

A Growing Problem

High Trees, Hedges and Other Nuisance Vegetation in Scotland

The Case For a Legally Enforceable Remedy

Scothedge

What Scothedge members say.....

"My late husband's last years were made a misery over this, I have very little light from my living room window – when we complained to the owner we got nothing but abuse." (Angus).

"A neighbour was refused a backland development. He then planted a row of Leylandii which have reached more than 10 metres in height, some 3-4 metres above the height of the retaining wall. This destroys our outlook across the Firth of Clyde to Arran, Cumbrae and Bute. He is completely anti-social and claims his motive is simply privacy." (Largs).

"The hedge owner responds occasionally and to my mind unsympathetically. They will not discuss the matter and indeed pushed me physically out of the house when I tried to bring up the discussion." (Edinburgh).

"I was advised that we were within our rights to cut back both branches and roots which enter our land. However we were also advised that any damage to the trees resulting from our actions could be our responsibility for which we may be found liable." (email Peebles).

"I have been attempting to resolve this issue by painstaking negotiation for about 16 months and did manage to persuade my neighbour's son to attend mediation by Stirling Council Mediation Service. Unfortunately this foundered on his mother's insistence on protecting the tree roots. Their proposal is that I should waterproof the inside of my house by a process known as tanking which is both unsightly and expensive. Needless to say there was no offer to meet the costs of any work required." (Stirling)

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Looks like our neighbour
has finally agreed
to trim his hedge.



1. Introduction

For over ten years Scothedge has been campaigning for legislation to end the suffering and injustice resulting from the irresponsible growing of trees and hedges. The Scottish Government has launched consultation this summer to establish the extent of the problem and explore possible remedies. This document outlines the Scothedge case for a legally enforceable remedy.

Scothedge has over 200 members throughout Scotland who suffer the distress caused by uncaring neighbours who refuse to maintain their trees and hedges. Westminster has legislated for England and Wales but this is a devolved issue and we still await legislation north of the border. In England and Wales local authority inspectors issue compulsory trimming orders when unreasonable hedge owners refuse to act. In Scotland the law continues to protect such unfair abuse.

Scothedge campaigns for a national system of guidance for growers, backed up with last resort legal enforcement if a grower persists in acting in a manner which the neighbouring and wider community finds unacceptable.

This paper shows the scale of the problem in Scotland and sets out a solution which Scothedge believes will be effective and cost efficient. The cases and examples which we use are all real and attributable. We have sometimes disguised them to avoid identifying perpetrators. We have no desire to publicly shame or prosecute individuals; we are simply trying to bring relief to their long suffering victims.

Whether you are a politician, a civil servant, a member of the public or perhaps even a grower of a high hedge, please look at our cases and imagine what it would be like if your house was blighted. Think about how easily it could happen to you. You could become the victim tomorrow. All it might need is for a neighbouring property to change hands.

Or perhaps imagine yourself in the position of grower; would you feel comfortable inflicting so much distress on a neighbour who just wants to live in peace?

Scothedge is not against trees and is not looking for 'anti tree' legislation. Scothedge stands against those who use trees and plants in an inappropriate and unreasonable way. The problem lies with people and the law must ensure that a small but significant group of selfish individuals cannot continue to behave in a way that the vast majority our society finds unacceptable.

**Scothedge
August 2009**

Scotthedge

CASE STUDY 1



Alice, a disabled lady, enjoyed the view from her small city backyard. That was until her neighbours planted trees to secure their own privacy with no regard for Alice. Three years ago one of the untended trees broke and Alice was injured.

Pleas for consideration were met with screaming abuse, a totally inappropriate response considering the serious impact the trees were having on this unfortunate victim.

In Alice's words,

'My neighbours are very unapproachable and become verbally abusive about the least little thing. I feel that as well as threatening my safety when sitting outside, the height is restricting light and the outlook from the otherwise perfect haven of my outside space. I should not have to be scared or feel intimidated when approaching a neighbour for fear of being verbally abused.'

This case is an example of the all too common practice of one neighbour using trees and hedges to inflict abuse and suffering on another.

The law as it stands offers no remedy to Alice. Her abusive neighbours need take no action, allowing Alice to suffer more and more as the trees grow. The neighbours right to grow trees is everything, Alice's loss of garden amenity counts for nothing.

The only hope for Alice is that the Scottish Government changes the law soon.

2. The Problem

2.1 The Suffering of Victims

'I do think he is being incredibly selfish. I would be so ashamed if I thought I was causing such unhappiness to my neighbours and was able to act but didn't.'

'Thank you for taking the time to listen and understand my plight, I should not have to be scared or feel intimidated when approaching a neighbour for fear of being verbally abused.'

These two short statements from victims summarise perfectly the real problems that lie behind the so called 'High Hedge Disputes'. This is a problem caused by a small number of people who are happy to abuse and victimise their neighbours. They use trees and hedges to inflict that abuse *because the law uniquely allows them to be used as weapons for that purpose*. By default the law makes any dispute interminable. The law needs to change.

It is a very real problem, not just one of petty disputes between neighbours who need to 'grow up and talk to each other'. Nor is it about busybodies who want every tree and shrub measured and cut down to six feet!

The vast majority of the Scottish people behave in a reasonable manner in this regard and therefore any proposed legislation in Scotland need not be targeted at them. Scothedge has come to realise that growers of trees and hedges show several types of behaviour which can be characterised as

- **People who would never dream of causing distress to anyone and who almost without thinking maintain their trees and hedges in a way that is generally recognised as reasonable.**
- **People who would perhaps wish to grow high trees and hedges but realise that this would be unreasonable and therefore do not.**
- **People who may not realise the problems their trees and hedges are causing but take the required steps when this is pointed out to them by the neighbour or perhaps following mediation by a third party.**

There is no problem with any of these cases. These cases rarely come to the notice of Scothedge or any one else for that matter. Good neighbourly behaviour, with a bit of give and take, rarely makes the news.

Unfortunately there some other types of response such as shown by

- **People who persist in acting unreasonably even after an approach by a neighbour and who do so safe in the knowledge that they and their poor behaviour have the full protection of the law.**

Uniquely, the uncontrolled growing of plants provides a way to act unfairly and aggressively towards another person and there is nothing that can be done if the perpetrator decides to persist with the unreasonable behaviour. These cases are best summed up with the phrase 'I like my trees, I refuse to do anything about them and I don't even have to discuss the problems that they are causing to others'.

But there are even worse responses such as shown by

- **People who use hedges and trees purely as a vindictive weapon.**

In such cases the desire for screening or boundary definition etc is not paramount. The distress caused is not a by-product of the trees but rather the purpose of them. Trees and hedges are the chosen method of inflicting abuse because such behaviour is not against the law in the way that other forms of aggression are. Quite often these cases are revenge for a planning application refused after a neighbour's objections, and this is a recurring theme in many Scothedge problems.

Couple's darkest fears are ended

WITH its spectacular views across the Solway Firth, John and Georgina Little's retirement bungalow was a dream come true.

And for Mrs Little, who suffers from Seasonal Adjustment Disorder (SAD), the natural sunlight streaming through its windows ended years of depression.

Then their neighbour decided to build a 6ft-high garden fence. The proposed wooden fence, running the length of their property in Gretna, would not only obscure the view, but blot out the light.

Planners backed the application - but their decision was last week overturned by Dumfries and Galloway councillors, who described the plans as "downright mean and vindictive".

Mrs Little, 61, said: "I have suffered from SAD for years, long before the condition was acknowledged publicly. I get

By **Nick Brownlee**

terribly depressed and the only thing that can alleviate my symptoms is a steady source of natural sunlight.

"Since we moved here, my condition improved and I felt so much better.

"Now all this anxiety has made me feel ill again."

Area planning manager David Suttie said: "I have a great deal of sympathy for Mr and Mrs Little, but if we refuse then the applicant can grow leylandii instead, and that can grow far higher as there is no control in Scotland for high hedges or leylandii."

But Councillor Marjorie McQueen said: "This is a downright mean and vindictive thing to want to do. It would obviously obscure light from the Littles' home."

Last night neighbour Chris Monk was unavailable for comment.

Couple on the hedge of despair

TRIUMPH has turned to despair for pensioners John and Georgina Little in their long-running battle to prevent a neighbour erecting a 6ft fence beside their home.

Yesterday the Scottish Daily Express reported how councillors threw out builder Chris Monk's plans, describing them as "downright mean and vindictive".

Mrs Little, 61, suffers from Seasonal Adjustment Disorder (SAD), and claimed the fence would not only block out sunlight at her bungalow in Gretna, but obscure spectacular views over the Solway Firth.

Within hours, however, Mr Monk began planting fast-growing leylandii trees along the proposed fence line. The trees do not come under planning restrictions in Scotland, and can grow to a height of 100ft.

"It's absolutely unbelievable," said Mrs Little. "I don't know what we've done to upset this man, but it's clear he's got it in for us."

"We thought we had sorted this problem when the council rejected his planning application, but now

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he's gone and done this. What's worse is there is nothing we can now do."

Mr Little, 57, said: "I really fear for my wife's health now."

Last night, Mr Monk, a father of three, defended his decision.

"All I want is some privacy in my garden," he said.

"At the moment, all that separates our houses is a low wall and some ugly barbed-wire fencing."

"I went through all the correct channels to get permission for the wooden fence, and I accepted the council's decision against it. There is no law against planting leylandii."

"I don't know why Mr and Mrs Little think I have some sort of vendetta against them. Nothing could be further from the truth."

Mr Monk's application was originally accepted by planners. However, councillors in Dumfries and Galloway rejected the recommendation after hearing about Mrs Little's condition.

Area planning manager David Suttie said: "I understand the problem circumstances, but there is nothing we can do."

It is legal in Scotland for one neighbour, in a dispute over any issue, to take advantage of the relative position of their property and use trees and hedges as a unilateral weapon of punishment to spoil a neighbour's enjoyment of their property.

This is where the law needs to change.

In a small number of severe cases people are suffering extreme stress and even dying as they see their everyday life destroyed by inconsiderate neighbours. The perception in the past has been that there are a high number of trivial cases which will take a great deal of effort to resolve.

The truth is that, given the political desire to legislate, the small number of severe cases could be easily and cost effectively resolved.

As the law currently stands, any solution to these extreme cases depends entirely on the goodwill of the hedge or tree owner. Given the fact that often the perpetrator has spent years allowing uncontrolled growth to create the situation, any voluntary remedy is extremely unlikely. Attempting to negotiate a settlement usually hardens the attitude of the grower. The only hope for the sufferer is for such unreasonable behaviour to be outlawed.

It is very unfair that a neighbour should be free to show no consideration in such matters and even retaliate by making things worse either through abuse or by planting more trees as a show of bullying strength. It is little wonder that the stress upon the victim is horrific and that their quality of life and health frequently is diminished. In several cases the victim is subjected to indecent cruelty. This is against any natural justice and it bears most harshly upon those who have a belief in equitable community life and the rule of law.

With many of the victims being elderly and confined to their homes as their final sanctuary, such inconsideration is especially hurtful and intolerable. To those retired and living 'twenty four-seven' in their homes the injustice is even more traumatic as their major asset and home is, little by little, devalued and turned into nothing at all.

