

High Hedges:

Your Questions Answered



When can I complain?

1. Can I make a complaint straight away if I have a hedge or tree problem?

No. Making a complaint to the Environment Department should only be a last resort if you really cannot agree a solution with your neighbour. The Environment Department can refuse to intervene if they think that you have not done everything you reasonably could do to settle your dispute.

If you are troubled by someone else's hedge or tree, the best way to deal with the issue is to talk to them about it. It is in both your interests to try to sort things out. Asking the authorities to intervene might make matters worse, without first having raised your concerns with your neighbour.

2. What will I have been expected to do to sort this out with my neighbour?

This will depend on how well you get on with your neighbours. But before you consider making a formal complaint about a problem high hedge or tree, you should have tried the following:

- Have a quiet word with your neighbour about your concerns;
- Follow this up by sitting down with them so that you can get a better understanding of each other's concerns and try to work a solution out;
- If your neighbour won't talk to you or you are apprehensive about speaking to them, send a polite letter; it won't be enough to say that your neighbour is not approachable.

Keep a record of what you have done e.g. copies of letters or dates when you approached your neighbour. If nothing works, you should let your neighbour know that you will be making a formal complaint.

3. I have a long-running dispute with my neighbour about a hedge or tree. Do I have to go through all this again?

You will be expected to provide evidence of a recent attempt to settle your hedge or tree dispute with your neighbour. If you rely on an approach you made more than, say, three months ago you might be asked to try again.

Your neighbour may have had a change of heart and might not welcome the involvement of the Environment Department: they may be ready to compromise.

What can I complain about?

4. What sorts of complaint will be considered?

If you've been through all the steps set out above AND can answer 'yes' to ALL the points listed below, then the Environment Department should be able to consider your complaint:

About the hedge or Tree

- Is it growing on land owned by someone else?
- Is the hedge – or that part of it that is causing problems – made up of one or more trees or shrubs?
- Is it mostly evergreen or semi-evergreen?
- Is it more than two metres tall?
- Even though there might be gaps in the foliage or between the trees or shrubs, is the hedge still capable of obstructing light?

Who can complain?

- Are you the owner or occupier of the property affected by the hedge?
- Is the property a dwelling or residential?

Grounds of complaint

- Does the hedge or tree spoil the reasonable enjoyment of the property (which might include the garden) because it is too tall?

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5. Does the hedge or tree have to be on the boundary line or in next door's garden?

No, it doesn't matter where the hedge is growing provided it isn't on land which you own. The further away it is from your house or garden, however, the less problematic it is likely to be.

6. What about a party hedge that is not maintained by one of the parties responsible for it?

You can only complain to the Environment Department about a hedge that is on land owned or occupied by someone else. In this example, the land where the hedge is growing is jointly owned by the person who would be making the complaint so you can not use the high hedges legislation to solve your problems. Depending on the terms of the party agreement, both neighbours might be entitled to cut the whole of the hedge - both sides and top.

You should talk to your neighbour and you may need to seek legal advice about what your legal rights are.

7. Can I complain about individual trees?

Yes. For the purposes of this law a hedge or nuisance tree is defined as being made up of one more trees or shrubs.

8. What's a semi-evergreen tree or shrub?

It is a plant/tree that keeps some live or green leaves all year round. Reference books such as "Hillier's Gardener's Guide to Trees and Shrubs" may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.

The intention is that it doesn't include beech and hornbeam hedges; they might retain some foliage for most of the year but this is brown and dead.

The law applies to hedges that are *mostly* evergreen or semi-evergreen so mixed hedges, which can contain some deciduous trees and shrubs, may fall within the provisions of the legislation. Whether a particular hedge is mostly evergreen or semi-evergreen will be a matter of judgement.

Bamboo is not covered by the legislation as it is a grass, and while ivy may be evergreen, it is a climber and so needs support in order to give it height. Any height-related problems are caused not so much by the ivy as by what it is growing up, although can cause a nuisance. Following the introduction of the new law, the Environment Department will monitor issues that arise and if necessary can make changes by way of regulations to the trees/hedges within the scope of the Law.

