

Storm in a treetop?

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Following the recent storms that have hit record levels within the UK, many people have been affected. One of the most common issues experienced is that of trees



falling or broken branches. This can cause a multitude of problems including blocking passage of vehicles - preventing roads and homes from being accessed, disruption in communications or other services, causing large (and small) amounts of damage to property. Sadly, this may also lead to death, in some cases.

What's the risk?

Statistically, trees account for a low number of incidents causing damage to people. Figures published by the HSE suggest that between five and six people are killed in the UK every year from falling trees or branches – three are killed by trees in public spaces. The risk of such an event is categorised as 'extremely low' - about one in 10 million.

However, on Friday 19 February 2022 storm Eunice hit the UK, with winds of up to 122 miles per hour. The storms brought down numerous trees and branches, resulting in at least three deaths. The numbers of homes and property, damaged by the storm will not be known for some time. Insurers and homeowners will be calculating the damage to not only their own property, but likely to others who have been affected by the damage done by the tree in question.

Who is liable?

Generally, the occupier of the land on which the tree is growing will have a duty towards those who may be affected, should the falling/shedding of the tree be as a result of lack of proper care and maintenance. Where there is a tree, there may be liability, should it fall or damage property, under such circumstances.

The nature of the tree, including species, age and its condition will naturally have an effect on whether the tree is likely to fall or shed a branch. A tree that is apparently free from serious defects may suddenly blow over completely in a severe storm or shed some large branches, but that particular risk cannot be reasonably predicted. This will be an unforeseeable event and will not render its owner liable in negligence.

Risky business?

What the owner of the tree is required to consider is, what risk may be present within the tree which can be discovered upon a reasonable inspection of it. This includes looking for any signs of disease, fungal infections or physical damage. For example, if a vehicle has previously collided with the tree, an inspection should assess any damage, giving rise to a risk.

There have been many cases where the courts have found that the issue with the tree would (or should) have been able to be discovered upon a reasonable inspection (*Quinn v Scott* [1964] 1 W.L.R. 1004, *Calor and Singh v Highways England* - [2019] 9 WLUK 587). So, inspections are a crucial part of any defence to a claim and specialist, ongoing advice should be sought.



Root and branch approach?

Numerous issues arise from falling trees and branches including: insurance disputes, neighbour disputes, arguments over damaged fences, sheds and other property and most are likely suitable to be resolved via mediation. Often the sooner the better as continuity of the neighbourly relationship has better prospects of being achieved, rather than enduring the long, protracted, expensive and extremely stressful process of litigation! There may also be a history of hostility, started long before the first branch falls, meaning that relationships may be strained, and expert settlement advice is therefore necessary.

2022 has got off to a stormy start and there will be undoubtedly more to come. However, tree owners need to act as 'reasonable, prudent land owners' and be aware of their responsibilities for trees on their land, if they are to avoid often complex, lengthy and costly claims for damage.



For any issues relating to arboricultural law or alternative means of dispute resolution, including mediation, please contact Elizabeth Nicholls – clerks@4-5.co.uk

Elizabeth acts on behalf of individuals, local authorities, public bodies, insurers and companies. She is also Public Direct Access accredited.

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