

The moves and steps presented here are usually present in all judgments and can be considered the basic elements of the genre. However, more moves and steps may be present, depending on the complexity and length of the case being dealt with.

4.3.4 Intertextuality

Legal discourse is characterized by a high degree of intertextuality and interdiscursivity, particularly in such genres as legislation, judgments, cases, and textbooks. For example, a law case is basically a report based on the judgment of a particular judge deciding the outcome of a trial or an appeal. Records of such judgments are also used as precedents in future cases. They are also reported in textbooks and commented on in university lectures for teaching purposes. The interpretation of legal argumentation in previous law cases is considered an extremely relevant basis for the understanding of the legal principles in question. Furthermore, previous laws and regulations are commonly referred to when drafting new legislation, which must fit in consistently with the existing body of legal texts.

CHAPTER 5

THE PLAIN LANGUAGE MOVEMENT

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5.1 WHAT IS PLAIN LANGUAGE?

A discipline that might eventually become known as “plain language studies” is beginning to emerge through the collaboration of individual plain language proponents (whom I’ll call plainers for short). Notably, in 2008 the two main international umbrella organizations (Clarity and PLAIN) and the Center for Plain Language in the United States set up a joint working group to develop what they hope will eventually become internationally recognized professional standards and accreditation.¹

Meanwhile, unsurprisingly, there is no generally accepted definition of plain language, and until now it has been left to plainers to offer their own. Dr Neil James divides the many definitions into three categories:

The most common definitions...define plain language by the “elements” that it works with. One of the best would be Joe Kimble’s Plain English Charter, which is divided into sections covering 36 general, design, organisation, sentence and word elements.

However, more recent definitions of plain language are becoming more general, focusing on the outcomes plain language produces:

¹ Known as the International Plain Language Working Group, it comprises two representatives of each of those organizations and six other members co-opted to represent between them all parts of the world. It is chaired by Dr Neil James of the Plain English Foundation <www.plainenglishfoundation.com> last accessed January 31, 2015. Since this chapter was written, the IPLWG’s proposals and my critique were published at <www.clarity.shuttlepod.org/Resources/Documents/64_032111_04_final.pdf> and <www.adler.demon.co.uk/comment.htm> respectively, both accessed January 31, 2015.

A communication is in plain language if the people who are the audience for that communication can quickly and easily

- find what they need
- understand what they find
- act appropriately on that understanding.

At the other end of the spectrum, some practitioners define plain language by focusing narrowly on readability:

Plain Language is language that is easy to read by matching the reading skill of your audience. Plain language increases comprehension, retention, reading speed, and persistence. (James 2009a:35)

Dr Robert Eagleson has made the seemingly obvious point, frequently overlooked, that some text will inevitably be beyond the reach of non-specialists, not because of the language but because the ideas are inherently difficult:

An advanced text on cancer or a law about the ownership of shares... will remain complex. But the complexity will reside solely in the subject matter, and not be compounded by difficulty in language. For it is an error to assume... that difficulty in context must be matched by difficulty in language... complexity in subject matter does not call for complicated, convoluted language. (Eagleson 1987:45)

Bearing that in mind, I had privately suggested this definition, based on a well-known definition by Martin Cutts (1996:3):

'Plain language' means language and design that presents information to its intended readers in a way that allows them, with as little effort as the complexity of the subject permits, to understand the writer's meaning and to use the document.

Results-based definitions imply that plain language is not a dialect of the standard language but a relationship between the text and its audience. Text that will be plain for one audience will not be plain for another.

This is not the view of those outside the plain language world (including many lawyers), which is that plain language is simple language: primarily the use of short, familiar words in place of jargon, especially Latin. But that popular view over-simplifies the plain language movement and is becoming increasingly unrealistic as plainers extend the range of their studies and techniques.

That confusion has led me to doubt the wisdom of trying to define plain language in a way which is itself not plain (Adler 2013).

