



A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

No 18: October 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.

It seems that neither of the High Court Masters we approached will be able to attend, though both expressed their support. However, we are very glad to hear that Lord Justice Staughton will be there, and has agreed to speak.

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. A more detailed note about this elections and topics for discussion appears on page 5.

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

INDEX

Accounts	5
Addresses	14
Advertising rates	3
Annual supper	Front/5
Articles	4
Australian news	1
Books	9
Canadian Bar Association conference	2
Committee	14
Committee news	5
County court rules	1
English news	1
Gruff Award	6
Industry contacts	1
Law Society conferences 1990/91	1
Letters	12-14
Members	14
NCC report	1
Plain English Campaign conference	3
Practice rules	1
Precedent library	11
Referrals register	10
Standard lease terms	1
Subscriptions	Front
Sydney plain language centre	1
Texas plain language committee	2
United States news	2
Words at Work poster	13

The press date for the
DECEMBER 1990 ISSUE
is December 5th

SUBSCRIPTIONS

CLARITY's new financial year began on
1st September.

Please do pay promptly (if you have not already
done so)
to keep us solvent and
reduce administrative waste.

NEWS

ENGLAND

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

CLARITY will be on stand A2 of the exhibition, between the entrance and the buffet.

We hope that this issue will be available in time to be included, but in any case all the back numbers will be there on sale.

Several members have supplied display copies of books or articles about plain language drafting, and we will pass purchase orders to the publishers. Editor Software's Stylewriter programme (reviewed *Clarity* 13 [June 1989] p.9 and 16 [March 1990] p.28) will be on display if this can be arranged. Eagle Star have supplied small versions of the posters advertising their plain language policy and John Walton has kindly given us a free hand to reproduce his cartoons from the back numbers of *Clarity*.

Some of the cost of the stand will be recouped from those benefitting from the promotion. However, our main concern is to attract new members from the delegates and from the members of the local law societies which many of them will represent.

On the Thursday afternoon, the 18th, Tamara Gorieli will be speaking on *What the public wants*. She will be saying that it wants (among other things) plain language, and CLARITY will be favourably mentioned.

CLARITY should also benefit from a redrafting competition to be run, with CLARITY's help, from The Law Society's stand. Entrants will be invited to translate a typical piece of legalese into clear English, and the winner will be announced on the Friday afternoon.

The Law Society Conference 1991 Brussels

CLARITY's suggestion that we run a drafting seminar is being considered by the appropriate Law Society committee.

A decision is expected in November.

New standard lease terms from The Law Society

The first draft of the standard lease terms, written by Trevor Aldridge, has been circulated for comment. Replies were to be submitted by 30th September.

Some members have been involved in their private capacity, and CLARITY was asked for its views. Justin Nelson submitted some suggestions on behalf of the committee.

Judging by the draft, these standard terms will be a remarkable improvement in the language of leases and we look forward to publication, when we will publish a full review.

Disappointing new practice rules

We are sorry to see that the Solicitors' Practice Rules 1990 incorporate all the poor drafting which CLARITY criticised in the draft circulated for amendment.

One or two of the rules were so turgid that we could not translate them into plain English; for others, more comprehensible, we suggested improvements.

All our suggestions have been ignored, including our proposed new obligation to keep clients informed "in language which that client can understand".

We hope to publish comment from The Law Society in the next issue.

County court rule amendments

We have just received for comment draft amendments to the rules relating to:

- postal service by solicitors;
- the small claims jurisdiction and registrars' trial jurisdiction;
- rent actions; and
- injunctions.

If anyone would like to comment on any of these, please contact Mark Adler for copies.

Contacts with industry

CLARITY has recently written to a number of major businesses whose interest in plain English is known, offering to liaise.

As we go to press, only the Prudential has replied. A note of their activities appears below.

The Prudential Assurance Co

There are encouraging signs of activity within the "Pru".

Some of its literature has been awarded Crystal Marks by the Plain English Campaign, and it is training its sales staff to talk to customers in plain English.

Meanwhile, its specialist investment arm, Prudential Holborn Ltd, has appointed Fiona Boyle, CLARITY member and plain language specialist, to oversee written communications with clients. Miss Boyle, formerly with the BBC World Service, is a writer and editor with extensive experience in education and broadcasting. She has devised and is implementing a major programme to raise the standard of written communications generally within the company, to help staff explain its intricate wares as plainly as possible.

National Consumer Council

The NCC is researching the problems created for consumers by legalese in contracts offered to them.

Their report, provisionally entitled *When did you last read the small print?*, should be available by the end of the year.

AUSTRALIA

Plain legal drafting centre at Sydney University

Sydney University's plain legal drafting centre is expected to open this autumn.

It is associated with the Schools of Law and English, and run by two CLARITY members. The director is Professor Robert Eagleson, and Associate Professor Peter Butt is assisting.

We hope to include a fuller report in the next issue.

UNITED STATES

Plain Language Committee in Texas

The Texas Bar Association has set up a Plain Language Committee under the chairmanship of Professor Bryan Garner, the editor of the *Scribes Journal of Legal Writing* (See *Clarity* 17 [June 1990] p.2). There are some 14 members, including practitioners, academics and judges.

