

Chapter 6: Remedial notices

Remedial notices – contents – finding a suitable management solution – excluded works – specifying the works – good practice advice – duration of notice

- 6.1 Remedial notices define how the hedge should be managed in order to give effect to the Council’s decision and so restore a suitable balance between the amenity enjoyed by the complainant and the hedge owner, having regard also to the needs of the wider community. They run with the land in question and are binding on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the notice is issued, but also their successors. Remedial notices are not, therefore, served on or addressed to a particular person.
- 6.2 In these circumstances, a remedial notice should normally be a separate document, issued with the Council’s letter notifying the main parties of their decision on the complaint. Remedial notices must be delivered by one of the methods described in paragraph 5.126. They cannot be sent electronically.

Contents of the Notice

- 6.3 The Act⁴⁴ requires that a remedial notice include the following information:
- it must describe the hedge it relates to and where it is situated;
 - state that a complaint has been made to the Council about the hedge and that the Council have decided that the height of the hedge is adversely affecting the complainant’s reasonable enjoyment of their property;
 - it must specify the property affected by the hedge;
 - explain what action must be taken in relation to the hedge in order to remedy the adverse effect and, if necessary, to prevent it recurring (“initial action”) and by when (“the compliance period”);
 - what further action, if any, is required to prevent longer-term recurrence of the adverse effect (“preventative action”);
 - what date the notice takes effect (“the operative date”); and
 - the consequences of failure to comply with the requirements of the notice.
- 6.4 A sample remedial notice is in the Appendix.

Description of the hedge

- 6.5 The hedge should be described in sufficient detail so that there is no doubt what the notice relates to.
- 6.6 It will not normally be enough to give the address of the property where it is located. While it might be the only hedge on the site when the remedial notice is issued, this could change. The position of the hedge within the property should, therefore, be specified or should be shown on a plan attached to the notice.

⁴⁴ Section 69(2).

- 6.7 A general description of species in the hedge should also be included. This will help to differentiate it from any new hedge that might be planted as a replacement for the original one. It should be enough to identify the predominant species. It will not normally be necessary – or advisable – to specify the precise number of trees or shrubs that are contained in the hedge, or to list exact botanical species.

Affected property

- 6.8 The full address of the property that is affected by the hedge is likely to be the best means of identifying it.

Initial action

- 6.9 The initial action covers the one-off works that must be carried out to the hedge to alleviate the problems it is causing. It can include:
- action to remedy the adverse effect (“remedial action”); or
 - action to prevent the problems recurring (“preventative action”); or
 - a mixture of both.
- 6.10 This enables Councils to specify that the hedge be cut below what is necessary to remedy its adverse effect, if this will help to prevent problems recurring. Further advice on what, in practical terms, such action might involve is given in the section on *Remedial Works* below.

Preventative action

- 6.11 Preventative action covers continuing works to ensure that the hedge does not cause problems again in the future. The initial action specified in the notice – the one-off works to the hedge – is likely to provide only short-term relief from its adverse effects. If the remedial notice is to deliver a lasting solution, it will normally need to include longer-term action – eg annual pruning – to prevent the problems caused by the hedge recurring.

Operative date

- 6.12 The operative date is when the remedial notice formally takes effect and marks the start of the compliance period. It must be set at least 28 days after the date on which the remedial notice is issued by the Council. This is to allow people time to lodge an appeal. The notice is suspended while any appeal is considered.

Compliance period

- 6.13 The remedial notice must set a time limit for carrying out the initial action. This should start from the date when the notice takes effect (“the operative date”). Even though there may be pressure from the complainant for early action, the compliance period needs to reflect what can reasonably be achieved. The owner or occupier of the land where the hedge is situated can appeal if they do not think they have been given enough time to comply with the requirements of the notice.
- 6.14 In setting the compliance period, Councils should take account of the extent of the work involved and whether specialist equipment or professional help will be needed. If a drastic reduction of the hedge is required, it might be preferable to carry this out in stages, perhaps

over a period of years. The Act⁴⁵, however, makes no provision for a timetable to be set for each stage of the works: only for a compliance period within which the initial works must be completed. In these circumstances, Councils might wish to set a long compliance period and use any accompanying good practice advice (see below) to encourage the hedge owner to discuss and agree with the Council a suitable timetable for the staging of works.

- 6.15 Councils should also bear in mind that it is against the law to kill, injure or disturb nesting wild birds⁴⁶. The compliance period might, therefore, need to be set to avoid cutting the hedge between March and August.
- 6.16 Any continuing preventative action, such as regular trimming to keep the hedge at its reduced size, would probably be open-ended.

Failure to comply

- 6.17 As remedial notices are not addressed to a particular person, they should include a clear statement that the owner or occupier of the land where the hedge is situated – or their successor – is responsible for implementing the requirements of the notice, and for meeting the cost of such works.
- 6.18 So that there is no doubt on the matter, the letter informing the main parties of the decision on the complaint might also usefully explain that the notice does not give the complainant any rights to step in and take the necessary action themselves.
- 6.19 Under the Act⁴⁷, both the owner and occupier of the land where the hedge is situated could be prosecuted for failure to comply with the requirements of a remedial notice, subject to certain defences. In practice, whether the owner or occupier (assuming they are different people) would normally be expected to carry out the works specified in the remedial notice, will depend on who is legally responsible for managing the hedge according to the contractual arrangements between them. However, general provisions in the Public Health Act 1936 (relating to the power of the courts to require an occupier to permit work to be done by an owner) apply so as to give the owner the right to comply with a remedial notice. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge.
- 6.20 The notice should make clear that failure to comply with its requirements could lead to a prosecution and a fine, and that the Council could also enter the land, carry out any works required and recover expenses reasonably incurred. Enforcing remedial notices is discussed in more detail in Chapter 9.

Correcting errors

- 6.21 If the Council make a mistake in the notice, they should withdraw it and issue a new one – using their powers under section 70 of the Act – as soon as the error comes to their attention (see Chapter 7: *Correcting Errors*). This will usually require consequential changes to the operative date and, possibly, to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.
- 6.22 Once an appeal has been made against a remedial notice, the notice is held in abeyance until the appeal has been decided. If an error or omission comes to light while an appeal is being considered, it should be drawn to the attention of the Inspector appointed to determine the

⁴⁵ Section 69.

⁴⁶ See the Wildlife and Countryside Act 1981.

⁴⁷ Section 75(1).

appeal. He has powers under the Act⁴⁸ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

Remedial Works

- 6.23 Under the Act⁴⁹, the action specified in a remedial notice cannot involve:
- the reduction of a hedge to less than 2 metres above ground level; or
 - the removal of a hedge.
- 6.24 Removal includes action that would result in the death or destruction of the hedge. This will depend on the species of the shrubs or trees in the hedge, their age and health. For example, healthy Leyland cypress hedges will usually respond well to a reduction of up to one-third of their height. On the other hand, taking too much from the top of such a hedge might result in the death of older or less vigorous trees. Care also needs to be taken with conifers not to cut back into older leafless branches, as new growth will not appear from bare wood. Councils are, therefore, advised to obtain arboricultural input when framing the requirements of a remedial notice.
- 6.25 Councils should also ensure that the works specified in a remedial notice:
- relate to the hedge itself. Works other than to the hedge (eg to any bank it might be growing on) are not allowed;
 - are directly related to the adverse effect found to be caused by the hedge; and
 - do not exceed what is necessary to remedy the adverse effect of the hedge, or to prevent it recurring.
- 6.26 Within these constraints, Councils have flexibility to tailor the management solution to the particular problem. The Act does not necessarily require hedges to be reduced to a height of 2 metres. Nor will it always be necessary to reduce a hedge to a single height along the whole of its length. Different heights might be applied to different sections of the hedge. Other remedies, such as crown lifting or thinning, or retaining selected trees in an otherwise reduced hedge, may also be considered.
- 6.27 In determining the extent of any works to be specified in the remedial notice, Councils might wish to adopt a three stage approach.

Step 1: taking care of the problem

- 6.28 First, decide what action is necessary to remedy the adverse effect of the height of the hedge on the complainant's reasonable enjoyment of their property. This is called "remedial action" in the Act⁵⁰.
- 6.29 As noted in Chapter 5: *Making the decision*, determining "reasonable enjoyment" means striking a balance between any harm caused by the hedge and its possible amenity value to the hedge owner and the wider community, to produce a proportionate response to the complaint.

⁴⁸ Section 73(3).

⁴⁹ Section 69(3).

⁵⁰ Section 69(9).

The same principles apply when determining what remedial action might be appropriate in a particular case.

- 6.30 Nevertheless, Councils might find it helpful to start by looking at just one side of the hedge and developing some initial ideas on what would provide relief for the complainant. They should then stand back to consider the impact of their proposal on other parties and in its local setting, making adjustments – as necessary – to strike a balance between the different needs.
- 6.31 In doing so, Councils might ask themselves:
- what works are needed to provide relief for the complainant from the adverse impact found to be caused by the excessive height of the hedge. Points to consider include:
 - the severity of the problems it is causing;
 - whether this is simply a matter of reducing the height of the hedge or whether other remedies would be more effective. These might include reducing the height of selected trees forming the hedge, to open up gaps. Alternatively, the lower branches of the hedge might be removed (known as crown lifting) or the branches might be thinned out. In some cases, an appropriate remedy might well include reducing the width of the hedge as well as its height;
 - whether action needs to be taken along the whole length of the hedge or whether works to a section of it would provide the necessary relief. In particular, it might be necessary to require action in relation to only part of a long hedge that borders other properties besides that of the complainant;
 - whether there are likely to be any side effects from the proposed works on the growth of the hedge, which have the potential to harm the complainant's amenity and so might require additional action. For example, reducing the height of some species might result in them putting on more lateral growth – bushing out. Action might be needed to keep this under control;
 - what would be the impact of such works on other parties to the complaint and on the surrounding area. Points to take into account, where relevant to the case, include:
 - issues or concerns raised, in the course of consideration of the complaint, by the owner or occupier of the land where the hedge is situated. As a general rule, the likely cost of remedial action or the means of the owner or occupier of the site where the hedge is growing would not be relevant considerations;
 - representations submitted by other residents;
 - the setting of the hedge, especially its contribution to the character and amenity of the area;
 - other legal restrictions that might be relevant;
 - what adjustments, if any, need to be made to the proposed works in order to mitigate these impacts. This might suggest a change of approach. For example, selected trees forming the hedge that have particular amenity value might be retained.
- 6.32 General factors such as the impact of the works on the appearance of the hedge should be considered only insofar as they may be relevant to the particular case. For example, such matters might be material where it is important to preserve the contribution that the hedge makes to the wider amenity of the area or to retain its function as a screen or shelter. Otherwise, they might more appropriately be dealt with through good practice advice.

