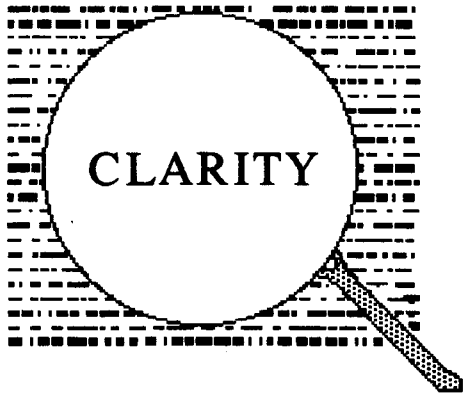


A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

No 22: December 1991

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**Press date** for the March 1992 issue is

**March 13th**

**but please send contributions as early as possible.**

*Clarity* is composed on computer as items come in, and production is easier if there is a steady flow of material between issues.

The last week before the press date is spent adding late items and manipulating the layout.

## CLICHÉS

Clichés are so insidious that we speak dismissively of *trotting them out* without realising that that is another.

Clichés arrive, batter themselves slowly to death, and disappear. Some years ago, the *Evening Standard* ran an advertising campaign with the meaningless slogan that it was *what living in London was all about.* For months, everything was *all about* something else, which, if it were not gibberish, would be untrue. The expression survives in the Hokey-Cokey, a strange ritual in which revellers form a queue and shuffle through a party inciting their more sober fellow guests (usually me) to join them. (Incidentally, dancing in general has much in common with clichés; both involve repeating strange little rituals, with each set of rituals coming into brief fashion.)

The current clichés are *window of opportunity* and *track record.* Earlier this year the prime minister gave us *safe haven.* In each case, one word would convey the meaing of the whole. The word *opportunity* includes the notion of temporariness supposedly brought in by *window.* When we speak of someone's *record,* the *track* has nothing to do with it. And a haven is by definition safe.

Some clichés do no harm except clutter the text. Lawyers like these: *hereby, the said, hereinbefore mentioned,* and so on and on. But when we use phrases without thought we will sometimes use them wrongly. *By definition* is a current example, when it is used not to explain the meaning of a word but to emphasise a factual - rather than a logical - connection between two ideas.

For all our claims to precision, lawyers do use words without thinking about their meanings. We will never eliminate all our bad habits of thought, but we can substantially reduce them. One way would be to rely less on precedents. These should be used as a checklist of points to be covered, but they are normally employed as a hand-me-down of stock phrases, many of which are unnecessary. »

» Why else would solicitors write, again and again, *In witness whereof the parties have hereunto set their hands and seals the day and year first above written?* It means only that the parties have signed the document to show that they mean it, a point so obvious that it need never be made. (We do not add it at the foot of our letters, yet would not argue that we were not committed to the contents by our signature. We do not even use it in contracts for the sale of land.)

But some legal clichés are dangerous as well as clumsy. For example:

- We think that *for the purposes of identification only* (habitually applied to the plan attached to a conveyance) means that the textual definition takes precedence if it conflicts with the plan. A moment's thought shows that the phrase says nothing like that. It says that the plan is included only to identify the plot. Well, of course it is! So is the verbal description. No distinction is made between them, so this cliché does not give us the protection on which we have been relying for years.

- *Unless the context otherwise requires* is a more accurate disclaimer, but too vague to be of much help. If the writer does not know whether a definition applies to a particular use of a word, the reader is not likely to. And the doubt caused by this slapdash habit detracts from the precision of the document.

Let us think as we write, and cut out the clutter. It will greatly improve our documents.

# NEWS

## Citizens' Charter

The civil service under Mr John Major is continuing the plain English initiative launched in 1982 by Mrs Thatcher.

The Cabinet Office said recently:

> The recently launched Citizen's Charter is intensifying efforts to further improve government forms and leaflets.

For example, the Taxpayer's Charter contains a commitment by the Inland Revenue "to help you ... by providing clear leaflets and forms".

## Cambridge City Council adopts plain language

Cambridge Council has adopted a plain language policy.

Simon Pugh, Head of Legal Services for the city, is a long-standing member of CLARITY, but the initiative is not limited to his department. The council has been working with the Plain English Campaign to produce understandable forms, and many - notably poll tax and housing documents - have already been "enplained". And Deputy Leader of the Council Jill Tufnell said of internal reports: "I'm confident they will get easier to understand. If councillors don't understand them they are encouraged to say so."

The council is preparing its own Citizen's Charter, and clear communication is one of its aims. "We intend to treat our poll tax payers as human beings," said Mr Pugh. "We expect them to comply with their obligations under documents we supply, and it is in everybody's interest that they understand them."

On December 9th CLARITY is giving a training seminar for the 12 members of staff in the legal department. They hope to convert all their documents into plain English within the next year. The council also intends to offer a mother-tongue translation service for the main language minority groups living in Cambridge.

## Plain English Campaign Conference 1992

The Plain English Campaign is planning a second international conference, in Hong Kong in September 1992.

The first, held in Cambridge, was reported in *Clarity* 18 (Oct 1990).

## Plain Language Institute of British Columbia

The PLI was created by the Attorney General's office in response to public criticism of obscure legal language. Its brief is to promote plain language in the law, and thus access to the justice.

Current projects are to:

> Look at lay readers' problems with legal materials, and the methods and attitudes of legal writers, isolating the factors which cause difficulty;
>
> Consider whether BC should enact laws mandating the use of plain language;
>
> Investigate whether judges interpreting documents attach more importance to formal expressions or to the parties' intentions;
>
> Computerise a bibliography of plain language materials;
>
> Set up a library;
>
> Prepare recommendations to the A-G's office on the design of statutes;
>
> Investigate lawyers' attitudes to plain language, and to »

» training courses, and to consider adult education courses generally, as groundwork for the design of a plain language writing course for lawyers;

Prepare a strategy for the City of New Westminster to adopt plain language;

Liaise with various special interest groups to help them prepare clear materials; and

**Arrange a plain language conference, to be held in October 1992 to:**

Clarify theory;

Develop skills;

Discuss research;

Provoke further research; and

Consider the needs of a document's readers, particularly those with special problems.

Other projects under consideration are to:

Examine how lawyers' concern about the risks of plain language inhibits their use of it;

Study the effect of legal education on communication skills;

Consider the non-written communication of legal concepts;

Create a directory of people and organisations working in the field of plain language;

Prepare an in-house style guide;

Set up a precedent library;

Make materials available by fax;

Help the A-G's office implement its plain language policy; and

Help individual law firms in the same way.

From a radio broadcast:

**That would be a very double-edged sword.**

## COMPETITION

***The clauses below are taken from the lease of a shop in an Essex precinct. But who is responsible for which boundaries? Small prizes are offered for:***

*(1) The interpretation nearest to that of the landlord's solicitors;*

*(2) The best letter explaining to the tenant who has to repair the boundaries;*

*(3) The most numerous list of drafting errors; and*

*(4) The best revision (for which you can make any substantive changes necessary to make your draft intelligible).*

There shall be included in this demise :

(i) A moiety in each case severed vertically of all dividing walls along the respective South and West boundaries of the demised premises and also that part of the East boundary which is co-extensive with 18 Long Ditton aforesaid other than that part of the South and West boundaries which are respectively co-extensive with the passageway and the pedestrian link and such last mentioned walls as also the fences (if any) in prolongation therewith shall be deemed to be party walls and party fences

(ii) The entirety of all boundary walls and/or fences situate along the respective North and East boundaries of the demised premises and also that part of the South and West boundaries which are respectively co-extensive with the passageway and the pedestrian link other than that part of the East boundary which is co-extensive with 18 Long Ditton aforesaid

Elsewhere, the lease requires the tenant to maintain "the demised premises" and "all party walls (and) fences" and

where necessary to join with the Landlord or at its written request with its tenant or tenants of other part or parts of the Building in ... carrying out ... repairs to any one or more of such party walls ... and ... to bear the proper proportion of the total cost ....

