



CLARITY

A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

No 17: June 1990

The

CLARITY SUPPER

will be held at The Law Society's Hall
113 Chancery Lane, London WC2
at 6.30pm on

Friday, 26th October 1990

at a cost of £12.50 per head

We will start congregating in the bar about 6 o'clock but if we have gone to eat by the time you arrive please ask at the front desk.

After supper, Professor Patricia Hassett will give a 10 minute talk. Professor Hassett is in England for a year or so on secondment from the University of Syracuse, in upstate New York. We also hope that one of the High Court Masters will speak on the use of plain English in litigation, but no firm arrangement has yet been made.

There will be an opportunity for discussion of any points which members would like to raise about CLARITY, and the election of the committee, for which nominations are invited. All those presently serving offer themselves for re-election.

We hope that there will be a good attendance. It is always an enjoyable occasion and a pleasure to meet other members.

INDEX

Accounts	9
Addresses	16
Advertising rates	5
Annual supper	1
Authors	2
Bits and pieces	9
Book reviews	14/15
Cabinet Office	3
Canadian notes	6/8
Carers survey	4
Committee	16
Commonwealth Conference	3
Contributors	2
Court forms	4
English news	3/4
Financial Consumers Bill (Canada)	8
Gruff Award	10
Interpretation of Documents Bill	2
Law Society conferences 1990/91	3
Letters	12/13
Linklaters & Paines seminar	11
Logo	9
Members	16
Precedent library	9
Referrals register	15
Scribes Journal of Legal Writing	2
Seminars	5/11
Solicitors Complaints Bureau	9
Solicitors Practice Rules	4
Standard lease terms (Law Society)	4
Stylewriter competition	13
Subscriptions	1

The press date for the
SEPTEMBER 1990 ISSUE

is September 1st

SUBSCRIPTIONS

CLARITY's new financial year begins on
1st September
and a new subscription form
should be enclosed,
unless you have already paid in 1990.

**Please do pay promptly
to keep us solvent and
reduce administrative waste.**

CLARITY MAGAZINE

Thanks to the quantity and quality of contributions from members, we have been expanding away from the "Newsletter" style into a magazine proper.

The last issue was 32 pages, almost twice the length of the one before, which had itself been a record length. However, this was getting out of control. It is clear from the financial report on page 9 that we cannot support the costs of production and distribution at that level, not to mention the wear and tear on the editor in the week before printing.

The problem was discussed at length at the March committee meeting. Two members thought we should only publish 8 pages each quarter, because a short journal would be read on arrival, whereas a longer one would be put aside for a convenient moment and neglected. The other three members thought it better to publish more, provided the quality justified it. Neither faction persuaded the other, but a compromise proposal, subject to reactions from the members at large, is that we try to produce a regular 16 pages.

To help reduce the length, we will no longer print repetitive information in each issue. Details about the committee, the referrals registers and the precedent library will be kept at Bridge Road and published in full from time to time, according to space and demand. However, additions to the lists will be published quarterly.

CLARITY AUTHORS

The CLARITY stand at The Law Society's conference in October will have a display of books on plain English legal drafting. Please see the details on page 2.

Meanwhile, if you have written a book of interest to CLARITY members and would like it reviewed in a future issue, please contact Justin Nelson (05806 2251).

Finally, we are compiling a list of books on drafting written by CLARITY members. It will be kept at the Newsletter office and published from time to time. Please send details.

INTERPRETATION OF DOCUMENTS BILL

Thanks to all those who have contributed to the drafting of the Bill over the last 15 months.

We are now setting about its promotion. Although we do not expect it to become law, we do hope that it will help to change the climate.

The Prime Minister, Lord Chancellor and Civil

Service Minister all favour plain legal English.

SCRIBES JOURNAL OF LEGAL WRITING

As we go to press, news of this new journal has arrived from America, with a copy of an article by Richard Wydick from the first issue.

Professor Wydick's article, "Should Lawyers Punctuate?", demolishes the objections to legal punctuation with a lively historical review, providing background which will be unfamiliar to almost all practitioners.

Volume 1 also contains articles by seven other authors, as well as "student essays, notes and queries, book reviews and notices".

The SJLW will be published annually (at least for the time being), as a public service, by West Publishing Company. We are asking for fuller details for the next issue, to help those who may want to obtain copies.

Despite its improbable name, the SJLW "seeks to promote better writing within the legal community"; it aims "to bring together as writers and readers all who have a professional interest in improving legal writing, whether in the courthouse, the law office, the publishing house, or the law school". It is edited by Professor Brian Garner of the University of Texas.

Professor Garner is also involved, with Oxford University Press, in the compilation of "Modern English Legal Usage". This work is expected to take another 10 years to complete.

ABOUT OUR CONTRIBUTORS: David Elliott

David Elliott first qualified as a solicitor in England before moving to Canada (where he is now a solicitor, barrister and chartered arbitrator) in 1968. There he stumbled into a job with the Alberta Legislative Counsel Office (equivalent to the UK Parliamentary Counsel Office). In 1978 he set up by himself in private practice, limiting his work to legislative drafting - the first Canadian office outside government to offer a legislative drafting service. His practice is now limited to drafting and labour arbitration work.

He recently returned to Canada from New Zealand, where he had spent a little more than 18 months working for the Environment Ministry on new environmental legislation, and for the New Zealand Law Commission. Whilst there he met Robert Eagleson and, hopefully (he says), his writing will never be the same again.

He prepared the first draft of the Financial Consumers Bill, extracts of which are quoted on p. 8.

