**The Boundary Dispute Protocol**

**Supplementary Guidance Note**

**What to expect from surveyors**

1. **The Surveyor’s Approach**

1.1 Surveyors who act as expert witnesses owe a primary duty to the Court or Tribunal before which they are to give evidence. Even when not retained as expert witnesses, surveyors must act in accordance with their professional code of conduct. It is important that those who instruct surveyors appreciate this and that surveyors are aware of these duties at all times. This is particularly so in the context of boundary disputes where emotions can run high (particularly where people’s homes are involved). Those involved in boundary disputes must be aware that their surveyors will be expected to act with professional detachment. It is important too that surveyors for their part maintain that detachment.

1.2   That said in adopting a professional approach it can be important for surveyors to understand the position of their clients and the underlying issues between them and their neighbours (including how the dispute arose). It is important too that they seek to understand the position of the other parties and their surveyors. If they do this and adopt a good “bedside manner” they may play an important role in diffusing what can be an emotionally fraught dispute while retaining professional objectivity. If you instruct a surveyor, the fact that he or she seeks to speak to your neighbour’s surveyor and to understand their position means that he is doing his job.

1.3   This note is designed to help those involved in boundary disputes understand the role of their surveyor and what you can expect them to do. It will also give surveyors an indication of what has been found in practice to be a sensible approach

1. **The steps to follow – A) When instructed as a Single Expert (i.e. by one party)**

*(also see Section 4… Single* ***Joint*** *Expert)*

* 1. Initial reading of the supplied papers
		1. Where boundaries are in dispute the first port of call is usually a solicitor and the solicitor will provide instructions to a surveyor. In some cases, those involved in a boundary dispute might start by going to a surveyor (who will advise retaining a solicitor to deal with the legal issues which arise).
		2. Instructions to surveyors may vary in form, from a simple email/letter to a full bundle of documents and correspondence or, usually, something between the two.
		3. The surveyor should always read through the documents provided and, if any useful documents are missing, obtain them himself (or request that they be provided if they are not easily obtainable). At this stage it is not necessary for the surveyor to form any hard and fast opinions but simply to be able to visit the property and commence the owner-interview with some questions in mind.
	2. The initial interview with the owner

2.2.2 The first thing a surveyor should do is to meet the owner and visit the property in question. The surveyor will explain to an owner on arrival at a property the surveyor’s programme for the day and an expectation of when the results will be delivered.

2.2.3 The surveyor should explain that, once the initial interview and the guided-tour of the property have been concluded, the surveyor will need to be left on his own to take precise measurements and photographs. Any interruptions may cause the surveyor to lose concentration or forget to take (or mis-record) a vital measurement.

2.2.4 The initial interview is unlikely to be the same as an interview with a lawyer where note-taking is essential, but may be more like a relaxed conversation.

2.2.5 The surveyor will explain that, once the measurements have been taken, it will not usually be possible to enter into another interview or give an opinion on where the boundary lies (though the surveyor will reassure the owner if the measurements are satisfactorily taken or something has arisen which requires further investigation). The reason for this is that the surveyor is duty bound to provide an independent judgment, and until the report is written it is preferable that the matter should not be discussed further with the client.

