CLARITY

A movement to simplify legal English
Patron: Lord Justice Staughton

No 16: March 1990

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The press date for the

JUNE 1990 ISSUE

will be June 1st

The

CLARITY SUPPER

will be held at The Law Society's Hall
113 Chancery Lane, London WC2
on
Friday, 26th October 1990

More details will be given in the next issue

From 6th May, Michael Arnheim's 01 codes for phone and fax will change to 071, and Mark Adler's will become 081.

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ENGLISH NEWS

Conveyancing protocol

The new standard conditions of sale were written by a committee of 6, including CLARITY's Trevor Aldridge and Richard Castle. The CLARITY committee was invited to comment on the first draft and a number of our amendments were accepted. The property information form reflects our suggested draft, though not all our proposals were adopted, and several of those involved at Chancery Lane have expressed appreciation for our contribution.

Some 12,000 solicitors attended the series of regional meetings arranged by The Law Society to introduce the protocol and to discuss the Courts and Legal Services Bill. Solicitors at the Guildford meeting enthusiastically supported the protocol, though I'm told that this was not so everywhere. Almost all the questions from the floor related to the protocol rather than the Bill.

CLARITY was given generous credit in the promotion; a reference to us as a branch of the Plain English Campaign was corrected once the error was pointed out. We also issued a press release of our own, explaining the spread of plain English drafting, welcoming the support ot The Law Society and expressing the hope that the Protocol was just the first of many steps. We said that clients should now insist that their solicitors wrote to them in a way they could understand, and should call for a translation if letters were incomprehensible. However, although many reports referred to the use of plain English in the Protocol, this aspect was not emphasised and the coverage was disappointing.

Nevertheless, this was an important breakthrough. For the first time, and in a scheme to which half the profession has already subscribed, The Law Society is publicly promoting CLARITY and the advantages of plain English.

Commonwealth Justice Ministers consider plain English

The Justice Ministers of the Commonwealth are meeting in New Zealand in March, and the use of plain English in law is on the agenda.

The Commonwealth Secretariat asked The Law Society to write a briefing paper on the subject and this was delegated toCLARITY.

The paper was written with the help of a number of CLARITY members in England and abroad and is to be published by the Commonwealth Secretariat.

The Cabinet Office

The Office of the Minister of the Civil Service (OMCS) in the Cabinet Office is the department responsible for co-ordinating and monitoring the forms review across government departments.

This initiative began in 1982 after a scrutiny of administrative forms and leaflets carried out by Sir Derek (now Lord) Rayner showed that many were badly written and designed. Since then a great deal of progress has been made. The civil service has reviewed 171,000 forms, scrapped 36,000 and redesigned 58,000; millions of pounds have been saved. The work has been recognised by the Plain English Campaign which, since 1982, has awarded 24 prizes to government departments for clear design and language. The Prime Minister and Richard Luce, the Minister for the Civil Service, attach a great deal of importance to this work. The OMCS submits a biannual progress report to the Prime Minister.

In the run-up to the 1991 report, government departments are being urged to concentrate on simplifying legal language. The OMCS say that by joining CLARITY, they hope to keep in touch with developments in this area both in the UK and abroad.

A CLARITY representative has been to the Cabinet Office to discuss our work and theirs. We hope that this will lead shortly to a project helping the development of plain English in the civil service. Meanwhile, we are to write an article for their Newsletter, encouraging the use of plain English.

The Law Society Conference 1990

We have taken a stand at the Glasgow conference, which will run from 17th to 21st October.

A fuller report will appear in the next issue.

The Law Society Conference 1991

Paul Marsh, who has recently jointed CLARITY, is The Law Society Council member responsible for the Conference. He has invited us to submit proposals for a CLARITY drafting seminar at the Brussells conference next year.

The Solicitors Complaints Bureau

We have held discussions with the Bureau, and are expecting an application for membership from it.

They say that almost all complaints relate not to serious misconduct but to a breakdown in communication. The problem is often a failure by the solicitor to speak or write to the client at all, but some cases arise from poor expression. The SCB want to make clear to the profession the importance of explaining his or her affairs to each client in language that that client can understand. There is, after all, no point in writing a letter that means nothing to the reader.

An awful example of the style to avoided appears on page 5.

Solicitors' practice rules

Following from the last item, CLARITY has proposed a new practice rule:

> (1) Solicitors in private practice must take reasonable steps to keep their clients informed about
>
> - The progress of the matter in hand and
> - The client's rights and alternative courses of action
>
> in language which that client can understand.
>
> (2) This rule does not apply:
>
> - to clients without a working knowledge of English, unless the solicitor has held himself out to the client as competent in a language spoken fluently by the client
> - to the extent that the client has released the solicitor from his obligation.

The Professional Standards and Development Directorate of The Law Society is meanwhile considering a general revision of the rules. CLARITY has pointed out that the draft circulated to the profession is in parts unclear and is waiting for a reply to its offer of detailed help.

Prescribed and recommended court forms

CLARITY has written to the Lord Chancellor's Department with suggested redrafts of four specimen High Court and County Court forms, with a critically annotated copy of the existing version of one of them.

We have offered these as examples of the way the forms could be improved, and have volunteered our help if it is wanted.

Insurance Companies adopt plain English

It is pleasing to see from rather clever advertisement hoardings that Eagle Star have converted to plain English . There is a rumour that the Prudential are inclined the same way, though their legal documentation remains as archaic as any.

Insurers have led the way in other jurisdictions. Here their influence stretches beyond their relationship with consumers to the world of commercial leases. Perhaps we can look forward to some improvement.

Association of Women Solicitors

Dr Michael Arnheim will be speaking on behalf of CLARITY at the Association's Annual General Meeting on Friday, 30th March.

National Consumer Council

Geoffrey Bull has answered the call in the last issue to help the NCC prepare a booklet explaining to legally aided clients their rights to taxation.

Should CLARITY be a charity?

If we were to apply for charitable status, it would be on the basis that we existed "for the advancement of education". However, "education" for this purpose does not include

political or propagandist activity.

Advantages

We would be eligible for tax relief. If members covenanted their subscriptions we could raise a little extra. However, the amounts involved would be small and almost certainly not worth the trouble involved.

It might help us beg funds from public and grant-giving trusts. However, in practice we would remain quite low in priority for donations.

Disadvantages

We would need a constitution acceptable to the Charity Commission, and we would be strictly bound by it. This would restrict our activities.

We would have to submit annual accounts to the Commission.

The trustees would have a high duty of care with personal responsibility and the committee (whether the trustees or not) would not be allowed to benefit personally from their position. [At present, the committee are volunteers, who work free of charge in their own or their firm's time, often using their own resources. Sometimes, as in the work on the conveyancing protocol or in lecturing, individual committee members are paid by outside bodies for work introduced through CLARITY. It is possible (but not certain) that we would be expected to surrender those fees.]

Conclusion

We would probably not qualify as a charity but in any case the game was not worth the candle.

SEMINARS

Clarity and Leicester Polytechnic
Coventry, Friday 8th June, 10am - 4.30pm

With the migration of some of our contacts from Trent, this year's seminar is a joint effort with Leicester Polytechnic. It will be held in Coventry, at a hotel still to be arranged.

The morning speaker, on the substantive law of contracts, will be Peter Dignan, principal lecturer in law at Leicester. In the afternoon, CLARITY's Michael Arnheim will advise on the plain English drafting of contracts. Dr Arnheim, formerly a Cambridge don and a practising barrister, is now director of training at Farrer & Co.

Unlike previous years, the day will be treated as a single course, rather than two separate but related ones. Lunch is included in the price of £135. CLARITY members will pay only £120.

We expect that continuing education points will be available but details are not to hand as we go to press.

CLARITY will be paying £200 towards the costs in exchange for the Poly's responsibility for administration. The profits will then be divided equally, and should produce a welcome fillip for CLARITY funds.

The College of Law
Lancaster Gate, London
5th, 11th and 28th June, 6.00 - 7.30pm

The Essentials of Legal Drafting is a series of three evening seminars to teach the understanding and application of the principles and techniques of legal drafting. The course is aimed mainly at articled clerks and the newly qualified but will be useful for more experienced practitioners.

The course will tackle:

Constructing individual sentences
- choosing words and phrases
- the structure of a legal sentence

Redrafting clauses and complete agreements
- avoiding mistakes and pitfalls
- using sub-clauses and paragraphs
- ethical considerations

Drafting without precedents
- structure
- logical order
- layout

The presenters are Chris Elgey and Michael Petley, both solicitors, principal lecturers and members of CLARITY, and Angela Applegate, Rachel Hawes and Gren Perry, all solicitors, senior lecturers and supporters of plain English.

The fee is £125, VAT exempt. It includes light refreshments and course materials - a lecture outline, exercises and suggested solutions.

It carries 6 continuing education points.

Application forms can be obtained from the Course Bookings Office at The College of Law in Guildford (0483 576711).

Lowe & Gordon Seminars
On tour

"The Art of Drafting", run by CLARITY's Grahame Gordon, was favourably reviewed by Brian Bowcock in our June 1989 issue.

It will be held at Manchester (May 17th), London (May 30th) and Nottingham (May 31st), at a cost of £220 + VAT. This includes the course papers, lunch and light refreshments. Reductions are available to anyone attending "The Art of Negotiating" or "The Art of Presenting".

The seminar will concentrate on a series of exercises on structuring, drafting and rewriting (a) specimen clauses in various types of document and (b) letters. Attention will be given to the overal structure of the document, the flow of ideas from one sentence to the next, the internal structure of the sentence and how to spot and improve on bad construction. Various "before" and "after" texts will be provided for discussion and questions.

There are 8 CE points.

The National Plain English Conference
Madingley Hall, Cambridge, 8th - 11th July

This conference, sponsored by Marks & Spencer plc and British Gas plc, brings together civil servants, public relations managers, lawyers, writers and designers.

Amongst many speakers are:

- Tom McArthur, the editor of "The Oxford Companion to the English Language", on "The history and importance of plain English"
- Richard Thomas, Director of Consumer Affairs at the Office of Fair Trading and an early member of CLARITY, on "Plain legal English and how it affects the consumer"
- Tom McKeown, head of the Straight Talk Institute of Canada, and Professor Robert Eagleson of Sydney, (both CLARITY members), on "Plain English movements abroad".

Other topics are "How design affects clarity", "Clear, safe medical information", "Teaching plain English", "'Plainer' tax, banking and accounting language" and "Plain English in customer care, improving image and saving money".

The fee is £620 net of VAT with accommodation and £550 net without it.

Enquiries: 0663 734541

Central Law Training
On tour

"Drafting: The Art and the Science" is a full-day course for 8 CE points, presented by Michael Arnheim and Gillian Parry at Birmingham (14th June), Bristol (18th June), London 25th June, Manchester (2nd July) and Leeds (9th July).

