

CLARITY

a movement for the simplification of legal English

NEWSLETTER

NO. 4

MARCH, 1985

Contributions to:- John Walton, 5 The Croft, High Street, Hillmorton, RUGBY, Warwickshire

MEMORANDUM, MEETINGS AND MEMBERS

Sorry for the absence of a newsletter over the past few months. Not that there has been total inactivity, of course. First, there was a memorandum of CLARITY's views submitted to the Farrand Committee — details on page 2. Then there was a most productive Annual Meeting in September. This included a lively discussion between members on the future of CLARITY, resulting in agreement on three broad objectives based on the publication of examples of good drafting, the inclusion of drafting in legal education and contact with others able to influence the use of clear, modern English by the legal profession. A note of the Annual Meeting is included with members' copies of this newsletter.

Working Committee

The Annual Meeting decided against electing specific officers at this stage, preferring the flexibility of a working committee. The lucky committee members are Mark Adler, Ken Bulgin, Katharine Mellor, Richard Thomson and John Walton, who have already met to consider how best to achieve the agreed broad objectives.

Reflecting the view of the Annual Meeting that CLARITY ought not to be in the business of producing volumes of precedents to be followed unthinkingly by lawyers, the committee has concentrated on the idea of publishing *examples* of modern English drafting. It is felt that these should not only be offered for guidance and encouragement, but also for criticism as a basis for debate. After all, CLARITY is in no position to hold itself up as a paragon.

With this in mind, we intend to concentrate initially on one specific area of law, with others to follow. Provided there is sufficient response from members, we would like to include a special feature on *wills* in the next newsletter. Members' contributions model clauses, drafting suggestions or legal opinions are warmly invited. We would also like to hear from any members specialising in this area of law, who would be willing to appraise any drafts received. Suggestions please for future special areas of study.

The committee has also looked at the important subject of legal education. It is felt that guidance on drafting should be concentrated initially on short courses, possibly run in conjunction with the polytechnics, aimed at trainee and newly-qualified lawyers. This angle is being pursued and it is hoped to include a further report in the next newsletter. If such courses can be run successfully, CLARITY should be looking to extend this area of its work to more ambitious projects. The Law Society's Continuing Education Programme, for example, envisages courses being provided by certain approved organisations — why not CLARITY?

On the matter of contact with others, CLARITY has always kept in close contact with the National Consumer Council and the Plain English Campaign. Newsletters and press releases have also been sent regularly to the various legal journals. Because of the importance of maintaining links with the relevant professional bodies, details of CLARITY's activities and aims have now been sent to The Law Society, The Bar Council, The Institute of Legal Executives, The College of Law and The Council for Legal Education, who will be kept fully informed of further developments.

It is hoped that members will do their own part to publicise CLARITY and foster good relationships with those individuals and bodies able to influence the use by the legal profession of clear, modern English.

Members

Current membership stands at 279. An updated membership list is included with members' copies of this newsletter. It is hoped that members will use it to the full and make direct contact with each other. Mark Adler is maintaining an up-to-date list on word processor, so any name/address changes should be sent to him please. Because of the relative lull in activity over the past few months, the committee felt that subscription renewals should not be invited until summer this year, by which time we hope to have made rather more progress towards CLARITY's aims.

A LOGO FOR CLARITY?

It has been suggested that CLARITY ought to adopt an eye-catching logo and/or slogan instead of, or possibly in addition to, the rather staid "CLARITY — a movement for the simplification of legal English". What do members think of the idea or, better still, what ideas can members think of? Come on all you budding advertising executives — there's a year's free subscription for any logo/slogan subsequently adopted by CLARITY.

THE FARRAND COMMITTEE - CLARITY'S EVIDENCE

The Conveyancing Committee chaired by Professor J.T. Farrand has now completed its work and reported to the Lord Chancellor on the second limb of its terms of reference - the scope for simplifying conveyancing practice and procedure. The report is now available from HMSO.

It is encouraging that CLARITY's comments were invited by the Secretary to the Committee. Although there was insufficient time for members to be consulted, a memorandum based on known views was prepared and submitted to the Committee on behalf of CLARITY. Its contents are summarised below. The full memorandum was circulated among those attending the Annual Meeting and copies are available from John Walton.

The memorandum first outlined the aims and representation of CLARITY, stressing the growing awareness within the legal profession of the need for lawyers to express themselves in good, clear English. Criticism was made of the archaic, over-complicated language of many conveyancing documents, which serves only to intimidate the public and to alienate them from the legal profession. Reference was also made to the frequent absence of punctuation which, when combined with legalese, duplication and length, could render certain clauses quite incomprehensible to the average non-lawyer.

