



# CLARITY

## A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

No 24: June 1992

### INDEX

Alberta program.....	3
Annual supper.....	1
Back numbers.....	10
Banner.....	5
Books and articles.....	67
Certificates for value.....	89
CLIC.....	3
Committee.....	5/24
Competition.....	21
Computer review (Microsoft Word 5).....	19
Conferences	
CPLL, Sydney 1993.....	13
PEC, Hong Kong 1992.....	13
PLI, Vancouver 1992.....	5/12/13
Sweden 1992.....	5
County Court Rules.....	4/22
Drafting tips.....	22/23
Gruff Award.....	20/21
Hansard Commission.....	29
Letters.....	89
Members.....	24
News	
Australia.....	2
Britain.....	2/3
Canada.....	3
Japan.....	3-5
New South Wales government.....	2
Parliamentary petitions.....	2
Posters.....	5
Precedents.....	10
Probate documents.....	14-18
Referrals register.....	10
Seminars.....	2/19
Saskatchewan program.....	3
Stating the Obvious.....	23
<i>Stylistic preferences in the USA</i> (Kimble)....	11
Vale's new venture.....	3
Witness statements.....	22

## Annual supper Friday, 30th October 1992

We reported in March that the meal would be at a restaurant to be decided, and that one of the guests of honour would be David Lewis, who is to speak on the design of documents. Mr Lewis is a recent secretary of the Information Design Association.

We have since discovered a supporter in Circuit Judge Michael Cook, who has kindly agreed to be our (chronologically) second guest, and to give a judicial view of plain language.

We have short-listed two restaurants, both in Chancery Lane. The arrangements will be announced in the September issue.

### STOP PRESS SWEDISH CONFERENCE

As this leaves for the printers, details have arrived of the conference *Discourse and the Professions*, to be held at Uppsala University, from 26th to 29th August. Robert Eagleson is involved in the organisation. Details from him or from East Molesey.

### CHANGE OF ADDRESS

The lease of 35 Bridge Road, East Molesey expires on 29th September, and will probably not be renewed. Alternative accommodation at 28 Claremont Road, Surbiton, Surrey has been agreed for 18 months subject to contract.

Please check by telephone before writing or faxing to arrive after 3rd September.

## News

### Australia

Judith Bennett writes:

#### New South Wales government encourages plain legal language

Peter Collins, the outgoing Attorney-General, took an active interest in plain legal language.

The Centre for Plain Legal Language was helping to co-ordinate a government conference, now expected to take place under his successor.

#### New South Wales Law Society Journal

The Centre for Plain Legal Language now has a regular column in the Law Society's Journal.

They use it to offer plain language equivalents for traditional legal words and phrases.

### Britain

#### CLARITY seminars: success, failure, and an extra point

The response to the publicity for our first public seminar was so poor that the event was cancelled.

We have been giving the same

seminar in-house to medium and large firms of solicitors, local government and civil service legal departments, and The Law Society. We have done 15 since it was launched in January 1991, and 4 more have been arranged. Bookings are still coming in quite regularly, and we have had one enquiry from Hong Kong.

In addition, a 30-minute presentation was given to the Berks, Bucks and Oxfordshire Law Society at their June skills day.

The public seminar was intended for small firms who wanted to send only one or a few delegates. Anyone interested in attending such an event at a fee in the region of £100 should please contact Mark Adler.

Meanwhile, a change in the continuing education rules - preferring workshops to lectures - means that our seminar now carries 5 points instead of 4.

#### Hansard Commission takes evidence on plain language legislation

The Hansard Society for Parliamentary Government has set up a Commission on the Legislative Process, chaired by Lord Rippon QC.

Michael Ryle, the secretary to the Commission, writes:

The Commission is anxious to discover the experience and views of bodies and people affected by legislation as well as those who make it... (It is interested in) such matters as the extent and nature of government consultation on proposed legislation ...; the form and drafting of bills and statutory instruments; parliamentary scrutiny of legislation; and the publication, and the accessibility to the public, of legislation passed by parliament...

Like CLARITY, our members would like to see the use of plain English in statutes wherever possible (although conscious that simplicity, clarity and certainty are not always easy bed-fellows in Acts of Parliament...)

David Elliott has written CLARITY's submission, and we are very grateful to him for the enormous amount of work he has put into it. He is admitted in Canada, England and New Zealand, and practises in Alberta, where he specialises in legislative drafting. (Our thanks also go to other members whose letters on the subject have been worked into the text: Trevor Aldridge QC, Richard Castle, Richard Oerton, and Lord Justice Staughton.)

We will publish our submission (in whole or in part, as space permits) in future issues. Meanwhile, an introductory piece appears (a little cramped, as a stop-press) on page 8.

The Law Society have made their own submission. It refers to the deluge of modern legislation, and emphasises the need to reduce it to an accessible and intelligible order: it should be easier to find the "text in force", secondary legislation should be more carefully vetted, and the law should be clear to those affected by it.

#### Plain English parliamentary petitions

CLARITY offered The Law Society a plain English redraft of the archaic form of petition recently circulated to all solicitors in opposition to the Lord Chancellor's legal aid proposals.

Early plans by The Law Society to promote our version - as part of their own plain language initiative - seem to have been abandoned.

## Canada

### Saskatchewan's clear language program\*

Last year Saskatchewan became the first Canadian province to begin a government-wide program of plain language.

Each government department and agency is responsible for its own strategy, but the program is overseen by a committee made up of senior officials from four departments and chaired by the Family Foundation.

So far, this initiative has produced:

- a train-the-trainers program;
- a manual, *Clear Language for the Saskatchewan Government*;
- a sub-committee to enquire how plain language can be introduced into legal writing.

An advisory committee of private-sector representatives is now being established.

### Alberta Law Reform Institute's plain language project\*

This project, just beginning, will rewrite certain commonly used forms. Its purpose is to demonstrate how plain language can be used without loss of precision.

### Canadian Law Information Council closes

We were very sorry indeed to hear

that CLIC was closing.

The decision followed a substantial reduction in support caused by the financial problems of important funders.

Established in 1973 as a non-profit-making corporation, the Centre sought to improve the quality and accessibility of legal information throughout Canada.

CLIC did pioneering work in such diverse areas as the indexing of statutes, computer-assisted legal research, public legal education and information, plain language in the law, law library resources, the common law in French, the development of research techniques, and the application of technology to legal information.

In its last weeks it was completing for publication reports on law library costs, access to government-held law databases, and the principles governing access to legal information.

In his March announcement, president of the board Basil D. Stapleton QC thanked the many competent and dedicated people who had served the organisation, and he expressed pride in the achievements they were leaving.

CLIC closed at the end of March.

### Mark Vale's post-CLIC initiative

Dr Mark Vale, director of CLIC until its closure, has set up Information Management & Economics Inc, of which he is principal.

He offers consulting and training services in plain language and information management.

IME has a team of writers,

designers, researchers, lawyers, and programmers. They will advise on existing forms and other documents, and design, write, and test new ones.

They offer introductory and advanced courses in plain language skills, testing documents, teaching plain language skills, and (for managers) adapting their organisation to plain language communication.

IME can be reached at:

220 Richmond St West, Suite 200  
Toronto, Ontario M5V 1V9  
1 416 979 7259  
fax: 3832

## Japan

### Japanese business copes with legal English

CLARITY has recently been approached by Babel Inc, a Tokyo corporation whose purpose is to ease communication between Japanese business-people and the rest of the world.

Amongst other services, Babel:

- Has a translation service;
- Prepares corporate documentation;
- Trains translators, interpreters, secretaries, and business-people;
- Provides bi-lingual staff;
- Gives classroom lessons,

\* Taken, with the kind permission of the author, from the appendix to *Plain English: A Charter for Clear Writing* by Joseph Kimble, published by the Thomas M. Cooley Law School. (For more details, see page 11.)

seminars, and correspondence courses on the use of language;

- Publishes books and audio-visual materials;
- Operates cultural exchanges.

One of its divisions is the Institute for Legal Communications, which writes:

In the 1960's, legal scholars and practitioners in the United States began rallying around a movement aimed at assembling specific principles and standards to guide legal drafting. This movement, led by such notables as Professor Reed Dickerson of Indiana University Law School and others associated with the special ABA committee on the subject, explored ways of spreading these principles throughout the American legal profession.

In Japan, a similar movement took place. Institutions such as the Japanese government's Cabinet Legislative Bureau sought to achieve standardization of Japanese-language legal drafting by publishing books promoting this objective.

