

Demystifying Woodland Insurance and Liabilities for Landowners

Roadside Trees and Woodlands



Woodland insurance and liabilities for landowners – doesn't sound the most gripping of subjects, but it is of very great importance, and this one-day event took us through our responsibilities as woodland owners. Organised by Heartwoods, hosted at the Forestry Commission Centre at Wyre Forest, and supported by ConFor, the Country Land and Business Association (CLA), the Forestry Commission and the National Farmers Union, this conference had an attendance of around 60 delegates. Talking to those who attended, the issue is of interest to everybody from folk like

ourselves, with 20-30 acres of woodland, right up to those managing very substantial estates covering large swathes of the country. So we sat with a mixture of small woodland owners, managers, large estate owners and even a Lord, to learn what we need to know, making reference throughout to the recent publication from the National Tree Safety Group: *Common Sense Risk Management of Trees*.

Responsibilities of having Rights of Way in or near your woodland

It was a great shame that the representative from Lycetts insurance company could not be with us on the day, although his presentation will be sent to us. So the day kicked off instead with the sometimes thorny subject of Rights of Way, presented by Richard Preston from Worcestershire County Council. He went through the law on Rights of Way in a very clear and simple manner. All Public Rights of Way (PROW) are Highways, a term which includes these PROW and roads. PROW come in four flavours: footpaths, bridleways (open to pedestrians, cyclists and equestrians), byways open to all traffic (BOAT) and restricted byways (no mechanical vehicles). Landowners have responsibility for some, but not all PROW management, and this includes stiles and gates, bridges over *new* ditches, overgrowth (trees) and crops, but the highways authority has responsibility for the rest (waymarks and signs, overgrowth). Waste authority has responsibility for fly-tipping, but owners are often fobbed off! Highways authorities must provide 25% of the cost of replacing stiles and gates, but many offer more. There are two new categories following the Countryside Rights of Way Act – Access Land and Permissive Access – the former are mapped areas of open countryside, the latter is access at the discretion of the landowner. Liabilities vary depending on the categorisation of the land, and the most important liability you must fulfil is “duty of care” – making it important to keep written records of your safety checks. Richard also dealt with trespass and its categories, and stressed the importance of filing a “Section 31 deposit” with the planning authority detailing permissive paths and to prevent trespassers claiming permanent rights if access has been continuous for 20 years.

Common Sense Risk Management of Trees

Justin Mumford was the next speaker, giving a very clear background to the new document, and running through the responsibilities we have as landowners for tree safety. First of all, the risk of being killed by a tree is extremely low – 6 people per year in the UK or 1 in ten million. This risk halves to one in 20 million in the open countryside (away from roads). The background to the review by the National Tree Safety Group was a case *Poll v Bartholomew* in 2006. A motorcyclist rounded a corner and hit a fallen roadside tree and was seriously injured.

Finding in his favour, the judge ruled that despite having trees inspected by a tree surgeon, and good written records, the tree surgeon had missed a small bracket fungus on the tree. He also ruled that he was not actually qualified to carry out these inspections, and that new qualifications were needed for roadside inspections. This had a major effect both on the qualifications industry, but also on roadside trees. Many were simply cut down, the costs of inspections and insurance becoming too onerous for landowners. So a review was set up, which reported in January 2012, and this report has been covered in a previous edition of this newsletter.

