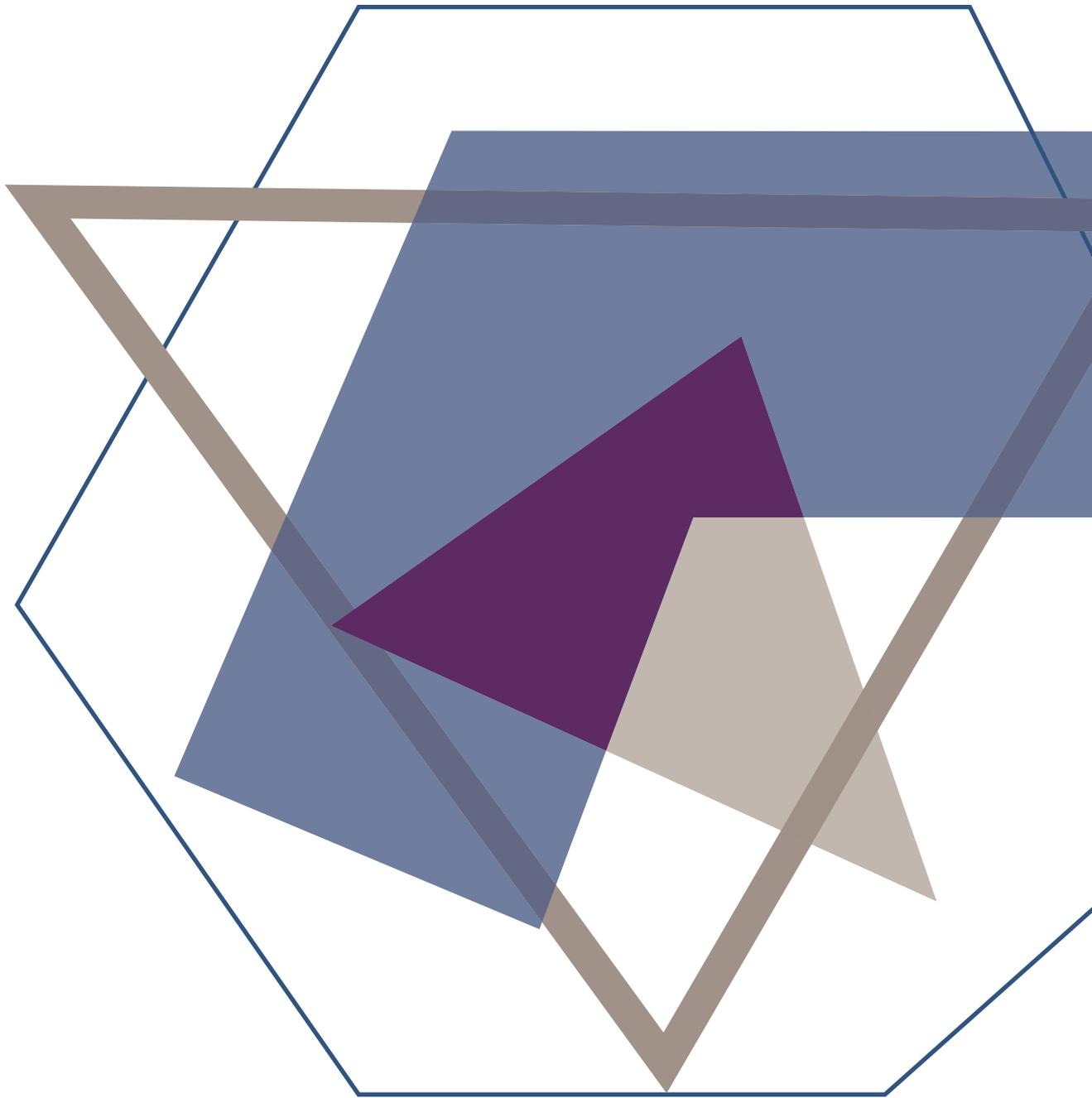


Number 74 2017

# The Clarity Journal

Published by Clarity, the international association promoting plain legal language



clarity

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# From the President



This is my last message as President of Clarity. I am pleased to welcome Eamonn Moran as our new President from November 2016. It has been an enjoyable and interesting time and I have had the great fortune of working with the other members of the committee to continue to develop Clarity as a leading, world-wide organisation.

My first focus was continuing the work of my predecessor Candice Burt with finalising Clarity's constitution. Many people worked tirelessly to develop this document and I thank everyone involved.

The other major achievement was the finalisation of a new Clarity brand and website. The website allows us to better communicate with you, our members. There is still work to be done but it is a considerable step forward for us as an organisation. Thanks to Josiah Fisk and his team at More Carrot for their pro bono assistance with this work.

While having a better looking website is one thing, it is another thing to keep it up-to-date. We have also employed Emma Mellon to assist with social media and web updates. This ensures that content is updated regularly and available to members.

In the area of our journals all but the past two issues are available on the Clarity website. And for the first time you can also search articles in the journal by author, title or keywords through a database developed by the Victoria Law Foundation website. The foundation, where I work, is committed to making information on plain language more widely available. Hopefully having the articles properly catalogue and optimized for SEO (or search engine optimization) will make it easier for the community at large to discover our work.

Further, all these outward looking activities are one thing but there has also been some work on improving systems to make us more sustainable into the future. We now have a country representative kit that includes access to brochures, logos and other information that can be used by the country reps to promote Clarity in their respective countries. The role of country representative is critical in generating interest in Clarity and one that Eamonn Moran, our new President, is keen to see further developed.

We have also set up better record management systems to allow for better transition between office holders and from conference to conference.

As I write this I have just returned from the 2016 conference in Wellington, New Zealand. The conference was co-hosted by WRITE Ltd. The conference was a great success. It was a pleasure to work with Lynda Harris and the team at WRITE Ltd – thank-you.

As I sign off, good luck to Eamonn in his new role. As they say in Star Wars - may the force be with you.

Joh Kirby

*Clarity International*

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# Editor's note



We have an amazing collection of articles, all waiting to be published this year, so look for several issues of *The Clarity Journal* in 2017. Meanwhile, here is the first: a long-awaited collection of just a few papers from Clarity's 2014 Antwerp conference.

We start with a paper I was privileged to work on with colleagues Kath Straub, Annetta Cheek, and Sean Mahaffey. We know that non-lawyers prefer plain language; our research now confirms that lawyers appreciate it even more.

We then examine some very specific contexts and the way plain—or obscure—language can make a difference. First, Martin Cutts examines the ways that something as seemingly simple as a parking sign can be used to trick the public. Tirza Cramwinckel then provides details about the Dutch Tax Authority's refreshing work to bring clarity to communications. And Karin Hansson shares the benefits (and challenges) of using both plain language and sound design in creating statistical surveys—a frustratingly elusive combination.

From those examples, we move on to Joh Kirby's discussion of the challenges lawyers face when communicating law to the public and how her organization has met some of those challenges. Steven Pinker then gives us some of the reasons behind bad writing—they're not always obvious! Still, even when we understand the problems and make real progress, sustainability becomes the next challenge. Neil James discusses ways to achieve critical mass in government communications—a necessary element to sustainability.

James Burgess then explains the way plain language has been used to improve civility in a notoriously contentious area: civil debt collection. Of course, it's always easier when people understand their obligations from the start, so Rachelle Ballesteros-Linao and Marilu Ranosa-Madrunico explain how a Philippine bank's credit-card terms were improved through a holistic and user-centered re-design.

Natasha Costello then summarizes the added layer of challenges when trying to teach clear legal writing to non-native English speakers, while Karl Hendrickx illustrates some of those challenges, specifically in the Belgian legal sector. Finally, Bart Weekers reminds us of how much the audience matters: "You do not speak plainly alone, you speak plainly together."

It is fitting to close the issue with a farewell to Professor Richard C. Wydick, a pioneer and lifetime leader in our field. For those of you who were not privileged to know Professor Wydick, David Marcello's heartfelt tribute will allow you a glimpse into his influence and passion. We will miss you, Professor Wydick.

A handwritten signature in cursive script that reads "Julie Clement".

Julie Clement  
*The Clarity Journal*  
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# In this issue

- Kath Straub, Julie Clement, Annetta Cheek and Sean Mahaffey** **6** Even lawyers want to understand: plain language increases lawyers' credibility to both lawyers and laypeople
- Martin Cutts** **10** Foxed and fined: how unclear contractual parking signs bamboozle motorists
- Tirza Cramwinckel** **13** Lost in translation? A multidisciplinary approach on legal issues in tax communication
- Karin Hansson** **18** Contact strategies for statistical surveys and plain language: a difficult partnership
- Joh Kirby** **22** The challenges of communicating the law to the public
- Steven Pinker** **25** The source of bad writing
- Neil James** **27** Permanent clarity: achieving critical mass in government communications
- James Burgess** **34** Putting the civility into NZ civil collections – a case study on building plain language into court documents
- Rachelle Ballesteros-Lintao and Marilu Rañosa-Madrunico** **37** Using a holistic and user-centered design in simplifying a Philippine contract
- Natasha Costello** **42** At the chalkface; challenges of teaching clear legal writing to non-native English speakers
- Karl Hendrickx** **45** The objectives do not meet the finalities. Learning to be clear in the Belgian Legal Sector
- Bart Weekers** **51** You do not speak plainly alone, you speak plainly together
- David Marcello** **55** In memoriam: Professor Richard C. Wydick 1937–2016

# Even lawyers want to understand: plain language increases lawyers' credibility to both lawyers and laypeople



## Kath Straub

As the Principal of Usability.org, Kath Straub, PhD, applies the psychology of behavior to help clients better understand, motivate and communicate with customers.

Kath has helped numerous fortune 500 companies, government agencies and not for profit organizations build better customer experiences and develop internal usability practices. She is recognized for her ability to “translate” research into practice, synthesizing and integrating emerging and seminal multi-disciplinary research into science that UX professionals can apply to improve design decisions.

Kath has created and presented talks and workshops on this topic – bridging the research-practice gap – for over 10 years. She presents an enthusiastically received workshop on the same topic each year at UXPA's international conference, and creates customized research review workshops for clients like SSA, CDC and ESPN. Kath Straub is an active and visible contributor in both the Usability and Plain Language communities.

By Kath Straub, Julie Clement, Annetta Cheek, Sean Mahaffey

## Introduction

In 1987, professors Robert Benson and Joan Kessler examined lawyers' perceptions of other lawyers.<sup>1</sup> Specifically, participants were asked to base their perceptions of the writers on passages from legal texts. Some participants reviewed passages written in traditional legal language, while other participants' judgments were based on plain-language edits of those passages. The study found that lawyers who write in legalese are “likely to have their work judged as unpersuasive and substantively weak,” and that “their professional credentials may be judged as less credible.” Last year, we attempted to validate and extend that study.

## Background & Our Methodology

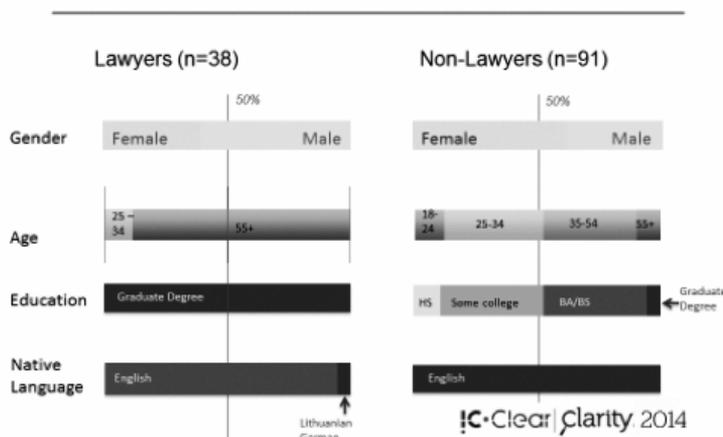
Benson and Kessler presented participants with two passages—each from a persuasive document filed with a court. We used the same passages but modified and extended the study slightly:

- We improved the plain versions with help from Joe Kimble
- We used updated data-collection methods
- We expanded the participant pool to also include non-lawyers

Our study group consisted of 131 participants: 38 lawyers and 93 non-lawyers.

Each participant read two short passages, which we presented as having been written by a specific lawyer. (See Figure 2.) Participants then made judgments about the lawyer who wrote the passages. We then compared the outcomes for (1) plain writers versus traditional writers, and (2) lawyers' versus non lawyers' opinions about the writers.

## Participant Demographics



## Do plain-language lawyers communicate effectively?

We used several questions to ascertain communication effectiveness:

- Is the writer easy to understand? (Agree, neutral, disagree)
- Are the passages worded well? (Agree, neutral, disagree)
- Are the passages logical? (Agree, neutral, disagree)
- How well will clients understand this lawyer? (Very easy to very hard)
- How well will juries understand this lawyer? (Very easy to very hard)
- How well will other lawyers understand this lawyer? (Very easy to very hard)

| Original   | Plain-language revision  |
|--|--|
| Needless to say, we disagree with much that is set forth in the Court of Appeal's Opinion herein. Nevertheless, this Petition for Rehearing is restricted to but a single aspect of the said Opinion. This single aspect is the one which pertains to that ratification of an act of his agent which is submitted to flow from the facts as represented by Mr. Jones to the Superior Court (Opinion: page 4, line 2 to page 5, line 2, page 11, line 7 to page 12, line 19). Specifically, we respectfully submit that the Court of Appeal's views relative to the assumed non-existence of such ratification, are predicated up on a factual assumption which is disclosed by the record to be incorrect. This being so, we submit that the actual facts, revealed by the record, are such as clearly to entitle us to prevail in respect of the ratification theory. | Although we disagree with much of the Court of Appeal's opinion, we limit this Petition to a single aspect—whether Mr. Jones ratified the act of his agent. The Court found that he did not (Opinion, pp 4-5, 11-12). We respectfully submit that this finding was based on a misreading of the facts. The Court assumed facts that the trial court record shows to be incorrect and that point to ratification. We are, therefore, entitled to a hearing. |
| The trial court erred in giving flawed essential elements instructions to the jury and thereby denied the defendant due process and fundamental fairness since it is error to give the jury, within the essential elements instructions, one statement containing more than one essential element of the crime and requiring of the jury simple and singular assent or denial of that compound proposition, fully capable of disjunctive answer, which if found pursuant to the evidence adduced would exculpate the defendant.  | The trial judge erred by instructing the jury to affirm or deny a single question. That question included all the major elements of the crime. By joining all the majority elements, the judge prevented the jury from acquitting the defendant even if they found him innocent of a major element. This error denied him his due-process rights.  |

Both lawyers and non-lawyers found the plain-language writers significantly easier to understand, although lawyers found the differences more significant than non-lawyers. Whether the passages were well-worded yielded similar results. But while the lawyers found the plain passages significantly more logical than the traditional passages, non-lawyers found all passages similarly *illogical*.

Interestingly, when asked how well clients would understand the lawyer who wrote each passage, the lawyers predicted a significant difference in understanding, but the non-lawyers did not. Rather, non-lawyers predicted only a marginal difference. The distinction is, perhaps, the result of testing a document written for lawyers. It could be that the non-lawyers found both versions equally unclear or unfamiliar. Non-lawyers' response to whether the passages were logical support this theory.

When asked whether jurors would understand the passages, lawyers favored the plain version over the traditional version, while non-lawyers were less convinced that juries would differentiate between the two. This finding could have important ramifications for trial attorneys, suggesting that lawyers may not be the best judge of whether a jury will understand even plain-language versions of some information.

Finally, we asked whether *other lawyers* would understand the writer. Both groups predicted that the plain-language versions would be easier for other lawyers to understand.

The category results: Even lawyers have trouble understanding lawyers. Plain language helps.



**Julie Clement, J.D.**, is a plain language trainer, consultant, and editor with J. Clement Communications. Her firm also offers research, writing, and drafting services to fellow lawyers. Julie began her legal career as a research attorney, and then spent nearly two decades as a law professor, teaching legal research, writing, and drafting. She has been the editor in chief of *The Clarity Journal* since 2005, and is also a Center for Plain Language board member.



**Annetta Cheek**, Dr. Cheek earned a PhD in Anthropology from the University of Arizona. She spent 25 years in the US Federal government, mostly writing and implementing regulations and was Vice President Gore's plain language expert for 4 years. She was the chair of the federal plain language group since its founding in 1995 until she retired in 2007 and the Chair of the board of the Center for Plain Language from its founding in 2003 until June 2014. She was instrumental in getting the US Congress to pass the Plain Writing Act of 2010 and still serves as the Center's Chair of the Government Affairs Committee.



**Sean Mahaffey** is an associate with Robbins, Kelly, Patterson and Tucker. He graduated from Ohio University with a degree in history and graduated Magna Cum Laude from the University of Cincinnati College of Law. Sean has experience representing clients in a variety of issues, including consumer protection, foreclosure, contract disputes, and commercial transactions. Sean has considerable experience litigating cases involving the Consumer Sales Practices Act, Fair Debt Collection Practices Act, Real Estate Settlement Procedures Act, and Racketeer Influenced Corrupt Organizations Act.

## Is plain language sufficiently specific?

Much of the persistent criticism of plain language is that it is not sufficiently specific—that only legalese can offer the specificity necessary to many legal issues. So we asked:

- Are the passages specific and concise? (Agree, neutral, disagree)
- Is the writer convincing? (Agree, neutral, disagree)

Both lawyers and non-lawyers rated the plain versions as significantly *more* specific and concise than the versions using traditional legal language. Perhaps surprisingly, nearly all the lawyers said that the traditional versions of the passages were not specific and concise.

Regarding persuasiveness, the lawyers found the plain writers significantly more convincing than the traditional writers. But the non-lawyers found no significant difference between the two.

So in spite of continued arguments to the contrary, our results suggest that lawyers find plain language clearer, more specific, and more persuasive than traditional legal language. This is especially important considering the samples used: persuasive documents written to judges.

