This guidance note is essential reading for all RICS members interested in boundary dispute practice and will also act as an effective refresher for experienced practitioners.

It focuses on the different stages of a potential boundary dispute and the processes that an RICS member could follow as an example of best practice. Professional practice issues such as dispute resolution, mediation, how to deal with initial contact and clients are underlined; investigation techniques and appropriate resources are also highlighted. Particular emphasis is also given to the primary roles of Land Registry, Ordnance Survey, the professional advisor and the chartered surveyor in a dispute situation. The importance of boundary research, measured field surveys and advice on best practice survey techniques and final report are outlined. This guidance note also contains extensive listings of further reading and online resources.

This guidance note was prepared by the members of the RICS Boundaries and Party Walls Working Group (B&PWWG), the Mapping and Positioning Practice Panel (MAPPP) and the Geomatics International Professional Group Board (GIPGB). The B&PWWG is a cross-faculty specialist panel of technical and chartered surveyors from the building, land surveying (Geomatics) and rural areas of practice, and brings together some of the leading and most distinguished professional surveyors working within the arena of neighbour disputes.
Boundaries

RICS guidance note

2nd edition
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This guidance note was prepared by the members of the RICS Boundaries and Party Walls Working Group (B&PWWG), the Mapping and Positioning Practice Panel (MAPPP) and the Geomatics International Professional Group Board (GIPGB). The B&PWWG is a cross-faculty specialist panel of technical and chartered surveyors from the building, land surveying (geomatics) and rural areas of practice, and brings together some of the leading and most distinguished professional surveyors working within the arena of neighbour disputes. The group’s remit includes boundaries, party walls and certain easements such as rights of way and rights of light. All of these are crucial to the physical and legal extent of property ownership and their determination governs matters of use, adaption, transactability and value. These issues lie at the core of RICS members’ professional work.

The B&PWWG also produce professional guidance and information, RICS public guides, RICS client guides, policy responses, journal articles and has been involved in the inception and ongoing operation of RICS Dispute Resolution Service (DRS) Neighbour Disputes Service. The B&PWWG exists to promote understanding and best practice in the areas of land transfer, registration and administration, encroachments, cadastre and boundary issues, this remit extending to an overview of the relevant laws, both within the United Kingdom and overseas.

Current B&PWWG membership (January 2009)
John Lytton FRICS – John Lytton & Co (B&PWWG Chair 2007 onwards)
Robin Ainsworth FRICS – Ainsworth Surveying Services Ltd
Nigel Atkinson FRICS– Morton Atkinson Associates
Mark Behan FRICS – Behan Taylor
Carl Calvert FRICS – Calvert Consulting
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RICS would also like to particularly thank Duncan Moss, Paul Cruddace (both Ordnance Survey & GIPGB) and Charlie Beeden (Land Registry) for all of their hard work and professional input to this guidance note.
RICS guidance notes

This is a guidance note. It provides advice to RICS members on all aspects of their practice. Where procedures are recommended for specific professional tasks, these are intended to embody ‘best practice’, i.e. procedures which in the opinion of RICS meet a high standard of professional competence.

Members are not required to follow the advice and recommendations contained in the note. They should, however, note the following points. In the event of an allegation of professional negligence being made against a surveyor, the court is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the surveyor has acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence, by virtue of having followed these practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It does not follow that members will be adjudged to have been negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members depart from the practice recommended in this note, they should do so only for a good reason. In the event of litigation, the court may require them to explain why they decided not to adopt the recommended practice. The guidance note has been prepared to promote best practice in terms of boundary identification, demarcation and dispute resolution in England and Wales. Circumstances can arise where the suggested best practice in this guidance note cannot be applied.

This guidance note therefore should not compel chartered surveyors to an inappropriate course of action. Transparency simply requires that in the event that the guidance note is inappropriate, the reasons for this are shared with all relevant parties and a record kept.

In addition, guidance notes are relevant to professional competence, in that each surveyor should keep themselves up-to-date and should have informed themselves of relevant guidance notes within a reasonable time of their promulgation.
Introduction

The physical extent of property ownership and rights of use are basic attributes of land and buildings and are capable of being evaluated by property professionals. Uncertainty of the extent of ownership and the associated rights affects the physical use and rights to repair, maintain, gain access to and obtain value of the land. Certainty is critical for the successful sale or purchase of real property and it governs the enforceability of property rights which materially affects the value of the property as collateral for a loan. The true physical extent of ownership and rights in real property are fundamental to the successful registration of the property title, effective development control and many aspects of the enforceability of regulations governing land, its ownership and use.

As the pressures of development increase in today’s society, particularly in urban areas, boundaries and other incorporeal rights gain greater importance, both economically and socially. Householders extend their houses and build conservatories often up to their boundaries, and developers are no different in wanting to maximise the use of their equally valuable and scarce land. Not surprisingly, uncertainty in the limits of occupation has led to a steady increase in disputed boundaries.

The purpose of this guidance note is:

1. to provide RICS members with an understanding of the value and role that clearly identifiable boundaries provide;

2. to enable, wherever possible, accurate and comprehensible information to be provided by professionals, with as little room for misunderstanding as practicable;

3. to help in the event of a dispute over boundaries, to set out the facts in a manner that assists the parties, their legal advisers and the courts;

4. to safeguard the interest of clients and to promote the public interest.

The aim of the RICS Boundaries and Party Walls Working Group (B&PWWG) and RICS Dispute Resolution Service is to encourage private individuals, businesses and professional advisers (particularly the legal profession) to select a suitably qualified chartered surveyor as an expert who can scrutinise and understand the documents and maps, carry out inspections (often with a measured land survey) and prepare a report. There may also be a requirement to provide a formal expert report and present it to the court in the same manner as any other expert witnesses, such as forensic scientists, medical practitioners and other specialists. Currently, while some individuals and businesses are aware of the existence of professionals who specialise in boundary demarcation, many are not. They may therefore seek advice from unqualified persons, often to the detriment of accurately identifying the problem and invariably leading to unnecessary expense, or worse still, ill-founded litigation. It is also worth noting that the law can effect justice only if both the claimant and the defendant have their cases presented properly and in full: accurate information and assessment at an early stage can often assist in obtaining a prompt and cost-effective resolution of otherwise contentious cases.
Stage 1. Instructions

There are several circumstances in which chartered surveyors may be asked to deal with boundary matters; the following is a representative, but not exhaustive, list:

- Initial scoping advice – for instance, the options on subdivision of land and the setting out of new physical boundary structures in non-contentious circumstances or where boundary features/markers have been lost and need to be reinstated or when their position is uncertain.

- Advice on the likely position of boundaries that already exist on the ground, such as when first registration of title is required, in connection with purchase or sale, for valuation, administering party wall procedures, or scoping advice on development proposals, etc.

- In a contentious case, you may find yourself acting for one or more parties (or for more than one opposing party as a court appointed single joint expert).

The initial contact stage is an opportunity to ascertain if the matter is within the ambit of your professional knowledge and competence. If the matter is complex it may be possible to conduct an initial review of the documentary evidence on a preliminary basis. It is incumbent on the chartered surveyor considering taking instructions to ascertain that he or she has the right experience and training for the task, and has adequate professional indemnity insurance (PII) cover, as claims arising from this work can prove costly. Possible conflicts of interest should also be considered.

It is essential that chartered surveyors make themselves conversant with RICS practice statement and guidance note Surveyors acting as Expert Witnesses (3rd edition, 2008). This contains advice and information on the overriding duties of an expert witness, as well as the practical matters, such as how to set up meetings with lawyers, how to develop fees, how to manage cases and how to prepare reports.

1.1 Initial contact

The initial contact can come directly from a potential client, a professional adviser (often a solicitor), or by referral from RICS.

1.1.1 Direct contact by a potential client

A member of the general public may approach a chartered surveyor based on contact information from the Neighbour Disputes Service (RICS Dispute Resolution Service), RICS Contact Centre, or from a commercial business directory. In many cases the surveyor is usually the first professional adviser to be involved and it may be possible, after a short conversation, to ascertain if it might be possible to avoid litigation or even to act as a mediator in the matter.

RICS provides public information leaflets; the Boundaries public leaflet has been distributed to Citizens Advice Bureaux across England and Wales (Appendix 1), and may be useful to both surveyor and client in determining the extent of the problem, the objectives and the possible outcomes.
1.1.2 Professional adviser (for example, a solicitor, accountant, architect, consulting engineer or other chartered surveyor)

A professional adviser to a client will often be aware of the expertise that chartered surveyors can offer. It is important for the professional advisor and chartered surveyor to understand the nature of the case and the potential timeframe involved. It may be useful to meet the professional advisor at this initial contact stage, depending on the complexity of the case. You will need to establish clear instructions from the professional adviser as to what is required, such as a measured survey, an expert report, court appearance, or whether the professional adviser simply needs your advice in order to include it as a part of their own boundary report.

1.1.3 Referral from RICS Contact Centre

This will arise when a member of the general public or professional adviser approaches RICS and asks for the name of a chartered surveyor with boundary expertise.

1.2 Alternative forms of initial contact

There is increasing direction from the courts to reduce the cost of civil litigation and, where possible, avoid trial. For example, RICS Dispute Resolution Service (DRS) has launched the Neighbour Disputes Service, which aims to resolve as many issues as possible before a case goes to court. As in many other aspects of civil litigation there is an increasing reliance upon alternative dispute resolution (ADR), of which mediation is one form. Therefore a chartered surveyor may find initial contact being made through one of these alternative routes, often when a case is at an advanced stage.

1.2.1 DRS Neighbour Disputes Service

RICS operates a service where it will appoint a suitably qualified chartered surveyor who has undertaken specific training which leads to inclusion on the Neighbour Disputes Service register to advise the general public and/or professional advisers in respect of boundary issues. This training will include the practice and procedure of the Neighbour Disputes Service, and competence in the production of expert reports which comply with the Civil Procedure Rules (CPR) and their relationship to associated RICS Practice Statements and guidance notes.

Interested chartered surveyors can find out more information on the Neighbour Disputes Service training at www.rics.org/drs. Members interested in joining the scheme can download the DR12 Neighbour Disputes Specialist application form.

To initiate the service, one or more of the disputing parties may apply to RICS Dispute Resolution Service on a Neighbour Disputes application form (RICS website www.rics.org/drs).

The Neighbour Disputes Service is designed to resolve boundary and other neighbour disputes in order to reduce costs and where possible, avoid the need for trial. Where court proceedings are unavoidable, Neighbour Disputes Service is designed to assist the court in coming to a prompt and informed decision, so avoiding prolonged litigation and the potential for escalation to higher courts.
1.2.2 Mediation

Mediation as a form of ADR requires specific training. RICS provides opportunities for mediation training to members; further information is available from www.rics.org/drs.

If you are being instructed to act as a mediator, it is essential that this role be established during initial client instructions, as this will have a direct bearing on how the case proceeds. Mediation aims to reduce conflict and tension and requires considerable tact and diplomacy to help bring opposing parties together to resolve a boundary problem without litigation. It is worth noting that the results of mediation do not become legally binding until the signing of a formal agreement between the parties. Courts will usually require the parties to attempt mediation in the hope that it will prevent a trial. However, in many cases parties return to court following an unsuccessful outcome from mediation.

