



CLARITY

A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

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CLARITY's annual supper

Friday, 30th October 1992

This year's event will follow the now customary format, though it will run on a little later in the evening and is to be held in a private room at a restaurant rather than at The Law Society's Hall.

After the meal two invited speakers will each give a 10-minute talk. They will be followed by a brief report from the committee, elections, and a discussion of live issues.

One of the speakers will be David Lewis, an experienced lecturer on the design of documents and an exponent of clear language. He is just stepping down from the committee of the Information Design Association, and recently joined CLARITY. We have as a group paid very little attention to the design of documents, and members should be interested in Mr Lewis's suggestions.

Even the formal parts of the event will be informal, and we hope that the new arrangements will improve what has always been a convivial and interesting evening.

We are still looking for a suitable restaurant in Central London, and suggestions would be welcome.

Euphemism

Freedom of speech is threatened by the aggressive fashion for euphemism.

I have railed in the past about the earnest linguistic idiocies of the committed, but my jaw dropped open another notch the other day. The *Daily Telegraph* reported that the government agency English Nature »»

»» will no longer refer to trees as Native Oak because this causes offence; and it went on to say that the "Black Environment Network, which campaigns for ethnic concerns on green issues, welcomed the decision as a victory against biological racism". This must be a leg pull. Mustn't it?

But so many of these stories are not jokes that even this one may be true. A few years ago, when my wife worked for social services in the London Borough of Islington, it was a disciplinary offence to wish people a "Happy Christmas", even if they were practising Christians; the "correct" expression was "Happy mid-winter festival". On the same principle, it would be wrong to wish a Jew "Happy New Year" in September, though I cannot imagine that even the most paranoid recipient of such a greeting would take offence. (I suppose I should not have suggested that Jews can be sensitive about anti-semitism, but as a Jew myself I have special licence.)

The problem is not restricted to the language of extremists. Few people will call a digging implement a spade if they can compose a clumsy and uninformative phrase to take the place of one useful syllable.

We no longer have blindness, but

visual challenge; no deafness, but hardness of hearing or hearing impairment. I am slightly deaf (I say so merely to establish my credentials) and I can assure all sensitive souls that I am not in the least offended by the word. It is also likely that I will be bald quite soon, but I will not thank the wally who describes me as "hirsutically disadvantaged". "Bald" means lacking hair on the head where it normally grows, but what does the 9-syllable alternative mean? That I have dandruff, alopecia, that my hair sticks out at strange angles? It could be anything.

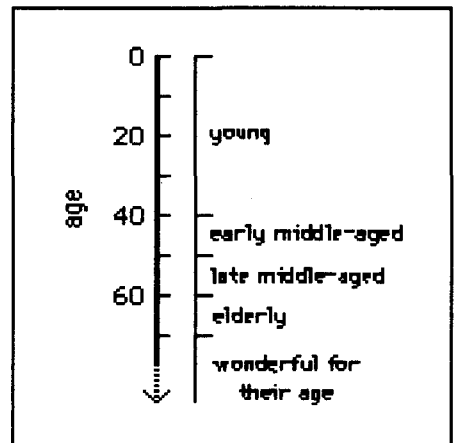
This liverish diatribe was triggered by hearing an intellectually challenged broadcaster refer to the "slightly elderly". The description of age has long been a source of euphemism, but this was a new one. The traditional categories are shown in the table on the right. It shows that those living an average 70 or 75 years are considered young for most of their lives and middle aged for most of the rest, but never old.

Similarly, when the dogmatically bland are discussing any positive characteristic, they divide the entire world into two categories, the gifted and "the perhaps not quite so gifted". It does not work the other way. We would not have "bitterly cold" and "perhaps

not quite so cold" when comparing Moscow and the Caribbean as holiday resorts.

I would not devote space to this issue if my criticism was unconnected to legal language, but lawyers are more euphemistic than most. Mealy mouthing is mistaken for professionalism, and as a result we do not say what we mean. Meanwhile, we pride ourselves on our precision.

Tact and professional detachment have their place, but we sometimes owe it to our clients - and to our standards of integrity - to say "boo" to the bogeyman. If criticism is appropriate we should make it fearlessly. Diffidence and advocacy are a poor mix.



News

Britain

Labour promises plain English statutes if it wins the election

Lord Irvine of Lairg, Labour's spokesman on legal matters in the House of Lords, has promised a

package of reforms if his party wins the spring general election.

One proposal is "to simplify legal practice by ensuring that statutes [are] written in plain English". CLARITY approached Lord Irvine to expand on this, but has not so far received a reply.

He is tipped to become Lord Chancellor if Labour wins.

CLARITY research continues

The article in the *New Law Journal* on 26th July was picked up by the National Consumer Council newsletter, and from there by *The Lawyer* and

others. This has generated a flurry of enquiries about membership.

A sequel is in hand, inspired by (though not the same as) research into American judges' attitudes. That was the project of Professor Joseph Kimble of Michigan, and showed that a consistent 80% - 85% of judges preferred plain language, in states as diverse as Michigan, Texas, Florida, and Louisiana.

