

## INDEX

Advertisement	6
Annual meeting	1
Committee	6
Drafting competition	5
Face the facts	5
Financial crisis	1
History of the shibboleth	4
Law Society	2
Letters	3
Members	6
Precedent library	5
QMC drafting course	2
Seminars	6
Victoria's plain English reform	4

*The next issue should be out in December. Meanwhile, is there, please, a volunteer to run off the Newsletters (or at least a master copy) on a Macintosh laser printer?*

## ANNUAL MEETING

At the time of going to press 23 people have arranged to come to the annual meeting and buffet but last minute arrivals will be welcome, subject to reasonable notice if you want to eat. Please contact Mark Adler as soon as possible at the address on page 6.

The meal, which costs £10, is at 6.30pm on Friday, 7th October at The Law Society's Hall, 113 Chancery Lane. The meeting, which is free, follows at 7.30 and should last about an hour.

Amongst other matters, we will be discussing our possible application for recognition by The Law Society and electing two new committee members.

If you are not able to come but would like to have a point raised at the meeting, please write to Ken Bulgin.

## FINANCIAL CRISIS

There has been a disappointing response to the plea in the last Newsletter for renewal of subscriptions. Nothing is due from those who joined in 1988 but only about one earlier member in four has paid.

We have managed since 1983 on the income generated by new members so that until now it has not been necessary to ask for renewals. However, the recent increase in our activities left us almost penniless, despite subsidisation from the committee.

Thanks to £250 recently paid by Trent for the last seminar and £500 in subscriptions, the immediate crisis has passed but we still need money.

A 6-page issue of the Newsletter costs about 22p to produce and post; this is the third this year and with the free use of this new computer it is hoped that future issues will appear quarterly. The Newsletter is sent to more than 400 members and to a number of organisations who are or may be interested. We also need to pay for the annual meeting, other administration and our increasing activities. Moreover, costs have risen because of the loss of use of facilities previously available to John Walton without charge.

The first £5 contributed by each member has paid over 5 years for two seminars, nine Newsletters, the instigation of the precedent library, publicity for CLARITY's principles, four general meetings and nearly twenty committee meetings.

**If your subscription is due you should find a renewal form enclosed. Please return it as soon as possible. £5 is little enough and without it we will reluctantly assume you want your membership to lapse.**

## RESPECTABILITY FOR CLARITY?

Should CLARITY seek recognition by The Law Society as a Special Interest Association?

These Associations do not receive the same support as the Special Interest Groups (which are virtually minor committees of The Law Society) but it has been suggested that they benefit by increased status from recognition. More practically, the Communications Division of The Law Society says: "Closer liaison between the Association and the particular Department in The Law Society concerned with its work is of benefit to both parties. The Associations also benefit by being able to call on other Law Society services such as Records and the Gazette."

The criteria for recognition are that:

- (A) The group's sphere of interest is not one substantially undertaken by any other solicitors' group;
- (B) At least 75% of members are solicitors;
- (C) It is already established with a satisfactory record of activities and meetings and there is evidence of a need or desire for an association of that type; and
- (D) It has a constitution.

There should be no difficulty with (A) or (C) but until more renewals slips have been returned we will not be certain about (B), although it does seem from those we have that about 80% of members are solicitors. We hope to print a breakdown of the figures in the next issue.

(D) is a little controversial. We have always managed without a constitution, although the possibility of forming one has occasionally been mooted. Opposition has been on the basis that whilst we operate satisfactorily without one nothing would be gained by the additional formality and that it would therefore be out of keeping with the spirit of the movement.

The possibility of applying for recognition will be discussed at the Annual Meeting. Anyone with a view but unable to come is invited to write in.

Meanwhile, we have been liaising with the Business Improvement Committee of The Law Society, who are sympathetic to our aims. Clive Baldon, its secretary, was instrumental in having an article promoting CLARITY published in the Gazette this month and he plans to attend the Annual Meeting.

## QMC's CLEAR LEGAL ENGLISH COURSE

The Centre for Commercial Law Studies at Queen Mary College held its annual course, "Principles of Legal Drafting", from the 15th to 17th September, as guests of the University of Bath.

The course reflected the long-standing commitment of the organisers, Professors Roy Goode and John Adams, to clear English. In structure it was similar to CLARITY's Trent courses but it had the advantages of professional organisation, a larger budget and additional time.

The first exercise was to draft an agreement for the use of a small plane. A mock solicitor-and-client interview between Carolyn Walton and Richard Castle supplemented written instructions. The papers were marked and Professor Adams expressed pleasure at the substantial improvement in the quality of drafting over that of previous years.