## Is the writer a successful lawyer?

We asked a series of questions to ascertain whether a lawyer's writing style affects whether he or she is judged as successful, and again, we found that lawyers make interesting judgments about one another. We asked these questions:

- Did the writer go to a prestigious law school? (Agree, neutral, disagree)
- Is the writer scholarly? (Agree, neutral, disagree)
- Was the writer in the top of their class? (Agree, neutral, disagree)
- Does the writer work in a prestigious law firm? (Agree, neutral, disagree)
- What level has the writer reached in the firm? (Managing partner, partner, associate, staff attorney, paralegal)

In this category, lawyers found significant differences between plain and traditional writers, but non-lawyers did not. Lawyers concluded that the *plain* writers were significantly more likely to have attended a prestigious law school than the traditional writers and that the plain writers were more scholarly than the traditional writers. Likewise, lawyers were significantly more likely to believe that plain writers were at the top of their law-school class than traditional writers and that the plain writers worked for more prestigious law firms than traditional writers.

Non-lawyers, on the other hand, were unable to differentiate between the two regarding education, academic success, and initial professional success.

But when asked to predict the writers' achievement levels within their law firms, the lawyers concluded that plain writers are more likely to fall in the *middle* of the scale. None of the lawyers believed that the plain writers had achieved the top position of managing partner. Whether true or not, the lawyers seem to have concluded that writing in plain legal language may limit a lawyer's ability to advance. (The non-lawyers, again, found no difference between the two.)

Considering these results, it seems important that law schools continue to teach lawyers to understand two languages: plain and legalese. Plain language helps with clients and cases, but the higher positions in law firms *may* still be reserved for traditional writers. On the other hand, these are merely impressions. Whether using plain language *actually* interferes with career advancement remains to be seen.

## Should your lawyer use plain language?

In this last category, we asked participants some questions to assess whether they believed their own lawyer should use plain language:

- Would you be satisfied with this lawyer as counsel? (Satisfied, neutral, dissatisfied)
- Is the writer trustworthy? (Agree, neutral, disagree)
- Does the writer win cases? (Agree, neutral, disagree)

Non-lawyers reported only a marginal preference for lawyers who use plain language. But lawyers reported a significant difference between the two, expressing far more satisfaction with the plain writers than with traditional writers.

In the area of trust, lawyers also reported a significant difference between plain writers and traditional writers. And while they were significantly more likely to agree that a plain writer was trustworthy than a traditional writer, they stopped short of judging traditional writers as *untrustworthy*, choosing “neutral” instead. Perhaps this reflects a general unwillingness to judge their colleagues on such an important value within the legal profession. Or perhaps they recognize that trustworthiness cannot be ascertained from a single paragraph of writing. Non-lawyers saw no statistically significant difference in the trustworthiness of plain versus traditional writers.

Finally, we found only a marginal difference between lawyers’ assessment of plain writers’ ability to win cases and traditional writers’ ability to win cases. We found no statistically significant difference in non-lawyers’ assessments.

The results here suggest that people—especially lawyers—want their lawyers to use plain language, but they are less sure whether the lawyer’s writing style affects his or her trustworthiness or success in court.

## What’s next?

Although our study resulted in findings similar to Benson and Kessler’s, it also raised important new questions. Our next efforts will attempt to test the effects of the following (among other factors):

- Participants’ pre-existing opinions about plain legal language
- Documents written for clients rather than for other lawyers and judges
- Familiar versus unfamiliar legal concepts
- Straightforward versus complex legal concepts

## NOTES

- 1 Robert W. Benson and Joan B. Kessler, *Legalese v. Plain Language: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing*, 20 *Loy. L.A. L.Rev.* 301 (1987).

# Foxed and fined: how unclear contractual parking signs bamboozle motorists



**Martin Cutts,**  
Research director, Plain  
Language Commission, UK

Presentation on 13 November 2014, Antwerp

Updated on 15 March 2015

Plain Language Commission  
(independent of government)

[www.clearest.co.uk](http://www.clearest.co.uk)

## By Martin Cutts

Today, we're all used to the idea that good companies want their contracts with consumers to be clear. Indeed, the law in the UK and the rest of Europe requires standard-form consumer contracts such as credit-card agreements to be written in 'plain, intelligible language'.

But what happens when less-scrupulous companies prefer obscurity to clarity? In the case of parking signs in the UK, their obscurity means an avalanche of costly 'parking charge notices' for drivers – more than two million of them a year, with hospital patients and visitors being a favourite target. Much misery and anguish ensues. The media have run countless stories about drivers fighting back through a clunky appeal system and, sometimes, the courts. But still the juggernaut of an unregulated 'industry' citing binding terms and conditions rolls on.

The parking operators are incentivized to impose penalties because they usually pay the landowner – typically a supermarket, hospital or shopping centre – for the right to collect the penalty income. Their charge notices look like official fines to most drivers, who tend to pay up when threatened with debt-collection letters and court action. (I should make clear that this article applies only to privately run car parks, as public ones operate under a different legal framework.)

The alleged breaches of contract tend to be for drivers overstaying a free-parking limit stated on the signs (typically two hours), inputting the car-registration number incorrectly at the pay machine, paying too little for the time they stay, and walking off site to shop somewhere else. When a number-plate recognition system is used, the exact time of entry – to the second – will be recorded on camera. The driver won't know what it is, so there is plenty of potential for confusion. As there are usually no entrance barriers, drivers can easily wander unwittingly into a contractual environment where their every move is checked for mistakes.

Maximizing the operator's revenue stream, not car-park management, is the main purpose of the system. If only a small percentage of drivers mess up, the operator wins.

But how do the operators know who to penalize? It's simple. The UK government's Driver & Vehicle Licensing Agency sells drivers' data to the companies at £2.50 (€3, USD3.80) a time. Until recently, the government has turned a blind eye to abuses, citing the virtues of 'self-regulation' – which in practice means no regulation. But change may be in the air, as responsibility for private parking has just been shifted to a different government minister who told the Daily Mail on 14 March 2015: 'There is more to do – there are still rogue practices by private car park sharks that we need to stamp out.' However, with a general election coming in May 2015, this may be little more than fodder for the voters.

In this conference session you'll be in the driving seat, almost literally. You'll play the role of a driver faced by the genuine signs I'll show you at a hospital car park. Based on them, you'll take a short quiz to decide how much to pay for your parking when you visit for a hospital appointment. You can pay at any time during your stay; but if you get the wrong answers you'll wipe out a chunk of your family's weekly budget.

Penalties cost £70 (€85, USD106), and the company has been imposing them in this car park – at the Queen's Hospital, Burton, Staffordshire – at the rate of about 30 a day, generating an annual income of perhaps £765,000 (€900,000, USD116million) from patients and visitors. This is all approved by the National Health Service trust that runs the hospital.

After our campaign against these signs and scores of complaints from the public, almost all the signs and machines were significantly altered in August 2014. Parking companies are secretive about how many penalties they issue at particular sites, citing commercial confidentiality. But the hospital has told me in response to a freedom-of-information request that, since these changes, the monthly number of penalties has fallen by a massive 42%.

## **The parking quiz – fail it and you'll get a £70 penalty**

Using the selection of signs provided and the information below, please tackle the quiz.

To simulate the real-life situation for most car-park users, you will ideally NOT use a calculator or pen and paper for these tasks. So you should use a pen only to write down your answers. But if tackling the quiz in your head proves too difficult, you're allowed to cheat. Just remember that this means you've already failed the test, and you'll get a penalty notice through the post!

Bearing in mind...

- that about 50 yards after the main entrance a sign says '20 minutes free parking from this point'
- that small print on the pay machine states 'Please note that there is a 20 minute grace period across site'
- the tariffs shown in figures 1 and 2
- that when you want to leave, it may take you about 10 minutes to walk from the pay machine to your car, strap in your children and exit the car park – maybe longer if you are disabled, and
- figure 2 says, 'Additional time can be purchased (if required) before you leave. An additional 50p will give you an extra 30 minutes parking time between 1-7 hours.'

...please calculate the cost of the five stays listed below.

1. Arrive 10.35am. Pay at 11.10am and leave soon after. Answer –
2. Arrive 9.55am. Expect to stay for three hours and buy a £3 ticket, but actually finish your treatment later and have to pay a top-up at 2.10pm, leaving soon after. Answer for the cost of the top-up –
3. Arrive 4am. Pay at 10am. Answer –
4. Arrive 3pm Tuesday. Pay at 3.15pm on Wednesday. Answer –
5. Arrive 2pm and buy a £4 ticket for seven hours. Pay a top-up at 9.45pm and leave soon after. Answer for the cost of the top-up –

You can find a more detailed article about the Queen's Hospital signs at: <http://clearest.co.uk/pages/publications/articlesbyourteam/parking-language>

**POSSIBLE QUIZ ANSWERS**

Most answers will depend on whether you think the 20-minute free-parking period is deducted from operator's press office has informed me it is not deducted. The press office has also said that '20 minute grace period across site' refers to the time people have to exit the site after paying – so, yes, it differs from the 20-minute free parking period! The possible answers below cover most of the possible interpretations, but there are others.

1 (a) 35mins = £2, or (b) 35–20mins = 15mins = 80p.

2 (a) 75mins extra to pay for, so 3 x 30-minute chunks if multiple chunks can indeed be bought = £1.50; or (b) total stay 4hrs 15mins, costing £3.50, so you pay an extra 50p; or (c) total stay 4hrs 15mins, so 3hrs 55mins = £3.50, so you pay an extra 50p.

3 (a) 6hrs = £4; or (b) Night rate = £1.50 + £3.50 = £5.

4 (a) £6 + 80p = £6.80; or (b) £6 if 20mins is free.

5 (a) £2 for the extra 45mins; or (b) 80p if 20mins is free; or (c) 50p x 2 for 45mins of extra time = £1; or (d) 50p for 25mins of extra time if 20mins is free.



Figure 1 – a sign on a wall near the main payment machine

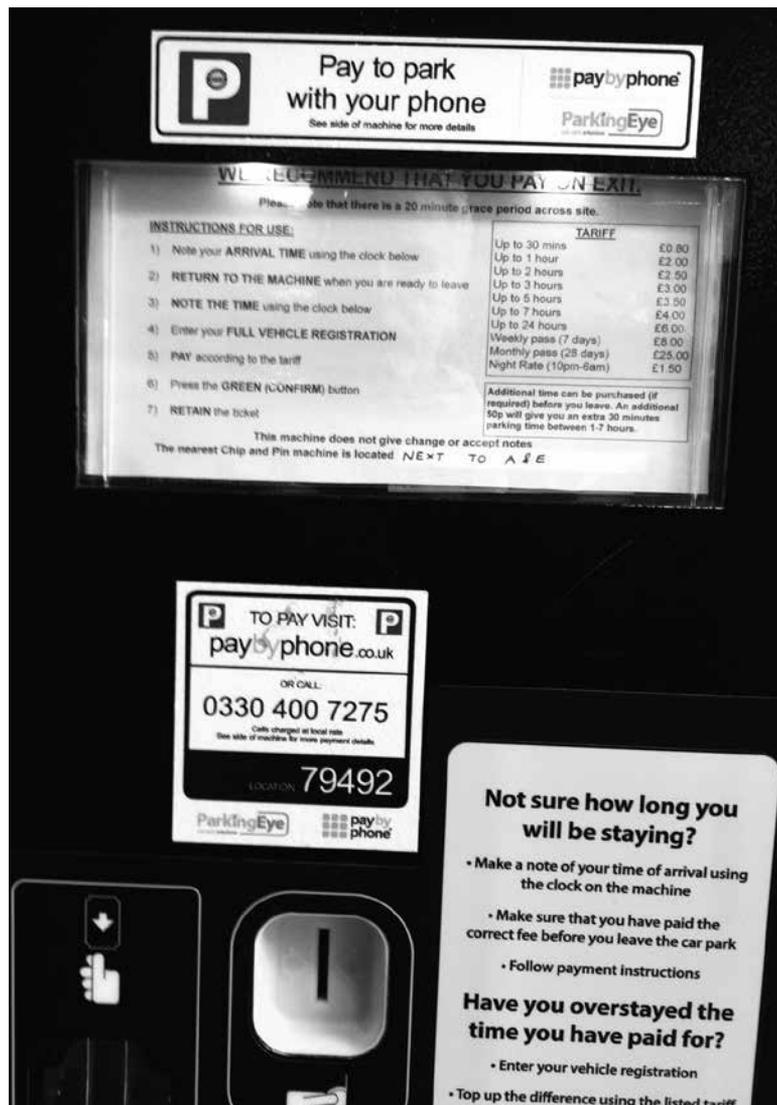


Figure 2 – the main payment machine in the hospital corridor

# Lost in translation? A multidisciplinary approach on legal issues in tax communication

By Tirza Cramwinckel

## 1 Introduction

How do taxpayers know their tax obligations and how to fulfill these obligations timely and correctly? Intelligible communication by the Dutch Tax Authorities (DTA) is crucial to achieve these goals. One of the most important tasks of the DTA in this respect is providing accessible information for taxpayers because tax laws and the system of taxation have become too complicated for most taxpayers.<sup>1</sup>

In this communication process, the DTA is continuously challenged to convert complex tax laws into understandable information. Out of necessity, the DTA functions as ‘translator’ of the legal language of the legislator into the language of the laymen (taxpayers). Inevitably in this process, certain important legal aspects can get ‘lost in translation’, which could have severe legal consequences for taxpayers. This brings forward important questions:

*If the DTA provides intelligible information, what is the legal status thereof?  
And can taxpayers rely on this information as if it were the law itself?*

As will be described below in more detail, the answer is no. Information provided by the DTA is considered a service and has no statutory authority. This is problematic because taxpayers largely depend on the information provided by the DTA, rather than on the original information (the law).<sup>2</sup> The translator role of the DTA thus raises interesting questions, which cannot be answered from an isolated legal perspective. Current legal debate, therefore, does not offer an adequate answer.

In this paper, I argue that a ‘paradigm shift’ is necessary to address these problems: A multidisciplinary approach is needed, in which the role of the DTA is also investigated from a linguistic angle. I provide multiple arguments based on a multidisciplinary research to reconsider the status quo regarding the DTA’s general information services and the legal impact of misinformation. By combining both legal and linguistic frameworks, I investigate whether the importance of clear communication should outweigh legal accuracy in tax communication.

## 2. The problematic language of the law

The Netherlands has a very complex and voluminous tax code that frequently changes and is highly technical. There are some obvious reasons why legislation – in general – cannot fully comply with the principles of clear language. Laws have a specific communicative situation.<sup>3</sup> They are one-sided (from legislator to subject, not reversed) and address a very heterogeneous public.<sup>4</sup> Furthermore, the law needs to apply to future and unforeseen situations. As a consequence, laws need to be very concrete while at the same time being abstract enough in terms of ‘open norms’ to offer flexibility. These elements explain the peculiar characteristics of legal language. On a linguistic level, one would be urged to ask at what point the language of the tax legislator loses contact with the common speech.<sup>5</sup> Tax policy has its own discourse and vocabulary, and taxation has its own jargon, concepts and principles.<sup>6</sup> Tax laws



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Her master thesis in tax law “Do (not) trust the tax authorities as a translator! A multidisciplinary research on tax communication,” was honored with the Thesis Award by the Dutch Ministry of Finance (2013).

## NOTES

1 DTA's Management Report 2007 and Business Plan 2008-2012, p. 15.

2 M.F. Steehouder & C.J.M. Jansen, *Taalverkeersproblemen tussen overheid en burger. Een onderzoek naar verbeteringsmogelijkheden van voorlichtingsteksten en formulieren* (Communication problems between government and citizens. A research into improvement of general information and forms), The Hague: SDU 1989.

3 G.C.J.J. van den Bergh, *Recht en Taal* (Law and Language), Deventer: Kluwer 1979, p. 55.

4 W.J. Witteveen, *Het wetgevend oordeel* (The legislative judgement), The Hague: Boom Juridische uitgevers 2010, p. 26.

5 D. Mellinkoff (1963), *The language of the law*, Boston: Little, Brown and company, p. 11.

6 L. Burkinshaw and J. Frecknall-Hughes, 'Assessing the legal status of HMRC guidance: some first thoughts', mimeo 2014, p. 5.

7 Art. 4.6 Dutch Income Tax Act 2001.

8 Art. 4 Dutch General Tax Code 1959.

9 Art. 8 Dutch General Tax Code 1959.

10 Mellinkoff 1963, p. 11.

11 Witteveen 2010, p. 26.

12 Witteveen 2010, chapters 2 and 3.

13 The DTA, *The Communication Objectives*, Utrecht: 2012.

14 J.L.M. Gribnau, 'Legis-

contain (extraordinarily) long sentences, complex syntax and unusual constructions. Additionally, we can revert to Mellinkhoff's chief characteristics of legal language:

- frequent use of common words with uncommon meanings (e.g. 'substantial interest'<sup>7</sup> when a taxpayer holds a certain amount of shares),
- use of terms of art and argot (e.g. 'taxable profit', 'mortgage interest deduction'),
- deliberate use of words and expressions with flexible meanings (e.g. the place of residence is determined by 'the circumstances of the case'<sup>8</sup>), and
- attempts at extreme precision of expression (e.g. the obligation to file your tax return 'clearly, certainly and without reservation'<sup>9</sup>).<sup>10</sup>

With all this causing fuzziness, it is no surprise that the law cannot enforce its own intelligibility. Instead, it has to rely on the interpretations of those implementing the tax law, that is, the DTA.<sup>11</sup>

### 3. Legal and linguistic issues of plain tax communication

Since the 90's, the DTA has provided intelligible information to taxpayers through different communication channels, for example, in brochures, explanations on the printed tax return forms, by phone (BelastingTelefoon), through social media and – most importantly nowadays – on the website (*www.belastingdienst.nl*).

With all these types of information services, the DTA is continuously challenged to convert complex tax laws into understandable information for taxpayers. This is a daunting task. The legal language of the law and the ordinary language of taxpayers do not 'match', and the DTA thus has to provide a solution for this language discrepancy.<sup>12</sup> In this process, the DTA must balance legal accuracy and precision with comprehensibility and clarity. The Communication Objectives of the DTA describe this aim as follows:

*We want texts that are fiscally accurate and are formulated in intelligible language. Accuracy should not come at the cost of intelligibility.*<sup>13</sup>

However, comprehensible information bears a certain incompleteness compared to the law. Inevitably, in the process from law to general information, certain aspects get 'lost in translation'. For example, last year the DTA stated on the website – inaccurately – that the costs for a stairlift were deductible under a rule for medical aids. However, given a legislative change, stairlifts were no longer deductible as 'medical aid'.

