

CLARITY

A movement for the simplification of legal English
Patron: Lord Justice Staughton

Newsletter

No 14: September 1989

INDEX

Accounts	15
Annual meeting	1
Book reviews	13/14
Commonwealth news	2
Committee	1/16
Conveyancing	15
Interpretation of Private Documents Bill	-
Letters	3/4/5
Note	5/6
Bill	7/8/9
Latin tags	14
Letters (general)	10/14
Members	16
Non-sexist writing	11
Patron	1
Precedent library	12
Referrals register	12
Specimen (divorce petition)	9/15

KEN BULGIN LEAVES THE CHAIR

Ken Bulgin, who has been at and made valuable contributions to almost every meeting of the committee since it was formed at the first AGM in 1984, has decided to step down after two years as chairman.

His term has been a period of encouragement and increasing influence for CLARITY. It is now widely accepted that lawyers should express themselves clearly and that our precedents need drastic pruning. We are well represented at The Law Society and The College of Law. Plain English drafting courses run by academic law departments and by commercial organisations are common.

Ken has lately been under considerable pressure of work and feels that he can no longer spare the time that CLARITY needs; he is therefore retiring from the committee. We will miss him.

A PATRON FOR CLARITY

We are pleased to say that the Rt Hon Lord Justice Staughton, known for his robust views in favour of plain legal English, has recently accepted our invitation to be patron of CLARITY.

Sir Christopher Staughton was born in 1933, was a scholar at Eton and then at Magdalene College, Cambridge, where he was awarded the George Long Prize for Roman Law in 1955. After serving as an officer with the 11th Hussars and the Derbyshire Yeomanry, he was in 1957 called to the bar by the Inner Temple, of which he later became a bencher. He took silk in 1970 and two years later was appointed a recorder of the Crown Court, a position which he held until he was raised to the High Court bench in 1981. He became a Lord Justice of Appeal in 1987.

He was joint editor of the editions of "The Law of General Average" (in the "British Shipping Laws" series) published in 1964 and 1975. His hobbies include bridge and the growing of dahlias.

We welcome Lord Justice Staughton to CLARITY and hope that his patronage will see the society grow from strength to strength.

Michael Arnheim

THE ANNUAL MEETING

will be held at The Law Society's Hall, 113 Chancery Lane, London WC2 from 7.30pm until about 9pm on Friday, 6th October. There is of course no charge for attendance and visitors are welcome. It will be preceded at 6.30pm by a buffet dinner, for which members will be charged £10 and visitors £15.

An application form for members accompanies this Newsletter; would anyone else interested please contact Justin Nelson at the address on the back page?

If you are unable to come but would like to make suggestions or comments about the future of CLARITY, please write in.

The programme is:

- Chairman's report
- Treasurer's report
- Election of chairman
- Election of committee
- A short talk by Prof. John Adams
- Any other business

We hope Lord Justice Staughton will be at the meeting but at the time of going to press do not know whether he will be able to come.

CANADIAN NOTES
by David Elliott

Canada has been a drafting leader in some respects, but in others it has been slow to take up "plain language" in the law.

Canadian Legislative Counsel (the equivalent of the United Kingdom's Parliamentary Counsel) have established a distinct Canadian style of legislative drafting. Perhaps the most noticeable characteristic is that legislation is drafted in the present tense. Although the law is generally regarded as "always speaking" that rule is incorporated in the Federal and Provincial Interpretation Acts. It has helped legislative counsel to draft in the present tense.

Two other matters have contributed to Canadian legislative style. The first is the practice of having periodic revisions of the complete statute book; over 100 revisions in Territorial, Provincial and Federal jurisdictions have been completed since Confederation in 1867. This has helped maintain a certain uniformity of style, has cleaned out the statutory deadwood and purged archaic language.

The second contribution to a reasonable quality statute book is the annual meetings of senior legislative counsel at what is now called the Uniform Law Conference. In the early days the senior legislative counsel hammered out what are known as legislative drafting conventions, which are generally followed throughout Canada. Professor Elmer Driedger also made a major contribution to Canadian drafting style through his writing and in the drafting course he instituted at the University of Ottawa.

In private practice the Canadian legal profession has lagged far behind. The one bright

spot was Robert Dick's book on Legal Drafting (Carswell 1985: 2nd edition). As Mr Dick put it in 1972, his book was "an attempt to disperse the word smog that pollutes the drafting landscape in Canada where the legal profession does not seem to be aware of the extent of contamination".

Although the legal profession in Canada has been slow to take up plain language in the law it seems to be making up for lost time now.

The Law Reform Commission of Canada has done valuable work with Federal Government Department forms. The Commission's legislative drafting style is first rate and it has provided valuable comment on drafting generally in a Working Paper on Drafting Laws in French.

The Canadian Bar Association is now promoting the use of plain language throughout the legal profession in Canada. The Association also has a joint project under way with the Canadian Bankers Association with a view to the simplification of legal forms.

The Yukon Territory has adopted legislative drafting in plain language and their experience was recounted to the Legislative Drafting Section of the Uniform Law Conference of Canada last year.

But perhaps the most encouraging development is the establishment of a Plain Language Centre by the Canadian Law Information Centre (CLIC). From CLIC Canadians learn about plain language principles and it provides the necessary training and research to implement them. More of this and other initiatives in later issues.

PLAIN ENGLISH LAWYER HEADS NEW ZEALAND GOVERNMENT

The Rt Hon Geoffrey Palmer, whose support for plain English legislation was quoted in the June Newsletter, was appointed Prime Minister of New Zealand in August.

Mr Palmer, who is 47, practised as a solicitor in Wellington from 1964 to 1966. He took his doctorate of law the following year from the University of Chicago and has since taught political science, law and English at various universities in New Zealand, England and the United States. He has advised various governments on compensation schemes and is the author of several books and many articles in legal periodicals.

