

Tree safety management – civil law judgements

There have been two court judgements handed down in the civil courts in July 2011 - both related to fatalities caused by falling trees in 2007.

The first case (Bowen and others v the National Trust) has been widely reported. In June 2007, a group of children were taking part in an orienteering exercise with a local activities centre. They were in woodland owned and managed by the National Trust, in the grounds of Felbrigg Hall in north Norfolk. A large branch (over 21 metres in length and estimated weight 1.5 tonnes) fell from a beech tree and struck the children. One 11 year old child, Daniel Mullinger was killed, and three others were injured. The accident was investigated by the police and by both North Norfolk District Council (NNDC) and HSE (due to the allocation of enforcing authorities, with HSE covering the activity centre and the school where the children were educated, and NNDC covering the National Trust). No enforcement notices were served and no prosecution was brought against any individual or organisation. At the subsequent inquest in 2008, the Coroner returned a verdict of accidental death.

A civil case was brought by the families of the children against the National Trust. The case, to determine liability, was heard in the High Court in June 2011. There was detailed examination of the National Trust's policies and procedures for tree safety management, and the way in which staff at the property had undertaken and recorded tree inspections. The claimants based their case partly on the existence of supposed flaws in the defendant's policies, which were rejected by the judge. They also based their case on the proposition that adaptive growth flares (i.e. bulges resulting from a tree's biomechanical response to load stress or internal damage for example) on the branch that failed should have been seen as an indicator of potential failure and ought to have led to more detailed inspection. The defendant's case was that such growth is common on mature beech trees, and is not necessarily an indicator of imminent failure. In this situation, the tree was located in a medium usage zone, and had been inspected twice in January 2007 before the accident, one a routine inspection and one after high winds. The National Trust's tree inspectors considered that the tree, in such a location and given the relatively low level of use of the area, did not have significant defects that merited recording or further investigation. Any defects at the junction between branch and trunk would not have been visible from a ground level visual inspection, which was all that was required in the circumstances. Whilst some of the case hinged on the evidence of the respective expert witnesses, the judge also found the National Trust's tree inspector to have been "a patently honest witness and a conscientious forester."

In concluding that there was no negligence or breach of duty by the defendant, Mr Justice Mackay summed up as follows:

"If as the claimants argue the bare possibility of a failure of a tree branch in a medium risk zone is enough to trigger tagging and remedial works, the bar would be set at an unreasonably low level in my view. It would substitute for an exercise in risk assessment taking condition and location into account, which is what the inspectors here were engaged on. I have to decide whether the judgement they formed, acting together as they did, was one which no reasonable tree inspector in those circumstances could have formed."

The full judgement can be found here:

<http://www.bailii.org/ew/cases/EWHC/QB/2011/1992.html>

The second case (Micklewright v Surrey County Council) received less publicity, both at the time it occurred and during the civil court case. In August 2007, Christopher Imison was struck by a large branch (estimated 15 metres in length and weight nearly 1 tonne) of an oak tree, which fell onto him

whilst he was unloading bicycles from his car in a parking bay off Wick Lane, Virginia Water, Surrey. He died several days later from his injuries.

It was found that the branch had a fungal infection which may have contributed to the failure, but was unlikely to have been the sole cause. The judge found that the defendant did not have an adequate system of inspection at the time, largely because there was little by way of an inspection process prior to 2004. Following a fatal tree-related accident in school grounds in Ashted in 2003, HSE had served an Improvement Notice on Surrey County Council to address deficiencies in their tree safety management procedures (this was complied with).

The key issue was whether an adequate inspection scheme would have detected any defect in the branch such that remedial work could have prevented the accident. On the available evidence, the judge found that the claimant had failed to establish this, and on the balance of probabilities the accident was unforeseeable.

The recent Court of Appeal judgement upheld the original decision. It can be found here: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/922.html>

Comment

Both these cases reinforce the need for organisations with responsibilities for the management of trees in public places to have a carefully considered system in place for inspection, remedial work and record keeping. Staff with responsibilities for tree inspection and decisions on remedial work should be trained and competent. It is important that any system also considers the benefits from trees and takes a proportionate approach to tree safety management, balancing risks with benefits. This is the key to achieving a defensible rather than defensive approach to managing trees. Further guidance on this subject is expected to be published by the National Tree Safety Group later this year. There is existing [VSCG guidance on tree safety management](#).

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