



## GUIDANCE NOTE ON BOUNDARY DISPUTES – AUGUST 2018

### Introduction

The aim of this guidance is to assist parties to achieve the resolution of a boundary dispute quickly and at limited cost. It sets out available resources and encourage those with a dispute to view court proceedings as last resort and where necessary to obtain expert assistance with the analysis and attempts to reach agreement on the issues that have arisen.

The guide is the result of a request from the Ministry of Justice to the Civil Justice Council to establish a working group with the aim of producing a document that could be used by individuals with a dispute as well as by the legal profession, consumer organisations, HM Land Registry and HMCTS. This working group had assistance from the Royal Institute of Chartered Surveyors and the Property Litigation Association whose protocol can be found at the end of this document.

### What is a Boundary Dispute?

A boundary dispute is a dispute between the owners or occupiers of neighbouring properties. This may take many forms but usually causes parties to question a boundary line or the construction of a new boundary between properties. Examples can include: the positioning of fences, rights of way, the positioning or overhanging of house extensions, the location of pipes and drains or the encroachment of foliage.

There is sometimes a trespass or nuisance claim accompanying (and parasitic upon) a dispute as to the correct boundary between properties. Such disputes are often capable of easy determination or indeed resolution once the boundary has been clarified

### How is a Boundary Determined?

The first step is to check your deeds. Many records are held by HM Land Registry (see [www.gov.uk/search-property-information-land-registry](http://www.gov.uk/search-property-information-land-registry)), but earlier documents may prove helpful and could have been retained by you or your solicitors. The plan at the Land Registry is not conclusive and will only provide a general guide as to where the boundary is unless the boundary has been formally determined or a boundary agreement entered into. The original conveyance which separated the land is the most important document which has to be interpreted both legally and in light of the physical features on the ground at the time. A

boundary surveyor may be able to help with the latter. You should seek to compare the plans on those documents with the ones held by your neighbour.

### **Problems in achieving a resolution**

Sadly, boundary disputes are frequently protracted. They can take years before they reach a stage where a court gives a final judgment and are all too often conducted at considerable, frequently disproportionate (despite the best efforts of the court) and occasionally ruinous cost.

These disputes cry out for a settlement meeting (in the broadest sense) or mediation as soon as the parties understand the other party's arguments.

### **What are your options if a dispute arises about a boundary?**

It is very important to recognise that unless the issue is truly urgent it is rarely appropriate to proceed straight to litigation. If you do so then the court may consider staying (halting) the case until you have considered mediation and/or if the case does proceed and you are successful, you may not cover some or all of your legal or court costs. The courts believe that the issuing of proceedings should be a last resort after the parties have attempted to fully investigate and resolve the dispute.

So what options are available to try and resolve any issues before litigation?

There are four:

- Mediation
- A binding evaluation by an expert
- A non-binding evaluation by an expert
- Following a pre-litigation protocol

### **Mediation**

Mediation is where a neutral third party, trained in dealing with difficult discussions between two opposing sides, helps the parties to negotiate and reach a settlement. It can often be arranged very quickly and parties can attend on their own or with any adviser or with friends for support.

Mediation is a focus on practical rather than legal solutions and often take place at the premises so the boundary can be looked at and solutions explored. However, it can also be held at a neutral venue. Mediation is an informal and flexible process and does not compromise a party's position should the matter not settle and go onto litigation.

Mediators will charge a fee for the mediation, but it is a much cheaper and quicker way of resolving a dispute than legal proceedings.

RICS and the Property Litigation Association will soon offer a joint Boundary Disputes Mediation Service involving a panel of third party legal and surveyor experts. More information will be available on this soon.

The following is a non-exhaustive list of other specialist mediators:

CEDR <https://www.cedr.com/>

Civil Mediation Council <http://www.civilmediation.org/members-disclaimer>

Clerksroom <https://www.clerksroom.com/>

In Place of Strife: <https://mediate.co.uk/>

Property Bar Association <https://www.propertybar.org.uk/member-directory>

The Property Mediators <http://thepropertymediators.co.uk/>

ProMediate <https://www.promediate.co.uk/>

Binding evaluations and non-binding “early neutral” evaluation by an expert

As an alternative, a binding evaluation involves the parties reaching an agreement, by a contract, to expert determination by an independent third party; either a lawyer or surveyor experienced in the relevant field. The parties can agree to treat this view as binding on them i.e. final with no ability to challenge it.

