



**Northern Ireland  
Assembly**

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**High Hedges Bill**

7 October 2010

**NORTHERN IRELAND ASSEMBLY**

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**Members present for all or part of the proceedings:**

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Roy Beggs  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Peter Weir  
Mr Brian Wilson

**Witnesses:**

Mr Robert Colwell     )     Mediation Northern Ireland  
Mr Peter O'Reilly     )  
  
Ms Claire Duddy     )     Carrickfergus Borough Council

**The Chairperson (Mr Boylan):**

We shall now receive a briefing from Mediation NI on the High Hedges Bill. I welcome Peter O'Reilly and Robert Colwell. I ask the witnesses to present to the Committee for five to 10 minutes, and I will then open the meeting up to questions from Committee members.

**Mr Peter O'Reilly (Mediation Northern Ireland):**

Thank you for the invitation to appear before the Committee to follow up on the submission that we made on the High Hedges Bill. All that I intend to do is to expand on some of the points that we made in the submission and take questions from Committee members.

For those members who do not know about our organisation, Mediation Northern Ireland is a mediation development agency that has operated in NI for the past 20 years. We have somehow managed to remain independent. It is a not-for-profit social enterprise, with a volunteer board of trustees; 12 staff; 25 associates, who are trained and experienced mediators employed on a sessional basis; and a team of volunteer mediators. By saying that we are a mediation development agency, we understand ourselves to be promoters and developers of the practice of mediation, and we support those who wish to develop mediation in their own sectors or agencies.

I shall speak to some contemporary thinking on handling conflict, and what I believe is a fairly reasonable capacity in Northern Ireland to deliver on what is planned at present through the Bill. I will also look at structures for delivery and mention confidentiality and impartiality as important principles underlying mediation.

We support the thinking and the proposed procedures to handle conflict in the Bill. I understand that I am speaking to what is guidance rather than legislation and that mediation will no longer be written into legislation but will instead be in the guidance on the procedures around its implementation.

At source, resolution as an idea has developed strongly throughout Europe and the Western World. European directive 2008/52/EC on certain aspects of mediation in civil and commercial matters promoted the use of, and access to, mediation. Lord Woolf previously considered how mediation should be promoted and used, and our own access to justice review is currently considering that. In its review of procedures for handling workplace disputes, the Department for Employment and Learning (DEL) also looked at the use of alternative dispute-resolution procedures, including mediation as early as possible and, again, at source. Members may be aware that the proposed public assemblies Bill also included the use of mediation, and that legislation may be introduced at some stage.

The mediation field can deliver, and that is something that we stated in our submission. There is a broad swathe of mediation practitioners throughout Northern Ireland, with varying degrees of experience. However, there are fairly high standards of training and accreditation of that training, and we have a system that can ensure quality of practice and the delivery of competent mediation services. There are various models of mediation delivery that the Committee could usefully consider recommending. Mediation is also becoming well known, and people have a growing understanding of what it can and cannot do for them throughout our society.

The 2008 European directive states:

“mediation can provide a cost-effective and quick extrajudicial resolution of disputes”.

However, it would be foolish to insist on mediation being used without paying attention to how the resource might be provided to allow people to use mediation. Many models could be considered in the context of the Bill. First, council or councils could use in-house mediators, with each council looking after provision itself. Secondly, councils could support the development of teams of local volunteers to deliver mediation, and, thirdly, councils could signpost people to privately provided — market-driven — mediation providers.

Another possibility is a shared-service approach, with a regional provider that councils could use. That could be an in-house approach; for example, some local government areas have staff who are trained mediators, and they could be used in another council area. There could be a quid pro quo arrangement among councils so that staff could go and mediate on situations for one other.

Alternatively, there could be a central service providing volunteer mediators who are independent of the council or any other agency, with some kind of service level agreement that could be core-funded. Councils could decide to leave it to a professional regional provider, and have a service level agreement with it, or leave it to market forces. Our recommendation is that a structure for the use of a regional service providing volunteer mediators would probably be the most efficient and effective way of providing the resource that the legislation needs.

Finally, I will make a point about confidentiality, impartiality and independence. Structuring

legislation is always difficult. If arbitration is going to be used later, what is the relationship between an earlier mediation process and a later arbitration, and can the arbitration take into account what has happened in the earlier mediation attempt? We argue strongly that mediation will work best if people know that what they are saying and doing during that mediation will not be used later on. The European directive expresses the strong view that Governments should protect the confidentiality of mediation, and that anything that happens in that process should be without prejudice to any later processes.