Step 2: allowing for re-growth

- 6.33 Having established what action is required to remedy the adverse effect of the hedge, Councils should then consider whether anything more needs to be done to prevent the problems recurring. This is called “preventative action” in the Act. Councils should think about what preventative action might be needed both in the short term (to allow for any re-growth) and over a longer period (to provide for ongoing maintenance).
- 6.34 In deciding what – if any – action is needed to avoid the problems caused by the hedge coming back again in the short term, Councils might ask:
- whether the remedial action on its own is enough to forestall further problems over, say, a period of around 12 months – before any longer-term maintenance requirement kicks in;
 - if not, how should the remedial action be adjusted to cater for this.
- 6.35 This is likely to be particularly relevant where the hedge comprises fast-growing varieties. If, in these cases, the height of the hedge was reduced to the level necessary to remedy the adverse effect, it might soon grow back and cause problems again. In such circumstances, Councils might require that the hedge be further reduced – to create a buffer zone or growing margin, which allows the hedge to grow between annual (or more frequent) trimming and still not cause significant problems.
- 6.36 A suitable margin would normally be equivalent to a year’s growth for the species concerned.
- 6.37 For example, the Council might consider that the problems caused by the hedge would be remedied if it were no more than 3 metres tall. They might, however, require the hedge to be reduced initially to a height of 2 metres so that it has room to grow. This combination of remedial and preventative action is called “initial action” in the Act.
- 6.38 In the above example, the Council would also need to consider requiring ongoing maintenance to ensure that the hedge is never again allowed to grow above 3 metres.
- 6.39 The Council cannot require a hedge to be reduced to below 2 metres in height. If the buffer zone or growing margin would take it below this limit, the Council might use good practice advice to suggest where the initial cut should be made or to recommend a more frequent trimming regime to achieve the same effect.

Step 3: ongoing maintenance

- 6.40 Thirdly, Councils should determine whether long-term maintenance of the hedge is needed in order to stave off future problems. They might ask:
- what will be the effect on the future growth of the hedge of the initial action proposed to remedy its adverse impact (see Steps 1 and 2 above);
 - is this likely to lead to a recurrence of the problems found to be caused by the hedge;
 - if so, what action would ensure that the hedge is preserved in its revised state over the longer term and so help to avoid further problems;
 - is this reasonable in the particular circumstances of the case.
- 6.41 The management regime imposed will depend on the nature of the remedial or initial action. However, it will most often take the form of continuing maintenance of the hedge at its new height or shape, by regular trimming.

Uncommon cases

Multiple complainants, single hedge one owner

- 6.42 Where Councils are dealing with more than one complaint in respect of a single long hedge, they must consider each case on its particular merits. And they must issue a separate remedial notice in respect of each complaint.
- 6.43 By following the process set out above, this could produce several different solutions in respect of one length of hedge. Thus it is possible that separate remedial notices could be issued requiring one section of the hedge to be reduced to a certain height while another portion should be cut lower, with the rest of the hedge left intact.
- 6.44 Under the terms of the Act, it is not open to the Council to amend the remedial action required in one case to take account of the impact of the hedge on another property that is the subject of a separate complaint, even though this might produce a more workable solution. They cannot, therefore, resolve these different outcomes through the terms of the remedial notices.
- 6.45 Instead, such matters must be left to good practice advice. Where cases are linked in this way, therefore, Councils are advised to highlight the apparent inconsistencies to the owner or occupier of the land where the hedge is situated and suggest ways in which the various requirements might be met.

One complainant, single hedge, multiple owners

- 6.46 In such cases, the Council would issue a single remedial notice. A notice may not necessarily require that the hedge be reduced to, and maintained at, a single height along the whole of its length. It could specify different heights for different sections, or include other hedge management solutions. In such circumstances, it is important that it is clear to each hedge owner what they need to do in order to comply with the requirements of the notice. Councils might explain the practical consequences in a covering letter or any good practice advice.

One complainant, multiple hedges, one owner

- 6.47 Even though they are owned by one person, a separate remedial notice must be issued in respect of each hedge or part of hedge that meets the legal definition of a high hedge and is affecting the complainant's property.
- 6.48 As noted in paragraph 5.19, the Council should consider the effect of each hedge individually as well as their cumulative impact. This might suggest that no remedial action should be taken in relation to one or more of the hedges. Alternatively, it might point towards different action to be taken in respect of different hedges. In addition, the cumulative impact of the hedges might justify more extensive remedial works than would be suggested if each hedge was assessed separately and individually.

One complainant, multiple hedges, multiple owners

- 6.49 Similar considerations apply to those discussed in the above example. Care should be taken to ensure that hedge owners receive the correct remedial notice and that they are clear about what action they need to take to meet the requirements of the notice.

Specifying the action

- 6.50 Both the initial action and preventative action need to be carefully specified in the remedial notice so that it is clear what must be done to comply with the notice and when enforcement action could be taken. This might best be achieved by concentrating on the end result rather than the method to be used. Vague forms of words should be avoided.

- 6.51 Examples of how different management solutions might be specified are in the Appendix.
- 6.52 Councils cannot attach conditions to remedial notices, such as requiring works to be carried out in accordance with good arboricultural practice or with relevant British Standards.

Good practice advice

- 6.53 Councils should, however, consider attaching to remedial notices practical advice on how the hedge might be cut safely and maintained so that it remains attractive. This would be for information only and would not be enforceable. The paragraphs below suggest other possible items for inclusion in any advice note.

Good arboricultural practice

- 6.54 Councils might recommend that all works are carried out in accordance with BS 3998: *Recommendations for Tree Work*. Reference might be made to publications that offer advice on specific management and pruning techniques for particular species of tree or shrub.

Safety

- 6.55 Councils should encourage safe working on and around trees. The Arboriculture and Forestry Advisory Group set up by the Health and Safety Commission has published a number of tree safety guides which are available at www.hse.gov.uk/pubns/forindex.htm. *Tree work accidents: an analysis of fatal and serious injuries* illustrates what can happen if safety procedures are not followed or work is undertaken by unskilled people. If Councils consider that specialist equipment or professional help is likely to be needed, particularly where work at height or with chainsaws is involved, good practice advice might encourage hedge owners to use qualified/skilled contractors. It might also usefully refer to the Arboricultural Association's list of approved contractors which is available on their website at www.trees.org.uk.

Birds and other wildlife

- 6.56 As well as setting the compliance period to avoid the hedge having to be cut during the bird nesting season, good practice advice might encourage the hedge owner to take special care not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that are nesting or roosting in trees.

Removal/replacement hedge

- 6.57 Where drastic action is called for which might leave an unsightly feature, good practice advice might suggest that the owner consider removing the hedge. It might be accompanied by a leaflet (such as *The right hedge for you*) to help them choose a suitable replacement hedge. Councils cannot, however, require a replacement hedge to be planted.
- 6.58 If removal of the hedge is suggested, Councils should – where appropriate – warn that prior permission might be required under other legislation. In particular, the Council's consent will be needed to fell any trees in the hedge that are protected by a tree preservation order. If the hedge is located in a conservation area or is caught by the Hedgerows Regulations 1997⁵¹, the Council would normally need to be notified of the proposed removal so that they can consider

⁵¹ Statutory Instrument 1997 No. 1160. The Hedgerows Regulations do not apply to residential hedges. However, hedges on agricultural land that are affecting neighbouring domestic property might be caught and so require prior notification to the Council before being removed. Further information is available through the farmland conservation pages of the Defra website at www.defra.gov.uk.

whether to protect the hedge – either by making a tree preservation order or by issuing a hedgerow retention notice. In other cases, a felling licence might need to be obtained from the Forestry Commission⁵².

Duration of Remedial Notice

- 6.59 The remedial notice remains in force until it is formally withdrawn. It would have no practical effect, however, if the hedge was removed or there was some other change in circumstances which took it outside the scope of the Act. For example, if the property affected by the hedge ceased to be used for domestic purposes.
- 6.60 Were the original hedge, specified in the remedial notice, to be replaced by another evergreen hedge which, in time, grew to such a height that it adversely affected a neighbouring property, a fresh complaint would have to be made.

Land charge

- 6.61 As long as the remedial notice is in force, it must be registered as a local land charge. In this way, prospective buyers of the property should be alerted to any commitment that they would be taking on.
- 6.62 If the Council is notified that the hedge has been removed, or that a change of circumstances means the Act no longer applies and so the remedial notice is unenforceable, they should withdraw the notice and delete the relevant entry from the local land charges register after following the procedure recommended in Chapter 7: *Case Beyond the Scope of the Act*.

⁵² Further information, including the leaflet *Tree Felling – Getting Permission*, is available in the grants and licences pages of the Forestry Commission's website at www.forestry.gov.uk/england.

Chapter 7: Withdrawing and relaxing remedial notices

Revising remedial notices – correcting errors – extending the compliance period – implementing the preferred solution of the main parties – change in circumstances – case no longer covered by the Act – works that go further than the original notice requires

- 7.1 The Act⁵³ gives Councils powers to withdraw a remedial notice that they have issued, or to waive or relax some of its requirements. Apart from the need to notify the complainant – or their successors – and the owner and occupier of the land where the hedge is situated of what they have done, the Act does not set out the procedure that Councils must follow before taking such a step.
- 7.2 The procedure is likely to vary according to the circumstances.

Correcting Errors

- 7.3 As indicated in paragraph 6.21, if the Council make a mistake in the remedial notice, they should withdraw it and issue a new one as soon as the error comes to their attention. This can be done before or after the remedial notice comes into effect, but is best done before the original 28 day appeal period expires.
- 7.4 Any alteration of the contents of the notice will usually require consequential changes to the operative date and to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.

Procedure

- 7.5 Given the importance of acting quickly, the Council would not normally consult the main parties to the original complaint before making the necessary changes to the remedial notice. But they should write to them, enclosing the revised remedial notice and explaining how this differs from the original and the reasons for the changes. It is good practice to send a copy of this letter to any other interested parties who were informed of the Council's earlier decision (see paragraph 5.109).
- 7.6 Councils are encouraged to issue the replacement remedial notice at the same time as they notify the main parties of the withdrawal of the original notice. If they cannot be done together, the letter informing the main parties that the original notice has been withdrawn should make clear that a replacement notice will be issued shortly.

