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Enforcing positive covenants: a practical perspective

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Case:

[Austerberry v Oldham Corp \(1885\) 29 Ch. D. 750 \(CA\)](#)

***Conv. 316** The anomaly between the treatment of positive and restrictive covenants, with regard to the extent to which they bind successors in title, has been considered both by commentators (for example Polden 1984,¹ Rudden 1987,² Dixon 1998³ and Gardner 1995⁴), and by the Law Commission, who considered the issue in detail in both 1984 and 2011.⁵ In recent discussions responding to proposed changes in the law, commentators have considered the theoretical perspective,⁶ comparative position,⁷ and the impact of the proposed changes on the Upper Tribunal (Lands Chamber).⁸ In its 2011 report the Law Commission set out a mechanism for enforcing positive obligations that utilises the standard procedure for determining a contractual dispute, and provides for an additional new "self-help" remedy. Whilst the mechanics are clearly addressed in the report, the viability of these in the context of a typical positive obligation has yet to be determined. This article aims to address this by taking a practical look at enforcement of the new positive land obligations. For this research the most common types of positive covenant were ascertained by analysing a statistically significant sample of registered titles. Having discovered the likely nature of the new positive land obligations, this article considers the implications for a covenantee wishing to enforce such obligations using the proposed procedures. The conclusion of this analysis is that, whilst the process may provide the desired outcome in some instances, because of the risks, and the potentially limited rewards, covenantees will often be advised to leave well alone. ***Conv. 317**

The [Austerberry](#) rule

The rule that the burden of a covenant could not pass to successors in title was set out in [Keppell v Bailey](#),⁹ which made no distinction between positive and restrictive covenants in that regard. The appletart was upset somewhat by [Tulk v Moxhay](#),¹⁰ in which Lord Cottenham relied on the doctrine of notice to uphold the enforceability of a restrictive covenant against a successor in title. No mention was made of the distinction between positive and restrictive covenants in the judgment, and the boundaries of the decision were far from clear.¹¹ This failure to set clear parameters led initially to a wide interpretation of the transmissibility of covenants. The doctrine was applied to litigants who held no estate in the land benefitting from the covenants¹²; positive covenants¹³; and property other

than realty.¹⁴ Over time these uses of the new doctrine were limited so that it could no longer be applied to chattels or positive covenants. It further became a requirement that the covenantee retained benefitting land. The rule that the burden of positive covenants does not run in equity is commonly referred to as the "[Austerberry](#) rule" after the case of [Austerberry v Oldham Corp](#),¹⁵ in which the rule was affirmed.

Analysis of the theoretical objections and justifications of the addition of positive obligations to the list of proprietary rights have been rehearsed in previous articles, in this and other journals, and these debates do not need to be repeated here.¹⁶ The purpose of this article is not to consider whether positive obligations should be enforceable, but rather what is likely to happen in practice if they are.

In its 2011 report the Law Commission proposed that, like restrictive covenants, positive covenants should be binding upon successors in title.¹⁷ It was not proposed that these changes, or indeed those relating to restrictive covenants, should be retrospective; not least because of the potential human rights implications of imposing new burdens on land.¹⁸ The proposals seem to have been widely supported by those who engaged in the consultation.¹⁹ Proposals regarding reform of positive covenants are not new; in fact detailed proposals were made 20 years ago in the *Law Commission's report, Transfer of Land: the Law of Positive and Restrictive Covenants*.²⁰ The previous proposed reforms were not implemented to a large extent because of the proposed introduction of commonhold.²¹ However, it is thought that only the lack of parliamentary time hinders reform this time. ***Conv. 318**

Like covenants, land obligations will be imposed on the carving up of land. It is uncertain whether the increased enforceability of positive covenants would lead to an increase in their use; the current lack of enforceability has not prevented them from becoming a popular device. However, it is possible that the change may lead to an increased number of positive obligations appearing in transfers of land, and that in turn could lead to an increased workload for conveyancers. In turn, this could result in unnecessarily increased costs for parties to land transactions.²²