The fee is £200 + vat.

The promotional booklet says: "The foundation of good drafting is mastery of the English language. The course aims to develop this mastery through the analysis of examples illustrating common pitfalls. A workshop approach will be used in which there will be substantial participation by delegates. Emphasis will be placed on the application of writing skills to common technical problems in several legal areas." The course also warns against the dangers of using precedents and gives guidance on the construction of a document.

European Study Conferences Ltd
The Mostyn Hotel, London W.1

"Letter and Report Writing" is a morning course on Thursday, 17th May, costing £90 + VAT and carrying 4 CE points.

It asks why so many solicitors' letters are taken to CABx and other advisors for explanation, and examines legal writing to analyse what makes it so difficult for non-lawyers to understand; it looks for solutions "against the background of the use of plain English", whatever that means.

"Drafting Skills for Solicitors" runs all day on 5th June, at a cost of £210 + VAT with 8 CE points.

The course is intended "to provide the less experienced with a workable framework of drafting skills. Delegates* will be taken through rules for structuring documents and individual sentences. Consideration will be given to common errors and ambiguities... There will be ample opportunity to plan and draft documents both alone and in teams."

** It has become fashionable to call those attending courses or seminars "delegates", whether they have been delegated by their firms or not. We should not need a euphemism for "student", which is what they are for the day, even if already qualified and taking time out from the office.*

HOW NOT TO WRITE TO A CLIENT

Here is a letter written by a solicitor to a client, who did not understand it and passed it to CLARITY:

I have been looking into the situation relating to the term of the Lease in the light of indications given with regard to the X Housing Association's standard Form of Covenant. As you know, no Deed of Covenant was required from you at the time of your acquisition, but it appears that arrangements were in hand at one time for the term granted by the Lease which you have acquired to be extended to 999 years. At present you have a term in excess of 70 years remaining on the Lease which is perfectly satisfactory, and if you were to consider moving during the course of the next few years you would have no difficulty in disposing of the Lease. Ultimately, however, difficulties can arise and it may be to your advantage to consider taking a Variation to extend the term. I have now received confirmation that the X Housing Association will be willing to agree such an arrangement, but any such Variation will probably entail the introduction of the need for a Deed of Covenant to be provided by the Purchasers at the time of assignment of the Lease. Please give the matter some consideration and let me know your requirements. I anticipate that you will be expected to bear the costs of obtaining such a Variation.

I await hearing from you both with regard to the above and with your cheque as previously requested.

Far too many solicitors write like this, blithely unaware of the blank incomprehension with which their letter is met. Amongst the faults:

The long paragraph is hard on the reader; it looks too boring to read, and many will start to skim before they reach the end.

There are many words and phrases which might not be understood by a lay reader.

The writer had not organised his or her thoughts; the text rambles from point to point and it is not always clear (even to another solicitor) what was intended.

The style is dull and repetitive, with many inappropriate capital letters.

It omits important information which the client would need to make the decision for which her solicitor is asking:

- how many years it will be before the value of the lease is affected;
- how much it will cost to put right;
- what commitments will be expected from a future purchaser;
- what sort of "requirements" the solicitor thought the client might have.

My interpretation of what the writer was trying to say is:

Your lease has just over 70 years to run. At the moment that is long enough but in (an unspecified time) it will become difficult to sell.

The Housing Association is willing to extend the lease (to 999 years?) to solve this problem for you, but you will probably have to pay their (unspecified) costs and agree to (unspecified) terms. Please tell me if you want to accept.

If the letter had been written like this it would have taken less time to dictate, type and check, such time as was used would not have been wasted by the client's incomprehension, and the writer would have noticed, and could have filled, the gaps in the advice conveyed.

Mark Adler and Chris Elgey

AUSTRALIAN NOTES
by Robert Eagleson
Professor of Linguistics, University of Sydney

High Court of Australia Condemns Legalese

The High Court of Australia has severely censured legalese and indirectly helped to advance plain language drafting. In a ruling concerning the Regulations under the Student Assistance Act 1973, Mr Justice Stephen commented [Australian Law Reports, Vol 34, pp 489-90]:

> Amended on more than 40 occasions in their 6 years of existence, these Regulations now represent an administrative scheme of great intricacy and much ambiguity. No applicant is likely to gain from them any clear impression of his entitlement to a benefit and this case suggests that even those who have to administer the scheme have great difficulty in understanding it....

The dispute arose from the interpretation of regulation 34(1)(k) which, the judge continued, "is even more obscure in its meaning than much else in these Regulations". It reads:

> **Ineligibility - previous study and other reasons**
> 34. (1) Subject to the succeeding sub-regulations of this regulation and to regulations 34A, 34B and 34C, an applicant who is undertaking, or proposes to undertake, in a period in a year at an education institution an approved course (including an approved course that is the combination of two courses each of which is also an approved course) is not eligible to be granted Assistance in respect of any part of the year -
> ...
> (k) if he, not being an applicant to whom sub-paragraphs (1)(i) and (ii) apply, has completed, before the relevant day, a course of study or instruction that -
>
> (i) in the case of a course that the applicant undertook in Australia before the commencement of the Act or a course that the applicant undertook elsewhere than in Australia - is; or
>
> (ii) in the case of a course that the applicant undertook in Australia after the commencement of the Act - was, at the time the applicant completed the course, an approved course,
>
> of the same level as the approved course that he is undertaking, or proposes to undertake, in that first-mentioned year and the work that he successfully undertook in the completed course exceeds, by more than one half of one year's normal full-time amount of work of the approved course that he is undertaking, or proposes to undertake, in that first-mentioned year that part (if any) that he has successfully undertaken before the relevant day including any part that, by reason of studies he has undertaken, he is credited with having successfully undertaken;...

However, this is only part of the story and to get the full legal effect readers have to consult other paragraphs. As there are few cross-references readers are thrust into a tangled maze.

The High Court's ruling against the authorities has had an excellent benefit. It has given the Commonwealth Department of Employment, Education and Training, which is responsible for administering the scheme, and the Attorney-General's Department, which is responsible for drafting the Regulations, the impetus to rewrite the Regulations in plain English. They have invited me to collaborate with them in the exercise, thus bringing together in one team policy, legal and language specialists. It is this kind of approach, in which we can draw an expertise from all relevant areas, that we need to follow more regularly.

I have produced a plain version which is about to be tested. The exercise has meant not only reshaping sentences and eliminating verbiage but also recasting entirely the arrangement of the content. Through the process of clarifying the wording, the Department is being helped to reconsider aspects of the scheme to reduce its complexity. The new Regulations are to be tested during 1990 and published in final form by the middle of the year for operation in the 1991 academic year.

The Australian Court's decision demonstrates again that lawyers can no longer take refuge in traditional legal drafting. More and more judges are ruling against organisations if their documents are obscure. They do not accept that all the responsibility falls on members of the public to understand but recognise that drafters also have responsibility to be comprehensible. The claim that courts prefer legalese is fast becoming a myth.

SPECIMEN

Each quarter we will publish a short precedent for members (only) to use or amend at their discretion. CLARITY is not insured and accepts no liability, leaving it to members to check that the drafts are good for their purpose. 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.

NOTICE OF ASSIGNMENT AND MORTGAGE

Landlord:

Landlords agents or solicitors:

Property let:

Date of lease:

Original parties to the lease: **1.**
2.
3.

Seller:

Buyer:

Lender:

Date of transfer and mortgage:

Landlord's registration fee enclosed: £

The Lease has been assigned to the Buyer and mortgaged to the Lender.

Please sign and date the receipt on the enclosed copy and return it to us.

Dated:

Signed:

Disken & Co
Solicitors for the buyer
16 Bond Street
Dewsbury
West Yorkshire WF13 1AT

RECEIVED a notice of which this is a copy

Date:

Signed:

COMMONWEALTH NOTES
Compiled from reports by
Richard Castle, Prof. Robert Eagleson, David Elliott and Richard Wydick

Australia

In March 1990 the Law Symposium of the Queensland Law Society and Bar Association is to celebrate its 30th birthday. One of the sessions of the Symposium this year is to be devoted to drafting, under the heading of "Legal Writing & Drafting: Taking the gobbledegook out of legalese". Speakers are Ross McNabb of the University of Queensland Law School and Robert Eagleson, so Clarity will have a representative.

The session reflects the increasing enthusiasm for plain English drafting in Australian legal circles.

The Australian Commonwealth Parliamentary Counsel has a PE policy. The practice is faltering but the intention is there. Professor Eagleson has been invited to help by running workshops for the less able. All the State Parliamentary Counsel also have PE policies.

For the first time after 30 annual conferences, the Law Society of Queensland had a session this year on PE. The State Governor, a former Chief Justice, made favourable comment in a subsequent talk.

The Property Division of the Law Society of New South Wales is planning to rewrite its standard contract for the sale of land and to study associated legal procedures to reduce paperwork and delays.

The New South Wales Law Foundation is setting up a Plain Legal Writing Centre. Only practical details have to be worked out before it starts work. The Law Society's proposal could be its first project.

Legal firms throughout the country are changing, especially the major ones. Some are systematically rewriting precedents in plain language and others follow. More and more are asking for advice.

New Zealand

The policy of the ruling Labour Party is to "simplify laws to make them as readily understandable as possible and to reduce the total number of statutes and regulations."

The Public Trust Office leads New Zealand with its plain language precedents and a number of statutory forms and business documents have been translated into plain English, to the general approval of those concerned. Some major law firms have hired plain language advisers.

One of the functions of the Law Commission is to "advise on the ways in which the law can be made as understandable and accessible as is practicable". The Commission has made suggestions for improving the form and style of legislation but these were buried in an unrelated report and forgotten. It has also sponsored visits by Robert Eagleson to work with groups interested in using plain English.

The judges of the Court of Appeal have supported the development of plain English, although most judgments are still written in legal English.

Some years ago nearly 25% of the country's lawyers took part in seminars on clear drafting run by the Law Society. But this has not been followed up and despite the various initiatives described above there has been little change, or interest in the use of clear language. Perhaps this will change with the welcome appointment of Geoffrey Palmer as Prime Minister.

Canada

Canada was slow to take up the use of plain language but is now making up for lost time.

Drafting conventions have been formulated to improve the language of statutes, although the attitude to plain English is not the same in all territories. One simple but useful development has been the adoption of the present tense. The regular revision of all statutes and annual meetings of senior legislative counsel have effected considerable improvements. The Yukon Territory has adopted plain English for its legislative drafting and reported on its experience to the Uniform Law Conference in 1988.

A Plain Language Centre has been set up by the Canadian Law Information Centre and has designed a major project to teach plain language legal drafting.