The chartered surveyor acting as a mediator should be able to explain, objectively and impartially, the boundary situation to all parties in a dispute, usually in the absence of legal representatives. The chartered surveyor should be seen as an independent source of knowledge with the potential to assist the parties to reach a mutually satisfactory resolution.

Mediation can often involve highly emotional situations, and one needs to be prepared for this. Mediation that is unsuccessful often results in greater tension, protracted costs and longer timescales than the conventional adversarial approach.

It can be difficult to be accepted as a truly impartial mediator if the initial contact has come from one of the parties only. If one party only is to be responsible for your professional fees it is inevitable that the other party will see you as being partial and not a truly independent mediator. Therefore RICS advises chartered surveyors to seek joint appointment as a mediator by all parties to the action.

1.3 Keeping records of activities

Litigation is an expensive procedure. It is important that a comprehensive record of each item of expenditure is kept, from initial contact through to the conclusion of the case. A statement of account should be made at the end of each month. RICS recommends that a regular statement of account be submitted to the instructing party (or parties). It is also vital to have time sheets, including a detailed activity list for each hour spent, and a record of material and travelling costs available for production at all times. For example, should the case proceed to court hearings but then be settled out of court at the very last moment, you may well be expected to produce detailed, justifiable and reasonable costings immediately.
Stage 2. Initial investigations

Depending upon circumstances, but especially in contested cases, it may be necessary to hold a pre-inspection meeting with the instructing party(ies) and/or their professional adviser(s). This may sometimes be combined with a preliminary reconnaissance visit to the site of the dispute. In other circumstances a brief site visit and a follow-up letter of suggestions may suffice. At all times, the amount of preparatory effort required at this stage should be proportionate to the complexity of the case. It is very important that you keep detailed and legible notes throughout all meetings and interviews, as these may form a vital record. This record may be heavily relied upon later, especially if the case eventually reaches court, a process which may take several years. It is prudent to bear in mind that all correspondence may be subject to ‘disclosure’. This means that such correspondence can be the subject of cross-questioning/examination in court, where any unguarded comment could reflect adversely on your personal credibility or even on the case itself.

RICS recommends that in all cases the following issues should be clarified at the earliest opportunity.

2.1 Setting expectations

It is essential to set the expectations of both the client and/or their professional adviser from the outset. It is particularly important to clarify that when acting as an expert witness, your primary obligation is to the court, not the instructing party(ies) and that they should remain impartial, truthful and dispassionate at all times. It is worth stressing that you will only be able to complete a comprehensive and accurate report if the client and/or professional adviser openly present all the known facts. It is also worth making clear to the client and/or professional adviser that all plans, documents and/or knowledge of any relevant incidents need to be disclosed, even if it may appear to be disadvantageous to their case.

2.2 The services to be offered

The chartered surveyor should clearly describe those services that are being offered and those that are not. For example, a chartered surveyor may offer a range of services, including, but not limited to:

- making an accurate measured survey of the existing land configuration;
- examining historical deeds and plans;
- obtaining and examining collateral and critical information, for example, from old photographs, from third party sources such as the Land Registry, Ordnance Survey, or from parish council records and local historians;
- interviewing anyone concerned with the boundary problem, for example gardeners, longer-term residents, etc.;
- analysing all information and combining it with the up-to-date accurate measured survey;
- presenting the results;
- preparing an expert final report showing the results of expert examination;
• presenting evidence in a court of law;
• being instructed under the RICS DRS Neighbour Disputes Service (where applicable);
• being instructed as a mediator (where applicable);
• being instructed as a single joint expert witness (where applicable).

It is important to set early expectations in terms of the quality and reliability of evidence that may be achievable from the examination of historical records and information sources. For example, you may find it useful to discuss the limitations of maps, surveys and plans of differing scales and provenances (see Table 3.1 Ordnance Survey Accuracies) so that the client and professional adviser can understand what may be achievable. It is also important to outline that it may not be possible to resolve the position or alignment of a boundary to the level of accuracy that they would prefer at the outset. Also the option to make an application for a ‘determined boundary’ (Stage 8) may also be appropriate. It may also be useful for you to refer to the RICS client guide Scale – Once it's digital isn't everything full size? (Appendix 1). RICS client guides are designed to communicate the sometimes ‘opaque’ technicalities of surveying and mapping into easily understood language. The Scale client guide is especially useful for explaining the concepts of scale to clients and professional advisers.

You may well be asked for an opinion on the meaning of the wording in old deeds and conveyances. Bear in mind that you may not be qualified to pass opinions on points of law or other legal matters, nor should you become involved in any arguments with the parties, except in cases where you are instructed as a mediator.

2.3 Conditions of contract

It can prove valuable to quote the RICS Terms and Conditions of Contract for Land Surveying Services (Appendix 1) as the general conditions under which you will operate. However, there are some variations, particularly with regard to the settlement of fees.

2.4 Formalising the contract

It is normal for the contract between the parties to be formalised by an exchange of letters after (but sometimes before) the initial meeting. For litigious cases and expert witness work (unlike surveys for mapping and development purposes, where the surveyor usually contracts to work for a developer, with an architect or engineer appointed as an agent to control the work), the work is normally carried out under contract to a professional adviser (usually, but not always, a firm of solicitors). If a contract is with the solicitor, then they are responsible for fees unless they state otherwise. RICS recommends that you contract with a firm of professional advisers wherever possible. This can make final payment easier to pursue in the event of late or non-payment of fees than with private individuals.
2.5 Charging fees and invoicing

Geographical and expertise differences, amongst other issues, may affect the level of fees to be charged.

It is advisable to present a copy of your fee schedule at the initial meeting, which should be given to the client and/or professional adviser.

Please refer to section 1.3 above, ensuring that you keep up-to-date records of your fees and costs incurred, and that you are in a position to show that they are reasonable. This may be done by demonstrating:

1. that the hourly or daily rate is a reasonable rate for a boundary specialist chartered surveyor; and
2. that each hour charged for has been reasonably spent.

You should provide the client and/or professional adviser with the basis for the rate charged.

There are two clear stages when an invoice can be raised. The first is on completion of the expert report – usually but not always a month to six weeks from instruction. There may then follow a period of months (or even years) when little happens apart from requests for copies of the report and the occasional meeting being made. A running total of costs during this period should be maintained.

This will be followed by either the settlement or a court appearance. It is unlikely that a boundary dispute will take less than two or three days in court, and therefore the cost of this final session can amount to several thousands of pounds. It is at the conclusion of this stage that the final invoice (including the costs incurred in the interim period mentioned above) can be raised.

Do not expect any invoice to be settled quickly. If legal aid is involved, it may take over 12 months before you receive payment, whereas if the dispute can be settled amicably without entering court you may be paid within a matter of weeks.

It is inadvisable to view boundary dispute work as a revenue stream offering short-term rewards, or as an adjunct to your normal surveying activities. Boundary disputes often require consistent long-term personal application, for which it may not be possible to collect fees until the matter is resolved or abandoned. For that reason it is recommended that anyone considering practising in this area should have sufficient cash flow to sustain both their business and personal income, and should ensure that a lack of liquidity does not endanger the completion of client-instructed work.

RICS members should also refer to RICS practice statement and guidance note, Surveyors acting as expert witnesses (3rd edition, 2008), section 19 – ‘Basis of charging fees’.

2.6 Conducting the initial meeting

The chartered surveyor should view the initial consultation as an interview with the client. The aim should be to allow and encourage the client to talk as much as possible in his or her own words about the history and context of the problem or dispute. All available documentary information such as deed plans, conveyance details, photographs and web-based information should be collected at this stage (a suggested checklist can be found at Appendix 4).
Copies of title registers and *title plans* are available from Land Register Online but are for information only and are not ‘official copies’ – www.landregisteronline.gov.uk/. Official copies can be obtained through LR Direct, Connect Direct or from the Land Registry office dealing with the administrative area. They may prove useful to study before the meeting, together with such other internet-based web map resources as Google Earth (http://earth.google.com/) and Microsoft Maps (http://maps.live.com).

Caution is advised if this initial meeting is held at the site of the boundary dispute, as the client may become more emotional and less objective about the issue. This also carries the risk of drawing an uncooperative neighbour into the matter at an inopportune moment. It may be helpful to hold the meeting at a neutral location (such as at your office or that of the client’s professional adviser). It is very helpful if the client can supply photographs of the site at this meeting. If the location of the client is distant, then the initial meeting may need to be combined with the main site visit for reasons of economy.

You can often find that you are seen by the client as the solution to all of their problems, and that this can create an emotional atmosphere of relief and gratitude. There is a risk that this trust and expectation can lead to promises and assurances being made that have to be retracted once you visit the site and begin to understand the true reality of the problem. This results in a loss of the surveyor’s credibility and client trust. Therefore you should carefully consider any promises made to the client, and the client’s perception of them.

The initial meeting should be used to clarify as many as possible of the following points.

### 2.6.1 Clarifying the issues with the client

Rarely are issues exactly as the client perceives them. Identifying the real issues and then confirming these clearly in writing with the client and/or professional adviser is essential. In effect this forms part of the terms of engagement of the chartered surveyor, as it is the basis of your professional opinion and the advice that will follow. Sometimes your opinion may not be to the liking or advantage of the client. At this point you may need to assess whether or not you can continue to work on a particular case. On some occasions it may be necessary to advise the client to seek help from an alternative source and disengage politely. It is sometimes desirable to defer finalising the terms of engagement until after the initial meeting. It is not uncommon for other matters to be intertwined with boundary issues, such as fears of potential for encroachment, the viability of a building extension, and so on.

### 2.6.2 Establishing exactly what the dispute is about

At initial meetings with clients and/or their professional advisers, a large amount of information is often presented not only orally, but in the form of deeds, plans, photographs, old maps and letters of exchange, etc. This volume will be all the greater if the dispute has been going on for some time and where your advice is being sought at a later stage. Therefore there may be a risk of leaving the meeting having received so much information that you remain uncertain as to the actual main issue at stake. Before leaving the meeting you may find it useful to try to clarify matters by using ‘test’ questions such as:
‘As I see it, the problem is …; am I correct?’
‘You would settle for…; am I correct?’ And
‘You would definitely not want … to happen; am I correct?’

The professional adviser or client will then be able to confirm, or if need be, correct your understanding of the dispute.

It is the experience of the B&PWWG that this initial meeting can also be the first time that the professional adviser has clarified the situation. The professional adviser will usually be grateful to you for clarifying any misunderstandings, particularly when done so in front of the client.

Bear in mind at this stage that the real dispute might not be about the boundary at all. Neighbours can fall out over all manner of things – children, noise and parking are just a few examples. Experience shows that neighbours might initiate boundary disputes in revenge for a perceived slight entirely unrelated to the boundary. Also many contentious disputes are not restricted to the position of a boundary, but may also involve other issues such as (but not limited to):

- easements (rights of access over one property to another);
- other rights, such as riparian rights, mineral rights, rights to light;
- subsidence;
- privacy;
- obstruction of views;
- damage to trees or from their root systems;
- noise and lifestyle issues;
- even physical assault.