Alternatively, a non-binding “early neutral” evaluation by an expert involves the parties seeking an expert determination by an independent third party; either a lawyer or surveyor experienced in the relevant field. The view expressed by the expert does not bind the parties but would give them a helpful indication of the likely outcome if they were to take the matter to court. In this way it will assist in negotiating a settlement.

Any meeting between parties at which resolution is considered is usually best conducted “on site”. Photographs/plans and even video evidence (although now often taken using a phone) are a poor second to being able to point to features of the land in question and add to the costs.

Users should however be aware that if it is a legal dispute then an RICS evaluator may need to refer it on, and likewise with a PLA evaluator if it is a technical surveying dispute. Parties may therefore end up with 2 evaluators if it is a mixed legal and technical dispute. Accordingly, the use of mediations first is encouraged because both lawyers and surveyors have the requisite experience to conduct them without the need for as much detailed analysis of the issues.

You can find more information here:

[www.rics.org/uk](http://www.rics.org/uk)

[www.pla.org.uk](http://www.pla.org.uk)

### The pre-litigation protocol

If the options above are not suitable or have not achieved success then the parties should consider complying with a pre-litigation protocol. The court will ordinarily expect there to have been some constructive discussion and negotiation between the parties before proceedings were commenced and the protocol is a guide as to how to go about the process.

The protocol applies where neighbours are in dispute about the location of a boundary. It applies to both residential and commercial properties. It assumes that attempts to resolve the dispute by informal discussions have failed, and that a more structured dispute resolution process is therefore needed.

The aim of the protocol is to provide a process which seeks to ensure the neighbours exchange sufficient information in a timely manner to minimise the scope of disputes between them and to enable such disputes to be readily resolved, keeping costs to a minimum including through the appointment of a single joint expert.

It is important to understand that the protocol provides stages at which the parties can consider if the dispute can be resolved by mediation or binding expert determination.

See the property protocols on the website of the Property Litigation Association:

[www.propertyprotocols.co.uk](http://www.propertyprotocols.co.uk)

### Taking a claim to a court or tribunal

It is inevitable that there will be some situations where the above options will not bring about a resolution and you may have to involve the courts. However, an advantage of having conducted a mediation or instructed a surveyor is that it will help narrow down what the dispute is about. The court will expect you to have explored at least one of the other avenues of settlement as set out above. Should you or your opponent have failed to do so then it is likely that the Judge will temporarily halt the proceedings-called a stay-to allow time for this to take place. If the case does proceed the court is likely to set a budget which limits the fees which you are likely to recover from your opponent even if you are successful. This does mean that you could face a significant shortfall in your costs. For all these reasons court proceedings in respect of boundary disputes should really be regarded as a last resort.

There are presently two ways in which boundary disputes can be resolved by the Courts:

#### Make an application to HM Land Registry.

This might be to alter the register, or to have the boundary determined (this does not refer to a decision by the registrar, but to an entry on the register defining the boundaries). If an objection is made to your application and no agreement can be reached then the file will be referred to the Land Registry Division of the First-tier Tribunal (Property Chamber). Some of the work is carried out on paper, but the dispute will be resolved in a hearing (usually about six months after your application has been referred to the Tribunal). The Tribunal Judge will come to visit the disputed area where necessary, and the Tribunal will endeavour to convene the hearing at a place convenient to the parties. The general rule on costs is that the loser pays.

The Land Registration Division also offers a free mediation service, to which you will be referred early in the proceedings. If both parties agree they will be able to spend a day with a mediator (who will be a lawyer or a judge with special expertise in boundary disputes) and work towards an agreed solution.

#### Issue proceedings in the County Court.

The court will expect you to set out clearly your case and will then allow time for your opponent to respond. The court will usually order expert surveying evidence and provide a timetable all the way up to trial. You do not have to be legally represented but many litigants in such cases are. Because of the number of procedural steps which have to be taken the costs can become very large and the usual rule is that the loser pays.

#### **Further advice**

- <https://www.gov.uk/how-to-resolve-neighbour-disputes/talk-to-your-neighbour>
- [www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/](http://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/)
- [www.advicenow.org.uk/know-hows/going-to-court](http://www.advicenow.org.uk/know-hows/going-to-court)