Private practice has lagged behind, although the Canadian Bar Association is now promoting the use of plain English throughout the profession. It has also undertaken a joint venture with the Canadian Bankers Association for the simplification of legal forms.

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GENDER-NEUTRAL DRAFTING IN CANADA
by David Elliott

The issues that swirl around non-sexist (in Canada more commonly called "gender neutral") language are as current in Canada as they are in the UK.

In legislative drafting circles, New Zealand was one of the first jurisdictions to use "he or she" in legislation. (Although the Acts Interpretation Act makes that unnecessary the Justice Minister, now Prime Minister, Geoffrey Palmer, insisted on gender neutral language.)

A number of Canadian jurisdictions are now committed to gender neutral drafting in legislation. The general revision of the Statutes of Ontario, due for completion in 1991, will purge the statutes of masculine gender references, using "he or she" if a repetition of the noun is awkward or some other re-arrangement unsatisfactory.

A major impetus for gender neutral drafting in legislation came with a recommendation from the Uniform Law Conference of Canada Drafting Section. It recommended that the Conference adopt a non-sexist legislative drafting style, giving these reasons:

- there is an increased sensitivity to the images of men and women that our languages create and reflect;
- linguistic changes originally thought extreme have become current usage and adopted as Government policy. As the Government of Ontario put it in 1985, it is committed to a legislative drafting style that "fully expresses and enhances the equality of the sexes";
- legislation should address its readers equally. Neither women nor men should be required to perform adjustments to the text that the other is not. People of either sex who are "targeted" by a provision should clearly understand this without having to convert the text by looking in an obscure place (ie, an interpretation act);
- the language of legislation should not offend any of its readers. Increasing numbers of women and men are offended by language that they consider sexist, believing that it creates images that are inappropriate today;
- legislation should be drafted in a manner that is neutral in terms of language issues, correct and up-to-date, neither faddish nor stodgy. It is not the function of legislation to coin new words or use language in a way that has not yet become accepted. On the other hand, to resist change where a trend has been firmly established is to endorse language that no longer reflects current use.

Sex-neutral legislative language is not a fad. It is being used in several Canadian jurisdictions and has been endorsed by a parliamentary committee at the federal level. Robert Dick, a well-known Canadian commentator on legal drafting in English, recommends a sex neutral style in the 1985 edition of his text "Legal Drafting" *(Carswell, Toronto)* and provides recommendations (at pages 167 to 189) for reducing, if not eliminating, sex specific references.

Having been required to use gender neutral language in New Zealand for nearly two years, I came to live with it. Despite early reservations, I now feel quite comfortable with gender neutral drafting, and find the constant masculine reference in some Canadian legislation and most legal documents objectionable.

In the September 1989 issue of CLARITY John Fletcher made some suggestions for writing formal letters to women. One other approach seen occasionally in Canada (and more often, I am told, in the USA) is not to use the honorific "Dear ..." at all. Once the address is written the writer gets on with the text. That's perhaps particularly useful when the writer does not feel that the recipient is entitled to any "dearness".

This would offend British readers, since the omission of the greeting is a mark of anger. I recently received a letter from a New Zealand solicitor - not a CLARITY member - beginning "Dear Partners", which seemed a sensible and unpretentious opening. - Ed.

The transition to gender neutral writing is really no more difficult than being conscious of delivering the message of a text in the most direct way. Plain language avoids not only convoluted language but any language or form of expression that distracts the reader from the message. Failure to use gender neutral language is a definite distraction for many readers. On that account alone, writers need to be sensitive to gender issues.

Seasons greetings to all CLARITY readers from this side of the Atlantic.

This article arrived just too late for the December issue.

LETTERS: THE SPECIMEN TRANSFER

From Andrew Melling, Lionel J. Lewis & Co
117 Burnt Ash Rd, London SE12 8RA

I know the arguments for avoiding words like "transferor" and "transferee" but in this case to use them would make labelling the parties unnecessary. The transferee is inevitably the person to whom the transfer is made and, therefore, the one giving the indemnity. I suggest that no-one capable of understanding the words "indemnify" and "covenant" would have any difficulty with the use of "transferor" and "transferee".

This is a fair point, but "transferor" and "transferee" are clumsy words best avoided. I suppose "buyer" and "seller" (or "donor" and "donee" where appropriate) could be used without labelling to get the best of both worlds.

The certificate for title is commendably short but will the Inland Revenue accept it?

See note below.

A different form would be needed if there were two or more related transactions with a total value not exceeding £30,000.

All precedents must be adapted to circumstances but how often will this change be necessary?

The attestation clauses do not take account of last year's Law of Property (MP) Act.

It's not in force yet.

You repeat the invitation to comment on the specimen divorce petition in the previous issue. Does the author intend that the petition be typed in full each time rather than use a printed form? If not, then it is unfortunate to include "they are domiciled in England and Wales" when it is only necessary for the petitioner to be so domiciled.

The author has the form on word processor; most of his clients' spouses are also domiciled within the jurisdiction so the neater plural is used. If the form were printed, provision would be needed for alternatives.

From Mark Adler to the Inland Revenue

I would be grateful for your guidance on the wording of a certificate of value in plain English.

It seems to me that "This is not one of a series of transactions" should be sufficient in the vast majority of cases. Once it is established that the transaction stands alone there seems no reason to refer to any aggregate consideration or value; and if the consideration for the transaction has already been expressed as a figure less than £30,000, no more need be said.

Nor does it seem necessary to say "It is certified that"; this means no more than "I am signing this document to say that".

I appreciate that s.34(4) of the Finance Act 1958 provides for more formal wording but I wonder whether you are prepared to make concessions in the light of the developing use of plain English.

S.34(4) requires that the instrument contains a statment certifying that the transaction does not form part of a series of transactions whose consideration or value, or aggregate consideration or value, exceeds £30,000.

The Revenue's reply

Thank you for your letter dated 18 January, the contents of which are noted.

Section 34(4) Finance Act 1958 as you point out states the form of the certificate of value which is required on documents and any departure from the normal wording carries the risk of disapproval by the Courts.

Comment

I telephoned the writer to ask if the Inland Revenue were likely to take the point before the Courts. She did not seem much more willing to commit herself than would appear from the letter, but gave the impression that the IR did not mind the revised wording. However, she said that even if they marked the document "Produced", a court might later disallow it as evidence on the basis that it was not properly stamped if the judge did not think the form of words sufficient. My instinct is that this is unlikely but the views of our more scholarly members would be welcome.

But in any case, it may be right to include a reference to value as well as consideration if it is not otherwise clear that the transaction is at arm's length.

At least it does seem clear from the authorities that "I certify that" is unnecessary, although it appears that the point has never been directly argued. In Roberts v. Watkins (32 LJCP 291) an oral expression of approval by an architect was accepted as a "certificate of satisfaction". In R v. St Mary, Islington (25 QBD 523) a letter asking for payment of an amount spent was a certificate that that had been the cost. And in the Minster Trust case (1954 1 WLR 963), in which a document was held not to be a certificate for other reasons, the court treated the absence of the "certifying" expression as irrelevant.

A BRIEF HISTORY OF ENGLISH AS THE LANGUAGE OF THE LAW

extracted from a paper by David Elliott
read at the LawAsia Conference, Hong Kong, September 1989

The language of the law at the time of the Battle of Hastings in 1066 was English and Latin, with Latin predominant and the English of those days barely recognizable to us today. During the next 400 years Latin, and later French, were the predominant legal languages.

After 1487 English became the language of statute law in England but the language of the common law remained Latin and French for several centuries.

There were three attempts to change the language of the law by statute.

The first, the Statute of Pleading in 1362*, decried the use of French, although it was written in that language. It required the language of the courts to be English (but documents to be recorded in Latin).

The second attempt was a statute promoted by Cromwell's parliament, in 1650, "for turning the Books of the law ... into English".** It was principally aimed at court proceedings but included a requirement that "statutes ... shall be in the English tongue". It was not happily accepted by the legal profession and in 1660, after the Restoration, was repealed.

The third attempt to change the language of the law to English was legislation passed in 1731 requiring that all court proceedings and statutes

> shall be in the English tongue and language only, and not in Latin or French ... and (court proceedings) shall be written in such a common and legible hand and character, as the acts of parliament are usually engrossed in .... ***

All three statutes were aimed at making the law more understandable and accessible to the public. In that sense they were the forerunners of the more recent "Plain English" statutes in North America.

Footnotes

* 36 Edw III, Stat.I, c.15. For an 18th century translation see D. Mellnikiff: The Language of the Law (4th ed) pp 111/112, Little, Brown & Co.
** Mellnikoff pp 126/127.
*** 4 Geo. II, c.26.

Commonwealth Notes **(continued from page 9 and concluded on page 23)**

The United States

President Carter ruled in 1978 that "regulations be as simple and clear as possible" and in 1979 that government forms "should be as short as possible and should elicit information in a simple and straightforward fashion". Unfortunately, this initiative lapsed under his successor. Nevertheless, there has been a dramatic improvement in legal language over the last 10 years or so.

Statutes requiring the use of plain English in certain types of contract have been passed in a number of states; they have not been much used by litigants (perhaps because the remedy will often not be worth the risk and trouble of proceedings) but they have been widely obeyed and are therefore worthwhile. A number of the largest corporations report the success of their plain English policies. For instance, when Southern Californian Edison simplified their request for payments to a fund, contributions went up by 40%.

INTERPRETATION OF * 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 **itself and** 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:

(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. (1) In this Act, "private text" means any **text**, however recorded, except Acts of Parliament and subordinate legislation.

(2) This Act takes effect subject to the mandatory provisions of any other Act.

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, bank holidays **and the last weekday before Christmas** 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 **both** joint and **separate**.

Service of documents

6. **(1)** Service of a document **required by text to which this Act applies must be in writing and may be** effected by:

(a) Handing it to the recipient;

(b) Leaving it at the recipient's address;

(c) **Sending** it to by ordinary post * with the first class postage pre-paid;

(d) Sending it * by recorded delivery or registered post;

(e) Lodging it * 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;

(f) Sending it by facsimile * and receiving a satisfactory transmission report, with the original marked by the machine; or

(g) Sending it by telex and receiving a correct Answerback code.

(2) The recipient's address for service under sub-clauses 6(b)-(d) is:

(a) An address described by the recipient as his, her or its address, unless the recipient has given the sender written notice that it is no longer effective and the sender has an alternative address for service; or

(b) The recipient's last known home or business address; or

c) If the sender does not know the recipient's current home or business address, an address at which the sender would normally expect the recipient to see mail within seven days of its arrival.

(3) Section 196 of the Law of Property Act 1925 remains in force.