It is useful to be clear about which of these other issues you are in a position to assist with, and how.

It may be useful at this point for you to consider arranging a programme of future stages for the boundary investigation and to explain the actions to be taken on completion of each stage.

2.6.3 Establishing the client’s objectives or purposes

It is important that the following issues are clarified at the earliest possible stage:

- What does the client hope to achieve?
- Are the expectations reasonable?
- If they are likely only to be partly realisable, what is the fallback position of the client?
- If it is a matter of a boundary position, where does the client think the boundary should be, and why?
- What is the client’s opinion of where the neighbour thinks it should be and why?
- What is the minimum that the client would agree to?
- Does the client wish to pursue the matter through the courts?
- Is the client looking upon the boundary dispute as part of a general legal strategy against the neighbour (i.e. are there other legal matters under way between the parties)?
• Is there a level of cost and inconvenience that would make the client agree to the status quo?
• Might the client accept the status quo in return for some monetary compensation?
• Does the problem hinge on the boundary position itself, or is there some other aspect (e.g. is it the ‘type’ of boundary that is in dispute)?
• How acrimonious has the dispute become?

Whilst the client might be adamant that they are in the right and will not accept any compromise, this position might change over the course of time, and it is helpful to check on how they feel at various stages of the dispute.

Whilst all the above questions may seem cumbersome to bear in mind at the first meeting, you will soon develop a way of extracting the above information quickly and efficiently. A good idea is to have a ‘checklist’ or agenda on a clipboard at the meeting, so that you can ensure that each subject is adequately covered.

It is probably wise to avoid all contact with the other side (whether solicitor or neighbour), but if approached and spoken to you may find it helpful to remain polite and to remember not to be an advocate for your client.

2.6.4 Ensuring expectations are understood

It is important to be realistic. Do not build up unrealistic or unachievable expectations. Consider the cost benefit of any proposed course of action and be prepared to advise if you think it is unfavourable or marginal. Avoid taking sides – your role is to be objective and to base your advice or opinions on the facts at all times. By all means explore areas where your advice and eventual outcomes might go either way; explain the risks, pitfalls and likely uncertainties. Many people may believe that a title plan from the Land Registry is definitive on matters of boundaries, and it is often necessary to explain the General boundary rule, listen and note any points or proposals that the other party might make.
Stage 3. Research

It is generally a good idea to set the date for the actual site survey at least a fortnight after the pre-site meeting or from receipt of documents. This will enable sufficient research to be made into the documents available or which may need to be sourced. You may have very little to go on apart from a photocopied conveyance and a plan that is indistinct and not to scale. If a solicitor is involved, there may be a considerable bundle of papers (the solicitor will usually refer to these as 'the case bundle', and it is not unusual for a bundle to contain many documents, each of which should be read carefully).

The objective of this research is to try to establish the position on site of any of the physical boundary features, particularly those that are in dispute, and to answer the following questions:

- Where was the boundary originally?
- Has it changed?
- If so, when, how and why?

3.1 The conveyance

The range of documents that might be provided, and their potential limitations, can be variable. Indeed some of the language used on older deeds can be arcane in the extreme, and requires careful consideration. As an example, some older documents may hint at ‘covenants’ that are not specifically recited but are contained in another document, or are ‘subject to the covenants therein’, or words to that effect. It is important to view all documents – new and old – as relevant parts of the case bundle.
A particular area to consider carefully is the historic wording on some old plans. Historic terminology, such as references to the ‘parcels clause’, and the words ‘more particularly described’ or ‘for identification purposes only’ are often used incorrectly or in conflicting terms (see the Glossary in Appendix 5 for a fuller explanation). The first key requirement is to establish whether the words of the deed take precedence over the accompanying (conveyance or transfer) plan.

As a general rule, in unregistered conveyancing the verbal description in the parcels clause will prevail over a plan attached to a conveyance, unless it is clear that the plan is intended to control the description. The effect of the phrase ‘more particularly described/delineated in the plan annexed hereto’ is that the plan will augment or cover any deficiencies in the verbal description, and will, therefore, in certain circumstances effectively control the description. Where a plan is stated to be ‘for identification purposes only’, the parcels clause will normally govern the description, on the assumption that the wording of the verbal description is adequate. This is, of course, not always the case, and where the description in the parcels is vague and the plan is for identification only, the court may take surrounding circumstances into account. Such circumstances may include the fact that a boundary has been agreed and marked out by the parties on the ground.

Conveyance deeds may also employ the phrase ‘which is for the purpose of identification only more particularly delineated on the accompanying plan’, which can only serve to confuse issues. Do bear in mind that what a person owns is defined in their deeds and not in anyone else’s. There may well be conflicts between the definitions of each party’s land, but that is generally a matter of law and not of surveying.

As already mentioned, the entire contents of the case bundle should be viewed as important and may help form a clearer picture of where the boundaries really lie.

It is self-evident when dealing with a boundary that it involves two or more adjacent ownerships. It is often necessary to obtain the relevant documentary information for the land on both sides of a boundary, if objectively reasoned advice is to be given. The Land Registry does not systematically retain copies of the conveyances that were the subject of first registration of the property title in question (the ‘pre-registration deeds’); where copies have been retained they can be provided. The Land Registry has started a process of destroying all deeds and documentation for which a scanned/electronic copy is held.

Compulsory registration started in 1899 in central London, and various other areas were subsequently added until on 1 December 1990 registration on sale became compulsory in all areas of England and Wales. Since then, triggers for compulsory registration have been extended to include almost all situations where there is a change of ownership or creation of a first mortgage.

Over a third of land in England and Wales was still unregistered as of February 2009. Unregistered land and property can be problematic, as deeds and ownership documents may be missing or held by a variety of sources such as mortgage companies, banks, solicitors, landed estates or estate surveyors.
It is also possible to voluntarily register unregistered land and there are many advantages to doing so (www1.landregistry.gov.uk/solidground/). When one or more parties in a boundary dispute are owners of unregistered land, you may find it advantageous to encourage them to move towards first registration with the Land Registry.

3.2 The Land Registry

Copies of the register and title plan(s) (if the property is registered) are readily obtainable via Land Registry Online; this is a service aimed at the general public.

Official copies of the register and title plan can be obtained via Land Registry Direct, now (March 2009) being replaced by new services which will be available through the Land Registry Portal, or by post, and are generally inexpensive. Alternatively you can use Connect Direct or the National Land Information Service (NLIS); the latter is normally used by solicitors and licensed conveyancers. In addition, the Land Registry can often supply official copies of documents referred to in the register, which may include the conveyance(s) on which the first registration was based.

Occasionally these documents can give additional information, such as the maintenance of a boundary structure that may not be revealed in the register entries. Any documents referred to in the register should always be investigated as a matter of course. The great majority of land in England and Wales is registered with general boundaries only. As a result, it is not possible to identify the position of the legal boundary from the register and title plan. The title plan is not, therefore, definitive (see section 3.3) as to the precise extent of the land in a registered title. One way of ensuring that the information is comprehensive is to undertake an initial site visit in order to get a feel for the nature of the problem. Each Land Registry office will also have a Senior Casework Team and it is worthwhile developing a working relationship with the mapping specialists within this team.

The Land Registry prepares the title plan using the version of Ordnance Survey large-scale topographic data that was current at the time of first registration. The title plan for each registered title is based on the information contained in the original title deeds. Provided the plans in the deeds and the detail shown on the Ordnance Survey map are compatible, the Land Registry will not routinely undertake a survey of the land. Where the property is not fully defined by physical features on the Ordnance Survey map, the Land Registry will plot any undefined boundaries using dotted lines.

Ordnance Survey large-scale topographic mapping data (and historic chart paper plans) have a limiting accuracy which is survey scale dependent (see section 3.3), and a currency which is dependent on the date of last survey. Whilst the Land Registry takes map updates from Ordnance Survey on a daily basis, the title plans are not routinely updated. A title plan will therefore remain in its original form until such time as action on the title requires that it should be updated.

Many of the titles held by the Land Registry pre-date its adoption of digital mapping, and some are held in paper format. The Land Registry has scanned many of its paper title plans and now holds them in an electronic format as raster images. Newly created title plans are held electronically in vector form.
In any case, nothing should be taken as overriding evidence, without careful consideration of the facts following research and comparative study.

### Land Registry documents referred to in the register

The term ‘document’ is used to describe a number of different items, which include a conveyance, a transfer, a deed, a lease, a mortgage, etc. Not all documents referred to in the register are available. In most cases you can determine which documents are available by looking for a note in the register saying ‘Copy in Certificate’ and ‘Copy Filed’. Copies of documents can mainly be obtained via Land Registry Direct (Land Registry Portal), or by post. (Alternatively you can use Connect Direct or the National Land Information Service (NLIS).)

To obtain a copy by post:
- Complete a Form OC2
- Send it to the Regional Land Registry office that serves the area where the property is located (www.landregistry.gov.uk/regional/).
- Include the relevant fee.

The relevant fees for documents can be sourced from www.landregistry.gov.uk.

If you regularly require information from the Land Registry you may wish to register as a user of Land Registry Direct, (Land Registry Portal). Users have access to a range of Land Registry services and further information is available on www.landregistry.gov.uk.

### 3.3 Ordnance Survey data and mapping

Ordnance Survey, Great Britain’s national mapping agency, collects, maintains, manages and distributes the definitive record of the features of the natural, built and planned environment, the definitive record of administrative boundaries and the record of such other national geographic datasets as required by government and the private sector. A description of Ordnance Survey’s remit and products can be found at www.ordnancesurvey.co.uk.

Ordnance Survey constantly updates the geographic information database to bring up to date changes that have occurred in the natural and man-made environment. The OS MasterMap® Topographic Layer and Imagery Layer both provide valuable additional information in a boundary dispute case. OS MasterMap Topographic Layer data is surveyed at three basic scales – 1:1250 (urban), 1:2500 (rural) and 1:10000 (mountain and moorland). Ordnance Survey products are available both directly from Ordnance Survey and from its many partners.

Historic Ordnance Survey mapping information goes back to the eighteenth century, since when the United Kingdom has been surveyed at regular intervals. This is now available in digital form as scanned mapping and has extensive uses in boundary disputes. Further information can be found at www.ordnancesurvey.co.uk/oswebsite/products/historicalmapdata/.
Historic mapping information may also be found at various centres, such as the copyright libraries of the Bodleian, Oxford and Trinity College, Dublin (www.llgc.org.uk/aldl/). The Public Records Office at Kew, London, local libraries and even landed estates can also contain large amounts of historic mapping information.

Ordnance Survey and the Land Registry have prepared a statement on their respective roles within boundary cases and the availability of relevant data. This explains that:

‘Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features. Although some property boundaries may be coincident with surveyed map features, no assumptions should be made in these instances and consequently it is not possible to be sure of the position of a legal property boundary from an Ordnance Survey map.’

The page also contains links to some frequently asked questions (www.ordnancesurvey.co.uk/oswebsite/site/contact/boundaries.html).