For the rest of the course, lectures were followed by exercises based upon them. Students were helped by written outlines and two booklets of articles and examples. Professor Adams discussed the pros and cons of plain English before giving detailed advice on improving style; Murray Ross spoke on the use of layout as an aid to understanding, Professor Goode on principles of interpretation and James Wheaton on the use of flow charts to organise complex instructions.

Guest of honour and entertaining speaker at the dinner on Friday evening was Professor Robert Eagleson of Sydney. Professor Eagleson, a linguist, has collaborated successfully with lawyers in Australia to draft legislation in plain English and is an enthusiastic member of CLARITY. He made what should have been but is not an obvious point - that law and language were different disciplines and the lawyers' assumption of drafting superiority was often unjustified.

Hazel Williamson QC and Jennifer Israel of the Council of The Law Society both joined the other speakers for a closing discussion during which Prof. Eagleson finally persuaded Murray Ross that "shall" was always best replaced - usually by "must" or "will".

54 delegates, most from industry and the large private practices, paid £250 each. This is a large sum likely to discourage smaller firms but QMC and Bath University gave good value and next year's course is strongly recommended. We plan to publish details when they are available.

Although CLARITY played no part, most of the lecturers are members and we were given generous support, both by reference and in a display of our material. In particular, we have great pleasure in welcoming Roy Goode as a member and we look forward to future collaboration.

## LETTERS

May I suggest that the reason that Justin Nelson is unable to find a precedent of an equity mortgage (*Newsletter 9 p.3*) is because the arrangement he describes - lender entitled to a percentage of the proceeds of sale in lieu of return of capital and interest - is more usually known as a tenancy in common? Instead of a long separate mortgage deed, all that is required is a simple declaration inserted in the Transfer as to the beneficial interests under the statutory trusts.

One can of course abandon the simplicity of this approach for more complex provisions depending on the relationship of the parties - i.e. it may be appropriate to set out the purpose for which the property is being acquired to establish when s.30 of the Law of Property Act 1925 may be invoked, or to give the "borrower" an option to buy the "lender's" share of the property, or to establish responsibility for outgoings. All this can however be achieved within the framework of the tenancy in common.

An additional advantage is that if the property is the principal residence of the "borrower" the "lender's" gain will not be liable for Capital Gains Tax.

### **A.C.Balchin**

The Manor, Boddington, Cheltenham, GL51 0TJ

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As usual I read the Newsletter right through within a short time of receiving it, and drafted this, but am only now getting round to typing.

I refer to page 6 at the bottom: "Lawyers Against Waffle" may make a good motto for CLARITY but it is not as printed an acronym - whoever composed the box should have looked in a dictionary. If the organisation was entitled Lawyers Against Waffle, the acronym would hardly be a safe one to use. (*Harry Eaglesoup replies: Pedant!!*)

I commend Alison Gorlov for her excellent letter, even if she had overlooked the Leases Act 1845 (as do most of us!). The last paragraph is particularly important. I am concerned about effective communication which for me means achieving that the reader attributes to what he reads the same meaning as that intended by the writer. Our organisation is called CLARITY not Brevity. All too often the former is sacrificed to achieve the latter. Brevity is not a virtue if it leads to obscurity or ambiguity; brevity as far as it is consistent with clarity is. The use of

such words as "promptly", which mean different things to different people and different things at different times is to be avoided in good drafting - it leads to uncertainty. Let precision be one of our watchwords. In the short time I have been practising (27 years) I have found that what clients want when being advised, and so often cannot have, is certainty.

I am disappointed that the editor did not answer the point raised by "Disgusted of Tunbridge Wells". Are contributions received from non-committee members? *(I don't know why Philip Huntly's letter was included; I think this was a lapse of judgement on my part. Not only is he not on the committee but he hasn't paid his subscription - Ed)*

I do hope we do not fall into the bad habits of the Plain English Campaign, which often seems to criticise text without suggesting what should take its place.

With regard to the point numbered 3 near the second column on page 6, I do agree that far too many lawyers write badly - or else are just too lazy to read their letters before signing them (as is suggested, one hopes, by the ever increasing number of typing and spelling errors) or cannot face the wrath of their typist if they make alterations and ask for a re-type!

### **Tony Wickens**

2 Frensham Walk, Farnham Common, Slough SL2 3QF

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I enclose my renewal sub, and have these points arising out of the latest Newsletter:

1. The Interpretation Act does not apply only to legislation - see s.23 (3).
2. The Interpretation Act is difficult to interpret! I would support a new Act along the lines suggested on page 1. Trevor Aldridge also has views on this.
3. Gowers (or at any rate "The Complete Plain Words") is dealt with in the plain English report by the Law Reform Commission of Victoria (*p. 4 below*).

