Protocol for Disputes between Neighbours about the Location of their Boundary (The Boundary Disputes Protocol)

1. Preliminary

1.1 This Protocol applies where neighbours are in dispute about the location of the boundary between their properties. It applies both to 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.

1.2 The aim of this Protocol is to provide such a process, which seeks to ensure that neighbours exchange sufficient information in a timely manner to minimise the scope for disputes between them; and to enable any such disputes to be readily resolved, keeping costs to a minimum.

1.3 Boundary disputes usually involve issues both of legal interpretation and of surveying judgement. Adjoining owners should bear in mind that, in order to investigate these matters properly, legal and surveying advice may well be required, and that the cost of obtaining such advice is frequently out of all proportion to the value of the land at issue.

1.4 It is not the function of this Protocol to provide advice to the parties. However, some guidance is set out in the accompanying [Guidance Note](http://www.propertyprotocols.co.uk/guidance-note) and the Supplementary Guidance Note. Land Registry Practice Guides also provide useful guidance - see Useful Links.

1.5 If there is a dispute about the location of the boundary, or there is reason to believe that there might be one, neither party should interfere with any physical feature which might be a boundary feature, or with any land (or anything on the land) which the other party claims to be theirs, until after the dispute has been resolved. Both parties (and any professional advisers) should avoid doing anything else which might unnecessarily exacerbate the relationship between the parties, and/or which might increase costs unnecessarily.

2. Exchange of Information

2.1 As soon as it appears that there is a dispute about the location of the boundary, the parties can agree to adopt this Boundary Disputes Protocol. The date on which this occurs will be referred to hereafter as the Start Date.

2.2 Dates by which certain steps are to be taken are set out below, by reference to the Start Date. If at any stage either party cannot comply with the timetable, they should notify the other as soon as possible of the reason for that, and, if there is a good reason, the parties should seek to agree a revised timetable.

2.3 Within 2 weeks of the Start Date, the parties should:

(a) if their property is registered, provide the other party with official copies of the Land Registry title information relating to their own property; and

(b) seek to agree whether any determined boundary exists, or whether there is any note about a boundary agreement in the official copies. If there is, then no further steps should need to be taken, because such information should resolve the dispute[[1]](#footnote-2).

2.4 If the dispute is not resolved at that stage, each party should assemble all the information they have in their possession, or which they can procure, within 4 weeks of the Start Date. This will include:

(a) past conveyances of either property (for example in a deed packet given to them on purchase, or held by their solicitor or lender);

(b) any further conveyances which are referred to in the official copies relating to their property which they are able to obtain, for example from the Land Registry;

(c) Photographs of either property which show the disputed boundary features.

The parties should exchange copies of such documents within 4 weeks of the Start Date[[2]](#footnote-3).

2.5 At the same time, if either party considers that they may have an adverse possession claim which will render further investigation of the paper title position pointless, they must inform the other party, and set out the basis for their claim, supplying the following information:

(a) a description or plan of the area which that party claims is or has been in in their possession;

(b) the period during which it is claimed that the land has been in the possession of the party or their predecessor, and whether the claim is an “old-style” claim or a “new-style” claim. (This is explained in the Guidance Note.)

(c) if the claim is a “new-style” claim, the basis for contending that the party had a reasonable belief that the land belonged to them, or, if they do not rely on the third condition in Schedule 6 paragraph 5 of the Land Registration Act 2002, which condition they rely on, and on what basis.

2.6 Where a claim for adverse possession is made (whether a “new style” claim or an “old style” claim: see the Guidance Note), or where one party relies on a historic boundary agreement, the other party should explain the basis for opposing this claim within 6 weeks of the Start Date.

2.7 Within 7 weeks of the Start Date, the parties should:

(a) seek to agree whether they have the first conveyance by which the properties passed into separate ownership (“the First Conveyance”), and if so, which one it is; and

(b) if they do not have the First Conveyance, discuss what other steps can or should be taken, when and by whom, in order to find the First Conveyance;

(c) seek to agree, if an adverse possession/boundary agreement claim is made, whether to proceed to investigate the paper title position, the adverse possession claim/boundary agreement, or both.

3. Appointment of professional advisers / Negotiation

3.1 Many boundary disputes will involve a claim for adverse possession. This is a complex and specialist area. Anyone claiming adverse possession should seek legal advice as soon as they appreciate that an adverse possession claim is likely to arise to make sure that their position is protected: see the Guidance Note.