The comparative position

The [Austerberry](#) rule was adopted in many common law jurisdictions, with the notable exception of the US. The position there has been clarified recently in the *Restatement (Third) of Property, Servitudes (2000)*.²³ The starting point regarding validity of covenants in the US since the *Restatement* is that servitude²⁴ is valid unless "it is illegal or unconstitutional or violates public policy".²⁵ Provision is made for the modification and termination of affirmative covenants if the obligation becomes excessive.²⁶ It is worth noting that there is a separate system regulating "common interest communities", which are governed by statute in most states.²⁷ In Scotland affirmative real burdens have been allowed to run with the land since *Tailors of Aberdeen v Coutts (1840)*.²⁸ The need for enforceability of positive obligations in Scotland is heightened by the infrequency of leasehold as a device for land management. Many of the other jurisdictions have, like England and Wales, become dissatisfied with the [Austerberry](#) rule over time. Indeed, legislation has been enacted in Northern Ireland,²⁹ the Northern Territory of Australia,³⁰ New Zealand³¹ and Ireland,³² allowing positive covenants to run with the land. In addition

to the jurisdictions where legislative changes have been made, a number of others have received recommendations from law reform bodies.³³ The gradual move of common law jurisdictions towards a desire to end the *Austerberry* rule is likely motivated by socio-economic factors related to property values. Since the 1960s, increasing density of development has created a need to consider how best to address issues of maintenance and management of common property.³⁴

The nature of positive obligations

In order to assess the viability of the enforcement of positive obligations it was thought informative to find out the nature of these obligations. As previously stated, **Conv. 319* the legislative change proposed would not be retrospective, so positive land obligations do not yet exist. However, they will probably be broadly similar to the existing positive covenants. This study involved the analysis of 600 land registry titles to determine whether they contained positive obligations and to assess how frequently these occurred.³⁵ In many cases further deeds referred to on the title had to be obtained, as the terms of the covenant were not fully set out. The data obtained was then analysed to ascertain the types of covenant occurring within the sample.

It was found that 41 per cent of titles referred to positive covenants within 315 of the sampled deeds. The deeds imposing the covenants dated from 1830 to 2013 (the year in which the sample was collected). The general trend of the imposition of positive covenants across the years has been one of increasing popularity, with the exception of the wars,³⁶ and the recent recession.³⁷ These are unsurprising examples of the correlation between building and the imposition of positive covenants. However, the correlation is not absolute: house building peaked in 1968,³⁸ and yet in this sample imposition of covenants peaked in the 1980s.³⁹ In fact the 1970s, 1980s, 1990s and 2000s all showed a higher percentage of deeds containing positive covenants, suggesting that positive covenants have been imposed in a higher percentage of transfers in recent decades. From this evidence it can be predicted that this trend will continue or, with the enhanced enforceability of positive obligations, even accelerate in the future. Unlike the restrictive covenants identified in the study, which varied considerably in type,⁴⁰ the positive covenants fell largely into a small number of categories. The three⁴¹ most frequently occurring types were: erection and maintenance of a fence (72 per cent)⁴²; contribution to maintenance (often of a shared accessway) (35 per cent); and maintenance of the appearance of the burdened property (18 per cent).

Clearly the implications of breach of a positive obligation for the owner of the benefitting land vary according to the type of obligation. Failure to contribute to the cost of an accessway could be more problematic than failure to mend a fence or to properly cultivate a garden. Online research⁴³ and cross-tabulation of the most frequently occurring covenant, that of erecting and maintaining a fence, revealed that the majority of the 189 titles related to houses within modern estates, with nearly 60 per cent of these covenants being created after 1960. In most cases those affected by the breach of such a covenant would be next-door neighbours. During the storms in the winter of 2013/2014 a great many fences were blown down, and doubtless a great many people hoped that their neighbours would rectify the situation promptly. Currently most neighbours rely on goodwill to sort out such issues, but if the law changes they may have additional redress.

The question is whether, for this kind of a breach, it would be worth utilising the new mechanism. ***Conv. 320**

Another common positive covenant revealed by the study was an obligation to contribute to a shared resource such as maintenance of sewers, drains or other shared conduits or private roads or shared driveways. This category of covenant appeared in 35 per cent of titles subject to a positive obligation. Responsibility for maintaining drains and sewers may have changed between the date of the deed and the date of the transfer to the current owner, with services being adopted by the water or sewage company. In most instances householders will have some responsibility for pipes from the road to their property, and this may be shared with a neighbour. Where there is a pipe serving a number of properties the responsibility for maintenance will be shared between them, regardless of whether there is a positive obligation contained within the transfer. On that basis, the obligation within the deeds adds little to obligations already in existence. More useful is the obligation to maintain a shared accessway. Where properties share a drive or private road it is important that each pays a contribution towards the maintenance cost. Currently in such a situation the rule in [Halsall v Brizell⁴⁴](#) provides redress by enabling the party seeking a contribution to argue that "he who takes the benefit must also take the burden".

