

CLARITY NEWSLETTER

a movement for the simplification of legal English

No. 7

JULY, 1987

Contributions to: Mark Adler, 35 Bridge Road, East Molesey, Surrey KT8 9ER

YES, WE'RE STILL HERE

..... in spite of the length of time since newsletter No. 6. Sorry for the delay – I just hope that this issue's mixed bag will compensate in some way. And for those who feared that their memberships had lapsed, they haven't. But a reasonably healthy bank account means that no subscription renewals have been invited.

Working Committee

Your Working Committee (Mark Adler, Ken Bulgin, Katharine Mellor, Justin Nelson and I) have certainly not been idle. We are pleased to report a successful drafting seminar last Autumn and plans are already in hand for the next. Membership continues to grow and is now around the 400 mark. A revised membership list is sent with each member's copy of this newsletter.

Annual Meeting

Less successful was the 1986 Annual Meeting, which had to be cancelled because only four non-committee members said they were coming! This really won't do, if CLARITY is to flourish. To encourage greater active participation, the working committee is suggesting a change of venue and a more sociable approach. See page 6 for details.

Accounts

Copies of the 1985/86 accounts, prepared for the cancelled 1986 Annual Meeting, are sent with members' copies of this newsletter.

My Role

I have just been appointed to a new management post which, as happens in local government, takes me even further from the "coal face" of legal practice and procedure. For this reason, and also because I believe CLARITY would benefit from a new "helmsperson", I intend to resign from the working committee in September. I will continue to take an active interest in the future of CLARITY, which I am sure will go from strength to strength. This means of course that there will be a vacancy on the Working Committee to be filled at the Annual Meeting. Mark Adler has kindly agreed to edit the newsletter, so all contributions to him please.

John Walton.

DRAFTING SEMINAR, 5TH NOVEMBER, 1986

The working committee is pleased to report a highly successful occasion, run jointly with Trent Polytechnic, Nottingham.

There were 38 delegates, of whom about half were members of CLARITY. John Walton took the chair and introduced the seminar. Talks by Richard Castle and Trevor Aldridge then followed. Richard talked about general principles and Trevor considered some detailed aspects of drafting.

Delegates then split into six groups, to work on the re-drafting of the repairing clause of a commercial lease. Delegates had been sent this in advance with the warning that they would be expected to prepare a re-draft at the seminar. They had also received a clause from a commercial lease concerning compliance with planning regulations, together with two suggested re-drafts of that clause to start them thinking in the right direction.

Members of CLARITY'S working committee and the speakers sat in on the different groups. There was a great deal of discussion and offering of ideas, not only with regard to re-drafting, but as to what might actually be meant by the clause.

After tea we re-assembled as one group, when the speakers were joined by Victor Tonge, a Senior Lecturer in law at Trent Polytechnic, and John Gossage, a solicitor in private practice in Nottingham. They had been involved as lecturers at a morning Polytechnic seminar on business leases, which many of the afternoon delegates had also attended.

A member of each group reported on the approach taken by that group to the re-drafting and read out the final version of the clause prepared by the group. The panel then commented on the version.

The seminar closed with a general discussion and question session.

CLARITY would like to thank Richard Castle and Trevor Aldridge most sincerely for participating in the seminar and thanks are due also to Trent Polytechnic for being so enthusiastic in hosting it.

The working committee is hoping to arrange a similar seminar next spring. Details will of course be circulated to all members. It is hoped that future courses will qualify for points under The Law Society's Continuing Education Scheme.

Katharine Mellor

CLARITY RE-DRAFTING COMPETITION

This proved a popular feature and we are grateful to all those who entered. Set out below is a selection of members' translations of this lease clause:

TO KEEP OPEN FOR RETAIL TRADE

(10) To keep the demised premises open for retail trade during the usual hours of business and the windows thereof dressed in a suitable manner in keeping with a good class parade of shops AND not to allow or suffer to be allowed any goods or wares to be displayed or exhibited otherwise than from within such windows nor from a showcase within any shop entrance of the demised premises unless the same shall be a permanent immovable showcase or window display forming an integral part of the layout of such entrance as shall have been previously approved as such by the Landlord AND at all times comply with all requirements of the Local Authority or Local Planning Authority in connection with the user of the demised premises for the purpose of the business for the time being authorised to be carried on therein PROVIDED ALWAYS and it is mutually agreed and declared that nothing in this Sub-Clause (10) shall prevent the Tenant from using the demised premises outside of the said usual business hours PROVIDED that it obtains the prior written consent of the Landlord to such opening and SUBJECT ALWAYS to the Tenant paying to the Landlord on demand the total additional costs resulting to the Landlord (as conclusively determined by the Landlords Surveyor) by virtue of any such additional or extended use.