They have formed themselves into four sub-committees, each with three or four members:

Awards	for "legaldegoon" and for good writing;
Bar Journals	mainly to publish a monthly column;
Forms	to redraft precedents;
Liaison	to work with other organisations and other bar committees, especially providing help and maintaining lists of the better speakers and consultants.

Each member of the main committee serves on one or two sub-committees.

We are pleased to welcome Professor Garner as a member of CLARITY and look forward to a regular exchange of views and information.

Conference at Ann Arbor

At a legal writing conference in Ann Arbor, Michigan, teachers of legal writing discussed a range of issues. Of most interest were a couple of sessions on what was described as "transactional drafting" which, roughly translated, means drafting agreements. David

Elliott reports making good contacts with a number of people in the field.

CANADA

Canadian Bar Association recommends plain language at London conference

Robert Venables represented CLARITY at a recent press conference. It was called jointly by the Canadian Bar Association and the Canadian Bankers' Association to promote their campaign for the use of plain language.

The associations' Joint Committee on Plain Language Documentation called for lawyers, businesses and governments to join forces to convey information as clearly as possible to the public.

Their report, *The Decline and Fall of Gobbledygook*, says:

The fact that so many legal, business and government documents are written in gobbledygook is unfortunate, since these documents frequently contain information that can have important consequences for the individuals who read them.

The (associations) recognize the importance of an informed public. (They) agree that plain language documents can help improve public access to the law. In particular, plain language documents in the financial services industry will increase consumers' awareness of their rights and duties in financial transactions.

The joint committee was established in 1988 at the bar association's annual meeting in Montreal, after the CBA approached the bankers' association to propose a joint study of the language problem. Its mandate was:

- to assess the use of English and French plain language in the legal profession and in the financial services industry;
- to identify barriers in the use of plain language;

- to develop prototype banking documents; and
- to make recommendations about the greater use of plain language in legal and financial service documents.

The committee found that plain language better informs the public and saves both time and money. It noted that the UK DSS was saving an estimated £26m a year in administrative costs by rewriting various forms, whilst the UK Customs and Excise saved 3,700 work hours a year and had reduced the error rate on some forms from 55% to 3%.

The report recommends:

- the voluntary adoption of a joint statement of principle on the use of plain language by bankers, law firms, businessmen and government bureaucrats;
- the formation of a coalition of law firms, industrial associations and government departments to work with the Canadian Legal Information Centre (CLIC) advocating the use of plain language and helping members to implement the proposals;
- that Canadian law schools and bar admission courses teach plain drafting;
- that law societies offer continuing education courses in plain writing;
- that businesses encourage their employees to enrol in these or similar courses;
- that businesses insist that their employees and their lawyers write plainly; and
- that Canadian governments draft legislation, regulations and forms in plain language.

We wish the initiative every success, and hope that something similar can be done in Britain.

THE NATIONAL PLAIN ENGLISH CONFERENCE
Madingley Hall, Cambridge, 8th - 11th July 1990

Marks & Spencer, British Gas and Provincial Insurance sponsored this useful and enjoyable, though expensive, seminar outside Cambridge.

Tom McArthur, the editor of "The Oxford Companion to the English Language" spoke on the history and importance of plain English.

Mike Foers of the Inland Revenue, who had just returned from a tour studying forms design worldwide, showed how official forms could be improved.

Professor Reed Dickerson of Indiana, who has been teaching legal plain English since the second world war, spoke with dry humour. One of his examples (reproduced opposite) was a sign on the door of the New York Bar Association library. He offered two careful revisions, showing how sensible paragraphing, short sentences and active verbs pulled the blurred information into focus. In closing, he mentioned the student who came up to him with an even more concise version: it was a piece of cardboard; on one side it said "Open" and on the other "Closed".

Edward Kerr, from Australian solicitors Mallesons Stephen Jacques, spoke about the conversion of this 600-lawyer, country-wide, firm to plain English. Six people are employed full-time converting their precedents. Each fee-earner has a desk-top terminal linked to a central computer, from which the documents are instantly accessible.

Mark Vale (the director of the Plain Language Centre set up by the Canadian Law Information Centre), Nicole Fernbach (CLIC's French language specialist) and Tom McKeown (who heads the Straight Talk Institute of Canada) all explained their work.

Robert Eagleson had to cancel at the last minute, but he was ably represented by Peter Butt.

Geoff Harrison, an information design consultant who has worked with PEC from the beginning, showed how he operated. He also made several suggestions for improving the layout of this magazine, notably the occasional use of three columns instead of two, which he thought would improve the appearance of the page as well as increasing the capacity.

James Hartley, Professor of Psychology at the University of Keele, covered the design of educational material.

Mark Adler took as his text the licence to assign which won this issue's Gruff Award. He also made a number of general drafting suggestions and called for lay clients to bring pressure on their solicitors to write clearly.

New York County Lawyers Association
House and Library Rules

1. The Office of the Association shall be open on weekdays, other than Saturdays and holidays, from 9 a.m. to 5 p.m.. The building of the Association and its library and reading rooms shall be open from 9 a.m. to 10 p.m. on weekdays, other than on Saturdays; and on Saturdays the library shall be open from 9 a.m. to 6 p.m.; excepting that on weekdays in July and August it shall close at 6 p.m. with the exception of Wednesday when it shall be open until 10 p.m. and be closed on Saturdays; and it shall be closed entirely on all Sundays and holidays, excepting Columbus Day, Lincoln's Birthday, Veterans' Day and Election Day, other than presidential elections, when it shall be open from 9 a.m. to 6 p.m., and on Christmas Eve and New Year's Eve it shall close at 4 p.m..