CLARITY's questionnaire will invite a sample of English and Welsh solicitors, barristers, and judges at various levels to choose between traditional and plain drafting, and to comment on their choice in some detail. We hope it will show:

- (a) Why so many lawyers applaud plain language but so few write it; and
- (b) What we might do about it.

CLARITY seminars diversify

We are continuing to receive bookings for the CLARITY seminar, a half-day drafting workshop given by Mark Adler at the offices of firms large enough to supply sufficient delegates. Some 15 have been given since the venture began in January last year.

As mentioned in the last issue, CLARITY is now arranging a similar seminar to be given under its own auspices. The format will be the same, but the session will be open to all. It is intended for firms too small to have the seminar in-house, and for strays who made themselves scarce at their firm's own seminar. It carries 4 continuing education points, and the fee will be £100 + VAT.

Some interest in the idea has already been expressed, though no bookings have yet been taken. The first has been arranged for 2nd June, at the Institute for Advanced Legal Studies. Further seminars will be arranged according to demand, not necessarily in London.

Details appear on page 15.

Housing Association leases

CLARITY has been retained to translate the Housing Corporation's two standard leases into plain English. These will be used country-wide by Housing Associations for long lettings of houses and flats respectively.

The work is in hand.

Legal Aid petition

The Law Society recently sent all solicitors' practices a form of petition on which to collect signatures opposing the Lord Chancellor's legal aid proposals.

The copy which came to CLARITY was accompanied by a sheepish note apologising for the legalistic style, apparently required by Parliamentary rules. We have taken up the challenge, with the encouragement of the Law Society, and hope there will be developments before the next issue.

Trainee Solicitors Group Conference 1992

CLARITY had a promotional stand at the TSG's Brighton conference on 7th March, but it attracted little interest.

A small change to county court forms

The form of certificate of judgment has been slightly altered, following a suggestion by CLARITY.

The form is issued by county courts to enable a successful litigant to register a judgment in the High Court or to start bankruptcy proceedings. The old form did not make clear which party had the benefit of the judgment, but a checkbox has now been added to remedy the defect.

A new computerised style and grammar checker

Microsoft's word processing program, *Word 5* (the UK Macintosh version) has just been released, with a style and grammar checker added since version 4. We hope to review this in the next issue.

Europe

Two ERICA projects Eirlys Roberts reports...

A multi-lingual plain language drafting competition.

ERICA (European Research into

Consumer Affairs) has recently run a competition in the European Parliamentary News. It published three pieces of obscure language from the official journal of the European Commission and invited each member state to clarify its national language version.

Most states have responded, and the entries are now going to the judges. A press conference will be called when the winners have been chosen, and an eminent European will be asked to present the prizes.

Biotechnology

ERICA is engaged in a project to explain biotechnology to the general public.

Canada

Plain language newsletter

Cheryl Stephens is editing a plain language newsletter called *Rapport*, the first issue of which was published in January, and the second in March.

If you want to be on the mailing list, write to Box 48313, Bentall Centre, Vancouver, BC V7X 1A1, or fax (010 1 from UK) 604 739 0522.

Plain Language Institute survey

The Plain Language Institute in Vancouver recently commissioned a survey of public attitudes in British Columbia.

A cross-section of 600 residents were asked to comment on legal documents produced by practising lawyers, government and businesses, and to compare the comprehensibility of lawyers with that of other professionals.

Lawyers were thought to be the most important yet the most difficult to »»

»» understand. Respondents also felt that lawyers were the least concerned about clear communication.

I found some of the results of this survey surprising. 64% of the 600 questioned said they were frustrated by the language of law and government. "Only" 17% considered legal documents easy to read, and "a full 57%... rated them poorly written and hard to understand".

I would expect a similar survey in England to find everyone frustrated by legal language, with 100% ratings for poor writing and incomprehensibility. Is BC English much plainer than that of the rest of the world?

A desktop plain writing guide

The Plain Language Institute has produced a ring-spine "quick and easy guide to clear legal writing", called *Free your words*, and intended for the desk-top.

It identifies 10 common faults and devotes a page to each, describing the problem, offering a test to identify instances of it, giving examples, and

explaining how to correct the fault.

It should help those unwilling to spend more than 5 minutes to improve their writing. This may sound dismissive, but the guide might be of use to a wide audience.

Vancouver Conference *Just Language* 22nd - 24th October 1992

The Plain Language Institute is organising a major conference this October, "on the theory and practice of plain language in law, government and business".

Amongst many other topics will be:

- Bias in legal language
- Clients' views of legal writing
- Plain language in law firms
- Clarity and comprehension
- Testing your document
- Shaping language in law schools
- Teaching lawyers to write
- Plain language laws
- The power of judicial language
- Writing when your audience is a judge

Amongst some 40 speakers who have so far agreed to attend are:

Peter Butt
Robert Eagleson
Brian Garner
Joseph Kimble
David Mellinkoff
Gail Dykstra
David Elliott
Edward Kerr
Philip Knight
Mark Vale
and John Ward

Inserts will be included with this journal if they arrive in time from Canada. If they do not, call 1-604-681-5701 for details.