From Steve Wilton, Skipton, N. Yorks:-

10.1 Hours of Opening

10.1.1. The tenant must keep the shop open during the usual hours of business.

10.1.2. The tenant may keep the shop open at other times provided:-

- (i) he obtains the written consent of the landlord; and
- (ii) he reimburses the landlord for any additional costs which the landlord's surveyor calculates as resulting from such extended opening.

10.2 Display of Wares

10.2.1 The tenant must ensure that there is always a display of wares in the shop window.

10.2.2. The tenant may also display wares by the public entrance to the shop provided:-

- (i) they are displayed behind a window or in a showcase which forms part of the structure of the building; and
- (ii) he obtains the written consent of the landlord to the display.

10.2.3. The tenant must not display wares anywhere else in the shop.

10.2.4. The tenant must ensure that any display:-

- (i) complies with any local authority requirements relating to the use of the shop; and
- (ii) is not vulgar or offensive.

From John Fletcher, Maidenhead:-

[The Tenant]

(10) During usual business hours, may [must] keep the premises open for retail trade; must ensure that the windowdressing is in keeping with a good class parade of shops; must ensure that any goods exhibited in the windows and entrances are in a permanent and immovable showcase or window display, forming part of the relevant entrance layout previously approved by the landlord; and must comply with any Local Authority or Local Planning Authority requirements which affect the premises or their use.

Outside usual business hours, the tenant may use the premises if the landlord has previously agreed to this in writing, but must reimburse the landlord on demand for any costs (as determined by the landlord's surveyor) which result from such use.

From Justin Nelson, Tenterden, Kent:-

10 (a) to keep the Property¹ open for business² during normal business hours

(b) to maintain a suitable window display at the Property but not otherwise to display goods there (except with the Landlord's prior written consent)

(c) to comply with all planning legislation resulting from the use of the Property³

PROVISOS:

- the Tenant may use the Property outside normal business hours if he:

(a) obtains the Landlord's prior written consent and

(b) indemnifies the Landlord against all consequent expense.

Footnotes

1. "Property" is a more understandable word than "demised premises".

2. Presumably the permitted use and, therefore, the "business" is defined elsewhere in the lease.

3. I would not bother with (c) at all, if the lease contained a general covenant to comply with planning obligations.

The tenant will do the following:

1. Keep the Shop open for the Permitted Business during hours which are customary for that business and during any additional hours for which the Landlord gives his written agreement. The Landlord's surveyors will decide conclusively whether the Landlord will incur any cost relating to the additional use of the Shop and the Tenant will pay that cost as a condition of obtaining the Landlord's agreement.
2. Maintain an attractive display of goods solely in the Shop windows and (if the Landlord agrees in advance) in any permanent showcases and parts of the entrance to the Shop which are designed for the display of goods.
3. Carry on the Permitted Business in accordance with the requirements of the Local Authority and Local Planning Authority.

FOOTNOTE

I have assumed that in the Lease the terms "Shop" and "Permitted Business" will be defined.

THE WINNING ENTRY

This was from David Pedley of Via Keighley, West Yorkshire, who has received his prize of a £10 book token:-

To Keep Open for Retail Trade

- 10.(i) (a) To use the premises as a good class shop during normal shopping hours.
- (b) Not to allow displays outside the shop, or in the entrance other than in a fixed display case previously approved¹ (by the Landlord)².
- (c) To comply with local authority legal³ requirements.

(ii) the tenant may with consent (of the Landlord)² open outside normal shopping hours on payment of any additional costs to the Landlord (as conclusively determined by the Landlord's surveyor).

Footnotes

1. *In the original, displays inside the shop are prohibited, but presumably this was inadvertent.*
2. *These words do not seem absolutely necessary.*
3. *This requirement was not in the original but could possibly be said to be assumed.*

What is apparent is that there can be no perfect draft. Each of the entries had something to offer, however, and the working committee have produced their own version, borrowing ideas of course from the various entries received. This is also offered for members' consideration.

