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## GEOSIGHT BOUNDARY SERVICES

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Whether you are buying or selling a property; planning a new build or an extension to your existing home; changing a hedge for a fence; or undertaking any work on or near your boundary, it is important to understand the legal definitions of the boundaries that are recorded on your registered title with the Land Registry. It is equally as important to understand that the Land Registry does not define property boundaries, they only compile and maintain a register of titles to land. It is up to the property owner to accurately define their property boundaries in agreement with their neighbours, and subsequently pass this on to the Land Registry to record.

Unfortunately, over time the physical features defining boundaries can move – hedges and trees grow and spread over the boundary line; hedges are ripped up and replaced by fences; outbuildings go up and are taken down; stakes and posts rot and fall down or are hidden in undergrowth. There are many, many ways a straightforward boundary line can end up as anything but straightforward. This ambiguity in boundary line position can lead to arguments, dispute and bad feeling between neighbours.

To help people through this maze GEOSIGHT offers an impartial, evidence based, Boundary Dispute Service, bound by our membership of the Royal Institute of Chartered Surveyors (RICS) and the Chartered Institution of Civil Engineering Surveyors (ICES). Our service is based around RICS practice notes, from UK.GOV, and from our own experience in dealing with a wide range of clients and their issues and situations.

### Typical procedure for a boundary examination

Roughly in sequence, the order of services runs as follows:

1. An initial discussion with our potential client to ascertain the extent of their issue, whether GEOSIGHT can assist, what the client's expectations are, and what level of service will be required from GEOSIGHT. In some cases, neighbours have reached an impasse over the position of a boundary line and need assistance in aligning existing features with those depicted on a Title Deed. Other cases deal with known and accepted boundaries and require lease plans, a Determined Boundary Application or just an up-to-date drawing of the land. In all cases GEOSIGHT acts as an independent expert witness and will survey, draw and write the evidence we find as if it is for a court appearance, regardless of who is paying for the service and whether our evidence is in their favour or not.
  - a. Some issues can be dealt with quickly by a phone call, imparting information regarding boundaries and how they affect their owners.
  - b. We may be asked to give a Preliminary Opinion. Having made a brief review of any documentation, photographs and conversations with our client we can provide an estimate on whether there is a case worth pursuing in the first place. If it is we can say how complex the case may be and give an estimate of fees and timescales.
  - c. Some issues can be dealt with as a desktop exercise, answering queries regarding the meaning of Title Deeds and the information they contain, what various coloured lines and areas might mean and to whom they relate.
  - d. More usually boundary issues require a meeting with the client to discuss the property legal paperwork and a site survey to accurately position the boundary in question.

This is followed by an accurate drawing of the boundary features, located to the Ordnance Survey National Grid. Often the case need go no further as the drawings provide sufficient proof to the parties concerned as to where the boundary lies, and who owns the various land parcels.