Richard Thomas, an early CLARITY member, described the efforts of the Office of Fair Trading towards the promotion of plain English for consumers.

Other representatives spoke about plain English in accountancy, medicine and the civil service.

This conference marked the launch of APEC, the Association of Plain English Communicators, and the *International Plain Language Movement*.

The Campaign hopes to publish the proceedings shortly, and another conference is planned for 1991.

ADVERTISING RATES

We are accepting a few advertisements 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 two weeks before the press date, and allow a few days for a quotation.

CANADIAN NOTES

by
David Elliott

First, a note of congratulations to the University of Sydney for establishing a Plain Language Centre, a joint project of the Faculties of Law and English. It was a real pleasure to meet Australian Professor Peter Butt immediately after he attended the Plain English Campaign's Cambridge conference and learn more of the Centre.

In Canada, a private member's bill was introduced in the Federal Parliament calling for plain language in legislation. The bill proposes a committee to vet new legislation but will die on the order paper. It has no new ideas (and is largely a copy of a bill introduced in a couple of provincial legislatures some years ago). The benefit is that it keeps plain language on the public agenda.

From all accounts the Plain English Campaign's conference was a success. Chrissie Maher's interview on CBC came over well. Reed Dickerson also told me he enjoyed it.

In British Columbia the government has announced a \$1.5m grant to establish and run a Plain Language Institute. The board of directors is made up of a wide range of people crossing a number of professions. Its

basic aim will be to improve legal and business writing. This project is additional to the Plain Language Project already established in BC, but the two may be merged. A director for the institute should be appointed soon.

In Alberta a legal writing consultant has been putting on seminars, and has attracted over 100 lawyers from the Calgary area alone.

Also in Alberta, the Financial Consumers Act (*Ckarity* 17 [June 1990] pp 6-8) was passed with a few amendments. The press has given the plain language aspects of the legislation reasonably good coverage. The Act should come into force next year.

Just arrived on my desk is the report of the Victorian Law Reform Commission "Access to the Law: the structure and format of legislation". It is another thought-provoking and controversial report, well worth reading.

If anyone has had trouble ordering a copy of Mellinkoff's *Language of the Law* (I have repeatedly been told it is out of print), write to Vicki Smith at publishers Little, Brown & Co, 34 Beacon Street, Boston, Massachusetts 02108. It is still available.

I have taken Mr Elliott's advice and Little, Brown have kindly sent me two copies of the 1990 (11th) reprint. One will be available for inspection on our stand at Glasgow and I hope that a review will appear in the next issue. - Ed.

ARTICLES

Writing Collective Agreements in Plain Language by David Elliott

Mr Elliott presented this paper at the beginning of June to the 8th Annual Labour Arbitration Conference in Calgary.

In it, he reported the application of the Flesch Readability Test * to sample agreements. The test uses the average numbers of syllables-to-word and words-to-sentence to give a rough measure of readability, on a scale from 0 (very difficult) to 100 (very easy). The agreements did badly, with the worst document scoring - 122.

The article stresses the advantages of plain language and gives several pages of advice.

* Flesch, Rudolph: *How to Write Plain English: A Book for Lawyers and Consumers*; Harper & Row, 1979

Strike Three for Legalese by Joseph Kimble and Joseph A. Prokop jr

This appeared in May in the monthly "Plain Language"

column of the *Michigan Bar Journal*, edited by Professor Kimble for the State Bar Plain English Committee.

The article describes a survey conducted separately - but with strikingly similar results - in Michigan, Florida and Louisiana.

Two alternative versions (one plain, the other traditional) of each of six short pieces of text were shown to the participants. Sometimes the plain form was the first, sometimes not. The alternatives were not labelled, and the testers tried to avoid any suggestion that one version was better than the other.

In each state, judges preferred plain English about 85% of the time, and attorneys (omitted from the Louisiana sample) 80% of the time.

The article also quotes a survey of 10 Californian appellate judges and their research attorneys. They thought the appellate briefs (in the American sense of "submissions") written in legalese were "substantially weaker and less persuasive than the plain English versions."

Professor Kimble may be contacted at Cooley Law School, PO Box 13038, Lansing, Michigan 48901.

COMMITTEE NEWS

Chris Elgey leaves the committee

We are very sorry to hear from Chris that the pressure of her other commitments had persuaded her to resign only two years after she joined the committee.

She has always been full of ideas and her contributions in thought and deed have been considerable. She has amongst other things formed a valuable connection with local law societies, the College of Law, and an inexhaustible supply of contacts.

Our Saturday morning meetings will not be the same.

Elections

The chairman and the remaining members of the committee are standing for re-election.

Other nominations may be sent in advance or made at the annual meeting.

An expanded committee?

There have been five people on the committee since it was formed. This has been a convenient number: it is rarely difficult to arrange bi-monthly meetings convenient for everyone.

However, our activities have expanded to such an extent that we cannot cope with the work, and opportunities are lost.

We would benefit from a reorganisation along the lines of the Texas plain language committee, with the chairman of sub-committees reporting regularly on particular areas. However, we do not know if enough people will be available.