9. Where is the two metres measured from?

It's measured from ground level where the hedge or tree is growing - which will be on the hedge or tree owner's side. This is usually at the base of the trunk or main stem of the trees or shrubs in the hedge. If the hedge or tree has been planted on a bank or in a raised bed or other container that is raised from the ground, the measurement should be from the natural ground level rather than that of the base of the hedge or tree.

10. The hedge has got some gaps in it that allow light through. Can I still complain about it?

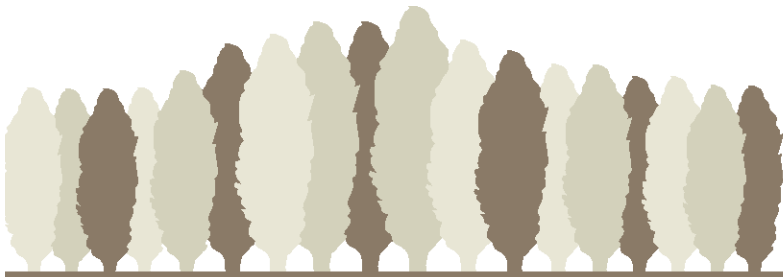
This depends on the extent of the gaps and may not be easy to judge, as the law also covers a single tree there will be a consideration of reasonableness. But if individual trees or shrubs are so widely spaced that you can see what lies behind them, then it might not meet the criteria for making a complaint as it might not form a barrier to light.

11. What sort of problems can I complain about?

You can complain about problems that you experience in your house and garden because the hedge or tree is too tall. You must also be able to explain why these bother you. You need to think about the disadvantages that you actually face and whether these are to do with the height of the hedge and how serious they are.

Things that are not really about the hedge in question or its impact on your house and garden cannot be regarded as valid grounds of complaint under the Law. For example, that other people keep their hedges trimmed to a lower height; that the problems with the hedge have caused worry which is making you ill; that you are concerned that the hedge might break or fall; or that the hedge is affecting particular activities in your home or garden such as television reception.

The proposed law is not designed to deal with other problems that might be caused by trees or hedges such as the effect of roots.



How do I make a complaint?

12. What do I need to do to complain about a hedge?

You will need to fill in a form and send it to the Environment Department. You should send a copy to your neighbours so they know what you've done. The Department will send your neighbour a copy of your complaint so you should bear this in mind when you fill in the form.

The form will provide you with a chance to set out why you feel that your neighbour's hedge or tree is a problem. In particular, you should think carefully about your grounds of complaint.

You will need to explain as clearly as you can the problems that you actually experience in your house and garden because the hedge is too tall, and why these are serious. Stick to the facts and provide all relevant information to back up the points you are making.

13. Do I have to pay anything for my complaint to be considered?

Yes, the Environment Department will charge a fee for this service. The Department will not get any additional funding from general States revenues to operate this service so it needs to raise funds to administer it otherwise other parts of its service will have to be reduced or cut. It is proposed that initially it will be £500 non refundable.

The fee must be submitted with the complaint so that it can be considered.

14. What if I cannot afford to pay the fee?

In exceptional circumstances, where financial hardship resulting in an inability to pay the full fee is proven to the satisfaction of the Department, the Environment Department may reduce or waive the fee.

15. Will I get my money back if my complaint is upheld or rejected?

No. The fee that you have paid will have been spent on investigating the complaint. The fee is not refundable once initially paid.

16. Can I reclaim the fee from my neighbours?

The Environment Department can't get involved in helping you recover the fee that you have paid and it can't require your neighbours to reimburse you.

17. What happens if the hedge is on land owned by the States of Guernsey or a parish?

You should still send your complaint to the Environment Department.

I own a high hedge: what does this mean for me?

18. My neighbour has told me that if this new law is introduced, it will be illegal for my hedge to be higher than two metres. Is this right?

No. There is no offence for having a tall hedge.

The law enables people, who have tried and exhausted all other avenues for resolving their hedge dispute, to take their complaint about a neighbour's evergreen hedge to the Environment Department for a decision to be made about whether the hedge is adversely affecting a property; a complaint can be made in respect of a hedge which is higher than two metres. For the complaint to be successful, they need to show that the hedge is adversely affecting the reasonable enjoyment of their property because it is too high.