Since his election as an MP 10 years ago, Mr Palmer has risen quickly through the opposition and government ranks. He has supported open government and comprehensible laws. We wish him success in his new office.

LETTERS: THE INTERPRETATION BILL

From James Kessler
3 Temple Gardens, London EC4Y 9AU

Cl 4(1) (References to gender; meaning of "person")

The two limbs of clause 4(1) are separate definitions; would they sit more comfortably in separate clauses?

Can the words "references to" be omitted so that, just as in s.61 LPA 1925, the clause reads:

"Person" includes a corporation.

Clause 4(5) (Definition of "working day")

Would "bank holiday" be clearer than public holiday? The former term can be defined by reference to the bank holiday legislation.

Clause 4(10) (References to clauses by citing words to be inclusive)

Can this be extended to references by citation of clause numbers?

Cl 6(c) (Time for service by recorded delivery)

Should this read "delivery", not "acceptance"? Contrast clause 6(a).

Clause 7(c) (Meaning of "duty")

Should this perhaps be an "inclusive" definition? I.e., reading:

A duty not to do something includes a duty not to permit others to do it.

Why shouldn't this definition apply to deeds which are not conveyances (e.g. indemnities)?

Clause 7(e) (Meaning of "duty to maintain")

The definition might require maintenance to "a reasonable standard" or maintenance to a standard "similar to that at the date of the conveyance". But if it does both, the question must arise as to what should be done if, at the date of the conveyance, the property is not repaired to a reasonable standard.

Repeal of s.61 LPA 1925

What is intended to be done with section 61? It will not be needed for the future but will remain necessary for existing documents. It might be possible to repeal it completely, but provide

that clauses 2(1), (2) and (6) of our Bill take effect from 1.1.26; this tidies the legislation in the manner of the Interpretation Act 1978.

From Professor John Adams
Queen Mary College, University of London
Mile End Road, London E1 4NS

I have mixed feelings over clause 7 of the revised Interpretation Bill.

First, I'm not sure the subject is suitable for a general measure like this and I would rather see it as a separate Law of Property (Amendment) Bill (where it could join such desirable items as implied indemnity covenants for restrictive covenants).

Secondly, I do not think that the provisions in (a), though often helpful, command sufficiently widespread use to merit inclusion; in (c) you throw out the baby with the bathwater unless you replace "is" with "includes" and in (e) does "to a reasonable standard" qualify only "decorated" or "clean, tidy [and] repaired" as well?

From W.S. Meads
33 Chestnut St, Surrey Hills, Victoria 3127, Australia

These comments mainly concern setting out.

Numbers: They would be more appropriate offset against the headings than at the start of the text. I prefer:

1. Application

This Act applies to ...

Definitions: Is there need for the numbers that are in brackets? If anyone needs to refer to a definition they can quote it or, in court, read it out. If identifying symbols are necessary, letters would be better than numbers, seeing that the sections are numbered. But numbers or letters just clutter it up.

I try to avoid numbers and letters whenever possible. I prefer "bullets" (•).

The definition of "today" is similar in style to the definition of "month" so why should "today" be 3(2) and "month" 4(6)? It would seem logical to have them all as part of clause 3.

I have replaced the semi-colons at the end of each definition with full stops. They are separate statements, so why semi-colons? Also,

each statement begins with a capital letter so should end with a full stop.

Service of documents: Do you need "A provision for" in the introductory sentence?

Here again, why semi-colons at the end of each statement? Presumably, it is treated as one long sentence (hence the "or" before the last point). But starting each one with a capital letter (which I fully endorse) rather conflicts with the idea of a single sentence. In this type of writing with an introductory statement ending in a colon, I consider each point relates back to the introduction, and one reads it that way.

Some might argue that you need the "or" to show that any one of the methods of delivery is satisfactory, but is that really so? By using full stops and omitting the "or" I can't imagine that anyone is going to argue that the document must be sent in all five ways.

Clause 6 is really part of the previous clause. The fact that it does not have a heading shows this too.

Do you need (in the introductory words to clause 6) the words "taken to have been"?

I would prefer to do away with the references (a), (b), etc, by repeating the method of delivery. (We could then use bullets in the previous clause.) We could say:

- If delivered by hand, on delivery ...
- If posted, on the second ...
- If sent by recorded delivery or registered post, on the second ...
- If sent by facsimile, at the end of ...

I think writers should go to great lengths to avoid cross-references in any document.

Jurisdiction: A heading like "general" says nothing and suggests that the author couldn't think of a proper one. "Jurisdiction" seems to fit the bill, but the text would be better if it were inclusive and stated the jurisdiction rather than exclusive. "Introduction is another common heading that says nothing."

Incidentally, last year I rewrote the Melbourne Planning Ordinance in clear English and in doing so did away with all letters, roman numbers and "notwithstandings"; it also introduced a new numbering system.

From Michael Wingate-Saul, Letcher & Son
Market Place, Ringwood, Hants BH24 1BS

Clause 1

On the assumption that the words "unless a

different intention..." are intended to qualify the existing opening words of this Clause, I suggest that it should read:

Unless a different intention is clear from the text itself or from external evidence, this Act applies to all text dated after ___ 19___, except text in other Acts or subordinate legislation.

When I first read the draft, I spent considerable time trying to envisage circumstances in which an Act of Parliament (or subordinate legislation) might include "a different intention".

Sub-clause 3(1)

I have some reservation over using the word "whose" in relation to an inanimate object. Would there be any objection to this provision reading: "Text of which the date is not apparent on the face of it is dated ..."?