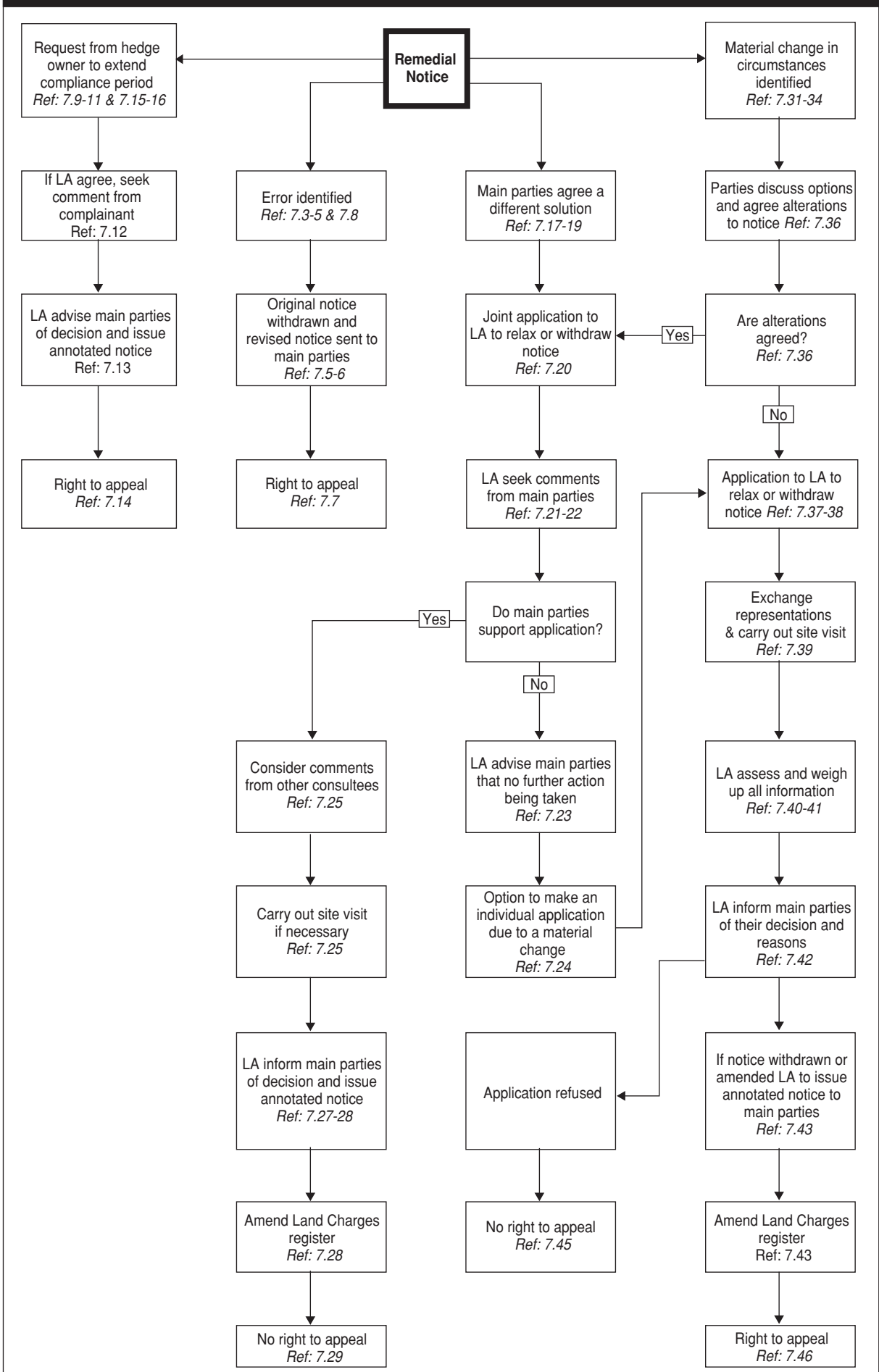
Appeal rights

- 7.7 Councils should also inform the main parties of the effect of this action on their appeal rights. They will have 28 days from the date that the new remedial notice is issued in which to appeal against the revised remedial notice as a whole – not just against the alterations. This applies whether or not they appealed against the original remedial notice, and even if the requirements of the notice are unaffected by the changes.
- 7.8 If an error comes to light after an appeal has been lodged against the original remedial notice, the matter should be drawn to the attention of the Inspector appointed to determine the appeal. He has powers under the Act⁵⁴ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

⁵³ Section 70.

⁵⁴ Section 73(3).

Figure 3 Request to withdraw or relax a remedial notice



Extending the Compliance Period

- 7.9 Councils should not normally entertain requests to extend the compliance period in order to give the owner or occupier of the land where the hedge is situated extra time to carry out remedial works to the hedge.
- 7.10 This should not usually be necessary. Councils are advised that, in setting the time allowed for completion of the initial one-off works to the hedge, they should take account of what can reasonably be achieved (see paragraph 6.13). In addition, if they think they have not been given enough time to comply with the requirements of the notice, the owner or occupier of the land where the hedge is situated can appeal (see paragraph 8.8).
- 7.11 There may, however, be exceptional circumstances which have prevented the owner or occupier of the land where the hedge is situated from complying with the requirements of the remedial notice. For example, extended and enforced absence, say, on business or in hospital could mean that the remedial notice was received late in the compliance period or that the time available has been significantly shortened. A key consideration will be not just the amount of time available but whether it is practicable to carry out the required works within it.

Procedure

- 7.12 If the Council consider that the circumstances justify altering the remedial notice to extend the compliance period – and if time allows – it is good practice to inform the complainant of their intentions and to invite comments within a set period. Any comments received should be taken into account before the Council makes its final decision.
- 7.13 The Council must notify the main parties of any decision to relax the requirements of the remedial notice by extending the compliance period. It is good practice to send a suitably annotated version of the remedial notice. The Council might, however, want to make clear – in a covering letter – when the extended period expires and spell out the consequences of failure to comply with the requirements of the notice.

Appeal rights

- 7.14 In theory, a complainant could appeal against the decision to relax the requirements of a remedial notice by extending the compliance period, on the grounds that there has been no material change in circumstances since the notice was issued. In practice, this is unlikely to arise as an appeal would prolong matters further and so would be unlikely to benefit the complainant.

Compliance period expired

- 7.15 Once it has expired, the compliance period cannot be extended by relaxing the requirements of a remedial notice. The notice would have to be withdrawn and a new one issued, which would trigger fresh appeal rights. Councils would need strong justification before contemplating such a significant step. In particular, they are advised not to proceed without securing the written agreement of the main parties.
- 7.16 Expiry of the compliance period will not, however, generally lead to automatic and immediate prosecution of the hedge owner for breaching the requirements of the remedial notice. Chapter 9: *Informal action* gives advice on action – falling short of prosecution – that Councils might take to ensure works specified in a remedial notice are carried out. This includes allowing more time and/or issuing a formal warning.

Main Parties Agree a Different Solution

- 7.17 It is possible that the complainant – or their successors – and the owner or occupier of the land where the hedge is situated might agree different one-off works (“remedial or initial action”) or different longer-term maintenance (“preventative action”) to that specified in the remedial notice.
- 7.18 If this goes further than the requirements of the notice (eg keeping the hedge trimmed to a lower height than that specified), there is no need to formalise the arrangement. It is open, at any time, to the owner or occupier of the site with the hedge to do more than the notice requires – unless other legal restrictions apply.
- 7.19 If the agreed solution is less exacting than the remedial notice requires (eg allowing a higher screen), an application should be submitted to the Council for the notice to be withdrawn or its requirements relaxed.

Procedure

- 7.20 The aim of the Act is to take the heat out of hedge disputes and to encourage communication and negotiation between the people concerned. It should not normally work, therefore, so as to frustrate implementation of an agreed solution.
- 7.21 If the Council receive a joint application requesting that a remedial notice be withdrawn or certain of its requirements relaxed or waived, they should write to the main parties inviting their comments within a reasonable period.
- 7.22 Depending on the circumstances of the case, the Council might also need to seek arboricultural, horticultural, ecological, landscape or conservation advice or consult specialist bodies (see paragraph 5.48).
- 7.23 If any of the main parties indicate at any time that they no longer wish to proceed with the application or they object to it, it should automatically fall. In these circumstances, the Council should inform all the main parties of the position and state that they will be taking no further action.
- 7.24 If one person still wants to go ahead and believes they can make a case for withdrawal of the remedial notice, or the waiver or relaxation of certain of its requirements, on the grounds that there has been a material change of circumstances since the Council last looked at the matter, they should make a new, separate application. This should be dealt with under the procedure described in the section below on *Material Change in Circumstances*.
- 7.25 If objections or representations are received from other consultees, the Council must consider these before withdrawing the remedial notice, or relaxing or waiving any of its requirements. This might necessitate a visit to the site and its surroundings.
- 7.26 As noted above, the wishes of the people involved in the dispute should normally prevail. Where the main parties to the complaint are happy to proceed, therefore, objections or representations from other consultees would need to be significant. For example, that the hedge is located in a sensitive area and that the changes sought would have a major impact on local amenity.
- 7.27 In any event, the Council should notify the main parties, plus anyone who submitted representations, of their decision on the application.
- 7.28 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Council should send to the main parties a suitably annotated/endorsed

version of the remedial notice. The annotations should include specifying a date when the changes to the notice come into operation. The Council should also ensure that the record held by the local land charges register is amended (see paragraph 6.61).

Appeal rights

- 7.29 Given that the Council would simply be implementing the parties' wishes, there are no rights of appeal against the Council's decision in these cases.

Material Change in Circumstances

- 7.30 Over time, circumstances might change to the extent that keeping to the requirements of the remedial notice adversely affects the reasonable enjoyment of their property by the complainant – or their successors – or the owner or occupier of the land where the hedge is situated. This relates primarily to any requirements in respect of longer-term maintenance of the hedge (preventative action).
- 7.31 It is most unlikely that circumstances will have changed to such a degree that any relaxation or waiver of the initial one-off works (remedial or initial action) would be justified.

Material change

- 7.32 A material change in circumstances is something that significantly affects the Council's decision on the original complaint. If the circumstances had been known to the Council at the time, it might have caused them to reach a different conclusion.
- 7.33 Examples of what might constitute a material change in circumstances include:
- development on either the affected property or the land where the hedge is situated which means that the hedge is no longer an adequate screen or does not sufficiently safeguard privacy. This might be small-scale development within permitted development rights. Or it could involve new higher density housing, or other buildings, on the site;
 - change of use or increased activity on either the affected property or the land where the hedge is situated which the hedge does not adequately screen out. In the case of the complainant's property, part of it would still have to be used for domestic purposes, otherwise the Act would no longer apply. For example, someone might live in and work from the property.
- 7.34 A change in ownership of either the affected property or the land where the hedge is situated is unlikely to represent a material change in circumstances for these purposes. This is unrelated to the effect that the hedge has on anyone's reasonable enjoyment of their property.

Procedure

- 7.35 If the Council are approached by someone who wishes to apply for a remedial notice to be withdrawn, or for certain of its requirements to be waived or relaxed, they are advised to follow a similar process to that used when dealing with the original complaint – as set out in Chapter 5.

Resolving the dispute amicably

- 7.36 This includes encouraging the applicant to try to reach agreement with the other main parties on the alterations sought to the notice. If they can agree a way forward, a joint application

should be submitted under the simplified procedure set out in the section above on *Main Parties Agree a Different Solution*.