Australia

Law Reform Agenda, the newsletter of the Law Reform Commission of Victoria, reports:

All statutes current in the Commonwealth of Victoria are being scanned into a database. New Acts will be added as they are passed.

Since 1958, all amending legislation has changed the wording of the Act amended. The amendments will now be incorporated immediately into the original Act on the database, greatly easing and speeding research.

Letters

The Charity Commissioners and other offenders

from David Pedley
East Hainslack Farm,
Hawshaw Road, Cowling, via
Keighley, West Yorkshire BD22 0LW

There was recently some correspondence in which I complained about the Charity Commissioners' use of language,

and one of the Commissioners said they were trying to rectify this.

Yet I recently had a case where a two-page Memorandum of Association was increased to five pages by the insistence of the Commission on inserting details of ancillary objects, including such things as

- .to accept subscriptions, donations, devises and bequests of and to purchase, take on lease or in exchange, hire or otherwise acquire and hold any real or personal estate maintain and alter any of the same as are necessary for any of the objects of the Company and (subject to such consents as may be required by law) sell, lease or otherwise dispose of

or mortgage any such real or personal estate;

and

- to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts.

In another recent case, the Inland Revenue insisted on adding to the word *expenses* the words *out of pocket*. No doubt the Revenue sees fraud and perks everywhere, but surely something cannot be an expense unless it has actually cost money "out of pocket".

Clichés

from Ken Bulgin
87 Hayes Road, Bromley, Kent

I am stirred to write in defence of *unless the context otherwise requires*. I have never seen a document in which this was used of definitions in general. It normally appears in the preface to the definitions section attached to a general statement to the effect that in this document the singular includes the plural and the masculine includes the feminine. This means that there is no need to trouble the draftsman (and irritate the reader) by constantly writing his or her, child or children, etc, because you know that one includes more than one and the masculine includes the feminine - unless the context makes it clear that in that particular instance number or gender is specific or important.

What's wrong with this? I have always considered it a very useful drafting device.

P.S. I'm not much of a dancer either but your throw-away parenthesis is somewhat perverse in ignoring the fundamental difference between the two activities. At any rate, I have personally never been reminded of la différence when using a cliché.

My main objection is the strong suspicion that the device is used carelessly, as a ritual form of words to stave off the effect of mistakes. How many drafters check through every instance to see if the context does otherwise require? If not, how can they be sure that it will always be clear to the reader? Will the reader always know whether the number or gender in that instance was important to the writer? The safer practice is to check each instance of a defined term using the computer's find facility, and make sure the definition is appropriate. If not, say so, or, if possible, use a different word.

As for dancing, I have never understood why treading on women's toes was erotic. - Ed.

Typing mistakes

from Chris Elgey
The College of Law, Braboeuf Manor,
St Catherines, Guildford, Surrey

I cannot compete with the wonderful

typing error at the top of page 9 of the December *Clarity*, but offer the following extract from a manual on professional conduct which we give the students:

A client should, at least every six months, be told the approximate costs incurred to date and in appropriate cases an interim bill should be delivered.

Midwifery is still not part of the course.

Readers offended by smut - for which my unconscious accepts full responsibility - should not look up the mistake to which Ms Elgey refers. - Ed.

Consumer Credit Regulations

from F.J.T. Price
Legal Services
Lombard North Central plc
3 Princess Way, Redhill, Surrey

One small point about *Clarity* 22 (page 11): the Consumer Credit Regulations to which you refer were made not in 1974 but in 1983, and came into force only in 1985.

This refers to the letter from David Lewis of the Information Design Unit complaining of the poor layout prescribed for Consumer Credit Act forms. If the current regulations were made so recently, when the civil service was busy improving readability, there is even less excuse for them. - Ed.

A Dictionary of Modern Legal Usage

from R.M.C. Venables
Charity Commission, 57 Haymarket,
London SW1Y 4QX

I have recently read this thoroughly delightful and practical book (reviewed *Clarity* 20 [April 1991] p.13). It stands for no nonsense and contains much that is of interest, both by way of background to expressions and advice on the correct use of language.

The book is not confined to American English and only occasionally trips the British reader with American spelling.

Naturally a number of American expressions appear but they are often enlightening and almost always entertaining.

Of *dilatory* he says "This word is little known to laymen". In exposing *Psittacism* - parrot-like speech - he comments that "Many legal opinions and law review articles seem little more than ready-made legal phrases strung end on end to justify a given proposition." He concludes that "The best legal writers attempt to formulate their thoughts anew; their writing is fresh and original. And it is rare."

In those terms his book is one of the best.

Plain English Campaign

from Martin Cutts
69 Bings Road, Whaley Bridge
Stockport, Cheshire SK12 7ND

Clarity 22 reports that the Plain English Campaign has awarded the Lord Chancellor a prestigious Crystal Mark for some divorce leaflets. In the interests of accuracy it should perhaps be mentioned that the Campaign charges £500 for this prize.