Underlying that is the fact that mediation can provide a shift in people's understanding of how they want the problem sorted out. The mediator's task is to get people to move into a collaborative, problem-solving mode as opposed to an adversarial, juridical approach to dealing with each other. Finally, we advise that, whatever structure or guidance is given to local government, mediators need to be impartial and independent, and seen to be so. The rest of our handout gives information about what mediation is and how it might work.

**The Chairperson:**

Thank you. Obviously, there is a role for councils and council staff. Do you envisage a role for your organisation in training those staff, and will you touch on some of the costs involved?

**Mr O'Reilly:**

The training of council officials costs something in the region of £1,000 a day to provide training for a group of 16 people. The standard practice is that people receive at least six days training before they are considered as approaching having the skills to implement mediations. That model has been used in different local government areas, particularly in England, to provide, for example, mediation in housing management. Councils train mediators and then share them around. The model has its pros and cons.

**Mr Weir:**

To follow on from the Chairperson's question, I appreciate that what I am about to ask you may be very difficult, if not impossible, to answer. You mentioned the cost of training people and suggested various training models. Have you any idea how much they would cost overall — even a ballpark figure — to implement? You said that there should be some form of shared

service, and you referred to volunteers. The question may be premature, but do you have any idea how much it would cost?

**Mr O'Reilly:**

The model that I recommend would aim to achieve the quality assurance standards that are beginning to be recognised throughout these islands. The Mediators' Institute of Ireland, based in Dublin, and the College of Mediators in the UK have developed similar standards. The initial cost of ensuring professional standardisation would be, and this is very much a ballpark figure, in the region of £10,000. That would leave us with a team and a sustainable system.

**Mr Weir:**

Do you mean £10,000 a council?

**Mr O'Reilly:**

I think that £10,000 would cover the region. For sustainability, we should avoid the council team approach. The number of cases to do with high hedges is not that many. We have not marketed ourselves for it, but we had an average of two such cases a year over the past number of years. Sustaining a team for that in each council area would not be efficient.

**Mr Weir:**

I appreciate that, and it was not what I was suggesting. However, I suspect that, when legislation comes into effect, there will be considerably more than two such cases a year. All of us are aware of quite a number of cases in our constituencies. Cases are not pursued at present because people know that, legally, nothing can be enforced, and so there is only complaining and shrugging of shoulders.

I agree with what you said about confidentiality, because it is important that what occurs in mediation be kept separate from the arbitration process.

You referred to the national bodies, such as the Mediators' Institute of Ireland.

**Mr O'Reilly:**

They are basically the professional standards bodies.

**Mr Weir:**

If there is a dispute within those bodies, to whom do they go? *[Laughter.]*

**Mr Beggs:**

Thank you, Mr O'Reilly, for giving the Committee your insight into this issue. You have mentioned possible routes forward. We could use professional or volunteer mediators. Do you accept that, even given the prices you cited earlier, it would be very expensive to have a professional role for an outside mediator in each individual case? I declare an interest as a member of Carrickfergus Borough Council.

**The Chairperson:**

You are on your home patch now, Mr Beggs.

**Mr Beggs:**

Indeed. Professional mediation would be an expensive route to go down. Presumably, it would cost £500 or £1,000 a day to use a professional mediator.

**Mr O'Reilly:**

I was referring to the training at that stage.

**Mr Beggs:**

How much a day does a professional mediator cost?

**The Chairperson:**

Personal questions. *[Laughter.]*

**Mr O'Reilly:**

It depends on the quality and experience of the mediator.

**Mr Beggs:**

You are not giving your hand away there. I suspect that it would be an expensive route to go down. If volunteer mediation is specified as essential in the guidance, there will be difficulties if

one cannot get volunteers in a particular area, or if demand for them peaked at certain times and volunteer mediators became unavailable. Do you accept that there might be problems there? There would be no harm in recommending volunteer mediators if they were available, but I would be concerned about making it a statutory requirement.

Do you accept that the best way forward might be for the council officers who are assessing a particular case to undergo that training so that they will have training and experience in the area when it comes to reaching a decision and arbitrating?

**Mr O'Reilly:**

There are pros to that model, one being cost efficiency, and there are difficulties with that as well. For example, some people would view council-employed mediators as not necessarily being impartial and may have difficulty trusting the confidentiality process if council employees are the mediators, and then, later on, the council is making an arbitration.

The model was developed in the Housing Executive, which has moved away from using officials trained in-house officials to using volunteer practitioners. The benefits of the volunteer model are that it is cheap in the long run. There is core funding for management and training, but providing the service is relatively free, with just the cost of mileage and expenses to be covered.

I am not making a political point, but the model also fits in with the Big Society idea. In our experience, when people are in dispute with their neighbours, they have a fairly positive attitude to volunteers, who are not in it as professionals or doing it as part of the job. Mediators are more trusted if they are working voluntarily.