# CLARITY'S ANNUAL SUPPER

**28th October 1991**

Apart from a couple of people for whom Fridays were inconvenient, no preference was expressed for any particular day on which the supper should be held. And 20 - about the usual number - came to this year's event, held at The Law Society's Hall on the last Monday in October.

Our speakers this year were the chairman of the bar, Anthony Scrivener QC, who has joined CLARITY, and John Ward, Director of Development at the National Consumer Council.

## Tony Scrivener's speech

Whenever the question of plain and simple language crops up most members of the legal profession immediately and instinctively go on the defensive. On this occasion I include within the definition of "legal profession" judges as well, but I accept this is not always so. At a recent dinner which I attended with Mr Justice Otton, I felt constrained to remind him, when a toast was proposed to the lawyers, that he was no longer a lawyer and so was not included in the toast. On reflection, he agreed with the proposition, remarking that the Court of Appeal had said as much recently when commenting on a judgment to which he had been a reluctant party.

The problem is that most advocates have a skeleton in the cupboard so far as the use of language is concerned. Despite the fact that we are simple purveyors of words, carriers of pertinent messages, salesmen of propositions and concepts capable of feats of oratory and of distinguishing binding authorities from previous case law from the facts of the case with which we have been landed, terrible errors can occur as in the heat of the moment we are driven by some waywardness which is forever near the elbow of the advocate, and muddle appears.

Thus it was that recently a distinguished member of the judiciary found himself saying:

> Counsel sought to raise another argument at a very late stage but I ruled that this was water under the bridge and could not be dug up now.

On the other hand, there was no error on the part of Mr Justice Willis when, in the early part of this century, he commented on the law of sewers. He had, so to speak, total *mens rea*, which is a topic to which I shall return later. He said:

> The truth is that the whole of our sanitary legislation is in a state which I hardly like to categorise in the language that naturally suggests itself.

I confess that on occasion I have been guilty of error. I have done the things I should not have done and not done the things I should have done. Sometimes it has been lack of clarity of thought rather than of language. I recall being host to a multitude of foreign lawyers, when it was discovered that the instantaneous translation was not working. After the technicians had failed to remedy the situation and one or two members of the Bar Council had kicked strategic parts of the apparatus to no effect, I was pushed onto the stage to confront the multilingual masses. In a moment of rare inspiration I was asked what seemed at the time to be a sensible question. I asked, "Please put your hand up if you do not speak English." Since no-one put up their hand I concluded that we could safely continue the day speaking in English.

If lawyers are at risk from the careless, unclear use of language, so are politicians. I suppose the lawyer/politician must be at optimum risk. Thus it was that a member of the House of Lords asked the following question:

> My Lords, is my noble friend aware that the River Thames is one of the least used waterways of any major city in the world and is he aware that greater use could be made of heavy lorries?

And a member of a local authority was found saying that if the local buses stopped to pick up passengers they would not keep to time.

I accept that advocates are often attacked for the over-polite use of language in court. Elaborate attempts are made by the judicious use of language to, so to speak, wrap up the message being conveyed to make it palatable and acceptable for the audience to receive. Thus there has developed a code language - a sort of professional gobbledegook - for use in court. Each polite, or perhaps over-polite, phrase carries with it a coded message understood only by those whose days are spent in court. It creates a mystique of courtesy which washes over the public gallery and the press, but contains within it barbed messages to those who know. I should give some examples of the code to the uninitiated:

> *If it please your Lordship* means *It will not please your Lordship, but he is just going to have to listen to it, so why not be quiet and listen?*
>
> *With respect* means *Without respect.*
>
> *If your Lordship will be so kind* means *Do try to get the right page or else we shall go part-heard.*
>
> *I am instructed that* means *Don't try to pin this on me.*
>
> *I will take instructions* means *I have not a clue.*

Of course, the code sometimes works in the other direction, when it is the judge who puts out the coded message. Thus:

> *Their Lordships understand your*

*point* means *Your point is rubbish, so shut up.*

*It is a short point, isn't it?* means *You go on at your own risk.*

*I would respectfully wish to disagree with the view expressed by the trial judge* means *The trial judge has gone bananas.*

These coded messages enable the hearings to proceed in a civilised manner. It creates a cool, quiet atmosphere for intellectual debate. It is so much better than shouting, "For God's sake, shut up!" or "I always said the retiring age should be 65."

Now no speech on this topic would be complete without making some proposals for reform. That very word "reform" is one of the most misused words in our language. It implies a change for the better, whereas, more often than not, it is a change for the worse. On the other hand, those announcing the change would not be doing so if they did not consider it to be a reform. Hence reforms are born.

The first reform I would suggest in court language is to bar Latin once and for all. I believe that we should acknowledge at last that the Romans and their civilisation have gone forever and that their language went with them. Let us demonstrate our erudition and learning by the use of our own language, rather than by demonstrating our knowledge of a dead language. Let the classical scholars argue in Latin or Greek, but let us get on with the language of the people.

Then there is the continual reference to what the judge was before he is what he is now: *Mr Justice Denning (as he then was).* Who cares what he used to be? It is about as relevant as referring to the maiden name of a female judge. Let us hear no more of what the judge used to be. It is a waste of time.

Then there is long-windedness. The blame does not lie just with the advocates. Whether we are good Europeans, federalists or old Englanders, we have much to learn from judgments from the European court. Unlike our courts, there is but one judgment, and it is short. The judgments of our courts seem to get longer and longer. The great Victorian judges did not go on and on for pages. So what can be done to shorten things?

The first thing is to shorten the résumé of facts. In a recent judgment of the Court of Appeal, those who wished to ascertain the principle of the case would have to start at page 46, as the earlier pages were a résumé of the parts and statutory provisions.

Then there is the process of reasoning. The words of long dead judges are picked over and cited at length. Huge chunks from the judgments of the past are set out page after page. For what purpose? This endless citation is used to demonstrate that the current judgment is an honest and logical emanation from the past. Yet after endless extracts from past judgments, the clever judge can justify to the academic legal world how he distinguishes the case from the unrelenting line of authority from the past. It can be used to demonstrate that Lord Coke in the 17th century was talking through his hat, or that Mr Justice Denman got it wrong in the 18th century. The poor advocate toils on through this exhaustive, exhausting dissection of history. But all the public, the litigants, and the lawyers want is the result, and what is the present state of the law. If citation is necessary, what is wrong with citing the name of the case and the page references relied on, without more? What we are interested in is the decision.

Then there is the dissenting judgment. There is none in the European Court. If a case is to establish the law for the future, do we need pages and pages of dissenting judgment?

The advocates have been able to keep their oral arguments concise by short, judicious references to previous cases, by skeleton arguments, and by avoiding a recitation of the facts. Judges should do the same in their judgments. The parties can agree a statement of facts to be included separately in the law report.

If the judges agree, must they all give judgments, the effect of which is often that where they have given different reasons for the decision, they merely store up manna for the advocates of the future. How do the European judges manage to concur in one judgment? Whatever gnashing of teeth and strong words there may be behind the scenes, one concise judgment is the final result.

In final mitigation on behalf of the lagal profession, forgive us for our sins, but bear with us as we toil through the jungle of modern legislation and the pages and pages of modern judgments.

I wish all messages could be as short, sharp, and interesting as this one, which I read recently in the *for sale* column of a local newspaper:

> For sale: tombstone suitable for someone called O'Reilly.

## John Ward's speech

Thank you for the invitation. I have long been an admirer of CLARITY. You are crucially important in the war to stamp out gobbledegook.

### My own experience

Is there any significance in your inviting me at the start of The Law Society's *Make a Will Week*? Let me tell you about my bad "will" experience last year.

I sent a solicitor a copy of my will annotated to show the changes I wanted to make. I asked that the new will should be written in plain and simple English. After 6 weeks I received a 2-page letter giving me information I did not need and had not asked for (including a paragraph on PETs that I did not understand and advice about inheritance tax) and a draft in the usual legalese:

> I hereby revoke all former Wills and Testamentary Dispositions ....
>
> I give all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto specifically

disposed ....

