

Mr G POLL

Claimant

- and -

**VISCOUNT ASQUITH OF MORLEY
VICOUNTESS ASQUITH OF MORLEY**

Defendants

JOINT STATEMENT OF ARBORICULTURAL EXPERTS

Consultant	Representing
Mr J Barrell, Barrell Tree Care Ltd	The Claimant
Dr D P O'Callaghan, OCA UK Limited	The Defendant

The Arboricultural Experts met on 16 September 2005 and it was agreed that definitions of the levels of competence associated with tree inspections would assist before proceeding with the points upon which they agree and disagree.

It was agreed that there are generally three levels of competence for surveyors / tree inspectors that define the level of knowledge and expectation, as follows:

- Level 1:** A person with no specialist tree knowledge but with a general interest in and knowledge of trees, who whilst having no training in tree inspection can identify gross defects and problems in trees and recognize that there is a level of risk attached such that closer and more detailed inspection by a 'Competent Person' is required.
- Level 2:** A 'Competent Person' as recommended in Circular 52/75 will have sufficient training, expertise and /or qualifications to identify tree hazards, assess the levels of risk and make appropriate management recommendations.
- Level 3:** A specialist or expert in tree biology, pathology, internal detection of decay in trees, failure and hazard evaluation, e.g. a tree pathologist, an experienced Arboricultural Consultant, who is qualified to a high level in their discipline and who as considerable experience of hazard trees and the consequences of failure.

The above definitions are broadly based on the levels set out in *'Veteran Trees: A Guide to Risk and Responsibility'* (English Nature 2000, ISBN 1 85716 474 1), but have been adapted to reflect what is required of levels of inspection of trees that are not veteran trees.

The following points were discussed and generally agreed between the experts.

- 1 The description of the subject tree set out in paragraphs 3.2.4, 3.2.5 and 3.2.6 of Dr O'Callaghan's Report is agreed.
- 2 The findings in respect of the fungal infection set out in paragraphs 3.2.7 of Dr O'Callaghan's Report are agreed.
- 3 The findings in respect to weather conditions set out in paragraphs 3.2.8 and 3.2.9 of Dr O'Callaghan's Report are agreed.
- 4 The discussions with respect to included bark unions / defects as set out at paragraphs 4.3, 4.4, 4.5 and 4.6 of Dr O'Callaghan's Report are agreed.
- 5 The discussions with respect to the nature of the fungal infection set out at paragraphs 4.8 and 4.9 of Dr O'Callaghan's report are agreed.
- 6 The discussions with respect to the weather conditions and the reasons for failure set out in paragraphs 4.11, 4.12 and 4.13 of Dr O'Callaghan's Report are agreed.
- 7 The discussions with respect to there being no crown symptoms evident before the failure as set out in paragraph 4.17 of Dr O'Callaghan's Report are agreed.
- 8 The analysis of the responsibility of the Highway Authorities in respect of tree inspections as set out in paragraph 4.22 of Dr O'Callaghan's Report are accepted.
- 9 Dr O'Callaghan's conclusions at paragraphs 5.1, 5.2, 5.4 and 5.6 of his report are agreed.

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- 10 The sketch illustration of the subject tree prior to failure at 7-1 of **Appendix 7** of Dr O'Callaghan's Report is agreed.
 - 11 The location plan at **Appendix 3** of Mr Barrell's Report and the larger scale sketch plan of the locus of the accident at 7-2 of **Appendix 7** to Dr O'Callaghan's report fairly represent the location and detail of the location of the subject tree and the locus of the accident, and this is agreed between the arboricultural experts.
 - 12 That the multiple stems of the subject tree would have been visible from a roadside survey at any time of the year.
 - 13 That the included bark unions at the base of the subject tree may have been visible from a roadside survey during the winter months is agreed. However, this defect would not have been visible during the late spring, summer and early autumn months without a close visual inspection that would have required pushing aside shrubs and undergrowth in order to reach the base of the tree.
 - 14 That it would be standard practice for a qualified and competent tree inspector to move through and push aside shrubs and undergrowth to reach the base of the subject tree.
 - 15 That Multiple stems from coppiced or layered trees in hedgerows are signs of potentially weak or included basal unions that a competent tree inspector should be aware of, and would normally be a sign that closer inspection is needed.
 - 16 That trees as dynamic organisms grow in such a way as to try to equate the forces exerted upon them through the production of reaction wood as is explained in the axiom of uniform strength, is agreed. However, it is also agreed that where trees contain included bark unions and / or multiple attachments, as they grow the pressure of the stems pressing against one another compromises the tree's ability to provide sufficient strength to resist all forces.
 - 17 That the subject tree and others in the vicinity of similar structure pose a medium risk to the highway.