5.2 A VERY BRIEF HISTORY OF THE PLAIN LEGAL LANGUAGE MOVEMENT

Robust criticism of lawyers' language—sometimes from within the profession—dates back hundreds of years but has mostly been ignored.

Professor Heikki Mattila has documented a successful eighteenth-century plain language movement:

The discussion on proper usage of legal language was very lively in the Prussia of the Age of Enlightenment... as is clearly evident from the legislation of the time... Care over proper usage of legal language radiated from German-speaking countries to other corners of Europe... [In Russia, for example] new laws were to be drawn up in simple language, using words that everyone could understand, and concisely. Mattila (2006:96-7)

But these reforms did not survive the end of the Enlightenment, and the barnacles of legalese soon grew back, despite occasional criticism.

George Coode (an authority on legislative drafting) and A. J. G. Mackay (a Scottish sheriff) were notable nineteenth-century plainers (Coode 1845:67; Mackay 1887:326). Professor Reed Dickerson (1965) was teaching plain writing to his Indiana University law students in the 1940s, and published a book on the subject 20 years later. And Anthony Parker, an English solicitor, published plain precedents in the 1960s (Parker 1964, 1969). But Professor David Mellinkoff (1963), writing a detailed history and analysis of legal English, robustly criticized traditional language without suggesting that there was any movement to reform it.

However, by the 1970s various initiatives, encouraged by the belief that citizens should be able to understand their rights and obligations, had built up sufficient momentum to be identified as the beginning of the current movement. Plain documents appeared from government and commerce in Canada, the United States, Australia, New Zealand, and England. In many of these countries the banking and insurance industries led the improvement of commercial documents, and parliamentary drafters began to apply plain language principles to legislation. At about the same time, Sweden and Finland began vetting their draft legislation to ensure that new acts were plainly written. President Jimmy Carter imposed plain language standards on the American civil service in 1978 and in the 1980s Margaret Thatcher made similar demands to improve British government forms (though both these initiatives were lost when they left office). Some jurisdictions passed legislation (written, strangely, in legalese) requiring plain language in consumer documents (Tiersma 1999:211-30).

The movement has since spread widely to other countries and languages. Japanese legal language has had particular problems arising from its use—in combination with two 48-symbol phonetically-based systems—of Chinese characters, "which have no phonetic relationship to spoken Japanese. Each character, which roughly speaking represents a word, must be memorized individually". The inevitable problems are exacerbated because many Chinese characters used in legal documents are unusual, the traditional legal-writing style has been Chinese (which does not fit Japanese syntax well), and there was no punctuation. But since the Second World War there has been gradual change, with the democratic constitution and parts of the legal code revised to make them more accessible to non-lawyers (Tiersma 1999:214-15).

Many judges have supported plain language, criticizing the obscurity of traditional drafting that has forced litigation about the meaning of legislation and of commercial documents. Lord Woolf, soon before he became Britain's most senior judge, was responsible for a dramatic revision of the civil court rules in plain language and he used them to discourage (though not abolish) verbose court papers.²

There is a strong wind in favor of plain language. There has been much change but progress is slow.

5.3 WHO IS INVOLVED IN THE MOVEMENT?

The plain language movement includes many plainers (practitioners and campaigners) worldwide. Law is only one aspect of the movement; some plainers promote plain medicine; others plain government, plain technical writing, plain finance, and plain scientific papers.

Some legal plainers are linguists, writers, editors, or legal translators. Some are practicing lawyers who write plainly for their clients; they might be private lawyers offering intelligible documents to the public, or government lawyers drafting plain legislation. Other plainers, whether or not they are lawyers, are one step removed from the public; they help lawyers redraft their standard documents and train them to write plainly for themselves; some are academics teaching the next generation of lawyers to communicate plainly.