It should be remembered that all Ordnance Survey material is subject to www.ordnancesurvey.co.uk/oswebsite/aboutus/yourinforights/copyright/index.htmlCrown Copyright. Surveyors should be aware of this when using or copying Ordnance Survey information.

3.3.1 The accuracy of Ordnance Survey large-scale topographic data

Ordnance Survey measures accuracy in three ways:

Absolute accuracy – a measure which indicates how closely the coordinates of a point in Ordnance Survey map data agree with the true National Grid coordinates of the same point on the ground.

Relative accuracy – this compares the precise distance between features measured in the real world to the distance between the equivalent features in the data.

Geometric fidelity – this concerns the trueness of features to the shape and alignment of the real-world objects they represent.

Accuracy is dependent on the map scale, as this constrains what can be sensibly depicted. The main areas of difference between scales relates to the competition for map space, i.e. the smaller the scale or plot size becomes, the less information can be shown, and vice versa. Therefore rules such as minimum depictable dimensions and areas and the need to generalise features are applied. This is important to note in cases such as where a boundary is to be determined along two nearby linear features. For example, when a fence, hedge or wall runs approximately parallel to another, at a distance of less than 1.0m (1:1,250 scale), 2.0m (1:2,500 scale) or 5.0m (1:10,000 scale) apart, only one is captured; this is normally the more important feature of the two and there is a hierarchy laid down that determines this. Preference is always given to the feature to which an administrative or electoral boundary is measured or which appears to define the physical extent of a property. The minimum separation distance for capture may be reduced to 0.5m (at all capture scales) where it is necessary to show an obvious property boundary, access path and so on.
Ordnance Survey revision programmes are driven by information about planned or actual changes. Data collection programmes, depending on the nature of change and where it occurs, are then developed to capture this change.

Ordnance Survey works to defined relative accuracy specifications, which are again dependant on scale. The result of 40 plus years of testing of Ordnance Survey topographic data indicate the following absolute accuracies, described in Table 3.1, can be expected.

Table 3.1: Ordnance Survey absolute mapping accuracies of large scale topographic data

<table>
<thead>
<tr>
<th>Mapping Scale</th>
<th>Absolute Error Root Mean Square Error (RMSE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:1,250 (Urban)</td>
<td>0.5 metres</td>
</tr>
<tr>
<td>1:2,500 (Rural)</td>
<td>1.1 metres</td>
</tr>
<tr>
<td>1:10,000 (Mountain and moorland)</td>
<td>4.1 metres</td>
</tr>
</tbody>
</table>

3.3.2 Obtaining Ordnance Survey mapping and data

Ordnance Survey Mapping and Data Centres are a network of independent retailers around the country. A full listing of centres is available on the Ordnance Survey website. Large-scale mapping information is available directly from the Ordnance Survey website as well as these Mapping and Data Centres.

3.4 Aerial photography and private data sources

There is often an advantage in studying aerial photographs of the area where these are available.

Historical information, such as old boundary features and buildings which may have been subsequently destroyed, may also be visible on aerial photographs. Aerial photography is a key source of collateral information, such as the use and occupation of land. It can be used as evidence relating to adverse possession or the exercise of an easement; for example, a muddy entrance way to a field, indicating frequent access and use, will show up clearly on an aerial photograph.

Photographs are at their most useful in identifying the existence and nature of boundaries. Being able to pinpoint the approximate history of when an old hedge had been grubbed up and replaced by a wall or fence might be the key to resolving a boundary issue. It is generally advised that the use of aerial photography in boundary disputes is restricted to that of interpretation, as a visual aid and as historic evidence. You should not try to plot features, nor rely upon or quote any accuracy statistics, unless you have photogrammetric knowledge, training and experience. It should also be remembered that features viewed from the air cast shadows, and it is not always possible to identify specific features within boundary structures. Photo-interpretation of
features can be enhanced by examining stereo pairs of aerial photographs using a hand-held stereoscope, which will enable basic three-dimensional viewing.

In England the National Monument Record (NMR) held by English Heritage has a substantial historic aerial photographic archive. This includes Royal Air Force, Ordnance Survey and local authority surveys. Details of how to arrange a specific site search can be found at www.english-heritage.org.uk. The National Library of Wales at Aberystwyth provides a similar service for Wales (www.llgc.org.uk/). Some areas of the United Kingdom also have excellent coverage of aerial photography and maps from the Second World War and the Cold War period, taken by agencies such as the German Luftwaffe and Soviet security services (KGB).

Great Britain is now covered by off-the-shelf *ortho-rectified* digital aerial imagery (both *vertical and oblique*) which is maintained and supplied by Ordnance Survey and a number of commercial suppliers. Some of this can be sourced online. Aerial photography and satellite imagery are constantly evolving, and the quality, currency and resolution of the available data are improving all of the time.

Imagery provided by web services such as Google Earth, Google Maps, Microsoft Virtual Earth and Windows Live Local can provide excellent background material, but this should be used sparingly in court. As the user cannot certify the integrity, quality, capture date or provenance of the data, the court may be unwilling to rely upon such sources as evidence.

It is important to be candid as to the accuracy of all evidence, and to annotate your report accordingly.

It can be useful to ask your client if they (or their neighbours, where appropriate) have any photographic evidence which might be pertinent. Whilst it is rare for householders to take specific photographs of boundary features, they may well hold photographs of family occasions such as picnics or parties. Birthday and anniversary occasions can be particularly useful, as these can often enable the date of the photograph to be established and therefore demonstrate the existence of boundary features at specific points in time. Another common source of privately held imagery includes oblique aerial photography of the client’s property that may be hanging on a wall or stored in a drawer. If the evidence is crucial it might also be possible to obtain a signed statement as to age and date of a photograph.

### 3.5 Analysis of documents

Once all plans, aerial photographs, other types of photographic evidence from private sources and other documents are received, the research can then move on to an analysis of all the available information. It may be necessary to enlarge or reduce the plans to a common scale for the purposes of this analysis. Most existing plans will usually be 1:500, 1:1,250 or 1:2,500. Check all the plans that you have available to ascertain their level of accuracy, so that you understand where you are comparing like with like or where there is a significant difference in accuracy of the data sources that you wish to compare. This will directly affect the reliability of the conclusions that you draw.

On rare occasions, documentary research and analysis may provide sufficient evidence to enable the dispute to be resolved, subject to the agreement of the parties. Examining the plans in chronological order may, for example, identify
the date of a sudden shift in the boundary position, and a further meeting with
the client may invoke a memory and close the matter. However, in most cases
this initial research and analysis will only confirm that something looks wrong,
and clarify the issues surrounding the dispute.

In a number of instances it will be found that the evidence is inconclusive and
that the audit trail of conveyances, plans, maps and photographs cannot
provide sufficient or reliable evidence. It may then be necessary to examine
other factors, such as the actions of parties over the years in relation to the use
of land, known patterns of use and whether these can be treated as established.
Other facts on the ground such as evidence of fences, topography and so on
may be of assistance. Before the site visit, it is helpful to identify evidential
shortcomings and what other facts on the ground might assist in reaching a
decision.

One problem with many of the plans which will be found in the case bundle, is
their legibility and quality. Various parties may have obliterated points of
critical interest with a heavy pen or pencil, or the plans may have been subject
to poor photocopying making it very difficult to discern the original boundary
features. If possible it is worthwhile obtaining the original clean plan upon
which the deed plan was based. This may be an old Ordnance Survey map or
an estate plan that is still available. The surveyor can then clearly see the
features that existed at the time and compare them with more recent maps and
plans. Experience shows that it is at the research and analysis stage where a
potential compromise position starts to take shape. It is important that this is
undertaken thoroughly and carefully, as it offers the potential to save
significant costs, time and anguish.
Stage 4. The site visit, measured survey and digital photography

In all but the most simple boundary cases it may be necessary to carry out a measured survey. It may also be advantageous to make a reconnaissance visit to the site before carrying out the actual measured survey to take photographs (preferably digital) of all the boundary features and to plan in exact detail the measured survey. If there is any risk of boundary features being disturbed, relocated or destroyed (e.g. by agricultural activity, site clearance, development or vexatious act), a preliminary photographic survey at the earliest opportunity can prove invaluable.

4.1 Collecting photographic evidence

Site photographs may include scale-aids (a survey staff or tape measure, for example), which will help with the appreciation of boundary and related feature details at a later stage, particularly if matters proceed to court. Photographs may be required for insertion in the final report. Digital photographs can be stored on appropriate media and a copy of this bound with the final report. Boundaries and their associated features can often be in poorly illuminated or overgrown areas, and adequate lighting should be considered. Using a digital camera can help and should be appropriate for the task at hand. Consideration should also be given to digital photograph file sizes and their inclusion in documentation. It is important that thought is given to verification of digital imagery. It is recommended that a detailed log of each photograph, its location and direction is maintained.

Over-photographing the survey area can help to ensure that a return to site is not necessary, and to ensure that a comprehensive selection is available for editing into a final report. Photographs taken from both inside and outside the site which show the general surrounds and relationship of neighbouring features can be useful. It is also worth considering whether a short video is appropriate, depending on the nature of the boundary.

4.2 The boundary survey

RICS members should make themselves fully conversant with RICS guidance and professional information relating to measured surveys and continue to follow best practice field survey techniques. A listing of relevant titles can be found in Appendix 1.

The primary function of a boundary survey is to show the ‘relative’ spatial relationships between relevant ground features. It is this ‘relative’ accuracy that is crucial (i.e. the distance between one fence post and the next, or from a conservatory wall to the boundary wall).

Depending upon circumstances and requirements, the boundary survey could result in a variety of different outputs, ranging from a basic sketch-map to a fully dimensioned and accurate measured survey that can be overlaid onto old plans or against which the dimensions found in deeds and on deed plans can be tested.
Boundary surveys should pay particular attention to the actual boundary feature(s) and, for example in the case of a post and wire fence, show individual posts, record their shape, size and record the number of strands of wire, estimated age of the wire, the side of the post to which the wire is attached and any other comment that may be relevant. Small details such as these can affect the outcome of a case. The reason for recording such detail is that there may be in-depth cross-questioning in the courtroom concerning the age and type of a fence or wall, its similarity to other fences or walls in the locality, the wire arrangement used around other parts of the property and consideration of whether any fence posts have been replaced subsequent to the original fence erection.

It is important to notify the client, professional adviser/solicitor and the solicitor/client on the other side of the boundary dispute (if relevant) of the proposed date of the measured survey. This will avoid confusion for all parties concerned. It is advisable that you do not express any opinion, professional or otherwise, whilst carrying out the measured survey.

4.2.1 Sketch-map survey

Some boundary situations do not warrant a full (and costly) measured survey. A sketch-map survey may suffice, and will usually be of a diagrammatic nature. It can be prepared with simple and inexpensive equipment, such as a tape measure (typically 20m or 30m long), ranging rods and/or hand-held laser electronic distance-measuring equipment. (Check measurements should first be taken, when using electronic distance-measuring equipment, to enable any field survey errors to be identified.) The sketch-map should relate significant features to each other with important written dimensions. It may also be necessary to relate the sketch-map to some distant object (e.g. a railway bridge, pylon, gateway), and it is often sufficient to draw an arrow pointing in the direction of that feature together with a thumbnail sketch and text such as '138 metres to nearest pylon leg'. It is worth remembering with title plans and boundary surveys that the relationship of external physical features and objects can be crucial in contextualising the plan.