There was one sentence of 120 words and not a single punctuation mark!

I gently remonstrated and received a very stern letter back saying:

> As lawyers we are, to a great extent, bound by precedent and we have neither the resources, nor the ambition to be trail blazers in devising new words for Wills....
>
> Expressions like *testamentary dispositions* are tried and tested in the courts....

and, finally, a wrist-slapping:

> I regret you had to write to the firm as you did.

Shortly afterwards I received the final draft for signature and - defeated - I signed it. Then I got the bill: £172! This was (believe it or not) for *receiving and taking my instructions* and included a charge for advising me on inheritance tax.

I wasn't satisfied so I complained to the senior partner. The good news is that he waived all the bill and said they would review their practice. The bad news is that I still have the will. If I pop my clogs before I can get it changed I will be - posthumously, at least - the laughing stock of the Plain English Campaign which I helped found, and my family will be crossed off Chrissie Maher's Christmas card list forever.

## Why the National Consumer Council is interested in plain English

NCC was set up to identify and represent the interests of consumers, expecially disadvantaged and inarticulate ones. Within a month of our formation in 1975 we announced a campaign to cut gobbledegook. My first job at NCC was to lead a review of welfare and social service leaflets. Chrissie Maher, who went on to found the Plain English Campaign, was then a member of my Council.

When NCC reviews any goods or services, private or public, it is in terms of how far basic consumer criteria are observed. Those criteria are:

> Information, access, choice, value for money, safety, equality of opportunity, complaints procedures and getting redress, and whether consumer interests are represented when key decisions are made.

But the adequacy of information underpins many of those other criteria. We have found in almost all the investigations we have done in the last 16 years that the customers were frequently baffled by the forms, leaflets and standard letters they received, and intimidated by the people sending them. This applied whether we were looking into banks, the credit industry, nationalised industries, local council services, health, social security, or legal services - but especially legal services. Too often people did not know their rights or how to assert them, and they hadn't a clue what they should reasonably expect of those services. This made them ineffectual consumers and contributed in no small measure to the dismal performance of so many of the services: bad consumers make bad services.

## *Making Good Solicitors*

A couple of years ago, NCC published a short report ambitiously called *Making Good Solicitors: the place of communication skills in their training.*

We were concerned with the apparent difficulties some clients and their solicitors have in understanding each other. We took the view that responsibility for good communication had to fall, in the main, on solicitors themselves. They are paid to use their knowledge and skills to advise and to serve the best interests of their clients. We found that when clients complain about their legal advisors, it is much more likely to be due to poor communications than to an issue of professional misconduct. We found CABx were getting a steady stream of people coming in to complain about their solicitors, usually clutching a letter, or a bill, or both, that they didn't understand. It is ironic that they went to a free public service for an explanation of advice they had paid for.

In the report we recommended:

> 1. The Law Society should routinely monitor the nature and extent of communication problems between solicitors and their clients.
>
> 2. The "written professional standards" in The Law Society's *Professional Conduct of Solicitors* should be enforceable and any breach of it should lead to a reduction of fees.
>
> 3. The initial training of solicitors and their continuing in-service training should emphasise communication skills - written and spoken.
>
> 4. Solicitors should encourage clients to ask if they don't understand.
>
> 5. An award scheme for articled clerks for best communication - oral and written - organised by The Law Society and the Plain English Campaign.

Are we making any progress on the recommendations? I'd like to know from you.

## CLARITY's experiment

Finally, if I ever needed reminding of the extent to which the gobbledegook virus has infected the legal profession, Mark Adler's article in a recent *New Law Journal* does it superbly. Many of you will have read it. I wonder how many other solicitors would be prepared to test their clients' loyalty to them by setting them an examination.

The results show how badly CLARITY's campaign is needed.

Mark has given us the evidence of something that those of us in the consumer movement have known for some time, but couldn't prove:

- Your clients understand a lot less than you think they do; and
- They will assure you they understand when they don't.

And of course they are more likely to think badly of you and complain about a disappointing result if they have not understood what you are doing for them.

You as a profession are not alone with this problem. But at least some of you are taking it seriously.

A last comment

Recently, a bunch of planners in Hammersmith took exception to a piece of plain English in a public consultation brochure which their department intended to put through every letterbox in a certain neighbourhood. It said that "such and such a road was causing a bottleneck". This was too much for them, so they had "bottleneck" changed to "localised capacity deficiency".

## ELECTIONS

The members of the existing committee stood successfully for re-election in the absence of other nominations or volunteers. They are (in alphabetical order, and with the date of original election to the committee in brackets):

**Mark Adler**, a solicitor working alone in a suburban general practice (1984);

**Michael Arnheim**, formerly a Fellow at Oxford University, now a barrister in general practice in London (1988);

**Patricia Hassett**, professor of law at Syracuse University, but presently in London serving on the Lord Chancellor's Advisory Committee on Legal Education and Conduct (1990);

**Alexandra Marks**, a partner in the property department of a City firm of solicitors (1988); and

**Justin Nelson**, a partner in a country firm of solicitors (1985).

From a letter written by a City solicitor to his client:

> You should sign the will in the presence of two witnesses, one of whom must not be your mother.

# CLARITY'S PLANS

## Annual supper 1992

We are looking for a suitable restaurant, within easy reach of the main London rail terminals, for next year's annual supper.

Even taking a private room, we anticipate that this will be much cheaper than hiring accommodation at The Law Society; it will allow us a wider choice of food; and enable us to run on throughout the evening if we wish, without paying for security or trespassing on the free time of The Law Society staff.

## A joint seminar with Leicester Polytechnic

Dr Michael Arnheim is representing CLARITY in negotiations with Leicester Polytechnic to run a seminar with them on litigation drafting, probably in April 1992.

We hope to publish details in the March issue, but anyone interested in attending should contact Dr Arnheim meanwhile at the address on the back page.

## CLARITY's own seminars

CLARITY has now given some dozen half-day seminars, and bookings are still coming in. So far, they have all been given for large firms of solicitors, local authorities, and in one case, The Law Society. They have been staged at the client organisations' own premises. Details appear in the advertisement on page 16.

The financial arrangements have changed since the project was first announced. Mark Adler is now responsible (through his firm) for the administration as well as the teaching. He pays CLARITY 10% of his fee or £50, whichever is more, and a small amount for advertising.

We are now exploring the possibility of running the seminar in a hired conference room, at a fee in the region of £100 + VAT per delegate. With 4 continuing education points on offer, this compares favourably with other courses. We hope it will attract delegates from the smaller firms. Again, we hope to announce details in the March issue, but anyone interested should contact Mark Adler meanwhile at the address on the back page.

## CLARITY ties and headscarves

As can be seen from the advertisement below, CLARITY is commissioning the manufacture of a tie, which we hope will help promote the organisation.

We are also discussing with the same supplier the provision of women's scarves with the CLARITY logo.

Anyone requiring CLARITY braces should contact Arthur Daley.

# CLARITY TIE

## For sale

**Navy blue ties with the CLARITY logo**
**(as nearly as it can be reproduced)**

**£8.50 each**

Please order from our East Molesey address as soon as possible, so we have an idea about the size of the demand.

Production to take until about March, so we will not cash your cheque until we deliver.

# Proceedings of the Commonwealth Law Ministers Conference1990

Following publication in *Clarity* 21 of notes on our contribution to the conference, we are grateful to Richard Nzaran of the Commonwealth Secretariat for permission to publish extracts from other speeches and papers.

The two volumes of the proceedings are obtainable from *Commonwealth Secretariat Publications*, Marlborough House, London SW1Y 5HX, price £30.

**Garth Thornton QC** recommended that:

1. Governments should vigorously promote an understanding that plain language and clear laws are the responsibility of all those concerned with the legislative process, and that they are not just a technical problem for the drafter.

2. Governments should accept that a separate duty exists, after enactment, to communicate the contents of a statute to those affected by it.

3. Law drafters should be encouraged to use modern technology.

4. Stylistic practices, and precedents of commonly recurring provisions, should be maintained in a practice manual and regularly reviewed.

