

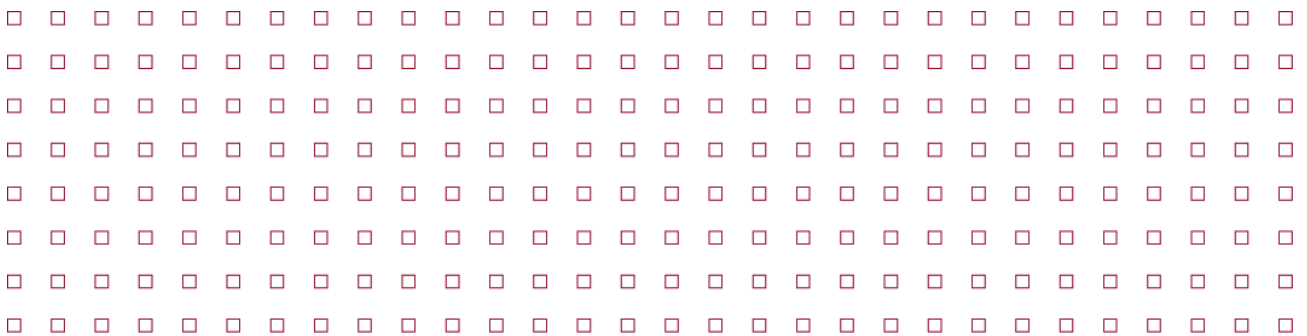


Ministry
of Justice

Boundary Disputes

A Scoping Study

January 2015





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This information is also available at www.gov.uk/moj

Executive Summary

Disputes about the position of a boundary come in many forms and have many different causes but they can too often be unduly bitter, expensive and time-consuming. In the light of this and concerns raised by Charlie Elphicke MP Ministers decided to carry out an initial scoping study into the problems affecting boundary dispute resolution with a view to identifying possible solutions. To carry out the study we sought the views of a number of key stakeholders on the following general questions:

- What types of boundary disputes arise?
- How often do boundary disputes arise?
- What are the main causes of boundary disputes?
- What resolution methods already exist and how effective are they?
- What problems currently arise and why?
- What could be done to address those problems?

The answers provided did not identify any useful sub-categories of boundary dispute and did not establish how many boundary disputes occur. The replies did, however, indicate that disputes are sufficiently numerous and serious for improvements to the ways they are resolved to be worthwhile.

The replies suggested that broadly speaking boundary disputes are either about the legal and technical issues of defining the line of the boundary or a result of the state of the relationship of the neighbours involved. The replies also indicated that most boundary disputes involve court or tribunal proceedings to some extent, but that many are resolved by other forms of dispute resolution, particularly mediation. They also indicated that there are several reasons why disputes are not resolved quickly, cheaply and conclusively.

The replies identified a number of possible approaches to improving the current system but did not reveal a consensus. The most widely supported approach was probably to promote the use of mediation. There was also strong support from some respondents for the imposition of a compulsory binding independent expert process based upon the Party Wall etc. Act 1996. The other main proposals made were to modernise the law; to extend best practice within the current system (for example, stricter case management and early site visits); and to improve the quality and availability of guidance and information.

We are not persuaded that there is currently adequate justification for the imposition of a solution based upon the Party Wall etc. Act 1996. We consider that the piecemeal improvement of the current system without impinging on its flexibility is likely to be a better approach.

We therefore propose exploring further: the scope for improving court and tribunal procedure; encouraging the use of mediation and independent expert determination; and making better information available with a view to reaching more definite conclusions in 2015.

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Part 1: Introduction

1. Boundaries are defined in law according to general land law principles. Boundary disputes come in all shapes and sizes, but they all relate to the position of a boundary and the ownership of the relevant land falling either side of that boundary. The present civil justice framework allows boundary disputes to be settled in a variety of ways – as is the case for civil disputes generally – and there are no special procedures for resolving them.
2. Although boundary disputes are resolved in the same way as other disputes, it appears to be a commonly held view that they are all too often disproportionately bitter, protracted and expensive. In response to this problem and in the light of the experiences of some of his constituents Charlie Elphicke MP introduced a Property Boundaries (Resolution of Disputes) Bill in the House of Commons on 25 June 2012. The Bill did not progress but in the light of the concerns identified by Mr Elphicke Ministers decided in early 2013 to carry out an initial scoping study into the problems affecting boundary dispute resolution with a view to identifying possible solutions.¹
3. The study is strictly focused on disputes about the position of boundaries and does not extend to disputes relating to easements, including rights to light; or to disputes regarding the maintenance of or alterations to boundary structures or the development of one property or the other (except insofar as this has created the dispute over the boundary position).
4. The study took the form of interviews with a small number of key stakeholders and the distribution of a questionnaire to 30 organisations with an interest in land law issues including boundary disputes. The questionnaire asked a series of questions on a number of key issues, namely:
 - What types of boundary disputes arise?
 - How often do boundary disputes arise?
 - What are the main causes of boundary disputes?
 - What resolution methods already exist and how effective are they?
 - What problems currently arise and why?
 - What could be done to address those problems?
5. We received 10 responses, although some of these appeared to share a common authorship in parts. Input was also received during the period of the study, either directly or through Ministerial correspondence, from a number of individuals involved in boundary disputes. The list of those who responded to the questionnaire and those whom we met is included at Annex A. A copy of the questionnaire is at Annex B.

