

Frequently asked questions on high hedges

How the legislation works

What sorts of complaint can the local authority look at?

You will find the answer to this and other questions about the complaints system in the leaflet *High hedges: complaining to the Council*.

Fees

Why should the person who is suffering the hedge problems have to pay the Council to intervene?

The Anti-social Behaviour Act 2003 states that complainants must pay a fee to the local authority when they submit their hedge complaint. There are several reasons why we think this is fair and reasonable:

- Most people who responded to questions about fees in the 1999 consultation '*High hedges - possible solutions*' thought it was fair that the complainant should pay something for the local authority to intervene in their hedge dispute.
- Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the local authority really is a last resort.
- A fee will also help to deter frivolous or vexatious complaints.
- It is common practice for local authorities to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general.

But the complainant is the innocent party in this dispute.

It is important to understand the way the legislation works. It allows local authorities to review these cases, as independent and impartial third parties. Authorities are not investigating any offence - none has been committed, even if a complainant 'wins' their case - and so the legislation does not deal in innocent or guilty parties. As a result, the fee is a payment for a service - not a penalty.

How can there be no offence: it's anti-social behaviour?

There is no special significance in the high hedges provisions being included in the Anti-social Behaviour Act 2003. It simply provided a suitable opportunity, and vehicle, to get the high hedges legislation onto the statute book after several unsuccessful attempts through Private Members Bills. Certainly, the Act makes no provision for an Anti-social Behaviour Order to be served on the hedge owner. And no offence is committed until such time as a hedge owner fails to implement a local authority's order to carry out works to the hedge to remedy the problems it is causing.

Can I reclaim the fee from the hedge owner?

There is no procedure under the Anti-social Behaviour Act 2003 for the complainant to obtain repayment of the fee, either from the local authority or from the hedge owner.

People have asked about taking their neighbours to the small claims court. This is the special procedure for handling smaller claims in the county court. It can be used for most claims for £5,000 or less and so, on the face of it, the procedure may apply to reimbursement of the fee for making a complaint about a neighbour's high hedge. However, issuing a claim at court should be a last resort.

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People should have tried other ways of settling the matter; for example, by writing to their neighbour to ask for recompense.

Further information is contained in the leaflets '*Making a Claim*' (Leaflet EX301) and '*The Small Claims Track*' (Leaflet EX307) available from the county court and at www.courtservice.gov.uk. Court staff can advise on the procedures, provide the necessary forms and help people to fill them out, but the final decision rests with the judge. So, court staff cannot tell someone whether or not they have a good claim or comment on their chances of success. People may be able to get free legal advice from a law centre to help them with this.

Deciduous Trees and Hedges

Why can't I complain to my local authority about deciduous trees and hedges that cause problems?

We decided to restrict the legislation to evergreen hedges because we had evidence that they were a widespread problem - from *Hedgeline*, the campaign group, and other letters we received from all over the country. And both the problem and possible solutions were the subject of public consultation. The results indicated overwhelming support for new laws to deal with evergreen hedges, including among the majority of local authorities who replied. Our mandate - and commitment - to legislative action is, therefore, to take action in respect of evergreen hedges only.

The consultation revealed no general appetite for legislation to deal with all problem hedges. And it must be said that we have no comparable evidence that deciduous hedges are a general problem. Although we get some letters from people who have problems with deciduous trees, these tend to relate to specific and individual sets of circumstances. They are also outnumbered by the representations we continue to receive on evergreen hedges.

Would you alter the legislation if more people wrote to you to complain about deciduous trees and hedges?

Even if there was more evidence of a widespread problem, we would still need to put the issue to public consultation before we could consider extending the provisions in the Anti-social Behaviour Act 2003 to allow local authorities to deal with complaints about deciduous hedges. In addition, we will want to ensure the current legislation is bedded in and working effectively before considering making any changes to it.

Further information

If you don't find the answer here, email us at hedges@odpm.gsi.gov.uk or write to us at the following address:

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