

THE FIRST YEAR

We now have around 250 members and a reasonably healthy bank balance. As you will read in this issue, several members have been making names for themselves in the advancement of simplified legal English. It has been a good first year for CLARITY. We are well-poised for an even better future. How we achieve that depends on you. It is therefore proposed to hold a **first annual meeting**, details of which are given below.

Members will receive with this issue a supplementary membership list and a copy of the audited accounts of CLARITY for 1983/84.

First Annual Meeting

A number of ideas were discussed in the last newsletter about the future direction of CLARITY. Volunteers were invited to form a "think tank" to resolve the various problems. Although one or two responses were received to this invitation, there were not enough to form an adequate working party. What is clear is that the necessary decisions about CLARITY's future ought not to be made by one member.

It is also apparent to your organiser that in attempting to carry out the duties of secretary, treasurer, publicity officer, membership secretary and newsletter writer, he has been hard-pressed to do justice to any of them. Suitably qualified members are therefore asked to volunteer their services for these posts. As a starter, your organiser is happy to volunteer for the posts of secretary and/or newsletter writer.

It is important that as many members as possible should meet to decide the various issues facing CLARITY, including the appointment of officers. The first annual meeting is therefore proposed to be held in The Benn Hall, Rugby at 11.00a.m. on Saturday, 8th September, 1984.

Apart from the business, the meeting will provide an excellent opportunity for many members to meet each other for the first time.

Rugby is in the heart of England and is easily reached by road and rail from all parts of the country. It is also only half-an-hour from Birmingham International Airport, so there's no excuse for not attending.

If you are able to come, please complete the enclosed confirmation slip and return it to John Walton by **no later than 20th August**. Full details of the meeting will then be sent out to those wishing to attend. Hope to see you there.

"PRINCIPLES OF LEGAL DRAFTING"

Thanks to Richard Firth of the Law Society's Commerce and Industry Group for mentioning this residential course, particulars of which were circulated with the last newsletter. The course was organised jointly by the Group and the Centre for Commercial Law Studies, which is part of the Laws Faculty at Queen Mary College, University of London. It ran at Cambridge from 22nd to 24th March.

A total of 100 lawyers attended the course, which included lectures by Professor Roy Goode, Director of the Centre, Professor John Adams of the QMC Laws Faculty, James Wheaton and Murray Ross, solicitors in private practice and commerce respectively. Between lectures, the course divided into smaller groups which dealt with a series of drafting exercises designed to illustrate and put into practice various themes arising from the lectures. General principles, construction and interpretation, structure and layout, plain English and pitfalls (prolixity, imprecision, inconsistency and ambiguity) were the topics covered.

The organisers claim that few, if any, delegates can have failed to enjoy and profit from what is claimed to be the first course of its kind. It's pleasing to see that CLARITY was well represented, not only in the course content but also by three out of the six course directors! These members were Richard Firth, Richard Henchley and Richard Castle (I, II and III?).

It is proposed to repeat the course, or a similar one. Members who wish to be placed on the Centre's mailing list should write to:—

Mrs N. Jones,
Centre for Commercial Law Studies,
Queen Mary College,
Mile End Road,
LONDON E1 4NS

CONVEYANCING PRECEDENTS

"Practical Conveyancing Precedents" is a major new looseleaf work by CLARITY member, Trevor Aldridge. It is published by Oyez Longman and priced at £47.50.

According to the blurb, the service provides in one complete work a full selection of modern conveyancing forms. It can be used to prepare a land transfer form for virtually any situation and is *ideal for use in conjunction with a word processor* as well as completely practical for use as a conventional precedent book. The modern approach is emphasised by the free word processor operator's manual and a set of instruction sheets provided with the service.

Particularly pleasing from CLARITY's point of view is that the precedents use straightforward, modern English and *punctuation*. Another virtue is that each form is *printed in full*, so doing away with the infuriating requirement, so common in certain well-known precedent volumes, to be constantly referring back to clauses in other forms. Each clause is numbered, with a cross-reference to a library of all the clauses.

The publishers state that later this year there will be a major release covering contract forms. This has been timed to take account of the 1984 version of the Law Society's Conditions of Sale. Further releases are to provide updating on all developments in the conveyancing sphere.