**Commonwealth Justice Ministers
consider plain English**

We have been told that CLARITY's paper was well received and that the need for plain English legal drafting was accepted. The Commonwealth Secretariat expressed "warm gratitude" for our assistance.

The Ministers accepted that legal documents and legislation should be as simple and as intelligible as their contents allowed. They noted that in several countries lawyers and legislative drafters had been justly criticised for using verbose, unintelligible or arcane language. Non-lawyer parliamentarians could also be handicapped as law-makers by incomprehensible Bills. There were examples before the meeting of how documents such as wills could be reduced in length and made more easily understandable without any apparent loss of precision. Ministers learned too how the need to translate legislation into another language could provide a stimulus for simplicity. Readability, and so intelligibility, could also be enhanced by improving the design and layout of statutes.

The meeting acknowledged that in some technical areas plain language might be unattainable. However, in the areas of the law which touched directly on people in their daily lives - whether statute law or legal documents - it was a challenge to governments and to the practising profession to render these meaningful to the lay person.

All the papers are to be published as a book later in the year by the Commonwealth Secretariat.

The Cabinet Office

The April issue of FUN News, the newsletter of the Forms Unit Network of the Cabinet Office, reported our recent meeting and that they had joined CLARITY. It promised to pass on points of interest about CLARITY in the future. Meanwhile, we have written a short article for the next issue.

**The Law Society Conference 1990
Glasgow, 17th-21st October**

We have taken a stand at the conference at a fee of £440, to which must be added the cost of furnishing it. We will be almost directly opposite

the lifts and the registration desk, on the way to the refreshment area.

The hours will be:

Thursday 18th October 9.30am - 6.30pm

Friday 19th October 9.30am - 5.00pm.

There should, if possible, be two people on the stand at any time - not only to cope with the rush but so that each can take an occasional break. We do not yet know which committee members will be able to take time off work to be there but at least one will be available on both days. Any member who would like to help should please contact the editor. Unfortunately, CLARITY cannot afford to reimburse the expenses, although some contribution may be negotiated.

The stand will be furnished with back issues of the Newsletter and with books and other materials on plain English drafting. We hope that most will have been written by CLARITY members. If you would like your own work to be included, please write as soon as possible, with one copy on loan, to the editor. Those accepted - and the committee must reserve the right to turn down unsuitable offerings - will be displayed for sale.

For a negotiable contribution to expenses, we will handle sales, either "over the counter" or by passing on orders. Unfortunately, the organisers have not arranged insurance cover, so we cannot accept responsibility for loss or damage; delivery of the books (and return if necessary) must be arranged by the author or publisher.

CLARITY member Tamara Gorieli is addressing the conference on behalf of the National Consumer Council, by whom she is employed. She will speak on "What the Public Wants" in one of the 4pm sessions on Thursday, the 18th.

The Law Society Conference 1991

We have submitted proposals to Paul Marsh for a CLARITY seminar in Brussels and are waiting to hear the outcome.

Mr Marsh, himself a member of CLARITY, is The Law Society Council Member responsible for the conference.

Law Society to publish book on plain English drafting

Mark Adler has written a book on plain English drafting, aimed at both branches of the profession. The Law Society is to publish it, if possible before the Glasgow conference.

Solicitors' practice rules

The Professional Ethics Division of The Law Society has thanked us for the submission reported in the last issue. Our views are to be put before the Council.

Meanwhile, we have been asked to vet the specimen "letters to clients" to be annexed to another proposed new rule. If this rule is passed, solicitors will have to write to clients on receipt of instructions setting out their terms of business.

Prescribed and recommended court forms

The Lord Chancellor's Department has put us on its consultation list for future revisions of court forms.

The Law Society's standard lease terms

Trevor Aldridge is preparing the first draft of The Law Society's proposed standard lease conditions.

Several other CLARITY members and supporters are involved in the project.

The Association of Local Government Secretaries

The editor of the Association's magazine has commissioned an article from CLARITY and John Walton has kindly agreed to write it.

Eagle Star Insurance switches to plain English

Eagle Star has become the first insurance company to receive the Plain English Campaign's Crystal Award, for the clarity of its "Tradestar" Business and Shops policies. More commercial policies are planned, for small to medium businesses, all in plain English.

It is interesting that this repeats the pattern in Australia and America, where insurance companies led other fields of business towards plain language drafting.

CLARITY hopes to establish contacts with the legal departments of this and other major businesses at the Plain English conference in July.

Opportunities for Women

This is a charity which has been a friend of CLARITY for some time, and has asked us to draw attention to its recent survey about carers at work.

Solicitors have to exercise considerable care in looking after their clients' interests. But they overlook problems closer to home.

The National Carers Survey shows that most adults have caring responsibilities. Three-quarters of those in work expect to have such responsibilities within the next ten years. Increased life expectancy will mean that many people, especially in the 40-50 age group, will have to look after elderly parents or other relatives.

This is a major issue, not only because of its relevance for 'women returners', needed by the legal profession, but for 'carer leavers' - those who have to stop because no-one helps them cope. Over a third of those in the survey who were concerned about how they would manage thought they would be forced to give up work.

Policy changes are essential. The expectations and rights of carers must be reviewed.

This affects solicitors personally. One male solicitor, for example, had to give up work to care for his elderly mother. It should be of great interest to the profession to find out exactly what impact these responsibilities will have on their futures.