The PEC replies that it makes no secret of the fact that it is a business, and that it charges for its services, including the Crystal Mark. The fee covers the work involved in adjudicating applications for the Mark, and this sometimes includes editing documents before they are approved.

Mr Cutts has also asked me to make clear that he was one of the two founders of the Campaign. - Ed

Cayman Islands

from Ian Lambert
PO Box 309 Grand Cayman,
Cayman Islands, British West Indies

This is just a brief note to say how important I think the CLARITY movement is, and how much I appreciate the journal. The absence of any correspondence from me or our firm should not be construed as apathy.

With best wishes for all involved in CLARITY for 1992. »»

Precedent wanted

from David Preston
Disken & Co, 16 Bond Street,
Dewsbury, West Yorkshire

I particularly wish to obtain a precedent for the sale of a small business such as a shop carried on in either freehold or leasehold premises.

The Economic and Social Research Council, which funds post-graduate research in the social sciences, has made this statement about obscure language:

Social science has suffered from an inability, or unwillingness, to put things over to a wider public. But you can popularise without trivialising. It could even be argued that if you cannot put over what you are doing in a well-educated and non-expert way, then you are hiding behind obfuscation.

Professor Howard Newby, chairman, quoted in *The Independent*, 5.3.92.

Teaching plain language writing

Alexandra Mills, recently back in Australia after her travels, offers some brief first thoughts on what she found

At the end of last year I toured the USA, Canada and England to investigate the ways lawyers are trained to write in plain English. My trip was made with the assistance of the Law Foundation of New South Wales, which established the Centre for Plain Legal Language in Sydney.

In return for the editor's generosity with some back issues of this illustrious journal, I now offer a few of my preliminary observations to any *Clarity* readers who may be interested.

Because I did not know what I would discover on this tour, I set the scope of my investigation fairly wide and narrowed it as I went along. Although I intended to focus on practising lawyers it would have been foolish to ignore lessons to be learned from other areas.

Consequently, the people I spoke to included teachers of almost every kind of lawyer and incipient lawyer, from first year law students to senior judges and legislative drafters. I asked them questions like:

How widely available and how popular is training in plain legal language?

How does it differ from traditional drafting training?

What are the main obstacles to

writing clearly (or even well) in the office?

What sort of people are teaching lawyers to write?

So far, the answers are surprisingly interconnected. For example, the availability of training in any sort of legal drafting is quite limited. It is restricted to specialist centres, and the odd enthusiast in an educational institution or, less frequently, a law firm. But, interestingly, where drafting training for practitioners does exist there seems little to distinguish the methods of teaching plain language from those used for traditional legal writing.

This helped to answer my next question and confirmed my suspicion that one of the reasons why it is so difficult to get practising lawyers to write clearly is a lack of serious attention to the task. In other words, simply teaching lawyers to draft, or write, goes most of the way to teaching them to draft or write clearly. It may even be that the reason for this is to be found in the answer to my fourth question: the people teaching lawyers to write seem increasingly to be writers rather than lawyers, particularly in North America.

Despite the differences, I was struck by the similarity of the answers on both

sides of the Atlantic, even from lawyers who do not consider themselves "plain". Although commercial lawyers in the USA may be less impressed by the marketing value of plain language than those in other jurisdictions, the issues challenging trainers in this area seem to be the same everywhere.

Practising lawyers everywhere have to be convinced that the use of plain language will benefit them personally, and they need to be impressed by the credentials of their instructors. And they do not want to spend a lot of time or effort being trained. If this resistance is to be overcome, the training must be attractive, authoritative, and readily available.

Before arriving in London I had gained a depressed view of plain legal language in England. One of my correspondents described it as "moribund". I was surprised, then, to see on the day I arrived a huge banner proclaiming that the Plain English Awards had been held the day before; and there was comprehensive newspaper coverage for the winners. That week also I learned of increased Law Society enthusiasm for producing more plain documents.

The more people I spoke to the more I realised that the real strength of the movement in England is its diversity. There are public interest groups and professional groups working away, and there is pressure from government and from market forces. This seems to have created a network of sorts that is raising the consciousness of both the public and the legal profession in a way that is more profound than mandatory regulation or even compulsory training could manage.

DRAFTING SNIPPETS

Payment in advance in arrears

I frequently use property developers' standard conveyancing clauses in this column to show that traditional legal language is nowhere near as precise as its proponents like to think. Perhaps the second richest source of material is the lease of a flat in a converted house.

This meaningless provision for the payment of service charges ran unchallenged for 17 years, and the contradiction was not noticed until counsel picked it up on the first day of the trial of various issues between landlord and tenants:

On the 29th day of September and the 25th day of March in every year in advance throughout the residue of the said term the Lessee shall pay to the Lessor by way of Maintenance Charge such sum as shall represent one half of the Lessee's contribution (calculated as aforesaid) in respect of the Annual Maintenance Cost as hereinafter defined for the year ending on the previous 29th day of September as shown in the last preceding Maintenance Account

How could the tenants pay *in advance* their share of the expenses shown on the previous year's accounts?

