

pkestaff

PLAIN
LANGUAGE
COMMISSION

Pikestaff 73
April 2016

In this issue:

[UK consumer law changes its approach to plain language](#)

[Business language needs a lift](#)

[What's new on communicating with older people](#)

[Private-parking charge of £85 is OK, says Supreme Court](#)

[New language: bulbous salutation and cultural appropriation](#)

[Loose chippings from the Tower of Babel](#)

[Learning events](#)

[Signs abroad](#)

[Links and credits](#)

UK consumer law changes its approach to plain language

The law requiring clarity in consumer contracts has been updated with the introduction of the Consumer Rights Act 2015. The new Act applies a test of fairness to terms used by traders in transactions with consumers. A separate and distinct requirement is that a written term of a consumer contract or consumer notice must be 'transparent'.

transparent

The main aspect of transparency is that the term should be plain and intelligible to the average person, whom the Act defines as 'a consumer who is reasonably well informed, observant and circumspect'.

The official guidance* to the Act says at paragraph 2.56: 'What may appear to be relatively straightforward technicalities can have onerous implications of which consumers are likely to be unaware.' Among its examples of technicalities are clauses that use language like 'indemnity' and 'statutory rights'.

If a term is not transparent (ie, not plain and intelligible) or prominent and creates a 'significant imbalance, contrary to the requirements of good faith, to the detriment of consumers', then it is unfair, according to paragraph 1.58 of the guidance. This means it is not legally binding on consumers (paragraph 1.31), who can challenge it in the courts.

If a term fails only the transparency test, a trader may still enforce it against an individual consumer (paragraph 2.6). But if the term is ambiguous, it must be interpreted in the way most favourable to the consumer. The regulator – the Competition and Markets Authority (CMA) – may take enforcement action against traders who use terms that fail on transparency alone.

On the style and structure of the writing in contracts, the guidance says (paragraph 2.51/2): 'Ordinary words should be used as far as possible and in their normal sense. In the CMA's view, words that are not literally unintelligible are likely to fail the



Pikestaff 73
April 2016

In this issue:

UK consumer law
changes its approach to
plain language

Business language needs
a lift

What's new on
communicating with
older people

Private-parking charge of
£85 is OK, says Supreme
Court

New language: bulbous
salutation and cultural
appropriation

Loose chippings from the
Tower of Babel

Learning events

Signs abroad

Links and credits

transparency test where, for instance, as a result of vagueness of language, their effect is likely to be unclear or misleading to the average consumer. To ensure that terms are fully intelligible, there is a need for clarity in the way terms are organised. Transparency is more likely to be achieved where sentences are short, and the text of the contract is broken up with easily understood subheadings covering recognisably similar issues. Statutory references, elaborate definitions, and extensive cross-referencing should be avoided.'

Tiny print is outlawed. The guidance says: 'In written contracts, the print must be clear. This depends not only on the size of font used but also its colour, the background and, where paper is used, its quality.'

* The guidance is on the CMA website [click here](#)

Business language needs a lift

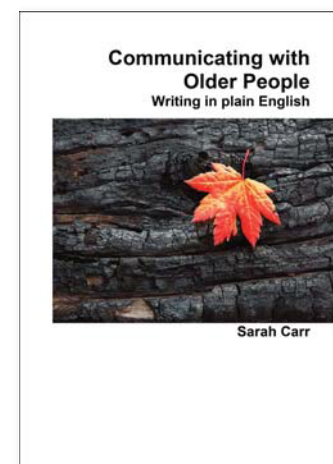
It's not news that standards of English are low, even among leading UK businesses. Punctuation is particularly woeful. Here's a typical example – part of a letter from the 'office manager' of a well-known stairlift provider who's responding to a complaint that its terms and conditions were missing from an earlier letter:

'You mentioned in your letter regarding the terms and conditions of the Three Star Service contract, these terms were sent together with the contract for the customer's records, however, these terms may have been misplaced so please see attached details.'

So it wasn't just the terms that were misplaced, but the full stops too. And how companies who screw up love the impersonal passive voice!

What's new on communicating with older people

Our culture often undervalues older people, which is reflected in the sometimes low standard of written communications aimed at them. Yet older people account for a large – and growing – part of the UK population. In the past, we'd have referred to 'the older generation', but it is common for there now to be two – or even three – generations aged 60-plus. And there's likely to be a big difference in the life experiences of people in their 60s, 80s and 100s – sometimes referred to as the 'young old', 'middle-aged old' and 'old old'. So how can we communicate effectively with them all?



