

The law on trees

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If you want to trim a tree, if overhanging branches are causing a dispute, or if trees in your area are under threat from cabling or insurance companies, here's what to do.

Q What's the general approach when dealing with tree problems?

A Trees can be a very emotive issue, so it's important to keep things in perspective. Follow these guidelines to help minimise the difficulties.

- ❖ Contact your neighbour for a discussion as soon as you can; don't let a problem fester.
- ❖ Be reasonable, stick to the point at issue and know the legal position, just in case.
- ❖ Be prepared to compromise, or share costs, to keep the peace.
- ❖ Do your best to keep up a cordial discussion with your neighbours. However, if you cannot reach a solution, get outside help before relations deteriorate irreparably. Visit the Alternative Dispute Resolution website (ADR) at www.adrnow.org.uk for advice. Otherwise you could try a person known to both parties to 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, for example, if the tree was obviously unsafe through disease or damage. You should write to your neighbour expressing your concern (keep a copy) 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

For help in finding a qualified arboriculturist, ask your local council's Tree Officer. Alternatively, contact the Arboricultural Association on 01794 368717.

Gardening Which? factsheet GWF425, Boundaries, Hedges and the Law.

A leaflet, *Trees in Dispute*, £5 incl p&tp, is available from the Tree Advice Trust, Alice Holt Lodge, Wrecclesham, Farnham, Surrey GU10 4LH. 01420 22255. The trust also runs a Tree Helpline where you can talk to a tree expert at £1.50 a minute on 09065 161147

Tree Preservation Orders: A Guide to the Law & Good Practice is available for £8 from: Communities & Local Government Publications, PO Box 236, Wetherby LS23 7NB 0870 1226 236 or viewable free along with other information at www.communities.gov.uk

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