



# A movement to simplify legal language

Patrons:  
The Rt Hon Sir Christopher Staughton  
and Justice Michael Kirby

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## Editors' Note

### Emma Wagner and Martin Cutts

When Martin and I were invited to guest-edit this issue of *Clarity*, we decided to make it an international edition. We wanted to step outside *Clarity's* usual circle of English-speaking countries and show what some other EU countries were doing to clarify legal drafting in their own languages. So we bring you articles from Sweden, Germany, France and Italy on official efforts to improve legal and administrative drafting.

For me, as a linguist, it was particularly interesting to see how each country has devised its own guidelines for clear drafting, based on an analysis of its own language. No country has used any other country's guidelines, yet the results in all languages are strikingly similar – write short sentences, think of the reader, avoid the passive voice, avoid archaic language, etc. When I was translating Barbara Wieners-Horst's article from German, I was struck by the similarity between the German guidelines and the advice given in Martin Cutts' *Plain English Guide* and in *Modern Legal Drafting* by Peter Butt and Richard Castle – but they were devised independently. The German guidelines were based on an analysis of German legal drafting and the proven ways of making it more accessible.

*(continued on page 2)*

It is interesting to look at each country's motivation for using clearer language. In the articles published here, they range from Sweden's and Italy's desire for inclusiveness and democracy, to German embarrassment over one badly drafted law that was ridiculed in Parliament, to France's conviction that bamboozling ordinary people is "an abuse of power".

We have added articles on our own work: Plain Language Commission, run by Martin in the UK, and the Fight the FOG campaign, which I started with colleagues at the European Commission. Martin describes his work on *Clarifying Eurolaw*, his most recent attempt to improve legal drafting in the EU institutions; and I describe how EU lawyers have reacted to his suggestions.

Emma Wagner

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## Notes from the Chair

This special issue of *Clarity* is devoted to European initiatives in the use of plain legal language. It shows an increasing awareness, worldwide, of the need for clearer legislation and regulation. We are indebted to Emma Wagner and Martin Cutts for collecting the material, and for providing articles of their own. We are also indebted to our USA representative, Prof Joseph Kimble, for producing this issue in the midst of his own busy work schedule.

Most of you will by now have heard of the forthcoming conference, "The Language of Legislation", to be held at Peterhouse College, Cambridge, from 12-14 July. *Clarity* is hosting the conference jointly with the Statute Law Society. You should have received details about the conference, plus a booking form, in our April 2002 Newsletter. We do hope you can join us at the conference – but you will have to book soon, as numbers are limited to 100 and places are filling up quickly. If you need a booking form, contact me at the e-mail address below.

Two other reminders. Please give your e-mail address to Mark Adler ([adler@adler.demon.co.uk](mailto:adler@adler.demon.co.uk)) for our e-mail list. And please see the notice about 2002 dues on page 35.

Finally, we would welcome expressions of interest from members who are willing to help share the load of administering *Clarity*. We depend on the support of volunteers. If you would like to help, please contact Joe Kimble ([kimblej@cooley.edu](mailto:kimblej@cooley.edu)) or me.

Looking forward to meeting you at the Cambridge conference,

Peter Butt  
Sydney, Australia  
[peterb@law.usyd.edu.au](mailto:peterb@law.usyd.edu.au)

## Sweden – The Swedish government promotes clear drafting

**Barbro Ehrenberg-Sundin**

In the heart of the legislative process, in the Swedish Ministry of Justice, five language experts are encouraging legal advisers and other ministerial civil servants to use a plain-language approach in their drafting. The ministry also has a special committee, the Plain Swedish Committee, whose task is to promote plain-language activities within the Swedish authorities at central, regional and local government levels.

Acts and ordinances, government bills, state commission reports and other official texts must be clear and user-friendly. This is essential from a democratic point of view. For instance, you cannot guarantee openness, access to the law, the rule of law or efficiency in public administration unless official documents are written in a way that meets readers' needs.

For more than 30 years, the Swedish Government has been pushing for plain language and more effective communication between the administration and the public. At the moment, the use of clear language in the European Union is the new challenge.

### **Our approach to clear legislation**

The Division for Legal and Linguistic Draft Revision in the Ministry of Justice has a key role in legislative drafting in Sweden. No Government Bill (including proposed Acts), Government Ordinance or State Committee Terms of Reference can be sent to the printers without the division's approval.

Five language experts and five legal advisers (associate judges) work there as a team, checking the quality of texts from all the ministries. This final revision before the Government decides on the text is an important checkpoint. The legal advisers check the constitutional and formal quality of the texts, and the linguists ensure that the proposed new or amended draft Acts and Ordinances are as easy as possible to read and understand.

In the year 2000 our division revised

1,187 Acts (including Bills)  
1,959 Ordinances  
110 Committee terms of reference.

To help *Clarity* readers understand this key role, I'll briefly summarise the Swedish legislative process.

### **The lawmaking process**

#### *Acts and Government Bills*

All new Acts (including amendments) are adopted by the Riksdag (the parliament) at the Government's initiative in the form of a Government Bill. This means that officials in the different ministries prepare the drafts, often based on a state law commission's draft, which are then published in a report to the minister who has appointed the commission. This report will already have been submitted to different authorities and organisations and their opinions taken into account during the drafting of the bill.

The draft bill then goes to other ministries, the Prime Minister's Office and our division for consideration and final revision.

After the final revision the Government (i.e. the 20 members of the Cabinet) decides to submit the draft to the Riksdag as a Government Bill. In most cases, the Act will be adopted without changes. When an Act is adopted, the Government has to promulgate it without delay: the laws must be made known to the public as soon as possible.

Some draft bills are also revised by the Council on Legislation in the form of preliminary draft bills. Before they are submitted to the council, our division revises those preliminary drafts as well. Both the Government and the Riksdag may choose to disregard the objections of the council, but mostly they are seriously considered and published in the Government Bill itself. If the council objects strongly to a draft, it is likely that it contains flaws that have been overlooked by the legal advisers in our division or that the government, for political reasons, is determined to proceed with the draft in spite of its deficiencies.

#### *Ordinances and committee terms of reference*

Ordinances and committee terms of reference are not submitted to the Riksdag. Our final revision is the last stage before the Government decides on them.

#### *Five working days for final revision*

The ministries are supposed to give us at least five working days to revise a text. The legal advisers are bound to read all texts and all parts of a text, for instance the explanatory part of a bill; this can amount to several hundred pages. The linguists usually concentrate on the provisions of Acts and Ordinances and on the full text of committee terms of reference.

#### **Revision alone does not guarantee lucid laws**

At the final revision stage, the linguists can deal only with sentence structure, archaic or misleading words, phrases and forms, syntax problems, unclear passive voice, nominalization (or the “noun disease” as we call it), incorrect spelling and other details. The structure and presentation of the contents are difficult to change at that late stage.

So, during the last 25 years, we have developed other methods, like special seminars for drafters of different kinds of texts and handbooks and guidelines on how to write, for instance, legislation, state commission reports and administrative decisions. And giving advice by telephone or e-mail and arranging seminars is of course an important part of our work.

One other important way of improving legislation is by taking part in state law commissions that examine important issues and redraft legislation. If the task is to redraft old and complicated legislation, one of our language experts may join the commission and work for it part time. Recently, I was a member of the Income Tax Law Commission redrafting very old income tax laws into one new and more comprehensible Income Tax Act. This work took many years and was very successful. For instance, the Council of Legislation was delighted with the way this legislation had been modernised: one well-structured act instead of more than 30 old acts with thousands of amendments over the years since 1928; every chapter starting with an article stating the content of the chapter and where to find other relevant rules; informative headings; and not more than three paragraphs in an article.

At such an early stage of the legislative process, we have more influence on the text and structure of the law. We can help to make it easier to navigate by using contents lists, informative headings, short summaries at the beginning of each chapter telling you what to find there, bullet lists in certain paragraphs, and more information in references to say what the provision referred to is about.

We can therefore use the whole range of plain-language principles in our redrafting, but there

is one limitation: we cannot change the format and layout of the Swedish Code of Statutes. A special commission would probably have to be appointed to change that.

Here is an example from the Election Act with informative headings, not more than three paragraphs in a section (article), and straightforward and gender-neutral language. Lists are provided, where appropriate, and a short overview at the beginning describing the provisions.

## **From the Election Act (SFS 1997:157)**

### **Chapter 12 Voting by proxy or rural postman**

*The preconditions for voting by proxy or rural postman*

#### **Section 1**

A voter may submit his or her ballot paper by proxy in accordance with Sections 2–6 or by Posten Aktiebolag's rural postmen in accordance with Sections 7–9. If a vote is submitted by proxy or rural postman, it must be submitted in an outer envelope for proxy votes.

*Voting by proxy*

#### **Section 2**

Voters who are ill, disabled or old and therefore cannot come in person to vote at their polling station or at any other voting place may submit their ballot papers by proxy.

*Who may be a proxy?*

#### **Section 3**

A proxy may be the voter's spouse, cohabitee, child, grandchild, spouse's child, cohabitee's child, father, mother or sibling. A proxy may also be a person who professionally or in a similar manner provides the voter with care of a more permanent nature or in another manner usually assists the voter in personal affairs. The person who is engaged as a proxy must have reached the age of 18 years.