7. **(1) A document served under sub-sections (1)(b) is effectively served on delivery, whether or not the recipient sees it.**

(2) A document **served under sub-sections 1(c)-(g)** is **considered** served, unless the contrary is shown:

(a) Under **sub-section *(1)(c)** - on the second working day after the next **scheduled** collection from the **point of posting;**

(b) Under **sub-section *(1)(d)** - on delivery at the address shown, whether accepted or not;

(c) Under **sub-section *(1)(e)** - on the second working day after the next collection from the sender's exchange;

(d) Under **sub-sections *(1)(f) or (g) - immediately if during the recipient's 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) **To require** consent **is to require it** in writing and **provide that it will** not **be** unreasonably withheld;

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

(d) A duty to insure premises 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 **but allowing a reasonable excess,**

and for loss of rent (if rent exceeds £1,000 a year) under any single letting for a period reasonably estimated by a surveyor appointed by the landlord as long enough to reinstate;

(ii) To have noted on the policy (if required by the person to whom the duty is owed) the interests of that person 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;

(iv) To reinstate the premises;

(e) An obligation to insure against loss of rent implies that:

(i) The rent will abate whilst the premises are damaged by an insured risk, except to the extent that it cannot be recovered from the insurers because of the tenant's fault;

(ii) If any part of the premises remains usable , only a fair proportion of the rent will abate, having regard to the extent and nature of the damage;

(f) 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;

(g) (i) A duty to reinstate premises is a duty to do so as quickly as reasonably practicable, subject to reasonable modifications and to the consents required by law;

(ii) Any party to a tenancy or licence over land may give reasonable notice ending it if it appears likely that reinstatement work cannot be completed within the time recommended by the landlord's surveyor under subsection (d)(i);

(iii) If the premises cannot be reinstated, the proceeds of insurance will be divided between landlord and tenant in fair proportions.

(h) (i) There is implied a reference to arbitration of any dispute about (a) the interpretation of the conveyance or (b) the calculation of any sum payable under it;

(ii) If the parties cannot agree on the identity of the arbitrator, one is to be appointed by the senior available officer of the Royal Institution of Chartered Surveyors;

(iii) The costs of the arbitration will be in the arbitrator's discretion.

Repeals

9. Section 61 of the Law of Property Act 1925 is repealed.

Jurisdiction

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

LETTERS: THE INTERPRETATION BILL

Editorial replies, in this typeface, are inserted at convenient points. We have broken up some letters to reduce the need for cross-reference, and apologise to those writers for interrupting their flow.

Where two letters have made the same point, we have printed it once only.

By clerical error picked up by some correspondents, the last two lines of clause 8(d)(i) and the first line of (d)(ii), at the foot of page 9 of the last issue, escaped the printer. These are shown underlined .

Clause 9 was widely (and justifiably) criticised, and has been withdrawn.

We are now closing this correspondence (apart from comments about the changes in this issue) and will try to generate interest in the Bill outside CLARITY. The committee thanks members for the great interest which has been shown and for the very many helpful suggestions made since the first draft appeared last March.

From David Brydon, German & Soar
103 High Road, Beeston, Nottingham NG9 2JT

Title

I disliked "Unfair Contract Terms Act" as a title because it also dealt with unfair terms in non-contractual situations. "Unfair Terms Act" would have been a more accurate description. Our bill regulates all documents other than Acts of Parliament and subordinate legislation. I find "private text" an unhappy definition of text which is not an Act or statutory instrument, and would prefer "non-statutory text". I think "private documents" is also misleading. The bill will apply to many documents that the general public would never think of as being "private documents" because they are generated by public authorities or are otherwise within the public domain. I think of a private document as something I wouldn't show you or one which is not likely to be litigated or subject to arbitration. I prefer "documents". My favourite title would be "Interpretation of Documents Bill", legislation being governed by simple "Interpretation Acts".

Mr Brydon has a point. In any case, the title is only a rough guide to the contents, and the shorter one is more convenient.

I do not like "is taken to have been served". I see nothing wrong with "is deemed served", or even "is served" - clause 4.1 says "is dated" for a similar fiction. The formula should be the same in each clause.

There is a difference. Notice is served when it is received; it is only taken to be served (in the absence of contrary evidence) at the arbitrary times suggested. On the other hand, the date of a document is always a convention, not a physical event.

Is clause 6 giving five examples of effective service or is it laying down the only five ways in which documents can be effectively served? It should be clear.

For simplicity, we have opted for the "optional" alternative, and to avoid doubt, have specifically retained s.196 of the Law of Property Act.

What about recipients out of the jurisdiction?

They may want to provide in their agreements for their particular circumstances, depending on the postal services and other facilities.

Whose working day for fax - sender's or receiver's or both?

We have amended to make clear that it is the recipient's.

Does the definition of "working day" in 5(6) apply to the expression in private text alone (see s.1) or to its use in s.7 of this Act as well (or alone)?

A good point. We have altered s.1.

What have you got against the period between 3pm and 5pm? Is is to take account of the effects of extended licensing hours?

No. We only wanted to protect a receipient against notices arriving late in the day. This seems, on reflection, an unnecessary complication, and has been withdrawn.

Someone trying to effect service under 6(b) would be well advised to obtain a certificate of posting. These are not issued by the postboxes mentioned in 7(b) so perhaps that needs to be expanded to "postbox or post office".

We have used "point of posting".

I have a fundamental complaint against 7(a). The rationale behind 7(b)-(e) is that the sending and receiving of a document are separated by time and/or the agency of machines or third parties; the immediacy and certainty of a real face-to-face service by hand (with simultaneous delivery and receipt) is lacking; so a rule is needed, and supplied. For a 6(a) service (by hand) no such deeming provision is required unless for some reason you wish to introduce an artificial rule that certain deliveries are not valid or are only to be effective at some later time. 7 (a) seeks to do the second of these by saying that documents delivered by hand outside, or between 3pm and 5pm on, a working day are deemed served on the next working day. What on earth for? (My wife likes her birthday card on her birthday, and long before 9.30am. Why should I not give her an effective notice to quit when I want to?)

We have tidied up the service clause. Meanwhile, Mrs Brydon might like to make use of our referrals register.

On the face of it, a divorce petition, a common law notice to quit and Landlord & Tenant Act notice will (may?) all be "private text"; none of them is an Act of Parliament or subordinate legislation). Are these and all other documents now to be effectively served only before 3pm on a working day? Or should clauses 6 and 7 begin "Subject to any rule of Court..."?

We are amending clause 3 to meet this.

Wouldn't clause 7 start better: "Service of a document is effective..."?

What do you do with the piece of private text which takes advantage of s.1 and expresses an intention that the Act (including the service provisions) is not to apply to it? Can it opt out of the deeming rules, and get served when it likes?

Yes. The scheme is voluntary, intended to simplify drafting, not impose a change in the substantive law. We have not tried to restrict freedom of contract but only to influence, by choosing (where choice is necessary) the fairest alternative.

What about "unless the contrary is shown"? If I can show that I served a document at 4pm on Friday, is it taken to have been served by hand on delivery? The problem is that the service in 6(a) is of a different kind from those in (b)-(e) and needs a different treatment. Under (a), the judge whips off the defendant's head with an axe. Under the others, he pronounces sentence of death by starvation, deprivation of water, slow poisoning or exposure to the elements. The end result - death - might happen any time and so has to be artificially fixed by clause 7, whereas in 6(a) the pronouncement and execution of the sentence are immediate and the same.

You could keep the format of the present clauses 6 and 7 but it would not be too radical to merge them so that the forms of service are shown in one column, and the respective times in another.

Time is too short and the advantage too small.

Clearly much of clause 8 relates to leases. It is unfortunate that the word "conveyance" relies on a technical definition in some other Act. Could you not expand the definition here to make it self-sufficient?

Clause 8, dealing with the drafting of conveyances, is only intended for lawyers, who would know about the LPA.

In clause 8(b), "not unreasonably withheld" would be welcome (?) but substantive change in the law.

The phrase is implied by s.19 of the Landlord and Tenant Act 1927 for licences to assign, sublet, etc and for improvements. For these and other licences, the phrase is more commonly added than omitted. If the landlord wants the right to withhold consent unreasonably, the document should contain an absolute bar; the landlord can then give or withhold consent at whim.

8(d)(i): If the rent passing is £1,250, do you have to insure for £1,250 or £250?

We have corrected this.

From James Kessler
24 Old Buildings,Lincolns Inn, London WC2

May I make some comments on the "wills" clause?

9(b) would defeat the claims of beneficiaries under the will of the would-be beneficiary who dies within a month of the testator. Would this really accord with most testator's intentions?

9(c): Doesn't s.33 Wills Act 1837 deal with the position quite satisfactorily?

9(d-f): A revision of the law relating to trustees' powers is certainly needed, but it seems to me that his should be carried out by a wide-scale review of the Trustee Act 1925. Clause 9 would create separate rules for lifetime settlements and will trusts, which only makes the law more complicated. An Interpretation of Private Documents Bill is not the place to cure defects in the general trust law.

Perhaps one further definition might be added to clause 5: "Will" includes a codicil.' This might save the draftsman from having to write "will or codicil" every time.

I am preparing a Standard Will draft but it will be quite long and perhaps better suited for the Precedents Library.

From Nick Lear
Debenham & Co, 20 Hans Rd, London SW3 1RT

I am not happy with clause 8. Specifically:

8b: I regard this as a trap. If a client signs a document referring to consent, he may not be too surprised to find an inference that consent must be inwriting, but he would surely be surprised to find that he had implied that it could not be withheld unreasonably .

But that already is the law, when the consent relates to assignment ... In any case, how many clients would expect a landlord to have the right to interfere unreasonably in the tenant's use of the property?

8d: I would exclude ground movement, which is often not included in a comprehensive insurance. You have not provided for the very common insurance provisions known as "excesses".

Ground movemeent has been included because it is common. The "excess" point is well-taken and has been written in.

8(g)(ii): This is a very controversial idea, and is surely best left out.

No-one else has challenged it, and it doesn't seem unreasonable. Otherwise, the tenant can be left in limbo indefinitely, not only unsettled but, after the estimated rebuilding period, paying the full rent and probably heading for insolvency (unless he can show that the tenancy has been frustrated).

8(g)(iii): As an example of the frustration clause, I like it very much.

8(h)(ii): Should be "Royal Institution", not "Institute".

A slip.

On balance, whatever you end up with as clause 8 of the bill, it will be very rare that someone will be happy to rely on it when preparing a conveyance or lease. Something like this would be an excellent interpretation clause, but I don't think it fits comfortably into this bill. I am not an expert on wills so I have not commented on clause 9 but I suspect that the same general comment might apply.

Sorry to be negative. On the whole I like the rest of the bill and I feel sure it will serve a useful function.