Conscious of the critical need for well-conceived legal drafting instruction and legally oriented educational curricula in general, Babel Inc in 1989 established the ILC, harnessing the talents and skills of bilingual Japanese attorneys familiar with legal drafting standards on both sides of the Pacific.... ILC has attracted participants from a broad range of legal and business professionals....

ILC strives to promote functional competency in the areas of English-language legal drafting and legal English comprehension among Japanese legal professionals, while fostering communication and understanding between Japanese professionals and their foreign counterparts. ILC-sponsored classes, seminars,

## Drafting court rules

In May we received for comment a draft of The Lay Representatives (Rights of Audience) Order 1992. By this order the Lord Chancellor will exercise his power (under s.11 of the Courts and Legal Services Act 1990) to extend rights of audience - in this case in small claims referred to arbitration in the county court.

We suggested that articles 2(1) and 2(2) could be run together and tidied up as shown below (with italics indicating new words).

2.—(1) Subject to paragraph ~~(2)~~ (2), there shall be no restriction on the persons ~~who anyone~~ may exercise rights of audience in relation to the proceedings specified in paragraph (2).

~~(2) These proceedings~~ are proceedings in a county court which stand are referred to arbitration by virtue of under Order 19, rule 2(3) of the County Court Rules 1981.

The Lord Chancellor's Department replied:

Thank you for your letter of

26 May. It may be helpful if I expand on two of the areas which you suggested should be redrafted.

Articles 2(1) and (2) were deliberately drafted as two separate paragraphs as it is expected that the Order will be extended to a further category of proceedings in due course: para (2) could then just be amended to contain the list of relevant proceedings.

As for the "stand referred", this expression was used not just because these are the words used in CCR Order 19, rule 2(3). The word "stand" was thought appropriate because, first, the reference to arbitration is automatic in these cases and, second, because the Order will not apply where the reference to arbitration has been rescinded - that is, where the reference no longer "stands".

We have received a number of comments on the Order, which is likely to be redrafted extensively. It may be that we will be able to adopt your other suggestion.

and related programs provide ILC members with practical and substantive legal training, including legally-oriented foreign language instruction....

ILC members include lawyers, accountants, business people, translators and interpreters....

The ILC staff includes expert translators, language instructors, bilingual attorneys, law professors and lecturers....

The form and content of Japanese contracts and legal documents generally differ significantly from those in common use in the international business community. ILC sponsors lectures by practising foreign attorneys, as well as by language instructors specializing in effective written expression. Participants in these lectures are taught English-language drafting skills while learning substantive considerations....

ILC ... develops programs to satisfy the special needs of individual companies... (These) range from job-specific language instruction to intensive courses on (particular areas of law)....

ILC plans ... programs for foreign attorneys engaged in Japan-related practice in their home countries. Classes will provide an environment in which foreign attorneys may develop Japanese language

skills ... (including) proficiency in legally-oriented Japanese....

ILC is planning to publish periodicals containing articles which address issues of interest to ILC members and participants.

Babel plans to open Plain Language Centres in Japan and the USA in September.

They have suggested collaboration with CLARITY in the exchange of

information, a possible exchange of lecturers, the development of correspondence courses, and joint publishing ventures.

The executive director is Tomoki Hotta, who can be reached at:

2-3 Sarugaku-cho, 2-chome  
Chiyoda-ku, Tokyo 101  
81 3 295 6300 (fax: 5154)

(Japan is 8hrs ahead of GMT)

## From the committee

### Alexandra Marks

We are very sorry to report that Alexandra Marks is leaving the committee - at least for the time being - in the autumn. But her reason is the best: she is expecting a December baby.

She has contributed ideas and good humour (and an office at Linklaters) at every meeting since she joined 3 years ago. Between meetings she has given time and energy, following up her own and other people's suggestions. She represented CLARITY at The Law Society's 1990 conference in Glasgow, and at the Trainee Solicitors Group 1992 conference in Brighton; she has written occasionally for this journal; she has introduced to CLARITY friends and colleagues from her other legal groups, notably Patricia Hassett, who during a sabbatical from Syracuse came to our annual supper as guest speaker and left a member of the committee.

Our two-monthly Saturday mornings will not be the same, and we look forward to Alexandra's return if family and other commitments permit.

## Subscriptions

The annual subscription falls due on 1st September, and renewal forms will be enclosed for those who need them.

By custom, those who joined this calendar year are not asked to pay a second subscription until next September. They, and those who pay by standing order, should ignore the renewal application if one is included.

As our financial position is healthy, the subscription will stay at £15 for next year.

## Junkets

Mark Adler writes:

I was keen to go to the Vancouver conference (p.11) and the Swedish conference (Clarity 21 [Aug 1991] p.6), but was worried about the expense. I asked the others on the committee if CLARITY would contribute to the cost. They felt that CLARITY should pay for my fares in full, and to avoid any suggestion of impropriety (in view of our casual organisation and lack of a constitution) I asked that this offer and the reasons for it should be brought to the members' attention. The committee thought the decision was justified because:

- I will be representing CLARITY and increasing its profile.

- Robert Eagleson, who is organising a workshop at the Swedish conference, wanted me to be there; and I will be telling a workshop in Vancouver about CLARITY's research projects.

- I will be contributing by my loss of earnings whilst I am away from my practice, and by meeting the incidental expenses.

- The contacts made and the knowledge gained will be to CLARITY's benefit.

- The cost can be met from the income from our seminars and will not dip into members' subscriptions.

## Posters and a banner

We are using a small amount of our financial reserves to have CLARITY posters printed and a canvas banner made.

The posters will be available for members to display in their offices, to draw their clients' attention to their commitment to plain language. A draft will appear in the next issue.

The need for a banner was particularly noticeable at the recent Trainee Solicitors Group conference, when few people came up to our stand, and those who did had to ask who we were.

## Book review

### A Clear Guide To Chaos

#### *A Practitioner's Guide to Wills*

by Meryl Thomas  
Format Publishing  
London 1992

Paperback: 324 + xxxv pp

When I was a student, some of my colleagues balanced about on platform shoes, so-called because the soles were so high that the wearer could use them to board trains between stations. They looked ridiculous, were probably very uncomfortable and must have been expensive. Walking in them was as sensible as - and probably very similar to - playing tennis in diving boots. But people wore them, as they do so many daft things, because other people did.

Meryl Thomas reminded me of this eccentric footwear on the second page of her introduction:

The form of the will drafted is largely a matter of choice for the solicitor, although the formalities under the Wills Act 1837 must always be complied with. There are certain conventions that are usually followed, such as the lack of punctuation in the text. Words of command (sic) such as I GIVE or I APPOINT are usually put into capitals.

Ms Thomas had already warned us of the complexity of will-drafting, and of the great importance of ensuring that the client understands the document. What a pity then that conformity has led her to draft her precedents in platform shoes.

Otherwise the book is excellent. It is comprehensive without being daunting. The bulk required by a thorough treatment of the subject is well managed, using short well-labelled

sections, navigated by a detailed table of contents, a conveniently divided list of precedents, and an index. The law on any point is easy to find and clearly expressed (though I am not knowledgeable enough to vouch for its accuracy). As the title indicates, this is a practitioner's book, not a scholar's; there are no footnotes, and the few case references can be included in the text without irritating the reader. Typography is used to help the reader, and the book is easy on the eye.

But the language of the precedents is a disaster. It ignores the support given to plain language initiatives by The Law Society, the Bar Council, consumer organisations, the government, and CLARITY. For instance:

I GIVE to [name] the sum of [£5,000] [free of inheritance tax] and I DECLARE that if the said [name] shall not have attained the age of eighteen years at the time of my death my trustees may invest the same as they in their absolute discretion think fit as if beneficially entitled thereto and I DECLARE that my trustees may advance the whole or any part of the said sum and the whole or any part of the income therefrom in such manner as they shall in their absolute discretion think proper .... (and so on at some length).

I will use this book regularly as a guide, but will translate the precedents I need into language the testator and relatives can understand.

MA

## Also received

### *Plain English: a charter for clear writing*

(issue 1 of volume 9 of the  
Thomas M. Cooley Law Review)  
by Associate Professor  
Joseph Kimble

This useful 58-page booklet is

divided into the following sections:

About the movement and legal writing  
Resolution  
Towards a definition  
The elements of plain English  
About definitions  
Myths and realities  
Why us?  
Appendix: Selected developments in  
plain English

*Joseph Kimble writes:*

In a separate mailing I will send 10 more reprints for members of CLARITY who you think might be interested. If those are not sufficient, anyone who would like a copy can write to me, and I will be happy to send one:

Thomas Cooley Law School  
Box 13038  
Lansing, MI 48901  
USA.

