

Dispute Resolution sub categories

Property Disputes

Boundaries – Disputes arise regularly over the line of a boundary between two properties and most people are surprised to be advised that it is almost impossible to define the extent of all boundaries. Registered land is subject to the general boundaries rule. The plan attached to office copy entries of any title will include wording that it shows the general boundaries of the property and the plan is not to be scaled from.

Boundary disputes can be emotive. We look to approach issues taking account of the fact that the area of land in dispute may not be of significant value and that it is easy for costs to rise quickly. Agreement is usually the best way forward but this is difficult if one party has taken unilateral action.

Easements

These can be granted by deed or established by long use. They can sit above ground or below ground but do not grant ownership over the land.

By deed – usually part of a conveyance

By long use – If it can be established that the right has been used in excess of 20 years without secrecy, force or permission.

Where granted or established easements remain binding on the land subject to the right (the servient land) for the benefit of the land with the right (the dominant land). Once established the right cannot be extinguished simply by lack of use. Where granted by deed they will be recorded in the title registers for both dominant and servient land.

Easements can be created when part of a larger piece of land is sold off pursuant to s62 Law of Property Act 1925 which preserves all rights that exist at the time of transfer.

Equitable/beneficial interest

People can be legal owners of property but have no beneficial interest ie they are not entitled to the sale proceeds. They are entitled to sell but they are not entitled to the net proceeds of sale. An interest in a property can arise where it is owned by one person but another has contributed to its value, either directly or indirectly in freeing up funds to enable the other to pay the mortgage or put a larger deposit down.

When more than one person is buying a property they should be asked whether they want to own as **joint tenants** or **tenants in common**. Joint tenants mean that they each own the whole of the equity and if one person dies the other continues to own the entire equity.

Tenants in common means the legal owners own a share of the equity. This can be shared equally or in specific shares, for example if one owner puts in 70% of the purchase price

and the other 30%, they are likely to want to divide the net proceeds of sale by the same percentage. Matters can become more complicated where a mortgage is involved and it is wise to resolve matters at time of purchase.

This does not always happen and arguments can arise. Also circumstances change which leads to disputes.

Nuisance, Trespass and Harassment

Nuisance is a substantial interference with a person's use and enjoyment of their land (or of their right over land).

Trespass is a use of another's land without permission

Harassment is a persistent course of conduct designed to cause alarm and distress to another.

Common causes of nuisance will be loud noise, obnoxious smells, excessive dust or similar caused by a neighbour or business which interferes with your ordinary use of land.

The nature of your area will influence what constitutes a nuisance. Noise and fumes are less intrusive in a town or city, where there are plenty of other noises for example, than in a rural setting. Harvest may be intensive noise for a prolonged period of the day but it is a regular part of rural life and is for a short period of the year as a whole. Issues will be judged on their own facts based on what the average person would consider as intrusive.

Trespass is often associated with neighbour disputes, where one party enters on the other's land without permission, for example parking a car on a person's land or even moving a fence to incorporate another's land as their own.

Another's use of your land without permission or rights is a trespass. You can seek compensation but it is likely you will want to stop the trespass. Trespass might cause a nuisance or a harassment so the 3 torts often arise together. Often the remedy sought will be an injunction to prevent the behaviour and damages to meet the cost of making good.

Landlord and tenant

The landscape for residential letting changed on 1st May 2026. S21 or "no fault" notices were abolished. New grounds have been introduced to enable a landlord to obtain possession, for example in circumstances where the landlord wishes for her or her wider family to occupy the property or if the landlord wishes to sell the house.

Notice in these circumstances will need to be 4 months, with the possibility of court proceedings to follow if the tenant fails to leave, extending the period before possession further whilst awaiting a court hearing and possibly removal by a bailiff.

Notice periods for existing grounds for possession also change, notably for arrears of rent. It has been possible until 1st May 2026 to serve a notice with 2 months arrears, the notice period being 2 weeks but now there must be 3 months of arrears and 4 weeks notice.

Fixed term tenancies are gone. All tenancies are periodic tenancies. The tenant cannot be asked to vacate in the first 12 months of the tenancy. Rent can only be increased every 12 months to market value. Bidding wars cannot occur. A landlord must advertise a price and be held to it.

Landlords will be obliged to register as landlords to a new portal. Failure to do so will lead to a sizeable fine. The expectation is that the current EPC rating will rise in time from an E to a C, which could put landlords in breach and at risk of receipt of improvement notices from the local council. For the unsuspecting landlord, perhaps where there is a dispute as to whether the occupation of a property is a lease or a licence, depending on circumstances, there are more uncertainties.

For tenants the biggest change is the need to serve 2 months' notice to a landlord rather than one before departing. For those looking to move this could prove quite tricky. If buying they will not be far enough in to the process to consider when the purchase might complete, or if letting, properties are unlikely to be advertised when notice is to be served.

With any change there will be unknowns which will need to be answered through court decisions. If you need advice please ask, the sooner the better.

Contentious probate

Lack of mental capacity

The will maker lacked relevant mental capacity to know and understand the nature and purpose of making a will, the size or value of their estate and the people who ought to be considered to benefit from it. The will writer must not have a mental impairment that leads them to incorrectly assess and consider who ought to benefit.

The assessment is based on principles set out in the case of Banks -v- Goodfellow decided in 1871. It has stood the test of time.

There is a presumption that where a will appears valid on the face of it, it is valid. This presumption can be rebutted with sufficient evidence and the burden of proving lack of mental capacity then changes from challenger of the will to a person claiming it is valid.

Lack of due execution

The Wills Act 1837 is clear that a will must be signed by the testator in front of 2 witnesses who also sign the will in the presence of the testator and the other witness. If the will does not comply with this provision it is not a valid will.

Lack of knowledge and approval

If it can be evidenced that the contents of the will were not known to the will writer, the will cannot be valid. This claim is often linked to lack of capacity.

Coercion/undue influence

If it can be evidenced that the will writer's free will to make their own choices and decisions has been altered by pressure or threats such that pressure has been put on them to make provision they would not choose to make the will writer will have been coerced or unduly influenced and the will will not be valid.

This is very hard to prove and there are very few cases to reflect a finding of undue influence. There have been some findings of fraudulent calumny where the will writer's thoughts have been poisoned by false statements and they make provision they would not otherwise have done.

Someone accused has every right to defend their position and whilst the civil standard of proof is 'on a balance of probabilities' the level of evidence required tends to be greater than in other areas.

Inheritance (Provision for Family and Dependents) Act 1975

Certain categories of people can bring a claim within 6 months of the date of grant of probate (without leave of the court) to seek to vary the provision in a will if they consider it does not make reasonable financial provision for them.

The categories of potential claimants are:

- **Spouse or Civil Partner:** The current spouse or civil partner.
- **Former Spouse or Civil Partner:** Those who have not remarried or entered a new civil partnership.
- **Cohabitees:** Persons who lived with the deceased as a spouse or civil partner for at least two years immediately prior to death.
- **Children:** Any child of the deceased, including adults.
- **Treated as a Child of the Family:** Someone treated by the deceased as a child of the family (e.g., stepchildren).
- **Dependants:** Any person who was being maintained, wholly or partly, by the deceased immediately before their death.

All claims are for maintenance subject to need, not dependent on the size of an estate. Adult children can make a claim but if they are not being maintained by the deceased and are not in need the claim is likely to fail.

A claim by a spouse goes beyond need and seeks to reflect the nature of the lifestyle the married couple enjoyed.