From Andrew Melling, Lionel J. Lewis & Co
117 Burnt Ash Rd, London SE12 8RA

I am sorry to be coming late to the debate but I have some comments to make, about clause 7 in particular.

Having previously defined a working day as ending at 5pm, why is it necessary to use the cumbersome phrase "more than two hours before the end of the"? Could there not be substituted the words "before 3pm on a" in paragraphs (a) and (e) of clause 7?

Agreed. It may also be wise to exclude the last working day before Christmas to give a little grace to revellers. The words "by hand" at the beginning of 7(a) were a clerical error.

Paragraph (b) seems to have the effect of limiting the use of ordinary post to the use of a postbox. Many larger concerns will deliver mail in bulk

over the counter of a post office or direct to a sorting office.

We don't agree ."To post" means "to send through the post" - the means of delivery to the Post Office, so long as they recognise it, is irrelevant.

I was suprised at clause 9(c)(ii). More often than not, my will-making clients are concerned to see that a gift does **not** go to the spouse of a deceased beneficiary.

From Richard Oerton
Bircham & Co, 1 Dean Farrar St, London SW1

I am very pleased to be a member of CLARITY and very much in sympathy with its aims. However, I have occasionally had the feeling on reading the Newsletter, and this is a feeling which I have also in connection with the bill, that there is a tendency for contributors to combine their quest for clarity with some impatience of, and disregard for, the complexity of the law with which they are dealing. Complexity in legal documents stems not only from the unnecessary verbiage which many lawyers still employ (with which I have no sympathy at all) but also from the inherent complexity of the subject matter; a distinction must obviously be drawn between clarifying the former and failing to take account of the latter. It is this slight tendency to think that the law itself is simpler than it really is which sometimes disturbs me, and it does manifest itself in the draft bill. Drafting work of this kind requires a very high degree of expertise and skill - and in saying this I draw on my experience as a member of the staff of the Law Commission for 13 years - and I feel that the very courageous and painstaking attempt which has been made may not have been completely successful.

I claim only a very limited area of expertise. I mainly deal at present with wills and trusts and my own interest is therefore aroused particularly by clause 9, most of whose provisions are, I think, open to fairly serious objection. This leaves me a little worried about the areas in which I have less expertise.

The comments that have occurred to me are:

Clause 3: I wonder whether "document" is a sufficiently precise word to use without further definition?

"Document" was widely criticised when it appeared in clause 1 in the early versions, and was replaced by "text". It slipped back here in September and has now been taken out again.

I note the comment on page 5 in response to a point raised by Mr Venables that clause 10 has been altered to widen the definition of "instrument". I do not quite understand this comment.

Clause 10 was altered in the last issue so that the bill would not change the effect of existing documents to which s.61 LPA did not apply because they were not instruments.

Clause 4: There is a slight tendency for the bill not to make clear the purpose for which its provisions are intended. Thus the statement "Text whose date is not apparent on the face of it is dated" would be clearer if prefaced by the words "For the purposes of sections 1 and 2 above". Otherwise clause 4 seems to have some universal effect which is not intended.

As by clause 1 the Act only applies to the text covered by clauses 1 and 2, is the suggested preamble to clause 4 necessary?

The same kind of problem seems to arise elsewhere in the bill - for example, in clause 8 where, putting together the opening words and the provisions of sub-clause (b), one gets a statement:

> In any conveyance ... consent must be in writing and not unreasonably withheld.

On the face of it, this means that if consent is given in a conveyance it must be in writing and not unreasonably withheld. What is actually meant is that if a conveyance provides that some act is not to be done without consent, the consent must be in writing (etc). This is longer but, I think, clearer. Brevity and comprehensibility do not always go hand in hand!

Agreed.

Returning to clause 4, I am really not sure how its provisions would apply to all the different kinds of case which could arise. I am thinking, for example, of a contract arising by correspondence, the offer being contained in one letter and the acceptance in a later one. If both letters are dated, then they each contain text in relation to which two different dates are apparent on the face of it. If, on the other hand, neither letter is dated, then presumably sub-clause (a) would apply to each and, this being so, there would be no room for the application of (b).

The intention is that each letter (whose wording is the prerogative of the sender, would be dated when it is

sent. The agreement under discussion in the correspondence (to which (a) does not apply) would be dated when its wording was agreed - unless (by clause 1) the parties agree otherwise.

Clause 5(10): This might not achieve the desired result in relation to a will?

This is covered by the alteration to clause 3 suggested by Mr Brydon.

Clause 7(b): Do the words "the next collection" mean the next actual collection or the time at which the next collection ought to be made?

We suppose it should mean the next scheduled collection, to avoid a vigil at the pillar box. If that collection is substantially delayed, "the contrary can be shown".

There also seems to be a contradiction between clauses 8 and 9 and the provisions of clause 1. Clause 1 applies the Act to all private text but 8 and 9 are more restricted. This seems to indicate the need for some qualification in clause 1.

It is true that clauses 8 and 9 apply to only some private text. Clause 8, for example, will not apply to a document which is not a conveyance. But we are not convinced that any amendment is needed to clause 1 to make this clear.

Clause 8(c): This ties up with a comment on page 6 of the December issue, from which it appears that these words are intended to serve the purpose of the words "Not to do or permit or suffer to be done ...". But the provision about "suffering" has been lost altogether. My recollection, from the distant time when I studied the decided cases on these words, is that there is a distinction between "permitting" and "suffering", because "permitting" connotes some degree of authorisation, whereas "suffering" does not. This is an instance of the subtleties which must be preserved in the simplification process.

Despite some research in the library, the editor has been unable to find any difference in meaning between "suffer" and "permit". The nearest he could get to supporting Mr Oerton's contention was an obiter dictum of Luxmoore J in Barton v. Read (1932 1 Ch 375): "The word 'suffer' is a wide term. It seems to me wider than the word 'permit'." He did not explain the difference, but went on to quote Atkins LJ from Berton v. Alliance (1922 1 KB): "It is not suggested that there is any difference between (the words) in this context, and I treat them as having the same meaning."

Clause 8(g)(i): I think "practical" should be "practicable".

Agreed.

Clause 8(h)(i): Is this provision for arbitration sufficiently common form to appear in this bill? My conveyancing days are long past, but I would have thought arbitration provisions were extremely rare.

They are very common in leases, which are of course "conveyances" under the LPA definition.

Clause 9: I have a number of points here, and it may be easiest to set them out in paragraphs which bear the same letters:

(a) Is this definition very helpful? It does not amount to a definition of "my Executors" or "my Trustees".

We are not sure that we have understood Mr Oerton, but if "executor" includes "trustee" then "my executors" includes "my trustees".

(b) This amounts to an omnibus commorientes provision. This does seem to me unwise. Such provisions can have unexpected and undesirable results, for example in relation to common form substitutionary provisions contained in a Will.

This should not be a problem if the other clauses are drafted with this one in mind. On the other hand, this Act would apply to wills drafted without legal advice.

(c) This provision too seems unwise.

Why does it apply only to a gift of part?

The provision in (i) that the gift is to be divided between the beneficiary's children is far too simplistic. Even if one accepts the absence of any age contingency, there is still the problem that the primary gift may have been to the beneficiary on attaining a particular age, and if the beneficiary died after the testator but before attaining that age it would not be clear whether the gift passed to the children living at the testator's death or those living at the beneficiary's. I suspect I should have more misgivings about this provision if I thought about it still harder!

The provision in (ii), though perhaps it ought to appear more often in wills, is in my experience comparatively rare and perhaps does not qualify for inclusion on this ground. There is also the problem as to whether the wife is

to take if she has remarried at the time of the failure.

(iii) rather made my hair stand on end because it seems to me to embody a classic drafting mistake. If a failed share falls back into residue then it will be divided amongst all the shares of the residue, including the failed one, and an endless process is produced, in the course of which the failed share goes round and round, with ever decreasing bits dropping off into the failed share and going round again! But this again is a very blunt provision because accruer clauses of this kind must provide for the case where the original shares were unequal, and also for the case where there is more than one accruer, so that the share which does the accruing has to include property which has accrued to it in the past.

But the amount in the failed share would with infinite speed become infinitely close to zero, and so could be ignored. Nor do we see the force in the final two points in this paragraph: the "final" residue will be distributed in the proportions due under the will to the surviving beneficiaries? Or are we missing a point?

(d) Why is the investment power confined to the proceeds of sale of property? Surely it should extend to cash as well. And it is illogical to restrict the application of the wide s.32 to beneficiaries under 18.

I must try to counteract what may seem the wholly negative tone of this letter by saying how much I am in sympathy with the aims of CLARITY in general and the bill in particular. These comments are intended, believe it or not, to be helpful.

OTHER LETTERS

From Paul Stockton
House of Lords, London SW1A 0PW

The Lord Chancellor has asked me to thank you for your letter of 10th January.

You are right in supposing the Lord Chancellor is sympathetic with your aim of promoting the use of clear English by lawyers. He hopes that in legislation for which he is responsible, and in the court forms which are prepared in this Department, some progress is being made towards that end; although in the case of court forms there may be room for further improvement and this is a matter which is receiving attention.

The Lord Chancellor will, nevertheless, decline your kind invitation to join your Group. Having regard to his constitutional position, it would be inappropriate for him to join any independent body which may put forward suggestions for reform which he would have to consider. Nevertheless, he is pleased that your members are taking the trouble to promote actively the cause of clarity in legal drafting and we will, if we may, retain the supply of membership forms which you sent.

From Chris Elgey
The College of Law, Barbeouf Manor,
St Catherine's, Guildford GU3 1HA

How do you translate "at arm's length" clearly and concisely?

From Leslie Melville
23 Woodlands, Welshwood Park, Colchester

A review of "The Draftsman's Handbook" was included in your issue for June 1986.

Amongst other matters, the reviewer complained that I had not mentioned CLARITY. Owing to the passage of time I cannot remember whether I knew of, or was a member of, CLARITY. I am however quite willing to mention it in the next edition which is now in course of preparation.

I do not go along with the other criticism: that I should have included advice on the correct uses of tenses, gender and voice. Nevertheless I am willing to be persuaded to the contrary if your reviewer, or other authorised voice, offers cogent argument in support.

The new edition is to include a wide range of precedents. Would it not be most appropriate if it

carried your preferred drafts?

And what about devoting the proceeds, or a substantial part, to a charity to be selected by you?

From Professor Robert D. Eagleson
University of Sydney, NSW 2006, Australia

On "The chairman shall be a member of the committee" and your comment (CLARITY 15 p.4):

Isn't the problem faulty drafting and not "must"? Often we cannot fix a weakness just by changing a word here and there, but need to go back to the beginning. Wouldn't the provision be better if it were on the lines of:

> The chairman must be appointed from the members of the committee.