I intend to update the appendix in a year or two, to list new developments in plain English and to add those which I missed this time. I am eager to hear from CLARITY members who can provide information.

*Short extracts from the appendix appear as news items on page 2, and an extract from the body of the article is reprinted on page 11.*

*Please telephone East Molesey (or the new office from September) for a copy.*

### *Legislative Change: guidelines on process and content*

(revised ed), December 1991  
A4 paperback 82pp

Report No.6 by the Legislation  
Advisory Committee of New  
Zealand

We are grateful to Sir Kenneth Keith, a member of the committee, for sending us this report. Paragraphs 45 and 46 address the problem of

clarity. The section reads:

**Is the legislation as understandable and as accessible as practicable? Are its expression and content as simple as practicable?**

These questions use the words of the Law Commission Act 1985. The second recalls Albert Einstein: "Make things as simple as possible but not simpler." They relate back to the first question in this part - to the possibility of statements of policy, and to the need as well in some cases to give precise directions. Precision, involving greater detail, may make simplicity more difficult to achieve. In a more general sense the questions recall the rules stated by George Orwell, a great exponent of the English language, in his essay on *Politics and the English Language*:

- (i) Never use a metaphor, simile or other figure of speech which you are used to seeing in print.
- (ii) Never use a long word where a short one will do.
- (iii) If it is possible to cut a word out, always cut it out.
- (iv) Never use the passive where you can use the active.
- (v) Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent.
- (vi) Break any of these rules sooner than say anything outright barbarous.

The matter is of course very much one for Parliamentary Counsel - but not exclusively so. It is the words of the legislation

that carry the main burden, at least at first, of stating the policy the legislator wants on the statute book. All of those concerned with the preparation of legislation have a responsibility to see to it that the policy is articulated in it. This matter is to be pursued both in the preparation of particular statutes and more generally, for instance in the Manual on Legislation being prepared by the Law Commission.

**Wills Drafting - 1991  
Chapter 7:  
Plain language wills**

Prepared by  
Margaret (Peg) James, director,  
CLE Plain Language Project

This readable, 19-page paper contains some useful points. It does not set out to be original, but it provides a clear, well-organised summary of the advantages of plain language wills, well spiced with telling and sometimes witty quotations. I have room only to give the flavour.

In answering her own question *Does plain language just mean never having to say 'herein'?*, Mrs James says that plain language is an attitude as well as a process:

Lawyers express this plain language attitude in several ways: ...

- When I speak, I make sure my listener understands me. I have the same responsibility when I write....
- I send my clients copies of all documents to ensure that they are fully informed. But my clients are only informed if they can understand the documents....

She borrows from David Elliott this quotation from Connecticut columnist David Holahan:

It is so frightening to contemplate that most of us put it off for as long as possible: the Last Will and Testament. What are we so afraid of? The loss of loved ones? Not being able to take it all with us? That dreaded transition from being to nothingness, or worse?

No, as forbidding as those matters are to dwell upon there is something else. It is the turgid, redundant legal prose that wills ... consist of.... Yes, after the hereins, hithertos and heretofores, the hereafter will be a breeze.

She goes on to ask how plain language changes a will:

For instance, if you acknowledge that the widower is an important reader, you can improve both the tone and the readability of the will ... with one simple technique. Rather than leave the general word *spouse* ... you can substitute the widower's name. This wording change has no effect on either the validity or the tax consequences of the will. It makes the will a more personal message from the widower's wife. Seeing his own name throughout the will also helps him to quickly recognise his place in the probate process. Being personally involved, he is more likely to understand what he reads....

You may also ... leave out some over-specificity to avoid invoking *ejusdem generis*, or other rules of interpretation used when a clause is ambiguous. For example, after some research you may conclude that, rather than set out in detail a whole series of powers trustees can use in connection with the testator's business interests, it would be safer to say, "My trustees have the same powers relating to my business interests as I would have if I were alive."

In answer to the "tried and tested" defence of traditional drafters, she quotes Professor Mellinkoff:

Precedent points overwhelmingly in every direction.

# Letters

## Certificates for value

On pages 7 and 8 of Clarity 23 (March 1992) we reported that the Stamp Office was willing to accept alternative versions of the certificate for value, and in particular this one:

This transaction is not one of a series or part of a larger transaction whose aggregate amount or value exceeds £\_\_\_\_\_.

From Francis Bennion  
62 Thames Street, Oxford

Because of its ambiguity, I am surprised the Stamp Office accepted your version.

The ambiguity is of the common type known as ambiguous modification (see my book *Statute Law* (3rd ed, 1990, p. 258). It is not clear, as a matter of syntax, whether the modifier whose aggregate amount or value exceeds £\_\_\_\_\_ applies to a series as well as to a larger transaction.

The version you seek to replace 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 £\_\_\_\_\_.**

This avoids ambiguity if read, as is no doubt intended, in accordance with the principle *reddendo singula singulis*, which concerns the use of words distributively (see my book *Statutory Interpretation* (2nd ed,

1992, p. 871). This contrasts a larger transaction in respect of which the amount or value exceeds... with a series of transactions in respect of which the aggregate amount or value exceeds...

*Agreed. My version needs commas after "series" and "larger transaction". - Ed.*

If I may say so, I do not agree with your proposition that if a transaction is part of a larger transaction, then each part is one of a series. A transaction is made at one time, whereas "series" suggests events over a period. Or so it can be argued. Good drafting avoids such arguments.

*This may be right, but I am not convinced. For elements to be part of a series they have to be connected (in this case, part of a larger transaction), but they can be simultaneous. For instance, this is a series of dots .... Can anyone produce an example of a transaction which, for stamp duty purposes, is part of a larger transaction but not one of a series? - Ed.*

Nor do I agree that the opening phrase *It is hereby certified* can be dispensed with. It adds additional meaning, since it indicates that the writer is not merely describing an external fact but verifying it.

*Authorities against this are:*

*Roberts v. Watkins (1863 32 LJCP 291), in which an oral expression of approval by an architect was accepted as a certificate;*

*R. v. St Mary, Islington (1890 25 QBD 523), in which a letter asking for payment of an amount spent was taken as a certificate that that had been the cost;*

*Minster Trust (1954 1WLR 963), in which a document was held not to be a certificate for other reasons, but the court ignored the absence of a "certifying" expression.*

- Ed.

My own contribution to "plain language" in this connection would be to reword the original proposition so as to avoid the distributive sense,

which I agree can cause puzzlement. So I would suggest -

**It is hereby certified that this transaction neither -**

**(a) forms part of a larger transaction where the amount or value of the consideration exceeds £\_\_\_\_\_, nor**

**(b) forms one of a series of transactions where the aggregate amount or value of the consideration exceeds £\_\_\_\_\_.**

This is not as short as you like, but brevity is not the sole consideration. It is not even the main consideration. This, to borrow your title, is clarity.

*I have no argument with the priority of clarity over brevity, but I do not think clarity calls for as long a version as this. I especially dislike It is hereby certified that instead of I certify. - Ed.*

From Brian Bowcock

Durrad Davies & Co  
25 Barker St, Nantwich, Cheshire

I have had accepted by the Stamp Office:

**This document is not part of a larger transaction or of a series of transactions whose aggregate value or consideration exceeds £250,000.**

In what you have had accepted, should it not be:

**... does not form part of a larger transaction nor [rather than "or"] of a series of transactions ... ?**

*I do not think so. We say "neither A nor B"; but "not A nor B" sounds odd, like a double negative. - Ed.*

"Area" in the referrals register is ambiguous. It could relate either to the lawyer's base or to the area in which he or she can deal with the work. In my case most of the work comes from

outside Cheshire. Space is a problem but could the distinction be made, or "area" explained or changed? Otherwise I would want "anywhere" instead of "Cheshire". It is where the work can be done that matters.

*I hope the regularity of my disagreement with Mr Bowcock will not be misunderstood. He is a kind and amiable man, but - he will forgive me for saying so - an appalling pedant. I think it is clear that "area" indicates the region in which the lawyer is based, and is of interest only to those who are looking for someone conveniently located. For example, someone asked me last week to recommend for a particular job a solicitor within visiting distance. It is generally understood, even before the single market, that a Cheshire solicitor can accept work from Cheddle, Chawley or Chiswick.*

**From Justin Nelson**

The wording eventually accepted by the Revenue is (in part) nonsensical. The amount of what exceeds £\_\_\_\_\_?