¹ Hansard 14 February 2013 HoC 873W.

6. We are grateful to all those who participated in the scoping study. We have considered all the suggestions made but do not think that the case has been made for radical reforms in the law or in the way that boundary disputes can be settled. In particular, we are not persuaded that there is currently adequate justification for the imposition of compulsory independent expert determination based upon the Party Walls etc Act 1996.
7. We think that the better approach is to work to improve the present flexible system by considering a range of measures to make boundary disputes easier and less expensive to resolve. We will therefore be carrying out further work on the feasibility of improvements in a number of areas, including, in particular, the use of mediation and expert determination, the spreading of best practice and the provision of better information.
8. In Part 2 of this paper we describe the responses received to the questions asked and discuss the suggestions made. In Part 3 we set out our conclusions and in Part 4 we set out what we will be doing next.

Part 2: Summary of responses

9. We now describe the responses received to the questions we have asked and discuss the suggestions made.

What types of boundary disputes arise? Do different considerations apply to boundary disputes affecting residential and commercial properties?

10. The general view of those who responded was that boundary disputes relate fundamentally to the position of a boundary. One respondent suggested that disputes could be defined as relating to either ground level physical boundaries or subterranean incursions. Some replies indicated that there are disputes about the ownership of a boundary feature, such as a party wall, or the effect of such a feature, such as a high hedge, on an adjoining property; about rights of way (for example, as to their width); and about changes in physical features and mapping techniques. However, for the purposes of this study we are only concerned with these types of dispute so far as they involve a disagreement about the position of a boundary.
11. The evidence that we have received indicates that the two main types of boundary dispute are residential and commercial. There is little difference between the two from a legal perspective, although residential disputes about the boundaries to people's homes are much more likely to be emotionally charged and the parties can be less willing to compromise. There are generally fewer commercial disputes, and less likelihood that any related legal proceedings will involve litigants in person. Commercial disputes will often involve land of greater value, and can have a greater impact in terms of long term development and usage of land, affecting wider interests than just those of the parties, but both types of dispute can have damaging effects on property transactions and the financial liquidity of the parties.
12. For our purposes, taking these comments into account, we do not think that there are any useful sub-categories of boundary disputes about the position (line or location) of a boundary between two properties in different ownership, including above and below ground level. In substance, while there also does not seem to be any significant difference between the subject matter of residential and commercial disputes, there does seem to be considerable difference in the attitude of the parties towards the dispute.

How often do boundary disputes arise?

13. The responses have not provided any robust figures as to the frequency with which boundary disputes arise, although it appears that residential disputes are more frequent than commercial ones.
14. Figures provided by the Land Registration Division of the Property Chamber of the First Tier Tribunal ("the Land Registration Division"), which is the first-tier tribunal that deals with land registration issues,² indicate that approximately 1200 referrals are received per annum, with around 500 cases being formally adjudicated or otherwise

² Formerly the Adjudicator to HM Land Registry established under the Land Registration Act 2002.

disposed of. However, these are not restricted to boundary disputes, and it was suggested informally that these may make up around one-third of the total number, giving around 160–170 boundary disputes before the Division annually. In the court system we do not have overall figures but a response indicated that the Central London County Court disposes of several dozen boundary cases each year.

15. Some of the responses from surveyors and mediators estimated that they become aware of 3–4 boundary disputes per day or upwards of 1000 per annum, while responses from two Land Registry local offices estimated that they each had about 40–50 cases involving boundary disputes per year.
16. Legal practitioners who expressed an opinion seemed to agree that disputes were frequent. One such reply indicated that while disputes may arise often, many can be resolved informally with sensible legal advice at an early stage, and that only a very small proportion result in legal proceedings (with an even smaller number coming to trial).
17. A judicial response indicated that boundary disputes involving court proceedings account for a small but not insignificant percentage of county court business.
18. Taking the replies together we do not know how many boundary disputes (ranging from rows between neighbours that go no further to cases that end up in the Court of Appeal) there may be but it appears that sufficiently serious disputes happen frequently enough for there to be a benefit in seeking to ensure that they can be resolved as cheaply and efficiently as possible.

What are the main causes of boundary disputes?