* 1. The guided-tour
		1. Before measuring up, the surveyor will usually ask for a guided-tour of the perimeter of the property and may use the opportunity to raise questions about features on the ground (“do you know *how long that wooden post has been there?*” etc.)
		2. It is important to be discreet when viewing the boundary: if neighbours are likely to be in close proximity it is sensible that they do not overhear conversations or that anything is said which might raise tensions.
		3. At the conclusion of the guided-tour the surveyor will need to be left on his own for the measurement process.
	2. The measurement
		1. In most countries in the world, boundary demarcation and measurement is the preserve of the specialist land surveyor. In England and Wales this is not the case, for two reasons. Firstly, there are not many land surveyors in England and Wales and, secondly, many boundary disputes are in heavily built-up areas where building surveyors can easily measure-up the extent of a property by conventional means.
		2. Where a land surveyor is involved, it is the usual practice to use a tripod-mounted electronic measuring device to make a map of the property that can be produced at any desired scale from a computerised model.
		3. At the time of writing this protocol, the use of GPS (Global Positioning System) instrumentation is not advisable. This is because the features in dispute are usually close to hedges, walls, fences and buildings, making GPS accuracy (from satellite fixes) unreliable. It is also the case that GPS results transferred to the OS (Ordnance Survey) grid can cause a surveyor to misunderstand the relationship between features on the ground and OS map-making methodology and limitations.
		4. Where a building surveyor is involved, the measurement is more likely to be carried out using tape measures and hand-held laser-measuring instruments.
		5. Whether a land or a building surveyor is involved, it is important that the resulting map is computerised, can be reproduced at any desired scale and thus can have dimensions extracted from it.
	3. The photography
		1. The purpose of taking on-site photographs is to provide a visual aid for a future dispute resolver or a Court.
		2. Photographs may be useful to identify important features shown on plans and reports. This will remove any misunderstandings at a later stage of what the lines and features on a map represent. Repetitive and unnecessary photographs, however, will not assist.
	4. Analysis
		1. Once the surveyor has returned to his office and downloaded/transferred the site measurements into a computer system (usually, but not necessarily, in DXF format), the analysis can begin.
		2. Whether the surveyor is instructed to produce a full report compliant with the requirements of the Civil Procedure Report or a short report for the client’s use, in preparing the report the surveyor should consider :-
		3. The Land Registry Documents: these (the Property Register and the Title Plan) are useful in seeing the trail of paper-title (conveyances and transfers etc.) that the LR has seen and recorded, and in seeing (on the LR Title Plan) the approximate outline of the property concerned. It should always be borne in mind that LR Title Plans do not show precise legal boundaries; they show features which may or may not be boundary features and which, in themselves, are subject to the ‘general boundaries rule’: Section 60 of the Land Registration Act 2002.
		4. The deeds: It is the deeds (conveyances, indentures, agreements, transfers, etc.) that define the extent of a property and this is referred to as ‘paper-title’. These may not be available from the Land Registry documentation and inquiries should be made of the client or solicitors if the Land Registry documents suggest they exist but they have not been provided.
		5. The deeds may contain dimensions within the text of a deed and/or on the deed plan itself. The surveyor should analyse all these dimensions, irrespective of their legal status, and attempt to reconcile them with his measured survey plan. The legal status of dimensions (e.g. the question of which has priority, a written dimension in the text or one that has been added to a plan for identification only) is a matter of law and not of surveying expertise. Aerial photography: Aerial photography is available from a variety of sources, typically going back as far as 1945, and is useful in illustrating features that existed before the current dispute evolved. Land surveyors have specialist training in aerial photographic interpretation involving the use of stereographic instruments that enable three dimensional views to be obtained.
		6. Terrestrial photography: It is often the case that owners have existing photographs (perhaps of family get-togethers in a back garden, or of a new car in the front drive) and these photographs can often help in identifying background features (hedges, fences, walls, etc.) and pinpointing an exact moment in time. The surveyor should always seek to ascertain who took the photograph and on what date it was taken (and explain this in the report). The person who took the photograph may, at a later date, have to provide a witness statement describing why the photograph was taken and when it was taken.
	5. Conclusion:
		1. Whether preparing a Short Report or a full CPR-compliant expert report, it is important that the surveyor can sum his conclusion up in short sharp terms. In other words, it is the ‘news headlines’ that initially matter to the instructing lawyer and/or owner.
		2. Copying and pasting long sections of the surveyor’s analysis into a conclusion should be avoided; the skill is in summarising the key parts of the analysis and then, if the lawyer/owner needs to delve further, the subject can be seen in greater depth within the analysis or notes (depending upon what type of report is being prepared).
1. **Meeting of Experts**
	1. If a dispute continues towards some form of arbitration, adjudication or litigation, it is usually the case that the expert surveyors appointed by each neighbour are instructed to meet and draw up a list of what they agree upon, what they disagree upon and items that they almost agree upon subject to some reservations. The idea behind this is that the nub of any disagreement can then be arrived at quickly and therefore it can save the parties involved considerable sums of money in wastefully dealing with matters about which there is no disagreement.
	2. It is frequently the case that one surveyor is based close to the properties in dispute and the other is several hundred miles away. Therefore, to meet on site is difficult (and expensive) to arrange. Surveyors, like most professionals, have congested diaries and so finding a mutually available date to meet-up at short notice can be very difficult.
	3. The usual way to conduct such meetings is by email. The advantage of this being that the surveyors do not have to be available at the same time, and they do not have to travel a long way to meet up.
	4. Both surveyors will have been to the site of the dispute, will have prepared a detailed map of the site and will have taken photographs, so they both have the necessary data at their fingertips without the need to be on-site.
	5. The usual procedure is for one of the surveyors to draw up a “Scott Schedule” (being a tabular list of items that are pertinent to the dispute) and to name it V1 (Version one). The surveyor can make his comments on each item and then email V1 to the neighbour’s surveyor. That surveyor can add his comments (and any new items) and return it as V2. In the end column of each item the surveyors can write “*Agreed*”, “*Disagreed*” or (perhaps) “*Agreed subject to xyz*”.
	6. After several versions being emailed back and forth the surveyors will have exhausted the items and issues and can sign the Schedule off and issue it to their instructing solicitors.
	7. On receipt of the Schedule, one or both of the respective instructing solicitors may wish to raise further questions of the experts arising out of the content of the Schedule. Those questions and their answers will form part of the surveyor’s report.
2. **The steps to follow – B) When instructed as a Single Joint Expert**
	1. It is increasingly common for an expert to be instructed jointly by the parties, usually through their solicitors.
	2. There are advantages and disadvantages of the Single Joint Expert approach. The advantages include reduced overall cost (because the surveyors can make one large plan to cover both properties and carry out the analysis using all available documents) and the probability that the expert may not be required to give oral evidence in Court (thus further reducing costs). A disadvantage (from each party’s aspect) is that the expert cannot have explanatory phone calls or day-to-day contact with one party’s solicitor. This tends to make the expert feel more remote and detached from the process. However, from the expert surveyor’s point of view, this may not be a bad thing in itself.
	3. The most important difference between being a Single Expert and a Single Joint Expert is that the surveyor when acting in a joint capacity must be even more careful to conduct the matter in an absolutely impartial way.
	4. It is important, therefore, prior to the site visit, for the jointly appointed surveyor to send the proposed programme for the day to each party. Typically, this may be as follows:-