Pikestaff 73
April 2016

In this issue:

UK consumer law changes its approach to plain language

Business language needs a lift

What's new on communicating with older people

Private-parking charge of £85 is OK, says Supreme Court

New language: bulbous salutation and cultural appropriation

Loose chippings from the Tower of Babel

Learning events

Signs abroad

Links and credits



In *Communicating with Older People*, Sarah Carr examines what authors should think about when writing for readers aged 60-plus. With the emphasis on using plain English, her book includes guidelines on inclusive writing. Areas covered include purpose, content and structure; style and grammar; layout and design; and checking the level of difficulty of text.

The book is available as a PDF on free download from us. Printed copies are also available on special order – please ask us for a quotation for print runs of more than 50 copies.

See our website under 'Publications'.

Private-parking charge of £85 is OK, says Supreme Court

The Supreme Court has ruled that a parking charge of £85 imposed on a motorist for overstaying in a privately run car park was fair and reasonable. The landmark decision, in *ParkingEye Ltd v Beavis*, overturns accepted legal wisdom that such a charge must be a 'genuine pre-estimate of loss'.

Beavis had overstayed 56 minutes in a Chelmsford car park where two hours' free parking was offered by ParkingEye, acting as agent for the landowner, BAPF. ParkingEye was paying BAPF about £1,000 a week for the privilege of collecting the charges from drivers who overstayed, obtaining their details from the Driver and Vehicle Licensing Agency.

The court considered whether the £85 charge was a penalty, which would not normally be allowed against a consumer. But it found it was more of a deterrent contractual charge, which was allowable because it was commercially justifiable as ParkingEye had a 'legitimate interest' in charging overstayers. John de Waal, QC, who acted for Beavis, told *The Times* on 5 Nov that, 'The decision is a setback for consumers, making it more difficult to challenge large charges when a contract is breached, affecting everything from phone contracts to parking your car at the supermarket.'

The full judgment is available [here](#). The dissenting judgment from Lord Toulson runs from paragraph 292 to 316. A summary of what the judgment may mean for the 'penalty rule' is given [here](#). We have covered private parking battles in numerous Pikestaff articles and under 'Publications' on our website. Our main beef is with unclear signs and systems that appear designed to trap motorists into breaking car-park rules. In the Beavis case, this was not a concern as all agreed that the signs were clear.

Pikestaff 73
April 2016

In this issue:

[UK consumer law changes its approach to plain language](#)

[Business language needs a lift](#)

[What's new on communicating with older people](#)

[Private-parking charge of £85 is OK, says Supreme Court](#)

[New language: bulbous salutation and cultural appropriation](#)

[Loose chippings from the Tower of Babel](#)

[Learning events](#)

[Signs abroad](#)

[Links and credits](#)

New language: bulbous salutation and cultural appropriation

Two new examples of pretentiousness may survive to become embedded in our language, the fate that befell Justin Timberlake's description of an exposed nipple as a 'wardrobe malfunction' some years ago. Here they are:

'Bulbous salutation', coined by Morrissey (once of the Smiths pop group) in his first novel *List of the Lost*: 'Eliza and Ezra rolled together into the one giggling snowball of full-figured copulation, screaming and shouting as they playfully bit and pulled at each other in a dangerous and clamorous rollercoaster coil of sexually violent rotation with Eliza's breasts barrel-rolled across Ezra's howling mouth and the pained frenzy of his bulbous salutation extenuating his excitement as it whacked and smacked its way into every muscle of Eliza's body except for the otherwise central zone...'

Could ignorance be a partial defence here, such as Morrissey's idea of what 'extenuating' means? Probably not, milud.

'Cultural appropriation', given by East Anglia university students' union as its reason for stopping the local Mexican restaurant Pedro's handing out sombreros during freshers' fair. Before the event, the union had sent all stallholders an advertising policy listing activities it might regard as discriminatory, including 'cultural appropriation'. The policy said: 'Discriminatory or stereotypical language or imagery aimed towards any group or individual based on...characteristics will not be permitted...We know that when it comes to cultural appropriation, the issues can sometimes be difficult to understand and many don't realize that they may be about to cause offence.'

In its superior way, the union said sombreros (a kind of straw hat) could be given only to students who were authentically Mexican or of Mexican heritage. They were silent as to how this would be established – presumably a passport and family-background check? Easily done!

Shouldn't the union also have allowed Pedro's to give sombreros to people who identified themselves as Mexican, maybe because they liked the food? After all, self-identifying is now crucial in the world of diversity. So organizations desperate not to cause offence must treat people as whatever they pretend to be. Had Pedro's not complied with the rules, its stall would have been closed.