Sub-clause 4(8)

Again, the intention behind this provision is not immediately clear to me. Would it not be improved if it were to read:

In any case:

(a) a duty imposed is to be performed,
and

(b) a power conferred is exercisable

from time to time.

At the very least, if you are to stick to the existing wording, I feel strongly that a comma ought to be inserted between the words "performed" and "and".

Clause 5, para (e)

As a matter of principle, I have reservations over providing for the sending by facsimile to constitute good service - at least until the state of the art has developed to such an extent that all transmitting facsimile machines automatically mark the document being sent with the date and time of the transmission, as well as the telephone number of the machine to which the transmission is made.

Clause 6

In my view, the individual "clauses" of the draft Bill are those numbered 1 to 8 (personally, I would prefer references to be to "Clauses" - but I accept that this may not be the majority view). Accordingly, the references in Clause 6 to the

sub-divisions of Clause 5 (none of which stands on its own) should be either to "paragraph (a) of clause 5" or paragraph 5(a)".

Tabulations generally

I was brought up on the principle that, where each one of a series of tabulations relates back to (and in consequence is intended to read straight on from) the opening words of a paragraph, those individual tabulations should not start with a capital letter. Do you not find it strange that (for instance) the final words of clause 5 are, in fact, shorthand for "A provision for service of a document is satisfied by Sending it by facsimile..."?

From R.W. Ramage

72 Boundary Lane, Congleton, Cheshire

I have one hesitant criticism to offer about Professor Adams' comments in your June issue. One of the alterations which he suggests to the preamble is to remove "as follows" in favour of "that". How does he propose that the Act should then be punctuated? "That", in that context, is a conjunctive participle "introducing a dependent substantive clause, ..." (The Shorter OED), and would conventionally be followed by a colon. Would Professor Adams then treat the whole Act as one sentence, ending each clause (sorry, sub-clause) except the last with a semi-colon? "As follows" enables the preamble to be a complete sentence and end with a stop.

Professor Adams replies:

Mr Ramage has raised a point which had escaped me. It might be possible to argue that "as follows" similarly attracts a colon, followed by semi-colons throughout the Bill. I would prefer to omit "that", to follow "enacts" with a colon and retain the full stops throughout the text, as if it were all a quotation. I submit that is grammatically correct.

Am I wrong to assume, from his having mentioned this, that Mr Ramage is not averse to the other aspects of my suggestions?

From Brian Bowcock

25 Barker St. Nantwich, Cheshire CW5 5EN

I stand stubbornly by the suggestion of words appearing or being omitted from the Bill to make its meaning and scope more readily intelligible to non-experts like me. Thus "Private Documents" in the title could prove a red

herring. "Text" hardly lends itself to a title. Is "Interpretation (year - I dare not give an illustration!) Act" insufficiently ambitious?

THE INTERPRETATION BILL **(Editor's note)**

A revised version of the Bill, incorporating some of the suggestions made for improvement of the second draft as well as some new material, appears on pages 7-9. Changes and additions are marked by bold type, deletions by *. The numbering below refers to this third draft; the letters on pages 3 and 4 of course use the clause numbering of the version in the June Newsletter.

We are sorry that there is not more new material but we hope to rectify this next time. Meanwhile, contributions (especially from specialists) would be welcomed. For example, Mr Kessler has suggested that standard will clauses be included in a schedule. To avoid duplication, anyone willing to help is invited to telephone the Newsletter on 01-979 0085; we will put those working on the same areas in touch with each other.

Our thanks to Mr W.S.Meads, an editorial consultant, for his reformatted version. There is insufficient space to print it but I have tried to do justice to his suggestions. However, we don't agree with his proposal to abolish the numbering or lettering of all sub-clauses: it uses very little space and is convenient for reference, as witness these notes.

We have retained for brevity references such as "clause 5(a)" instead of "sub-clause"; there is no risk of misunderstanding and it saves even greater convolution when there are sub-sub-clauses.

With respect to Mr Wingate-Saul we don't accept that is strange to capitalise the tabulated sub-clauses: it seems a natural device; but this must be a matter of taste.

Cl 1: This has been substantially recast to meet Mr Wingate-Saul's point. We prefer this to his suggested solution as it keeps the statement of the rule before the exceptions. We hope it also meets Brian Bowcock's reservations about the Bill's title.

Cl 2: This new clause has been adapted from s.179 LPA 1925, on James Kessler's suggestion.

continued on p.6

Cl 3: We have no strong feelings about Mr Mead's suggestion to merge clauses 3 and 4. We drafted 3 separately because 3(1) was about the document as a whole and 3(2) was linked to it. Clause 4 gave definitions of words within the document. No-one else has taken the point so the consensus seems to be that it will do as it is. However, we are open to persuasion.

Cl 4/5: In 4, where the sub-clauses stand alone, we have taken Mr Mead's advice to end each with a full stop. In 5, where the sub-clauses are only part of a sentence, we have left the semi-colons. (Strictly, commas would be appropriate, but the longer pauses and the capital letters break up what would be too long as an unbroken sentence.)

Cl 4(1): With respect to Mr Wingate-Saul, "whose" is the correct possessive, even for inanimates, and is neater than "of which the".

Cl 5(1): We have adopted James Kessler's suggestions to split this into two sub-clauses and delete "references to".

Cl 5(6): Again, we have taken Mr Kessler's line. But would this cover those odd occasions when the Queen announces a public holiday?

Cl 5(9): In the interests of space we have opted for the second of Mr Wingate-Saul's alternatives. But is this sub-clause necessary at all?

Cl 5(11): Mr Kessler's proposal has been added but is this clause needed at all? Could anyone argue that a reference to A to Z really meant B to Y?

Cl 6: We have deleted "a provision for" as Mr Mead suggested, changing "satisfied" to "effected" to improve the sense of what is left. The inoffensive "or" and "and" in this and clauses 7 and 8(d) are removed, in line with the rest of the Bill.