The full report 'Care to Work', and a short handbook, 'Carers at Work', are available from:

The National Carers Survey
Centre Two
Ossian Mews
London N4 4DX
Tel. 081-348 9458

ADVERTISEMENT

WHEREAS

- the Clear English Masterclass is probably the best in-house writing skills course; and
- lawyers give glowing reports of it; and
- the cost is remarkably reasonable

NOW THEREFORE

you should call Martin Cutts on 0663 732957 for more details and a brochure, or write to:

Words at Work
69 Bings Road, Whaley Bridge
Stockport SK12 7ND

SEMINARS

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

Several CLARITY members from around the world will be speaking at Maddingley to a largely commercial audience. A report will appear in the next issue.

Clarity and Leicester Polytechnic Coventry, 8th June

Unfortunately, this seminar was cancelled for lack of applications.

Lowe & Gordon Commercial Leases: Drafting, Negotiating and Amending On tour

This was an informative and lively course hospitably hosted by the avuncular Bob Lowe. If this sounds like the introduction to a music hall act, his own genial and bewhiskered style is responsible. This is not a criticism: an enjoyable atmosphere and a peppering of wit are great aids to attention and learning.

The speakers are Philip Freedman, Murray Ross and surveyor Eric Shapiro, who work well as a team. Although the emphasis of the course was on law rather than style (and the specimen lease was for practical reasons traditional), the panel recommended plain English, and say that the essentials of a lease are that it should be accessible and clear. In particular, Mr Shapiro pleaded on behalf of the surveyors who have to struggle with the jargon imposed by lawyers, and suggestions for improvement were welcomed.

There was plenty of meat on the bones, and I was depressed by the extent to which I had been brought face to face with my ignorance of a field in which I practice regularly. One day is nowhere near enough to cover the subject thoroughly, and I came away worried about the unmentioned traps of which the speakers had not had time to warn us. But the printed materials are thorough, and I will study them tomorrow ...

This seminar will not be given again until next year, but Lowe & Gordon will be staging several related ones around the country in September and October. Judging by the speakers (Trevor Aldridge, Murray Ross and Eric Shapiro),

"Repairs and Dilapidations" should be of particular interest.

Training Tomorrow's Solicitors National Consumer Council Seminar

In January The Law Society published "Training Tomorrow's Solicitors", a consultation paper seeking views on proposed changes in legal education. It has now approved in principle a recommendation that the Finals Course should be replaced (probably in autumn 1993) with a Legal Practice Course. This will include greater emphasis on the practical skills solicitors need, but full details have not yet been worked out. There will also be a new course, called a Professional Skills Course, which all trainee solicitors will have to undertake. This will replace the existing Accounts Course in Articles and the Category A Continuing Education Courses undertaken in the first two years after admission.

The National Consumer Council are organising a seminar on legal education. They want to put forward the consumer's view about how solicitors should be trained. They have asked CLARITY to send a representative to present the case for training in the use of plain English. The seminar is planned for early September and Chris Elgey will represent CLARITY.

ADVERTISING RATES

As an experiment, and to help defray production costs, we are accepting a few advertisements for goods and services of interest to members.

The maximum size will be half a column.

Cost is negotiable, depending on the size, the amount and complexity of the copy, and the value to the advertiser. However, as a guide, it is likely to be in the range of £15 to £30, with extra for graphics.

Please send copy to the editor at least one week before the press date, and allow a few days for a quotation.

CANADIAN NOTES

by
David Elliott

An active three months. The Saskatchewan Government has announced a plain language policy for written communication.

A Bill introduced in Alberta's Legislative Assembly, the Financial Consumers Bill, requires certain financial documents to be written in understandable language and form.

Another interesting facet to the Bill is that a different format was used - the first significant format change ever in Alberta. Touted as "experimental", the margin lines are revised and section headings used instead of marginal notes. All designed to help "readability". A proposal to use questions for some headings and an off-white paper colour was rejected - it was going a bit too far

Alberta's Consumer and Corporate Affairs Department plans on hiring a plain language writer to help organisations rewrite commonly used forms. The first project is the standard conditions of sale used by real estate people.

My paper on plain language worldwide was well

received at the AGM of the Alberta branch of the Consumers Association of Canada.

The Alberta Law Reform Institute reports interest in preparing drafts of legislation in plain language. It now regularly hires a writer/editor for its final reports - and it shows.

Other trends in Alberta include the use of "must" instead of "shall" in four Bills introduced in this sitting of the Legislative Assembly. Not conversion but at least a start.

A paper on "Writing Collective Agreements in Plain Language" was presented to the 8th Annual Labour Arbitration Conference at the University of Calgary at the end of May. The first paper of its kind in Canada.

In Ontario the Law Society of Upper Canada has published a book, "Better Writing for Lawyers" by Timothy Perrin.

The next three months look to be just as active and interesting.

LEGISLATING PLAIN LANGUAGE

by
David Elliott

First thoughts

Forcing people to write documents in plain English is not immediately attractive. It smacks of cost, red tape and authoritarianism and interferes with freedom of contract.

Whilst most people agree that plain language is a nice idea few agree on what it is, whether it can be achieved or whether it can be legislated effectively.

Alberta tests the water

Alberta's Financial Consumers Bill is the first government sponsored bill in the Commonwealth to stipulate plain language for financial transactions.

It does so with a curious choice of documents: life

insurance policies, mutual fund contracts, and various savings and cheque accounts offered by financial institutions.

The main focus of the Bill is on improving the information available to consumers before they make certain kinds of supposedly secure investments. Part of the information thrust is to require named financial documents and application forms to be written "in readily understandable language and form".