If the chartered surveyor has any doubts about the reliability of such a sketch-map, the words 'NOT TO SCALE' should be added. It is very important to be fully aware of the inherent issues regarding scale. Please see the RICS client guide, Scale – Once it's digital isn't everything full size? (Appendix 1). A sketch-map will be inadequate if the intention is either to produce a determined boundary application or to take the matter to court.

4.2.2 Measured survey

If the surveyor is to be subject to detailed cross-examination in court at a later date it is advisable to carry out a measured survey, as this will provide more robust and defensible evidence. As a minimum the measured survey should include all boundary features, buildings and adjacent kerb lines. It should also include any other features which either appear on the Ordnance Survey plans or data (as this will aid cross-comparison) or are relevant to the problem, e.g. trees, changes to surface type, above-ground height and composition of boundary feature, etc. It is essential to measure the features outside the actual area of dispute as they may help in interpreting neighbouring conveyance plans and as above, help contextualise the final survey and other spatial information. You should also remember that this is where an initial survey specification can
prove crucial, as a guide to best practice and as a checklist of features to be included. RICS members should refer to the ‘Quick Specification for Topographical and Measured Building Surveys’ (Appendix 3). It is important to remember that electronically generated data can cause its own issues when you come to process and present it back at the office. It is important to take good field survey notes and sketches to aid later interpretation.

A measured survey is carried out using precise surveying equipment that can measure and fix position, linear dimensions and shape. This may be achieved using equipment that measures angles and distances, such as an electronic theodolite/total station. Increasing use is being made of equipment that utilises a ‘reflectorless’ electronic measuring device. This means that the observer can measure features without the need of an assistant to ‘occupy’ these with a ranging pole and reflector. This is particularly useful for boundary surveys, where access to certain features is either dangerous or perhaps impossible.

An alternative method that can be used for measured survey is direct observation of features using global navigation satellite systems (GNSS) technology, for example the global positioning system (GPS). In Great Britain a real time kinematic (RTK) GPS network has been established by Ordnance Survey and is accessible through commercial partners. This service allows surveyors using GPS receivers to achieve absolute accuracies of 10–20mm in plan and 15–30mm in height. However, the use of GPS is not appropriate in all instances, and RICS members should be aware of the need for appropriate training and expertise in the use of GPS equipment. GPS best practice and advice can be accessed through the RICS guidance note The use of GPS in surveying and mapping – (2003) and the client guide Virtually Right – networked GPS – a useful guide from RICS on aspects of cost effective networked GPS correction services (see Appendix 1).

More information on the Ordnance Survey RTK GPS network can be obtained from www.ordnancesurvey.co.uk/oswebsite/gps/.

A further method that may prove very useful in certain circumstances is photogrammetry, for example where there is a requirement to establish the position of features that have disappeared, or there is a need to re-establish the topography at a particular point in time. If suitable aerial photography, either recent or historic, can be sourced, it is often possible to accurately re-plot the visible features. Such work is best undertaken by organisations specialising in photogrammetry, as a high degree of skill and experience is required.

This guidance note is not intended to deal with survey practice. Those wanting more information on field survey techniques should refer to the publications listed in Appendix 1. RICS members may also refer to RICS Specification surveys of land, building and utility services at scales of 1:500 and larger (2nd edition, 1997). This specification is currently under review; a new edition entitled, Measured surveys of land, buildings and utilities – RICS specification is expected during 2009.
Table 4.1 typical survey accuracies possible for different boundary features – a guide

<table>
<thead>
<tr>
<th>Topographic feature</th>
<th>Average width of feature (mm)</th>
<th>Potential survey accuracy (+/-mm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brick or block wall</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>Cut stone wall</td>
<td>250–500</td>
<td>30–50</td>
</tr>
<tr>
<td>Dry stone wall (uncut)</td>
<td>500–1500</td>
<td>50–200</td>
</tr>
<tr>
<td>Retaining walls (earthworks, gabions)</td>
<td>1000–2500</td>
<td>100–250</td>
</tr>
<tr>
<td>Railings</td>
<td>50</td>
<td>5–10</td>
</tr>
<tr>
<td>Fence (post &amp; wire, concrete/wood panel, picket)</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>Fence (agricultural)</td>
<td>200</td>
<td>20</td>
</tr>
<tr>
<td>Watercourses, banks, sidings, ditches</td>
<td>3000</td>
<td>200–300</td>
</tr>
</tbody>
</table>

4.2.3 Selecting suitable survey and output scales for the boundary survey

Several basic field survey ‘rules of thumb’ can be used to establish the appropriate scale of a survey:

- Measured survey data capture should be as accurate as the dispute and specification requires; there may be a future need to ‘scale up’ or ‘scale down’ survey plans for clarity or at the request of the court.
- Always carry out a field survey to an accuracy that is at least one order of magnitude greater than the original Ordnance Survey data and Land Registry title plan information.
- 0.3mm multiplied by the scale gives a good base indication of horizontal accuracy.
- Boundary disputes tend to be overwhelmingly paper-based (hard copy), and familiarity with plotting tolerances, representation at particular scales and the limitations of both are important.
- You should try not to get caught up in issues of digital data representation or accuracy versus precision-type arguments.

1:100 may seem a large scale, but it is very useful for spotting kinks and bulges in fence lines. It also enables the surveyor to add intricate details of fence posts and their junctions. This is the scale that can be used to zero-in on the problem area and illustrate to the client and the court a particular spatial issue/problem, that may not be possible at smaller scales such as 1:500 and 1:1,250.

1:500 is a useful scale for presenting an overview plan that can be easily used during a desktop discussion. Many boundary disputes involve an area of land that will fit onto a 1:500 plan at A3 size. In a court room it is rare for the judge to have a large enough space available on which to spread out other large plans, and a 1:500 scale plan is useful in this respect. This scale of plan can be referred to on a regular basis by the court, due to its ease of use. By using this scale it is easier for all involved to refer to the more detailed larger-scale 1:100 plan or less detailed 1:1,250 or 1:2,500 or 1:10,000 plan and still retain a clear picture of the overall context.
1:1,250, 1:2,500 and 1:10,000 – at various stages of the research, analysis and/or litigation, the Ordnance Survey data or maps of the area at one of these scales will be constantly referred to (see Table 3.1 for nominal survey scales that apply to Ordnance Survey large-scale topographic data according to geography). It is important, therefore, to include an extract from the Ordnance Survey map in the final report. It is often useful to reproduce the boundary survey at the same scale as the Ordnance Survey map, and superimpose one over the other, thus showing the degree of agreement with the key features. Land Registry title plans are based upon extracts from Ordnance Survey data/maps originating at these same base scales. Land Registry title plans can form a significant part of discussions and should be sourced as early as possible.

On completion of the boundary survey the field measurements are usually transferred to a computer for post processing, editing, presentation and plotting at suitable scales. Experience has shown that the following plot scales are particularly useful:

- 1:100 for detailed analysis;
- 1:500 for court presentation;
- 1:1,250 and/or 1:2,500 and or 1:10,000 for comparison with Ordnance Survey information.

This selection of scales is based upon the experience of the B&PWWG, and may not be applicable in all situations. In all cases the scale should be appropriate to the circumstances and based on the features on the ground that will need to be surveyed and graphically represented.

**Note on use of units of measurement:** In some cases, such as when dealing with old deeds, it may be appropriate to place imperial measurements in brackets after metric units. When in court (or at pre-trial meetings) a useful skill is to begin ‘thinking imperial’, as most people involved will be able to picture six inches, whereas fewer people will be able to mentally picture 0.150m. The same comment applies to hectares and acres.

**Note on citation of scale:** If a comparison is being made with old deed plans containing imperial measurements, it is important to provide a common basis of measurement. Difficulties may arise with old imperial scale plans (e.g. 1/4” to 1 foot (1:48)) that do not correspond to modern standard scales. As part of best practice, include the conversion factor that you have used between metres and imperial measurements.

**Note on calibration of instrumentation:** It is imperative that chartered surveyors make sure that any survey instruments used, including ancillary field survey instrumentation such as tape measures and level staffs, are in good working order. The professional onus is on the chartered surveyor to ensure that calibration and/or checking certificates are up-to-date for all instruments used during a boundary survey. Calibration is also the subject of an RICS official guidance note and client guide (Appendix 1).
4.3 **Instructing other specialist chartered surveyors**

If you are in doubt or believe that execution of the boundary survey may be beyond your training and experience, then it may be appropriate to call in an expert chartered land surveyor or chartered land surveying company. When using external specialist land survey companies, it is vital that the contractual arrangements between the instructed chartered surveyor and the chartered land survey company are robust, and mirror the terms of engagement of the instructed chartered surveyor. Where the matter is likely to result in evidence being presented to a court it is essential that the measured survey is supervised by the instructed chartered surveyor or a qualified assistant, and that the agreed measured survey specification is fully adhered to.

In other circumstances it may be possible to give detailed instructions, in which case the initial specification of any survey is critical and special attention should be paid to actual deliverables (see ‘Quick Specification for Topographical and Measured Building Surveys’ in Appendix 3). It is also possible that if agreement is subsequently reached, an application to ‘determine’ the boundary might be made to the Land Registry. Land Registry requirements are referred to later in this guidance note, and the instructed chartered surveyor should be conversant with Land Registry requirements (Appendix 1 ‘Land Registry resources’). The Land Registry sets specific requirements for measured surveys that are to be lodged with a determined boundary application; these should be considered at the initial stage and should inform the survey specification from the outset.
Stage 5. The report: analysis and preparation

The nature and complexity of the report will depend on the dispute under consideration and the purpose of the boundary report. It could consist of a sketch plan and an explanatory letter or memorandum only. The written text and accompanying plan should accurately cross-reference each other in terms of colours, scales, notations and so on. Consistency is paramount.

In contentious cases, the report is the document that will be passed around all the legal professionals involved in the dispute, and will be scrutinised by the presiding judge in court. It should therefore be of a very high quality, not only in its content but also in the way it is presented. The chartered surveyor should be aware at the time of preparing the initial report that each fact referred to, and every opinion expressed, will be subject to cross-examination by counsel acting for the other side. The professionalism of the chartered surveyor will be judged on the quality and initial reaction to the final report, so great care should be taken in its preparation.

You should be able to support any assumptions, opinions or facts by direct reference to analysis, expertise or published/learned documentation such as RICS practice and guidance notes. Any contentious statement is likely to be challenged.