There are several plain language voluntary organizations through which plainers meet and support each other. Notably, those interested in legal language have Clarity.³ Clarity was formed by a British local government solicitor in 1983 for lawyers wanting to simplify legal English and it quickly became an international movement represented (though often sparsely) in some 50 countries, with more than 1,100 members at its peak. But it is now in decline, falling under the influence of non-lawyers and widening its focus from legal language to language (and design) generally. It is likely to merge with the Plain Language Association InterNational (PLAIN), a Canada-based but international non-profit company owned by fewer than 200 members and interested in plain language in all fields.⁴ British Commonwealth lawyers interested specifically in legislation have the Commonwealth Association of Legislative Counsel,⁵ although good drafting is only one of its concerns. American lawyers have Scribes, founded in 1953 to honor legal writers and encourage a "clear, succinct, and forceful style in legal writing".⁶ Some plainers are active in more than one of these organizations but the evidence of networking websites like LinkedIn suggests that most plainers are not affiliated to any of them.

² <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules>> last accessed January 31, 2015.

³ <www.clarity-international.net> last accessed January 31, 2015.

⁴ <www.plainlanguagenetwork.org> last accessed January 31, 2015.

⁵ <www.opc.gov.au/calc> last accessed January 31, 2015.

⁶ <www.scribes.org> last accessed January 31, 2015.

Over the last 30 years or so various institutes have been established to study and promote plain language, partly funding themselves with consultancy and training fees but in part relying on government or private sponsorship. Some have closed but others remain successful. Many small businesses now offer services similar to those offered by the institutes, typically including drafting, editing, training, the accreditation of documents, and the benefits of their research.

5.4 ADVANTAGES AND DISADVANTAGES OF PLAIN LEGAL LANGUAGE

5.4.1 Advantages

Various advantages for plain language over legalese have been identified:⁷

5.4.1.1 *It is more precise*

Traditional drafters often justify their style by asserting that complex ideas require complex language, and that what plainers criticize as verbosity is necessary to avoid ambiguity and achieve precision. But plainers and others have repeatedly shown by example that complex ideas *can* often be expressed much more plainly than in the traditional style. Moreover, plain revisions of traditional documents routinely expose and correct errors and ambiguities in the original texts. That legalese is *imprecise* is predictable from the way it is constructed:

- Precedents are routinely used without being adapted to the individual circumstances (and often without being read).
- Material that in standard English would be spread over several sentences is accumulated in a single sentence, so that it is often unclear which words and phrases modify which others.
- The use of unnecessary extra words, non-standard word order, embedded clauses, and the absence of punctuation all exacerbate this problem.
- The use of abstract rather than concrete words masks the intended meaning.
- The misuse of passive verbs sometimes fails to disclose who is or should be acting.

5.4.1.2 *There are fewer errors*

As plain language almost invariably employs fewer words its use, given any particular rate of errors per 1,000 words, will tend to reduce the absolute number of errors. But beyond this, its use reduces the chance of mistake arising from the complexity of the

⁷ See, for example, Mellinkoff (1963), Kimble (1994–5), Asprey (2003), Butt and Castle (2006), Adler (2007).

language, and it increases the chance that someone will spot any remaining errors before they do harm. It also avoids the risk that meaning will be inadvertently changed during "translation" between plain language and legalese.

5.4.1.3 *It is quicker and cheaper for everyone*

Lawyers typically charge hundreds of dollars an hour for encoding their plain language instructions in legalese and for translating legalese back into plain language for their clients. Plain language uses fewer lawyer-hours and reduces the waiting time for work to be done.

5.4.1.4 *It is more persuasive*

Most legal texts seek to persuade. A letter might seek to persuade an opponent to accept an argument or proposal or a client to accept advice. A pleading or witness statement should seek to persuade an opponent (or, failing that, the judge) that the client should win the case. A lawyer drafting a will, contract, regulation, or statute should hope to persuade those affected by it to accept the document and comply with the obligations it imposes.

But there can be no persuasion if the document is not read and understood.