*How voting by proxy is conducted*

#### **Section 4**

Voters who wish to vote by proxy must:

- for each kind of election cast their vote and personally place the ballot paper in a vote envelope;
- put the vote envelopes that have been arranged in an outer envelope for proxy votes in the presence of the proxy and the witness;
- stick the outer envelope down;
- give an assurance on his or her honour that they arranged the vote envelopes and outer envelope in this manner and that they by reason of disability, illness or old age cannot come in person to vote at the polling station or at any other voting place;
- certify that the vote envelopes have not been arranged before the time allowed in accordance with Section 11; and
- write this assurance and this certificate on the outer envelope.

The proxy and the witness must certify in writing on the outer envelope that the voter himself or herself has signed the assurance and that he or she does not know of anything that makes the contents of the assurance incorrect.

A witness must have reached the age of 18 years. The voter's spouse or child or the spouse's child may not be a witness. The same applies to the voter's cohabitee or the cohabitee's child.

**Section 5**

The proxy must write his or her name, his or her civil registration number and his or her address on the outer envelope.

*Where must the proxy submit the vote?*

**Section 6**

The proxy must submit the outer envelope for proxy votes in the voter's polling station. The proxy vote may also be submitted at a post office, a special voting place or a voting place arranged by a foreign mission.

*Voting by rural postman*

**Section 7**

Voters who are served by Posten Aktiebolag's rural postmen may submit their votes by rural postmen, if voting is arranged by the post office to which the rural postman is attached. The Central Election Authority may in connection with elections that do not apply to the whole of Sweden, on the proposal of Posten Aktiebolag, limit the number of routes where the voters may submit their votes by the rural postman.

A rural postman who receives outer envelopes for proxy votes should carry with him or her:

- party-marked ballot papers for every party that at either of the last two elections to the Riksdag obtained more than 1 per cent of the votes in the whole of Sweden; and
- blank ballot papers.

*How voting by rural postman is arranged*

**Section 8**

Voters who wish to vote by a rural postman must:

- for each kind of election cast their vote and personally place a ballot paper in a vote envelope;
- put the vote envelopes that have been arranged in an outer envelope for proxy votes in the presence of a witness;
- stick the outer envelope down;
- give an assurance on his or her honour that they have arranged the vote envelopes and outer envelope in this manner;
- certify that the vote envelopes have not been arranged before the time allowed in accordance with Section 11; and
- write this assurance and this certificate on the outer envelope.

The witness must certify in writing on the outer envelope that the voter personally signed the assurance.

A witness must have reached the age of 18 years. The voter's spouse or child or the spouse's child may not be a witness. The same applies to the voter's cohabitee or the cohabitee's child. Nor may the rural postman be a witness.

**Section 9**

The voter must personally give the outer envelope for proxy votes and his or her voting card to the postman. Voters who are not known to the postman must produce identification. If they do not do so, the postman may not accept the outer envelope for proxy votes. The postman must certify in writing on the outer envelope that the voter personally submitted the outer envelope.

*Where should the rural postman deliver the votes?*

**Section 10**

The rural postman must deliver the outer envelope for proxy votes to a vote collector at the post office to which the postman is attached. The envelope may be left there even if the post office is not open to the public.

*When may the outer envelope for proxy votes be arranged?*

**Section 11**

A proxy vote may, in ordinary elections to the Riksdag and also ordinary elections to county council and municipal assemblies, be arranged no sooner than 24 days before the election day.

In other elections, a proxy vote that is submitted at the polling station, at a special voting place or at a post office, may be arranged no sooner than 10 days before the election day. A proxy vote that is submitted at a foreign mission on such elections may be arranged no sooner than 20 days before the election day.

### **The first guidelines for clear language in laws appeared in 1967**

The booklet *Language in acts and other statutes* stated that “if the language in laws and other statutes is simple and clear, this will have an impact on the language used in other official texts”. The booklet gives many recommendations and examples, telling authors:

- to use modern and comprehensible vocabulary and modern forms;
- to avoid “the noun disease” and unusual prepositional phrases;
- to avoid long and complex sentences with embedded subordinated clauses;
- to avoid vagueness and unnecessary variation.

In 1979, a little supplement appeared, *More guidelines for the language of legislation*. The most important thing here was that the Government declared that the drafters had to follow these guidelines when drafting new Acts and Ordinances as well as amendments. The supplement states that as soon as you make a substantial amendment, you must also modernise the language of the amended article, if necessary.

The supplement also offers principles on, for example, how to make the language gender-neutral, how to use headings and how to use lists for multiple conditions, requirements or rules.

During the 1980s, we published more guidelines, for instance the so-called *Black list*, showing inflated, formal and difficult words and phrases alongside their more comprehensible alternatives. When the list was published in 1988, the alternatives had already been used in new and amended

legislation and approved of by the directors-general for legal affairs in each ministry. So nobody could really argue against them and claim that the language experts were impoverishing the legal language.

Also, in the mid-1980s, the central authorities got their own handbook on how to draft regulations, which is also used by drafters in the ministries, since it is still the most complete Swedish handbook of its kind. Our division takes part in the work of revising and issuing the guidelines, but does not revise the authorities’ regulations.

### **Statutes for clear drafting**

The legal basis for the plain-language work in Sweden is stated in three statutes.

The first is the Ordinance on the Duties of the Government Offices (1982:1177, section 26). This prescribes that the Director-General for Legal Affairs at the Prime Minister’s Office (together with the senior civil servant at the Ministry of Justice, who is publisher of the Swedish Code of Statutes) must

“encourage the greatest possible simplicity and clarity in the language used in statutes and other decisions”.

The second is the Law of Administration (1986:223, section 7). This says that the central authorities

“must endeavour to express themselves in a comprehensible manner”.

Thirdly, there is the Government Authorities and Agencies Ordinance (1995:1322, section 7). This requires the director-general to ensure that the authority uses a plain-Swedish approach when drafting official documents.

Similar provisions can be found in ancient Swedish legislation, from the times of King Charles XII at the beginning of the eighteenth century.

### **Plain Swedish spreads among the authorities**

As I have mentioned, the central state administration in Sweden is divided into ministries and administrative central authorities. There are hundreds of such authorities, situated not only in the Stockholm area but all over the country. There are also regional and local administrations, which contain both state and communal bodies.

The communication between administration and citizen is of course more frequent and direct at the central, regional and local administrative levels than in the Government Offices. Therefore, it is even more important that such authorities use a plain-language approach in their drafting. Section 7 in the Law of Administration says they should do so.

#### *Eight years of campaigning*

To encourage the authorities to start plain-language projects, the Government appointed a Plain Swedish Committee in 1993. It consists of three judges, two linguists, three political scientists and a secretary. The committee meets monthly. The secretariat is based in our division.

Despite limited resources, we have had great success in inspiring the authorities to comply with section 7. Having established a network of contacts responsible for language matters at every authority, we have made them the main target group for our seminars and conferences, for spreading our Plain Swedish Bulletin and for informing the civil servants about our website, Klarspråk.

Many central authorities have started projects on revising standards for their documents, publishing their own plain-language guidelines, and giving in-house drafting courses, and some have employed their own plain-language expert.

Every year we award the Plain Swedish Crystal to one or two authorities that have obtained good results in their plain-language work. This award has become very desirable, and we get more nominations every year. In 2001, the Minister for Democratic issues awarded the Crystal to the local authority of Borås for its straightforward and accessible summaries of the community council's decisions, published on the Internet within an hour after the council's meetings. The award was first given in 1998.

#### *A new means for evaluating comprehensibility*

By order of the Plain Swedish Committee, an evaluation of the comprehensibility of texts from the authorities has been carried out by the Swedish Agency for Administrative Development, and the report was presented in September 2001. The evaluation focused on how to measure comprehensibility, and an instrument that can be used for that purpose has been designed. It consists of a set of questions about different aspects of texts. Answers are given as a mark on a scale, and the marks can form the basis of an overall measurement of comprehensibility. The instrument was used on three different textual genres – brochures, reports and administrative decisions – and the test was carried out by employees of different public authorities, who regularly write texts in the three genres.



The evaluation showed that archaic, difficult and obscure words, as well as long and complicated sentences, have almost disappeared from the bureaucratic language. Instead, there is a lot to be done to make the documents more user-friendly by, for instance, changing the perspective – in particular using informative summaries and headings, and focusing on what is important to the reader, from the whole of the text to the individual paragraphs.

We are now designing this instrument to be used on the web. We hope it will help drafters to become aware of what features make a text a good and functional one.

**The European Law Conference in Stockholm – a starting point for closer “clarity collaboration” between EU Member States?**

During the Swedish presidency of the European Union in 2001 the Swedish Government and the Riksdag arranged a European Law Conference. My contribution to the conference was to organise the session “The Need for Clarity and Public Access”. (See Bengt Baedeker’s article that follows this one.)

The need for a shift in perspective to improve communication quality of the law-making process was highlighted during the conference. This could be done:

- by writing laws for EU citizens and organisations rather than for experts like lawyers and judges;
- by public deliberation and representative panels;
- by effective feedback mechanism about real effects.

It was stated that concerted political action would be needed to improve the quality of EU law.

That it is quite possible to use plain-language principles while drafting EU law was made clear to the audience of the conference. Martin Cutts’s rewrite of the Safety of Toys directive proved that (see his article in this issue).

