Chapter 1

What's wrong with traditional legal writing?

Introduction

Lawyers with keyboards or dictating machines forget they are people; however amiable and unpretentious they are at other times, when they compose the written word a strange personality emerges. Where a human being would say

> The house is ready

a solicitor employs a large staff to say

> We hereby give you notice in accordance with clause 11 of the Contract dated 6th November 2016 the made between Miranda Homes Limited of 157 Bracknell Road South Farnham Hampshire (1) and East Hill Residents Association Limited of 157 Bracknell Road, South Farnham, Hampshire SF4 5GR (2) and James Edward Brownlow & Katherine Elizabeth Brownlow of 81 Landfall Road South Farnham Hampshire (3) that the above property is now constructionally complete.

What persuades solicitors that all this is necessary? The belief that careful drafting will avoid ambiguity? There would have been none; with the address given (as usual) in the heading of the letter, the four-word alternative could not have been misunderstood by the solicitor-recipient. But a more helpful writer could have added:

> You should therefore arrange to complete the purchase by 1st September[, please].

What is wrong with the longer form?

- *Hereby* adds nothing. Could the recipients have argued that *We give you notice …* did not constitute notice?
- *We give you notice that* is similarly redundant.
- *In accordance with* is wordy; *under* would be neater.
- Nothing is gained by reciting the contract, since it had already been identified by the reference to the house in the heading of the letter.

- So keen was the writer to reproduce the entire contents of the dictionary that he (or she) did not notice the mistaken use of *the* instead of *and* in the second line. This error turns the supposedly precise text into gibberish.
- *Dated 6th November 2016 and made …* could be expressed more economically: dated *6 November 2016 …*
- *Contract* is a common noun, not a proper one, and does not deserve a capital letter.
- If the names of the parties must be spelled out, the usual *Ltd* would serve.
- Commas are omitted from the first incidence of the Bracknell Road address. This creates ambiguity: is it *157 Bracknell Road, South Farnham* or *157 Bracknell Road South, Farnham*? And if there is a good reason for abandoning punctuation (and the postcode), why are they both restored on the following line?
- The postcode (which the recipient would have checked before exchange of contracts) is no help here.
- The repetition of the address is clumsy and gives the impression that the writer was not aware that it had already been given: *of the same address* could replace the second recital; or (with slight rearrangement) the first could be omitted in favour of *both of …*
- The use of the numbers *(1)* and *(2)* might be appropriate if it is not otherwise clear who is who (though it always should be – see, for example, the revision on p.86), but it is an affectation in a letter.
- The use of *and* between each of three items in a list is clumsy.
- On the third reference to South Farnham (where both solicitors had their offices) the writer is still assuring the recipient that it is in Hampshire.
- *The above …* is no more precise than *the …*; there is no property mentioned below.
- *Constructionally complete* is not a term of art and has no clear meaning. We suspect that it was a slip, perhaps copied from the contract, and that the writer meant practical completion.

Few people read more legal writing than they have to, especially if it's badly written. So it's worth bearing in mind Armstrong and Terrell's warning (2015):

> Our starting point has been a painful psychological fact about how readers, especially readers who are habitually skeptical, approach a document. At every level, from its very beginning all the way down into the innards of its paragraphs, they are constantly asking annoying questions: Why am I reading this? Where are we going? Why are we going there?

But even if the reader perseveres, and is able to unravel the language, the message itself may well be flawed. Justice Samuel Alito of the US Supreme Court thinks that (Garner, 2011):

> there is a clear relationship between good, clear writing and good, clear thinking. And if you don't have one, it's very hard to have the other.

Throughout this book we suggest clearer, more concise, and, we hope, more effective alternatives to pieces of traditional drafting. You might find that we – like everyone else – make mistakes. But that does not mean it is wrong to write more clearly; any error can (and is more likely to) be corrected within the guidelines we are proposing. If you spot one, or have any other criticism, please post it on the book's website at www.clarity forlawyers.com.

So what is wrong with traditional legal writing? In summary:

- It wastes everyone's time.
- It wastes everyone's money.
- It reduces lawyers' earnings.
- It holds up commerce and people's lives.
- It is imprecise.
- It causes unnecessary and sometimes expensive mistakes.
- It often fails to achieve the writer's purpose.
- It alienates clients, their advisers, and the public.
- It alienates many judges.
- It sounds archaic.
- It shuts people out of their own business.
- It undermines the rule of law.
- It is often itself unlawful.
- It can be unprofessional.
- It is inhuman.
- And it's as dull as lead (and almost as indigestible).

