

If you have a boundary dispute it is because you and your neighbour do not know the **exact line** of the boundary that separates your respective lands and hold different opinions as to where the boundary is. How do you go about finding out the exact line of your boundary?

DON'T ASK FOR HELP FROM ...

Don't expect **Land Registry** to resolve your boundary dispute. Land Registry's role is to record against a backdrop of Ordnance Survey mapping only the **general** position, not the exact position, of the boundary. Land Registry's guide to the general position of a boundary is the often ambiguous description of that boundary found in the pre-registration title deeds.

Don't expect help from **Ordnance Survey** maps: the Ordnance Survey Act 1841 prevents those maps from showing the boundaries of private land.

Don't expect help from your **local authority's planning office** because, whilst they may give consent to construction close to a property boundary, they have no jurisdiction over boundaries.

Don't expect the **police** to be able to tell you where the boundary is. Boundaries are covered by civil law whilst the police's remit extends only to criminal law.

IF YOU NEED ADVICE

www.boundary-problems.co.uk offers three ways to get advice.

1. The **Boundary Problems web site** is a free on-line text book that enables you to read up on the subject of boundary disputes.

2. The **Boundary Advisor** service offers a telephone consultation with an expert whose advice is guided by the documents relating to your property.

Ask for leaflets [BA01](#) and [BA02](#)

3. **Jon Maynard Boundaries Ltd** offers a range of professional services that are based upon skill in spatially analysing the evidence for boundaries.

You may also want legal advice, for which you should consult a property litigation solicitor.

ADVICE ISN'T RESOLUTION

It is important to understand that neither an expert in boundary demarcation and disputes nor a property litigation solicitor has the power to decide where the

boundary is and to impose that decision upon an unwilling neighbour. Even when your opinion as to the location of the boundary is bolstered by expert opinion and legal opinion, it is still only an opinion – and your neighbour is entitled to his or her opinion, which may differ from your own.

METHODS OF RESOLVING THE DISPUTE

It should be understood that the law recognises that boundaries are described in the earliest title deed relating to either of the properties in question, and that those descriptions are sometimes ambiguous (moreover, a great many of such pre-registration title deeds have been destroyed since the land became registered and are no longer available). The law therefore allows adjoining landowners to agree the exact line of the boundary for the purpose of clarifying the ambiguous description in the title deeds.

Amicable resolution of the dispute

It follows that you and your neighbour should simply get together to work out where you think the boundary is supposed to be according to the earliest pre-registration title deeds, deciding upon a precise position on the ground that is consistent with the, perhaps ambiguous, description in the title deeds.

It is important to consider the boundary as a problem that needs fixing and, since it affects both of you, you should cooperate to fix it together. All too often the matter that is addressed is not the ambiguity in the boundary description but the outrage felt by one landowner in response to some action by the neighbour, and outrage encourages antagonism and prevents cooperation.

Early Neutral Evaluation

The Ministry of Justice is trying to discourage would-be litigants from settling their boundary disputes in the County Court. In 2015 the court's case management powers were increased under Rule CPR¹ 3.1 (2)(m) which allows the court to order an Early Neutral Evaluation (ENE) with the aim of helping the parties settle the dispute.

If the court is likely to order ENE anyway, then why not pre-empt that decision and agree with your

¹ CPR = Civil Procedure Rules

neighbour that ENE is a vital first step in resolving the dispute?

If the dispute concerns technical issues, e.g. the position of the boundary, then the Evaluator should be a boundary disputes expert. **Jon Maynard Boundaries Ltd** offers Early Neutral Evaluation.

If the dispute concerns legal issues, e.g. whether one of the parties has acquired legal rights over a part of the other party's land, then the Evaluator should be a barrister who specialises in property litigation.

The aim of ENE is to assist the parties at an early stage, to assess the strengths and weaknesses of the evidence, to advise the parties on how things might fall at trial, to assess the best method of resolving the dispute, and to save considerable costs and time by focussing on the essential issues of the case and steering the dispute away from litigation.

There are clearly many advantages in this approach as it holds the potential to reduce the bitterness, cost and the length of time that traditionally bedevil a boundary dispute.