US plain language laws the model

The Bill's plain language sections are modelled largely on US plain language laws, with a few wrinkles.

Enforcement can be by:

Continued on next page

- prosecution;
- an order made by a Director appointed under the Act that language or form be improved (and prosecution for breach of the order);
- arbitration of claims by individuals for consequential loss;
- civil action by consumer organisations for a declaration that the Act has been contravened, an injunction and costs (designed to be embarrassing but not punitive).

Proof that reasonable efforts were made to comply is a good defence.

Regulations can be made defining "readily understandable language and form" but none are anticipated unless the subjective approach fails.

The Act cannot be excluded by agreement but failure to comply does not, by itself, invalidate the agreement.

Why should the legislature intervene in private contracts?

First, because of the efficiency and economy that plain language brings to business, as established by studies in a variety of jurisdictions around the world.

Second, because failure wastes money and clogs the courts to the detriment of society.

Third, fairness. Justice demands every reasonable effort to make the law understandable whether the law is made by legislation or by two contracting parties.

Fourth, to force the profession which has exclusive rights over the practice of the law to improve itself. There are notable exceptions, but for the most part lawyers do not think of the need for clarity; they claim to seek precision but in practices create uncertainty and obscure what could be clear. For centuries the profession has been reluctant or unable to change its writing style and habits. Time has run out. The patience of many consumers is exhausted.

If the guardians of the words in consumer contracts are unwilling to change they must be persuaded. Nothing is more persuasive to lawyers than the law and it seems that legislation is needed to give any real impetus to the change.

Not that plain language will prevent all disputes. It

will not. But experience has shown that it reduces the number of disputes and concentrates those that remain on the substantive issues, diverting attention from the tortuous dissection of language.

US experience

None of the dire consequences or disasters predicted for US plain language laws occurred. There was no mass confusion, nor an endless stream of litigation, nor drastic penalties, nor uncertainty, nor inability to enforce contracts written plainly. Compliance rates, at least initially, appeared good. Rosemary Moukad, writing in 1981 about New York's plain English law, commented:

The flaws of the plain English law are overshadowed by its triumphs. Its primary goal has already been achieved by virtue of overwhelming compliance. The most important function of the law is its recognition of a principle: plain language is desirable and achievable in consumer contracts.

Reed Dickerson, a leading writer on legal drafting in the United States, says that without a collective jolt the legal profession as a whole is unlikely to institute effective action to improve the clarity or readability of legal instruments. He is presently trying to have a Clear Consumer Information Act passed in Indiana.

Professor David Mellinkoff, writing in "Legal Writing: Sense and Nonsense" [West Publishing Co, St Paul, Minnesota, 1987] said at page 218:

It would be better that legal writers mend their ways on their own; they can. But without the goad of some legislation they won't. They need some encouragement, and not only on "consumer" agreements. The "plain language" movement may speed the disposal of much of the trash in the language of the law.

In an article in the New York Times [Friday, 15th September 1989], Sharon Stein suggested that the growing move by law firms in the United States to hire linguistics and English experts was, at least in part, attributable to plain English laws.

A Canadian trend?

It remains to be seen how well the Alberta plain language law will work, or even if it is enacted. Initial reaction has been muted or mildly favourable.

Bob Dick, the leading Canadian writer on legal drafting, commented in a recent letter to me that

he "may have changed his views" about the need to legislate plain language. 10 years ago in an article on the New York plain English law he did not favour a similar approach in Canada.

Having done the policy research and the first

draft of the plain language sections, I'm confident those sections can work. Although I would have much preferred a wider range of documents being subject to the law and a Canada-wide approach, this is a start. Other Provinces may well pick up the challenge. Hopefully the legal profession will

FINANCIAL CONSUMERS BILL

(extracts)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Duty to use plain language

- 13 (1)** The following documents must be in readily understandable language and form:
- (a) application forms for consumers who wish to invest in named financial products* ;
 - (b) agreements setting out the terms and conditions of named financial products;
 - (c) any information provided to a consumer* under section 10(2) or 11(1);
 - (d) any other documents described in regulations*.
- (2) Subsection (1) does not apply to words or forms of documents that are required by law.
- (3) Proof that reasonable efforts have been made to comply and maintain compliance with sub-section (1) is a complete defence
- (a) in a prosecution under subsection (1), or
 - (b) in a dispute about whether subsection (1) has been complied with.

Terminology

- 15** The Lieutenant Governor in Council may make regulations
- (a) defining words that can be used by suppliers*, agents* and financial planners* in relation to financial planning or named financial products;
 - (b) placing restrictions on the use of those words when they relate to financial planning or named financial products.

* Defined in a definition section at the beginning.

CLARITY'S ACCOUNTS

CLARITY's financial position on 26.6.90 was (subject to minor corrections):

B/f 22.3.90		£2,268.24	
Income			
15 new members	£120.00		
Donations	£1.00		
Bank interest	£61.68		
Leaflet distribution	£20.00	£202.68	
			£2,470.92
Expenses			
Newsletter (1 issue)	£673.19		
Law Society conference deposit (£253 still due)	£253.00		
Administration	£9.45	£935.64	
			£1,535.28

PRECEDENT LIBRARY

Pressure of other work has led to the neglect of the precedent library in the last three months but we hope to make improvements before September.

Meanwhile, David Preston has claimed authorship of the notice to assign, and we apologise for not attributing it to him.

For the reasons given on page 2, the catalogue will not be printed in full each quarter. Members who need details and do not have a copy of the list should send a stamped addressed (or DX) envelope to the Bridge Road office.