5. Greater attention should be paid to the teaching of writing skills to student lawyers.

6. Statutes should be reprinted with amendments incorporated.

7. Consumer statutes should where necessary be redrafted in plain language.

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**Shri Dinesh Goswami, Union Minister of Law and Justice, India,** made a speech welcoming CLARITY's proposals, and underlining the importance of communicating law to the lay citizens; plain language must be used if this was to be achieved

He also referred to the problems of simplifying statutory drafting in the 15 Indian languages as well as English. Since 1973, the translation into the local language had been the authoritative version of any law, but not all English legal concepts were readily translateable. "In finding a satisfactory answer to these problems," he said, "linguists and legal experts are sometimes forced to adopt words and phrases which are less intelligible than the English text itself." To improve the situation, they are developing glossaries of nationwide standard expressions.

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**Sir Kenneth Keith,** deputy president of the New Zealand Law Commission and now a member of CLARITY, quoted Queen Victoria's 1840 instruction to the governor of that country that all laws

> be drawn up in a simple and compendious form, avoiding as far as may be all prolixity and tautology.

Sir Kenneth mentioned many

> outstanding examples of good drafting, ... from the very first Supreme Court and conveyancing ordinances....

He continued:

> The high quality of such statutes is of course the consequence of several factors, including usually clear thinking and decision making..., good instructions to Parliamentary Counsel, a good grasp by those involved (in the executive branch and in Parliament) of the wider political, administrative, legal and constitutional context, and sufficient time....

Design

The design of the statute book has been changed throughout this century. So the page is now smaller than a century ago, the setting easier on the eye, and the line length shorter. Numbers are no longer spelled out in words and references to statutory provisions are shorter.

Statements of purpose

More statutes now include an express statement of purpose....

Accessability of inherited law

Parliament, building on work done throughout the Commonwealth (especially in Australia), recently provided a definitive list of our inherited statute law and ... a more direct draft Bill than the original (Imperial Laws Application Act 1988)....

The internal organisation of statutes

The organisation of statutes more often places the important substantive provisions first and the less significant institutional and procedural matters last....

Consistent approach to principle

The substance of statutes

increasingly reflects a consistent approach to recurring matters of principle....

Many of (the new principles and practices) are brought together by the Legislation Advisory Committee in *Legislative Change: Guidelines on Process and Content*, published in 1987 and endorsed by the Cabinet later that year....

One of the important projects Sir Kenneth described was the preparation of a *Legislation Manual.*, in which the Commission recommends the use of:

- purpose provisions instead of long titles;
- varying typography;
- Arabic rather than Roman numerals;
- short sentences;
- a clear, logical order of presentation;
- the present tense; and
- the active voice;

and the avoidance of:

- inappropriate capital letters;
- archaic and unusual words;
- unnecessary fictions; and
- unnecessary qualifications to propositions.

All statutes are being computerised, but

We have yet, I think, properly to assess the computer's potential for a much more accessible, principled and coherent statute book.

oooooooooooooooooo

**The Public Trust Office**, which (among other duties) provides a public will-drafting service, reported that in October and November 1985 two senior staff solicitors rewrote 240 will precendents in plain English, and circulated the drafts for consultation before they were adopted.

An example is shown above opposite.

## Extract from a Pubic Trust Office will

**Earlier wills**

1. I cancel my earlier wills.

**Executor and trustee**

2. I appoint the PUBLIC TRUSTEE of New Zealand ("my trustee") the executor and trustee of this will.

**Guardian**

3. If my wife dies before me, I appoint my sister AMY the guardian of my children.

# LETTERS

## Gender-neutral drafting

**from Julia Wakelam**
**1 Woodhall Street, Bury St Edmunds, Suffolk**

Have you never heard the following:-

Lizzie Borden took an axe
and gave her father forty whacks
when she saw what she had done
she gave her mother forty one

More seriously, your article *Neutral Language* in the last issue was both offensive and inaccurate. One does not have to be a philosopher to appreciate that the use of language reflects a subconscious bias and that, conversely, a conscious use of language can help eliminate bias.

*Mark Adler replies:*

*Ms Wakelam's suggestion that the problem is philosophical (and not psychological) reveals her own unconscious (not "subconscious") bias: that the answer is something we can impose on the world rather than the other way round.*

*Nor am I sure that her conclusion is right. It does not follow logically (if indeed she intends it to) from the assumption that thought patterns are reflected in language; and she offers no evidence in support of the assertion. My (ill-informed) view is that it is more likely that the unconscious use of language affects thought; conscious use seems to lead often (as it did in my article) to ridicule.*

*I agree that we should try to develop gender-neutral language, and it is a pity that Ms Wakelam did not comment on the constructive proposal I made, nor on the reasoning I offered.*

*Whilst I was taken aback by the vehemence of her condemnation, I still do not see why it is offensive to say (even if inaccurately) that women do not chop people into small pieces.*

## "At arms' length"

**from Professor Peter Butt**
**Law Foundation Centre for Plain Legal Language, University of Sydney, Australia**

On page 13 (*Clarity* 21) there appears your suggestion about the meaning of "at arms length". Could I suggest:

Two people agree upon a deal *at arms' length* if they bring

independent minds to the question whether they will enter into the deal, with neither person's judgment being overborne by the other person.

## Law reporting

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

I cannot recall any law report being criticised for its language, so this may be a first.

In the headnote to the report of *Hiscock v. Outhwaite (no.2)* (1991 3 All ER 642), paragraph 2 (reproduced opposite) consists of three sentences. There are no difficult words and many of the words are short but the first sentence contains 187 and the second 110, without so much as a semi-colon to provide relief. The third sentence, with only 8 words, has no place in this paragraph, since it sets out the conclusion from paragraphs 1 and 2.

My ability to understand the sentences is hampered by my complete ignorance of the subject matter; but surely a seven page judgment could be summarised in more accessible language than this.

***I sent a copy of Mr Melling's letter to the publishers for comment, but they have not replied. - Ed.***

**The headnote to *Hiscock*: see Andrew Melling's letter**

**However, where the enforcing court and the court of the country whose law governed the award (the curial court) were one and the same and application was made to that court to set aside or suspend a Convention award that court could exercise both the curial court's supervisory power to set aside or suspend the award and, at the same time, the enforcing court's discretion to permit the pending supervisory process to continue and to refuse enforcement of the award if that process resulted in the award being suspended or set aside by itself as the curial court, since where application was made to itself, as the curial court, to set aside or suspend the award it had as the enforcing court power under section 5(2) of the 1975 Act to refuse enforcement of or reliance on the award and power under s.5(5) to adjourn the proceedings, notwithstanding that the only 'proceedings' consisted of the application to itself as the curial court to set aside the award in which necessarily the award was being relied upon by the party seeking to have it set aside. Accordingly, although under s.3(2) the award, being a Convention award, was binding for all purposes and could be relied on in any legal proceedings, that was subject to the award being enforceable under the Act, which was an issue to be decided by the English court as the curial court because the arbitration was governed by English law, and since the English court was both the curial court and the enforcing court the High Court remained capable of exercising its curial jurisdiction over the arbitration and of adjourning, it it thought fit, any decision on the enforceability of the award until the pending proceedings for review had been determined. On those grounds the appeal would be dismissed.**

## Misunderstood phrases

from Alan King
11 Nelson Avenue, St Albans, Herts AL1 5SE

While reading the August *Clarity*, I was forcibly struck by the item on page 2 in which it was reported that many people seriously misunderstood the phrase *without prejudice*. It is of course legal shorthand, but it is not surprising that lay readers thought it was intended to indicate impartiality. An important phrase which is misunderstood is more dangerous than one which is not understood, and I think that CLARITY should compose an alternative, and push for its adoption throughout the profession. A Latin phrase, or one in Swahili, or some initials, would be better than an English phrase which seems to mean almost the opposite of its intended meaning.