Surely it would be better to say:

**This transaction is not part of a series or larger transaction whose total consideration exceeds £\_\_\_\_\_.**

*Agreed. But I think we must add or value after consideration, in case the transaction is not at arms' length.*

**Authority to inspect**

**From Anthony Rich  
Cartwright & Lewis  
3rd flr, 100 Hagley Road,  
Edgbaston, Birmingham**

I am acting for the defence in a personal injuries case. There is a dispute about the extent to which the plaintiff's current problems were caused by the accident. I therefore asked for the plaintiff's medical records to be disclosed to my expert.

The form below was the result. Are you able to understand it? (*Italics indicate handwriting.*)

**CLARITY'S SUBMISSION  
TO HANSARD**

In an introductory note, the paper points out that the style of UK statutory drafting is incompatible with that used in continental Europe. Continental drafters state broad legal principles and avoid the mass of detail which gives British legislation greater certainty - when it can be understood - by restricting judicial discretion. There are arguments for and against the continental style, but Mr Elliott suggests that the time is ripe to consider its advantages. This is a controversial view, and it is put outside the main body of the submission. The rest of the paper offers less radical improvements.

Part 1 stresses the importance of persuading drafters to take into account the difficulties of the ordinary reader, and offers suggestions about how such an attitude may be encouraged. The adoption of a style guide would be a considerable help.

Part 2 suggests various ways to improve communication with the reader: using purpose sections; re-organising the document; using examples, diagrams, formulae, and other devices; and switching to the present tense.

Part 3 deals with numbering, typography, and reducing the text to manageable sections. Examples are given from 1991 statutes.

**AUTHORITY TO VIEW AND INSPECT  
MEDICAL RECORDS HOSPITAL CASE NOTES AND X-RAYS  
AND RECORDS HELD BY GENERAL PRACTITIONER**

I hereby authorise the doctor/surgeon named below to inspect records at \_\_\_\_\_ and if necessary to inspect records held by my G.P. \_\_\_\_\_

(HOSPITAL . DR.) \_\_\_\_\_  
Mrs. *Harvey* \_\_\_\_\_

Signed..... *J. Cooper* \_\_\_\_\_  
Address..... *DENTAL CLINIC* \_\_\_\_\_  
*JAMES STREET, BROMSGROVE* \_\_\_\_\_  
*WORCS* \_\_\_\_\_  
Date..... \_\_\_\_\_

**MRS. JOAN COOPER,**  
**32, WOODS CLOSE,**  
**CANLEY**  
**DROITWICH**  
**WORCS DY1 1AB**  
**CANL 189273**

G.P..... *DR SMITH a Dr BROWN* \_\_\_\_\_  
Address..... *HEALTH CENTRE* \_\_\_\_\_  
*BROMSGROVE* \_\_\_\_\_

James & Co  
11 High Street  
DROITWICH  
Worcs. DY1 2CD  
Solicitors for the above-named Patient  
REF: \_\_\_\_\_

Part 4 offers closing remarks. It endorses the high standard of the best parliamentary drafting, and contrasts

the well-written Local Government Act 1988 with the notorious Leaschold Reform Act 1967.

## 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

<u>Lawyer</u>	<u>Area</u>	<u>Telephone</u>	<u>Field</u>
Christopher Eskell	Bristol	0272 293601	Personal injuries (for defendant insurers)
Mr T.G. Howell	Reading	0734 585321	Unspecified
Lawrence McNulty	Wokingham, Berks (non-lawyer)	0734 776775	Marketing & PR for lawyers
H.L. (Peter) Pierce	Tetbury, Glos (non-lawyer)	0666 502465	Plain language drafting, especially banking documents
Anthony Rich	Edgbaston, B'ham	021 452 1989	Litigation
Christopher Shelley	Oxford	0865 722106	Intellectual property; EC law; general commercial law

### Corrections and changes

Irving Brown now practises under the name Irving Brown & Daughter at 120 High St South, London E6 (081 470 1828).

Charles Harpum, fellow in law at Downing College, Cambridge, writes:

I wonder if I could trouble you with a correction to my entry. Although I am a barrister, I do not practice as such. I am, however, very happy to deal with academic queries on the subjects listed in my entry, and indeed I often receive enquiries from practitioners.

Dominic Lang of Norton Rose was mistakenly listed as David Lang in the register published in *Clarity* 23. My apologies.

David Pedley is now at Brierfield, Nelson, Lancs (0282 697733), and describes his fields for referral as "environmental, public inquiries, private prosecutions, charities".

David de Saxe has asked to be removed from the list now that he is no longer in practice (see p.16).

### 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	
	23	£2	

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

### PRECEDENT LIBRARY

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

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

Each document should be vetted by two volunteers 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.

## For all the right words

Seminars and courses  
on advanced writing skills  
(including plain English  
for lawyers)

Editing and design  
of plain legal documents

Martin Cutts  
69 Bings Road  
Whaley Bridge  
Stockport SK12 7ND  
Tel: 0663-732957 Fax: 0663-735135



## Flowery Language

### 2 dozen red roses from an insurance broker

Dear Sirs,

Further to our telephonic conversation held Thursday 12th September, we confirm all figures introduced therein are acceptable viz, £450 to our client's vehicle, £100 loss of use and general inconvenience.

We have pleasure in relating we are empowered and authorised to accept the sum £550 in full and final settlement, without any admissions to liability whatsoever, on behalf of Mr Smith and arising out of a motor collision which occurred at Katherine Road/Sherrard Road. London E7 and on 5th June 1991.

We are now again bound to express our profound gratitude for all kind consideration and prompt attention granted to our correspondence throughout our negotiations which has afforded us the opportunity to proceed to the amicable and expeditious conclusion we so earnestly sought.

Clearly we remain indebted to your revered company and now beg leave to await settlement as aforesaid and agreed.

Faithfully yours,

## Stylistic preferences in the USA

*Extracted from Professor Joseph Kimble's article (for details of which, see page 5)*

A survey conducted for the State Bar of California found that 90% of the public and 91% of the lawyers responding said there is a need for simpler legal documents.

In another California study, ten appellate judges and their research attorneys, reading passages from appellate briefs, rated the passages written in legalese as "substantively weaker and less persuasive than the plain English versions." And contrary

to what lawyers might think, the readers "inferred that the attorneys who wrote in legalese possessed less professional prestige than those who wrote in plain English".

In one more study, a student and I prepared a survey of judges and lawyers that has now been done in Michigan, Florida, Louisiana, and Texas. The survey form invited readers to choose between the A or B version of six different paragraphs. One choice was

written in plain English. The other choice had some of the common characteristics of legalese, including obsolete formalisms, archaic words, wordy phrases, doublets, abstract nouns created from strong verbs, passive voice, long sentences, and intrusive phrases. Neither the survey form nor the cover letter referred to "plain English" or "legalese". Readers were simply asked to check off their preference for the A or B version of each paragraph.

In every state, at least 50% of the readers responded. A total of 1,462 judges and lawyers returned the survey. And in all four states, they preferred the plain English versions by margins running from 80 to 86%.

# Conferences

## The Plain Language Institute

1500-555 West Hastings Street  
Vancouver  
British Columbia  
Phone: (Canada) 604 687 8895  
Fax: 687 0018

21st - 24th October

In the last issue we briefly mentioned the conference *Just Language*, organised by the Plain Language Institute. More details are now available.

A pre-conference "clinic" on the 21st is designed for drafters of legislation. Delegates can choose one of the following sessions:

- a drafting workshop;
- a hands-on computer software demonstration;
- a session on getting better instructions;
- a session on the psychology of meetings;
- a panel of experts discussing special issues in legislative drafting.

There will be five (simultaneous) writing clinics the next day, still before the main conference starts. They are:

- Bryan Garner (of Lawprose and chair of the Texas Bar's plain language committee) on *Advanced legal drafting for lawyers*;
- Mark Vale (formerly of CLIC but now principal of Information Management & Economics Inc) on *Clear business writing*;
- Barbara Child (director of

legal writing at the University of Florida) on *Methods of teaching legal drafting*;

- Dianne Bodnar (education director of the PLI) and Harold Lawrence (a communication consultant) on *Editing your own and others' writing*;
- Rusty Boehm (a senior forms analyst for Ohio) on *Plain language aspects of forms management*.