- e. With a little more work from the previous step, drawings required for a Determined Boundary Application can produced.
- f. If required GEOSIGHT can produce a written report. This report can be in summary form, detailing our findings only; or we can describe the issue, our procedure and findings expressed as a Professional Opinion, as if for court and complying with Civil Procedure Rules (CPR) in Practice Direction 35.
- g. Rarely required, GEOSIGHT can appear in court as an Expert Witness, providing evidence as to the state and location of a boundary.
2. Confirming our contract with our client through a Letter of Instruction. This details our understanding of the issues and gives an estimate of the duration and charges for the services described in the letter. Further services may take place at a later date and will attract their own charges.
3. Reading and thoroughly examining all the client supplied papers relating to the boundary issue. From this GEOSIGHT can determine if any more information is required. Such additional papers may be in the form of aerial photographs, contemporaneous maps, deeds and documents other than just Land Registry entries and deed plans. This is usually done before we attend site for a survey.
4. Visiting our clients and their site. It may seem obvious, but site visits can be crucial to a comprehensive understanding of what is or was represented on maps and plans. A ditch may have been filled in and the hedge replaced by a fence or the Ordnance Survey (OS) may have shown a stream which is now a ditch. It is the skill of the surveyor to be able to represent to our client, or potentially a court, what the lines on the maps and plans most probably represent or represented.
5. Make a measured survey of the land in question and its surroundings with, as deemed necessary at the time, laser Total Stations, 3D laser scanners, ground and aerial photos, to an accuracy appropriate to the circumstances. This will include any visible boundary features (posts, fences, hedges, walls, ditches, trees, etc.). The survey will be located to OSGB36(15), otherwise known as the Ordnance Survey National Grid. This locates the measured features precisely with the rest of the country and removes any ambiguity as to their position.
6. Draw up the survey. This is done using Computer Aided Design (CAD) software and is usually overlaid on the appropriate OS tile.
  - a. Our plans are drawn at a scale of 1:1 and then reduced to 1:1250 or 1:2500 for location purposes, and then to 1:100, 1:200 or 1:500 to show the boundary or parts of it.
  - b. If required, produce a version of our survey for a Determined Boundary application.
7. Prepare either:
  - a. an advisory opinion to alert the client to the evidence and gives them the opportunity to decide either to stop at this point or to go for a full report  
or
  - b. a full Expert Witness Report in accordance with the RICS practice statement and guidance note entitled "Surveyors acting as Expert Witnesses".
8. Optionally, rather than take a case to court, the parties involved in a boundary dispute can opt to engage mediation services (e.g. RICS Dispute Resolution Service (DRS)). If this course is followed an independent professional is engaged to help each side of the disagreement put their case forward, for both sides to explore the options, and for a joint agreement to be arrived at that both parties will uphold. Usually as an outcome of this process a Determined Boundary Application will be made recording the final agreement.

## **Who Does GEOSIGHT Represent?**

All boundary work GEOSIGHT undertake is produced as if for a court appearance from the outset and as such will not favour any particular party, insomuch as we will not slant the facts to someone's benefit. However, the output of our work is for the client who engages us either directly or via legal firm on their behalf.

If there is a dispute we may be requested to meet the surveyor acting for the other party. We both then try to prepare a schedule of 'agreed' and 'disagreed' points together with a 'joint plan'. These schedules and plan will help either our respective clients or a court narrow down the matters being contested.

There are occasions where a single surveyor is engaged by both parties as a Single Joint Expert (SJE). This can be voluntary or where a boundary case has gone to court and a ruling made compelling the parties involved in the dispute to engage an SJE. Where this happens the parties contesting the boundary must instruct and pay for the services of a single chartered surveyor. The surveyor's instruction will be to weigh the evidence, produce a drawing and accompanying report that puts forward independently gathered evidence, and recommends an outcome that both parties agree to abide with, and that is accepted by the court.

If in an SJE situation ordered by court we will normally attend a conference with counsel in advance of being cross-examined on our evidence under oath. Once the court has defined a boundary line and an order has been written, or if the matter has been settled prior to the court, GEOSIGHT may then be asked to mark out the boundary line on the ground for any fencing contractors or builders so that a second dispute does not arise because of poor interpretation of the result.

## **Summary**

A chartered surveyor is probably the one professional who is present from start to finish in an independent and objective role. The chartered surveyor will meet one or both parties and their lawyers, measure up the land, analyse the deeds, give evidence in court and then mark out and record the final boundary.

## **Definitions**

In most instances, what is shown on your Land Registry Title Plan is referred to as a 'General Boundary'

### **General Boundary**

*England and Wales operate a 'general boundaries' system of land registration (as does Scotland and Ireland). A title plan with 'general boundaries' shows the boundary of a property in relation to a given physical feature on the ground, such as a wall or hedge as identified on the Ordnance Survey map. The red edging on a Land Registry title plan is therefore not definitive as to the precise position of the boundaries. For this reason, official copies of title plans carry the following warning: 'This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.'*

In respect of this, you are **not** advised to use a title plan to define the extents of your property. Rather, you should look to accurately define your boundaries with your neighbours and apply to the Land Registry to have these determined.