Since the conference there has been a lot of activity in the EU showing that clarity is on the agenda. The Commission’s white paper on governance includes a commitment to present a “better regulation action plan”, and the report by the High Level Advisory Group (the Mandelkern group), presented on November 13, gives a detailed, practical plan of action on better regulation. The Swedish delegate of this group has pointed out that “easy access” to the law presupposes that the law is clear to those it is intended for. Therefore, it is necessary that language experts take part in the multi-disciplinary “regulatory management”, which is proposed to be established in the institutions and in Member States’ governments.

At a meeting in Laeken in December, the European Council welcomed these proposals on the quality of regulatory arrangements, mentioned in the Mandelkern report. The next step is for the Commission to present its action plan for better regulation at the end of May. Sweden, along with other Member States, is looking forward to it.

For more information about the Swedish plain-language work, please visit our website <http://www.justitie.regeringen.se/klarsprak>

## European Law Conference – a promising start

by Bengt Baedeker

The European Law Conference took place in Stockholm 10–12 June 2001 as part of the Swedish Presidency of the European Union. One of the major topics at the conference was “The Need for Clarity and Public Access”. So, how did it go?

Several things became evident at this conference. *One*: There is a need to make EU legislation clearer. *Two*: There is a will to do it. *Three*: It is possible to do it. *Four*: The arguments against plain language are false.

### Why the vagueness in EU legislation?

The first speaker on the theme of clarity was H.D. Tjeenk Willink, Vice-president of the Council of State, Netherlands. He stressed that the quality of legal documents in the EU depends a lot on the legislative *process*. In his experience, often the reason for unclear EU legislation is the need for Member States to be able to negotiate and compromise; the need for consensus takes precedence over the desire for clarity and leaves us with vague documents that can be interpreted differently in different Member States.

### What is true, what is false?

“It’s babyish, it’s imprecise, there is no evidence that it improves comprehension”. The list of shallow, poorly substantiated arguments against plain language seems endless. Only with hard facts can that kind of nonsense be stopped. Professor Joseph Kimble has collected a great number of studies that show that

plain language *is* precise, that it is favoured by readers, that it improves comprehension, and that it takes considerably less time to understand.<sup>1</sup> In short, plain language saves a lot of time and money. In his presentation, Professor Kimble very effectively refuted all serious charges against plain language.

### Can it be done?

The best argument for plain language in EU documents is of course evidence that it works, and works well. Such evidence is now available! On behalf of the European Commission, legendary plain language consultant Martin Cutts rewrote a typical – and anything but reader-friendly – directive. Several plain language principles were used, such as grouping related points under informative headings, using everyday words if possible, and stating the purpose of the directive early in the document. In a joint presentation with Emma Wagner, Head of Department at the Translation Service in the European Commission, he showed that the contents of the original directive could be conveyed in a way that is clear, easy to follow and yet precise.

Mr Cutts’s rewrite has now been translated into all the eleven languages of the Union.<sup>2</sup> The book *Clarifying Eurolaw* contains both the original directive, Cutts’s English rewrite and his comments on the ideas behind the rewrite. (For more on *Clarifying Eurolaw*, see Cutt’s article on page 24. It includes information on how to obtain the book.)

<sup>1</sup> J. Kimble, *Answering the Critics of Plain Language*, The Scribes Journal of Legal Writing, Vol. 5, 51-85 (1994–1995); *Writing for Dollars, Writing to Please*, The Scribes Journal of Legal Writing, Vol. 6, 1-38 (1996–1997).

<sup>2</sup> Available on-line at <http://europa.eu.int/comm/translation/en/ftfog/eurolaw/eurolaw.htm>.

### Not just English

The conference gathered prominent spokesmen for plain language not only from English-speaking parts of the world. Professor Alfredo Fioritto presented the results of an extensive project in Italy. The objective of this project was to simplify the administrative language. Ms Nicole Fernbach, Canada, recounted her experiences of plain language work in French, and Ms Barbro Ehrenberg-Sundin described the efforts being done in Sweden.

### Let's not stop here!

Making Mr Cutts's clear rewrite a possible model for directives in the European Union would be a giant leap in the right direction. But the efforts for increased clarity in the Union must not stop there. It is also important that more people in all Member States become aware of the advantages of plain language, and that the process of modernisation be accepted and supported by those responsible. In the concluding discussion panel, Professor Willem Witteveen, member of the Dutch Parliament, said that a shift of perspective is needed to get clear EU legislation – laws must be written for citizens and organizations rather than for administrators and politicians. He proposed

that we should create a network, where promoters of plain language from different Member States could share experiences and jointly strive towards improvements. I am convinced that this network has great prospects of becoming truly successful!

*Bengt Baedecke is a language expert at the Swedish Government Offices, and he was one of the organizers of the topic "The Need for Clarity and Public Access" at the European Law Conference.*

## Eschewing obfuscation?

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The brochure is also available from our website.

## ••• 2002 Dues •••

**Renewals were due on January 1  
(unless you joined after September 1).**

If you have not yet paid your 2002 dues, would you please do so. Pay your country representative or Joe Kimble, as explained on page 34. We have never raised the modest dues, even though our funds are barely enough to cover the cost of producing and mailing the journal.

Also, if you change your address, please let us know.

## Germany – Editing in the German Parliament

**Barbara Wieners-Horst**  
(translated and adapted by Emma Wagner)

“The language of proposed legislation must be correct and if possible understandable by all readers. The language of proposed legislation must reflect the equal rights of women and men. Proposed legislation should be forwarded to the German Language Society’s editing service in the German Parliament so that the draft can be checked for correctness and understandability.”

(Paragraph 42 (5) of the Common Rules of Procedure of German National Ministries)

Since the earliest days of the Federal Republic of Germany, the German government has sought assistance from the German Language Society on the wording of new legislation. The German Language Society (GLS) is a non-political association set up in 1947 to protect and research the German language. Its aim is to increase the German public’s awareness of language and its impact on society. The GLS keeps a critical eye on developments in German and draws on academic research to make recommendations for general language use. (See <http://www.gfds.de/wir.html>)

In 1966, Parliamentary President Eugen Gerstenmaier arranged for the GLS to set up an editing service in the German Parliament. This move was prompted by Parliament’s discussion of the proposed Environmental Planning Law: the draft was peppered with unfortunate turns of phrase that were ridiculed in the plenary debate. It was Parliament itself that suggested incorporating some editing by language experts into the process for adopting new legislation.

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Since then, a GLS employee has been on hand to give language advice to Parliament and the highest levels of the German federal authority. The name “GLS editing service” dates from that time, because in the early years the parliamentary administration attached two of their own support staff to the service as well.

On reading the fine principles laid down in the quotation at the beginning of this article, you might be surprised to learn that the editing service consists of only one person. The lofty aim of language checking to ensure maximum understandability is sadly at odds with the sobering reality of the single part-time post that is provided to meet this challenge.

Most of the service’s time is taken up with its priority task: checking the drafts of new laws and regulations. But it also helps Parliament and ministry staff over the phone, answering their day-to-day queries about spelling, punctuation, grammar, style, word derivation and so on.

The steps involved in the editing service’s work are simple:

- The ministries send the first drafts of proposed legislation to the GLS editing service, ideally at the earliest possible stage, or at least well before they go to the Federal Cabinet.
- The GLS editing service looks through the drafts and accompanying texts; identifies parts that are difficult to understand, especially in the draft itself; produces clearer alternatives, and explains them; and returns the improved and annotated texts to the specialist departments in the ministries.
- The authors review the suggestions and accept them if they agree. Experience shows that 90% of all suggestions are accepted.

The advantage of this method is that a neutral and detached reader, who was not involved in the earlier stages of producing the text, can see it from the point of view of an outsider. In a sense, the German language expert in the GLS editing service is a permanent guinea-pig to test understandability. The authors will have been focusing on the legal content of the text and often do not have enough critical distance to judge the language. Usually they are grateful to have an outsider who can remove unnecessary obstacles to understanding.

On the other hand, the main disadvantage is that authors are not obliged to discuss their texts or any suggested improvements. The Rules of Procedure quoted at the beginning of this article describe only what the editing service does with the texts; they do not stipulate how its suggestions should be handled by the ministries. The editing service's improvements and explanations may be welcomed and taken on board, but this exposure to criticism and alternative suggestions is voluntary, and ultimately dependent on the authors' goodwill.

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Papers presented at a conference on plain legal language, held at the Faculty of Law, University of Pretoria, July 1999.

**Contributors include:** Justice Johann van der Westhuizen, plain language experts Mark Adler and Derrick Fine, Minister Dullah Omar and Enver Daniels

(In a large administration, time pressure and other non-linguistic factors also influence the drafting process.) In the present administrative circumstances, probably the only way of offsetting this disadvantage would be a formal requirement for cooperation and a real dialogue between the authors and the language-checking service.

In checking texts, the GLS editing expert is guided by both the "maximum comprehensibility" requirement set out in the Rules of Procedure, and the "demand for a minimum level of comprehensibility", formulated as follows by German language expert Ludger Hoffmann:

"Every law must be written using expressions and constructions that can be understood by anyone who knows German and is familiar with the area covered by that law."

(From: *Wie verständlich können Gesetze sein?*  
In *Rechtskultur als Sprachkultur*, G. Grewendorf  
1992)

No diagnosis without treatment ... The next stage is the most important one: producing alternative wording. The GLS editing service must provide concrete assistance, not just criticism. Of course, its linguistic improvements must not alter the content or intention of the law.

