**Property Litigation Association**

**EG**

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**A new scheme to help counter a “hideous form of litigation”**

AvatarJacqui Joyce and Peter Bourke10/11/2020[Print](https://www.egi.co.uk/legal/a-new-scheme-to-help-counter-a-hideous-form-of-litigation/)[Download](https://www.egi.co.uk/legal/a-new-scheme-to-help-counter-a-hideous-form-of-litigation/?download=true&articleid=1065001&_wpnonce=a5f759098f)



Lord Justice Ward was a master of the memorable quote. A favourite is in relation to a boundary dispute regarding a small patch of land between two very expensive properties. He said: “This is another of that hideous form of litigation called the boundary dispute, a form of litigation which is best not pursued.”

In another neighbour dispute he said: “The total costs thrown away amount to £140,134. If the parties were driven by concern for the wellbeing of lawyers, they could have given half that sum to the Solicitors Benevolent Association and then resolved their dispute for a modest fraction of the monies left over.” He added: “Not all neighbours are from hell, they may simply occupy the land of bigotry. There may be no escape from hell, but the boundaries of bigotry can, with tact, be changed by the cutting-edge reasonableness skilfully applied by a trained mediator. Give and take is often better that all or nothing.” It is no surprise that Ward LJ went on to become the chair of the Civil Mediation Council.

**Judicial concerns: the scoping Study**

Boundary disputes have been a cause of concern for many years for the judiciary, solicitors, and surveyors. While advisers can earn a great deal of money from them, they are more often than not fraught cases to deal with and the costs incurred by the parties do not bear any resemblance to the value of the land being fought over. One should also not underestimate the level of bad feeling and resultant stress that is often involved.

In light of this, the Ministry of Justice carried out a scoping study into the problems affecting boundary dispute resolution with a view to identifying possible solutions. The results were published in January 2015.

The study did not favour resolving these disputes in a way akin to the Party Wall Act 1996 procedures that has been introduced into the House of Lords several times via the Property Boundaries (Resolution of Disputes) Bill. It identified that there was likely to be a significant number of appeals to the court under the suggested procedure. This would have the effect of adding an extra layer to the proceedings, which would add to the costs rather than reducing them.

Instead, the study proposed exploring further the scope for improving the court and tribunal procedure; encouraging the use of mediation and independent determination; and making better information available to those involved in these disputes. This brief was given to the CJC.

**Further consultation**

Following this scoping study, the CJC held further discussions with the RICS and the PLA to see if a bespoke scheme could be provided to deal with boundary disputes. This group considered the possibility of having expert determination but felt that this was not straightforward, since boundaries inevitably involve complex questions of law and surveying and there are probably very few people, if any, who are properly expert in both fields. This requires more thought.

The committee decided to focus on mediation, particularly as this was the most widely supported approach in the scoping study.

In the CJC’s final report of its working group on alternative dispute resolution (*ADR and Civil Justice)*, it recognised that there was support for bespoke and sector-specific mediation schemes. There was support for boundary disputes as an area where there should be additional encouragement to mediate as well as possible compulsion. This report referred to the work being done to set up the Boundary Disputes Mediation Service.

**Boundary Disputes Mediation Service**

The BDMS has been developed jointly by the RICS and PLA and will be administered and quality controlled by the RICS. It will comprise a mixed panel of surveyors and lawyers, all of whom are experienced in mediating boundary and neighbour disputes. As stated by the CJC in its report, it is hoped that “every boundary dispute is at least given the opportunity of using the new service”. This scheme will enable the judiciary to have one central place to which they can refer litigants and suggest that they try mediation. With the additional pressure on the courts due to reduced funding and Covid-19, it is hoped that this can relieve some of the burden and, importantly, give parties a quicker, cheaper and more flexible way of resolving their neighbour dispute.

For the initial appointments to the panel there is a tight timetable. Applications need to be returned by Wednesday 11 November and there will be an assessment workshop on 18 November, followed by interviews. A copy of the criteria and application form can be [downloaded here](https://www.rics.org/uk/products/dispute-resolution-service/drs-services/boundary-disputes-mediation-service/). It is hoped that the panel will be live by January 2021.

**More important than ever**

Anecdotally, solicitors are reporting that they are receiving more instructions about neighbour disputes. It is likely that is an unforeseen consequence of the lockdown. Not only have neighbours been confined to their homes, and consequently more aware of what is happening next door, but they are also more likely to have started DIY/building projects, which often highlight different perceptions of where the boundary is. It would seem that this scheme has come not a moment too soon.

*Jacqui Joyce is a member of The Property Mediators, whose members specialise in mediating property disputes and Peter Bourke is a partner in the property disputes team at Wilsons. Both are members of the PLA’s Law Reform Committee and involved in setting up the BDMS*

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