

APPENDIX 2
Tree Risk Management Plan
Second edition

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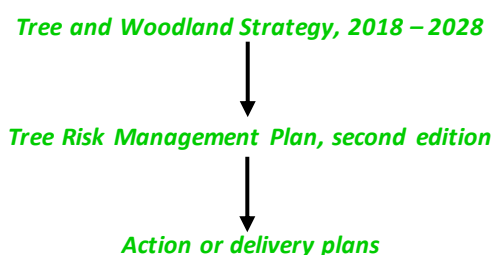
1 Introduction

Aragon Direct Services

- 1 Peterborough Limited, which trades in the name of **Aragon Direct Services** (ADS), is a private limited company, which is wholly owned by **Peterborough City Council** (the Council) as a Local Authority Trading Company.
- 2 One of the services provided by ADS is grounds maintenance, which includes the tree service, under which Council-owned trees are routinely inspected and any necessary maintenance is carried out in a timely way to mitigate risk, and new trees planted and managed.

The Tree Risk Management Plan

- 3 The purpose of this, the second edition of the **Tree Risk Management Plan** (the Plan), is to explain the steps that ADS take to deliver the Council's adopted **Tree and Woodland Strategy 2018 – 2028** (TWS) to ensure the sustainable management of the wide range of trees and woods managed on behalf of the Council by ADS.
- 4 In hierarchical terms the relationship between the documents is as follows:



- 5 To support the Council in discharging its duty of care under the broad range of legislation and case law affecting trees, people and property, see **Appendix A**, the TWS draws upon the comprehensive and dynamic legislative framework under which tree management in the public realm must be delivered. The Plan articulates the measures that ADS have put in place, and in particular a response to:
 - the publication in 2000 by the **Forestry Commission** of *Practice Guide 13 Hazards from Trees – a general guide*, and
 - the publication in 2007 by the **Health and Safety Executive** of Sector Information Minute *Management of the risk from falling trees SIM 01/2007/05*, (the SIM), and
 - the publication in December 2011 by the **National Tree Safety Group** of their suite of documents *Common sense risk management of trees. Guidance on trees and public safety in the UK for owners, managers and advisers* provides a summary of the law in respect of an owner's liabilities for injury to others caused by the fall of a tree or branch in **Chapter 3 What the law says**.
- 6 The Plan is presented in three sections, dealing with:
 - the tree service,
 - the tree data, and
 - tree management, the range of actions that will be followed.

2 The tree service

- 7 The tree service to implement the Plan will comprise the following:



The tree surveyors

- 8 The tree survey will be undertaken by suitably trained, qualified and experienced ADS staff, or specialist contractors working under ADS guidance. Typical minimum arboricultural qualifications awarded under the **National Qualifications Framework** would include the **NVQ/SVQ Level 3 in Treework**, the **AA/ABC Awards Technician's Certificate in Arboriculture**, the **EAC European Tree Technician**, or a **National Award** or **Diploma** (depending upon the syllabus), or their successors under the **Qualifications and Credit Framework**.
- 9 In addition, the ADS tree surveyors would have attended the **Lantra Awards Professional Tree Inspection** course or be working toward that qualification within 6 months of the confirmation of their employment.
- 10 The criteria to be assessed during the survey are listed in **Appendix B**.
- 11 The requirement will be that a surveyor is able to demonstrate their competence in the recognition of tree species, diseases, defects and signs of debility, and the consequences of those symptoms. On-going training will be made available as required in order to maintain the currency of the surveyors' arboricultural knowledge.
- 12 In addition, a surveyor will be able to demonstrate:
 - 1 understanding of and competence in the use of survey software in the field.
 - 2 understanding of and competence in the implementation of the Council's chosen tree risk assessment system.
 - 3 understanding of and consistent implementation of the Council's chosen protocol for valuing amenity trees.
- 13 It will be the surveyor's responsibility to acknowledge their own limitations in both knowledge and understanding to ensure that they do not attempt to sign off a survey for which they are not suitably and sufficiently qualified. The surveyor will be encouraged to refer those surveys for a second opinion.