The provided communication can also have shortcomings due to discrepancies between jargon and ordinary speech. Furthermore, accessible information includes the main features of the tax rules; details and exceptions are left out. This leads to 'incomplete' translations. Examples of problems that can arise because of this are inaccurate explanations of the law or wrong references to certain amounts (e.g., the amount of a tax deduction).

Importantly, taxpayers might not be aware of the eventual misinformation, which could lead to problematic situations. Taxpayers may derive certain expectations about the application of the law and rely solely on the 'translation' provided by the DTA. Problems arise when the DTA takes a different ('correct') position with regard to the interpretation of the law (e.g. when imposing a final tax assessment), that deviates from the 'translation' in the previously provided general information. From a legal perspective, this raises questions: How should one deal with the taxpayers' expectations based on the earlier provided information? What are the legal consequences of misinformation?

#### 4. DTA's legal framework and taxpayers' expectations

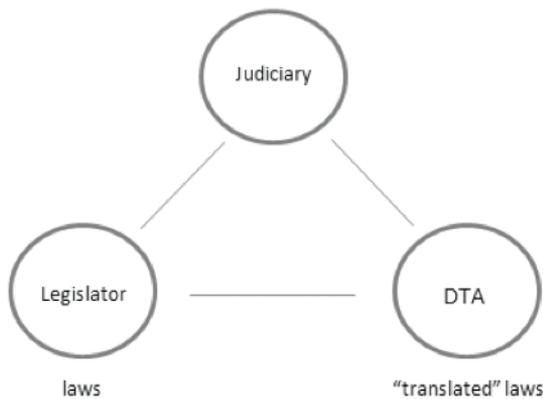
In Dutch case law, general information provided by the DTA is considered a client-orientated service to help taxpayers fulfill their obligations. It has no statutory authority as such.

However, the DTA is bound by unwritten legal standards, the so-called 'principles of proper administration'.<sup>14</sup> One important principle is 'the principle of honoring legitimate expectations'. This principle may – in exceptional cases – justify a deviation from the strict application of the law, in favor of legitimate expectations of taxpayers. This principle is not codified, but developed in case law of the Dutch Supreme Court.

In 1988, the Dutch Supreme Court decided that the DTA is not bound by flaws and imperfections in general information, unless certain requirements are met.<sup>15</sup> These requirements are that the taxpayer:

- i. could not be aware of the misinformation; and
- ii. made a decision based on this misinformation due to which he suffered financial disadvantage, beyond the tax liability under the law.

In general, this means that expectations raised by general information (deviating from the law) are not honored. As a consequence, the risk of improper general information is borne by the taxpayer, and not by the DTA.



From a legal perspective, this allocation of risks can be explained by the separation of powers as advocated by Montesquieu: The DTA's function is to administer the law, rather than to create laws. Therefore, translations by the tax administration cannot be treated as tax legislation.

However, given the fact that – from a taxpayer's perspective<sup>16</sup> – communication about tax laws provides guidelines for their tax

obligations and certainty about how to fulfill them, is it appropriate that taxpayers bear the consequences of the translations made by the DTA, in which taxpayers are not involved?

An important consideration is that taxpayers, in general, are not able to check the accuracy of the provided information. Most taxpayers will never consult tax legislation in its original form, and if so, they would probably not be able understand it, due to its technical nature. Moreover, taxpayers' compliance largely depends on the extent to which taxpayers understand the information that is provided by the DTA.<sup>17</sup> It is crucial to approach this topic from a different angle, one that takes into account the perspective of the taxpayer in its communicative relation with the DTA.

#### 5. The linguistic framework and taxpayers' expectations

A communication perspective approaches the relationship between the DTA and taxpayers from a different angle. Where the legal perspective abides by the separation of powers (the legislator, the tax authorities and the judiciary), the communication perspective does not. In the communication theory, for example in the classic Communication Model of Shannon and Weaver (1949), only two parties are relevant: the sender and the receiver.<sup>18</sup>

lative Instrumentalism vs. Legal Principles in Tax Law', *Coventry Law Journal* 2013 (16), p. 103.

15 Dutch Supreme Court 9 March 1988, 24 199, BNB 1988/148.

16 OECD, Informational Note: Working smarter in revenue administration – Using demand management strategies to meet service delivery goals, 2011.

17 K. Gangl et. al., "How can I help you?" Perceived service orientation of tax authorities and tax compliance', *FinanzArchiv* 2013 (69), p. 487-510 and DTA's Management Report 2011.

18 C.E. Shannon and W. Weaver, *The mathematical theory of communication*, Urbana: University of Illinois Press 1949.

19 J.R. Searle, *Speech Acts. An essay in the philosophy of language*, Cambridge: Cambridge University Press 1970.

20 J.L. Austin, *How to do things with words*, (ed. J.O. Urmson and M. Sbisa), Oxford: Oxford University Press 1976.

21 Austin 1976, p. 6, 151-152.

22 Searle 1970, section 2.5.



When this approach is applied to tax communication, only two relevant parties are recognized: the DTA (sender) and the taxpayer (receiver). The legislator is neither directly nor visibly

involved because of the interposition of the DTA. The linguistic perspective offers different answers to questions concerning the status of the provided information by the DTA and whether taxpayers should be able to rely on this information.

To address these questions, a theory relating to how people produce and comprehend communications is needed. The field of pragmatics, as a subfield of linguistics, takes into account both perspectives by the ‘transmission of meaning’, and therefore can offer inspiring viewpoints on the topic of plain tax communication. Two pragmatic theories are especially relevant here. The first is the Speech Act Theory of Searle.<sup>19</sup> This theory is partly based on Austin’s ideas that when people communicate, the sender is not just producing sounds or words (morphemes, sentences), but he is doing something with words.<sup>20</sup> In this case, issuing an utterance is the performing of an action (‘performatives’), for example, to verdict, to inform, to warn, to promise and to congratulate.<sup>21</sup>

Searle’s Speech Act Theory builds on these ideas. According to this theory, a speech act is a communicative act, performed with a certain intention, that has a certain effect on the receiver. For example, consider the act of *promising*. If a speaker promises to do X, he commits himself to actually doing X. The receiver recognizes the intention of the speaker to make a promise and assumes the speaker is committed to it. Every speech act is bound by a set of conventional rules.<sup>22</sup>

Let’s evaluate the informative utterances of the DTA and how they are conceived by the taxpayer in the light of this particular theory. It is especially interesting to consider the specific acts of asserting and *informing* when tax law is ‘translated’ into general information by the DTA.

The second row provides the theoretical outline of ‘asserting/informing’ by a Speaker (S). The third row illustrates how the DTA as Speaker provides plain tax information to taxpayers regarding mortgage interest deduction.

| Types of rule                | Assert, state (that), affirm   | Plain tax information on mortgage interest deduction  |
|------------------------------|--|---|
| <b>Propositional content</b> | Any proposition p.   | p = Mortgage interest is deductible under certain conditions.                                   |
| <b>Preparatory</b>           | 1. S has evidence (reasons, etc.) for the truth of p.                                | DTA has evidence for the truth of p.  |
| <b>Sincerity</b>             | S believes p.  | DTA believes p.   |
| <b>Essential</b>             | Counts as an undertaking to the effect that p represents an actual state of affairs. | Counts as an undertaking that the STA makes sure that p. represents an actual state of affairs. |

From this example, it follows that if the DTA provides information that mortgage interest is deductible under certain conditions (*propositional content*), this implies that the DTA had evidence for the truth of this translation (*preparatory rule*), that the DTA believes this information to be correct (*sincerity rule*), and that it represents an actual state of affairs (*essential rule*). From a taxpayer’s perspective, in turn, this raises expectations about the correctness of the utterance. It presumes that the DTA provides information that is in conformity with the law and therefore is committed to this ‘law substitute’.

According to the Speech Act Theory, interpreting an utterance is not only to comprehend the words and their meaning, but also to understand the commitment to the speech act and the rights and obligations it involves. From this perspective,

it can be argued that the DTA should be held responsible for the 'quality' of its information, and that consequently, taxpayers should not automatically bear the risk of shortcomings.

The second relevant theory for investigating the DTA's role from a linguistic perspective is Grice's General Principle of communication.<sup>23</sup> According to Grice, all cooperative interactions are governed by the Cooperative Principle. This principle is described as follows:

*"Make your contribution such as it is required, at the stage in which it occurs, by the accepted purpose."*<sup>24</sup>

In other words, to communicate successfully, sender and receiver have to adjust their utterances to each other. Communicators will act in accordance with this principle when they perform in line with the Maxims of Conversation. Grice calls this the Maxims of Quantity, Quality, Relation and Manner.

Quantity relates to the information to be provided ("Make your contribution as informative as required."). Quality appeals to provide a true contribution ("Do not say what you believe to be false or that for which you lack adequate evidence."). The Maxim of Relation says, "Be relevant". Finally, the Maxim of Manner relates not to what is said, but rather to how it is said ("Be perspicuous, avoid obscurity and ambiguity, be brief and orderly.").<sup>25</sup>

Applying these maxims to DTA communication means that the DTA should provide adequate information (Quantity), should have evidence for the accuracy of the translation of the tax code (Quality), should provide relevant information (Relation) and should do so in an intelligible way (Manner). This assessment provides relevant viewpoints for the underlying questions on plain tax communication, as illustrated in Bach's view on communicative value of these principles:<sup>26</sup>

*Although Grice presented them in the form of guidelines for how to communicate successfully, I think they are better construed as presumptions about utterances, presumptions that we as listeners rely on add as speakers exploit.*

In other words, Grice's Maxims show that the sender (the DTA) acts in accordance with these principles and, more importantly, that the receiver (the taxpayer) assumes the communication to be in line with all these rules.<sup>27</sup> Moreover, the taxpayer *relies* on this. As a consequence, taxpayers expect that the DTA transfers the law in good faith, despite the fact that it is formulated in less legal language.<sup>28</sup> From this theoretical perspective as well, the translator should be held responsible for misinformation provided in its communications, rather than the receiver.

## 6. Concluding remarks

To conclude, the DTA's role as translator has become more important due to a growing complexity of tax laws and an increasing awareness of the importance of intelligible communication. However, the information provided by the DTA does not have the same legal status as tax code. Nevertheless, from a linguistic perspective the DTA actually functions as *de facto* legislator by prominently and persistently providing intelligible information. In this respect, the current legal approach to the DTA's translating task and its legal consequences by the Dutch Supreme Court seems to be outdated.

23 P. Grice, *Studies in the Ways of Words*, Boston: Harvard University Press 1975, chapter 2.

24 Grice 1975, p. 26.

25 Grice 1975, p. 26-27.

26 K. Bach, 'The Top 10 Misconceptions about Implicature', in: *A festschrift for Larry Horn* (ed. B. Birner and G. Ward), Amsterdam: John Benjamins 2005, p. 6.

27 Searle 1970, p. 54 and Grice 1975, p. 28-29.

# Contact strategies for statistical surveys and plain language: a difficult partnership



## **Karin Hansson, Ph.D.**

has been working as a plain language expert at Statistics Sweden since 2012. In 2011, while working at the Swedish Council for Higher Education, she took part in winning the Plain Language Crystal for integrating plain language work in the development of a new online service for applying to university courses and programs in Sweden. Before entering the world of plain language, she taught Modern Irish grammar at Uppsala University. Her doctoral thesis (2004) deals with passive constructions in 20th century Irish literature.

## By Karin Hansson

What happens when contact strategies for statistical surveys meet plain language principles? Plain language and survey design share the goal of successful communication. Despite this, the two disciplines seem mysteriously incompatible. As a plain language expert at Statistics Sweden, one of my most challenging tasks is to apply plain language methods to improve the communication with the respondents in our surveys. This is especially important nowadays since non-response is a growing problem for national statistical institutes in many countries. For example, in the labour force survey, non-response at Statistics Sweden has increased from just below 20% in 2005 to a bit over 30% in 2014. From a plain language perspective, I am very interested in exploring what effect clear communication can have on the data collection and, possibly, the response rates. Non-response is of course a complex issue that involves a lot more than communication. Naturally, plain language alone can't fix the problem of non-response, but it can certainly play a part. The data collection involves a great deal of communication, mostly written. For example, the first link in the communication chain is always an invitation letter.

Plain language work is rather new at Statistics Sweden. It only started in June 2012 when I was hired as the first (and only) plain language expert. In addition to this, the communication with respondents is regarded as part of the survey design and thus the responsibility of statisticians and survey designers. As strange as it may sound, the communication department has never been significantly involved in the communication with the respondents. Luckily, though, this is changing. Today, I devote about half of my time to improving how Statistics Sweden communicates with respondents.

## **The contact strategies don't include plain language**

The contact strategies that govern the dialogue between Statistics Sweden and the respondents are based on theories of the best choice of response mode (e.g. web form or paper questionnaire), as well as communication channel (e.g. paper letter, email or SMS) and the timing of the various links in the communication chain, such as the invitation to take part in the survey, reminders and instructions. However, there is a conspicuous lack of clear communication and plain language guidelines, especially when one considers how much attention is paid to the linguistic details of constructing questions. Furthermore, experts in survey design have proved surprisingly hard to collaborate with. This I find particularly odd considering that texts that work are what we all strive for. In my work, I'm used to being confronted with principles, methods, views, etc. that are, to some extent at least, in opposition with plain language principles and methods. For example, a colleague may want to write according to academic or legal writing norms in texts aimed at readers with no academic or legal background. When this happens, the colleagues involved often don't have a clear view of what they want to achieve with their text and they are usually not aware of how their choice of wording may affect the success of their text. In a way, this is hardly surprising. Many colleagues at Statistics Sweden who have had no proper training in communication or plain language can only rely on how they learnt

to write in university. For many, it is a struggle to learn academic writing. To be asked to leave behind what they learnt during three or four years in university—something they often fought hard to achieve—is not always a motivating experience. It is easy to understand that it is difficult for them to change the way they write. Moreover, many of them have never seen a really good text in their work life, and they may never have been the receiver of a text written in plain language from a state agency. In short: Most of my colleagues are not aware of what they can gain personally in their work or what Statistics Sweden can gain by applying plain language.

## **There is a gap between survey designers and plain language professionals**

What I have experienced with the survey design experts at Statistics Sweden is completely different and unexpected. The main difference between them and other colleagues is that survey design experts have specialised training in questionnaire construction. In addition, they claim to write for the readers and they have explicit goals with their writing: to enhance data collection for statistical surveys. Finally, survey designers are used to testing texts on actual readers. Despite all this, the texts and templates they produce deviate in central ways from established plain language guidelines. For example, according to the templates for invitation letters to respondents, the letters generally start by describing the purpose of the survey, instead of presenting the purpose of the letter and why Statistics Sweden has decided to contact the recipient. Another example is the lack of informative headings and subheadings. Finally, the legal information is often too abstract for layman readers and sometimes even misleading.

What is the explanation for this gap between, on the one hand, me as a plain language expert as well as my colleagues in the communication department, and on the other hand, statisticians, survey designers and questionnaire constructors? After actively searching for the answer, my conclusion is that the basis must lie in the different theoretical frameworks behind our competing principles. Through searching in literature on survey design and through discussing with experts in questionnaire construction, I have found that there are many mentions of the importance of well-designed introductions, letters and instructions. For example, informal language, persuasive descriptions and the tailoring of letters are recommended but what they actually entail is not explained. As opposed to plain language principles, very little attention is paid to the wording. Somehow it is assumed that the content of the letter is successfully absorbed and then an internal decision making process begins that determines what action, if any, the reader will take after reading.

## **Survey design research shows that language matters**

In Statistics Sweden's own Journal of Official Statistics, you can find research articles about communication with respondents. For example, Singer (2003) reports about a study on tailoring invitation letters to the respondent's concerns.<sup>1</sup> The conclusion is clear: the choice of contents and wording has an effect on the respondents' willingness to participate in surveys. These results are of course highly interesting. However, the article does not include any details on how the letters were composed, or the actual texts that were shown to be so successful in the experiment, apart from a few short excerpts. In another article,<sup>2</sup> five researchers (including one employed at Statistics Sweden) describe a similar experiment aimed at "targeting the respondents' own motivation to participate in surveys"<sup>3</sup> by tailoring the language, both in the invitation letter and in the questionnaire, to the respondents. Wenemark et al<sup>4</sup> base the experiment on self-determination theory; they refer to "respondent-friendly approach"<sup>5</sup> and mention that they "wanted to avoid items and scales with difficult or old-fashioned language".<sup>6</sup> From a clear communication perspective, the

## **NOTES**

1 Singer, E. (2003). Exploring the Meaning of Consent: Participation in Research and Beliefs about Risks and Benefits. *Journal of Official Statistics*, Vol. 19, No. 3, 273-285.

2 Wenemark, M., Persson A., Noorlind Brage H., Svensson, T. and Kristenson, M. (2011). Applying Motivation Theory to Achieve Increased Response Rates, Respondent Satisfaction and Data Quality. *Journal of Official Statistics*, Vol. 27, No. 2, 393-414.

3 Wenemark et al. 2011, 394

4 Wenemark et al. 2011, 394

5 Wenemark et al. 2011, 397

6 Wenemark et al. 2011, 398

7 Groves, R., Cialdini R. and Couper, M. (1992). Understanding the Decision to Participate in a Survey. *Public Opinion Quarterly*, Vol. 56, 475-495.

