



Balancing tree benefits against tree security; the duty holder's dilemma

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Summary

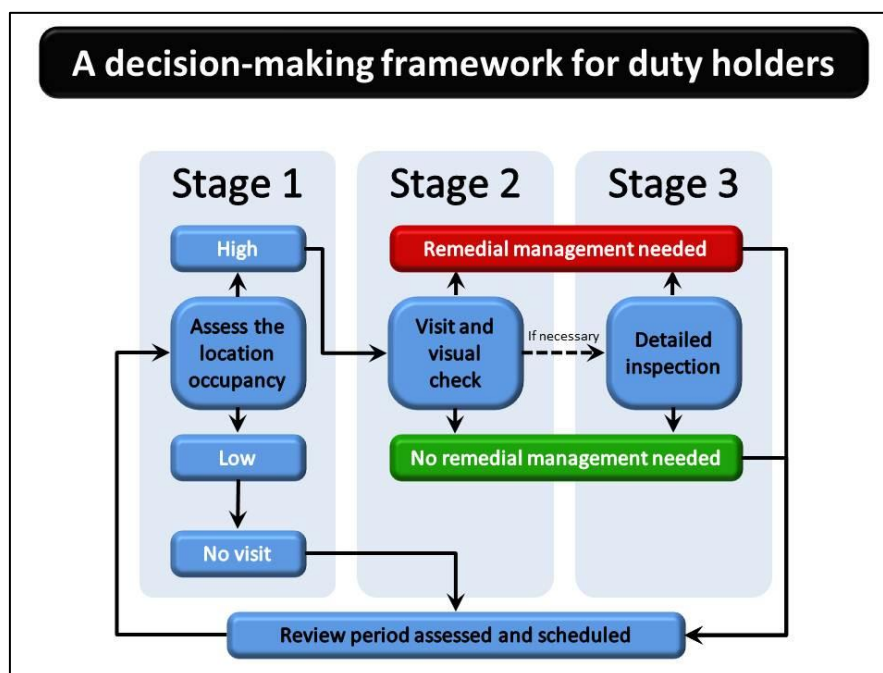
When a tree failure results in harm, the focus often falls on the standard of the duty of care, i.e. how much management is enough in all the circumstances, and whether it was met by the duty holder. Although the fine detail will always be an interpretation for the courts, duty holders can reduce their exposure to liability by adopting a systematic approach to tree risk management. The more reasonable, practicable, balanced, proportionate and sensible those measures are, the better the chances of successfully refuting allegations of negligence.

What is the standard of the duty of care?

In my role advising tree owners on how to manage their trees, I am regularly faced with the same questions. How often should I have my trees inspected? Do my trees need inspecting at all? Can I inspect my own trees? What qualifications should an inspector have? Is a visual check enough or do I need to have expensive investigations carried out? Indeed, these are precisely the questions that the court will ask if a tree fails and harm arises, so the answers are very important. The conundrum for duty holders (those who are responsible if anything goes wrong), and for arboriculturists as advisors, is that there are very few clear answers, more a complex mass of confusion and contradictions!

A framework for proactive tree risk management

The conceptual diagram below summarises a decision-making framework to assist duty holders and their advisors in deciding how much tree management is enough.



Stage 1: The assessment of the hazard potential for the location based on the level of occupancy can be done by a layman with knowledge of the land, but no tree expertise. It is likely that, as a minimum, all duty holders would be expected to undertake this process to meet their duty of care. If there is no significant hazard potential, then there is no need to visit and check the trees.

Stage 2: If there is a significant hazard potential, then the trees will need to be visited and visually checked. If the quick visual check did not identify any significant defects, then no further action would be necessary in that management cycle. If defects were identified, then remedial works (which could include tree works or changes to restrict access around the tree) could be specified at that point, or a further, more detailed inspection, carried out.

Stage 3: The level of a more detailed inspection would be dictated by the findings of the visual check, but it is likely that this would require specialist knowledge and that the inspector should be formally trained for the task.

In summary, the difficulty for duty holders and advisors alike is that the only way to be sure that enough has been done is through a decision from the courts. In the absence of such certainty, duty holders who have adopted a structured approach and are able to demonstrate that what was done was reasonable, practicable, balanced, proportionate and sensible, are likely to have gone some considerable way to meeting their duty of care.