If you are convinced, you might want to go straight to Part C where we start to discuss the writing habits that can make legal writing more effective. Or, for argument and examples in support of the bulleted assertions and an explanation of what we are trying to do, please read straight on.

Legalese wastes time

Legalese takes longer to read. This is partly because there is more of it, but there are other reasons; several factors make it more time-consuming, word for word. These are the:

- unbroken layout;
- long and convoluted sentences;
- more difficult words; and
- absence of punctuation.

Take this example from a commercial lease, written by a committee of lawyers who had no homes to go to:

> Not to use or permit or suffer to be used the demised premises or any part thereof or any buildings or erections at any time hereafter erected thereon or on any part thereof as and for all or any of the purposes of a brewery or a club (whether proprietary or members) or a public house or other licensed premises or otherwise for the preparation manufacture supply distribution or sale whether wholesale or retail and whether for consumption on or off the premises of all or any alcoholic liquors of any description and not without the previous consent in writing of the Landlord to carry on or permit upon the demised premises any trade business or occupation other than that of a retail shop for the sale of X.

They could have said just:

> Not to make or sell alcoholic drinks in the shop or (without the landlord's written consent) to use it except for the retail sale of X.

(We explain the omission of *not to use or permit* on p.106.) The irony is that the drafters must have started with something like the shorter version in mind. What did the client want? That the premises be used as a shop, with the landlord having a reasonable say in what was sold – but on no account strong drink. Why then did the drafters so painstakingly construct that elaborate waffle? The tenant's solicitor would only have to decode it. So, also, would the parties and their advisers each time a query arose over the years and whenever the lease was sold or mortgaged.

The late Dr Robert Eagleson, an Australian linguist and legal drafting consultant, once said (in correspondence) that he hadn't managed to devise a suitable test

> … but from experience I think it is pretty certain that legalese takes longer to write.
>
> Public servants ('civil servants' in the UK) often begin with a plain version and then redraft into a longer version meaning the same.
>
> Lawyers tend to do the same. No one begins with a grammatically correct 300-word sentence. They begin with many short ones and then merge. To get everything in the right order takes time.

Getting all the right content in the right order takes not only time but experience, skill, thought, and care. An efficient shortcut is to copy what the writer (or someone else) has written before. Using a precedent also reduces the risk of overlooking what others have already considered, although it introduces other, less obvious, risks. Unfortunately, most precedents are still in traditional style, but when it's time to add or update a precedent, a clearer style will be a lasting asset.

Research reported by the Law Reform Commission of Victoria (1987, para.106) shows that plain English (a concept we discuss in Chapter 4)

increases the speed with which lawyers read documents and solve problems interpreting legislation. Those findings have since been duplicated, notably by Martin Cutts' research reported in *Lucid Law* (2000).

> **DP**: In 2014, I ran a timed trial on a two-page letter asking a court manager to preserve documents for an appeal. A small group of postgraduate legal writing students read the letter and answered questions testing their understanding. The students given the original version took about 30 per cent longer to finish answering than those looking at the version rewritten according to the principles in this book. The students looking at the rewritten version also gave more accurate answers. This was not an isolated example; I often run less precisely measured tests on shorter documents, and routinely find a noticeable difference in reading time.

The reader of a traditional text has a harder task than the writer, who (ideally) knows the intended meaning.

The 158-word original sentence below took Mark Adler some four minutes to read and understand, a rate of about 40 words a minute. The 54-word plainer version that follows it omitted unnecessary and some irrational detail and should take about 20 seconds, a rate of 165 words a minute. What slowed him down so much in the original? He had to:

- Force himself to read to the end, dragging his mind back to the text when it wandered.
- Concentrate hard on what he was reading.
- Search for cross-references and skim them for their gist.
- Break the text down into its parts, so that he could put subordinate clauses to one side as he worked out the structure of the whole and extracted the essence of the meaning.
- Read each part more than once.
- Reassure himself that he correctly understood it (though a thorough check would have taken much longer).