8 American Association for Public Opinion Research, AAPOR. (2014). Current Knowledge and Considerations Regarding Survey Refusals, 16. [https://www.aapor.org/AAPORKentico/AAPOR\\_Main/media/MainSiteFiles/RefusalTF\\_FLINAL090814.pdf](https://www.aapor.org/AAPORKentico/AAPOR_Main/media/MainSiteFiles/RefusalTF_FLINAL090814.pdf)

results are encouraging: The tailored versions render higher response rates. Again, the texts themselves are not included in the article and no details of the actual tailoring are given. Already over twenty years ago, Groves, Cialdini and Couper wrote about tailoring in statistical surveys to increase the respondents' motivation.<sup>7</sup> When the article was written, surveys were normally conducted as face to face interviews, so the tailoring did not primarily involve written communication. But the aim and principle of tailoring are basically the same today when web forms and phone interviews dominate and invitation letters and other written communication are always used.

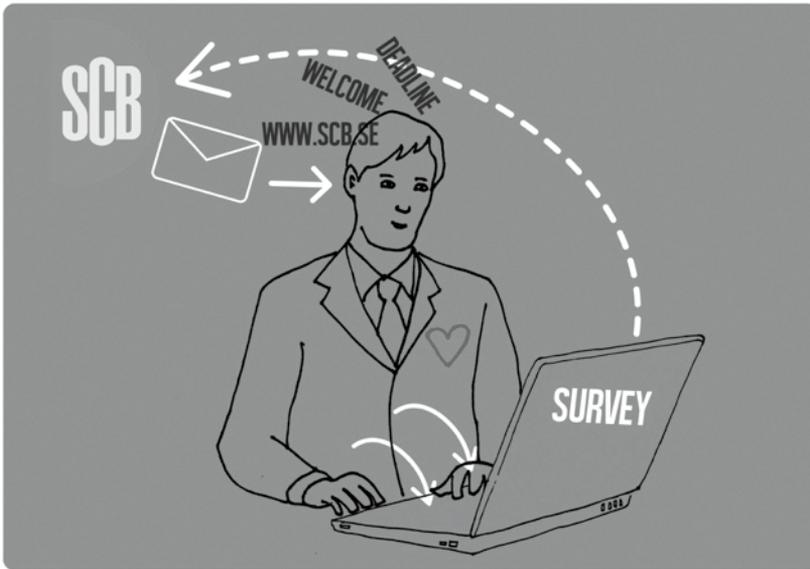
Obviously, there is research within the field of survey design that indicates, indirectly at least, that language matters in the communication with respondents. It is rather surprising to realise that all relevant knowledge coming from that research does not seem to have been put into practice at Statistics Sweden. For example, the positive effects of tailoring the contents and language have not influenced the current guidelines and templates for letters in any apparent way.

### **Understanding each other's theoretical framework is crucial for effective collaboration**

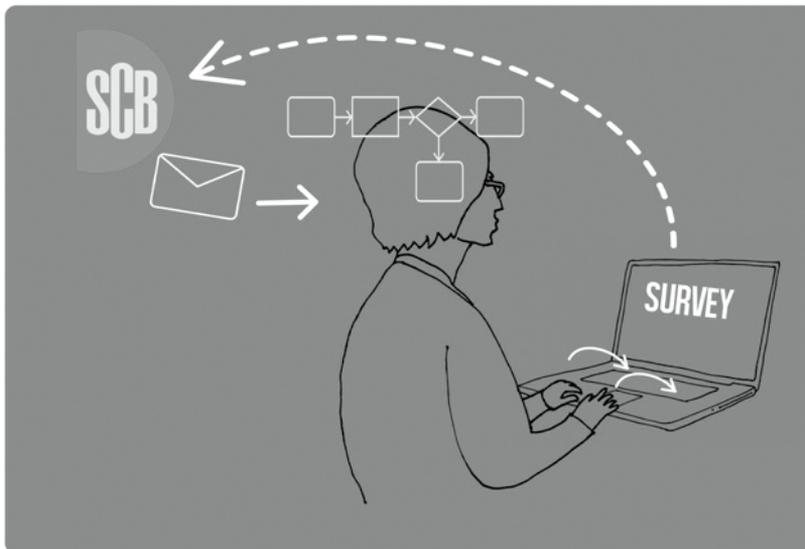
It was a completely unexpected situation for me when I realised that an issue I needed to address to enhance collaboration was not my colleagues' unfamiliarity with plain language methods and principles. Instead, I discovered that a major factor that was slowing down our work was their specialist competence in survey design, a field of research and practice that in many ways overlaps the field of plain language and clear communication. As I soon found out, however, this overlap did not entail that we agreed on methods, principles and ideals. I still can't fully grasp this gap—I need to know more—but I am convinced of its existence. This quote from the report *Current Knowledge and Considerations Regarding Survey Refusals* by American Association for Public Opinion Research (AAPOR) is quite revealing: "Reasonable efforts can and should be made to assure that sampled persons have the information necessary to make an informed choice to participate or not. However, these efforts must be balanced with protections from the potential harassment of repeated contact attempts."<sup>8</sup> My interpretation of these sentences is that AAPOR believes that one sometimes has to choose between not informing and harassing respondents, a view that to me is completely incompatible with the plain language theory and practice.

In conclusion, working with survey design experts has made me aware of how important it is to try to understand what motivates them, including their theoretical framework, in order to make substantial progress in our collaboration. It would certainly have been easier had I appreciated more fully from the start how influential, in my view, their competing principles of how to write successful texts would be on our collaboration.

In plain language the focus is on choosing the right contents and wording to get the message across and achieve the goal of the communication.



In survey design, on the other hand, the focus seems to be on the internal decision making process. Little attention is paid to the the role of the linguistic details in getting the message across.



# The challenges of communicating the law to the public



**Joh Kirby** is executive director of the Victoria Law Foundation. Her commitment to improving legal communication has helped establish the foundation in its role as Victoria's only dedicated community legal education body.

Joh often speaks on the subject of plain language and the law, sharing the experiences of the foundation with other organisations in Victoria and at international conferences, including those sponsored by Clarity and PLAIN. Most recently, she worked with the Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal to improve their online communication.

Joh earned a Bachelor of Applied Science degree from the University of Canberra and a Bachelor's degree in law from Monash University. She is Clarity's immediate past president.

By Joh Kirby

In 2013 at the Victoria Law Foundation we asked the public what they would do if they had a legal problem. Unsurprisingly some of them said that they would "Google it."<sup>1</sup> With increased access to the Internet,<sup>2</sup> more and more people are using it as the first step towards solving their legal problems.<sup>3</sup> However, a survey we conducted of over 100 legal websites found that most of them were overly complicated, poorly structured and didn't meet plain language standards.

In 2014 we launched *Everyday-Law.org.au*, a website designed to address the lack of good online legal information for the public by bringing together in one place over 1500 plain language legal resources, information on the legal system, how to find a lawyer and free and low cost legal services. The development of the website was based on plain language principles but drew on a range of other sources that reflected the online environment. This paper discusses some of the key factors in the project's success.

## Audience input

Like any good plain language project *Everyday-Law* was underpinned by a range of activities aimed at understanding our audience. Card sorting was used to inform the structure of the site, usability testing to assess its effectiveness and, once launched, Google Analytics to analyse its use.

### CARD SORTING

Making *Everyday-Law* a useful tool for the public hinged on making the 1500 resources on the website easy to find. We used a technique called card sorting to do this. Card sorting is commonly used in the development of websites to get user insights into how content should be named and organised. In our case we gave our sample target audience members cards with the topics to be included on the website. We then asked them to organise them into groups that were logical to them. A strong theme of the feedback was that people wanted information presented in easy-to-understand language that didn't draw on technical words. We used this and other results to ensure we developed an information architecture for the website that was intuitive and versatile enough to allow for the different ways people look for information.

### USABILITY TESTING

The site also underwent two rounds of usability testing.

The first stage of usability testing was undertaken on the wireframes or early designs of the website. When constructing a website the wireframes are one of the first things that are worked on by the developers to develop the site structure and navigation. To make changes in the later stages of an online project can be expensive; so testing the wireframes on the target audience before building the website can save you money and many hours of work. The testing results suggested that we needed to reflect on whether the project truly focused on one audience and it strongly reinforced the need for multiple entry points for information including a sophisticated search tool, the

ability to easily browse content to minimise user fatigue and signposts to push people to popular topics. At this early stage these and other changes were easily incorporated.

The second stage of usability testing was undertaken near the end of the development of the site when the majority of the content had been uploaded. Given the nature of the website, we wanted this round of testing to give the test users as close as possible to finished experience of the site. This has obvious risks, as major changes at this stage of the project would have been both expensive and time consuming. Fortunately for us only minor, inexpensive amendments were revealed. We put this good result down to the various stages of testing (card sorting and first round of usability testing) which had allowed us to reveal potential issues at the earliest stage.

## GOOGLE ANALYTICS

Since the launch of the site we have continued to monitor its use through Google Analytics. Google Analytics allows us to build a profile of who is coming to the site, what they are coming for and whether they are finding the information they seek. Interpreting the data provided by this tool gives us an overall picture of the effectiveness of site and informs how we develop and publish web content that is responsive to user needs. This is an important tool for maintaining and ongoing development of the site.

## Reference and peer groups

As with our print publications the selection of resources on the website were reviewed by legal experts. This group helped us to identify good quality content. We also established a peer review group, made up of online communications specialists with experience in similar projects. This group offered invaluable input on issues where we lacked definitive feedback from our audience through testing and assisted in filling gaps in our knowledge.

## Meeting online best practice

While plain language principles and best practice approaches for publishing hardcopy public legal information are well established, the online environment poses some specific challenges. In 2013 the Victorian Legal Assistance Forum<sup>4</sup> developed best practice guidelines for online legal information.<sup>5</sup> The guidelines have 12 elements to improve the provision of online legal information including: resources should include the date that they are accurate to and the jurisdiction of the information, a glossary of terms should be included and minimum requirements for improving visibility of online content through search engines also referred to as SEO.<sup>6</sup> Many of the elements are simple, inexpensive requirements that have the ability to vastly improve the experience of the user. The guidelines are an essential reference tool for the development of any online legal information project.

## Brand

A cornerstone of the Everyday-Law project was that whatever we produced had to be authoritative yet friendly and welcoming to the user. Plain language was critical to this but we thought the language could be assisted by a strong visual design and brand that promoted a positive experience. We worked closely with a design studio to develop a number of brand elements that could be used across Everyday-Law.

## NOTES

1 Victoria Law Foundation, What Would You Do If You Had A Legal Problem (15 December 2014), YouTube, <<https://www.youtube.com/watch?v=wmxEBd8Wtk8j>>.

2 Australian Bureau of Statistics, Household Internet Use (24 February 2014) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8146.0Chapter12012-13>>.

3 Law and Justice Foundation of New South Wales, 'Legal Australia-Wide Survey: Legal Need In Victoria' (2012) 14 Access to Justice and Legal Needs, 117.

4 Joh Kirby was the Chair of the working group that developed these guidelines.

5 Victorian Legal Assistance Forum, Best practice guidelines for the development and maintenance of online community legal information in Victoria (29 April 2014 <<http://www.victorialawfoundation.org.au/sites/default/files/attachments/Guidelines%20-%20Final%20%28140516%29.pdf>>.

6 The foundation has developed a plain language glossary that is available for other legal bodies to use on their websites to assist with meeting this element of the guidelines.

These included:

- black and white images of relaxed people looking directly at the camera
- bold coloured blocks to highlight particular legal topics
- stories that explained topics told with humour
- icons to help direct the user to particular features
- strong colours to code different sections of the site.

The brand was one of the biggest risks that we undertook with the project. Testing of users throughout the development of the website told us that the brand and visual language on the website helped to make Everyday-Law a more welcoming site, enticing users to look further for what they needed rather than 'bounce' off.

## **What we learnt**

The project drew on all our expertise to make it a successful project and it emphasized how online projects required a range of skills to make them successful in addition to those used on print publications. Along the way it confirmed a number of things for us:

- having a clear, well documented set of objectives about what you want to from the outset is crucial, so that you can test decision you make along the way as well as the final outcome
- listening to your audience will make a better project
- considered risk taking, like the development of our brand, pays off
- the public don't think like lawyers and they don't all think the same
- peers are an important source of information and support and working with them helps build trust and networks.

Everyday-Law was a significant achievement for the foundation. Driven by an ambition to create a legal information website that engaged the user, we were challenged to look broader than plain language principles to achieve it. Since its launch in April 2014 we have seen a steady growth in new and returning visitors to the website as well as a high percentage of these people using the site in the ways we hoped, suggesting that the website is working.

For more information on our work in this area, visit the 'Better information' section of the foundation's website: [www.victorialawfoundation.org.au/better-information](http://www.victorialawfoundation.org.au/better-information)

# The source of bad writing

## *The 'curse of knowledge' leads writers to assume their readers know everything they know*

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By Steven Pinker

Why is so much writing so bad? Why is it so hard to understand a government form, or an academic article or the instructions for setting up a wireless home network?

The most popular explanation is that opaque prose is a deliberate choice. Bureaucrats insist on gibberish to cover their anatomy. Plaid-clad tech writers get their revenge on the jocks who kicked sand in their faces and the girls who turned them down for dates. Pseudo-intellectuals spout obscure verbiage to hide the fact that they have nothing to say, hoping to bamboozle their audiences with highfalutin gobbledygook.

But the bamboozlement theory makes it too easy to demonize other people while letting ourselves off the hook. In explaining any human shortcoming, the first tool I reach for is Hanlon's Razor: Never attribute to malice that which is adequately explained by stupidity. The kind of stupidity I have in mind has nothing to do with ignorance or low IQ; in fact, it's often the brightest and best informed who suffer the most from it.

I once attended a lecture on biology addressed to a large general audience at a conference on technology, entertainment and design. The lecture was also being filmed for distribution over the Internet to millions of other laypeople. The speaker was an eminent biologist who had been invited to explain his recent breakthrough in the structure of DNA. He launched into a jargon-packed technical presentation that was geared to his fellow molecular biologists, and it was immediately apparent to everyone in the room that none of them understood a word and he was wasting their time. Apparent to everyone, that is, except the eminent biologist. When the host interrupted and asked him to explain the work more clearly, he seemed genuinely surprised and not a little annoyed. This is the kind of stupidity I am talking about.

Call it the Curse of Knowledge: a difficulty in imagining what it is like for someone else not to know something that you know. The term was invented by economists to help explain why people are not as shrewd in bargaining as they could be when they possess information that their opposite number does not. Psychologists sometimes call it mindblindness. In the textbook experiment, a child comes into the lab, opens an M&M box and is surprised to find pencils in it. Not only does the child think that another child entering the lab will somehow know it contains pencils, but the child will say that he himself knew it contained pencils all along!

The curse of knowledge is the single best explanation of why good people write bad prose. It simply doesn't occur to the writer that her readers don't know what she knows—that they haven't mastered the argot of her guild, can't divine the missing steps that seem too obvious to mention, have no way to visualize a scene that to her is as clear as day. And so the writer doesn't bother to explain the jargon, or spell out the logic, or supply the necessary detail.

Anyone who wants to lift the curse of knowledge must first appreciate what a devilish curse it is. Like a drunk who is too impaired to realize that he is too impaired to drive, we do not notice the curse because the curse prevents us from noticing it. Thirty students send me attachments named "psych assignment.doc." I go to a website



### **Mr. Pinker**

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for a trusted-traveler program and have to decide whether to click on GOES, Nexus, GlobalEntry, Sentri, Flux or FAST-bureaucratic terms that mean nothing to me. My apartment is cluttered with gadgets that I can never remember how to use because of inscrutable buttons which may have to be held down for one, two or four seconds, sometimes two at a time, and which often do different things depending on invisible “modes” toggled by still other buttons. I’m sure it was perfectly clear to the engineers who designed it.

Multiply these daily frustrations by a few billion, and you begin to see that the curse of knowledge is a pervasive drag on the strivings of humanity, on par with corruption, disease and entropy. Cadres of expensive professionals-lawyers, accountants, computer gurus, help-line responders-drain vast sums of money from the economy to clarify poorly drafted text.

There’s an old saying that for the want of a nail the battle was lost, and the same is true for the want of an adjective: the Charge of the Light Brigade during the Crimean War is only the most famous example of a military disaster caused by vague orders. The nuclear accident at Three Mile Island in 1979 has been attributed to poor wording (operators misinterpreted the label on a warning light), as have many deadly plane crashes. The visually confusing “butterfly ballot” given to Palm Beach voters in the 2000 presidential election led many supporters of Al Gore to vote for the wrong candidate, which may have swung the election to George W. Bush, changing the course of history.

How can we lift the curse of knowledge? The traditional advice-always remember the reader over your shoulder-is not as effective as you might think. None of us has the power to see everyone else’s private thoughts, so just trying harder to put yourself in someone else’s shoes doesn’t make you much more accurate in figuring out what that person knows. But it’s a start. So for what it’s worth: Hey, I’m talking to you. Your readers know a lot less about your subject than you think, and unless you keep track of what you know that they don’t, you are guaranteed to confuse them.

A better way to exorcise the curse of knowledge is to close the loop, as the engineers say, and get a feedback signal from the world of readers-that is, show a draft to some people who are similar to your intended audience and find out whether they can follow it. Social psychologists have found that we are overconfident, sometimes to the point of delusion, about our ability to infer what other people think, even the people who are closest to us. Only when we ask those people do we discover that what’s obvious to us isn’t obvious to them.

The other way to escape the curse of knowledge is to show a draft to yourself, ideally after enough time has passed that the text is no longer familiar. If you are like me you will find yourself thinking, “What did I mean by that?” or “How does this follow?” or, all too often, “Who wrote this crap?” The form in which thoughts occur to a writer is rarely the same as the form in which they can be absorbed by a reader. Advice on writing is not so much advice on how to write as on how to revise.

Much advice on writing has the tone of moral counsel, as if being a good writer will make you a better person. Unfortunately for cosmic justice, many gifted writers are scoundrels, and many inept ones are the salt of the earth. But the imperative to overcome the curse of knowledge may be the bit of writerly advice that comes closest to being sound moral advice: Always try to lift yourself out of your parochial mind-set and find out how other people think and feel. It may not make you a better person in all spheres of life, but it will be a source of continuing kindness to your readers.