**Mr McGlone:**

There is no one-size-fits-all in mediation, in particular when a council could wind up being the arbitration body, yet someone from the council is seen as being the mediator. The clear answer in that case is to involve someone from outside the council. In other instances, a volunteer could weigh in, perhaps even a local MLA or councillor.

Although we all accept the principles of mediation, I am sure that there are different models

that we could talk about all day. As I said, there is no one-size-fits-all. I can see situations in which mediation is useful, but I still do not see there being so many cases that fully trained mediators will be needed in every council. Your idea, Peter, that there should be a group approach —

**Mr Weir:**

To be fair, that was their idea.

**Mr McGlone:**

Sorry, I thought that it was your idea.

**Mr Weir:**

I am not decrying it, but I am not taking credit for their thoughts. *[Laughter.]*

**Mr McGlone:**

You would hope that it would not come to that, unless people —

**Mr O'Reilly:**

What will be sustainable will probably be a team of mediators addressing many different topics. Mediators trained to deal with just high hedge disputes will not be all that sustainable.

As I said, we are at the very early stages of conversation with the Department for Employment and Learning about a network of mediators that would provide services in the early stages of certain types of workplace dispute. My colleague is working in Carrickfergus helping to develop mediators to work on cohesion issues. Therefore, a team that provides services to different Departments, and perhaps local government, may be the more efficiently sustainable approach to take.

**Mr McGlone:**

However, given that the issues are more or less the same, you have answered your question. It could be a housing problem or a hedge problem. What is important is your approach and methodology, and the independence and professionalism of the mediators. Therefore, it is a

service per se.

**Mr O'Reilly:**

Yes, and the investment that I mentioned is about ensuring that the contemporary quality assurance and competencies are there and recognised. Regardless of whether they are volunteers or professionals, they need to be competent and they need to work to quality standards.

**Mr W Clarke:**

Thanks for your presentation. I agree that training council enforcement officers could create difficulties where independence is concerned. Generally, council workers are seen as coming from the Government and as having made up their minds already. You touched on this from a community perspective, and I will approach it in the same way by looking at models of good practice, such as the community restorative justice schemes that are being rolled out across the island of Ireland and, indeed, throughout Europe.

Staff in restorative justice schemes come from the community and are largely voluntary, although their expenses are met. I am aware of their expertise, and the PSNI, Housing Executive and social services recognise that expertise, and they acknowledge that staff in those organisations do a very good job. They are respected and have personal knowledge of various local families because they come from their own communities. What would you think about putting such staff on more of a statutory footing so that they could deal with particular matters? That could then lead us to look at sharing resources, perhaps through the transitional committees and the system that would have emerged from the review of public administration (RPA). Dealing with enforcement officers at that level could be a job for transitional committees.

**Mr O'Reilly:**

I am aware of the work that Community Restorative Justice Ireland (CRJI) does on alternative measures, the services that it provides and the progress that is being made in the recognition and standardisation of practice. You are right to say that the community based nature of such schemes is important and would be a benefit. People who are involved in those schemes have local knowledge, local cultural understanding and so on. What someone gets away with in a village in Tyrone and what they get away with in an estate in north Belfast might be different.

The question would be about managing and delivering that model and about whether a structure could be created that covers all the need that exists for those provisional services everywhere. The management and supervision of the work would have to be acceptable throughout communities in Northern Ireland. Therefore, you are right. I said earlier that the skills and experience exist for that, but it is a matter of organising, structuring and delivering the service in a way that is acceptable to everybody.

**Mr Dallat:**

I am sure that members will not need arbitration or mediation for the Committee to reach its conclusions. It seems to me that mediation is very useful, and I think that most elected representatives would be glad to have the opportunity to get involved in it rather than to get caught up in a brawl between people on opposing sides. How do you ensure that mediation is time limited? Are you certain that mediation would not end up being some other kind of arbitration later?

**Mr O'Reilly:**

In answer to your first question, we use a process that involves meeting each of the parties, agreeing the focus and boundaries of the mediation and getting to agree to a timescale. We use different models for differing contexts, but the process may involve two separate meetings lasting one hour or an hour and a half with each of the parties. Those may be followed by a mediation session lasting three to four hours, and that would usually bring us to a place where we know either that extending the process will lead to success or that the mediation will get no further.

**Mr Dallat:**

Do you have an answer to my second question? Are you sure that your work does not somehow in law become the focus of arbitration somewhere else, such as in court?

**Mr O'Reilly:**

Do you mean a complaint about the mediation process, or a complaint about how it was used?