5.4.1.5 *It is more democratic*

The New Zealand Law Commission summarized the need for plain legislation in this way:

It is a fundamental precept of any legal system that the law must be accessible to the public. Ignorance of the law is no excuse because everyone is presumed to know the law. That presumption would be insupportable if the law were not available and accessible to all. The state also has an interest in the law's accessibility. It needs the law to be effective, and it cannot be if the public does not know what it is. . . . It seems once to have been supposed that law was the preserve of lawyers and Judges, and that legislation was drafted with them as the primary audience. It is now much better understood that Acts of Parliament (and regulations too) are consulted and used by a large number of people who are not lawyers and have no legal training. . . . Many other people refer to legislation in their jobs. (New Zealand Law Commission 2008: paras 1.1, 1.11, 1.12)

5.4.1.6 *It is pleasanter to use*

Some critics have complained that the plain English movement debases the language of Shakespeare. Plainers reply that while no legal language, traditional or plain, is likely to be confused with poetry in purpose or content, plain language is less tedious and usually more elegant than legalese.

5.4.2 Disadvantages

There has been virtually no attempt in the literature to rebut these arguments. However, in a rare recent exception Francis Bennion, a British authority on legislative drafting,

argued that plain language is not always appropriate in legal documents (Bennion 2007).⁸ His concern was that some legal texts (notably statutes) are designed to *be* the law rather than to explain it, and an explanation in plain language can come from other sources (notably "a competent lawyer"). Moreover, laypeople would not realize that their ignorance of the law might undermine their interpretation of documents that they thought they understood.

But is his distinction between *being* and *explaining* the law tenable, either logically or empirically? The text must explain the law to someone for it to be the law rather than gibberish. Moreover, before becoming the law the text must be enacted (and will often be amended) by the legislators, some of whom will have no professional qualifications. Further difficulties with Bennion's view are that:

- not all lawyers are competent;
- even competent lawyers (including appellate judges) have difficulty reading legalese;
- it is often impracticable (or financially impossible) for those affected by a legal document to obtain legal advice.

Bennion's complaint that plain language is a danger to the public seems to imply that legal documents should be deliberately made opaque. But that extreme view is not generally held.

5.5 ATTITUDES TO PLAIN LEGAL LANGUAGE

5.5.1 Non-lawyers

Non-lawyers almost invariably prefer plain language, often seeing legalese as a device by which lawyers cynically make themselves expensively indispensable (see, for instance, Adler 1991).

5.5.2 Judges

Many influential judges support the use of plain drafting (Adler 2007:21–5) but there has been little research. However, an investigation into American judges' attitudes in the 1980s (Kimble 2005:3) showed over 80 percent of judges polled attributing greater professionalism to plain language lawyers than to traditional drafters.

⁸ For my answer see Adler (2008, 2013).

5.5.3 Practicing lawyers

Although most practicing lawyers still write legalese, many are aware of the need for change and some are effecting it. Thirty years ago lawyers generally accepted the orthodox view that traditional legalese is more precise than standard language and is necessary to reflect the complexity of the subject. They believed that plain language represents irresponsible over-simplification.

That view has since been discredited by extensive professional literature, but few practitioners have the time or inclination to study the theory or to improve their drafting skills. So the literature remains widely unread and the traditional view is still common. Lawyers are aware of pressure towards plain language from campaigners (in and out of the profession) and from those we might call the legislators (parliament, judges, and the lawyers' own professional bodies). But the pressure has not been intense and is more often resisted than not.

In 1992 I invited a selection of British lawyers to compare two traditional and two plain versions of a routine document and to complete a survey intended to test their knowledge of and attitudes to plain language (Adler 1993:29). The results (roughly summarized in Table 5.1) indicated:

- Almost everyone supported the use of plain English in the law (Table 5.1).
- Asked if they used plain English themselves, about half answered "yes" and most of the rest "maybe".
- But very few followed even basic guidelines like avoiding long sentences.