Application

- 7.37 If the other main parties do not agree to the alterations, a formal application should be made to the Council for the remedial notice to be amended or withdrawn. This should include the following information:
- the applicant's name, address and other contact details;
 - the name and address of whichever of the complainant – or their successors – or the owner or occupier of the land where the hedge is situated is not the applicant;
 - a copy of the original remedial notice;
 - whether the applicant seeks withdrawal of the notice or for certain requirements to be waived or relaxed. It will help the Council if the applicant explains what requirements they wish to see altered;
 - details of the steps taken to settle the matter by negotiation, with copies of relevant correspondence or other papers;
 - reasons in support of the application. This should include:
 - what has changed since the original complaint was considered to justify re-opening the matter;
 - details of how maintaining the hedge in accordance with the terms of the notice is adversely affecting the applicant's reasonable enjoyment of their property. It will help the Council if this does not just list the problems caused by the hedge but explains their severity and their impact, in factual terms.
- 7.38 The applicant should send a copy of their application to the other main parties involved in the original complaint – or their successors – at the same time as they submit it to the Council.

Exchanging representations and site visit

- 7.39 On receipt of an application, the Council should follow the steps outlined in Chapter 5: *Gathering the Evidence* for exchanging representations between the main parties and consulting other relevant interests. A visit to the site is also likely to be necessary. All relevant papers should be seen by the main parties so that the process is open and transparent.

Deciding the application

- 7.40 As described in Chapter 5, in reaching their decision, the Council should consider all relevant factors and assess each application on its particular merits. It will normally come down to a question of balance between the various arguments for and against continuing with the current management regime for the hedge.
- 7.41 In carrying out this balancing act, Councils should ask themselves:
- does maintaining the hedge in its current state adversely affect the reasonable enjoyment of their property by either the complainant – or their successors – or by the owner or occupier of the land where the hedge is situated;

- how severe is the impact of the hedge and is this sufficient to justify withdrawing the original notice or waiving or relaxing some of its requirements;
- what, if any, adjustments need to be made to the original remedial notice to remedy these problems and to prevent them from recurring;
- are there any reasons why such alterations should be moderated or the current requirements retained, having regard in particular to all representations received and to the impact on the character and amenity of the area.

7.42 The Council must notify the main parties of their decision and the reasons for it. The Council should also explain the rights of appeal against their decision, enclosing a copy of the explanatory leaflet *High hedges: appealing against the Council's decision* and providing the contact details for the Planning Inspectorate.

7.43 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Council should send to the main parties a suitably annotated/endorsed version of the remedial notice. They should also ensure that the record on the local land charges register is amended (see paragraph 6.61).

7.44 The decision letter should specify a date when the changes to the notice come into operation. This should be set at least 28 days after the date of the Council's decision to allow time for the main parties to appeal against the decision. The decision in question will be held in abeyance while any appeal is determined and the requirements of the original notice will continue to apply.

Appeal rights

7.45 There is no specific right of appeal under the Act if the Council rejects an application for a remedial notice to be withdrawn or for some of its requirements to be waived or relaxed, and decides in favour of retaining the current arrangements. If someone believes the Council did not make the decision in the right way, they can refer the matter to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

7.46 Any of the main parties may appeal against the Council's decision to withdraw a remedial notice, or to waive or relax any of its requirements. Chapter 8: *Grounds of Appeal* explains the grounds on which such an appeal can be made.

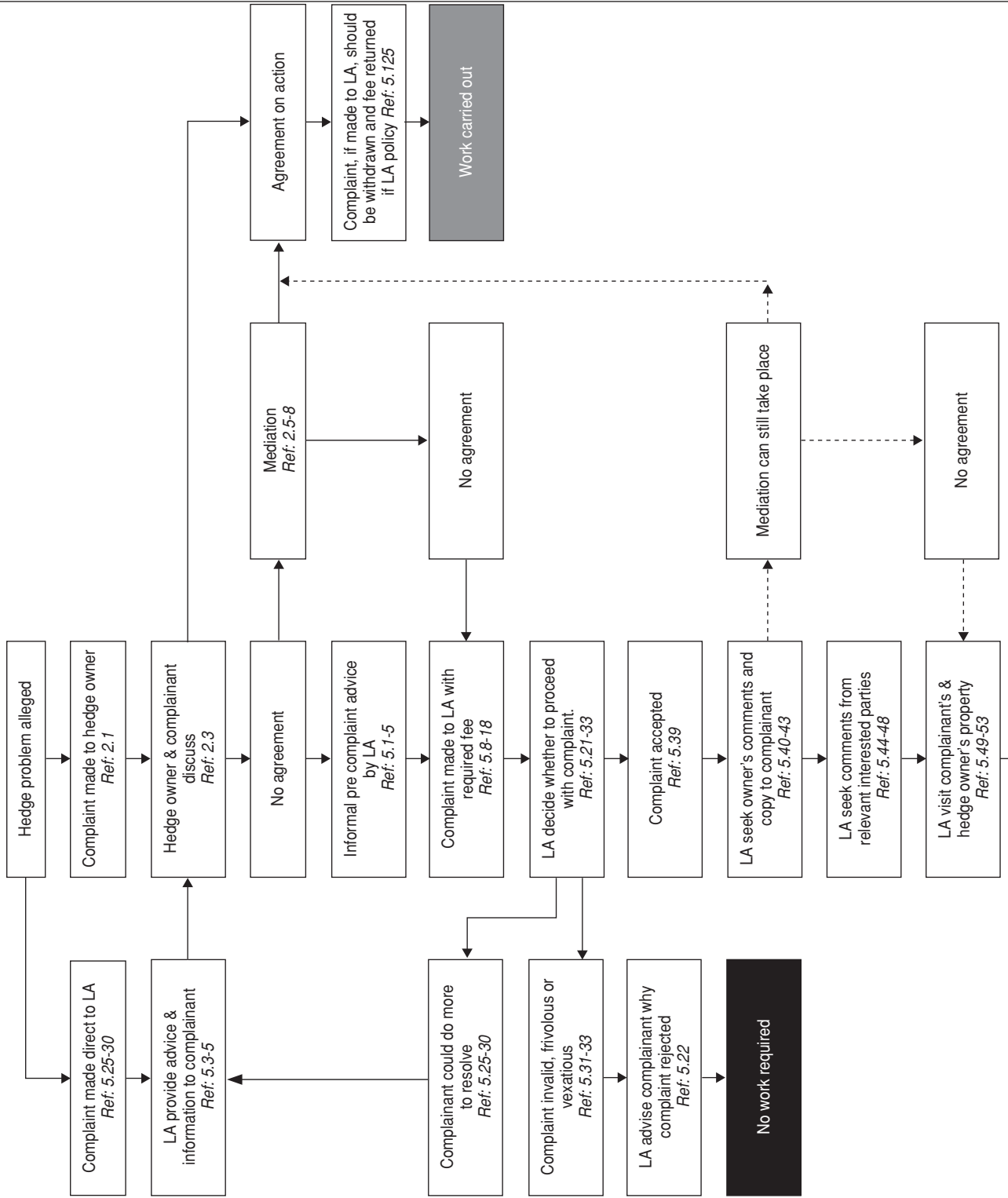
Case Beyond the Scope of the Act

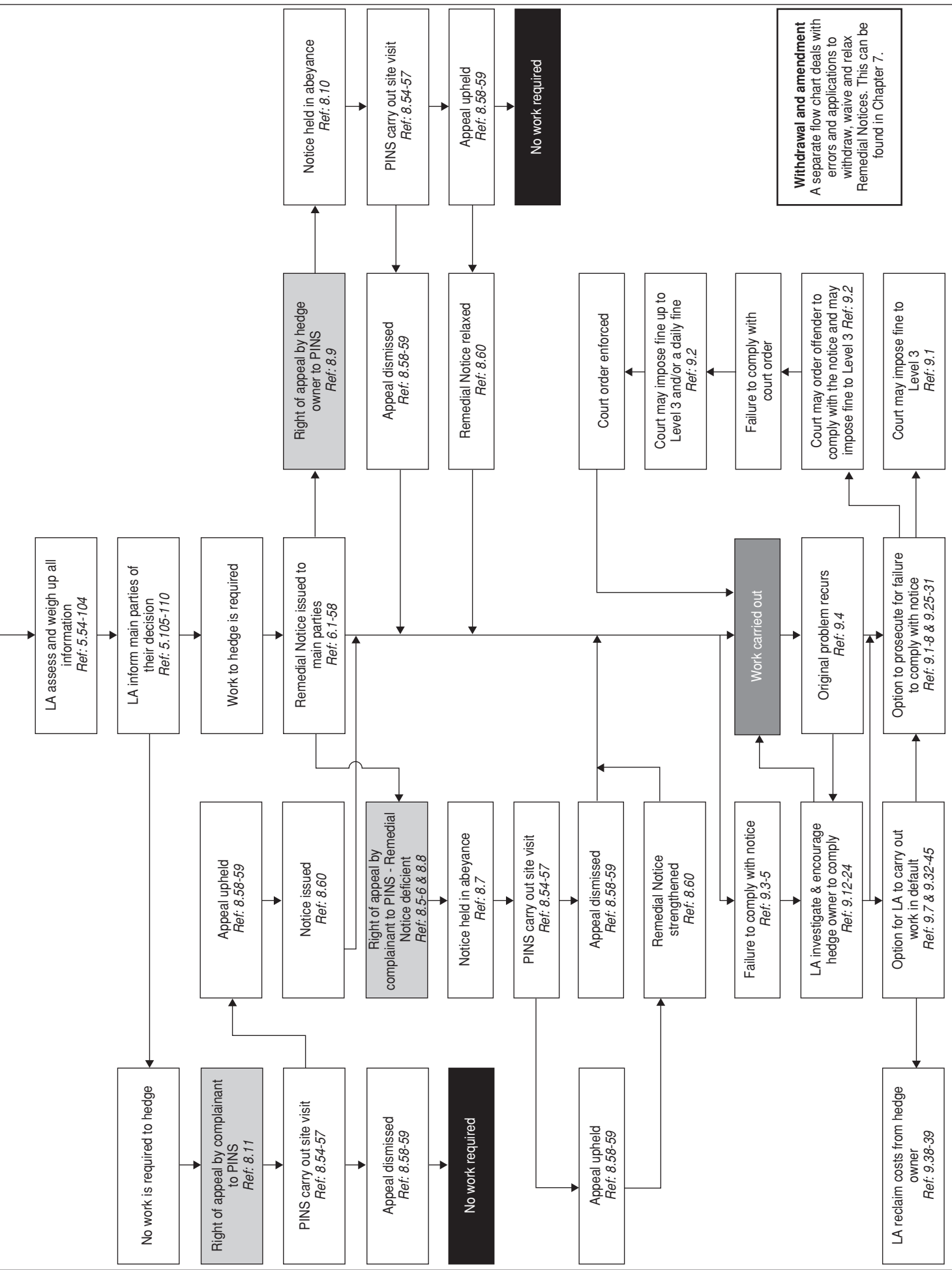
7.47 Changes might arise that take the case outside the scope of the Act, with the result that the remedial notice can no longer be enforced. For example, if the hedge is removed or the affected property is no longer classed as domestic use. Although the remedial notice would have no practical effect, it remains a local land charge until the Council removes it.