The tree survey tools

- 14 The two main tools that the surveyors use are:
 - 1 the **Tree Hazard: Risk Evaluation and Treatment System** (THREATS) developed by the **Forbes-Laird Arboricultural Consultancy** and embedded in the data capture and management software **ezytreev**.
 - 2 the **Capital Asset Value for Amenity Trees** protocol (CAVAT) as a means of valuing amenity trees as public assets.
- 15 The determination of the most appropriate control measures is based upon the application of arboricultural knowledge and experience by the surveyor, who may seek a second opinion from a colleague or their line manager, including a recommendation for a more detailed inspection, including the use of decay detection devices such as the resistograph or sonic tomograph, should the surveyor determine that to be necessary.

The tree survey software

- 16 **ezytreev** from **RA Information Systems** (www.ezytreev.com) is used for both data capture and subsequent data management.
- 17 A series of drop-down menus on a hand-held data logger must be completed before the record can be closed, the data point updated, and before the surveyor can move on.
- 18 The work programme is generally driven by the outputs from ezytreev, particularly for the higher levels of risk that are identified, but the timing of service delivery may be moderated for lower risk categories to meet with



other cyclical or strategic regimes or objectives. Where this has happened, the works have generally been delivered ahead of the time dictated by ezytreev.

The profile of the tree service

- 19 ADS will determine the appropriate structure for of the tree service required to deliver the Plan, and the authority, competence and responsibilities of the individuals in that structure. The appropriate level of resource will be kept under constant review by ADS.
- 20 Analysis of the survey data will lead to the development of a tree work programme; the most appropriate means to deliver the programme will be agreed between ADS and the Council.

The budget

- 21 The primary objective for ADS when using the budget allocated to them from the Council will be to ensure that the surveying capacity and capability is maintained to provide a contemporary evidence base: resources will then be allocated to tree service delivery.
- 22 The indicative costs of the common range of tree service tasks or services will be used to plot how to draw down the available budget.
- 23 For operational reasons it is likely that some of the works that are identified by the survey will be brought forward and completed in advance of the recommended date because of the need to use the overall budget wisely and to consolidate service delivery within particular areas at given times.

3 The tree data

Overview

- 24 Assets are assessed by qualified personnel who use THREATS as a method for identifying, recording, and managing hazards from trees and deciding upon suitable control measures. At the same time, the trees are given a value as a public asset using the CAVAT protocol.
- 25 Guided by those assessments, recommendations for individual tree management are made and recorded.
- 26 At the initial survey assets are placed into one of three categories as prompted by the tree management software, designed in collaboration with the Council. Those three categories are:
 - individual trees, or
 - tree groups, or
 - shelterbelt and woodland groups.
- 27 A single tree within the categories “tree groups” or “shelterbelt and woodland groups” will only be recorded as an individual when necessary to mitigate risk.
- 28 Other data fields in the tree management software allocate the asset to a site type:
 - streets, footpaths and cycleways, or
 - parks and open spaces, or
 - shelterbelt, or
 - woodland, or
 - schools, or
 - other sites, including cemeteries, allotments, nature reserves etc.
- 29 In addition, the asset is allocated to the appropriate civil parish or ward.



Cyclical surveys

- 30 There is a cyclical survey regime for each asset type, and generally they are on a three-year cycle: the exception is the annual school survey and the 18-month cycle for those trees classified as requiring high frequency inspection.

Highways and parks survey

- 31 Individual trees and tree groups assigned to this site type, and every asset grouped by parish or ward in the following site types, will be re-surveyed on a three-year cycle:
- streets, footpaths and cycleways
 - parks and open spaces
 - cemeteries

When inspecting Council owned highway street trees, Aragon surveyors will also notify the highways authority of any privately owned trees of concern within falling distance of the highway. It is recognised however that Aragon only undertake these surveys on a three year cycle and do not visit and inspect all sections of the highway network, owing to certain parts of the network containing no Council owned trees. In order to address this, highway inspectors will through the course of their routine activities be required to make basic tree assessment surveys, and report concerns to Aragon for further assessment. To satisfy these duties, highways inspectors will have attended a **Lantra Awards** Highway Tree Inspection course (or similar) to ensure that trees within falling distance of the highway (both private and PCC owned) are suitably inspected at the same frequency as highways undertake their routine road condition surveys. Where concerns are raised by highway inspectors, cases are escalated to an Aragon to detail risk and quantify actions required. Equally when trees of concern are highlighted from Aragon inspections these are referred to highways for enforcement action under the Highways Act.

Shelterbelt survey

- 32 Under this survey cycle every asset grouped by parish or ward in the following categories and site types will be visited every three years:
- shelterbelt groups, and
 - shelterbelt site type

Woodland survey

- 33 Every asset grouped by parish or ward in the following categories and site types will be assessed every three years under this survey cycle:
- woodland groups, and
 - woodland site type

School survey

- 34 Every asset in the school site type will be assessed every year.