You will only be in breach of the law if a complaint about your high hedge is upheld by the Department and if you fail to carry out the work that you are required to do to reduce the height of your hedge. If you fail to carry out the work when required you may commit an offence for which you may be charged a fine of up to £5,000.

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19. My neighbour has asked me to reduce the size of my hedge. I am willing to do some works to it but is there any guidance to help me establish what would be a reasonable hedge height?

This is difficult because there is no single right answer. It's a question of trying to find what suits both you and your neighbour. It's best to look at all the options rather than discuss just one possible solution.

A booklet to help you assess whether an evergreen hedge is blocking too much daylight and sunlight to neighbouring properties – Hedge height and light loss – has been published by the UK Government. A printed copy will be available from the Environment Department. It can also be viewed online. <https://www.gov.uk/government/publications/hedge-height-and-light-loss>

20. I am willing to reduce the height of my hedge without my neighbour making a formal complaint to the Environment Department. There is, however, a protected tree which forms part of the hedge; do I still need to make a formal application to carry out works to a tree that is protected by a Tree Protection Order?

Yes, you will need to make a formal application to carry out any works to a protected tree. Similarly, if a hedge or tree is subject to a planning condition, the permission of the Environment Department to carry out works to the tree or hedge may be required.

In determining any application for planning permission for works to protected trees the Environment Department will undertake the normal balancing exercise of weighing the amenity value of the tree(s), the trees health against any harm likely to be caused by the tree.

21. If my neighbour makes a formal complaint about my hedge, what involvement will I have in the process?

The Environment Department will write to you to let you know that they have received a formal complaint about your hedge. They might ask you to provide certain factual information, such as whether you own the property as well as occupy it and whether there are any legal restrictions that apply to the property.

The Department will also ask you for your comments on the points made in the complaint and to provide any further information that you want the Department to take into account. In making your comments, it is best to keep to the facts and explain how the hedge contributes to your enjoyment of your property and what the effect would be if its height had to be reduced. Bear in mind that a copy of your comments will be sent to the complainant.

Someone may also need to come to your property to gather further information about the hedge and its effect on your neighbour's property.

In making their decision, the Department must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

If the complaint is upheld, the Department may issue a notice which will set out what you must do to the hedge to remedy the problem, and by when.

22. I offered to reduce the hedge to what I consider a reasonable height but my neighbour wanted more. They have now made a formal complaint. Will my offer be taken into account by the Environment Department in deciding the complaint?

No. It is not the role of the Environment Department to negotiate or arbitrate between individuals. Acting as an independent and impartial third party, they will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property. So any offers that you made earlier are not directly relevant to what they have to decide, which is about the impact of the hedge.

Negotiations between you and your neighbour do not have to stop just because a formal complaint has been made. It's worth continuing to talk to one another. If you agree a solution, the complaint can be withdrawn.



23. The hedge was there before the complainant's property was built [or before they moved into it]. Will the Environment Department take this into account?

No, the history of the hedge or of the site where it is located is not relevant to the question that the Department has to decide - which is about the impact of the hedge on the complainant's reasonable enjoyment of their property.

What happens to a complaint?

24. What is done to investigate a complaint?

If the Environment Department is satisfied that a complaint is a valid one (i.e. that is, it satisfies all the 'tests' set out under question 4 above), it will invite the hedge owner to set out their case. When they've got both sides of the story, someone from or on behalf of the Department will visit the site to see the hedge and surroundings for themselves. They will also obtain any other information that might be needed to determine the complaint. This might involve measuring the size of the complainant's garden, the height of the hedge or how far the hedge is from windows in their house.

Once all this information is gathered, the Environment Department will weigh it all up. They will decide whether the hedge adversely affects the reasonable enjoyment of the complainant's home or **garden** or other residential property such as a care home or visitor accommodation and what, if anything, should be done about it.

If they decide that action is necessary, they will issue a formal notice to the hedge owner which will set out what they must do to the hedge or tree and when they must do it by. It can also require the hedge or tree owner, and anyone who subsequently lives in the property, to keep the hedge or tree trimmed to its new height.