Assistance is needed with:

the precedent library (drafting, commissioning and vetting forms);

the magazine (planning future issues, commissioning articles and writing reports);

recruitment (contacting likely individuals and organisations worldwide);

fund-raising (especially arranging payment to CLARITY for our activities, where the market will bear it);

teaching (preparing materials and running courses);

liaison with professional organisations and other plain English groups.

CLARITY'S ACCOUNTS

1.4.89 - 31.8.90

Opening balance		£1,239.92
Income		
95 new members	£703.05	
207 renewals	£1,635.00	
Donations	£55.00	
Membership income	£2,393.05	
Bank interest	£198.43	
Seminar income	£213.55	
Advertisement income	£35.00	£2,840.03
		<hr/>
		£4,079.95
Expenses		
Newsletter (6 issues)	£2,525.41	
1989 AGM (net)	£154.37	
Law Society conference (to date)	£618.27	
Administration	£49.70	£3,347.75
		<hr/>
		£732.20
Deposit account	£670.43	
Current account	£61.77	£732.20
		<hr/>

It may be that more of the consultation could be done by letter than at present, to reduce the time spent at meetings.

These proposals will be discussed at the annual meeting, but in the meantime anyone interested should contact Mark Adler.

Fund-raising

From time to time CLARITY is asked to teach or draft. As we have no staff, and members have their livings to earn, any payments have been kept by the individual to whom the job has been delegated.

However, as funds have dwindled, it was decided at the September committee meeting that members should in future be asked to contribute 10% of their fee as a commission to CLARITY.

But it is not quite so simple. Solicitors cannot share fees with CLARITY, and there are tax and insurance complications.

Suggestions at or before the annual meeting would be welcomed.

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

THIS LICENCE AND DEED OF COVENANT ^{1, 1A}
² made the

BETWEEN (1) THE LONGWINDED LANDLORD COMPANY LIMITED of Maker Mealerwhit House 28 High Road Falootin Bec Berkshire ("the Landlord") and (2) INTRAPID TENANT LIMITED of 66 Clickety Road Binglehampton Buckinghamshire ("the Lessee"³) and (3) POOR CLIENT LIMITED of 15 Love Road Wimbledon West Sussex ("the Assignee") is SUPPLEMENTAL ⁴ to a lease ("the Lease" ⁵) dated 19th July 1968 made between (1) The Right Honourable John Michael Earl of Donoughmore William Francis Roderick Seagrave ⁶ and Gerald Austin Bernhard and (2) Perkin Warbeck Limited whereby ⁷ the property known as ^{7A} 14 West Street Horsham West Sussex ("the demised premises ^{8, 9}") was demised ^{9A} for a term expiring ¹⁰ on the 1st day ¹¹ of April 1991¹²

WHEREAS ¹³

The Lessee is entitled to the demised premises for the residue ^{13A} of the said ¹⁴ term and the Landlord is entitled to the demised premises in reversion immediately expectant on the said term ¹⁵ and has at the request of the Lessee agreed to grant the following licence ^{16, 17}

WITNESSETH ^{18, 19, 20} as follows: ²¹

1. IN ²² this deed ²³ where the context so requires or admits ²⁴ the following expressions shall ²⁵ mean and include ²⁶ as follows ²⁷ (that is to say) ^{28, 29}

"the Landlord" shall include ^{29A} its successors in title the reversioner for the time being immediately expectant on the term of years created by the Lease ³⁰

"the Lessee" shall include the executors or administrators ³¹ successors in title and assigns³² of the Lessee

"the Assignee" shall include the executors or administrators ³¹ of the Assignee as the case may be ^{33, 34}

The singular shall include the plural ³⁵ and ³⁶ a covenant entered into by more than one person shall have effect as if it had been entered into by those persons jointly and severally ³⁷

2. IN pursuance of ³⁸ the said ¹⁴ agreement and in consideration of the covenants on the part of the Lessee and the Assignee hereinafter contained ³⁹ the Landlord hereby ⁴⁰ consents to the Assignment ⁴¹ of the Lease to the Assignee

3. IN consideration of such consent to assign as aforesaid ⁴² both ⁴³ the Lessee and the Assignee hereby ⁴⁰ jointly and severally covenant ⁴⁴ to carry out and complete ⁴⁵ the works detailed in the Schedule of Dilapidations dated 30 May 1990 annexed hereto, ^{46, 47} within three months from the date of this Licence ⁴⁸ to the intent that ⁴⁹ should the proposed Assignment not take place the Lessee shall ⁵⁰ comply with this covenant and the Assignee hereby ⁴⁰ covenants ⁴⁴ with the Landlord to pay the rents and other monies ⁵¹ reserved by the Lease and payable by the lessee thereunder and to observe and perform the covenants on the part of the lessee and conditions therein contained ⁵² during the residue ^{13A} of the term thereby granted ⁵³

IN WITNESS whereof the parties have hereunto affixed their Common Seals the day and year first above written ⁵⁴