Or, if the other meaning were intended:

> The chairman must sit on the committee.

I promise that I shall never send you another comment about "shall".

I should think not; the correspondence has been closed for two issues. - Ed.

From Robert Venables, Charity Commission
57 Haymarket, London SW1Y 4QX

Thank you for your invitation to contribute to the Newsletter on legal drafting in the charity world. I wonder whether it would not be more interesting to know if others have any comment on what we produce. We have a standing aim of simplifying our drafting but, as a colleague has remarked, it requires confidence.

Meanwhile, may I invite possible solutions to a point on which I have been brooding for some while? Many of the Commissioners' Orders under section 29 of the Charities Act 1960 have a recital as follows:

> The Trustees of the above-mentioned charity propose to sell (hereinafter called "the transaction") the land specified in the Schedule hereto and belonging to the charity.

The recital sometimes goes further to specify to whom and at what price. Clearly this phraseology is not elegant, but where does one put the defining parenthesis so that it makes sense and remains accurate?

Members may be amused by the following horror which I found recently at the end of another Order by the Commissioners. I have changed the actual name (but not the spiritual status) and would point out that the wording is required by Order 45 rule 7(6) of the Supreme Court Rules:

> Note: If you the within-named V.E.N., otherwise known as Sister M.J., otherwise known as Sister J.N., neglect to obey this Order by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

If there are opera lovers in the house, perhaps they will be reminded of "the Carmelites", at the end of which no less than 18 nuns go to the guillotine - off stage!

From John Price FCA
The Old Vicarage, Poulton, near Cirencester, Gloucester GL7 5HU

I am glad to see in the Newsletter a reference to plain English penetrating the offices of the parliamentary draftsmen. I cannot say I have noticed this in relation to VAT legislation (my own field) but I am glad that you see improvements.

Several years ago, I became so angry at what I regarded as the poor standard that I redrafted several clauses of a Finance Act. After much prodding, I was at last referred to the Chief Parliamentary Draftsman, from whom a response was eventually obtained. This was so pompous and condescending (a mere accountant daring to criticise!) that I gave up.

From John Walton
Warwick District Council, Town Hall, Leamington Spa CV32 4AT

I managed to say a few words about CLARITY at last Friday's meeting of the National Executive of The Law Society Local Government Group. They were quite interested and agreed to CLARITY being given a plug in the next Executive Newsletter, which goes out to all local government members of The Law Society. Let's hope that will bring in a few more recruits.

A suggestion made by one member of the

Executive was that there might be scope for a local government group within CLARITY. I'm not sure how many local government employees now feature on the membership list but it may well be that the specialist needs of certain members could be catered for by groups based on specialism rather than geographical location. I am hesitant to suggest a local government group through the Newsletter as I feel that that would imply a willingness to organise such a group. In all honesty that is not something I feel I could take on with my present commitments. But perhaps the next Newsletter could include an invitation to local government lawyers and others to set up specialist groups through the correspondence columns.

There is already increasing co-operation between individual members on a casual basis but the formation of such groups should help spread this wider. If anyone is interested in setting up a special interest group, please write to the Newsletter, not (unless they have an exceptionally thick skin) John Walton.

From Harry Eaglesoup
St Clement, Imber Grove, Esher, Surrey

CLARITY should be ashamed of itself! The phrase "A movement for the simplification of legal English", which for 6 years has appeared on the banner, should read "A movement to simplify legal English".

This flash of insight came to me the day after I read Professor Dick Wydick's book "Plain English for Lawyers" (Carolina Academic Press). He warns against "nominalisations", the expansion of verbs into noun phrases. This is a classic example.

From Darryl Myers
PO Box 472, Grand Cayman, Cayman Islands, British West Indies

The style of drafting advocated by CLARITY is not used and is virtually non-existent in the Cayman Islands. Most of the documentation seems to follow the style and language used in Butterworth's or other precedent books. I try when producing my own documentation to draft in the present tense and the active and to avoid the more obvious archaic or unusual expressions. I seldom meet resistance, although I cannot persuade one of my partners that a pronoun is preferable to "the same"!

The Cayman Islands Law School does not offer a course on drafting.

From Malcolm Herman
11 Ibn Ezra Street, Jerusalem 91078

These are my brief thoughts on the linguistic style of Israeli lawyers.

There is a great difference between the spoken and the written language. The general day-to-day contacts between lawyers are usually extremely informal - sometimes frighteningly so. Language is straightforward and direct.

Because Israel is a young country, it has been able to adopt a modern judicial system with a unified profession. Procedures tend to be rather lax. Judges do not wear wigs. Gowns are only worn in the higher courts. The Magistrates Court is particularly informal.

Israel does not have a class system as exists in England and (perhaps as a result of the political situation) there is a tendency to admire positive, aggressive language rather than polite and mannered conversation.

The written language is completely different. Hebrew legal literature - especially academic literature - tends to be just as ponderous as its English counterpart. There is frequent use of ancient Aramaic expressions and Biblical language. Furthermore, in recent years there has been a movement to revive interest in and use of traditional Jewish law as an integral part of the modern judicial system, in place of common law. Since the sources of Jewish law are principally old religious texts or Rabbinical commentaries, these references are usually incomprehensible to the lay reader.

Commonwealth notes (concluded from p 12)

There are many legal books promoting plain English drafting and the many seminars on the subject are over-subscribed. The law colleges are emphasising the need for clear drafting and are taking time to teach the mechanics. Practising lawyers and judges have adopted the style.

A couple of years ago the Board of Governors of the California Bar passed a resolution pressing the 117,000 lawyers under its jurisdiction to simplify their language. A 1987 survey by the LA Times found that appellate judges preferred PE briefs.

BOOK REVIEWS
by Justin Nelson

PRECEDENTS FOR THE CONVEYANCER
General editor: E.H. Scammell
Second general editor: J.E.Adams
Sweet & Maxwell: £160 (+ updating service)

This two-volume, looseleaf collection of precedents deals with a wide range of non-contentious work: business structures and transactions, charities, executors, leases and licences, mortgages, trusts, sale of land, wills.

It is not a CLARITY-friendly work. In his 1970 preface, Professor Scammell admitted "to being unimpressed with some recent attempts to simplify the language of legal documents". He felt that "it should be left to the lawyer, not the form, to explain the working of the form and how it gives effect to his client's intentions".

Professor Adams took a contrary view in his 1977 preface, but made it clear that the work would not be used to encourage the simplification of legal language. This attitude is evidenced in the precedents; on the whole, they are not simple, they do not use modern language and they are "dense" in layout.

This is perhaps partly because the precedents are not intended for general and frequent use; they were originally a collection of forms "of some special or unusual interest", later aiming to become "a comprehensive set of forms and precedents covering the whole range of vendor and purchaser ... and commercial activity". Although the scope of the precedents is wide, they are not comprehensive; they are still a collection of "special or unusual" forms.

On occasions, the 'right' precedent (ie: the most useful one) will be in this work. On many more occasions, the collection will be of little use. Although not stated explicitly, this must be deliberate, so the claim to comprehensiveness is a little odd.

This publication can supplement other, more comprehensive, ones, but it must only be worth buying as such a supplement: a last resort, rather than a first port of call. With John Adams (the consultant editor of Parker's Modern Conveyancing Precedents) as editor of this collection, it is disappointing that no real attempt is made to simplify the language and improve the layout. I hope that, as the forms are progressively revised, this will be corrected, so that I can recommend it more enthusiastically.

BRIGHOUSE'S PRECEDENTS OF WILLS AND LIFE TRANSFERS
E.F. and A. George
Sweet & Maxwell: £22

Despite the title, this is not simply a collection of precedents; the 27 pages of introduction contain many useful pointers to tax saving and several warnings of potential traps.

The precedents could be improved from the CLARITY point of view. They contain too many unnecessary words ("hereby", for instance) and too many archaisms ("heretofore", "thereon"); they also fail the "shall" test - using "shall" when "will" or "must" would be better.

Sample clauses I use to test the clarity of Will precedents are:

1 - appointment of a firm of solicitors as executors.

2 - trust for sale of residue.

3 - professional charging clause.

4 - attestation clause.

My views on those clauses in this work are:

1 - No such clause is included (though the appointment of a bank is).

2 - One sentence of 10 lines (8 if references to entailed interests and powers of appointment are omitted). Though straightforward for a lawyer, this is unnecessarily long and suffers from the "Liverpool policeman syndrome".

3 - Two versions are given: a long form which is capable of substantial improvement, and a short version which (if two unnecessary words are removed) is as clear as one can expect from someone not fixated

on plain English.

4 - The short form ("signed by the testator in our presence and then by us in his") is perfect; the long form is the "hereunto subscribed" version that is a favourite of non-CLARITY lawyers.

The other precedents follow similar lines, so I would award the book half marks. It is worth having for the introduction and the basic forms of the precedents, but the precedents themselves would benefit from substantial redrafting, mainly to delete superfluous words and break up over-long clauses.

LIVING TOGETHER PRECEDENTS

Jill Bowler, Jacqui Jackson and Eileen
Longbridge: 61pp
Waterlow Publishers: £49.50

This small book is designed to fill a very specific niche: it caters for couples who are living together but are unmarried - an area where trust deeds, enforceable agreements and Wills are vital, but often overlooked.

There are four sections:

1 - Living together agreements (one where beneficial ownership of the home is shared, one where one party retains all beneficial ownership, and one where the home is rented);

2 - Deeds of trust (one for jointly owned, and one for solely owned, property);

3 - Wills clauses (a very limited range);

4 - Checklists and questionnaires.

In its narrow field, the book can achieve perfection as a precedent book: it illustrates the main options available and gives specimen clauses and frameworks, but does not pretend to have a document ready-made for each occasion. It therefore leaves it to the draftsman to tailor each document to individual cases, requiring him to think, rather than encouraging him to use, unaltered, a nearly-right precedent.

The wording of individual clauses is not CLARITY perfect, but the documents as a whole are so clear, and the notes so informative, that it is easy to make the minor adjustments of wording needed to produce an excellently lucid document. This book is so useful, and so easy to use, that I can thoroughly recommend it.

SPECIMEN LETTERS FOR SOLICITORS

Robert Blackford
Longmans: £25.75

The declared purpose of this book is "to provide sample letters to enable fee earners to write adequately, and without undue burden." I'm not entirely sure exactly what market they are aimed at. Are they designed to enable inexperienced staff to write letters? If so, there is the obvious danger of inspiring over-confidence. Are they designed as a checklist for those who only occasionally venture into certain fields? Again the danger is that using the letters will create a false sense of security. Are the letters intended to show how particular legal concepts or procedures (tenancies in common, or the risks involved in not accepting a payment into court, for instance) can be explained? If so, they fail (see below), and there would be no need to include the many short, obvious letters.

