

## THE STARTING POINT

Any boundary dispute starts when a landowner discovers that his or her neighbour has a different idea from their own as to the position of the boundary that divides their two lands. The neighbour may be seeking to adopt, or perhaps already has adopted, their own idea as the true position of the boundary.

Most landowners assume that Land Registry can resolve the dispute for them, or if not Land Registry then a boundaries expert. Gradually, the nature of the mire reveals itself.

## THE SITUATION THAT YOU FIND YOURSELF IN IS THIS:

- Land Registry's title plans show only the general position, not the exact line, of the boundary.
- This is because boundaries were generally described ambiguously in the conveyance deeds that were used in support of first registrations of title.
- Most of those conveyance deeds were destroyed upon first registration of the title to the land.
- Land Registry does not get involved in resolving disputes between adjoining landowners.
- The land registration system, and the wider law of property, does not confer on anyone (other than a judge in a court of law or a tribunal) statutory powers to enable them to settle a boundary dispute.
- No chartered surveyor, nor anyone else acting as a boundaries expert, has a statutory power to impose their professional opinion as to the boundary upon their client's adjoining landowner.

## THE PLACE YOU ARE TRYING TO GET TO

You probably expect that there is a system in place that can tell you and your neighbour exactly where the boundary is and has the power to ensure that boundaries are respected. The first bullet point above tells you that Land Registry does not know exactly where the boundary is. The fourth, fifth and sixth bullet points tell you that there is no system for ensuring that landowners respect boundaries.

You are left to seek advice either from a professional source (boundaries expert) or from a legal source (property litigation solicitor) as to how to go about resolving the boundary dispute.

A wise advisor will tell you that there is no one route out of the boundary dispute that guarantees success. There are two reasons for this.

The first reason is that neither you nor your neighbour will have received training to understand how the land registration system for England and Wales deals with boundaries, meaning that it is quite likely that neither of you understands where the boundary was intended to be by the person who created that boundary.

The second reason is that the route you take on your journey through the dispute will depend upon whether your neighbour is minded to cooperate with you in resolving the dispute, or whether your neighbour wishes, out of a misplaced belief that he believes he is right and you are wrong, to contest you at every turn to contest you at every turn: of course, that boot might be on the other foot.

Realistically, both you and your neighbour should be aiming for a destination that can offer both:

- **a just position for the boundary founded upon evidence uninfluenced by either party's interests; and**
- **a permanent and binding record of the boundary.**

The route you will need to follow depends on a complex set of factors.

## THERE ARE OPTIONS AS TO WHICH ROUTE YOU MAY FOLLOW:

### Without professional assistance.

- You and your neighbour could attempt to research, via such documentation as can be found, the history of the boundary between your two properties.
- Based on that history, you could reach an amicable agreement as to where the boundary is, and you and your neighbour could then act upon that agreement.
- You can apply to Land Registry to have your boundary agreement noted on the title registers to both properties. This will provide a permanent record of the agreement.

### With professional assistance (Alternative Disputes Resolution methods or ADR)

- Your jointly instructed boundary expert could attempt to research, via such documentation as can be found, the history of the boundary between your two properties.
- If you both agree the boundary expert's findings then you can ask the boundary expert to draw up a boundary agreement, and you may, if appropriate, specify that you want the agreement to be based on an Exact Line of Boundary, then leave it to the expert to make the application to Land Registry.
- If you and your neighbour each agree to it and each trust the expert, then jointly instruct an expert to perform an Expert Determination. The decision as to the position of the boundary is delegated to the expert, whose decision will be final and binding on both you and your neighbour.
- If you and your neighbour don't like the concept of Expert Determination, then you and your neighbour should agree to settle the dispute via mediation, Mediation is essentially a refereed negotiation between the two landowners, with the mediator's role being akin to that of the referee on a sports field.

### If you and your neighbour prefer to act adversarially (Litigation):

- In this case, you have no option but to each appoint your own expert to write an Expert Report. The expert is required to assist a judge in getting to the truth of the matter should your boundary dispute end up in court. Your expert's duty to the court overrides his duty of care to those paying his fees.
- If you unilaterally instruct an expert to write such a report on your boundary then you are very likely, unless your and your neighbour's solicitors agree with each other to steer their respective clients towards a settlement, to end up in litigation. This is a process that the Ministry of Justice has described as "*all too often unduly bitter, expensive and time-consuming*", and is best avoided.

## OTHER ALTERNATIVES TO CONSIDER

- If you find that there is no avoiding litigation, then consider whether you and your neighbour might co-operate to instruct a Single Joint Expert (SJE). Courts will normally insist on this if you haven't each instructed a separate expert before reaching the decision to litigate; using an SJE simplifies the court procedures.
- Also consider Early Neutral Evaluation (ENE). The courts often find that each party comes to litigation with a different bundle of evidence. The idea of ENE is to provide a level playing field of evidence right at the start of the trial. There are two ways in which ENE can be used:

- An expert, acting as a SJE, can examine all items of evidence that fall within his or her expertise, such evidence being produced by both parties, and assess those that will weigh heavily with the court and those that will not. The expert's ENE report may, if appropriate, recommend a basis for resolving the dispute out of court.
- Counsel (i.e. a barrister), acting on the joint instruction of both parties, can examine all of the legal arguments that may be used, given the supporting evidence, and assess those arguments that will weigh heavily with the court and those that will not. Counsel's ENE report may, if appropriate, recommend a basis for resolving the dispute out of court.

## ACHIEVING A PERMANENT RECORD OF THE BOUNDARY

LITIGATION: County Courts destroy their records after a period of 6 years: this gives no permanence.

The decision of a Judge in a court or a tribunal can change the position of the legal boundary. That judge may instruct the Chief Land Registrar to alter the affected title registers and the title plans. If appropriate, the judge can direct that the exact line of the boundary is recorded and registered against the affected titles, and this provides a permanent record.

ADR, i.e. MEDIATION, EXPERT DETERMINATION, BOUNDARY AGREEMENT, EXACT LINE OF BOUNDARY

Following a settlement made by any of these methods should be followed up with an application to Land Registry to note the agreement on the affected title registers. Land Registry sees such a boundary agreement as NOT affecting the legal boundary: LR will not amend the title plan no matter how strongly the parties to the settlement think that the pre-existing title plan is misleading. A "boundary agreement" settlement nevertheless provides a permanent record.

If the same boundary should later be contested and taken to litigation, it is safe to say that the court or tribunal would accept the "boundary agreement" as evidence of the legal boundary, regardless of what Land Registry thinks.

## THE LONG, WINDING AND POTENTIALLY EXPENSIVE ROAD

Potentially the quickest and cheapest way to a settlement is for the two parties to **amicably agree** the boundary with each other and without any professional or legal support. The danger is that this will feel more like navigating a minefield than a mire.

Using **ADR** is likely to cause only a little distress, to cost in the range of £1,000 to £20,000 depending upon which ADR method is used and how much effort goes into the resolution process, and will take a matter of months from start to finish.

**Litigation** is usually attended by ever-increasing bitterness that can result in the worst cases in mental or physical illness, is likely to cost in the range of £50,000 to £100,000, and will take a number of years to reach a conclusion.