Cl 6(e): Mr Wingate-Saul's point about service by fax is a fair one but what abuses are likely? Is there not as much risk of mistake or dishonesty with old-fashioned postal service as with a fax?

Cl 7: "Taken to have been" is retained because it may not have been served. It seems arbitrary to say, as Mr Meads does, that this clause is part of the previous one; it is related and therefore under the same heading.

Cl 7: The disadvantage of Mr Mead's substitute for cross-references is that too much needs to be repeated; if, for example, clause 7(b) became "If posted, on the second working day..." it could be argued that the detailed provisions of 6(b) did

not apply.

Cl 7(c): This has been adjusted as Mr Kessler suggests. The additional words have been added to take account of the possibility that the envelope is refused or - as is common - just left by the postman; if this concession were not made, the sender could rely anyway on service by the postman by hand under clause 7(a).

Cl 8: Our inclination is to leave this clause in, despite Professor Adams' reservation. It was not intended that the Bill should be exclusively "general". Moreover, apart from the convenience of having different fields covered by a single Act, there is an important practical consideration: we will be doing well if we get a single Bill passed and material postponed to a second one might never appear.

Cl 8: We have not included a provision that a conveyance includes rights of soil, support, etc, often copied from sale to sale with neither party nor their solicitors knowing what these rights are. We think this is unnecessary, as the rights are passed in any event by s.62 LPA.

Cl 8: The ragged (in fact, centred) margins in the last issue were a word-processing error, now corrected.

Cl 8(a): Again, we disagree with Professor Adams. Something along these lines, varied according to the whim of the draftman rather than the needs of the client, is usually included and the extent of the letting is often unclear or inconvenient. But an alternative appropriate to "structural tenancies" might be useful.

Cl 8(a): "Cupboards" has been replaced by "storage areas", to include, for example, water tanks.

Cl 8(c): "Includes" has been changed, as suggested by Mr Kessler and Professor Adams. Mr Kessler's other proposal, to extend the scope of this provision to cover all deeds, seems reasonable but are there any traps? If not, could we please have suggested redrafts.

Cl 8(e): "Reasonable" has been deleted to meet Mr Kessler's objection and a rider added to protect against repairing obligations so strict that they would be oppressive in a long lease. Professor Adams' point about ambiguity has been met by the earlier insertion.

Cl 10: This new clause has been tacked on in haste and may need tidying, especially if other repeals are called for.

Cl 11: Mr Mead's suggested heading has been substituted for "General".

INTERPRETATION OF PRIVATE DOCUMENTS BILL

A BILL

To simplify the drafting of documents by establishing standard definitions.

The Queen, with the advice and consent of the Lords and Commons assembled in Parliament, enacts *:

Application

1. This Act applies to all private text dated after _____ 19__, * unless a different intention is clear from the text or from external evidence.

2. The Lord Chancellor may publish, referring to this Act:

(1) Definitions which will apply to all private text dated more than three months after his publication, unless a different intention is clear from that text or from external evidence; and

(2) Wording which may be incorporated by reference into private text.

3. In this Act, "private text" means the wording of any document, however recorded, except Acts of Parliament and subordinate legislation.

Definitions

4. (1) Text whose date is not apparent on the face of it is dated:

(a) If its wording is the prerogative of the sender, when it is transmitted to another person; and

(b) In any other case, when a binding agreement as to its wording is reached.

(2) "Today" means the date of the text.

5. (1) Words of one gender include any other gender;

(2) * "Person" includes a corporation;

(3) Singular words include the plural and vice versa;

(4) The measurement of distance is in a straight, horizontal line;

(5) Subject to section 3 of the Summer Time Act 1972, a reference to time is to Greenwich Mean Time;

(6) "Working day" is any day other than Saturdays, Sundays and bank holidays and lasts from 9.30am to 5pm;

(7) "Month" means calendar month;

(8) A reference to an office-holder is a reference to the holder of that office for the time being;

(9) A duty imposed is to be performed, and a power conferred is exercisable, in each case from time to time;

(10) A reference to an Act of Parliament or to subordinate legislation is a reference to it as amended or re-enacted when the text is dated;

(11) A reference to a block of text by citing words or clause numbers at the beginning and end is a

reference to the text including those words or clauses;

(12) A commitment by more than one person is joint and several.

Service of documents

6. * Service of a document is effected by:

- (a) Delivering it by hand;
- (b) Posting it by ordinary post, properly addressed and with the first class postage pre-paid;
- (c) Sending it properly addressed by recorded delivery or registered post;
- (d) Lodging it properly addressed according to the rules of a document exchange of which the sender is a member and which is or is affiliated to an exchange of which the recipient is a member; *
- (e) Sending it by facsimile to the recipient's published number and receiving a satisfactory transmission report, with the original marked by the machine.

7. A document is taken to have been served, unless the contrary is shown:

- (a) Under clause 6(a) - by hand, on delivery, if more than two hours before the end of the working day, but otherwise on the next working day;
- (b) Under clause 6(b) - on the second working day after the next collection from the postbox;
- (c) Under clause 6(c) - on delivery at the address shown, whether accepted or not;
- (d) Under clause 6(d) - on the second working day after the next collection from the sender's exchange; *
- (e) Under clause 6(e) - at the end of transmission, if more than two hours before the end of the working day, but otherwise on the next working day.

