

Introductory Note by FB

The article below is a further addition to my writings on the use of plain language in legislation. Others are included within the Topic 'Plain language law'. The Topic can be found on this website at www.franciscbennion.com/topic/plainlanguage.htm.

Confusion Over Plain Language Law

Introductory

For thirty years or so the movement for plain language in law has been flourishing, encouraged by governments, judges, academics, linguists - and of course those who consider themselves (and often are) plain language experts. The movement is widespread in the UK, the Commonwealth and the US. President Carter signed an executive order requiring federal agencies to ensure that regulations are written in plain English and can be understood by those who have to comply with them.¹ I obtained that information from the second edition of a leading textbook on the plain language movement, *Modern Legal Drafting* by Peter Butt and Richard Castle, which has recently been published.² I shall refer to it as *Butt and Castle*.

Criticising plain language, like undermining motherhood and apple pie, is not done. It is frowned upon, for all right-thinking people admire plain language and seek to promote it. Yet this can be overdone, as it is by the subject of the present article, the plain language movement. This was always a misconceived and hopeless project, and it has failed (except in one particular, which I specify later). This is because there are five things which are basically wrong with it.

1. The plain language movement does not recognize that law is an expertise.
2. It fails to distinguish clearly between four distinct types of relevant text, namely (a) a text which is law, (b) a text which furthers an act in law, (c) a text otherwise addressed to lawyers³, and (d) a text about law which is addressed to non-lawyers.
3. Because of 2 it muddies the waters by agitating for changes in one type of text which are needed instead in another type of text (if they are needed at all).
4. It has distracted attention from needed reforms in law that are more important.
5. By holding that non-lawyers can do things which only lawyers can be trusted to do, it endangers the public.

Law is an expertise

The law is made up of what I will call law texts, that is texts that actually are law. They constitute the law, which resides only in words. The purpose of a law text is geared to this function of *constituting* the law. Many plain language campaigners fail to grasp this point. They think the purpose of a piece of legislation is to *explain* the law. Thus the plain language campaigning group *Clarity* says:

¹ Executive Order No. 12044, March 23 1978.

² Cambridge University Press, 2006. See pp. 105-107 for developments regarding plain language in the US.

³ By "lawyer" in this article I include anyone who is an expert in law, or a particular area of law, even though not possessing formal legal qualifications.

“People read legislation looking for answers to questions. More often than not they find what Richard Saul Wurman calls ‘information anxiety’,⁴ the black hole between data and knowledge. It happens when ‘information’ doesn’t tell us what we want or need to know.”⁵

But it is not the function of a legislative text to explain the law. Explanations should be given *aliunde*, as we lawyers say. They naturally lie outside what they explain. In New Zealand the authorities have recently departed from classic doctrine and begun inserting explanations as an integral part of legislative texts.⁶ This is a mistake.

Clarity bolsters its view that a law text should be self-explanatory by saying:

“If laws cannot be readily understood by those most affected by them the social cost is an increasing ignorance of the law and growing disrespect for the law and those who administer it.”⁷

This is a *non sequitur*: the inference or conclusion does not follow from the premise. The fact that law texts cannot be readily understood by those most affected by them does not inevitably lead to an increasing ignorance of the law. That can be avoided by making sure sufficient explanations of the law are available to the public in other ways. Lord Diplock said:

“Elementary justice or, to use the concept often cited by the European Court, the need for legal certainty, demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible.”⁸

The key is in the parenthesis. If the law is not clear to the lawyer, the lawyer cannot make it clear to the client. The plain language movement, by harping on the illusory aim of having law that is directly clear to the citizen, has distracted attention from the imperative need to have law that is directly clear to the lawyer, in other words is fit for purpose.

Many pre-twentieth century Acts of the Westminster Parliament were not fit for purpose because they suffered from what I have called disorganised composition.