ENE will not of itself settle the dispute, but by leaving the next decision in the hands of the two parties it gives the parties a sense of control as well as providing guidance as to the best way forwards.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

There is a number of different methods available for settling a dispute without recourse to litigation and these are collectively referred to as ADR methods.

Expert Determination of the Boundary

This form of ADR requires you and your neighbour to accept that you do not have the expertise to resolve the matter and that you should delegate the matter to someone who has that expertise. The expert's decision is - by prior agreement of the parties - legally binding on the parties.

The advantages of Expert Determination are that the process is confidential, speedy, cost effective and final. In spite of this, Expert Determination is little used. Perhaps this is because all control is taken away from both landowners and placed in the hands of the expert, and because there is no redress available to a party who believes that the expert has got it wrong.

Mediation

Mediation's strength is that it provides a mechanism for the disputing parties to negotiate a settlement that they can each live with. Moreover, the settlement can be much more inventive than a decision handed down by a county court judge who is confined within the tramlines of the law.

Mediators are professionals (such as lawyers or surveyors) who have had additional training in mediation and are taught that mediation may be used to resolve any kind of dispute. If you want to take a boundary dispute to mediation then you need to ensure that the mediator normally practises either as a surveyor who specialises in boundary disputes or as a lawyer who specialises in property law or litigation and can maintain the parties' focus on the point at issue - the location of the boundary.

Mediations can result in an unsatisfactory outcome when one party recognises that mediation is all about negotiating hard for what he or she wants whilst the other party is fixated on his or her idea of where the boundary should be and upon notions of justice. The party that fails to understand the principles of negotiation (an opening gambit; arguments involving give and take; concessions to narrow the gap between the parties) has no room for manoeuvre during the negotiation and is forced either to make concessions that are unacceptable to them or to abort the mediation.

The advantages of mediation - when both parties understand the implications of negotiation - are that the settlement is arrived at by the parties themselves, is confidential, speedy, cost effective, and final.

Other 'alternative dispute resolution'

Arbitration and Adjudication are two other methods that may be used. I have not personally encountered a boundary dispute in which either method has been used and will comment no further here.

LITIGATION

Boundary disputes are traditionally litigated in the **County Court**. Some litigants will use the **High Court** if the dispute is over a matter involving a high monetary value, or if the litigant is seeking to establish a new legal precedent.

It is also possible to take the dispute to the **Land Registration Division of the Property Chamber (First-tier Tribunal)**: in theory this offers the

possibility of a less formal and cheaper method of litigation, but this is only true if the litigants represent themselves at the hearing rather than bringing their barrister and expert to the hearing.

Litigation usually involves:

- a property litigation solicitor whose role is to manage your case, including corresponding and negotiating with your protagonist's solicitor;
- an expert witness to provide an expert opinion concerning the spatial analysis of the evidence for the boundary;
- a barrister (counsel) to provide an assessment of the strengths of the legal arguments surrounding your case and to argue your case in court.

The courts' view of nearly every boundary dispute is that the cost of litigation is considerably more than the value of what is being fought over. The courts will often try to persuade the litigants to settle their dispute by a form of alternative dispute resolution rather than come to court. In view of this, the would-be litigant's solicitor will usually try to arrange a settlement between the parties before resorting to making application to the courts.

These factors help to explain why litigation is the slowest method of dispute resolution, and also why (given that the litigant's solicitor has already attempted other methods of dispute resolution) the legal fees are so high. Add to this the notorious unpredictability of the outcome of litigation and it is little surprise that even the courts themselves feel that litigation is not the best way to resolve a boundary dispute.

The advantage of litigation is that it offers a tried and trusted method of settling a dispute authoritatively and finally. However, given that it is possible for a litigant to seek leave to appeal to a higher court, the finality and authority might be called into question.

However the dispute is resolved, it is a good idea to have the exact position of the boundary recorded as an **Exact Line of Boundary: Registration** that is noted by Land Registry on the title registers of both properties.

