The Clarity Journal

clarity

From the President

I am writing this sitting at Graz airport at the start of my journey home after attending PLAIN 2017. Many Clarity members were in attendance and a good number of those came along at 8:00 am on Saturday morning for the Clarity general meeting. As always, we leave a plain language conference inspired by the speakers we have heard and the interactions we have had with other delegates. Our very own Joe Kimble gave an informative and highly entertaining talk at the conference dinner.

We had reports from the country representatives in attendance at the Clarity meeting. Country representatives play a critical role in generating interest in Clarity in their country. I am grateful to them for their work but urge them to try even harder to gain new members in their country.

The Graz conference was a good opportunity for us to promote Clarity 2018, our next Clarity international conference. Co-hosted by Educaloi, it will be held at the Hyatt Regency, Montreal, Canada from 25 to 27 October 2018 with the theme Plain Language in Modern Times. Julie Bourbonniere from Educaloi was in attendance in Graz and spoke to delegates about the conference and also distributed promotional material. Please mark your diary with those dates and start planning your trip to Montreal. A call for papers will be made very soon.

This Journal features papers from the very enjoyable PLAIN 2015 conference held in Dublin, Ireland co-ordinated by Claire O'Riordan. Very shortly the papers from Clarity 2016 held at Wellington, New Zealand will be published in a double issue of the Clarity Journal. I am grateful to Julie Clement for her hard work in getting our Journals published.

We had a meeting in Graz of the International Plain Language Working Group made up of representatives form Clarity, PLAIN and the Center for Plain Language. We resolved to continue our co-ordinated efforts in the advancement of plain language. A separate website will be established on which will be found, in various languages, the definition of plain language we previously agreed together with details about the Working Group and its members. The Working Group will also work on a draft standards document. I am delighted that our past president Christopher Balmford has agreed to join the Working Group as a representative of Clarity. Christopher will bring a lot of talent and enthusiasm to the role. The Working Group will be chaired by Annetta Cheek who I am sure will ensure that it gets swiftly down to work.

As always, I am keen to hear from you with your ideas and suggestions.

Eamonn Moran QC
President
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Guest editor's note

The theme of this edition of Clarity is "Clearer language, greater efficiency and effectiveness". The contributors were all speakers at the tenth biennial conference of the Plain Language Association InterNational (PLAIN) held in Dublin, Ireland, in September 2015.

PLAIN and the conference hosts NALA (the National Adult Literacy Agency) selected this theme because it was topical in the context of the global recession and the increasing interest in regulating for plain language. While the conference presented a wide range of speakers, we have focused in this edition on articles in the legal, financial, and health sectors, with some additional attention to Ireland. You will find much of practical value to explore.

We begin with a powerful article on "Plain language, citizens and the European Ombudsman" by Ireland's Emily O'Reilly, who is also European Ombudsman. She uses real life examples to show how plain language "is [simply] a requirement of good administration," even though its use is often a "hit-and-miss" affair.

Next up is the first of two articles focusing on the financial sector. Colm Kincaid is Head of Consumer Protection for Policy and Authorisations at the Central Bank of Ireland. He writes about the significant cultural challenge facing firms to engage customers in a way that best serves customers. Plain language will be central to achieving this. Colm also writes about the role of regulation and technology in achieving this cultural shift.

A second article from the financial sector is from María Such and Joanna Richardson. Theirs is an inspiring piece written from a time governments were bailing out big banks. This article tells the story of a Spanish bank who "chose a different road" and embarked on a highly-successful "transparent, clear and responsible (TCR) communications project". You may be surprised, but you will definitely be inspired.

As the Dublin PLAIN conference was hosted by NALA, we have also included my article on what our organisation does to make plain English the norm in public documents. You will read how a small Irish charity has managed to put plain English on the national agenda through intensive plain English campaigning, training and editing, and by providing useful free resources. We see this as something of a modern David and Goliath story.

We also offer two articles focusing in detail on specific on legal texts. These provide excellent case studies of how to wrestle with the legacy of turgid legal documents. In the first article, Tialda Sikkema, a Dutch researcher, describes an attempt to modernise a Dutch court summons. She draws from this experience to outline conclusions others can learn from when negotiating with the many institutional readers invested in a traditional text. Thanks, Tialda!

Similarly, Sarah Fox, a plain language expert in the construction industry, writes about her battle to take on jargon and legalese in "Why use 50,000 words when 500 will do?" She presents a compelling argument for shorter and clearer contracts, and identifies the need for lawyers, clients and users to work together to bring about fundamental reform.

From the legal sector, we move to the regulation of medical information in Europe. Dr. Laura Sahm and Dr. Karel van der Waarde outline current problems in the visual information that patients receive about the medicines they need to take. They set out some compelling examples, analyse the causes of problems they identify, and suggest some opportunities.

Our issue then broadens the focus to look more generally at how to evaluate the effectiveness of plain language communications. Plain English veterans Dr. Neil James and Dr. Susan Kleinman presented a thought-provoking keynote on how to integrate all of the available evaluation methods into a single framework. They argue we need to move beyond limited debates between one evaluation method or another and set out criteria we can apply to select the best evaluation methods in each context.

Our edition closes with a humorous piece from David Marsh, former production editor of the Guardian newspaper in England. David, who has called himself "the man responsible for the spelling mistakes in the Guardian," looks back at his 42-year career in newspapers. He tells us about his main weapon to counter gobbledygook and to promote clear English – the Guardian Style Guide. I challenge you not to smile or even laugh out loud during his charming but considered piece.

Running through all of the pieces here is the theme of efficiency and effectiveness. Across a range of sectors and contexts, the articles show the inefficiencies of many traditional texts and how plain language can bring about more effective communication.

Of course, you can find more information and other presentations from the Dublin conference at our website: *plain2015.ie* and on NALA's YouTube channel: *www.youtube.com/user/nationaladultliterac*.

Enjoy!

Claire O'Riordan

In this issue

Plain language, citizens and the European Ombudsman

Emily O'Reilly,
European Ombudsman

Emily O'Reilly was elected as the European Ombudsman in 2013. She is an author and former journalist and broadcaster who became Ireland's first female Ombudsman in 2003. In 2007, she was also appointed Commissioner for Environmental Information and Freedom of Information Commissioner. Ms O'Reilly is a graduate of University College Dublin with a Degree in European Languages and Literature and holds a Graduate Diploma in Education from Trinity College Dublin, as well as two honorary doctorates in law from the National University in Ireland and University College Dublin. She has written three critically acclaimed books on Irish politics and media and her journalism has won two awards: Journalist of the Year and Woman Journalist of the Year. Ms O'Reilly is a keen plain language advocate.

By Emily O'Reilly

This article focuses on the need for plain language when the institutions of the European Union are communicating with EU citizens, and some of this of course has relevance for all administrations. And by way of background, As European Ombudsman I deal with complaints against the EU administration, such as the European Commission, made by EU citizens and residents as well as by corporate entities with registered offices within the EU.

I work in a multi-lingual environment. The European Union has 28 Member States and 24 official languages. In recent years, English has emerged as the "default" common language, or *lingua franca*. English has displaced French which, for several decades, was the dominant linguistic and administrative influence on what is now the European Union.

Multilingualism is a culturally enriching feature. Any of you who are fans of Irish literature in English will know that two of our greatest Irish writers – James Joyce and Samuel Beckett – thrived as writers only when they moved abroad: to France in the case of Beckett and to Italy, Croatia, France and Switzerland in the case of Joyce. Their engagement with other languages, and particularly so with Joyce, was a significant boost to their artistic creativity.

Oddly, in the context of plain English, both of these writers were capable of writing very simply and clearly but also, on occasion, in very convoluted and unclear language. The opening lines of Joyce's Finnegans Wake are enough to send shock waves through the heads of all plain language advocates. He wrote:

Riverrun, past Eve and Adam's, from swerve of shore to bend of bay, brings us by a commodius vicus of recirculation back to Howth Castle and Environs.

I mention this because I find that, in the more mundane world of public administration and dealing with citizens, the same institution is capable of both very clear writing and, on other occasions, precisely the opposite.

Inevitably, multilingualism creates communications difficulties that do not arise in an individual state which is monolingual or at least has one very dominant language. In the EU, for example, its legislation has equal validity in each of the 24 official languages and as a result, not surprisingly, it can sometimes be difficult to reconcile linguistic differences between the various language versions.

Plain language: what is it?

Since coming here, I have also realised that what is considered "plain language" in one culture is not considered so in another. In some countries there is a greater tolerance for lengthy communications, and the use of verbose language, than is the case in English-speaking countries.

I have heard it suggested that in some non-English speaking countries there is an expectation that communication from political leaders, and from the administration, will be lengthy and verbose. In 2007, the then Venezuelan president, Hugo Chávez,

did a marathon eight hour television broadcast to his people. I can say with confidence that this feat would not be welcome anywhere in the English-speaking world!

In the case of English, the plain language test requires short sentences, simple structure and reliance on a vocabulary and references which the intended audience, or readership, can be expected to understand. This means using language which is inclusionary rather than exclusionary. It involves working within the context of shared meaning between the writer or speaker and the reader or listener.

The objective with plain language is to help the reader or listener to understand the message. Plain language is a great help for the many people with reading difficulties, but it is much more than a simplified language for such people.

In this plain language universe, there is no place for jargon, for insider language, for displays of verbal precociousness or fluency in another language. In particular, those with legal training have to avoid the temptation to use Latinisms. *Sine die*, *mutatis mutandis*, *ratio decidendi* and so on have to be consigned to the dustbin of history – except where the communication is aimed solely at one's own legal colleagues.

Plain language can be even more effective in the written form where it is supported by intelligent design and formatting. Selecting the appropriate font and font size, and the choices made in spacing, can contribute significantly to making a document attractive, more readable and indeed more likely to be read.

The length or duration of a communication is also an issue. Increasingly, people are less able to cope with lengthy documents or presentations – and I will say more on this later on. Ideally, at least in the English-speaking world, a communication must not only use clear language but it must also be fairly brief.

This brings me on to the issue of the medium, or media, in which a communication is issued. Increasingly, people do their "reading" on electronic media such as tablets, smartphones and personal computers. This has implications for the message being conveyed because, as Marshall McLuhan preached in the 1960s, "the medium is the message". This, as I understand it, proposes that there is a symbiotic relationship between the content of a message and the medium through which that message is communicated.

The truth of this proposition is best illustrated in the use of Twitter. Being confined to just 140 characters for public tweets, the medium exerts a huge influence on what is actually said and how it is said. A tweet can be no more than a sign-post to a larger message or, perhaps, the conveying of one single fact or idea. Tweeting requires compressed language and the use of abbreviations. In fact, the language of tweeting has evolved into a distinctive language of its own – I was going to say that the language of tweeting is *sui generis* but have resisted the temptation!

Where public bodies use Twitter to communicate with citizens – as is happening increasingly – the need to use plain language is the same as in the use of any other medium. The key test is that the words and characters used must make sense to the average citizen – and not just to Twitter geeks.

Ombudsman promotion of plain language

As European Ombudsman, I promote the use of plain language by the EU administration for a very simple reason: it is a requirement of good administration. The right of EU citizens to good administration is a legal right. The EU Charter of Fundamental Rights, which has the force of law within the EU, recognises the right to good administration. This right, under Article 41 of the Charter, provides that a

EU citizen is entitled have his or her "affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union".[1]

Implicit in this right to good administration is the right to receive clear and effective communications from the EU's institutions − whether for one's own affairs or in the institutions more generally.

I think it is fairly obvious that poor communication on the part of an institution can have negative consequences both for the institution and for citizens whom it is meant to serve.

The negative consequences of poor communication are much easier to see at national level where public authorities are dealing with very immediate and pressing issues: health services, housing, social security, taxation and so on.

At EU level, the issues are often not as immediate on an individual, personal level but are nevertheless important. For example, if the European Commission fails to explain properly why it has decided to disallow certain expenses claimed by a contractor, or project operator, this can give rise to prolonged exchanges and the wasting of much time and energy on both sides.

Or if the EU's anti-fraud office − known as OLAF − fails to explain clearly what action it has taken in response to a whistleblower or other report of possible fraud, the person making the report may believe that no action was taken. This, in turn, will give rise to frustration on the part of the reporter, to lengthy follow-up contacts with OLAF, and to the likelihood of a complaint to the European Ombudsman. This kind of scenario would never come about if the initial communication from OLAF to the reporter had explained clearly that action was being taken.