### **Determined Boundary**

*The Land Registration Act 2002 provides for the recording of 'determined boundaries'. The aim is to record a boundary's position to a precision of +/- 10 mm. The determined boundary should be mapped relative to surrounding 'hard' detail (anything made of brick, stone or concrete that is expected to endure) or to the OS National Grid to a high level of accuracy that is certified by a chartered land surveyor. The intention is that another chartered land surveyor would be able to relocate or replicate the boundary. A determined boundary should be agreed between the neighbouring landowners before it can be recorded. The only practical difference between a boundary agreement and a determined boundary is that the determined boundary is recorded on a plan whose accuracy has been certified by a chartered land surveyor.*

Upon receipt and acceptance of a Determined Boundary application, Land Registry will then make it apparent from the register that the boundaries have been Determined. Reference to the boundary concerned being a Determined boundary will be made in the property register of each affected title. Thereafter you can proceed safe in the knowledge that your boundaries are now legally defined and can never be called into question, since the definition of Determined Boundary remains with the property and not just the proprietor. This also makes any future conveyance on the property much easier, because a Determined Boundary adds value, in the sense that it rules out any future boundary dispute issues.

### **Chartered Surveyor**

Someone who has studied surveying, past the requisite examinations and interview, and has been accepted as a member of the RICS. They agree to abide and be bound by the rules and standards of the Institute in providing an independent and professional service to their clients.

### **Expert Witness**

A witness called by a tribunal to give expert opinion evidence by virtue of experience, knowledge and expertise of a particular area beyond that expected of a layperson. The overriding duty of the expert witness is to provide independent, impartial and unbiased evidence to the tribunal – covering all relevant matters, whether or not they favour the client – to assist the tribunal in reaching its determination.

### **Expert Witness Report**

The report will contain a mini-CV, instructions received from the client(s), an index, a brief description of the surveying methodology used, a detailed analysis and a conclusion. The conclusion will include a summing up of all ranges of opinion with regard to the disputed boundary so that 'no stone is left unturned'. Maps, plans, deeds, photographs etc, will all be included at the end of the report.

## **The Land Transfer Act 1897**

The Act introduced compulsory registration of title (although in 2019 about 15% of all land in England and Wales remains unregistered).

The Act also prescribed that "the Ordnance Survey map, on the largest scale published, shall be the basis of all registered descriptions of land". However, 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.

## **Ordnance Survey National Grid**

The OS National Grid is the map reference system used on all Ordnance Survey maps to identify the position of any geographic feature.

## **Preliminary Opinion**

A brief review of available documentation, photographs and a conversation with our client in order to decide if there is a boundary case worth pursuing. If so we can provide an estimate of fees and timescale for our clients and, if involved, their legal and insurance representatives.

## **Professional Opinion**

This is the opinion of the surveyor engaged to study a boundary issue and report on their findings. A chartered surveyor will be trained in their subject, have previous experience in unpicking the issues presented, and be able to present a coherent and relevant conclusion that is evidence based, independent in nature, and offers a satisfactory outcome.

## **Single Joint Expert (SJE)**

An expert instructed to prepare a report for the Court on behalf of two or more of the parties (including the claimant) to the proceedings.

## **Title Deeds and Plans**

Title Deeds are the definitive legal documents that track the ownership of property over time.

A Title Plan is the document that graphically shows the extent of property ownership and forms part of the Title Deeds. Ownership is usually shown as a red border around a parcel of land, although other colours can be used.

## Checklist of Essential Information/Actions

Note	Supplied by client
Enquiry status: (initial enquiry/boundary demarcation/informal dispute/litigation)	
<b>For the client's property</b>	
Client's name	
Address of site	
Representative's name	
Address for correspondence	
Client's status (owner/occupier)	
Purpose of service - why is the boundary survey required	
Potential/actual conflicts of chartered surveyor interest (declaration needed)	
*Register entry, title plan and title N°	
Title deeds (conveyances, transfers, deeds of grant, etc.)	
Photographs from the family/private sources	
Witness statements (obtained by client's solicitor)	
<b>For the neighbour's property</b>	
*Register entry, title plan and title N°.	
*Title deeds referred to in register entry (available from Land Registry as official copies)	
<b>Relevant to both properties/either property</b>	
Planning drawings (from local council planning department)	
Vertical aerial photographs	
Oblique aerial photographs	
Terrestrial oblique photographs	
Old Ordnance Survey maps	