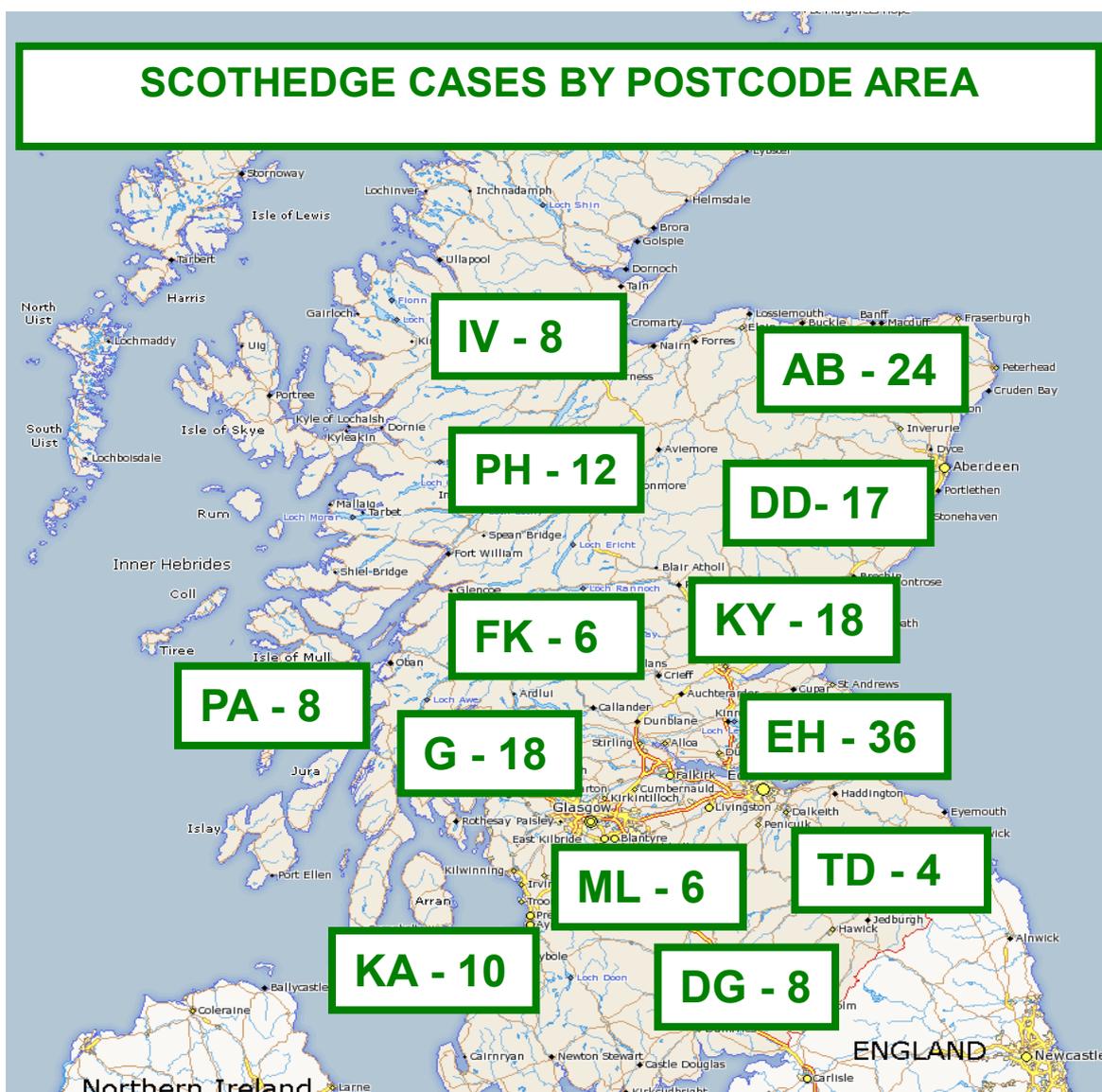
2.2 The Extent of the Problem

Scotland has benefited from widespread house building in the last fifty years, much of it in fairly high density developments. Occupiers have used walls, fencing or hedging to gain reasonable privacy and the first two, being covered by planning regulation, have never become a problem. Trees and hedging however have remained unregulated and some people have used these inappropriately and with complete disregard for others. This is literally a 'growing problem' as the shrubs and saplings planted decades ago have been allowed to become the monsters of the 21st century.

People who find themselves the victim of hedge and tree abuse soon discover that negotiation, mediation and the law are powerless in the face of a determined and selfish

bully. The law protects the hedges and trees as the property of the owner with no regard for the suffering of the victim, who discovers that attempts to use the existing law often make a bad situation very much worse. Many of these victims have joined Scothedge to support the campaign for a change in the law.

Scothedge has over 200 members from households throughout Scotland and most MSPs have been asked for help by at least one constituent. Scothedge estimates that its membership represents about one fifth of Scottish hedge and tree victims, the remainder being those who have not heard of Scothedge or who are already represented by a neighbour. Based on the responses to the 2003 Land Reform Bill and previous consultancies, 800 victims would not be an excessive estimate. Some cases affect multiple households with multiple occupants and this probably means that the actual number of cases needing a remedy will be considerably less.



This map above shows the distribution of Scothedge cases by postcode area. Whilst there is the usual concentration in the central belt it can be seen that there are significant numbers of cases throughout the country. Overall the numbers of cases has increased by about 30% in the last four years.

2.3 How People Are Affected

Scotledge surveyed its members in 2005 and 2009. The full results of the 2009 survey are available separately¹, but some of the main findings are summarised below

Many people suffer from more than one problem but the most common effects are

Garden light blocking	81% of cases
Inappropriate domination	78%
Loss of cherished view	68%
Window light blocking	66%
Excessive root encroachment	66%

Other common effects include excessive leaf and needle deposition, loss of garden fertility and damage or the risk of damage to drains.

93% of sufferers reported an unhelpful response from their neighbour and of these 38% reported hostility.

78% percent of cases described the archetypal conifer hedge situation but a significant 34% identified deciduous species as being the problem. 49% of problems stemmed from a single inappropriate tree. This data shows that any attempt to define the problem in terms of species, numbers or arrangement of plants will deny justice to significant groups of sufferers. At the same time it would offer vengeful hedge owners legal alternatives to allow them to continue their unreasonable behaviour.

The 2005 survey recorded 70 responses and this rose to over 100 in 2009, which shows a significant and increasing level of support for legislation even given the years of fruitless campaigning. It also indicates that whilst the cases recorded are severe the overall number is manageable, a number unlikely to need massive resource either locally or nationally to resolve. It is likely that there are some people who have opted to 'suffer in silence' and this will of course add to the numbers seeking help from any new legislation.

Following your visit to our house on Monday of this week, I have discussed with my husband, your suggestion of meeting with you to further discuss the trees in our driveway. Both my husband and I agree that we see no purpose in such a meeting as we consider the matter closed. We recognise of course, as previously stated, that you are legally within your right to cut back branches which encroach your land.



It is also important to remember that any individual who has never been concerned about hedge abuse becomes a potential victim when the ownership or tenancy of a neighbouring property changes. In other words we are all potentially just one house move away from being a victim of hedge and tree abuse.

These numbers represent a small but significant minority. Successive governments have made much of their desire to protect minorities and it is high time that something was done to protect this minority who are suffering systematic abuse. Most MSPs have received requests for help from sufferers and Scothedge has received universal and sympathetic support of MSPs from all parties. It is very disappointing that the sufferers are still waiting.

The surveys show that uncontrolled trees and hedges can impact on neighbouring properties in many ways. The effects can be equally felt from a single tree or a group of trees and can be caused by any species or type of plant. Let's look more closely at how these effects can cause suffering to those forced to live with them,

1. Loss of Garden Amenity.

Analysis of the Scothedge survey data shows that negative effects on neighbouring gardens are the biggest problem. Average gardens are often completely dominated by a neighbour's hedge, tree or bush which may be seen as an attractive feature to the owner but renders the affected garden a gloomy, barren and unfertile place. Large trees and hedges deny light to normal sized plants and suck water and other nutrients from the soil. The effect is to diminish or even destroy the amenity of the garden and this impact is out of all proportion to the perceived benefits to the hedge grower. Trees and hedging plants are sometimes grown in very restricted areas which would not comply with BS 5837: '*Trees in Relation to Construction*'.²

2. Root and Branch Encroachment.

The high density of modern housing renders inappropriate and uncontrolled trees and hedges a danger to neighbouring property.

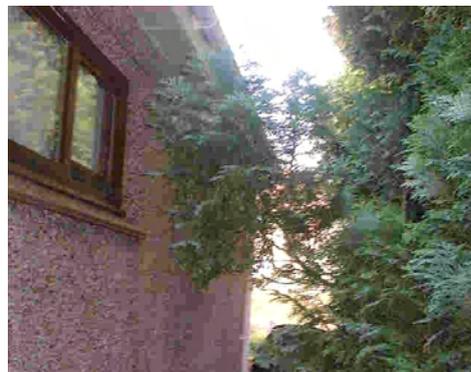


Roots and branches cause damage to buildings, garden walls and patios. Roots also cause unseen damage to underground services such as water and gas pipes, drains and sewers, and TV, telephone and power cables. Leaks from damaged pipes can also soften or wash away ground beneath foundations. These often unseen effects can impact on neighbouring properties otherwise unaffected by the plant growth.

The common law self-help remedy of abatement is available to the owner of the affected property, but this offers only a partial solution. Overhanging branches can be cut back to the boundary but this will have no effect on the height or thickness of the growth on the owner's side of the boundary. Trimming such major structures may be dangerous to a perhaps elderly resident and for legal reasons it is advisable to employ an insured specialist contractor to avoid damage to the plants which are the property of their owner.

Roots can also be cut back to the boundary but this is even more difficult to achieve and often requires extensive excavation way beyond the capability and means of the average resident.

Should abatement by a neighbour result in the death of a plant, it is very possible that a charge of criminal damage may result. It is also possible that abatement of branches and roots on only one side of a tree or hedge could render it unstable. Owners exploit this fear where natural justice would suggest that they should be made responsible for a 'holistic' solution to the problems they cause. However the owner currently has no obligation to maintain the trees appropriately or even to take responsibility for abatement on the sufferer's side of the boundary.



3. Deposition of Branches, Leaves, Needles, Cones or Resin.

Improperly maintained trees and hedges effect neighbouring properties by shedding, whether seasonal or not. Probably the most common impact is blockage of gutters but blankets of leaves and needles etc can inhibit garden cultivation. Reasonable people



with reasonable neighbours have no problem with 'normal' amounts of deposition from properly maintained trees and hedges, but there are cases where clearance of droppings from uncontrolled growth cause real problems which need routine effort and major expense to remedy.

4. Subsidence and Land Heave.

Apart from the direct damage caused by roots and branches (see 2 above) there is also a danger of subsidence and land heave caused by trees and shrubs taking moisture from soils and causing shrinkage. Clay and peat soils, common in Scotland, are particularly vulnerable to these effects. This problem is fully recognised and documented. The Association of British Insurers (ABI)³, The Royal Institute of Chartered Surveyors (RICS)⁴ and other professional bodies all publish information on preventing this problem but this is of little use to sufferers without some legal obligation on the part of the grower.

5. Loss of Views.

Scotland is one of the world's most beautiful countries and the quality of life for many is enhanced by outstanding views. Many properties have been developed to take advantage of outlook and many Scottish people routinely enjoy views which visitors, and those who come to settle here, are happy to travel thousands of miles to experience.

