



[2018] UKFTT 0081 (PC)

REF/2017/0222

**PROPERTY CHAMBER, LAND REGISTRATION  
FIRST-TIER TRIBUNAL**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**Deborah Anne Edwards**

**APPLICANT**

**and**

**Jack Law & Cynthia Law**

**RESPONDENTS**

**Property Address: Land between driveway, Southbank/adjoining Trenance,  
Perrancombe, Perranporth TR6 0HX  
Title Number: CL300931**

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**ORDER**

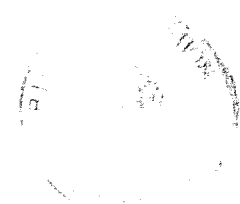
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IT IS ORDERED as follows:

1. The Chief Land Registrar is to cancel the Applicant's application dated 17 July 2015 for first registration insofar as it has been objected to by the Respondents.
2. The Chief Land Registrar is to alter the general boundary to Trenance, registered title number CL111772, so as to reflect more accurately the position of the boundary by showing it to be contiguous to the boundary of Southbank along the driveway to which the Applicant's application relates.

Dated this 15 January 2018

**Elizabeth Cooke**  
BY ORDER OF THE TRIBUNAL





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**DECISION**

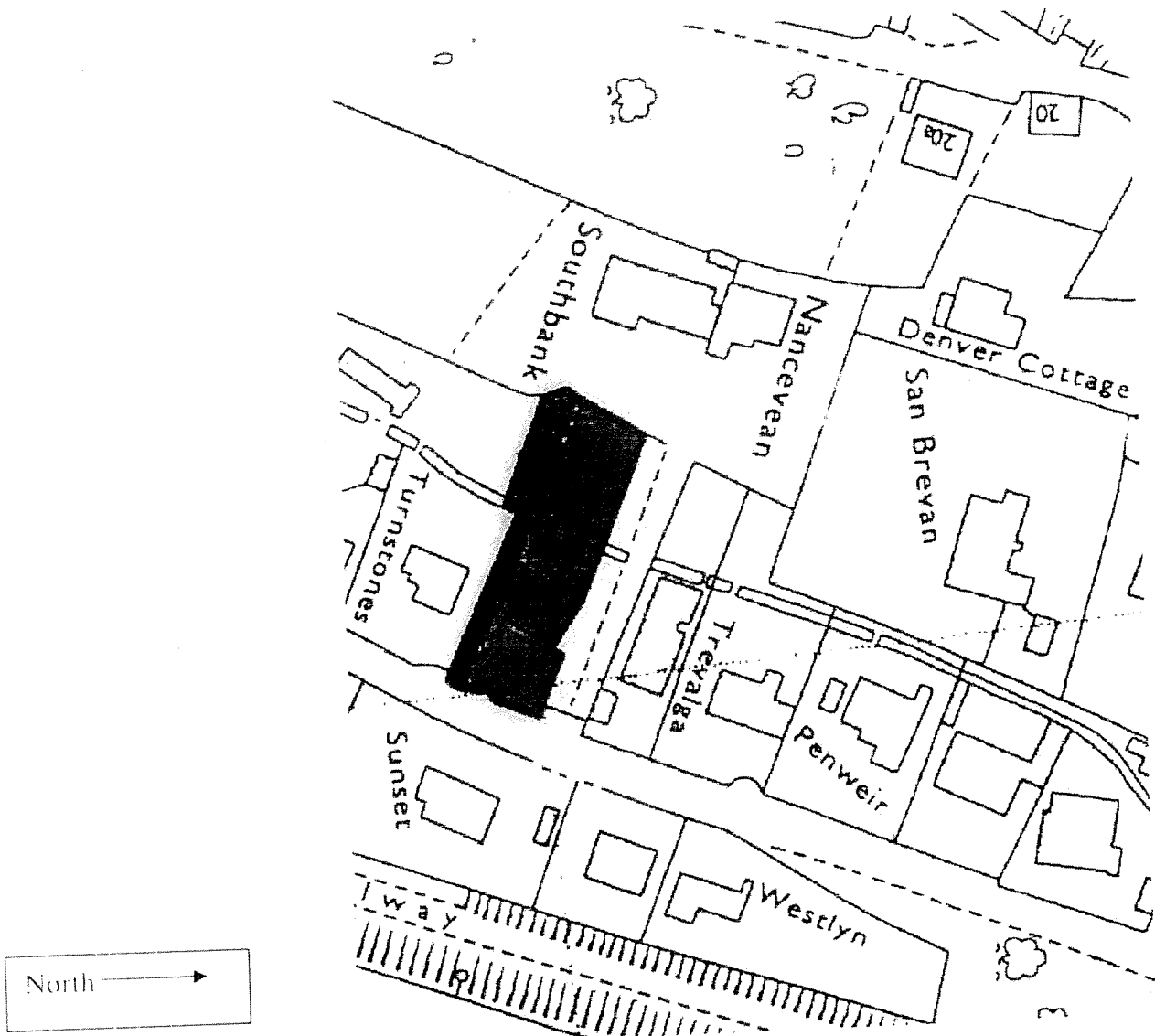
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1. The Applicant, Mrs Deborah Edwards, is the registered proprietor of "Southbank", a property on Perrancoombe, a pleasant leafy lane in Perranporth on the north coast of Cornwall. Southbank is registered at HM Land Registry under title number CL184615. It is set back from the road (Perrancoombe) behind another row of houses; the registered title to Southbank comprises not only the roughly rectangular plot on which the house is built ("the main plot") but also a narrow strip of land running roughly east-west between two other properties and out on to Perrancoombe ("the

