

## Landowners liability for falling trees

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**CATEGORY:**  
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This case involved a review of landowners' liability for damage caused by trees falling on (or from) their land.

In the early morning of 18 December 2009, a passing train collided with the stem of an ash tree that had fallen onto the railway line from the garden of an adjacent property. The claimant train company sought to recover the costs of repairing the damage to the train from the owner of the property.

The property owner had thought that the tree was in good condition: there were no dead or falling branches and each spring the tree produced a large amount of healthy leaves. She believed it to be healthy because of the leaf cover and state of the crown and described it as a 'healthy, strong, majestic tree'.

On closer inspection it was discovered that the two stems of the tree were joined by an included bark union, which had caused a crack to develop where the stems forked. There was also a 'wound' at the base of the tree, from which a third stem had broken off many years before. The trunk was difficult to inspect or access because of the density of the surrounding vegetation. The defendant had not carried out any close inspections of the tree.

The claimant argued that the defendant was under a duty to have the tree regularly inspected by an arboriculturalist. If she had done this, the arboriculturalist would have discovered the included bark union and the 'wound'.

Mr Justice Coulson gave the following summary of a landowner's duty with respect to trees on their land:

1. The owner of the tree is under a duty of care to act in the manner 'to be expected from a reasonable and prudent landowner' (*Caminer v Northern Investment Trust Ltd 1951*);
2. There is, however, 'no ground for holding that the owner is to become an insurer of nature' (*Noble v Harrison 1926*);
3. The danger must be of a kind that is 'apparent...to the ordinary layman which the ordinary layman can see with his own eyes' (*Brown v Harrison 1947*);
4. A reasonable and prudent landowner must carry out preliminary/informal inspections of his or her trees on a regular basis and only if these inspections reveal a problem is the landowner under any duty to arrange for inspection by an arboriculturalist.

Lord Justice Coulson held that the defendant's duty in this case extended no further than the carrying out of periodic informal or preliminary observations of her tree. There was nothing that should have alerted her, or put her on notice, that the tree was anything other than healthy or required a closer inspection by an arboriculturalist. The claim against her failed.

What this means for you:

1. A reasonable and prudent landowner should carry out preliminary/informal inspections of his trees or observations on a regular basis, particularly where those trees border a highway, railway or another property.
2. Reasonable and prudent landowners are not obliged as a matter of course to instruct experts to carry out regular inspections of trees on their land.
3. There is no need to inspect each and every tree closely; the duty on landowners must not amount to an unreasonable burden or force the landowner to act as the insurer of nature. The landowner does, however, have a duty to act where there is a danger which is apparent and which he can see with his own eyes.