Unfortunately this amenity can be taken away at the whim of a hedge or tree grower. There is nothing that the sufferer can do about it because the tree grower can steal the view with the full backing of the law. 68% of replies to the Scothedge survey quoted loss of individual or communal view as the cause of their distress. Trees, whilst most often making a contribution to the beauty of Scotland, are sometimes used to destroy it.

A single resident, perhaps seeking privacy, can ignore the ethos of the site and the communal expectation of an outlook for all. In many cases selfish growers continue to enjoy the outlook themselves whilst happily stealing it from others (amongst the Scothedge cases we rarely see trees planted on the 'view' side of a property). Several instances of vindictive planting have followed



unsuccessful planning applications which were refused on the grounds of protecting a view. Growers have legally planted trees and hedges as retaliation against those who objected and have been able to destroy the view regardless. End of story.

Scothedge even has a case where a planning application succeeded despite similar objections, and the grower planted trees to increase the impact on the view, just to rub salt in the wound. The use of trees and hedges to specifically thwart the spirit of the planning regulations is a recurring theme of the Scothedge cases.

A universal 'right to a view' is probably impractical, but legal redress is long overdue where trees and hedges have a negative effect on a neighbour out of all proportion to any benefits to the grower. The Scottish Parliament has an opportunity to legislate in a way that sends out a message that shows how much it cares about and is prepared to defend our right to enjoy the world famous beauty of Scotland.

6. Loss of Light to House Windows.

Residential boundaries often run close to buildings, especially in today's relatively dense housing layouts. In houses with small gardens the boundary may run within a metre of a neighbouring house so anything above 2 metres height in line with a window is likely to cause a loss of light to that window. The householder is powerless to combat this and there are even cases where trees actually touch neighbouring windows. Although light blocking is most often associated with conifer hedges, a single, inappropriate deciduous tree at such close proximity will have the same effect, particularly in summer. The Scothedge cases often show how unscrupulous hedge and tree growers try and screen their properties to the north, denying their neighbour a southerly aspect,

but rarely plant high trees or hedges on their own southern boundary. 66% of responses to the Scothedge survey reported light blocking as being a major problem. The effect is to be forced to live in a twilight world, often needing to use artificial light during daylight hours. Conservatories and greenhouses are effectively useless.

Trees planted close to a property do not only deprive that property of light but they can be close enough to restrict air circulation causing moisture absorption



and damp.

7. Insect Infestation.

High concentrations of trees and hedging plants in close packed residential developments attract insects. In some cases this leads to infestation of neighbouring properties.

8. Danger of Plant Toppling.

High and poorly maintained trees and hedges can present a danger of toppling with the potential for damaging neighbouring buildings and endangering people within. If a neighbour's tree is diseased and in danger of falling on to an adjoining property, that property owner cannot take any action if the tree is within the neighbour's property. It is not until it falls and causes damage that it becomes a nuisance and action can be taken. Strangely though local authorities can take action if the tree is threatening a public road.



9. Health Issues.

Some plant species, particularly cypress conifers, can cause an allergic response in some people. This effect is exacerbated when the trees are allowed to grow unchecked and can render the gardens and sometimes even parts of the houses of sufferers as 'no go' areas.

There are many instances of stress and depression caused by the sheer unfairness of the hedge grower having all the rights and full protection under the law.

Scot hedge is also aware of a case of someone suffering from Seasonal Adjustment Disorder (SAD) who is physically affected by light deprivation caused by a high hedge.



10. Loss of Access.

Plants which are overgrown or overhang neighbouring properties can restrict physical access to a property or to normal garden amenities. Normal vehicular access can be affected.

11. Water Shedding.

During heavy rain, overgrown hedges can collect large amounts of water which can then run off in a concentration causing local flooding or water channel damage to foundations or gardens.

12. Impact on Property Resale Value.

Properties blighted by high trees or hedges suffer a significant loss in value. Potential buyers will always ask 'Who looks after the trees?' Nobody wants to buy a house affected by an uncontrolled hedge or tree or one where there is a dispute with a neighbour. It is impossible to hide the effects or gloss over them in a slick estate agent's description. Surveyors have estimated that the loss in value could be around 20% but quite often the property simply cannot be sold. In some instances, for example in developments laid out for a view, the value of other properties can be affected. This is because it can be seen how easily a feature which sustains the value is in reality merely transient and only sustained at the whim of other property owners.

13. Loss of TV/Radio Reception.

Many communications technologies, such as satellite TV, rely on 'line of sight' to the transmitter. High trees and hedges can completely block a neighbour's access to a signal.

These are just a selection of possible 'nuisances' which can be caused by careless or vindictive management of major plants. The problems are not species specific and do not arise because of the plants themselves because of the behaviour of their owners. A single inappropriately planted or maintained tree can be just as disruptive as a group of trees or a hedge. There is no such thing as a 'rogue plant', only rogue plant growers. The sufferer must continue to suffer because there is no requirement under the law for the perpetrator to behave in a way that most people would regard as normal and reasonable.

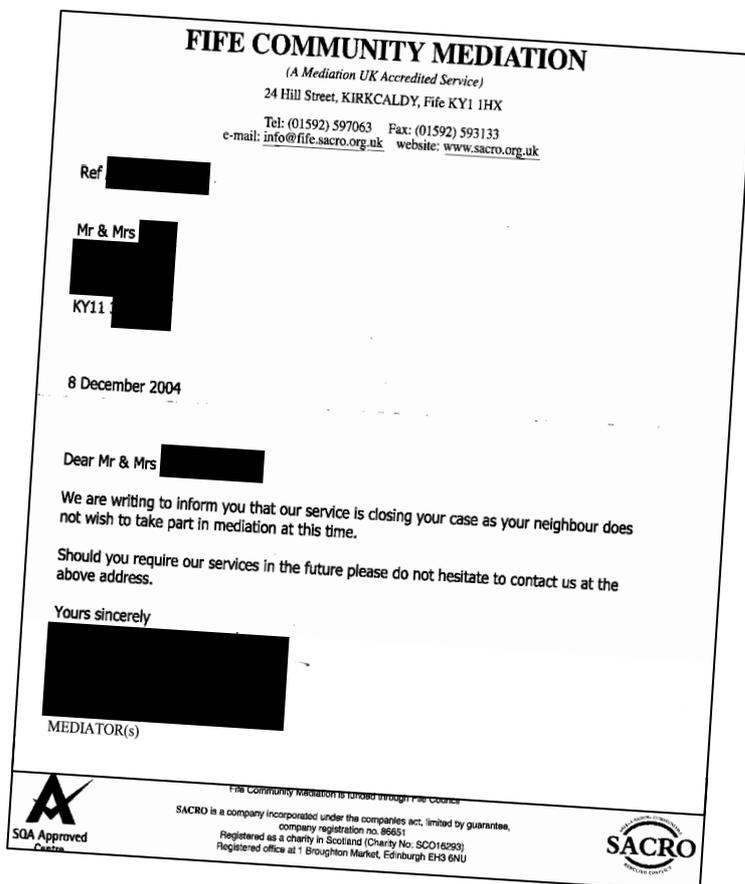
Problems arise when a tree or hedge is selected which is not suitable for its location or is not properly maintained. Trees which occur naturally in a wood or forest setting are unlikely to be suitable for modern housing developments. A forest type tree such as a birch or an oak is not suitable for planting amongst buildings and the associated underground services. Plants need to be regularly maintained and this should be done two or three times a year. Leyland cypress can grow to a height of over 30metres at a rate of 1 metre per year but even the humble privet can grow to 7metres high at 60 centimetres per year. The point is that over time, all species of plant can become a nuisance and in some cases a danger.

Those affected by high trees and hedges see their quality of life drain away as their homes become miserable and dominated places, far removed from the happy and comfortable havens they expected. Their misery becomes a life sentence as the value of their properties fall and they become trapped in a property which is unlikely to be sold. All this is because an inconsiderate neighbour 'likes his trees' or perhaps just enjoys the suffering of others, and so refuses to behave in a way that the vast majority would see as normal, decent and neighbourly.

The latest Scothedge survey reported that over 90% of growers when approached refused to negotiate and 38% were reported as being hostile. Many Scottish sufferers are from the older and vulnerable sections of our society. This reinforces the perception that the issue is primarily one of bullying. Vulnerable people, often living alone, find it an impossible task to

try and face down an often younger and always over-bearing neighbour.

Mediation, often suggested as a solution, is of no benefit to those who are suffering the most because it relies on the willingness of both parties to participate. Abusers simply reject the process. In the Scothedge cases the sufferers have long exhausted all available means of resolution. Indeed many have gone beyond mediation and spent hundreds or even thousands of pounds on lawyers only to be told that the law offers no remedy. Hedge growers are fully aware of the impotence of mediation and simply carry on. A voluntary remedy is extremely unlikely and Scothedge's experience is that any attempt to negotiate usually hardens the attitude of the grower. **The only hope for the sufferer is for such unreasonable behaviour to be outlawed.**



A high wall will be refused planning permission if it is deemed to adversely affect others. Satellite dishes may be forbidden if they break a house skyline and flagpoles may require local authority permission. Structures inappropriate to a site are controlled but callous hedge and tree growers, far from being regulated, remain protected by the laws of property ownership. Westminster legislated for England and Wales in 2003 and it is unacceptable that the situation is still allowed to continue in Scotland. The southern legislation has some serious flaws but its mere existence prompted many hedge owners to act, once they realised that their 'do nothing' position had become unsustainable. In response to an enquiry from the Scottish Parliament, Baroness Andrews⁵ reported from Westminster

'there are positive signs that the legislation is helping to end the misery caused by overgrown hedges in England'

The Scottish Parliament is celebrating its tenth year but Scottish sufferers are still waiting for help. The Government now has an opportunity not only to resolve the current distressing cases but to prevent more cases in the future. Unless something is done the problem will only get worse as the tree planting of the 70's and 80's continues to grow and we continue to develop denser housing. Scothedge has outlined above what the actual and potential problems are but the responsibility to do something about them sits firmly with the Scottish Government.

In the past there has been a perception, particularly in local government, that there is not a problem in Scotland, but this is because complaints which have been received by the local authority are not recorded since the complainant is told there is nothing that can be done. This is also not born out by the correspondence of MSPs who individually, and regardless of party, remain supportive of the aims of Scothedge. However the problem is finite and manageable, providing it is addressed with appropriate legislation.

In a recent Edinburgh case, the problem hedge was chopped within weeks of the death of a neighbour after years of intransigence; one can only speculate on why it wasn't done sooner. In another case a widow lives in a darkened sitting room terrified by an abusive neighbour. In yet another, the hedge owner ran a car at the complainant and the police were informed who visited and cautioned the hedge grower. Recently an old age pensioner was apparently pushed from a ladder whilst trying to legally abate a hedge. In these cases it is as if the hedge owner believes that since the law does not prevent inconsideration regarding the hedge or tree then it is acceptable to be even more generally inconsiderate.

The problem has sometimes been scorned and scoffed at by the media and politicians. But what may appear to some as trivial is in reality a singularly unfair event, which strikes hardest at those who play by the rules and who as a reward are condemned to progressive costs, hardships and stress as plants continue to grow and frustration accumulates. The perpetrators of the problem are small callous group of people who take advantage of ineffective regulation with total disregard for common decency.

2.4 Summary

This is not a problem caused by plants. It is a problem caused by selfish people who have no regard for, and often even enjoy, the suffering their actions inflict on a vulnerable minority.

The law provides no protection to sufferers and this is unacceptable.