Original (158 words)

If at any time when the aggregate of the Initial Percentage and any Portioned Percentage (as hereinafter defined) acquired by the Leaseholder pursuant to the provisions of Clause 2 and the Fourth Schedule hereto is less than 100% there has been a disposal of the Lease otherwise than in the circumstances detailed in Clause 3(15)(b) hereof and the Landlord by notice in writing served upon the Leaseholder within two months after receipt of notice of the disposal pursuant to Clause 3(16) hereof so requires the Leaseholder shall pay to the Landlord on demand the Market Value of the Relevant Percentage as defined in and ascertained in accordance with the provisions of the Fourth Schedule hereto as if the Leaseholder had served upon the Landlord on the date of the disposal a notice pursuant to Paragraph 2(1) of the Fourth Schedule hereto stating his intention to acquire such Portioned Percentage as would thereafter reduce the Relevant Percentage to nil

Revision (54 words)

The tenant must buy the landlord's remaining share of the lease, using the valuation machinery in clause x and paying the price on demand, if:

(1) The ownership of the lease changes in breach of clause 3(15)(b); and
(2) Within two months of receiving notice of the change, the landlord gives the tenant notice to buy.

That example was taken from a document 20 pages long, with about 360 words to a page. Scaling up from the extract, it would take about three hours to read in full, though in practice the sanity breaks will extend that time. Then it must be explained to the client, ideally in writing – another long and tedious job. If the revision reduces the 7,200 words of the original pro rata to 2,500 words, it should take about 15 minutes to read, and leave only points of law to explain to clients (who can read the document for themselves).

Any change in writing habits takes time – whether to simplify a legalistic style or to complicate a simple one (as some writers do on joining the profession). So, at least in the short term, writing clearly saves more time for the reader than it does for the writer. But in Chapter 8 and Appendix A we suggest a practical approach for busy professionals to improve their style without disrupting their workflow. Meanwhile, lawyers should demand, and help develop, clear and simple precedents. They might begin by focusing on those 'high stakes' documents which will most benefit the clients, the firm, and the writer. Improvements might make extra work in the short term for users familiar with the old version, but will guard against the dangers of skimming.

In the longer term, it will become quicker to write the initial draft. Any time saved can be reallocated to think more about what readers will need and to check and improve the draft.

Legalese wastes money

Just as time is wasted, so is money.

Lawyers spending 12 times as many hours as should be necessary on a job are likely to charge up to 12 times as much as they might; more if they think the complexity justifies a higher rate. To give some idea of the burden this imposes on all but the wealthiest clients, a solicitor charging 'only' £225 an hour – and some charge much more – will save a client earning £25,000 a year about two working days' income for every hour's work no longer necessary. Cutting the time taken to carry out the work can make the lawyer's services more affordable for the client and profitable for the lawyer. Even on work charged at an hourly rate, there is commercial pressure to keep fees in proportion to the value of the transaction and unbillable hours may have to be written off. Lawyers working for a fixed fee must reduce their profit or quote more to allow for wasted time. Moreover,

our experience has been that clearly written documents attract fewer amendments and so reduce both the cost of negotiations and the delay to the clients' business while they are conducted.

Time and money are also wasted in dealing with queries about unclear text, and in correcting errors arising from it. For example, the UK Parliament's Public Accounts Committee reported that (UK PAC, 2010):

> Feedback from advisors had revealed that a letter [HM Revenue and Customs] sends out each year to people joining Income Tax Self Assessment was confusing. By changing the letter it had eliminated 88,000 calls which would save the Department £447,000 a year.

And in 2015, HM Courts & Tribunals Service was receiving 500,000 applications a year to reduce court fees and rejecting up to 70 per cent, even though most applicants did qualify, because the applicants had misunderstood the form or sent the wrong evidence. Faulty applications dropped once it simplified the application process, changed the form, and reduced the guidance from 37 pages to 12, improving the outcome for applicants and saving work for court staff.[1]

For many more examples, see *Writing for Dollars, Writing to Please* (Kimble, 2012).

Legalese reduces lawyers' earnings

Cynics might argue that lawyers don't *want* to reduce their fees (and some lawyers agree with them). But lawyers who know how to save time and fees on a transaction can still earn as much. If they spend a quarter of the time on a job they can double their hourly rates yet still halve their bill. They will be paid twice as much for each hour worked, and sooner than they otherwise would have been. They can move more quickly to the next job, represent more clients while charging each one less (so reducing the need to work unprofitably), and impress each client with their speed and efficiency.

If they do run out of genuine work – or choose to take less on – they can go home at a reasonable time and relax at weekends, having earned good money for a skilful job. There might come a utopian time when all our precedents are clearly written and fewer lawyers will be needed; if so, let the least talented aspiring newcomers choose a career more useful than stoking fog.

In the meantime, law firms keen to secure these savings might start by clarifying their own most-used documents. Those that rely on the forms and precedents produced by legal publishers should call for these to be improved.