### **Richard Castle**

Mabor Farm, Clearbrook, Yelverton PL20 6JD

I wonder if anybody can throw any light on a phenomenon which I find distinctly puzzling. This is the practice of providing that "The headings (or sidenotes) are for identification purposes only and not to be used as an aid to construction". Why?

If a clause could not be understood without reference to the heading a court would have to hold it unenforceable. Is this what the parties wanted? Presumably not.

So why is the clause there in the first place? Is it that lawyers are afraid to taint their quaintly drafted documentation with nice, clear headings? Or is there a more rational reason that escapes me?

**John Wilson**

33 Manor Row, Bradford BD1 4PS

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## THE PLAIN ENGLISH REPORT OF THE LAW REFORM COMMISSION OF VICTORIA - an extract

Precision and clarity are not competing goals. Precision is desirable in order to minimise the risk of uncertainty and of consequent disputes. But the document which is precise without being clear is as dangerous in that respect as one which is clear without being precise. In its true sense, precision is incompatible with a lack of clarity. As Thornton says:

The purposes of legislation are most likely to be achieved by the draftsman who is ardently concerned to be intelligible. The obligation to be intelligible, to convey the intended meaning so that it is comprehensible and easily understood by the affected parties, is best satisfied by writing with simplicity and precision.... A law which is drafted in precise but not simple terms may, on account of its incomprehensibility, ... fail to achieve the result intended. The blind pursuit of precision will inevitably lead to complexity; and the complexity is a definite step along the road to obscurity."

*G.C. Thornton, "Legislative Drafting" 1987*

## HISTORY OF THE SHIBBOLETH

**James Kessler**

"The Language of the Law is Almost Necessarily Obscure ... it is obscure that it may be unambiguous." (*Sir Ernest Gowers: "The Complete Plain Words"*). This is the Shibboleth cited and criticised in the last Newsletter. Whilst it may be agreed that legal drafting cannot be judged by the normal standards of good writing, most readers of CLARITY will share Justin Nelson's view that "obscurity for the sake of unambiguity" is almost self-contradictory: obscurity tends to lead to ambiguity.

Is the Shibboleth an invention of Sir Ernest Gowers, or does it have a history? The Shibboleth is also recorded in Fowler's "Modern English Usage" (1st edition, 1926) under the heading "Officialese":

Legalese cannot be judged by literary standards ... eloquence cannot be expected ... indeed, it is hardly an exaggeration to say that the more readily a legal document appears to yield its meaning the less likely it is to prove unambiguous.

However, this passage, which at first appears to be the source of the Shibboleth in "The Complete Plain Words" does not originate from H.W. Fowler. It was inserted in 1965 when Fowler's book was edited by Sir Ernest Gowers. The history of the Shibboleth remains unknown. Perhaps another member of CLARITY could unearth the records of an earlier discussion on the merits of traditional legal drafting. Drafting in the Victorian era was considerably more obscure than at the present time and can hardly have escaped the attention of the layman.

Gowers also recorded his view that the reason for the obscurity of the Finance Acts was the determination of the draftsman to make sure that, when the reader eventually gropes his way to a meaning, it should be, beyond all possible doubt, the meaning intended by the writer. As a former chairman of the Board of Inland Revenue, his words must be treated with respect. But the proof of the pudding is in the eating: parliament is so accustomed to obscure drafting in Finance Acts that defects may pass unnoticed. A glance at the Tax Cases shows that this is not an infrequent occurrence.

## DRAFTING COMPETITION

Harry Eaglesoup writes: "Clauses 2 and 3 of the Drummond trusts (*Newsletter no. 9 p.2*) seem to contradict each other and this is the best I can make of it...

The trustees shall hold the fund:

(1) To pay the net income:

(A) To the settlor during his lifetime; and

(B) After his death to those of his daughters who reach the age of 21 or marry sooner (their respective shares passing per stirpes after their deaths to their own daughters similarly defined) but so that none may anticipate or charge her interest;

(2) After the death of each (all?) (grand-?) daughter (s?), to divide her share of the capital amongst:

(A) Such of her issue and in such proportions as her will directs; or if there is no direction,

(B) Equally amongst her children who reach the age of 21 or, if daughters, marry sooner; or if none,

(C) Equally amongst the settlor's daughters, the share of any who has died passing per stirpes to her children when they reach the age of 21 or marry sooner.

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## FACE THE FACTS

Being a regular Radio 4 listener, one evening I happened to have my tranny tuned in when the programme of this name came on. For those of you who are not familiar with it, it is one of those "consumer" programmes where the presenter pursues his "shock-horror" type leads in the "Not quite the finest but we're on a limited budget" tradition of English journalism (i.e. with a foot in the door and microphone in the face and "Well, what have you got to say about so-and-so, Mr Bloggs? Aren't you just a conman, Mr Bloggs? Eh? Eh?").

