

# CLARITY

a movement for the simplification of legal English

# NEWSLETTER

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## THE BIRTH OF CLARITY

CLARITY is born. It was conceived in the correspondence columns of the Law Society's Gazette. There have been announcements of the birth in legal journals, national newspapers, Radio 4 and even the Australian press. Over 200 letters of support have been received. Most of these have been from lawyers who already believe in the aims of CLARITY. There are many more who don't. CLARITY's early childhood may be more of a struggle.

## CLARITY'S AIM

The aim of CLARITY has been stated as the use of good clear English by the legal profession. It is hoped to achieve this aim by:—

1. avoiding archaic, obscure and over-elaborate language in legal work;
2. drafting legal documents in English that is both certain in meaning and easily understandable;
3. exchanging ideas and precedents, not to be followed slavishly but to give guidance in producing good written and spoken legal English; and
4. exerting a firm but responsible influence on the style of legal English, with the hope of achieving a change in fashion.

Those are the general intentions. Exactly how they are carried out will depend on you. What's the best way of exchanging precedents, for example? And to what extent should campaigning form part of CLARITY's activities? Your views will be needed in deciding the early direction of CLARITY. For that reason, a questionnaire is sent with this newsletter. Please complete it and send it back as soon as you can — together with your membership subscription (mentioned below).

## MEMBERSHIP

Most of you who have written have stated (quite clearly) that you want to join CLARITY. Others have merely expressed interest or asked for further information. This newsletter is being sent to every one who has responded — in the hope that you'll confirm your membership without delay.

There will have to be a subscription to cover the copying, stationery, printing and suchlike. Although it's difficult to assess future costs, an annual subscription of £5 should give us a reasonable working capital. But this could be waived for students (and out-of-work lawyers?). A bank account has been opened and cheques should be made payable to CLARITY please.

Remember, membership of CLARITY is open to lawyers, those training to be lawyers and anyone else in a position to influence the use of legal English. A list of members will be sent out with the next newsletter, with additions being included in later issues.

## PRECEDENTS

One of the most practical ways in which members of CLARITY can help each other is by the exchange of precedents. But this raises a number of questions:

### Quality of Precedents

Who is to say whether a precedent submitted by a member is good or bad? Naturally, it is for every lawyer to satisfy him— or herself that any precedent followed is good for its purpose. But it's conceivable that a member will submit a precedent that is manifestly unsuitable. It may be immediately apparent, for example, that it includes unnecessary legalese. Or that in the search for simplicity, some important case law has been overlooked. But who is to be the judge? One of the matters on which members' views are needed is whether there should be a vetting system and, if so, what form it should take.

### The Register

How should this operate? There are various possibilities — a central register or simply a system of exchange through this newsletter? Should precedents be photocopied and distributed on request or can anyone offer word processor space? And what charging system should be used? The views — and services — of members are invited.

### Copyright

Can a member using a precedent submitted by another member be sure that there is no breach of copyright? This could be a risk where a form is offered, for example, by a solicitor employed in industry or commerce. It would seem prudent for any precedent sent in to be accompanied by an assurance that its use will not infringe any copyright.

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## Negligence

Is there any possibility of a claim lying against the drafter of a faulty precedent? If so, members could be discouraged from sharing the products of their skills. It must be emphasised that anyone using another's precedent does so at his or her own risk. The ultimate responsibility for a document must lie with the one who prepares it.

## CAN ANYONE HELP?

### Joint Tenancies/Tenancies in Common

I should be glad of some assistance with a common-place task which seems to be beyond my powers of self-expression.

How do I explain briefly and simply to a beneficial joint tenant, firstly the difference between joint tenancy and tenancy in common, and secondly the effect of severance?

My shortest effort in writing to date ran to something like one and a half pages of impenetrable prose. I need to improve on this, particularly for the benefit of matrimonial clients representing the non-business half of the partnership; those men and women who have always signed obediently between the pencil crosses and asked no questions.

Can anyone help with a precedent, please?

Richard Thomson, 18 Queen Alexandra Road,  
Salisbury SP2 9LN



## CLARITY FOR CLAIMANTS

David Lewis is a Forms Writer in the DHSS Forms Unit, whose task is to encourage the introduction of greater clarity in the Department's forms.