registered strip"). Functionally the registered strip is a driveway allowing vehicular access to the main plot.

2. Another property, Nancevean, is adjacent to Southbank and has the benefit of a right of way along the registered strip. The Applicant is also the registered proprietor of Nancevean. The right of way that benefits Nancevean is not in dispute.
3. The two properties between which the registered strip runs are Trenance to the south (roughly) and Branksome to the north. The Respondents, Mr and Mrs Law, are the registered proprietors of Trenance, which is registered at HM Land Registry under title number CL111772.
4. Below are copies of the registered title plans for Southbank and Trenance, showing the boundaries of each as a bold line corresponding to the red line on the respective title plans and the land itself shaded. It will be seen that between the registered strip and Trenance is a strip of land which appears to be unregistered. It can only be said that it *appears* to be unregistered, because the boundaries on the title plans are general boundaries; they do not show precisely where the edge of each registered title lies.





5. I use the word "driveway" to refer to the whole of the land between the north fence of Trenance and the south fence of Branksome, comprising the registered strip and the area that appears to be unregistered.
6. It will be seen from the plans that the gardens of Trenance and Branksome are bisected by a stream, as is the driveway. Therefore part of the driveway is a bridge. The bridge does not occupy the full width of the driveway; it is about 10 feet wide and there is a gap of about three feet between the bridge and the north fence of Trenance.
7. The Applicant's case is that there is, or should be, no unregistered strip between Trenance and the registered strip, and that she owns the whole width of the driveway by virtue of her ownership of Southbank, to which title was registered in 2002.
8. The Applicant has therefore applied to HM Land Registry on form FR1 to be registered as proprietor to a long narrow rectangle of land which comprises the part of

the driveway that appears to be unregistered, corresponding in width to the gap between the bridge and the fence that separates Trenance from the driveway, including part (but not quite all) of the north fence of Trenance as well as half the thickness of the hedge and the stone wall at the Perrancoombe end of the driveway. The hedge and the wall appear (subject to the general boundaries rule) to be within the Respondents' registered title.