19. From the evidence we have received it would appear that a wide range of factors can contribute to a boundary dispute between two parties. These factors can generally be divided into two categories, legal/technical issues and personal issues. The circumstances in which these issues can arise are manifold, and include changes in ownership of a property; extensions or other improvements being carried out; the repair or replacement of features such as fences (in particular where a hedge is replaced by a fence); and changes in the position of a physical feature over time.
20. Legal issues that can lead to boundary disputes include a frequent lack of adequate evidence to confirm the physical location of the boundary³ coupled with an unwillingness of the other party to accept assertions about the location without this substantiation; problems caused by changes in physical features;⁴ lack of clarity in the available documentation and consequential differences in interpretation or understanding of title deeds and plans, Ordnance Survey maps and different methods of mapping; badly prepared title deeds showing an inaccurate position for a boundary or other errors in conveyancing or by the Land Registry; developers seeking to maximise plots; and claims relating to adverse possession.

³ A hedge may, for example, mark a boundary, but where within the line of the hedge does the boundary line actually run?

⁴ For example, buildings, walls, hedges or trees may be removed.

21. However, responses suggested that often boundary disputes are caused by, or are merely symptoms of, personal disagreements or antipathy between neighbours. This means that disputes can arise out of jealousy or greed, or be used as a weapon between neighbours who may be having disagreements over other issues such as noise or the keeping of pets. It can also involve circumstances where developers seek to bully neighbours in adjoining properties in order to acquire extra land for their development. It is this type of personal dispute that those who responded to our questionnaire indicated can be much tougher to resolve, as they are often much more about emotion than technical or legal detail. As a result they often involve greater unwillingness to compromise or accept an adverse ruling, and hence lead to much greater time and cost being expended (for example on appeals or enforcement proceedings) before a conclusion can be reached.
22. In summary, although there may be genuine legal issues, such as double conveyancing⁵ of a piece of land or inadequate property description, that cause boundary disputes, the trigger will often be the nature of the relationship between the adjoining owners.

What resolution methods already exist and how effective are they?

23. It appears that many disputes do not develop beyond initial complaints or seeking of advice. However, the replies indicate that there are a number of possible ways of resolving those disputes that do escalate: litigation, mediation, arbitration, expert determination, application to Land Registry, private negotiation or concession. The response has not provided any robust statistics as to the absolute and relative uses of these methods of dealing with boundary disputes.
24. On the information that we have collected these methods are used to varying degrees and with varying levels of effectiveness:
- Of those disputes which are sustained and intractable, most are resolved through litigation. Litigation can take place either in the county court or higher courts or through a boundary application being made to the Land Registration Division. Sometimes matters can be resolved and settlement reached after proceedings have begun but before the case comes to trial, but otherwise cases will be decided by court judgment.⁶ This judgment, once beyond appeal, will be final.
 - An individual can apply to the Land Registry identifying the position of a legal boundary and if the other party does not object the Land Registry can make it apparent from the register that the boundary has been determined. However, if the other party objects to the application then the Land Registry must refer the application to the Land Registration Division to be decided in a hearing by a tribunal judge. Disputes arising in the course of applications to the Land Registry are also referred to the Land Registration Division.

⁵ Where the same land is conveyed to different people by a common vendor.

⁶ All cases are concluded by a court order, which may be a consent order approved by the judge or, rarely, an order striking out the application. One respondent did, however, state that orders can be defective in practice for a number of reasons: inadequate plan; does not require the boundary to be pegged and surveyed; or does not require the parties to sign the plan/survey. One respondent said that successful mediations should be concluded with a Tomlin Order staying the litigation. The order can then be enforced without new proceedings to establish the terms of the agreement set out in the order.

- In some cases issues can be resolved through mediation. Sometimes this will form part of formal litigation (where a judge may take on the role of the mediator) but on other occasions mediation will be entered into voluntarily and be entirely unconnected with any litigation which may occur.
- In a very small number of cases some other form of alternative dispute resolution may be used, such as arbitration or expert determination.⁷
- Some disputes are resolved by one party or the other simply giving up. This may happen in cases where one party is significantly more “powerful” or has access to much greater resources. In some cases anecdotal evidence suggests that parties can give up because they feel intimidated and threatened. These disputes are of course capable of reviving at a later date. Some responses mentioned the damaging effect on a prospective sale that an unresolved dispute may have.

25. Of these methods it seems from the evidence provided that the most commonly used is litigation through either the county court or the Land Registration Division. One response estimated that around 80% of cases involved litigation,⁸ although other responses suggested that up to 50% of disputes did not go to court. However, these are both methods which carry considerable expense and can take a considerable amount of time to achieve resolution. Estimates varied widely, but it was suggested that cases could take anywhere between three months to several years to resolve (depending on factors such as the complexity of the case, the attitude of the parties and administrative delays). The Land Registration Division indicated that 80% of its cases were resolved within a 70 week target.

26. Varied estimates were also given of the costs involved, and it was suggested that these could typically range from £10,000 to £50,000 per case, with the potential for much higher costs in the most bitterly contested cases. It was a common view that typically costs far exceed the value of the piece of land at stake. It appears that cases are usually funded privately by the parties, or in some instances through legal expenses insurance, although difficulties were identified in persuading insurers to agree to fund such proceedings.