**Mr Dallat:**

No, I mean if the material used could be obtained under the Freedom of Information Act 2000, for example, for a full-scale blitz in a court.

**Mr O'Reilly:**

Disclosure law is very strong here. We have had a number of cases where solicitors have sent us letters after we had done mediation work, and our response has been that there was an agreement to confidentiality. Only on one occasion was that correspondence followed up with a second letter, to which we responded again saying that mediation was confidential. That response was not followed up. The advice that we receive from the judiciary is that, although the confidentiality of mediation is not protected in law, the judicial system is interested in supporting its development. Any judge would be slow to undermine that confidentiality. Although there would not be a legal protection, the direction in which things are moving suggests that we would not expect judges to undermine mediation any time soon.

**Mr Dallat:**

Those remarks are very useful. We may need to bear that in mind when the Bill goes through its various stages. We should not take it for granted that that might be the case and that things might be tied up.

**Mr McGlone:**

You made a useful point, but the issue hinges entirely on the integrity, professionalism and bona fides established by those involved in the mediation. That probably brings us back to the original point about confidentiality, professionalism and integrity being established from the outset. I am not a legal person, but if there were any semblance of jiggery-pokery going on, I could see legal action being justified. However, I could see why someone would want to have a case reopened. That brings us back to the need for professional training to ensure that those who are involved are not working to any other agenda, other than to the integrity of the mediation process and to bringing professionalism to it.

**Mr O'Reilly:**

That is true, no matter what model is used and who is involved, be they a council official, a

professional mediator or a volunteer mediator. That is why we need investment to ensure that we fit in with what is developing on the islands where good professional standards and complaints procedures are concerned. All that is important.

**The Chairperson:**

Thank you for your contribution. We will take your views on board.

I now welcome Claire Duddy from Carrickfergus Borough Council, who will brief us on the High Hedges Bill.

You will have five to 10 minutes to speak, and then I will invite questions. If you hear voices outside, I reassure you that it is not ghosts; people are visiting the castle.

**Mr Beggs:**

I declare an interest as a member of Carrickfergus Borough Council.

**Ms Claire Duddy (Carrickfergus Borough Council):**

Thank you for inviting me today. I am the deputy director of environmental services at Carrickfergus Borough Council. This is a good opportunity for me to put across the views of the smaller district councils, which will, no doubt, be tasked with enforcing the legislation.

Carrickfergus Borough Council broadly welcomes the introduction of legislation to deal with problematic high hedges. If I may provide a context, we receive about 10 complaints about high hedges each year, some of which could not necessarily be dealt with under the current legislation. We get complaints about large trees, dangerous trees, leaf fall, needle fall and damage to lawns. We get other complaints about root structures. That subject will be covered by the legislation. Given all that, it is hard to say how many of the complaints or enquiries that we receive would be caught by the legislation.

Aside from that, there is no doubt that there is a need for the legislation. If anyone were to type the words “high hedges” into any search engine, they would find loads of information about disputes in England and Wales. Recently, there was an item on the BBC news website about a 35

ft high hedge. There have been stories about hedge rage and about people setting fire to trees and hedges. In a dispute in the East Midlands, a person was even murdered, and there was a subsequent suicide. Therefore, for some people, high hedges can be a serious problem. Thankfully, things have not yet got to that stage in Carrickfergus, but we welcome any legislation that would help prevent such things from happening.

Although we welcome the legislation, we have a number of concerns, which I would like to raise with the Committee. I know that they have been discussed in previous evidence sessions, but, as far as we in Carrickfergus are concerned, the idea of making a complainant pay to make a complaint is contrary to our normal environmental health practices and is something with which we are not familiar. I believe that our officers would feel uncomfortable with a situation in which we might be perceived to be allowing only the more affluent members of our community to make a complaint. That is not to say that the intention of the legislation is to enable a fee to be applied, but that might be our ratepayers' perception of it. In addition, I believe that setting anything other than a minimal fee has the potential to damage our relationship with the community and residential groups. Over the years, we have built up a level of trust with those people. They would definitely not welcome the proposal, so our relationship with them could be damaged.

Like any local authority, we do not want an additional financial burden to fall on us, particularly given the difficult financial circumstances that we face. Furthermore, other new pieces of legislation are due to come in, such as the Clean Neighbourhoods and Environment Bill, the Dogs (Amendment) Bill and the Welfare of Animals Bill, all of which will create a massive burden for a small department such as ours in Carrickfergus. Therefore, if at all possible, we would like any financial burden to fall on hedge owners and not on the council.