In his introduction to the work, Mr Aldridge writes, "I have simplified traditional conveyancing language, without jettisoning it. This gives documents which are shorter and which the parties to them will more easily understand. But, by keeping the familiar general format, I hope I have avoided the fear that radical changes may alter a document's known legal effect. My only regret is that the limitations of the automatic numbering capabilities of most word processors mean I have had to retain 'whereas' to introduce all recitals." It seems, therefore, that Mr Aldridge has opted for a sensible compromise which falls short of an over-radical simplification of legal terminology but which might yet win over the more traditional draftsmen/women – if only to the use of the comma!

"Practical Conveyancing Precedents" can be ordered from Oyez Longman Publishing Limited, 21–27 Lamb's Conduit Street, London WC1N 3NJ.

N.B. Congratulations to Mr Aldridge on his appointment as a Law Commissioner from 1st October, 1984, as recently announced in the Law Society's Gazette.

PLAIN ENGLISH IN AUSTRALIA

Two CLARITY members have been making the news in Australia. Robert Eagleson of Sydney University has been appointed by the Federal Government to lead a committee to review all government forms and to teach bureaucrats how to communicate clearly. It is claimed that the confusion of language in current forms costs taxpayers millions of dollars a year. Good luck to Professor Eagleson's committee in what will no doubt be a mammoth task.

Stephen Lacher, described in "The Australian" as a Sydney language-reform lawyer, has his doubts about the project. According to the newspaper, Mr Lacher predicts that the committee, welcome as it is, will fail. Government forms follow the wording of badly written legislation, he says, and until the law is clear the rewritten form will repeat the confusion. He suggests that, instead of amending legislation, it should be codified in clear English. But Mr Lacher points out that that calls for clear draftsmanship "and we don't have the draftsmen to do the job."

Perhaps Mr Lacher need not be so pessimistic. Many of the Civil Service departments in the U.K. have now established Forms Units for the specific purpose of producing better designed, more understandable Government forms. Happily, a number of these departments are already subscribers to CLARITY.



CLARITY MEMBERSHIP

I am surprised to see that such a large proportion of CLARITY's members want the organization to be a vehicle for the exchange of precedents. I would have thought that the majority of those who espoused CLARITY's cause would be people who had discovered for themselves that clarity of expression comes not from copying precedent, but from:

- (a) a thorough understanding of one's subject matter and (in the case of lawyers) the relevant legal principles;
- (b) clear, logical thought; and
- (c) the proper use of English to express one's intentions.

People who understand this need precedents only, for instance, to assist them develop the simple, direct style of which the CLARITY newsletter has already given examples.

Because of this I believe that CLARITY's main aim should be to promote training in logic and in the understanding and use of English as a significant part of lawyers' education. One way in which it might do this is by compiling something akin to "The Complete Legal Plain Words", perhaps using precedents provided by CLARITY's members for the purpose. This might eventually result in a reference volume (or, nowadays, computerised "wordbase") which would be of value to all lawyers.

With respect, I do not think that a poster and sticker campaign will do more than advertise the existence of what might come to be regarded as just another crank society. It will not actually encourage other lawyers to improve their drafting.

Finally, I would like to follow the lead given by Mr S.R. Lacher by suggesting that it is high time that lawyers dispensed with the use of Latin maxims which nowadays are not necessarily understood by all lawyers and which are certainly not comprehensible to the majority of laymen. It may still be true that a large proportion of English lawyers have had the benefit of learning Latin as part of their education, but this can certainly not be said of most Commonwealth lawyers. Erudite expressions in a dead language can only cause confusion in a place like Hong Kong.

M.P.H. Tyler, Kowloon.

ANOTHER MAN'S POISON

I was not surprised to learn from the letter you published in Clarity from Dr. Robinson that "one man's meat is another man's poison"; I agree. I don't even consider that the use of the "decimal" system is an advance. When I am not likely to run out of letters and numbers I do not in fact use it. However as will be apparent I do believe in tabulation as a means of making documents more clear. I also believe in appropriate indentation. It may be that in publishing an extract from the standard lease of British Waterways Board the indentation was not shown. I prefer to rely on this rather than on the niceties of grammar to which Dr. Robinson refers. The difficulty about observing the rules he describes is ensuring that they are consistently applied; if you always use the upper case there is not this problem. Any doubt about the intention is avoided by appropriate indentation.