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- 18 That both landowners and the Highway Authorities have a duty to inspect trees that are within falling distance of the carriageway in order to keep the highway safe from threats from trees.
- 19 That the status of 'Forestry Contractor' does not necessarily imply that a person is a competent tree inspector.
- 20 That competent roadside tree inspection is a Level 2 inspection skill, as defined earlier in this statement, that requires training in tree defects and the recognition thereof, and of the assessment of risk posed by defects together with the ability to identify remedial measures necessary to abate and / or eliminate the risks.

The Arboricultural Experts Disagree on the Following Points.

- 21 No agreement could be reached upon the trees, other than the subject tree, which Mr Barrell refers to in his Report, as Dr O'Callaghan has not had an opportunity to re-visit the site and inspect the trees to which Mr Barrell refers.
- 22 Dr O'Callaghan is of the opinion that the fungal bracket is unlikely to have been detected, even by a competent inspector, as it was located underside of the stem that failed and was only visible to him because the stem had failed and exposed it.
- Mr Barrell believes that the fungal bracket could have been visible during a detailed basal inspection of the subject tree had one been undertaken by a competent person. However, it was not present when he made his inspections and he is unable to be certain as to whether it could or could not have been seen.
- 23 Mr Barrell is of the opinion that the Mells Estate did not have a systematic or prioritized tree inspection regime in place before the accident.

It is Dr O'Callaghan's position that the Mells Estate did have a tree inspection regime in place, through Mr Rowe's visual assessments. Dr O'Callaghan agrees that although the system in place could have been better, nonetheless a system was in place, which in his experience is more than most landowners have.

- 24 It is Mr Barrell's opinion that a prioritized tree inspection regime undertaken by Mr Rowe would not entail a significant increase in resources.

Dr O'Callaghan disagrees. It is his opinion that before a meaningful regular systematic regime of inspection could be implemented, it would be necessary to first undertake a baseline survey that would identify all trees, tag them, plot them on a map and prioritize actions, after which regular systematic re-inspections could be meaningfully undertaken. This would require a large expenditure in the first instance.

- 25 Following from points 22 and 23 above, it is Mr Barrell's opinion that the Mells Estate failed to discharge its duty to inspect trees close to the highway.

Dr O'Callaghan disagrees. It is his opinion that the Mells Estate did have an inspection regime in place and, it is also incumbent upon the highway authority and or the local authority to inspect trees that impact the highway. The local authority has powers under the Highways Act to enter upon private land to inspect trees that threaten the highway and to serve appropriate notices under S154 of the Highways Act upon landowners to undertake such works as are necessary to address any dangerous trees. Indeed it has powers to have the work undertaken and to recover costs from landowners if appropriate.

- 26 Dr O'Callaghan is of the opinion that the inspection regime in place at the Mells Estate is adequate for it to discharge its responsibilities. Mr Rowe is a Level 1 inspector, i.e. one who can recognize gross deficiencies/defects in trees and call upon more competent inspectors to undertake more detailed inspections as appropriate. This is all that is required to comply with the Estate's responsibilities.

Mr Barrell disagrees. It is his opinion that from the evidence he has seen to date he does not believe that Mr Rowe was sufficiently competent to carry out tree hazard inspections that he was asked to do. However, he reserves his final opinion until he has had sight of Mr Rowe's qualifications and the details of any training courses in tree inspection he might have attended

- 27 Mr Barrell believes that the description of Mr Rowe as a 'Forestry Contractor' does not imply that he has any Arboricultural Expertise.

Dr O'Callaghan points out that the term 'Forestry Contractor' does not always mean that the contractor deals only in commercial forestry, which is a distinct discipline from Arboriculture. Indeed the title used may reflect Mr Rowe's rural location and to imply that he and his firm deal with tree problems generally. Mr Rowe does undertake work that could be described as Arboriculture.

Signed

Jeremy Barrell

Mr J Barrell, Arboricultural Consultant
On behalf of Mr G Poll

(Dated 30/09/05)

Signed:

D P O Callaghan

Dr D P O Callaghan, Arboricultural Consultant
On behalf of the Viscount Asquith of Morley

(Dated 23/9/05)