# Permanent clarity: achieving critical mass in government communications

By Neil James

The genesis of the plain language movement in Australia is often traced to a car insurance policy that NRMA introduced in 1976. The company was certainly among the first in the finance and insurance sectors to promote plain language at around that time.<sup>1</sup> Over the next decade, public sector agencies followed this example, encouraged in the legal sector by a landmark 1987 report from the Victorian Law Reform Commission.<sup>2</sup>

Almost 40 years later, the push to promote plain language is approaching its middle age. While it is not worth stretching the metaphor too far by asking whether we are having a mid-life crisis, it is certainly worth considering how far we have come in implementing plain language.

This paper will help to answer that question by looking at how public sector agencies in Australia currently implement plain language. The Plain English Foundation has surveyed 50 government agencies over the last decade to find out.

We wanted to map what agencies actually do when they set out to communicate in plain language, and to what extent they succeed. And we wanted to evaluate that experience to identify lessons that could help other organisations improve their own plain language programs.

This article will outline the results in four sections:

1. Who did we survey?
2. What did we find?
3. What can we conclude?
4. What do we recommend?

Many of our findings will not be surprising. Others are rather sobering, such as the overall success rate in consolidating a plain language culture. Above all, we have identified what agencies could focus on to help manage the considerable risks that a plain language program will fall short of its intended goal.

## 1 Who did we survey?

The survey is an ongoing research project that the Plain English Foundation<sup>3</sup> started in 2010 with a qualitative survey of 30 agencies. We conducted the survey through a mixture of desktop review, telephone interviews and written responses. In 2014, we kept 25 agencies from that first group that ran plain language programs from 2000–2009. We have now added a further 25 agencies that started a program between 2010 and 2014.

The Foundation intends to add to these results every 5 years by surveying a further 25 agencies. This way we will build a substantial knowledge base about public sector plain language programs and identify trends over time.

The agencies we selected all ran a dedicated plain language program. Half ran a program for a fixed period and half considered plain language an ongoing activity.



**Dr. Neil James** is Executive Director of the Plain English Foundation in Australia, which combines plain English training, editing and auditing with a public campaign for more ethical language practice. He has published three books and over 90 articles and essays on language and literature. His book *Writing at work*, (Allen and Unwin, 2007) has become a standard reference on workplace rhetoric and plain English, while *Modern Manglish* (Scribe, 2011) looks at the lighter side of Gobbledygook. He was founding chair of the International Plain Language Working Group and is currently President of the Plain Language Association International.

**NOTES**

1 Michele Asprey, Plain Language for Lawyers, 3rd edition, The Federation Press, Sydney, 2003, p 62.

2 Law Reform Commission of Victoria, Plain English and the Law, Report No 9, 1987.

3 <https://www.plainenglishfoundation.com>

4 <http://www.plainlanguage.gov>

This brings us to our major qualification. The survey was not designed to represent the entire public sector. For example, we did not include agencies that have no plain language program. Rather, we wanted to focus on agencies consciously dedicating resources to promote plain language to assess what they did and what we might learn from their experience.

In other ways, however, we tried to make the survey as representative as possible. The agencies vary in size from 100 to over 100,000 staff, with an average of 2,500 staff in each. All sectors of government are represented:

| <b>Sector</b>         | <b>2009 survey</b> | <b>2014 survey</b> |
|-----------------------|--------------------|--------------------|
| Arts and education    | 2                  | 3                  |
| Audit                 | 4                  | -                  |
| Environment           | 2                  | 2                  |
| Finance               | 2                  | 2                  |
| Health                | 1                  | 1                  |
| Industry and commerce | 2                  | 2                  |
| Legal and justice     | 1                  | 5                  |
| Local government      | 1                  | 1                  |
| Planning              | 1                  | 1                  |
| Social services       | 3                  | 1                  |
| Transport             | 1                  | 2                  |
| Utilities             | 3                  | -                  |
| Other                 | 2                  | 4                  |
| <b>Total</b>          | <b>25</b>          | <b>25</b>          |

The average program length in the survey agencies is four years, ranging from 3 months to 13 years, although the average in the first survey group is 6 years and the more recent group is 1.7 years.

**2. What did we find?**

We started by mapping what agencies actually did as part of their programs by asking four questions:

1. What prompted a plain language initiative?
2. What activities were included in a program?
3. What models, if any, did agencies apply?
4. Did the program succeed and why?

We found that when it comes to starting a plain language program, agencies were most influenced by the example of another agency or the initiative of a senior champion within their own organisation rather than by external criticism or plain language laws. Of course, some were influenced by more than one factor, but there was a clear trend:

| <b>Prompt points for program</b>        | <b>Number of agencies</b> |
|---|---------------------------|
| Example of a comparable agency          | 21                        |
| Initiative of executive/senior champion | 17                        |
| Staff member from another agency        | 11                        |
| Internal process or review              | 10                        |
| External criticism                      | 3                         |
| External requirement (such as law)      | 0                         |

The implication for someone wanting to start a plain language program is to find a comparable organisation that has already done so, and bring it to the attention of a potential internal champion at a senior level. Networks such as the Plain Language Action and Information Network in the United States provide a useful model to promote plain language for this very reason.<sup>4</sup>

We also found that even when internal management processes identified issues with an organisation's communication, they didn't commonly translate into a program without relevant external precedents and internal champions.

It was more of a surprise that external criticism of an individual agency did not help to kick start a program. In fact, we found that it often put an agency on the defensive and made it less likely to take action, as doing so would be publicly admitting that its practice was poor.

We are aware that these factors may not hold true in countries with plain language laws or centrally coordinated programs.

In the United States, for example, the Center for Plain Language has reported success in encouraging agencies by publishing its annual 'Report Card'<sup>5</sup> referencing the *Plain Writing Act*.<sup>6</sup> But Australia has no such laws to authorise this kind of review and influence agency behaviour. Although there are some 40 acts and regulations in Australia with some plain language requirement,<sup>7</sup> there is no explicit law mandating plain language such as in the United States or South Africa or Sweden.

In Scandinavia, countries such as Sweden and Norway also run centralised programs encouraging and supporting plain language through their language councils. These no doubt have a significant influence on agencies there. Again, Australia has no such programs.<sup>8</sup>

In Australia, while there was some common ground in what prompted a plain language initiative, there was no standard model governing the activities agencies used in their programs. We grouped these into seven areas:

| Plain language activities       | Number | %    |
|---------------------------------|--------|------|
| Training                        | 50     | 100% |
| Reform of document templates    | 34     | 68%  |
| Evaluation                      | 27     | 54%  |
| Follow-up training              | 27     | 54%  |
| (Re)development of style guides | 17     | 34%  |
| Editing                         | 16     | 32%  |
| Internal promotion/incentives   | 14     | 28%  |

Perhaps not surprisingly, training was at the heart of all programs, followed by reform of standard document templates. But from there it varied a great deal, depending on each agency. In short, there was no 'master model' for how to run a plain language program. Nor were most programs particularly complex:

| Number of activities | Number of agencies | %   |
|----------------------|--------------------|-----|
| 7                    | 6                  | 12% |
| 6                    | 5                  | 10% |
| 5                    | 6                  | 12% |
| 4                    | 6                  | 12% |
| 3                    | 11                 | 22% |
| 2                    | 10                 | 20% |
| 1                    | 6                  | 12% |

The plain language program in half of the agencies only involved one to three measures. Many began with only one or two activities and rarely started with an overall strategy. Most initially saw the problem as a purely 'skills' issue that sending some (usually junior) staff off to training would address. When this alone was not sufficient, they tended to add further activities over time. Almost all of them needed external advice from communication practitioners in how to then construct a program that would guarantee a better return on investment.

5 <http://centerforplainlanguage.org/report-cards/>

6 <http://www.plainlanguage.gov/plLaw/>

7 Ben Piper, paper presented at 2012 Clarity conference in Washington, May 2012.

8 <http://www.sprakradet.no/Vi-og-vart/Om-oss/English-and-other-languages/English/> and <http://www.sprakochfolkminnen.se/om-oss/kontakt/sprakradet/om-sprakradet/in-english.html>

9 Everett M Rogers, Diffusion of Innovations, Simon and Schuster, New York, 2003.

10 <http://www.sprakradet.no/klarsprak/>

If there was no master model, we were at least able to use the survey results to construct four major stages that agencies needed to move through, even if the activities in each stage varied from agency to agency. We labeled these stages as:

1. Initiation
2. Authorisation
3. Critical mass
4. Consolidation

When we assessed how many agencies succeeded in completing all four stages, the results became somewhat sobering:

| Stage            | Agencies completing stage | %    |
|------------------|---------------------------|------|
| 1. Initiation    | 50                        | 100% |
| 2. Authorisation | 37                        | 74%  |
| 3. Critical mass | 27                        | 54%  |
| 4. Consolidation | 17                        | 34%  |

Because of the survey parameters, all agencies completed the initiation stage. That's like starting out at base camp when climbing a mountain. Yet only 74% were able to complete the authorisation stage. We defined authorisation as the process of securing formal recognition and support for plain language throughout the agency. Agencies demonstrated this in a number of ways, such as:

- formal executive endorsement
- volume of staff trained
- changes to underlying systems
- awareness of support among staff
- formal documents such as policies or style guides
- management processes such as in business cases or annual reports.

The survey results suggest that almost a quarter of agencies that started to climb the plain language mountain did not reach this first camp. We were keen to identify why this was the case, and found the main reason was clear: a lack of executive support:

| Contributing factors   | Number | %   |
|------------------------|--------|-----|
| No executive support   | 9      | 70% |
| No changes to systems  | 6      | 46% |
| Internal resistance    | 4      | 31% |
| Underlying culture     | 3      | 23% |
| Still early in program | 3      | 23% |
| Resources insufficient | 2      | 15% |

The obvious implication is that without executive engagement, a plain language program is far less likely to succeed. Without that support, there is little reform of underlying systems and cultures and very little authority to overcome roadblocks and resistance.

The next phase we identified we called reaching 'critical mass'. In social dynamics, critical mass relates to a sufficient number of people in a social system adopting an innovation for it to become self-sustaining.<sup>9</sup> For plain language, we defined critical mass as a stage in a plain language program where most of the writing staff in an agency had functional competence in plain language and were able to apply it successfully when writing documents.

We lost almost another quarter of the agencies before reaching this second camp on the climb. But the reasons were much more mixed and evenly spread:

| Contributing factors   | Number | %   |
|------------------------|--------|-----|
| Competing priorities   | 5      | 50% |
| Size of organisation   | 5      | 50% |
| Major change           | 5      | 50% |
| Lack/loss of champion  | 4      | 40% |
| Resource issues        | 3      | 30% |
| Program in early stage | 3      | 30% |
| Internal tensions      | 2      | 20% |

These results suggest that as a plain language program matures, the challenges will actually intensify. Even if you succeed in gaining executive support in the early stages, you need to watch out for a wider range of factors as you progress.

For example, no matter how well things start, the loss of an executive champion can kill a program. But so can major changes in organisational structure or budget. The risks are also higher in small agencies, where significant change can happen quickly.

Yet the most sobering result of our survey was that only around one-third of agencies reach the summit: the stage we labeled 'consolidation'. We defined consolidation to mean that an agency maintained its critical mass by continuing a plain language program, working to a clear standard that was part of the mainstream of its business operations.

An underlying issue here was agencies, after initial success, deciding that they had 'done plain language' and they could now move on to other things. The more specific reasons they gave for failing at this last climb were similar to the previous stage:

| Contributing factors      | Number | %   |
|---------------------------|--------|-----|
| Competing priorities      | 4      | 50% |
| Loss of champion          | 4      | 40% |
| Program seen as complete  | 4      | 40% |
| Program still in progress | 4      | 40% |
| Major change              | 2      | 20% |

Significantly, of the one-third who made it to consolidation, half no longer have a dedicated plain language program. This means they remain at risk of losing some or all of their gains. At the same time, some had not reached consolidation because their program was still in progress, so the results may improve in the years ahead.

### 3. What can we conclude?

The survey results suggest that, even when public sector agencies set out to implement plain language, the best case may be that only a third of them succeed in the medium term. It's not a particularly encouraging result.

More importantly, the survey helps us to isolate the factors that influence success and failure so that agencies may better address the risks this survey has identified. We identified the top ten 'critical success factors' in scaling the plain language peak. Some of these are activity related, but some relate more to the design and management of a plain language program:

#### Critical success factors

1. Learn from the example of comparable organisations
2. Take a strategic approach and link plain English to organisational objectives
3. Start with a baseline evaluation and regularly assess progress
4. Design a program that addresses skills, systems and culture

5. Ensure there is Executive engagement and support throughout
6. Appoint senior internal champions to overcome roadblocks
7. Train a critical mass of staff who write documents
8. Identify and update templates, style guides and procedures
9. Bring in external expertise for strategy, training and templates
10. Consolidate plain English through recruitment and performance management.

Most of these elements speak for themselves. It seems that external examples, executive support and internal champions are crucial to starting and then driving a plain language program. And activities such as evaluation, training and reform of underlying systems should also be in the mix. It also seems that external assistance is crucial to bring in the right expertise.

There may be less awareness of the vital role of the second item on this list: the need for a strategic approach. Above all, the lack of strategic planning was a universal factor in contributing to failure. Put simply, if agencies do not have a business case, strategy or plan to link that process to their regular management systems, they are almost certain to fall short of the summit.

A strategic approach also helps agencies to understand and manage what the survey has identified as the common risks to a plain language program:

| <b>Most common internal risks</b>        | <b>Most common external risks</b>            |
|--|--|
| Staff turnover                           | Major organisational change                  |
| Loss of champion                         | Change in political environment              |
| Size of agency                           | Shift in budget priorities                   |
| Change in executive (particularly a CEO) | Other external influences (industry culture) |
| Shift in operational priorities          | External authority (standards)               |

The major external risks are hardly surprising. When an agency has a major budget cut or is suddenly merged with a larger organisation after an election, many programs and priorities can disappear overnight. It may feel it is restricted in reforming communication by the culture of its broader discipline, whether that be engineering or accounting or science. And this may be reflected in external documents such as standards that it must comply with.

The major internal risk that we've not already discussed also proved to be the most important: staff turnover. In many public sector organisations, 5–15% of the workforce leaves every year. Many organisations deliberately set a 'separation' target between 5% and 10% to promote a healthy and adaptable workforce.

In some of our survey agencies, this quickly led to as much as half of the workforce changing every 5 years. Unless an agency has integrated plain language into its mainstream business processes, earlier gains tend to dissipate, sometimes to the point where plain language vanishes from view.

#### **4. What do we recommend?**

While the survey offers plenty of practical tips for elements that should be part of a plain language program, the main recommendation emerging from the survey is the need for a more strategic approach.

Put simply, agencies need to start out with explicit strategies that include:

- measurable outcomes
- a business plan
- risk management measures
- a review cycle.

Beyond this, we were able to map from the survey results the features that should be part of plain language strategy at the early stages, the mid-program and late-program periods.

Early stages: initiation and authorisation

- Develop a strategy and source external expertise
- Set up evaluation measures
- Engage executive and secure support
- Target flagship system changes
- Look for some easy wins
- Begin training and culture shift

Mid-program: critical mass

- Roll-out training to critical mass
- Continue with system reforms
- Retain champions or replace them
- Engage regularly with executive
- Regular evaluation and reporting

Late-program: consolidation

- Shift training to maintenance levels
- Continue evaluation and reporting
- Review system changes and update
- Maintain continuity with champions
- Retain executive support
- Continue resourcing

Of course, the examples of the United States and Scandinavia cited earlier show the value of a plain language law or a central program in reinforcing communication reform. This did not feature in our Australian survey because we have no such law at present. But we suspect that having such external authority would make a significant difference in sustaining plain language programs.

This kind of difference suggests we need next to broaden the research about Australia's public sector experience before we generalise too much about public sector institutions. How does the Australian experience compare to other countries? What difference exactly do plain language laws and centralised programs make? Are the results for public sector agencies comparable to the private sector?

At a minimum, this research can suggest some of the issues and questions for future research to examine. We could then start to integrate the results to paint a more complete picture. An immediate project, for example, might be to compare these survey results with work done in Norway on its public sector experience.

The survey project will also allow us to track changes over time and assess how plain language programs may need to evolve. In the meantime, the results have identified some concrete actions we can consider to help agencies achieve critical mass in their plain language programs.

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# Putting the civility into NZ civil collections

## *A case study on building plain language into court documents*



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James focuses on large projects at Write. Client projects often involve creating technical content, reworking business processes, or supporting major proposals. James has a background in the engineering and transport sectors, and has worked on national regulations and EU directives.

### By James Burgess

Civil collections processes in New Zealand law are used to collect civil debt – where a debtor is taken to court to recover money they owe. Courts can make orders that reclaim money from wages, confiscate belongings, or even evict the debtor from their home. The debtor is often under great stress during this process, making clear communication particularly important.

The NZ Ministry of Justice ran a project to make these processes more effective. They adopted a plain English approach along with new legislation, computer systems, and enforcement procedures. I worked on letters, forms, and information sheets for these processes. This article describes the journey we followed with the subject matter experts at the Ministry.

### **The context for the project, and our role**

The people affected by civil debt often have difficulty engaging with court processes.

- People owing money to one creditor often have other money problems, and also suffer stress from their employment or housing situation.
- People trying to recover money from one creditor often also have to deal with other creditors and work with several agencies. They may also feel their own financial stress if they rely on the money they are trying to recover.
- Other people often get ‘caught in the crossfire’ – missing out on their own related income, or needing to administer processes such as wage deductions to recover fines.

The Ministry’s project simplified a set of civil collections processes. Some of these process changes required legal changes. The Ministry also redeveloped its communication (both online and offline) within the processes, and public engagement about the processes. This engagement extended to ‘prime time’ television commercials, explaining the fines or other measures that unpaid debt could lead to, and how the new processes make it easier to stay out of trouble.

Our role in the project was to develop clearer communication throughout the processes, including forms, guides, letters, and official court notices. We worked together with other contributors to the project: process specialists from the central administration, front-line staff from field offices, the IT group in charge of online elements, and the legal specialists in the Office of Legal Counsel.