High frequency tree survey

- 35 Under this survey cycle the surveyor will, every 18 months, visit every individual asset grouped by parish or ward in the following categories:
- individual tree category where the tree is:



- a High Target Tree with a stem diameter of over 40cm and with a Target Score under THREATS of High or Very High

The survey control measures

- 36 To allow for unexpected seasonal variations and operational factors, there will be a six-month surveying window, not exceeding three months before or after the target re-inspection date, to ensure that all the required surveys are completed. The exception will be the high frequency survey period which must not, under any circumstances, exceed 18 months.
- 37 The timing of subsequent surveys will be evidence led and will depend upon the particular information about each individual tree that the surveyors capture during the preceding cycle of the survey.

Ad hoc inspections outside the survey regime

- 38 In addition to the programmed cycle of the survey regime there will be occasions when *ad hoc* inspections of specific trees or tree groups are required in response to an enquiry. Where enquiries stipulate health and safety concerns those assessments will be to the same standard as for the cyclical survey regime.
- 39 The outputs from the *ad hoc* health and safety surveys will therefore provide the opportunity to balance the need for work, as derived from the application of the embedded THREATS protocol, with an indication of the value of the tree, as derived from the application of the embedded CAVAT.

Monitoring the survey

- 40 To monitor the implementation of the survey ADS have put procedures in place to demonstrate that each of the following have been met and any agreed benchmarks and or milestones have been achieved, and if they have not then what control measures will be put in place:
- 1 the scope of the survey will endeavour to :
 - Plot free-standing individual trees as individual data points,
 - Plot groups by reference to their dripline,
 - Plot individual trees exhibiting noteworthy health and safety concerns within groups as an individual data point
 - 2 the extent of the survey has been met: either the complete set of data has been captured for each tree under ADS's control in these areas, or it has not:
 - street trees (and highway trees)
 - trees in parks and open spaces
 - trees in some, but not all, schools
 - trees in woodlands
 - trees in the urban woods
 - village and rural trees
 - trees on other sites
 - 3 all the required data fields have been completed:
 - quantitative data is likely to be recorded from a sequence of drop-down menus and so should be consistently presented,
 - qualitative data may be recorded as free text that may require editing before it can be used, editing may give the opportunity to a suitably qualified and experienced arboriculturist to verify the data.
 - 4 the embedded version of THREATS has been consistently applied, across time, geography and the team:



- the use of a suitably qualified and experienced arboriculturist to lead the analysis and comparison of the data captured by the team will help the team move toward a common vocabulary of risk and a shared understanding of the interpretation of THREATS.
- 5 the embedded version of CAVAT has been consistently applied, across time, geography and the team:
- as for risk assessment, the leadership of a suitably qualified and experienced arboriculturist will help the team move toward a common vocabulary of value and a shared understanding of the interpretation of CAVAT.

Reports

- 41 Typical reports that are generated include:
- 1 the progress of the survey, both within each electoral ward and across Peterborough,
 - 2 an analysis of the enquiries that have been received, for example how many over what period, where, how they have been dealt with,
 - 3 the prescriptions for work as generated by the survey, and
 - 4 the delivery of the tree work programme generated by the survey.
- 42 The progress of the tree work programme will be publicised on both the Council and ADS web sites, updates may be shared using social media.

4 Tree management

- 43 The implementation of the Plan aims to satisfy the following requirements.

Management information

- 44 The SIM recommends that the tree manager in the public realm should hold the following management information:
- 1 an overall assessment of risks from trees to enable the risks associated with tree stocks to be prioritised, and to help identify any checks or inspections that may be needed,
 - 2 a system for periodic checks, to involve a quick visual check for obvious signs that a tree is likely to be unstable to be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboriculturist,
 - 3 a record of when an individual tree has been checked or inspected with details of any defects found and action taken,
 - 4 a procedure to obtain specialist assistance when a check reveals defects beyond the experience and knowledge of the person carrying out the check,
 - 5 a system to enable people to report damage to trees and to trigger checks following potentially damaging activities, such as work by the utilities in the vicinity of trees or severe gales,
 - 6 specific assessments for those trees that the duty holder wishes to retain, despite the presence of serious structural faults,



- 7 an action plan to manage the risk that has been identified by a check, without unnecessarily felling or pruning trees,
 - 8 a register of individual trees that require more detailed inspection because, for example, they have structural faults that are likely to make them unstable and a decision has been made to retain the tree with these faults in close proximity to targets, and
 - 9 a monitoring regime to ensure that the arrangements are fully implemented.
- 45 As one of the leading tree management database systems the developers of *ezytreev* have ensured that the available fields and the software architecture have been designed to meet the recommendations of the SIM.