27. It was said that mediation is used in around 20% of cases, and that in 50% of cases which are mediated the mediation takes place outside the context of legal proceedings. One respondent estimated that mediation was successful in 95% of cases in which it was used and that the involvement of a RICS member enabled resolution without court proceedings in a large percentage of cases.⁹ However, a key weapon in achieving these solutions seems to be judicious use of without prejudice offers that can be produced to the court if costs of the ensuing legal action come to be considered.¹⁰ Generally speaking the cost of mediation was said to be much more reasonable than litigation (with figures of around £1000–£1500 per party being quoted), although an unsuccessful mediation could simply add to the costs involved. The Land Registration Division has been operating a judicial mediation scheme since September 2012, and in the year to September 2013 32 cases had been referred to

⁷ One response referred to the RICS Boundary dispute resolution service.

⁸ With 19% being mediated and 1% being subject to expert determination.

⁹ Perhaps about 75% because the same response indicated that 25% of cases in which RICS members are involved go to court.

¹⁰ See Civil Procedure Rules, Part 36.

mediation (of which 14 had been successfully mediated, 7 had reached agreement in principle, and 11 had been unsuccessful). By way of comparison in 2013–2014 the residential property jurisdiction (London region) 71 cases went to mediation with an almost identical success rate of 66%.

28. Other methods of resolution such as the Land Registry procedure and the use of independent expert surveyors were said to be little used. The reason for this was thought to be that if one side objects to the process or refuses to accept any decision made then the issue is likely to result in litigation in any event.
29. Disputants in boundary disputes have therefore a range of possible ways in which to try to resolve their dispute. In terms of effectiveness, it was considered that (subject to concerns over time and cost) litigation would generally give a greater degree of certainty through providing a definitive judgment on the legal position of the boundary, although concern was expressed at the need for clarity in the judgments given, and responses also referred to the emotional cost inherent in the court process and the likelihood of ongoing bad feeling between the parties. Mediation or other forms of ADR were seen as potentially beneficial in this respect, although their effectiveness was seen very much to depend on the willingness of the parties to “buy in” to the process. One respondent commented that the present reliance on litigation or some degree of co-operation prevented the use of proportionate methods of dispute resolution. Simply leaving a matter to lie may end or merely postpone the reckoning in relation to the dispute.
30. Taking an overview the position which emerges from responses is that litigation is certain but relatively expensive, whilst mediation is cheaper but relies on a degree of co-operation that is not always present and may depend for its success on the existence of legal proceedings. Other methods of resolving disputes seem to be little used.

What are the causes of the problems that prevent current methods of resolving boundary disputes from doing so quickly, inexpensively and conclusively?

31. The responses we received identified a mixture of problems relating to legal or procedural deficiencies in aspects of the current system, issues common to civil proceedings more generally, and broader behavioural difficulties arising from the nature of these disputes.
32. Particular issues identified were as follows:
 - Problems stemming from “human nature” such as intransigence, aggressively territorial behaviour, and an unwillingness to compromise, perhaps derived from other incidents, together with the potential for dishonest and manipulative behaviour aimed at securing an advantage.¹¹
 - A shortage of issues that are genuinely negotiable, given the focus on determining ownership of the land in dispute and the precise legal position of the boundary.

¹¹ For example, individuals developing their own property, perhaps by building an extension, are said to take the widest view of their entitlement.

- A failure in some cases by courts¹² and solicitors to focus the parties' minds as early as possible on the need carefully to consider the costs and benefits of pursuing litigation.
- Possible deficiencies in timely and robust case management by the courts.
- The adversarial nature of litigation, and a tendency of some solicitors to discourage compromise.
- The involvement of experts at a point when the parties' positions are already entrenched.
- The high cost of litigation favouring those with deeper pockets.
- Difficulties in securing the co-operation necessary to make mediation and other forms of ADR effective, and in relation to making the conclusions reached by these means binding and enforceable.
- The inadequacy in modern conditions of the law relating to boundaries.
- Inherent difficulties involved in determining legal boundaries arising from inadequate or inaccurate documentation and the fact that many title plans, including the Land Registry title plan, only define general boundaries and not precise legal ones (leading to confusion and misunderstandings by parties to disputes).
- The expense of properly mapping and surveying an accurate boundary.

33. There are in short thought to be a wide range of possible reasons for the cost, expense and effectiveness of the methods presently used to resolve boundary disputes.

What could be done to address problems that prevent current methods of resolving boundary disputes from doing so quickly, inexpensively and conclusively?

34. A number of suggestions were made to address the problems that have been identified. We describe them and discuss their advantages and disadvantages below.

Greater encouragement for mediation and other forms of alternative dispute resolution

35. Some respondents suggested that by encouraging mediation and alternative methods of dispute resolution matters could be kept out of court by enabling the parties to reach agreed settlements in an informal non-adversarial setting. In cases where proceedings are brought, court-ordered mediation could also help in resolving cases more quickly and with less friction between the parties. Some responses also suggested that more guidance about the availability of dispute resolution services might be made available earlier in the process so that the parties could become aware of it as an option before they had committed time and expense to litigation.¹³

¹² Using case management powers.

¹³ For example the RICS Boundary Disputes Resolution Service.