The guidance restores a lot of common sense to the management of trees, but it is clear that doing nothing is not an option and *everybody who owns trees with which the public might come into contact must read and apply the*



guidance. It is principles-based, and strikes a balance between the risks from and benefits of trees in the landscape, and that the approach should be balanced and proportionate. After considering legal duties, the booklet introduces its main recommendations for action. A tree safety policy should be produced. It should be based upon *zoning of the land* such that areas in much more frequent use, and in particular roads, where collisions may occur at higher speeds with greater consequences, should be

treated differently from areas in less frequent use. This should allow landowners to devise an inspection regime, and these *inspections may be informal, formal and detailed.* Crucially, anybody can undertake these inspections including members of the public, contractors and employees, who may make *ad hoc* observations. A landowner may or may not feel able to assess tree safety, and can call in a suitably qualified individual to assess a tree at any time if unsure. In general, the level of expertise relates to obvious defects – branches hanging off, root plates moving, major decay or evidence of disease. The majority of the time, inspections will be *ad hoc*, with formal inspection limited to areas in frequent use, and detailed inspection to high value trees of concern. The frequency of inspection is not stated and it is up to the landowner to decide what is required – for example, along a busy road, you may want to inspect once a year, plus after every storm.

The key message is clear: ignorance is no defence, and doing nothing and hoping for the best is not an option. If the public visit your wood, you are advised to have a tree safety policy and keep records (these can be electronic). These guidelines have yet to be tested by case law, but a clear policy that is reasonable, and good records will make your case much more defensible.

The 'Common Sense Risk Management of Trees' guidance can be downloaded at

[http://www.forestry.gov.uk/pdf/FCMS024.pdf/\\$FILE/FCMS024.pdf](http://www.forestry.gov.uk/pdf/FCMS024.pdf/$FILE/FCMS024.pdf)

and a summary for landowners at

[http://www.forestry.gov.uk/pdf/FCMS025.pdf/\\$FILE/FCMS025.pdf](http://www.forestry.gov.uk/pdf/FCMS025.pdf/$FILE/FCMS025.pdf)

The document has been discussed in a previous newsletter <http://www.swog.org.uk/wp-content/uploads/2012/01/NL-Feb2012-final.pdf> and the article also describes what we have done, and our tree safety policy.

Safety Aspects of Practical Woodland Management – Responsibilities for Contractors

Graham Taylor (Pryor and Rickett) considered what you need to do if you have contractors working for you in your woodland. Not all small woodland owners employ contractors, but even in our 20 acre woodland, we have had contractors working on site on occasion. Forestry can be a risky business, with 5 times the risk of death of the construction industry (10.4 versus 2.8 per 100,000), and 15 times the risk of all UK industries, and there is a residual risk culture at which the HSE are looking closely. Interestingly, experience and age are not predictors of risk, and accidents are not just among “weekend foresters” such as many small woodland owners.

Before employing contractors, it is important to ensure that you read the HSE Forestry Document published in 2003, and consider what is being done in your woods. Whoever commissions work on site should see that the contractors have the correct certification, insurance, a proper risk assessment for the work to be done (the landowner may be able to add things they hadn't thought of), and check the work to ensure the guidance is being followed. This shows a good level of “duty of care” to your contractors, and other woodland users who may come into contact with them and their work.

Bringing Groups into your Woodland – Alex Argyropulo

Speaking as a landowner who permits Forest Schools to operate in his woodland, Alex provided a lot of useful information for those thinking of inviting groups into the wood. What is clear is that both the landowner and the group leaders have some responsibility for duty of care, negligence, litigation, compensation, insurance and even criminal negligence. This sometimes makes it very difficult to insure these activities. A block policy, such as that offered by Rural Arbor Products has many exclusions, some of which are implicit, so you need to read the policy carefully. The above excludes any activities for which payment is taken, any activities involving children, any regular or frequent users. However a bespoke policy can be very expensive, and you need to talk to your insurers so you can be clear what is being done, and what they are covering. Alex managed to get an indemnity from the Council for the local authority group to use the site, in return handing over health and safety responsibilities to the user. This is obviously OK for some groups but not others, and will only cover one specific type of use. You still need to ensure under these circumstances that they have done what they say they are going to do in terms of health and safety, and that they are competent to do it, so it isn't a get out. You also need to supply local knowledge. Other groups, including volunteers, may be considered to be either your employees, or contractors, and then your liability, and responsibilities change to those of employer or commissioner of contractors. Managing conflicting activities in the wood, and in the surrounding area is also important e.g. telling the users if permission has been given for lamping nearby when there are overnight stays in the wood. I got the feeling from this presentation that the odds are currently stacked against a small woodland owner who wants to invite groups to use their wood: insurance companies often don't understand the concept of wild spaces.

