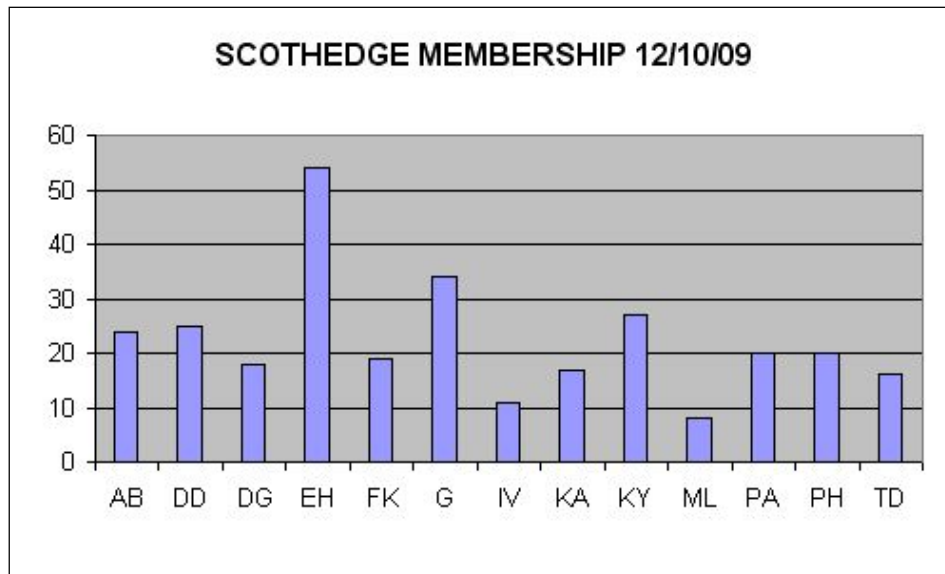


## 2009 Scot hedge Survey Results



292 High Hedge Complainants

Scothedge surveyed its members in July 2009 by means of a postal questionnaire. There were close to 100 responses, which represents a valuable and statistically significant sample of Scotland's High Hedge and Other Nuisance Vegetation. corpus.

The purpose of the survey was gather up to date evidence to qualify the practical Scot hedge front line experience of abuse by inconsiderate hedge and tree growers. The data will inform and contribute to the current work with the Scottish Government and support the Scot hedge response to the Public Consultancy on High Hedges and Other Nuisance Vegetation. The Scot hedge involvement with sufferers runs over many years and includes the experience of their parent organisation, Hedgeline, which campaigned on behalf of English and Welsh complainants and still supports some 4000 UK wide members, including the Scottish contingent. The Westminster legislation received the Queen's Consent in 2003 but unsurprisingly contains flaws, which the Scottish Parliament can avoid through logical attention to Scottish evidence and the English implementation history. This survey specifically investigated the range of problems caused by hedges and trees and also the absence of any authority to secure a fair outcome and escape from face to face contentions, inequalities and irreconcilable vested interests.

The sources of the 2009 Scothedge information are the current Scottish victims, several of whom have suffered for 20 years or more, deprived of their normal expectation of enjoyable residential life. This then is a partisan response from those who have sought help from Local Authorities and other agencies and who have experienced the reality that the impact of problem plants exists within a legislative vacuum where the only authority to provide remedy lies with the owner of the problem plants themselves. This absolute authority allows, with impunity, the careless dismissal of a complaint or even malicious further planting with the intent to inflict harm.

The information comes from 12 postcode districts in Scotland, predominantly in the east, which reflects the Scothedge history. However membership and contacts cover the length and breadth of Scotland. The nominal 100 responses represent 63% of the Scothedge membership at the time of the survey, which by any polling standards is a successful result.

Scothedge identifies the cause of these disputes not as the problem plants themselves, but the above mentioned legislative vacuum which forces neighbours into face to face conflict under entirely unreasonable conditions where the complainant can only seek remedy from the problem provider as a privilege. There is no qualification of the complaint other than by the two involved vested interests. Even the Local Council cannot safeguard local interests as they normally would during planning procedures. This isolation of the complainants, who we represent, creates much of the bitterness and the anti-social behaviour associated with such disputes.

This report identifies the problems created by the misuse of hedges and trees and illuminates the breakdown of enjoyable neighbourly co-habitation in the face of disputes made interminable by the right to grow without any concern for neighbouring homes . The following information derived from survey form SH101B, provides a numerical and evidential understanding of these two criteria.