*What about "Off the record" or "Not for disclosure to the court"? - Ed.*

Another pair of misunderstood words, although this is not so serious, is *Our reference*. Judging by the quantity of letters I receive on which it is not quoted, it is clear that some people - even in business - do not understand that they are asked to do so. Perhaps they think that the random sequence of characters is merely to enable the sender to file the copy correctly. We are so used to the expression that we do not realise that less experienced people will misunderstand it, and we put its omission down to laziness. I recall one instance when a telephone enquirer was asked: *Have you got a reference?* and she took this to mean that we would not deal with her unless she had a referee who would provide a "reference" of the kind required when someone applies for a job.

All business letterheads should have *When contacting us please mention our reference:* prominently shown, in the hope of getting the message across. I know it is longer than usual, but it would be printed, and the purpose of the "reference" should be clearer to the recipient than *Our ref.*

***This point had never occurred to me, though I have long suspected that we overuse references. The length of some suggests that the firm has more files than***

*there are atoms in the universe, which is unlikely during a recession. I have been thinking of abandoning the reference in my firm, where the writer's name appears at the bottom of the letter, and files are stored by the name which appears in the "re" line. - Ed.*

## Prescribing the layout of forms

**from David Lewis**
**Information Design Unit**
**79 High Street, Newport Pagnell,**
**Bucks MK16 8AB**

The Consumer Credit Act 1974 not only prescribes words that must appear on hire agreements covered by the Act, but it also dictates how they must be presented. This extends to emphasising particular words in the prescribed text, the relationship between their typography and that of the rest of the form, and the use of boxes around certain words.

All these rules mean that the relevant forms are, almost without exception, dire to look at and read, and considerably worse than they would be if the Act was less prescriptive about what things should say and look like.

While there may sometimes be good reasons for laying down the exact language and design that should be used in documents, I think that this is more often unhelpful. It means that the language and design are ossified. With the CCA, it means that documents produced now are restricted by what was (perhaps) acceptable 17 years ago, but is now quite outdated.

When I worked in the DHSS Document Design Unit we made a point of promoting the idea that Acts and Regulations should not include documents that had to be reproduced exactly as they appeared in the legislation. This might be something that CLARITY would want to urge more generally.

*I asked David Lewis if the regulations had not been updated since 1974, and he sent me an extract from a form prepared under the rules now in force. This appears below.*

*He also said that the regulations do not demand a minimum type size, but only comparative type size, and that the large amount of prescribed information militates against the use of large type even by a willing drafter. - Ed.*

This is a Hire Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms.

Signature(s) of Hirer(s) Date(s) of signature(s)
Under this agreement the goods do not become your property and you must not sell them.

**YOUR RIGHT TO CANCEL**

Once you have signed you will have for a short time a right to cancel this agreement. You can do this by sending or taking a **WRITTEN** notice of cancellation to The General Manager XYZ plc at the above address.

If you cancel this agreement, any money you have paid, goods given in part exchange (or their value) and property given as security must be returned to you. You will not have to make any further payment.

If you already have any goods under the agreement, you should not use them and should keep them safe. (Legal action may be taken against you if you do not take proper care of them.) You can wait for them to be collected from you and you need not hand them over unless you receive a written request. If you wish, however, you may return the goods yourself.

**IMPORTANT - YOU SHOULD READ THIS CAREFULLY - YOUR RIGHTS**

The Consumer Credit Act 1974 covers this agreement and lays down certain requirements for your protection which must be satisfied when the agreement is made. If they are not, XYZ plc cannot enforce the agreement against you without a court order.

If you would like to know more about the protection and remedies provided under the Act, you should contact either your local Trading Standards Officer or

## An Australian in London

Alexandra Mills is an Australian lawyer on leave from her firm, where she is responsible for publications and for in-house training.

After a stint in Boston, she is in London until the end of December, studying methods of training lawyers in plain drafting.

When she returns to Australia she will be seconded to the Law Foundation Centre for Plain Legal Language.

## Stamp duty: certificates for value:

After representations by CLARITY, the clerks at the stamp office have been instructed not to insist on the traditional wording of the certificate for value, which reads:

> It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £30,000.

Certificates are to be considered on their merits.

# A stylistic analysis of The Law Society Business Leases

by

Professor J.E. Adams

*Clause numbers refer to the "whole building" version of the lease.*

The un-named commentator in *Clarity* 21 (August 1991, p.17) properly refers with enthusiasm to The Law Society promoting the use of plain English, which he (or she) welcomes in these forms. So do I, and the drafters deserve congratulation on their achievements in that respect. Even if the only impact of the new forms is the demonstration that a modern style of drafting is practical, all the effort will have been worthwhile.

As with any draft, however, particularly one's own, it is always possible to look back at some phrases or concepts and think, afterwards, that it might have been done differently and sometimes better. On the assumption that CLARITY members will by now have a copy of the document constantly by them, that is the purpose of this article. It is not concerned with substance, except incidentally to the meaning caused by drafting choices.

## Use allowed

The first port of call on this voyage of exploration is, on page 1, *use allowed*.

Why was *permitted use* rejected? The answer may be because of its technical meaning in the Planning Acts, but the chosen phrase reads much more awkwardly than the more familiar one.

A more serious complaint is that the *use allowed* provision perpetrates a "stuffed definition", which some rate as a regrettable drafting fault. The definition contains a substantive provision (that is the "stuffing") for it reads *for use as ... or any other use to which the Landlord consents (and the Landlord is not entitled to withhold that consent unreasonably)*. When that is tucked away in the definition, it can be overlooked when construing the substantive clause. The phrase would have been much better sited in the *Use* clause, clause 3, in the text.

Moreover, there is a problem with the meaning of the new expression. Is it merely the equivalent of *such consent not to be unreasonably withheld*? That phrase allows no claim for damages, but only the self-help sanction of doing the forbidden act in the teeth of unreasonable withholding (subject to statutory amendment for alienation clauses under the 1988 Act). Alternatively, the new wording may mean *and the landlord agrees not to withhold consent unreasonably*, which does give a remedy in damages. Either phrase would avoid the uncertainty which the new mid-way phrase creates.

The same remarks apply when the phrase is used elsewhere in the leases, e.g. in clauses 3.6, 5.7 and 6.2.

In any event, *is not entitled to* equals *may not.*

## Words and figures

An odd survival, also on page 1, is the words and figures usage for rent: ____ *pounds (£____ ).*

## Payment of insurance premiums

A second apparent "change for the sake of change" appears in clause 1.2. The tenant must pay the landlord *the amount of every premium ..., to be paid* [three surplus words] *within 14 days after* [written notice] *(and this amount is to be paid as rent.*

Does this last phrase mean *otherwise it may be recovered as if rent in arrears*? That appears to be the intention. This is significant for the availability of distress, and is highly significant in deciding which forfeiture regime applies - rent or non-rent.

It is arguable whether the new wording only has that one possible meaning.

Incidentally, with 14 days allowed in clause 1.2, and another 14 days in the forfeiture clause 12(a), one is soon up against the risk of waiver of breach by accepting rent with knowledge of the breach, because of the policy decision to opt for monthly rent as the norm. The present writer does not share the earlier commentator's enthusiasm for that innovation.

## VAT payable

Next, one asks why is it *any value added tax payable* in clause 1 and *value added tax where payable* in clause 2?

## Insured risks

A more serious lack of consistency is the switch from *insured risk* in clause 5.4(b), excusing the tenant from making good the damage so caused, to *any of the risks to be insured* in clause 9, the cesser of rent clause.

The former arguably relates only to risks in fact insured; a landlord failing to cover all the risks listed in clause 11 would be in breach of that obligation but the omitted risk is nevertheless not an insured risk within clause 5.4(b).

Why change the wording? In fact, *insured risks* is a prime candidate for a front page definition anyway.

## The tenant's payment obligations

A similar "wobble" appears elsewhere between clauses 1 and 2. The former starts boldly. *The Tenant is to pay the Landlord* but clause 2 starts *The Tenant is also to make the following payments.* The clause 2 payments are all to third parties, which may be an explanation, but *The Tenant will pay* covers both and is clear and direct.

