



Hardfacts

Norwich Union Risk Services

Ref No 9001 (v5)

January 2007

Liability for Hazardous Trees

Introduction

The owner and/or occupier of land upon which trees stand is generally liable for any loss or damage resulting from falling branches or from the falling of the tree itself. Falling branches have resulted in deaths and caused serious road accidents.

If there is any doubt about the status or ownership of land containing trees landowners are strongly advised to clarify the situation as a matter of urgency. In the meantime it would be sensible to assume ownership and responsibility and take action as necessary in order to minimise potential future liability.

Legislation

Under the Health and Safety at Work etc. Act 1974, all occupiers have responsibilities to ensure the safety of those not in their employment. "Occupier" is generally taken to mean any person occupying or having control of premises, in this case land.

In addition, occupiers have duties under the Occupiers Liability Act 1984. This states (s2) that the occupier owes a "common law duty of care" to visitors and those who enter his land or premises and this duty of care extends to trespassers. In Scotland there is no such distinction in the law.

Liability of Tree Owners

Occupiers must take reasonable steps to manage and reduce risk and these steps include regular inspections of trees to identify those that might cause injury or place property at risk. When hazardous trees are identified suitable remedial action must be taken to reduce risk.

The Courts expect owners in control of places where the public has access, such as parks and gardens, to take greater care than those in control of more remote woodland. In addition, the Courts expect occupiers to be prepared for children to behave less carefully

than adults and thus consideration must be given to whether children might suffer injury from climbing trees which may have weak or damaged branches.

Occupiers are also advised to ensure that any person carrying out work on their trees is competent and holds adequate Public Liability insurance that covers both contractor and employer, i.e. the occupier against any unforeseen consequence of the work.

In the event of an accident the occupier may be held liable if the contractor does not have suitable or sufficient insurance.

Recent case law has confirmed and clarified the responsibilities (*Poll v Viscount Asquith* 2006). A motorcyclist suffered serious injuries when they collided with a fallen tree. The landowner was found liable even though they had hired a forestry inspector. But it was held that the contractor was not sufficiently experienced. He had relied on "drive by" inspections and not carried out a closer inspection of a tree that clearly should have received one.

Local Authorities

Local Authorities have certain powers to deal with dangerous trees that overhang the highway. They can give notice to the owner requiring them to cut or prune the tree. If the owner fails to comply the Authority may carry out the work and charge the owner. (Highways Act)

Local authorities retain control of trees that are covered by Tree Preservation Orders.

Inspections

It is essential that a planned inspection programme is established which ensures trees are inspected as often as is necessary. Inspections must only be undertaken by a suitably experienced and competent person and should lead to the carrying out of a risk assessment.

Inspections are best made in September or early October unless there are indications that checks need to be made immediately e.g. after severe storms. The initial visual inspection may indicate that more detailed examination is required. The inspection

should include the entire tree, not just those parts that appear in a poor condition or in danger of falling.

There cannot be specific guidance on the frequency of inspections since it is entirely dependent upon risk. Inspections should concentrate on those areas where there is a significant risk to persons or property. Such locations would include woodland containing paths and recreational areas or adjacent to a public highway or thoroughfare. In such locations there might need to be regular inspections after any period of severe weather in addition to an annual inspection. However, where there is limited risk e.g. in remote areas where there is little public access the frequency of inspection can be reduced.

Risk Assessment

The risk assessment should consider the following:

- Location of the tree in relation to people, property and adjacent thoroughfares
- Species of tree – some are better able to withstand decay
- Nature and type of decay or fungal attack

Risk Control

There are several control methods that can be used to reduce the risk:

- Modifying usage e.g. by re-routing paths and walkways or moving car parks or recreational facilities
- Tree surgery
- Bracing or propping
- Felling

The most appropriate action will depend upon the circumstances. If the tree is of no significant value then felling may be a suitable option. However, if the tree is great value e.g. a specimen, one of historical significance or part of a wildlife habitat then re-routing of adjacent footpaths may be the more suitable approach.

It is possible to reduce the development of hazardous situations by preventive activities such as staking of young trees, harvesting and woodland management. Where such management has not been taken, hazardous situations may have arisen.

Over Hanging Branches

It is well established in law that neighbours have a legal right to trim overhanging branches (and roots) however they must return the cut branches. But they are under

no obligation to consider any effect of the tree from their pruning e.g. unbalancing the tree. Thus occupiers are strongly advised to liaise with neighbours and offer to prune so as to avoid the risk of inappropriate action being taken.

Tree Felling

It is a criminal offence to fell a tree without first having obtained the necessary licence from the Forestry Commission. There are certain exceptions to this requirement that include, but are not limited, to the following:

- Small trees (as defined)
- Trees in gardens
- Trees in certain locations such as designated open spaces
- Trees that need to be felled to prevent danger

Key Action Steps

If you are in control of land that contains trees then you should:

- Secure competent advice
- Set up a regular programme of inspection
- Take remedial action as necessary

Source of Information

- Hazards from Trees – A General Guide ISBN 0-85538-514-6
- Tree Felling – Getting Permission

Both published by Forestry Commission and free to download from their website www.forestry.gov.uk

Trees and the Law ISBN 0 900978 15 5
Published by the Arboricultural Association
Tel: 01794 68717

Institute of Chartered Foresters
Tel: 0121 225 2705

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Norwich Union Risk Services operates a Risk Helpline during normal business hours for the cost of a local telephone call. The telephone number is:
0845 366 66 66
www.nu-riskservices.co.uk