9. The Respondents have objected to the application in part. They say that the registered strip is only as wide as the bridge, and that the land that appears to be unregistered and lies to the south of the registered strip is in fact part of their title. Nevertheless they make no objection insofar as the application relates to land west of the stream, although in refraining from objecting they say that they are making a concession. They do object to the application insofar as it does not relate to land west of the stream, in other words insofar as it relates to the rest of the land that appears to be unregistered, and to the hedge and the stone wall falling with the application. The dispute has been referred to the tribunal pursuant to section 77 of the Land Registration Act 2002.
10. The Respondents have registered a caution over the land that appears to be unregistered, under caution title number CL300931. The application land comprises therefore the land in the caution title, together with the stone wall and the half of the hedge that the Applicant also claims.
11. I heard the parties, neither of whom was legally represented, in Truro on 3 January 2018; the previous day I had the benefit of a site visit, and I am grateful to the parties for allowing me access to their land.
12. The parties were, as I say, unrepresented; they have done their research and have very helpfully produced copies of a number of the pre-registration deeds to their properties. Understandably they have not been able to give me much assistance beyond that in terms of legal argument and I have had to draw conclusions as best I can from the pre-registration deeds, whose effect the parties – again, understandably – did not wholly understand. Moreover, the Applicant bought her property in 2006, and the Respondents bought theirs in 2012; so none of them has a very long memory of their property and none of them owned their land at the time of first registration. Each has discussed matters with neighbours and have produced letters from neighbours and from predecessors in title, but the only witness called at the hearing was Mr Nicholls, who lived at Trenance from 1987-1988, whose evidence was of very limited assistance (but whose assistance at the hearing in terms of helping to manage documents, which

had to be passed frequently between me and the parties, I gratefully acknowledge). All other evidence is hearsay and I view it with caution. I have reached my decision on the basis only of the documents of title.

13. Discussions between the parties have been extensive and I have been shown a great deal of correspondence, much of it by no means neighbourly or helpful. Feelings have run high and still do. I hope that the hearing has gone some way to show the parties that the solution to their dispute is not easy to find, and that it is no-one's fault that it is difficult, nor that deeds have been lost. I have done my best with the evidence shown to me and I have found that the Applicant cannot show that she has title to the application land. Accordingly, insofar as the Respondents object to it, I have directed the registrar to cancel it. One of the reasons why I have reached that finding is that it is clear from the conveyancing history of these parcels of land that the disputed land – although apparently unregistered – must belong to either Southbank or Trenance; and while there is some positive evidence that the Applicant's title does not extend the full width of the driveway beyond the edge of the bridge, there is also evidence that the disputed land belongs to Trenance and would have been shown as such on the title plan but for a mistake arising from the state of the 1973 Ordnance Survey. Accordingly I have directed the registrar to make an entry to that effect on the registered title to Trenance by amending the general boundary so as to reflect more accurately the position of the boundary and the fact that the boundaries along the driveway are contiguous.

14. I have set out my reasoning below under the following headings:

- i. The Applicant's case: (1) there is no gap between the registered titles
- ii. The Applicant's case: (2) title to Southbank
- iii. The Respondent's case: (1) the 1940 abstract
- iv. The Respondent's case: (2) the boundary to Trenance
- v. Conclusion: my directions to the registrar

**i The Applicant's case: (1) the land that appears to be unregistered cannot belong to a third party**

15. The Applicant has explained, and it is not in dispute, that Trenance and Branksome were formerly a single property 80 feet wide owned by Clifton Menadue and Guthrie Thomas. On 31 March 1928 they conveyed a plot of land with a frontage of 40 feet to Ms Kate Price. On 1 June 1928 they conveyed plot of land with a frontage of 40 feet to Ms Edith Shipp. I have been shown copies of both those conveyances. It is agreed

that the land bought by Ms Shipp was Trenance; it is agreed that the land that Ms Price bought in 1928 now comprises both the property known as Branksome and the registered strip. What is not agreed is whether the land in dispute was formerly part of Ms Price's land or Ms Shipp's land. Put another way, the position of the boundary between the two forty-foot-wide plots is not known.

16. In a letter to the Respondents dated 14 April 2015 HM Land Registry expressed the view that the land that appears to be unregistered (the cautioned land) must belong to a third party. But that view was expressed without the benefit of the history of the two titles. I find – and it is agreed by the parties – that there cannot be a third party owner of the land that appears to be unregistered. The boundaries of Southbank and Trenance should therefore be contiguous on the driveway. That is also the view now taken by HM Land Registry, despite the appearance of their plans, in its letter to the Applicant's former solicitors dated 27 April 2016.

17. So the story told by the title plans is misleading: there is no strip of unknown ownership between the Southbank Drive and Trenance. What is not known is whether the land that appears to be unregistered belongs to Southbanks or to Trenance, or even partly to one and partly to the other.

18. The Applicant says that the caution land belongs to Southbank, along with half the hedge and the wall. The Respondents say that all that land is theirs.