Multi-Purpose Woodland and Tree Safety

Ross Murray gave the final classroom presentation, and what a great summary it was. Ross manages huge estates in Monmouthshire, South Wales and Scotland. Estates are used for logging, access, sporting activities and shooting, by third parties including Forest Schools, and also have major and minor roads, other rights of way and canals crossing them. We may not have 4000ha estates, but many of us are affected by some or all of these issues – in our 20 acres we have a roadside boundary, shooting for vermin control, we do coppicing, we invite third parties in, hold public open days – in other words, estate size doesn't seem to matter. What you need to do is show a clear brief for all people involved: owner, beneficiary, agent, manager, contractor and employee (who could be a volunteer). It is useful, therefore, to have a health and safety policy, a tree safety policy, contractors' terms of engagement, a risk assessment for all activities, and any sporting or commercial activities should be covered by their own licences and insurance, and you should see copies of their certificates. I was pleased to see

that for this huge estate, the tree safety policy took a side and a half of A4 (the same as ours!). Health and safety policies can be difficult to write (our woodland one is incorporated into our business as a whole), and expensive, and at the end of the session, I agreed to work with Heartwoods to see whether we can produce short templates for small woodland owners that can be adapted for local use, making it easier to show “duty of care”.

Outdoor Workshop: Practical Implementation of Risk Management



After lunch, with showers threatening, and finally arriving in style, Mike Seville from the CLA gave the final presentation of the day. We looked at the potential for zoning in the vicinity of the Forestry Commission Centre and then walked up to the car park to consider trees at the roadside and how we might assess or manage them. We discussed whether you needed to record every tree, or whether a simple walk-by or drive-by inspection would suffice. He also gave us a demonstration of his tools of choice for inspection: a bag, binoculars, a notebook, a hammer (is the tree hollow?) and a screwdriver (is it rotten?).

We all agreed we wouldn't do a whole lot to the trees, although some of us might remove a hung-up sycamore

branch (away from parking spaces but in the vicinity). And with that the rain came down with a vengeance, and the session ended.

Overall impression

We were reassured that what we are doing, as small woodland owners, is reasonable. A tree safety policy is easy to write, but you need to have one if any members of the public enter or travel past or through your woods, and action should be proportionate to use. You need to have adequate insurance for the activities you carry out. You may need to have a health and safety policy, and need to manage contractors responsibly, in particular making sure they are qualified to carry out the work, and can work safely. This is not difficult, and doing nothing is not an option. We all need to do something, and record it.



Previous article: from February 2012 Newsletter

New guidance has been published regarding tree safety for landowners. This is an outline of what the guidance says, and the approach we have taken in our woods, before and after the issue of these guidelines.

The Forestry Commission have recently released new guidance for tree-owners and landowners regarding tree safety, produced by the National Tree Safety Group (NTSG). This is designed to provide clear

guidance, to ensure that trees critical for safety are managed while preventing over-zealous pruning or felling of trees that are in low-risk areas. The document is called *Common Sense Risk Management of Trees*, and is available with two companion documents: *Common Sense Risk Management of Trees—Landowner Summary* and *Managing Trees for Safety*, the latter being a guide for householders who own trees. All three documents are available from <http://www.forestry.gov.uk/forestry/HCOU-4VXJ5B>

As small woodland owners, we need to take the approach outlined in the Landowner Summary, and carry out a risk assessment of our trees. This booklet is subtitled *Landowner Summary of guidance on trees and public safety in the UK for estates and smallholdings*, and that pretty much covers most of us!