Not only would we have the burden of legal fees, the cost of which is all that we are used to receiving after a successful prosecution, but we seek recompense for officer investigation time, which could be quite substantial in such cases. Ultimately, it will be up to the elected members of Carrickfergus Borough Council to decide whether to introduce a fee for making a high hedge complaint or, indeed, to set the level of fee and the discounts for disabled, elderly and unemployed people. If necessary, we would welcome the opportunity to set fees at levels that we deem appropriate.

We also support the introduction of a standardised high hedge complaint form, such as that provided at the Northern Ireland Local Government Association (NILGA) training earlier this year. Unfortunately, I was unable to attend the training, but I received a copy of the material from my colleague. As well as aiding enforcement and ensuring consistency across all councils, such a form would help to reduce the number of vexatious complaints that are made. In our experience, a number of people who had made, say, a noise complaint, withdrew it when they heard that they would have to fill in noise log sheets or they heard that the procedures to resolve their complaint would be lengthy. The requirement to complete a seven-page complaint form such as that with which we have been provided would help to reduce the number of frivolous complaints that are likely to come our way.

As far as enforcement is concerned, Carrickfergus Borough Council would welcome further exploration into the possibility of providing council officers with powers to serve fixed penalty notices for non-compliance with aspects of the legislation. We would welcome any enforcement powers other than those that involve court proceedings. Court proceedings can be very expensive for taxpayers, can involve lengthy processes and, nine times out of 10, can result in fines that are both far from suitable and inadequate, particularly given the amount of time and effort involved in getting to that point.

In line with members' earlier discussion, we have raised concerns about mediation. We regularly encounter neighbour disputes. In the past, we have availed ourselves of mediation services to help resolve noise and housing complaints. Our experience has shown that the quality of service that is provided can vary greatly from one organisation to another. Experience has also shown that not all organisations that we have engaged have been found to be impartial, in that some have political agendas that they wish to push through.

In the standard complaint form, which I have seen, there is a suggestion that the complainant may have to go down the route of mediation before contacting a council. If that were to be the case, I feel that it is yet another reason for councils not to introduce a fee if they are expected to possibly have to shell out for some sort of mediation before complaining to us. That is too much of a burden on the complainant, and we should either not set a fee or keep the fee to a minimum.

Obviously, as with any new legislation, officers require training, and we would welcome any guidance and training from the Department on the subject. It is fairly unfamiliar territory for environmental health officers to look at issues such as high hedges, and we would welcome any training that could be provided in good time ahead of the enactment of the legislation. In addition, we request that guidance documents be provided by way of a small leaflet to residents in our boroughs in good time ahead of the enactment of legislation to advise them about what constitutes a complaint and how they can go about making a complaint to their district council.

In conclusion, Carrickfergus Borough Council welcomes the legislation. We also welcome the opportunity to set our own fees as we see fit. We request that the option of a fixed penalty for enforcement tool be explored further, and we have concerns about the quality, availability and potential expense of the mediation services that are currently available.

**The Chairperson:**

Ladies and gentlemen in the gallery, somebody's mobile phone is on, and it is interfering with the system. We can all clearly hear that.

Thank you very much for your presentation. I have a few points to make. It is clear that you believe that Carrickfergus Borough Council should be able to set its own fees. Should there be one fee across all council areas, or should councils set that themselves? You also mentioned that the hedge owner might pay. Would that involve a lengthy process that would defeat the purpose? The Bill leans towards the complainant paying. Last week, we discussed whether the fee would be returned if the case is found in the complainant's favour. There is concern that, if we go down the route of asking the hedge owner to pay and are not able to acquire the fee, the ratepayers in that district council area will pay for it. When I was a councillor, I had a lot of complaints about single trees. As a council, would you support provision to deal with single trees? At the minute, the Bill refers to two trees or hedges.

**Ms Duddy:**

I will first address the issue of the single fee across all councils. I do not think that it would be fair to set a single fee across all councils; each council should decide its own fees. However, all

councils work in a group basis, and we do so through the chief environmental health officers' group. Before we would agree on any figure in our own council, we would liaise with our colleagues in other district councils to ascertain their feeling. That would help to inform the process.

The Chairperson asked whether the hedge owner should pay. That is a very difficult issue, and I understand that there will be occasions where the hedge owner might be elderly or from a lower socio-economic group and therefore unable to pay. It will, no doubt, end up falling to district councils to carry out work by default. However, the legislation has made provision for that in that a charge can be set against a property at some point so that the cost can be recovered eventually. I think that that would be sufficient to deal with that matter.