Plain language: challenges for the EU

All governments and their public bodies face challenges in seeking to use plain language in engaging with citizens. The EU, given its governance arrangements and its 24 Treaty languages, faces more challenges than most. Perhaps a vast country like India, with its plethora of languages, may face a somewhat similar challenge.

I am concerned here specifically with the question of the use of plain English by the EU and its administration.

One of the peculiarities of the EU in this context is the way in which English has emerged as the default common language. This means that English is being used by EU politicians, administrators and civil society groups where, in the vast majority of cases, it is not the speaker's (or writer's) first language.

The term Euro-English or Eurish is often used about this variant of mainstream English. Some native English speakers use these terms with a certain amount of disdain. For my part, I have the greatest respect for EU civil servants and others speaking and writing Euro-English. Their overall linguistic abilities generally put to shame many of us who have English as our first language. Nevertheless, this variant of English can have some negative effects and is not always conducive to clear communication.

I think those who use Euro-English are genuinely surprised to find that native English speakers struggle frequently to understand some of what passes for their first language. There are two sides to this problem.

The first is the inevitability that any self-contained world − and the so-called "Brussels Bubble" is very much a self-contained world − will develop its own jargon and insider language. Just at the moment, my favourite jargon term is "horizontal rules". I'm still not entirely sure what it means.

The second side is that the English used within the EU government and administration is influenced heavily by other languages, principally French.

In Euro-English, legislation never "provides" but it "foresees"; documents are not held on a file but on a "dossier"; and work is not assigned to staff but it is "attributed"; procedures are not subjected to checks but to "controls"; decisions are never made but they are "adopted". A senior person never says or states something but he "emphasises" or "stresses"; or, if those words have been already used you'll find him "underlining". In fact, senior EU people "underline" until they are blue in the face!

Another feature of Euro-English is a heavy reliance on the passive voice: "it must be borne in mind …" and "it must be emphasised …".

These features of Euro-English may seem harmless and it may seem that it is over-the-top to draw attention to them. In fact, there is a serious side to this. Euro-English can have some negative consequences.

The obvious difficulty is that a native English speaker – and presumably other English speakers who are not part of the "Brussels Bubble" – will find much of this language difficult to understand. The more insidious problem arises from the fact that Euro-English has the capacity to alienate readers or listeners who do not find that it is inclusionary. In fact, the combination of jargon, odd use of terminology and unusual word sequence undermines the sense of a shared meaning which is an essential characteristic of plain language.

In May 2014, I spoke at a conference in London on a somewhat similar theme and my contribution was picked up by Michael Skapinker, a writer with the *Financial Times*. He referred to a 2009 survey which found that, while 90 per cent of European Commission staff regarded English as their main drafting language, only 13 per cent of these officials were native speakers of English. He accepted that while "Eurish" – as he terms it – "helps non-native speakers talk to each other, Brussels Eurish affects the way the EU talks to native speakers".[2] And the consequence of this, he said, is to make the EU even more alien for native English speakers.

In fairness to the EU institutions, and to the European Commission in particular, it is aware of these language issues and has been attempting to grapple with them for some years. Realistically, the challenge facing the EU in this area is major. Compared to public administrations in its individual Member States, the EU administration is relatively small in terms of staff numbers and resources. At the same time, and recently perhaps more than ever, the EU is attempting to cope with a myriad of crises both internally and externally.

Real progress will require an on-going language awareness campaign for EU staff, together with the support of dedicated communications professionals. In addition, within each administrative unit of the EU a senior manager should have specific responsibility for ensuring the use of plain language in all communications. This is far from being an easy task. It is a task never quite completed but one to be pursued constantly.

The EU is not alone in having a hit-and-miss approach to the challenge of meeting the plain language test. I was struck recently by the very variable quality of two communications from United Nations agencies. On the one hand, I was impressed with the very clear and powerful statement issued on 4 September by the UN High Commissioner for Refugees dealing with the refugee crisis in Europe. The statement said, in part:

Europe is facing its biggest refugee influx in decades. More than 300,000 people have risked their lives to cross the Mediterranean Sea so far this year. Over 2,600 didn't survive the dangerous crossing, including three-year-old Aylan, whose photo

3   www.unhcr.org/
news/press/2015/9
/55e9459f6/statement-un-
high-commissioner-refugees-
antonio-guterres-refugee-
crisis.html

4   eige.europa.eu/
gender-mainstreaming/what-
is-gender-mainstreaming

5   www.legislationline.org/
documents/action/popup/
id/17173

has just stirred the hearts of the world public. After arriving on Europe's shores and borders, they continue their journey – facing chaos and suffering indignity, exploitation and danger at borders and along the way.

... overall, Europe has failed to find an effective common response, and people have suffered as a result.[3]

On the same day, 4 September, the UN Committee on the Rights of Persons with Disabilities issued its concluding observations on the initial report of the EU on its implementation of the UN Convention on the Rights of Persons with Disabilities. These observations included the following:

The Committee recommends that the European Union mainstream women and girls with disabilities' perspective in its forthcoming Gender Equality Strategy, policies and programs, as well as a gender perspective in its disability strategies.[4]

And there was much more in that same vein. I do not doubt but that this second statement can be understood by those to whom it was primarily addressed – EU officials, European Parliament members, my own office as well as NGOs active in the disability area. But I suspect that an ordinary reader would not have the insider knowledge, or indeed the patience, to get to grips with the Committee's statement.

Clearly, the statement by the UN High Commissioner for Refugees was a high priority one and presumably benefited from the involvement of a communications professional. The conclusions of the UN Committee on the Rights of Persons with Disabilities was a more routine communication and may not have had the benefit of a communications professional. The fact remains however – and this applies to the EU and perhaps to all international organisations – that routine communications are the norm. And, where communications are routinely drafted in language that is not plain, then a cumulative alienation can result.

Plain language not always enough

However, I think it is good to bear in mind that plain language by itself does not always head off all problems. This is particularly true in the case of legal instruments such as national Constitutions and international conventions. Many of these are written in direct and apparently clear language.

For example, Article 2 of the Treaty on European Union reads:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.[5]

In my view, this example and others satisfy the plain language test. The communication is direct and without structural complication; the words are mostly straightforward even if somewhat abstract; there is no jargon or exclusionary language. While we might think we understand what is meant, the application of a provision to a concrete situation is likely to lead to a number of alternative outcomes and to possible court challenge.

Take the case of Article 22 of the EU Charter of Fundamental Rights. If the EU is to respect linguistic diversity, how far does this respect go? Does it require each EU institution to produce all of its publications and communications in each of the 24 Treaty languages? Or is it enough that a citizen can communicate with any EU institution in any of the Treaty languages and be entitled to a reply in that language? This is hardly the case since this right is specifically provided for already at Article 20 of the Treaty on the functioning of the European Union.

My point is that plain language will not always clarify or resolve complex issues.

Information overload

Before finishing, I would like to mention briefly the question of information overload and the impact of social media and electronic communication generally.

In Europe, and probably at a global level, more and more people are getting their information electronically. Social media, which may have been intended originally for interpersonal and social communications, are being used extensively for commercial and public administration purposes. The manufacturers of mustard or of bathroom paper, to take just two examples, now invite us to "follow" them on Facebook. And indeed my own office invites people to follow us on Facebook.

News and communications generally operate on a non-stop basis. More and more, people are skim-reading rather than absorbing complete articles or texts. Most of you listening to me now – if you have not already done so – will whip out your smartphones or other devices immediately I finish my contribution.

Our reliance on communications technology is approaching the level of addiction.

The questions this raises include:
• does more communication mean better communication?
• does over-exposure to communication reduce our capacity to absorb information?
• does the widespread use of graphics, rather than text, imply a significant shift away from language?
• has a generation emerged already for whom the traditional form of written communication is almost irrelevant?

All of these questions, which I will not attempt to answer, are directly relevant to the plain language movement.

Using plain language to protect consumers

Colm Kincaid is the Head of Consumer Protection for Policy and Authorisations at the Central Bank of Ireland. He was previously Deputy Head of the Legal Division at the Central Bank, and prior to that Regulatory Counsel at Merrill Lynch International Bank. Colm practised as a solicitor at Linklaters in the City of London and A&L Goodbody in Dublin, specialising throughout in financial services regulation.

By Colm Kincaid

In financial services, as elsewhere, we are seeing a move to more innovative ways to use digital technology and a proliferation of products on offer across the various sectors. However, regardless of how evolved or sophisticated a market becomes, firms still need to engage with consumers in a way that seeks to ensure that the consumer's best interests are protected. Plain language is an essential part of this. As PLAIN's website puts it:

A communication is in plain language if the language, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information.[1]

This definition of plain language gets to the heart of the matter that, for financial services and other sectors, plain language is not just about words. It is about a desire to make sure that your customer understands what they are buying and can access the information they may need later when they need it. Financial products and services can be very complex and firms have an obligation to help consumers fully understand the associated risks and benefits before they make their decisions.

The cultural importance of plain language

In this way, plain language goes to the ethical heart of ensuring the best interests of consumers. It is a way of working that seeks to protect consumers by taking care to see that they understand what they need and what a particular product can deliver to meet their needs. This is also critical when advising a consumer who is thinking about moving from one product to another.

Firms need to evolve how they engage with consumers in the design of relevant financial services, and in deciding what needs to be communicated to consumers and how. This does not mean that complexity will go away, but it does mean that there is a greater chance it is explained in a meaningful way. Firms must do this to fulfil their duty of care to consumers and raise consumers' confidence in financial services.

Making the customer a participant

To achieve this, financial service providers need to make their customers active participants in navigating the inevitable complexity of financial services, towards a solution that fits their customers' needs. In an age of online forums and mass movement on social media, it also resonates with a renewed desire people have to be more engaged with the firms they deal with.

This is an opportunity for firms as well as a challenge. Getting consumer input into the design of products and documentation is worthwhile. The Central Bank of Ireland's review of firms' compliance with the requirement to provide annual pension statements found that customers had a more positive view of providers who made a greater effort at clarity and went beyond the minimum disclosure required.

The role of regulation

The importance of proper communication is something the Central Bank of Ireland has consistently drawn attention to in our rules, our annual Consumer Protection Outlook Report[2] and in our engagements with the firms we supervise. We expect all firms to demonstrate that their products are fit for purpose and that firms go beyond tick-box compliance and disclosure to ensure their products are fully understood by their customers and are suitable for meeting their needs. In the case of our recent requirements to improve transparency for variable rate mortgage holders, we introduced a specific legal requirement that lenders consumer test a newly required statement of their variable rate policy, and that it be drafted in a clear, consumer friendly manner and in plain English.

The role of consumer testing is also something we are prioritising at a European level. The recently finalised Key Information Document (or KID) for packaged retail and insurance-based investment products (or "PRIIPS") was informed by consumer testing across 10 European countries.

Of course, we continue to make the point that communication is not understanding. While standardised disclosure documents are a great step forward, no disclosure document can take the place of proper suitability checks based on a proper understanding of the individual consumer's needs.

As well as strong suitability checks at point of sale, the Central Bank of Ireland and other regulators across Europe are increasingly emphasising the need for proper product oversight and governance. As members of the European Supervisory Authorities' Joint Committee on Consumer Protection and Financial Innovation, the Central Bank of Ireland was instrumental in developing European guidelines in the area of product oversight and governance across the banking, insurance and investment service sectors. These guidelines include:
• requiring product testing with consumers before launch;
• ensuring charges are transparent for the target market; and
• ensuring that distributors of the product are provided with clear, accurate and up to date information so they can properly advise their clients.

Such requirements supplement existing requirements in our Consumer Protection Code that:
• a regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English;
• key information must be brought to the attention of the consumer;
• the method of presentation must not disguise, diminish or obscure important information; and
• firms must make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.

Firms' expectations of consumers

Firms must also look at what it is fair to expect a consumer to comprehend and accurately factor in when making a financial decision. We have grappled with this challenge in our work on PRIIPs and it is something the Central Bank has funded specific research on here in Ireland, at PriceLab.[3] This detailed laboratory-based research has given us an empirical picture of the capacity of an individual to weigh up different factors and compare them when making price related decisions. The work of PriceLab shows the inherent human biases and errors that should compel firms to look beyond mere clarity of words into what needs to be communicated to consumers – when and how – and to take the time and make the effort to do so.