At the same time there will be a discussion on research chaired by Jacquelyn Nelson of the Ministry of the Attorney-General of BC. It will include brief presentations from:

- Nicole Chovil (research consultant) on *The comprehensibility of legal documents: perception and understanding of BC readers*;
- Linda Conrad (projects coordinator of the PLI) on *Justice denied: how we are frustrated by the language of documents*;
- Mark Adler (of CLARITY) on *CLARITY's research*;
- Rick Coe (of Simon Fraser University's English department) on *Approaches to plain language*;
- Michael Masson (of Victoria University's psychology department) and Mary Ann Waldron (of the law faculty) on *Plain language contracts and reader comprehension*;
- Cheryl Stephens (consultant) on *Plain language at City Hall*;
- Philip Knight (executive director of the PLI) on *Judicial remedies and legislated standards*;
- James Ogloff (of Simon Fraser University's psychology department) on *Readability of informed consent forms used in research*;
- Maureen Bourke and Gabriella Moro (of Tenants' Rights Action Coalition) on *Methods of testing plain language documents*;

- Marvin Schwartz (of the Office of the Auditor-General of Canada) on *The use of audit*;
- Janet Fast (of Alberta University's Department of Family Studies) on *Plain language utility bills*;
- Neil Vallance (lawyer, of Dinning Crawford & Co) with *An annotated bibliography of plain language literature*.

The conference proper will open that evening, with Mary Gusella (Canada's Deputy Minister of Multiculturalism and Citizenship) speaking on *Why language matters in justice*.

Over the next two days delegates can choose one session from each of the following groups:

### 1st morning (23rd October)

- Lynn Smith (dean of law at the University of British Columbia) on *Bias in legal language*;
- Linda Phillips (of Memorial University) and Peter Ringrose (of Public Legal Information, Newfoundland) on *Law, language and social responsibility*;
- Dennis Pavlich (of the University of British Columbia's law department) on *Shaping language in law schools*;
- Donald Freeman (of the University of Southern California's English department) on *Plain language laws: whose interests are served?*
- Brian Schwartz (of the University of Manitoba's law faculty) on *The power of judicial language*.

### 1st afternoon

- Philip Knight (director of PLI) on *People's experience with documents*;
- Don Thompson (director of competency and education programmes for BC's Law Society) on *Clients' problems with legal writing*;
- Michael Masson (of the psychology department, University of Victoria) and Mary Ann

Waldron (of the law faculty) on *Relationships between clarity and comprehension*;

- John Ward (of the National Consumer Council) on *Consumer experiences with the language of business*;
- John Stinson (of The Village Clinic, Winnipeg) on *Communication problems in community service agencies*;
- Linda Mitchell (executive director, Literacy) on *The needs of audiences who have difficulty reading*.

#### 2nd morning

- Chloë Lapp (of Adult Guardianship) and Stephen Whipp (of Public Legal Education) on *Assessing the audience's needs*;
- Linda Mitchell, repeating the previous afternoon's presentation;
- Roger Bilodeau (director of the Legal Terminology and Translation Centre of the Université de Moncton) on *Plain language and the translation process in a bilingual setting*;
- John Stinson, as before;
- Andrew Sims (chair of Alberta Labour Relations Board), Joseph Kimble (of Thomas Cooley School of Law, University of Michigan), and Peter Butt (of Sydney University's Centre for Plain Legal Language) on *Writing when your audience is judge*.

#### 2nd afternoon

- Edward Kerr (of Mallesons Stephen Jacques, Australia) and Joan Collins (director of professional development, Russell & DuMoulin) on *Using plain language in law firms*;
- Gillian McCreary (senior policy advisor, executive council, Govt of Saskatchewan) and Cathy Chapman (director, policy research and co-ordination, National Literacy Secretariat) on *Plain*

*language in government*;

- Mark Vale on *Plain language in business*;
- Penny Goldsmith (public legal education fieldworker, Legal Services Society) on *Plain language in community organizations*;
- Bryan Garner on *Teaching professionals to write clearly*;
- Barbara Child on *Implementing change in professional education*.

Plenary presentations will be:

- David Mellinkoff (professor emeritus at UCLA) on *Plain language: plain to whom?*
- Madam Justice Beverley McLachlin (of the Supreme Court of Canada) on *The importance of language in delivering justice*;
- Kenneth Dye (president of the Workers' Compensation Board, BC) on *Unravelling communication problems in workers' compensation*;
- Robert Eagleson (consultant to Mallesons Stephen Jacques and the Government of Australia) on *Plain drafting: a genuine respect for the law*;
- Maureen Maloney (dean of law at Victoria University) and a panel discussing reports from each group;
- Angus Reid (president, Angus Reid Group) on *A psychographic analysis of Canadians*.

Fees for the conference vary from \$175 for one of the pre-conference sessions to \$550 for both pre-conference sessions and the conference itself. Individual half-days at the conference are available for \$100 each (or \$25 for students).

There are special accommodation arrangements with certain hotels, and there is a travel discount from Canadian

Airlines.

## Plain English Campaign

### Hong Kong, September

We are sorry to hear that this conference has been cancelled.

PEC are hoping to re-arrange it for a different time and nearer home.

## Law Foundation Centre for Plain Legal Language

6th floor, University of Sydney  
173 Phillip Street  
Sydney  
New South Wales 2000  
Phone: 61 2 232 5944  
(Fax: 221 5635)

Sydney is 10 hrs ahead of GMT

5th - 7th April 1993

This proposed conference is still subject to Board approval.

They have in mind a different theme for each day, relating plain legal language to:

- consultancies;
- education and training; and
- research and case studies.

### DO YOU OFFER A PLAIN ENGLISH SERVICE?

If so, and you would like to be included, free of charge, in a list, please send details.

The list will be sent to new and prospective members, and will be available to anyone interested.

Oath for Executors

IN THE HIGH COURT OF JUSTICE

Extracting Solicitor .....

Family Division

Address .....

If necessary to include alias of deceased in grant add "otherwise (alias name)" and state below which is true name and reason for requiring alias.

(1) "I" or "We". Insert the full name, place of residence and occupation or, if none, description of the deponent(s), adding "Mrs", "Miss", as appropriate, for a female deponent.

(2) Or "do solemnly and sincerely affirm".

(3) Each testamentary paper must be marked by each deponent, and by the person administering the oath.

(4) "with one, two (or more) Codicils", as the case may be.

(5) If exact age is unknown, give best estimate.

(6) Where there are separate legal divisions in one country, the state, province, etc., should be specified.

(7) Delete "to", if there was land vested in deceased which remained settled land notwithstanding his death.

(8) Settled land may be included in the scope of the grant provided the executors are also the special executors as to the settled land; in that case the settlement must be identified.

(9) Delete or amend as appropriate. Notice of this application must be served on all executors to whom power is to be reserved unless dispensed with by a registrar under Rule 27 (3).

(10) "I am" or "we are". Insert relationship of the executors to the deceased only if necessary to establish title or identification.

(11) "The sole" or "the surviving", or "one of the", or "are the", or "two of the", etc.

(12) If there was settled land and the grant is to include it, insert "including settled land" but, if the grant is to exclude the settled land, insert "save and except settled land".

(13) Complete this paragraph only if the deceased died on or after 1 April 1981 and an Inland Revenue Account is not required; the next paragraph should be deleted.

(14) Insert "115,000" in respect of deaths on or after 1 April 1990, "100,000" in respect of deaths on or after 1 April 1989, "70,000" in respect of deaths on or after 1 April 1987, "40,000" in respect of deaths on or after 1 April 1983, or "25,000" in respect of deaths prior to that date.

(15) Insert currently "10,000", "25,000", "40,000", "70,000", "100,000", or "200,000" as appropriate.

(16) Complete this paragraph only if an Inland Revenue Account is required and delete the previous paragraph. N.B. The names of all executors to whom power is to be reserved must be included in the Oath.

THE PRINCIPAL REGISTRY IN the Estate of \*

deceased.

(1)

make Oath and say, (2)

that

(1) believe the paper writing now produced to and marked by (3)

to contain the true and original last Will and Testament (4)

of \* of

formerly of

deceased 19 ,

who died on the day of

aged years (5) domiciled in (6)

and that to the best of knowledge, information and belief there was (7) [no]

land vested in the said deceased which was settled previously to h death (and

not by h Will (4)

and which remained settled land notwithstanding h death (8)

And I/we further make oath and say (2) that notice of this application has been given to the executor(s) to whom power is to be reserved, [save

]. (9)

And (1) further make Oath and say (1)

that (10) X (11)

Execut

named in the said

and that (1) will (i) collect, get in and administer according to the law the real and personal estate (12)

deceased; (ii) when required to do so by the Court, exhibit on oath in the Court a full inventory of the said estate (12)

and when so required render an account of the administration of the said estate to the Court; and (iii) when required to do so by the High Court, deliver up the grant of probate to that Court; and that to the best of knowledge, information and belief

(13) [the gross estate passing under the grant does not exceed (14) £

and the net estate does not exceed (15) £ , and that this is not a case in which an Inland Revenue Account is required to be delivered]

(16) [the gross estate passing under the grant amounts to £ and the net estate amounts to £ ].

