

# Managing risks from trees: a position statement from the National Tree Safety Group

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## Introduction

The National Tree Safety Group (NTSG) is an inclusive organisation with representatives from governmental and non-governmental agencies, professional and corporate bodies involved in the management of trees. Its membership is open to all stakeholders with responsibility for trees<sup>1</sup>. The NTSG's aim is to develop a nationally recognised approach to tree safety management and to provide guidance that is proportionate to the actual risks posed by trees. A main outcome stipulated in its terms of reference is to produce a set of basic principles for considering and managing tree safety in the public interest. This statement, *Managing Risk from Trees*, sets out those principles. The overall approach is that a balance should be struck between risks and benefits.

The statement aims to support the work of all those involved in tree management – whether connected with streets, parks, public open spaces, businesses such as hotels or farms, private estates, woodland, commercial forestry or private gardens.

## Context

There has been wide concern about the way that tree management addresses public safety. Fear of litigation is leading many landowners to remove trees in the name of 'health and safety'. The effect is to shift the focus away from more fundamental objectives.

People's tendency to remove trees for fear of them failing ignores dependable evidence that associated deaths and injuries are very rare indeed. Despite the fact that millions of trees grace our landscape and that nearly everybody passes under trees every day, there are only about six deaths a year from trees. Felling is also an exaggerated response to the actual risk of prosecution. Court judgments have recently shown regard for the landowner undertaking reasonable and proportionate tree assessment and management without the implied need for burdensome record keeping or costly professional surveying. A number of recent lower court judgments against the responsible defendant landowner have been overturned in the higher court in favour of the wider common good. Indeed the Health and Safety Executive itself has only ever made one successful tree-related prosecution following members of the public being killed by falling trees or branches.

The NTSG has produced this position statement in response to growing concern over the unnecessary removal of trees. Neither the law nor the regulators require the NTSG or anybody else to develop a single policy that states how safety should be managed in all circumstances. Management of the risk is the responsibility of the owners and managers of the land (and the trees). However, a coherent underlying risk philosophy articulated by such an inclusive organisation will undoubtedly aid all types of tree owner in considering what constitutes reasonable management in their particular circumstance.

## **Striking a balance between risk and benefits**

The spirit of the Health and Safety at Work Act and other legislation that addresses people's safety in the face of risk of death or injury suggests that the operators, in this case tree owners and managers, are the people best placed to assess the risk and take the necessary action to reduce it to a reasonable level.<sup>2</sup> The act obliges them to reduce the risk as far as is reasonably practicable. The HSE's general approach is to set out the (safety) objectives and to give duty holders considerable choice as to the measures they should put in place to meet these objectives.

The HSE also recognises the complexity of the decision-making involved. It recognises, that there are necessary trade-offs between benefits to society and ensuring that individuals are adequately protected, including the need to avoid imposing unnecessary restrictions on people's freedom.

For such a non-prescriptive regime to work, however, duty holders must have a clear understanding of what they must do to comply with their legal obligations,<sup>3</sup> and the NTSG will produce detailed guidance to support this statement of principle:

**The NTSG believes that one fundamental concept should underlie the management of risks from trees. It is that the evaluation of what is reasonable should be based upon a balance between benefit and risk. This calculation can only be undertaken in a local context, since trees provide many different types of benefit in a range of different circumstances.**

This underpins a set of five key principles:

1. Trees provide a wide variety of benefits to society
2. They are living organisms and naturally lose branches or fall
3. The risk to human safety is extremely low
4. Tree owners have a legal duty of care
5. Tree owners should take a balanced and proportionate approach to tree safety management.

## **Trees and risk**

There are billions of trees in the United Kingdom and they make a vital contribution to our health, wealth and well being. Nowhere in the UK can be thought of as untouched by human activity, but not all trees are actively managed. Where it occurs, tree management means many different things depending on its underlying purpose. Trees grown by the Forestry Commission to supply timber are not dealt with in the same way a tree on a busy street. While tree safety management in both cases focuses on deaths and physical injuries resulting from accidents, the approach needs to strike a balance between both the benefits and the risks from trees. Although people's safety is undoubtedly an important consideration whether trees are managed for their cultural, amenity, heritage or environmental benefits or for timber production and other commercial interests, it must be evaluated alongside the other benefits.

Because trees present a very low risk to people, owners and managers should be able to make decisions within this context and avoid unnecessary intervention, survey and cost. In so doing they can reduce unacceptable risks whilst optimising the many values conferred by trees. Good tree safety management does not seek to eliminate risk, but to reduce it to a reasonable level. In some situations people exposed to risks from trees are expected to make reasonable decisions about their own interaction with trees, particularly during extreme weather.

Trees grow in many different types of location and the expectation of society and the courts reflects this. By carefully considering how trees fit into a particular local context, owners and managers will be better able to identify those areas and situations requiring some action. It will also help them ensure that any management is proportionate, achieving a fair balance between the real risks and benefits.

## **Evaluation of what is reasonable**

The Health and Safety Executive believes that: "Public safety aspects can be addressed as part of the approach to managing tree health and tree owners should be encouraged to consider public safety as part of their overall approach to tree management."<sup>4</sup> This is an encouraging position from the regulator, even if 'tree health' may be a term that causes some discussion within the tree world. It would certainly seem that the HSE, and by implication the courts, will accept that human safety is to be considered within a wider management context rather than being evaluated in isolation or in response to some notional protocol.