Any legislation should not be designed to be 'anti-tree' or 'anti-hedge' but should target the behaviour of people who use trees and hedges inappropriately.

The law should protect everyone's right to a nuisance free home-life. It should not protect the right of a few uncaring individuals to cause distress to others.

'We have approached them but they have refused to do anything about them because they want their privacy. They contacted a solicitor and he confirmed to them that we can only cut back to our boundary any overhanging branches, so we will just have to put up with it. We would have been happy if they would only trim the trees down to about 20 feet (at least the sun would shine over the top of the trees). If the trees were maintained at that level it would be a lot better than they are at the moment, but still the answer was no.

**Has there been any more progress on the Scottish legislation coming into force?'
(St.Andrews)**

My mother aged 83, has a small garden in a mid terraced house which would be easy to maintain if it wasn't for her neighbour. They have a big garden and do not like gardening and rarely do any. The hedge that they have is a beech and the leaves are a nightmare. My husband cut a little of the hedge away and my mother received a letter from their solicitor and is very upset. I really hope that the law changes soon." (email)

Scotledge

CASE STUDY 2



George is retired and purchased his home because of its outstanding coastal views. There is a burden on surrounding land to prevent any new building from blocking his view. When a neighbour decided to build an additional house which would have destroyed the view, George was able to prevent it because of the title conditions.

The neighbour took the case to the Land Tribunal to attempt to have the burden thrown out. The case was refused and the neighbour was ordered to pay the substantial costs of both sides.

One would think that justice had been done. Or has it. . . . ?

George's neighbour has now planted substantial trees which block the view anyway, purely as a vindictive response. George has lost his view and the law allows the neighbour to behave in this way. The neighbour has refused three attempts to mediate.

Other residents have been affected, as George says, *'He has deliberately planted trees with the aim to cause a loss of amenity and one particular neighbour, who is currently recovering from cancer, has to put his kitchen light on in mid summer because the trees are now over 40 feet high!'*

This case is an example of a common problem in Scotland where people are able to inflict suffering on others by using trees and hedges to effectively sidestep purpose of existing planning laws. These are revenge attacks which use trees and hedges, because the law allows them whilst bricks and mortar would be illegal. The law is found wanting and made to look somewhat ridiculous.

The law needs to change.

3. A Brief History

3.1 The Campaign in Scotland

1999

The Scottish Parliament is established and the first elections held.

Scotledge is formed as the Scottish part of Hedgeline, the Campaign which in England and Wales eventually goes on to achieve high hedge legislation in 2003 as an amendment to the Westminster Anti-social Behaviour Bill.

2000

Scott Barrie MSP introduces a bill to deal with high hedges.

The Scottish Executive mounts a little publicised public consultation.

2001

Following the consultation and in response to questions from MSPs, Justice Minister Jim Wallace says⁶,

'In response to the consultation paper published last year, we received 90 formal responses. At the same time the Executive also received over 120 letters from members of the public, many of whom went to great lengths to describe the difficulties they were experiencing as a result of high boundary hedges. We consider that though the experience of such problems is not so widespread in Scotland as south of the border, the suffering in individual cases is just as acute.

We have accordingly decided in principle that a statutory remedy of last resort is required, involving complaints to the local authority and enforcement action in appropriate cases, where other avenues have been exhausted. No commitment can be given at this stage as to when legislation can be brought forward.'

2002

Scotledge lodges Public Petition PE497 in the Scottish Parliament urging the Scottish Executive, *'to implement legislation at the earliest opportunity to alleviate the nuisance caused by high hedges.'* The petition receives a very sympathetic response from the committee.

2003

Scottish Parliament Elections

High hedge legislation secured in England and Wales. Part 8 of the Anti-social Behaviour Act 2003 deals with the criteria for admissible complaints, the definition of a high hedge and a domestic property, the complaints procedure, appeals procedure, powers of entry and enforcement powers.

Scott Barrie MSP launches a private members Bill with significant input from Scotledge.

2004

The Scott Barrie Bill receives wide cross party support but falls due to a technical parliamentary rule change.

2005

Scott Barrie relaunches bill.

Agreement to launch consultation with dates etc published.

In view of the progress being made, the Petitions Committee closes PE497.

Launch of consultation cancelled at short notice despite Scothedge inviting supporters from across Scotland and mobilising wide media support.

2006

Scothedge lodges Public Petition PE984, again calling for legislation to provide local authorities with the power to deal with complaints regarding high hedges etc.

Mary Scanlon MSP proposes legislation as amendment to the Planning Etc. (Scotland) Bill, (but later loses her seat in by-election).

Dave Petrie MSP (amendment 156) and John Home Robertson MSP (amendment 129) introduce further amendments to the Planning Bill. The Petrie amendment offers a very different legislative approach to the flawed Westminster Bill and seeks to address the problems experienced by residents, regardless of the plant, as simple nuisance. This will eliminate all the confusion and the risks associated with narrowly defining the problem in terms of species, number or arrangement of plants. The legislation will allow Local Councils or an appointee to provide an arbitration service after all else had failed.

Amendments debated by the Communities Committee in September 2006 but fail as the issue of high hedges is considered to relate to nuisance and not regulation of new development.

Government announces that further consultation will be required to clarify issues raised by Executive and COSLA.

2007

Second Public Consultation launched, Scothedge demonstrates outside Parliament.

Government defeated in Scottish Parliament elections. Scott Barrie loses seat. Findings of Public Consultation never emerge and remain his property.

New SNP minority government elected.

Public Petitions Committee ask Government what consideration will be given to the matter under its antisocial behaviour strategy review.

2008

Public Petitions Committee continues to press Government for measures to address high hedges etc.

Scothedge meet with officials of new Government to outline case for legislation.

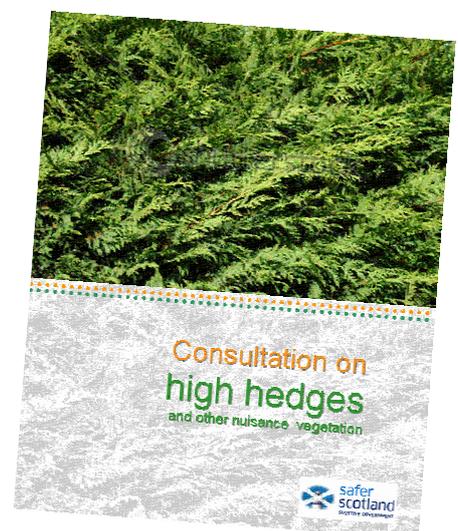
2009

Scothedge meet with Fergus Ewing, Minister for Community Safety and his officials and agreement reached to launch a further public consultation.

PE984 is closed following consultation agreement.

Scothedge carry out extensive public survey in order to provide evidence of the need for legislation to the Scottish Government.

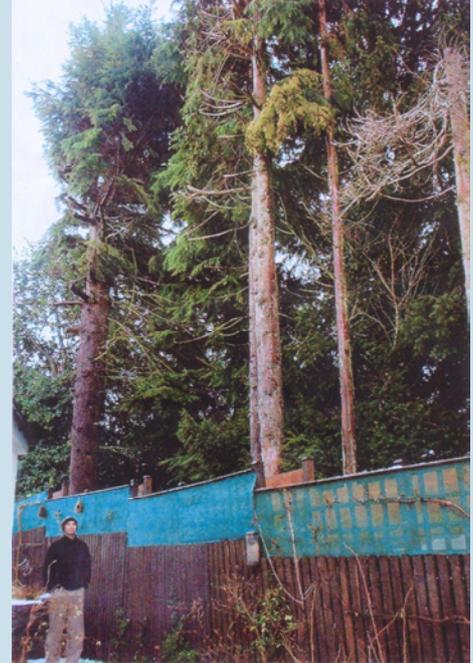
In August the Scottish Government launches its 'Consultation on High Hedges and other nuisance vegetation'.



Scotledge

CASE STUDY 3

The Brown Family live in a suburb of a borders town. A neighbour has grown some woodland trees that are now 10 metres high and within 3 metres of their house. The trees are not near the neighbour's house, but dominate the Brown's house and garden. They overhang the garden and nearby road leaving gutters blocked with needles, and there is root encroachment. The unmaintained trees are in danger of toppling onto the Brown property.



The neighbour agreed to cut the overhanging branches, at the Brown's expense, but this did little to remove the danger and strangely left the neighbour outraged. He advised that *'I regard this matter as closed, and no further communication will be entered into'*. The Council advised that *'It is inappropriate for the Council to become involved'* and that the trees *'are not causing a danger to road users or pedestrians'*. A large limb was blown down, narrowly missing the Brown's home.

The Brown's have built an extension. Removal of roots added considerably to the cost, and they were advised that *'damage resulting from their actions to the trees could be their responsibility'*. Another specialist stated *'there is a danger that (the trees) will be blown over into the garden and may cause injury'*.

Mediation failed. The Council advised *'not everyone considers mediation to be appropriate and we are closing the case'*.

The Browns tried to sell their property but buyers were put off by the trees.

Last year the Council had one tree removed as it was *'in danger of falling onto a road'* but again said that *'the removal of the other trees (was) a private matter'*. The Council had again acknowledged the danger that they were powerless to remove.

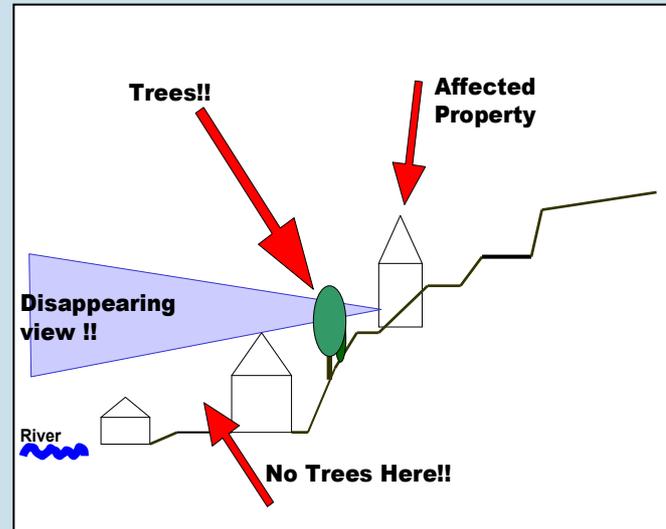
The Browns applied for legal aid to help their fight but in a final ironic twist, the Scottish Legal Aid Board refused it saying *'it is not clear why the local authority have apparently not determined that the remaining trees should be removed'*.

This family have fully grown forest trees on their boundary which are a proven danger. The law threatens action against them if removing roots beneath their property results in damage to the trees. If the properties were built today the proximity of such large trees would not comply with current standards.

The inappropriate trees and their callous owner are protected by the law, the safety and aspirations of the family are not.

Scothedge

CASE STUDY 4



The Dillons live in a 1970's development designed to give each house a spectacular river view. Unfortunately they have to suffer a neighbour who, whilst enjoying his own view, persists in growing a high hedge consisting of both deciduous and evergreen trees, blocking the view from their property and sunlight from a large part of their garden.

A surveyor has estimated that the loss of the view will discount the value of the property by around 20% (£60-70,000). Homeowners throughout the development are happy to maintain their trees and hedges in a way that benefits everyone but several neighbours suffer at the hands of this selfish individual.