7.48 If Councils are asked formally to withdraw a remedial notice for these reasons, it is good practice to notify the main parties of their intention to withdraw the notice, and to invite comments within a set period. This will help provide assurance that the hedge has been removed or other change has taken place.

7.49 Provided that any comments received do not identify a problem, the Council should send to the main parties a copy of the remedial notice, endorsed to verify its withdrawal. They should also confirm that the relevant record on the local land charges register has been deleted.

Figure 4 Overview of process. Charts on specific elements can be found with the relevant text





Withdrawal and amendment
 A separate flow chart deals with errors and applications to withdraw, waive or relax Remedial Notices. This can be found in Chapter 7.

Exceeding the Requirements of a Remedial Notice

- 7.50 As noted in paragraph 7.18, if the owner or occupier of the site with the hedge wishes to carry out works that go further than the remedial notice requires, it is open to them do so at any time – unless other legal restrictions apply.
- 7.51 On the other hand, if the owner or occupier of the affected property – the complainant or their successors – wants to see a more drastic management regime implemented, they should in the first place seek to negotiate a solution with the owner or occupier of the land where the hedge is situated.
- 7.52 Where such negotiations fail, the owner or occupier of the affected property would need to make a fresh complaint to the Council following the procedure set out in Chapter 5 – provided that the hedge continues to meet the definition of a high hedge (see Chapter 4: *High Hedges*) and the affected property remains in domestic use.
- 7.53 This would include payment of a fee and provision of evidence that reasonable steps had been taken to resolve the matter without involving the Council. As with any application to relax the requirements of a remedial notice, the complainant would need to show there had been some change in circumstances since the Council last considered the case that justifies re-opening the matter. Without this, the Council could reject the complaint as frivolous or vexatious. They would also take account of the time that has elapsed since the original remedial notice was issued.

Chapter 8: Appeals

Council decisions that can be appealed against – grounds of appeal – appeal form – time limit for submitting appeals – parties to an appeal – gathering relevant information – site visit – deciding the appeal

- 8.1 Although the right of appeal is to the Secretary of State, all his appeals functions are carried out by the Planning Inspectorate (PINS). They handle all matters related to appeals, from submission to appeal decision.
- 8.2 A separate leaflet *High hedges: appealing against the Council's decision* is available for potential appellants.

Rights of Appeal

- 8.3 Under the Act⁵⁵, the complainant and the owner and occupier of the land where the hedge is situated can appeal against:
- the issue of a remedial notice;
 - the withdrawal of a remedial notice;
 - the waiver or relaxation of its requirements.
- 8.4 In addition, the complainant can appeal against:
- a decision by the Council that the height of the hedge is not adversely affecting their reasonable enjoyment of their property;
 - a decision not to require remedial action even though the height of the hedge is causing problems⁵⁶.

Grounds of Appeal

Issue of a remedial notice: complainant

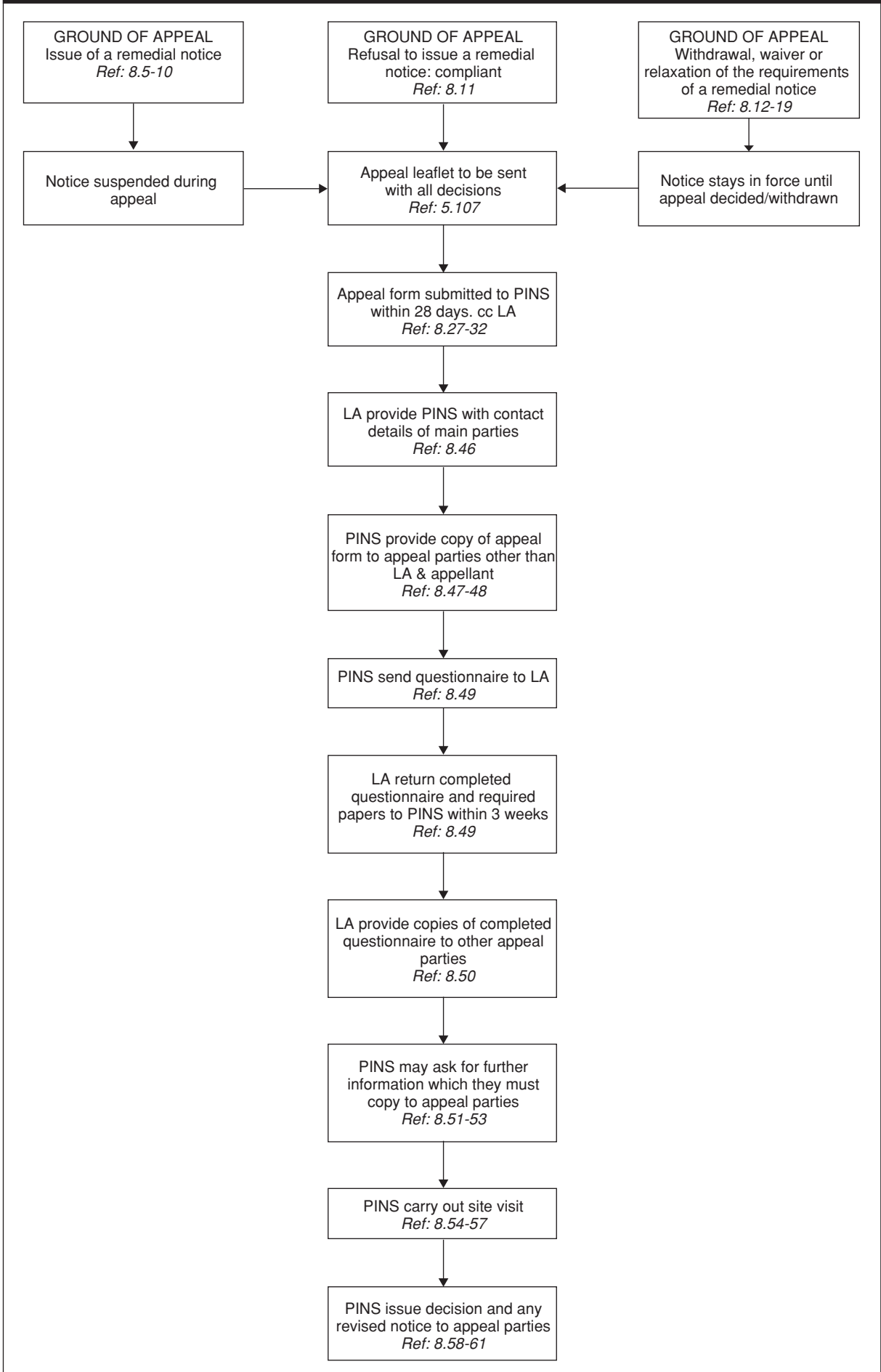
- 8.5 The Appeal Regulations⁵⁷ specify that appeals relating to the issue of a remedial notice can be made by the complainant on the grounds that the remedial action or preventative action specified in the remedial notice (or both) fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring. The appeal may, therefore, be against the initial action (ie one-off works) and/or against the preventative action (ie longer-term management) specified in the notice.
- 8.6 Reasons for appealing on such grounds might include:
- that, in determining a suitable management solution, the Council have attached insufficient weight to the problems that the complainant experiences with the hedge;
 - that the Council have overestimated the contribution that the hedge makes to the amenity of the neighbourhood;

⁵⁵ Section 71(1).

⁵⁶ Section 71(3).

⁵⁷ Regulation 3(b) of the Appeals Regulations.

Figure 5 Appeal process



- that more extensive works can be carried out without affecting the amenity of the people occupying the property where the hedge is situated;
- that more extensive works can feasibly be undertaken, without being detrimental to the health of the hedge;
- that alternative works would be more effective in remedying the problems caused by the hedge or in preventing them recurring.

8.7 The remedial notice is suspended while the appeal is being determined.

8.8 Complainants cannot appeal on the grounds that too much time has been allowed to carry out the works specified in the remedial notice. An appeal is likely to prolong the timetable and so is unlikely to be of any advantage to the complainant.

Issue of a remedial notice: owner or occupier of the land with the hedge

8.9 Appeals against the issue of a remedial notice can be made by the owner or occupier of the land where the hedge is situated on the following grounds⁵⁸:

- a. that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property. Reasons for appealing on such grounds might include the following:
 - that the Council have overestimated the problems experienced by the complainant;
 - that the Council have attached insufficient weight to the contribution that the hedge makes to the amenity of their property or to the neighbourhood.
- b. that the remedial action or preventative action specified in the remedial notice (or both) exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring. Reasons for appealing on such grounds might include the following:
 - that the works to the hedge specified in the remedial notice would adversely affect the amenity of their property or of the neighbourhood;
 - that the works could lead to the death of the hedge;
 - that alternative works provide a more effective remedy.
- c. that not enough time has been allowed to carry out the works set out in the notice.

8.10 The remedial notice is suspended while the appeal is being determined.

Refusal to issue a remedial notice: complainant

8.11 The complainant can, in addition, appeal against a Council's decision that the height of the hedge is not adversely affecting their reasonable enjoyment of their property; or not to require remedial action. Such an appeal can be made on the following grounds⁵⁹:

- a. that, contrary to the decision of the Council, the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property; and/or
- b. that the adverse effect warrants action being taken in relation to the hedge.

⁵⁸ Regulations 3(a), (c) and (d).

⁵⁹ Regulation 5.

Withdrawal of a remedial notice

- 8.12 There would be no advantage to the owner or occupier of the land where the hedge is situated in appealing against the withdrawal of a remedial notice. The grounds of appeal in the Appeal Regulations⁶⁰ envisage, therefore, that only complainants – or their successors – would wish to exercise the right of appeal against a decision to withdraw such a notice.
- 8.13 Before a complainant – or their successors – can appeal against the withdrawal of a remedial notice, the following conditions must be met:
- a. that the complainant – or their successors – did not agree to the withdrawal of the remedial notice; and
 - b. that the Council have not issued a new remedial notice relating to the same hedge.
- 8.14 These conditions effectively rule out appeals against:
- a Council decision to withdraw a remedial notice where they immediately replace it with a new one (eg to correct an error or omission). In such cases, an aggrieved complainant or owner or occupier of the land where the hedge is situated would exercise their right of appeal against the issue of a new remedial notice (see Chapter 7: *Correcting Errors*);
 - a Council decision to withdraw a remedial notice where they are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).
- 8.15 Provided the two conditions described above are met, the complainant – or their successors – may appeal against a decision to withdraw a remedial notice on the grounds that there has been no material change in circumstances since the original notice was issued that would justify its withdrawal.
- 8.16 The decision to withdraw a remedial notice is suspended while the appeal is being determined. The original notice, therefore, remains in force until the appeal is decided or is withdrawn.