“Older Acts are frequently the subject of disorganised composition. Here the text may be the product of many hands; and the language is sometimes confused and inconsistent . . . If an enactment is sloppily drafted, so that the text is verbose, confused, contradictory or incomplete, the interpreter cannot insist on applying strict and exact standards of construction.”⁹

With disorganised composition there is in reality no coherent meaning. One statement contradicts another. Within a single statement there are glaring defects. As Grove J politely put it in an 1876 case, the language “is not strictly accurate and grammatical”.¹⁰ The need for improvement was perceived long before the advent of the plain language movement. In 1891 Stephen J said in a famous passage:

“I think that my late friend, Mr [John Stuart] Mill, made a mistake upon the subject, probably because he was not accustomed to use language with that degree of precision which is essential to anyone who has ever had, as I have on many occasions, to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which, therefore, it is not enough to attain to a

⁴ Richard Saul Wurman: *Information Anxiety*, Doubleday.

⁵ “Using Plain English in Statutes: Clarity’s submission to the Hansard Society for Parliamentary Government”, June 1992 (hereinafter “Clarity Submission”), Pt 1.

⁶ See Ross Carter and Matthew Green, “‘The enactment is self-explanatory . . . or is it?’ – Explanatory Provisions in New Zealand Legislation”, 28.1 *Statute Law Review* (2007), p 2.

⁷ Clarity Submission Pt 1.

⁸ *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 279.

⁹ F A R Bennion, *Statutory Interpretation* (London, LexisNexis Butterworths, 4th edn, 2002), p. 350.

¹⁰ *Ruther v Harris* (1876) 1 Ex D 97 at 100.

degree of precision which a person reading in good faith can understand; but it is necessary to attain, if possible, to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.”¹¹

Legislative drafting in England and elsewhere in the Commonwealth has now reached this high degree of precision. In 1963 Lord Reid said that “our standard of drafting is such that [the need to do violence to the words] rarely emerges”.¹² Later Lord Bridge referred to “a modern statute, using language with the precision one expects”.¹³ Lord Roskill remarked that until comparatively recently “statutes were not drafted with the same skill as today”.¹⁴ The Court of Appeal said of the Consumer Credit Act 1974 (drafted by the present author):

“ . . . the draftsman has been careful and precise in his choice of language: for example, where ‘means’ is intended the statute says ‘means’, and where ‘includes’ is meant it says ‘includes’ ”.¹⁵

To an extent therefore law texts are now comprehensible *to lawyers*. But there is still much that needs to be done in the way of reform.¹⁶

So law, like medicine or engineering, is an expertise. That is why we have a legal profession. Most law texts are designed to be read exclusively by legal experts¹⁷.

Supporters of the plain language movement are determined to show that law is *not* an expertise, or need not be if legislative drafters will only use plain language. Then, they believe, the public can assert their right as citizens to access any law text directly. That is a chimera.¹⁸

However much drafters succeed in clothing law texts in so-called plain language, the ability to handle them successfully will still constitute an expertise. It can be dangerous for members of the public to believe (without professional advice) that they understand an Act of Parliament, and then to act on that belief. As Sir G. Palmer, President of New Zealand’s Law Commission, said:

“Is it safe to give them access to statutes? People may come to grief advising themselves.”¹⁹

Law texts should therefore be tailored to suit the people who do constitute their proper readership, namely those possessing the requisite legal skills. What the skilled reader needs to get from a law text is the grammatical meaning, or the legal meaning where that differs. The legal meaning is the one the highest court has given the text, or would give it. It may not be easy for a lawyer to determine this; it is impossible for an unaided lay person to expect to do so.

A law text, even if it is an entire Act, is far from being the whole story. Every Act is incomplete in itself. Law is a palimpsest or multiple imprint surface. An individual law text needs to be considered in context. No one law text stands alone. It always needs to be read

¹¹ *In re Castioni* [1891] 1 QB 149 at 167.

¹² *Luke v IRC* [1963] AC 557 at 577.

¹³ *Wills v Bowley* [1983] 1 AC 57 at 104.

¹⁴ *United States of America Government v Jennings* [1982] 3 WLR 450 at 460.

¹⁵ *Office of Fair Trading v Lloyds TSB Bank plc, Tesco Personal Finance Ltd and American Express Services Europe Ltd* [2006] EWCA Civ 268, [2006] 2 All ER 821, at [65].

¹⁶ Space does not permit me to go into detail on that aspect, in which I personally have been active for over forty years. For details see my website www.francisbennion.com.

¹⁷ For a rare exception of a law text intended to be understood by non-lawyers see the Schedule to the Hotel Proprietors Act 1956 (form of notice to hotel guests).