When this began to be a problem they approached their neighbour, asking him to control the hedge and offering to pay the costs. Their request was to maintain the trees at a height at or below his roofline (still allowing plants over 2 metres high at the boundary) which would restore the light and view whilst maintaining full privacy between the properties. The request was refused. Over the next year they made several further requests which were also refused. They sought the assistance of the local council mediation service but their neighbour refused to participate. They sought the advice of a lawyer, at considerable expense, who sent a letter with a further request but this was also refused. In early 2005 the lawyer advised that they should wait for the 'Scottish High Hedge legislation' being considered at Holyrood.

The Dillons then approached their local councillor, MSP and MP who all sympathised fully and told them that legislation to end this injustice was due to go before the Scottish Parliament

They Are Still Waiting.

4. The Westminster Legislation

4.1 The Situation in England and Wales

Scotledge is part of Hedgeline, the UK wide campaign group which was formed in 1998 and has some 4,000 members. Hedgeline have campaigned with some success for legislation in England and Wales with the result that Part 8 of the Anti-social Behaviour Act 2003, introduced by Steven Pound MP, began to operate in England and Wales on 1st June 2005. Hedgeline have continued to monitor the effectiveness of the new law since then.

The evolution of the Bill took some 7 years. During this time the perception of the problem slowly advanced from the initial view that it was neighbours needing help to agree over leylandii hedges, to the understanding that the nuisance hedge owners were acting unreasonably but entirely within the law. In their own eyes they had broken no law and this was enough to enable them to be malicious with impunity.

In moving the amendment in the House of Lords, Lord Bassam of Brighton, the Government spokesman, introduced it by saying⁷

'My Lords, it gives me more than usual delight to move this amendment. In effect, it will introduce a whole new Bill into the Anti-social Behaviour Bill. Rarely can there have been such an occasion in your Lordships' House that has been greeted with such gratitude, delight, enthusiasm and warm support'

4.2 The Outcome of the Westminster Bill

The Westminster legislation allows sufferers to take their case to their local authority whose role has become⁵,

'not to mediate or negotiate between the complainant but to adjudicate on whether – in the words of the act – the hedge is adversely affecting the complainant's reasonable enjoyment of their property.'

As part of their consideration of PE984, the Public Petitions Committee of The Scottish Parliament sought the views of Westminster and were informed by Baroness Andrews, Parliamentary Under Secretary of State that⁵,

'overall there are positive signs that the legislation is helping to end the misery caused by overgrown hedges in England'

There were many estimations of the number of cases that local authorities would have to deal with in England and Wales. At the time of the introduction of the Bill, local authority

workload was estimated as possibly 40,000 pending cases. Understandably this led to some nervousness on the part of authorities but in reality actual cases have turned out to be substantially less than 10% of this.

Birmingham anticipated around 1000 applications for arbitration in the first year of the legislation and received around nine.

In South Tyneside 40 cases were recorded with all but three cases being withdrawn. Hedgeline enquiries indicated that 36 were capitulations by hedge owners.

Hedgeline believes that around 80% of cases have been resolved without arbitration.

The reality is that the mere existence of the Bill cleared up many cases almost overnight when the perpetrators realised that their unreasonable position had become unsustainable.

An appeals process was also established which is reported as working fairly well.

4.3 The Shortfalls of the Westminster Bill

Despite its many successes, the legislation in England and Wales suffers from several significant weaknesses. A government review of the workings of the legislation is due in 2010 and it is anticipated that some of these shortfalls will be addressed, therefore it makes sense that they should be avoided in any provision made in Scotland. These problems include

1. The legislation *defines a 'rogue' hedge* in terms of number, size, position and species of plants. This has led to much confusion about eligibility of individual cases and some reluctance to use the legislation (especially where a substantial 'up-front' fee is demanded – see below). It has also denied a solution to some serious cases where for example, deciduous trees have been used or where the problem is caused by a single dominant tree.

- Scothedge sees the problem as 'unreasonable behaviour in the use of plants by people' and not one caused by a rogue arrangement of certain species of plants. Such narrow definition of the problem also offers unscrupulous growers all sorts of loopholes which could be exploited by changing species or removing some plants to fit the narrow definition without bringing any relief to the sufferer. We believe that the solution lies in removing the problem, however caused, rather than trying to define 'bad plants'.

2. Local authorities have the right to *set and charge a fee*, which always falls on the complainant. This has led to a wide variation in fees across local authorities from a refundable £100 in Kirklees to non-refundable £550 in Cotswold district. Some English councils have argued that a fee should be payable as a service is being provided to individuals although it could be argued that there should be no fee for access to justice. There was also a suspicion initially that some councils raised fees

to price the service out of the range of the majority of sufferers and reduce the workload, although the capitulation of many cases prior to adjudication has probably removed this fear. Indeed South Tyneside have removed the fee altogether having realised that the presence of the law alone was sufficient to cause capitulation by many growers.

There has also been discussion down south about the possibility of refundable fees in the event of a successful adjudication and 'loser pays' fees. Fees refunded for successful cases would reward the most worthy and would also discourage the frivolous or vexatious. 'Loser pays' fees whilst deemed inappropriate by some, would encourage early settlement of even more cases. There is also the possibility that if the sufferer must always pay a fee, some vindictive growers could take the argument forward despite realising that they would lose, purely for the satisfaction of inflicting one final blow on their erstwhile victim in the form of a hefty fee.

- Scothedge accepts that some contribution towards the cost of adjudication is probably inevitable but believes it should be structured in a way that is consistent and does not deny access to those unable to pay. Scothedge also believes 'loser pays' fees could be justified for cases that do go to eventual arbitration and that this in itself would encourage early settlement of the worst cases prior to this stage.

3. The English Bill *prohibits cutting back growth if there is any danger of killing the plant(s)*. This has had the unintended outcome of protecting the worst (i.e. biggest) growths. This major anomaly arises from what has been described as a drafting error in the bill. The refusal to allow hedge height reduction below 2 metres was considered a reasonable provision at the time however it has effectively blocked any remedial trimming which might kill a hedge. In a Gilbertian logic, arguably the worst hedges became exempt from remedial orders on the grounds that trimming to an acceptable height would kill the hedge and so reduce its height to zero (i.e. below 2 metres).

- Scothedge believes that there should be no restrictions on justifiable measures to deal with an unreasonable situation. The onus should be on the grower to behave reasonably and it is rational to expect him to have done so in the past and to have properly maintained his trees. The welfare of the sufferer is more important than that of any tree or hedge. It would indeed be ironic if the worse cases in Scotland have grown high enough to become untouchable whilst we have been waiting for legislation.
- In fact Scothedge can point to cases where trimming below 2 metres or even complete removal would be appropriate, for example where trees are planted close to a neighbouring ground floor window.

4. The Westminster Bill specifically excludes certain problems from consideration, for example root and branch encroachment. This is because there is existing but limited legal redress available for some of these problems.

- Scothedge believes it would be sensible to include such problems in the scope of any new Bill. This would simplify the law and make it easier to understand and apply, not least because many cases are blighted by more than one problem

4.4 How Wales is Different

The devolved Welsh Assembly adopted the Westminster legislation but has introduced some distinct features in the way it is operated.

The main difference is that Wales applies the legislation in a unitary way across the Principality. There is a single inspector (arbitrator) and a single arbitration process. There are however concerns that the use of one individual inspector has led to unbalanced decisions and the general feeling seems to be that the system is working less well than in England.

- Despite these concerns Scothedge believes that a single arbitration process would be a good idea in Scotland provided that lessons were learned from the experience in Wales. Given that the number of cases going to arbitration is likely to be small a single authority would reduce the set up and operational costs and would also allow a concentration of expertise and experience.
- Local Authorities in Scotland would become the first point of contact with the public, dealing with initial enquiries and issuing guidance, but cases needing to go to arbitration would involve the central service .

4.5 Summary

The shortfalls of the southern legislation could easily be avoided in Scotland. This would not only bring relief to even more sufferers it would also avoid the law occasionally looking a little inept and foolish as has sometimes been the case in England and Wales.

The law passed by Westminster has brought relief to many sufferers. Its greatest effect has been to encourage many hedge and tree growers to trim their plants once they realised that to persist would be against the law.

This is the mechanism that must be made available to Scotland.

"I am affected by the trees of two different neighbours. One will discuss the problem and allows me to restrict the height, but only if I carry out the work at my own expense, which I have done for 30 years. The other neighbour whose hedge affects 3 other neighbours will not negotiate. The Edinburgh Arbitration Service has been involved but with no effect. The trees are now over 40ft high." (Edinburgh)

"Our neighbour has refused to maintain the overhanging branches for over 14 years though they trim their own side regularly. Last time we attempted to trim, the Council verbally advised us our neighbour would sue us for damage if we made an attempt to trim them to the boundary." (eMail Stirling).

5. The Case for Scottish Legislation

The problem of high trees and hedges is not caused by plants but by people who have no regard for, and often even enjoy, the suffering their actions inflict on others. They use trees and hedges to inflict this suffering protected by the knowledge that no matter how anti-social their behaviour, the law cannot stop them. Scothedge is calling on the Government for legislation to end this injustice.

Scothedge is asking for legislation which targets the behaviour of people who use trees and hedges inappropriately, and is not asking for something designed to be 'anti-tree' or 'anti-hedge'. In England and Wales evidence shows that over 90% of cases have disappeared as growers realised that with a legal 'last resort' available to sufferers, 'do nothing' position is now unsustainable. A similar effect in Scotland based on demographics alone, would reduce the number of cases requiring legal intervention to less than 50.

By drawing on the local experience of Scothedge and their knowledge of the strengths and weaknesses of the Westminster legislation, Scotland can develop something better. We can have cost effective legislation which is focused on the desired outcome, takes full account of the needs of all those likely to be affected, and does not impose rules where there are no problems.

The single cause of virtually every interminable dispute is the absence of any statutory last resort means of resolution.

Scothedge members are not lawyers and we must rely on our legislators to produce efficacious law in response to the problem we have highlighted. The goal of the legislation should be to end the suffering of the victims of those who use trees and hedges inappropriately. Over the years of campaigning, politicians have proposed several different legal routes to a solution including use of planning, nuisance and, more recently, anti-social behaviour provisions. Scothedge has welcomed the 'Proposing Positive Outcomes'⁸ document which defines antisocial behaviour in terms of causing alarm or distress, effects which are certainly felt by Scothedge members. Our proposals support its key points which call for prevention and becoming smarter in the way we tackle antisocial behaviour.

Legislation should aim to eliminate the situation where complainants have to face down a neighbour who is entirely free to refuse negotiation and mediation and whose response might be vindictive planting to make the situation worse. Something needs to be done about the fact that there is currently no sanctions against hedge growers and they face no penalties for sustaining a bullying dispute with a totally helpless opponent.

It is apparent from the material from Lord McGhie quoted at paragraph 3.21 of the Scottish Government consultation paper⁹, that an important part of the problem, at present, is that the owner of the plants in question is usually acting entirely within his or her rights as proprietor. The affected person has no rights in the matter. He can ask for change but if the hedge, bush or tree owner declines to act, there is nothing to argue about. There is no

proper 'dispute' and no basis for 'complaint'. If there was a right which could be enforced, the very existence of the right to force the owner to do something might resolve most of the problem situations.

Lord McGhie makes the point that actual court proceedings are just the tiny tip of the iceberg. Most people conduct their affairs 'in the shadow' of the law rather than by direct involvement with courts.

We agree that once a neighbour has a right to do something, whatever that is and whatever the procedure, the owner will be compelled to think about the problem. We would hope and expect that in many cases that would lead to discussion and compromise. The risk of expense may help achieve that compromise.