How these lawyers perceived the advantages and disadvantages of plain English is shown in Tables 5.2 and 5.3.

Table 5.1 Survey of British lawyers' knowledge and use of plain language

Question	Yes	Maybe	No
Do you support the use of plain English in the law?	45	10	1
Do you use plain English?	27	24	4
[Did the answers to questions about style indicate that the respondent followed the most basic guidelines for plain English?]	Not tested	16	40
Would you prefer one of the plain versions of the document over one of the traditional versions			
if you had to draft it?	32		22
if your opponent drafted it?	34		20
to explain to your client?	39		14

Total number of respondents = 76

Table 5.2 Perceived advantages of plain English

Does plain English have these qualities?	Yes	No	No reply
Easier for lay person to read	49	1	6
Quicker for lay person to read	47	0	9
Preferred by most clients	39	1	16
Easier for lawyer to read	38	1	17
More chance of seeing error reading	36	3	17
Generally more efficient	35	6	15
Quicker to write	32	9	15
Easier to take instructions	31	3	22
Cheaper	29	2	25
Easier to write	29	9	18
Less chance of error writing	21	12	23
Less likely to be interpreted perversely by judge	19	13	24
Probably preferred by judges	17	14	25
Legal effect more predictable	15	20	21

Total number of respondents = 56

Table 5.3 Perceived disadvantages of plain English

Reasons	Number so answering
Fear of error, ambiguity, or unpredictable effect	24
Belief that judges disapprove	14
Harder or slower to write (at least at first)	14
Dislike style; insufficient gravitas	8
Harder or slower to read	7
Unfamiliar, loss of tradition	6
Harder to take instructions	4
Contrary to expectation of other lawyers	3
Generally less efficient	3
More expensive	2
Legalese justifies fees	2
Restrained by employers	1
Disliked by clients	1

Total number of respondents = 56

5.6 PLAIN LANGUAGE DRAFTING TECHNIQUES

The range of techniques for plain drafting is much larger than is generally thought, and includes:

Planning

Consider:

- what you want to say.
- why you want to say it.
- to whom you are saying it.
- how to present it (including what extra information might be useful).

Organization

- Organize the document coherently (that is, arranging the contents in a sensible order, clearly and logically divided into a hierarchy of sentences, paragraphs, and—where appropriate—chapters, parts, and so on).
- Keep paragraphs short enough to keep readers in sight of the next break. If there is too much material on the subject of that paragraph, consider using sub-paragraphs or headings to maintain both consistency and brevity.
- Begin paragraphs with a sentence that follows from the last paragraph and summarizes the current one.
- Avoid sentences of more than 40 words and consecutive long sentences within that limit, aiming for an average between 15 and 25 words.
- Move from the general to the particular.
- Avoid irrelevant detail.
- Keep subject, verb, and object close together, and generally in that order.
- Keep like with like, so that all references to a particular thing or class of things are found together.

Design

- Use blank space to:
 - make the page look appealing.
 - show the relationship between paragraphs, sub-paragraphs, and so on.
 - rest the eye.
- Use color if it will help (for instance, to make the document attractive or to distinguish certain parts of the text) but remember that a reader might be color-blind and that someone might need to make monochrome copies).
- Prefer plain to elaborate design to avoid distracting readers.

Choose fonts of suitable design and size, especially avoiding text too small for readers' comfort.

Embolden and italicize for headings and to a limited extent for emphasis (ensuring that no text looks more emphatic than a heading which applies to it).

Use the size and weight of the font in each heading to indicate the heading level.

Separate lists, so that instead of all the items forming a continuous paragraph, each item has its own indented sub-paragraph following grammatically, consistently, and without unnecessary repetition from the line that introduces the list.

Supplement or replace text with tables, graphs, flowcharts, pictures, algebraic formulas, and other graphics to help readers understand your message or to emphasize it.

Be consistent in design.