### **Our working model – collaboration, iteration, and efficiency**

Our working model was to combine and simplify process documents by working collaboratively with the process specialists. Rather than trying to rewrite individual documents in isolation, we worked on all the communication for a given process together. We examined failure data and experience ‘in the field’ for the existing processes, and identified possible failure points in the new processes. We shared ideas and draft content with the process specialists, unearthing any undocumented constraints as early as possible in the process.

We worked through process flows to simplify the paths people might follow. We ensured the timescale for process steps kept people as well-informed as possible — for example, where applications trigger processes that might take a long time.

We used the principles of plain language to provide the right information to the reader at the right point in the process, and to provide a clear picture of what happens next. We used clear structure and signposting to accurately describe complex situations, without hiding the basic messages at each step in a process.

The Ministry user-tested some forms and processes with the target audience. This highlighted any sources of confusion so we could fix them in the next versions. This process was helpful where the legal experts preferred complex information using legal language from the legislation. The test results showed that clearer versions were more effective while accurately reflecting the provisions in the legislation.

### **Effective update letters (even with bad news)**

We worked on several letters that gave the latest update for an ongoing process. We used clear headings to let the reader understand the main message up front. With clear case identification and with the case history for context, we were able to provide an informative statement title rather than a simple label. This approach worked well, even where this statement provides bad news (such as an appeal having failed, or a missed action leading to a formal hearing or penalty).

We minimized the number of messages in one letter. We ordered the information to present status updates, next steps, required actions, and process details in clear chunks.

The project included IT improvements that let us include more merge-text in the letters, such as names, amounts of money, and other case details. Familiar information in merge-text helps the reader to relate to the letter. It lets the Ministry reduce the formal or generic references to people and roles in a case. Where processes have a number of possible branches, merge-text can simplify the letter to refer to the specific situation for that case.

### **Empathy in eviction notices**

An eviction notice is an important part of the civil enforcement processes and has a huge impact on the people affected. However bad the situation beforehand, an eviction notice is likely to send many recipients into crisis. Our work on eviction notices in this project acknowledged the pressure the reader is under. We took particular care to predict and answer the reader's 'what next?' questions. Providing plenty of clear information about access to crisis services should help improve the outcome.

### **Improving the user experience and dealing with constraints**

The project's simplification aim and new technology let us improve the user experience, with clearer processes and simple online forms for those able to use them.

Several forms that were complex and paper-based became clear online forms. In some specific cases, the process has many variables and the IT systems couldn't provide true online forms. In these cases we helped improve PDF forms for completion on screen. The next step for these processes will be to develop online forms that are context-aware, so choices at one stage influence which questions and options the reader sees. That will simplify the process further for the user.

In some cases, existing forms were too complex and few people managed to complete them successfully. Creditors needed to calculate debt, interest, and expenses to apply to recover this money, as part of their initial application form.

Almost every applicant made an error in this calculation or simply abandoned their application. The new process splits the calculation from the main form. Applicants can get help to make the calculation, or they can submit their own figures without risk of spoiling the main application.

User-testing highlighted places where the reader may miss information or react badly to the way it is presented. The Ministry took care to select relevant participants for user-tests. The stress associated with these processes is an important, but difficult, factor to take into account. It can make a huge difference to the reader's ability to absorb a message. Even the most representative user-test participant, carefully briefed about the context of the document, is unlikely to feel the same strength of emotion as some readers in real life. As a result, testers occasionally felt information was too blunt.

The work of Tialda Sikkema and colleagues may give some extra insight in this area – see the work of the 'Debt and Debt Collection' research group at Utrecht University of Applied Sciences in the Netherlands. Tialda's presentation at the 2014 ICClear Clarity conference examined the effect of these emotions on compliance with similar court-issued instructions.

Legal language formed another constraint to the project. Working with the process and legal specialists helped us avoid complex legal terms wherever possible. There were, however, some phrases we could not change. For example, the creditor in the process is formally known as the 'judgment creditor' to differentiate them from someone who is a creditor but hasn't applied to the court to recover the debt. This distinction is not useful to most readers once involved in a case. We were able to remove it in many places, but not everywhere.

### **So what? Return on investment and effective processes**

The project has led to significant improvements in process support, in court case administration, and in access to justice for the public.

The Ministry has noted a reduction in the number of failed applications to recover debt. These failed applications delay the process and take time and effort to follow up. Debtors and creditors are now abandoning fewer processes and needing less support to complete forms. Support teams are gathering data on the remaining process failures to support further improvements.

Courts have become more efficient, with fewer 'no-shows' at hearings and less court time wasted. The Ministry is collecting data on these savings.

In the wider public context, citizens have easier access to justice. Removing the barriers in these processes leads to a fairer outcome for creditors, and one that treats debtors with respect and empathy.

The Ministry has now launched the new processes and documents. You can find some of them online at <http://www.justice.govt.nz/fines/about-civil-debt/>

# Using a holistic and user-centered design in simplifying a Philippine contract

By Rachelle Ballesteros-Lintao and Marilu Rañosa-Madrunico

## Introduction

The term *simplified*, the end goal of the simplification process, puts a premium on how the intended audience, lay or expert, are able to comprehend and use a document's content upon their first encounter with the material. This article demonstrates the simplification process of a Philippine bank's credit card terms and conditions document employing a user-centered design. This simplification process begins with testing, then the actual document simplification process, which includes protocol-aided revision, the main focus of this paper. (The name of the bank has been marked as XXXXX for propriety and ethical reasons.)

The document that underwent simplification was the Credit Card Terms and Conditions (CTCC) of a top Philippine consumer bank, a one-page informational text that comprises 28 provisions and stipulations, 51 paragraphs, 125 sentences and 5497 words.

## Testing

A vital concept of the plain English work or simplification process is the testing stage. Testing ensures that the writer's objectives in a document are sufficiently transmitted to the prospective reader. Experts call for iterative testing in simplification tasks.<sup>1</sup> The existing document was initially subjected to reader-based tests (oral-paraphrase and written-cloze). Results yielded statistically significant outcomes revealing the low comprehensibility of the document. Meanwhile, a text-based computational tool called Coh-metrix,<sup>2</sup> which was substantiated by other readability computational tools, illustrated that the document is in the 11 – CCR (College-Career Ready) grade band. A complication arises because the readability of the document does not correspond with the level of the participants, deemed only in the 8-10 US grade level. In other words, the document is too difficult to be understood by the participants. The testing then identified a need to single out aspects of the document that the participants were baffled about.

## Lexical and Syntactic Simplification

The next stage in this study involved establishing certain linguistic features in the existing document that could explain the consumers' difficulty in understanding the document. These questionable lexical and syntactic structures identified served as groundwork in redrafting or simplifying the material. In particular, problematic words, inaccurate models, and the legalese use of couplets and triplets, were addressed on the lexical level. And on the syntactic level, managing the sentence length, using active voice, utilizing simple sentence structure in most parts of the contract and avoiding nominalizations were undertaken.



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## Protocol-Aided Revision

An effective way to confirm and revise for comprehensibility, and thus, to validate the simplification, is the protocol-aided revision.<sup>3</sup> Initially used by Hayes and his colleagues,<sup>4</sup> protocol-aided revision is used as a method in studies relating to comprehension, writing and even document design.

A protocol is defined as an evidence of happening, ideas or thoughts taking place over a period of time. Such evidence is recorded using a device keeping track of the person's contact with a machine. Think-aloud protocol is one of the protocol categories (the other one is behavior protocol) suitable to this study since participants in the task were asked to accomplish an activity while they verbalized anything going on in their minds during the process. Schriver emphasizes that since think-aloud protocols are gathered throughout the time the reader is engaged in the activity, the reader's comments, while comprehending the material, would uncover the area and type of difficulty encountered.<sup>5</sup>

This study used Schriver's guidelines for designing protocol-aided revision that employed three cycles, with five participants in each stage. These participants were also part of those who underwent the cloze and paraphrase testing of the original document.

Two pilot read-aloud protocol activities were conducted. The pilot ensured that intelligible instructions and sample protocol activity were given during the actual activity. Moreover, piloting permitted the researchers to have a clear picture on how the actual activity would work, including timing, allowing them to plan the best possible ways to capture the readers' feedback while they attempted to understand the document.

All 15 participants involved in this three-cycle activity were randomly grouped into three. They were individually scheduled for a one-on-one session with the researchers for the activity. The read-aloud protocol lasted an average of 32 to 50 minutes.

During the actual activity, participants were given written instructions to read, sample audio and transcribed protocol activity and a particular situation concerning their specific goal in reading the document. Presenting such scenario allowed the participants to be more involved as they attempted to understand the text. They were urged to state their reactions, thoughts and questions aloud in the language they can best express themselves. Next, participants were asked to read aloud the most critical provisions—15 of the credit-card's 28 terms and conditions. These provisions are crucial to the consumers' understanding or involvement, requiring a high degree of compliance to avoid negative or adverse consequences. Additionally, terms that hold the bank free from any responsibility or obligation were also included. Most of these provisions were also used in the previous paraphrase and cloze tests.

As the goal of each cycle of protocol-aided revision activity is to "debug poorly-written text",<sup>6</sup> three language specialists served as intercoders to avoid what Schriver regards as the proclivity or tendency of the writers to "attribute the difficulty to the participant rather than to the text".<sup>7</sup> The intercoders were oriented as to what specifically they would code and were provided with sample protocols, coding scheme guidelines and a copy of Schriver's article on protocol-aided analysis as their reference.

It must be noted that all the respondents used the Filipino language with some incidence of code-mixing the Filipino and English languages. The sample extracts presented in the succeeding discussion have been translated in English. After consolidating the participants' overall comments (both positive and negative) from their protocols, the language specialists evaluated which among these comments signaled problems caused by errors of omission and commission. Lastly, they had to diagnose problems or errors in the text based on the readers' feedback.

## The First Cycle of Protocol-Aided Revision Activity

Four errors of omission and five errors of commission were noted by the language specialists after the first cycle of the reading protocol activity. Two errors of omission, considered as local lapses, involved two typographical errors: a case of duplicating the words *that* and *involving*. The other two related to global errors, identified as missing information, concerned words or terms that must be added to the text to achieve more clarity:

**Protocol:** In case of default, you must surrender the CARD and pay all TOB, interests, penalty charges applied and other charges specified below. *So for the payment of charges it's like... it's like showing.. it indicates the change in the market rates that it's like.. hmmm then there's something below. There. I was looking if there's something below, where it is. There.*

To address this concern, the phrase in *Case of Default* has been added to the original heading, *Other Charges* to make it as:

**Revised Heading of the Provision:** *Other Charges in Case of Default*

Regarding the five errors of commission recognized by the three language experts, one error pertained to the use of the word *Settlement*, an alternative heading initially regarded to replace the term *Right of Set Off*.

**Protocol:** *SETTLEMENT...It's just a credit card but they'll get everything?! So it's true, the ones calling who are like.. they're real. It's not really settlement what's in here, right? It's really not like settlement, change it. That's not settlement.*

To rectify the error caused by the word *Settlement* as heading, the word *Offset* served as replacement. Garner<sup>8</sup> emphasizes that the word *Offset* is the more preferred and common word by the legal drafters. The remaining commission errors dealt with the mistakable and unclear construction of the provision upon first reading.

Most of the protocols of these five respondents in the first cycle were responses relating to their ability to understand the simplified version. Reactions about how unfair and biased the provisions are towards the Bank were also recorded. Moreover, questions and clarifications, not considered as errors or problems in the text, but rather issues concerning the Bank's discretion as the creditor, were also documented.

**Protocol:** *Unless there is an exception, you must maintain a current or savings deposit/placement account(s) with us or XXXXX or any of our subsidiaries or affiliates. What is the exception?*

**Protocol:** *Unless we end earlier or you voluntarily cancel or return the CARD, it is valid from the day of issue or renewal ... I have a question. What is the reason for ending the card earlier?*

In addition, one participant in the first cycle asked about how to compute the "Minimum Payment Required." Unfortunately, the current document does not provide an answer to this question; instead, the answer appears only in the frequently-asked questions (FAQs) on the bank's website.

*How much is the minimum payment required?*

*The minimum payment required is 5% of all retail transactions plus entire Special Installment Plan amortization for the month. Any amount past due and in excess of the total credit limit form part of the minimum payment required and should be paid in full.*

## NOTES

1 Dumas & Redish, 1994; Lowe, R. & Pramono, H. (2006). Using graphics to support comprehension of dynamic information in texts. *Information Design Journal*. 14(1), 22-34; Schumacher, P. (2007). Creating effective illustrations for pictorial assembly instructions. *Information Design Journal*. 15(2), pp.97-109.

2 McNamara, D. S., Graesser, A. C., McCarthy, P., & Cai, Z. (2014). *Automated evaluation of text and discourse with Coh-Metrix*. Cambridge: Cambridge University Press.

3 Communications Design Center, 1980.

4 Hayes & Flower, 1980, 1983; Hayes & Simon, 1974; Hayes, Schriver, Blaustein, & Spilka, 1986; Hayes, Waterman, & Robinson, 1997 in Schriver, 1991.

5 Schriver, K. (1991). Plain language through protocol-aided revision. In *Plain Language: Principles and practice*, ed. E.R. Steinberg. Detroit: Wayne State University Press.

6 Schriver, 1991, p. 9.

7 Schriver, 1991, p.14.

8 Garner, B. A. (2011). *Garner's dictionary of legal usage*. 3rd ed. New York: Oxford University Press.

## NOTES

9 Schriver, 1991, p. 11.

10 G.R. No. 126490, 31 March 1998 as source, Atty. Fred (2009).

As this provision is a very important detail that the credit card users ought to know, this information was also included in the simplified version.

In general, the researchers revised the document based on the errors, questions and concerns raised by the five respondents and consolidated and identified by the three language specialists. The result was an improved second version of the simplified contract.

### The Second Cycle of the Protocol-Aided Revision Activity

Schriver explains that “the first cycle finds about half of the readers’ problems, the second pass exposes half of the remaining problems, and so on. Most documents can be revised to meet the reader’s needs in two or three cycles”.<sup>9</sup> The next stage then highlighted cognitive rendering to address the deeper intuitive components of the material, followed by the second segment of protocol-aided revision activity. Another set of five respondents participated in this activity.

Aside from one commission error considered to be local, identified as a repetition of the word only in the Surety provision, the language specialists spotted four other global commission errors.

On Surety:

**Protocol:** *That? Is the surety like a co-maker sis? Guarantor? So aside from the supplementary you still have an additional guarantor sis? Is it right that what it is saying here is that you need to present one? It’s like here in CCT sis, that aside from the husband, you need one more, because the person is the only collateral. That if the person cannot pay, we will demand payment from the guarantor).*

Another problem about the term surety is recorded in this protocol:

**Protocol:** *What does the last part mean? (Reading...) The last part is not clear. Is there another term for supplementary? Even for surety? Isn’t it that it’s co-maker? Ahhh.. guarantors!! I have a question... for credit cards, is that the term used? The supplementary? Not co-maker?*

One participant’s response on the Surety provision implies that she was unsure of the meaning of the term *surety*, whether it is the same as a *co-maker* or a *guarantor*. Another response indicated an affirmation of her understanding of the *Surety* provision that aside from the spouse, one needs to nominate another person as surety. Using the case of *Palmares vs. CA*<sup>10</sup> establishes that since the term *co-maker* acts as a surety, it is then valid to place the term surety side-by-side with the word *co-maker*, as the latter is a more familiar term to the Filipinos.

Additionally, the whole document was reviewed and restudied for semantic soundness of those simplified terms and legal precision of the truncated expressions. These tasks align to the idea that simplification must benefit the non-lawyers without neglecting the legal soundness of the contract. A significant insight drawn was on specificity: that specificity has premium over brevity. While there may be a number of redundancies in the agreement, some terms must still be included as they add precision to the meaning. Some of the words include the terms *goods* (things or rights producing economic activity) and *merchandise* (goods that can be sold), and *fees* (amount paid to avail of a service) and *charges* (amount paid that is not a service or a financial penalty for a neglectful act). Since charges can be penalties, then the word penalties has been dropped in the following provision:

**Revised Provision:** *These include interests, fees and other charges that may apply using the CARD.*

It is important to note that the respondents expressed significant favorable feedback expressing their ability to understand the simplified document. Other reactions cited how they compared the present simplified version just as this one:

**Protocol:** *It's clear for me, it's not that long; it's understood. Besides the words used like the verbs are common, unlike the other one before. Words were so deep, words I didn't even encounter.*

The second revised version was further improved by recasting the erroneous and unclear ideas to ensure an intelligible document to its intended users.

### **The Third Cycle of the Protocol-Aided Revision Activity**

After undergoing two cycles of protocol-aided revision activities, the improved simplified version was presented to the last set of five participants for the last stage of protocol-aided revision activity. As advised by Schriver, usually, half of the errors can be dealt with after the first protocol-aided revision activity, then the remaining half after another protocol-aided revision work. Feedback received from this last cycle were most, if not all, reactions and realizations concerning their easy understanding of the contract:

**Protocols:** *Sample Computation: Is this the computation, sister? OK Ahhhh... it's like that? Automatic when your card gets stolen.. Yes, it's easy to understand.*

Revisions in this third cycle were more of fine-tuning, ensuring the substance and the ideas are all captured in the simplified version. The consistency in the use of *must*, *will* and *agree to* were reviewed and studied. Likewise, sentence lengths were reviewed to guarantee that the average sentence length promoted by the plain English advocates would be achieved in this document.

### **Conclusion**

Before the simplification process, it is imperative to test the document. Here, testing the document supported the need for redrafting and identified specific aspects of the material that were problematic. After the researchers identified the lexical and syntactic challenges, the existing document underwent a user-centered simplification process, taking into consideration the users' specific thoughts, reactions, questions and other feedback. The use of the three-cycle protocol-aided revision activity significantly aided the researchers in addressing problematic unclear terms and constructions that eventually helped in recasting the document. The result is a user-driven consumer contract in clear language.