Payment per month

An agency's standard house rental agreement provides for

the monthly rent of £1300.00 Per Calendar Month One thousand three hundred pounds (and a due proportion

for any period less than a month) ... and payable in advance the first such payment to be in accordance with the itemised invoice enclosed with this Agreement and to be made on the signing hereof ... and to be in respect of the first month period of the said term

This linguistically challenged example means that the cost per week depends on the arbitrary criterion of the number of days in the month.

Another law report

Peter Butt sent in this item from an Australian digest:

Held, that in determining whether an act or omission which constitutes a permitting of a thing caused the damage which subsequently resulted, what is involved is the selection from the events preceding the damage the events which are, for the purposes of the law, to be seen as in the relevant sense causally responsible for it.

PETROU v. HATZIGEORGIOU (1991 Aust Tort Reports 68,559 [NSW Sup Ct CA]).

What is the matter with this?

The sentence contains 56 words, so is 2 or 3 times as long as it should be (allowing 15-20 words as a good average length).

Punctuation is not excluded in principle, but the writer's flow is broken only by 3 commas.

There are many 3- and 4-syllable words, making the sentence even longer than the word count suggests.

The repeated *ing* endings (determining, permitting, thing, preceding) are clumsy.

Words have been moved too far from those they should be near:

... in determining whether an act or omission which constitutes a permitting of a

thing caused the damage which subsequently resulted, what is involved is ...

... which are, for the purposes of the law, to be seen ...

... to be seen as in the relevant sense causally responsible

There are waffly phrases:

What is involved is...

In the relevant sense...

Causally responsible....

And what *is* the relevant sense?

Even with all these words, the sentence says nothing. It might have been written:

To decide if A caused B you have to decide whether (in the eyes of the law) A was "causally responsible" for B.

Perhaps the full judgment is more informative.

Certificates for value

I mentioned briefly in the last issue (*Clarity* 22 p.11) that the Inland Revenue had agreed to accept plain language equivalents to the certificate for value which is inserted at the end of conveyancing documents to claim exemption from stamp duty. Space then did not permit any greater detail.

The traditional wording is:

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 £_____.

I had argued that it was sufficient (if the facts permitted) to write:

This is not one of a series of transactions.

I argued that:

If the transaction was not one of a series it could not be part of a larger transaction, since if it were each part would be one of a series.

If it was not one of a series of transactions, it could not be one of a series whose value (etc) exceeded any given amount.

One or two of my documents had been returned by the Stamp Office with a note that I must use the traditional form verbatim, and they would not be moved by argument. However, an appeal through the Cabinet Office was passed to the higher ranks of the Inland Revenue, who instructed the Stamp Office to accept any reasonable alternative wording. My original version was too strong for them, but they have accepted:

This transaction is not one of a series or part of a larger transaction whose aggregate amount or value exceeds £30,000.

Southwark Borough Council

In *Clarity* 21 [Aug 1991] we reported that Southwark Council had advertised for a plain English lawyer but that our enquiry about their drafting policy was met by the telephone equivalent of a blank look.

Alexandra Marks' mother, a tenant of the council, recently received this letter from their legal department:

Dear Sir
RE: 2A PEACOCK YARD

I refer to previous correspondence and enclose herewith engrossment of the agreed form of Licence for execution in escrow and return in readiness for completion.

Yours faithfully

When I pointed out that the letter was incomprehensible to the lay tenant, the council replied:

... (I) can only assume that the letter should have been addressed to the Solicitor/Licensed Conveyancer acting for the recipient of the letter. I can only apologise for this oversight.

The section is currently reviewing the form of letters and documents that it uses, and it will of course take into consideration the comments made in your letter. In this connection, I would be grateful to receive any examples of plain-english correspondence that your organisation may have prepared.

We welcome Southwark's good intentions, and are following up the point.

However, at about the same time I applied to the local county court for a new lease, to which my client - a small trader - was entitled. Southwark Council was again the landlord.

The parties can reach any terms they want, of course, but if they cannot

agree the court will stipulate the form of the new lease. It will broadly reproduce the existing lease, but can make reasonable alterations to reflect changes in the market since the original was granted. The applicant must propose terms for the lease.

The old lease was 16 pages of gobbeldegook. I asked, in the application form and in correspondence, for a lease in plain English, and I suggested the Law Society's new standard lease terms. Without comment on this proposal, I received for approval a traditional draft twice the length of the old lease.

When I pointed out that they had ignored my suggestion, the Legal Services Division replied that:

- They had not read the correspondence (about the terms on which the lease was to be granted, conducted by the Valuation Department);
- They were changing the old form of lease, which they had inherited from the disbanded Greater London Council, for their own standard;
- The council would be insufficiently protected by the Law Society lease because "it is intended for use for lettings up to ten years in length".

It is a pity that the Law Society lease is ignored for reasons such as this. The last point in particular escapes me. The correspondence continues.