The improvements most commonly proposed by the GLS editing service come in three main categories: vocabulary, syntax and text design. This breakdown is based on a German Language Society study carried out for the Ministry of Justice by Karin Frank-Cyrus and others (Wiesbaden, 1996). Two large text extracts were analysed and improved; it was found that the types of improvement could be boiled down into 24 recommendations, given below. The value of these recommendations is confirmed on a daily basis in the work of the GLS editing service.

## German Language Society – Recommendations on legislative drafting

### Words

1. Use specialist terms that have a clear structure and unambiguous and consistent meanings, giving definitions where necessary.
2. Use words accurately and neutrally.
3. Avoid unusual, archaic and elevated words as well as modish and colloquial language.
4. Do not over-use compound nouns.
5. Use simple verbs rather than verbal expressions.
6. Vary your choice of words, except with specialist terms.

### Sentences

7. Avoid long sentences and clauses.
8. Avoid multiple subordinate clauses.
9. Put parentheses or explanations in a separate sentence of their own.
10. Put the main verb near the beginning of the sentence if possible.
11. Avoid over-long noun phrases.
12. Avoid stacking nouns together.
13. Use infinitive constructions correctly.
14. Use active verbs whenever possible, rather than the passive voice.
15. Put the main statement in a prominent position in the sentence.
16. Specify who is affected by the law; refer to them in gender-neutral language.
17. Use the positive form rather than the negative.
18. Use prepositions and conjunctions correctly.

### Text design

19. Use logical order, clear structure.
20. Omit anything superfluous.
21. Check that headings are accurate and complete.
22. Make lists clear and logical.
23. Use simple rhetorical devices to make your message clearer.
24. Use pronouns and adverbs to shorten sentences and link them with each other.

The findings of the study were also included in the new edition of the Manual of Legal Forms produced by the Federal Ministry of Justice (1999). The first edition in 1991 had included some drafting advice, and this was so well received that the Ministry decided to expand the section on language. What it wanted was not a systematic analysis of legal language, but advice on dealing with the basic, minor and major difficulties encountered in formulating laws – in other words, guidance that would help unwary authors to avoid the common pitfalls of legal drafting.

To illustrate the points made in the recommendations, here are some examples from the recent work of the Editing Service:

(Translator’s note: The examples relate to the German language, and I have tried to translate them in a way that illustrates the point in English. There are striking parallels between the two languages, however.)

Accuracy of vocabulary means replacing unusual, archaic or colloquial words by commonly used standard or specialist words and expressions; the terms must also be appropriate to the context. For example, in a directive on taxation, the German term *Störfall* (general meaning: *abnormality*) had been introduced as shorthand for “premature termination of part-

time working in pre-retirement period”. But *Störfall* is also the word commonly used to refer to a *malfunction in a nuclear power station*, so it is quite inappropriate to use it in contexts relating to people and their working arrangements.

In cases like this, it becomes clear that the authors have lost sight of the normal meaning of words and are seeing them only in “their” own special regulatory context. For someone who is thinking in terms of the normal regulatory situation, any deviation counts as an abnormality. There is always a danger that expressions like this will spill over from legislation into situations where administrators come into contact with citizens. Derived regulations, explanatory notes and guidelines associated with laws are used by administrators to interpret and give practical advice.

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Such quasi-legal texts are only marginally influenced by the call for clear and accurate writing in legislation, yet they lay the foundations for typical administrative writing – in a style that is frequently and justifiably criticised by the general public.

A typical feature of all condensed specialised language, including legalese, is the use of a noun-heavy style. It is generally thought that clusters of nouns help to produce an economical and compact style of writing and that they are inevitable in legal language. But often noun clusters are not in fact shorter or more compact, and they are not necessarily easier to understand – there are clearer alternatives. For example, compare the following:

- that the possibility of registration as an insurance claim has already been excluded
- that an insurance claim can no longer be registered

Similarly, legal language often makes excessive use of noun + verb structures. While they are a typical feature of specialised language and allow more subtle distinctions than simple verbs, they can overload a sentence with nouns and make it difficult to understand. So the GLS editing service always attempts to distinguish between those noun + verb structures that genuinely add to the meaning and those that are superfluous.

For example, it would replace:

- in cases where carriage of employees cannot be effected by public means of transport  
by:
- in cases where employees cannot travel by public transport

A typical example of compact and abstract legal writing is this sentence from an early draft of a new regulation on access to telecommunications:

The possibility of access from public telephone installations to emergency numbers must not be restricted by the allocation of privileged rights to certain service providers.

This sentence is not particularly long, nor does it contain specialised terms (*certain service providers* are defined earlier in the text as emergency and rescue services, etc.; *privileged rights* is also defined earlier). But the two noun clusters make the sentence difficult to understand; the most important nouns (*emergency numbers* and *privileged rights*) are hidden in grammatically subordinate positions. Because the main verb is in the passive voice – *must not be restricted* – the subject of the sentence is the abstract *possibility of access* rather than the more important *emergency numbers*. Since this provision is about the rights of telephone users, it would be better to formulate it as an order rather than a prohibition.

The improved version is:

Emergency numbers must be easy to dial from public telephones, even if certain service providers have privileged rights.

The authors of these texts are not always lawyers. In this case they were engineers, faithfully reproducing the style of language commonly used in public administration. The draft had already gone through legal revision in the Ministry of Justice when the editing service suggested the change explained above.

In the area of syntax, we often find that sentence structure and sentence length can be improved. A general guideline is 22 words per sentence (which we treat as both a maximum and a minimum!), as this has been confirmed by empirical studies.

The GLS editing service improves texts by shortening sentences; it may break them up into shorter sentences, cut down subordinate clauses, or simply rearrange the order in which ideas are presented in longer sentences.

Our guiding principle for all drafting improvements is coherence, and we try to achieve it by a combination of:

- clear and logical structure
- omitting anything superfluous
- accurate headings (headings are now mandatory)
- using pronouns and adverbs to shorten and link sentences.

Here is an example of how to clarify:

To ensure the validity of a decision at the guild assembly it is necessary that the topic be notified when it is convened, except when it is subsequently entered on the agenda of the guild assembly with the approval of three quarters of the members present, unless it is a decision on membership changes or dissolution of the guild.



Our suggested improvement would break this down into:

1. ensuring a decision is valid,
2. two conditions,
3. one exception:

A decision by a guild assembly can be valid only if the topic was notified when the assembly was convened, or if three quarters of the members present agree to add it to the agenda. This does not apply to changes of membership or dissolution of the guild.

All in all, the GLS editing service helps to make draft laws more readable and understandable. But there are limits to the improvements it can make. They arise partly from the legal system and partly from the demands made by specialised language. It would be dishonest to use simple language that would tempt laymen into thinking they could understand the law: understanding means not just understanding the words, but the legal interpretation, the context of the law, and its links with the rest of the legal system.

Many obstacles to understanding are actually created by the legal system itself, owing to:

- the use of imprecise legal terms (German terms similar to the notoriously vague *best endeavours* in English)
- the use of legal terms that have no standard definition or differences between common usage and legal usage, such as:
  - terms whose legal meaning is different from their common meaning
  - terms which are used interchangeably in common use, but have distinct meanings when used in legal contexts.

But the most important point has already been mentioned and is worth repeating: Unless we insist on interaction between language experts, lawyers and civil servants, there is little chance of correcting basic deficiencies in legal language, for content and form are inextricably linked. Only by working together can we improve the basic architecture of laws, cut out superfluous matter, and adapt the structure and formulation of laws to their real addressees. Until Parliament makes editing a mandatory step in preparing legislation, considerable potential for language guidance will go to waste.

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## France – The Committee to Simplify Official Language (COSLA)

*(Based on information from Chantal Staminesco, French Ministry of Culture, and from articles in Le Monde and The Times in August 2001)*

In 1539, the French king Francis I decreed that Latin should be dropped as the language of state. He insisted that French be used instead of Latin, so that the largest possible number of ordinary people would be able to understand. Now the language of French officialdom is being overhauled again, for exactly the same reasons. A government survey found that people felt alienated by official language and complained that the civil service was treating them like naughty children. Moreover, the survey showed, the system was clearly failing the most vulnerable members of society, who could not understand the official letters they were sent or the forms they were supposed to fill in to claim allowances.

The task of simplifying official forms and correspondence falls partly to the new Committee to Simplify Official Language, known in France as COSLA (Comité d'orientation pour la simplification du langage administratif).

COSLA was set up on 2 July 2001 by the Civil Service Minister and the Minister for Culture and Communication. Its mandate is to make concrete proposals to improve the quality of official language and to check that the proposals work in practice. Specifically, the committee is expected to help less well-educated users to understand the various official forms and letters sent to them by the administration.

The committee is chaired by the two Ministers (Michel Sapin and Catherine Tasca) and was set up for a period of three years. It is made up of:

- one-third language experts,
- one-third representatives of users,
- one-third civil servants.

It met for the first time on 3 July 2001. Its members include popular figures such as Pierre Perret, a singer known for his use of slang lyrics, the Algerian singer Cheb Mami, and Bernard Pivot, who hosts a popular television chat show.