All these criticisms can be illustrated by a couple of examples from the chapter on conveyancing:

The paragraph in a letter to a purchaser client recommending a survey does not really explain WHY, nor does it explain the deficiencies of a mortgagee's valuer's report.

The comparison of a joint tenancy with a tenancy in common was far too simplistic; it gave the impression that, for a married couple, a joint tenancy is "usual", without explaining how a tenancy in common might be better and/or more appropriate.

No attempt is made to explain the difference between paying a deposit to the vendor's solicitors as stakeholders and paying it to them as agents for the vendor.

The wording is more convoluted and flowery than necessary ("We should be grateful if you would..." instead of "Please..."); the specimens also make occasional use of archaisms (thereof; thereon; etc); but more noticeable is the somewhat stilted general tone.

Many letters hardly require specimens: that to a county court to enter judgment in default, for instance.

Compared to the conveyancing letters, those relating to the various forms of litigation appear

to be far more useful - though this may just reflect my relative inexperience with litigation (perhaps I am falling into one of the traps mentioned above).

Judged largely on the basis of the conveyancing, landlord & tenant, matrimonial and wills & probate letters, the specimens are unnecessary (in simple cases), insufficient (where complex concepts need explanation) or dangerous (if they give a false sense of expertise to the inexperienced). Nor is their wording a good example of clarity or precision.

In summary, I cannot recommend these letters to anyone. Better by far to know the relevant subject thoroughly and to draft a letter from scratch than to rely on these.

Perhaps CLARITY should produce some specimens to show how lawyers' letters can be clear, accurate and comprehensive.

DRAFTING RESIDENTIAL LEASES
Charles Bennett
Longman: £38.50

This book claims to be the complete guide to the drafting of residential leases.

It covers drafting as such (style, definitions, etc), the point of having or granting a lease, types of tenancy, the various parts and clauses of the lease and their effect, deposits and premiums, sureties, dealings with the reversion, and special cases (company, holiday and student lets, owner-occupier grants, etc).

It includes 17 precedents: some are complete leases, others particular clauses, all written quite clearly (although not in a style that would satisfy the more radical members of CLARITY).

I warmed to the author from the outset. Chapter 1 (on drafting) starts:

> All leases ... should be drafted so as to be comprehensible not only to lawyers, but also to the individuals who will be affected by them, ie the "lay" landlord and tenant.... The draftsman ... should adopt a style and layout and use words which the layman can readily understand."

I am pleased to be able to say that the author has following his own advice.

Although the claim of the jacket blurb is somewhat extreme, this is certainly a useful book to have if you draft residential leases or tenancy agreements; its particular merit (in my view) is that it does cover both fields. I feel it is worth its price: I have bought the copy I had on approval, anwyay.

ON WRITING WELL
William Zinsser
Harper & Row, New York, 1976

Designed mainly for writers of books and newspaper articles (though also dealing with some business writing), this book could be described as the American version of Gower's "Plain Words". It is divided into three sections: basic principles, particular uses and general approaches to writing. The first part is far too short to deal comprehensively with the subject, and is therefore no competitor to Gower. The second and third parts are interesting, but of little direct relevance to CLARITY members.

A book that is worth borrowing, but not (in my view) worth buying.

CRONER'S MODERN BUSINESS CONTRACTS
Croner Publications Ltd
£62.30 + annual service fee

This work is aimed at the businessman, not his lawyer. It gives a limited range of precedent contracts, covering:

- purchase, sale, hire, lease, etc of goods
- supply of services (including agency, employment and partnership)
- financial services
- intellectual property
- building contracts
- carriage of goods

The precedents are supported by necessarily condensed introductions, explaining some of the relevant law, and commenting on parts of the precedents. The introductions are, on the whole, admirably clear and easy to read. This cannot be said for the precedents themselves, which use legal jargon and lawyers' sentence structures more than necessary.

As a guide for the businessman when considering his lawyers draft contracts or a possible dispute with another party, this book is very worthwhile; as a lawyer's drafting tool it is of limited use.

THE ROSSCASTLE LETTING CONDITIONS

Two CLARITY members, Richard Castle and Murray Ross, have produced a set of standard letting conditions for business premises in the hope of streamlining the grant of commercial leases.

They rejected the idea of standard leases on the grounds that they have been proposed a number of times and have never caught on. Nor do they like the artificial abbreviation of documents by the use of key words defined by statute, for two reasons: subsequent reform takes parliamentary time and a knowledge of law is needed to understand the lease.

Instead, they have borrowed from conveyancing the idea of standard conditions, incorporated by reference and bound into a short form of lease (in which they are modified to the users' requirements). A specimen lease is provided.

Both authors are experienced plain English draftsmen and the conditions are promoted as written "in modern English ... free from 'legalese'".

It is true that a Rosscastle lease would be a considerable improvement on the linguistic dinosaurs which, despite regular criticism, remain the norm. Sentences are shorter and jargon is reduced; the specimen and conditions are much easier to read.

However, the result is rather disappointing; the conditions are still badly over-written. A 59-page traditional lease picked at random from my files had about 200 words on a typical page. The six closely printed pages of standard conditions contain about 12,000 words (as estimated by a sample) and the specimen lease nearly 1,000 more. Rosscastle in longer. And there is still no punctuation!

The first two sections of the conditions are headed respectively "Definitions" and "Interpretation" but there is no real distinction between them. All are definitions, although most of the "interpretations" are expressed as "including" rather than "having" the given meanings. This example of over-writing comes from the second section:

> "Conducting media" includes all drains channels sewers flues conduits ducts pipes wires cables watercourses gutters culverts soakaways and other similar transmission media and installations and all fixings louvres cowls covers and other ancillary apparatus.

This is not markedly different from what we are used to, and could have been much reduced. Why use a name as clumsy as "conducting media"? "Conduits" are defined in my Webster as "a natural or artificial channel through which something (as a fluid) is conveyed; a pipe, tube or tile for protecting electric wires or cables". If that word was used instead of "conducting media" it would be easier on the ear and the definition could be radically cut, and perhaps omitted altogether.

Drains, channels, sewers, flues, ducts, pipes, cables, watercourses, gutters, culverts and soakaways are all covered by the normal meaning of conduit. And what are the "other similar transmission media and installations" not listed? I am a bit dubious about "covers"; would they include the roof and ceilings, or would that absurdity be avoided by the eiusdem generis rule? An electric wire is arguably a conduit, since electricity flows through it.

For all this criticism, Rosscastle is a large step forward. The language is better than we are used to, although not much; more important, if the Conditions become standard, we will not need to read more than the few hundred words of the lease, and will avoid weeks of expensive negotiation about the terms. This makes life easier for the solicitor, but will it be of advantage to the clients? The Conditions are written for landlords and will help to institutionalise the unreasonably anti-tenant terms which are now so regularly imposed. It will be harder for the tenant's solicitor to argue with printed standard forms. Moreover, The Law Society's guidelines provide for a fee calculated on term and rent in such a way that in many cases only a small proportion is attributable to the time spent by the solicitor. How much of the benefit of time-saving will be passed on?

I hope these defects, imposed by commercial pressures, can be cured in a later edition. Meanwhile, I will stick to my own standard lease when acting for landlords.

"In an unusual move, he will stay at his post."

From BBC TV Nine O'Clock News, 14/3/90

COMPUTER REVIEW
by Mark Adler

MacPROOF
395 Swiss francs from
Lexpertise Linguistic Software, Chateau de Vaumarcus, CH-2028, Vaumarcus, Switzerland

This text editing program runs on the Macintosh and is, as would be expected, much clearer and easier to use than the PC-based Stylewriter [reviewed in our June 1989 issue, and see below]. (MacProof does have a sister program, PC Proof, for the other machines, but I have not tested that.) In particular, MacProof allows on-screen editing, not yet available from Stylewriter. Apart from that, it is disappointing.

The manual has some advice on style but does not provide the self-contained and quite impressive guidance of its rival. Moreover, the style of the manual is itself so poor that the whole enterprise loses credibility. For instance, the correct use of parentheses is illustrated with this example: "Cynthia (she is the woman at the window) comes from a wealthy background."

I ran each program through two texts: one was an appalling 155-word sentence from a statute, the other an example of Lord Denning at his best.

MacProof rashly and unjustly accused the learned judge of misspelling the name of a case on which he sat, and that of one of the other judges who heard it. The name of the then Master of the Rolls was unchallenged but his title was downgraded to "MR.", with a single full stop. It missed a genuine spelling mistake, planted as a test and pointlessly replaced "a - b" with "a--b"

"Landlord" was flagged as offensive, with the recommendation that "owner" or "manager" be used instead. This so surprised me that I was lured into a scatological expedition to see what other words the software forbade. I couldn't fault it on racial epithets, but it considers both "knickers" and "bum" acceptable.

More seriously, MacProof, whilst looking for passives that might be replaced, stopped at every use of the verb "to be", in any form. Stylewriter highlights passives without this irritating diversion.

Nor did MacProof bring home to the user as clearly as Stylewriter just how awful was the construction of the other example I tested. It made very few criticisms, other than regular complaints about the use of the verb to be, which in most cases had been correct.

STYLEWRITER

This computer program for improving the style of documents was favourably reviewed in issue 13.

The suppliers, Editor Software Pty Ltd of Oxford, will shortly be publishing Version 2, incorporating:

- On-screen editing;
- Improved file handling for WordPerfect and Multimate;
- A more sophisticated word-count for checking sentence length;
- Improved editing advice;
- A new over-ride facility;
- An improved file directory.

Version 2 will be supplied for an additional £10 to anyone buying Stylewriter this year.

Meanwhile, a 20-minute demonstration disc has been produced for those who want to look at the program before they buy it.

Editor Software's telephone number is:

0453 548409

Thanks to Miss R. Rungsang, Tilleke & Gibbons, Bangkok, for sending a press cutting from a Washington newspaper:

"In the world uncovered by Professor William Lutz, workers are not 'laid off'. Fired employees are 'dehired', 'non-retained' or 'released'."

In his book "Doublespeak", Lutz says: Words need not be convoluted to be doublespeak. "Helps fight the symptoms of dandruff" doesn't tell us how much it helps, or whether the fight is successful; nor does it cure the dandruff.

PRECEDENT LIBRARY

Change of policy: The committee decided at its recent meeting to vet the precedents, the new ones as they come in and old ones as soon as can be arranged. Each precedent will be considered by two people, neither of whom would be the original author. They will then resubmit it to the author for approval of any changes. The finally agreed form will be held anonymously. This will not affect the disclaimer below: documents will be "offered", not recommended. We have not yet had time to put this into effect but hope to make substantial progress in the coming quarter.

Conveyancing Protocol: We have withdrawn some items which are no longer needed.