#### **ii The Applicant's case: (2) title to Southbank**

19. At the hearing I asked the Applicant if she could show me how Southbank came to own the registered strip. She was unable to provide an answer to that question. She does not have pre-registration deeds that show how Southbank came to comprise not only the main plot but also the registered strip. Given the lie of the land one might have expected that at some stage the owner of the main plot of Southbank might have bought the registered strip from whoever, at that date owned Ms Price's land. But there is no evidence of any such purchase.

20. It turns out that that is not what happened.

21. The Applicant has produced abstracts of title to Nancevean – no doubt part of the pre-registration deeds to Nancevean which she holds – which show that in 1922 a Captain Edgar Twidle purchased the main plot of Southbank, Nancevean, some other land to the north of Nancevean, and a right of way on to a lane to the north (marked A - B on the plan to that conveyance). They also show that in 1936 Captain Twidle sold Nancevean and other land to Mr and Mrs Shepherd. The Shepherds' 1940 abstract of

- title to Nancevean shows that on 27 June 1938 they sold to a Mr Frederick Seymour a plot of land 50 feet wide on west side of the road from Bollena to Perranporth.
22. Nothing in those abstracts of title relates to the registered strip.
23. I asked the parties to produce for me, during the lunch break, lists so far as they were able of the owners of Southbank, Nancevean, Trenance and Branksome over the years. The Respondents were able to tell me only about Trenance, and I say more about title to Trenance below.
24. What emerged from the lists that the Applicant was able to make, from her local knowledge (which was not disputed by the Respondents), is that there was a time when Nancevean, Southbank and Ms Price's land were all owned by Mr and Mrs Shepherd. I have seen an abstract of the conveyance of Ms Price's land to the Shepherds on 24 July 1936.
25. Neither party was able to supply any further information about the title to Branksome (which comprises Ms Price's land minus the registered strip). But in the absence of any evidence of the owners of Southbank buying the registered strip from the owner of Ms Price's land, and since both Southbank and Ms Price's land were at one stage in the common ownership of Mr and Mrs Shepherd, I take the view that at some unknown date Branksome was sold off by the owners of Southbank but that that seller retained a strip of land giving access for Southbank to Perrancoombe. Nor surprisingly no copy of that sale off has been found by the parties.
26. A little more of the story can be reconstructed from later events.
27. In 2001 the Environment Agency did some extensive flood prevention works and required access along the driveway. A deed was made between the Environment Agency and the then owner of Southbank, Ms Brady, giving the Agency the right of access that it needed to do the work. The deed recited Ms Brady's ownership of the relevant land, which in 2001 comprised the main plot and a strip of land corresponding to some or all of the driveway, said to have been conveyed to her in 1963.
28. The Applicant says that Margaret Brady owned Southbank until her death in 2001, after which it was bought by Mr and Mrs Wrigg in 2002 and title was registered; the Applicant (together with her husband and her mother, both now deceased) bought from Mr and Mrs Wrigg.
29. Accordingly I find that in 1963 there was conveyed to Margaret Brady the main plot of Southbank and the land that is now the registered strip.



30. Whether in 1963 there was also conveyed to Mrs Brady the rest of Ms Price's land, which she sold off later, or whether that land had already been sold off by Ms Brady's predecessor so that she bought only the main plot and what is now the registered strip is not known, and does not matter.
31. The 1963 conveyance might well contain the answer to the puzzle at the heart of this case: what was the extent of the narrow strip of land retained (before or after 1963) by Southbank from Ms Price's land? But it cannot be found.
32. One clue, however, we do have. Today's parties do not have the 1963 conveyance: but Ms Brady had it and the Environment Agency saw it. The plan attached to the 2001 deeds purports to show hatched the land that Ms Brady owned over which the Environment Agency was given access. The copy of the 2001 deed placed in the hearing bundle by the Applicant did not include that plan, but the Respondents produced a copy that included the plan at the hearing. The hatched land does not extend the entire width of the driveway but is clearly only as wide as the bridge.
33. The 1963 conveyance must have formed the root of title when the Wriggs purchased in 2002 and must have been submitted to Land Registry; and the title plan produced by Land Registry on the basis of that deed again shows the land owned by Southbank within the driveway as extending only as wide as the bridge. It is of course a general boundary, but there appears to have been a deliberate decision to draw the line as it is on the plan rather than along the southern boundary of the driveway, and that decision was taken with knowledge of the 1963 plan.
34. The Applicant takes the view that the fence that now separates Trenance from the driveway is on the line of the fence that Ms Price was obliged to put up when she purchased in 1928. But there is no evidence to that effect and some evidence to the contrary, which I shall discuss below.
35. One final point: I asked the Applicant at the hearing why she says that she owns not only the whole of the driveway but also half of the hedge and the whole of the stone wall that appear to lie within the Respondents' registered title. Her answer was that Mr Higgins told her that the stone wall was built by Mr Shepherd in 1938.
36. Mr Higgins is a resident of Perranporth. He did not attend the hearing. He has made a witness statement consisting of a modern photograph of the Perrancoombe end of the driveway. His statement, in full, reads "I certify that the entrance was constructed by the then owner of Southbank, Mr Shepherd". It is not dated.