Conveyances

8. In any conveyance (as defined by the Law of Property Act 1925):

(a) The conveyance of part of a building, divided horizontally, includes only

the insides of the rooms, corridors and storage areas within the boundaries of that part, plaster on the walls, ceilings, internal walls which are not load-bearing, floorboards, doors, door frames, windows, window frames, shop fronts, and conduits which are inside the boundaries and serve that part of the building exclusively;

(b) Consent must be in writing and not unreasonably withheld;

(c) A duty not to do something includes a duty not to permit others to do it;

(d) A duty to insure a structure is a duty:

(i) To insure (so far as cover is reasonably available)

against fire, explosion, storm, flood, ground movement, malicious damage, civil disorder and impact by vehicles, animals, aircraft and things falling from aircraft,

in its full reinstatement value, including all necessary professional fees and the removal of debris,

and for loss of rent exceeding £1,000 a year under any single letting; *

- (ii) To have noted on the policy, if required, the interests of the person to whom the duty is owed and of his mortgagees;
- (iii) To serve on the person to whom the duty is owed, as soon as they are received, copies of the policy and the receipts for the premiums.

(e) A duty to maintain is a duty to keep the property clean, tidy, repaired and decorated, in each case to a * standard similar to that at the date of the conveyance but only so far as is reasonable given the age and class of the property.

Wills

9.

Repeals

10. Clauses 5(1), 5(2) and 5(7) apply to all documents dated after 1925 and clause 61 of the Law of Property Act 1925 is repealed.

Jurisdiction

11. This Act does not extend to Scotland or Northern Ireland.

SPECIMEN

Each quarter we will publish a short precedent for members (only) to use or amend at their discretion. The following issue will contain any criticism received, so you might think it prudent to wait 3 months before using the drafts. Contributions will be welcomed and will be added to the precedent library kept by Katharine Mellor.

DIVORCE PETITION

1. On the 17th April 1979 the petitioner, Lavinia Jane Browne-Study (then Green) was lawfully married to Basil Browne-Study at the Register Office in the district of Upper Optimism in the Borough of Weal.
2. They last lived together at "Orly", Wenterhear, Devon.
3. They are domiciled in England and Wales; the petitioner is a housewife and mother living at Rosetinted Cottage, Tooyonge Street, Wenterhear; the respondent is a company director living at 24 Carey Street, London WC2.
4. The only children of the family now living are:

Richard Browne-Study	born 5th November 1981; and
Thomas Browne-Study	born 9th May 1983.
5. No other child now living as been born to the petitioner during the marriage.
6. There have been no previous proceedings in any court in the world concerning the marriage or between the parties with reference to any property.

[contd on p.15, col 2]

OTHER LETTERS

**From A.J.H. Wickens
2 Frensham Walk, Farnham Common,
Slough SL2 3QF**

I shall again be unable to attend the AGM...

I support those who think we should "remain separate from the establishment" while co-operating with it.

It should be possible "to have the backing of authority" by being acknowledged by The Law Society to be co-operating with it, without becoming part of the establishment. There is a danger that a movement may lose impetus if it becomes part of the ordinary order of things.

I think we should maintain links with other groups concerned with effective communication, such as the Plain English Campaign, particularly if we can persuade them that there is little point in criticizing gobbledegook (and small print, insufficient space, etc) unless one suggests what should be there instead. Too often do they just pour scorn on what appears to them to be over-complex wording without first finding out whether it could be replaced without loss by a simpler alternative.

I am wondering why two of the three passages in the right-hand column of page 12 of issue 13 have been published without comment - I accept that the third speaks for itself.

The first passage uses scientific terminology to describe a scientific subject - it may have left the reader none the wiser, but if the chemical explanation was such that the reader would not be able to understand it, what other language could have been used to advantage?

The reason for publishing the second piece escapes me entirely. There is (I should hope) clearly understandable difference between natural (blood) relationships and those of marriage and adoption which are created by law. Why therefore is not "lawful" appropriate to the latter, although no longer required for the former?

Let us not lower our standards by seeking to ridicule without explanation or suggestion for improvement.

I look forward with pleasant anticipation to the next issue.

W.M., a chemist, replies:

I understand that the first extract quoted on page 12 of the last issue was the answer to four questions raised by a consumer:

- (1) Whether super-absorbent chemicals are used in the manufacture of the company's brand of super-absorbent nappies;
- (2) The identity of those chemicals;
- (3) Whether the company had carried out any research into their effect on the human body; and
- (4) The results of the research.

The impregnable piece quoted in June was a good example of the idiocy of allowing boffins loose on the public. His answer should have been intercepted by the public relations department and translated into something like this:

Yes; they are based on chemicals known as cross-linked polyacrylates.

The major manufacturers of these chemicals and the major companies using them in consumer products have carried out extensive and intensive safety testing and are satisfied that there is no risk to health when the products are used as recommended.

On the contrary, they are an asset. Ordinary cotton nappies can become soggy from urine and cause baby-bottom rash. Super-absorbent nappies soak up the entire urine discharge of a normal baby and remain dry.

The Toxic Shock Syndrome linked in the press to the use of super-absorbent tampons was probably caused by...

[The explanation here becomes harrowing for those who don't want to know what goes on inside them. The gist is that TSS has nothing to do with the chemicals and is inapplicable to nappies. - Ed.]

The letters continue on p.14

NON-SEXIST WRITING by John Fletcher

I am worried by one point in the review of "Stylewriter" in the last issue. You say that the challenge to sexist terms "may be a good cause" but "it is a political rather than a stylistic one". The lefties have indeed been loud in their anti-sexist protests but this does not allow the non-lefties to ignore the movement. The stylistic aspects are more important than the political ones.

Language changes continually, and the most difficult aspects to follow are those where we risk offending the feelings of our readers, or their ideals.

Today some of the changes most evident are those which make writing non-sexist, trying to avoid "writing which excludes, trivialises, marginalises or denigrates women" (Preface to the British edition of "The Handbook of Non-Sexist Writing" by Casey Miller and Kate Swift).