Each surveyor may in time develop their own style of presentation and compilation, but the following sub-headings are suggested as a generic approach to the drafting of any boundary report:

(i) Qualification and experience of surveyor (a ‘mini-CV’).
(ii) Instructions (explain the problem).
(iii) Background and issues (a history of the matter).
(iv) Site investigation, methodology and findings of fact (how the survey was carried out).
(v) Analysis (the boundary chartered surveyor’s investigation).
(vi) Conclusion (the boundary chartered surveyor’s opinion).
(vii) An appendix of plans contained in poly pockets (clear plastic document holders) and in the same orientation as each other.
(viii) An appendix of colour photographs or digital imagery correctly labelled.
(ix) Presentation and delivery.
(x) For expert reports to be used in court proceedings, the standards of Civil Procedure Rule (CPR) Part 35 should to be followed. This, and the associated Practice Directions 35, can be accessed at www.justice.gov.uk/civil/procrules_fin/contents/parts/part35.htm.
(xi) It is imperative that the surveyor refers to RICS practice statement and guidance note, Surveyors acting as expert witnesses (2008).
One of the most important aspects of the final report is the analysis, and as with the rest of the final report, this section should be well written and logical. It may be helpful to describe how you have examined all of the available documentation, maps and plans (Appendix 4), how the measured survey has highlighted the current boundary position, and how the original boundary demarcation and detail have been transferred onto the present-day dispute situation.

It can be useful to demonstrate in the final report exactly how one plan should be laid over another and, for that reason, it may be useful to add guide marks (similar to fiducial marks on photographs) as an aid to those who are not familiar with grids and other such surveying terminology. Photographs should be numbered clearly and any reference to the photographs should always be accompanied by a reference to its number.

You should not assume anything. It can be quite possible that the client or a barrister may not realise that ‘OS’ is being used as an abbreviation of Ordnance Survey, for example, and so it may be advisable to write any such name in full on the first occasion (together with its abbreviation), and then refer to it by its abbreviation only from then on.

The key aspect of a boundary report is that it should explain and guide the layman (or another non-survey professional) in a way that will illuminate the analysis of the dispute without being condescending but still retain the key technical facts that form the basis and logic of the analysis. Technical and mathematical jargon is to be avoided.

The conclusion of the report allows you to summarise the research and the analysis and to arrive at an expert opinion. The body of the report will outline your findings, while the conclusion will interpret those findings and support (or not) the client’s claim or defence. It is worth emphasising that this is purely your expert and professional opinion. You should refrain from expressing or developing any ‘emotional’ attachment to a dispute or expressing any such feelings in court.

If you hold some opinion on the morality of the case or feel strongly about a non-technical issue, then you should discuss this with the acting solicitor who may be able to use such information.

Expert witnesses in court proceedings owe a primary duty to the court to assist it in its deliberations. The court will expect total candour, including an explanation of those areas where the evidence may not support the instructing party’s case. The role and function of the expert in giving evidence to a court needs to be explained from the very outset to clients and their other advisers. If, in your opinion, the facts do not support your client’s case, it makes sense to discuss this with them at the earliest opportunity. They may wish to consider their position or obtain a second opinion. The aspect above is important, and if not adhered to could lead to difficulties further on in the dispute.

As already mentioned, the actual report itself should be presented in a folder or wallet, and if there are any maps or plans that cannot be folded and inserted into the report, they should be clearly referred to in the index. It is very important that parts of the report do not become separated, as this could lead to one of the parties claiming that they have not been shown the full details.

It is usual for the solicitor acting for each client to exchange reports before a court appearance (sometimes months or even years before the appearance).
You should impress upon the solicitor that the reports should be exchanged in as near to a simultaneous manner as possible. It is important to maintain a strong element of objectivity when completing a boundary dispute report, and not to be influenced by the findings of the other side, even if their solicitor has sent a report through earlier than expected. It is important to remember that surveys produced in court should be agreed by both sides, and if not agreed, then reasons why should be stated.
Stage 6. Presentation of the report

Informal reports are commonly contained in a letter, or simply bound to help keep the pages in order. The report should be accompanied in all cases by an invitation to the client, adviser or solicitor to convene a meeting or conference call to discuss matters. Electronic/softcopy submission of reports is often very helpful for overseas clients, but plans and drawings should be covered by a caveat that they may not be true to scale when viewed or when printed out. Using portable document format (.pdf) documents can assist in reducing inaccuracies.

With regards to presentation and delivery (Stage 5), consideration should be given to the number of copies required and to the format in which it is produced. Many reports are produced digitally, but in these cases it is wise to ‘write-protect’ the document so that it cannot be amended other than by its author. In court proceedings it is usually necessary to compile five identical paper copies of this report, one to be retained by the chartered surveyor and the others to be handed to the client, professional adviser or solicitor for examination and circulation.

For court-related work a report should be in paper format in addition to any electronic format. Judges are increasingly using information technologies and can be reluctant to read through large volumes of paper, although having a paper copy for actual fine scrutiny remains indispensable.

The report can be sent to the solicitor (or the client, if there is no solicitor or other professional adviser involved) approximately one week before a meeting of the client and their instructed parties. It is often helpful at that meeting if you go slowly through the full report, answering queries throughout. It can also be useful to supply additional looseleaf copies of key plans and photographs that can be compared, orientated and annotated at the meeting.

Any amendments should be agreed at this stage and will normally only apply to grammatical and layout items. This meeting can involve considerable client pressure on the chartered surveyor to leave out items that may be unfavourable to the client’s case. Facts that are removed or concealed, however, invariably get found out under cross-examination, to the disadvantage of the client’s case and the detriment of the chartered surveyor’s professional standing.

At the meeting, an opinion of the strength of the case can be given to the solicitor and/or client. This opinion would normally fall into one of the following categories.

For general boundary reports:
- the level of correlation between plans and what is on the ground;
- encroachments and other vulnerabilities;
- accuracy of information and its possible implications.

For contentious cases, you may state that:
- This is a strong case, but there are no certainties in litigation.
- This is a fairly strong case, but it will need careful presentation by the barrister in court.
This case could go either way. There are arguments for and against a decision in the courtroom going your way. Your case may well be successful, but there is an element of risk.

There is little chance of your case being successful, and it would be sensible for you to attempt to settle the case, or if this is unsuccessful, to withdraw.

There is absolutely no possibility of your case being successful as it is completely contrary to the evidence available.

If any of the above verbal advice is given to a client or professional adviser it may be prudent for you to follow this up in writing. Bitter recrimination (and possibly litigation against instructed parties) often follows unsuccessful boundary dispute litigation. Remember that you are there to report on factual evidence only and whether that factual evidence supports the case.

Whatever the strength of the case, it can be worth encouraging the client to try and seek settlement of the dispute out of court. This is something that the solicitor should advise the client on. Since the reforms advocated by Lord Woolf, the Civil Procedure Rules (CPR) (Appendix 1) make virtually mandatory the consideration of settlement other than via the court. However, do not be surprised if the client wishes to proceed with a court appearance even after you have advised that there is absolutely no possibility of the case being successful. As a chartered surveyor, you or the professional adviser/solicitor should make clear that the client fully understands the significant penalties that could be attached to proceeding unwisely or frivolously.

Clients can become obsessed with not ‘losing face’, and will want to try to recover the accrued costs. Clients should be discouraged from such a stance, though this is principally the role of the legal adviser. Because litigants can finish up with costs awarded against them, it is advisable in these circumstances to make certain that payment of outstanding fees is made, or that a suitable sum to cover them is deposited with the solicitor. Chartered surveyors should take note of the Civil Justice Council’s ‘Protocol for the Instruction of Experts to give Evidence in Civil Claims’, available at www.justice.gov.uk/civil/procrules_fin/contents/form_section_images/practice_directions/pd35_pdf_eps/pd35_prot.pdf, which states at paragraph 7.6:

‘Payments contingent upon the nature of the expert evidence given in legal proceedings, or upon the outcome of a case, must not be offered or accepted. To do so would contravene experts’ overriding duty to the court and compromise their duty of independence.’

There is no such scenario as ‘no win no fee’ in expert witness cases.
Stage 7. Litigation

7.1 Before the courtroom

If the boundary problem is not resolved and leads to litigation, it is important that the chartered surveyor has an opportunity to brief the barrister acting for his or her client at least 24 hours before the court hearing. Such litigation can take over a year to reach court from the date of the field survey, and it can prove valuable for you to pay another visit to the boundary dispute site on the day before the court hearing, to ensure that your memory of the boundary issues is fresh, and also to re-read the report several times.

7.2 In the courtroom

Being inside a courtroom can be a daunting experience, especially if for the first time. There will be many people present, usually including the following:

- judge;
- clerk to the court;
- court usher.

For the claimant:
- barrister;
- solicitor;
- solicitor’s secretary;
- expert witness;
- witness of fact;
- the claimant;
- the claimant’s partner.

For the defendant:
- barrister;
- solicitor;
- solicitor’s secretary;
- expert witness;
- witness of fact;
- the defendant;
- the defendant’s partner.

The above list contains 17 people, and there can also be friends and relations of both the claimant and defendant in the public gallery, swelling the numbers to between 25 and 30. Speaking in front of such numbers and in such an environment whilst under cross-examination can induce nerves in the strongest witnesses, especially as barristers are very used to such occasions and are invariably word-perfect.

An important factor in performing in a professional manner in the courtroom is to have all one’s facts, report and plans in a neat and logical bundle.
Fumbling amongst haphazardly arranged documents under the steady gaze of a barrister and judge should be avoided.

Remember to speak clearly and slowly, and only answer the question that has just been asked. A common barrister’s tactic is to leave a slightly pregnant pause after a reply, in the hope that it will be nervously filled. This not only conveys an impression of nervousness and naivety, but also allows the barrister to cut the conversation short. It is recommended that you practise giving clear answers that actually end with a colleague the day before the court hearing.

First, you will be questioned by your client’s own barrister, whose job it is to elicit certain answers, which will help illustrate the case to the judge in a favourable light for your client. This is called evidence in chief. You will then be questioned by the barrister acting for the other party, whose job it is to find as many faults as possible with the final boundary report. This is known as cross-examination. Avoid being defensive about views, and try not to be drawn into the adversarial arena, one in which barristers are master.

It is important that each question is answered honestly and accurately, even if it is to the detriment of your own client, again underlining that any attempt to modify statements to suit a client will be quickly exposed by the opposing barrister, and your professional credibility will collapse.

The opposing barrister will sometimes try a tactic of asking simple yes/no questions that may require a more in-depth answer. The court will demand an answer. A defence against this tactic is to directly address the judge and respectfully respond that in keeping with the oath that has been taken, the question cannot be answered in those terms and then outline the reasons why.

Judges are often impressed by accurate and up-to-date methods of measuring. They can also be impressed by detailed, accurate plans. The evidence should include a brief description of the method of measurement used and its accuracy (e.g. accurate to +/- 3mm (1/8″)). However, such detailed plans should be supplemented by very simple diagrammatic plans to show the conflicting boundary lines, preferably in different colours. Very large-scale plans are also helpful, especially where the difference between the two lines is very small.

Cases are often won or lost on presentation in the witness box, but it should be remembered that all plans produced in court should be agreed with the other side before they are used. It is advisable to have some props in the witness box to aid explanation. Three basic scale-rules (one for the chartered surveyor, one for the judge, and one spare) should be carried. A magnifying glass is also useful when examining tiny conveyance plans that may be passed to you during cross-examination. The time taken with the use of a magnifying glass (including its removal from the case) will also provide a few valuable moments in which to collect one’s thoughts before replying. The same applies when using a calculator or other device, although care should be taken to always use well-known and trusted calculators or other devices, as mishandling or confusion will undermine your confidence in the witness box.

