Managing tree-related liability through autumn and winter 2026

What the coming season tends to do to trees, what the law asks of you as the owner, and what sensible tree management looks like on a small budget.

AGENDA

What we'll cover

1

What this season does to trees

How a dry summer, a wet autumn and a stormy winter build on one another and exasperate seasonal challenges

2

Where your legal duty sits

The Occupiers' Liability Acts and common-law negligence in plain English

3

What the courts have decided

Two well known cases and what the successful defendants had in common.

4

What to do before December

Practical guidance on how to mitigate your tree risk while building a defensible position if things do go wrong

Q & A

THE SITUATION

How the season builds, from July to March

THE SUMMER JUST GONE

Clay soils shrink

In a long dry spell, tree roots draw a lot of moisture out of clay soil and the ground contracts, causing foundations to shift and cracking to appear.

OCTOBER TO DECEMBER

The ground moves again

Autumn rain refills the soil unevenly and may cause cracks may widen or close up. Trees still in full leaf catch the wind, making uprooting and falling branches more likely

DECEMBER TO MARCH

Storms find weaknesses

Winter gales test roots damaged by drought, now sitting in waterlogged clay. Weakened anchorage and brittle deadwood make uprooting and falling branches more likely.

> A tree that comes down in January was often in trouble back in July.
> If an issue arises, questions will revolve around what happened in between.

FIRST, THE DRY SUMMER

It starts long before anyone sees a crack

- A mature broadleaf tree can take many tens of litres of water a day out of the soil around it.
- Where that soil is clay (much of the Southeast, East Anglia and the Midlands) it shrinks, and shallow foundations settle with it.
- Councils tend to own exactly the trees that get blamed: highway trees, churchyard and burial ground trees, verges, parks and boundary trees.
- The British Geological Survey expects the number of UK properties at high risk from shrink-swell soils to double by 2030, as summers get hotter and drier.

Reference British Geological Survey, shrink-swell subsidence projections

THEN, THE AUTUMN RAIN

Ground movement turns into a subsidence claim

£219 million

Paid out on domestic subsidence in a single year (2022)

23,000

Subsidence claims made in that year

70%

Of those claims with trees or vegetation involved

6 – 24 months

How long a claim usually runs, with the tree in question under discussion throughout

£1.9 billion

Forecast annual subsidence spend by 2030

£9,600

Average settlement, before anyone tries to recover it from a tree owner

References ABI Press Release 2023 · PwC Press Release 2023

AND THEN THE STORMS

Winter is the risk, and also the opportunity

Wet ground holds trees badly

Once the soil is waterlogged, the root plate has much less to grip. Trees come over in winds they stood through happily in August.

Bare branches reveal all

Deadwood, cavities, weak forks and hanging limbs are all far easier to spot from the ground between November and March.

A look round after a storm counts

Walking your busiest sites after a named storm, and writing down what you found and when, is about the cheapest evidence there is.

Busiest Sites
Exposure to injury or property damage: the play area, the war memorial, the bus stop, the car park, the school route, the neighbour's roof.

THE DUTY

What the law asks of you as a tree owner

OCCUPIERS' LIABILITY ACT 1957

You owe a duty of care to people you invite onto your land to see that they are reasonably safe while they are there.

OCCUPIERS' LIABILITY ACT 1984

A narrower duty to people who are not invited, where you know about a danger and know somebody might come near it.

NEGLIGENCE AND NUISANCE

Taking reasonable care of your neighbours and of people on the highway, including damage from roots that you could have foreseen.

Reasonable and defensible, not perfect

Nobody expects a council to remove every risk. What is expected is that somebody suitably qualified looks at the trees, on a sensible cycle, and that you act on what they find.

Size doesn’t matter

A parish council with one recreation ground is an occupier in the same terms as a county council with forty thousand trees. The scale of the response can differ but the duty doesn't.

WHAT THE COURTS DECIDED

Case 1: Bowen v National Trust (2011)

In 2007, a branch fell from a mature beech onto schoolchildren sheltering at Felbrigg Hall, killing one child and injuring three.

The family argued that visible adaptive growth should have led to remedial work

- **Written tree safety policy**
- **Risk-zoned estate**
- **Inspected at least every two years (medium-risk zone)**
- **Two inspections in the six months before the failure**
- **Regular informal walk-past checks**
- **Trained, experienced inspectors**
- **Inspection in line with accepted professional practice**

Outcome: Not liable

WHAT THE COURTS DECIDED

Case 2: Hoyle v Hampshire County Council (2022)

In 2017 during a storm, a tree besides the A287 fell onto a passing car, killing an occupant.

It was alleged that the defects in the tree should have been flagged as a higher priority and done sooner.

- 16 drive-by inspections
- Two on-foot arborist inspections in the year before failure
- Regime exceeded the agreed three-yearly standard
- Qualified arboricultural contractors
- No visible defects to trigger immediate action

Outcome: Not liable

If a tree came down tomorrow, could you produce your inspection and works records within 24 hours?

That is usually the first question asked, ahead of why the tree failed.
The answer needs to be something you can put your hands on: dated, written down, and signed off by someone qualified to have made the judgement.

THE RESPONSE

What a sound inspection system looks like

1. **A written tree policy.** Implemented, minuted, looked at once a year. The important is that it exists and that you follow it.
2. **Inspections matched to how busy the site is.** Play areas, car parks, footpaths and road frontages get looked at more often than a back field that nobody walks through.
3. **Somebody qualified doing the looking.** A Professional Tree Inspector. A groundsman's view, however experienced, won't carry the same weight, but they can play a role in the broader policy (visual checks after inclement weather)
4. **Recommendations that get done.** Urgent, moderate and routine, each with a date to be done by and a completion certificate when the work is finished.
5. **Records you can find again.** Kept centrally and easily available when somebody asks about them.

The one thing to avoid is an inspection that gets done but never written down, or a recommendation that is raised and never closed off.
Both show that you knew about a problem without showing what you did about it.

BEFORE DECEMBER

Eight things worth doing this autumn

✓ **Work out where your tree risk is likely to be**
Recreation grounds, closed churchyards, verges, allotments, car parks. Ownership arguments are much harder after something has fallen.

✓ **List the trees near people**
Anywhere a failure would meet somebody or something. For most councils that is a list of dozens, not thousands.

✓ **Book the winter inspection and report**
Between November and March, by a qualified inspector.

✓ **Finish off last year's actions**
An urgent recommendation from an earlier report that was never carried out is the thing most likely to cause you trouble.

✓ **Decide what triggers a storm check**
Agree now whether it is a named storm or an amber warning, and who goes out and does it. This would form part of your policy.

✓ **Log what residents tell you**
An email about a leaning tree that nobody replied to is exactly the paper trail you don't want read out later.

✓ **Check where you stand with your insurer**
Ask them what evidence of tree management they expect you to be keeping.

✓ **Develop a Tree Management Policy**
Design and implement the policy, then stick with it. This will demonstrate your structured and defensible approach if an issue arises.

Two ways to make a start

The 5-minute tree risk check

Ten questions, a score, and a straightforward view of where your risk currently stands.
No site visit, no obligation, no cost.

A quote for a tree condition report

A fixed price against your list of sites, carried out by a Professional Tree Inspector.

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Q&A

Useful links

www.clearcouncils.co.uk

www.envirotrees.uk