36. Respondents see a number of possible benefits to such an approach. Alternative dispute resolution is generally a cheaper alternative to litigation and in many cases can happen more quickly, as it is not dependent on the listing pressures of getting cases heard by a court. This may help to prevent arguments between neighbours becoming entrenched. Solutions to the dispute can be tailored to the circumstances and take forms that could not be achieved by litigation alone. Those in favour of such an approach also argue that it has a good success rate and offers more scope for compromise than the adversarial system encouraged by litigation and court proceedings.
37. However, we note that in order to work mediation requires co-operation and a willingness to accept a compromise solution. Given what we have been told about the emotion involved in some boundary disputes it seems unlikely that many of the parties engaged in such disputes would be willing to approach mediation in a positive way. Unless the outcome is formalised in a binding agreement or court order, there may also be a limited likelihood of their abiding by any conclusion reached at the end of the dispute resolution process. The very nature of such disputes, where the focus is on fixing the legal position of a boundary means that there will normally be a winner and a loser and there may therefore be limited scope for genuine compromise. In addition, if people do not abide by conclusions reached through such processes it is unclear what status these would have legally and whether anything could be done to prevent the dispute still proceeding to court. Similarly even where mediation is ordered by the court as part of the proceedings there may still be resistance to the mediation. Where this is the case the mediation / dispute resolution may merely add to the cost and delay.
38. As noted above mediation is already available as an option in boundary disputes. The cost involved and uncertainties over the extent to which it may produce firm and enduring settlements mean that it would not appear appropriate for mediation to be made compulsory. However, consideration could be given to how its use could effectively be encouraged in a way which minimises these difficulties. By coincidence the Ministry of Justice is intending to carry out a small study into the options for extending the use of mediation in the Land Registration Division. As the Division decides some boundary disputes some of the findings may be pertinent to boundary disputes more generally.

Independent Expert Approach

39. Some responses referred to the advantage of appointing an independent expert capable of imposing a binding decision, as at present such a decision would only be binding if the parties had agreed to be bound. Certain of these responses made specific reference to the success of the Party Wall etc. Act 1996, which uses independent expert determination (not limited to chartered surveyors) to settle party wall disputes.¹⁴

Party Wall etc Act 1996 model

40. This suggestion has its roots in the Private Member's Bill tabled by Charlie Elphicke MP and developed by the Pyramus and Thisbe Club (a body established by surveyors

¹⁴ A party wall is a wall separating buildings in separate ownership or a wall standing partly on the land of one owner and partly on the land of another.

dealing with party wall cases). It is based on the system established under the Party Wall etc. Act 1996 and would provide for a system where, upon the opening of a dispute, each party is required to appoint a surveyor (unless they agree the appointment of a single surveyor) and then the two surveyors come to an agreement on the precise position of the boundary, with a third, agreed, independent surveyor acting as an arbitrator in cases where the two original surveyors can't agree. The decision reached would be subject to appeal to the County Court.

41. The key benefits outlined by those in favour of such an approach are that it would reflect the reality that expert opinion is usually the deciding factor in disputes and would avoid the adversarial nature of litigation as the two appointed surveyors will be professionals dealing purely with the legal and technical issues in dispute with the agreement of the parties. They argue that surveyors are able to apply the basic legal principles that govern land law alongside their technical expertise in judging the true position of the boundary. It is also suggested that such an approach could operate relatively quickly and inexpensively (compared to litigation and court proceedings) and that this could help avoid a situation where the parties become set in entrenched positions. Early referral to the procedure would, it is argued, be enough to remove the incentive to disagree over boundaries in many cases.
42. However, there are potential drawbacks with such an approach, even if it is adapted to allow for mediation and other forms of dispute resolution to be explored when the surveyors have been appointed. The focus on determining the legal position of the boundary is normally a matter for a judge as it determines a person's legal rights. A surveyor, no matter how expert in technical issues, is not in a position to give a ruling which is conclusive in legal terms and will also not necessarily have the legal expertise to deal with those cases which involve more complex legal issues such as adverse possession. In addition, the Party Wall etc. Act procedure is based on a mutual need between the owners of adjoining properties for work to be done efficiently, whereas as noted above boundary disputes are much more likely to produce a "winner" and "loser", with the latter being likely to be dissatisfied with the outcome.
43. Any such system would therefore require some form of appeals procedure and the likelihood of appeals would seem relatively high. If a Party Wall etc. Act type of procedure were made mandatory and there were still a significant number of appeals to the court then this would simply have the effect of adding an extra layer to the proceedings which would add to the costs rather than reducing them. In addition, the early appointment of experts may itself front load costs in cases that might have resolved in other ways. A single mandatory procedure for such a varied set of problems may be unduly restrictive as it would be an attempt to impose a single solution on a disparate problem. The approach would require clarity as to when a dispute was deemed to exist otherwise considerable satellite litigation might be anticipated around the question of whether the new procedure had in fact been triggered.