If during the hearing you need to leave the courtroom for whatever reason, it is necessary to bow to the judge before leaving and on re-entering.
Stage 8. Recording the outcome in the Land Registry

In many cases a solicitor will have instructed you, and the recording of the outcome with the Land Registry will be their responsibility, although they may want to seek your views and assistance. If you are working directly for laypeople or another type of professional adviser, they may wish to avoid the additional cost of employing a solicitor, and there is no reason why the chartered surveyor cannot assist them in making an appropriate application.

8.1 Applications relating to boundary agreements at Land Registry

When a boundary issue is resolved it is important that the agreement between the parties is set out in the form of a deed and recorded to ensure that the issue does not recur.

It is important to note that boundary agreements are a method of recording the agreement between parties on boundaries and can ultimately be used as a method of resolving some boundary issues. Various other procedures such as deeds of rectification, transfers or applications for adverse possession may also be necessary depending on the circumstances.

The Land Registry’s Public Guide 19 Title plans and boundaries (www1.landregistry.gov.uk/assets/library/documents/public_guide_019.pdf), at section 10 advises neighbours to set out any boundary agreement in a formal document (see Appendix 2 for an example of a boundary agreement).

The Land Registry can also note agreements relating to boundaries and boundary structures in the form of a deed. Guidance as to the form of a deed is given in Land Registry Practice Guide 8 Execution of deeds (www1.landregistry.gov.uk/assets/library/documents/lrpg008.pdf).

Depending on the form of agreement reached, the document can be relatively simple, e.g. ‘We … and … agree that the boundary between our respective properties is the hedge shown on the plan between points A–B.’

If the nature of agreement covers more complex issues, e.g. party wall agreements, the document should reflect that complexity to the degree required by the parties. It can contain plans, photographs and sketches if needed – anything that is capable of being electronically scanned.

It can also contain a description of the agreed boundary and the provisions relating thereto in as much specific detail as meets the needs of the parties.

Plans contained in the agreement should ideally be capable of being interpreted by anyone, and not just the parties to the agreement. However, it is vital that the parties fully understand the nature of the agreement, and ensure that it fully reflects the agreement in a tangible way that they can understand. The agreement should contain enough information that the boundary could be re-created in the event of the boundary features being destroyed by flooding, etc.
Regardless of the detail contained in the boundary agreement, the boundary will remain a general boundary as defined by s. 60(1) LRA 2002, and its exact position will not be determined unless a successful application for determination is made to the registrar.

Land Registry may be able to make an entry regarding the boundary agreement in the registers affected by the agreement. An application to make an entry regarding a boundary agreement should be made in Form AP1 (see ‘Land Registry resources’ in Appendix 1) and requires a fee (please see the applicable Fee Order at the time of application). In most situations two titles will be affected and both title numbers should be quoted on the form. As a boundary agreement does not constitute a disposition of land, no identity evidence is required and items 12, 13 and 14 need not be completed.

Appendix 2 contains a model boundary agreement document. This is not an approved Land Registry document, but it can be used as a DIY form in straightforward cases and may be perfectly adequate for the vast majority of circumstances.

Land Registry will consider the document. It is important that any plans are capable of being related to the current detail on the Ordnance Survey map, otherwise the application is likely to be rejected. If Land Registry cannot reconcile the position of the boundary in question as depicted on the title plan(s) with the deed plan(s), it may be necessary to arrange for the Ordnance Survey map to be updated and then the title plans can be replaced using the latest mapping detail.

If there has been a significant change it may be necessary to inspect the property. This will be done by either a Land Registry surveyor or by Ordnance Survey in order to update the Ordnance Survey map.

In many cases there will be no actual change in the boundary feature or the change will be so small as to be within Ordnance Survey tolerances at the survey scale of the map. In these cases no change will be made to the title plans.

Usually a copy of the document will be electronically scanned. An entry along the following terms will be made in the register:

‘An Agreement dated … made between … relates to … [e.g. an agreement as to the north eastern boundary of the land in this title].

NOTE: Copy filed.’

Resolution of disputes is often hard-won and it would be a great shame if the resulting agreement were not recorded at the Land Registry, particularly if the issue were to reignite at some stage in the future.

8.2 Application for a determined boundary

If the owners intend to establish the exact line of the legal boundary, they should make an application in Form DB under s. 60(3) LRA 2002; see Land Registry Practice Guide 40 (www1.landregistry.gov.uk/assets/library/documents/lrpg040.pdf).

This is a procedure that allows for the exact line of a boundary to be determined and recorded on a registered title (s. 60 LRA 2002). In the vast majority of cases, noting a boundary agreement as referred to above will be perfectly adequate, although the courts have been known to direct that the
agreed boundary be determined in the Land Registry. A determined boundary may well protect boundaries from any future dispute. Surveyors should note the ‘relative accuracy’ emphasis of the determined boundary process.

The plan supporting an application to determine the exact line of a boundary would ideally be the plan that you have produced as a result of your measured survey.

*Land Registry Practice Guide 40* (LRPG 40 section 3.3.2) states that:

- The plan should show sufficient surrounding physical features to allow the position of the boundary to be drawn on the Ordnance Survey map.
- It should identify the start, end and any turning points of the determined boundary.
- It should be drawn accurately to a stated recognised scale preferably no smaller than 1/200.
- Measurements shown on the plan need to be both precise and accurate to 10mm, and should be taken from at least two defined points on surrounding permanent features. In this context ‘permanent features’ are taken to be physical features, which it is reasonable to assume will remain in position for at least ten years, taking into account the nature and construction or character. The measurements should be taken horizontally – that is, not along a slope.
- Any measurements should be from precise points on physical features, such as the corner of a buildings. Measurements from features that are subject to natural growth or decay cannot meet the accuracy requirements. If possible, measurements should be taken from both sides of the boundary.
- The specific relationship of the boundary to physical features should be shown. For example, on which side of the feature the boundary lines runs or through which point of the feature the boundary passes.
- As the plan lodged with the application will be used to record the boundary and filed at the Land Registry, it should only include information and detail that is relevant. Any superfluous information that could clutter the plan or possibly contradict the relevant information should be left off.
- No coordinates used in the surveying process, other than National Grid coordinates, should appear on the plan.
- The plan should not bear any statement or disclaimer.
- The plan should be no larger than A3 size (if necessary, more than one plan can be used).

Ideally the application should be made with the agreement of the adjoining owner. If this is not the case, the Land Registry will serve notice on them. Therefore an application lodged without the involvement of the adjoining owner is not a solution for a boundary dispute. Box 9 of Form DB allows the adjoining owner to agree to the application.
8.3 Certificate of accuracy

The Royal Institution of Chartered Surveyors (RICS), the Survey Association (TSA) and Ordnance Survey have agreed that it is good practice for plans prepared by a chartered land surveyor or other suitably qualified professional to be endorsed with a certificate as to its accuracy:

‘I certify that the measurements shown on this plan have a relative accuracy of +/- 10mm.’

An example of a determined boundary plan is shown in Land Registry Practice Guide 40 together with further information, and you should study this in detail before assisting a client in making an application.
Appendix 1: References and online resources

The following publications are just some of the many books available:


**Land Registry online resources**


**RICS guidance and professional information resources and reference sources (current as at May 2009)**

All RICS official guidance can be downloaded free of charge from www.rics.org/guidance.

**Practice statements and practice notes**

*Surveyors acting as expert witnesses* GN and PS (3rd edition), 2008.


**Guidance notes**


**Client specifications** (available from RICS books – www.ricsbooks.com)


**Client guides** – guides for the lay professional (available from www.rics.org/mappp)


Reassuringly Accurate a client guide to calibration.

Scale – Once it’s digital isn’t everything full size? A guide on not tripping up over step changes in scale.

Virtually Right? – Networked GPS – a guide on aspects of cost effective networked GPS correction services.

Virtually level – a guide on the transition from the familiar benchmark to heighting using GPS.

Map Projection Scale Factor – a guide on how to understand and avoid the potential dangers of scale factor.

Flood damage – reinstating your boundary. What every property owner should know – a guide on how to reinstate a boundary following flood damage, and where you can go to for advice.

**Public Guides** – guides for Citizens Advice bodies

Rights to Light
Party Walls
Subsidence
Boundaries

Compulsory Purchase Orders (CPOs)

All of the above are available to download from www.rics.org/practiceareas/property/helping_hand.htm

**International**

Those members interested in the international dimensions of land registration and boundaries can find a large archive of online resources from FIG (Federation International Geometre) @ www.oicrf.org/
## Appendix 2: Model boundary agreement

If you need more space than is provided for in a panel, use continuation sheet and attach to this form.

<table>
<thead>
<tr>
<th>1.</th>
<th>Stamp Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>No duty is payable</td>
<td></td>
</tr>
</tbody>
</table>

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category [ ] in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £ [ ]
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

<table>
<thead>
<tr>
<th>2.</th>
<th>Title Number(s) of the Properties Leave blank if not yet registered.</th>
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<tbody>
<tr>
<td>a.</td>
<td>b.</td>
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<table>
<thead>
<tr>
<th>3.</th>
<th>Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>b.</td>
</tr>
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</table>

<table>
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<tr>
<th>4.</th>
<th>Date</th>
</tr>
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<table>
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<tr>
<th>5.</th>
<th>1st Party Give full names as appear on the register</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>6.</th>
<th>2nd Party Give full names as appear on the register</th>
</tr>
</thead>
</table>

| 7. | The Agreement |

(For example: The parties hereby agree that the position of the boundary between their respective properties is as shown by the line on the attached plan between points A and B)
8. Additional provisions

---

9. Execution

Signed as a deed by ..............................

In the presence of (name)............................

(address) ...........................................
........................................................................
........................................................................

Signed as a deed by ..............................

In the presence of (name)............................

(address) ...........................................
........................................................................
........................................................................

Signed as a deed by ..............................

In the presence of (name)............................

(address) ...........................................
........................................................................
........................................................................
Appendix 3: Quick specification for topographical and measured building surveys

The quick reference Specification Sheet overleaf summarises the full RICS guidance (*Measured surveys*). It is intended for use on small or straightforward schemes and assumes that the first option clause (where appropriate) is used throughout. Margin numbers indicate the relevant main guidance sections or clauses. The specifier should tick the requirement(s) needed in each subject category. Where no item is selected for a particular category, the surveyor will assume that there is no requirement. Additional information, where necessary, should be provided in a covering letter.
<table>
<thead>
<tr>
<th>Clause</th>
<th>Subject</th>
<th>Choices</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>project information</td>
<td></td>
</tr>
<tr>
<td>1.1.2</td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>1.1.3</td>
<td>Contact and telephone</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Survey extent</td>
<td>Location plan attached</td>
</tr>
<tr>
<td>1.3</td>
<td>Scale(s) 1:</td>
<td>50</td>
</tr>
<tr>
<td>2.1</td>
<td>Plan control grid</td>
<td>Local grid</td>
</tr>
<tr>
<td>2.2</td>
<td>Level datum</td>
<td>GPS derived national datum</td>
</tr>
<tr>
<td>2.3</td>
<td>Detail survey</td>
<td>Boundaries</td>
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<tr>
<td>2.4</td>
<td>Trees</td>
<td>Foliage lines</td>
</tr>
<tr>
<td>2.5</td>
<td>Height information</td>
<td>Spot heights</td>
</tr>
<tr>
<td>3</td>
<td>Underground services</td>
<td>Cover position</td>
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<td>Buildings external</td>
<td>Outline</td>
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<td>Buildings internal</td>
<td>Ground floor</td>
</tr>
<tr>
<td>5.1</td>
<td>Plan reproduction</td>
<td>Final drawings</td>
</tr>
<tr>
<td>5.2</td>
<td>Digital data</td>
<td>State format</td>
</tr>
<tr>
<td>5.6</td>
<td>Computer media</td>
<td>Internet download</td>
</tr>
</tbody>
</table>

* Scale factor applies
Appendix 4: Suggested list of documents relevant to a boundary dispute

Not all of the items below will necessarily be relevant to every case.