COSLA's priority is to work on the written language of officialdom. It has two main projects:

1. rewriting six of the most commonly used administrative forms in clear language (application for national identity card, claim for family allowances, retirement application, declaration of estate, application for general health cover, application for minimum wage);
2. simplifying official letters.

COSLA will oversee the production of three aids for drafters, to be supplied in 2002:

1. a guide to administrative drafting, written by the Centre for Applied Linguistics at Besançon,
2. a glossary of official terms,
3. special style-checking software.

Items 2 and 3 are to be produced by contractors. At a meeting on 27 November 2001, the Committee approved some of the rewritten forms and interviewed the contractors selected to produce the glossary and the style-checking software.

Some tips for clear writing already given to French civil servants include the following:

**Do not write this:**

*J'ai l'honneur de vous faire connaître que ...*

I have the honour of informing you that ...

*nom patronymique*

patronymic name

*personne morale*

legal person

*personne physique*

natural person

**Instead, write this:**

*Je vous informe que ...*

I inform you that ...

*nom de famille*

surname

*société*

company

*personne*

person

Although COSLA is a home-grown French product and not a clone, its motivation is similar to that of plain language campaigns elsewhere. COSLA's vice-chairman, the linguist Pierre Encrevé, put it like this: "It is not up to the public to untangle the officials' red tape. It is up to officials to adapt to the public." After all, as Encrevé also points out, "if someone fails to fill in a form correctly, the State has failed too, because it won't have the information it needs." So clear language serves efficiency as well as democracy.

Another member of COSLA, the dictionary editor Josette Rey-Debove, asks: "Do civil servants themselves always understand what they have written?" Whether they do or not, she says: "one thing is certain: by writing the way they do, they are exercising a form of abusive power." It is this abuse of power, and the accompanying alienation of the public, that COSLA hopes to combat with a simple weapon: clearer language.

Website: <http://www.service-public.fr/accueil/cosla.html>

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## Italy – How politics can be used to improve the quality of legislation

by **Stefano Murgia and Giovanni Rizzoni**  
(**Italian Parliamentary Drafting Unit**),  
translated by **Dave Skinner**, European  
Commission

### Technical rules on legal drafting

In Italy it is generally accepted that legal language needs to be made as clear and simple as possible. Rules were issued some time ago setting out clear guidelines for the drafting of legal acts. The most important of these rules were laid down by Parliament and the Government, and by the legislative assemblies of the 20 autonomous regions into which the country is divided.

At the national level, three separate Technical Directives – with the same content – were issued in February 1986 by the Presidents of the upper and lower houses of the Italian Parliament and the President of the Council of Ministers. These formed an initial set of

technical guidelines on legal drafting. In April 2001 they were revised and added to – again in three separate circulars from the same three authorities.

Many of the guidelines are designed to ensure that laws are drafted so as to avoid ambiguity of meaning and syntax, and are kept as simple and precise as possible.

To achieve this, various rules are laid down:

- The most general rule is “coherence”: use the same terms for the same concepts and actions throughout each legal act.
- Rules on the use of legal language:
  - prefer the indicative,
  - avoid the passive when it is not clear who is the subject or object of the action referred to,
  - do not use double negatives.
- Rules on structure:
  - how to divide up the act itself,
  - how to link it to the other acts which it amends, repeals or mentions.

Basically, these rules are intended for the technical staff who draft laws for the politicians. And in Italy legal drafting is not done by one office but by a range of bodies. For example, each house of parliament has its own specialist drafting team. These teams help to draft the bills tabled by MPs and then check the final texts adopted by the house, but do not get involved in the huge amount of drafting by parliamentary committees. These committees have their own secretariats and consultants to advise on the content and formal aspects of the measures in question.

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### **Why quality of legislation is not just technical, but political**

But the whole question of “good legislation” is no longer a merely technical problem, concentrating on the support given to law-makers. It is now high on the political agenda in Italy – for three very good reasons:

1. It is primarily in the Italian Parliament that laws are actually drafted, chiefly in committees but also in the assembly itself, where bills can be very drastically amended. So the final version of a law emerges from a highly political process in which MPs and members of government become actively involved. The actual wording is often the result of awkward political compromises, and cannot really be influenced by rules on legal drafting.
2. The number of laws adopted in Italy is much higher than in other countries of Europe. This surfeit of legislation has led to increasing resentment from individuals and businesses, and from public opinion in general.
3. Parliament is not the only originator of rules and regulations. In recent years, more and more are being issued at the European level, by independent administrative authorities and by the regions. There has also been a clear transfer of final law-making authority from parliament to the government, through the legislative delegation process.

All these factors have substantially changed the form and content of the laws adopted by parliament, or at least the most important ones. Laws have fewer provisions that apply directly to individuals and more that set up regulatory powers outside parliament.

As a result of all these developments, there is now a tendency to consider the problem of clarity of legal documents within the broader context of quality of legislation, and to make this the direct responsibility of the political authorities.

### **Minimum quality requirements**

The clearest sign of this change in approach was an amendment to the rules of procedure of the Chamber of Deputies, an amendment that came into force in January 1998. The new rules of procedure give the parliamentary committees primary responsibility for a number of minimum quality requirements, namely to ensure that each legislative measure:

- (a) is necessary, and that its objectives cannot be achieved by other legal means;
- (b) is acceptable under the Italian constitution, is compatible with European law and does not conflict with regional competencies;
- (c) is proportional to the desired objective;
- (d) is unambiguous, clear and compatible with existing legislation.

This means that responsibility for clear wording lies directly with the legislator, and is just one of the elements required for high-quality legislation.

### **The Legislation Committee**

To help the committees in their work, the new rules of procedure have set up a Legislation Committee. This is yet another political body, but with very special features. It is made up of ten MPs chosen by the President of the House, with equal representation for the majority and the opposition. The committee is chaired by each one of its members in turn for a period of six months each.

The committee's job is to give opinions to the specialist committees on the quality of their texts. Are they consistent, simple, clear and correctly worded, and will they help simplify and improve existing legislation? The committee has been very effective in improving the quality of legislative drafting, and in most cases its opinions are taken into account by the other committees, even on government bills.

The committee works on special lists prepared by the chamber's study department. These show the critical aspects of the legislative working of the bills concerned. The fact that the comments on these lists have been made by a political body like the committee obviously means that they have a much greater impact on the legislative decision-making process. Its authority over other parliamentary committees is also strengthened because it has members from both sides and in practice virtually all its decisions are unanimous.

In addition, the Legislation Committee has organised a number of inter-institutional seminars on the quality of legislation, aimed at MPs and people working in the court system and for other government and regional authorities. The seminars were modelled on a similar initiative by the Danish Parliament, based on the idea that high-quality legislation can be achieved only through coordination between all the institutions involved in the whole legal process (the legislature, the executive and the judiciary).

This is an idea derived from the experience of the European institutions. The three most directly involved in producing legislation (the European Commission, European Parliament and Council) have jointly produced the Inter-institutional Agreement on the quality of drafting of Community legislation, based on Protocol 39 of the Treaty of Amsterdam.

### **International comparisons**

Before trying out this initiative – and others – it was essential to look at what had been achieved in other countries of the European Union. Between 1998 and 2000, the President of the Italian Chamber of Deputies headed a working party of presidents of national parliaments on the quality of legislation. The working party and the plenary conference produced some reports which formed a very useful basis for the action taken by Italy.

### **Conclusion**

The Italian experience shows that the problem of clarifying and simplifying legal language is closely linked to the more substantial problems of simplifying law-making and keeping complex regulatory systems in check. All these problems can be put under the heading of "quality of legislation". Action has been taken by:

- adopting special procedures,
- setting up special bodies within political authorities, particularly parliament.

These new procedures and bodies often mean that matters of legislative drafting technique are no longer in the hands of specialists, because the political authorities are now more directly involved in settling points that used to be the province of lawyers and legal drafting specialists. However, the specialists have not been marginalised as a result. On the contrary, they are actively involved within parliament and government in helping the political authorities by providing them with all the background information they need to improve the quality of legislation.

## “Un Manuale di Stile” (“Style manual”)

a book by **Alfredo Fioritto**

*This review is written by Francesca Nassi (European Commission Translation Service), and translated by Dave Skinner (European Commission Translation Service). The book is available only in Italian.*

“Too often rules, regulations and circulars are written in obscure technical language, designed more to conform to legal formulae than to communicate to the public measures of importance in their daily lives. If writing is opaque and incomprehensible – and often ambiguous – it deprives citizens of one of their rights and makes it difficult for them to comply with the law.” This is taken from the introduction by Franco Bassanini, Minister for Public Service, to Alfredo Fioritto’s *Style manual* (published by Il Mulino, 1997, Bologna), which is subtitled “How to simplify the language of public institutions”.

Continuing the process of civil service reform started by the Prodi government, and following the example of many other European countries (the Scandinavian countries, Germany, Spain and the United Kingdom), and non-European countries too, the Public Service Department has adopted a scheme to simplify language. The scheme was launched in 1994 by Sabino Cassese, the Minister at the time. It directly involves staff and gives them training in the rewriting of some sample documents. It also includes the introduction of a computer programme to correct errors in public documents.

As we know, simplification is difficult, partly because, as Fioritto points out, “specialists in a particular subject area tend to use words and formulations specific to the group to which they belong and resist the complaints from those who are trying to understand”. Part of

the problem is that in order to write clearly you need to know exactly what you want to say. “In other words, you have to take responsibility for what you are writing” and “know who you are writing it for”.