To Keep Open for Retail Trade

- 10 (a) to keep the shop open for business during normal business hours;
- (b) not to open the shop for business outside normal business hours, unless the tenant:
 - (1) obtains the landlord's written consent; and
 - (2) indemnifies the landlord against all consequent expense (as conclusively assessed by the landlord's surveyor).

Display of Goods

- 11 (a) to maintain a window display appropriate to a good class parade of shops;
- (b) not to display goods outside the shop or in its entrance without the landlord's written consent.

Footnotes

1. *"the shop" will be defined elsewhere in the lease.*
2. *The user clause, elsewhere in the lease, will have effectively defined the "business".*
3. *We consider that the planning requirements could be more effectively embodied in a general obligation to comply with statutory requirements elsewhere in the lease.*

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FOR THE AVOIDANCE OF DOUBT

Here are some useful definitions from the Education (School Governing Bodies) Regulations 1981:

"In these Regulations any reference to a Regulation is a reference to a Regulation of these Regulations, any reference in a Regulation to a paragraph is a reference to a paragraph of that Regulation and any reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph."

So now you know!

RECOMMENDED READING

Mr J.F.H. Charlton, has kindly sent in a copy of his reading list, which is published here for the benefit of members. Do please send in your own suggestions for adding to the list.

TITLE	AUTHOR	PUBLISHER
The Theory of the Craft		
Straight and Crooked Thinking	Robt. H. Thouless	Pan
Language Truth & Logic	A.J. Ayer	Pelican
The Preparation of Legislation ("The Renton Report")	N/A	HMSO Cmnd. 6053
Fowler's Modern English Usage	Gowers	Oxford
A Modern Introduction to Logic	L.S. Stebbing	Methuen
Language & The Law	Glanville Williams	LQR 1945/6
Statute Law Review	N/A	Sweet & Maxwell
How to do Things with Rules	William Twining & David Miers	Weidenfield & Nicholson
The Practice of the Craft		
On Writing Well	William Zinsser	Harper & Row
How to Write Plain English Books	Rudolf Flesch	Barnes & Noble
The Transitive Vampire	Karen Gordon	Severn House Publishers
The Complete Plain Words	Gowers/Fraser	Penguin
Materials on Legal Drafting	Reed Dickerson	West Publishing
Mind the Stop	G.V. Carey	Pelican
Dictionary of Troublesome Words	Bill Bryson	Penguin
Plain English for Lawyers	N/A	National Consumer Council
Straight to the Point	Forms Unit, MSM2	DTI
Lord Denning's Judgments	Lord Denning	Var. Law Reports
The Economist Style Book	Ed. John Grimond	Economist Publications
Plain English for Lawyers	Richard C. Wydick	California Law Review
Legal Drafting	R.C. Dick	Carswell Company Canada

HELP PLEASE

Counsel for Contract Revision

I would appreciate any help with regard to the name of Counsel who may be able to help with the following task.

I am an in-house solicitor with a large retail company which operates a number of warehouses. From time to time I become involved in lengthy complicated agreements (running to 70 pages +), in respect of the supply of equipment in our warehouses which run to millions of pounds.

We currently use a Form of Contract based on Model Form A as recommended by the Institute of Mechanical Engineers, the Institution of Electrical Engineers and the Association of Consulting Engineers.

Many of our suppliers are foreign and have great difficulty in understanding the tortuous and legalistic clauses. The same problem is experienced by not only myself, but my colleagues who have to prepare, implement and run such contracts.

Unfortunately, I do not have the time to devote to a revision of the standard Form of Agreement which we currently use and I would like to place the task with a Barrister with the sole purpose of translating the Agreement into plain English!!

Can anyone let me have some names of Counsel who may be able to assist?

F.W. Oakes,
Universal House,
Devonshire Street,
Manchester M60 6EL.

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No Idler for Adler

Mark Adler is looking for a recently qualified solicitor (or possibly a good articulated clerk) for his small general civil practice at Hampton Court, just outside London. Human dynamo preferred. 01-979-0085.

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See You Later, Litigator?

Is there such a creature as a clear-thinking litigator? Most members of CLARITY will be conveyancers, commercial lawyers, etc., but there may be a few litigators. In case any such rarity is considering new employment, there is a vacancy with Justin Nelson's firm in Kent. Anyone interested please contact Justin direct at work [05806 - 2251] or at home [05806 - 5313].