Waiver or relaxation of the requirements of a remedial notice

- 8.17 The Appeal Regulations specify that an appeal can be made in relation to a decision to waive or relax the requirements of a remedial notice only if the person wishing to appeal did not agree to the change⁶¹. This rules out appeals in cases where the Council are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).
- 8.18 Provided this condition is met, the complainant – or their successors – and the owner or occupier of the land where the hedge is situated may appeal against a decision to waive or relax the requirements of a remedial notice on the following grounds:
- a. that there has been no material change in circumstances since the notice was issued that would justify waiving or relaxing its requirements;
 - b. that the revised requirements fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
 - c. that, conversely, the revised requirements exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring.
- 8.19 The decision to waive or relax the requirements of a remedial notice is suspended while the appeal is being determined. The requirements of the original notice, therefore, remain in force until the appeal is decided or is withdrawn.

⁶⁰ Regulation 4(1).

⁶¹ Regulation 4(2).

Before Making an Appeal

- 8.20 There is no charge for appeals. Nevertheless, appeals are expensive to administer and time consuming for all those involved and so should not be made lightly.
- 8.21 Communication between the people involved in the dispute is to be encouraged at all stages of the process, including during the period for making an appeal. In particular, if the people concerned agree a different solution to that specified in the remedial notice, they should consider submitting a joint application to the Council to waive or relax the requirements of the notice, under the simplified procedure set out in Chapter 7: *Main Parties Agree a Different Solution*, rather than go through the appeals process.
- 8.22 In addition, complainants – or their successors – and the owner or occupier of the land where the hedge is situated should use the appeal period to seek additional information from the Council if they are uncertain of the reasons for the Council’s decision.
- 8.23 Potential appellants should note that the Secretary of State or the Inspector dealing with the appeal will have regard to this guidance, especially the advice in Chapter 5 on *Assessing and Weighing the Evidence* and on *Deciding the Complaint*.
- 8.24 In addition, they should bear in mind that the other party to the complaint or the decision in question could also appeal. In these circumstances, the cases will be considered together and it is possible that one party could find they are worse off as a result of the appeal decision.
- 8.25 For example, the complainant might appeal against a remedial notice because they consider its requirements are not tough enough. At the same time, the owner or occupier of the land with the hedge might appeal to have the remedial notice removed. It is possible that the Secretary of State or the Inspector could decide to dismiss the complainant’s appeal but allow that from the owner or occupier of the site in question, and quash the remedial notice. Alternatively, they could decide to allow the complainant’s appeal and dismiss that from the owner or occupier of the site in question, and make the requirements of the remedial notice more onerous.
- 8.26 It is important, therefore, that potential appellants carefully assess the merits of their case and the prospects of success of any appeal.

Submitting an Appeal

Appeal form

- 8.27 Appeals should be submitted on the official form provided by the Planning Inspectorate⁶². The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
 Planning Inspectorate
 Regus House
 Room 2/15
 1 Friary
 Temple Quay
 Bristol BS1 6EA
 Telephone: 0117 344 5687.

- 8.28 The appeal form should be completed accurately, including the full grounds of appeal, and should be accompanied by all the relevant documents. These will normally include a copy of

⁶² Regulation 7(1).

the Council's decision letter and any remedial notice in question. Appellants should not merely list the grounds of appeal that are relevant to their case. They should explain why they disagree with the reasons given by the Council in support of their decision. Where the appeal is against the issue of a remedial notice, appellants should make clear what action specified in the notice (remedial action or preventative action, or both) is the subject of the appeal.

- 8.29 The completed appeal form and enclosures should be sent or emailed to the Planning Inspectorate. See Chapter 5: *Delivering Documents* for more information about how to deliver documents.
- 8.30 The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question⁶³.

Time limits

- 8.31 The completed appeals form and other documents must be received by the Planning Inspectorate within 28 days, starting from:
- the date the remedial notice is issued;
 - the date of the Council's notification to the main parties that it has decided to take no action in relation to the hedge; or
 - the date that the Council notifies the main parties it has decided to withdraw a remedial notice or to waive or relax its requirements⁶⁴.
- 8.32 Although there is discretion to allow extra time⁶⁵, this is normally exercised only in exceptional circumstances. For example, where appeal rights were not properly explained in the Council's decision letter or where personal circumstances (such as enforced absence) meant that the appellant received the decision late in the appeal period or after it had run out.

The Parties to an Appeal and their Role

- 8.33 The parties to an appeal relating to a high hedge are⁶⁶:
- the appellant;
 - the Council; and
 - every person, other than the appellant, who is:
 - a complainant – or has succeeded them as owner or occupier of the domestic property that is affected by the high hedge; or
 - an owner or occupier of the land where the hedge is situated.
- 8.34 References to the appeal parties in the rest of this Chapter include all the above. All play an equal part in the process and see all relevant papers. All must be notified of the appeal decision.

⁶³ Regulation 7(2).

⁶⁴ Section 71(4)(a) and (5).

⁶⁵ Section 71(4)(b).

⁶⁶ See regulation 2.

- 8.35 Other people or organisations who made representations to the Council about the decision that is the subject of the appeal have no direct role in the appeals process. Their original representations will be supplied to the Planning Inspectorate and taken into account in deciding the appeal.

Uncommon cases

- 8.36 As noted above, appeals against a remedial notice – or against a Council decision to withdraw such a notice, or to waive or relax its requirements – may be brought by both the complainant and the owner or occupier of the land where the hedge is situated. There could, therefore, be multiple appeals against a single notice or decision of the Council. In these circumstances, the Planning Inspectorate will consider the appeals together and will issue a single decision notice informing all the appeal parties of the outcome.
- 8.37 Where a Council issue more than one remedial notice in response to a complaint, as a general rule each notice may be appealed individually. In these and other cases that involve multiple hedges or hedge owners, the Planning Inspectorate will normally adopt a similar approach to that used by Councils in dealing with the original complaints, as set out below.

Multiple complainants, single hedge, one owner

- 8.38 The Council would have issued separate remedial notices in respect of each complaint. While the owner or occupier of the land where the hedge is situated has a right of appeal against all or any of the notices, the complainant can appeal only against the notice relating to the section of hedge that affects their property.
- 8.39 Appeals against a particular remedial notice will need to be considered on their individual merits and separate decisions will be issued in respect of each remedial notice. But the cases will be linked as they are processed so that the relationship between them, and the practical implications for the hedge owner, can be considered.

One complainant, single hedge, multiple owners

- 8.40 Both the complainant and every owner and occupier of the land where the hedge is situated have a right of appeal against the single remedial notice issued by the Council. All such appeals will be considered together and a single decision notice issued.

One complainant, multiple hedges, one owner

- 8.41 Both the complainant and the owner or occupier of the land where the hedge is situated can appeal against all or any remedial notices issued in response to the original complaint. The complainant may also appeal against a Council decision not to require remedial action in relation to any hedge.
- 8.42 As the Council did beforehand, the Planning Inspectorate will need to look at the effect of each hedge that is the subject of an appeal individually as well as considering their cumulative impact. The Planning Inspectorate will, therefore, consider the cases together and issue a single decision notice.

One complainant, multiple hedges, multiple owners

- 8.43 In these circumstances, the complainant has the right of appeal against all or any remedial notices issued by the Council, as well as any decision not to require remedial action in relation

to any hedge affecting their property. The owner or occupier of the land where the hedge is situated can appeal only against any remedial notice issued in respect of their hedge.

- 8.44 As in the previous example, the effect of each hedge that is the subject of an appeal will need to be considered individually as well as looking at their cumulative impact. As a result, the appeals will need to be considered together and a single decision notice issued – even though different people might be involved in the appeals in question.

Appeals Procedure

- 8.45 All appeals will be decided on the basis of written submissions, chiefly those made during consideration of the original complaint or request, plus a visit to the site by the Inspector appointed to determine the case.

Preliminary information

- 8.46 On receipt of their copy of the appeal form and accompanying documents, the Council must provide the Planning Inspectorate with the names and addresses of everyone – other than the appellant – who is a party to the appeal (see paragraph 8.33)⁶⁷. The information should be readily available on the Council's case file and so should be supplied promptly, normally within a few days of receiving the appeal form.
- 8.47 When the Planning Inspectorate have received a properly completed appeals form and all accompanying documents, and the preliminary information set out above, they will notify the appeal parties – other than the appellant and the Council – of the appeal and send them a copy of the completed form⁶⁸.
- 8.48 The Inspectorate will also provide the name and contact details of the officer who will be handling the case⁶⁹.

Questionnaire

- 8.49 The Planning Inspectorate obtain background papers relevant to the appeal by issuing a questionnaire, to be completed by the Council⁷⁰. The Council normally have 3 weeks to return the completed questionnaire and to provide these papers⁷¹. Relevant papers include:
- the complaint, or the request to withdraw a remedial notice, or to waive or relax its requirements, together with supporting information;
 - the hedge owner's representations and supporting information;
 - any representations received from people other than the main parties (eg neighbours, local amenity societies);
 - comments from any organisations that the local authority consulted;
 - any report prepared by the case officer;

⁶⁷ Regulation 8.

⁶⁸ Regulation 9(1)(b).

⁶⁹ Regulation 9(1)(a).

⁷⁰ Regulation 9(1)(c).

⁷¹ Regulation 10(1).

- relevant extracts from any policies or other documents referred to in the officer's report;
- minutes of any committee meeting where the decision in question was discussed;
- the Council's decision letter;
- any remedial notice issued, or amended to waive or relax its requirements.

8.50 The Council must send a copy of the completed questionnaire to all the other appeal parties. They are not required to provide them with copies of all the background papers, most of which they will have seen previously. The Council should, however, be prepared to supply copies of selected documents on request.

Additional information

8.51 The Planning Inspectorate have discretion to ask for further information that they consider is relevant to the appeal⁷². They will exercise this discretion, in particular, if it is apparent that representations submitted at the complaint stage (including those from other interested people or organisations) have not been disclosed to the main parties, or if they believe that the appeal raises new points, or includes fresh information, not previously been considered by the Council. In these circumstances, the Planning Inspectorate will copy relevant papers to all the appeal parties and invite their comments. These must be submitted within the deadline set by the Planning Inspectorate, who will send a copy of these comments to all the other appeal parties.

8.52 It is important to keep to the timetable set by the Planning Inspectorate. If they do not receive comments by the date set, they might not accept them⁷³. This means that they would not be taken into account by the Inspector.

8.53 The Inspector who determines the appeal may also request additional information from the appeal parties. For example, as a consequence of something noted during the site visit.

Site visit

8.54 When the written evidence has been gathered, the Planning Inspectorate arrange for an Inspector to visit the site of the hedge. The Inspector, who is impartial, is responsible for determining the appeal.

8.55 No discussion of the merits of the appeal is allowed at a site visit. It will, however, normally be necessary for someone to attend so that the Inspector can gain access to the site of the hedge and to the affected property. For example, the Inspector may need to go through someone's home in order to reach a hedge that is situated in a back garden. In these circumstances, the Inspector would generally be accompanied at all times by all the appeal parties. This would include the complainant (or their successors) and the occupier of the land where the hedge is situated, or their representatives, as well as the Council. This provides assurance that the site visit has been conducted in a fair and impartial manner and that no inappropriate discussion has taken place.