## Defined terms

The writer wishes all the defined phrases had initial capital letters, as that seems a helpful and well understood

convention. Only *Landlord* and *Tenant* are so treated in the new documents, so none of the others signals its defined status in the text.

### Active and passive

There is a sudden switch from active to passive voice in clause 6. This opens *The Tenant is to comply with the following:* but clause 6.4 runs *the Landlord's solicitors are to be notified and a copy sent to them.*

It would be more consistent to say *the Tenant will notify the Landlord's solicitors and send them a copy.* It may be objected that the notifier/sender, for say a mortgage, would be the mortgagee, but there is still merit in imposing the obligation directly on the tenant, leaving him to delegate it (at his own risk) if he so chooses. The obligation cannot directly bind the mortgagee.

### Landlord's obligations

Clause 11 produces the mild absurdity of *The Landlord agrees with the Tenant: (a) the Landlord is to keep ....*

Nothing is added by *the Landlord is* except three words.

### The wording of the covenants

The *End of Lease* clause, clause 13, does not start *The Tenant agrees with the Landlord* but reads ... *the Tenant is to.*

Again, the issue whether a covenant is imposed by that wording, (clause 1 on payment also uses *is to*). Here there seems little doubt, but no-one would suggest that *the Tenant agrees with the Landlord* was not user-friendly, bus-queue English. One detects another mild instance of a rather firm insistence on novelty. Such novelty is harmless enough in this clause but it may contain hidden traps elsewhere, as in the provisions on withholding consent.

### Conclusion

Despite these mild reservations, the writer repeats his admiration for a good example of concise modern drafting. Perhaps the minor defects are the product of committee drafting and compromise, or the inability of The Law Society to find a computer program to eliminate unjustifiable variations. Who of us would not welcome such a program to scan our own products?

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# INDEX OF MATERIALS

We occasionally receive gifts of materials from members and organisations. Below is the beginning of a list of books and pamphlets held by the chairman. If anyone is interested in any item, please telepone 081 979 0085 during office hours.

There is not enough room in this issue for the complete list, and it will be continued in the next issue.

AUSTRALIA
*Legislation, Legal Rights and Plain English* (discussion paper), Law Reform Commission of Victoria 1986.
*Plain English and the Law* (report), Law Reform Commission of Victoria 1987.
*Austudy Regulations,* Australian Government 1990.
*Reader Friendly Documents Kit,* Australian Government 1990.
CANADA
*Plain Language and Legal Writing in Quebec* (unsigned and undated article, by David Elliott?).
*Plain Language Resource Materials* (bibliography), CLIC 1990.
*The Decline and Fall of Gobbledygook: Report on Plain Language Documentation* , Canadian Bar and Bankers' Assocs 1990.
*Plain Language Consumer Contracts* (discussion paper), Government of Alberta 1991.
*Municipal Government in Alberta - A Municipal Government Act for the 21st century,* Government of Alberta 1991.
*A Plain Lenguage Report* (1st annual report of the Plain Language Institute of British Columbia, 1991.
ENGLAND
*Conveyancing Simplifications* (report), The Farrand Committee 1985.
*The Plain English Story,* Plain English Campaign 1986.
*A Lament for the Law Commission,* Richard Oerton 1987.
*Memoranda of the 1990 Meeting of Commonwealth Law Ministers (Part 1),* Commonwealth Secretariat 1991.
*Winding up an estate* and *When I'm 65* (leaflets), Richard Oerton and The Law Society 1991.
SPAIN (all published in Catalan by the School of Public Administration, Catalonia)
*Revista de Llengua i Dret* , 1990.
*Formulari de Procediment Administratiu,* 1990.
*Manual de Llenguatge Administratiu,* 1991.
USA
*Scribes Journal of Legal Writing (Vol 1),* West Publishing 1990.

# PLAIN ENGLISH CAMPAIGN 1991 Awards

Lord Mackay, the Lord Chancellor, was at the Plain English Campaign's 12th annual award ceremony on 2nd December to collect his department's award for the recently redesigned county court *default summons* form. It was also announced that PEC had awarded their prestigious Chrystal Mark to the new divorce leaflets produced by the same department.

The awards were sponsored by the National Consumer Council, a long-time supported of PEC, and by Video Arts, who have taken over the marketing of the Campaign's *Plain English Course.*

The other winners were:

> Department of Social Security, for their *Disability working allowance* claim pack and information sheets;
>
> Department of Trade & Industry, for their *Brussels, can you hear me?* brochure;
>
> The Employment Service, for their *Helping you back to work* leaflets;
>
> Inland Revenue, for their *Income tax and young people* education pack and *You and the Inland Revenue*, a leaflet produced under the Taxpayer's Charter initiative;
>
> Hastings Health Authority, for their *Stress busters* booklet;
>
> London Lighthouse, the AIDS charity, for its leaflet *Introduction to London Lighthouse*; and
>
> Midland Bank, for their brochure *Business banking charter.*

A new category of award, for clear news reporting, was given to *The Independent,* and to the BBC for both its *Newsnight* and *Northwest Tonight* programmes. The London *Evening Standard* refused its award because it was offended by the description "Best Regional Newspaper"; it is apparently a national newspaper, though only available in the London area.

On the distaff side (if one can say this without offending the champions of agricultural produce), the Campaign offered Golden Bull awards for eight examples of gobbledegook.

Out of respect for his office, the first went to Dan Quayle, the Vice-President of the United States, for this quotation in the *Washington Post*:

> We offer the party as a big tent. How we do that (recognise the big tent philosophy) within the platform, the preamble to the platform or whatnot, that remains to be seen. But that message will have to be articulated with great clarity.

The representative of a Hertfordshire firm came to the ceremony to collect a Golden Bull for this extract from its conditions of sale:

> In the event of the goods being sold by the buyer in such manner as to pass to a third party a valid title to the goods, whilst any such sums are due as aforesaid, the buyer shall be the Trustee for us of the proceeds of such sale or to the claim for such proceeds and the buyer shall place such proceeds in a separate account. Nothing herein shall constitute the buyer our Agent for the purpose of any sub-sale.

He asked how he could recover the fee paid to his solicitor for drafting this 13 years ago, and as a humanitarian gesture the award was withdrawn.

Other good-natured recipients wrote or attended, promising to do better in future. In particular, the chief executive of the West Bromwich Building Society wrote that his predecessor, who had penned its winning entry, had taken early retirement (some time) after writing to a borrower:

> As you have already effected insurance cover Mrs Smith with the Direct Line Insurance Company, the Society would certainly agree if it would assist you, to this insurance remaining in effect until the next renewal date in June 1991 and then the Society could arrange insurance cover as referred to above, under Block Policy Arrangements with the General Accident Insurance Company, but I look forward to hearing from you bearing in mind the administrative difficulties for the Society if a borrower effected their own insurance cover, Mrs Smith, that you will agree to the Society effecting the normal insurance cover from the next renewal date in respect of the insurance with the Direct Line Insurance Company, in June 1991.

The well-attended reception was an opportunity to market the *Plain English Course.* This consists of a trainer's guide, material for 48 students, and a copy of *The Plain English Story*, which describes the aims and history of the Campaign. The course is in 17 parts, and in its full version lasts 2 days.

The awards ceremony was attended by several government ministers and was well reported in the press. Congratulations to Plain English Campaign on another publicity coup, and on their routine hard work and success - often behind the scenes - in eroding gobbledegook.

**The *Plain English Course* is available for £695 + VAT from:**

**Video Arts**
**68 Oxford Street**
**London W1N 9LA**

**Tel: 071 637 7288**
**Fax: 071 580 8103**

# ACCESS TO THE LAW

## The Bar Council's Law Reform Committee Report

Slightly abridged from the original, which was written by James Goudie QC, Mr District Judge Adams and William Blackburne QC

Printed by kind permission of the Bar Council

### Introduction

The inaccessability of statutory law to the public at large and even to legal practitioners, especially legal practitioners outside major urban centres, has increased, is increasing and ought to be diminished.

Statutory law is inaccessible in two major respects.