His basic recommendations are:

- organise your document clearly, taking account of its readership, its purpose and the key information in it;
- use short sentences of no more than 20 words;
- use everyday words.

He demonstrates use of these rules with various “before” and “after” examples, showing how you can improve your writing.

Once you are clear about the order of importance of the items of information (main and secondary points, general and detailed points), organise the document in a logical sequence without confusing constructions:

- Use simple and linear syntax.
- Each sentence should contain just one item of information.
- Use active verbs: avoid passive and impersonal forms.
- Sentences should be affirmative, and must state the subject.
- Subordinate clauses should not contain implicit verb forms, like the gerund.
- Use everyday phrases, and avoid pompous expressions and clichés.
- Words should be concrete rather than abstract, Italian rather than foreign, and ordinary rather than specialised.
- Do not use acronyms and abbreviations.

The book contains a long glossary explaining the precise meanings of various Italian administrative terms. It ends with a useful guide on pagination of documents and on the use of word-processing programmes. It also recommends using non-discriminatory (gender-neutral) language.

## Punctuation extra

**Martin Cutts**

*Plain Language Commission, based in Whaley Bridge, near Manchester, UK is an independent provider of editing and training services. Martin Cutts, research director, describes its work.*

Since time's winged chariot appears not to be planning a special stop on my behalf at Immortality Junction, I recently called up a local law firm to ask if they'd write me a Will. Yes, was the reply, that would cost about £100 + tax. But I'd like it written in fairly normal English, said I, without 'per stirpes' and all that. Yes, she said, we write Wills in plain English now – people seem to prefer it. Optimist that I am, my spirits soared. So that means you use normal punctuation, I ventured. There was a pause this time. Well, we do put commas into addresses now, she said. Oh, I said, only in addresses, then? But I'd like plenty of full stops too – you know, at the end of sentences and paragraphs, that sort of thing. Do you do that? This time the pause was longer and broken by a nervous chuckle. That depends on the precedents we use, she said. But, I said, I'm prepared to pay extra for full stops – would that help?

This discussion reflects the way many lawyers in the UK still regard plain language, that somehow it only requires a few minor shifts in vocabulary and then everything will be well understood. For them, proper punctuation, vertical lists and the grouping of like information under headings still seems a dangerously unprofessional drift towards the demotic.

At Plain Language Commission we do our best to combat this. Our clients include leading law firms for whom we edit contracts and precedents and provide training courses, including clear-writing sessions for their new entrants. With a commitment from the top of the firm, good progress can be made. Enlightened firms know that long term there's no future in obfuscation, particularly when their writing has to cross national boundaries. Using British legal terms of art and archaisms like 'witnesseth' is unlikely to satisfy parties from other legal traditions or whose command of English is basic.

Our salvoes against traditional forms of legal writing are sometimes seen as attacks on the profession itself. We have to make clear it's the sin, not the sinner, we're targeting.

### Services we sell

We offer two main services:

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Our criteria and prices are published on our website, so customers always know what standard they need to aim for and what they'll be paying. We often apply light-editing discounts where it is clear that customers have worked hard to make their material clear. In all the work we do, we hope to ensure that documents have the ABCDE of official writing – Accuracy, Brevity, Clarity, Dignity and Effectiveness.

At present, the Clear English Standard appears mainly on UK documents, but we are looking for partners in Canada, the US and Australia.

### Other roles

We have taken part in several well-publicised demonstration projects to prove how legal language can be transformed. In *Lucid Law*, we showed how an Act of Parliament could be rewritten and redesigned along plain-language lines without losing legal effect. Testing of the new and revised Acts with groups of law students and others showed the revised version was significantly easier to read and use. This and associated work helped to persuade the Inland Revenue to begin redrafting 6,000 pages of tax law – its Tax Law Rewrite project.

In 2001 we worked closely with the EC's translation service to transform an EC directive into plainer English. *Clarifying Eurolaw* shows the 'before' and 'after' versions and provides a detailed commentary on what was done. (Information on obtaining the book follows this article, on page 27.) The work has been applauded by Peter Hain, Minister for Europe, who wrote, 'I wholeheartedly support your aims. We need plain speaking in Europe, in language that ordinary people can understand. I intend to write to ministerial colleagues and send them copies of your booklet. I am also looking at taking forward your idea of a "citizens' summary" for each new EU directive.'

Some lawyers criticised the fact that we worked on a directive not a regulation. So, just to please them, we are currently tackling the Access to Documents regulation. The rewritten version should be out in the summer of 2002. Peter Hain's department has helped to pay for the work involved.

We've worked closely with lawyers from one of the biggest mutual insurers, Standard Life, who have rewritten the company regulations – around 35,000 words of traditionally worded legal English. The draft regulations – whose adoption is soon to be voted on by members – will show yet again that legal English can be reasonably plain English – a triumph for the lawyers concerned.

Here are some 'before' and 'after' examples from the work:

Board meetings *"The directors shall meet for the dispatch of business at such times as they shall think fit at the head office of the Company or at such other place as may be appointed by them and may adjourn or regulate their meetings as they think fit."*

"The board may decide when and where to meet, and how its meetings are conducted."

Reserve funds *"The directors may, in relation to any separate fund or otherwise, establish reserves which may or may not be allocated for a specific purpose and the directors may transfer to or from such reserves such sums as they think fit."*

"The board may establish reserves for any purpose and may transfer any sums into or out of any reserves."

Sending accounts and directors' report to policyholders: *"A printed copy of every such account, balance sheet and report shall on the application of any member or joint holder of a policy be forwarded to him by post or otherwise."*

"The Company must send a copy of the accounts and directors' report to any policyholder who requests one."

### Still plenty of rhubarb

The work of Clarity, Plain Language Commission and others may delude plain-language practitioners that the battle has been won. Not so. Scarcely a week passes without a disgruntled member of the public sending us some semi-literate piece of legal English they are meant to have understood well enough to have signed, and of course we see only a fraction of what is out there.

Take an assured shorthold tenancy agreement that arrived recently, intended for signature by a lay person. The phraseology includes 'thereof', 'monies', 'expiration', 'determination' (in the sense of 'terminate'), 'thereafter', 'hereby', 'reversion expectant', 'forthwith', 'indemnify', 'suffer to be done', 'assign underlet charge', 'vitiate', 'thereon', 'herein', 'hereunder', 'notwithstanding', 'pursuant to the terms hereof', 'restrictive but not obligatory covenants', 'as witness the hands of the said parties'.

It's also full of mistakes like 'schedule of dilapidation's' (twice), 'any dispute shall be refereed to a single arbitrator' (read 'referred'), and endless listed items that bear no connection to their platform statements. So the agreement says, 'The tenant will...To purchase at the Tenants own expense the appropriate

television and broadcasting license...' – which also manages to capitalise 'tenant' in two different ways, omit an apostrophe, and misspell 'licence' (at least for a British audience). I have no proof that this comes from a law firm, and there are plenty of non-lawyers who write this way in imitation of lawyers, but it is typical of the genre.

Sometimes, if we think a favourable response is likely, we'll write to the firm responsible and offer to work with them on their documents. Alternatively, if publicity might do some good, we'll publicise the case: several of our Golden Rhubarb awards have gone to examples of legal English.

### Work by the OFT and the FSA

Battle has been joined against legalese by the Office of Fair Trading (OFT) using its powers under the Unfair Terms in Consumer Contracts Regulations (SI1999/2083). Regulation 7 requires standard terms in consumer contracts to be 'plain and intelligible', which has enabled the OFT to force firms whose contracts have been reported to the OFT to abandon such words and phrases as 'indemnify', 'irrevocably indemnify', 'time is not the essence', 'warranty', 'statutory rights', 'indemnity' and 'tort', where these are left unexplained. The Financial Services Authority, the main financial services regulator and one of our corporate members, has recently signed a concordat with the OFT whereby it will take the lead in investigating complaints about consumer contracts on investment business and pensions. This will include a remit to persuade firms to clear up the language of their contracts.

Plain Language Commission  
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 High Peak SK23 7BB, UK  
 Tel: +44 (0) 1663 733177  
 E-mail: mail@clearest.co.uk  
 Website: www.clearest.co.uk.

*Lucid Law* and *Clarifying Eurolaw* can be downloaded free from the website. The former is also available from Plain Language Commission, price £10 (UK) or £14 abroad. The latter is priced at £8 (UK) and £10 abroad. Sterling cheques only, please.

*The Plain English Guide* by Martin Cutts, published by Oxford University Press, is available from bookshops, price £4.99 in the UK (ISBN: 0-19-866243-2), and from Amazon.

## John Fletcher



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 Maidenhead SL6 4PZ  
 UK

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E-mail: john.fletcher@lineone.net



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## Clarity Document Services

Clarity offers two related but distinct services: the first is document drafting; the second is vetting documents for the award of the Clarity logo.

### 1. Drafting

A Clarity member will draft or redraft your documents applying the principles we advocate. Members working on this basis do so on their own account. Clarity is not a party to the contract.

Fee: The fee is negotiated between you and the drafter.

### 2. Vetting

A Clarity vetter will consider a document and approve it as drafted; approve it subject to minor changes; or reject it with a note of the reasons.