CC:W1560OCVP.D01 ⁵⁵

Notes			
1	The spacing is haphazard and hard on the eye.	9A	Let.
1A	A covenant is an agreement by deed. "Deed of covenant" means "deed in which people have agreed to do things" and is therefore not very informative.	10	In the words of the old saw, "Ladies expire, leases end". In any case, "until" could replace "for a term expiring on".
2	The indentation on the second line must be a mistake unless (and I wouldn't rule this out) the entire piece is not intended as a legal document at all but as some new and appalling style of modern verse.	11	"Day of" is superfluous. The writer managed without "month of" or "year of".
3	"Landlord" goes with "Tenant", "Lessor" with "Lessee".	12	The unbroken block of the paragraphs prevents the reader from seeing the content at a glance.
4	The attempt to highlight "supplemental" with capitals fails because there are so many other capitalised words.	13	I prefer "Background" as an introductory heading, with each recital a paragraph.
5	If only one lease has been mentioned, "the" lease must be that one. There is no need to define "the Lease" with brackets, inverted commas and a capital letter.	13A	Rest.
6	The refusal to use commas makes it impossible to tell where one name ends and another begins. Was there a William Francis and a Roderick Seagrave or just one William Francis Roderick Seagrave?	14	"Said" adds nothing to "the".
7	"Whereby" is archaic and in any case the wrong word. It is "by which", not "by where".	15	"... Is entitled to the demised premises in reversion immediately expectant on the said term" is a pompous way of saying "... is the landlord". This leaves us with "The Landlord is the landlord".
7A	Only a lawyer would say "known as"; "at" would do as well, or we could say that "14 West Street ... was demised".	16	"... And has at the request of the Lessee agreed to grant the following licence" is blindingly obvious.
8	The other defined terms, although common nouns, are given an initial capital, presumably to flag them as defined words.	17	The whole paragraph is pointless, since it does nothing but tell those involved what they already knew and what was already well documented. Recitals have a place but they are usually (as here) thrown in without thought.
9	"the demised premises" is a name - a short form of reference. Why make that unnecessarily long? "The premises" would serve as well, and "the shop" better. Moreover, why say "The demised premises were demised"?	18	This and the first paragraph only make sense if "This licence and deed of covenant" is the subject and "witnesseth" the verb. But the "whereas" paragraph is a sentence on its own. You cannot bury one sentence in the middle of another.
		19	Why not "witnesses"?
		20	Why include the phrase at all? "This deed witnesses as follows" means no more than "This document says what it says".
		21	If punctuation is forbidden, the colon should not be there.
		22	The capitalisation of the whole of the first word is pointless, and inconsistent with the practice in the previous paragraph.
		23	"IN this deed" is obvious.
		24	"Where the context so requires or admits" is lazy and dangerous: the effect is that "A means B unless you can argue that it doesn't".
		25	"Shall" is always best avoided because of its ambiguity between the future and the imperative. Here, neither meaning is appropriate, as (1) there is no compulsion and (2) the deed takes effect immediately.
		26	"Mean" means "the same"; "include" implies a difference. So "mean and include" is gibberish. In any case, "mean" seems to be excluded by the "shall include" clumsily repeated in each of the three definitions following.
		27	The double use of "as follows" is also clumsy, and the phrase was unnecessary in the first place.
		28	"(that is to say)" adds nothing.
		29	Inconsistently, there is no colon after this use of "as follows".
		29A	Includes.
		30	I do not know what "the reversioner for the time being" adds to "successors in title" or why "immediately expectant on the term of years created by the Lease" was thought necessary. In any case, the whole definition is otiose, as successors in title are included under the general law.
		31	As the tenant and assignee were both companies, this provision is rather silly. Even if the tenant had been an individual, it would have been ineffective: it could not have imposed on the personal representatives any liability they did not have under the general law.
		32	"Assigns", another archaism, adds nothing to "successors in title". Again, the definition is pointless.

33	"As the case may be" seems to have been stuck on the end for no good purpose. It adds nothing and the previous definitions managed in their own lame way without it.	consideration at all.		In any case, A will be liable for the rent and all the other tenant's commitments even if he does not buy the lease. This is absurd.
		40	How else, if not "hereby"?	
		41	The capital "A" is illogical.	50
34	The spacing is inconsistent.	42	If this recitation of the consideration is necessary, "that consent" could replace "such consent to assign as aforesaid".	51
35	This is implied by the Law of Property Act 1925.			52
36	The earlier definitions occupied a paragraph each; this paragraph has two definitions.	43	"Both" is otiose.	52
		44	"Agree" would have done as well.	
37	The "joint and several" rule only applies to the covenant in clause 3, where it is already stated.	45	"Carry out" implies completion.	53
		46	The attached schedule.	
38	This expression is always clumsy but the sentiment is entirely unnecessary here. It means only: "Under its agreement to sign this agreement, the landlord signs this agreement." In any case, there probably was no agreement before completion of the licence. If there was, who cares?	47	The only comma in the document has been misused.	54
		48	, Today.	
		49	This phrase is inappropriate and woolly. It appears that T and A will both be liable for the repairs "to the intent that" if A does not buy the lease T will be liable (which he already is); it is not clear whether A would then be released from the obligation, or (if not) whether T would indemnify A against a claim by L.	55
39	"Hereinafter contained" is archaic. "in consideration of the Lessee's and Assignee's covenants" would be sufficient, if it was necessary to recite the			

Licence to Assign

Definitions

Landlord	THE LONGWINDED LANDLORD COMPANY LIMITED of Maker Mealerwhit House, 28 High Road, Falootin Bec, Berkshire
Tenant	INTRAPID TENANT LIMITED of 66 Clickety Road, Binglehampton, Bucks
Buyer	POOR CLIENT LIMITED of 15 Love Road, Wimbledon, West Sussex
The shop	14 West Street Horsham West Sussex
The lease	That dated 19th July 1968 between the Earl of Donoughmore and others (landlords) and Perkin Warbeck Ltd (tenants), by which the shop was let until 1st April 1991
Today	<The date of the licence>

Licence

1. The tenant may assign the lease to the buyer.
2. The work listed in the attached schedule will be completed within three months of today by whoever is then the tenant.
3. After the assignment, the buyer will comply with the tenant's obligations.