The challenge to firms

Part of what makes customer participation so important when designing products and communications is that it changes the questions firms need to ask themselves:

- What does the consumer need (as opposed to what do I have that I can sell them)?
- What does the consumer want to know (as opposed to what does the firm want to communicate to them)?
- What is the simplest way for this information to be made available to that consumer before sale and over the lifetime of the product (as opposed to how can the firm communicate now so it is covered later if something goes wrong)?
- What is the regulated entity doing to cater for honest consumer error or oversight? Will it err on the side of dealing fairly with the consumer, or will it look to fall back onto its legal terms and conditions?

The role of technology

Technology (used properly) provides exciting opportunities to involve the consumer in the development of clear and fair financial products and services. It enables them to read, reflect, test and view illustrations in a manner that is engaging and educational.

Taking place in the comfort of one's own home or other familiar surroundings, the use of technology can give consumers time and space to get comfortable with the financial decision they are about to make. It also enables realtime feedback. This provides an avenue of communication that firms can and should use to test and explore what their customers want to know and to get feedback on their experience.

Of course, innovation cannot be allowed to diminish existing consumer protections. This is especially important as technology becomes more sophisticated and is used to convey information but also to provide advice or recommendations. At the Central Bank of Ireland, we are actively pursuing this topic, to assess whether our existing consumer protection rules need to be enhanced in specific areas. We are also looking at whether there are impediments in our rules to firms adopting technologies that may be beneficial to consumers. Our recently published Discussion Paper on Digitalisation and the Consumer Protection Code[4] includes a chapter dedicated to the digital provision of information to the consumer. This highlights the importance the Central Bank places on this topic and the need for digitalisation to evolve in a consumer-centric manner.

Conclusions

Consumers increasingly expect more engagement and tailoring to their individual needs. I also believe that consumers will look to be ever more connected with the entities from whom they receive their services and look to have real confidence in them.

There is a great opportunity for financial service providers to make their customers participants in defining what products, service and information they want and what plain language really means for them.

Plain language organisations such as NALA[5] and PLAIN have a unique expertise to guide financial service providers in this evolution and place understanding and customer participation at the heart of getting it right for consumers.

Transparent, clear & responsible communication project in BBVA

By María Such and Joanna Richardson

After the 2008 world financial crisis, we all read about the banks who government bailouts. This is the story of a bank that chose a different road: to reassert its position in the market by communicating clearly with its clients. One Spanish bank is working closely with plain language experts to earn its clients' trust and grow its business.

Context

The Banco Bilbao Vizcaya Argentaria (BBVA) has roots in northern Spain, where it started over 150 years ago as the Banco de Bilbao. Today, BBVA is a global financial group with a diversified business providing financial services in over 31 countries and to 66 million customers. BBVA:
• has a strong position in Spain
• is the top financial institution in Mexico
• has leading franchises in South America
• is one of the 15 largest banks in the Sunbelt region in the United States
• has a significant presence in Turkey through partnership with Garanti Bank.
• is one of the top banks in the Eurozone for return on equity and efficiency.

After the 2008 financial crisis, which hit Spain particularly badly, the Spanish financial sector suffered from a lack of consumer trust. BBVA responded to differentiate itself by creating relationships based on trust with its customers, in particular to find out exactly what it was that customers wanted from a bank.

Customer confidence survey

In 2013, BBVA commissioned Millward Brown, the second largest market research organization, to carry out a customer confidence survey. It asked 3,579 customers in eight countries the following questions about responsible business.

How would you rate the importance of the following when thinking of a bank that does business in a responsible way. A rating of 0 means this factor is not at all important and 10 is very important.
• Uses a clear and easy to understand language
• Supports country development (entrepreneurs, small to medium sized enterprises)
• Has employees that are not under pressure to sell
• Provides financial education
• Seeks long term customer relationships
• Promotes community investment
• Promotes financial inclusion

The survey results showed that by far the most important factor was that the bank "uses a clear and easy to understand language", with an importance rating of between 9.11 and 9.39. Perhaps even more significantly for a bank, those surveyed responded that this factor is essential when recommending a bank to others.

Some of the customers made further comments referring to banks in general:

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They are always sitting there only telling the good things, and never the bad ones.

They shouldn't take advantage of our ignorance.

You thought you were contracting one thing but it turned out to be totally different from what you thought it was.

You don't want to find figures you weren't expecting in your statement, however small they are.

A responsible bank is the one that sells you what you need and not everything it can sell you.

No small print, or the least amount of small print possible.

TCR communications project

With these statistics and comments in mind, BBVA decided to embark on the Transparent, Clear and Responsible (TCR) communications project to help its customers make informed choices throughout their relationship with the bank. BBVA's aim is to care for its customers' interests and differentiate itself from its peers as the bank which customers see as the clearest in the market.

With regulatory and non-regulatory pressure growing on banks, clients increasingly demand greater clarity in communications. Therefore, being transparent, clear and responsible with a bank's customers is key to delivering an excellent experience and to promoting sales – especially digital ones.

BBVA's vision and strategic priorities are to:
• set a new standard in customer experience
• drive digital sales
• develop new business models
• optimize capital allocation
• improve efficiency
• train a first class workforce.

The TCR project is fully aligned with this strategic vision. TCR is all about the bank's relationship with the client:
• **Transparency:** To provide all the relevant information for the client, balancing out advantages, costs and risks.
• **Clarity:** The client decides what is clear. The client must understand the information or process provided at a glance. Clarity refers to language, layout of information and web navigation.
• **Responsibility:** To look out for the client's interests in the short, medium and long term.

Implementing the TCR project

In general, BBVA coordinated the project through its Responsible Business Department, working with the local owners and business development units and locally-based plain language experts. The latter, wherever possible, were recommended by Clarity, the international association promoting plain legal writing.

In the Spanish-speaking countries, the local experts worked in plain Spanish – *lenguaje claro* – as it is called in Spanish. They worked in workshops with multi-disciplinary teams within the bank redesigning the documents to be user-friendly.

To date, more than 700 people have attended TCR workshops. TCR is ongoing in Argentina, Chile, Colombia, Mexico, Spain, Peru, Venezuela, and the U.S.A. The project has been partially implemented in Paraguay and Uruguay and in Turkey it is due to start in 2016.

The TCR project started in 2013 and has been implemented in four areas:
• TCR Advertising Code
• TCR in Product Summaries
• TCR Contracts
• TCR embedded in digital agile teams

Following is an outline of each area, with extra detail on the product summaries.

ADVERTISING CODE

The TCR Advertising Code sets out the principles for Transparent, Clear and Responsible Commercial Communication and the governance to make it happen. This was written internally by a multidisciplinary group from the Marketing, Legal and Responsible Business teams.

PRODUCT SUMMARIES

TCR was implemented in Product Summary Pages for 80+% of units sold. The Product Summary Pages:
• have all the relevant information
• provide both advantages and costs/risks
• structure information according to customer needs/questions
• are written in plain language
• have clear layout and are easy-to-read
• have no small print
• have a didactic tone
• take care of customer interests

Figures 1 and 2 below show part of a Product Summary from Spain for a credit to buy a car. Figure 1 uses questions, icons and a checklist as well as being written in plain language.

Figure 1

Figure 2 uses a comparison between a new and a used vehicle which is visually appealing and easy-to-read.

Figure 2

New vehicle (aged 0-36 months)		Second-hand vehicle (more than 36 months)	
Total cost	€12,779.92	Total cost	€13,218.23
Monthly instalment	€205.17	Monthly instalment	€212.47
NIR 8.50% (APR 10.81%)		NIR 10% (APR 12.46%)	

Ask your advisor for a simulation based on your personal situation.

The Product Summary also has a "Did you know that?" section for extra information. There is a Glossary to define the few legal terms and financial jargon that must remain because they are terms-of-art. Figure 3 shows the glossary defining one term.

Figure 3

Did you know that?

- Default interest will be charged if you are late on payment of an instalment. Before you sign the contract you will be given standard European consumer credit information.
- Under its standards for prudence and responsibility in lending the Bank may request the transaction to be notarised. All costs will be paid by the customer.

ⓘ Glossary

- **Nominal Interest Rate (NIR):** it is the percentage paid on the amount lent and determines the instalments to be paid to the bank.

The first Product Summary for each group of products was reviewed by a plain language expert and tested on customers. Plain language experts always worked with the teams in each country where TCR was implemented.

CONTRACTS

TCR Contracts are for the 5 most frequently ordered products. Wherever possible, the plain language expert worked closely with the legal departments of BBVA in several countries.

DIGITAL TEAMS

The objective is to make sure the bank's digital contents are TCR-compliant and have been designed putting people first. BBVA is approaching this in 3 different ways:
- **Train:** This first stage consists of a Workshop on TCR Communication and Human-Centered Design for all those who have a say in the web and mobile complement.
- **Implement:** This second stage is embedding TCR into the daily work of the relevant agile team.
- **Measure:** This last stage will measure customer feedback about TCR in digital channels and will improve based on the insights.

Next steps and challenges:

So far, BBVA is very pleased with the results of the TCR project and has already received improved scores in the PEW Charitable Trusts' study that evaluated leading U.S. banks' checking accounts practices in 2014. The perception of BBVA as a clear bank has improved in most of the countries and, with it, the customers recommending the bank.

BBVA's aim is to embed TCR in the whole value chain and to ensure that TCR is an integral part of all the teams working with client products so that they are born TCR to start with.

Packing a punch: how a small charity put plain English on the national agenda

By Claire O'Riordan

Though she be little, she is fierce! This quote from Shakespeare's A Midsummer Night's Dream captures the heart of the National Adult Literacy Agency (NALA) in Ireland. NALA is a small organisation, but we have had a big impact.

NALA is an independent charity committed to making sure people with literacy and numeracy difficulties can fully take part in society and have access to learning opportunities that meet their needs.

Our work in plain English was prompted by requests from organisations, largely in the health sector, to help "literacy proof" their materials. Over the years, further requests for help improve the quality and clarity of documents followed from government departments, agencies, and private bodies.

This evolved into our Plain English Editing and Training Service, which started as a part time service but has now operated full time for 17 years.

Our service today

Today, NALA is Ireland's leading plain English provider. We have helped almost every government department with plain English services such as:
• editing
• training
• resources such as guides, checklists, and quick tips.

You can explore our free resources at NALA's dedicated plain English website: *www.simplyput.ie*.

NALA sees itself as serving Ireland's citizens – particularly the one in six adults with low literacy. Plain English transforms complex language that may be too difficult for some of our population to read. This creates a more level playing field, so people have a fairer chance of accessing essential services, understanding their obligations, and exercising their rights.

Clients use NALA's plain English service to improve the clarity of their communications and increase their organisation's efficiency and effectiveness. Our service is staffed by editors, trainers, a communications manager and me (the full-time Plain English Coordinator).

In 2005, the then Ombudsman and Information Commissioner in Ireland, Emily O'Reilly, officially launched our Plain English Mark, a quality mark for documents or web content that meet plain English standards. As you read earlier in this issue, O'Reilly continues to support plain language in her current role as European Ombudsman.

Today, thousands of documents feature NALA's Plain English Mark. We are the only not-for-profit organisation in Ireland that offers such a Mark, and we are very careful about the quality of documents that receive it.

Claire O'Riordan is Plain English Coordinator at the National Adult Literacy Agency (NALA) in Ireland. She runs NALA's Plain English Editing and Training Service (www.simplyput. ie). She is an experienced project manager and has managed the editing of hundreds of resources for the public and private sectors and the delivery of plain English training to professionals and volunteers in the community and voluntary sectors. She is also one of the judges for the national health literacy awards. Claire is a board member of the Plain Language Association International (PLAIN) and was convenor of the tenth PLAIN conference in Dublin, Ireland in 2015.

Our advocacy for plain English

Over the years, we have worked to build support for plain English both from the top down and bottom up. We favour a systemic approach to embed plain language with support at the highest levels, combined with individuals driving change from below.

