

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 help from **Land Registry** because the law requires them to record against a backdrop of Ordnance Survey mapping only the **general** position of the boundary. They do this because the descriptions of boundaries given in the earliest pre-registration title deed are prone to ambiguity.

Don't expect help from **Ordnance Survey** because the Ordnance Survey Act 1841 rules that Ordnance maps do not alter the boundaries of anyone's 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](http://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.

[download leaflet](#) 

3. **Jon Maynard Boundaries Ltd** can offer a range of professional services that are based upon skill in spatially analysing the evidence relating to your boundary.

You may also want legal advice, and for this you need to consult a solicitor who specialises in property litigation.

## 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.

## 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. 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 and work out between you 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 prevents cooperation from occurring.

As it is unlikely that you and your neighbour are experts in boundary demarcation then you may need to consider what is written under the heading "IF YOU NEED ADVICE".

### Expert Determination of the Boundary

A different approach is for 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 come-back if one of the parties 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 by the trammings 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 to move 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 Tribunals Service**: 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 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 in the form of a **Determined Boundary** 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:

<b>Expert Determination</b>	ask for leaflet	<b>JMB28</b>
<b>Party Appointed Expert</b>	ask for leaflet	<b>JMB23</b>
<b>Single Joint Expert</b>	ask for leaflet	<b>JMB24</b>
<b>Determined Boundaries</b>	ask for leaflet	<b>JMB26</b>

