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”LOOK BEFORE YOU LEAP INTO NEW RULES FOR TREES.”

RRAC Chair calls for common sense to prevail in new proposals for Tree Risk Management

Rick Haythornthwaite, Chair of the independent Risk & Regulation Advisory Council, charged by the Prime Minister with encouraging balanced and sensible decisions about risk, today called for a “common sense break” in discussions which could seriously affect the future maintenance and care of trees right across the UK. “I am deeply concerned by the proposed introduction of what could be a disproportionate, costly and unnecessarily bureaucratic system for managing trees,” said Haythornthwaite.

A standard for tree safety has been drafted, and is open to public consultation until the end of July⁴. While groups from within the arboricultural (treecare) industry have contributed to proposals, the issue of trees affects everyone in the country, and the quiet availability of the “draft for public comment” on BSI British Standards’ website is rather less than a broad public consultation. In the absence of sufficient voices of disagreement, a standard is usually accepted for publication.

Industry insiders brought their concerns to the RRAC, worried that important parts of our natural and cultural heritage could be needlessly swept away by new bureaucratic demands in the name of public safety, without taking proper account of the actual risk, or the myriad benefits we derive – and take for granted – from the continued presence of millions of trees across Britain’s rural and urban environments.

Haythornthwaite said, “The risk from trees has not increased⁶. The RRAC believes the existing legal principle⁷, effective for the last 60 years, is sufficient. If the industry insists on pressing forward a new standard, then the cost-benefit analysis needs to be better thought through, and the public’s voice must be heard. Achieving this would constitute a good day’s work for the RRAC.”

The Health and Safety Executive agree that a lighter touch should be possible. HSE Chief Executive, Geoffrey Podger, said: “In 2007 HSE became concerned that uncertainty was causing some organisations to over-react to the low risk from falling trees. HSE therefore produced guidance for its inspectors on what is required by the law we enforce - the Health and Safety at Work Act 1974. It makes the point that the risk is generally extremely low. For most trees around the countryside HSE does not believe any action at all is reasonably practicable under the 1974 Act. Where trees are in very public places we suggest that non-specialist staff with a working knowledge of trees should look out for obvious problems as part of their everyday work. Inspection by tree experts is likely to be appropriate only in very limited circumstances, for example where a tree in a very public area is known to be unstable but is kept for heritage or other reasons. There are several other relevant pieces of non-HSE law; we have encouraged stakeholders to agree a simple and proportionate approach to cover all the legal duties. We hope that by sharing our own guidance we have provided a useful starting point.”

Haythornthwaite continued: “This is an example of how pressures to regulate public risks can sometimes lead to wholly undesirable outcomes if left unchallenged. It has the potential to produce the kind of bureaucratic system of which people would later ask, ‘How could anyone let that happen?’ We believe this issue needs to be brought to the public’s attention and I urge all those who feel strongly about it to respond to the consultation.

“The plans for trees are an example of the dangerous bureaucratic spiral which can be caused by the complex interactions of different groups. Those who fear they might be held liable in the event of some incident look for compliance standards to remove legal uncertainties. Then there are “risk entrepreneurs” among treecare professionals who thrive on maximising the perception of risk in order to create standards for which they are perfectly placed to provide profitable solutions. Public and media opinion will often tend to agree that ‘something must be done’ in light of one or more tragic events. The result can too easily be new regulations introduced without a balanced assessment of the true level of risk against the possible wider damage which can be done by heavy-handed regulation.

“Standards are useful in many industries to identify best practice, but all relevant stakeholder groups must be involved in their creation. In this case, tree management arguably affects everyone, yet the draft standard has been put together by a rather narrow group led by arboriculturalists who stand to gain from its adoption, while the potentially enormous costs would have to be met by tree owners.”

At the Risk & Regulation Advisory Council we often hear complaints such as ‘It’s bureaucracy gone mad - what happened to common sense?’ Trees provide just one example of the risk circus which can distort public policy and create inefficient and inappropriate responses to the management of risks to the public. Our research has shown that central government is rarely the driver of increased regulation of risk. Risk entrepreneurs exist across all sectors of society and the economy, particularly in the legal and insurance professions, and public points of view tend to reinforce the pressure for regulation to reduce risk – until there is an equally strident opposing call for the nanny state to leave people alone.

The remit of the RRAC is to provide an independent ‘voice of common sense’; a neutral forum to mediate and facilitate difficult risk decisions. We work with all stakeholders in particular risk topic areas, and particularly with government, to improve understanding of the relationship between public risk, responsibility and regulation, and to improve the policy-making process so that risks can be managed proportionately. The public also needs to accept that a society cleansed of all risks is both undesirable and unachievable.

For further information or for requests to interview Mr Haythornthwaite, please contact Sue Youngman, Compass Rose & Co on 07768 283 162

Notes for Editors:

1. The RRAC (Risk & Regulation Advisory Council) is an independent council set up in January 2008 to carry on consideration of public risk issues undertaken by the Better Regulation Commission, which it has replaced. The creation of the RRAC was welcomed by the National Consumer Council, CBI, and TUC among others, and the Prime Minister asked the RRAC to work with government to develop a better understanding of public risk, and how best to respond to it, and to work with non-governmental stakeholders to help foster a more considered approach to public risk and policy making.
2. The RRAC as currently constituted is a time-limited body which will be expected to complete its current workload by the end of April 2009. It will work through major stakeholder forum events on key risk topics and the development of communities of practice, rather than the traditional approach of reports and recommendations.
3. The RRAC is made up of the Chair, Rick Haythornthwaite, and six other independent and unpaid members with strategic regulatory experience. Rick Haythornthwaite was formerly Chair of the Better Regulation Commission, and is also a partner at Star Capital Partners Ltd. For a full list of RRAC members see <http://www.berr.gov.uk/about/economics-statistics/rrac/RRAC%20members/index.html>. The RRAC is supported from within the new Risk & Regulation Team in the Department for Business, Enterprise and Regulatory Reform.
4. A standard is an agreed, repeatable way of doing something. In the best case scenario, a standard is the result of a consensus within an industry of how things should be done. It can be used as a form of protection against negligence cases by the industry. Even though it does not bear any legal value in itself, judges may look to a standard as a bar to measure whether the necessary controls were in place when an accident happened. The current BSI British Standards’ Draft for Public Comment on “Recommendations for tree safety inspection” is BS 8516 and can be accessed by registering at <http://drafts.bsigroup.com/>.
5. The RRAC has no issue with BSI British Standards itself, and recognises the importance of its work and the valuable role which it plays. The RRAC view in the particular case of trees is that a) a new standard is unnecessary b) it wants to make sure that the consultation (hitherto unpublicised) includes all interested parties so that views can be heard before the standard is created and c) if the standard proceeds there should be a better thought through cost-benefit analysis.
6. There are on average six fatalities every year in the UK linked to trees. This represents a risk of one in ten million which is, for example, 100 times less than deaths associated with stairs.
7. The long-established (1949) legal principle applied to trees is that risks should be kept as low as reasonably practicable (ALARP). Recent compensation cases allocating blame have raised questions as to whether this principle still holds legal weight. There is a heightened public awareness of the risks that trees cause, owing to reporting of tragic but isolated incidents. On 29 May a London conference on Tree Management for Public Safety sought to address these issues. Rick Haythornthwaite of RRAC spoke at the conference, dividing opinion sharply.