We support the following strategy for plain English in Ireland:
1. All public bodies should draft an organisation-wide plain English policy.
2. All public bodies should engage whatever resources are available and necessary to make sure their public information is as clear as possible. Ensuring clarity includes testing leaflets, letters, forms and other public information for usability among those most likely to read them.
3. All government departments should require agencies and other bodies under their control to provide evidence of a plain English policy and action plan in applications for project funding or annual budget submissions.
4. The Department of An Taoiseach (Prime Minister) should use its role as coordinator of the Quality Customer Service Initiative to set up a code of practice for plain English in all public communications.
5. The Department of An Taoiseach should set a target for putting public information into plain English and make this a key performance indicator of the Government's record of being accessible to the public.
6. All organisations (public and private) should use plain English for documents and online information intended for the public.

Examples of success

The following examples show the progress we have made with implementing these recommendations.

THE PUBLIC SECTOR

We have worked with most government departments and a wide range of public bodies like the Director of Corporate Enforcement, the Office of Public Prosecutions and the Adoption Authority of Ireland. In fact, only two departments have not received our plain English training.

Of particular note is our detailed work with the Department of Social Protection, where we had a three-year sponsored relationship to introduce plain English. This involved editing all the department's brochures, letters and forms and training staff in plain language techniques. We are still working with the department on further communication projects.

For years we have lobbied high-level officials for recognition of plain English. This paid off when the current Public Sector Reform Plan committed to an "on-going focus on the use of plain and accessible language".

We also recently developed a plain English style guide with the Department of Public Expenditure and Reform, which was then distributed to all public servants. While there is still plenty to do work to ensure public servants actually use the guide, at least we can cite this reference in support of our work.

PARLIAMENT (HOUSES OF THE OIREACHTAS)

In 2011, we did six months intensive plain English work with the Houses of the Oireachtas to introduce plain language. We audited its materials, trained its staff in plain English, and developed plain English resources such as the Brief Guide to How your Parliament Works, which features on its home page. The parliament put plain English performance indicators into its Communications Strategy.

NALA also commissioned research on the public's understanding of documents and information from the government and public bodies, as well as developing a plain English guide to political terms.

HEALTH SECTOR

From the outset, NALA has been a major stakeholder in promoting health literacy in Ireland. We see plain English as central to this work. Our most recent initiative is the development of a Crystal Clear Mark for pharmacies and general practitioners that meet the criteria. We worked in partnership with international pharmaceutical company MSD.

LEGAL SECTOR

In this sector, we have:
• developed easy-to-read guides for the Director of Public Prosecutions Office on topics that the public and other stakeholders find difficult to understand
• provided plain English and literacy awareness training to the Law Society of Ireland
• edited legal documents and contracts for solicitors and other legal bodies

We developed an A-Z Guide to Legal Terms, which is widely used by legal professionals and the general public. And in 2016, we published Plain English and the law: the legal consequences of clear and unclear communication – an Aesop's Fables-like resource.

COMMUNITY AND VOLUNTARY SECTOR

Based on a competitive tender, NALA was able to deliver training to hundreds of staff and volunteers in the community and voluntary sector over the last four years. This also meant we were able to develop new resources like our plain numbers checklist for documents, and a web writing style guide.

Raising the profile of plain English

Apart from these efforts working directly with public and private sector organisations, NALA has promoted plain English through its public programs.

NATIONAL PLAIN ENGLISH AWARDS

NALA has run two national plain English award ceremonies with leading law firm, Mason Hayes & Curran. The awards aim to reward organsations that communicate clearly in plain English. Winners of the award gain public recognition for putting their readers first.

PLAIN ENGLISH PETITION

In 2015, we launched a petition calling on the Irish Government and its agencies to provide information in plain English. Over 5,000 people signed, easily meeting the deadline we set to meet this target. We presented the petition to the Government, which has helped to create greater public awareness and preference for plain English. It also helped us gain access to some government departments that we had not dealt with before.

PLAIN'S 2015 CONFERENCE

A highlight for NALA was winning the bid to host the Plain Language Association International's 10th conference in Dublin. Despite our demanding workload, we wanted to take on this challenge as the event would help us to keep plain language high on the agenda of decision makers in Ireland.

The conference attracted over 250 plain language experts and participants from around the world, including many people new to plain language. Eighteen countries were represented at the conference, with 70 contributors to the program. It was a terrific experience for NALA.

Conclusion

NALA is making progress in keeping plain English on the Government's agenda and in the public eye. Thirteen of the 15 government departments have now used our plain English editing and or training services. And eight out of ten adults in Ireland are now aware of plain English. This is a 31% increase compared to results from 2015 (51%).

But we are not stopping here. We are working to keep plain English to the fore while developing the first nationally accredited plain English course in Ireland and the United Kingdom.

So keep an eye on the organisation that is "little but fierce". Small in size does not mean small in impact – something that other countries might learn from.

New writs are being served? From ceremony to pragmatism in a Dutch court summons

By Tialda Sikkema

Recreating even the toughest legal document takes a few days hard work. But getting all stakeholders to support or even to put energy into such an exercise is unthinkable in many legal environments, and the Dutch legal environment is no different.

This article will firstly reveal the underlying forces that are holding back legal professionals from change. It will show how you can deal with these forces, and offers five guidelines on how to achieve change.

When we define a purpose, an audience and agree that informing the defendant is the major purpose of a court summons, we leave the ceremonial character of the traditional writ behind.

1 The origins of traditional legal design

In many countries, a court summons and other formal documents that are part of the legal procedure have a rather ancient appearance. The Dutch courts look rather modern, but a Dutch court summons is very old fashioned and notorious for its incomprehensibility. Before thinking about changing such a document, it is useful to stop and ask how these ended up looking the way they do.

First, there is a well described set of legal norms: this is the way the civil code prescribes the content of a court summons in a civil procedure. The norms stem from nearly 200 years ago, which is why the structure and wording in a writ from 1915 is exactly the same as one from 2017. No lawyer in their right mind would violate these norms, which keeps many lawyers from changing anything at all.

Second, there are the expectations of the court's officers. Writs have a certain appearance, and clerks and judges expect this specific structure. They won't invest energy in a writ that uses a different format. Again, no lawyer wants to change the format and upset the clerk or the judge.

Third, change costs money. Even if a bailiff or a lawyer wants to experiment and overcome their fears, they will have to invest time and money in a modern format. With 1.5 million writs being served every year, changing the format would be very costly.

But why are writs written this way in the first place? We have to go a bit further back in history to answer that question. Remember that a court procedure once was a ceremonial event, as adorned as a Christmas tree. Court procedures from 500 BC until well into the nineteenth century had three parts in this order:
- ceremonial deeds
- an oral component
- a written component.

In the twentieth century, courts felt the ongoing juridicialisation of society increased their caseload enormously. This, added to the desire to minimize the distance between justice and society, made them move towards a more pragmatic approach

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to court proceedings. Many ceremonial deeds were abolished. The courts were being run like modern organizations, and the spoken word was replaced by writing as much as possible. But the ceremonial and oral aspects of a court procedure are still reflected in some of that writing: the genre of the writ for example is still ancient, very specific and incomprehensible.

Did you know that if you read a writ aloud, you discover it is in fact an oral statement with a surprisingly high number of ceremonial aspects? This is part of its genre identity, and changing these documents requires serious thinking about the ceremony. This also means we are forced to acknowledge the importance and dignity of magistrates, notaries, clerks, bailiffs and solicitors. We need to clarify that changing the style of writs is not an attack on the legal identity in the documents.

2. Creating a new writ

Given these constraints, how do we deal with the incomprehensibility of writs for so many readers? Many types of lawyers want to do something about this. Bailiffs, for example, think that the format of the writ might interfere with the relationship the debt collector tries to establish. Incomprehensible documents do not promote loyalty, compliance or willingness to pay. Notaries can't explain the high costs for their services when they use automatically generated deeds that people find very hard to understand. Magistrates are confronted with a great gap between their oral dealing with a case and the written one. And many of them realize that incomprehensibility is inconsistent with the rule of law.

I teamed up with Jos Rutten, a bailiff and judicial officer and lawyer, to create a writ in a debt collection procedure that would meet all legal standards and be (at least) less incomprehensible to non-lawyers. Here's what we did. First, we looked at the purpose(s) of the document from the perspective of three different readers:
- the client/non-lawyer/debtor
- the legal professional/magistrate
- the debt collector/judicial officer.

These users have different and at times opposing purposes. The debt collector wants the debtor to pay as soon as possible, while the debtor in some cases wishes not to pay, or pay as late as possible. The rule of law is not designed for debt collection, and the civil code considers the writ as an informing document enabling a legal party to disagree in a dispute.

We chose the latter as the basic principle, because a court summons is not just an instrument in debt collection, and the legal requirements are all based on properly informing defendants about this legal position, the claim, the plaintiff, the manners of responding, the default conviction and its consequences.

Second, we agreed on a set of guidelines for the design, structure and wording that would help make decisions when we had to make choices. These guidelines are:
1. a writ is a legal, formal, factual document that is in line with legal standards
2. a writ is a genre in itself (it is not a letter, brochure, leaflet or brief)
3. any document needs structure with headings and an introduction on the different sections
4. plain standards on wording, sentence length and so on – but where jargon is unavoidable due to the first guideline, we chose to add an explanation
5. start on a blank sheet, not with a traditional writ in front of us.

This approach resulted in a modern and fresh writ which we then tested in an actual legal procedure against a tenant who hadn't paid the rent for such a long time that the housing company wanted to put an end to the contract.

The first obstacle was that getting rid of the ceremony meant losing the structure of the writ that help clerks process it easily. How could we deal with that and have the court accept our writ?

Third, we kindly asked the leading magistrate in this court for her feedback and cooperation. She responded:

"this court summons appears to be substantially clearer than the forms that usually are being served. … I think everyone can only applaud to this development".

We were able to use our writ.

We received a judgment in this case on 12 March 2014. It was a default conviction, because the writ had not given the defendant reason to appear in the procedure.

In the years that followed, a new wind started to blow in the magistrate's office. Part of the reorganization of the court law changed the court summons into a pragmatic document. And the magistrates knew where to find inspiration: our little experiment.

3. What we can learn?

Changing a document is not that hard. It takes energy, time and money. But changing the culture and the ideas behind a document is the difficult part. When this motivation is not felt or recognized, most energy is easily wasted.

I say easily, but not entirely.

Even a project like ours contributed to a change in culture. To know it is possible, to experiment and to find space for modernization, to have research funded and to have discussions starting is essential to make change happen.

In our case, we succeeded at least in part. With the Dutch court systems going digital, all the court summons will have a modern design and wording.

Our 'top 5' conclusions about how to change legal documents would be:
1. find an organization or environment that is ready for change
2. pursue change with the lawyer(s) on board
3. keep working at change: plain writing involves mental reorganization from the ceremonial to the pragmatic
4. look into the functionality, readers, communication chains and organizational goals to define the boundaries before changing anything (in particular, look at all disputes about document change)
5. involve readers in testing both old and new documents.

When defining a purpose, an audience and agreeing that informing the defendant is the major function of a court summons, we leave the ceremonial character of the traditional writ behind and step into the 20th century. Oops, I mean the 21st century!

Why use 50,000 words when 500 will do?

Sarah Fox is a speaker, lawyer, trainer, and author of 500-word contract. Her main job is teaching construction professionals to write simpler contracts or understand complex ones. She draws on her 15 years as a solicitor in the Construction and Engineering Group at a top five global law firm, Eversheds LLP. As an antidote to long contracts and disputes in the global construction industry, Sarah designed a series of 500-word construction contracts that can be read and used by the whole team, completed easily, and with clear risk allocation. This branch of transparent, trust-based and trouble-free contracts is her personal contribution to the plain language movement.

By Sarah Fox

This article takes you on a journey through the history of construction contracts, from the first contracts to the first standard forms that have evolved into mammoth 50,000-word documents. It then sets out my vision for a future of 500-word contracts.

The oldest contract

In the British Museum in London, there is a 5,000 year old clay tablet from Persia. It's one of the oldest pieces of evidence we have for a construction contract. Historians believe it is a contract for the exchange of labour for a reward (beer) on the construction of a public project by slaves.

It is small enough to fit in the palm of your hand. It is simple enough to be read by those providing the labour. It is short enough to be made by pressing a reed into wet clay. It is simple, transparent and short.