The speciment notice of assignment was amongst the papers without a name. Apologies to the author for his or her enforced anonymity.

Disclaimer: The precedents are volunteered by members and by CLARITY, which is uninsured; neither receives payment. Messrs Elliotts keep and distribute the precedents at a loss as a favour to us. The documents are offered as examples of the plain English drafting style and it is for those using them to satisfy themselves that they fill the requirements of their clients. No liability can be accepted for any defects.

Copies can be obtained, by members only, by sending s.a.e. and payment in favour of her firm to Katharine Mellor at Centurion House, Deansgate, Manchester M3 3WT (DX 14346 Manchester 1).

Further contributions would be welcome.

The current list is:

Agency agreement	Katharine Mellor	£1.35
Commercial lease	Justin Nelson	£1.80
Commercial lease	Mark Adler	.60
Computer software licence	Justin Nelson	.60
Contracts for sale of house	Justin Nelson	.....
Registered		.30
Unregistered		.30
Contracts for sale of business		.....
Registered land		.60
Unregistered land		.60
Divorce petition	Mark Adler	.15
Enquiries before contract	Justin Nelson	.....
General		.75
Additional:		.....
Residential land		.15
Business goodwill		.45
Commercial land		.15
Existing leasehold		.30
Farmland		.15
Land subject to a tenancy		.45
Licensed premises		.30
New residential lease		.30
New business lease		.15
Sale under enduring power of attorney		.15
Instructions to counsel to settle pleading	Civil Team, G'ford College of Law	.15
Land Registry transfer	Mark Adler	.15
Letter to client explaining legal aid offer	Civil Team, G'ford College of Law	.30
Letter to opposition asking for interim payment	Civil Team, G'ford College of Law	.15
Notice of assignment	See headnote	.15
Partnership deed	Brian Bowcock	.90
Personal reps' advert under s.27 TA 1925	Alan Macpherson	.15
Personal reps' advert under s.27 TA 1925	Mark Adler	.15
Residential flat lease	Justin Nelson	£1.35
Requisitions on title		.30

CLARITY'S ACCOUNTS

CLARITY's financial position on 22.3.90 was:

B/f 1.4.89		£1,239.92
Income		
79 new members	£578.05	
207 renewals	£1,635.00	
Donations	£55.00	
Bank interest	£114.30	
Seminar income	£213.55	£2,595.90
		£3,835.82
Expenses		
Newsletter (4 issues)	£1,391.88	
Annual meeting (net)	£154.37	
Administration	£21.33	£1,567.58
		£2,268.24

The simplification of deeds

I wrote in the last issue (CLARITY 15 [Dec 1989] p.15) , discussing the Law of Property (Miscellaneous Provisions) Act 1989, that "Current Law" was wrong in saying that a deed transferring land may be "delivered " when the seller gives it to his solicitor to hold ready for completion.

Chris Elgey, who saw a proof of the note, thought that there was authority in "Emmet on Title" in support of "Current Law", but did not have the time to look into it before we went to press. She promised to do so for this issue, and refers to paragraphs 18.005-18.008, where there is a long and technical discussion of a rather abstruse point of law. The answer seems to appear in the third paragraph of 18.005:

> If a deed is sealed subject to the carrying out of instructions which can be revoked by the grantor it is not thereby delivered as an escrow. As there is an overriding power in the grantor to recall it, there is no delivery of it whatever.

This reflects the normal conveyancing position, in which the solicitor's instructions to complete can be revoked by the client at any time, up to the last moment.

This is a drafting journal, not a conveyancing one, so the discussion is now closed. My apologies for straying into these quicksands, and thanks to Chris Elgey for pointing out the problems.

Mark Adler

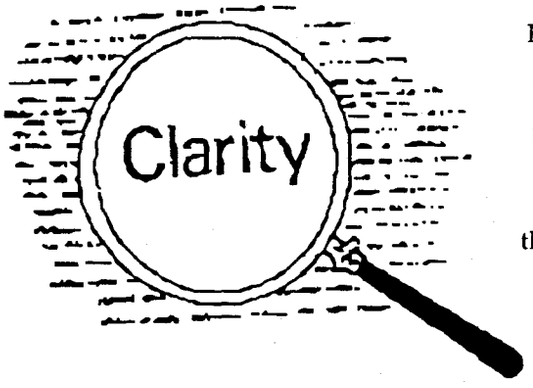
REFERRALS REGISTER

This list is open to any member willing to accept referrals of clients from other members.
It was restricted only to solicitors but others have now asked to be included. All are solicitors unless indicated.
Please write to the Newsletter if you would like to be included.

Solicitor	Area	Telephone	Field
Richard Ablitt	Croydon	01-681 0139	General civil but not debt collection
Keith Howell-Jones	Kingston	01-549 5186	Co/commercial, comm'l lit, debt collection
James Kessler, barrister	London WC2	01-242 2744	Tax, trusts and wills
Katharine Mellor	Manchester	061-834 9933	Company/commercial
Mr A.J.B.Monds	Yeovil	0935 23407	Company/commercial
Darryl Myers	Grand Cayman	809 949 0699	Company/commercial/trusts/trade marks
David Pedley	Keighley	0535 32700	General but especially conservation, public enquiries and private prosecutions
Adrian Pellman	Thames Valley	0734 883793	Matrimonial and unusual litigation
John Price FCA	Cirencester	0285 851888	VAT
Edmund Probert	Exeter	0392 411221	Commercial
Nicola Solomon	London EC4	01-353 0701	General litigation, copyright, media work
Ian Torrance	London	01-242 6154	General, but unusual litigation in particular
Messrs Wright & Bull	Milton Keynes	0525 290620	General litigation, but especially medical and nursing; conveyancing.

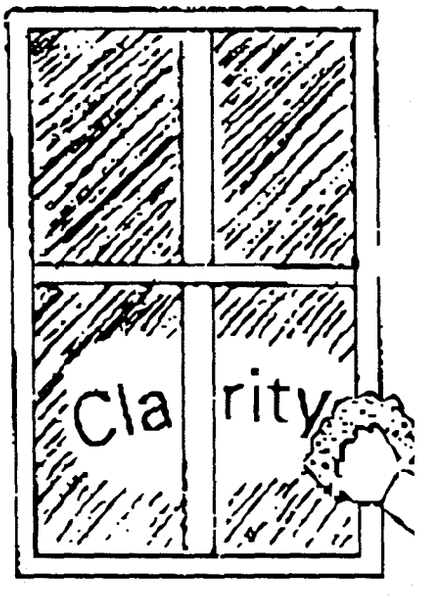
A LOGO FOR CLARITY

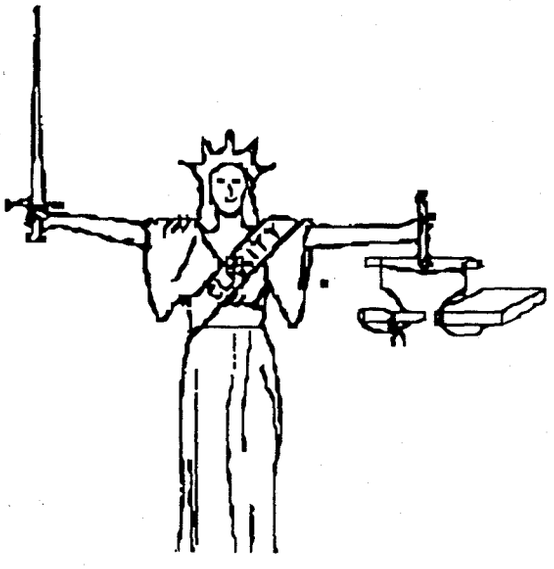
Several members have sent in ideas, which are shown below.



The magnifying glass, from the the Forms Unit of the Inland Revenue, is favourite amongst the committee. This was so similar to an earlier design from Tony Bannister that we have only reproduced one of them. (Mr Bannister's had the word "Lex" instead of "CLARITY", with the "E" under the glass and the other letters outside it.)

Also from the Forms Unit comes the "window cleaner". This is a nice idea, and looks cheerful, though it is more a cartoon than a logo.





Finally, from Harry Eaglesoup, is the figure of Justice. (The inappropriate blurring of our name is a technical problem which would be cured if this symbol were chosen. And it may be better without the ribbon round the paper.)

We would like to adopt one of these as CLARITY logo. Would anyone with an opinion please contact the Newsletter by the end of April?

WELCOME TO NEW MEMBERS

Peter Bright, solicitor, Geoffrey Stevens & Co, Plymouth
Margaret Caira, legal executive, Huttons, Wallington, Surrey
Edward Coningsby, solicitor, Croydon
Robert Coram, solicitor, Newton Abbott, Devon
Pauline Dixon, civil servant (on behalf of the Cabinet Office), London SW1
Sue Eccleston (on behalf of the Professional Standards & Development Directorate of The Law Society)
Jennifer Israel, solicitor, London N20; member of the Council of The Law Society
Paul Marsh, solicitor, Bells, Kingston, Surrey; member of the Council of The Law Society
Duke Maskell, retired English lecturer, Corbridge, Northumberland
Ian McLeod, solicitor/lecturer, Leicester
Darryl Myers, solicitor, Myers & Alberga, Grand Cayman
Lance Parker, solicitor, Charles Lucas & Marshall, Newbury
Gillian Parry, solicitor, Edgbaston, Birmingham
Maggie Rae, solicitor, Hodge Jones & Allen, London NW1
Karen Richardson (Chairwoman, Association of Women Solicitors), Travers Smith Braithwaite, London EC1
John Upton, solicitor, Warren Upton & Garside, Market Drayton
David Ward, President of The Law Society
Juprin Wong-Adamal, senior state counsel, Sabah, Malaysia

BEST WISHES
to

Francis Bennion, former parliamentary counsel, on his return to practice at the Oxford bar
Chris Elgey, on her promotion to Principal Lecturer at the College of Law
Dr Stanley Robinson of the University of Queensland, on his retirement
John Walton, on his election to the chair of the W. Midlands & Mid-Wales Branch of The Law Society's Local Government Group

DATA PROTECTION ACT 1984

Details supplied by members are kept on a word processor. They may be supplied to other members or interested non-members (although not for the purpose of mailing lists).

Please contact Justin Nelson if you object.

MEMBERSHIP LIST

The cost of distributing the membership list free to everyone is too high but copies can be obtained from Justin Nelson for 5 first class stamps and a stamped addressed envelope.

Please allow 28 days for delivery.

ADVERTISING SPACE

Until now we have offered free publicity to all as a service to members.

However, as the Newsletter has grown and the number of commercial activities mentioned has increased, this is no longer practicable.

At the committee meeting on 31st March we will consider fixing a charge for future issues.

Please contact the Newsletter for the rates.