Scothedge is asking for the establishment of a right in law for a neighbour to force an owner to act, backed up with a process of arbitration. Arbitration is defined as 'the process of resolving disputes between people by referring them to a third party, provided by law, who makes a judgment'. If 'arbitration' has to be called something else to make the process work within the current Scottish legal framework then Scothedge calls on the legislators for guidance on this.

Scothedge favours a law where the 'illegality' would be the action of the grower who, having been given official guidance, persists in using greenery to inflict distress and the loss of amenity on a neighbour and who subsequently fails to respond to the decision of an arbitration process.

However it is described and however it is provided, the outcome must be a process of official adjudication backed by an enforceable obligation to comply.

Scothedge is not running a campaign to eliminate high hedges. Most trees and hedges are perfectly acceptable because they cause no distress to anyone and add to the richness of our lives. It is only when a hedge or tree is unfairly impacting upon the amenity of other properties, and a reasonable request for remedy has been refused, that third party intervention is needed. The best way to identify these cases is by means of a **complaints based system** and Scothedge completely refutes any suggestion that they are seeking a system where local authorities are compelled to survey all hedge and tree growth and take action against all those above a certain height.

The aim of government should be to solve this problem cost effectively and without creating a huge bureaucracy. Scothedge believes that the best way to achieve this is by the issue of official guidelines explaining the availability of the arbitration process and giving details of what is acceptable and hence likely to have most influence on the outcome. This principle of guidelines, backed up by last resort arbitration is likely to resolve over 90% of current cases without the authorities being involved in any form of site visit, evidence gathering or analysis. This is because most people will act either from a belated desire to behave reasonably or from a fear of eventual legal action and possible cost.

The guidelines should be available online and in libraries, council offices etc. This alone would add weight to any request for a remedy and encourage people to try the direct approach to a neighbour. The majority of cases will end there, without any need for government intervention and at no further cost. In our view the guidelines approach, whilst need-

ing some small initial investment, would be the most important factor in reducing the overall workload and cost on the authorities. Apart from offering a quick and effective remedy to the majority of sufferers, the guidelines approach would also prevent future cases because acceptable standards of hedge and tree maintenance would be made clear. Experience in England and Wales has shown a huge number of capitulations following delivery of the guidelines without the need to actually use arbitration. A similar Scottish result would suggest less than 10 arbitrations per year after an initial settling in period.

5.1 A Proposal for Legislation in Scotland

Scothedge believes that this proposal to develop official guidelines backed up by last resort arbitration would offer a solution fully in line with the Government's desire that ¹⁰

'all approaches to ASB (antisocial behaviour) need to be appropriate, proportionate and timely with the aim of preventing future ASB and providing long term solutions.'

Previous arguments that disputes are simply private affairs between householders and therefore not the responsibility of government, deny victims protection from selfish vested interests who have no regard for concepts of right or wrong. Fair sharing of the residential land and its amenity is compromised. Access to justice should not be a private matter.

The Westminster Bill has brought many benefits to England and Wales but has several major flaws. One problem is that the legislation seems to assume a robust contest between two equally matched protagonists, whereas the reality in Scotland, as shown by the Scothedge cases, is that most sufferers are elderly or infirm people facing bully boy type hedge growers who persist in their behaviour because they know the 'opposition' is weak. Whilst we agree that any remedial process should be fair, it would be wrong to think that a 'fair process' is one that would return equal numbers of judgements on both sides. The starting point for any remedial process in Scotland is likely to be a few hard core cases often characterised by extreme and nasty behaviour on the part of the hedge grower.

Scothedge is proposing that a Scottish remedial process has the following features:

- 1.** A householder or occupier will be entitled to help if, in their opinion, a tree or hedge is causing the loss of the reasonable enjoyment of their domestic property and if the tree or hedge is situated on land owned or occupied by another person or organisation.
- 2.** Those considering asking for help under the process will first be directed to the official guidelines and can then decide if they wish to proceed once they are aware of the process and can judge the likelihood of their success. Given competent guidelines it is not expected that there will be a significant number of trivial cases and hence there is no requirement for any other pre-qualification for access to the process.
- 3.** The legislation will **not** define the 'illegality' in terms of species, number or arrangement of plants or trees. The right to 'reasonable enjoyment of a property' should be the criterion and this reasonable enjoyment can be denied by using trees and hedges in any number of ways, regardless of species or arrangement.

A tight definition of a 'rogue hedge' could deny help to small groups of sufferers whose problems fall outside such a definition and would also offer a legal loop-hole to those who could continue to inflict suffering by changing species etc. It would also add to the perception that there are 'bad hedges by definition', even if they are not otherwise cause for complaint.

- 4.** In most cases it is reasonable to expect that the sufferer will have approached the grower, but those who feel intimidated by their neighbour should not be compelled to do so before being helped under the new legislation. Many sufferers are elderly or live alone and the fear of abuse or physical threat should not deny help to a vulnerable minority.
- 5.** The process should direct the sufferer towards alternative methods of resolution such as negotiation or mediation, and the guidelines will greatly help this process. However the majority of the current Scothedge cases have reached a point where advice to 'negotiate' or 'try mediation' is seen as naïve and ill-informed because sufferers continue to be taunted by a neighbour who knows that the current law supports their position of doing nothing. This is the point at which last resort, enforceable arbitration is needed.
- 6.** The legislation will apply retrospectively, i.e. to existing trees and hedges. This is different to the planning regulations and it should be no defence to say that the tree or hedge has been there for say 20 years or was planted before the sufferer moved in. Bad behaviour left unchallenged over a number of years does not suddenly become acceptable. The issue should always be the current problems because a small hedge or tree today can become a problem tomorrow if the owner fails to maintain it.
- 7.** Scothedge recognises that the Government may wish to impose a fee to offset the costs of administration of the process. It is important that any fee structure does not deny access to those least able to afford it. Assuming that guidelines are publicly available, the next stage would be for the sufferer to ask the authorities to register their complaint and to write to the grower informing them that a formal complaint had been made and enclosing the guidelines. It is not unreasonable to expect the complainant to pay a small fee towards the cost of this stage. However, beyond this point it becomes reasonable to expect a 'loser pays' system, given that both parties have been made aware of the guidelines and the implications of ignoring them. England has varying fee structures with punitive and uncapped fees in some areas resulting in an unfair postcode lottery. This is the single most contentious issue of the English process.
- 8.** Scothedge believes that, given effective guidelines, the actual number of cases proceeding to arbitration would be small. Many local authority areas could experience less than one arbitration per year and this would suggest that the arbitration service might be centrally based.

9. There will be an appeals process, the form of which would be developed once the initial process is designed.

5.2. Detail of the Proposed Guidelines

There are two key elements of the solution now being proposed by Scothedge. These are guidelines and last resort enforceable arbitration. Well written, widely available and effective guidelines should be produced that will inform the public of how to avoid the problems of high trees and hedges from the point of view of the both grower and an affected neighbour. The guidelines would be simple to establish and adjust to meet practical requirements without the need return to Parliament. The guidelines produced for England and Wales could easily and cheaply be adapted for use in Scotland.

Based on their own data and evidence from England and Wales, Scothedge believes that the guidelines would facilitate the solution of over 90% of current cases and prevent almost all future cases without the need for any other intervention by the authorities, **provided that there was last resort enforceable arbitration to substantiate the guidance.**

The overall process would flow along these lines

1. Guidelines to be made widely available online, at libraries, CABs, council offices, post offices, and through community councils etc. Any initial approach to authorities will first be directed to the guidelines.
 - This provision alone will allow sufferers, and those helping them, to point out to growers that their behaviour has been formally recognised as unreasonable. This alone will cause many cases to dissolve.
2. If the sufferer considers they have cause under the guidelines they will write to the authorities, detailing their complaint and steps they have taken to resolve it. An application form could be included in the guidelines and a small fee may be appropriate at this stage. The authority will assess the case against the guidelines and if considered appropriate will write to the grower. They will enclose the guidelines and inform the grower that a formal complaint has been made, that the process to resolve the dispute has started and that there is an obligation on the grower to engage with the process. They will also inform the complainant of their assessment of the claim and the action they have taken.
 - This provision is expected to cause many more cases to dissolve as growers realise that the options to ignore communication and do nothing are no longer available.
 - A complaint would be greatly helped by evidence from third parties, for example a letter of support from a councillor or other neighbour and it would be incumbent upon the complainant to make a strong case at this stage.
 - The authority would have the option to throw out a case at this stage and the complainant would have the right to appeal against this.

- 3.** If the dispute remains unresolved and both sides wish to persist then the arbitration stage would start which would involve site visit, formal meetings with both parties and an eventual adjudication.
 - Scothedge believes that if the costs of this stage are not to be born by the tax payer then they should be on the basis of 'loser pays'.
 - Cases reaching this stage are expected to be very few and this stage might best be administered centrally.
 - The authorities will have the right to enter the land of a grower or a complainant for the purpose of carrying out a survey of the trees etc that are the subject of the dispute.

- 4.** Issue of Remedial Notice should the complaint be upheld.
 - There should be clear indication of what remedial action is needed with timescales.
 - There should also be indication of continuing measures needed to prevent recurrence.

- 5.** Appeal against the decision of the arbitration.
 - There will be an appeals process available to both sides.

- 6.** Enforcement if required.
 - In the event of non-compliance with a Remedial Notice then an offence will have been committed.
 - The authorities will have the power to enter premises to enforce any remedial notice.

5.3 Assessing Unacceptable Use of Trees and Hedges

The main aim of guidelines is to define and explain what is considered reasonable behaviour in terms of trees and hedges. The Scothedge cases, some of them extreme, demonstrate many examples of unreasonable behaviour but the guidelines need to help the public and the authorities draw the line between what is reasonable and unreasonable. We have already shown why we shouldn't try and define an 'illegal hedge' and so we are obliged to define reasonable behaviour *in terms of the deployment and maintenance of trees and hedges*.

One way of assessing reasonable behaviour, particularly in modern developments where the properties are often very similar, is to simply look around at how most properties are maintained and a third party arbiter would find this a good place to start. However the

guidelines need to offer much more because of the variation in properties and the varying ways that trees and hedges can impact upon them.

BS 5837: '*Trees in Relation to Construction*'² gives '*recommendations and guidance on the principles to be applied to achieve a satisfactory juxtaposition of trees, including shrubs, hedges and hedgerows, with structures*'. Whilst this applies to new development work any assessment of what is reasonable and responsible conduct with regard to subsequent planting and growth can be pretty well informed by its contents. There seems little logic in having standards to protect for example, the drainage of a new development from tree roots when subsequently the owners of parts of the development can go ahead without challenge and plant trees regardless of their potential for damage.

Trees and hedges are most often used to provide a degree of privacy between properties. The growing of high trees and hedges to provide privacy should be placed within the context of the height of wall which local building regulations might allow. Otherwise the hedge is basically a means of circumventing planning regulations. There is simply no justification for a 5 metre high hedge, grown to provide privacy if it presents problems to those whose homes are on the other side of it.

If we look again at some of the different effects of uncontrolled trees and hedges we can begin to see some examples of what guidance is available and how it could be used

1. Loss Of Garden Amenity.

High hedges and trees can effect plant growth in neighbouring gardens due to loss of light. Whilst some of this cannot be avoided, even from an acceptable hedge, it is unreasonable to affect a greater portion of a neighbouring garden than that which might follow from say a 2 metre high wall. The Building Research Establishment¹¹ offers methodology for assessing whether a tree or hedge is likely to cause a significant loss of light to a nearby garden.