LOGO

No-one wrote in to express a preference for any of the proposed logos shown in the last issue, but most of the committee preferred the one from Ian Paulson of the Forms and Stationery Department of the Inland Revenue. We have adapted it slightly. Our thanks to him, and to Lee Beck for helping with the artwork.

However, one member of the committee preferred our old banner, with no logo. Members' views

would be welcomed before we commit ourselves to the new design.

SOLICITORS COMPLAINTS BUREAU

In an article in The Law Society's Gazette (25th April 1990), Mavis Fairhurst of the SCB wrote:

Communication is often a key to a complaint, which on examination very often reveals a misunderstanding or no understanding at all. Who can blame the octogenarian's confusion when she saw a substantial part of a compensation claim clawed back by legal aid? The file revealed that the solicitor had explained the situation thus: "I am afraid that the Law Society's statutory charge will attach to part of this money but given the defendant's alleged impecuniosity I think it unlikely that you will obtain more if we proceed."

[This extract is printed with the kind permission of Mavis Fairhurst and of the LSG.]

AT ALL TIMES

This expression is common in leases but is usually unnecessary, since (for example) an obligation to keep premises in repair is obviously an obligation to do so at all times (by definition of "keep").

Stroud's Judicial Dictionary (4th edition) has only one, laconic entry against this phrase:

A covenant in a mining lease to work the mine "at all times", is frequently incapable of literal performance.

THE WORDING OF AFFIDAVITS

Since time immemorial, affidavits have begun:

I, Alfie David of 13 Broom Cupboard Close, Harpic, Hertfordshire, solicitor, make oath and say as follows:

On a recent visit to the library I tried to track down the authority but could not do so before my time ran out. However, I did pin down the source of the wording of affirmations. Section 6 of the Oaths Act 1978 prescribes the form as:

I, Effie Mation of Dawn End in Somnia, solicitor, do solemnly and sincerely affirm:

The universal but otiose "as follows" is omitted. Does the same apply to affidavits?

**THE GRUFF AWARD
for
Dog's Breakfast of the Month**

So far as the amount of money is concerned, we could, of course, canvass in some detail the arguments here that we think, at this stage, suffice to say, the right approach, and we hope in saying this it is from both parties' point of view, that your client should, in effect, agree to make available to our client a sum of 34% of the net proceeds of sale. The significance of this figure is that it is likely, in the present market, that an offer will be accepted in the region of £150,000 which, on that figure, gives a sum of £51,000. However, clearly to protect our client's interest, there should be a minimum figure and we would suggest that this is £50,000. This would mean that if there is an increase in the property market and, from reading the financial commentators, there seems to be some debate as to whether there will be or will not be, our clients are protected without, in fact, materially affecting your client's position. We think that it is agreed that it is unlikely the property market will decrease any more than at present and the purpose of putting our effective long-stop on it is to ensure that the property is not sold at an under-value. We do not make this point in order to be contentious, but to simply show, as we are sure you are aware, the way our minds are working in terms of advising our client.

Sentence length: Average sentence length should be in the region of 15 to 25 words; more than 25 is long and 40 is about the limit for any sentence. Longer sentences should be interspersed with shorter ones. This piece has 6 sentences, of lengths 69, 34, 21, 49, 41 and 34 respectively.

Unnecessary words: Several sentences are unnecessarily extended, and their flow broken, by words and phrases which contribute nothing:

Of course	At this stage	Suffice to say
In saying this	In effect	A sum of
In fact	Clearly	Materially

Discursive phrases: Some phrases contribute to the sense, but are unnecessarily long and clumsy:

So far as the amount of money is concerned
 We could ... canvass in some detail
 Your client should ... agree to make available
 And from reading the financial commentators, there seems to be some
 debate as to whether there will be or there will not be
 We think it is agreed that
 The purpose of putting our effective long-stop on it is to

Illogical phrases: Others make poor sense, either because words were omitted in error or used wrongly, or because of a more fundamental defect:

It is from both parties' point of view, that your client should ... agree to
 make available ...
 The significance of this figure is ...
 It is unlikely that the property market will decrease any more than at
 present
 But to simply show, as we are sure you are aware, the way our minds are
 working in terms of advising our client.

How could this passage have been better written?

It seems likely that the house will fetch about £150,000. We suggest as a compromise that your client pay ours 34% of the net proceeds of sale, or £50,000, whichever is greater.

It is not clear from the original why £50,000 is a reasonable minimum, nor why there is a danger of a sale at an undervalue. It seems rash to agree large settlement figures without a valuation.

CLEAR LEGAL ENGLISH IN THE PROPERTY DEPARTMENT OF LINKLATERS & PAINES

by

Alexandra Marks and Chris Elgey

In April we led a lively discussion among members of the Property Department at Linklaters & Paines on clear legal English. We told them about CLARITY and discussed some basic drafting principles, using examples from standard clauses in leases and contracts. These included:

Not using two words where one will do,

e.g. *refuse and rubbish,*
cease and determine,
well and substantially,
reparation and repair;

Not using unnecessary words,

e.g. *hereby, hereinafter, hereto, said, the same,*
whereas;

Using a short word if possible,

e.g. *event* instead of *eventuality,*
use instead of *utilise,*
trying instead of *endeavouring;*

Not using a phrase when a word will do,

e.g. *in the event of for if,*
it shall be lawful for the landlord to for
the landlord may,
for prior to for before.