If the document is approved, or approved subject to changes which are made, you may use the Clarity logo on the document provided the document remains exactly in the approved form.

Fee: The standard fee is £100, but may be higher if the document is long or complex. Our vetter will quote before starting.

### Common principles

In both cases:

- all types of documents are included – for example letters, affidavits, pleadings and manuals;
- confidentiality will be respected;
- the applicant is responsible for ensuring that the document does the job intended;
- Clarity is not insured and will not accept liability.

We will try to see that the drafter is not also the vetter, but we cannot guarantee this.

Please contact: Richard Castle  
 242b Tinakori Road  
 Thorndon, Wellington  
 Tel: 04 938 0711  
 Fax: 934 0712  
 schloss@paradise.net.nz  
 International code: 64 4 938

## Fighting the Fog in the EU institutions

Emma Wagner

Civil servants are traditionally polite to each other, and we Eurocrats are no exception. So it was with trepidation that my colleagues and I – all translators at the European Commission – planned our “Fight the Fog” campaign in 1997. The campaign was due to run for the first half of 1998, coinciding with the British presidency of the EU, and its aim was to encourage clear writing in the EU institutions.

### Reactions to the Fight the Fog campaign

How, we wondered, would our fellow Eurocrats react to being told that they were writing rubbish? Could we encourage them to KISS (Keep It Short and Simple)? How could we wean them off Eurojargon?

On the first score, we need not have worried. They were both understanding and supportive – so much so, that the campaign is still running. We have organised Fog-fighting seminars and well-attended lectures by experts such as Chrissie Maher and Martin Cutts, and distributed 15,000 copies of our booklet *How To Write Clearly*, written especially for Eurocrats but drawing liberally on the advice given in other guides such as Martin’s *Plain English Guide*. We even have a Fight the Fog website (<http://europa.eu.int/comm/translation/en/ftfog>), an impressive collection of humour, and our own campaign song, intoned at major events such as our Clear Writing Awards sponsored by Neil Kinnock (see our website for details).

As for the second problem – concision and KISSing – there are signs that the habit is spreading at last. Official instructions now enjoin authors to write less, because short

documents have more impact. Short documents are also easier to finalise and faster to translate. We translators have produced convincing forecasts showing the relation between document length and translation costs. At present the EU has eleven official languages, so one page saved in a document to be translated equals ten pages of translation saved. In the foreseeable future, with 22 official languages, the case for concision will be irrefutable.

As for the third problem – how to eradicate Eurojargon – that was a tough one, and we don’t claim to have succeeded, yet. It seems to be part of a larger problem: the widening gap between the EU institutions and ordinary people.

### Official efforts to narrow the gap

The need to narrow the gap between the EU and its citizens was acknowledged when, in December 2001, the European Council decided to set up the Convention on the Future of Europe, a year-long conference with an ambitious aim: to make the EU more relevant to its citizens, to streamline EU decision-making, and thus to prepare for the impending enlargement of the EU. To quote from the Convention website (<http://european-convention.eu.int/>):

The Convention “will consider the key issues arising for the Union’s future development, for example: what do European citizens expect from the Union? How is the division of competence between the Union and the Member States to be organised? And within the Union, how is the division of competence between the institutions to be organised? How can the efficiency and coherence of the Union’s external action be ensured? How can the Union’s democratic legitimacy be ensured?”

The Convention will open its proceedings with a period of listening in order to find out what people want and expect from the European Union. The second stage will be a period of analysis for comparing the pros and cons of the proposals put forward for organising the European Union. The third phase will seek to draw together the different proposals and draft recommendations.”

The Convention Chairman is Valéry Giscard d'Estaing, former President of France, and it has 105 members. Some members represent the national governments and parliaments of the present and future EU countries; a smaller number represent the EU institutions. The Convention is supported by a secretariat headed by Sir John Kerr, former head of the British diplomatic service. One of the British government representatives is Peter Hain, UK Minister for Europe, who, incidentally, is conducting his own campaign against what he calls “Eurobabble” (see his speeches on the UK government website and Fight the Fog website).

### **Fighting legal fog**

In the Fight the Fog campaign we began by trying to improve information texts intended for the public. Sometimes the native language of these authors is not English, and we found they were grateful for some tips on clear writing in English – and above all for reassurance that clear language would be welcomed by readers, not dismissed as naïve, undignified baby-talk. These texts usually have to be translated into several languages so they can be distributed throughout Europe. If the originals are well-written, the translations will be better and clearer too. So the potential gains are obvious for all concerned.

Initially we steered well clear of legal drafting. We refrained from giving fog-fighting advice to lawyers. In the EU institutions, translators come quite low in the food chain; our learned friends in the Legal Service enjoy much higher status. So we kept off their patch. But gradually it became clear that many of the problems in general information material were caused



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by overspill from legal drafting – a distant, impersonal style and legalistic turns of phrase, simply reproduced without much thought for the end user. However, concurrently with our Fight the Fog campaign, the lawyers in the three main EU institutions (the Commission, European Parliament and Council) were making their own efforts to improve legal drafting, with the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation. This stated that “Community legislative acts shall be drafted clearly, simply and precisely” and seemed to indicate that suggestions from national authorities on legal drafting would be welcome. But we still didn’t have the courage to approach the lawyers without outside assistance, so we asked Martin Cutts to see if he could improve an EU Directive by applying the principles set out in his book *Lucid Law*. The result was *Clarifying Eurolaw*, which Martin describes in his own article in this issue of *Clarity*.

The EU lawyers’ reaction has been fascinating. *Clarifying Eurolaw* is a thoughtful, well-argued and extremely well-written book which was praised by many non-lawyers in the EU institutions and by the people who actually write the first drafts of EU legislation (a peculiarity of our system is that the initial drafters are technical experts rather than lawyers). But this widespread enthusiasm was not shared by the Legal Service, who consider that:

- the book is “anti-lawyer in tone”;
- it recommends improvements that are already common practice;
- one of *Clarifying Eurolaw*’s proposals – the inclusion of a citizen’s summary with every piece of Eurolaw – is unnecessary and dangerous;

- it is based on the assumption that EU directives are addressed to citizens. On the contrary, say the lawyers, EU directives are addressed to the Member States and not to private citizens.

Evidently this is a sensitive issue. But as mentioned above, official efforts are being made to narrow the gap between the EU and its citizens, and clear language has a part to play here. Much has already been done to improve physical access to EU documents. All Eurolaw is now available on-line, free of charge. The next step must surely be to clarify the language in which it is written, or at least to accompany each legal act with an official summary that is quick to read and easy to understand. The Convention on the Future of Europe might like to take a dispassionate look at EU legislation and consider these questions: Are citizen’s summaries really “unnecessary”? Are laws meant only for lawyers, or should concerned citizens be able to understand them too? The Fight the Fog campaigners will try to ensure that these questions appear somewhere on the Convention’s agenda.

*The views expressed here are the author’s and are not necessarily shared by her employer, the European Commission.*

## ▼ Clarity’s Website

We now have our own address:  
**[www.clarity-international.net](http://www.clarity-international.net)**

We are continuing to develop the website,  
and further suggestions are welcome.

In particular, we have started a page of  
articles on plain language matters. If you wish  
to offer an article of your own please send it,  
formatted as it is to appear (in Acrobat or  
HTML), to [adler@adler.demon.co.uk](mailto:adler@adler.demon.co.uk).

## Welcome to New Members

### Australia

*Michael Aa*, actuary; Killarney Heights,  
New South Wales  
*Carolyn Austin*, precedents manager; Sydney  
*Elizabeth Kangro*, solicitor; St. Ives,  
New South Wales  
*Gadens Lawyers*; Sydney  
*NRMA Insurance Limited*; Sydney  
*Tiziana D'Costa*, solicitor; East Doncaster,  
Victoria  
*Tim Miles*, solicitor; Sydney  
*Sparke Helmore* [Gwen Hamilton]; Newcastle

### Bahamas

*Brenford A.V. Christie*, attorney; Freeport

### Belgium

*Allen & Overy*; Brussels  
*Allen & Overy* [Linda Brindle]; Brussels  
*Kenneth Larson*, language coordinator; Brussels

### Canada

*CWA*; Markham, Ontario  
*Davies Ward Phillips & Vineberg*; Toronto  
*NT Literacy Council*; Yellow Knife,  
Northwest Territory  
*Dr. Edward Berry*, professor; Victoria,  
British Columbia

### Germany

*Dr. Margaret Marks*, translator; Furth

### New Zealand

*Russell McVeagh*; Auckland  
*Dr. Jacquie Harrison*; Auckland  
*Vivienne Wilson*; Wellington

### South Africa

*University of Pretoria*; Pretoria

### Sweden

*Svenska spraknamnden (The National  
Language Council)* [Olle Josephson]; Stockholm  
*Erika Grehk*, legal adviser; Borlange  
*Textfixarna Maria Och Mikael Sundun HB*;  
Stockholm  
*Eva Thoren*; Stockholm

### Thailand

*Frank Anderson*, editor; Muang, Korat

### United States

*Thomas Wallace*, attorney; Oklahoma City,  
Oklahoma  
*Lawrence Nwora*, attorney; Sugarland, Texas  
*Catherine Baker*; Bethesda, Maryland

## Clarity Seminars on writing plain legal English

Mark Adler has now given over 50 seminars for Clarity to a selection of firms of solicitors, to law societies, legal interpreters, and to the legal departments of government departments, local authorities, and other statutory bodies. Participants have ranged from students to senior partners.