37. That is hearsay, and very imprecise. It is not clear what is meant by "the entrance", but I do not see why it would refer to the garden wall alongside Trenance. It is more likely to refer to the stone gate-posts that stand within the driveway. It does not tell me anything that indicates where the boundary lay. The written statement does not say that Mr Shepherd built the stone wall; that is oral hearsay from the Applicant. There is no indication that she has correctly understood Mr Higgins' recollection, nor whether his recollection is correct. In the absence of any detail or of any opportunity for Mr Higgins' recollections to be tested at the hearing I place no weight whatsoever upon what the Applicant says he said.

38. I now turn to the Respondents' case.

### **iii The Respondents' case (1) the 1940 abstract**

39. The Respondents have asked the Applicant for evidence of the title she claims to have to the application land and, as discussed, she cannot produce any.

40. However, the Respondents claimed, prior to the hearing, to have found evidence of a sale of the driveway to the owners of Southbank (which, as I said above, I had rather expected to find). They rested their case primarily on that evidence, which was a copy of part of an abstract of title referring to a strip of land 10 feet wide. I was shown at the site visit that the bridge is approximately 10 feet wide.

41. On examination at the hearing the copy document the Respondents relied on turned out to be part of the 1940 abstract of title to Nancevean. The paragraph they relied on was not a record of a sale of the driveway to the owners of Southbank, but an acknowledgement for production of title deeds given by Mr Seymour to Mr and Mrs Shepherd in connection with his purchase from them in 1938. There is reference to a 10 foot wide strip of land which he also owns, giving access to the road from Bollena to Perranporth. There is nothing to indicate that this is land between Trenance and Ms Price's land apart from the OS plot reference (787a), which is the same reference as Ms Price's land and Trenance. But such plot references change over the years and it is not clear which part of 787a is referred to nor what is the full extent of plot 787a. In the circumstances, and in the light of the reference to the road from Bollenas to Perranporth (which may be what is now known as Bollena Lane) it is probably the case that that land is the access marked A - B on the conveyance to Captain Twidle in 1922 (see paragraph 21 above), some distance from Trenance and Ms Price's land.

42. So there remains no documentary evidence of the extent of the driveway owned by Southbank. As I concluded above it was probably retained by sellers who owned both

Southbank and Ms Price's land (whether Ms Brady or her predecessors) rather than being acquired as a strip.

43. Nothing so far indicates that the Applicant owns the application land. I turn now to the evidence about the position of the boundary from Trenance's point of view.

**iv The Respondents' case (2): the straight boundary of Trenance**

44. When Trenance was sold to Ms Shipp in 1928 its boundary was straight. There was no dog-leg. That appears to have remained the case until Trenance was registered in 1995 when Ms Trebath and Mr Scott bought Trenance. Planning applications in the 1960s made by the owners of Southbank show the north boundary of Trenance as straight

45. The 1973 Ordnance Survey map showed a line along the north edge of Trenance as having a dog-leg. That was probably the line of the fence, as it is now. Mr Nicholl, who lived there as a tenant from 1987 – 1988, confirmed that the fence followed the current line when he lived there. It is likely that the Ordnance Survey, which often draws lines along physical features, inadvertently gave the impression that Trenance's northern boundary had a dog-leg in it and that Land Registry followed the Ordnance Survey line rather than taking a straight line from the deeds.