The next most commonly occurring positive covenant within the sample was an obligation to maintain the external appearance of the burdened property to a specified standard. These often referred to keeping a garden cultivated and free from weeds. This obligation may be even more problematic than a covenant requiring maintenance of a fence because to remedy a breach will require an ongoing obligation (and possibly cost) by the owner of the burdened land.

Enforcing positive land obligations

Before the breached obligation can be remedied, it must first be established that there has been a breach. In some instances this will be straightforward: if the obligation is to erect and maintain a fence then when the fence falls down the burdened owner must replace it. In some cases matters will be less clear, particularly with more subjective covenants relating to keeping a garden neat and tidy. Anyone who has attempted to interpret a leasehold covenant to keep in repair will appreciate that there is plenty of scope for disagreement. The standard or repair in leasehold obligations depends upon the type and location of the property; one cannot expect the same standard in Spitalfields as in Grosvenor Square.⁴⁵ Those drafting the obligation should be clear as to what is expected, but some scope for disagreement should be foreseen. Provisions which impose a continuing obligation, such as keeping a garden tidy, are likely to be particularly difficult as they will require periodic monitoring. With maintenance of a shared accessway, disputes may arise over when access is needed to make repairs and to what standard.

Having established a breach, the benefitting owner will next seek remedy. The Law Commission's recommendation is that positive obligations should be enforced by an order to perform the covenant or, where it is a financial obligation, the payment of a sum of money.⁴⁶ As positive covenants are enforceable between the ***Conv. 321** original parties to the contract, there is a small body of law concerning specific performance and assessment of damages.⁴⁷ An order for specific performance would require, in the case of

a covenant to maintain a fence, the defendant to carry out the work. An award of damages could either be assessed on the basis of the cost to the claimant carrying out the work that the defendant had failed to do,⁴⁸ or on the basis of the reduction in the value of land resulting from the breach. ⁴⁹ The Law Commission has been quite clear in rejecting the notion that the assessment of damages should be calculated in accordance with the difference between the value of the land with and without the breach of covenant.⁵⁰ In addition to specific performance and damages, in its report the Law Commission provides for an alternative remedy of "self-help". In describing this remedy, the Commission specifically provides the example of maintaining a fence:

"[The] owner of the land burdened by an obligation to mend a fence, say, might be obliged to allow the dominant owner to enter his or her land, on notice, and to inspect the work done, and to carry out the work himself or herself in certain defined circumstances." ⁵¹

In theory these remedies are entirely appropriate but, in practice, it is submitted they will either be ignored or will cause as many problems as they resolve.

Taking the example of the most common positive covenant, and therefore the most likely case where a breach may arise, the first task is to determine whether the covenantee is aware of the obligation of their neighbour towards the fence. They will have received a copy of the title to the property and a report on this when they purchased, but often the contents of these documents are forgotten or have not been read.⁵² Assuming the covenantor is aware, regardless of how they later decide to proceed, the covenantee will need to speak to the neighbour and ask them to fix the fence. Failing to do so will be viewed unfavourably in any subsequent court action⁵³ and could turn "self-help" into trespass. If the neighbour then fails to carry out the required repair, the benefitted owner would have a choice of whether to make an application to court, or to proceed with the proposed "self-help" procedure.

If the covenantee decides that they do not wish to carry out the work themselves (perhaps because they simply do not have the funds to do so) they can apply to court for an order for specific performance or damages. Where the breach is for failing to repair and maintain a fence, the damages are likely to be in the hundreds of pounds, and the claimant will therefore be required to make an application using the small claims procedure under the Civil Procedure Rules.⁵⁴ The small claims track is designed to be used by litigants in person and has received positive reviews **Conv. 322* from them in consumer disputes.⁵⁵ However, whilst users of the courts are often satisfied, research also shows that many potential users of the court system avoid doing so because they are daunted by the process.⁵⁶ The costs of representation will only be awarded where the other party has behaved unreasonably.⁵⁷ This means that the covenantee will have practically no access to legal advice.⁵⁸ Of course, this is the point of the small claims track, but it does mean that parties will not have the benefit of advice regarding the risks of getting involved with litigation against a neighbour. Assuming the covenantee is able to proceed, as part of the procedure the applicant is asked whether they would like to use the free mediation service provided by Her Majesty's Courts and Tribunals Service with a view to promoting settlement. This is a useful opportunity for the parties and might settle the matter, but the issue fee will remain payable. If mediation is not undertaken, or fails, the matter will proceed to court. Unlike certain more contentious neighbour disputes, such as contested boundaries, the breach will in many cases be clear.⁵⁹ More problematic than determining

fault will be the ability of the covenantor to perform or to pay. It may be that the reason that a positive obligation has not been performed is that the covenantor cannot afford to pay for the work or make the contribution. Ultimately enforcement might be by way of a charge against the covenantor's house.