Procedural adjustments

44. A number of procedural adjustments in relation to proceedings in either the county court or the Land Registration jurisdiction have been suggested as possible ways of reducing the length and cost of proceedings. These are as follows:

a. Early site visit (followed promptly by a case management conference)

45. This proposal, put forward by members of the judiciary, is that the judge hearing a case should make a visit to the site of the disputed boundary at as early a point in the proceedings as possible to clarify the issues in dispute and to get a better feel for the real situation on the ground. This may also assist in making clearer to the parties the degree of complexity in the issues at stake and the likely costs that would be involved so that they can reach a better cost / benefit analysis of the merits of pursuing or defending the litigation.
46. Although we can understand that such an approach could well be beneficial, it may be preferable for the courts to have the flexibility to carry out an early site visit at their discretion in the light of the circumstances of the individual case as at present rather than for this to be prescribed as a requirement in all cases. This approach might however be encouraged if this was thought to be useful.
47. It was also suggested that claimants should be required to submit a land survey plan in a prescribed form to accompany the claim form when commencing legal proceedings. Consideration could be given to whether this would be useful in the context of early site visits.

b. More robust case management

48. It was suggested that the courts should be more robust on occasions in managing cases. Robust case management appears essential in what are often very difficult cases, and would assist in avoiding delay and fostering greater awareness among the parties of the costs involved. It could also help crystallise the issue in dispute at an early stage and encourage early settlement. However, it was considered that in many disputes intransigent parties would still be likely to push the issue to a full hearing.
49. In this context, we would mention other recent reforms to the civil justice system. These include: a new rule on proportionality, which means that costs which are disproportionate will not be recoverable even when they are reasonably or necessarily incurred; new provisions for costs management and costs budgeting; and steps to encourage early settlement. These changes, which apply generally, should help to reduce the extent to which costs spiral disproportionately out of control in property boundary disputes.

c. Court to order parties to get single joint valuation of the land in dispute and then cap recoverable costs of each at value of land

50. This suggestion, which was made by a judge, aims to ensure that the parties to litigation do not run up exorbitant and disproportionate costs over very small pieces of land, by ensuring that a successful party could only recover costs from the unsuccessful party limited to the value of the land in dispute. This might assist in encouraging early settlement and avoiding lengthy litigation. However, if recoverable costs were capped in this way parties might choose to reduce their own costs by proceeding as litigants in person, which could potentially add to procedural difficulties and the length of proceedings. There is also the possibility that it would favour those with deeper pockets such as developers who could afford to fund themselves beyond the capped costs limit. It would therefore not appear appropriate to require the court to do this in all cases, but it might be an option which the court could consider deploying where it considered it appropriate. It is likely to require a rule change to enable the court to make such an order.

d. Land Registration Division of Property Chamber to take on county court cases

51. It was suggested that the county court could be given the power to transfer cases to the Land Registration Division. This would have the benefit of leading to greater specialism with more cases being heard by specialist judiciary. However, this would create resourcing issues in relation to the availability of sufficient specialist judges. As noted above, 80% of cases currently before the Land Registration Division are resolved within a target of 70 weeks. There would clearly be a risk that without adequate additional resourcing a further influx of cases would add significantly to the time taken. Any such change would also need primary legislation, and would require the resolution of funding issues between Ministry of Justice (which currently funds the county courts) and the Land Registry (which currently funds the Land Registration Division).

e. Adjustments to Land Registry procedure

52. Suggestions were made to empower the Land Registry to determine the location and legal ownership of boundaries and to require it to put the details of ownership on the register when a change of ownership takes place in order to provide greater clarity. However, the Land Registry has indicated that it does not consider it appropriate for it to take on the role of determining legal ownership and the body making this suggestion recognised that putting ownership details on the register could have the effect of increasing rather than reducing the number of disputes.

Other suggestions

f. Outlaw adverse possession at the expense of the registered title

53. This suggestion would overturn the long standing principle that a person continuously using otherwise neglected land for a period of time without this being challenged by the registered owner eventually takes ownership of that land. However, the Land Registration Act 2002 has already made adverse possession harder to acquire by requiring the registered owner to be notified of any such application, and to outlaw it altogether would overturn what is a long-established principle of land law and would appear unfair on a person who is reasonably using otherwise neglected land.

g. Give new powers to local authorities

54. Another suggestion was that local authorities should be given additional powers to resolve disputes, for example by acting as mediators. Local authorities can on occasion assist in helping to resolve disputes at present and have power to make orders to reduce the height of hedges which unreasonably interfere with the use of an adjoining domestic property under the Anti-Social Behaviour Act 2003. However, the introduction of a new formal system giving responsibility for this to local authorities would require the creation of an entirely new administrative system, the establishment and operation of which could involve considerable cost. In addition, in common with certain other suggestions, a local authority would still not be in a position to determine the ownership of the land in a way which was conclusive in legal terms, and there would still be the potential for its decisions to be regularly appealed to the court. The legislation could in theory confer power to define boundaries on an authority but this would be a radical new role, raising issues about the relationship of the role of the authority and the court as the body deciding the legal rights of the parties.