Then we bravely put forward revised versions of some standard clauses.

e.g. Payment after date of review

(Standard version: 248 words)

In the event that by the Relevant Date of Review the amount of the Revised Rent has not been agreed between the parties hereto or determined as aforesaid then in respect of the period of time (hereinafter called "the Interval") beginning with the Relevant Date of Review and ending on the Quarter Day immediately following the date upon which the amount of the Revised Rent is agreed or determined as aforesaid (which date is hereinafter called "the Late Payment Date") the Tenant shall continue to pay to the Landlord in manner hereinbefore provided the FIRST rent at the yearly rate thereof payable immediately before the Relevant Date of Review Provided that on the Late Payment Date there shall be due as a debt payable by the Tenant to the Landlord as arrears of rent an

amount (hereinafter called "the Balancing Payment") equal to the difference between what should have been paid on each Quarter Day had the Revised Rent been determined by the Relevant Date of Review and the amount actually paid during the Interval and apportioned on a daily basis in respect of the Interval together with by way of additional rent interest at the Prescribed Rate on such amount such interest being payable for the period on and from the Quarter Day upon which each instalment would have been due had the Revised Rent been determined up to the date of payment of the Balancing Payment.

(Our suggested revision: 82 words)

1. Until the Market Rent has been established, the Tenant must continue to pay the Old Rent.
2. On the quarter day immediately after the Market Rent has been established, the Tenant must pay to the Landlord:
 - 2.1 any difference between the rent actually paid and what would have been payable had the Market Rent been established before the Relevant Date of Review; and
 - 2.2 interest at the Prescribed Rate on such difference until payment since the quarter day when each instalment would have been payable.

(Capitals show an expression previously defined.)

We also discussed part of a standard insurance clause. Do you need to say *rebuilding or re-instatement*? Does not *re-instatement* include *rebuilding*? Do you need to talk about premises being *destroyed and damaged*? If premises are destroyed they will certainly be damaged. We never resolved this debate!

The discussion was fun and we think well received. About 50 (from articled clerks to senior partners) came voluntarily and (to our surprise) stayed for the whole session. We did not expect a mass conversion to CLARITY but we hope we have made new friends and influenced people.

LETTERS

**From Ronald Powell
Office of the Solicitor
DSS and Dept of Health
48 Carey Street, London WC2A 2LS**

Newsletter no.16 contained ideas for a logo for CLARITY. If you want a motto, how about the following, which I came across recently in "Flaubert's Parrot" by Julian Barnes:

Mystification is simple: clarity is the hardest thing of all.

I disagree. Clear writing is a skill, but not a difficult one. On the other hand, a lawyer must take great care to ensure that obscure text means what is intended. Didn't the Parrot book win a prize for clever novels?

**From David Pedley
36 Main Street, Cross Hills, Keighley, W Yorks**

The Charity Commission ask for drafting examples. I list below sample phrases from just one recent trust deed, comparing my original draft with the amendments required by the Commissioners:

... the acquisition of land.

... in furtherance whereof but not otherwise the Trustees may acquire ... land. *

The trustees may invest money

The trustees may invest the trust fund or any part thereof in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wherever situate as the Trustees in their absolute discretion think fit

This constitution (except Clause 2) may be amended by the Trustees ... in order the better to facilitate the achievement of the objects of the Trust

* The arrangement has been changed so the translation does not quite match.

The Trustees ... may by any deed or deeds alter or amend the provisions of this deed (other than Clause 2 hereof) to such an extent (but to such extent only) as may in the opinion of the Trustees be requisite for the purpose of promoting the better administration of the Trust property or the more effectual execution of the said objects

If it appears to them that the objects of the Trust will no longer be furthered by the existence of the Trust, they shall wind up the affairs of the Trust

If it appears to the Trustees that by reason of changes or prospective changes in the law or in social conditions or otherwise the said objects no longer provide a suitable and effective method of using the Trust property to revoke the trusts hereof

Robert Venables replies from the Charity Commission:

Thank you for showing me Mr Pedley's letter.

On example 3 I can only say I am sorry we have not done better. If he will tell me the name of the charity concerned I will try to discover the source of the wording and see what we can do about having it changed. We are in fact working on model deeds and have the language point very much in mind.

Although I accept that examples 1 and 2 are not elegant, no.1 is not synonymous with the alternative proposed: it restricts the purpose of the investment. That may not be important, but without knowing the context I can not tell.

Number 2 is more serious. The Commissioners are very concerned about the number of charities where trustees do not take advantage of the limited powers of investment given by the Trustee Investments Act 1961. In appropriate cases we are prepared to offer schemes conferring wider powers of investment. In this case Mr Pedley appears to be arguing against a very wide investment provision for one which would confine the trustees to the powers conferred by the Act. Unless there was good reason for that kind of restraint this would appear to be a case of allowing simplicity of language to override practical advantage.

With regard to number 4, I accept that some of our wording is otiose, but I question whether "wind up" is an appropriate expression in relation to an unincorporated body.

We are presently considering this draft for use in slightly different circumstances:

The Trustees shall consult the Commissioners if at any time they consider that the purposes of the Charity as provided for in this scheme are no longer effective or are impossible to carry out, or if in their view the property of the Charity could be put to better use if it were applied in conjunction with another charity.

This has the advantage of making it clear that in such circumstances there is a duty to apply for a cy-pres scheme (see section 13(5) of the Charities Act 1960).

Finally, I must point out that not all the Commission's staff are lawyers. Even for qualified people it takes confidence to leave the well-beaten track. We are doing our best to encourage that confidence and will use occasions such as this for the purpose. Meanwhile I am grateful to Mr Pedley for drawing attention to this set of examples.