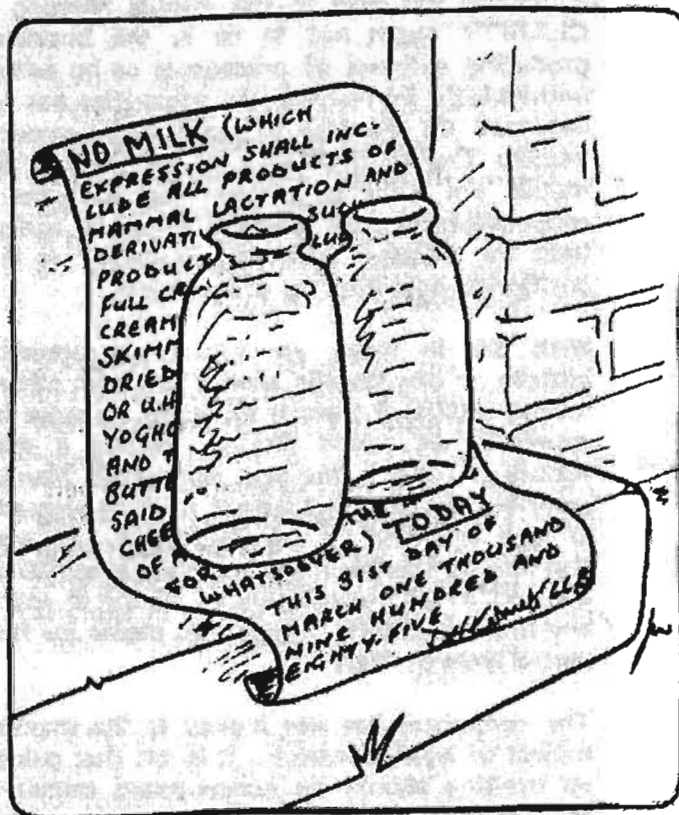
The style and wording frequently used in legal writing is often defended on the ground that it is in the best interests of the client for the lawyer to cover every contingency, to seek certainty of meaning and to use formulae that have stood the tests of time and litigation. In its evidence, CLARITY argued that clients' interests are better served:-

- (i) if they are able to understand the documents they are asked to sign;
- (ii) if documents are drafted in modern English to each client's specific requirements, rather than unthinkingly cribbed from an outdated precedent;
- (iii) if lawyers accept CLARITY's view that the laudable aims of certainty of meaning, comprehensiveness and intelligibility are not exclusive of each other;
- (iv) If unavoidably lengthy clauses are broken down into comprehensible form by the sensible use of punctuation and sub-clauses; and

- (v) if those drafting legal documents follow the advice recently given by the National Consumer Council "to write with the interests and abilities of your reader constantly in mind".

The memorandum concluded by expressing likely support for any recommendations of the Conveyancing Committee designed to help achieve CLARITY's objective of the use of good, clear English by the legal profession. It is therefore particularly pleasing to see, first, the Committee's acceptance in the report that *the principle of using plain English in legal forms and documents is obviously sound* and, second, the following paragraph included among the Committee's conclusions:-

Strongly Recommended: Compatibility, Consistency and Comprehensibility of Forms. The forms used in conveyancing transactions should be designed so as to be compatible with word processors, standardised wherever possible (particularly the two principal sets of general conditions of sale) and also made comprehensible, so far as possible, to lay persons.



Your editor is fast running out of ideas for cartoons that fall within the scope of his very limited ability. All contributions gratefully accepted.

LORD DENNING REGRETS

A number of members at the Annual Meeting in September felt that CLARITY ought to have a suitable figurehead as honorary president or patron. Lord Denning's love of clarity of expression made him an obvious choice and, at the request of members, he was warmly invited to accept this role. Here is his reply:—

Dear Mr Walton,

I am glad that CLARITY is progressing so well, and I have been very glad to have copies of all your newsletters. You are indeed doing well.

I am most interested to see your suggestion that there should be a Plain Language Act. I doubt whether it would get very far, especially as Lord Renton's excellent report has not been implemented, as I think it should have been.*

Now it is kind of you to invite me to become the Honorary President of CLARITY. In a way I should like to do so, but on the whole I feel that at my age it would be better for me not to accept it. You are doing exceedingly well with you as Chairman, and I am sure you will go right ahead. I must beg to be excused from active participation, even as President.

*Yours sincerely,
Denning*

*The Lawn,
Whitchurch, Hants.*

(*This is a reference to the National Consumer Council proposal, as argued by Richard Thomas at CLARITY's Annual Meeting)

SUCCESSFUL COMMUNICATION

A short comment in response to Mr McKean's letter. Whilst I appreciate his concern for clarity, there is a much more significant question to be asked. Is it clarity for the reader of the communication? Whilst we may be able to judge our own responses to language, it is more difficult to judge the response capacity of the client. It is infinitely more difficult to judge the response capacity of a party that one has not met. Hence, in my view, if what one writes is to be a successful communication then it must be cast in the simplest language. If there be a scintilla of doubt, then it must be recast. It follows that there is less likely to be doubt if the usual canons of expression be used. Whilst the infinitive may be split, *it is preferable to not do so*. Splitting the infinitive can affect the confidence of the reader and he may not take the use of other conventions at their face value. Effective communication is most likely to be achieved if there is consistent and disciplined use of English.