# At the chalkface: challenges of teaching clear legal writing to non-native English speakers



## **Natasha Costello**

is English, a Solicitor (non-practising) and former senior lecturer in law at Manchester Metropolitan University, England. She currently lives near Paris, France, working with French lawyers to improve their legal English. She also teaches legal English at Université Panthéon-Assas (Paris II) and Université Paris Ouest Nanterre La Défense (Paris X).

## By Natasha Costello

This article follows the presentation that I gave at the IC Clear/Clarity Conference in Antwerp in November 2014<sup>1</sup>. It was the first time that I had attended a Clarity conference and it was inspiring to be surrounded by people who were passionate about clear language.

The aim of my presentation was to illustrate what can be done at a practical level, as a teacher in the classroom ('at the chalkface'), to encourage the use of clear language in legal writing.

I currently work in Paris, teaching legal English to French lawyers in private practice and French undergraduate law students. In this article, as in my presentation, I will focus on my recent experience teaching French law students. There is an ideal opportunity, whilst these future lawyers are still at university, to instil good practice in legal writing.

The purpose of this article is to explain some of the challenges of teaching clear legal writing to non-native English speakers and I will highlight three teaching strategies that I have used to try to improve the students' writing skills. I would like to share practical teaching and learning activities that I hope will be useful to other readers.

## **Teaching strategy 1: Start early and start simply**

In one of my classes, I had an excellent student who always participated in class discussions, asked interesting questions and demonstrated very good oral English skills. However, her first piece of written work was incomprehensible; there were problems with sentence structure, grammar and spelling. This experience served as a reminder that it is important to start evaluating and teaching writing skills early in the course (and not to assume that orally articulate students will have the ability to write clearly).

Often there is a reluctance on the part of both the teacher and the students to include writing activities in English lessons. It can be difficult for a teacher to manage a writing exercise, particularly in large or mixed-ability classes. In addition, I find that students usually prefer to focus on oral skills and enjoy having class discussions and debates on topical legal issues.

I try to start a course with some simple writing activities, rather than overwhelming students with a long piece of writing such as a letter or case brief. I use an activity that I call "*just one sentence*".

For example:

- We discuss a topic in class and then I ask the students to write one sentence about the topic. I tell them that I will read the best sentence out to the rest of the class.
- We discuss a topic in class and then I ask the students to write a definition of one of the terms that we have discussed (for example "common law").
- The students read an article, I write questions about the article on the board and then the students have to come and write (on the board) answers to the questions.

I appreciate that clear writing involves more than just one sentence but these activities allow me to identify any particular problems that students may have at an early stage in the course. In particular, where the activity involves the students writing their sentences on the board, it stimulates a class discussion about sentence structure and vocabulary.

At the beginning of the course, some students need to make a number of improvements to their writing. "Starting simply" also means giving each student just one thing to focus on. For example, my advice to a particular student might be to concentrate on keeping the 'core' of the sentence (the subject, verb and object) together. For another student I might just suggest that they write shorter sentences (before moving on to tackle problems of syntax).

## Teaching strategy 2: Use speaking activities to aid writing

Non-native English speakers sometimes have difficulty expressing themselves clearly when writing. They often try to translate every word literally and do not take the time to reflect on what they have written. It can be hard to convince French law students to write in clearer, plainer English when they are used to using traditional, formal language in French legal writing. The students usually feel more comfortable using words with a Latin origin as these are familiar to them from the French language.

As I mentioned earlier, students tend to prefer practising their oral skills rather than spending time writing in class. However, I have found that speaking activities can also help students reflect on and improve their writing skills.

For example:

- I ask the students to write a letter to a client (either in the class or for homework). In pairs, the students swap their letters and read them aloud to each other. This activity brings to life the 'reader over your shoulder' mentioned by Steven Pinker in his presentation at the IC Clear/Clarity Conference<sup>2</sup>. The exercise provides critical peer evaluation of the students' writing and highlights parts that are unclear. Frequently, the student reading the letter will ask "what did you mean here?" and the other student will have to explain, in clearer language, what they meant.
- The students role-play a client meeting where a lawyer explains the terms of a contract to a client. There is an example of this type of activity in the book 'International Legal English'<sup>3</sup>. The students often find this task challenging, especially where the contract terms contain a lot of legalese and passive constructions. This leads to a good plenary discussion in which I encourage the students to critically examine the contract drafting, thinking about the aspects of the language that make it difficult to explain the terms to the client and considering how those terms could be redrafted so that they are clearer.

## Teaching strategy 3: Use real life examples

Sometimes, the most difficult challenge as a legal English teacher is explaining why clarity matters. The students read various legal texts in English (journal articles, statutes, judgments and contracts) containing complex sentences and archaic language. They think that this type of language is something to be mastered, not changed.

I try to demonstrate why it is so important to write clearly by including reference in my classes to real life cases about unclear or ambiguous drafting.

For example, see the case of *Bayerische Landesbank, New York Branch v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42 (2d Cir. 2012) referred to in Ken Adams's blog on contract drafting.<sup>4</sup>

## NOTES

1. IC Clear/Clarity conference: Learning to be clear, Antwerp-Brussels, 12-14 November 2014
2. Ibid. The title of Steven Pinker's presentation was: The sense of style: the thinking person's guide to writing in the 21st century. His book of the same name was published in 2014 by Viking.
3. Amy Krois-Lindner International Legal English (Cambridge University Press, 2nd ed. 2011) page 43, Exercise 10.1
4. <http://www.adamsdrafting.com/herein/>

The case concerned section 29 of the contract, in which the court considered whether the word 'herein' referred only to that section or whether it referred to the whole contract:

*This Agreement is made solely for the benefit of the Issuers and the Portfolio Manager, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement, except as otherwise specifically provided herein. The Swap Counterparty shall be an intended third party beneficiary of this Agreement.*

I would develop this into a classroom activity by:

- writing the contract provision on the board
- asking the students how they would interpret the provision
- explaining the facts of the case and the parties' arguments
- asking the students to predict the outcome of the case
- discussing the court's decision and considering how the relevant provision could have been drafted more clearly

## **Conclusion**

I share the passion for clear language with the people that I met at the IC Clear/Clarity Conference and I try to encourage clear legal writing in the classes that I teach.

In this article, I have described teaching strategies that can be used to improve the writing skills of non-native English speakers. I have included examples of classroom activities that will engage students in discussions about the language that lawyers use.

I hope that other teachers and trainers will find these examples helpful and I would welcome feedback from readers, sharing their own experiences and teaching ideas.

You can contact me at [nclegalenglish@gmail.com](mailto:nclegalenglish@gmail.com).

# The objectives do not meet the finalities

## *Learning to be clear in the Belgian Legal Sector*

By Karl Hendrickx

*This is a slightly abridged and adapted version of the opening speech given at the IC Clear Clarity Conference in Antwerp in November 2014.*

How has the Belgian legal sector learned to be clear? Indeed, the theme that was chosen for this congress is *Learning to be clear*. According to the Oxford dictionary, *learn* means, “gain or acquire knowledge of or skill in (something) by study, experience, or being taught”. Belgian lawyers have had to learn in almost all of these meanings, to be clear.

### **19th–20th C: developing legal language**

As a result of the two world wars, Belgium is a trilingual country, with a Dutch-speaking northern part, Flanders, a French-speaking southern part, Wallonia, and a very small German-speaking community on the border with Germany. This peculiar linguistic situation and quite a complex history have resulted in a specific situation in terms of legal language and the attention to clear legal language.

When Belgium became independent from the Netherlands in 1830, the newly written Constitution was praised all over Europe for its modern liberal values and focus on freedom, all inherited from the Enlightenment and the French Revolution. One of the freedoms proclaimed was the freedom of language: everyone could speak and use the language of his choice. This however, according to the new government, also applied to the government itself. Consequently, it chose to use only French in all public matters. It was not until 1898, almost 50 years after independence, that Parliament approved a bill of law which stated that from then onwards, all new legislation had to be published both in Dutch and French. Around the same period, laws were passed about the use of Dutch in Flanders in court procedures, secondary education, civil service and so on. Of course, this new law did not solve the problem of legal Dutch at once: which variety of legal Dutch had to be used to formulate the new legislation, since all previous translators had created their own terminology? And what did one do with all the existing legislation, of which only a French official version existed?

The problem was even bigger than that. Whereas in the Netherlands, as early as 1916, the Dutch lawyers’ association installed a committee in order to simplify legalese, a Belgian law professor, Bellefroid, remarked about the same period that the problem for Flemish lawyers was not so much their limited knowledge of legal Dutch, but their limited knowledge of Dutch itself. Indeed, until well into the 20th C, Flemish lawyers would have to study Dutch first in order to be able to study legal Dutch afterwards. Furthermore, no standard variant of legal Dutch existed. Although all new legislation had been published in Dutch since 1898, no uniform terminology had been developed and very often, calques from French were being used. In 1923, in the aftermath of the First World War, political awareness of the democratic consequences of this situation grew and the government appointed a committee that would translate all major statute books into Dutch, however without legal force. In 1954, after the Second World War, a new committee was appointed



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to create Dutch texts with legal force of all major statute books and acts. During the 1950's and 1960's finally, official Dutch texts of the civil, penal and commercial code were published. The Belgian Constitution was only officially published in Dutch as late as 1967, more than 130 years after the country's independence. The translating committee created in fact a complete official Dutch legal terminology next to the French one. It did so with great care and accuracy, publishing extensive motivations about the translating choices it made. Therefore, its role can hardly be overestimated. The committee chose to approach as much as possible the existing legal terminology and language of the Netherlands. In doing so, it wanted to provide Flemish lawyers with an already full-fledged and standardized terminology and language, ready for use. At the same time, it contributed significantly to the strengthening of the unity of language in the Dutch-speaking regions.

The consequence of these historical developments was that, until the end of the 20th C, the focus was on learning, in the sense of studying, correct, and not so much clear, legal language. Lawyers had to learn to avoid calques and phrases copied from French which were largely present in the older legal documents. Generations of lawyers were taught language courses at university in the style of 'do not say [following a calque from French] but use [following the Dutch variant from the Netherlands]' instead.

### **21st C: shift from correctness to clarity**

Only at the end of the 20th C, did attention shift to clarity and accessibility. Lawyers learned, here in the sense of gaining knowledge through experience, that their correct language did not meet the citizens' expectations or needs.

The same shift occurred, by the way, in the minds of the French-speaking lawyers in Belgium. Up until then, they had experienced less difficulties, since they disposed of a fully developed legal language that was accessible to all those who could gain access to justice, up till then mostly the wealthier and educated classes.

Since the 1990s, government has taken several initiatives in order to make legal language and public communication at large more accessible. The Flemish Parliament installed a special drafting and revision service both at parliament and at government level. This service revises all bills of law and drafts of government and ministerial decrees, not only in terms of correct language use, but also in terms of clear writing. The revision is compulsory, the suggestions proposed are not: in the end, the supremacy of the legislator is respected and it is up to the members of parliament or the ministers to decide whether they agree with the revisions proposed or not.

Around the same time, beginning of the 1990s, at the federal Belgian level, a somewhat similar initiative was taken in the first chamber of the Belgian parliament, the Senate. There, members of the judicial service, the translation service and a number of senators decided that when the Senate discussed a bill, they would read it together, putting together the remarks they had from their own specialized point of view. This so-called Reading Committee would discuss the texts from linguistic, legal and political points of view, thus coming to a comprehensive, coherent and balanced report. The committee's work was greatly praised and approved, but as in many bicameral democracies, the first chamber has limited powers and since the last parliamentary reform in Belgium of 2014, the Senate has been abolished as a full parliamentary assembly and the committee has disappeared as well.

Still on the level of the federal Belgian state, in the 1990's, the training centre for the civil service developed clear writing courses – which still exist today – and even organized a clear writing office, where civil servants could send their texts for advice

on clear formulation. Both initiatives were taken both for French and for Dutch. The clear writing office unfortunately did not survive subsequent rounds of economies.

So at the Flemish level, the initiatives are still running, but often their effect is questioned because of the noncommittal and isolated nature of the remarks that are made, which can easily be brushed aside by so-called technical specialists or politicians. On the federal Belgian level, a very fruitful collaboration existed between linguistic and legal specialists, who, through dialogue, arrived at a balanced and coherent set of proposals, but their approach was not taken over by the Belgian House of commons when the Senate was reformed.

### **Dialogue key factor to success**

This dialogue between lawyers and linguists is in my opinion the key to success in clear writing efforts. All too often, clichés and biases dominate the debate: linguists see lawyers as incompetent writers, either stuck in an old-fashioned and pompous jargon or consciously putting up a smoke screen of legalese to serve their own interests in the first place. Lawyers in turn dismiss the linguists' suggestions as all too simplistic, lacking the technical fine tuning and nuances they know through years of study. As both parties come together and sit around the table in order to discuss the possibilities of making a text more accessible, both are often surprised of the other one's openness and willingness to listen and to balance pros and cons of certain suggestions, often arriving at the conclusion that much more is possible than was initially believed. In that sense, they learn to be clear as well, not so much by studying but much more by gaining knowledge and especially skill through experience and dialogue.

### **On other legal levels as well, initiatives were taken around the turn of the century.**

In terms of drafting instructions and clear legal writing, the Council of State has played an important role. One of the Council's two major competences is being parliament's advisor on new legislation, the other being the supreme administrative court. The Council's legislation section provides advisory opinions on all new bills of law, royal and ministerial decrees. The Belgian Council of State is a relatively young institution, it was only founded in 1946, around the same time and in the same spirit as the Translation Committee that was mentioned earlier. Therefore, its advisory role has always included special attention to correct legal language as well. At the beginning of the 21st C, the Council made the same shift from focusing on correct language and correct legal technique towards more attention to clear language. The shift is clear in the Council's legislative drafting manual. The Council had already published legislative drafting instructions from the 1980s onwards, but the 2001, and especially the 2008 editions of the legislative drafting manual focus much more on principles of clear writing, stressing the need of using simple syntactic structures and avoiding wordiness. The Flemish government has published its own legislative drafting manual, which paid attention to clear writing from its first edition but which has taken over almost all of the Council's recommendations in its latest edition as well. Furthermore, the Flemish government has organised since 2009 a special course for civil servants who want to specialise in legal drafting, with attention to clear writing as well.

Since 1997, the ministry of Justice has organised a course for magistrates on how to write their judgments, focusing both on the contents but also on the clear formulation. The course is compulsory for all newly appointed magistrates, but is open to all other magistrates as well. The most fruitful and rewarding part of this course is the collective discussion and rewriting of a judgment: newly appointed magistrates, some with refreshing and sometimes revolutionary ideas and some

with great fears of making even the slightest mistake, discuss with colleagues of long standing experience, some of those with wise and encouraging remarks that such and such simple expression is perfectly acceptable, others clearly set in their ways and using a language the new colleagues hardly understand.

Maybe thanks to this course, the judges have become the forerunners in clear language. Their texts are often shorter and clearer than the lawyers' statements and certainly the writs drawn up by the bailiffs. Some judges and courts have created an explanatory leaflet which they add to each of their judgements and which explains the most important terms and rules concerning the judgement: what about appeal, what about the costs, what is sentence by default etc. The High Council of Justice, the regulatory body of the judiciary in Belgium, is developing a model judgement with a clear and uniform structure and lay-out, leaving behind the old-fashioned style where each sentence started with 'considering that', a style that has disappeared over the last twenty years.

Recently, the positive effect of dialogue and direct confrontation of linguists and lawyers was confirmed in yet another legal branch, that of the notaries. Notarial deeds have a fierce reputation of inaccessible, highly ritualised language. Individual notaries invariably refuse to change whatsoever in the texts of their deeds, which have remained unchanged since the beginning of the 20th century. Nevertheless, the Notaries' Journal, the leading legal review for notaries in Flanders, decided in 2013 to celebrate its 75th anniversary with a book about the language of notarial deeds. The preparation of this book brought together a group of notaries in order to discuss the suggestions for simplification I had made in some of their own deeds. Again, often the conclusion of the discussion was that simplification was indeed possible: whereas the author himself would insist that he had always written like that and for good reasons, his colleagues would often react that in their eyes the alternative that was proposed, could equally well serve without creating confusion or endangering legal certainty. Following the successful publication of the book, the journal's editorial board decided to introduce a quarterly column in the journal with examples of how to clarify the language of notarial deeds.

### **Still work to do**

All these initiatives however should not make us too euphoric. Some large scientific surveys show us that the problem of inaccessible legal language and insufficient communication remain very real.

In the aftermath of the notorious Dutroux-case – a paedophile murderer – which caused much public upheaval, the Belgian government decided to organise a large survey amongst citizens in order to gain insight into the problems they experienced with justice and their opinions about justice in Belgium. The first edition of the *Justice Barometer* was published in 2002 and the survey was repeated in 2007 and 2010. The results of the main question, “do you think justice in Belgium is trustworthy?” were very negative in 2002, immediately after the Dutroux-case had revealed malfunctioning in both the police and the judicial authorities. In the 2007 edition of the barometer, the result had changed for the better: a major police reform and other initiatives made that the majority of the public had found back its confidence in the legal system, which was confirmed in the 2012 survey.

However, the results of another question remain negative through all three editions. On the question “do you think the legal language is sufficiently clear?”, almost three quarters of all respondents answered negatively in all three surveys. The problem has clearly not been solved yet. Of the ten most important problems that came forward from the surveys, almost half are linked to communication and information: people experience the legal language as too complex, see the legal system as very

impervious and inaccessible, find that legal professionals are very aloof, they do not receive enough information about their own case and experience a lack of communication in general.

These results were confirmed in a survey at the request of the Antwerp Court of appeal. Lawyers and litigants in all courts of the Court of Appeal's jurisdiction were interviewed about the user-friendliness of all aspects of the court system, from the practical access to the court buildings to the insight into the legal procedures. Two major problems came out of this survey: the long delays on the day a case comes before Court and the difficulty of the language used in judgements and letters.