Thus far Dr. Robinson and I do not approach the matter in the same way. He is, if I may with respect suggest it, over-influenced by what he appears to regard as the rules of grammar; as Fowler says there are no rules but only conventions which should be followed by all who wish to write clearly and agreeably; in the case of the lawyer clarity matters much more than anything else; hence perhaps the justification for the split infinitive in Partnership Act 1890 s.35(c).

I do however agree with Dr. Robinson's comments about the use of the word "such" as a demonstrative adjective; likewise his criticism of the use of the word "apparatus". My excuse is that I was doing my best to bring an existing and well settled form of lease up to date; to try to make my changes as acceptable as possible to others I kept my amendments to a minimum and so continued this use of the word "such" and with the reference to "apparatus". Perhaps I should have gone further and probably next time I will.

I think that comments like those of Dr Robinson are extremely useful. Perhaps your columns could be used for debate of matters of this sort.

J.M. McKean, British Waterways Board

P.S. There is some very good guidance on tabulation in Professor Dickerson's book "The Fundamentals of Legal Drafting".

"PLAIN WORDS FOR CONSUMERS" "PLAIN ENGLISH FOR LAWYERS"

These are the titles of a report and guidelines published this month by the National Consumer Council and largely written by Richard Thomas, the NCC's Legal Officer and a member of CLARITY.

"Plain Words for Consumers" proposes a plain language law which would require standard-form consumer contracts to be written in clear, comprehensible language, using words with common and everyday meanings. The law proposed in the report is based on successful United States legislation. It is claimed to be moderate, setting no more than general standards of CLARITY for the language and layout of consumer contracts. The NCC believes that their proposals could have a dramatic effect on the ability of people to understand the documents which, everyday, they are asked to sign. Special reference is made to tenancies, insurance policies, rental agreements and credit deals.

In arguing the case for a plain language law in this country, the report even incorporates a draft Plain Language Bill. This provides that contracts covered by the law should:—

- (a) be written in clear and readily understandable language using words with common and everyday meanings;
- (b) be arranged in a logical order;
- (c) be suitably divided into paragraphs with headings;
- (d) be clearly laid out; and
- (e) be easily legible.

Moderate sanctions are proposed. These would not be in the form of a criminal penalty or even to render offending contracts void, unenforceable or voidable. What is suggested is that compensation should be paid to a consumer who could show actual loss and, as back-up, an extension of the existing powers of the Director General of Fair Trading to deal directly with businesses that ignore the new laws.

It is good to see that the final section of the report argues that a lawyer's training should include the principles and techniques of writing skills. A number of practical suggestions are directed to the relevant bodies. These are some of the recommendations:—

- (a) that universities, etc. should explore the scope for including basic communication skills as a mandatory part of their law degree courses;
- (b) that the benefits and techniques of plain language should form part of the Law Society's Final Examination syllabus;

- (c) that drafting skills, with heavy emphasis on the plain language approach, should be included as a mandatory course under the new compulsory continuing education scheme aimed at recently qualified lawyers in practice;
- (d) that the appropriate bodies should organise suitable voluntary courses for lawyers; and
- (e) that the Bar Council should incorporate plain language techniques into their qualifying examinations.

(Similar proposals are addressed to the equivalent Scottish bodies.)

"Plain English for Lawyers" offers guidelines on writing and designing legal documents. The paper commences by quoting from a Canadian publication on the two common failings of lawyers — "one is that they do not write well and the other is that they think they do."

After stressing the dangers of over-obscure English and the importance of the substance and design of a document, the guidelines concentrate on the use of clear and simple language. The guidelines cover such matters as:—

- * logical order;
- * familiar forms of address;
- * surplus words;
- * familiar, concrete words;
- * short sentences;
- * sensible use of verbs;
- * word arrangements;
- * punctuation; and
- * language quirks.

The paper stresses that it offers guidelines to give ideas for improvement, rather than hard-and-fast rules. It concludes by stating that the only golden rule is to write with the interests and abilities of your reader constantly in mind.

You can obtain copies of "Plain Words for Consumers" and "Plain English for Lawyers" from the NCC, 18 Queen Anne's Gate, London, SW1. They are £4 each, including postage and packing.

NOT ONLY LAWYERS

A letter received from a company's surveyor reads:—

"With reference to your letter of the 24th January 1984 and the notice to owners and statement of reasons attached thereto we note the contents set out therein and will be discussing this matter with this company's management and will be writing to you further in this matter in due course."