When was the last time you saw a contract that was designed specifically to be read, including graphics and tables? We know from Stefania Passera's report *Contract understanding and usability test*, that the use of visuals in a contract improves a user's understanding, contract readability and can 'help us [avoid] the pitfalls of spoken and written English (and legalese)'.[1]

Standard construction contracts

The first standard set of conditions contract – the nattily titled 'Heads of Conditions of Builder's Contract' – was issued by The Royal British Institute of Architects (RIBA) with the London Builder's Society in 1870. It became the forerunner of the Joint Contracts Tribunal (JCT) 1963 Standard Building Contract, now revised and part of the large JCT 2011 suite of contracts.[2]

Engineering standard forms arrived in 1903 with the Model Conditions for electricity works published by the Institute of Electrical Engineers, and engineering contracts influenced international forms of contract such as FIDIC (Fédération Internationale des Ingénieurs-Conseils).

These first standard or model forms were intended to reduce the costs of tendering, assist risk management, minimise negotiation, record good practice, and reinforce industry customs. According to the RICS 2012 Survey on Construction Contract Use, 97% of projects use a standard form contract.[3]

The degree to which they achieve these goals depends on the degree to which they are standardised. Lawyers tend to amend each standard form to suit their clients, negating many of these benefits. Reviewing, amending and negotiating contracts arguably creates an industry in itself.

Good practice is often enforced through legislation (especially outside the UK). However, although there was plenty of English legislation and regulations relating to aspects of a construction project, it was not until 1996 that there was specific legislation governing the relationship between the parties to a construction contract – even now it is restricted to payment and dispute resolution.

There are now 10 publishers of over 140 standard form contracts for use in the construction industry, leading to bewildering choice for users.

How long is too long?

One of the most commonly used standard form construction contracts (for projects over £10m) is the JCT 2011 Design and Build contract, which weighs in at 100 pages and over 50,000 words. It is by no means an unusual length, as the graph below shows. Even the NEC standard form which was *designed* to be simple is over 15,000 words long in its most basic form.
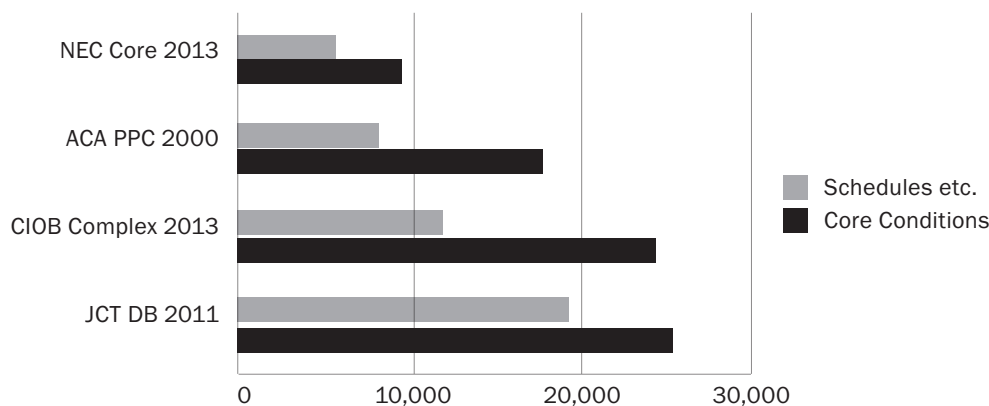
SOURCE: Research by 500 Words Ltd.

In 2014, RIBA published a Concise Building Contract following requests from its member architects. It started by creating a wish list of everything members wanted and writing a contract to include those items. That first draft was definitely *not* concise. Even the final document has 15 pages of Conditions and 15 pages of Agreement.

5   Peter Hibberd, How Difficult is it to Write a Standard Form Contract!, 2014. (Contact author for further information.)

6   Ken Adams, Case-law Cautionary Tales for Contract Drafters, Adams on Contract Drafting, June 2015. http://www.adamsdrafting.com/from-caselaw-cautionary-tales-for-contract-drafters/, last accessed 1/28/18.

What do users really want?

Asking contract users what they want doesn't necessarily provide you with a logical or workable solution to our current contract problems. However, the answers have been remarkably consistent. The 1994 Latham Report[4] showed that users want simplicity. In 2015, I asked 100 construction contract users what they wanted, and they said:

- **Simpler contracts** – 50% wanted simpler language with no jargon or legalese.
- **Shorter contract** – 39% wanted contracts of less than 10 pages, which would mean severely editing most forms.
- **Fairer contracts** – 46% wanted fairer contracts, where risks are shared and users can analyse risk sharing provisions easily.

Focus on trust

In 2014, Peter Hibberd, then chairman of the JCT, argued that:

At the simplest level all that is required is a description of the works to be carried out and a price or price mechanism; the rest of left to common law and statute ... The advocate of the one sheet of A4 standard contract is easily satisfied – indeed a whole page is too much. That might have worked two hundred years ago – it still might even today – because trust was more obvious...'[5]

He talked about one of the less laudable objects of a contract being to "exploit and abuse economic power" and that to fulfil that objective alone is going to take more than just a page of A4. But which comes first – trust or shorter contracts?

Do long contracts create mistrust or trust? 22 years ago the Latham Report reported that the weaknesses of standard form contracts included "encouraging conflict/litigation (52%), insufficiently clear (45%) and ... a high level of mistrust (38%)". Since then, the standard forms have become longer, more complex and even more adversarial.

Simple contracts, on the other hand, create trust as the users can read, understand and use them. They create trust by their transparency of obligations and remedies. They create trust by avoiding the spectre of hidden nasties – clauses which can trip up the users without them even knowing about them.

Just 500 words

Many proponents of standard form contracts argue that their strength is in their "tested contract language". However, as Ken Adams regularly tells his readers,[6] and we can see from the cases in the English courts, standard form contracts are not dispute free.

Other arguments in favour of long contracts are based on the old idea that three words are needed to ensure correct interpretation by the courts. But this is based on the idea of literalism, which the English courts are moving away from. Recent cases highlight the idea that the English courts will interpret contracts as written, to reinforce business common sense, *not* based on archaic case law.

These arguments have provided grist to my mill. When I started, my goal was much simpler – to create a contract I could use in training workshops to get lawyers to think about its content, style and use. I could not use any of the standard form construction contracts because my workshops only lasted a day.

I researched the four critical contents for certainty in a construction contract and six effective extras for workability – ending with a list of 10 essentials to build a plainly worded contract. I wrote onto a blank sheet of paper and carefully carved out anything unnecessary (including the blindingly obvious) until I was left with roughly 500 words.

The feedback from lawyers and clients was very positive and the idea stuck.

Persuading a reluctant industry to change

Of course, the UK construction industry is hardly a paragon of innovation when it comes to contracts. In 1995, NEC introduced a second edition of its Engineering and Construction Contract to reflect views of the 1994 Latham Report and create a "modern effective contract". It took many years to get any sort of traction in the industry, and it was only following its mandatory use on the London 2012 Olympics that it has become regularly used.

I know I have my work cut out.

But of the £22.5bn annual UK construction spend,[7] 36% is on repair and maintenance projects[8] often with low values, many of which do not currently use any standard form contract. At least 99.9% of the firms in the industry are SMEs, with over 80% being sole traders.[9] And one-third of construction projects start without any contract being in place. This provides clear room for improvement and impact.

A glimmer of hope?

The annual ARCADIS Global Disputes Surveys consistently show that key causes of disputes on construction projects arise from:
• failure to read contracts
• failure to use the contract procedures
• inaccurate or incomplete contracts.

Other sources bear out that most disputes are caused by parties failing to read, understand or use their contracts. Some of those problems arise from the contracts themselves. Contracts are too long, too complex and too adversarial. Their length makes them impenetrable; their legalese and jargon makes them incomprehensible; and their adversarial nature makes them unusable.

The evidence can convince. The UK construction industry is crying out for collaboration and innovation, and we need to work out how to create contracts they can read, understand and use.

Lawyers, clients and users need to work together to make it happen, and the plain language community needs to continue to demonstrate how simple it could be.

If 500 words will do, why bother with 50,000?

7   Chris Rhodes, House of Commons Briefing Paper, Number 01432, 6 October 2015 Construction industry: statistics and policy.

8   Office for National Statistics, November 2015 Output Figures.

9   BIS Business Population Estimates for the UK and Regions, 2012. SMEs are businesses with less than 250 employees.

A prescription for Clarity

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By Dr. Laura J Sahm and Dr. Karel van der Waarde

This article explores the efficiency and effectiveness of the visual information that patients receive when they need to take medicines. We examined a number of examples that might present problems for healthcare professionals and for patients. We then looked at these from both a pharmacists' and a designers' point of view. As an initial step, we give some of the reasons for these problems and suggest some opportunities.

What are the problems?

Several steps influence the development of patient information, and they reduce the efficiency and effectiveness of the information patients receive about medicines.

1. THREE DIFFERENT FRAMEWORKS WORK IN PARALLEL

Information about medicines can be viewed from a regulatory/legal perspective, an economic/financial perspective, and a healthcare/medical perspective, all of which have different aims.

The Regulator needs to be sure that the information conforms to the required legislation and guidelines. The manufacturer needs to comply with the Regulator but also has to balance costs and profits. The third perspective takes the health of an individual patient as the main criterion.

Unfortunately, these three perspectives run almost parallel and do not share as much common ground as would be hoped. More significantly, the actual end user –the patient – is to a large extent ignored in the development process. There is little need to pay attention to the requirements of patients as long as information conforms to the legislation and can be produced for reasonable costs. For regulators and manufacturers, there are no direct benefits to make sure that information enables patients to act appropriately.

2. A LINEAR PROCESS SEPARATES WRITING, DESIGNING, AND TESTING

The current regulatory framework in Europe separates the writing, designing and testing of information about medicines. The EMA-QRD template must be used to write the texts on packaging and package leaflets. Some parts of the obligatory texts in the template are not really suitable in all situations. On the other hand, the visual design of packaging and leaflets is largely determined by marketing and production requirements.

This separation leads to lot of text in a very small space. It does not lead to a visual design that supports patients taking their medicines appropriately.

In addition, only the package leaflet needs to be tested on a limited number (about 25) of healthy volunteers. The outer packaging is not tested, nor are combinations of three, four, or more medicine packs tested.

We argue that "best practice" should start with the patient. This would ask patients and/or those looking after the patient about their needs. Second, examples would be made in which texts and design are considered together. User testing would be done to check if understanding is reached. An iterative process would help to ensure that patients are able to act appropriately. This process would not only involve regulators and industry, but also doctors, pharmacists, patients and their caregivers.

3. PATIENTS HAVE DIFFERENT CHARACTERISTICS

The lack of individualized information also makes information about medicines hard to understand and apply. The European legislation for medicines standardizes information through a template. This approach ignores the differences between:
• patients (old/young, health literate/less health literate)
• medicines (chronic/short term, life threatening/benign)
• languages and cultures.

4. INFORMATION STRATEGY IS NOT COORDINATED

Another source of the difficulties patients have is that the information comes from many sources. A prescribing doctor provides verbal instructions; a pharmacist adds verbal/written advice and one or more labels; the industry adds the obligatory information on the outer packaging and information in the package leaflet.

In addition, patients may have to take more than one medicine, which multiplies the information from all sources. Motivated patients ask others, search on the internet, join discussion groups, and join patient associations. It is likely, however, that some patients may not ask or be able to access this information, leading to higher risks.

What are some examples?

The following examples show the potential issues from the perspective of the reader.

EXAMPLE 1: CONFUSING PACKAGING: METRONIDAZOLE & METFORMIN / ZITHROMAX / LEXAPRO.

Pharmacists today are being confronted with new yet similar packaging every week. In Ireland, this is due to the introduction of interchangeable and generic medications. The increased availability of drugs with similar packaging containing different drugs and/or different strengths of the same drug increases the cognitive burden on the pharmacist. This in turn may increase the risk that a patient receives the wrong medicine.