Jon Maynard Boundaries Ltd offers the following services that may assist in dispute resolution:

Early Neutral Evaluation	Ask for leaflet	JMB30
Expert Determination	ask for leaflet	JMB28
Party Appointed Expert	ask for leaflet	JMB23
Single Joint Expert	ask for leaflet	JMB24
Boundary Agreement	Ask for leaflet	JMB25
Exact Line of Boundary: Registration	ask for leaflet	JMB26

THE STAGES OF A BOUNDARY DISPUTE

Every boundary dispute goes through a number of stages on its way to resolution. No dispute runs sequentially through all of the stages set out below: each dispute is different and runs through such of the stages as appear appropriate to the disputing landowners.

1. AMICABLE RESOLUTION

- a. Negotiate in person with the adjoining landowner. This may result in agreeing that either you or the neighbour is in the right or in negotiating some kind of middle ground settlement.
- b. Agree to cooperate with each other in resolving the dispute by jointly instructing an expert to investigate the boundary and propose a solution on which to base a settlement.

2. PREPARATION FOR FORMAL RESOLUTION OF THE DISPUTE

- a. **Early Neutral Evaluation:** Jointly instruct a suitable expert to examine all of the evidence with a view to assessing which evidence is likely to weigh heavily in a court case and which is not, suggesting where the court is likely to find the boundary to be, and suggesting whether litigation or alternative dispute resolution (ADR), and which form of ADR, is likely to be the most appropriate way of settling the dispute.
- b. **Single Joint Expert Report:** if the two parties are not minded to cooperate in instructing an Early Neutral Evaluation then it is unlikely that they will be willing to jointly instruct a single joint expert. This is regrettable as the court procedures are simplified if a single joint expert is used.
- c. **Expert Report:** A report written on the instructions of one party only (and if the matter goes to litigation, then the other party will appoint their own expert) with a view to stating the expert's professional opinion on where the evidence places the boundary.

3. ALTERNATIVE DISPUTE RESOLUTION

- a. **Expert Determination:** jointly instruct a suitable expert, giving the expert delegated powers to decide the position of the boundary on behalf of both parties, acknowledging that both parties will be bound by that expert's decision.
- b. **Mediation:** jointly instruct a suitably trained mediator whose main function will be to referee a negotiation between the parties without him- or her-self being involved the substance of the negotiations. The mediator will draw up a settlement agreement in the event that neither party brings their solicitor to the mediation.

4. LITIGATION

- a. A **Temporary Injunction** may be obtained from the County Court. This would order the subject of the injunction to desist from all contentious activity upon the disputed land until the County Court has heard the case and decided where the boundary is and whether, as a consequence of determining the boundary, to uphold the injunction or to release the subject from the terms of the temporary injunction.
- b. The **County Court** is traditionally the place to litigate a boundary dispute. In recent years the County Court has discouraged litigation, referring litigants to mediation or even attempting to use the judge as mediator.
- c. The **Land Registration Division of the Property Chamber (First Tier Tribunal)** is the successor to the **Adjudicator to Land Registry** that was set up under the Land Registration Act 2002 for the purpose of resolving applications to Land Registry that were contentious and upon which Land Registry was unable to make decisions. The Land Registration ... Tribunal is also able hear actions brought by a landowner against his / her / their adjoining landowner and is therefore used in preference to the County Court by those who do not wish to use ADR but wish to go straight to litigation.

5. RECORDING THE SETTLEMENT OF THE DISPUTE

It is desirable to create a permanent record of the settlement of the boundary dispute, and there are three options available, all of which amount to an application to Land Registry to add an entry to the title registers of both affected properties:

- a. A **boundary agreement** consisting of an unambiguous description of the boundary in words with a supporting plan;
- b. An **Exact Line of Boundary registration**, consisting of a tightly specified plan based on a high accuracy survey and supported by a deed that agrees the boundary or an order made by a judge as to the determined position of the boundary;
- c. In the event that the only way of convincing Land Registry of the legality of the agreed, or settlement, boundary, admit that land has changed hands between the two parties and have solicitors draw up the necessary **Transfer Deed and Transfer Plan**.