SWORN by Deponent

the above-named

at

this day of 19 ,

Before me,

## Probate oaths

by

Christopher Wallworth

I am responding to your request in the March issue of Clarity for comments on probate oaths.

There is no prescribed complete form of oath set out in the Non-Contentious Probate Rules, and some changes to the conventional forms can be made without the need for the Lord Chancellor's Department to give its blessing.

The first step in improving the probate oaths is to throw out the Oyez printed forms (see left) and load the text onto a word processor. It is then a simple matter to remove all the redundant words (as in *the said deceased*), and to correct the obvious archaic phrases like *paper writings*, which simply means documents. An incidental benefit of a word-processed oath is that it is quicker to produce because there is no need to line up printed forms in the typewriter, and the finished version is not littered with deletions which have to be initialled by the solicitor administering the oath.

I have been using a cleaned up form for some time and I have never received any objections from Winchester District Probate Registry. This is Document 1, on the right.

Some of the wording in the oath is set out in the NCPR, and will need an amendment to the Rules before changes can be made. The settled land

continued >>>

### DOCUMENT 1

#### Cleaned up version of present form of oath

Extracting solicitor: Bird Franklin  
Wheatsheaf Yard, 127 High Street  
Oxford, OX1 4DF  
DX 4334 Oxford

IN THE HIGH COURT OF JUSTICE

Ref: CW/

FAMILY DIVISION

THE DISTRICT PROBATE REGISTRY AT WINCHESTER

IN the Estate of \*\*

I, \*\* make oath and say that:

- 1 I believe the document now produced to and marked by me to contain the true and original last Will and Testament of \*\* of \*\* [formerly of \*\*], deceased, who died on the \*\* aged \*\* years domiciled in England and Wales.
- 2 To the best of my knowledge, information and belief there was no land vested in the deceased which was settled previously to his/her death (and not by his will) and which remained settled notwithstanding his death.
- 3 I am the executor named in the Will.
- 4 I will
  - (i) collect, get in and administer according to law the real and personal estate of the deceased;
  - (ii) when required to do so by the court, exhibit in the court a full inventory of the estate and render an account of it to the court; and
  - (iii) when required to do so by the High Court, deliver up to that court the grant of probate.
- 5 To the best of my knowledge, information and belief the gross estate passing under the grant amounts to / does not exceed £ \*\* and the net estate amounts to / does not exceed £ \*\* [and this is not an estate in which an Inland Revenue account is required to be delivered].
- 6 Notice of this application has been given to the Executors to whom power is to be reserved, namely \*\*.

Sworn by the above-named )  
Deponent \*\* at )  
this )

Before me

Solicitor

statement is prescribed by rule 6(3) in terms which suggest that the exact wording must be used. The statement about administering the estate according to law reproduces section 25, Administration of Estates Act 1925, although I cannot find any authority requiring the section to be quoted word for word.

Bearing those comments in mind, I have redrafted the oath completely (shown as Document 2).

In paragraph 3, I think it is still necessary to refer to the original last Will, to distinguish those cases where probate of a copy will is being sought.

*True and original* in the conventional form is a tautology and can be eliminated.

The purpose of the settled land statement is to establish whether settled land should be excluded from the grant. This can only arise where the deceased was the tenant for life or the statutory owner of settled land and the settlement continues after his death. It cannot arise where the deceased creates a new settlement by his will. The conventional wording and not by his will is redundant. I have revised paragraph 4 to state the facts simply and avoid the convolutions of the conventional wording.

In paragraph 6 I see no reason to quote from statute, and I have set this out as a simple obligation to administer the estate according to law; section 25 AEA is then implied. Most lay executors have no idea

continued >>

**DOCUMENT 2**

**Plain English  
Executor's oath**

Extracting solicitor: Bird Franklin  
Wheatsheaf Yard, 127 High Street  
Oxford, OX1 4DF  
DX 4334 Oxford  
Ref: CW/

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

THE DISTRICT PROBATE REGISTRY AT WINCHESTER

IN the Estate of [TESTATOR]

I, [EXECUTOR] of [ADDRESS] swear that:

- 1 [TESTATOR] of \*\* [formerly of \*\*], (the Testator), died on \*\* aged \*\* years.
- 2 The Testator was domiciled in England & Wales.
- 3 I believe that the document marked by me is the Testator's original last Will.
- 4 To the best of my knowledge, the Testator was not the tenant for life or statutory owner of any settled land which remains settled land after his death.
- 5 I am one of the executors named in the Will.
- 6 I will administer the estate as required by law.
- 7 To the best of my knowledge, the gross estate passing under the grant amounts to / does not exceed £ \*\* and the net estate amounts to / does not exceed £ \*\* [and so it is not necessary to deliver an Inland Revenue account].
- 8 I have given notice of this application to the other Executors named in the Will ( \*\*) and I ask that power be reserved to them.

Sworn by [EXECUTOR] )  
at )  
this )

Before me

Solicitor

what the conventional wording means, if they bother to read it, but would understand an obligation to comply with the law.

In paragraph 7 the conventional introduction (To the best of my knowledge, information and belief) is a threefold tautology, and I have therefore simplified it. Information and belief are implicit in knowledge. It could be simplified still further to *As far as I know*, but that might be thought to sound too colloquial.

After I began work on redrafting the form of oath, I decided to see what changes to the traditional wording would be acceptable to the probate registry. I submitted an application for probate to the Winchester District Registry in the form of Document 3. (As I was the sole executor there would have been no embarrassing explanations to clients if the registry had insisted on it being resworn). This is a half-way house between the present oath and a full revision. I have left untouched those paragraphs where statute or the NCPR prescribe a form of words, but revised everything else. The revised form was accepted without question.

I have also drafted a revised administrator's oath (Document 4). The part which usually causes difficulty is the elimination (in the legal sense) of anybody who might have priority to the applicant. By splitting this into separate paragraphs it is easier to see what is required. Can I make a plea for the abandonment of the word *relict*, as in *lawful*

continued »»

**DOCUMENT 3**  
**Half-way house revision**  
**accepted by Winchester**  
**Registry**

Extracting solicitor: Bird Franklin  
Wheatsheaf Yard, 127 High Street  
Oxford, OX1 4DF  
DX 4334 Oxford  
Ref: CW/

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
THE DISTRICT PROBATE REGISTRY AT WINCHESTER

IN the Estate of [TESTATOR]

I, [EXECUTOR] of [ADDRESS] swear that:

- 1 [TESTATOR] of \*\* died on \*\* aged \*\* years.
- 2 The deceased was domiciled in England & Wales.
- 3 I believe that the document marked by me is the deceased's original last Will.
- 4 To the best of my knowledge, information and belief there was no land vested in the deceased which was settled previously to her death (and not by her will) and which remains settled land notwithstanding her death.
- 5 I am one of the executors named in the Will.
- 6 I will
  - (i) collect, get in and administer according to law the real and personal estate of the deceased;
  - (ii) when required to do so by the court, exhibit in the court a full inventory of the estate and render an account of it to the court; and
  - (iii) when required to do so by the High Court, deliver up to that court the grant of probate.
- 7 To the best of my knowledge, information and belief the gross estate passing under the grant amounts to / does not exceed £ \*\* and the net estate amounts to / does not exceed £ \*\* [and this is not an estate in which an Inland Revenue account is required to be delivered].
- 8 Notice of this application has been given to the Executors to whom power is to be reserved, namely \*\*.

Sworn by the above-named )  
Deponent \*\* at )  
this (etc) )

*widow and relict.* It is tautologous, a word not in common use elsewhere, and, because it sounds like *relic*, insulting to women. Can I also ask that the coy expression *a single man / woman* is abandoned, and that we simply say *a divorced man/woman*.

## CLARITY

### TIES



are available for sale at £8.50 each Navy blue ties with the CLARITY logo (as nearly as it can be reproduced)

Please send your order with a cheque to our East Molesey address

## WHITE SPACE

Following our own guidelines, and to eliminate the appearance of cramping which has flawed earlier issues, we have increased the use of white space.

We have widened the margins at top and bottom and on the right of the page, between the columns on 3-column pages, and between text and surrounding boxes.

Further suggestions are invited.