## **Start during law training**

All those scientific investigations show that we have to continue our efforts to convince lawyers of the necessity of clear language. And who could we better begin with than law students? If we can teach them to be clear, if they learn to be clear, in the sense of studying and being taught but also in the sense of gaining insight, we can take a first important step towards a durable change. Most Flemish law faculties therefore have in their law programmes a course on clear writing and communication, often quite early in the programme, during the first or the second year. It usually takes the form of a one-semester course, sometimes in smaller groups with accompanying exercises.

But students quite rightly complain that at the moment the course is being taught, they are not yet used to legal language, that they do not recognize the problems yet, and above all that the four following years of their studies, all the other law professors do their best to counteract all they have learned about clear communication by using and offering them exactly the opposite.

A one-shot course in the whole law curriculum therefore does not suffice: law professors should pay continuous attention to clear communication in all the courses they teach. Clear communication should also be dealt with explicitly throughout the complete curriculum. Therefore, the University of Antwerp has developed the first-year course on legal language proficiency into what has been called a learning path. After the more theoretical first year course dealing with all the pitfalls of legal communication, a more practical writing course with assignments follows in the second year.

In that course, uniform assessment forms for papers and essays are also introduced. Those forms will be used throughout the whole curriculum to assess and mark all assignments, papers and essays, both on the content level but also on the level of clear communication. The form is divided into two blocks. The first block is specific for each assignment: it usually contains criteria concerning contents, structure, sources, etc. The second block deals with the language used in the paper and always remains the same: every time, attention for obsolete words, complex phrases, prolixity etc. comes back. Because all professors use the same assessment form with the same criteria, students will quickly learn that those criteria are important and, moreover, that they are able to make progress, progress they will discover on the subsequent assessment forms they receive. Since every paper and essay is also marked in terms of formulation and language use, this puts pressure on the students to pay attention to these aspects. For the teachers as well, this offers advantages: marking becomes more objective, transparent and uniform, an aspect which is strengthened by the teacher's manual that accompanies the forms and that explains in detail the criteria used in the form and the ways to use them for marking.

## **Conclusion: dialogue key to success**

In this article, I have given a brief overview of the complex history of legal language and especially legal Dutch in Belgium, of the shift in focus at the end of the previous century from correct language towards clear language and of the necessity of dialogue between lawyers and linguists in the process of trying to reach better legal texts. I would like to illustrate that necessity with a personal experience. When I was revising the conclusions of an audit report of the Belgian Court of Audit, I came across a subtitle saying “*the objectives do not meet the finalities*”. This rather mysterious formulation sounded for me like a perfect tautology. Hence I asked the authors to reformulate, which was met with reluctance and disbelief: how was it possible that I had not understood one of their principal conclusions, that the objectives did not meet the finalities? I repeated that for an average reader, the title would probably sound as a repetition or a couple of synonyms. Consequently, I was treated to a complete course in public management. Indeed, for the authors it was self-evident that in order to function properly, a public service should set targets to aim at, formulated with so-called “smart” criteria, in order to reach its ultimate purpose of functioning well as a public service. In their explanation, the authors had provided sufficient synonyms in order to rewrite the text. The title was rewritten in Dutch sounding more or less as ‘the set targets do not meet the intended purpose’. By discussing my remark, I learned that the authors had not just written the title inconsiderately, and the authors learned that their original formulation would probably cause confusion. At the same time, the dialogue had provided us with an easier formulation which conferred the original message equally well.

Clarity through dialogue, that should indeed be the purpose, the aim or the finality to aim at.

# You do not speak plainly alone, you speak plainly together

By Bart Weekers

De Vlaamse Ombudsdienst (“The Flemish Ombudsman”) is the parliamentary ombudsman of Flanders i.e. the government of 6 million people living in the northern part of the federal State Belgium.

Like any other parliamentary ombudsman, the core business of the office of the Flemish Ombudsman is the individual approach of cases, brought to the attention of the ombudsman by any citizen who is dissatisfied with the treatment they receive from a governmental department. The ombudsman then tries to mediate. The winning asset of the ombudsman in that respect is his independence, combined with his mediation expertise and his authority.

But whenever possible, an ombudsman’s office will also do a second thing. The office will try to draw lessons from cases in which the office mediates. In so doing, the office will try to help to improve the overall service provided by the government. Let’s discover the issue of “speaking plainly, of “clear communication” throughout this respect. The key point that “you do not speak plainly alone, you speak plainly together” will be first illustrated by a tiny example: “the fine that people get when they take a bus without paying”. Secondly, this example will pass to a broader point-of-view, talking first about “the hotline of hotlines”, ending with a conclusion on “speaking plainly together”.

## Speaking plainly about travelling without a ticket

Over the years, the Flemish Ombudsman has opened several hundreds of cases on fines for travelling without a ticket on the De Lijn buses. De Lijn is our Flemish state-owned company for public tram and bus transport. Every year, De Lijn issues some 40,000 to 50,000 of such fines from 75 to 150 euros.

Since I took office five years ago, we don’t open that many cases any more. Does that mean that all these fines no longer cause any problems? Of course not, but the results I saw from the hundreds of cases in the past were too meagre and I found that we gave people an illusory impression and consequently, we were not speaking sufficiently plainly to them.

We had already long known for a fact that De Lijn wants to be lenient only for pass holders who had forgotten their pass, but that is as far as it goes; apart from that, only some very rare social circumstances are accepted as an excuse and some errors of form are dismissed (such as a summons to pay a fine that is left lying about too long at De Lijn and was sent after the deadline).

Rather than getting a predictable “no” from De Lijn 100 times a year, I now speak very plainly as ombudsman to people with an umpteenth story about fines, which is nonetheless based on variations of comparable arguments each time. The ombudsman explains that he understands De Lijn. And you know what? Most of my petitioners by far understand that the fine is justified. And only very, very occasionally does someone persist.



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“Poor ombudsman’s service,” I can hear you thinking. Perhaps, but at the same time we are continuing to talk to De Lijn; we worked together with them on a better motivation for rejecting a complaint, although the computer programme continues to allow only 180 characters to explain why the first wave of objections is not convincing. And we are trying to convince De Lijn to provide a telephone service to deal with fines, if necessary through information officials working from scripts. This brings me to my broader story and what we have to do so that we can all speak “plainly” together.

## **The hotline of hotlines**

First, I would like to talk to you about hotlines. In recent years, we in Flanders have become increasingly more aware that better services start at the zero line: the level at which the government communicates actively with its citizens; and also provides an answer to individual questions that citizens put to the government about their own situation.

The two most prominent instruments of my Flemish government to that end are an informative website, with 5.5 million visitors per year ([www.vlaanderen.be](http://www.vlaanderen.be)); and a toll-free hotline with more than 1 million questions per year via telephone (toll free number “1700”), e-mail and chat ([www.vlaamseinfolijn.be](http://www.vlaamseinfolijn.be)).

And yes, as a general ombudsman, I am very much aware that such a general hotline or a general website cannot possibly specialize into every little detail. And yes, I know all too well that a special (preventive anti-) suicide line requires a completely different approach than a general hotline.

This knowledge has not however prevented me from having long advocated consistently for maximum integration of all possible government communication. Over the years, I illustrated my plea with the argument of being fed up with always having to act as the ultimate “hotline of hotlines,” which must time and again explain anew to citizens which specialised hotline deals precisely with the very problem that citizen happens to have.

Admittedly, that plea by the ombudsman was a plea “too far,” because it is clearly not possible to integrate all communication through one or two general channels. We stuck to the plea nonetheless and in the meantime we can see that it has borne fruit.

Visitor figures on the two aforementioned central channels have been going up year after year. And the additional creation of new, specific, sub-hotlines has in the meantime acquired taboo status. And when existing, isolated lines run into problems, the policy now addresses those problems, with integration. That is currently the case for the helpline devoted to care for the elderly. The minister responsible for welfare informed parliament recently that he is looking into how he can merge that helpline for senior citizens with the hotline for young people, for instance.

Needless to say, the ombudsman does not get such processes going on his own; there were also others with the same plea as the ombudsman. But at the same time, it is also a good thing to do more oneself than “just plea.” We have been consistent in recent years, in fact. So since 2012, when citizens pick up the telephone and call the ombudsman, they no longer reach a special line of the ombudsman, for the telephone has in fact been brought under the aforementioned toll-free general hotline [www.vlaamseinfolijn.be](http://www.vlaamseinfolijn.be) / 1700 hotline.

You read correctly: the hotline of the government itself now answers countless questions for information, which people used to put to the ombudsman. Of course! We share the joint ambition of being able to communicate clearly by dealing with every question or complaint in a professional and customer-friendly manner using one single number. Our cooperation is bolstering the role of 1700 as the first point of

contact and information channel of the Flemish government for citizens, companies and organisations.

This processing pattern consists of:

- the zeroth 1700 line, which provides information;
- the first line complaints processing by the entities of the Flemish government
- (with 1700 being the signpost to the complaints managers and other ombudsman services);
- and the second-line of complaints processing by my office.

Our cooperation is currently shaped as follows: (a) Calls to the (former) 0800 toll free number of my office are diverted to the front office (contact centre) of 1700. My staff are thus relieved from the flood of telephone calls and instead, callers end up in a call centre with dozens of telephone operators on hand. (b) The front office of 1700 answers questions for information directly. In the case of first-line complaints, the call centre refers the calls to the complaints handlers within the Flemish government or to other ombudsman or complaints services. (c) Only the remaining calls are diverted (escalated) to my office. This way, my office now receives 2 to 3 calls a day, instead of 40 as before.

We have been doing so for five years now and I have never heard a complaint about it.

Citizens express an 80 to 90% satisfaction in our monitoring: the kind of result that helps a lot to stay convinced of the direct social utility of this cooperation, inasmuch as citizens and companies are accorded high quality reception, thereby making it easier for citizens to find help, through a simple call number 1700, where there is a real human being on hand to answer them.

Furthermore, there are other advantages: the escalation of the 1700 affords my office enhanced accessibility and greater processing possibilities. The larger basis and the broader platform can help the Flemish Ombudsman Service to underpin more soundly its recommendations for improvements to the administrative entities. This way, we really think that we are speaking much more plainly together.

In the summer of 2015, for instance, there were many annoying problems getting the renovation premium to people's account in good time (and people had to wait for their money, which at times amounted up to 4.000 euros). We were in particular keen to provide clear information on the matter to the people concerned in collaborating with the governmental hotline and website.

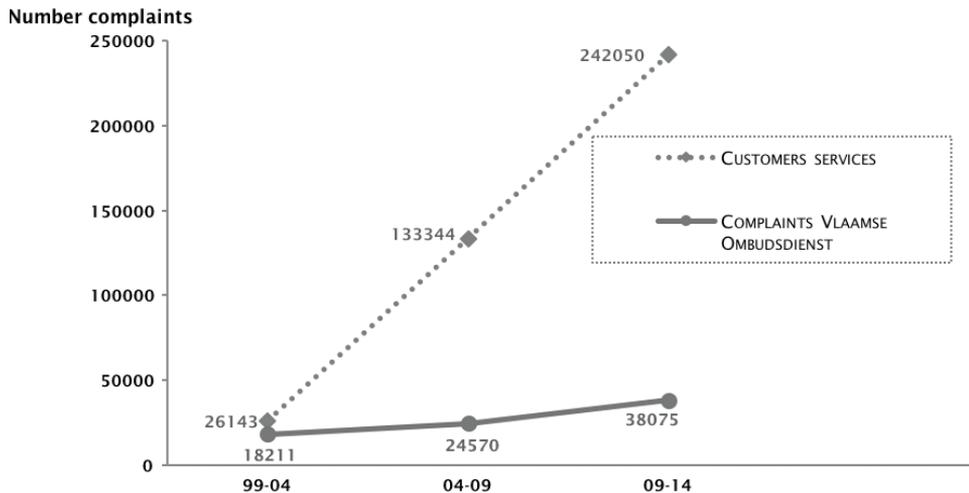
## **Speaking plainly together**

Let's look now to the so-called first-line complaints, not only about De Lijn fines. You need to know that back in 2001, my Parliament adopted the Complaints Decree, which states that every Flemish government institution must have a complaints department or handler. These first-line complaints handlers deal with 50,000 complaints every year (51,110 in 2014). The complaints services are getting better year after year. Many of these have in the meantime grown into fully-fledged services.

I did not want the Flemish Ombudsman Service to become a call centre, over and above the first-line services of the Flemish government itself. So I was faced with the following challenge when I took up the office back in 2010: I wanted to continue to receive and provide advice and guidance for an appropriate solution to citizens, phoning or mailing me with their concerns, but I also wanted to be able to concentrate on my core task which consists of reconciling points of view in the 2nd line processing of complaints against the Flemish government services.

As you can see below, we have worked hard on this issue in the last five years.

Back in 1999-2004, the office of the ombudsman was dealing with almost as many complaints as the complaints departments themselves (1999-2004: ombudsman dealing with 18.211 complaints / complaints departments: 26.143). Ten years later, 2009-2014, we see something totally different: the office of the ombudsman received now 38.075 complaints, which is not even 20% of the numbers of complaints, 242.050, that were dealt with by the complaints departments).



A final word about the first line, i.e. my government's complaint and customer services. As mentioned, in 2014 these services processed 51,110 complaints in all. Only when the complainants do not get a satisfactory result on that first line, can they turn to the second line of the ombudsman.

We have called consistently for more integration of these "first line" complaints and customer services also. You must know in fact that, when I assumed my duties at the end of 2010, I found a fragmented landscape of dozens of customer services. And they all seemed to operate on their own island. For instance, I saw a commercial gesture for a passenger, who missed his bus in the East of the country. At the same time, another passenger, who missed his bus too 100 km to the West, was just sent packing.

Here once again we have sometimes exaggerated in our focus on integration.

And again, the ombudsman did more than speaking words alone. If, for example, a major government department is currently grappling with problems relating to a massive digitising project, we are not going to find complaining citizens the right, because one or another high accessibility standard has been temporarily infringed. We do explain the work in progress and expect a little empathy from the citizen. Behind the scenes, we keep an eye on the approach to problems, as we did in the previous months for instance, for the digitisation in childcare.

And once again, we have produced results. The bus company in the meantime has one central customer service, with one commercial policy for the entire country. And recent reporting shows how the operations of the customer services are getting increasingly more integrated in the government's general quality policy.

Final conclusion. What else can I say, other than that this aspect of my work too is always a matter of "weighing things up". Sometimes, the ombudsman will continue to hammer hard and consistently on some points of principle, but at other times, pragmatism will be needed to get things moving to "more speaking plainly together".



IN MEMORIAM

# Professor Richard C. Wydick 1937–2016

By David Marcello

“We’re going on two generations of lawyers and law students who have been guided and changed by *Plain English for Lawyers*. No other book on legal writing can make a claim like that.”

Professor Joseph Kimble, *Scribes* — The American Society of Legal Writers



**David Marcello** is Executive Director of The Public Law Center at Tulane Law School.

In 2008, our International Legislative Drafting Institute honored the work and the wisdom of Professor Richard C. Wydick, whose marvelous little book, *Plain English for Lawyers*, has been an enduring resource to hundreds of Institute graduates. Professor Wydick’s annual lectures on the fundamentals of plain language drafting played a key role in the Institute during its first dozen years.

When we first invited Dick Wydick to speak at the 1996 Institute, we knew he expressed himself well in print, because we used his book in classes with Tulane and Loyola law students. We did not know how he would present himself in person, however, when first introducing him for the Institute presentation. Despite his many accomplishments, Professor Wydick was a modest man whose concern for others gave him an attentive rather than an assertive demeanor. Fifteen seconds into his presentation, any doubts were dispelled.

Watching Dick Wydick in the classroom was like watching Muhammad Ali in the ring—but without the violence. He energetically engaged students in a model Socratic dialogue, using question-and-answer to elicit their opinions and refine their responses. The experience can be challenging for students accustomed to being passive recipients of information imparted by lecture. For many Institute graduates, the encounter with Dick Wydick on Wednesday morning of Week One may have been their first experience with “active learning,” and their memories no doubt remain vivid.

Hundreds of Institute graduates experienced Dick Wydick in the classroom. Thousands of law school students benefitted from his career in teaching. Tens of thousands of writers have improved their abilities because of important lessons learned from *Plain English for Lawyers*, which has sold more than a million copies.

When the 2008 International Legislative Drafting Institute celebrated the works and the wisdom of Professor Richard C. Wydick, the participants expressed their appreciation and best wishes in a photograph!



Professor Wydick retired in 2003 from a successful teaching career as a faculty member of the Law School at the University of California at Davis. He served as Acting Dean of the Law School in 1978-80 and received the Distinguished Teaching Award in 1983. He authored law review articles and books on ethics, evidence, and good writing. He served as a member of the Board of Scribes—The American Society of Legal Writers, which gave him its Lifetime Achievement Award, and in 2005 he received the Golden Pen Award from the Legal Writing Institute.

Idiopathic pulmonary fibrosis curtailed Dick Wydick's travels in 2007, and he could no longer tolerate the flight to New Orleans. His wisdom continued as a presence in the Institute classroom, however, where each participant still receives a copy of "the little book" and several days of instruction on how to apply its techniques in legislative drafting.

Wydick's wisdom still accompanies us to distant training events as well. In a training visit to Vietnam during May 2016, I held up his book in a room full of legislative drafters and read from it: "We lawyers do not write plain English." I then left behind two shrink-wrapped copies of *Plain English for Lawyers* with a couple of very happy Vietnamese drafters.

On the flight home to New Orleans, I thought of Dick and Judy Wydick as our flight map showed Sacramento below. Then at a layover in Dallas-Fort Worth, I opened an email and learned he was no longer with us.

We've lost a great teacher, an insightful writer, a thoughtful and considerate person. His work endures, embodied in the *Plain English* book and in the vivid memories of his former students and colleagues. His legacy is large, and his contributions are ongoing. Dick Wydick's lessons continue to inform my teaching, and he will continue to accompany me into every classroom, as a model and a mentor.

*Contributions to the Wydick Family Scholarship for UC Davis law students may be made payable to the UC Davis Foundation: School of Law, 400 Mrak Hall Drive, Davis, CA 95616-5201.*

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