25. Why can't people just be made to cut their tall hedges?

There is no offence for having a tall hedge. It is the job of the Environment Department to decide whether the height of the hedge or tree is adversely affecting the reasonable enjoyment of a property and if so, what should be done about it.

The Environment Department will take into account the comments of the hedge or tree owner as well as the grounds of the complaint. They must also take into account whether the hedge is an important or attractive feature in the area. It is only by weighing up all of the relevant information that a fair and balanced decision can be reached.

Collecting written evidence from the hedge or tree owner and the neighbour and visiting the site will make sure that the Environment Department has all the information they need to make the right decision.

26. How do I know that a complaint will be successful?

You can't be certain what the outcome of a complaint will be. That's why it is important for people to think carefully about their reasons for making a complaint before they submit a form.

27. How long will it take for a complaint to be determined?

There is no set deadline for a complaint to be dealt with. It will take time to get a statement from the hedge owner and to visit the site once a complaint has been made. It is expected that complaints will take at least 13 weeks to be determined.

What happens to the hedge?

28. If the hedge is a problem why can't it just be removed?

The Department has no powers to require a hedge to be removed in its entirety nor can they require it to be cut down to a height below two metres.

29. Will all problem hedges have to be cut down to two metres?

Not necessarily. Where a high hedge or tree is found to be a problem it should be reduced to a height that will solve the problem. This may well mean that the hedge can be maintained at a height that is greater than two metres.

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30. How long will a hedge owner be given to reduce the height of a hedge?

This will vary but it could well be months rather than weeks. A realistic time will be given to allow the hedge owner to carry out the works.

Extra time may be given so that the hedge does not have to be cut when birds might be nesting in it or to avoid causing serious damage to the health of the hedge.

The hedge owner can appeal if they think that they have not been allowed enough time to carry out the work.

31. What is there to make sure the hedge owner keeps the hedge at its new height?

As well as being ordered to cut the hedge to a new height, the hedge owner can be required to keep the hedge within its new height for as long as it is there. Any remedial notice that is issued by the Environment Department will set out any such maintenance requirement.

32. If the hedge owner doesn't carry out the work to cut the hedge can the neighbour do it?

No. If the neighbour does any work to the hedge the owner could take them to court for damaging their property.

33. What happens if the hedge owner doesn't cut the hedge how and when they're meant to?

Failure to carry out the works ordered by the Environment Department will be an offence. The hedge owner could be prosecuted and, if found guilty, could be fined.

34. Can someone else carry out the work?

The Environment Department is authorised to have the works carried out if the hedge owner doesn't comply with a notice. It's up to the Department to decide whether to do this and they are not obliged to do so.

35. How will the Environment Department deal with high hedge or nuisance tree complaints where there is a planning condition requiring the hedge to be maintained at a certain height?

In determining a high hedge and nuisance tree complaint, the Department should take account of the reasons why such a condition was attached to the original development permission. The age of the planning permission and the extent to which circumstances have altered in the meantime might also be material. Any notice issued in response to a complaint could however, override a planning condition and the planning condition would need to be separately discharged. But the department should be able to deal with this at the same time.

36. What happens if there is a protected tree in a hedge that has to be reduced in height?

The Environment Department can protect a tree because of its amenity value by making a Tree Protection Order in relation to it. The contribution that a hedge or tree makes to the amenity of the area, whether it contains protected trees or not, will be taken into account by the Department in deciding whether to issue a notice and in determining what action the notice will require the hedge owner to take.

If the hedge owner wants to go further than the remedial notice requires, they will need the Department's consent to carry out works to the protected tree in the normal way.

What if I disagree with a decision?

37. Can I challenge the Environment Department's decision?

If a hedge or tree owner or someone who has made a complaint about a high hedge disagrees with the Environment Department's decision they can appeal to the independent Planning Tribunal. Their appeal must be received by the Tribunal within 28 days of the person appealing receiving the Department's decision letter. An appeal fee is payable; initially it is proposed this will be the same as for an application for a complaint (£500).