

Which?

Legal advice

expert advice

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The law on trees

Trees can be an emotive issue, but try to keep things in perspective. These Which? Legal Service guidelines will help to minimise difficulties

Q What's the best way to deal with tree problems?

A Don't let the problem fester, contact your neighbour for a chat as soon as possible and do your best to keep the discussion cordial. Be reasonable, stick to the point at issue and know the legal position, just in case. Be prepared to compromise or share costs in order to keep the peace.

If you can't reach a solution, however, get outside help before relations deteriorate irreparably. The Alternative Dispute Resolution (ADR) website (www.adrnow.org.uk) offers advice. Otherwise you could ask a person known to both parties whether they would mediate.

Q My neighbour's tree overhangs my garden. Can I cut it back?

A Generally, yes; you can cut back any part of a tree (or any other plant), including the roots, which encroaches on your boundary, as far as the boundary line. Obviously, it is preferable to do this in agreement with the neighbour and in a way which causes the least damage or disfigurement to the plant. The cut-off

parts remain the neighbour's property, and you should offer them back. Before doing any work, check if the tree has a Tree Preservation Order (TPO) or is in a Conservation Area. You cannot apply any poison which could kill the tree.

Q Can I pick the fruit from the branches of an apple tree overhanging my garden?

A Legally, all the fruit on the tree belongs to the tree's owner. However, it would be a reasonable compromise for the owner of the tree to let you pick the fruit in return for allowing the branches to overhang. If the fruit falls off, it is legally regarded as abandoned, so you may keep it.

Q My electricity company has been trimming trees in my street. Are they permitted to cut back trees on my property?

A You should ensure that your own trees do not interfere with overhead electricity or telephone cables. If they do, then the utility companies themselves can trim the trees.

Similarly, if your trees block access to a public footpath, or have dangerous

overhanging branches, you should deal with the problem; otherwise, the local authority may do so and send you the bill.

Q How can I protect trees from damage by cabling companies?

A Trees have little legal protection as such, but the cable companies have agreed to follow a government-approved code of practice called National Joint Utilities Group 10, to protect street trees and trees in gardens. This includes hand digging to minimise damage to tree roots. If you are worried about damage being caused by cabling or utilities, contact the company involved and the tree officer at your local council. If damage has already occurred, take photographs and contact the same people.

Q My insurance company wants me to cut down a healthy tree in case it causes subsidence. Do I have to?

A No, but if the tree were to cause subsidence the insurer is likely to refuse to pay out for repairs to yours or a neighbouring property. The best

solution is to ask the advice of a qualified arboriculturist, and get them to prepare a report to help convince the insurance company.

Q I'm worried my neighbour's tree could fall on my house in a storm. What can I do?

A A tree is the responsibility of the owner of the land they grow on, regardless of who planted them. If a tree causes damage, the owner may be liable. However, your chance of making a claim would usually depend on demonstrating that the owner had been negligent; if the tree was obviously unsafe through disease or damage, for example. You should write (keep a copy) to your neighbour expressing your concern and ask them to have the tree's health checked by an arboriculturist. As a last resort, it may be possible to get a court injunction requiring an owner to deal with a dangerous tree, or the local authority may take action, especially if there is a danger to the public. Where property is rented, the landlord may require the tenants to maintain any trees, this would be stated in the lease. If in doubt, contact both landlord and tenant.

Q What about tree roots undermining a path?

A The owner of the tree could be liable for the damage, particularly if they

planted the tree knowing it could cause damage. If you are worried about your own trees, check that your insurance policy covers you for any damage they could cause. An arboriculturist can advise on potential problems.

Q My neighbour complains about leaves from my tree blocking his gutter. Am I liable?

A As fallen leaves are uncontrollable and fall seasonally, you are extremely unlikely to be held responsible by the law.

Q What is the effect of a Tree Preservation Order?

A Tree Preservation Orders (TPOs) are imposed by local councils to protect trees which improve the local environment. You must get the council's permission to do any work on a protected tree - even removing a dead branch or pruning a tree causing a nuisance is a grey area. If permission is refused, you can appeal to the Office of the Deputy Prime Minister within 28 days of the council's refusal. To find out if a particular tree has a TPO, consult your local council.

If the tree is in a Conservation Area, you must give your local authority the option to serve a TPO before carrying out any work on trees. It then has six weeks to decide whether to serve a TPO. Failure to comply with a TPO can result in fines up to £20,000.

Further information

- 1** For help finding a qualified arboriculturist, ask your local council's tree officer, or contact the Arboricultural Association (01242 522152; www.trees.org.uk).
- 2** The Tree Advice Trust (01420 22022; www.treecouncil.org.uk) prints a leaflet called 'Trees in dispute' (£8, inc p&p), and you can call its Tree Helpline on 0906 516 1147 (calls cost £1.50 a minute) to talk through your problem with an expert.
- 3** Communities & Local Government (0303 444 0000; www.communities.gov.uk) offers, along with other information, a publication called *Tree preservation orders: a guide to the law and good practice* - visit its website to buy the book for £8 or download it for free.
- 4** Our *Which? Gardening factsheet*, 'How to deal with boundary disputes', also offers information.

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