As part of a larger publication – the Good Forms Guide – the Unit has produced a Thesaurus of possible alternatives to some of the words and phrases that many people find difficult to understand. Mr Lewis has kindly sent a copy of the Thesaurus to CLARITY. Here are a few examples from it:—

accordingly  
adjacent to  
attend  
on behalf of  
defer  
discontinue  
dwelling  
endeavour  
ensure  
entitlement  
excluding  
henceforth  
hereby  
inform  
in the event of  
irrespective of  
maintained  
necessitate  
notify  
particulars  
permit  
prescribed  
prior to  
provided that  
purchase  
in receipt of  
require(d)  
revised  
subject to  
subsequently  
tenant  
thereafter  
concerning  
in connection with  
re  
with reference to  
with regard to  
in relation to  
approximately

so  
next to  
be there  
for  
put off  
stop; end  
home  
try  
make sure  
right  
apart from  
from now on  
now  
tell  
if  
whether or not; even if  
kept  
need  
tell  
details  
let  
set; fixed  
before  
if; as long as  
buy  
get  
need(ed)  
altered; new  
as long as; if  
later  
you  
then  
about  
about  
about  
about  
about  
about

Many of you must have favourites of your own. Who can send in the most ingenious simplification of a commonly-used legal expression?

## SNIPPETS

Here are a few snippets from the hundreds of letters received:—

"I shall not easily forget the look on our town clerk's face when I suggested the wording, 'at the end of this time, all people and all equipment must be out.'" Miss G.C. Collis, Swindon

"Legal 'gobbledegook' is ..... worse with the introduction of modern word processing techniques which allow 224 word sentences ..... to be summoned up at the touch of a button and without the typists going on strike."

Andrew Clifton, Romford

"Lawyers ought to moderate their language not only in the writing of documents but also in court." Sarah Harman, Canterbury

"On behalf of The Solicitors' Law Stationery Society plc, I would like to convey our support of your group CLARITY."

Sarah Harker, Product Research & Development Officer

"Traditional legal drafting has changed surprisingly little from the old penny-a-word days and the principles may be summarised as:

- use continuous narrative, with no punctuation;
- sprinkle liberally with terms of art and such traditional archaisms as 'hereinafter' and 'aforesaid';
- never use one word where three will do; in particular repeat all complicated terms in full every time they occur.

The final rule is read through when finished and if there is any danger of it being intelligible to a non-lawyer, re-draft it."

K.A. Bulgin, Bromley

"Do you find that the language lacks a suitable preposition for 'on the subject of'? You can use 'about' or 'on' sometimes, but many people feel an irresistible need to write 'with respect to' or 're' ..... any ideas?"

Peter Douglas-Jones, Mumbles

"I see the plan is to circulate comprehensible precedents. It might be a salutary exercise to put together a separate file of the incomprehensible versions."

Alison Gorlov, Westminster

"In a draft Conveyance submitted to another firm of solicitors I used the phrase 'This Deed witnesses .....'. The draft came back approved, with the word 'witnesses' altered to 'witnesseth'."

G.V. Bull, London SE26

"I submitted for approval a draft lease written in English and it was returned with every punctuation mark carefully deleted."

Mark Adler, East Molesey

"Brevity is frequently confused with clarity. The two are not necessarily synonymous ..... I would much prefer 'immediately after the signing of this Agreement' to 'forthwith upon the signing hereof.'"

Keith Lewington, Milton Keynes

"I have been befuddled by the terms of my late mother's will and am convinced that the trustees have been negligent ..... in explaining it all to me. I am apprehensive about approaching a new solicitor ..... as I shall be pushed into more jungles of legal terminology."

(Name withheld)

"I am the editor of Kelly's Draftsman and have attempted to take some steps to improve the quality of English used in it whilst not departing radically from well known and established forms. I would be glad to consider taking this work further in future editions."

R.W. Ramage, Stoke-on-Trent

"Has anyone suggested a means yet of curing one's colleagues of writing things like 'I have pleasure in enclosing for signature by your goodself'?"

A.J. Elliott, Warrington

"All best wishes for success in the aims of CLARITY — it is after my own heart."

Lord Denning

## INTERNATIONAL SECTION

"I suggest that the root of the problem lies in the fact that legal education, whether at University, College of Law or in articles, does not recognise sufficiently that lawyers are dealers in language (and problem solvers)."

Dr. S. Robinson, University of Queensland

"What we as professions have in common is the regrettable tendency to use antique and unintelligible English ..... I would think that Scots lawyers would be delighted to join CLARITY. Our law may be Scottish, but on the whole we speak English."

William M. Millar, Editor, The Journal of the Law Society of Scotland

"As the only English lawyer in the bank, I have a constant battle to rid our English of a Germanic flavour! German lawyers seem even more reluctant than English lawyers to write in short sentences."