WHY DO THEY DO IT?

After all the advice local authorities have received about communicating clearly to the public they still produce material that is totally baffling even when seeking public views.

A typical example is shown below. Who outside the department will have any idea what it is about?

**BOROUGH COUNCIL
LOCAL GOVERNMENT ACT 1972
LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1976
PUBLIC HEALTH ACT 1975**

NOTICE IS HEREBY GIVEN that the _____ Borough Council intended on a date not earlier than the 30th day of May 1986 to pass a resolution under powers contained in Section 180 of and Schedule 14 to the Local Government Act 1972 applying the provisions of Section 171(4) of the Public Health Act 1875 throughout the area of the Borough.

If passed the resolution will come into effect, if approved by the Secretary of State for the Environment, on such date as he may specify.

Any representations relating to this proposal should be made in writing to the Council at the below mentioned address and should be received by no later than the 23rd day of May 1986.
Dated this 18th day of April, 1986

Chief Executive

Who knows what invasion of individual rights is being proposed or whose property will be affected? It is a good idea to tell the public about matters to be discussed at council meetings, but this sort of notification is useless.

The proposal is to extend the licensing of taxis to the whole of the borough and to restrict the number of taxis plying for hire there. The general public and interested groups might have had some important points to make but just how many were aware of what was being proposed?

If these notices are required by law, then it is time the law was amended. But, in the meantime, surely an extra note could be added to explain what it is really about. Is it surprising that local government is seen as bureaucratic and legalistic when this image is presented to the public?

[From an article by George Jones and John Stewart, reproduced by kind permission of the Local Government Chronicle.]

1987 ANNUAL MEETING

Following last year's poor response, the Working Committee has been considering how best to improve attendance for CLARITY's 1987 Annual Meeting. Previous meetings have been held in Rugby, mainly because of its central location. Because of the large number of members living in the South-East, however, the Committee is suggesting that this year's Annual Meeting be held in Central London (venue to be arranged).

Two dates are suggested:

- EITHER** Friday, 25th September, 1987 at 7.30p.m. (preceded by a reasonably priced buffet at 6.30p.m.)
- OR** Saturday, 26th September, 1987 at 11.00a.m. (followed by a reasonably priced buffet lunch at 1.00p.m.)

The buffet (optional) is proposed in each case to give members an opportunity to meet socially.

Your views are needed on where and when we are to hold CLARITY's 1987 Annual Meeting, to ensure a good attendance at what has always been a lively, enjoyable occasion. If you hope to be able to attend, **please complete the tear off slip below** and return it to Mark Adler, by not later than 21st August, if possible. Further details will be sent to those replying.

THE PLAIN ENGLISH STORY

Martin Cutts and Chrissie Maher don't like complicated official writing; they believe it confuses and humiliates many people. Their Plain English Campaign has led many government departments and insurance companies to write forms, leaflets, letters and agreements in plainer words and to set them out more clearly and logically. Today, say the campaigners, it's difficult to find a truly atrocious government form.

The Plain English Story describes how the war on gobbledygook grew from an advice agency in Salford, Lancashire to an organisation that is regularly consulted by those government departments, local councils and finance companies who are trying to adopt plain English as their official language.

Most of the book gives practical help on how to write and set out official documents. It says that the best documents are created by a partnership between a writer committed to plain English and a designer committed to high legibility.

The Plain English Story includes many translations of muddy prose (including legal language) into clear language. It also shows how a plain English approach can transform the layout of documents.

The Plain English Story is available direct from Plain English Campaign, Vernon House, Whaley Bridge, Stockport SK12 7HP (Telephone 06633 - 4541) for £5.50 including postage and packing (UK)

CLARITY ANNUAL MEETING 1987

1. Preferred location: London Rugby
2. Preferred date/time:
- Friday, 25th September at 7.30p.m.
(buffet at 6.30p.m.)
- Saturday, 26th September at 11.00a.m.
(buffet at 1.00p.m.)
3. Would you be likely to want a reasonably priced buffet to be arranged for you?
- Yes No

Name: _____

Contact Address: _____

Telephone (day-time) _____

Slip to be returned to Mark Adler, 35 Bridge Road, East Molesey, Surrey KT8 9ER
by 21st August, please