BOOKS

Several books have arrived too late for review in this issue. A brief note is given below but we there will be a fuller treatment in the next issue.

Writing in Plain English

by Robert D. Eagleson

Australian Government Publishing Service, 1990.
(122-page A4 paperback: \$16.95)

This is, in the words of the Foreword, "part of the Australian Government's program to help public servants to express themselves clearly".

Its five main parts are devoted to:

- the advantages of plain English;
- planning a document;
- the use of language;
- designing, testing and revising documents; ,
- exercises, with suggested solutions.

At the end are a glossary and a bibliography.

The Language of the Law

by David Mellinkoff

Little, Brown & Co, Boston, 1963 (11th reprint 1990).
(526-page paperback)

The first (and larger) "half" of this scholarly American classic is devoted to the history of legal English from Roman times. The second argues that legal language is imprecise and wordy, and could be improved to the benefit of lawyers and clients alike.

Clarity for Lawyers

by Mark Adler

The Law Society, 1990
(128-page paperback: £12.50)

The book, due on 9th October, argues the benefits of plain English and suggests how it may be written. It is laced with annotated translations of legalese.

This has been a personal project of the author, rather than of CLARITY, but he has expressed appreciation for the help of many CLARITY members, and the organisation is widely promoted. In particular, each copy will contain a membership application form.

A review by Justin Nelson will appear in the next issue.

The Draftsman's Handbook

by Leslie Melville

Longmans (in preparation)

Dr Michael Arnheim is collaborating with Leslie

Melville on a second edition of Dr Melville's book, to be published by Longmans. Work is only just starting but they hope it will be available in 1991.

The book, orientated towards plain English, covers various fields, but predominantly wills and contracts.

A Lament for the Law Commission

by R.T. Oerton

Richard Oerton writes:

This book was published as long ago as 1987, and its relevance to CLARITY's aims is indirect and probably confined to chapter 6.

It was published by a small legal publisher, Barry Rose, which was taken over just before the book appeared. For a number of reasons - among them the fact that interest in the Law Commission is limited at the best of times - the book sold badly, despite some favourable reviews. I am now the proud possessor of nearly all the unsold copies, which lie in parcels outside my study door, a threat to life, limb and domestic harmony.

If anyone would like a copy, please send a cheque for £1 to "Lament" (to cover the cost of post and packing) at

84 Burghley Road, London NW5 1UN.

Marcel Berlins wrote of the book:

Mr Oerton has spent 12 years as a senior civil servant with the Law Commission.... His passionate and very personal account ... is fascinating, irritating and provocative; it is well worth reading.

Mr Oerton has kindly sent 12 copies to CLARITY free of charge; these will be on sale at Glasgow at £1, the proceeds helping to defray the costs of the exhibition.

ADVERTISEMENT

Message clear?

- Expert plain English editing of all kinds of documents.
- Typographic design and printing of office stationery, booklets, etc.
- Quality 1-day in-house courses on advanced writing skills.
- Discounts for CLARITY members.

Call Martin Cutts on 0663 732957 for a brochure, or write to Words at Work, 69 Bings Road, Whaley Bridge, Stockport SK12 7ND.

REFERRALS REGISTER

This list is open to any member willing to accept referrals of clients from other members.

All are solicitors unless indicated.

Please write to the Newsletter if you would like to be included.