1. It is hard to find.
2. Once found, it is hard to understand.

### Hard to find

A combination of factors make statutory law (which is increasingly bulky and prolix) hard to find to a scandalous extent. These include the following:

1. A major new statute may have been enacted but be unavailable for several weeks. Meanwhile one has to make do with the Bill, which will not, however, include the latest amendments; and clause and sections numbers will not correspond.

2. No sooner has a statute been enacted than it may be subject to massive amendment.

3. Even when legislation is consolidated this may then be subject to immediate change.

4. Primary legislation may be changed by statutory instrument made under other primary legislation.

5. Different sections, and even sub-sections, are brought into effect (by a successtion of commencement orders) on different dates over a period that may run into years.

6. Notwithstanding that we are in the age of word processing, and despite experience elsewhere, how a statute currently stands can be discovered only by an elaborate and time-consuming paperchase or by resort (in some areas) to expensive updates or Lexis.

7. Although the legislation itself is rarely skeletal, a mass of flesh is often added by statutory instruments, subject to a minimum of parliamentary scrutiny. Moreover, statutes and statutory instruments made under them are drafted in different offices.

8. Even when it is possible to gain access to all the relevant and most up-to-date legislation on a particular subject, this will often not be enough to provide a complete picture of the law: one commonly has then to attempt the difficult task of completing and understanding the jigsaw created by the combination of legislation which covers certain aspects of an area of the law, and cases which continue to cover the rest.

9. Many other areas of the law which could now readily be codified are still to be found only from cases decided over many years and scattered across a number of different series of reports.

### Hard to understand

If the searcher after enlightenment has not already been defeated in the quest to discover what statutes and statutory instruments currently in force say, he or she is then confronted with the task of divining what they mean. If judges (encouraged by the Court of Appeal) incants the words of a statute, then they are liable to be met by looks of blank incomprehension from the jury. If they are able to paraphrase the statute in a way that is simple and suited to a lay audience then one must ask whether this could not usefully have been done by Parliament in the first place.

Bewildering complexity is by no means confined to revenue statutes. Although there is scope for mathematical formulae, as the Renton Committee on the Preparation of Legislation (Cmnd 6053) suggested, in paragraphs 11-20, those for the calculation of mainenance in schedule 1 to the Child Support Bill are a glaring case of misuse. Is it not time for a return to the style of the Sale of Goods Act 1893?

Very often, the vices identified above are found in combination. For example, the draft Commonhold Bill is very long, very involved and very complicated, and yet very important provisions are left to regulations.

Moreover, often three (or more) sets of provisions have to be considered: old law which has been repealed but is still relevant for some purposes; new law which is not yet fully effective; and extremely complex transitional provisions, which will remain part of the statute long after they have ceased to be applicable.

### What should be done?

The main problems are the attitude of government (which drafts virtually all legislation) and the need to consider the legislative process, democratic and thorough though it is capable of being. The Bar should identify and promote a series of proposals for making the content of the law more accessible and comprehensible to the public at large. The focus of these proposals should be the needs of the user and they should combine detailed recommendations as to the presentation of statute law with general recommendations about the formulation and future role of »

» legislation in our legal system.

Examples of such proposals would be as follows:

**Presentation**

All legislation, including statutory instruments, on a particular subject should be contained in its latest form and comprehensively in one place. The user should be able to find all the statute law on that subject quickly and conveniently, without having to refer to amending Acts, or sections of other Acts which primarily relate to different subject-matter.

To this end:

1. The arrangement of statutes should, as with *Statutes in Force*, be on the basis of subject; and "miscellaneous provisions" legislation should be avoided.

2. All statutory instruments enacted under a statute should be appended to a republication of the statute.

3. New provisions relating to a subject covered by an existing Act should be incorporated by textual amendment into the existing Act rather than forming a separate statute.

4. Publication of new and amending legislation should be in a form which allows quick and easy updating (possibly on the basis of a loose-leaf system with the issue of individual replacement pages).

5. It is extremely important that publication should always be before the date on which the legislation takes effect.

6. The date on which the legislation takes effect should be readily apparent on the face of the legislation, subject only to unavoidable exceptions.

7. The titles of new legislation should be in accordance with a clear subject index already established for existing legislation.

8. Unavoidable detail should not appear in sections of the Act, but should be put in schedules, save for details of a changing or technical character, for which statutory instruments are appropriate.

**Formulation**

Legislation inevitable originates in government departments yet it is at this early stage, when improvements could most satisfactorily be made, that our present legislative process lacks any machinery capable of carrying out the necessary consultation with outside interests. This function may well merit a body whose responsibility is to scrutinise the form, arrangement and language of proposed legislation to ensure that it is clear and comprehensive before it goes before parliament and that it remains so. No person or body is now effectively responsible for scrutinising legislation as a whole before it is introduced, the Legislation Committee of the Cabinet having largely abdicated this function. In particular:

1. Legislation must be expressed in »

» clear and simple language, avoiding the confusing legalistic style of drafting which predominates in most existing statutes. The Maintenance Enforcement Bill is an outrageous but typical example both of extraordinarily complicated provisions, mostly incomprehensible to the persons affected by them, and of numerous early statutes being amended. Unintelligible legislation is the negation of the rule of law and of parliamentary democracy.

2. Legislation should expressly state whether it is to be retrospective, or if it is intended to reverse the effect of some rule of law.

3. The structure of statutes should follow a logical, sequential pattern that allows for most convenient reference by the user; statutes should be annotated; and there should be a wider use of definitions.

4. The substantial content of legislation should be contained within the statute itself rather than added later in the form of statutory instruments.

5. An Act should cover only one subject, a practice introduced by Britain in many Commonwealth countries.

6. The structure and language of statutes should be kept under constant review.

7. Legislation should state its purpose and lay down general principles (in the European tradition). It should whenever possible avoid trying to cover every situation imaginable, with the consequent need for frequent amendment.

Any body established to carry out these functions could also be responsible for increasing consolidation and codification.

### Consolidation

Consolidation of the statutes covering a particular area of the law provides an answer to many of the problems of access to legislation outlined above.

### Codification

Codification is a logical extension to revision and consolidation. Existing law, both statute and judge-made, is reduced into comprehensive and comprehensible statutory form. The user need look at only one source for all the law in a particular area.

Arguments against codification are powerful. They stress the undoubted advantages of authoritative judge-made law, namely its flexibility, certainty and capacity to develop in response to the pressure of changing social conditions conveyed through the channel of litigation. However, the development of case law is limited by the unstructured pattern of cases coming for decision. Codification should retain the flexibility of case law whilst allowing for reform and clarification. Its gradual development should be encouraged, provided that:

1. There is allowance for adequate study, research, consultation and planning, which should include the opportunity for the lay voice to be heard in the process of law-making, and which should result in a commentary to accompany any code to aid interpretation.

2. Codification must be comprehensive and sufficiently detailed so that it is the only source of the law in that field.

3. Codes should be kept under continuous review, the initial code being the first rather than the last stage in the process; and the advantages and disadvantages of codifying a particular area of law and of codification generally should be kept under review.

4. The users' requirements should be remembered.

### Conclusion

Of the 81 recommendations made by the Renton committee in 1975 for improving statute law, only 39 have been fully or mainly implemented. Several of the most important have not been carried out.

Since then the situation has deteriorated: legislation has become more voluminous, more detailed and more difficult to find and understand. The next Parliament should reverse this trend as a matter of urgency.

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## REFERRALS REGISTER

The full list is published from time to time but copies are available from Mark Adler on request.
Please send stamped or DX addressed envelope.

**The list is open to any member willing to accept client referrals from other members.**
All are solicitors unless indicated.
Please write in if you would like to be included.

New entries only are listed at the foot of the next page.