Most of our complaints are to do with single trees. Indeed, in May or June, we had spate of complaints about single trees that people felt were dangerous. We also have to consider how far the legislation should go. Although a single tree can be annoying, can lead to a loss of amenity and can even be dangerous, it is hard to say whether that should be included in legislation as an issue. I certainly would not want our officers to have to investigate dangerous trees, because we have no expertise in that. At what point is a tree assessed as dangerous? That crosses in to the territory of health and safety where public safety is concerned. Public safety is not really in our remit; our role is to enforce health and safety in commercial premises. Therefore, I am reluctant to go down that road.

**The Chairperson:**

I know that most councils would prefer not to go down that road. From your experience in this district council area, can you say whether vacant land is a major issue? Do you foresee problems in trying to attain moneys for any such issues?

**Ms Duddy:**

We have encountered difficulties in finding owner details, and we have even gone through Land and Property Services (LPS) and done property checks. Even when a property appears to be occupied, it is difficult to find out who the owner is. Quite often, land is unregistered, and we have a concern that we would end up paying for it. Most of those properties are out in the open,

and there is less chance of hedges in those places being a problem and causing any sort of nuisance or loss of amenity to the public.

**Mr Weir:**

Thank you, Claire, for your presentation. I will pick up on the point about the number of complaints that are made. It will be difficult to ascertain how many complaints will be made when the legislation is enacted. On the one hand, you mentioned that around 10 complaints a year are made, but you said that not all of them are relevant to the legislation. On the other hand, people will know that there is a service that can be used. At present, I suspect that one of the reasons that stops people from complaining is that they know that nothing can really be done. In the short term at least, I suspect that a glut of complaints will be made fairly quickly and that that will then level off.

I have two or three other points to make, and it might be easiest if I fire them all out at once. The issue of vacant land has been raised with us before, and, although it may not happen in massive numbers of cases, clearly, there will be occasions when the council is left to deal with properties where the owner is difficult to trace or for which enforcement is difficult. Would one possible solution be that whatever fee structure that is put in place bears the extra cost to cover the occasional case where vacant land is concerned? As you said, although vacant land is more difficult to trace, its nature means that it is less likely to lead to a problem. I would like to hear your views on that.

My second point is about the fees. I believe that the costs should follow the event, and someone who has a high hedge should pick up the tab if something is ruled against them. However, from a fairness point of view, other than trying to make a few hurdles for people to overcome, how do you deal with vexatious complaints? Some of the complaints will be genuine, but we have all come across occasions where neighbours have fallen out. They may not have fallen out over the hedge; something else may have been the reason for that. The relationship breaks down to the extent that everything loses proportion. Someone may make a totally spurious complaint that may be genuine in their eyes, but, objectively, no one would back it. Is it not the case that, if there is no fee at all for a complaint, those who have a grudge against their neighbour, particularly a heavy grudge, will fill out the forms at no real cost?

The third point is that there seems to be a lot of sense in having a standardised form. I am not overly convinced by the idea that making the form as long as possible will put people off, because a person who has a massive grudge will fill out screeds of paper. For a range of reasons, a lot of people tend to get put off by forms. Perhaps they have a bit of a phobia against them, perhaps they have literacy problems and, because of age or disability, they might be reluctant to go down the road of filling out forms.

I would have thought that it was a good idea to have standardised forms, but surely they should also be as simple and straightforward as possible. Will you comment on those three points, please?

**Ms Duddy:**

Will you clarify your point about vacant land?

**Mr Weir:**

There is clearly a problem with vacant land, as others have identified. If there are high hedges on vacant land, it may be possible to get some money off the complainant to address that. However, if we take the general philosophy that whoever is at fault should pay, the council may be faced with a reasonable bill for dealing with vacant land, because it cannot find the person responsible for the land to recover the costs from. Although incidents involving vacant land will probably be relatively rare, there is one possible way round the problem. I think that something should be worked in to the general fee structure to subsidise any cases involving vacant land — be it one in 10 cases or whatever it happens to be — should the council have to take action but have no one to recover costs from. That is one possible way forward.

**Ms Duddy:**

I take your point. I will no doubt have to produce a document on that when the time comes. I hope that our elected representatives will bear that in mind when making a decision about the fees that we introduce. Rather than having no fee at all, some sort of minimal fee could be introduced. However, I would hate to go to the lengths of introducing the suggested fee of £300 or £350, which is the amount that some district councils in England charge. Certainly, if a smaller fee

were introduced, some money could be set aside for such eventualities.

With regard to vexatious complaints and the length of forms, the forms that we have seen are seven pages long, but they are fairly straightforward, and guidance will be provided. However, I am not sure whether anybody else has seen them at this point.

**Mr Weir:**

I know that this probably is more about the implementation and the wording of the legislation, but it might be helpful if you or somebody else were to send us a copy of the form so that we can see what it will look like in practice. That would be quite useful.