Language

Adopt as informal a tone as is appropriate in the circumstances (which include the readers' and writer's preferences and the relationship between them).

Prefer concrete to abstract language, and explain unfamiliar abstract ideas with examples.

Avoid:

- language that will cause inappropriate offense,
- misleading euphemism,
- over-emphasis,
- superfluous words,
- long, archaic, or unfamiliar words where a short, modern, or familiar word is as appropriate,
- nominalization,
- clichés,
- ambiguity,
- vagueness.

Do not confuse readers by using different words for the same thing or by using a word in different senses.

Use active verbs unless there is good reason for the passive.

Express ideas positively rather than negatively where practicable.

Grammar

Write grammatically.

Punctuate normally.

Use capital letters only where standard language requires them (although some lawyers justify their use to flag defined terms.)

Avoid pointless obedience to unhelpful conventions that are not rules (like not starting a sentence with *and* or *but* and not ending a sentence with a preposition).

Style

Listen to the rhythm of your text in your mind's ear and edit to make your writing flow.

Editing

Read draft documents carefully, checking the use of these techniques as well as for clerical errors and the completeness and accuracy of content.

Re-read them as often as practicable.

Read as though you were the intended reader rather than the writer. If you are writing for different audiences read with the eye (or ear) of each.

As far as practicable, re-read the whole document after any change.

However carefully you have edited on screen, finish by checking the hard copy of any document that is to be printed.

If practicable, delegate some of this so that a fresh set of neural pathways will pick up mistakes to which you are blind.

Use computerized checks if they help, but don't trust them.

Testing

To the extent that it is practicable, test the otherwise finished document for comprehensibility: is the target audience likely to understand it in the way you intended and without undue difficulty?

The more sophisticated plainers benefit from studies in linguistics, physiology, psychology, and sociology, in particular to learn how the eye and brain function when we read, how the brain processes language, and how different people can differently interpret the same document. And they study rhetoric to make their writing more persuasive.

5.7 AN EXAMPLE OF TRADITIONAL WRITING MADE PLAIN

Here is a typical piece of legalese, chosen at random from an English lease, by which residential flats (apartments) were let in 2006 for 125 years for a premium of some £225,000 and a fictional (that is, non-existent) rent:

If the whole or any part of the Rents⁹ shall be unpaid for twenty one days after becoming due (whether formally demanded or not) or if there shall be a breach of any of the

⁹ As detailed below, "Rents" (in the plural) were confusingly defined as the nominal "Rent" and the far-from-nominal management charges.

Tenant's covenants contained in this Lease the Landlord shall be entitled (in addition to any other right) at any time thereafter to re-enter the Premises or any part of it in the name of the whole and thereupon the Term shall absolutely determine but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant or other term of this lease Provided that if the Tenant shall have served notice in writing on the Landlord at any time with the name and address of the Tenant's Lender on the property the Landlord shall not be entitled to exercise its right of entry herein until at least 21 days notice in writing has been given by the Landlord to the said Lender stating (i) details of unpaid rents and/or (ii) the nature of any breach of covenant on the part of the Tenant alleged by the Landlord and (iii) details of the Landlord's requirements for any such breach to be remedied insofar as the breach is capable of remedy

I have annotated the text to show how plainers would criticize it (with a few personal comments of my own), and I offer a plain redraft below.