#### **A. Breakdown of Neighbourly Co-habitation.**

##### **Question 1. Approach to the Hedge Owner.**

All respondents have asked the hedge owner to sort the problem.

##### **Question 2. Response from the Hedge Owner**

Helpful	5%
Unhelpful	55%
Hostile	38%

**Comment.** The helpful responses came from cases where the problem was overcome by the arrival of new neighbours. 55% of respondents could take their cases no further because the hedge/tree owner would simply not respond. A serious 38% were hostile to any approach,

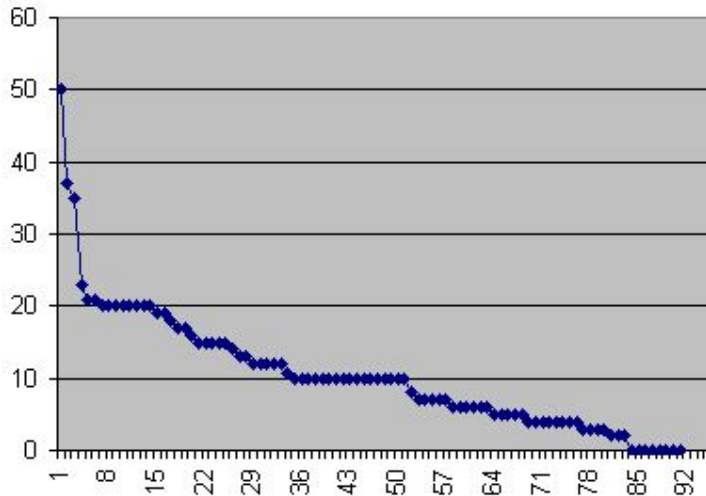
resorting to verbal and even physical abuse sometimes requiring police intervention. This is the Antisocial Behaviour dimension and it occurs because it can.

**Question 3. Who did you seek help from?**

Council	45%
Solicitor	23%
MSP	38%
Mediation	18%
C.A.B.	8%

Comment. The vast majority expected the Local Council to intervene, however it is now generally recognised that they have no such powers. Several respondents state in notes that their Councils are simply awaiting ‘the expected legislation’. Likewise Councils are arguing that they can do nothing until the ‘imminent new legislation’ is passed by the Scottish Parliament. Complainants are now simply without access to fair recourse until the Scottish Parliament ends the legality of indiscriminate deployment of high hedges and other nuisance vegetation

**Question 4. How many years have you been trying to resolve your problem?**

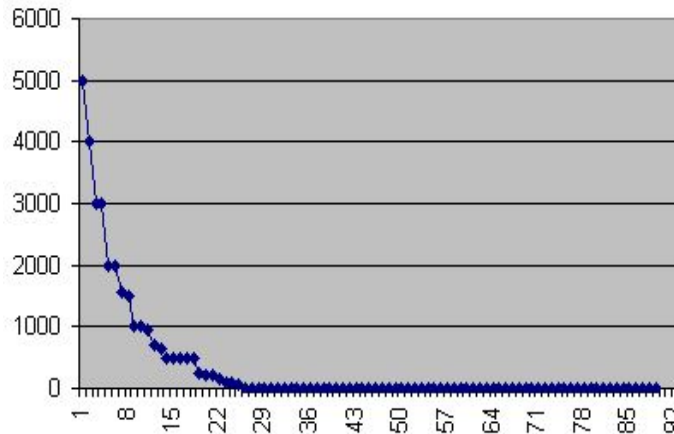


Graph .1. Case Duration Years

Not all respondents stated the duration of their dispute, but most did. The average duration was 10.5 years however this was heavily distorted by some extraordinarily long cases. Some 17% of cases were 5yrs and below which means they have arisen since the 2005 Scothedge survey. All these case durations arise because of the current legislation vacuum and the absence of a binding decision to close them out. The 50% 10 year period since raising a complaint will

see a Leyland Cypress grow 10 metre beyond the complaint initiation point.

**Question 5. Have you suffered expense in your efforts to resolve your problem?**



Graph 2. Costs incurred £

The threat to a home caused by the failure of a neighbour to acknowledge responsibility, will be approached quite differently by those with available funds compared to those with none. Denied any access to legislative adjudication, some will seek help from solicitors and arboriculture professionals to justify their complaint or pay for abatement or repairs to their property. The majority of respondents could not justify such expense and some saw no sense in paying the costs of managing a tree or hedge wholly belonging to a hostile neighbour. Most complainants start off with a “quid pro quo” belief in fair collaboration but upon rude rebuff, this option very quickly and understandably shuts down. Giving to get is not reciprocated. Costs incurred of as much as £5000 confirm that whatever the expectations of the complainant it is an expense without return. To some it is simply extortion.