**Ms Duddy:**

I can go through some of the areas that are covered in the form. The questions cover, for example, asking what approach has been taken so far to try to resolve the dispute. Have the neighbours tried mediation? Does the neighbour of the hedge owner have any intention of complaining to the council? Are there any other matters that the person wants to raise? The criteria for making a complaint are very straightforward and set out what actually constitutes a high hedge complaint. For example, does it constitute a line of two or more trees or shrubs? The form goes into quite a lot of detail, but its completion is a simple and straightforward tick-box exercise.

A member of the public came to our department, and we were able to assist them in completing the form. I do not know about anybody else's environmental health division, but we are quite a helpful lot, so if someone indicated that they needed our help, we would provide it. Another interesting point was about the potential need to supply a photograph, site plans and that sort of thing. The form is not difficult to complete, but a number of steps are required to do so.

**Mr Weir:**

Just to clarify, I know that the form is a sample, but is it similar to those that are used in England?

**Ms Duddy:**

I believe so. I believe that this form has been developed from some of the forms that local

authorities on the mainland produce.

**Mr Weir:**

Apart from the layout of the form, what else would deter someone with a grudge making a vexatious complaint if there were no fee at all?

**Ms Duddy:**

Once a person has completed the form and followed all the requested steps, it would not take too long for a professional officer to judge whether the complaint was genuine or vexatious. After spending five minutes looking at the form and making a quick visit to the person's property, the officer would be able to make a speedy determination about whether the complaint was genuine.

**The Chairperson:**

You seem very civil in this part of the country.

**Mr W Clarke:**

Thanks for your presentation. I have a couple of questions to ask. To date, how successful has the council been at resolving disputes about issues that are raised in the Bill by using council officers to mediate? Are many cases resolved?

My other question is about a community based approach to mediation. Are there groups in the Carrickfergus area that carry out that type of role? Another member made a point about vacant land and houses. I declare an interest as a councillor in Down District Council.

I am aware of cases in which the owner just will not own up to owning the land in question. There were a number of issues, concerning not just high hedges but vermin, as well as arson attacks on that property. It can be very difficult to trace people if they do not want to be traced. In one particular case, the person's relationship had broken up and he did not want the wife to get any money. *[Laughter.]*

**The Chairperson:**

That is a different piece of legislation.

**Mr W Clarke:**

He rescinded his responsibility for the house. Do you have many such cases in Carrickfergus? Would you be inclined to share mediation services with other councils?

**Ms Duddy:**

In response to your point on the success of any previous mediation, to date, we have really only used the mediation service for such matters as housing disputes, unlawful evictions, disagreements between landlords and tenants, and a couple of noise complaints. We used local mediation services, at least one of which is no longer available. I do not think that we would care to use that service in future if it were to return.

In answer to your question, we have not used mediation or resolved any issues around trees or high hedges, because it is not a statutory function and we have to prioritise the work that we do. However, we try to provide advice to complainants where possible, and advise them to go down the civil action or any alternative route. We advise them to speak to the neighbours and try to resolve it themselves. We try to do as much as we can, but there is only so much that we can do without having powers behind us.

I have already covered the groups that are available for mediation locally. However, we have a community forum here in Carrickfergus, and I think that one of its key members may have been trained in mediation. That may be something that we could draw on in future, but I fully support the idea of shared mediation services. Personally, I would not want a mediator to be working in the council, because there is an element of trust involved, and the public would be suspicious if the mediator were. We are too small to have that expertise just in our council. It would be preferable to have a service that could be shared out regionally among several councils, even on a group basis as it exists at the moment. For example, there is one for the Larne area and one each for the southern, eastern, western and Belfast areas. I would support that.

I am not so familiar with people trying to hide ownership of land, but I am aware of some cases in which it has been difficult to trace owners. However, we are still working in a very small local council, so local knowledge is a very powerful tool. We will usually find out who the person is over time, but I appreciate that if the reform of public administration were to happen,

and we were to start working in larger authorities, that would diminish.

**The Chairperson;**

Therefore, you have not dealt with any of the worst cases?

**Ms Duddy:**

No; not yet.

**Mr McGlone:**

Thank you for your presentation. I have two observations to make, the first of which picks up on what Mr Weir said about the extent of detail that is put down on the form. You should make the form as simple as possible. I am sure that many of us have had seven-, eight-, nine- or 10-page letters that are usually a result of someone's absolute fixation with an issue, potentially a dispute with a neighbour. Theirs can become utterly obsessive-type behaviour. You need to make the form as simple as possible, not just for your peace of mind but for that of anyone else.