From A.H. Duncombe
98 High Street, Thame, Oxfordshire OX9

It seems to me that CLARITY's referrals register could be of immense value. As a small specialist practice we regularly have to refer matters to other solicitors as well as receiving referrals, so we are always looking for specialists in other areas. The trouble with the law list "categories of work undertaken" is that most firms profess skill in all departments, which is nonsense, as everybody knows.

Solicitors who accept referrals know how important it is to respect the relationship of the client with the referring solicitor. We are

meticulous about this and always encourage the client to go back to his own solicitor on non-specialist matters.

If CLARITY adopted a protocol for inclusion on the referrals register, perhaps both points could be covered? Solicitors might for example be invited to describe the type of practice that they are in and, if applicable, the one or two areas in which they can genuinely claim to be expert.

If you think there is any merit in these ramblings, I would be happy to canvass the solicitors currently on the register.

Mr Duncombe's firm has been added to the register and he should be contacting the others on it as suggested in his last paragraph.

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

"Will" does not necessarily include "codicil" or "any other testamentary disposition", as Mark Adler thought in the will-drafting issue (Clarity 5 [March 1985] p.2). Section 1 of the Wills Act 1837, which provides this, applies only to itself. A similar restriction applies to the definition of the Law of Property Act 1925. In practice it will rarely matter: few people use codicils, and most of these are revoked by the inconsistency of a later will.

From Andrew Melling
117 Burnt Ash Road, London SE12 8RA

Has the most recent amendment to cl 6(1) produced an unintended result? The introductory words seem now to be saying that service of a document must be in writing. That surely cannot be right.

No. We have recast this to read:

6. (1) Notice required by text to which this Act applies must be in writing and may be served by: ...

STYLEWRITER PRIZE

Editor Software (Pty) Ltd of Oxford (0453 548409) is keen to collect additional material. They ask readers to send to Clarity examples of:

- the worst legalese
- the silliest and most outdated words and phrases
- the improvements you would like to see in legal language.

As a prize, a copy of Stylewriter will be given for the three most interesting or amusing examples (as judged by a member of the CLARITY committee).

Stylewriter has been favourably reviewed in Clarity (13 [June 1989] p.9 and 16 [March 1990] p.28) and is recommended by the Plain English Campaign. It sells for £195 + VAT (subject to a 15% discount for CLARITY members).

BOOK REVIEWS

by
Justin Nelson

Plain English for Lawyers (2nd edition)
by Richard Wydick
Carolina Academic Press (105pp paperback)

This book is written by a CLARITY member who is also a professor of law at the University of California.

It is a short book designed to help lawyers express themselves in a clear and simple style, on the basis that legal writing should not differ without good reason from ordinary well-written prose.

After a short introductory chapter explaining why it is better to use plain than convoluted English, there are seven detailed chapters on the methods to achieve the recommended aim. At the end is a brief summary as an aide memoire.

Throughout the body of the book practical exercises are suggested; more exercises, and some suggested solutions, are given in the appendices.

The index itself is of interest: it is a combined "index and lawyers' word guide", showing lawyers' words in italics. For instance, "*aforementioned*, a lawyerism, pages 53-55"; looking up that reference gives you a paragraph headed "Do not use lawyerisms" and starting "Lawyerisms are words like *aforementioned*, *whereas*, *res gestae* and *hereinafter*: they give writing a legal smell, but they carry little or no legal substance."

In effect, the book is a distillation of the directly relevant parts of Gowers' "Plain Words". It should be issued to every law student and kept close at hand by every practising lawyer.

Drafting and Negotiating Commercial Leases
by Murray J. Ross
Butterworths: £40 (468pp hardback)

I have been looking forward to this: about nine months ago I heard of the impending publication of this work, whose author is a member of CLARITY; more recently, I heard that the book

included the Rosscastle Letting Conditions - standard lease conditions designed to be incorporated into leases of business premises - which had been drafted by Murray Ross jointly with Richard Castle (another CLARITY member, whose own book "Conveyancing without Computers" I have already reviewed enthusiastically (Clarity 8 [Jan 1988] p.4).

Most of the book (368 pages) is taken up with text, starting with drafting itself, covering all the various parts of the lease, and ending with the completion and post-completion arrangements. The section on drafting, though only 7 pages long, summarises very well the basic rules for clear writing, and merits careful reading in its own right.

The respective responsibilities of the solicitors for each party are analysed. In that respect, the book is far more useful than most on drafting leases; others view the transaction from the landlord's point of view, with occasional comments of importance to the tenant but generally leaving the tenant's solicitor to gather by inference which points are critical and which are not. Ross looks separately at the position of landlord, tenant and surety.

Each clause appropriate to a commercial lease is analysed in depth, legally and in terms of its drafting, setting out the background to the clause, the standard terms, suggested possible variations, and its effect.

The book also covers the renewal of business leases under the Landlord and Tenant Act 1954, and even the assignment of a lease during the renewal procedure.

The text is amply supported by (perhaps over-fussy) footnotes with statute and case references, tables of statutes and cases, and a satisfactory (but not brilliant) index. This makes it a useful work of reference for construing the terms of existing leases, as well as an exemplary guide for drafting (and haggling over) new ones.

The appendices contain the Rosscastle Letting Conditions themselves, forms of lease (incorporating the Conditions) for various types of premises, suggested insurance, rent review and other specific clauses, a checklist for the tenant's

solicitor and extracts from relevant legislation.