MA

BACK NUMBERS

of *Clarity* are available at the following prices:

Issues	1-4	£1	each
	5-11	£1.50	"
	12-15	£2	"
	16	£3	
	17-21	£2	each
	22	£3	

Please add 20% for handling and postage (inland) or send international postal coupons (overseas)

PRECEDENT LIBRARY

We badly need a volunteer to breathe new life into our sorely neglected precedent library.

No new precedents have been submitted for some time and some of those we have may be obsolete. A wider range of documents would be desirable.

Each document should be vetted by at least one volunteer and any changes approved by the original drafter.

A great deal could be done in an hour or so a week, and less time than that may be needed.

Please contact the committee if you are interested.

Book reviews

Plain Language for Lawyers

Michele Asprey
The Federation Press 1991
PO Box 45, Annandale, NSW 2038
178 pages
A\$40 (cloth); A\$25 (paperback)

Michele Asprey is a solicitor in New South Wales, and consultant to the Law Federation Centre for Plain Legal Language at the University of Sydney.

This book is the equivalent to Mark Adler's *Clarity for Lawyers* - a brief paperback on the reasons for using, and ways of using, plain language. The two books cover the same basic ground, but in significantly different ways: *Clarity for Lawyers* is more radical in format and attitude - more provocative; Michele Asprey deals with the subject at more length and in a more conventional way: a way more likely to convince the dubious lawyer.

She emphasises that one should "draft to communicate, not merely to record" and that the basic principle, therefore, is to consider your reader. Lawyers, she says, have an "obligation to communicate clearly and efficiently", and this can only be done using plain language.

The bulk of the book is devoted to explaining how to write clearly, covering the structure and layout of documents; words to use; words to avoid; grammar; legal affectations and "other nasty habits". A review of the basic rules of legal interpretation acts as a reminder that the odd interpretations sometimes placed by judges on certain rules and phrases are the exceptions, not the rule, and are usually only necessary because of poor drafting in the first place.

In other words, clear language is better for the client (as it is far easier to understand) and for the lawyer (as being less open to misinterpretation) - definitely the preferred choice.

Justin Nelson

Bullen & Leake & Jacob's Precedents of Pleadings

(13th edition)

Eds: Sir Jack I.H. Jacob QC
and Iain S. Golrein

Sweet & Maxwell 1990; £145

Now the established precedent book for pleadings, Buller & Leake was first published in 1860. The last edition was published in 1982.

Over the past 130 years there have been enormous changes in legal language, and during the past 10 years the move towards plain language has become more and more pronounced. It is therefore interesting to see the extent to which such an established work, dealing with what could be described as the epitome of legal drafting, takes account of such changes. As the editors say in their introduction, "accurate, clear and intelligible pleadings ... are as essential today as they have ever been".

The book starts with a handicap. It is the collective work of 19 specialist barristers, and it must be impossible to agree on a house style or a basic drafting philosophy. Certainly, it seems that no concerted effort has been made to clarify the language, structure or layout of the various pleadings, and there is ample scope for improvement on those aspects.

However, the pleadings serve their purpose of providing checklist precedents that users can develop and mould to their own style. Some precedents are relatively clear, others are a long way off, but I suspect that almost all are written in much plainer language than would have been the case a very few years ago.

Perhaps the 14th edition will see more radical re-drafting, but in the meantime this edition serves very well.

Justin Nelson

A Practical Guide to Drafting Pleadings

Anthony Radevsky, barrister
Fourmat Publishing 1991
DX 58256 Islington
200 + xiv pages (paperback)
£20 + £1.50 delivery

This useful guide recommends clear language, and is on the whole well written.

In his preface, Judge Quentin Edwards says that "discursive and elaborate language should always be eschewed. Simplicity and directness should be the goal, for a pleading is the distillation of a client's case".

This endorses Radevsky's view, expressed in his first paragraph. There he quotes the Rules of the Supreme Court (O.18 r.17(1)):

Every pleading must contain, and contain only, a statement in a summary form of the material facts ... and the statement must be as brief as the nature of the case admits.

In chapter 2 he returns to this theme (though in disappointingly little detail) in a section on The Use of English:

Pleadings must be written in clear grammatical English.... It should be unambiguous and correctly punctuated. Although many leases avoid punctuation altogether, the style should not be copied in the drafting of pleadings to make them sound more legal!...

If you can use two words to say what you mean, do not use four.

Reading most pleadings, it is difficult to believe that these fine sentiments are so frequently expressed, and that they are enshrined in the White Book. But Radevsky generally follows his own advice: his style is mostly clear and succinct. However, the writing is by no means perfect (as evidenced by the missing comma between "clear" and "grammatical", and the inappropriate use of the exclamation mark as a syntactic elbow in the ribs).

A more serious instance of disobedience to his own advice appears on pages 2 and 3, where Radevsky uses the statement of claim arising from an imaginary traffic accident as an example of irrelevance, which must be avoided:

... the Plaintiff, a married man wearing a brown suit, was crossing Oxford Street

"A better attempt", he says, would be:

... when a Ford Escort motor car registration no. G889 MGO being driven by the Defendant

But how often are the make and registration number of the car any more relevant than the colour of the plaintiff's suit?