h. Create a Boundary Disputes Ombudsman to resolve disputes

55. This would involve similar difficulties and costs to those inherent in giving new powers to local authorities (for example in creating an entirely new administrative system). In addition, as above there would still be questions about the extent to which an Ombudsman could determine the legal ownership of land.

i. Improve the law and the availability of guidance about it

56. Some responses suggested that the law relating to boundaries (with its assorted rather ancient presumptions) should be updated and that better education about the implications of property ownership should be provided. It was also suggested that more detailed mapping (adopting standards used in the 1905 Ordnance Survey) would help and that the land registration rules should be adapted so that declarations of ownership of boundaries could be added to the register (or even be required to be added). One response suggested that the Law Society and the RICS might provide more guidance on the preparation of conveyances and their plans; and that the Land Registry might inform people of RICS boundary dispute resolution services when indicating that it was considering referring a dispute to the Land Registration Chamber.

j. “Nationalise” disputed land

57. One respondent suggested that disputed land should be “owned” by the State, subject to the parties continuing to enjoy their present use of the land in question, pending the determination of its true line by arbitration. If the parties did not accept the award the land would stay in the ownership of the State subject to the dispute being re-opened. This proposal would be a considerable innovation and seems likely to complicate the law. We are not attracted to it.

Part 3: Conclusion

58. We are grateful for all the suggestions made and the time and effort given by those who took part in the scoping study.
59. It appears that most boundary disputes involve court or tribunal proceedings to some extent, but that the majority are resolved by other forms of dispute resolution, particularly mediation. It is however impossible to estimate how many disputes end before litigation. Litigation is of course usually the most expensive and time consuming element of resolving any dispute. It is perhaps small comfort that the vast majority of boundaries – of which there must be many millions or even billions – are not disputed.
60. Our impression from the scoping study is that property boundary disputes tend to be divided into those which are legal and technical disputes about the position of the boundary and those which are really more personal disputes between neighbours, where the boundary dispute may just be a pretext for conflict or only one of a number of areas of disagreement. The reasons why boundaries are disputed may lie as much in the personalities of the neighbours as their legal history and the law.
61. That said, in the legal and technical disputes the very nature of the dispute lends itself towards a litigated or judicial resolution, because the aim is to get a conclusive decision on the legal position of the boundary. The underlying problem here may well be that boundaries generally are not and have never been precisely delineated in the way that occurs within some other types of land ownership systems. This means that neighbours can in some cases honestly hold differing opinions about where the legal boundary lies. In the second category of cases, because of the emotional (and often financial) investment of the parties on both sides often neither is willing to compromise and settle for an agreed resolution until a judge has made a definitive ruling. The result is that in both sets of circumstances substantial expense can be built up, often over a period of a number of years.
62. Despite the disparate causes and natures of boundary disputes it is common ground that disputes can be protracted, expensive and difficult to resolve and that it may be possible to improve the way they are dealt with so that they can be disposed of more economically and efficiently. There is, however, no consensus as to how those improvements might be achieved.
63. We are not surprised given the disparate nature of boundary disputes and their causes that there is no single answer commanding general support. Nonetheless, the scoping study identified a number of possible approaches that might be taken to improve the current system, some of which are not mutually exclusive. Perhaps the most widely supported approach would be to promote the use of mediation within the current system wherever the parties are willing to engage constructively. On the other hand, there was strong support from certain quarters for the imposition of a compulsory binding independent expert determination along the lines of Mr Elphicke's proposals. The other main proposals were to modernise the law; to extend best practice within the current system (for example, stricter case management and early site visits); and to improve the quality and availability of guidance and information.

64. We are not persuaded that there is anything significantly wrong with the present general law relating to boundaries or that there is anything to be gained by unsettling boundaries that already exist by changing the law in relation to them. We will however discuss this with the Land Registry and consider whether there are ways in which information about ways to settle boundary disputes can be made available more generally and at times when it is needed. In this connection we note that Land Registry has recently revised its Practice Guide on Land Registry plans to provide more detailed coverage of boundary agreements.¹⁵ Boundary agreements, as the name suggests, record the agreed position of a boundary line. They are the product of a resolution rather than a way to resolve a dispute but they might reduce the risk of future disputes where the line of a boundary is uncertain and the neighbours have sufficiently good relations to reach an amicable agreement. Against this, the mere raising of the issue of the line of the boundary could, as the Guide states, “generate forceful differences of opinion”, which could lead to a dispute. We will discuss the impact of the Guide with Land Registry when it has had time to bed in to see if any lessons can be learned. We will also ask the professions to consider whether there is any further guidance that might be given to their members concerning boundaries in order to minimise the chance of disputes in the future.
65. Boundary disputes are not alone in being considered expensive. The Government is taking action to bear down on the cost of civil litigation generally. We expect that these reforms will help reduce the cost of boundary disputes.
66. The present system allows for disputes to be settled in a number of different ways. Some of these depend upon the willingness of the parties to participate in a consensual approach. The most radical proposal made in the scoping study was to establish a new independent expert determination system based upon the Party Wall etc. Act 1996. This would remove the flexibility of the present system and force all disputes into a single pattern. We do not think that the case has been made for such a radical departure. Independent expert determination is little used at present and although the 1996 Act is apparently successful in its own area we are not convinced that it can simply be extended to other areas and expected to work as well. Mediation seems to be quite successful where it is used and may be capable of wider use. The outcome of the work on mediation in the Land Registration Division may be helpful in this respect. It might also assist if the services of mediators and independent experts were more widely publicised so that people caught up in disputes could identify them and the services they offer.
67. Nor are we persuaded that the jurisdiction of the county court should be transferred to the Land Registration Division. Both jurisdictions seem well adapted to their roles.
68. In conclusion, the scoping study was intended to identify problems relating to property boundary disputes and possible solutions. The study has achieved both objectives albeit without identifying any overarching solutions. On balance, whilst we do not think that boundary disputes will reduce significantly in number or that we can prevent unnecessary and disproportionate expenditure in all cases, we consider that useful improvements can be made.