**Question 6. Property Devaluation by High Hedge/Tree Impact.**

52% of respondents felt that their homes had lost significant value. This loss is anecdotal but as much as £50,000 was considered realistic by one complainant. It is customary for Scothedge to assess a depreciation of 20% as being reasonable. Considering that the value of a home may determine a pensioner’s quality of life in retirement, this imposed loss is hard to bear. Some respondents have actually tried to escape the problem by selling up only to find that their homes cannot be sold at a fair price if at all. The introduction of ‘Sellers Reports’ in Scotland can only be expected to create new problems.

It is common knowledge that neighbour disputes and adverse impacts of neighbour's hedges and trees severely discourages buyers.

**Question 7. Have you or your family suffered severe stress during the dispute?**

51% of respondents felt themselves or their family to be under stress. A pensioner facing a wealthy landlord or being warned off by the hedge owner's lawyers, may face considerable terrors, often unsustainable but nevertheless coming to dominate their lives. In a few cases, the involvement of the police shows such fears to be very real. This stress dimension is vicious.

Stress caused by dispute is an unpleasant reality of confrontation but when this grinds on, year after year with no option of escape, it denies the expected enjoyment of living within a community. This stress results from an accumulation of all the problems being faced but is usually dominated by the evaporation of trust in a close neighbour. The indifference of a neighbour to the problems they are causing is appalling to decent people who have expected a mature and reasoned response. It is all too easy for the first approach of the complainant to the neighbour to lead instantly to severe emotional stress simply because of the raw sensitivity at this first engagement.

**Question 8. Has your health been affected?**

38% of responses reported health deterioration and given that many of the complainants are elderly and perhaps with underlying health problems this is not surprising. They face an aggressive, violent or bullying neighbour and may lay awake feeling that the next day will bring further hostilities or that a wealthy opponent might take legal action quite capable of forcing destitution upon them.

Whilst these statistics are anecdotal, several complainants have died whilst under this constant worry and it is commonsense that long term stress is likely to shorten life.

In several cases, Scothedge would describe the problems facing some complainants as simple cruelty where the elderly and disabled live in fear. The case of the elderly widow denied sunshine to her living room and subjected to verbal abuse on sight by the neighbour responsible has no place in Scotland.

**Question 9. Do you still speak to your neighbour?**

40% of respondents remain able to speak to their neighbours whilst in dispute. 60% find speaking to their neighbours both unproductive and unpleasant. Understandably they withdraw from making any further attempt.

### **Question 10. Have you suffered physical abuse by the hedge owner?**

Fortunately the occurrence of physical abuse is quite small in Scotland when compared to England where murder and suicide were reported in extreme cases. Nonetheless almost 8% of respondents cited physical abuse, which of course is properly a matter for the police.

### **Question 11. Have you required police involvement?**

A much higher 18% reported police involvement. This is quite significant since this suggests a formal complaint to the police was made which should have been recorded complete with actions, if any taken by the police. Such events although caused by the high hedge/tree issue are already police matters and therefore not needing any further legislation, but new arrangements should go a long way to preventing these disturbing cases.

### **Summary**

Questions 1-11 deal principally with the breakdown of neighbourly relations and the examples of antisocial behaviour are of primary concern to our Community Health and Safety. It should be stressed that these aspects arise simply because there is no vehicle for “arms length” resolution which would dilute the personality and vested interests of the protagonists.

### **The problems created by hedges and trees.**

#### **Question 12. Is your problem?**

##### **a) An evergreen hedge?**

A massive 78% of complainants faced a line of conifers subjectively described as a hedge. This includes the infamous Leyland Cypress but is not exclusive to this species.

##### **b) A deciduous tree?**

34% of sufferers identify deciduous trees such as Copper Beech as their problem. This is still a large number with effects just as serious as those of a conifer hedge.

##### **c) Individual Trees?**

49% cite single tree problems. In part this is due to the confusion as to what constitutes a hedge, which is just a row of individual trees, but in some cases it is clearly one single tree which is impacting inappropriately upon a home and garden.

This data shows that the problems are not “species specific” and that any attempt to limit by species will deny solution to a significant

proportion of those seeking relief. The data also shows that trees can be used to create a problem irrespective of their numbers or arrangement and again any attempt to frame legislation to combat sundry arrangements will only lead to confusion and exclusion for some deserving cases. This new data again vindicate the Scothedge position that what is needed is a law to address the antisocial behaviour of people using trees inappropriately and not a law which defines an “illegal hedge”.