Discharging the duty of care

- 46 The SIM states, at paragraph 3:

*Employers, persons carrying out undertakings or in control of premises all have duties under the HSW Act. In particular, there is the duty to do all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety. Doing all that is reasonably practicable does **not** mean that all trees have to be individually examined on a regular basis. A decision has to be taken on what is reasonable in the circumstances and this will include consideration of the risks to which people may be exposed.*

- 47 The SIM goes on to state at paragraph 5:

In addition to duties under the HSW Act there are a number of reasons why . . . duty holders . . . may want to manage their tree stocks, for example responsibilities under other legislation and the risk of civil liabilities to:

- *reduce the risk of property damage from subsidence;*
- *maintain stocks to preserve their amenity, conservation, and environmental value;*
- *prevent personal injury through trips and falls on footways disturbed by tree roots; and*
- *prevent vehicle damage and personal injury from obscured sightlines on the highway.*

For these and other reasons, some duty holders may undertake inspection of trees in a manner well beyond the reasonably practicable requirements of the HSW Act.

- 48 The SIM continues, at paragraph 7:

Individual tree inspection should only be necessary in specific circumstances, for example where a particular tree is in a place frequently visited by the public, has been identified as having structural faults that are likely to make it unstable, but a decision has been made to retain it with these faults.

- 49 It is clear therefore that by adopting and fully implementing the steps described in the Plan ADS will be able to discharge their duty of care under the broad range of legislation and case law affecting trees, people and property.
- 50 ADS will follow two broad principles when considering what tree management response is appropriate to meet the requirements of the TWS in each circumstance, be that as part of planned works or an emergency response:
- 1 appropriate action will be taken to mitigate a risk to the personal safety of residents or visitors, or of harm to property, which is directly related to the condition of, or presence of, an ADS-managed tree, and



- 2 early intervention will be preferred to prevent everyday arboricultural situations from developing into a hazard that is difficult or unreasonably expensive to control.
- 51 The general presumption will be that tree pruning will provide the preferred option of a sustainable solution; however, in some circumstances tree removal may be the only option.
- 52 The appropriate response in each circumstance will be determined by the particular facts, however an analysis of the previous decisions that have been taken, each one based on high quality management information, will help to deliver tree care in an even and consistent way that can withstand public scrutiny and audit.

Sustainable tree management

- 53 The Plan seeks to help to deliver the Council's commitment to protect, plant and maintain the trees and woodland within its authority as set out in the TWS. Sustainable systems of management will be promoted that will aim to:
- maintain or enhance the tree population,
 - facilitate the removal of dangerous or potentially hazardous trees,
 - promote biodiversity and conserve the tree/woodland eco-system,
 - conserve veteran trees with significant ecological, historical and amenity value,
 - establish a tree population with a balanced diversity of age class,
 - optimize the use of timber and other products of tree management.
- 54 Records of tree management decisions that were based on high quality management information will help to deliver tree care in an even and consistent way that can withstand public scrutiny and audit.

5 Conclusion

- 55 The Plan above has evolved to satisfy the Council's need to discharge their duty of care to manage the risk represented by the tree and woodland assets under their control, whilst maintaining the broad range of benefits and values those assets provide to the general public both now and for future generations.



Abbreviations and references

Abbreviations

ADS	=	Aragon Direct Services
CAVAT	=	Capital Asset Value for Amenity Trees
HSE	=	Health and Safety Executive
HSW Act	=	Health and Safety at Work etc. Act 1974
MHSWR	=	Management of Health and Safety at Work Regulations 1999
the Council	=	Peterborough City Council
the Plan	=	Tree Risk Management Plan
the SIM	=	Sector Information Minute Management of the risk from falling trees
the TWS	=	Tree and Woodland Strategy
THREATS	=	Tree Hazard: Risk Evaluation and Treatment System

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Appendix A – the legal background