The first stage of an evaluation, therefore, looks at the role of the trees themselves. In a private garden, there is no presumption that it is reasonable to expect owners to do anything other than react to obvious signs of danger (which they are likely to do anyway since it is themselves or their property that is most in danger). There is clearly a concept of scale in the consideration of reasonableness and, in the context of the low level of risk noted already, the HSE SIM further states that: "Given the large number of trees in public spaces across the country, control measures that involve inspecting and recording every tree would appear to be grossly disproportionate to the risk". What is inherent in this evaluation is a sense of proportion. This can only be achieved by considering the trees' place in a wider management context and the relationship of people to that context.

In some circumstances trees are managed as a crop. This context is closer to the type of workplace environment that the Health and Safety at Work Act was designed to address. Here, the primary focus is on planting, maintaining and harvesting the crop for maximum income. In this simple model of a commercial forest, benefit can be equated to profit in the same way as in a factory or farm. In this case, one might expect a formal health and safety policy to address workforce and visitor safety. Leaving aside the question of amenity use by visitors, it seems logical to apply cost benefit analysis to the valuation of safety interventions as outlined in the Tolerability of Risk Framework<sup>5</sup>. And, given the low level of risk to the public, it is likely that nearly all the investment will be focussed on worker safety. This type of calculation might be appropriate for other commercial operations and public utilities that incorporate trees on their site.

The evaluation seems more complicated when it comes to considering the risk to the public from trees in urban and rural open spaces. In many cases trees may be looked after by local government or public bodies such as the National Trust, which must bear the safety costs. Undoubtedly the trees benefit the organisation, but this benefit is not expressed as an income.<sup>6</sup> It is this dissociation of costs and benefits that leads to the unnecessary loss of trees. Here the benefits are to the public, but the owner, or manager, shoulders the costs and the liability. The establishment of what is reasonable in terms of public safety in these circumstances requires the adoption of a different basis of calculation. It is this that the NTSG, in common with other sectors of public risk such as play provision, is now arguing for.

## Managing the risk from trees

People enjoy what they perceive to be 'natural' or 'unmanaged' environments, and value trees that have received minimal or no intervention. People are prepared to accept a degree of risk because of the value of the trees, and the pleasure they derive from visiting or participating in leisure activities in treed environments. Therefore it is acceptable that tree management does not seek to eliminate all risk of minor and easily-healed injuries. Tree management should not expose people to significant likelihood of permanent disability or life-threatening injuries. However, it may on occasions be unavoidable that tree management exposes people to the very low risk of serious injury or even death. This is only tolerable in the following conditions:

- The likelihood is extremely low
- The hazards are clear to users
- There are obvious benefits
- Further reducing the risks would remove the benefits
- There are no reasonably practicable ways to manage the risks.

For example, a mature tree in a city park presents a low but irremovable risk of falling on somebody, even if it is frequently inspected and treated. This risk is usually tolerable. The likelihood is typically low and people benefit through retention of a feature that is inextricably linked to why they visit the park. Further reducing this risk is not possible without removing the tree and taking away the benefits.

The NTSG considers that it is reasonable to expect sufficiently large organisations that own or manage trees to develop a formal policy (in line with practice in other sectors). This policy should strike a balance between the risks and the benefits. This balance should be based on a risk assessment involving a risk-benefit trade-off between safety and other goals, which should be spelt out in the policy. The NTSG argues for the presumption to be that, given their social and environmental value and their importance to human health and well-being wherever possible, amenity trees should not be felled. Such a reasonable policy, articulating the benefits of trees, should carry as much weight in protecting the policy-maker against litigation following an incident as any reasonable risk management policy in a workplace setting.

## Conclusion

Safety management should not be considered in isolation. It should be considered only as part of an integrated management plan that focuses on the wider management of the trees within a particular setting. Establishing the reasons for the tree being there will always dictate the resources invested in its maintenance, whether it is being grown as timber, is an outstanding veteran tree in the park of a stately home or is a self-seeded intruder that needs to be cleared for site development. A situation has arisen where some of those

responsible for trees are managing them defensively, though fear of litigation. This circumstance is exacerbated by the fact that, generally speaking, while public gets the benefit of the trees, it is the owners and managers who bear the legal duty and attendant cost. This unnecessary loss of trees, which the landowner would have otherwise retained, can be addressed if the public good (in terms of health, environmental and social benefits for example) is brought into the calculation of benefit to demonstrate a reasonable position that will be accepted by the courts.

## Notes

1. Membership currently includes the Forestry Commission, The Arboricultural Association, The Country Land and Business Association, the Woodland Trust, the Ancient Tree Forum, The Confederation of Forest Industries, English Heritage, The National Farmers Union, The Institute of Chartered Foresters, The British Standards Institution, The Royal Institution of Chartered Surveyors, The London Tree Officers association, the Visitor Safety in the Countryside Group and the National Trust.
2. Reducing Risks, Protecting People, HSE, 2001.
3. The HSE sector information minute, although produced for its own inspectors, also gives useful insight into their current thinking. (HSE, SIM 01/2007/05, Management of the risk from falling trees).
4. HSE, SIM 01/2007/05, Management of the risk from falling trees.
5. The Tolerability of Risk Framework is used by the HSE to judge what is reasonable for investment in safety. It is set out in Reducing Risk Protecting People, HSE 2001.
6. And although techniques exist to estimate a monetary value by surveying people's willingness to pay for such intangible benefits, this is not practicable in the circumstances of tree risk management.