46. The Applicant agrees that the boundary of Trenance should be straight, but of course she places it three feet or so to the south, inside the stone wall, halfway through the hedge, and along the fence. The basis for her view is the opinion of her predecessors in title and the evidence of Mr Higgins, which I explained above does not assist her. It seems highly unlikely that the wall between the driveway and Trenance, which appears to be a continuation of the wall that separates Trenance from Perrancoombe, was not built at the same time as that wall and does not belong to Trenance.

47. The Court of Appeal has said that where the deeds to a property do not indicate the precise line of a boundary, the boundary may be discerned by considering how things would have looked to a person with the plan in his hand looking at the land at the time the boundary was created. The boundary may well have been open in 1928; at any rate there is no evidence that any of today's features existed at that date unless perhaps the wall did – in which case anyone looking at the land would suppose that the wall belonged to Trenance.

48. The Applicant says that she owns the fence that separates Trenance from the driveway. I have not been shown any evidence that might indicate that she is correct.

49. When the Respondents looked round Trenance in 20011 Mrs Law says she walked between the fence and the north-western corner of the bungalow. She and Mr Law say

- that at that date the fence was damaged, but that by the time they moved in Mr Edwards had repaired it, and that it was then no longer possible to walk around the bungalow because the gap between the fence and the bungalow was too narrow.
50. I have no reason to doubt the truth of what Mrs Law says. The Applicant agrees that Mr Edwards mended the fence; she says they put two new panels in. I find that Mrs Law is telling the truth and that after they did so she could no longer walk through the gap. The fence was moved, very slightly. The effect was to enlarge, very slightly, the width of the driveway. Whether that was done deliberately I cannot say; I make that finding only to demonstrate that the fence may well have moved over the years, as it did in 2011, and that successive owners of Southbank may have encouraged it to do so.
51. I find as a fact that the northern boundary of Trenance is a straight line, running from the north face of the stone wall at the Perrancoombe end to the south face of the bridge. Beyond that its ending is immaterial since the Respondents do not object to the Applicant's application insofar as it relates to land beyond the western bank of the stream.

**v Conclusion: my directions to the registrar**

52. Insofar as the Respondents do not object to the application there is nothing for me to decide, but I find that the Applicant cannot show that she owns the rest of the application land, partly because of the evidence of the title to Southbank and partly because of the evidence that Trenance's boundary is a straight line which is unlikely to be anywhere other than inclusive of the stone wall at the Perrancoombe end and then in a straight line.
53. I therefore direct the registrar to cancel the Applicant's application save for the small area in respect of which the Respondents do not object.
54. The registered title to Trenance is misleading. In the light of the evidence as to the title to Trenance it would appear that there is a mistake on the register insofar as the general boundary to the north of Trenance is not depicted as a straight line and insofar as it appears to indicate that there is unregistered land between Trenance and the Southbank registered strip,
55. Neither party has applied for the title to Trenance to be altered. Rule 40(3) of the Tribunals Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 enables me when directing the registrar to cancel an application also to require him to make an entry on the register of any title affected. It would correct the mistake, and would

certainly be an improvement to the current state of affairs, if the northern boundary of Trenance were to be amended on the plan, so as to remain a general boundary but so as to reflect more accurately the position of the boundary by running in a straight line contiguous to the southern boundary of the registered strip. That would be an alteration of the register; the conditions for alteration set out in paragraphs 2 and 3 of Schedule 4 to the Land registration Act 2002 are met, namely that there is a mistake on the register, the Tribunal has power to make the order for alteration, and there are no exceptional circumstances that would justify not doing so. It is not rectification (and so does not fall under paragraph 3(2) of that Schedule, because it does not prejudicially affect the title of a registered proprietor since the Applicant does not own the application land. Accordingly I have so directed the registrar.

### Costs

56. The Respondents are entitled to have their legal costs paid by the Applicant insofar as they were incurred after the date of the reference of this matter to the Tribunal. If they seek an order for costs they are to write to the Tribunal, sending a copy to the Applicant, with a detailed schedule of costs within 28 days of the date on which this order is sent to them. The Applicant will then have 28 days to respond, and the Respondents a further 21 days to reply if she does so.

Dated this 15 January 2018

BY ORDER OF THE TRIBUNAL

Elizabeth Cooke