The Law Commission's proposal regarding the remedy of "self-help" seems, on the face of it, an eminently sensible one. If a neighbour's fence is damaged in a storm and they will not repair it then the owner of the benefitting land can himself or herself proceed with the repairs (subject to the wording of the land obligation). However, there are potential concerns here. These obligations are similar to those found in commercial leases where, subject to insertion of the relevant provision in the lease, a landlord can enter and carry out repairs where a tenant has failed to do so. These clauses, known as [Jervis v Harris](#) clauses after the 1995 case,[60](#) are routinely included in commercial leases.[61](#) However, [Jervis v Harris](#) clauses can be problematic; and some of their problems would equally apply to "self-help" remedies for breach of a land obligation.[62](#) One such problem is that the burdened owner may not allow the benefitting owner access. Whilst the "self-help" provision would negate trespass, the legal risks associated with entering upon land are clear.[63](#) Secondly, the benefitting owner will have to fund the repairs without a guarantee of being reimbursed; the reason for the burdened owner's failure to repair might be that they simply cannot afford to pay. Whilst the benefitting owner can enforce the payment as a debt, the burdened owner might be unable to pay, and the placing ***Conv. 323** of a charge on a neighbour's property for failure to pay the debt may be excessive. Finally, disputes could arise as to the costs of the work carried out. The benefitting owner will only be able to recover "reasonable" costs.

Subject to the comments above, it may be the case that a breach of a land obligation is easier to prove than a boundary dispute. It is therefore less likely to lead to a dispute regarding the facts of the matter. That said, whether the benefitting owner issues proceedings for specific performance or damages or invokes the remedy of "self-help", a dispute has arisen between two neighbouring parties. It is of some concern that what may originally have been a small issue relating to a fence or shared driveway could result in other civil or, in extreme instances, criminal proceedings.[64](#) Even in cases where the dispute is resolved relatively satisfactorily there could be issues for the benefitting owner on the sale of his or her property. Standard conveyancing enquiries will ask whether there have been any disputes or complaints regarding the property. The seller would be obliged to answer positively or risk a later claim for misrepresentation.[65](#) Arguably, any kind of dispute disclosed during the conveyancing process will be off-putting to potential purchasers.[66](#) As Mummery LJ stated in [Cameron v Boggiano](#)[67](#) (a boundary dispute), "both sides lose if, for instance, litigation blight has damaged the prospects of selling up and moving elsewhere".[68](#) These sentiments were echoed recently by Norris J in [Bradley v Heslin](#),[69](#) where a dispute over the opening or closing of gates led to three days of High Court litigation.

Of course, providing a legislative mechanism does not guarantee its use, as the lack of appetite shown for the use of the [Law of Property Act 1925 s.84](#) bears testament.[70](#) A key difference, however, is that utilising [s.84](#) involves the initiating party paying a substantial issue fee,[71](#) whereas the small claims issue fee is related to the amount claimed and will therefore often be modest.[72](#) It is hoped that the possibility of enforcement will deter breach in the first instance. Failing that, the threat of enforcement in the courts will be

sufficient to provoke remedial work without the need for actual litigation and the resultant damage to neighbour relations.

