

# Loss Prevention Standards

## Hazardous Trees

### Introduction

The owner and/or occupier of land upon which trees stand may be held liable for any loss or damage resulting from falling branches or from a fall of the tree itself. The number of instances when people are struck by falling branches or trees is relatively low.

The National Trees Safety Group commissioned research which determined that from January 1999 to 2009 there had been 64 deaths resulting from falling branches or trees. Non-fatal injuries from such causes give rise to around 55 cases each year, which is much lower than other everyday causes of accidents, such as, footballs 262,000 cases, children's swings 10,900 cases and wheelie bins 2,200 cases.



Anyone with responsibility for land or trees should put in place procedures to identify and manage the risk. 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 liabilities.

### Liability of Tree Owners

Occupiers and anyone with responsibility for trees, e.g. a tenant, must take reasonable steps to manage and reduce risk and including identifying and inspecting those trees that might cause injury or place property at risk. When hazardous trees are identified, suitable remedial action must be taken to reduce risk.

In addition to existing statutory requirements the Courts expect those in control of places to which the public has access, such as parks and gardens, to take greater care than those in control of more remote woodland. Consideration should also be given to the possible increase in risks arising from the placing of seating or benches around or under trees. 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.

It is necessary to have in place a strategy which will include suitable and sufficient systems and procedures to ensure that the risks are identified, assessed and controlled. Such systems and procedures need only be reasonable, as it is not necessary to reduce risks to zero and completely eliminate the chance that a branch could fall and injure a person. A suitable strategy will include the following:

### Zoning

A high risk area may be:

- Located near to or adjacent to roads, parking, etc.
- Easy to access with made-up paths suitable for buggies, pushchairs and wheelchairs
- In regular daily use

In contrast a low risk area may:

- Be remote
- Not possess clear footpaths
- Have no obvious visitor attractions or facilities
- Be little used apart from specialist groups such as birdwatchers and mountain bikers

## Inspections and Risk Assessments

It is essential that systems and procedures are documented and that inspection records are retained. Inspections must only be undertaken by a suitably experienced and competent person and should lead to the carrying out of a risk assessment.

Current custom and practice includes three types of inspection:

- **Informal Observation:** which can be undertaken by persons who are not necessarily tree specialists but who possess an understanding of trees and have local knowledge
- **Formal Inspection:** dedicated surveys comprising a mix of walk-through inspections and close examination of trees from ground level
- **Detailed Inspection:** carried out by a tree specialist and which will involve access to and close examination of all parts of the tree

There are various sources of guidance for the exact nature and frequency of inspections. The [Arboricultural Association](#) recommends:

- Frequency of inspection to be related to the tree's condition and the risk of failure
- Annual inspection, as a minimum
- Additional inspections following storms or severe weather events

Those trees located in the highest risk locations should be inspected more regularly, such as:

- In parks or places with high public 'footfall' such as recreation grounds or playing fields
- Adjacent to roads
- Overhanging third party property
- Species more liable to disease or decay

A risk assessment will help establish what needs to be done and should consider the following:

- Location of the tree(s) in relation to people, property and adjacent thoroughfares
- The age and condition of the tree(s)
- Species; some trees are better able to withstand decay
- Nature and type of any damage, decay or fungal attack

Inspections should concentrate on those areas where there is a significant risk to persons or property.

## Assessing Competence

A person is generally regarded as competent if they possess a suitable mix of both formal qualifications and practical expertise. There are a number of relevant qualifications including Examinations and Certificates offered by City & Guilds and the Royal Forestry Society, BTEC and Foundation Degrees/BSc (Hons) Degrees. In addition, individuals should also be required to demonstrate their expertise.

## Using Contractors

Whilst it is possible to carry out both inspections and remedial work using your own employees, there are times when it may be preferable to use contractors. Contractors must be competent and hold adequate Public Liability insurance that covers both the contractor and their 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.

Case law has confirmed and clarified the responsibilities regarding the liabilities of the employer (*Poll v Viscount Asquith 2006*) in respect of the maintenance of trees. A motorcyclist suffered serious injuries when he collided with a fallen tree. The land owner was found liable even though they had hired a forestry inspector, as 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 the tree that clearly should have received one.

## Local Authorities

Local authorities have certain powers to deal with dangerous trees which overhang the highway, including providing 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. Local authorities retain control of trees that are covered by Tree Preservation Orders.

## Management of the Risk

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

- Modifying usage, e.g. by re-routing paths and walkways or relocating car parking areas or recreational facilities
- Removing seating or play equipment that might encourage people to linger under trees
- Changing mowing practice, underplanting with shrubs or leaving brushwood or logs under/around trees to keep people at a safe distance
- Fencing or barriers to prevent people accessing the area close to the tree/under the canopy
- Tree surgery
- Bracing or propping
- Felling

The most appropriate action will depend upon the circumstances.

## Overhanging Branches

It is established in law that neighbours have a legal right to trim overhanging branches, and roots, however they must return the cut branches. However, 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 which include small trees (as defined), trees in gardens, trees in certain locations such as designated open spaces and trees that need to be felled to prevent danger.

## 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. Thus there are clear legal responsibilities to assess risks which arise from trees and take suitable and sufficient steps to control these risks. 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.

## Key Action Steps

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

- Secure competent advice
- Develop a procedure to identify those trees that present the greatest risk
- Set up a regular programme of inspections
- Take remedial action as necessary
- Keep suitable and sufficient records of all that you have done

## Additional Information

- [City & Guilds](#)
- [Royal Forestry Society](#)
- [Forestry Commission](#) – This site also includes details of the National Tree Safety Group (NTSG) which is a partnership of bodies with an interest in and experience of tree management
- *Hazards from Trees – General Guide*: Published by the Forestry Commission and available to download from their website above
- *Tree Felling – Getting Permission*: Published by the Forestry Commission and available to download from their website above
- [Guide to Trees and the Law](#): Published by the Arboricultural Association
- [Institute of Chartered Foresters](#)

Further risk management information can be obtained from [Aviva Risk Management Solutions](#)

Please Note

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