I sound one wee word of caution about when a member of staff at the council fills in or helps to fill in a form that someone then puts their signature to. Ultimately, that could lead to a possible conflict of interest. Let us say that the case did, unfortunately, have to go to mediation because it had not been resolved, during mediation, complainants could say that they filled in the form in the manner that the person at the council told them to. That would lead slap bang to the council being stuck in a situation in which it would not necessarily want to be. That is my wee word of caution on that issue.

**The Chairperson:**

It is a fair point, particularly if councillors mediate or even help someone to fill in a form.

**Ms Duddy:**

I take the point, Chairperson, but it may be an issue that we could refer to our local community forum or some other organisation, rather than deal with it in-house.

**Mr Beggs:**

When it comes to councils charging fees to hedge owners who have been unreasonable, do you agree that such a message would be a financial incentive to those people to come to an earlier resolution with their neighbours, act reasonably and minimise costs by avoiding such fees?

**Ms Duddy:**

I agree that financial implications are a great deterrent. They are probably more of a deterrent than the cost of legal proceedings, more so than the cost of recovering officer time. We would welcome that.

**Mr Beggs:**

On that point, have you any knowledge from discussions with environmental officers who already operate similar policies or from reading information about it elsewhere, how much officer time and costs could be expected in an average case, or, indeed, whether there is such a thing as an average case?

**Ms Duddy:**

I do not have any specific information on that issue. We have one colleague who has worked on such issues. The legislation came in some time ago, but in that case, the legislation was enforced by the planning department, which he did not work for. I am not sure about the amount of officer-time spend, but I believe that it would be very significant indeed, especially at a time when resources are tight and more legislation is due to be commenced, particularly the Clean Neighbourhoods and Environment Bill, which will have a significant impact on council departments when it comes to reviewing policies, practices and procedures.

**Mr Beggs:**

On the issue of whether a complainant should pay a fee, do you accept what Mr Weir said, which is that there is a danger of being swamped by vexatious complaints? If, at least, a fee were left as an option to local councils to determine, councils could adjust fees accordingly and charge no fee, a nominal fee or a slightly higher fee if they became flooded with complaints and could not afford expensive officers' time to deal with them? Should that option be left open to councils to determine?

**Ms Duddy:**

I welcome that suggestion. The council would need the opportunity to review its fees over time. We would support the inclusion of such a provision in the Bill.

**The Chairperson:**

There is a wee bit of favouritism there. *[Laughter.]*

**Mr Beggs:**

I am curious about cases that you may have been aware of to date. Have any of those cases involved permitted new developments that have been built adjacent to existing high hedges? Do you have any ideas about that? In my mind, I would have a little bit more sympathy for the owner of an existing hedge where a new development has been built right beside the hedge. The people who built the new development would have known that it was there. However, where a hedge is allowed to grow out of control on an existing property, my sympathy would lie with the neighbours. Have you had any experience of conflicts having arisen from new developments being built adjacent to existing hedges?

**Ms Duddy:**

I am not familiar with any such instances, but that is not to say that they do not exist. As one of the members rightly pointed out earlier, because of the lack of legislation at present, not all people bring a complaint to their local council. I spoke to building control colleagues this morning who told me that some enquiries about the legislation come through to them because of their capacity to deal with dangerous structures. We are not getting the full picture at present. It is possible that there are more enquiries or complaints that we do not hear about in the environmental health department.

**Mr Dallat:**

Thank you for your presentation, Claire. It is obvious that you take your high hedges very seriously in Carrickfergus. Have you come across cases in which the problem was not so much the hedge going up but the roots going out, which can cause neighbours to complain about their sewerage systems and drains being blocked? If so, is that something that should appear in the

legislation?

**Ms Duddy:**

There have been a few complaints over the years regarding the destruction of pavements by roots, and so on. However, it is not for the legislation to tackle those issues, personally speaking.

**Mr Dallat:**

Thanks for that. *[Laughter.]*

**The Chairperson:**

It is recorded, Mr Dallat. It is recorded.

**Mr Dallat:**

I know. That is the problem.

**The Chairperson:**

I have one final point. Obviously, it is very important to have guidelines in advance. Can you comment on that?

**Ms Duddy:**

Given that officers in local councils are being stretched further and further as more and more legislation is enacted, it is important that we are all suitably trained to enforce the legislation that is given to us. We have only two pollution/environmental protection officers, and those officers may not know their deciduous from their evergreen. On simple matters such as tree species, and also around the sorts of remediation that may be required, there is a need for training. It is important that officers receive that training before the legislation commences. Quite often, training comes three or four months after the commencement of legislation.

**The Chairperson:**

Is that an appeal to central government for more resources?

**Ms Duddy:**

Absolutely.

**The Chairperson:**

Thank you very much for your presentation and contribution.