**For the client’s property**
1 Register entry and title plan Title No. .......................... Supplied by client [ ] or to be obtained by surveyor [ ]
2 Title deeds (conveyances, transfers, deeds of grant, etc) to be supplied by client
3 Photographs from the family photo album (to be supplied by client)
4 Witness statements (obtained by client’s solicitor) (to be supplied by client’s solicitor)

**For the neighbour’s property**
5 Register entry and title plan Title No. .......................... supplied by client [ ] or to be obtained by surveyor [ ]
6 Title deeds referred to in register entry (available from Land Registry as official copies)
   Supplied by client [ ] or to be obtained by surveyor [ ]
Relevant to both properties/either property
7 Planning drawings (from local council planning department)
   Supplied by client [ ] or to be obtained by surveyor [ ]
8 Vertical aerial photographs
   Supplied by client [ ] or to be obtained by surveyor [ ]
9 Oblique aerial photographs
   Supplied by client [ ] or to be obtained by surveyor [ ]
10 Old Ordnance Survey maps
   Supplied by client [ ] or to be obtained by surveyor [ ]
Appendix 5: Glossary

**Alternative dispute resolution (ADR)** – A range of options for resolving disputes without going to court. ADR includes mediation, adjudication, arbitration, conciliation and ombudsman schemes.

**Case bundle** – All documentation relating to the boundary dispute. Case bundles should comply with strict and quite intensive provision as laid down within the current Civil Proceedings Rules (see Appendix 1). Bundles of documents should comply with paragraph 3 of PD 39, Miscellaneous Provisions relating to Hearings. These guidelines are additional to those requirements, and they should be followed wherever possible. The preparation of bundles requires co-operation between the legal representatives for all parties, and in many cases a high level of co-operation.

**Covenants** – A contract arising by a deed. Covenants can be both positive and restrictive. In terms of land, covenants tend to be mostly restrictive. A restrictive covenant is a promise by one person with another, for example, by a buyer of land with a seller, not to do certain things with the land, such as to build on it or use it as a shop or factory. It binds the land and not the buyer personally, and therefore ‘runs with the land’. This means that the covenant continues even when the buyer sells the land on to another person. Restrictive covenants also continue to have effect even if they were made many years ago and appear to be obsolete.

**Curtilage** – The land within which the building is set and which belongs or once belonged to it and is or once was used in conjunction with it. The extent of the curtilage can be hard to determine. It may, for example in the case of a farm, extend to include barns, stables and sheds.

**Determined boundary** – The Land Registration Act 2002 provides for the recording of ‘Determined boundaries’. This is meant to provide the precision and certainty of a fixed boundary, but without the perceived difficulties. The aim is to record a boundary’s position to a precision of 10mm. The determined boundary should be mapped relative to surrounding ‘hard’ detail (anything made of brick, stone or concrete that is expected to endure) 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 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.

**Disclosure** – To make something known publicly, or to show something that was hidden.

**Easement** – A right which benefits the land in that it ‘eases’ the use of the one land and constitutes a restriction on the use of the other, ‘serving’ land. The three necessary parts of an easement are that (1) it applies to land affected by it (servient tenement); (2) it is annexed to other land which has the benefit (dominant tenement); and (3) it is a right, which in common sense and public policy is capable of forming the subject matter of an easement. Easements and
covenants often run in parallel, but an easement is expressed as a right of the
dominant tenement, whereas a covenant is generally expressed as an obligation
on the servient tenement.

**Fee schedule** – A list or table showing fixed fees for goods or services. The
actual set of fees to be charged.

**First registration** – An application to put previously unregistered land on the
register.

**General boundary rule** – England and Wales operates a ‘general boundaries’
system of land registration. 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.’

**Global navigation satellite systems** (GNSS) – The standard generic term for
satellite navigation systems that provide autonomous geo-spatial positioning,
with global coverage. A GNSS allows small electronic receivers to determine
their location (longitude, latitude, and altitude) to within a few metres using
time signals transmitted along a line-of-sight by radio from satellites.

**Legal aid** – Assistance with the costs of legal advice for people who cannot
afford it.

**Mediation** – An effective way of resolving disputes without the need to go to
court. It involves using an independent third party – a mediator – who helps
both sides to come to an agreement. The role of the mediator is to help parties
reach a solution to their problem and to arrive at an outcome that both parties
are happy to accept. The mediator remains neutral throughout the process. The
focus of a mediation meeting is to reach a common sense settlement agreeable
to both parties in a case. Mediation is a voluntary process and will only take
place if both parties agree. It is a confidential process where the terms of
discussion are not disclosed to any party outside the mediation hearing.

**Ortho-rectified** – Orthorectification is the process of using a mathematical
model and a digital elevation model (DEM) to correct distortions in raw
images such as aerial photographs. An orthophoto or orthophotograph is an
aerial photograph that has been geometrically corrected (‘orthorectified’) such
that the scale of the photograph is uniform, meaning that the photo can be
considered equivalent to a map. Orthophotographs have the positive attributes
of a photograph such as detail and timely coverage, and the positive attributes
of a map including uniform scale and true geometry.

**Party wall** – In semi-detached or terrace houses a shared wall with a neighbour
is known as a party wall. It separates buildings belonging to different owners.
Where a wall separates two different-size buildings, only the part that is used
by both properties is considered to be a party wall. The rest belongs to the
person on whose land it stands.
Photogrammetry – The art, science and technology of obtaining reliable information about physical objects and the environment through processes of recording, measuring and interpreting photographic images and patterns of recorded radiant electromagnetic energy and other phenomena.

Portable document format (.pdf) – Invented by Adobe Systems, PDF lets you capture and view robust information — from almost any application, on any computer system — and share it with virtually anyone, anywhere. PDF formatted documents have greater security, stability and multi-platform capabilities than other forms of digital document. With increased stability comes a smaller file size, aiding e- and portable hard drive transfer and internet-based applications.

Single joint expert (SJE) – An innovation introduced under the new Civil Procedure Rules (26 April 1999) to reduce the cost of expert evidence. An SJE is a single person jointly appointed by the parties with court approval. The court has the power to direct the use of an SJE, and where the parties cannot agree on an individual, to impose a method of identifying and appointing a suitable person.

Title plan – A large-scale location plan, usually drawn to a scale of 1:1,250 for urban areas or 1:2,500 for rural areas, and shows the approximate position of the boundaries of the property, edged in red, in relation to the surrounding properties.

Unregistered land – Land that is unregistered. The owner of unregistered land will often have a bundle of deeds, which form a record of previous sales, mortgages and other dealings with the land. However, if the land is mortgaged, the lender normally holds the deeds as security for their loan. There is usually no public record of the information contained in the deeds.

Vector/raster – A vector map is a spatial database which contains information and metadata on map features such as coordinates. It can provide an ‘intelligence’ behind map features. A raster map is an image only (a scanned copy).

Vertical and oblique – There are two types of aerial photographs: vertical and oblique. Vertical photographs give a bird’s-eye view of landscapes, as they are taken looking directly (vertically) down at the ground. Oblique photographs are taken at an angle and are normally focused on particular sites or other features.

From Stage 3 Historic document interpretation

The Parcels Clause – This is the clause that describes the land and defines the boundaries. In conveyance deeds it always begins ‘ALL THAT piece or parcel of land’ and is usually found in the lower half of the first page of the deed. Transfer deeds made using Land Registry form TR1 will usually describe the land only in terms of the registered title number. In other words, they are relying on the general boundary shown on the title plan, which is neither precise nor is it likely to be the legal boundary. In this case, efforts should be made to locate a copy of the pre-registration title deeds if the true position of the legal boundary is to be discovered.

The Words or The Plan? – The first requirement is to establish whether the words of the deed take precedence over the accompanying (conveyance or transfer) plan. A phrase such as ‘which is for the purpose of identification only shown on the accompanying plan’ tells us to ignore the plan and to concentrate
on the words. A phrase such as ‘which is more particularly delineated on the
accompanying plan’ tells us to ignore the words and to concentrate on the plan.
Unfortunately, too many conveyance deeds employ the phrase ‘which is for the
purpose of identification only more particularly delineated on the
accompanying plan’, which only serves to confuse. Even when the deed clearly
tells us to ignore the plan, it is usually the case that the words of the deed tell us
so little that it is necessary to consider the information shown on the
accompanying conveyance plan in the hope that this will give us additional
information that helps to form a clearer picture of where the boundaries really
are.

**Hedge and ditch explanation** – When two properties are divided by a hedge
(or bank) and a ditch, the boundary is presumed to be on the far side of the
ditch from the hedge. This presumption is based on the surmise that the owner
of the land, standing on his side of the boundary, looking towards his own
land, dug his drainage ditch within his own boundaries and planted a hedge on
the mound of earth removed from the ditch. This presumption can be rebutted
by evidence to the contrary. In any event it only applies to man-made ditches,
and does not apply if at the time the ditch was dug the same person owned the
land on either side.
Boundaries: procedures for boundary identification, demarcation and dispute resolution in England & Wales

2nd edition, guidance note

This guidance note is essential reading for all RICS members interested in boundary dispute practice and will also act as an effective refresher for experienced practitioners.

It focuses on the different stages of a potential boundary dispute and the processes that an RICS member could follow as an example of best practice. Professional practice issues such as dispute resolution, mediation, how to deal with initial contact and clients are underlined; investigation techniques and appropriate resources are also highlighted. Particular emphasis is also given to the primary roles of Land Registry, Ordnance Survey, the professional advisor and the chartered surveyor in a dispute situation. The importance of boundary research, measured field surveys and advice on best practice survey techniques and final report are outlined. This guidance note also contains extensive listings of further reading and online resources.

This guidance note was prepared by the members of the RICS Boundaries and Party Walls Working Group (B&PWWG), the Mapping and Positioning Practice Panel (MAPPP) and the Geomatics International Professional Group Board (GIPGB). The B&PWWG is a cross-faculty specialist panel of technical and chartered surveyors from the building, land surveying (Geomatics) and rural areas of practice, and brings together some of the leading and most distinguished professional surveyors working within the arena of neighbour disputes.