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- 1. P. Polden, "Law Commission: transfer of land. the law of positive and restrictive covenants" (1984) 47 M.L.R. 566; and P. Polden, "Private estate planning and the public interest" (1986) 49 M.L.R. 195.
- 2. B. Rudden, "Economic Theory v Property Law: The Numerus Clausus Problem" in J. Eekelaar and J. Bell, *Oxford Essays in Jurisprudence, 3rd series* (Oxford: Clarendon Press, 1987), p.239.
- 3. M. Dixon, "Freehold covenants: making positive obligations run, or not?" (1998) 25 S.L. Rev. 54.
- 4. S. Gardner, "Two maxims of equity" (1995) 54 C.L.J. 60.
- 5. Law Commission, *Transfer of Land: The Law of Positive and Restrictive Covenants* (TSO, 1983/4), Law Com. No.127, HC Paper No.201; Law Commission, *Making Land Work: Easements, Covenants and Profits à Prendre* (TSO, 2011), Law Com. No.327, HC Paper No.1067.
- 6. E. Cooke, "To restate or not to restate? Old wine, new wineskins, old covenants, new ideas" [2009] 73 Conv. 448.
- 7. P. O'Connor, "Careful what you wish for: positive freehold covenants" [2011] 75 Conv. 191.
- 8. T. Sutton, "On the brink of land obligations again" [2013] 77 Conv. 17.
- 9. [*Keppell v Bailey* \(1834\) 2 My. & K. 517; 39 E.R. 1042 Ct of Ch.](#)
- 10. [*Tulk v Moxhay* \(1848\) 2 Ph. 774; \(1848\) 18 L.J. Ch. 83 Ch D.](#)
- 11. A.W.B. Simpson, *A History of the Land Law*, 2nd edn (Oxford: Clarendon, 1986), p.258.
- 12. For example, [*Catt v Tourle* \(1869\) L.R. 4 Ch. App. 654 CA](#) in Ch.
- 13. For example, [*Morland v Cook* \(1868\) L.R. 6. Eq. 252 Ct of Ch.](#)
- 14. For example, [*De Mattos v Gibson* \(1859\) 4 De G. & J. 276; 45 E.R. 108 Ct of QB.](#)
- 15. [*Austerberry v Oldham Corp* \(1885\) 29 Ch. D. 750 CA.](#)
- 16. See for example, Cooke, "To restate or not to restate? Old wine, new wineskins, old covenants, new ideas" [2009] 73 Conv. 448, 455-459.
- 17. Law Commission, *Making Land Work: Easements, Covenants and Profits à Prendre* (2011), Law Com. No.327, HC Paper No.1067, para.5.69.
- 18. Law Commission, *Making Land Work: Easements, Covenants and Profits à Prendre* (2011), Law Com. No.327, HC Paper No.1067, para.5.9.
- 19. See Law Commission, *Easements, Covenants and Profits à Prendre: Consultation Analysis* (2011), Consultation Paper No.186 Consultation Analysis, pp.109-110.

20. *Law Commission, Transfer of Land: The Law of Positive and Restrictive Covenants (1983/4), Law Com. No.127, HC Paper No.201.*
21. Cooke, "To restate or not to restate? Old wine, new wineskins, old covenants, new ideas" [2009] 73 Conv. 448, 448–473.
22. This issue was raised by the Country Land and Business Association, in *Law Commission, Easements, Covenants and Profits à Prendre: Consultation Analysis (2011), Consultation Paper No.186, Consultation Analysis.*
23. *American Law Institute, Restatement (Third) on Property: Servitudes (2000).*
24. A servitude is a variety of covenant.
25. *Restatement (Third) of Property, Servitudes (2000) §3.1.*
26. *Restatement (Third) of Property, Servitudes (2000) §7.12.*
27. *J. Dukeminier & J.E. Krier Property, 5th edn (new York: Aspen) p.925.*
28. *Tailors of Aberdeen v Coutts (1840) 1 Rob. 296.*
29. [Property \(NI\) Order 1997 art.34\(4\).](#)
30. Law of Property Act 2000 Pt 9, Div.4.
31. Property Law Act 2007 s.303.
32. Land and Conveyancing Law Reform Act 2009 s.49(2).
33. *The Ontario law Reform Commission, Report on Covenants Affecting Freehold Land, AG (Ont) (1989); the New South Wales Land Titles Office, Review of the Law of Positive Covenants Affecting Freehold Land (1984); and the Victorian Law Reform Commission, Easements and Covenants, Final Report. 22 (2010).*
34. O'Connor, "Careful what you wish for: positive freehold covenants" [2011] 75 Conv. 191, 192.
35. The sample size was determined using an online sample size calculator and selecting a confidence level of 95 per cent (used by most researchers) and a confidence interval of four.
36. Approximately 11 per cent of the deeds containing covenants in the sample were dated 1930–1939, whereas only 2.5 per cent were dated 1940–1949.
37. The period 2000–2009 made up 11.5 per cent of the total, but 86 per cent of this was between 2000 and 2005.
38. *House of Commons, A Century of Change: Trends in UK statistics since 1900 (Research Paper 99/11), p.13.*
39. 9.5 per cent of the deeds containing positive covenants were dated 1960–1969, whereas 14.5 per cent of the deeds were dated 1980–1989.
40. Originally more than 50 types were identified.
41. Other frequently occurring covenants included to maintain or repair a building or to maintain a road until adoption (14 per cent), to make good damage caused by building works (5 per cent) and to complete building works.
42. This is the percentage of titles containing a positive covenant which contain this particular covenant.
43. Using google maps and property valuation sites.
44. [Halsall v Brizell \[1957\] Ch. 169; \[1957\] 2 W.L.R. 123 Ch D.](#)