Radevsky is no plain English purist. He offers "(hereinafter called 'the premises)" with the advice that "some people shorten this by omitting the words 'hereinafter called'". He says that "hereinafter" though archaic, is useful shorthand, though "overuse of ('herein' words) should be avoided". He draws attention to the common mistake of using "the said premises" after "hereinafter called 'the premises'", but gives as an alternative version:

1. The Plaintiff is the freehold owner of the premises ... known as 1 Acacia Gardens

2. ... The Plaintiff let the said premises

The implication is that without "hereinafter called", reference to "the premises" is insufficiently precise, but that "said" fills the gap. This, of course, is a fallacy. Another instance of the same error leads the drafter to claim, clumsily and with unnecessary discourtesy to Mr Johnson, that:

The said accident was caused by the negligence of the said Johnson.

"Said" is badly overused throughout the examples, even by traditional legal standards.

A poor impression is given in a guide to skilled drafting by a drafting mistake which a lay reader would have avoided. This example, of a type often lampooned in the past, appears a couple of pages after the heading "Be Precise":

The Plaintiff intends to rely on the Defendant's conviction for driving without due care and attention at Wimbledon Magistrates' Court on the 14th March 1991....

Perhaps this was just a momentary lapse which the author bitterly regrets, but it is not the first misuse of punctuation, and the defence carries as little weight for Radevsky as it did for his client before the Wimbledon bench.

These two further offences, committed only two pages later, should be taken into consideration:

On the 1st May 1992, at about 10 p.m. the plaintiff was crossing Goldhawk Road, Leeds, Yorkshire by the pedestrian crossing next to the Hornet Building Society, when a ... lorry

One final example shows (unintentionally) how the absence of punctuation can create ambiguity:

The words STATEMENT OF CLAIM appear in the middle of the page immediately following the names of the parties.

Another problem appears with the statement of the rule that conditions precedent to the action need not be pleaded: in the example on page 18 such a condition is pleaded without explanation. The example sounds right, so is probably a valid exception to the rule, but I was left puzzled.

But there are many examples which will help most lawyers improve their style, and if I have been critical this is probably the consequence of my own morose pedantry rather than of Mr Radevsky's shortcomings. However, I am not convinced that there is any advantage in reading the rules of pleading here rather than in the White Book.

MA

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FOR THE YEAR 1990-91**

Pursuant to the Solicitors Act, 1974
THE LAW SOCIETY hereby certifies that

HARRY EAGLESOUP

is duly enrolled a Solicitor of the Supreme Court
and is entitled to practise as such solicitor

Given under the hand of the Secretary General of the
Law Society

Dated 01/11/90 Signed Secretary
General
11111A

**The Law Society's
Change in form of practising certificates**

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FOR THE YEAR 1991-92**

Under the Solicitors Act, 1974

HARRY EAGLESOUP 11111A

is entitled to practise as a solicitor

Commencement date 01/11/91 Replacement date
31/10/92

Secretary General

Referrals register

This list is open to any member willing to accept referrals of clients from other members.
All are solicitors (or lawyers, if based outside Britain) unless indicated.
 Please write to *Clarity* if you would like to be included.
New entries are in bold italic type.

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<i>David Wolchover, barrister</i>	<i>London</i>	<i>071 831 6974</i>	<i>Criminal law</i>
Messrs Wright & Bull	Milton Keynes	0525 290620	General litigation, but especially medical and nursing; conveyancing.

INDEX OF MATERIALS

Occasional gifts of plain language materials come to CLARITY from members and organisations. Below is a list (not yet complete) of books, articles and pamphlets. If anyone is interested in any item, please telephone 081 979 0085 during office hours. Some are available for lending.*

AUSTRALIA

- Drafting notes* (article), F.H. Callaway LIM
- Statement of the Attorney-General of Victoria on plain English legislation*, 1985
- The law and plain English* (article), Robert Eagleson, Law Institute Journal, Sept 1986
- 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
- Clear legislative drafting: New approaches in Australia*, Ian Turnbull QC, 1990
- Austudy Regulations*, Australian Government, 1990
- Reader friendly documents kit*, Australian Government, 1990

* This vagueness is intentional. Some are cherished.