Why should someone be allowed to grow an excessive tree or hedge if it significantly impacts on a neighbour's ability to enjoy their own garden?

2. Loss Of Light To House Windows.

Property boundaries often run within a metre of neighbouring house windows and irresponsible growers have in some cases used huge and unmaintained plants as a means of hiding their neighbour and achieving 'privacy'. They have no concern for the fact that the tree or hedge can completely block light from neighbouring windows, often causing the victim to suffer eyestrain or needing to use artificial light to read in their own homes on summer days.

There is considerable help available to those who might need to assess the light loss caused by trees and hedges for example '*BS 8206-2: 1992. Lighting for buildings. Code of practice for daylighting*'¹² The Building Research Establishment (BRE) have also devised methodology¹¹ for calculating what height a hedge should be in order to allow delivery to the windows of a house the amount of daylight and sunlight recommended in the British Standard.

Why should someone, especially in these energy conscious days, have to resort to artificial light just because another individual grows a tree and decides unilaterally that that is the way things will be, particularly when there is a wealth of guidance and codes of practice which simply need some legal reinforcement?

3. Root and Branch Encroachment and The Danger of Toppling.

As well as causing direct damage to buildings, roots and branches can impact on both buildings and gardens in several other ways.

- There is no legal requirement for a grower to prevent or cut back the spread of roots and branches unless there is an impact on the public highway, but an affected neighbour does have limited abatement powers. For example a neighbour is allowed to cut overhanging branches and remove roots from beneath their property, subject to strict limitations to prevent damage to the hedge or tree concerned. The effectiveness of these provisions is limited by the difficulty of sufferers abating roots and branches themselves, especially if elderly or infirm, or the considerable expense of having the job done by a professional.
- Roots are a progressive problem which may be tolerated initially but in time they may cause great destruction to garden, property and drains. They also draw water from the soil and reduce that which is available to other plants, resulting in barren areas.
- Overhanging branches and encroaching roots can directly block access to a driveway or some other part of a neighbouring garden
- There is no legal obligation on a property owner to control trees and hedges which could break or fall onto private property. The dangers to neighbours and their property are real and should be considered under the legislation.
- In Scothedge's experience local authorities are able and willing to act only when there is a threat to a public road leading to an obstruction or a danger to pedestrians and vehicles. The law needs to change to ensure that children playing in their own garden, for example, receive the same protection as pedestrians or vehicles on a public road.

The question remains, how can it be fair that branches and roots of any plant in a neighbouring garden can be allowed to have a severe impact on a neighbour and yet the owner to have no obligation to remedy the situation? It is a fairly simple matter to assess the risk to people and property which results from uncontrolled tree growth. Risk assessment is commonly used today to influence many aspects of human behaviour and given some legal support it would work well in assessing these types of impact.

4. Loss of Views.

Scotland is one of the world's most beautiful countries. Many Scottish properties enjoy beautiful and spectacular views with many designed and built to take full advantage of their position and outlook. It is the dream of many people to retire to a corner of Scotland and enjoy scenery which is second to none.

How can it be fair for someone, for whatever reason and without fear of contradiction, to use trees to block a cherished view when the planning regulations would most likely prevent the building of a wall etc? Why shouldn't a country as uniquely beautiful as Scotland have a piece of unique law which protects this most valuable asset?

The new legislation should establish and protect the reasonable right to a view. It is accepted however that the wider public interest sometimes requires an individual's access to a view to be challenged. A good example of deciding what is reasonable

was shown by the recent controversy around the toll plaza canopy built at the southern end of the Forth Road Bridge. Some local residents objected because the building obstructed their view of the firth but the wider public interest justified the building because it would help improve traffic flow on the bridge. However when the tolls were abolished and the only use for the structure would have been as a gantry for road signs, it was removed (at great expense) because it now became unreasonable to block the view for such a marginal public benefit. Here we have a wonderful demonstration of the authorities protecting '*that which is reasonable*'. There is no reason why such wisdom cannot be built into any legislation regarding trees and hedges. It is clearly not fair for one person to use trees and hedges to gain say, an *unreasonable* degree of privacy, if this denies to another person the *reasonable* right to a view.

The loss of a view can have a detrimental effect on property value. According to surveyors, this could be as much as 25% compared to similar properties whose view remains unobstructed. This is an area where it is extremely easy to assess a loss, given some degree of legal backing.

5. Planting Of Inappropriate Species.

Trees should be selected and planted with careful consideration so that when mature their height, canopy & roots are retained within the tree owner's boundary.

In many environments, particularly the urban garden, there is often simply no place or space for inappropriate non-native 'forest trees' which completely dominate the area, often growing higher than the houses themselves.

Planting guidelines are readily available from garden centres and online but these are often ignored or in some malicious cases used to select a plant that will have maximum impact on neighbours. There should be an obligation on growers to plant and maintain their plants responsibly. Again, the ready availability of expert guidance and opinion would make enforcement of any law a straightforward matter.

6. Deposition of Branches, Leaves, Needles, Cones or Resin.

Leaves falling from trees, particularly in the autumn, are perfectly acceptable and often welcome as a sign of the ever changing seasons. Householders are happy to sweep leaves with no regard from whether they have come from their own or neighbouring trees and removal of normal amounts of seasonal droppings from gutters is treated as routine house maintenance.

There are cases however where the sheer quantity and size of neighbouring trees and hedges results in an overwhelming amount of debris falling onto neighbouring property. This can destroy the fertility of the land and often requires expensive and perpetual clean up operations.

This is not a widespread problem but Scothedge is aware of several extreme cases where neighbours should be forced take responsibility for the effects their trees are having on others and be compelled to behave in a reasonable manner towards them.

7. Subsidence and Land Heave.

As well as the direct damage caused by roots, The Royal Institute of Chartered Surveyors (RICS) highlights the danger of subsidence and land heave resulting from

trees and bushes planted close to property. In areas of clay and peaty soils (common in Scotland) tree roots can suck water out of the soil causing the water table to drop and the clay to contract, triggering deflection which may cause structural damage to buildings. Consumer champion *Which* estimates that about 70% of all subsidence cases are due to tree roots sucking moisture out of the soil. Water can also leak into the soil from drainpipes damaged by roots and wash soil away from the foundations. Guidance on 'safe' planting distances for common species is readily available online from the Royal Institution of Chartered Surveyors (RICS) and the Association of British Insurers (ABI). Such codes of practice, prepared and approved by professional bodies should carry great weight when assessing what is reasonable in terms of trees and hedges. Failure of the authorities to act on such readily available expert advice could be construed as negligent.

This problem will become worse if climate change reduces the overall amount of moisture in the soil but the recommended remedy is simply proper maintenance. Trees in proximity to buildings should be regularly pruned to prevent excessive root spread. This is not a big commitment and failure to meet it is clearly unreasonable and irresponsible behaviour on the part of the tree owner.

Why should anyone have to worry about the threat of damage to their property resulting from the reckless indifference of their neighbours when the dangers are fully documented and available from professional bodies such as the RICS?

8. Interference With TV and Radio Reception.

There is no obligation on a property owner to prune or remove trees that are causing loss of TV or Radio reception. Modern digital and satellite systems use 'line of sight' technology and it seems incredible in the 21st century that reception can be denied at the whim of a neighbour who 'just likes his trees'. Consider the difficulty of selling an urban property with no TV reception; and this in an age when satellite technology has finally brought TV to even our remotest communities!

Assessing this problem is a simple matter which can be carried out by any TV engineer. It just needs some simple legal support to rectify.

9. Health issues.

There is no obligation on a property owner to reduce the effects their trees and hedges may have on the health of their neighbours.

- In one case a pensioner suffering from Seasonal Adjustment Disorder (SAD) bought a property specifically because of the light it enjoyed, only to have it denied by a hedge planted by a neighbour demanding privacy.
- There are many instances of stress and depression caused by the sheer unfairness of the hedge grower having all the rights and protection under the law. In this respect the failure of legislators to provide appropriate law is probably as much to blame as the growers. This effect might be difficult to quantify but it is no exaggeration to say that premature death has in some cases resulted from having to fight a so called 'hedge war'. The fact remains that one person can cause worry, concern or depression to another by using trees and hedges as the weapon of choice with the full backing of the law.
- Dense, unmaintained trees and hedges can become infested with insects posing a threat to the health and hygiene of neighbours.

- Dense growing trees can have a severe impact on air circulation leading to air quality problems and condensation in nearby buildings, both of which can lead to health problems.
- Plants with poisonous leaves or berries are a threat, particularly to children and animals.

Medical opinion is often sought in these instances and is readily available. What is not readily available is any legal obligation on a hedge grower to take responsibility.

10. Water Shedding.

High and dense trees and hedges planted close to residential property can cause excessive water shedding in severe weather. The trees have an ability to collect rain water and deflect it in huge volumes into areas ill equipped to cope. Correct tree maintenance can prevent this problem but some owners refuse to act and once again there is no obligation on owners to act and mitigate the easily preventable effects of their trees and hedges.

5.4 Why Controlling Deciduous Trees is Important

The majority of hedge and tree problems are caused by evergreen species. However the 2009 Scothedge survey shows that 34% of problems result from deciduous species.

The evergreen, particularly the leylandii, was mainly selected for its quick growing properties and began to be a problem in the 1980's as it grew beyond a reasonable height when selfish owners refused to control it. However in time other species used for hedging have caught up with the faster growing evergreens to the point where all species (evergreen and deciduous) are now causing serious problems.

Earlier attempts at legislation focussed solely on evergreen or semi-evergreen species, seemingly driven by a perception that the root of the problem was their 'evergreenness'. However evergreens became the issue not because of this but because they grew more quickly and became the problem sooner. Deciduous hedges have now caught up and it is important that Scottish legislation addresses problem plants of all species. There is at least one case where an unscrupulous owner is cultivating parallel hedges of evergreen and birch to block a view, safe in the knowledge that the English legislation applied in Scotland would bring no relief to the sufferer.

The period when deciduous trees are without leaves

Available now on the internet...



...for an instant deciduous high hedge

is actually quite short. Brown leaves persist well into winter months awaiting a good storm to strip them off. Even without leaves many deciduous species have a dense pattern of small branches and shoots that still form an effective barrier to light and outlook. In spring, summer and early autumn there is no significant difference between species and this is when those affected by an unreasonable hedge suffer most. This is the time of long days for just enjoying the sun, an outlook or cultivating a garden. The reasonable right to enjoy all these things can be lost to a rogue hedge, evergreen or deciduous. 81% of cases reported to Scothedge listed garden light blocking as a major problem.

Deciduous trees, well suited to establishing high hedges, are now available from garden centres at heights over three metres. At no great cost a deciduous hedge could be instantly planted to replace an evergreen barrier restricted under 'evergreen only' legislation.

It should be recognised that people who are happy to cultivate a nuisance hedge in the first place would probably not hesitate to switch to deciduous species if their evergreen hedge became the subject to restriction.

5.5 Arriving at a Fair Decision

In most cases problems arise because the negative effects of the trees and hedges on the sufferer far outweigh any benefits to the grower, **yet the grower holds absolute authority over the situation.**

In assessing what is reasonable, any arbitrator should be aware of this disproportionate effect and the following 'Tests of Proportionality' should help in understanding and judging the problem, remembering at the same time that the majority of people would never dream of inflicting such disproportionate suffering on their neighbours.