P.J. Condon, Frankfurt

"In the issue of the West Australian newspaper of 17 June 1983 reference was made to a group of English lawyers who are trying to 'beat a clear path through the thicket of impenetrable legal verbiage'."

Peter Atkins, Perth, Western Australia

"I am a solicitor of the Supreme Court and also a member of the State Bar of California ..... I should like to join CLARITY."

Michael Oliver, Beverley Hills

## GIFT OF AN ORANGE

When an ordinary man wants to give an orange to another, he would merely say, "I give you this orange." But when a lawyer does it, he says it this way: "Know all men by these presents that I hereby give, grant, bargain, sell, release, convey, transfer, and quitclaim all my right title, interest, benefit, and use whatever in, of, and concerning this chattel, otherwise known as an orange, or citrus orantium, together with all the appurtenances thereto of skin, pulp, pip, rind, seeds, and juice for his own use and behalf, to himself and his heirs in fee simple forever, free from all liens, encumbrances, easements, limitations, restraints, or conditions whatsoever, any and all prior deeds, transfers or other documents whatsoever, now or anywhere made to the contrary notwithstanding, with full power to bite, cut, suck, or otherwise eat the said orange or to give away the same, with or without its skin, pulp, pip, rind, seeds, or juice."

Wisconsin Bar Bulletin, Feb. 1975.

(Of course, the British version wouldn't have any punctuation to confuse the issue!)

## WHAT'S WRONG WITH "YOU"?

It's customary for legal agreements to be written in the third person — "the tenant hereby covenants" etc. But the second person has its uses too. The "you" form is particularly useful, for example, in cases where obligations are imposed on a person who may not have the benefit of legal advice. In consumer credit agreements, for instance, where it is especially important for the rights and obligations to be clearly understood.

"The Conveyancer" has recently featured a precedent drafted by solicitor, Robert Craig, who is one of the founder-members of CLARITY. This is a hiring agreement for television apparatus and is written in a delightfully straightforward style. It includes such expressions as "If you object to the increase you may reply in writing within two weeks from the date of the notice ....." and "Do not let anyone else get (or try to get) legal rights over the Set".

One of the winners of last year's Plain English Awards was Rugby Borough Council, whose standard form of tenancy agreement for small industrial units addresses the tenant in the second person throughout. For example, "You may bring the tenancy to an end on the last day of any calendar month, provided you give at least one month's written notice beforehand. You must send any such notice to ....." The units were intended for those starting off in business for the first time and who might not be familiar with a business tenant's usual rights and obligations. It was particularly important that the tenancy agreement should let tenants know precisely what was expected of them.

Where people or companies enter into agreements on equal terms, it will be better to refer to each of them in the third person using a simple definition device (not "hereinafter referred to as ....."). The second person form certainly won't be suitable in every case. But its use shouldn't be overlooked as an aid to clarity in documents.

## PARKER TAKES TO THE WATERWAYS

Mr J.M. McKean will be well-known to many of you as a contributor and consultant to Parker's "Modern Conveyancing Precedents" and principal contributor to "Modern Wills Precedents". As Solicitor to British Waterways Board, he has tried to continue the philosophy of those publications.

The Board's new standard form lease is a splendid example of the sort of comprehensive yet clear legal drafting CLARITY is seeking to encourage. The grant clause, for example, is worded in a straightforward style, with a sensible use of schedules to avoid the unwieldy type of paragraph commonly found in leases:—

1.1 The Board grant to the Tenant/s a lease of the property described in Schedule I Part 1 ("the Property") for the term of \_\_\_\_\_ years starting on \_\_\_\_\_ 198\_\_\_\_\_ reserving a basic yearly rent ascertained in accordance with Schedule II.

1.2 The grant is made subject to:—

1.2.1 The matters set out in Schedule I Part 2.

1.2.2 The reservations set out in Schedule I Part 3.

And here are the repairing and yielding up provisions:

2.2.2 To [put and] keep in a good state of repair cleanliness and decoration the whole of the Property [except .....

2.2.3 When this Lease ends to yield up to the Board the Property with all additions improvements and fixtures in the state required by 2.2.2. having first (but only if required in writing by the Board) removed any structures for which permission under the Town and Country Planning legislation may have been granted for a limited period only and such apparatus as the Board so require all damage caused to the Property by such removal being made good by the Tenant/s.

And not a "said", "thereof" or "hereinafter" in sight!

This has been the first CLARITY newsletter. Now it's up to you. All contributions will be welcome.

JW.