Legalese holds up commerce and people's lives

Traditional writing also slows everyone down in another way. Apart from increasing the number of hours devoted to a job, it extends the time before the work is finished. The recipient of a short, clear document is likely to deal with it promptly, perhaps immediately. But a busy lawyer receiving 60 pages of gobbledigook is likely to put it to one side and to leave it there for as long as possible. They dread spending three hours on a 15-minute job (using the comparison on pp.7–8) and give it low priority, perhaps forgetting it until the dissatisfied client complains.

And while the lawyers put off the long, dull job they can't get around to, the client's property is standing empty (if it's a lease they are negotiating): the landlord is losing rent while continuing to pay the outgoings; the tenant's business cannot open; neighbouring businesses and the local community suffer from a less vibrant district; and the landlord's prospects on neighbouring rent reviews are diminished. Meanwhile, neither client is satisfied with its lawyer, or with the quality of service provided.

> **MA:** Contrast the case of a landlord who telephoned me one afternoon about an empty shop. A prospective tenant had arranged to view it the following day, and the landlord asked me if I could meanwhile email a draft lease to each of them. I typed the proposed details into the standard lease for that trading estate and sent it to them, inviting the tenant to pass it to his solicitor. Next morning, I later heard, the tenant approved the shop, signed the lease (which was clearly written and intended to be fair to both parties) with immediate effect, and took possession.

Legalese is imprecise

The main excuse for the impenetrability of traditional legal writing is that the wording has been honed by the courts over many years and is necessary if the document is to have the extraordinary precision required of such a complex subject. But this is nonsense.

The two strands of this argument are logically separate. Neither is valid.

Sometimes the argument is presented as though the years of litigation have so carefully defined the terms that it would now be dangerous to depart from them, as the new language would then have to be litigated from scratch. On other occasions the argument is presented as though the language was intrinsically precise. Of course, these two hypotheses are incompatible: if the language was intrinsically precise it would never have needed the litigation.

The late Professor David Mellinkoff's law dictionary devoted, he said, more than 200 pages to summaries (summaries!) of conflicting judicial rulings on the meaning of 'accident'. Does that mean that the word is now

precise (but wasn't after the penultimate ruling)? Or that it is now much more precise than it used to be, but still needs some litigation, which your client offers to fund? In *The Language of the Law* (1963) Mellinkoff selects a few examples, including these (at p.377; we have omitted the meticulous case references):

> If you reach forward to stop a heavy crate from falling, and get a heart attack, that's an accident. But if you reach upward to stop heavy planks from falling, and get a heart attack, that's no accident. A sunstroke is usually an *accident*, but it is anyone's guess whether sunstroke is an injury by *accidental means*. If there is any doubt in your mind about what an *accident* is, just remember that if Mr Schwartz picks his nose and it bleeds, that's an *accident* …
>
> Without perceptible benefit, courts have repeated for years the lay definitions of *accident,* and are not even agreed that it has any technical meaning.

A moment's thought undermines the honing argument even without recourse to the details. Every case is decided on its own facts, and the decision will reflect the evidence (so far as it was admissible) of the circumstances surrounding this particular use of the word, and in particular of the parties' intentions. But how often do lawyers using an expression check its meaning in a legal dictionary? As close to never as makes no difference. And how often do they then read the judgments cited? *Absolutely* never. Even if they did, and they tailored their language to reflect all these (often inconsistent) cases, it would not protect them from a judge who disagreed with an earlier decision, nor from one who knows that meaning varies from place to place and from time to time.

'Tried and tested: the myth behind the cliché' (Adler, 1996) looked at these arguments in more detail, comparing the wording of a selection of repairing covenants and the results of the disputes they provoked. It appeared that it was not the *wording* that had become customary, but only the *style*. The wording was different in every case.

But could there be anything in the suggestion that legal language is intrinsically more precise, even if absolute precision is an unattainable ideal?

Look at how that language is constructed:

- Take as many sentences as possible.
- Replace the full stops that separate them with conjunctions to make one super-sentence.
- Remove the rest of the punctuation (to mask the relationship between different parts of the super-sentence).
- Move what used to be one sentence into the middle of what used to be another, and repeat the process as often as you like (to make it difficult to see where one idea ends and the next begins).
- Change the word order to one less familiar to non-lawyers.
- Replace modern words with archaic alternatives.

- List all the specific items you can think of instead of (or as well as) using a general word to cover them all (but don't worry if the list is incomplete, or if it includes items that should not be there).
- Pad out the result with as many synonyms and other unnecessary words as possible.