Tests of Proportionality

The goal of any new legislation should be that one person can no longer cause unacceptable nuisance and suffering to another person by the use of trees and hedges.

The main question that should be asked is

Is the benefit of the tree or hedge to the grower (person A) disproportionate to detriment it has on the sufferer (person B)?

It may help to consider these more specific questions which have been developed from analysis of the Scothedge cases. If the answer to any of these questions is 'yes' then it is likely that the trees and hedges are having an unfair and unacceptable effect on the complainant.

- 1.** Is the garden (or land area) of A much bigger than that of B?
 - What might be seen as appropriate growth for a big garden could easily overpower the smaller garden on the other side of the boundary.

- Where there is a neighbouring absentee landlord or a neighbouring large estate the boundary region will in most reasonable judgements be of little importance to them compared to the importance to neighbours in average size houses on average sized plots. What benefit are a few trees on the edge of a multi-acre estate compared to the effect they might be having on a neighbouring average house and garden?
- 2.** Is the tree or hedge much closer to B's house than to A's?
 - What might be a distant feature with respect to A's house could be very close or even touching B's house.
 - 3.** Is the area of the tree or hedge in A's garden of less importance to him than the corresponding area affected in B's garden?
 - What might be a pleasant screen in a distant and unused section of A's garden could be planted in a 'high value' area of B's garden, for example next to flower beds, vegetable plots, patio or other 'outdoor living' area.
 - 4.** Is the tree or hedge planted on a northerly boundary of A's property and consequently forming a barrier to light on a southerly boundary of B's property? Does A enjoy a property filled with light and warmth whilst denying this to B?
 - In assessing this effect it is often useful to check whether A has planted similar trees and hedges on the southerly boundaries of his own property.
 - 5.** Is A's tree or hedge denying a view from property B whilst still allowing the view to property A?
 - In assessing this effect it is often useful to check whether A enjoys a view which his trees or hedges deny to B.
 - 6.** Has the tree or hedge planted by A been planted in an attempt to completely screen his property with respect to property B?
 - Some growers are seeking a level of privacy way beyond that which can reasonably be expected in most housing areas or they can be attempting to obliterate any evidence of another property as seen from their land.

No doubt other questions and tests could be developed because here we have the crux of the whole debate, the *definition and promotion of 'that which is reasonable'*.

The cases on the Scothedge books all exhibit this cruel and unfair element of disproportionality. It is just plain wrong to perceive these cases as fair disagreement that just need a bit of give and take on both sides. The hard core cases in Scotland are way beyond that.

It is 'I'm alright, Jack' in its worst manifestation because not only is Jack alright, he is protected by the law.

5.6 Environmental Impacts

Scotthedge is not anti-tree. Nothing in these proposals can be interpreted as wanting to destroy the natural environment. Many sufferers are keen gardeners trying to improve the environment by releasing their gardens from the stranglehold of inappropriate neighbouring plant growth. Because cases are relatively few the numbers of plants trimmed or even removed under the proposed measures will have negligible impact on the environment. Allowing natural light and heat back into shaded properties would actually reduce the amount of energy currently used in artificial heating and lighting.

As a society we are being encouraged more and more towards the use of solar panels and domestic wind turbines. The removal of high trees and hedges to restore the right to wind and sunlight could well prove to be one of the as yet unforeseen benefits of these proposals.

Where tree preservation orders (TPOs) are in force these should be reviewed as part of the assessment process. It is anticipated that cases involving TPOs will arise in Scotland but ending the suffering of people should take precedence over a TPO, unless the circumstances of the tree are truly exceptional.

These proposals acknowledge the need to take a responsible attitude to tree and hedge trimming by for example, the use of professional arboriculturalists and taking sensible measures to protect nesting birds.

In general it should not be acceptable to use the excuse of 'protecting the environment' as a means of avoiding the issue of high trees and hedges.

*“The tree owner has actually threatened my husband with bodily violence. She sent someone round threatening to break his arms and legs if he touched the trees again. Also has recently threatened us with court action for cutting back the overhang in spite of the council telling her we are within the law to do **so.**” (Glasgow)*

6. Conclusions

In 2009 the Scottish Parliament celebrates its 10th anniversary. Throughout this time Scothedge has been campaigning for legislation to end the injustice caused by the uncontrolled growing of trees and hedges. It is to be hoped that parliament doesn't see another anniversary before something is done.

On behalf of its members and other sufferers throughout Scotland, Scothedge is asking the Scottish Government for help.

The position is that

- **Scothedge is asking for the provision of a legal sanction that can be applied as a last resort against people who use trees and hedges to cause nuisance and distress to others. Unless this sanction is made available the worst abuses in Scotland will not be remedied. This provision, by its very existence, would most likely resolve the majority of Scottish cases and prevent more cases developing in the future. Without legal sanction nothing will change.**
- **Scothedge advocates a 'complaints based system' which will only respond when needed. We are not calling for a system that requires the authorities to measure every tree and hedge against a legal standard. The issue is not the tree or hedge, it is the way the tree or hedge is used by people.**
- **Scothedge is asking for a centrally administered arbitration service to assess and decide on cases which cannot be resolved voluntarily.**
- **Scothedge proposes the preparation and issue of national Scottish guidelines on the acceptable use of trees and hedges. This would allow an arbitrator to reach a decision based on sound reasoning and would also guide the public on their responsibilities and expectations with regard to trees and hedges.**
- **Scothedge knows from experience that mediation can be useful only where there is a willingness on both sides to resolve the problem. It is wrong and misleading to suggest that any of the current serious Scottish cases would be resolved by mediation.**
- **Scothedge agrees with the statement in '*Promoting Positive Outcomes*'⁸ that '*success should be measured in terms of reduction in antisocial behaviour and the increase in quality of life*'.**

It is the Scottish Parliament's responsibility to develop law that works and Scothedge believes that the it has an opportunity to produce legislation which is more just, more workable and more cost effective than that enacted by Westminster. There is no justification for

the fear of some MSPs and local authorities that anything other than the most limited legislation would result in hundreds or thousands of cases. Good guidelines based on common sense and reasonable behaviour would reduce the number of cases needing significant intervention to a trickle, provided that the ultimate sanction of enforceable arbitration was available in the background.

The guidelines would enable 'light touch' intervention by local authorities and should be seen as a valuable aid to developing sustainable communities rather than as petty interference. Without sanction this problem can only get worse and more and more people will see their homes and lives blighted.

This is a problem caused by a small number of people who are happy to abuse and victimise their neighbours. They use trees and hedges to inflict that abuse *because the law uniquely allows them to be used as weapons for that purpose.* By default the law makes any dispute interminable. The law needs to change.

Scothedge offers these proposals as the best way achieve this success and to end the current injustice in Scotland.

"Mature deciduous trees near boundary. Sycamore(60ft), Ash(40ft), Rowan(30ft), Cotoneaster(20ft). Light and sun being excluded back and front for large part of the day. Not a hedge as such but creating loss of amenity and views. Thick roots encroaching and hard work in leaf gathering. Both retired. Offered to pay half costs to trim but problems remain." (Edinburgh)

(The owner trimmed within months of the complainant's husband dying. As his widow wrote, it was a shame that her husband did not live to enjoy the late change of heart of the plant owner.)

Scotledge

CASE STUDY 5



The prospective owner of this historic former church hall would like to develop it for residential use. The smaller photograph shows how it looked before the owner of the estate which surrounds it apparently decided to obliterate it from view. In an ironic reversal of the usual view blocking scenario, the grower in this case is trying to eliminate a property from a view rather than eliminate a view from a property!

According to the prospective purchaser the hall now has no natural light and damp rot has set in. The hall is now useless, worthless, unmarketable and condemned to a lingering death.

How can the law stand by and allow a person to destroy the value of a property belonging to someone else?

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4. *The Royal Institution of Chartered Surveyors. www.rics.org*
5. *Letter from Baroness Andrews. Parliamentary Under Secretary of State to Michael McMahon, Convener of the Public Petitions Committee, Scottish Parliament. 29/01/07.*
6. *Jim Wallace MSP. Justice Minister. Scottish Parliament. Jan 2001*
7. *Hansard. Excerpts from Anti-social Behaviour Bill Report Stage. House of Lords. 03/11/2003*
8. *Promoting Positive Outcomes'. Scottish Government and COSLA. March 2009.*
9. *Scottish Government Consultation on "High hedges and other nuisance vegetation". August 2009.*
10. *'Promoting Positive Outcomes'. Scottish Government and COSLA. March 2009. (p23, Strategic Aim 2.)*
11. *High Hedges, daylight and sunlight: Final Report, Building Research Establishment (BRE) 2001*
12. *BS 8206-2: 1992. Lighting for buildings. Code of practice for daylighting.*

"The trees in front of our house are 18-20ft high. They are Leylandii trees and growing all the time. The owner has two plots, one which upon which his bungalow stands, the other alongside our garden facing the sea. The trees stand around 10ft from our lounge window and darkens the room. He is now planting further Leylandii to fill up any gaps. The legislation in Scotland was supposed to be in force by 2004. A great disappointment I can tell you." (Sannox)

"A number of neighbours, who are increasingly affected by the continuing unchecked growth of the hedge, have been encouraging me to take up the matter again, but I am not hopeful given the dismissive response I got initially." (Balfron).

'I am delighted that you have included TPOs in your discussions. I know for a fact our Council have been going round Aberdeen with one of our Councillors and placing TPO's 'willie nillie'. Our TPO Council man said to me that he placed the TPO on our neighbour's trees to prevent people like me cutting back to boundaries. No taking into consideration the beligerence of the tree owner or the lack of light/amenity/damage to me. The other really annoying fact is this new Western peripheral route proposed by Mr XXXXX is some 300 metres from our house. They propose to cut down 100s of TPO'd trees and make over 100 people homeless. Although these trees have a TPO on them as they are an asset to the amenity, it's funny how they no longer remain an asset when it suits them !.' (email Aberdeen).

“I feel that I've enough difficulty getting through each day with my disabilities without having to pursue this problem yet again. I just wish that the powers that be would get off their arses and get this issue resolved.” (Barnton).

Thanks for the updates. We still have a problem of a barrier of douglas fir trees in garden ground opposite which have reached such massive heights that sunlight, view and even television reception by satellite is problematic. They are growing significantly annually both in height and spread and are a depressing feature in what was once a very pleasant area to live.

“My neighbour has very high 40ft Leylandii trees. I have never met the owner who may be an investment purchaser after the original owner died. I have therefore no one to approach other than the Council and they do not want to know.” (Newton Mearns).

. . . . just some more sentiments from real Scottish sufferers

. . . . and there are many, many more.

"It is time the 'victims' of unreasonable landowners had some legislation in their favour." (email. Ancrum).

Please help to end the tyranny of uncontrolled trees, hedges and other nuisance vegetation.

To participate in the Scottish Government Consultation on high hedges and other nuisance vegetation go to

www.scotland.gov.uk/Consultations/current and click on 'High Hedges'

before the consultation closes on 13th November 2009.

To join Scothedge contact:

**Dr. Colin Watson
Scothedge Campaign Leader
2, Ravelrig Road
Balerno
Edinburgh EH14 7DQ
Tel 0131-449-3037
E-Mail docwat@colwat.com
<http://www.pentlandhedge.colwat.com>**

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