Pikestaff 73
April 2016

In this issue:

UK consumer law changes its approach to plain language

Business language needs a lift

What's new on communicating with older people

Private-parking charge of £85 is OK, says Supreme Court

New language: bulbous salutation and cultural appropriation

Loose chippings from the Tower of Babel

Learning events

Signs abroad

Links and credits

Loose chippings from the Tower of Babel

► **All at sea** In an advert for Mediterranean cruises on Classic FM, the entertainer Rob Bryden says that as the sun rises on another glorious ocean day, 'Montenegro lays before us'. A million alert listeners must have found themselves murmuring, 'Only if Montenegro is the name of a hen.' Their chorus of disapproval seems to have been heard somewhere, for in the latest version of the advert Bryden says, 'Montenegro lies before us.'

► **On the wrong track** At the Emirates stadium, where Arsenal play their football, an advert for the team's main sponsors catches the eye: 'Fly Emirates to the Indian Ocean'. This is perhaps not the ideal marketing slogan so soon after Malaysian Airlines' flight 370 disappeared into the drink en route from Kuala Lumpur to Beijing.

► **Weasel words of diplomacy: 'involuntarily removed without due process'** Lee Bo, a Hong Kong bookseller and British passport holder, disappeared in December 2015, one of five booksellers to vanish within six months after stocking copies of a biography about the Chinese leader President Xi Jinping that purports to expose details of his love life. In a foreword to a bi-annual report to parliament, the UK foreign secretary Philip Hammond wrote: 'Our current information indicates that Mr Lee was involuntarily removed to the mainland without any due process under Hong Kong SAR law.' This is weasel-speak for 'abducted' or 'kidnapped', but even such guarded phrasing was seen by some as provocative to the Chinese government. Can't be too careful – after a Brexit, we may need China.

► **Cycle of doom** Orthodox opinion continues to hold that commuting by pedal cycle is a wonderful thing – its leading advocate, Mayor of London Boris Johnson, is often seen on his bike. But Pikestaff is equally sure that cycling at peak times is bonkers in Britain's big cities, especially London, for two reasons: (1) the roads are congested so cyclists are likely to be squished; and (2) the air is filthy, especially with particulates from those lean-and-clean diesel-powered vehicles we were all encouraged to buy because they'd save the planet. The Times reports that the number of cyclists seriously hurt or killed in Britain has soared by more than a third in five years, despite declining accident rates for all other types of road user, including pedestrians and motorcyclists. Some 3,500 cyclists were hospitalized or killed in 2014, up from 3,252 in 2013. A study found that the rise was only partly due to an increase in the amount of cycling. What has this to do with plain language? Only that if you tell people to do a stupid thing often enough in clear and simple language, they are quite likely to do it. ([Times, 25 May 2015](#))

Pikestaff 73
April 2016

In this issue:

UK consumer law
changes its approach to
plain language

Business language needs
a lift

What's new on
communicating with
older people

Private-parking charge of
£85 is OK, says Supreme
Court

New language: bulbous
salutation and cultural
appropriation

Loose chippings from the
Tower of Babel

Learning events

Signs abroad

Links and credits

► **Jargon de nos jours** Wayne Berry of Toronto sends us this lumbering leviathan of a sentence from the Socialfish website [click here](#), mentioning that there are plenty more on the same site: 'The customer journey decentralizes, becoming a series of non-linear mobile-centric micro-moments, mimicking everyday consumer activity and communication. This sets the stage for relevant brand and product serendipity.'

► **Fallback position** Priapic golfer Tiger Woods has split from his girlfriend Lindsey Vonn. A friend resorted to wardrobe-malfunction language when revealing the cause: 'He had a relapse in the sex department.'

► **Trumped-up tax to help trump Trump** Bernie Sanders, who is challenging for the Democratic ticket in the US presidential election, tweets: 'Greed, fraud, dishonesty, arrogance. These are some of the adjectives we use to describe Wall Street.' A graduate of Chicago university – in those days students could skip the course on distinguishing adjectives from nouns – Sanders likes to headline free university education for all. His website is a bit more weasel-worded, though, as it prescribes at least two important criteria: 'As President, Bernie Sanders will fight to make sure that every American who studies hard in school can go to college regardless of how much money their parents make and without going deeply into debt.' The site declares how Sanders will pay for this largesse: 'The cost of this \$75 billion a year plan is fully paid for by imposing a tax of a fraction of a percent on Wall Street speculators who nearly destroyed the economy seven years ago. More than 1,000 economists have endorsed a tax on Wall Street speculation and today some 40 countries throughout the world have imposed a similar tax including Britain, Germany, France, Switzerland, and China.' That Britain has imposed a 'tax' on 'speculation' certainly comes as news to, er, people who actually live in Britain. Perhaps Sanders should stick to what he knows best: selling fried chicken in all its myriad forms.