09:45 Arrive on site and if possible hold brief introductory meeting with both parties

10:00 Visit Party A for discussion and guided-tour of the area of dispute

10:45 Visit Party B for discussion and guided-tour of the area of dispute

11:30 Commence measurement survey

c14:30 Complete measurement survey and commence photography

c14:45 Complete photography, dismantle surveying equipment, check notes

c15:00 Depart from site

* 1. It is also important to understand (and the surveyor should, in any event, explain this) that, with modern equipment, it is often the case that a survey map can be made with most of the electronic measurements being taken from one garden. In other words, there may be a location in Party B’s garden from where 90% of the entire survey can be measured. If this is not explained, Party A may feel, wrongly, that Party B is being favoured.
	2. Once the analysis has been completed and the report has been prepared, it is important that it is despatched so that both lawyers receive it at the same time/day. This can best be achieved by emailing it to both lawyers (i.e. addressed to them both on one email). However, if hard copies are required then, if both lawyers are on the DX system, then DX can be used. If one lawyer is on the DX system and the other isn’t, then it is advisable to send both hard copies by Royal Mail 1st Class post to avoid a situation where one copy arrives the day before the other.
	3. Written questions to the Joint expert may be prepared by one or both of the party’s lawyers. On receipt of written questions, the expert should write back to the lawyer giving the cost of answering the questions and the timetable for answering them. As with all communication, it must be copied to the other Party’s lawyer at the same time (i.e. the estimate and, once completed, the answers to the questions).
	4. If the matter proceeds to Trial and (which will probably be a rare occurrence) the Joint expert is asked to attend, then the expert should sit separately to the parties in the Court waiting area and not communicate, other than with introductory pleasantries, with either party. If one party’s counsel approaches to talk to the expert, then it must be made clear that both counsel must be present for such a conversation to occur. During the Hearing the expert will, in essence, be cross-examined by each party’s counsel and then questioned by the Judge.

**A Note on Surveyors’ Fees**

Surveyors acting as expert witnesses are not able to accept instructions on a contingency basis. A surveyor should provide a clear indication of the likely fees at the outset of each instruction.

**5. A Short Report** may be all that is required

5.1 A full CPR (Civil Procedure Rules) compliant report can be a substantial document.

5.2 The methodology that lies behind a full report it is that the surveyor visits the site, then carries out an analysis of the deeds, photographs, etc., and then draws a red line on the survey plan to indicate the probable boundary line. That analysis is usually complete before a single word has been typed to create the text of the report.

5.3 The surveyor will then spend considerable time typing-up the way in which the red line probability was reached and will attach and describe the supporting documentation.

5.4 The above process takes time and that generates cost.

5.5 It can be seen that the “probable red line” is arrived at quite early-on in this process and so it will invariably be more cost effective for the instructing (i.e. paying) party to be made aware of the result of the surveyor’s analysis without generating all the extra cost of producing a fully CPR-compliant report.

5.6 With this in mind, a professional approach is to offer a “Short Report” option to clients. The Short report should include the plan (with the red line on it), the site photographs and a concise, numbered, set of methodology-notes (preferably on just one or two A4 sheets). The notes should also make it clear that they do not constitute a full CPR-compliant report but that they can be upgraded to a full report, if required, at a later stage and at further cost.

5.7 A Short Report should therefore suffice for most boundary disputes in that they enable the party and/or their lawyer to appreciate where the expert is going to say the boundary lies and this enables the lawyer to engage in correspondence, discussion and, hopefully, agreement with the other party, without generating the cost of a full CPR-compliant unless the matter proceeds to Trial.

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