Notes relating to the whole passage	Sentence length
	This sentence has 210 words. It has been inflated by including in a single sentence what in normal English would be several sentences and by using more words than are necessary.
Text If the whole or any part of the Rents	Punctuation
	The difficulty of reading a long sentence has been unnecessarily increased by omitting the punctuation used in normal English. Anomalously (but traditionally), there is some punctuation: in this case apostrophes and parentheses. But unusually, this text omits the extra spaces often used to indicate a missing period.
shall be	Commentary
	If <i>any rent</i> would do as well. The capital R is intended to indicate a defined term, but (1) word-initial capitals are used inconsistently for other purposes (and sometimes for no purpose) and (2) the indication is lost on non-lawyers. In this document, <i>Rents</i> were defined in clause 2 ("Definitions and Interpretation") as "The Rent the Estate Charge and the Building Service Charge". <i>Estate Charge</i> and <i>Building Service Charge</i> were separately defined in clause 2 but <i>Rent</i> was not. Confusingly, it was specified under clause 1 (<i>Particulars</i>) as "A peppercorn (if demanded)". Traditionally, the valueless peppercorn is included to provide an (unnecessary) contractual obligation by the tenant, but it is never demanded. Despite the helpful convention that a word should not be used in different senses in a formal document, the archaic <i>shall</i> is traditionally used instead of the more natural <i>must</i> to denote obligation as well as to indicate the future tense. Here it means <i>is</i> .

(continues)

Continued

unpaid for twenty one days after becoming due	21 would be better in figures but if in words they should be hyphenated.
(whether formally demanded or not)	Words to this effect block a loophole but "(even if not formally demanded)" is neater.
or if there shall be a breach of any of the Tenant's covenants contained in this Lease	= "or if the tenant has broken any other covenant". Incidentally, <i>Tenant</i> is not a defined word so does not warrant a capital T. Following what is now common practice, the name of the original tenant was given with the other particulars (like the rent) in a form which looks like a definition but isn't. This use of <i>Tenant</i> refers not to that original tenant but to whoever holds the tenant's interest at the relevant time. <i>Covenant</i> has a technical meaning but it is unnecessary to specify it here; all obligations in a lease of this kind are covenants. But the drafter has nodded to the plain language movement by using <i>Landlord</i> (which is gender-neutral in British English) and <i>Tenant</i> instead of the traditional but user-unfriendly <i>Lessor</i> and <i>Lessee</i> .
the Landlord shall be entitled (in addition to any other right) at any time thereafter to	"the Landlord shall be entitled to" = "The landlord may". In fact, the landlord is by law usually <i>not</i> entitled to this remedy (see below). The clause is made less readable than it should be by the intrusion of two subordinate phrases between <i>entitled</i> and <i>to</i> .
re-enter the Premises or any part of it in the name of the whole	As soon as the landlord steps through the door he has entered the premises. The reference to "any part of it in the name of the whole" is superfluous verbiage (and <i>it</i> should be <i>them</i>). <i>Enter</i> (rather than <i>re-enter</i>) is sufficient. What difference does it make if the landlord has been there before? Could a tenant argue that a landlord who had not been there before (having bought the interest without inspecting the premises) cannot exercise this right?
and thereupon	<i>Thereupon</i> is archaic.
the Term shall absolutely determine	= "The lease will end".
but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant or other term of this lease	= "but without affecting any of the landlord's rights which have already accrued", though this is of such doubtful use that I've omitted it from my redraft.
Provided that	This phrase has no technical meaning, being used variously for <i>but</i> , <i>if</i> , <i>and</i> , and the superfluous "And this document provides that". The capital P marks not a defined term but what should be a new sentence or paragraph.

(continues)