Legislation

- A1 As part of their carrying out of undertakings, or control of premises, including public spaces, employers have a duty of care under the **Health and Safety at Work etc. Act 1974**. In particular there is a duty to do what is reasonably practicable to ensure that they and other people are not exposed to risk. **Section 3** of the Act confirms that an employer cannot pass on their legal duty by way of a contract to third parties.
- A2 The **Management of Health and Safety at Work Regulations 1999** (MHSWR) require a risk assessment to be carried out to identify the nature and level of the risks associated with the works and associated operations. Regulation 3.1 states:

Every employer shall make a suitable and sufficient assessment of:

- a. the risks to the health and safety of his employees to which they are exposed whilst they are at work; and*
- b. the risks to the health and safety of persons not in his employment arising out or in connection with the conduct by him of his undertakings.*

<https://www.legislation.gov.uk/uksi/1999/3242/regulation/3/made>

- A3 The MHSWR affect all parts of the tree management process, though in the context of this Plan they apply most particularly to the undertaking of tree inspection on a reasonable cycle and the completion of the necessary remediation work.
- A4 Under **The Occupiers Liability Act 1957** ADS, as the occupier, owes a duty of care to all visitors to ensure that their visit is reasonably safe. Trespassers are protected under **The Occupiers Liability Act 1984** from the risks that the occupier is aware of. Consideration, therefore, is needed to be given to any known tree-related risks and the actions necessary to reduce or remove them.
- A5 Other legislation requiring positive action in response to health and safety concerns includes the **Highways Act 1980**. The Government has, for at least three decades, published advice on the inspection and care of trees:

*The Secretaries of State wish to draw . . . attention **once again** to the need for regular inspection of roadside trees in order that any considered to be a danger to road users can be made safe or felled.*

(DOE, 1973:2)

- A6 Collectively, street trees and trees within falling distance of the highway (including those outside the ownership and direct control of the highway authority and so potentially some ADS-managed trees) are classed as highway trees. The highway authority is responsible for ensuring that highway trees do not endanger the highway and its users. Recommendations in **Well-maintained Highways, Code of Practice for Highway Maintenance Management** include R9.3:

Highway safety inspections should include highway trees . . . Inspectors should take note of any encroachment or visible obstruction and any obvious damage, . . . a separate programme of tree inspections should be undertaken by arboricultural advisors

(Roads Liaison Group, 2005:119)

- A7 When an occupier fails to meet the requirements of their statutory duty of care, which subsequently results in reasonably foreseeable harm or damage to persons, animals, or property, it is likely to be construed that the occupier has been negligent and may result in their prosecution. This may be either because of their action



(for example using a person without sufficient skill to survey trees, by undertaking incompetent pruning, or by destabilising a tree by root severance) or by their omission (for example by a failure to inspect trees on a reasonable cycle or the failure to carry out prescribed remedial actions).

Case law

- A8 In **Noble v Harrison** [1926] 2 KB 332 (CA), a tree shed a limb onto a passer-by, causing personal injury. The Court of Appeal reversed the original finding in favour of the claimant because the defect could not have been discovered by inspection. Rowlatt J said:

I see no ground for holding that the owner is to become an insurer of nature, or that default is to be imputed to him until it appears, or would appear upon proper inspection, that nature can no longer be relied upon...

(cited in Stagecoach, paragraph 57)

- A9 In similar vein, in **Brown v Harrison** [1947] 177 LT 281, Somerville LJ reiterated the relevant test in these terms:

Having regard in each particular case to the circumstances of the particular case if there is a danger which is apparent, not only to the expert but to the ordinary layman, which the ordinary layman can see with his own eyes, if he chooses to use them, and he fails to do so, with the result that injury is inflicted ... the owner is responsible, because in the management of his property he had not acted as a normal, reasonable landowner would act.

(cited in Mynors 2011: 222)

- A10 In his summing up in **Edwards v National Coal Board** [1949] 1 All E. R. 743 Asquith LJ interpreted reasonably practicable as follows:

'Reasonably practicable' is a narrower term than 'physically possible' ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.

(cited in Mynors 2011: 217)

- A11 In **Quinn v Scott** [1965] 1 WLR 1004, Glyn-Jones J found for the claimant because the decay of the tree (which was owned by the National Trust), was there to be seen and the tree should have been felled. The judge said:

The duty of the Trust is to take such care as a reasonable landowner – and that means a prudent landowner – would take to prevent unnecessary danger to users of the highway adjoining the Trust's land. There is not to be imputed in the ordinary landowner the knowledge possessed by the skilled expert in forestry... But, in my opinion, there may be circumstances in which it is incumbent on a landowner to call in somebody skilled in forestry to advise him, and I have no doubt but that a landowner on whose land this belt of trees stood, adjoining a busy highway, was under a duty to provide himself with skilled advice about the safety of the trees...

