



## 1. What your Boundary Surveyor cannot do

Many clients have false expectations of what their boundary surveyor can achieve for them. These expectations arise out of a lack of knowledge, which is unsurprising given that very few landowners and homeowners have any education in land law.

Many landowners think that there must be some government-backed agency that has the authority to declare exactly where a property boundary is supposed to be. They soon discover that Land Registry is not that agency.

They then turn to a surveyor who offers advice in boundary disputes in the expectation that the surveyor will write to the neighbouring landowner to tell that neighbour where the boundary is and what that neighbour should do to set matters right.

Unfortunately, your surveyor is not registered by the government, has no royal warrant, has no power of arrest, and is not entitled to tell your neighbour what is right and what is wrong concerning boundaries.

The neighbour will be as unimpressed with a letter from your surveyor as they would be with a letter from your solicitor. Your neighbour will not do what your surveyor asks. The matter will not be resolved.

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## 2. Understanding the framework surrounding boundaries

### 2.a. Who creates and describes boundaries?

There is no government agency with responsibility for deciding where property boundaries should be.

A boundary is created when a landowner divides his land in order to sell the divided off part of it. There is no legal requirement for a vendor to consult a government agency when deciding along what line to divide his or her land prior to selling part of it and, indeed, there is no government agency to turn to for such advice.

The landowner, or an agent of his such as his conveyancing solicitor, is usually responsible for describing the boundary. That boundary description is found in the deed accompanying the first sale of the divided-off parcel of land.

For unregistered land this would be a conveyance; if the parent parcel of land was already registered prior to its division then the deed would be a "transfer of part".

The description of the boundary usually takes the form of words in the "parcels clause" and of an accompanying plan.

### 2.b. Land Registry's role

Land Registry was established in 1862 under the Land Registry Act 1862. The Act describes itself as "An Act to facilitate the Proof of Title to, and the Conveyance of, Real Estates." Its remit was initially limited to England but later extended to include Wales.

There are two factors that render ambiguous almost all boundary descriptions.

Unfortunately, the deed plan that accompanies the division of a vendor's land is nearly always insufficiently accurate to allow for an accurate determination of the boundary's position, and may be based upon out-of-date information as to what is on the ground.

The words in the parcels clause of the deed that creates the newly divided-off parcel of land nearly always neglect to mention how



the boundary is physically marked upon the ground.

Section 10 of the Land Registry Act 1862 sets out that *“The Identity of the Lands with the Parcels or Descriptions contained in the Title Deeds shall be fully established, and the Registrar shall have Power by such Inquiries as he shall think fit to ascertain the Accuracy of the Description and the Quantities and Boundaries of the Lands”*. Section 17 recognised that boundary descriptions had the potential for ambiguity and set out that *“If in making up, or afterwards continuing, such Record of Title as aforesaid, any Question shall arise as to the true Construction or legal Validity or Effect of any Deed, Instrument, or Will, ... or the Extent ... of the Estate, ... it shall be competent for the Registrar, or for any of the Parties interested, to refer the same to a Judge of the Court of Chancery”*.

The truth of the matter was that almost all applications for first registration had to be referred to the Court of Chancery for a decision as to the true position of the boundary. Applications for registration met with difficulties, delays and expense. Land registration was getting a bad name.

The Land Transfer Act 1875 sought to avoid referring every registration application to court by giving the Registrar powers to hear objections. It also removed the need to ascertain boundaries to the nearest inch, effectively inventing the “general boundaries” that currently blight the system.

The Land Transfer Act 1897 introduced compulsory registration of title, and yet in 2019 there remains a significant minority of unregistered land.

The 1897 Act also prescribed that *“the Ordnance Survey map, on the largest scale published, shall be the basis of all registered descriptions of land”*. This is a curious

development, given that section 12 of the Ordnance Survey Act 1841 prevents Ordnance Survey maps from showing property boundaries and from having any effect on anyone’s legal interests in land. Moreover, the Ordnance Survey maps are not sufficiently accurate to show the exact positions of the physical features represented by the lines on those maps.

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### 3. Boundary disputes are inevitable

A great many boundary descriptions found in deeds (conveyances and transfers of part) are ambiguous because they are based upon Ordnance Survey maps.

Under the terms of the Land Transfer Act 1897, Land Registry relies, as the basis for their descriptions of the extents of registered land, on Ordnance Survey maps that by law (the Ordnance Survey Act of 1841) do not show property boundaries. This forces Land Registry’s title plans to show only the general positions of boundaries, but in any case, Land Registry is not in possession of information sufficient to determine the exact lines of boundaries.

In the case of many properties, destruction of the pre-registration title deeds follows first registration of title. In these cases, the only boundary description available is Land Registry’s “general boundary”.

It is safe to say that no vendor offers an adequate description of the land that the purchaser is buying, and that no conveyance nor any transfer of part comes with a guarantee as to the position of the boundaries of the land being sold.

The preceding four paragraphs are not the description of a model land registration system: they describe an environment in which boundary disputes will inevitably flourish.





## 4. What, realistically, can your boundary surveyor do for you?

### 4a. Litigation support

Traditionally, the surveyor's role in boundary disputes is to assist a court by interpreting onto an accurate plan the position of the "paper title boundary" (the boundary described in the deed that divided the vendor's land), and to support that interpretation with an **expert report** and with oral evidence given in court.

The leading boundary surveyors are able to offer **early neutral evaluation** of the technical issues in a boundary dispute (it requires a barrister to make an early neutral evaluation of the legal issues). Early neutral evaluation requires the disputing parties to jointly commission the evaluation so that the dispute starts on a level playing field of shared knowledge and provides an impartial assessment of which factual evidence (or legal argument if the evaluation is made by a barrister) is likely to carry weight and influence a judge. The evaluation would also suggest an appropriate alternative dispute resolution method for settling the dispute, more quickly and less expensively, out of court.

### 4.b. Alternative dispute resolution methods

Your boundary surveyor may be able to assist in resolving the boundary dispute in some of the following ways.

Some surveyors have trained as **arbitrators** who will be asked to make a decision as to where the boundary is. The process may be treated as a desk exercise, or as an informal hearing in front of the arbitrator.

Some surveyors have trained as **mediators** who will facilitate a negotiation between the parties in which all contentious issues are discussed and settled by negotiation. This may result either in clarification of the exact position of the boundary or it may result in the position of the boundary being moved in order to reach a settlement of the dispute. In the latter case the mediator will make the arrangements needed to deal with the movement of the boundary.

Some surveyors offer **expert determination**, in which the disputing parties agree to leave the legally binding decision as to the true position of the boundary to the expert they have appointed.

The above alternative dispute resolution methods all rely upon the parties agreeing with each other that they will submit to the particular method. In this, they differ from litigation, which is usually initiated by the unilateral action of one of the parties.

### 4.c. Amicable settlement

Litigation has a reputation for being unduly bitter, expensive and time-consuming. ADR (alternative disputes resolution) is undoubtedly considerably quicker than litigation, with a corresponding reduction in expense and time consumed by the dispute.

Pursuing that line of reasoning further, it follows that an amicable settlement of a boundary dispute is much preferable. It can only be achieved if both parties are willing to engage with each other without resorting to animosity, and with both parties being willing to jointly take friendly and impartial advice from an experienced expert in the matters at issue.