

PROPERTY BRIEFING: ARTICLE 4

This edition of 1 Chancery Lane's Property Briefing **Zachary Bredemear** discusses **the jurisdiction of courts and tribunals to determine boundaries**.

The Civil Justice Council is presently consulting on the distribution of jurisdictions in landlord and tenant, property and housing disputes with a particular focus on the work of the First-Tier Tribunal (Property Chamber) and the County Court.

One of the problems the CJC's Working Group on Property Disputes has identified relates to technical difficulties concerning the First-Tier Tribunal granting declaratory relief in boundary disputes, which the County Court could have granted.

The problem is illustrated by *Murdoch v Amesbury* [2016] UKUT 3 (TCC), a case decided by HHJ Dight, a county court judge sitting in the Upper Tribunal.

In *Murdoch* a deputy adjudicator of the Land Registry was considering an application to determine a boundary. She dismissed the application because the applicants' plan was defective but proceeded nevertheless to determine the true position of the boundary. The applicants appealed on the basis that she had no jurisdiction to determine the boundary. This submission had been rejected by the deputy adjudicator herself as being "unduly restrictive and contrary to good sense". Whilst HHJ Dight expressed sympathy with this view he held that the statutory jurisdiction conferred on an adjudicator (and now the First-Tier Tribunal) was limited to a determination of the application before her (it). As the

question of the true location of the boundary was not before the deputy adjudicator it was not before the Upper Tribunal on appeal either. The order under appeal had to be set aside.

However, taking his cue from Lord Reid in *Essex County Council v Essex Incorporated Congregational Church Union* [1963] AC 808 and in deference to the parties and their industry HHJ Dight expressed brief strictly obiter comments on the boundary dispute. He thought that the adjudicator's view of where the true line of the boundary lay was unsafe as she had relied on inadmissible evidence of the subsequent conduct of successors in title but he could not view her conclusion on an argument based on adverse possession as being incorrect.

HHJ Dight is a member of the CJC Working Group on Property Disputes and it will be interesting to see what proposals for reform the CJC puts forward.

Zachary Bredemear



Zachary Bredemear has particular expertise and experience in the fields of commercial landlord and tenant law and issues relating to development land such as options, easements, restrictive covenants and mortgages.