## DOCUMENT 4

### Plain English

### Administrator's oath

Extracting solicitor: Bird Franklin  
Wheatsheaf Yard, 127 High Street  
Oxford, OX1 4DF  
DX 4334 Oxford  
Ref: CW/

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

THE DISTRICT PROBATE REGISTRY AT WINCHESTER

IN the Estate of [DECEASED]

I, [ADMINISTRATOR] of [ADDRESS] swear that:

- 1 [DECEASED] of \*\* [formerly of \*\*], (the Deceased), died on \*\* aged \*\* years.
- 2 The Deceased was domiciled in England & Wales.
- 3 The Deceased died intestate.
- 4 The Deceased was a married man.
- 5 The Deceased did not leave any issue.
- 6 No other person is entitled by law in priority to me to share in the Deceased's estate.
- 7 No minority and no life interest arises under the intestacy.
- 8 To the best of my knowledge, the Deceased was not the tenant for life or statutory owner of any settled land which remains settled land after his death.
- 9 I am the [widow] of the Deceased.
- 10 I will administer the estate as required by law.
- 11 To the best of my knowledge, the gross estate passing under the grant amounts to / does not exceed £ \*\* and the net estate amounts to / does not exceed £ \*\* [and so it is not necessary to deliver an Inland Revenue account.

Sworn by [ADMINISTRATOR] )  
at )  
this )

Before me,

Solicitor

## Computer review

### Microsoft Word 5.0 (Macintosh version)

I recently upgraded my Word 4.0, and found as an unsolicited but welcome extra a grammar and style checker built into the new version.

To test it I ran it through an example of bad drafting - the clause on the right, taken from a statement of claim settled by counsel.

After a think long enough to

Save that by clause 6 of the said Agreement, the Plaintiff was allowed by the Defendant into possession and occupation of "the storage area" in order to carry out in a good and workmanlike manner and to the reasonable satisfaction of the Landlord's Surveyor, the works set out in a Section 146 Notice, a copy of which was annexed to the said Agreement and save that by Clause 10 of the said Agreement the Plaintiff was to comply with the said Section 146 Notice and save that by Clause 11 of the said Agreement the Plaintiff was to so comply within three months from the date of the said Agreement, that is, by 3rd September 1987 and that provided the said Notice was complied with within that time the Defendant agreed to grant the Plaintiff a supplementary Lease of the "storage area", Paragraph 1 of the Statement of Claim is admitted.

discourage use, the grammar checker highlighted the last part of the paragraph, from "date of the said agreement", told me it suspected a punctuation error, and suggested a capital D for date. I enquired as to the program's motives by mousing the button marked "explain". The promise on the button label remained unfulfilled. I ran the check again, with the same result, but a close inspection of the text did not reveal the basis of this fixation.

The program has an impressive list of categories by which it seeks to improve the drafter's style and grammar. These include *jargon*, *clichés*, *redundant expressions*, *weak modifiers*, *stock phrases*, *pretentious words*, *inappropriate prepositions*, *archaic expressions*, and many others.

Despite this potent arsenal of pedantry, the only other complaint the program could muster was a warning that we should avoid using *said* as an adjective "except in formal legal writing".

But it did tell me that I had 1 paragraph with 151 words in its only sentence. If I was interested, there were 837 characters. The text had a Flesch score of 33.2, which my chart in *Clarity 20* (April 1991) tells me is just the right side of the boundary between *difficult* and *very difficult*. This, according to the program, is equivalent to grade level 15.5, which the manual explains as *needing 15.5 years of formal education*. The checker gives the Flesch-Kincaid score and the Gunning Fog Index, but neither of these were adequately explained.

The word and word-per-sentence counts are useful, as are the readability scores if you have the scales to interpret them. Otherwise, I was not impressed, though perhaps to be fair I should have tested a wider range of prose. But it is good value as a free extra in a powerful program.

## CLARITY offers half-day SEMINARS

### ON PLAIN ENGLISH WRITING

Either

or

#### IN-HOUSE

#### PUBLIC

You will be asked to provide:

CLARITY will provide:

a suitable room  
writing equipment  
specimen documents for revision  
light refreshments

a suitable room  
writing equipment  
specimen documents for revision  
light refreshments

**Fee: £500 + expenses + VAT**  
An additional charge will be negotiated if the estimated travelling time exceeds 90 minutes in each direction.

**Fee: £100 + VAT per delegate**

We recommend between 10 and 20 delegates but these numbers are flexible.

There will not be more than 15 delegates at any seminar.

### The seminars

- are given by Mark Adler
- run for 3½ hours, including a 20-minute light refreshment break
- offer the standard guidelines for plain writing
- are intended to make delegates more aware of their writing style and to suggest improvements.

The seminar now carries 5 Continuing Education points.  
Contact Mark Adler at the address on the back cover.

MA

# The Gruff Award

## The letter

Dear Sirs <sup>1</sup>,

FLAT 1 18 WOLSEY ROAD SUTTON <sup>2,3</sup>

We now return <sup>4</sup> draft contract approved and are holding the other copy of the contract <sup>5</sup> signed by our clients <sup>6</sup> in readiness for <sup>7</sup> exchange, subject to contract <sup>8,9,10</sup>. <sup>11</sup> Our clients have 100% funding <sup>12</sup> on <sup>13</sup> this property <sup>14</sup>, therefore <sup>15</sup> it would be appreciated if <sup>4</sup> deposit could be kept to the minimum, say £1,000.00. <sup>16</sup> Please discuss this <sup>17</sup> on the telephone if necessary.

You say in <sup>18</sup> replies to preliminary enquiries that the service charge is running at £500.00 per annum, but cannot supply figures to support this. We have written to the managing agents about this, but <sup>19</sup> our clients have noticed <sup>20</sup> that this figure <sup>21</sup> is a discrepancy from <sup>22</sup> the figure of £350.00 given in the agents <sup>23</sup> particulars. Can you provide any explanation for this discrepancy. <sup>24,25</sup>

We would much prefer to exchange having first heard something from the landlords <sup>23</sup> solicitors as to the covenants they require. <sup>26</sup> On a further point, <sup>27</sup> our clients would prefer completion to be 6 weeks, rather than 4 weeks <sup>28</sup> from exchange as one of our clients is a director of a major engineering company and departs for a lengthy business trip to Japan on 3rd March. <sup>29</sup> We do wish to have contracts at least <sup>30</sup> exchanged by the time of our clients <sup>23</sup> departure.

Yours faithfully,

## Notes

- 1 There are too many women solicitors to assume that you are writing to men, and many women resent the excuse that *the masculine includes the feminine*.
- 2 Although this line is too short for it to matter, it is generally best to avoid continuous capitals. Tests have shown that we read lower case faster, using the shape of the word for recognition.
- 3 There is no apparent reason for using extra spaces instead of commas, nor for making the second gap shorter than the first.
- 4 *The* has been omitted, as in the American custom (*Plaintiff claims ...*). Can any American members comment on this form?
- 5 It is clumsy and unnecessary to repeat *of the contract*.
- 6 The pompous phrase *our clients* is used 6 times in this short letter.
- 7 *In readiness = ready*.
- 8 *In readiness for exchange, subject to contract = in escrow*.
- 9 *Subject to contract* should come after *signed by our clients*, as it was the signature which was conditional, not the exchange.
- 10 This letter was written before the 1989 Act abolished the rule that an oral contract for the sale of land was binding if evidenced by a document containing all its terms and signed on behalf of the defendant. A perverse 1973 decision, *Law v. Jones*, caused consternation by finding a contract in routine circumstances in which practitioners thought it obvious that there was none. The ruling was "not followed" (buried) the following year, but cautious conveyancers (and some litigators) still exclaim "subject to contract and without prejudice" in each paragraph. Even before 1989 the expression *subject to contract* would not have been needed here: it is clear from the letter that neither the deposit nor the completion date had been agreed, and that the buyers wanted more information before they would commit themselves.
- 11 As the second sentence deals with a different topic it should have its own paragraph.
- 12 The writer meant, but did not say,

- that 100% of the funding was to be provided by a mortgagee (who would not release the money until completion).
- 13 *For* is more appropriate than *on*.
- 14 *On this property* seems unnecessary.
- 15 *So* is better than *therefore*, at least in mid-sentence.
- 16 *.00* makes the figure difficult to read.
- 17 With your clients? With us?
- 18 *Your* has been left out in the same way as *the* earlier.
- 19 *But* is inappropriate, as well as repetitive.
- 20 It makes no difference who has noticed, so the further use of *our clients* could be avoided.
- 21 *Figure* need not be repeated.
- 22 *Discrepancy* is mis-spelt, and *is a discrepancy from* is wrong. The correct form is *There is a discrepancy between ....*
- 23 The apostrophe is missing.
- 24 The question mark is missing.
- 25 Is this a request for information or just a rebuke? The details are coming from the landlord.
- 26 The ideas are expressed in the wrong order (insofar as they are expressed at all in this vague sentence).
- 27 If this is another point it should have its own paragraph. And is this phrase more than throat-clearing?
- 28 The omission of the 2nd comma, when commas are used as parentheses, is a remarkably common mistake.
- 29 This bragging is counter-productive, as well as a waste of breath. Such a big-shot can afford a decent deposit.
- 30 *At least* has been mis-placed.