The NTSG outlines five principles of tree safety:

- trees provide a wide variety of benefits to society
- trees are living organisms that naturally lose branches or fall
- the overall risk to human safety is extremely low
- tree owners have a legal duty of care
- tree owners should take a balanced and proportionate approach to tree safety management

What we, as small woodland owners, have to do, is balance the risk posed by the tree with the benefit provided by the tree. Both risks and benefits will be locally-determined, and therefore need to be assessed in the context in which the tree grows.

Reading this booklet at first seems rather alarming—surely we don't have to go around and assess every branch on every tree in our woodland? Well, yes and no. The booklet outlines three steps to tree safety management

- zoning: appreciating tree stock in relation to people or property
- tree inspection: assessing obvious tree defects
- managing risk at an acceptable level: identifying, prioritising and undertaking safety work according to level of risk

The key concept here is zoning, i.e. defining different areas of the land you own depending on the use to which it is put. Clearly, if the land has no public use, and does not border on land that is used by the public, and if the only users it has are you and your family and friends, you can take a different approach to tree safety from a woodland owner who allows public access, who has a public right of way across the woodland, or whose woodland borders a road, footpath, canal or other area in use by the public. You do not need a specialist to zone your site—the landowner is the person best placed to do this.

High use areas, such as roadside trees, those on paths, footpaths, alongside canals, and in areas used by the public, or adjacent to public areas, will need a system of formal and recorded inspection and action. Low use areas can rely on informal or *ad hoc* inspection, and action taken only as required.

Tree inspection



Tree inspection can be informal, formal or detailed. Informal inspection is relatively straightforward—as we walk around the site, we look at trees, may see some action that is required, and take that action. Other people may also report to us a problem with one of our trees. Formal inspections may be drive-by or walk-over—again, fairly self-explanatory: you drive by or walk over your land and assess the trees for safety. You don't have to be formally qualified to do this, but you do have to have a knowledge and appreciation of trees and *“the ability to recognise normal and abnormal appearance and growth for the locality. This includes an*

ability to recognise obviously visible signs of serious ill health or significant structural problems, such as substantial fractured branches or a rocking root plate which, were they to cause tree failure, could result in serious harm. They also need the ability to assess approximate tree height and falling distance from the tree to the area of use as well as when to request a detailed inspection.” If you are new to woodland ownership and not confident to do this, it is helpful to have a qualified tree surgeon do your formal inspection, at least to begin with. This is what we did, and learned from him.

Detailed inspection is reserved for individual, high concern, high value trees growing in public areas, and need to be undertaken by professionals.

So, once you have zoned your woodland, you need to determine what the appropriate inspection regimen is for your trees.

Managing risk

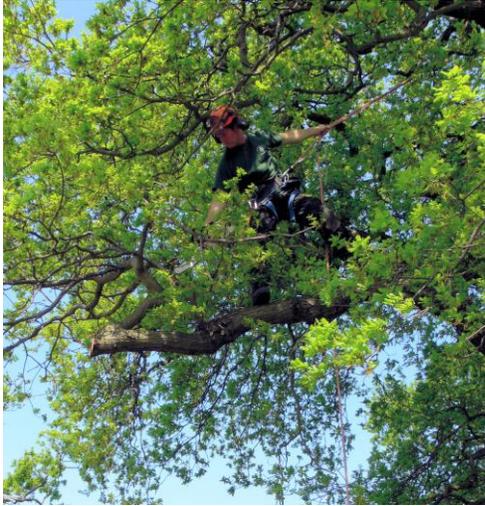
Even if you have identified a tree as a potential risk, you don't have to fell it, or cut off branches. The booklet gives guidance on managing risk by managing access e.g. you could divert a path so it no longer goes past the tree in question, re-locate parking spaces or play equipment, or just allow brambles and grass to grow long around the tree, so people find it hard to approach. Of course, you may need to take action, including, on occasions, felling the tree. But this all depends on the zone in which the tree sits and therefore the risk it poses. Remember also, if you need to fell a tree or branch, look out for roosting bats and if necessary, perform a bat survey before doing any work.