Some changes are likely to be permanent. Already many organisations have a policy of non-sexist writing, and some local authorities apply the policy compulsorily. Even writers who are not obliged to follow such a policy may wish to do so to avoid giving offence.

A rough guideline of what is acceptable is whether the practice would be right if reversed. We would not use "she" of a person who might be a man or a boy. We should try not to use masculine terms like "he" when the person might be a woman or girl, or "man" to mean "man or woman", as it has traditionally. Masculine pronouns like "him" and "his" should be used only in a masculine, not a universal, sense.

We have not yet worked out a full set of non-sexist alternatives. Some suggested changes are:

From:

A doctor feels that he should have the usual choice of meal.

to:

A doctor feels that he or she should have the usual choice of meal.

or:

Doctors feel that they should have the usual choice of meal.

or:

A doctor may want the usual choice of meal.

In other words, either go for the longer version

("he or she", "him or her"), or for the plural ("they") or reword the sentence.

The suffix "-man", as in "chairman", is not necessary. Among the variations that have been tried are "chairwoman" for a woman, reserving "chairman" for a man; "Mr Chairman" and "Madam Chairman"; and "chairperson". The suffix "-person" does not seem to be gaining favour, and many authorities use "chair" for men and women, which has the merit of being short.

Under the traditional system it was impossible to write a formal letter to a woman unless you knew whether to address her as "Miss" or "Mrs". Therefore women writing letters and wanting replies had to put their title after their signature. While many women are happy to do this, there is increasing evidence that this procedure is embarrassing, not only to the women but also to the men* concerned, as they have to find out whether a woman is married before writing to her.

The title "Ms" was invented to avoid this. However, some women object to "Ms" more than to the awkwardness of the traditional system. It is possible that the practice, already widespread, of beginning a letter "Dear Jane Smith" or "Dear Jack Smith" will eventually become normal, and the designations "Ms", "Mrs", "Miss" and "Mr" will drop out of use.

Meanwhile we are in transition, and the main need is to accept other people's preferences, and allow various non-sexist alternatives to develop until there are new standards. To those brought up on a set of rigid rules the transition may well be painful. Meanwhile, feminists should not inflict neologisms like "s/he" on traditionalists.

[* I hesitate to be a smart-Alec but, having hesitated, surrender to temptation. Mr Fletcher makes a sexist assumption here: who said only men write formal letters to women?

May I also take this opportunity to rant against the use of "person" as a suffix? It is a cold word, associated with supercilious butlers. And it has a perfectly good (and much pleasanter) plural in "people"; "persons" is awful! Or am I just prejudiced?

Ed.]

PRECEDENT LIBRARY

There have been no additions this quarter and further contributions would be welcomed. Copies can be obtained, by members only, by sending s.a.e. and payment (to cover photocopying charges only) in favour of her firm to Katharine Mellor, Messrs Elliott & Co, Centurion House, Deansgate, Manchester M3 3WT (DX 14346 Manchester 1).

The current list is:

Agency agreement	Katharine Mellor	.90
Commercial lease	Justin Nelson	£1.20
Commercial lease	Mark Adler	.40
Computer software licence	Justin Nelson	.40
Contract for sale of house	Mark Adler	.10
Contracts for sale of house	Justin Nelson
Registered		.20
Unregistered		.20
Contracts for sale of business	
Registered land		.40
Unregistered land		.40
Divorce petition	Mark Adler	.10
Enquiries before contract	Justin Nelson
General		.50
Additional:	
Residential land		.10
Business goodwill		.30
Commercial land		.10
Existing leasehold		.20
Farmland		.10
Land subject to a tenancy		.30
Licensed premises		.20
New residential lease		.20
New business lease		.10
Sale under enduring power of attorney		.10
Res freehold (questionnaire to V)	Mark Adler	.50
Res leasehold (questionnaire to V)		.50
Land Registry transfer		.10
Partnership deed	Brian Bowcock	.60
Personal reps' advert under s.27 TA 1925	Alan Macpherson	.10
Residential flat lease	Justin Nelson	.90
Requisitions on title		.20

Two members, acting independently, have approached us and the authors for permission to publish precedents commercially.

REFERRALS REGISTER

This list is open to any solicitor member willing to accept referrals of clients from other members.
Please write to the Newsletter if you would like to be included.

<u>Solicitor</u>	<u>Area</u>	<u>Telephone</u>	<u>Field</u>
Richard Ablitt	Croydon	01-681 0139	General civil but not debt collection
Richard Castle	Plymouth	0822 853534	Anything non-contentious
Keith Howell-Jones	Kingston	01-549 5186	Co/commercial, comm'l lit, debt collection
Mr A.J.B.Monds	Yeovil	0935 23407	Company/commercial
David Pedley	Keighley	0535 32700	General but especially conservation, public enquiries and private prosecutions
Edmund Probert	Exeter	0392 411221	Commercial
Nicola Solomon	London EC4	01-353 0701	General litigation, copyright, media work
Ian Torrance	London WC2	01-242 6154	General, but unusual litigation in particular

BOOK REVIEWS

TAX PLANNING AND FUND RAISING FOR CHARITIES (with precedents) by Robert Venables & James Kessler

This is a monograph of 160+ A4 pages, i.e. roughly equivalent on word-count to a conventional size book of about 250 pages, and it covers the subject pretty comprehensively.

There is an exhaustive treatment of the impact on charities of income tax, corporation tax, capital gains tax, inheritance tax, stamp duty and value added tax. The authors consider charitable covenants and charitable donations by companies. They advise on the tax-efficient management of a charity: everything from minimising VAT on charitable concerts to what a charity should and shouldn't do when it owns a company.