## A possible alternative

Dear Partners,

I enclose the draft contract approved as drawn [or *as amended*].

The Smiths have signed the other copy, but there are several points to be resolved before we exchange:

1. They are borrowing all the purchase money, so would appreciate it if your clients would accept a small deposit - say £1,000.
2. In your replies to my preliminary enquiries you put the service charge at £500 a year, £150 higher than the figure quoted in the estate agent's particulars. I have written to the managing agents for details, but the sellers might like to comment on the discrepancy.
3. I am waiting to hear what covenants the landlord's solicitors want.
4. Mr Smith has to go abroad on 3rd March. He would like to exchange before then, but will need 6 weeks, rather than 4, between exchange and completion.

Yours faithfully,

## Competition

Some apologists for traditional legal language

excuse their preference on the ground that "it just sounds better".

A £10 book token will go to the

best poem composed in legaldegook.

Entries to 35 Bridge Road by 31st August, please.

## Drafting Tips

**1: Use paragraphs as a guide to meaning**

*The first of a regular series*

1. *Break down the text into paragraphs and, if appropriate, sub-paragraphs.*
2. *Use paragraphs to show where one idea ends and the next begins.*
3. *Use indentation to show sub-paragraphing.*

*Version A below is taken from the 1971 edition of Brighthouse's Short Forms of Wills.*

*Version B opposite is the same clause, broken down into separate paragraphs, with italics and overstrike showing the few necessary alterations, but not otherwise changed.*

*Further improvements to the passage will be offered in future issues.*

### VERSION A

I give to my eldest son Arthur the goodwill of my trade or business of mechanical engineer and the stock-in-trade machinery plant and effects employed therein or belonging thereto together with the lease of the messuage or tenement shop factory and buildings situate at 146 Bishopsgate London EC2 in which the said business is carried on or used for the purposes thereof and the benefit of all contracts subsisting in respect of the said business and all book debts and moneys due to me in respect thereof or standing to the credit of my business account at my bankers at my death my said son discharging and indemnifying my general estate from all debts and liabilities due or subsisting in respect of the said business at my death and if required by my Trustees entering into a bond or covenant at the expense of my general estate in that behalf AND I APPOINT my said son executor of this my will as to the said business and premises hereinbefore bequeathed to him AND I DIRECT that the estate duty and expenses of taking out the limited probate in respect thereof shall be borne by him.

## Witness statements

New High Court and county rules in England and Wales provide for the routine exchange of witness statements after close of pleadings.

The guidance in the notes to R.S.C. Order 38 rule 2A (at 38/2A/8) says:

The statement of the witness should represent his evidence in chief and should be treated as if he was giving evidence in the witness box. It should be stated in a clear straightforward

ward narrative form, and should use the language of the witness, his *ipsissima verba* \*. For the sake of clarity it should follow the chronological sequence of the events or matter dealt with. For the sake of easy and ready reference, it should be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of his evidence. If the statement contains dates, sums or other numbers, they

should be expressed in figures and not in words.

It will be interesting to see if this guidance is taken seriously by practitioners and encouraged by judges.

\* Or, in the witness's own words, *in the witness's own words*. As Rumpole would say, "They all have *ipsissima verba* in Brixton."

## VERSION B

1. I give to my eldest son Arthur:
  - (a) the goodwill of my trade or business of mechanical engineer and
  - (b) the stock-in-trade machinery plant and effects employed therein or belonging thereto together with
  - (c) the lease of the messuage or tenement shop factory and buildings situate at 146 Bishopsgate London EC2 in which the said business is carried on or used for the purposes thereof and
  - (d) the benefit of all contracts subsisting in respect of the said business and
  - (e) all book debts and moneys due to me in respect thereof or standing to the credit of my business account at my bankers at my death
2. My said son *must*
  - (a) ~~dischargeing~~ and ~~indemnifying~~ my general estate from all debts and liabilities due or subsisting in respect of the said business at my death and
  - (b) if required by my Trustees ~~entering~~ into a bond or covenant at the expense of my general estate in that behalf AND
3. I APPOINT my said son executor of this my will as to the said business and premises hereinbefore bequeathed to him AND
4. I DIRECT that the estate duty and expenses of taking out the limited probate in respect thereof shall be borne by him

### Stating the Obvious

1. The title of this note shall be "Stating the obvious".
2. In this note, unless the context otherwise requires:
  - (a) "This note" shall mean "the note headed *Stating the Obvious*";
  - (b) "Stating" shall mean "stating by lawyers, which expression shall include (without prejudice to the generality of the foregoing)

solicitors, barristers, judges and parliamentary draftsmen";

- (c) "The" shall mean "the said";
- (d) "Obvious" shall mean "such as would have been assumed (without previous consideration) by any reader (actual or potential) of this note, had it not been so stated";
- (e) "Documents" shall mean "any paper or other writings written and/or composed by a lawyer, whether by writing or dictation and whether stored for the time being on paper, recording tape (audio or audio-visual), word-processor or other computer, or by

any other means whatsoever"; and

- (f) "Shorter" shall not imply "short" but shall be at all times a relative expression.

3. Documents would be shorter if lawyers did not state the obvious.

### From the BBC

- Very much at the other end of the spectrum.
- A very doomsdayish scenario.
- Totally decimated.
- Totally incomplete.
- A potentially endless list.

## Welcome to new members

Richard Auton; solicitor, Norwich Council; Norfolk  
Colin Blackman; employed barrister (and chartered physicist); Hong Kong  
John Chan; solicitor, Leung Kin & Co; Hong Kong  
Chapman Tripp Sheffield & Young; solicitors; Wellington, New Zealand  
Christopher Eskell; solicitor, Cartwrights; Bristol  
Julie Gillam; solicitor, Law Centre; Luton, Bedfordshire  
Mr T.G. Howell; solicitor, Clarks; Reading, Berkshire  
Lawrence McNulty; marketing and PR consultant; Wokingham, Berkshire  
Sarah Panizzo; solicitor, Penningtons; London EC2  
H.L. (Peter) Pierce; copy editor; Tetbury, Gloucestershire  
Anthony Rich; solicitor, Cartwright & Lewis; Edgbaston, Birmingham  
Daniel Russell; trainee solicitor; Edgware, Middlesex  
Christopher Shelley; solicitor, Manches & Co; Oxford  
Anne Stanesby; solicitor, Official Solicitor's Department; London SE24  
Patrick Stevens; solicitor, Stevens & Co; Chirk, Clwyd

## News about members

Trevor Aldridge has been appointed honorary Queens Counsel.

The second edition of Francis Bennion's textbook *Statutory Interpretation* was published in May by Butterworths at a price of £130. This and CLARITY were publicised during his interview on BBC Radio Oxford.

G.V.Bull has retired from partnership with his daughter, Vanessa Hawkes, but remains as a consultant. They are now practising with another solicitor in Woburn, near Milton Keynes, as Reynolds & Hawkes (incorporating Wright & Bull).

David de Saxe has given up private practice as a solicitor on his appointment as a full-time chairman of industrial tribunals.

Stewart Graham is looking for

### ARTICLES

He has been doing a first-rate job clerking for me since June 1991, full-time in college vacations and part-time during term.

He is expecting a 2.1 in sociology from Kingston University when the degree results are published on 6th July, and has an unconditional place for the CPE at Guildford in September.

But he needs a principal who can help him through the College of Law.

Mark Adler

## Committee

Mark Adler (chairman)	35 Bridge Road, East Molesey, Surrey KT8 9ER DX 80056 East Molesey	081-979 -0085 Fax: 081-941 0152
<b>But see change of address notice on front cover</b>		
Dr Michael Arnheim	8 Warwick Court, Grays Inn, London WC1R 5DJ DX 1001, Chancery Lane	071-430 2323 Fax: 071-430 9171
Prof. Patricia Hassett	837 Millbank Tower, Millbank, London SW1P 4QU	071-217 4282 Fax: 071 217 4283
Alexandra Marks	59 Gresham Street, London EC2V 7JA DX 10, London	071 606 7080 fax: 071 606 5113
Justin Nelson	66 Rogersmead, Tenterden, Kent TN30 6LF DX 39008 Tenterden	05806 5313 fax: 05806 2215

### Please contact

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

**Press date  
for the next issue:**

**12th September**