Keeping records



Another important thing to do is to keep records: somewhere, you should have a record of the zones in your woodland, your inspection types and schedules, a record of any trees of concern, and the action you have taken. We all know that trees can do unexpected things. We had a standing dead tree near a path that was assessed as safe by a tree surgeon. Less than 6 weeks later it suffered a frost fracture and fell across the path, fortunately while nobody was there. Nobody could have predicted that. But, had somebody been injured, we would have been able to show we had inspected the tree, been concerned, and invited a detailed inspection by a qualified individual, and taken appropriate action based upon what he said.

What we have done



We are not tree surgeons, nor are we lawyers. However we have to take tree safety seriously because our woodland borders a road, a field used variously for horses and sheep, an arable field, and a canal. Although there is no right of way through the woodland, we hold open days, have volunteers come and help us (including from a rehabilitation project) and run photography courses and other meetings in our woodland. We also know that poachers enter the woods illegally—and we have to protect them too.

Before the guidance came out, we already had a scheme of tree inspection, in particular of the trees along the road, which is a national speed limit road, and therefore traffic speeds are high.

The first thing we did when we bought the woods was get a tree surgeon to inspect the trees alongside the road and undertake safety work on them. As we gradually created paths, we had him inspect the trees alongside the paths for safety too, and undertake work required. This work initially required planning permission (due to a site Tree Protection Order), but is now incorporated in our woodland management plan.

Under this plan, we undertake an annual tree safety survey along the road and main paths on foot, looking for signs of weakness in the trees. Dead branches and hung-up branches are the main concern, but we also look for other issues.

We don't want to fell trees or cut off dead branches where it isn't necessary because our woodland is mainly a wildlife site. But we have cut some branches, and left them as habitat piles. We have also had to fell one large oak tree growing extremely close to the road, as this was not only a collision hazard, but also impaired visibility when entering and leaving the site. Most trees need no management, as they are nowhere near the boundaries or paths, so they are left alone, unless we notice a problem with them.

When we hold any public events, we always carry out a site inspection before opening the wood: this is usually a buzz round on the quad bike. We started doing this after three cows escaped from conservation grazing on a nearby wildlife site, and ended up in our wood, to the surprise of us and our visitors, but it is clearly useful for tree safety too.

Tree safety policy

In response to the booklet we now have a Tree Safety Policy too. This didn't take long to write, as we were already doing everything the booklet asks of us, and fits on two sides of A4.

First of all, we described our woods, and decided whether in general, they were high or low risk—clearly they are the latter. We then described four different zones in which different policies for inspection should apply

1. Roadside (high risk, heavy daily use, formal inspection, detailed inspection if needed)
2. Main woodland paths (low risk, intermittent use, formal inspection)
3. Woodland away from paths (low risk, informal inspection)
4. Newly-planted woodland under 2m tall (low risk, informal inspection but will need modification as trees grow)

We then outlined additional precautions we will take e.g. siting the camping area away from the drip line of trees, cancelling events in high winds, inspecting paths prior to every public event, undertaking specific risk assessments for specific events, and advising public visitors to keep to the paths at all times.

This year we have completed our formal inspection along the roadside, and found no current issues. The formal inspection of the paths and parking areas has highlighted a few dead branches of concern, which we plan to cut before re-opening in the Spring. We also have a hollow tree about which we have been concerned for a while, and which is close to a path. We have now re-routed this path, so the tree would fall away from it—this has knock-on benefits of keeping visitors off our bluebells.

What to do

Four things: read the booklet; write a policy; inspect your trees; record it! You don't have to inspect every tree, you don't have to cut every tree down, you don't have to keep people out of your woods. It is just common sense, and something I guess most of us are doing all the time anyway.