► **Only 400,000?** What joy the EU's Common Agricultural Policy has brought to farmers and taxpayers alike. In her new book, *Foutez-nous la paix* ('Leave us alone'), Isabelle Saporta, a journalist, said French farms had to observe at least 400,000 rules and regulations. Stifling bureaucracy is said to be one of the main causes of the recent protests that have brought parts of France to a halt. The mountain of regulation dwarfs even the rules apparently needed to govern British prisons. A recent David Cameron speech said these amounted to 46,000 pages, including policy on how many jigsaws or sheets of music a prisoner may have in their cell (the answer is 12). Which in turn dwarfs the UK's tax code, a mere 22,298 pages (at 2015 figures – Channel 4 'Dispatches', 8 Feb 2016), with 900 pages being added every year since the Office of Tax Simplification was set up in 2010.

► **Ancient wrestlers make FIFA look good, incidentally** A contract between two wrestlers at the 138th Great Antinoiea, a regional sporting contest in AD267, reveals the first recorded 'incidence' of match fixing in sporting history, according to a report in *The Times*. Found on a rubbish dump at Oxyrhynchus ('city of the sharp-

Pikestaff 73
April 2016

In this issue:

UK consumer law
changes its approach to
plain language

Business language needs
a lift

What's new on
communicating with
older people

Private-parking charge of
£85 is OK, says Supreme
Court

New language: bulbous
salutation and cultural
appropriation

Loose chippings from the
Tower of Babel

Learning events

Signs abroad

Links and credits



nosed fish', since you ask) in modern Egypt, the papyrus agreement describes how Nicantinous had to make his defeat look convincing to the judges, otherwise his opponent Demetrius wouldn't pay the planned 3,800-drachma (£100) bribe. Pikestaff, untroubled by the rigging of the contest, focuses on the misuse of 'incidence', which means 'rate of occurrence'. The Times author meant 'instance', 'incident' or 'occurrence'. Bet those meticulous ancient legal scribes wouldn't have made such a blunder! By the way, have you a little Greek (the language, we mean)? If so, you could help decipher the Oxyrhynchus fragments through ancientlives.com. So far, figuring out 6,000 fragments has taken scholars a mere 115 years, and it's hoped some amateur involvement will speed things up. (*The Times*, 10 Feb 2016)

► **No comma, no case** An Ohio appeal court has overturned a conviction because a comma mistakenly omitted from a local parking law meant the rules did not apply to most vehicles. Andrea Cammelleri's Ford pick-up truck was towed by police for violating an ordinance that said it was unlawful for a person to park on a street 'any motor vehicle camper, trailer, farm implement and/or non-motorised vehicle' for a continuous period of 24 hours. The law should have said 'motor vehicle, camper...' but the missing comma meant the rule applied only to 'motor vehicle campers' and the other listed items.

► **Chariots of fear** As UK voters look forward to only three more months of wrangling before the referendum vote on 23 June, the Brexit faction is still casting around for a big name to front its efforts. It could do worse than headhunt in Croydon, where Snarl (South Norwood Animal Rescue and Liberty) is investigating a series of deaths and mutilations among the domestic-cat population – about 60 animals have been attacked. One of Snarl's leading lights is the evocatively titled Ms Boudicca Rising. With a name like that, she'd surely put the frighteners on the leaders of Project Fear, just as her ancient namesake terrified the Roman occupiers of Britain as they slobbered about in their heated bathhouses.

► **Tautology corner** The first sentence of the Daily Mail's lead story on 12 February was enough to make old-school sub-editors faint with shock as it revived one of the oldest, deadliest tautologies: 'Junior doctors are threatening a mass exodus to Australia after Jeremy Hunt forced through his controversial new contract yesterday.' Mass exodus, indeed! Bible readers will know that Moses led an 'exodus' – not a mass exodus – of Israelites from Egypt, parted the Red Sea, and reached the Canaan service station just in time for milk and honey with a side order of manna. The Bible's second book is called not Mass Exodus, just Exodus. Bob Marley had no need of adjectival support when naming his ninth album Exodus. On a similar theme, The Times on 8 February reports that Lord Dyson is stepping down from his, er, role as Master of the Rolls (head of civil justice) at the age of 73, because the admin has become 'an onerous burden'. Latinists will gnash their teeth, knowing that 'onus' means burden. It's like traffic-news announcers telling us of 'a delay because of an earlier accident'. Delays because of future accidents remain mercifully rare.