Dr. Stanley Robinson,
University of Queensland

PRECEDENTS

I read with interest the letter published in your July 1984 issue from Mr M.P.H. Tyler of Kowloon, Hong Kong. I work with Mr Tyler and we are fellow members of Clarity. I was not, however, aware that he was writing to you.

I agree with almost everything that Mr Tyler says but must dissent strongly from his second paragraph.

In this paragraph he writes "people who understand this need precedent only, for instance, to assist them develop the simple direct style of which the Clarity Newsletter has already given examples." This paragraph appears to me to be ambiguous. I cannot understand whether those people need precedents only for the reason given or the reason given is an instance of when those people need the precedents. If he claims that they need them for the reasons he mentions only then I beg to differ. If that reason is only an instance he must agree that precedents may be of other use.

For myself I agree that a thorough understanding of the subject, clear logical thought and the proper use of English are the most important criteria for good drafting. And a person who needs precedents in order to achieve those three criteria is not a good draftsman. However, the precedent can also be a useful and time saving checklist to ensure that the draftsman has not left anything out. In addition to being well understood, clearly and logically thought out and properly expressed a good legal document must be comprehensive.

Perhaps all that is needed on many occasions is a checklist. But then if somebody else is willing to do the work of writing for me I am very happy to take advantage.

M.D. Fairbairn,
Kowloon.

LEGAL DRAFTING COURSE

This residential course is due to take place at the University of Cambridge from 27th to 29th June, 1985. It is organised jointly by the Law Society's Commerce and Industry Group and the Centre for Commercial Law Studies (part of the Laws Faculty, Queen Mary College, University of London). A similar course last year covered general principles of drafting, construction and interpretation, structure and layout, plain English and pitfalls.

For further details on this and other courses, please contact Mrs N. Jones, Centre for Commercial Studies, Queen Mary College, Mile End Road, London E1 4NS.

HELP PLEASE

Consumer Law Specialist Sought

Formecon Services Ltd is a publisher and supplier of specialised business forms. Its principal activity is converting legal requirements which affect businesses/employers, into practical and understandable documentation.

As a member of CLARITY, Formecon would like to hear from members having specialist knowledge of consumer legislation, with regard to a new range of forms.

Please write to:—

Mr Patrick Redstone,
Formecon Services Limited,
Douglas House,
Gateway,
Crewe
CW1 1YN.

Voluntary organisations' governing instruments

I am not a lawyer. Part of my work is drafting, re-drafting and amending governing instruments for voluntary organisations; constitutions for unincorporated organisations; memoranda and articles for companies limited by guarantee; possibly deeds for charitable trusts. For most of these documents there are readily available models, but they are usually written in a formal and sometimes complex legal (or legalistic) manner. It has been my wish for some time to try and draft new model forms which are more understandable and useful to the people who need to use them.

I wonder if there is someone who would be interested in being associated with an attempt to do this work along the lines of the Plain English for Lawyers booklet recently published by the National Consumer Council?

Parry Thornton,
Information Officer,
Leeds Council for Voluntary Service,
229 Woodhouse Lane,
Leeds
LS2 9LF

Any more pleas for help?

A "help please" column can obviously be a very useful service between members. Do please make use of it.

SIMPLIFIED UNDERTAKINGS

In a letter to the Law Society's Gazette, David Welham of Peldon, Colchester suggests a simplified version of the form of undertaking recommended by The Law Society in connection with discharging a mortgage. The Law Society's form is stated as:—

"In consideration of your today completing the purchase of ... we hereby undertake forthwith to pay over to the ... building society the money required to redeem the mortgage/legal charge dated ... and to forward the receipted mortgage/legal charge to you as soon as it is received by us from the ... building society."

The alternative suggested by Mr Welham is:—

"We undertake forthwith to pay the ... building society the money required to redeem the mortgage/legal charge dated ... and to forward the receipted mortgage/legal charge as soon as we receive it."

Mr Welham wonders whether it is really necessary to state the reason for giving the undertaking. He asks whether it is not obvious that the undertaking is "hereby" given and what the words "over to" add to paying the society. Above all, he adds, whence might one expect to receive the mortgage/legal charge other than from the building society to which one sends it; and if it accidentally came from a different source, would one's obligation not remain?

Mr Welham stresses that he is all for retaining standards, but not flatulence. Happily, he has since accepted an invitation to join CLARITY.

IN OTHER WORDS

A recent solicitors' letter reads:—

"We thank you for your letter of the 25th ultimo and we also refer to our telephone conversation of the 28th wherein are pointed out that although the transfer now included an indemnity covenant the same had not been duly sealed by the Council. You accordingly confirmed that you would have the same duly sealed by the Council after completion and would let us have a copy thereof."

Sad that it's so typical, isn't it?

AND FINALLY

The success of this newsletter depends on you. All contributions to John Walton please (making note of his new address).