The book brings together knowledge which could otherwise be gathered only from a great number of practitioners' textbooks, if at all, and is prepared both to confront difficulties and suggest possible solutions. I am not sure how wide the potential market for such a publication is but for any practitioner closely involved with charitable work it will be extremely useful.

It also contains a small collection of precedents and the first five (which are draft covenants) are preceded by a note that they have been drafted specifically with clarity in mind - hence the interest of CLARITY.

The covenants are certainly a considerable improvement on traditional efforts in that they feature a schematised, uncluttered layout and use normal punctuation. "In witness whereof I have hereunto set my hand and seal the day and year first above written" disappears: the residue, "Signed, sealed and delivered Date:" cannot be plain English where the law requires deeds as distinct from other documents, but it is a good deal simpler and more intelligible. Traditional, but unnecessary components, such as reference to the covenanted amount being made out of the covenantor's taxed income and a specific provision that the covenantor takes no personal benefit, are omitted, and the notes point out that neither seals nor witnesses are necessary.

But, like the day-tripper, they take us only half way there. Despite his many improvements, the draftsman still has a mild case of "shall-itis": "This covenant shall last for the period of four years, but I shall have the right to cancel this covenant at any time if I wish." If some sort of mandatory nuance is considered essential, "is to"

could be substituted for the first "shall", though "This covenant is for four years" is plainer, shorter and means exactly this same as the first part of the sentence. The second half seems to suffer from some confusion over tenses: the right to cancel is written into the document and, unless otherwise specified, applies throughout its duration - it is the exercise of the right which must take place in the future. What's wrong with "... But I reserve the right to cancel it earlier."

The remaining two precedents are draft outlines for a charitable trust and the constitution of an unincorporated charitable association. They both win CLARITY points for clear presentation - numbered clauses, listed items set out in a schedule and a definitions clause which allows the use of short sentences. Indeed, the draft constitution is marred only by a few "shalls" - most of them have been eliminated - and is otherwise a model of drafting.

The draft charitable settlement, however, rather spoils the effect of its modern appearance by a liberal sprinkling of such unnecessary archaisms as "subject as hereinafter provided" and "of the one part", and using the adjective "same" as if it were a neuter pronoun. "... (Hereinafter together called 'the Original Trustees')" is a useful definition but "... ('the Original Trustees')" would have been better. "Witnesses" is not quite as ridiculous as "witnesseth" but the whole phrase "Now this deed witnesses" is unnecessary. Similarly, satisfaction at seeing "moneys" spelt correctly is tempered by disappointment that such jargon should be employed at all; elsewhere "money" is used. It also features the device, one of the most irritating examples of legal pomposity, of pointless inversion: "other the trustees" instead of "any other trustees"; cf "it matters not" for "it doesn't matter", and that favourite judicial expression, "I am clearly of opinion that..." meaning "I am of the clear opinion that..."

In short, from the plain English point of view these precedents are a considerable improvement on the sort of drafts commonly seen but could still be further improved.

Ken Bulgin

CLARITY AUTHORS

Please encourage your publishers to send your books, and any others which may be of interest to CLARITY members, to Justin Nelson at the address on the back page for review in the Newsletter.

**MAKING GOOD SOLICITORS: The
place of communication skills in their training
A report by the National Consumer Council
May 1989**

This report highlights the need for solicitors to communicate clearly, particularly with their clients. It shows how easy it is for solicitors to confuse, mislead, upset and lose clients simply through a breakdown in communication which could often be avoided by using plain English.

The report makes it clear that "responsibility for good communication has to fall, in the main, on solicitors themselves". The College of Law is harshly criticised for its failings. However, little credit is given to the college for the steps it has taken (and those it is still taking) to improve its training of prospective solicitors, and the report ignores the very important fact that even perfect training will not help the articulated clerk whose principal refuses to use (or allow the use of) plain English.

The report provides reassurance and incentive to

CLARITY members - our aims are worthwhile - and it gives CLARITY a (small) plug; I therefore welcome it.

I have one or two more quibbles. The report was heavily dependent on input from the Plain English Campaign, to the almost total exclusion of other organisations; despite promises, CLARITY was not given an opportunity to comment on the draft. The PEC and, by implication, the NCC, applaud the use of plain legal English by, for instance, the Consumer Credit Trade Association, but still criticised its use of "lien" as being "unfamiliar and technical", ignoring the fact that to try to express the multitude of rights and obligations denoted by that word would probably take an entire book.

Despite these minor points, the report will be useful if it encourages the use of plain legal English, and illustrates the advantages of striving for clarity.

Justin Nelson

Letters - contd from p.10

From Brian Bowcock

25 Barker St. Nantwich, Cheshire CW5 5EN

Although it is becoming something of a rarity, could we take on the Revenue about the wording of an acceptable Certificate of Value?

[The Revenue have accepted:

This transaction does not form part of a larger transaction or of a series of transactions whose aggregate value or consideration exceeds £30,000.

and:

This instrument falls within category ... in the schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

In particular, "I certify that" is unnecessary.

-Ed.]

**CUTTING OFF THE TAGS
by Justin Nelson**

Why do some lawyers insist on using Latin tags, even when they should be able to offer plain English alternatives? Is it only out of a desire to appear learned? Some suggested alternatives are:

Ab initio:	From the start
Ad hoc:	Temporary
Ad idem:	Of the same mind, as one, in agreement
Ad valorem:	In proportion to value
Audi alteram partem:	Each argument must be heard
Bona fide:	In good faith
Caveat emptor:	Let the buyer take care
Compos mentis:	Of sound mind, rational
Inter alia:	Among other things
Jus accrescendi:	Right of survivorship
Mutatis mutandis:	After necessary changes
Pari passu:	Equal treatment
Per annum:	A year
Volenti non fit injuria:	Don't complain about what you agreed to.