A review (by someone else) of the Rosscastle Conditions has already appeared (Clarity 16 [March 1990] p.27). I view them much more favourably than the writer of that review:

(a) They are vastly better written than most leases I see;

(b) Using a comprehensive set of standard conditions will make it easier to draft, analyse and approve a lease and less likely that the lease will omit vital clauses or contain contradictions;

(c) Production of the first edition is an opportunity to comment with a view to revision.

This book is well worth buying for the text alone. Inclusion of the Rosscastle Conditions makes it a real bargain. It is all too easy to bring reckless criticism of any major innovation. No doubt improvements will be needed in future editions but they will only come through constructive criticism arising from practical experience. In the meantime, I applaud the venture, and wholeheartedly recommend the book.

From a letter:

"We would appreciate your considered advices as to the earliest commencement date."

Parkers Modern Conveyancing Precedents
by Eric Taylor (with J.M. Kean and J.E. Adams)
Butterworths: £35 (hardback)

This is the second edition of the plain English lawyers' "bible" (and the companion to "Parker's Modern Will Precedents" reviewed in Clarity 12 [March 1989] (p.8).

Although the precedents are probably too radical and terse for most lawyers, they should appeal to CLARITY members, and are certainly well worth considering in appropriate cases. One problem is that, as registration of land spreads, the appropriate cases become fewer and fewer.

For this reason, it is something of a disappointment that the work is not more comprehensive. Effectively, it covers the transfer of title to unregistered land - freehold conveyances, leasehold assignments, mortgages and assents. Presumably, registered title documents are not covered because they should be clear and brief anyway, and because they can be adapted from their unregistered equivalents. However, it would have been useful to have included (for instance) deeds of variation, the grant of easements, the surrender of leases and licences to assign. I hope that future editions will expand the scope.

The book is worth buying by any conveyancer interested in clarifying his documents. It is however so purely a working book of precedents (rather than a general discussion of clear drafting) that it would not be worthwhile for a non-conveyancer, except simply to own a seminal work on plain English drafting.

REFERRALS REGISTER

This list is open to any member willing to accept work or referrals of clients from other members. To save space, only additions to the list will be published quarterly, with the full list maintained at the Bridge Road office. Please write in if you would like to be included.

<u>Member</u>	<u>Profession</u>	<u>District</u>	<u>Telephone</u>	<u>Field</u>
Francis Bennion	Barrister	London	0865 251521	General, but especially administrative and statute law
Brian Bowcock	Solicitor	Cheshire	0270 624225	Personal taxation and professional sport (clubs and players)
A.H. Duncombe	Solicitor	Thame	0844 261026	Company/commercial, with particular experience of company law and industrial estate breakups
Alan MacPherson	Solicitor	Blackpool	0253 20008	Agency work of all kinds

In the last issue we mentioned that Francis Bennion had returned to practise at the Oxford bar. He has asked us to point out that although his chambers are in Oxford, his practice is exclusively in the London High Court and above.

WELCOME TO NEW MEMBERS

George Allingham, solicitor, RTP Williams & Llewllin, Haverfordwest, Pembrokeshire
Professor Hugh Bevan, Wolfson College, Cambridge
Martin Cutts, editor & forms designer (formerly of the Plain English Campaign), Whaley Bridge, Cheshire
Professor Patricia Hassett, Syracuse NY and London W11
Ruth Lawrence, Head of Publishing and Information Services, The Law Society
Fred Martin, solicitor and barrister, Edmonton, Alberta
Susan Nelson, solicitor, Slaughter & May, London EC2
Catherine Nicholls, barrister, 4 Brick Court, Temple, London EC4
John Noble, solicitor, Bromley, and member of Law Society's Property and Commercial Services Committee
Nicholas O'Brien, barrister, 4 Brick Court
A.K. Sen FCA, barrister, 4 Brick Court
Ann Spratling, barrister, 4 Brick Court
John Stacey, forms design unit manager, Lord Chancellor's Dept, London SW1
Adrian Taylor, barrister, 4 Brick Court
John Thorpe, solicitor, Smart & Spicer, Eastbourne, East Sussex

BEST WISHES

to

Dr Michael Arnheim, on setting up (with others) new chambers, and his return to practice at the bar
Professor Roy Goode, on taking silk
Alexandra Marks, on her partnership in Linklaters & Paines
John Walton, on his appointment as Borough Manager (chief executive) of Nuneaton & Bedworth BC

As we go to press, Michael Arnheim is daily expecting his new chambers to open at:

Warwick House, 8 Warwick Court, Grays Inn, London WC1R 5DJ
Tel: 071-430 2323
Fax: 071-430 9171

If you have difficulty contacting him, however, please phone the editor.

COMMITTEE

Mark Adler (chairman)	solicitor, sole practitioner in suburban practice	
Michael Arnheim	law lecturer and barrister in private practice	
Chris Elgey	solicitor, principal lecturer at the College of Law Braboeuf Manor, St Catherines, Guildford GU3 1HA DX 2400, Guildford	0483 576711 fax: 0483 574194
Alexandra Marks	solicitor in City practice 59 Gresham Street, London EC2V 7JA DX 10, London	071 606 7080 fax: 071 606 5113
Justin Nelson	solicitor in country practice 66 Rogersmead, Tenterden, Kent TN30 6LF DX 39002, Tenterden	05806 2251 fax: 05806 4256

Published from 35 Bridge Road, East Molesey, Surrey KT8 9ER
DX 80056 East Molesey
Fax: 081-941 0152 Tel: 081-979 0085
Editor: Mark Adler