3.2 In simpler cases which do not involve adverse possession, the parties should consider:

1. whether they can exchange information in accordance with this Protocol without needing professional input;

1. having exchanged information, whether they can reach an acceptable resolution by direct negotiation or with the assistance of a mediator before incurring the cost of legal and surveying advice, bearing in mind the value of the land at stake, even if that means accepting something less than they would ideally like. In preparation for such a negotiation or mediation, the parties should ascertain (preferably by asking the advisers that they will retain if the dispute cannot be settled) what costs they will incur if the matter cannot be settled.

3.3 In all cases, the parties should within 8 weeks of the Start Date discuss whether they wish to negotiate or mediate at this stage, or proceed with the next steps in the Protocol.

3.4 If legal advisers are not instructed on both sides within 8 weeks of the Start Date, but are subsequently instructed, the legal advisers should consider whether a further negotiation or mediation is appropriate, and inform the other party, within 2 weeks of appointment. If agreement is not reached at that stage, the parties and the legal advisers should keep under review whether a further negotiation or mediation is appropriate.

4. The Paper Title Claim

4.1 Once the First Conveyance has been identified, each party must consider what evidence they will be able to adduce about the physical features which existed on the ground at the date when the First Conveyance occurred (and any other relevant issues of fact). The parties should exchange any documentary evidence they have (eg old photographs/aerial photographs), and identify the proposed witnesses of fact, and what they will say, within 3 weeks of the date when the First Conveyance is identified.

4.2 If the First Conveyance provides accurate plans, and the parties cannot settle the dispute, it is likely that expert surveying evidence will be needed. In some cases, other types of expert evidence will also be needed, for example, to assist in the interpretation of aerial photographs. For convenience, all such experts are hereafter referred to in this Protocol as “the expert”.

4.3 In most cases where boundaries between gardens are disputed, and in some other cases, it will not be proportionate for the parties to have an expert each. In these cases, an expert should be jointly appointed (which means the expert owes the same duties to both parties, and the parties share the costs). The expert should be instructed within 5 weeks of the date when the First Conveyance is identified, and should be asked to produce a short report within a further 4 weeks. Instructions should be given on the basis of Part 35.3 of the Civil Procedure Rules (CPR)[[3]](#footnote-4).

4.4 A jointly appointed expert who is a surveyor should carry out the following tasks:

(a) produce an accurate, computerised, plan of the physical features existing on the ground at the date of inspection;

(b) plot onto that plan the line shown on the First Conveyance plan, or, if there is more than one possible interpretation, the various possible boundary lines;

(c) explain why the various possible boundary lines arise – ie what interpretation of the First Conveyance and/or the other evidence leads to that line being chosen; and

(d) produce any photographs which the expert considers will assist.

4.5 In other cases (for instance, where there are proposals to develop one or both of the properties and the precise location of the boundary is important for the development proposals), it may be appropriate for the parties to instruct an expert each. Instructions to the experts should be given within 5 weeks of the date when the First Conveyance is identified. As above, instructions should be given on the basis set out in CPR Part 35.3, so that the experts are aware that in the event of litigation the duty of the experts is to help the tribunal which decides the dispute on matters within their expertise and that this duty overrides any obligation to the person from whom instructions are received or by whom they are paid.

4.6. Short reports should be exchanged within 4 weeks after instructions are provided to single experts. The experts should, within 2 weeks of the exchange of reports, have a discussion in order to identify to what extent they are able to agree, and agree a short summary of their discussion which should be provided to both parties.

4.7 Whether an expert is a single joint expert or an expert instructed by one party, they should be provided with everything which the parties have exchanged in accordance with the Boundary Disputes Protocol.

4.8 Further guidance about what to expect from surveyors can be found in the Supplementary Guidance Note.

5. Adverse possession

5.1  Where this issue arises, each party should, within 14 weeks of the Start Date, provide to the other party all relevant documentary evidence and information about who the witnesses of fact will be and what they will say. Relevant documentary evidence might include photographs, aerial photographs, and receipts for works done on the boundary.

5.2 In some cases, expert evidence may be necessary - for example, if there is a difference of interpretation of plans, or there are aerial photographs. In cases where a boundary between gardens is disputed, it will usually be appropriate for the parties jointly to instruct a single expert. This may also be appropriate in other cases. In some cases, it may be proportionate for each party to instruct their own expert. In either case, the expert or experts should be appointed within 16 weeks of the Start Date, and should be asked to report within 4 weeks of their appointment. If each party has an expert, the experts should, within 2 weeks of the exchange of reports, have a discussion in order to identify to what extent they are able to agree, and agree a short summary of their discussion which should be transmitted to both parties.