I expect others will have their own favourites, and still others will, presumably, disagree: feel free to agree or contradict, but let us have your views.

CLARITY'S ACCOUNTS

CLARITY's financial position at the end of August was:

B/f 1.4.89	£1,239.92
Income	
30 new members	£186.00
131 renewals	£1,027.00
Donations	£44.00
Bank interest	£14.83
	<u>£1,271.83</u>
	£2,511.75
Expenses	
2 Newsletter issues	<u>£614.18</u>
	<u>£1,897.57</u>

Payments for the 6th October meal have been left out of account, as the money will be passed on to The Law Society.

As this goes to press, a cheque is arriving from Trent Poly for our share of the profits of the April seminar.

CONVEYANCING

Two prominent CLARITY members, Trevor Aldridge and Richard Castle, are on the six-strong committee drafting the new Joint Conditions of Sale.

This is a joint venture between The Law Society and Solicitors' Law Stationers. The new document will replace both the National Conditions of Sale and The Law Society's General Conditions of Sale. If local law societies do not publish rival versions, the use of the new form should soon be universal. This will reduce the problems created by the existence of different terms in a chain of transactions (for example, where times for completion vary between the links). However, the advantage will be lost if solicitors continue to vary with their pet special conditions.

The draftsmen are aiming for a fair balance between vendor and purchaser. To this extent, the Joint Conditions will follow The Law Society's tradition more than the old National Conditions. However, the committee is not redrafting from either of the existing versions and have started with a blank page.

The drafting committee is working to a very tight deadline and unfortunately representations must be in before the Newsletter can be distributed. However, the first draft has been shown to CLARITY's committee for comment.

The Joint Conditions should be available at the beginning of January.

Specimen divorce petition: continued from p.9

7. The marriage has broken down irretrievably.

8. The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

Particulars

(A) The respondent has not at any time during the marriage shown the petitioner any affection;

(B) He has throughout the marriage excluded her from decisions which affected her, notably (in July 1989) arranging to move to another area without consulting her;

(C) He has consistently refused to discuss finance with her, other than to make unreasonable demands of economy;

(D) He is habitually and unreasonably hostile, bad-tempered and abusive to her and to her friends.

The petitioner therefore asks:

- (1) That the marriage be dissolved;
- (2) For custody of the children;
- (3) For herself and, where appropriate, the children:
 - (a) Maintenance pending suit;
 - (b) Periodical payments;
 - (c) Secured periodical payments;
 - (d) A lump sum; and
 - (e) A property adjustment order;
- (4) For costs.

Signed 14th September 1989

This petition is to be served on Basil Browne-Study of 24 Carey Street, London WC2.

The petitioner's address for service is c/o Affirm & Co, 1 Rumpole Street, Wenterhear, Devon.

The Court office at 3 Rumpole Street, Wenterhear is open Monday to Friday from 10am to 4pm.

WELCOME TO NEW MEMBERS

David Bowcock, student, Nantwich, Cheshire
John Brewer, director, Bankers Trust Co, Hong Kong
Anthony Butler, legal executive, Swindon
Julian Camm, solicitor, Charsley Harrison, Windsor
Jane Chapman, lecturer, College of Law, Guildford
Paul Corker, Cambridge
M.T.B. Dodd, solicitor, Morton Fisher, Kidderminster
James Duncan, solicitor, Preston
Duncan Forbes, solicitor, Crickhowell, Powys
Tamara Goriely, barrister, National Consumer Council
John Ingham, solicitor, Morecroft Dawson, Liverpool
Martin MacLachlan, solicitor, Vancouver, Canada
David Marsden, solicitor, Blackhurst Parker, Preston
Richard J. McDowell, solicitor, Napthens, Preston
Stuart Paltridge, lecturer, College of Law, Guildford
Janet Rallison, solicitor, Courtney Richards, Paignton
Richard Robinson, solicitor, Dixon Ward, Richmond
Tim Sewell, lecturer, College of Law, Guildford
Sir Christopher Staughton, Appeal Court judge
Martyn Whiteman, solicitor, Whitemans, Guildford
Andrew Wilson, solicitor, Banks Wilson, Preston

Our thanks to Preston Law Society for their promotion of CLARITY, which has produced 4 new members.

I have available a supply of the sticker appearing below. It does at least pull the twaddle merchants up in their tracks. Anybody wanting a supply should drop me a line at 25 Barker Street, Nantwich, CW5 5EN. There is no charge but donations to me or to CLARITY would be welcome.



Brian Bowcock

BEST WISHES to

Richard Castle, on escaping private practice for a year's M. Phil research course at Wolfson College, Cambridge;

David Elliott, on returning to his private practice in Canada, where he specialises in legislative drafting, after 18 months with the New Zealand Law Commission;

Professor Roy Goode, on his appointment to the Norton Rose Chair of English Law at Oxford and his fellowship of St Johns College.

NEXT ISSUE

So that the next issue can be distributed before Christmas, the press date will be 7th December.

COMMITTEE

Ken Bulgin (Chairman)
87 Hayes Road, Bromley, Kent BR2 9AE

01 740 7070
Fax: 01 749 2474

Justin Nelson (Treasurer, Kent local group, book reviews, membership list)
66 Rogersmead, Tenterden, Kent TN30 6LF

05806 2251
Fax: 05806 4256

Chris Elgey (Liaison with College of Law)
24 Oakwood Road, St Johns, Woking GU21 1UU

0483 576711
Fax: 0483 574194

Michael Arnheim (Trent seminar)
7 Kings Bench Walk, Temple, London EC4

01 583 0404
Fax: 01 583 0950

Mark Adler (Newsletter, liaison with The Law Society)
35 Bridge Road, East Molesey, Surrey KT8 9ER

01 979 0085
Fax: 01 941 0152