Forgive us for doubting the sanity of anyone who thinks this is a recipe for precision. But if you still feel nervous about leaving the asylum may we refer you to a more detailed exposition in 'Alphabet soup' (Adler, 1993)?

Legalese causes mistakes

Mistakes are inevitable. Everybody makes them, especially when working under pressure. But just as a traditional document takes even longer to understand than its unnecessary length would lead us to expect, so will it contain proportionately more mistakes. But it goes beyond that: legalese breeds extra errors that could be avoided by clear expression.

This example comes from the terms for supplies of goods or services, offered on its website by one of the 50 biggest UK law firms:

> Without prejudice to any other right or remedy we may have, we reserve the right to set off any amount owing at any time by you to us, whether under this Agreement or any other agreement which may exist from time to time between us, against any amount payable by you to us under this Agreement.

The sentence is long and confusing – to writers and proofreaders as well as the people to whom it is addressed. The idea seems to be that the law firm (but not the supplier) can deduct debts owed under other contracts. In fact, the clause is meaningless because, by repeating the words *by you to us*, it says the law firm can set off the supplier's debts against the supplier's debts.

The harder it is to extract the meaning from text, the easier it becomes to overlook a possible problem. The mistake everyone fears is *not* typed as *now*, or missed out altogether. That could have been the problem in this clause, which the House of Lords called 'half-baked', in a contract to develop land and then lease it:

> Upon the proper issue of the certificate of practical completion referred to in clause 3(a) hereof the landlords will forthwith grant and the tenant shall forthwith accept and execute a counterpart of the lease provided that if for any reason due to the wilful default of the tenant the development shall remain uncompleted on the 29th day of September 1983 the lease shall forthwith be granted and completed as aforesaid but without prejudice to the provisions of clause 3 hereof.

If taken literally, the proviso gave the tenant a good result (a lease of the property) if it acted very badly (failed through 'wilful default' to complete the development). After three and a half years of litigation, the House of

Lords corrected the mistake through a piece of creative interpretation (*Alghussein Establishment* v. *Eton College* (1988)).

Creative interpretation (and rectification) can still correct a mistake in some cases, but not all. Consider this clause fixing the service charge in the lease of a holiday chalet in a caravan park (*Arnold* v. *Britton* (2015)):

> To pay to the Lessor without any deduction in addition to the said rent a proportionate part of the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and the provision of services hereinafter set out the yearly sum of Ninety Pounds and value added tax (if any) for the first three years of the term hereby granted increasing thereafter by Ten Pounds per Hundred for every subsequent three year period or part thereof.

Sixty-nine chalets were let on these or similar terms; some chalets had annual rather than triennial increases. The service charge started at £90 in the first year, and in the last year of at least one term would reach £1,025,004 regardless of the actual cost to the landlord of providing the services. After four years of litigation, the Supreme Court expressed sympathy for the tenants for increases it described as 'alarming' but supported the landlord's interpretation. Lord Neuberger, giving the main judgment, said:

> I accept that the less clear [the words] are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning.

Nevertheless, this clause was not bad enough to justify a creative interpretation. It was only bad enough to help disguise the bad bargain the tenants were making.

These mistakes can have savage consequences for solicitors as well as for the clients, since they are likely to be sued for negligence (or worse, if they have deliberately helped to create a misleading document).

Consider also a vital witness whose statement includes a mistake created by the solicitor and thrown up only during cross-examination. If the case turned on the witness's reliability and this witness was made to look careless or a liar, how would the damage be repaired?

Mistakes are bound to increase with both the length and complexity of a sentence, as writers bite off more than they or their readers can chew. Why do lawyers go to such lengths to create unnecessary trouble for their clients and themselves?

Legalese doesn't achieve the writer's purpose

This is a third way in which legalese wastes time. Lawyers write to communicate, not to show off. If the reader does not understand, what should have been said will remain effectively unsaid. To communicate, you must adapt to the reader. It is no good sending a television signal to a radio receiver.

If one litigator writes to another *We reserve the right to bring a Part 20 claim against [X]*, the meaning will be clear. But if the recipient passes on the message untranslated, the client will be no wiser, and perhaps ask for an explanation, interrupting the solicitor's other work and adding (unfairly) to the bill. Or perhaps they will just shrug their shoulders and put up with ignorance – a common reaction. So, what should the solicitor have said? *The defendants are threatening to add to this litigation their own claim against [X].*

Formal agreements frequently – we are tempted to say 'usually' – contain provisions that the parties to it did not intend, do not know are there, and accordingly ignore. Too often this applies to their solicitors as well.