6. Dispute Resolution

6.1 The parties should meet again within 2 weeks of the date on which the last of the steps set out above is taken, in order to see whether they are able to agree the boundary. If possible, that meeting should take place at the location of the disputed boundary with the expert (or experts if more than one was instructed). Any discussions should be on the basis that they are "without prejudice" and so cannot be relied upon in subsequent legal proceedings, unless a binding agreement is reached: see section 7 below.

6.2 If they cannot reach an agreement in principle, the parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation and, if so, endeavour to agree which form to adopt.  The options for resolving disputes without litigation include:

(a) arbitration by a suitably qualified and experienced lawyer or surveyor agreed upon by the parties or appointed in default of agreement from the Property Panel of the Chartered Institute of Arbitrators by the President of that Institute;

(b) expert determination by an independent third party (for example, a barrister, solicitor or surveyor experienced in the relevant field); or

(c) mediation - a form of facilitated negotiation assisted by an independent neutral party.

6.3    If the parties cannot reach agreement after complying with this Protocol then the final step will be for the dispute to be referred to the appropriate tribunal; either the Court or (by way of a Land Registry application) the First-tier Tribunal (Property Chamber) (Land Registration) for determination. Parties should be aware however of the substantial costs consequences of taking such action and that the risk of paying costs may be greater if they have failed to take steps equivalent to those set out in this Protocol, particularly alternative dispute resolution.

7. Agreement

7.1 In reaching an agreement, it is important that the parties are clear about what is being agreed. Agreements can be reached by reference to lines on plans or lines on the ground. If the parties are negotiating by reference to a line on a plan, they should be clear that they understand where on the ground this line will lie. It is generally wise to negotiate by reference to a line on the ground (ie to mark out on the ground the line being proposed), to ensure that there are no misunderstandings.

7.2 It is also important for the parties to be clear, if “an agreement” is reached on site or during the course of a without prejudice meeting, whether the agreement is intended to be immediately binding (and followed by a written document recording the agreement); or whether it is intended that the agreement will not be binding until a written document is executed. It is suggested that the former will often be more satisfactory.

7.3 If the parties reach an agreement (or an agreement in principle) by reference to a line “on the ground”:

1. The parties should ensure that the line is marked, by stakes where it does not accord with existing physical features, at the time they reach their agreement. As disputes are often about a few inches of land, the parties should make sure that they agree on which side of the stakes the boundary lies.
2. The expert (or experts – or if none have previously been instructed, a jointly instructed expert) should be instructed to survey the line agreed, and produce a plan within 1 week, showing the agreed boundary line coloured in red.

7.4 Conversely, if the parties reach an agreement (or an agreement in principle) by reference to a plan, unless the line follows an existing physical feature, the expert (or experts if more than one was instructed) should be instructed to transpose the line on the plan onto the ground, for example, by placing stakes along it, in order to bring home to the parties, for the avoidance of doubt, the position of the line in relation to existing physical features.

7.5 In all cases a written document setting out what has been agreed will be required. The parties should annex the plan to a written agreement and record that in order to settle a dispute as to the location of the boundary, the parties have agreed that it should run along the line shown, for example, coloured red on the plan annexed. It will often be wise to have the agreement drawn up by a lawyer.

7.6 Each party should apply to Land Registry to note the agreement against their titles.

**Written by:**

Stephanie Tozer

Guy Fetherstonhaugh QC

Jonathan Karas QC

Nicholas Cheffings

Mathew Ditchburn

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These documents comprise part of a group of protocols which are provided free of charge to the property industry. For more, and for most recent developments, please see the full list of documents at[www.propertyprotocols.co.uk](http://www.propertyprotocols.co.uk).

1. Disputes concerning boundary agreements, particularly where it is alleged that there was a boundary agreement in the past which is not noted in the register, are possible but beyond the scope of this Protocol. [↑](#footnote-ref-2)
2. The parties should also consider at this stage whether there is anyone other than their neighbour who should be involved in the resolution of the dispute, for example their own or their neighbours’ mortgagee, or any tenants. [↑](#footnote-ref-3)
3. Hyperlink to https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35#IDASLICC [↑](#footnote-ref-4)