Pikestaff 73
April 2016

In this issue:

UK consumer law changes its approach to plain language

Business language needs a lift

What's new on communicating with older people

Private-parking charge of £85 is OK, says Supreme Court

New language: bulbous salutation and cultural appropriation

Loose chippings from the Tower of Babel

Learning events

Signs abroad

Links and credits

► **Patients struggle to understand medical information** An article in Bill DuBay's always-interesting Plain Language at Work Newsletter suggests that in the USA, 120,000 people die every year because they don't take their drugs as prescribed, and that non-compliance costs \$200bn in medical bills. Read the article [here](#).

► **Whingeing about 'impact' again** Occasionally (well, every issue), Pikestaff rails against businesses that use 'impact' as a verb when no collision has taken place except in their car-crash sentences. Today's offering comes from M&S Bank, which in a long and rambling letter to credit-card customers about 'loyalty points' says: 'We deliberately delayed making any changes ahead of Christmas to ensure the points earned on your festive spending were not impacted.' Aargh! What is 'deliberately' doing in this sentence – would the delay have been accidental? What moron could write 'ahead of Christmas' without thinking that 'before Christmas' would be better? And what in the name of all that's horrible is 'festive spending'?

► **Chimps ape religion** In the Republic of Guinea, our nearest relatives the chimpanzees – with whom humans share 98% of their genetic material – have been observed creating a kind of shrine at particular trees. They lob rocks at them and heap stones at the base, making cairns. Some scientists think the chimps must be venerating the trees as sacred objects. Why such surprise? For years, the Catholic and Anglican churches have numbered among their leaders many primates.



The Primate of All Ireland,
Archbishop Eamon Martin

Learning events

Information design: Bath week promises total immersion

The Information Design Summer School (5–9 September 2016) is a week-long immersion in information design, with lectures, group work, critiquing and discussion. This year it's held at Bath, the beautiful spa town famous for its regency architecture and Roman thermal baths. It will use the studio facilities at the Sion Hill campus of Bath School of Art & Design. Tutors are Rob Waller, Clive Richards, Jenny Waller, Karel van der Waarde, all experienced information design practitioners, researchers and teachers. Together they bring long experience of diagramming, editorial design, wayfinding, and information for health, management communications, government and the law. For more details, see the Simplification Centre [website](#).

The summer school is run by the Simplification Centre in partnership with the International Institute for Information Design (IIID). There's an early bird rate ending on 1 May, and an extra 10% discount for members of IIID, Information Design Association, ISTC or Clarity.

Pikestaff 73
April 2016

In this issue:

UK consumer law changes its approach to plain language

Business language needs a lift

What's new on communicating with older people

Private-parking charge of £85 is OK, says Supreme Court

New language: bulbous salutation and cultural appropriation

Loose chippings from the Tower of Babel

Learning events

Signs abroad

Links and credits



Clarity conference

Clarity, the group of (mainly) lawyers who campaign for plain legal language, has announced that its next conference will take place at the Amora Hotel, overlooking Wellington Harbour, New Zealand from 3–5 November 2016. [Click here for details](#). The organizers say: 'Clarity2016 will have a strong focus on practical, interactive learning. We guarantee compelling keynote speakers along with interactive workshops, case-study presentations, panel discussions, mentoring appointments and 'speed-learning' events. There'll be a strong legal theme along with topics relevant to all sectors and industries.'

PLAIN conference, Dublin 2015: presentations now available

Many of the conference presentations are now available to download from the [Friday](#) and [Saturday](#) events or you can watch some of the keynote speeches on the conference's [youtube channel](#).

Signs abroad

For the up trains, it would, of course, be down – seen at Hebden Bridge station, West Yorkshire, England



Photo: Kevin Cutts

Some lawyers adopt a punctuation-free style of writing, while others like to put their defined terms in brackets. This one prefers to do both.



Photo: Robert Linsky, Salem, USA

Pikestaff 73
April 2016

In this issue:

UK consumer law
changes its approach to
plain language

Business language needs
a lift

What's new on
communicating with
older people

Private-parking charge of
£85 is OK, says Supreme
Court

New language: bulbous
salutation and cultural
appropriation

Loose chippings from the
Tower of Babel

Learning events

Signs abroad

Links and credits



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Rolling the credits

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