

Letter in the New Law Journal

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Plain English

I would like to comment on the letter headed "Plain English" (NLJ May 30, p 788) by Mark H Ashworth, assistant company secretary NatWest Group. I agree with Mr Ashworth that it is important that forms, circulars and other documents issued to members of the public should be in plain English. Great improvements in this respect have been made in recent years, and they are to be welcomed wholeheartedly. This work needs to continue.

However, the position is different when it comes to documents having legal effect. These are primarily intended to be applied by lawyers, and should be worded accordingly. Plain English should certainly be used whenever possible, but not at the cost of abandoning correct terminology. Explanations of legal terms for lay readers should be provided separately, where necessary.

Mr Ashworth calls such terms "ritual incantations". This pejorative description misses the point, which is that legal jargon is a necessary form of shorthand. To the expert, it briefly conveys precisely what is meant and so avoids doubt and confusion. Its use imports a mass of legal doctrine and precedent, which needs to be deployed if lawyers follow Mr . Ashworth's advice and assume that "plain words will do just as well" they risk not doing their job. As an example, Mr Ashworth says he has no doubt that "together and separately" used in a document having legal effect would be given by a court the same meaning as

"jointly and severally". A court might come to that conclusion in the end, but equally it might not. Advocates would argue, if that was to the advantage of their clients, that the departure from the usual formula betokened a different intent.

The virtue of legal shorthand is that, without the need for argument, it keys into references in textbooks and law reports to the doctrines it refers to. A number of doctrines are governed by the concepts of jointness and severalty. One would need to argue, and convince the court, that these are also attracted by a reference to "together and separately". I can hear the judge saying, in the way judges so often do, "if they had meant jointly and severally they could easily have said so".

Drafters need to remember the wise words of Blackburn J: "It has been a general rule for drawing legal documents from the earliest times never to change the form of words unless you are going to change the meaning" (*Hadley v Perk* [1866] 1 QB 444 at 457).

Francis Bennion Oxford