8.56 As on-site discussion is not allowed, it is not necessary for the Council to be represented by the officer who dealt with the original decision. Site visits will not normally be delayed, therefore, because the officer concerned would be unavailable on the date suggested.

⁷² Regulation 11.

⁷³ Regulation 12.

- 8.57 The Inspector has the same rights to enter the land where the hedge is situated as the Council officer who dealt with the original complaint⁷⁴. The Inspector is also subject to the same obligations in respect of prior notice (see Chapter 9: *Entry to Land*).

Appeal Decision

- 8.58 In determining appeals, the appointed Inspector may allow or dismiss an appeal, either in total or in part⁷⁵.
- 8.59 The Act⁷⁶ requires the Inspector to notify the Council, the complainant (or their successors) and the owner and occupier of the land where the hedge is situated of their decision as soon as is reasonably practicable. He must also notify the appeal parties, in writing, of the reasons for his decision⁷⁷.
- 8.60 The Inspector will also copy to all the appeal parties, with the decision letter, any new or revised remedial notice, as follows:
- if he allows an appeal against a Council decision **not** to issue a remedial notice in response to the original complaint, the Inspector will issue a new notice⁷⁸;
 - if he decides to allow an appeal relating to a remedial notice, he will vary the requirements in the notice to reflect his decision⁷⁹;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the notice to correct any defect, error or misdescription in the original, provided this will not cause injustice⁸⁰;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the date when it comes into effect (“the operative date” – see paragraph 6.12). This will be either the date of the Inspector’s decision or such later date as he may set. The compliance period (see paragraph 6.13) will start again from the revised operative date.
- 8.61 The Inspector’s decision is binding on the complainant (or their successors) and on the owner or occupier of the site where the hedge is located, even if they did not bring an appeal.

Withdrawal of Appeal

- 8.62 The appellant may withdraw their appeal at any time. In these circumstances, the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements, would take effect from the date that the appeal is withdrawn.

Review of Appeal Decision

- 8.63 There is no separate right of appeal against an appeal decision. The only recourse is by applying to the High Court to challenge the decision by judicial review. Such a review is designed to ensure that the powers laid down in the Act and the Appeal Regulations have been

⁷⁴ Section 74(2).

⁷⁵ Section 73(1).

⁷⁶ Section 73(4).

⁷⁷ Regulation 13.

⁷⁸ Section 73(2)(c).

⁷⁹ Section 73(2)(a) and (b).

⁸⁰ Section 73(3).

exercised properly and in accordance with good administration. It can be used, therefore, only to challenge the way the decision was made. It does not consider the merits of the appeal decision.

- 8.64 Permission is needed to bring an application for judicial review. This will only be granted where an applicant is able to satisfy the court that they have both sufficient interest in the matter and an arguable case. Anyone considering applying for judicial review would be well advised to seek specialist legal help. Community Legal Service (CLS) can help people to find the right legal advice⁸¹. An adviser can tell them whether they have a good case and can help with practical matters such as filling in court forms and preparing for hearings.

⁸¹ Search www.clsdirect.org.uk or telephone 0845 345 4 345.

Chapter 9: Enforcement

Offences and fines – person who enforcement action should be directed at – defences against prosecution – recording investigations – informal action – mounting a prosecution – Council intervention to carry out the required works – powers to enter the land where the hedge is situated

Offences

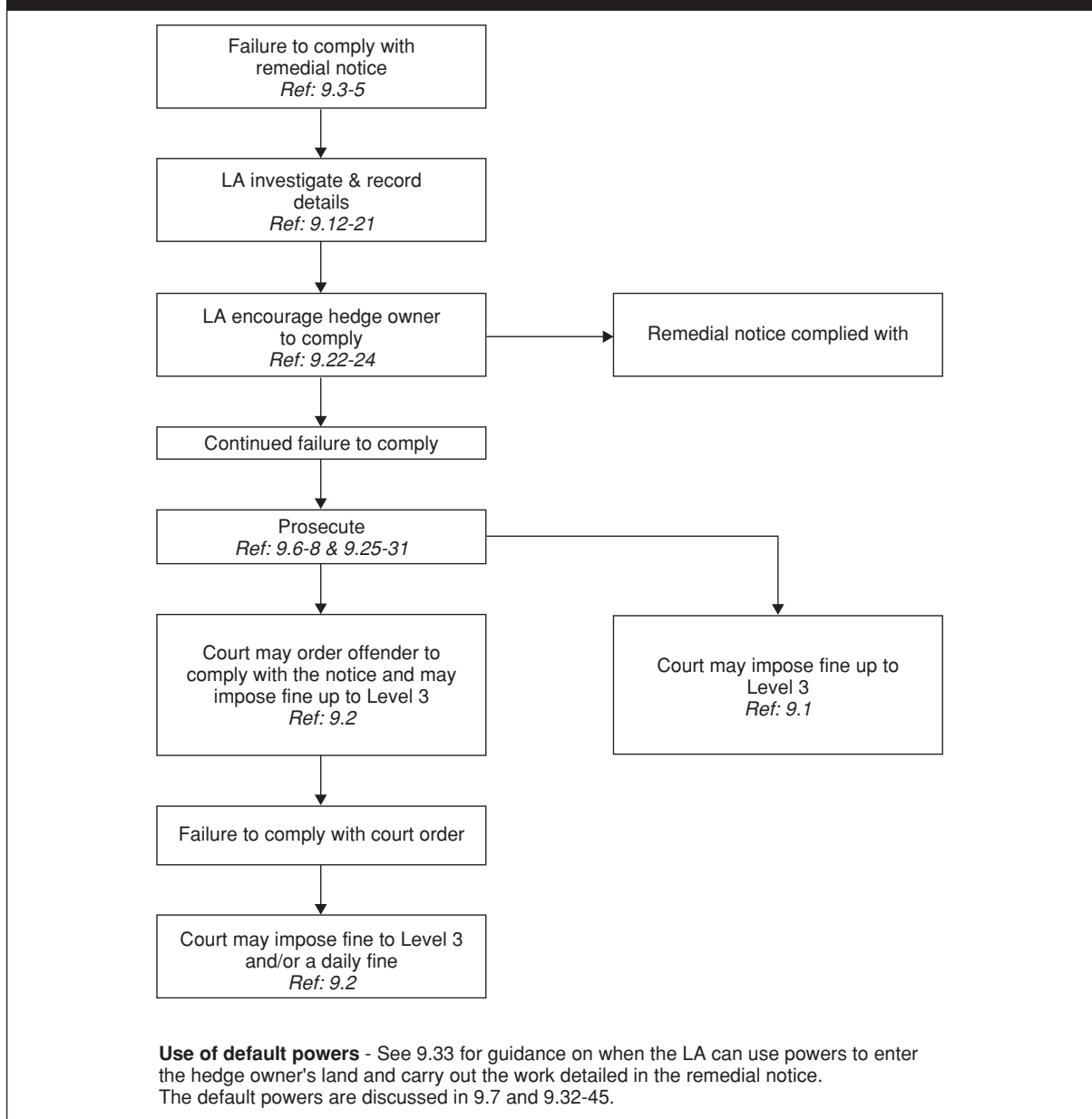
- 9.1 Failure to comply with the requirements of a remedial notice is an offence punishable, on conviction in the magistrates' court, to a level 3 fine (up to £1,000)⁸².
- 9.2 The court might then – in addition to, or in place of, a fine – issue an order for the offender to carry out the required work within a set period of time. Failure to comply with the court order would be another offence, liable to a level 3 fine. From this point, the court would also be able to set a daily fine of up to one twentieth of a level 3 fine for every day that the work remained outstanding⁸³.
- 9.3 This means that offences are committed:
- where someone does not complete the initial one-off action specified in the remedial notice within the time specified; and
 - where any continuing maintenance works are not carried out in accordance with the requirements set out in the notice.
- 9.4 A separate action may be brought against each contravention of a remedial notice. For example, someone could be prosecuted for failure to carry out the initial action specified in the remedial notice. They might then cut the hedge but subsequently fail to maintain it as required. This would be a separate offence for which they could also be prosecuted. Equally, if they then trimmed the hedge but did not do so again, as specified in the remedial notice, a new offence would be committed.
- 9.5 Where the requirements of a remedial notice are breached, whoever is the owner or occupier of the land where the hedge is situated at the time when the offence takes place could be liable to prosecution. This includes not only the owner and occupiers of the site who originally received copies of the remedial notice but also their successors (but see the section below on *Defences*).
- 9.6 Where there is both an owner and an occupier (eg landlord and tenant), Councils should initially direct enforcement action at the person who has legal responsibility for managing the hedge. However, general provisions in the Public Health Act 1936 (relating to the power of the courts to require an occupier to permit work to be done by an owner) apply so as to give the owner the right to comply with a remedial notice. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge. Ultimately, therefore, the landowner is responsible for ensuring the requirements of a remedial notice are implemented.
- 9.7 If, after reasonable enquiry, the Council are unable to trace the owner or occupier of the land where the hedge is situated, they effectively have no-one who can be charged with an offence, or against whom enforcement action can be taken⁸⁴. In these circumstances, Councils might

⁸² Section 75(1) and (2).

⁸³ Section 75(7) to (10).

⁸⁴ Ownerless property, under common law, passes to the Crown. The Treasury Solicitor, on behalf of the Crown, administers the estates of people who die intestate or without known kin and collects the assets of dissolved companies and failed trusts. Further information is on their website at www.bonavacantia.gov.uk. As a general rule, the Treasury Solicitor does not undertake any management responsibilities in respect of properties that it holds.

Figure 6 Options for enforcement



wish to consider using their power to enter the land and carry out the works specified in the remedial notice, in default of the owner or occupier (see the section below on *Council intervention*).

- 9.8 Where offences are committed by bodies corporate, proceedings can, in certain circumstances, be taken against individual officers as well as the body corporate.

Defences

- 9.9 A person will be able to defend themselves against prosecution under the Act if they can show that⁸⁵:

- they did all that could be expected of them to meet the requirements of a remedial notice. This is relevant where there is both an owner and an occupier of the land in question and a prosecution is brought against the person who does not have control of the hedge; and/or

⁸⁵ Section 75(3) to (5).

- they were not aware of the existence of the remedial notice at the time that the offence took place.

This last defence can be used only where the person was not sent a copy of the original remedial notice and could not be expected to know about it. Someone would normally be expected to know about the remedial notice if they own the site and the notice is registered as a local land charge.

- 9.10 These defences provide important safeguards against wrongful prosecution. But if allegations of any contravention of the Act are fully investigated before the case is brought to court and if any prosecution is focused on the person who has responsibility for the hedge, it should not be necessary for people to have to resort to them.
- 9.11 Other mitigating factors or explanation put forward by the person allegedly responsible for the offence (eg lack of financial or physical resources to carry out the works to the hedge, existence of restrictive covenant) would need to be taken into account in determining whether prosecution would be appropriate. Ultimately, it is for the person accused of the offence to prove their case to the court. As noted in paragraph 5.100, it is possible that, where a covenant gives rise to a clear nuisance, the courts might attach little weight to it.