The seminar has slowly evolved since we began early in 1991, with a major relaunch in 1995. But it remains a blend of lecture, drafting practice, and discussion. The handouts outline the lecture, with exercises and model answers.

The seminars are held on your premises, and you may include as many delegates as you wish, including guests from outside your organisation. The normal size ranges between 12 and 25 delegates.

Arrangements are flexible, but the half-day version usually lasts 3hrs 10mins (excluding a 20-minute break) and costs £550 net, and the full-day version usually lasts 5hrs 10mins (excluding breaks) and costs £725 net.

Expenses and VAT are added to each fee and an extra charge is negotiated for long-distance travelling.

### Contact Mark Adler

[adler@adler.demon.co.uk](mailto:adler@adler.demon.co.uk)

## Minutes of Clarity's Annual General Meeting

3 November 2001, at "Briefs", Lincoln's Inn

### Present

Peter Butt (Chair)	Ken Bulgin	Mark Adler
Paul Clark (Deputy Chair)	Stewart Graham	Dominic Minett (Brazil)
Wendy Coetzee (South Africa)	Richard Wydick (USA)	Robert Lowe
Enid Swift	Francesca Quint	Galina Anikeeva (Holland)
Simon Adamyk	Nick Lear	Duncan Berry

### Apologies

John Pare, John Walton, Robert Owen

Peter Butt took the chair for the meeting. He welcomed the members who attended, especially those who had come from overseas.

### Chair's report

Peter Butt reported on the following matters, which had been the subject of debate amongst committee members during the year:

**Name of organisation: *Clarity or CLARITY.***  
***The consensus was Clarity.***

However, some present at the meeting thought that we should introduce the term "international" into the name of the organisation.

PB undertook to circulate committee members on three options:

- Clarity – that is, leave name as is.
- Clarity International
- Clarity – that is, leaving name as is, but adding in the sub-text of the organisation's masthead: An international movement to simplify legal language

*Journal:* PB reported on the work of Phil Knight to (1) ensure the regular production of Journal, and (2) devise a more settled framework of topics, to make it easier for guest editors to produce the Journal. PB also reported on the time frame and the proposed guest editors for Journals 47 to 50.

*International accreditation:* a proposal had come from South Africa for Clarity to accredit plain language trainers. This would give Clarity some international exposure. However, the meeting felt that it would be too costly and difficult to administer. PB undertook to reply to the person who proposed the suggestion.

*Website:* Mark Adler's continued work on the website was acknowledged.

*Membership:* Work was continuing on pruning the membership lists to ensure that only subscription-paying members received the Journal. It was likely that the existing "nominal" membership of about 1,000 would be pruned by a few hundred.

Duncan Berry reported on his attempts to encourage the setting up of an Irish branch of Clarity.

*Membership fees:* Several international members (Holland, Brazil) commented on the difficulty of paying fees in their own currency. Dominic Minett reported that it should not be difficult to set up a facility allowing people to pay by Visa through Clarity's website. Dominic undertook to work with Mark Adler on setting up the facility, with the help of Simon Adamyk.



*Conference:* PB gave details of the proposed conference with the Statute Law Society, Cambridge, 12-14 July 2002. Planning was in advanced stages. PB and Paul Clark represented Clarity at the planning meetings; Francesca Quint and Neville Hunnings represented the SLS. Final details should be available by the end of the year.

### **Finances**

In the absence of the Treasurer (John Pare), PB reported on the following approximate bank balances:

- US: \$4,000
- UK: £1,400
- Australia: \$2,100 Aus
- Canadian: \$1,800 Can (but probably now reduced by layout costs for Journal #45 and #46)
- Hong Kong (estimate given by Duncan Berry: \$2,000 - \$3,000 HK)

### **Committee membership**

The meeting re-endorsed the existing committee members. They are:

#### **United Kingdom**

- Paul Clark (Deputy Chair)
- Mark Adler
- Simon Adamyk
- Nick Lear
- Robert Lowe
- John Walton
- Nick O'Brien
- John Pare
- Richard Woof

#### **Australia**

- Peter Butt (Chair)
- Christopher Balmford
- Michèle Asprey

#### **New Zealand**

- Richard Castle

#### **Sweden**

- Barbro Ehrenberg-Sundin

#### **USA**

- Joe Kimble

#### **Canada**

- Phil Knight

#### **Brazil**

- Dominic Minett

#### **Hong Kong**

- Wai Chung Suen

#### **South Africa**

- Frans Viljoen

#### **Singapore**

- Hwee Ying Yeo

Several committee members had been difficult to contact. Peter Butt undertook to check whether they were prepared to continue as committee members.

In addition, the meeting resolved to invite Robert Eagleson to join the committee.

### **Life membership for Mark Adler**

The following resolution was proposed by Peter Butt, and seconded by Paul Clark, and then passed unanimously:

“That Clarity award a Life Membership to Mark Adler – “Mr Clarity” – for his unstinting work over many years as Chair of Clarity and proponent of plain legal language”.

A framed certificate was presented to Mark, reflecting the terms of the resolution.

The formal meeting ended at 12.15.

After coffee, Peter Butt gave a talk on “The Assumptions We Make”. The talk considered the assumptions about plain language inherent in moves to simplify legal language.

[End of minutes]

## Country Representatives

**Australia:** Christopher Balmford  
Words and Beyond Pty Ltd.  
1 Barrack Street, Sydney NSW 2000  
\$35 (\$10 for non-earning students)  
02 8235 2337 (fax 02 9290 2280);  
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**Brazil:** Dominic Charles Minett  
Lex English Language Services  
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Sao Paulo, SP 04018-030  
011 5084 4613 (phone & fax);  
dominic@lexenglish.com.br

**Canada:** Philip Knight  
1074 Fulton Ave.  
W. Vancouver, BC V7T 1N2  
\$25 (\$10 for non-earning students)  
604 925 9041 (fax 0912);  
philknight1@telus.net

**Hong Kong:** Wai-chung Suen  
Justice Dept, 9/f Queensway Government  
Offices, 66 Queensway, Admiralty  
HK\$200 (non-earning students please enquire)  
2867 2177 (fax 2845 2215)

**Israel:** Myla Kaplan  
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34987 Haifa, Israel  
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**New Zealand:** Richard Castle  
242b Tinakori Road  
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**Singapore:** Prof Hwee-Ying Yeo  
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**South Africa:** Prof Frans Viljoen  
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barbro.ehrenberg-sundin@ministry.justice.se

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PaulClark@djfreeman.com

**USA (and anywhere else not listed):**  
Prof Joseph Kimble  
Thomas M. Cooley Law School  
Box 13038  
Lansing, Michigan 48901-3038  
USA  
\$25 (\$10 for non-earning students)  
1 517 371 5140 (fax 517 334 5781);  
kimblej@cooley.edu

### For members and prospective members who do not have a country representative

The U.S. bank used by Prof. Kimble charges US\$10 to deposit a personal check drawn on a foreign bank. So, if possible, could you please send a bank draft for \$25, payable in U.S. dollars and drawn on a U.S. bank. (Remember to make the check payable to Clarity.) For convenience, you might consider paying for two years (US\$50).

**Clarity's Website: [www.clarity-international.net](http://www.clarity-international.net)**

## Clarity Membership by Country

Country	Number of Members	Country	Number of Members
Australia	98	Japan	1
Austria	1	Jersey	3
Bahamas	1	Malaysia	1
Belgium	3	Malta	2
Brazil	1	Netherlands	5
British West Indies	3	New Zealand	19
Canada	46	Northern Ireland	1
Denmark	5	Scotland	11
England	443	Singapore	11
Germany	3	South Africa	31
Gran Canaria	1	Sweden	5
Hong Kong	13	Switzerland	4
India	5	Thailand	2
Ireland	3	USA	245
Isle of Man	1	Wales	10
Italy	1	<b>Total</b>	979

### ••• 2002 Dues •••

**Renewals were due on January 1  
(unless you joined after September 1).**

If you have not yet paid your 2002 dues, would you please do so.  
Pay your country representative or Joe Kimble, as explained on page 34.  
We have never raised the modest dues, even though our funds are barely  
enough to cover the cost of producing and mailing the journal.

Also, if you change your address, please let us know.

## Application for Membership

<b>If you are joining as an individual</b>					
Title		First name		Surname	
Firm				Position in firm	
Professional qualification				Occupation if different from qualification	

**or**

<b>If you are joining as an organisation</b>	
Name of organisation	
Nature of organisation	
Contact name	

<b>Either way</b>		<i>whether an individual or organisation</i>			
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DX					
Home telephone		Work telephone		Fax	
Specialist fields		E-mail	<i>please print clearly</i>		
What is the latest issue of the journal you have been given (leave blank if none)?					
Date					

<p><b>Please send this form</b></p> <p>to the Clarity representative for your area (see page 34) with a cheque in favour of Clarity for the subscription.</p> <p>If you prefer to pay by banker's order, please contact your area representative.</p>
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<p>Your details will be kept on a computer; please tell us if you object. By completing this form, you consent to your details being given to other members or interested non-members (although not for mailing lists), unless you tell us you object.</p>
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