



Samantha Jackson

## Property Law Briefing

### The Property Boundaries (Resolution of Disputes) Bill 2016 An overview of the Proposed Procedure

The Property Boundaries (Resolution of Disputes) Bill (“the Bill”) has entered the committee stage of examination and debate in the House of Lords. The Bill can be found [here](#).

The Bill includes proposals aimed at providing an alternative to the Court and Tribunal determination of boundary disputes and rights of way by introducing the expert determination of boundary and rights of way disputes by qualified surveyors. It is a private member’s bill that was introduced by the Cross Bencher Peer—the Earl of Lytton. He is a surveyor and a Fellow of the Royal Institute of Chartered Surveyors. He was also involved in the formulation of the Party Wall Act 1996 and is currently the chairman of the RICS Boundaries and Party Walls Professional Panel.

During the second reading of the Bill on 9 December 2016 there was discussion on issues including the costs of conventional litigation and the adversarial nature of disputes. It was disappointing to note that the costs of surveyors was not used in a comparison exercise. It is also disappointing to note that whilst the adversarial nature of the existing regime of two sets of lawyers is criticised, the replacement under this Bill is two sets of surveyors and possibly a third with a quasi-judicial role!

The Bill is or was modelled on the Party Wall Act 1996 in that it takes the dispute out of the hands of the squabbling neighbours (and arguably lawyers if you’re a surveyor) to be dealt with by appointed surveyors—up to three appointed surveyors.

- Where a land owner wishes to establish the position of a boundary or private right of way, a notice, accompanied by a plan, is to be served on the adjoining owner of the land or user of a private right of way establishing the proposed line of boundary or the private right of way.
- If the adjoining owner does not consent to the line of the boundary contained in the notice or the right of way a dispute is deemed to have arisen.
- Where a dispute arises, both parties shall either select one agreed surveyor or each party will select a surveyor, who will then jointly select a third surveyor. The third surveyor has a quasi-judicial function.
- If reasonable access is denied to allow the surveyor entry onto the land, then an offence may be committed. If found liable on summary conviction the penalty is a fine of an amount not exceeding level 3 on the standard scale (which is currently £1,000).
- The surveyor would then determine the dispute and set out his decision in an award, which would also provide who should pay the costs of the dispute.

- The surveyor's findings would be conclusive, and could only be challenged if an appeal was made within 28 days to the Business and Property Court Division of the High Court of England and Wales.
- Within 28 days after the expiry of the appeal period, the owner of the land would be required to submit the award to the Land Registry, and the award would then be noted on both titles of the affected land.

This Bill's procedure, whilst in theory could be quicker and cheaper than the current route to boundary dispute resolution, will rely on the expertise of surveyors and their ability to comprehend fully the legal implications of the historic conveyances and property documents. Often these documents have a significant bearing in establishing the line of the boundary and title to land.

My view is that there are fundamental flaws in these proposals. Surveyors do not have the professional expertise to deal with all the various factual and legal issues that come up in boundary disputes or contentious rights of way issues; the proper legal construction of documents, estoppel and boundary agreements and lastly but by no means least issues of adverse possession. Determining a boundary is not just a question of a surveyor looking at plans on conveyances and transfers, and looking at features on the ground. There will be many factual and legal issues that cannot be dealt with in this proposed procedure, which it is intended will be compulsory.

Perhaps the second reading at the Committee stage (which has not been set as at the date of this updated article) will address some of the flaws.

This is abridged version of an article written by Samantha in August 2017. The original article can be found [here](#).