Enforcement Procedures

- 9.12 It is for each Council to determine their policy and approach to enforcing remedial notices, depending on available resources. Most enforcement activity is, however, likely to be reactive – mainly responding to neighbours’ complaints of alleged failure to comply with the requirements of a remedial notice.
- 9.13 Enforcement action is nearly always labour-intensive. Even if Councils adopt a reactive approach, it would still be necessary to consider establishing a set of priorities to help them manage these cases effectively. The degree of harm caused by the alleged failure might be one criterion that could be used. For example, failing to carry out the initial one-off works, necessary to remedy the adverse effect of the hedge, within the time allowed might be considered more serious than allowing the hedge to grow just above the specified height between annual trims.
- 9.14 The general steps to be taken in evaluating and determining enforcement action should be:
- acknowledge the complaint of the alleged failure to comply with the requirements of a remedial notice;
 - investigate the current facts and the case history;
 - prepare a situation report, including any legal advice on issues raised by the investigation;
 - submit to the relevant decision-maker within the Council a considered recommendation on the enforcement action to be taken;
 - record and implement this decision;
 - report the outcome to the person who brought the matter to the Council’s attention;
 - monitor the practical effect of implementing the decision;
 - review the need for possible further enforcement action.

Documenting the Case

- 9.15 Throughout the enforcement process it is essential to maintain a complete, accurate and up to date record of all investigation carried out and assessment of the results. This is important even in those cases where the initial decision is not to take formal enforcement action. If it is necessary to return to the case in the future, officers dealing with it will be able quickly to establish the relevant facts and history.
- 9.16 The case record should contain the following information:
- the alleged contravention of a remedial notice, as notified to the Council;
 - the date of this first notification;
 - the identity of the person making the claim;
 - the address of the land where the hedge is situated;
 - the identity of the owner and any separate occupier of the land in question;
 - brief description of the hedge, including any relevant photographs (see paragraph 9.20);
 - the alleged contravention, as established by the Council's officers following initial investigations;
 - summary of the factual evidence;
 - summary of the case history;
 - summary of recommendations on enforcement action;
 - details of implementation of the Council's decision. These will vary according to the circumstances but – where they fall short of prosecution – might include:
 - date that the owner and occupier of the land where the hedge is situated are notified of the Council's decision;
 - summary of required steps;
 - time limit set for compliance;
 - result of the action taken by the Council;
 - legal action;
 - exercise of default powers;
 - recovery of costs;
 - summary of any subsequent monitoring of the situation.

Investigations

- 9.17 On receiving a complaint that the actions required under a remedial notice have not been carried out, the Council should investigate the allegations. They may wish to visit the site to collect and verify information.

- 9.18 If the results of these initial investigations suggest that an offence has occurred, the Council should contact the owner and occupier of the land where the hedge is situated, inform them of the alleged breach and seek their comments.
- 9.19 Under the Police and Criminal Evidence Act 1984, any officers – not just the police – who are responsible for investigating offences or charging offenders must have regard to the code of practice issued under the Act⁸⁶. The code sets out when it is necessary to caution people suspected of committing an offence, and how a caution should be given. The Council’s legal department should be able to advise officers how the code should be applied in practice to possible offences under this Act.
- 9.20 A complete documentary record of all investigations is essential (see the section above on *Documenting the Case*). Wherever possible, it should include photographic records which are signed and dated by the person taking the photographs. All photographic records should be accompanied by a location plan showing where each photograph was taken from.
- 9.21 It is good practice for Councils to inform the person who made the complaint what, if any, action they are taking to enforce the requirements of the remedial notice and the reasons for their decision.

Enforcement Action

- 9.22 What enforcement action, or combination of actions, Councils pursue will depend on the particular circumstances of the case. The main aim of any enforcement action should be to put right the harm that has been caused. This means identifying the measures most likely to ensure that the owner or occupier of the land in question carries out the required works to the hedge.

Informal action

- 9.23 In some cases, Councils might wish to hold an informal interview with the person to encourage them to comply with the remedial notice; or send them a formal warning letter of the consequences of their continuing failure to act.
- 9.24 Where investigations show that the owner or occupier was unaware of the existence of a remedial notice, the Council should provide them with a copy and should normally give them more time to comply.

Prosecutions

- 9.25 The decision to prosecute an individual is a serious step. And each case must be considered on its facts and merits.
- 9.26 The Code for Crown Prosecutors (issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985)⁸⁷ sets out a two stage test for use in deciding whether to mount a prosecution. The first stage involves consideration of the evidence, involving an evaluation of the strengths and weaknesses of the cases of both the prosecution and defence, to determine whether there is a realistic prospect of conviction. If this test is satisfied, the next stage is to look at whether a prosecution would be in the public interest. The Code identifies some common public interest factors both in favour of, and against, prosecution.

⁸⁶ Police and Criminal Evidence Act 1984: Code C ‘Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers’, available on the Home Office website at www.homeoffice.gov.uk.

⁸⁷ ‘The Code for Crown Prosecutors’, available on the Crown Prosecution Service website at www.cps.gov.uk. See Section 5, The Full Code Test.

- 9.27 Several of these principles might, depending on the circumstances of the particular case, be relevant to high hedges cases. For example:
- among the public interest factors in favour of prosecution:
 - the defendant’s previous convictions or cautions are relevant to the present offence;
 - there are grounds for believing that the offence is likely to be continued or repeated, eg by a history of recurring conduct;
 - a prosecution would have a significant positive impact on maintaining community confidence;
 - among the public interest factors militating against prosecution:
 - the offence was committed as a result of a genuine mistake or misunderstanding;
 - the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
 - the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated;
 - the defendant has put right the loss or harm that was caused.
- 9.28 Although the Code was written for Crown Prosecutors, Councils might wish to consider applying the same principles and approach to any potential prosecution under the Act.
- 9.29 If the Council consider that prosecution is the most appropriate way to secure compliance with a remedial notice, they will need evidence to show “beyond reasonable doubt” – the criminal standard of proof – that a requirement in the notice has been, or is being, contravened and so an offence has occurred (see the sections above on *Offences* and *Defences*).
- 9.30 The magistrates’ courts are likely to have little practical experience of such cases and so it will be helpful for the Council’s prosecutor to explain fully to the court the context in which the alleged offence has occurred.
- 9.31 Depending on the circumstances, the following approach might help the court to appreciate the strength of the prosecution’s case:
- explain that the provisions of section 77 of the Act make it an offence to contravene the requirements of a remedial notice;
 - describe the nature of the particular offence, in factual terms;
 - outline the actions taken by the Council to secure compliance with the remedial notice.

Council intervention

- 9.32 Councils have the power to enter the land where the hedge is situated and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements⁸⁸. Unlike the owner or occupier of the site with the hedge, the Council cannot exceed the requirements set out in the remedial notice.

⁸⁸ Section 77(1) and (2).

- 9.33 It is for Councils to consider whether they use these powers to carry out the works specified in the remedial notice; if so, when they employ them; and whether this is done instead of, or alongside, a prosecution. There is no requirement or obligation on Councils to intervene. As a result, there should not be a general expectation that Councils will step in, nor that they will do so immediately after a breach of a remedial notice occurs.
- 9.34 Where the Council decide to intervene, their action should be planned, organised and implemented with the utmost care. The owner or occupier of the land where the hedge is situated might strongly resent, and possibly try to prevent, the Council carrying out the necessary works. Anyone who wilfully obstructs an officer, or other person authorised by the Council, from entering the site in question and taking the necessary action is guilty of an offence⁸⁹. On conviction in the magistrates' court, they could be liable to a level 3 fine (up to £1,000).
- 9.35 Among the practical matters that Councils would need to consider when preparing to intervene are:
- what exactly needs to be done in order to enforce the requirements of the remedial notice;
 - what equipment will be needed;
 - the physical characteristics and constraints of the site;
 - the risks to operatives carrying out the work and how to ensure compliance with relevant health and safety regulations;
 - whether a breach of the peace is expected and whether the co-operation of the local police should be sought;
 - how long the work is likely to take and what is the best time of day to do it;
 - who has the necessary skills – the Council's own staff or a private contractor.
- 9.36 Councils are required to give 7 days' notice of their intention to go in and do the necessary work⁹⁰. If they anticipate that the owner or occupier of the land where the hedge is situated might attempt to obstruct them, it is good practice for the Council to warn those concerned that they could face criminal prosecution.
- 9.37 Where necessary, the Council may also use a vehicle to enter the land⁹¹. Otherwise, the general powers relating to *Entry to Land* (see below) apply.
- 9.38 The costs of this work can be recovered from the owner or occupier of the land⁹². This includes the cost of dealing with any waste removed from the site at the owner or occupier's request. Otherwise, waste may be left on the site, though Council operatives should ensure it is suitably stacked so that it does not present a hazard.
- 9.39 Any unpaid expenses would (until recovered) be registered as a charge on the property. This means that the Council should get their money back when the property is sold, if not before.

⁸⁹ Section 77(9).

⁹⁰ Section 77(5).

⁹¹ Section 77(7).

⁹² Section 77(3) and (4).

Entry to Land

- 9.40 Councils may authorise their officers to enter the land where the hedge is situated in order to obtain information that will help them decide⁹³:
- whether the complaint is one that can be considered under the legislation;
 - whether to issue or withdraw a remedial notice;
 - whether to waive or relax the requirements of a remedial notice; or
 - whether a notice has been breached.
- 9.41 At least 24 hours' notice of the intended entry must be given to all occupiers of the land⁹⁴. The Council might, in particular, need to gain quick access in order to establish whether or not the requirements of a remedial notice had been met. These might relate not only to the works that must be carried out to the hedge but also the timescale within which action must be taken. Timing of a site visit could, therefore, be critical.
- 9.42 Council officers entering land under these powers would be able to take with them other people, equipment or materials as necessary⁹⁵. They might, for example, need someone else to help them measure a hedge. In extreme cases, they might need to be accompanied by the Police. Council officers would also be able to take samples of a hedge to assist, for instance, in species identification.
- 9.43 Besides giving prior notice of their intentions, there would be other conditions that officers would have to meet when exercising these powers⁹⁶. In particular, they would – if asked – have to produce evidence of their authority to enter the land in question. If the land was unoccupied, they must leave it as effectively secured as they found it.
- 9.44 Intentionally obstructing any person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale (up to £1,000)⁹⁷.
- 9.45 Where a person exercising their rights of entry under these provisions causes damage, the owner or occupier of the property would be able to make a claim through the civil courts. The fact that they were operating under statutory powers would not be sufficient to defend Councils against liability for such damage. They would need to demonstrate that the damage was reasonable in the exercise of their statutory functions.

⁹³ Section 74(1).

⁹⁴ Section 74(3).

⁹⁵ Section 74(5).

⁹⁶ Section 74(4) and (6).

⁹⁷ Section 74(7).