The visual similarity of some outer packaging does not help this, as figures 1, 2, and 3 show. Whilst every pharmacist is aware of this risk and will make an extra effort during dispensing, it nonetheless introduces a risk that could be avoided if packaging was required to be noticeably different.
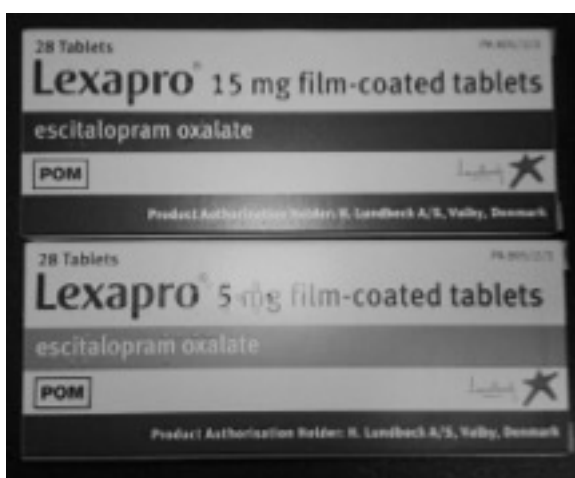
Figure 1 Metronidazole and Metformin.

Figure 2: Zitromax

Figure 3: Lexapro

EXAMPLE 2: POOR READABILITY OF OUTER PACKAGING FOR POM MEDICINES: PERINDOPRIL

Even if different medicines can be clearly distinguished, reading some of the vital texts on the outer packaging is made more difficult by small type, low contrast, and distorted letterforms. The visual design of the package, especially the combination of the colours, typefaces, and braille code requires extra effort to decipher the detailed information (Figure 4).

The 200mg Ibuprofen over the counter (OTC) package in Figure 5 was bought in the United Kingdom. The first instruction on the back of the box suggests the outer packaging does not have all the information, and a consumer can open the box to check the package leaflet. In practice, this is unlikely to happen. The rest of the text is very difficult to read because:
• it uses a light version of a typeface
• the type is condensed
• there is very little space between the lines
• the contrast between the black type and the grey background is low
• the background is highly reflective
• there are braille dots pushed through the text.

There is evidence that each of these factors individually does reduce readability. A combination of such factors has not yet been investigated.
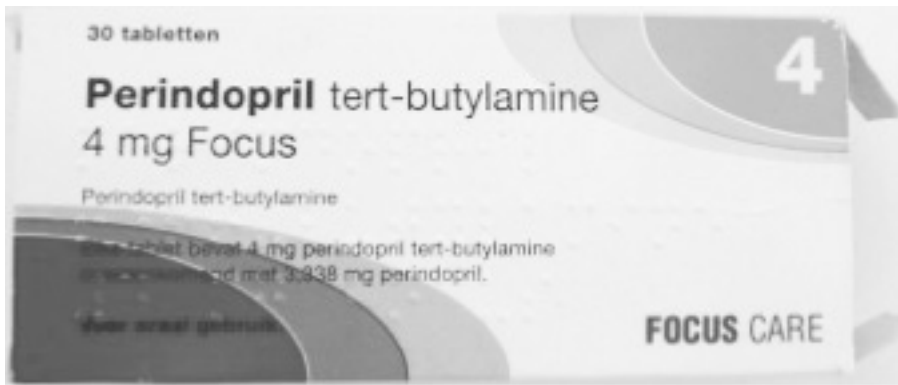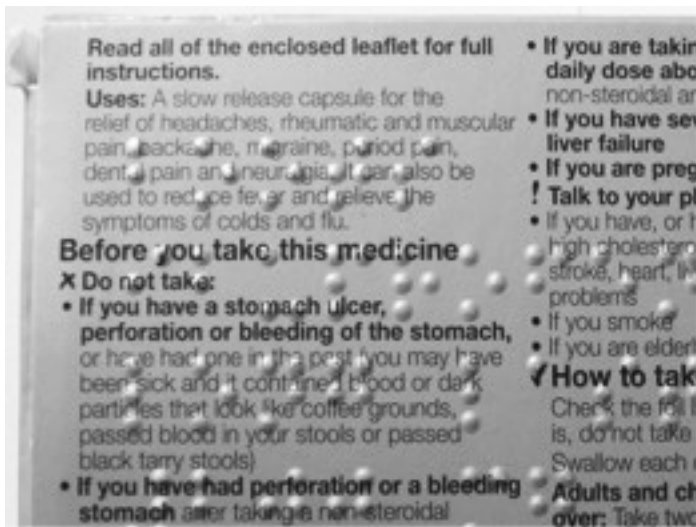
Figure 4: Perindopril (POM)

Figure 5: Ibuprofen (OTC)

Figure 5: Ibuprofen (OTC)

EXAMPLE 3: UNSTRUCTURED PHARMACISTS' LABELS

Pharmacists print labels with specific instructions, which are added to the medication before the patient receives it. However, as the visual design in Figure 6 shows, this information does not have either a:

• hierarchy (what is the most important?)
• sequence (in which order should I read this information?).

This problem may increase as the pill burden also increases – when patients need to take several medicines at the same time, and they must compare the different labels and work out a daily regimen.

Figure 6: Pharmacy generated labels

Figure 6: Pharmacy generated labels
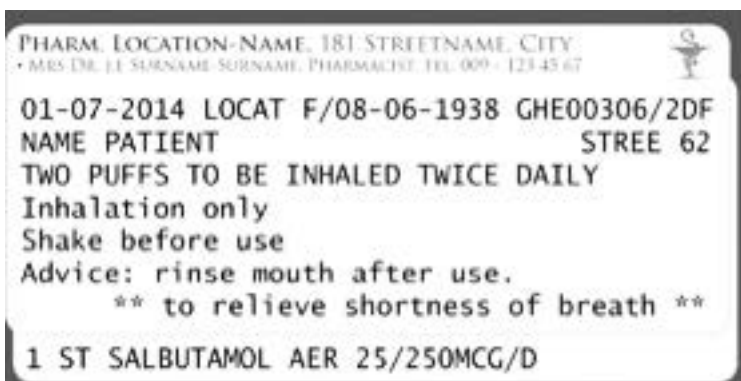
These examples show that some of the information patients receive is easy to confuse, difficult to read, unstructured, and hard to apply in a real life situation. Of course, not all outer packaging, inner packaging, package leaflets, and pharmacy labels suffer from all four of these issues to the same extent. It is, however, difficult to find examples that are "absolutely excellent" on all four criteria.

What would a solution look like?

It is clear that some of the regulations and guidelines need to be changed. The European Commission is aware of these shortcomings and published two reports in 2015. Unfortunately, the recommendations have not lead to any change in regulations or guidelines. The uncertainty about the future location of the European Medicines Agency – it has to leave London after Brexit – is likely to mean the provision of usable information about medicines will receive little attention in the coming years.

However, at least four actions can be taken to improve the current situation within the current regulatory framework.

1. MAKE SURE THAT THERE IS ENOUGH HIGH-LEVEL SUPPORT

To change situations, it is essential to have support from people at the top of organisations.

2. DEVELOP PROTOTYPES AND ALTERNATIVES

Prototypes can be tested to show which performance levels can be reached. We can visually enhance current information in both digital and paper media so that it can be understood by those with limited literacy and numeracy skills.

3. GET THE RIGHT DATA

To change legislation and situations, it is vital to know the current state of affairs, with measures such as the:
• number of confusing packs
• frequency of incorrect dispensing
• numbers of patients interpreting instructions incorrectly.

It is likely this kind of research will show a complete range from "best practice" to "harmful practice". But without data, it is not possible to distinguish these.

4. GET THE RIGHT PEOPLE

The solution must involve doctors, pharmacists, healthcare professionals, industry, regulators, and patients. A coordinated approach can only be based on cooperation between all stakeholders.

Toward an integrated framework for evaluating plain language

By Neil James and Susan Kleimann

No one could object to the evaluation of texts to assess their quality and effectiveness. Many evaluation methods exist, from readability formulas and expert reviews to usability tests and the analysis of outcomes.

Yet in recent years, a divide has developed between practitioners who prefer one evaluation method over another. This preference often emerges from the types of documents each works with. Writers of an internal policy or submission in a government agency, for example, are more likely to review their draft against a checklist or with a colleague. The team designing and writing a standard tax form for the public are more likely to prefer large-scale usability testing.

Unfortunately, these differences in context have often led to debates about the relative value of one or another method. The value is often seen on a linear scale where some methods are "simpler" and implicitly less effective than the more "complex" alternatives higher up the scale.
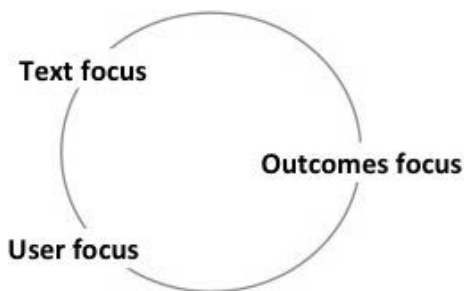
1 A spectrum of methods

We decided to approach evaluation by looking equally at all the available methods to assess where each would best add value and in what context. We were then able to group them into 3 broad categories depending on their focus:

- text focus
- user focus
- outcomes focus.

As Figure 1 shows, we felt it was more useful to think of these as falling on a circular spectrum rather than a linear scale.

Figure 1: Spectrum of evaluation methods

Our concept of a spectrum builds on previous work by Janice Redish and Karen Schriver. Decades ago, Schriver mapped the 'continuum' of text-focused to reader-focused methods and concluded that "reader-focused methods are preferable".[1] Redish outlined the available range of outcome measures that can demonstrate value in a communication project.[2]

We wanted to bring all of these methods into a single framework that would be practical to apply. But we also wanted to consider the value of each method in different contexts to determine how to select the right mix and scale of evaluation.

But first, let's look at a high level at each of these methods on the spectrum.

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Dr Susan Kleimann leads a small business, founded in 1997, to provide research and training to help organisations create clear, consumer-focused information. She has more than 35 years of experience creating messages that people can understand and use. Susan is a recognized expert on user-centered design, consumer evaluation of

documents and disclosure development for complex regulations and rules. She is currently Chair of the Center for Plain Language in the United States.

NOTES

1 Karen Schriver, 'Evaluating Text Quality: The Continuum from Text-Focused to Reader-focused methods. IEEE Transactions on Professional Communication, January 1990, p. 252.

1 Janice (Ginny) Redish "Adding Value as a technical Communicator" Technical Communication Volume 50, number 4, November 2003. This republished an earlier version published in that same journal in 1995.

TEXT FOCUS

A text-focused evaluation assesses characteristics in a text itself. Some of these relate to the "micro" features of vocabulary or syntax, such as the average:
- number of words in sentences
- number of syllables in words
- ratio of "difficult" words
- ratio of active to passive voice.

Some text-focused methods, such as readability formulas, can be applied in an automated way through computer software. These can be particularly attractive in a professional context, as they imply a level of objectivity and do not require expertise to interpret a result in the broader context of the communication.

Other text criteria add macro elements such as:
- clarity of purpose
- length of paragraphs
- appropriate level of detail
- suitability of structure
- use of headings and other design features.

These "macro" elements more often require human judgement to assess how well particular features will contribute to clarity, logic and cohesion. To evaluate these, a human reviewer may assess a written text against a checklist or a complex standard. When that reviewer is a communication specialist, they may also analyse audience needs in a formal way, and will bring valuable professional judgement to the task.

Figure 2: Text focus evaluation methods

Tool-based	Expert review
Readability formulas	Audience and task analysis
Standard	Review against a standard
Evaluation software	Document assessment

USER FOCUS

The next group of methods has emerged from fields such as marketing, cognitive psychology, and usability. These focus on the end user's interaction with the text.

Marketing relies on revealing the preference of a potential consumer about a product, even when that product is a text. This can include questions about the elements assessed in broader textual evaluation, such as the structure, language, and design. But it can also probe the content and message in more detail.

Such preference testing provides qualitative information on what readers say they like and how they may react to a communication. It can be done online, through focus groups, or in single interviews.

On the other hand, performance testing determines how a reader actually interacts with a document – what they read, what they skip, how well they retain information, or even how well they complete an action or follow directions. Some performance tests can be as simple as asking someone to read a text and then answer a series of content questions. At other times, the test simulates a real-world situation to see if a reader can synthesize information and make a sophisticated judgement.

Figure 3: User focus evaluation methods

Preference testing	Performance testing
Surveys	Think-aloud interviews
Focus groups	Cognitive interviews
Interviews	Usability testing
	Controlled study
	Performance survey

OUTCOMES FOCUS

The evaluation methods we've considered so far are generally applied before a document is released to its readers. Outcomes focused methods review the impact the document has once it has been used.

Some outcome evaluation is purely quantitative, such as whether measurable transactions have changed. These can include the number of phone calls received, the revenue raised, or the error rates experienced in response to a communication. Many of these methods are used to validate earlier evaluation methods and measure the relative effectiveness of different approaches to a communication.