**Question 13 Please indicate the problem.**

a	Window light blocking.	66%
b	Garden light blocking.	81%
c	Loss of cherished view	68%
d	Inappropriate domination.	78%
e	Causing garden infertility	48%
f	Limiting use of garden space.	33%
g	Excessive branch encroachment	66%
h	Excessive root encroachment.	56%
i	Excessive deposition of leaves, needles and resins.	50%
j	Damage or risk of damage to drains.	34%
k	Damage or risk of damage to garden walls and patios, due to water shedding, land heave, subsidence.	42%
l	Risk of tree fall.	40%
m	Allergies to conifer spores.	19%
n	Insect infestation.	11%
o	Costly or dangerous trimming of encroaching branches	44%

This table shows the types of damage and harm being experienced by the 100 people who responded to the Scothedge survey. No attempt has been made to quantify the magnitude of these problems but the numerous accounts and photographs held by Scothedge show that they represent severe difficulties that require correction. Many people suffer from more than one of these effects.

**Avenues of Assistance**

Given that the respondents were from a corpus unable to resolve the dispute with their neighbours, unsurprisingly no helpful body was identified in this survey.

Help was sought from Local Councils by 50% of respondents, but many did not contact their Local Council since they were well aware that they had no authority to intervene and many councils now simply say that they must await anticipated legislation.

Solicitors also had little success but in a small number of cases their gravitas appeared to bring capitulation. Only 5% of respondents suggested the courts as a resolution option but 24% of respondents did contact their solicitors.

Mediation was suggested by 18% of respondents and tried by 17% of respondents without any success whatsoever. Hedge owners are under no requirement to take mediation seriously and either refused to participate or rejected any mediation negotiations to the extent that mediation just did not work.

A high percentage of respondents (80%) felt that a fixed boundary hedge height limit was required regardless of whether a problem existed.

Interestingly most respondents (51%) turned to their MSPs who indeed came in for some plaudits for offering representation although failing to overcome the inertia of a stalled Private Member's Bill. There is wide realisation that this matter must be sorted out by legislation by the Scottish Parliament.

**This then is the crux of the matter – complainants have no ability to resolve disputes whilst their neighbours are able to deny any liability for a range of identifiable problems, undeniably associated with their hedges and trees.**

### **Conclusions**

Scothedge Survey 2009 is an important source of information about the so-called High Hedge/Tree disputes in Scotland. It is not constrained by the limitations of the Westminster focus upon the 'Line of Two or More Conifers' or the initial consideration that light to rooms is the dominant issue. Indeed this is seen to be less frequent than excessive domination or loss of cherished view.

No attempt is made to identify the individual gravity of the identified problems because it is realised that this is a matter of degree and subjective judgement by the complainants. For example leaf deposits are normal in almost every garden in the land. This only becomes problematic when clearing becomes a severe burden, and there is blockage of drains and gutters which is of such severity, that it incurs labour or maintenance costs which affect the reasonable enjoyment or use of a garden and home.

Hedges and trees are benign and positive assets until they outgrow their environment in other words they become inappropriate for residential land.

It is the refusal of the owners to undertake sensible and reasonable management which creates the problem, and the problem is impossible to solve because of the absence of any last resort legislative procedure.

This survey illustrates the degree of bad blood which quickly arises when a self-evident reasonable complaint is made and rebuffed and this can become worse when the response is peppered with malicious intent.

The significant proportion of problems such as cherished view loss and root and branch damage fully qualifies them for consideration by the proposed legislation because it is simply not acceptable for anyone to have to suffer these sort of effects at the whim of a neighbour. The value and enjoyment of the home are normally only challenged by the formal planning process and should never be at risk from a single, uncontrolled vested interest.

In the majority of cases Local Councils have acknowledged that a problem exists but also that they are powerless to require the hedge/tree owner to deal with the matter. Likewise MSPs are sympathetic and many have given positive help in dealing with the dispute. But their role is representative and if there is no process to engage, then there is nothing that they can do other than confirm that the situation is outrageous and give their support to legislative proposals. Those responding to the survey have welcomed the interest of their MSPs as their champions within the Scottish Parliament which alone is responsible for solving this problem.

**This Scothedge 2009 Survey provides important though by no means the only justification for the development of 'fit for purpose' Scottish legislation.**