<u>Solicitor</u>	<u>Area</u>	<u>Telephone</u>	<u>Field</u>
Richard Ablitt	Croydon	081 681 0139	General civil but not debt collection
Michael Arnheim, barrister	London	071-430 2323	Civil litigation
Francis Bennion, barrister	London	0865 251521	General, but especially administrative and statute law
Paul Berwin	Harrogate, Yorks	0423 526301	Property, family
Brian Bowcock	Cheshire	0270 624225	Personal taxation and professional sport (clubs and players)
John Breen	Middlesborough	0642 244154	Wills, probate, trusts, taxation
Irving Brown	Chigwell, Essex	081 555 1342	General
Peter Butt	Sydney, Australia	02 232 5944	Australian property and conveyancing
Simon Carter	Knutsford	0244 315366	Planning, property
Peter Clark	Reading	0734 585321	Property (esp landlord/tenant), estate planning
David de Saxe	London NW11	081 458 6309	Accident compensation, medical negligence, employment
P.R. Douglas-Jones	Swansea	0792 650000	Crime, employment
A.H. Duncombe	Thame, Oxon	0844 261026	Company/commercial, especially company law and industrial estate breakups
Nicholas Grazebrook	Birmingham	021 632 4199	Personal tax planning, trusts, probate
Philip Holliday	Chislehurst, Kent	081 467 0267	Construction, personal injury
Paul Housego	Kingsbridge, Devon	0548 853044	Non-contentious
Keith Howell-Jones	Kingston, Surrey	081 549 5186	Co/commercial, comm'l lit, debt collection
Edward Kerr	Australia	612 250 3180	Australian banking and finance
James Kessler, barrister	London WC2	071 242 2744	Tax, trusts and wills
Alan MacPherson	Blackpool	0253 20008	Agency work of all kinds
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
Andrew Patience	Shrewsbury, Salop	0743 231455	General
David Pedley	Keighley, W. Yorks	0535 32700	General but especially conservation, public enquiries and private prosecutions
Adrian Pellman	Reading	0734 883793	Matrimonial, private client litigation, commercial, tax planning
Dennis Pipon	Jersey	0534 35218	Jersey conveyancing and leases
John Price FCA	Cirencester	0285 851888	VAT
Edmund Probert	Exeter	0392 411221	Commercial
Clive Sheldon	Twickenham, Middx	081 892 0814	Elderly & disabled clients
Nicola Solomon	London EC4	071 353 0701	General litigation, copyright, media work
Mark Sullivan	Bristol	0452 374252	Insurance/commercial
David Thomas	Liverpool	051 227 3541	Commercial (esp terms of business, financial services, computers)
Ian Torrance	London	071 242 6154	General, but unusual litigation in particular
Julia Wakelam	Bury St Edmunds	0284 755771	Company /commercial, commercial property
Colin Weeden	Stevenage, Herts	0707 329333	Commercial property
Andrew J. Wilson	Preston, Lancashire	0772 823921	High Court debt recovery, insolvency
Messrs Wright & Bull	Milton Keynes	0525 290620	General litigation, but especially medical and nursing; conveyancing.

PRECEDENT LIBRARY

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, particularly of will clauses, 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

LETTERS

From Professor J.E. Adams
Titmuss, Sainer & Webb
2 Serjeants Inn, London EC4Y 1LT

I have over the years largely refrained from commenting on reviews of any publication of mine, no matter how adverse. I am moved to break that rule of practice however by Mr Nelson's unfair treatment of Precedents for the Conveyancer in issue 16.

He has, I fear, paid insufficient attention to the basic fact that this is a collection built up over the years, and whilst existing forms are updated as necessary, only in a few instances have they been redrafted. If Mr Nelson had compared some of the 1990 offerings with some of the 1978 ones (when I took over) the difference would surely have struck him. He could not then have complained that "no attempt has been made to simplify the language and improve the layout". What fault, by those two criteria, does he find with, say, Form 5.101 (furnished tenancy agreement) or 19.51 (option to purchase reversion); I cite them at random so readers may be able to judge for themselves. If Mr Nelson can improve on either in the two respects he highlights, I will gladly publish his versions.

He suggests the precedents are "not intended for general and frequent use". In fact, I make every effort to include new precedents which are of general use; the last 12 new forms include:

- an attestation clause for companies (section 36A came into force only last week)
- auction sale conditions requiring written contract to be
 - made
- a modern service contract
- the Inland Revenue's new form of covenant to a charity
- a clause to make a conditional contract equivalent to an option
- a pre-emption clause for a lease, and
- a declaration of trust by co-owners.

Little that's esoteric in that list, I suggest.

My style has changed substantially in the twelve years I have been the editor, during which time I have probably drafted 200 new forms. If some remain complex, the reason is often the complexity of the underlying transactions. On the whole, however, the emphasis is on general conveyancing, and not the heavy end of commercial conveyancing or intricate trust drafting. I regret the fact that Mr Nelson's comments may give a different impression, but I'm not wholly clear what he was looking for from the work.

So readers must decide if they share his view.

From Ken Bulgin
McKenna & Co, 119 London Wall,
London EC2Y 5ET

Was I being too optimistic in my remarks at last year's annual supper?

An anonymous (but apparently official) author in *The Law Society's Gazette* (26th September 1990, pages 35-36) suggests some amendments to the Standard Conditions of Sale. For example:

Standard condition 5.1.3 shall not apply and the following condition shall be substituted: "The seller is under an obligation to the buyer to insure the property".

It's a bit discouraging if, after all the effort to write the new Conditions in plain English, the draftsman slips effortlessly back into legalese as soon as the contract needs a little routine tailoring.

Shouldn't this amendment simply read:

Standard condition 5.1.3 does not apply and the seller is under an obligation to the buyer to insure the property.

Or "... and the seller must insure the property" - Ed.

From Harry Eaglesoup
St Clement, Imber Grove, Esher, Surrey KT10 8JD

Since I wrote about "will" not including "codicil" (*Clarity* 17 [June 1990] p. 13), I have come across *Farrer v. St Catharine's* (LR 16 Eq 19). In that case, a third codicil to a will had revoked the will itself without seeming to revoke the earlier codicils.

Lord Selborne LC said (at page 23):

The word "will", used abstractedly from the context, carries all testamentary instruments which together make the will of the testator, yet here, where you have the context which expressly distinguishes the last will from the codicil, you are not to infer that all previous codicils are revoked because he revokes the last will.

In the normal case, therefore, "I revoke all former wills" will cancel any codicil.