This programme was about a man who lets premises for chip shops, using a simple method of getting rich at the expense of solicitors.

He has a standard form of lease. His prospective tenants' solicitors regularly advise their clients that it is a "standard commercial lease" simply because it looks like one. In fact, it is anything but. Most importantly, the rent review provi-

sions are craftily worded to ensure that the rent rises at an astronomical rate.

Once the tenant has signed and has had a little time to settle in, the landlord visits. He explains the lease and tells them what it will cost them to persuade him to accept a surrender (not a modest sum) but that it is not as bad as it sounds because the tenant can recover by suing his solicitor for negligence.

But what has this to do with CLARITY? Simple. Surely such antics are only possible because of the daft language in which leases are written. If they were drafted in nice, clear English then trick clauses would be much simpler to spot, by the client as well as by his solicitor.

**John Wilson**

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## PRECEDENT LIBRARY

Katharine Mellor reports fairly brisk use the library, which she will maintain after leaving the committee.

However, only two new precedents have been sent in since the last issue and further contributions would be welcomed to maintain the momentum.

The complete list (with the new item in bold type) is:

Agency agreement	Katharine Mellor
Commercial lease	Justin Nelson
Commercial lease	Mark Adler
Computer software licence	Justin Nelson
<b>Contract for sale of house</b>	Mark Adler
Enquiries before contract	Justin Nelson
General	
Additional:	
Residential land	
Business land	
Business goodwill	
Existing leasehold	
Farmland	
Land subject to a tenancy	
Licensed premises	
New residential lease	
New business lease	
Sale under enduring power atty	
<b>Land Registry transfer</b>	Mark Adler
Residential flat lease	Justin Nelson
Requisitions on title	Justin Nelson

## VACANCIES ON THE COMMITTEE

We are sorry to announce that John Wilson has decided to leave the committee at the Annual Meeting.

He volunteered last year intending to replace John Walton as the representative of local government but has since returned to private practice in Bradford. There is no suggestion from anyone else that he could not contribute as much in his present position but he feels that it is time for him to step down, admitting to a loss of enthusiasm, in part brought on by the long journeys to meetings.

He has promised to continue his contributions to the Newsletter and we thank him for his efforts of the last year.

With Katharine Mellor also leaving on October 7th there will be two vacancies on the committee. Few members know others well enough to nominate them so the usual taboo concerning self-promotion is relaxed: would anyone willing to contribute themselves please volunteer at or before the Annual Meeting, whether able to attend it or not.

We hope, though it is not essential, that one of the recruits will have the use of a word-processor, to take over control of the membership list and the money. At present these jobs are inconveniently split.

## WELCOME TO NEW MEMBERS

Dr Michael Arnheim, academic now in practice at the London bar  
Paul Eldridge and Nicholas McFarlane-Watts, solicitors, partner-founders of the National Association of Sole Practitioners, Oxford  
Professor Roy Goode, Centre for Commercial Law Studies, London  
Philip Harland, solicitor, Manchester  
Michael Petley, solicitor & tutor, College of Law, Lancaster Gate

### and to old ones

Apologies to Murray Ross for leaving him off the membership list.

### And congratulations

to Sir Kelvin Spencer on his 90th birthday (with thanks for his donation to CLARITY).

### VACANCIES

still exist for assistant solicitors  
in the respective firms of  
Justin Nelson and Mark Adler

## CLARITY SEMINARS IN 1989

We are planning a half-day course on will-drafting with **Trent Polytechnic** and another on leases and tenancies with the **University of Kent at Canterbury**.

Both should be held in the spring of 1989 but the dates have not been fixed yet. We hope to publish further details next issue but if you need to know meanwhile please contact the committee.

## COMMITTEE

Ken Bulgin (Chairman and treasurer) 87 Hayes Road, Bromley, Kent BR2 9AE	01 740 7070
Katharine Mellor (Trent courses and the precedent library) Elliott & Co, Centurion House, Deansgate, Manchester M3	061 834 9933
Justin Nelson (Liaison with College of Law, Kent local group, book reviews) 12 Rogersmead, Tenterden, Kent TN30 6LF	05806 2251
John Wilson (Publicity) Richardson & Sweeney, 33 Manor Row, Bradford	0274 733281
Mark Adler (Newsletter, membership list, liaison with The Law Society) 35 Bridge Road, East Molesey, Surrey KT8 9ER	01 979 0085 Fax: 019 410 152