¹⁵ <https://www.gov.uk/government/publications/boundary-agreements-and-determined-boundaries/practice-guide-40-land-registry-plans-supplement-4-boundary-agreements-and-determined-boundaries>.

69. We therefore propose exploring further the scope for improving court and tribunal procedure; encouraging the use of mediation and independent expert determination; and making better information available when it will be most helpful.
70. We do not think that the case has been made for radical reforms to the law or to the ways that boundary disputes can be settled. In particular, we are not persuaded that there is currently adequate justification for the imposition of an independent expert determination based upon the Party Wall etc. Act 1996. We consider that the piecemeal improvement of the current system without impinging on its flexibility is likely to be a better approach to making boundary disputes easier and less expensive to resolve than adopting an untried and radical solution.

Part 4: Next Steps

71. The scoping study identified a number of possible approaches that might be taken to improve the current system, some of which are not mutually exclusive. We propose taking the following steps over the coming months with a view to reaching more definite conclusions in the course of 2015.
72. We will discuss with the Land Registry:
- whether there are improvements that could be made to the general law relating to boundaries.
 - whether there are ways in which information about ways to settle boundary disputes can be made available more generally and at times when it is needed.
 - the impact of its coverage of boundary agreements in its revised Practice Guide on Land Registry plans.
73. We will also ask the professions to consider whether there is any further guidance that might be given to their members concerning boundaries in order to minimise the chance of disputes in the future.
74. Finally, we will explore further the scope for:
- improving court and tribunal procedure in relation to boundary disputes;
 - encouraging the use of mediation (the outcome of the work on mediation in the Land Registration Division may be helpful in this respect) and independent expert determination in relation to boundary disputes; and
 - making better information available in relation to boundary disputes when it will be most helpful (in particular so that people caught up in disputes can identify people who might help them and be aware of the services they offer).

January 2015

Annex A

List of those who responded to the questionnaire

His Honour Judge Bailey, Central London County Court

George Laurence QC, Barrister

Law Society Property Team

Nicholas Fluck, Solicitor

Andrew Schofield, Pyramus and Thisbe Club

Royal Institution of Chartered Surveyors

The Dispute Mediation Consultancy

Civil Mediation Council

Land Registry – Leicester Office

Land Registry – Weymouth Office

List of those whom we met

Principal Judge Cousins, Property Chamber, Land Registration Division

Andrew Schofield and David Moon, Pyramus and Thisbe Club

Patrick Milne and John Pownall, HM Land Registry

Sarah Thorogood and James Kavanagh, Royal Institution of Chartered Surveyors

Annex B

Boundary Disputes Scoping Study Questionnaire

A. Types of boundary disputes

- Are there different types of boundary disputes?
If so, please identify them and please reply to the remaining questions by reference to each type of dispute you have identified.
- Do different considerations apply to boundary disputes affecting residential and commercial properties?
If so, please specify and please distinguish in your replies to the remaining questions between disputes relating to residential properties and disputes relating to commercial properties where relevant.

B. Boundary disputes

- How frequently do boundary disputes arise?
- What causes boundary disputes?
- How long do boundary disputes generally take to resolve?
- What do boundary disputes typically cost to resolve?
- How are boundary disputes usually funded?

C. Methods of resolving boundary disputes

- What methods are currently used to resolve boundary disputes?
- How often is each method used?
- How often are disputes resolved without commencing court proceedings?
- How often are disputes only concluded by the making of a court order?
- How effective is each method in terms of:
 - (a) time,
 - (b) cost and
 - (c) achieving a conclusive outcome?
- What problems prevent these methods of resolving boundary disputes from doing so:
 - (a) quickly,
 - (b) inexpensively and
 - (c) conclusively?

Please reply by reference to each method you have identified.

- What are the causes of these problems?
- What could be done to address the problems you have identified and improve the current situation?

D. Any other comments

- Do you have any other comments you wish to add?



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