if the Tenant shall have served notice in writing on the Landlord	"Shall have served notice" = "has notified". The reference to serving notice suggests, but does not specify, some formality. It also leaves open an argument about whether service was effected by posting the document even if it did not arrive. "Has informed the landlord in writing" is a more natural form of words and blocks the loophole. "Has told" is even more natural but might just leave the argument open.
at any time	This phrase is redundant, being understood if no time is specified.
with the name and address of	<i>With</i> should be <i>of</i> . Otherwise, what is the content of the notice that the name and address accompanies?
the Tenant's Lender on the property	<i>On</i> is not the appropriate preposition, though a casual speaker might refer to "lending money on the property". It is unlikely that an unsecured lender would expect to benefit from this clause, so "the tenant's mortgagee" would be clearer and neater. Despite the capital L, neither <i>Lender</i> nor <i>Tenant's Lender</i> has been defined. "the ... Lender" suggests that there could only be one lender (although there is a statutory rule that in leases "the singular includes the plural"). This is repetitive and inelegant.
the Landlord shall not be entitled to exercise its right of entry	
herein	<i>Herein</i> is archaic and superfluous.
until at least 21 days notice in writing has been given by the Landlord	The active voice would be neater than the passive.
to the said Lender	<i>Said</i> is archaic and superfluous.
stating	<i>Giving</i> would be more natural.
(i)	Arabic numerals are easier to read and shorter.
details of unpaid rents and/or	<i>And/or</i> "has been clouding the law for more than one hundred years" (Mellinkoff 1963:306). I argued in Adler (2007:125) that the virgule "on its own means <i>and/or</i> , creating an infinite regress" ¹⁰ Here <i>or</i> is clearly an inappropriate alternative to <i>and</i> , as it seems to give the landlord a choice about which breaches the notice should specify. If landlords do choose (i) as an alternative to (ii), are they bound by (iii) or does that fall with (ii)? In any event, category (i) is superfluous, as failure to pay the rent is a breach of covenant covered by category (ii).
(ii) the nature of any breach of covenant on the part of	"On the part of" = "by".
the Tenant alleged by the Landlord	"Alleged by the Landlord" is superfluous.

(continues)

¹⁰ See also Mellinkoff (1963:147).

Continued

and (iii) details of the Landlord's requirements for any such breach to be remedied	"Details of the Landlord's requirements for any such breach to be remedied" = "how the breach is to be remedied".
insofar as the breach is capable of remedy	"Insofar as the breach is capable of remedy" = (in this context) "if the breach can be remedied". (The proviso is intended to extend to the mortgagee the protection given to the tenant by s.146 of the Law of Property Act 1925 (which uses <i>if</i> rather than <i>insofar as</i> .)

A plain language version of this clause might read (using small capitals to signal a defined term):

- (A) The landlord may enter the FLAT, so ending this lease, if:
- (1) Any MANAGEMENT CHARGES are unpaid more than 21 days after they have become due (even if not formally demanded); or
 - (2) The tenant has broken any other duty under this lease.
- (B) (1) But if paragraph (B)(2) applies the landlord may not use this power until:
- (a) It has sent the lender written details of:
 - (1) Any breach under paragraphs (A)(1) and (2); and
 - (2) The landlord's reasonable requirements for correcting any remediable breach; and
 - (b) 21 days have since passed without the breach having been remedied.
- (2) This paragraph applies to any lender:
- (a) For whose debt the FLAT is security; and
 - (b) Whose name, address, and mortgage details the landlord has received.

This reduces the original 209-word sentence to the 90 words of paragraphs (A) and (B) (1), adding 35 words in paragraph (B)(2) to supply details missing from the original. A plainer might also want to add a note about the tenant's legal rights over-riding this remedy.¹¹

5.8 CONCLUSION

Although some material is inevitably difficult to understand this does not justify legalese, for several reasons:

1. Many of the faults which make legalese impenetrable can be cured by uncontroversial improvements in format and sentence structure without significant change of language.

¹¹ For a discussion of the difficulties involved, see Adler (2013).

2. Almost none of the impenetrable language adopted by the traditionalists is required by law.
3. The ideas expressed in legal documents (in contrast to those of theoretical science) will rarely, if ever, be so counter-intuitive as to be beyond the reach of clear explanation. And it is undesirable that they should be, as such complexity would make the obligations difficult to comply with and so defeat the purpose of the document. What difficulty there is (for instance in tax law) usually arises from complicated combinations of ideas which are individually comprehensible, and this difficulty can be avoided or substantially reduced by applying the techniques of plain language (including design) to set out the individual ideas and the relationship between them.¹²

¹² For an example of how an incomprehensible piece of legislation can be revised, see Adler (2010).

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