(cite in Stagecoach, paragraph 62)

- A12 In **Chapman v Barking and Dagenham LBC** [1997] 2 E.G.L.R. 141 a branch was broken from a tree in a high wind and fell onto the van being driven by Mr Chapman, and he was severely injured. The tree had exhibited features that warranted closer inspection and there was a duty on the Council to make inspections, which they had failed to do and so they were found to be at fault. Judge Viscount Colville of Culross QC stated:



I am satisfied that, despite all encouragement and advice both from external sources and to some extent from their own officers, the defendant Council did not at any relevant time appreciate the distinction between making lists of trees and routine maintenance, as opposed to systematic expert inspection as often as would be reasonably required. I find that no such inspections were ever made, that it was a clear duty on the defendants to make them, and that they have failed in that duty.

(cited in Mynors, 2011: 223)

- A13 The need to use a suitably trained, experienced and/or qualified tree inspector was at the core of **Poll v Bartholomew and Bartholomew** [2006] EWHC (QB) 4BS50394 when the claimant, having collided with a fallen ash tree, successfully sued the landowners for negligence. The judgment also recognised that there are varying levels of skill in inspectors and it is the employers' duty to ensure that they employ a competent person at the appropriate skill level, re-asserted in **Atkins v Scott** [2008] 6KB04804.
- A14 In **Corker v Wilson** [2006] 5MY04657 the branch of a roadside oak tree fell and struck the claimants car causing injuries and damage. The claim of negligence was dismissed as no breach of duty was established, and so the failure of the branch from the roadside oak tree that led to the injury to Mr Corker was deemed not to have been foreseeable.
- A15 Similarly, in **Selwyn-Smith – v – Gompels** [2009] 8SN00362 the claim of negligence was dismissed as it was deemed that the catastrophic failure of the Austrian pine that resulted in damage to the garage and injury to Mr Selwyn-Smith could not have been foreseen.
- A16 In **Micklewright v Surrey County Council** [2010] 8GU20243 a branch fell from a highway oak tree, one of over 2 million on the Surrey road network, resulting in the death of Mr Imison in 2007, adjudged to be accidental at the inquest. The claim was that the defendant had breached their common law duty of care and their statutory duty under OLA. However, the defendant had instigated a system of inspection in 2008, and the central point in the case was (at paragraph 43) that,

even if an adequate system of inspection had been in place so that the tree had been inspected by a suitably trained Highways Inspector before the accident, nothing would have been found which would have resulted in a detailed inspection by a qualified arboriculturist and the works which would have prevented the accident.

- A17 The judgment included, at paragraph 15:

Neither the common law or the statute law requires an owner or occupier to make his land completely safe. His duty is to take such care as in all the circumstances of the case is reasonable. What is reasonable varies with the circumstances. It follows that the owner or occupier must make some assessment of the potential risk presented by any tree on his land. He must therefore inspect trees at appropriate intervals. In ascertaining how frequently the trees need to be inspected the owner or occupier must have regard to the size of the risk involved and the difficulty of counteracting that risk. The question is "Was the owner or occupier's conduct reasonable?"

- A18 The judgment was that the action failed.

- A19 The case went to the Court of Appeal [2011] EWA Civ 922 but the appeal was dismissed; the central point was raised in paragraph 9:

Having found that the defendants had no proper system of inspection, the learned judge had then to consider the following questions: (i) what sort of inspection would have been required? (ii) had such inspection been carried out, would it have revealed anything warranting a more expert inspection? and (iii)



The whole focus of the appeal was in effect on the judge's approach to and answer to (ii) above. Since he answered that in the negative, (iii) did not receive close attention.

A20 In **Bowen and others – v – National Trust** [2011] EHC 1992 (QB) the Trust was claimed to have breached their statutory duty of care under OLA, and their co-extensive common law duty, “to take reasonable care to provide reasonable safety”, after a branch failure at Felbrigg Hall tragically resulted in the death of one child and injuries to others. Despite that tragedy the Trust was found to have acted reasonably.