45. [Proudfoot v Hart \(1890\) 25 Q.B.D. 42 CA](#) per Lord Esher at [55].
46. *Law Commission, Making Land Work: Easements, Covenants and Profits à Prendre (2011), Law Com. No.327, HC Paper No.1067, para.6.160.*
47. See *McGregor on Damages, 18th edn (London: Sweet & Maxwell, 2009), paras 22-041 to 22-048.*
48. [Radford v De Froberville \[1977\] 1 W.L.R. 1262; \[1978\] 1 All E.R. 33 Ch D.](#)
49. [Wiqsell v School for the Indigent Blind Corp \(1882\) 8 Q.B.D. 357 QBD.](#)
50. *Law Commission, Making Land Work: Easements, Covenants and Profits à Prendre (2011), Law Com. No.327, HC Paper No.1067, para.6.162.*
51. *Law Commission, Making Land Work: Easements, Covenants and Profits à Prendre (2011), Law Com. No.327, HC Paper No.1067, para.6.173.*
52. In research commissioned by the Scottish Law Commission, and forming part of its 2000 report, it found that only 31 per cent of home owners had some knowledge of the conditions attached to their house: *Scottish Law Commission, Report of Real Burdens (2000), Scot Law Com. No.181, p.471.*
53. *HM Courts & Tribunals Service, "I'm in a dispute — what can I do?", EX301, available at: <https://www.moneyclaimsuk.co.uk/PDFForms/EX301.pdf> [Accessed July 20, 2015].*
54. The small claims track is used for claims of under £10,000 in value: [CPR r.26.1\(2\)](#).
55. *L. Bello, "Small claims, big claims—consumers' perceptions of the small claims process", Consumer Focus, October 2010.*
56. *Bello, "Small claims, big claims—consumers' perceptions of the small claims process" Consumer Focus, October 2010, p.11.*
57. [CPR r.27.14\(2\)\(g\)](#).
58. Although Bello reports that in the research commissioned for the Consumer Focus report 20 per cent of claimants were legally represented: *Bello, "Small claims, big claims—consumers' perceptions of the small claims process" Consumer Focus, October 2010, p.29.*
59. This may be controversial with regard to an obligation to cultivate and keep free from weeds.
60. [Jervis v Harris \[1996\] Ch. 295; \[1996\] 2 W.L.R. 220 CA \(Civ Div\)](#).
61. See, for example, the Model Commercial Lease available at <http://www.Modelcommerciallease.co.uk> [Accessed August 5, 2015].
62. For a detailed discussion of the problems associated with [Jervis v Harris](#) clauses, see S. Highmore, "Jervis v Harris clauses: not worth the paper they are written on?" (2012) 16 L. & T. Review 175.
63. There is a risk of civil trespass and possibly even aggravated trespass under the [Criminal Justice and Public Order Act 1994](#).
64. [Criminal Justice and Public Order Act 1994 s.68\(1\)](#).
65. In [McMeekin v Long \[2003\] 2 E.G.L.R. 81](#) an undisclosed dispute regarding the use of right of way led to a claim for misrepresentation. The parties settled the damages at £67,000 (the purchase price in 1999 was £124,000).
66. *D. Agnew and A. Morris, Neighbour Disputes A Guide to the Law and Practice, 2nd edn (London: Wildy, Simmonds & Hill Publishing, 2011), p.24.*
67. [Cameron v Boggiano \[2012\] EWCA Civ 157; \[2012\] 1 E.G.L.R. 127.](#)

- [68.](#) [Cameron v Boggiano \[2012\] EWCA Civ 157; \[2012\] 1 E.G.L.R. 127](#) at [D56].
- [69.](#) [Bradley v Heslin \[2014\] EWHC 3267 \(Ch\)](#).
- [70.](#) The average number of decisions per year between 2010 and 2014 was six.
- [71.](#) The issue fee at the Upper Tribunal (Lands Chamber) is £800.
- [72.](#) The fee for a claim of £500–£1,000 is £60 or £70 depending on whether money claim online is used.

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