Other outcomes evaluation is more qualitative, measuring attitudes and behaviors. In simple internal documents like memos or submissions, for example, one outcome measure is the response of decision makers, such as senior executives. In the corporate sector, qualitative outcomes might relate to the perception of a brand. In public health campaigns, it might assess the likelihood that people will change behaviors, such as toward healthier eating.

These evaluation methods can then influence how a document is revised if it is in ongoing use. When a document is used only once, outcomes evaluation may only influence other similar documents in the future.

Figure 4: Outcome focus evaluation methods

Transactions	Attitudes and behaviors
Errors	Endorsement
Phone calls	Approval
Revenue	Changes in behavior

While it is one thing to set out all of the available evaluation methods, there is currently no systematic framework to help practitioners choose the best method or mix of methods in a given context. So we decided to draft one.

2. The Kleimann-James evaluation framework

Our framework comes in two parts:
• an integrated table of evaluation methods
• a set of criteria to assess communication and business requirements.

By applying the criteria to a given context, the framework helps to judge which evaluation methods will be most effective. Following is the integrated table of all the methods we've discussed so far.

Figure 5: Integrated table of evaluation methods

Text focus		User focus		Outcome focus	
Tool based	Readability formula	**Preference testing**	Surveys	**Transactions**	Decrease in measures
	Standard		Focus groups		Increase in measures
	Evaluation software		Interviews		
Expert review	Audience and task analysis	**Performance testing**	Think-aloud interviews	**Attitude and behaviors**	Endorsement or approval
	Review against standard		Cognitive interviews		Changes in behavior
	Document assessment		Usability test		
			Control study		
			Performance survey		

The first point we make is that this evaluation process is blended and scalable. It is not about selecting one method for each context, but considering a mix of two, three, or even more.

More importantly, each method can be applied at a simple or more complex scale. For example, a text-based evaluation may involve a single calculation for readability or a more comprehensive assessment using a range of criteria at micro and macro levels. Similarly, a performance test could evaluate a document with one to three cognitive interviews or could scale up to dozens of people across multiple locations.

In most cases, the best approach will blend several methods at different scales to maximise the insight gathered and validate the results between them. The key is not to be limited by one approach in evaluation practice, but to master the broadest range of methods and choose carefully case by case.

But what criteria should you apply in making this choice, and can you approach this in a structured way? This is the second part of the Kleimann-James framework.

We started by considering three broad requirements: communication and business requirements, which overlap in the shared outcomes for a communication, as Figure 6 shows.

Figure 6: Requirements and outcomes

Communication requirements

Shared outcomes

Business requirements
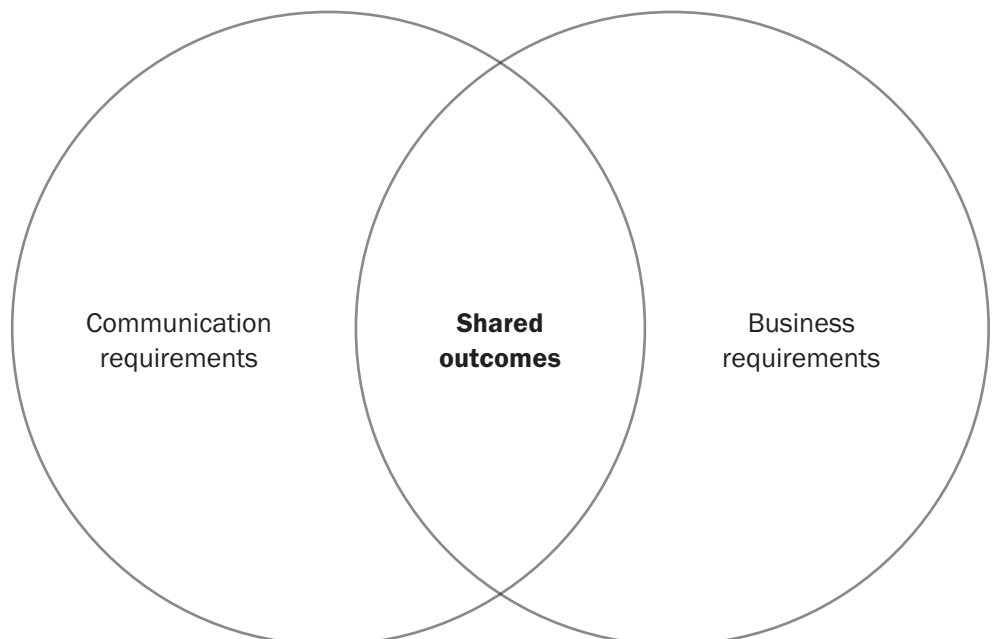
Using that concept, we developed a set of criteria in five areas that can help to select the best blend and scale of evaluation methods in a given context:

1. Readers
2. Complexity
3. Outcomes
4. Context
5. Risks

Here's how this came together in our framework.

Figure 7: Criteria to select evaluation methods

As Figure 7 shows, the Reader and Complexity criteria are part of the communication requirements, while Context and Risks fall under business requirements. Outcomes bridge the two kinds of requirements because they relate to both.

The idea is that by reviewing each of these criteria in a context, we can better judge the right blend and scale of evaluation methods that will maximize the result. We'll illustrate this with some examples, but first let's look more closely at what we mean by each of these criteria.

READERS

There are three aspects to review with the intended audience:
• number of readers
• literacy skills
• knowledge of the topic.

A document for a single reader or few readers is likely to need only a text-based evaluation. But if those few readers have low literacy skills or topic knowledge, then it may call for a comprehensive form of text-based evaluation or an expert review. Even where those readers have extensive content knowledge, if their literacy is low the evaluation may need to be scaled up to ensure the communication will succeed.

Conversely, if a text is going to be read by thousands of people, a user-focused regime may be essential, even if the readers have high literacy and reasonable knowledge of the subject.

COMPLEXITY

The complexity of the material itself will also influence evaluation. Buying a house, for example, is a highly complex transaction in many countries, and one that few readers do frequently. It can whip up a storm of financial information.

At other times, the content may be relatively simple, such as the criteria for an insurance claim (let's say for a robbery). But the task involved may be complex, requiring readers to fill out a complex form and provide a wide range of supporting documents.

Weighed against these two aspects of complexity is the urgency of a task. Many communications run along a predictable timeline. Income tax information, for example, comes at the same time each year. Company reports to shareholders have a set season around the mandated publishing of annual accounts.

In other cases, a predictable schedule is disrupted by events. In the United States several years ago, the tampering of Tylenol medicine bottles resulted in consumer deaths. The consequent stakeholder communications were anything but standard and the urgency disrupted a normal timeline.

On the whole, however, the more complex the information and task and the more non-standard or urgent the transaction, the more likely it is that writers will need to use a wider range of evaluation methods on a larger scale.

OUTCOMES

The outcomes criteria are part of the communication requirements but also bridge into business requirements. The first aspect to consider is whether the purpose of a communication is simple or complex. This relates both to the readers' purpose for using the text and the purpose of the authors to meet a business requirement.

For example, a manufacturer's purpose for the operating manual of an appliance will be to meet regulatory requirements, to minimise service calls, and to cut manufacturing costs as much as (or more than) to offer consumers an easy-to-use guide. For those consumers, the initial purpose will be to start using the appliance, but then keep the document as a reference for later troubleshooting and service.

The impact of a document also bridges communication and business requirements. It might be low in the case of a routine communication that occurs on a set timeline. But what if the communication is a new warning about the small possibility of a false positive on the charge held by a heart defibrillator? Here the impact on both customer and company may be high because of the risk of death and the possibility of a lawsuit. At the same time, the company does not want to cause panic among its customers, so its purpose is complex.

Overall, the more complex the purpose and the higher the impact, the more types of evaluation may be needed and on a larger scale.

CONTEXT

As we move from communication requirements into business requirements, we begin to consider the sensitivities that should influence evaluation choices for the authoring organisation.

We first must consider the context by mapping the timing and the cost. Timing, like the urgency for the reader, relates to whether the communication is on a standard timeline or is disruptive for the authoring organisation. A disruptive timeline may require further resources in staff time, production, or professional services such as legal advice.

The costs can flow from timing, but equally from other factors, such as a rise in production costs due to external factors, or the cost of more complex evaluation methods themselves – particularly if the organisation does not have enough internal expertise.

Of course, cost is often cited as one of the main barriers against certain forms of evaluation, such as performance testing. Here, the scalability and range of the framework comes into play. If the budget is limited, the most realistic approach may be an expert review combined with a small number of participants in performance testing. By adjusting the range and the scale of the methods, an organisation can maximize the impact of its available budget. Even with the most negligible (or non-existent) budget, some evaluation is always possible.

RISKS

The final criteria can trump one or all of the others: the level of risk. Too often this aspect is neglected in evaluation decisions. Financial risks are relatively straightforward. Might the organisation experience a financial impact and at what level? Non-financial risks can be harder to measure but are nonetheless real, such as risk to reputation and public confidence.

Let's consider the case of our defibrillator company. The financial risk to the company from a lawsuit is incredibly high. It may also face high non-financial risk in public reputation and confidence. Even where a communication is simple and for a limited number of people; even if all readers have high literacy and a simple task to complete in response; even if the cost of the right evaluation method is very high and the timing tight, the risks are such that company should invest in evaluation.

3. Using the Kleimann-James evaluation framework

As you were reading these criteria, no doubt many seemed obvious or even common sense. Yet how often do organizations neglect the evaluation of their communications?

In retrospect, for example, would United Airlines have expressed regret about a passenger being physically man-handled off a plane using the term "re-accommodation of passengers"? Would Volkswagen have described its cheating of emissions testing as "possible emissions noncompliance"? And if this happens in high-profile cases with communication crisis teams, how more likely will it be behind the scenes?

For expert practitioners, our framework provides a handy reference to assess what evaluation methods may be appropriate, but also to guide decision makers in adopting expert advice.

To illustrate this more clearly, let's consider some examples. The first involves a scenario that will lead to more text-focused evaluation, while the second blends a wider range of text- and user-focused methods.

EXAMPLE 1: MEMORANDUM OF ADVICE

In the first scenario, a lawyer in a commercial law firm is preparing a formal memorandum of advice for a corporate client in the mining sector about whether to challenge a recent land classification decision that may affect a proposed extension of the mine's operations. The lawyer's advice is that the company should not appeal the classification, as that had limited prospects of success, but should seek an amendment to a development consent with another agency, which will then override the classification.

The advice will be read initially by in-house counsel in the client's company, then by senior executive staff and Board members who need to approve the company's response.

The evaluation criteria help to map the requirements for this communication:

Figure 8: Example 1 legal advice

Communication requirements				Business requirements		
Readers		**Outcomes**		**Context**		
Number of readers	Few → Many	Purpose	Simple → Complex	Timing	Standard → Disruptive	
Literacy skills	Low → High	Impact	Low → High	Cost	Low budget → High budget	
Knowledge	Low → High			**Risks**		
Complexity				Financial	Low → High	
Content	Low → High			Non-financial	Low → High	
Reader task	Low → High					
Urgency	Standard → Disruptive					

In this case, the document will be read by at most a dozen people, at least initially. And their literacy skills and subject-matter knowledge will be high. Yet the legal issues are complex, so the reader's task requires effort. And there is a limited time to appeal the classification, so a decision must be made quickly.

Similarly, the impact of the communication is potentially great, as the wrong decision may cost the company millions of dollars. The decision makers will need to balance a range of legal and business outcomes in choosing the right response.

As the situation was unexpected, there is no allocated budget for responding to the situation, including any evaluation costs. But the risks for the company are high, not only in financial terms, but in public reputation if they contest the decision.

Considering these measures as a whole leads to the following evaluation measures (highlighted in bold).

Figure 9: Example 1 evaluation methods chosen

Text focus		User focus		Outcome focus	
Tool based	• Readability formula • **Standard** • Evaluation software	Preference testing	• Surveys • Focus groups • Interviews	Transactions	• Decrease in measures • **Increase in measures**
Expert review	• **Audience and task analysis** • Review against standard • **Document assessment**	Performance testing	• **Think-aloud interviews** • Cognitive interviews • Usability test • Control study • Performance survey	Attitudes and behaviours	• **Endorsement or approval** • Changes in behaviour

The Reader and Context criteria point toward text-based evaluation methods, not least because of the urgency involved. Yet the Complexity, Outcomes and Risk criteria mean that such methods should be as broad as time permits. The author should draft the advice with reference to a clear standard, but the text should then be subject to expert review by an internal communication specialist.