From A. Robin Widdowson
38 Forester Road, Bathwick, Bath, Avon BA2 6QE

The new *Clarity* is a great improvement. I like the idea of the magnifying glass logo, although I'm not so keen on the artwork itself. At a glance it looks like a balloon, or a frying pan on an old-fashioned Formica kitchen work surface. Perhaps the small print could look more like

Continued at foot of p.13

Words at Work have produced for sale a poster for display in offices promising plain language. A legal version appears on one side and a "lay alternative", for use by non-legal businesses, is given on the other side. The first is reproduced below with the permission of Martin Cutts.

The original is 295mm x 420mm.

Name of your organisation/section:

Charter for Clear Legal English

We, this organisation's writers, will -

1. Fit our writing to the needs and knowledge of our audience, remembering that few clients are lawyers.
2. Tell clients and colleagues clearly, concisely and courteously what has happened, how the situation stands, and what they can expect next.
3. Plan carefully our purpose and message before we write.
4. Aim for an average sentence length of 15-20 words.
5. Prefer natural word order: doer first, then an active verb.
6. Use everyday English unless technical terms are essential, avoiding legalese and (inter alia) Latin tags.
7. Cut verbiage.
8. Use words precisely, yet take care to be general when covering events we cannot foresee.
9. Use headings, lists, numbering and normal punctuation.
10. Set out our reasoning clearly and leave no crack in the logic for our opponents to prise open.
11. Follow precedent books which prefer plain English, but use them as guides not gospels.
12. Use words to shape the situation to our client's best advantage, even if it means breaking these principles.

This charter is published in the interests of lawyers and their clients by:

Words at Work, 69 Bings Road, Whaley Bridge, Stockport SK12 7ND, UK, from whom copies of the Charter are available, price £5 for 10. For information on Words at Work editing services and in-house writing courses, call 0663 732 957.
© Martin Cutts, Words at Work (8/90)

Further reading

Wydick RC 'Plain English for Lawyers', 1985, Carolina Academic Press, PO Box 8795, Durham, N Carolina 27707.
Mellinkoff D, 'The Language of the Law', 1963, Little, Brown and Company, Boston, Mass. Charrow VR and Erhardt MK, 'Clear and Effective Legal Writing', 1986, Little, Brown and Company.

This charter is approved by: Clarity-a movement to simplify legal English.

Words at Work

Letters continued from p.12

small print. I realise that artwork is an expensive business, however.

The artwork is home-done. Improvements are invited from any artist with a Macintosh computer who can supply a better version on disc. - Ed.

from Justin Nelson

66 Rogersmead, Tenterden, Kent TN30 6LF

"If X survives me by one month, I give him £Y" does

not necessarily create a contingent gift vesting only if the beneficiary survives the testator by one month. According to the decision in *Phipps v. Ackers* (1842, 9 Cl and F 583), the wording creates a vested gift liable to be divested if the beneficiary dies within the month. This destroys much of the point of imposing the survivorship period.

The rule applies to personal (as well as real) property: *re Heath* (1936 Ch 259), confirmed in *re Kilpatrick's Policies Trusts* (1966, 2 All ER 149).

Continued on p.14

Letters continued from p.13

To avoid this trap, more complicated wording is needed. For example, "I give £Y to X contingent upon him surviving me by one month." It has even been said that, to make sure, one should go on to say "... but if he does not survive me then I direct that he is to be treated as having pre-deceased me and the intermediate income shall not belong to him."

Can any expert on wills offer a clearer way around this problem? Or perhaps someone could show that it is not a problem at all. Please?

Michael Arnheim suggests:

You need to make survival a condition precedent rather than a condition subsequent. For example,

I give £Y to X provided he has survived me by one month.

If X has survived me for one month I give him £Y.

The *has* ensures that the gift does not take effect until the end of the waiting period.

WELCOME TO NEW MEMBERS

Ian Alderson, solicitor, Bremner Sons & Corlett, Liverpool
Nicholas Daykin, solicitor, Attleborough, Norfolk
Mavis Fairhurst, professional and public relations officer, Solicitors Complaints Bureau, London SW1
Nicole Fernbach, French Language Services, Canadian Law Information Centre, Toronto
Professor Bryan Garner, School of Law, University of Texas, Austin
Chrissie Maher, director, Plain English Campaign, Whaley Bridge, Cheshire
Clive Sheldon, solicitor, Twickenham, Middlesex
Mark Sullivan, in-house barrister, Bristol
Anna Visy, librarian, Canadian Law Information Centre, Toronto
Jonathan Watt, solicitor, Eastbourne, East Sussex
Richard Woof, solicitor, Debenham & Co, London SW3

BEST WISHES

to

Ken Bulgin, on joining McKenna & Co
Robert Eagleson and Peter Butt, on the launch of their Plain Language Centre
Tamara Gorieli, on joining the Legal Action Group
Ruth Lawrence, on needing maternity leave

COMMITTEE

Mark Adler (chairman)	See below	
Michael Arnheim	8 Warwick Court, Grays Inn, London WC1R 5DJ DX 1001, Chancery Lane	071-430 2323 Fax: 071-430 9171
Chris Elgey	Braboëuf Manor, St Catherines, Guildford GU3 1HA DX 2400, Guildford	0483 576711 fax: 0483 574194
Alexandra Marks	59 Gresham Street, London EC2V 7JA DX 10, London	071 606 7080 fax: 071 606 5113
Justin Nelson	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