

Trees and the law

This is some general information highlighting some of the more common points of the law surrounding trees.

It is not a definitive guide and is not intended to be used as such. Should you require further information surrounding the care of trees, you should consult a professional arborist or seek legal advice.

Who do the trees belong to?

In most cases a tree is owned by the person who controls the land on which the tree grows (usually the land owner) regardless of whether the tree was self-seeded or deliberately planted.

Where ownership may be in doubt when a tree is growing on or close to a boundary it is necessary to establish the location of the legal boundary. Ultimately, where a dispute occurs a court can decide who legally owns the tree.

It is important to keep in mind that there is no such thing as “no man’s land” all land and therefore all trees are in somebody’s responsibility.

Who is responsible for managing trees?

The safety of a tree is nearly always the responsibility of the owner of the land on which they grow, but there are some exceptions such as when a rental agreement requires the tenants of a property to manage the tree.

The tree owner or manager has a ‘common law’ duty of care to: *‘take reasonable care to avoid acts or omissions which they can reasonably foresee which would be likely to injure their neighbour’*. In practice this means that if a tree fails and causes damage to a person or property then the tree owner may be liable.

The chances of making a claim will usually depend on whether the owner had been negligent; for example, if the tree was obviously unsafe through damage or disease and they failed to act to prevent the incident occurring.

Trees overhanging boundaries

The owner of a tree is not responsible for preventing their tree from growing over a boundary and cannot be legally forced to cut back overhanging trees.

You have a right to prune back roots and branches that encroach over your boundary without the tree owners consent (*subject to any legal restrictions being overcome first such as Tree Preservation Orders or conservation areas*).

Where possible it is always advised to discuss your concerns with the tree owner before carrying out any work.

You also have a legal duty, however, to take 'reasonable care' whilst undertaking the works and you may be liable if you damage your neighbour's tree or cause it to become unstable.

The branches or roots pruned from the tree remain the property of the tree owner and therefore should be offered back, although the tree owner has the right to refuse them and if refused it is your responsibility to dispose of them suitably.

It is not legally acceptable to "throw the branches back over the boundary" as this could be classed as fly tipping and you could be liable for any costs occurred in their removal and potentially face prosecution.

Subsidence

Subsidence can occur when tree roots extract moisture from soil (usually clay) and where a building's foundations are inadequate.

If cracks appear in a building and it is believed a neighbouring tree may be the cause, then the owner of that tree or their insurer may be liable for the cost of repair.

In order to demonstrate liability, technical evidence beyond reasonable doubt should be provided. It may be necessary to demonstrate that the damage was reasonably foreseeable and that the owner should have taken action to control or remove the tree.

Removal of trees may not be possible without professional guidance following claims of subsidence as Ground Heave may occur following the removal of mature trees.

Ground Heave is the opposite of subsidence and typically it occurs when trees within influencing distance of a building are removed. The result is that the soil will "re-wet" and gather moisture which causes the ground to swell up resulting in structural damage.

It is important to remember that an owner is not obliged to remove or control a tree that is implicated in causing subsidence. Failure to do so however may result in an element of liability if it is later proved in court that the tree was a contributory factor to the subsidence.

Trees blocking light & views

Although there is a "right to light" it is not as simple as most people believe. The entitlement to light only applies to general daylight and there is no right to direct sunlight. There is only a right to a particular level of light which is normally less than most people already receive.

The law is not very clear as to how trees affect this right. It is complicated by the fact that trees grow over a period of years and that most trees don't have leaves for part

of the year. The law is much clearer if someone were to build a brick wall outside your window.

There is no right to light in a garden and no liability for shade cast over the garden by a tree.

There is also no right to a view. Trees that once framed a view and now obscure it do not legally constitute a nuisance.

Fruit, leaves & flowers

Leaf, flower and fruit-fall are not considered a nuisance in the legal sense and therefore it must be accepted that leaf-fall is a natural process which the tree owner has no control over and is not required to take any action to avoid. This also includes guttering and drain pipes.