Yet the risks and impact are such that, even with limited time or budget, some form of user-based evaluation should be considered. In this case, that would likely be a low scale preference test, such as asking two or three colleagues (including non-lawyers) to read the draft advice and evaluate how well they understand and are persuaded by what it is recommending.

Once the communication is sent, outcomes evaluation would be useful to inform future documents of a similar kind. Did the client agree with the advice offered and did that have the right result?

EXAMPLE 2: TERMS AND CONDITIONS

In our second example, a new transport company is attempting to challenge the dominant market player, and it has decided to rewrite its terms and conditions to give it a competitive advantage. The existing competitor has recently been criticised for the poor readability of its terms and conditions. For both companies, the terms and conditions will often be read by users on a mobile device.

Here's how this scenario scores against the evaluation criteria.

Figure 10: Example 2 terms and conditions

In this scenario, the number of potential readers is relatively large and their literacy skills and knowledge will be average at best. Yet the content and reader task is rather complex, particularly given readers may be reading on a small screen while waiting for a pick up.

While the purpose of the communication is fairly straightforward, it needs to convey information that customers may be surprised about – such as how the company may use personal information. Yet the impact may be high given the purpose to create a commercial advantage and the potential adverse reactions if it does not succeed.

The timing is relatively average, as there have not been any complaints so far about its existing document, and there is virtually no budget for any evaluation. The financial risk is moderately high given the adverse publicity its main competitor has attracted, and the reputational damage that may occur if the company's own terms and conditions come under similar scrutiny.

This leads to the following evaluation methods (in bold).

Figure 11: Example 2 evaluation methods

Text focus		User focus		Outcome focus	
Tool based	• **Readability formula** • Standard • **Evaluation software**	Preference testing	• Surveys • **Focus groups** • Interviews	Transactions	• Decrease in measures • **Increase in measures**
Expert review	• **Audience and task analysis** • Review against standard • **Document assessment**	Performance testing	• Think-aloud interviews • **Cognitive interviews** • Usability test • Control study • Performance survey	Attitudes and behaviours	• **Endorsement or approval** • Changes in behaviour

Under this scenario, the criteria suggest a much wider range and depth of evaluation methods than in our first example. The evaluation should start with some simple text-based methods, such as calculating the readability scores for the document. But poor results would immediately lead to more detailed expert review by asking one of the firm's communication specialists to revise the document.

But the reader, complexity, outcomes and risk criteria all point to further evaluation to verify this work. Because the company is looking at strengthening reputation and increasing revenue, it should turn to some user-focus evaluation. This could start by bringing together a small group of fellow workers for an impromptu focus group. If the results show further work is needed, there is now stronger evidence to secure some budget for more formal user-focused evaluation.

This process can evolve progressively, with increasing investment of time and resources until the communication and business requirements are likely to be met. Even if all methods are needed, the timeline is going to be around 3 weeks from start to finish. At that point, the company can finalise some outcome measures. These might include public recognition for a clearer and more transparent document than its major competitor, and, ultimately, increased business and revenue.

4. Conclusions

In both of our examples, evaluation required expertise. It was not a formulaic process that can be automated, and it will still need the judgement of clear communication practitioners. The Kleimann-James evaluation framework provides a structured approach to the communication and business requirements for any text to select the right blend and scale of evaluation methods.

Of course, many practitioners will already work with these criteria and methods. But we have not found a framework that brings them together in a formal way to strengthen evaluation decisions. We also hope our framework will help to explain the importance and feasibility of evaluation in every context, and take our field beyond limiting debates about the absolute value of one method over another.

Capital letters out, swearwords in: one journalist's legacy

By David Marsh

David Marsh is the former production editor of the Guardian, which he joined in 1996 after previously working in local newspapers and a range of national newspapers in the UK from the Sun to the Financial Times. For many years, David edited the Guardian style guide and the Guardian's Mind your language blog. He is the author of For Who the Bell Tolls: the Essential and Entertaining Guide to Grammar (Guardian Faber, 2013) in which he writes of his "lifelong mission to create order out of chaos".

The man responsible for the spelling mistakes in the Guardian' looks back on his 42-year career.[1]

I went to a wake recently. My own. Or that's what my farewell party, after 20 years at the Guardian – and 42 years in newspapers – felt like. People say nice things about you, have a few drinks, and go home to get on with their lives. Just like a funeral, albeit a professional one. Still, at least they turned up, laughed at my jokes, and were generous with their comments and gifts. Imagine a leaving do where no one came. Michael Gove's, say.

Today is my last day in journalism. It feels the right time to go after the Brexit result. On the left we get used to disappointment – you win some, you lose most – but the leave campaign marked a new low, the deeply unpleasant rhetoric[2] adopted by many of the politicians echoed in much of the press. It doesn't make me feel proud of my profession.

I've been very fortunate in my career, however, almost all of which has been spent working for the good guys, from Spycatcher to WikiLeaks, from cash for questions to phone hacking. It's given me the chance to write about, among many other things, music, politics, grammar, tripe, going on University Challenge, grammar, going on University Challenge again, becoming a dad at 58 ... and grammar.[3]

I've worked for some great editors, including, all too briefly, the greatest of them all, Harold Evans. I've worked with many fine journalists, including Anthony Bevins, Robert Fisk, Nick Davies, Richard Williams, and the best boss I ever had, Ian Jack: whatever job he gave you, and no matter how well you did it, you knew he could have done it better, but he was too nice to say so.

Like many journalists I started off wanting to be Robert Redford in All the President's Men. But my favourite job was, less glamorously, editing local papers (long before a proposed new newspaper called the Independent decided, inexplicably, to add me to its launch team 30 years ago, almost to the day). At a local level it's easier to work with the community to change things for, you hope, the better. Campaigning is the lifeblood of a good local newspaper although, given the way they have been grotesquely mismanaged for many years, with staffing cut to the bone, many find it increasingly difficult to do so.

The last two of my four decades in the job have been spent at the *Guardian*, the newspaper my grandparents read. (OK, this is a lie: they read the *Daily Express*, but they lived in Manchester, so in theory they *could* have read the *Manchester Guardian*. And my grandmother later introduced me to her neighbour, a Mrs Weatherby, whose son WJ was a distinguished *Guardian* US correspondent.)

The brief given me was, broadly, to stop people calling the paper "the Grauniad". Or, since this professional suicide mission was always unlikely to succeed, at least give them less reason to do so. I have been, in the words of one English professor, "the man responsible for the spelling mistakes in the Guardian". It's a living. Was a living.

My allies in the fight have been the best team of subeditors anyone could wish for. My weapon was the Guardian style guide,[4] much admired, occasionally followed. You didn't ask, but I'm going to tell you anyway: my favourite entry from this two-decade labour of love remains

Meat Loaf
sings

meatloaf
doesn't sing

I've written thousands and edited millions of words down the years, and dreamed up hundreds of headlines,[5] but the style guide, which I took over in 1999 (no one else wanted the job), has given me most pleasure.

How I shall miss being paid good money to send my long-suffering colleagues emails like this:

The Duchess of Cambridge, right, meets Lee Pearson and Ellie Simmonds during a reception at Buckingham Palace yesterday (caption in today's paper).

Lee Pearson is male and on crutches; Ellie Simmonds is 4ft tall. It was probably not necessary to identify the duchess, the only other person in the photograph.

I am looking at a piece that blithely tells us Meg Hillier is "Labour MP for Shoreditch". The seat is Hackney South and Shoreditch and I'd expect Guardian journalists, of all people, to know that the Hackney South bit is the more important part of the name. Calling it Shoreditch is like calling Hackney North and Stoke Newington "Stoke Newington", ie wrong.

Whoever thinks "this weekend" is in the right place in the following sentence would be advised to this weekend see a good tin ear specialist: "Tiny Uruguay, the most progressive country in Latin America, is expecting this weekend a historic electoral showdown … "

cum

You probably all realise that we need to take care with this word.

If you use it, two hyphens are needed – one before the "cum", so to speak, and one after. "A party-cum commune" on the network front page today was corrected pretty smartly, but not before someone had tweeted it.

No longer will Guardian journalists, or indeed Guardian readers, have to put up with my obsessive diatribes about [the evils of] square brackets, the use of "ahead of" ahead of "before", or why hyphens[6] should at-all-costs be avoided.

My 20-year battle against cliches[7] ended in, at best, a score draw. The problem is that, like the Hydra's heads, every time you think you've chopped one off, another sprouts up. You may feel you have "elephant in the room" and "fit for purpose" under control, then the writers suddenly discover "national treasure" and "game-changing".

There have been successes. If I have had any impact at all in my time at the Guardian, it's a reduction in the incidence of capital letters.[8] Just think of the saving in ink and trees. There are also rather fewer actresses[9] in our pages these days. At the same time, my years at the helm have coincided with a huge increase in swearing.[10] As legacies go, not quite "comment is free, facts are sacred", but it's mine and I'm proud of it. Along with my appearance in Private Eye's Pseuds Corner (for declaring a headline "a work of art"), and two in that publication's Street of Shame (in one of which I became, justifiably, "the hapless Marsh").

NOTES

1   David Marsh gave an entertaining plenary speech at PLAIN 2015 in Dublin. This article is his final piece in the Guardian, published on the day he retired. www.theguardian.com/media/mind-your-language/2016/aug/01/capital-letters-out-swear-words-in-one-journalists-legacy

2   www.theguardian.com/commentisfree/2015/aug/28/migrants-people-refugees-humanity

3   www.theguardian.com/music/musicblog/2012/sep/27/old-music-tears-fears-seeds-love

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isks-swearwords

11 www.theguardian.com/
commentisfree/2009/
aug/24/grauniad-spell-
ing-grammar-subeditors

12 www.andandand.name

As for the number of mistakes,[11] I once received a letter from a reader saying there were fewer than there used to be. It's still tucked under my pillow, along with a cutting in which we quoted a football club chairman saying his club had the worst team in the league. (He had said "worst tea".)

As I leave Kings Place to devote my declining years to the school run, Sheffield United Football Club, and my quirky music website,[12] what will I miss most? The biggest single change I've seen, other than technological, has been the virtual (in both senses) disappearance in the gap between journalists and readers. For a long time the odd – sometimes distinctly so – letter to the editor was about it; now there's a continuous dialogue: the @guardianstyle Twitter feed ("the pedant's pedant") has nearly 65,000 followers and it's been wonderful to engage with and learn from so many funny, clever people. The same applies to the readers who have posted comments under these blogposts. I shall miss you.

They say all political careers end in failure (*you've already done the Michael Gove joke – editor*). Perhaps all careers end that way, or at least leave a nagging sense that you could have achieved more. The journey from hip young gunslinger to curmudgeonly old fart is surprisingly short. In the end you do your best, pass on the baton to others, and head off to the pub – happy in the knowledge that you have at least learned one thing.

When to stop.

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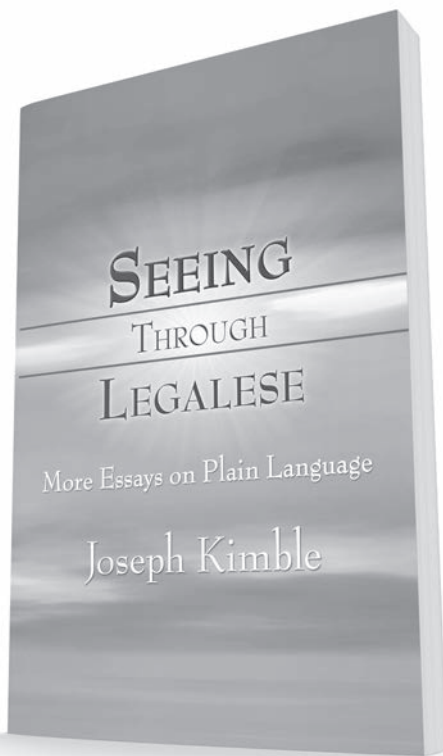
This is Joe Kimble's second book of collected essays. His first collection was called "superb," "invaluable," and "a treasure." This new one has already been described as "packed with insights" and "worth its weight in gold."

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