A lease (which a client wanted to buy) defined the boundary between the flat (for whose repair she would be responsible) and the rest of the building above and below (for which the landlord was responsible) by reference to the floor timbers and the joists on which they rested. But the floors were concrete. So who pays for their repair? And who pays the legal costs of arguing about it? This and other (equally unnecessary) defects made the lease unmortgageable – except to the many lenders whose solicitors didn't notice – and the buyer very reluctantly withdrew, disappointing both parties.

A more expensive example occurred in the transfer of housing stock, with its associated staff, from a local authority to a company. The deal was complex, and there was an unfortunate misunderstanding over its terms. The company and both lawyers thought the local authority would make up a deficit in the staff pension fund. The local authority negotiator thought the opposite. Here is the clause dealing with the point:

> 14.10.2 In relation to the Transferring Employees and the Support Service Employees [DDC] shall make payments to the appropriate administering authority or the administrators of the Superannuation Scheme for immediate credit to the Scheme as are necessary to ensure that all liabilities in respect of the benefits accrued by (1) the Transferring Employees up to the Completion Date and (2) the Support Services Employees up to the Transfer Date are fully funded based upon the actuarial assumptions used for the 2007 actuarial valuation. For the avoidance of doubt, this means funded to the extent necessary to ensure that there shall be no liability on [DDH] to make any contributions to the Superannuation Scheme in relation to the cost of funding the accrued benefits in relation to the period of time up to the Completion Date in respect of the Transferring Employees (and the Transfer Date in respect of the Support Services Employees) and until such payments are made by [DDC] shall indemnify [DDH] against all costs proceedings damages expenses and Support Services Employees' liabilities and claims of whatever nature in respect of the Transferring Employees and the Support Service Employees said accrued benefits. [DDC] shall be responsible for corresponding with the Superannuation Scheme's actuary in relation to the certification by the Superannuation Scheme's actuary as is mentioned above and shall bear the costs incurred in relation to the obtaining of the said actuarial valuation.

The Court of Appeal, after four years of litigation, said this clause was 'clear' – that is, it could have only one meaning. It meant the local authority

must pay the deficit, as certified by the actuary, which was £2.4 million (*Daventry District Council* v. *Daventry & District Housing* (2011)). Nevertheless, the demand had come as a shock to the local authority. Reading and approving the contract had done nothing to correct their misunderstanding of the deal they were about to make.

There is no point in imposing obligations in such language that they are not understood either by those responsible for obeying or those responsible for enforcing them. Unfortunately, many solicitors prepare documents, often with onerous clauses, without consulting their clients. They just copy a precedent that they (or someone else) have used in the past. Similarly, many solicitors do not explain the incoming documents to their clients. Often neither party to a contract knows what the solicitors have arranged. The resulting document does not represent the bargain made by the clients and its provisions are innocently ignored – until there is a problem.

Another consequence is that the bargain is not properly thought through. For example, many disputes have arisen because the co-owners of a house were not asked by the solicitor acting on the purchase to decide what would happen if one died or if they separated.

Legalese alienates clients, their advisers, and the public

Even if no tangible harm follows, the client may well resent being addressed in unfamiliar language. The Solicitors Complaints Bureau reported privately for the first edition of this book that about nine referrals out of 10 arose out of nothing more than a breakdown in communications. Some of these were cases in which the client could not understand what the solicitor had said. This example did not go to the Bureau, but the baffled client did ask another solicitor to translate the letter for her:

> I have been looking into the situation relating to the term of the Lease in the light of indications given with regard to the X Housing Association's standard Form of Covenant. As you know, no Deed of Covenant was required from you at the time of your acquisition, but it appears that arrangements were in hand at one time for the term granted by the Lease which you have acquired to be extended to 999 years. At present you have a term in excess of 70 years remaining on the Lease which is perfectly satisfactory, and if you were to consider moving during the course of the next few years you would have no difficulty in disposing of the Lease. Ultimately, however, difficulties can arise and it may be to your advantage to consider taking a Variation to extend the term. I have now received confirmation that the X Housing Association will be willing to agree such an arrangement, but any such Variation will probably entail the introduction of the need for a Deed of Covenant to be provided by the Purchasers at the time of assignment of the Lease. Please give the matter some consideration and let me know your requirements. I anticipate that you will be expected to bear the costs of obtaining such a Variation.
>
> I await hearing from you both with regard to the above and with your cheque as previously requested.