- Writing in Plain English*, Robert Eagleson, Australian Government Publishing Service, 1990
Law Reform Agenda (no 5) (newsletter of the Law Reform Commission of Victoria), 1991
Fuzzy law: a better way to stop snouts in the trough (article on the Corporations Amendment Bill), 1991
Plain language: is it legal? (article), Edward Kerr, 1991
Eliminating legalese (article), Patrick Macalister, 1992

CANADA

- Plain language and legal writing in Quebec* (unsigned and undated article, by David Elliott?)
Plain language resource materials (bibliography), CLIC, 1990
Legal drafting: Language and the law (New technology and drafting: the latest devices, techniques & ideas), David Elliott, Canadian Institute for the Administration of Justice, 1990
Resolution M-08-91: Plain language documentation, Canadian Bar and Bankers Associations
The decline and fall of gobbledygook: Report on plain language documentation, Canadian Bar and Bankers' Assocs, 1990
Survey of literacy skills used in daily activities (reading and numeracy), Statistics Canada, 1990
Clarity/Clarté (bilingual newsletter of Canadian Legal Information Centre (no.3), 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 language report (1st annual report of the Plain Language Institute of British Columbia), 1991
Judgment in the case of R. -v- Hudson Bay Co, 1991
A Global Perspective (article), David Elliott, 1991
Plain Language Wills (chapter 7 of *Wills Drafting*), Margaret James, Plain Language Project, 1991
BC Readers Survey: An assessment of the comprehensibility of selected legal documents (report), 1991
Using clear language in your department: How to get started, Government of Saskatchewan, 1991
Rapport: news about plain language (issues 1-2), 1992
Writing arbitral awards in plain language (article), David Elliott, 1991

ENGLAND

- Plain English* (The Plain English Campaign magazine), various issues, 1979-1987
Specimen life assurance policy, General Accident, 1982?
Specimen home insurance policy, TSB, 1982
An applied discourse analysis of English legislative writing, V.K. Bhatia, University of Aston, 1983
Small print: The language and layout of consumer contracts, Martin Cutts & Chrissie Maher, NCC, 1983
Plain words for consumers, National Consumer Council, 1984
Plain English for lawyers, National Consumer Council, 1984
Conveyancing simplifications (report), The Farrand Committee, 1985
The Plain English Story, Plain English Campaign, 1986
Drafting legal documents: General principles (outline of a talk), Richard Castle, 1986
Forms design: an international perspective, J.M. Foers, Inland Revenue, 1987
Why can't lawyers learn to speak English (article in "Law Magazine"), 1987
A Lament for the Law Commission, Richard Oerton, 1987
Is it legal? M2/6 forms design (pamphlet), Inland Revenue Forms Design Unit, 1988
Specimen lease, with Rosscastle letting conditions, Richard Castle & Murray Ross, 1990
Legislating in plain language (course notes), Celia Hampton, 1990
Memoranda of the 1990 meeting of Commonwealth law ministers (Part 1), Commonwealth Secretariat, 1991
Citizen's charter, Cabinet Office, 1991
Taxpayer's charter, Inland Revenue, 1991
Winding up an estate and When I'm 65 (leaflets), Richard Oerton and The Law Society, 1991
IDeAs (no.5) (newsletter of the Information Design Association), 1992
News reports of the "Blue Dolphin" case

MALAYA

- Plain English in commercial contracts* (article), Michael Hwang, 1990

»»

SOLUTION TO CROSSWORD

No 2

Set by John Walton

Congratulations to Ian Torrance
of Bernard Oberman & Co, who won a £10
book token for the first correct solution
opened.

And thanks to the compiler for donating the
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»» Index of materials

NEW ZEALAND

Legislation and its interpretation, Law Commission, 1988

A new Interpretation Act: to avoid "prolixity and tautology", report, Law Commission, 1990

SPAIN (all published in Catalan by the School of Public Administration, Catalonia)

Tradicio i Modernitat en el Llenguage Aministratiu, 1986

Revista de Llengua i Dret, 1990

Formulari de Procediment Administratiu, 1990

Manual de Llenguage Administratiu, 1991

USA

The Language of the Law, David Mellinkoff, Little Brown & Co, 1963

How to Write in Plain English (chapter 2 only), Rudolph Flesch, HarperCollins, 1979

Plain English for Lawyers (2nd ed), Richard Wydick, Carolina Academic Press, 1985

How Words Work, Writer's Digest, 1986

A Dictionary of Modern Legal Usage, Bryan Garner, OUP, 1987

Scribes Journal of Legal Writing (Vols 1-2), West Publishing, 1990-1

The Elements of Legal Style, Bryan Garner, OUP, 1991

The Second Draft (Bulletin of the Legal Writing Institute, Texas), 1991

PROBATE OATHS

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The
PRESS DATE
for
the next issue
is
13th June



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The editor apologises for the home-made design on the left.
It is supposed to be a tie, not a magnifying glass.

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David Wolchover; barrister; London EC4

NEWS ABOUT MEMBERS

Professor Peter Butt has now left the Centre for Plain Legal Language for a year's study leave. His main task is to write the 3rd edition of his book *Land Law*, but he will also be following developments in plain language legal drafting. He is based at the School of Law, Vanderbilt University, Nashville, Tennessee until about August, and expects to arrive at Wolfson College, Cambridge in September.

Justin Nelson, who left Champion Miller & Honey last year, is now practising from home under his own name. His new phone, fax and DX numbers are listed below.

Several members of the CLARITY committee recently welcomed Peg James, director of the plain language project of the Continuing Legal Education Society of British Columbia, who was on a private visit to England.

COMMITTEE

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