# CROSSWORD
**No.2**

**by**

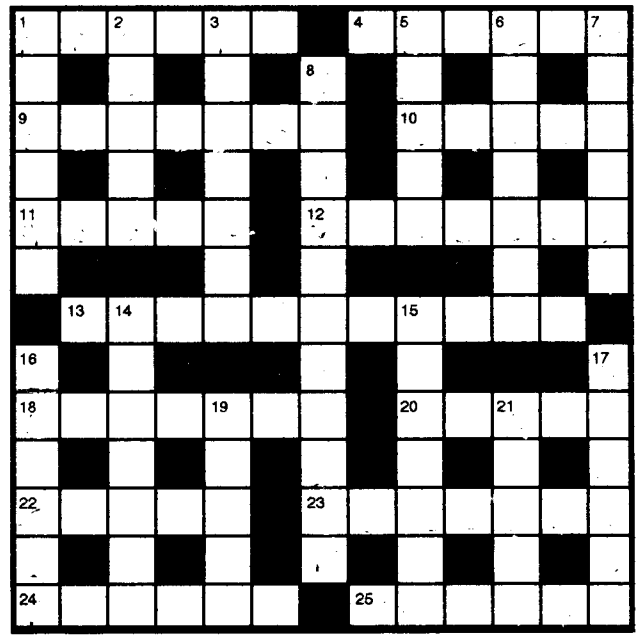
**John Walton**

*A small prize, donated by the compiler, will be awarded to the first correct entry opened.*

*Please send entries to*

1 Ashworth Close, Crick, Northants NN6 7DX

*to arrive by 31st January.*



## CLUES ACROSS

1. Baffle school by including test of 13 (6)
4. Lawyers wager on dog - or bird (6)
9. Once more let free (7)
10. Euclid losing head goes wild - yet still imbued with CLARITY (5)
11. One embraced by former king - he's beyond recovery (5)
12. Wordy yet misspelt Old English verbs (7)
13. Ready to include sailor I fired in CLARITY? (11)
18. Legislator brings rubbish back with stick (7)
20. Exe became recipient of old Algerian vessel (5)
22. Gluts upset 19 (5)
23. Put in with "herewith" it's tautology! (7)
24. Custodian returns to redraft ... (6)
25. ... letters to sue dun when redundant (6)

## CLUES DOWN

1. For Latin I do without ... (6)
2. ... the Spanish, the French 'n' Miss Terry (5)
3. Scorched salmon brown? No, wrong fish, wrong colour! (7)
5. Mark (of CLARITY) amends second letter - and is even more proficient! (5)
6. Renege, so no longer in? (4,3)
7. It dies to be put in order! (6)
8. Weighty proof to be discharged? (5,6)
14. When payment compelled so roughly cede tax (7)
15. Roman law I study in wordy book (7)
16. Recess disrupted by legal stoppage (6)
17. Effusive exposition of confused creeds (6)
19. It's worth coming up for this girl (5)
21. Chemists' footwear? (5)

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## NEW ENTRIES IN THE REFERRALS REGISTER

**(For other details see the foot of the previous page)**

| Name | Area | Telephone | Field |
|---|---|---|---|
| David Adam | Enfield, Middlesex | 081 367 3999 | Notary public |
| J.M. Eardley | Eastleigh, Hants | 0703 629962 | Marine law (yachting) |
| Kaltons | London N1 | 071 490 8696 | Commercial law and property |
| Stephen Knafler | London SE1 | 071 378 8005 | Landlord & tenant |
| Law Foundation Centre for Plain Legal Language | Sydney, Australia | 02 232 5944 | Plain English drafting |
| Christine Reid | Oxford | 0865 242468 | Computer law, charities |

# F. Reed Dickerson - an obituary

**David Elliott writes:**

The death of one whose ideas have stimulated so many, and who has so influenced legal writing, gives us occasion to pause and say *thank you.*

It was in the fall of 1939 that Professor Dickerson, then a newcomer to law teaching, joined the faculty of the Washington University School of Law in St Louis. But he did not stay long. The war saw him move to Washington DC, where he remained until 1958. It was during his government service that Professor Dickerson became fascinated by legislative drafting and the process by which legislation is created.

After joining the Indiana University School of Law in 1959 he concentrated on his special areas of interest - legislation, legal drafting, and products liability. Through his teaching, his writing, and his proposals for reform he became a major and formidable advocate for change in legal expression. He spent 22 years as an Indiana delegate to the National Conference of Commissioners on Uniform State Laws, making a major contribution to the substance and drafting of uniform state laws. It was also at USL conferences that his outstanding abilities as a jazz trumpet player first became known to the legal profession.

Professor Dickerson had a long-lasting relationship wih the UK Parliamentary Counsel Office, and was called to give evidence before the Renton Committee on the Preparation of Legislation. He much admired the British system of control over the form and style of legislation, and sought the help of Sir Noel Hutton, former First Parliamentary Counsel, to tell an American audience something of the British experience. Dickerson sought to professionalize legislative drafting in the United States.

The US judiciary takes a close look at legislative history as an aid to interpretation. It was Reed Dickerson who pointed out that sometimes that look excluded the text of the legislation itself. He straightened out interpretive wrinkles by publicising this remarkable judicial statement:

> **the legislative history ... is ambiguous .... Because of this ambiguity it is clear that we must look primarily to the statutes themselves to find the legislative intent.**

Professor Dickerson retired in 1980. Many of his friends said they could not believe he would retire. They were right. Just two years ago he was the keynote speaker at two international conferences, one at Cambridge University and the other, a few months later, in Ottawa. At both conferences he received a standing ovation. In 1990, he was back in England to speak, to similar acclaim, at the Plain English Campaign's Conference at Maddingley.

It was at the Ottawa conference, on legislative drafting, that I first met Reed Dickerson. He was then 80 years old. He held his audience for over an hour with a spirited talk about drafting, while decimating and then rewriting a piece of gobbledegook.

F. Reed Dickerson's contribution to the law and to legislative drafting cannot be overestimated. His influence will continue; the seeds he has planted will flourish. We thank you for the ideas, the challenge, and the spirit. To Reed Dickerson, lawyer, teacher, writer, trumpeter, we bid a fond farewell.

**Reed Dickerson died on June 9, 1991 at Bloomington Hospital, Indiana.**

## WELCOME TO NEW MEMBERS

**David Adam**, solicitor, Vanderpump & Sykes, Enfield, Middlesex
**Adviser on legislation (unnamed)**, Securities and Futures Commission, Hong Kong
**Carol Barnes**, Linley Point, near Sydney, New South Wales, Australia
**David Beales**, solicitor, London EC2
**Mrs G.L. Brown**, solicitor, and lecturer at Hammersmith & West London College
**C.R. Davey**, solicitor, Nabarro Nathanson, London W1
**J.M. Eardley**, solicitor, Eastleigh, Hampshire
**C.V. Evans**, solicitor, Mayfair, London W1
**Alison Fielden**, solicitor, Cirencester, Gloucestershire
**Helene Hanrahan**, solicitor, Blackheath, London SE 3
**Shelley Johnson**, Plain Language Institute, Vancouver, British Columbia
**Deborah Jolliff**, solicitor, Andrew & Co, Lincoln
**Kaltons**, solicitors, London N1
**Stephen Knafler**, solicitor, Anthony Gold Lerman & Muirhead, London SE1
**Philip Knight**, executive director, Plain Language Institute, Vancouver
**Law Foundation Centre for Plain Legal Language**, University of Sydney, Australia
**David Lewis**, information designer specialising in effective English, Information Design Unit, Newport Pagnell, Buckinghamshire (and member of the executive committee of the Information Design Association)
**William Morrison-Bell**, solicitor, London SW6
**The Plain Language Institute**, consultants, Vancouver
**John Pullig**, solicitor, Beckenham, Kent
**Christine Reid**, solicitor, Oxford
**Anthony Scrivener QC**, chairman of the bar of England & Wales

## NEWS ABOUT MEMBERS

**Professor Peter Butt**, director of the Centre for Plain Legal Language at Sydney University, hopes to be in England for several months early in 1992.
**Tony Scrivener QC** finishes his year as chairman of the bar on 31st December.

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## COMMITTEE



Please contact

Justin Nelson about membership, finance or book reviews
and
Mark Adler about this journal