A21 The issue being considered (paragraph 6):

is whether those who inspected this tree, as they did on two occasions prior to the fall of B3, exercised such care as was reasonable in the circumstances of this tree at this place. It is easy to state the law in this area, but less easy to apply it, particularly in a case with such a tragic outcome as this. The thrust of the case against the defendant is that its tree inspectors, for whom it is vicariously liable, failed to exercise reasonable care in their task.

A22 Despite the disastrous consequences the judgment concludes at paragraph 43:

I accept these inspectors used all the care to be expected of reasonably competent persons doing their job, and the defendant had given them adequate training and instruction in how to approach their task. To require more would serve the desirable end of compensating these claimants for their grievous loss and injuries. But it would also be requiring the defendant to do more than was reasonable to see that the children enjoying the use of this wood were reasonably safe to do so. I regretfully conclude that I cannot find that the defendant was negligent or in breach of its duty in respect of this tragedy.

A23 In **Battley v Wycombe District Council** [2013] OWL00094 the claimant was struck by a falling Lombardy poplar tree and the main issues were the extent of the inspection and/or testing which the Council should have carried out, what such inspection and/or testing would have revealed and whether what would have been revealed was causative of the tree's failure. The cause of failure was agreed to be a combination of root decay and gale force winds, with gusts of between 55 – 70 mph.

A24 In paragraph 86 the judgment states:

Thus the following particulars of negligence have been admitted or proved against the Defendant: failure to recognise the tree as owned, failure to inspect it, failure to consider the threat posed to its anchorage / stability by the excavation and installation of the heavy concrete strip, failure to use equipment to investigate the internal condition of the root plate and failing to cut it down before this incident occurred.

A25 In 2014 in the case of **Stagecoach South Western Trains v Hind and Steel** [2014] EWHC 1891 (TCC), where a mature ash tree in the rear garden of Rose Cottage, owned by Hind and worked upon at her direction by Steel, failed and fell onto the railway causing damage to a train, the claimant sought to recover damages, but that case was dismissed. The judge found that there was no duty to warn in this specific case and that the tree that failed was not obviously dangerous and so the claim of negligence was dismissed.

A26 The case of **Witley Parish Council v Cavanagh** [2018] EWCA Civ 2232 in the Court of Appeal in 2018 has divided opinion: the NTSG commentary from their web site states:

It does, however, highlight that zoning is material in safeguarding against risk to the public, and that some trees in locations with high levels of use (generally to be determined by landowner or agent) may warrant more frequent and thorough inspection than trees in other locations. Decisions will be informed by factors such as tree species, life-stage, condition and size. Whether inspections are two-yearly, or even more frequent, will depend on individual circumstances; equally, three-yearly, or less frequent, inspections may be appropriate in other circumstances.

(<https://ntsgroup.org.uk/123-2/>)



A27 In **Colar v Highways England** [2019] C32YP685 the judgment from the County Court was that the assessment that had been undertaken was inadequate and failed to identify evidence that was causative of the tree failure which led to the Claimants injuries and that liability must be determined in their favour.



Appendix B – the tree survey criteria

- B1 The usual criteria that would prompt a tree to be identified as an individual are as follows:
- that which would commonly be recognised as a tree, i.e. a clearly visible woody stem with secondary thickening and with a diameter at 1.5m above ground level of in excess of 7.5cm
- B2 In general, mature shrubs such as elder for example, would not be identified and recorded as an individual unless management intervention were required to mitigate risk associated with that specific asset. Their presence would routinely be reported to Grounds Maintenance for their action.
- B3 When undertaking cyclical surveys, Aragon rely on accurate land ownership data provided by the Council's GIS layers, which are supplied and uploaded onto Ezytreev on a quarterly basis. Those features identified as trees that are within the Council's most recent land ownership GIS layer would be recorded as being the responsibility of the Council. Where further clarification on ownership and responsibility is required, Aragon will seek this from the relevant Council department responsible
- B4 Those features identified as trees that are outside the Council's most recent land ownership GIS layer would be recorded as private trees.
- B5 Tree groups may be identified where a common management prescription would be applied; within a group a tree individual may be identified and recorded as an individual where management intervention may be required to mitigate risk.
- B6 Tree groups are not subject to THREATS or CAVAT evaluations as standard.
- B7 Within the High Frequency Survey, High Target trees will be excluded from the survey of shelterbelt site types as there is necessarily insufficient data to locate individual High Target trees in these site profiles.