¹⁸ The *Oxford English Dictionary* (second edition 1992) says that in ordinary modern use this word means “an unreal creature of the imagination, a mere wild fancy; an unfounded conception”.

¹⁹ Cited Ross Carter and Matthew Green, “The enactment is self-explanatory . . . or is it?” – Explanatory Provisions in New Zealand Legislation’, 28.1 *Statute Law Review* (2007), pp 2-33 at 9.

alongside many other law texts, and this cannot be achieved by unaided non-lawyers. That is another mistake made by the plain language movement.

It is linked to a yet further error, that persons lacking legal training can safely be trusted to rewrite legal documents in plain language. This can be highly dangerous, as I show later. Redrafting non-lawyers are likely to make the text look good (as they think) while presenting the law or its effect incorrectly, or applying the law wrongly.

This reminds us that lawyers, like medical doctors or civil engineers, are *trained*. In one case the Full Court of the Federal Court of Australia referred to the necessity for legal training to achieve clear expression and added “If legal training is also required to read it with complete understanding, that should not surprise either”.²⁰ Why would lawyers need training if law is not an expertise?²¹

Style and tone of legal texts

Plain language proponents complain that traditional legal language lacks style. It depends what you mean by style. On one view, it is so-called plain language that lacks style. It also lacks learning. For example it eschews foreign words and phrases, even though in other respects multiculturalism is supposed to be a modern virtue. In *Butt and Castle*, the authors, after citing phrases like *de bene esse*, *en ventre sa mere*, *force majeure*, *inter vivos*, *res ipsa loquitur* and *ultra vires* say:

“Phrases of this kind are best abandoned, for three reasons. First, the average reader will not understand them. Second their foreign origins convey a sense of precision and technicality which they simply do not possess. Third, they are not true legal terms of art. *Almost* always they can be discarded for an equivalent in modern English.”²²

Here we see the muddle over which type of text the campaigner is talking about. In relation to what I am calling law texts, which as I have said should be designed for lawyers, these reasons are spurious. The average lawyer *will* understand these terms. They *do* convey a sense of precision because they *are* true legal terms of art.

Another shibboleth of plain language campaigners is that lawyers should eschew stuffy legal terms like *hereby* and *thereby*. Again they show their ignorance, for such terms have an important function in law. They are what the linguistic philosopher J. L. Austin called performance utterances. Commenting on this H. L. A. Hart remarked:

“And here the law came into its own – when I say ‘I hereby give you my gold pen’ I’m not describing what I’m doing, I’m actually doing it.”²³

This controversy shows what would be lost if law texts were, as some campaigners wish, designed so as to be read with ease by ordinary members of the public. Then, I agree, it would not be appropriate to use terms like the above. They would be outlawed as jargon. But jargon has value when used between professionals. Some fields of law are highly technical. Vinelott J said of tax legislation:

“This is a technical field. It is common experience that a taxpayer can easily get so lost in the technicalities that he loses sight of what ought to be self-evident as a matter of good sense. The advantage of obtaining advice from someone who has mastered the technicalities and who has experience in this field is that a person in that position can

²⁰ *Blunn v Cleaver* (1993) 1 ALR 65 at 81 (cited Jeffrey Barnes, “The Continuing Debate About ‘Plain Language’ Legislation: A Law Reform Conundrum”, 27.2 *Statute Law Review* (2006) pp. 83-132 at 106.

²¹ On law as an expertise see further F A R Bennion, “Don’t put the law into public hands”, *The Times*, January 24 1995, www.francisbennion.com/1995/006.htm.

²² *Op. cit.*, p. 142 (emphasis added).

²³ See Nicola Lacey, *A Life of H. L. A. Hart* (Oxford University Press 2004), p. 144.

stand back and look at the legislation and interpret it in the light of the inferred purpose of the legislature.”²⁴

Clarity observes that “legal writing does not have to be turgid, complex and dull”.²⁵ It also says that a more conversational tone should be used in statutes, offering as a (trivial) example “a person who is under 18 years old” rather than “a person who has not attained the age of 18 years”.²⁶

In *Butt and Castle* it is alleged that legal language “has a unique tendency to be wordy, unclear, pompous and dull”²⁷ and “is also impersonal, lacking warmth”. We are given the following advice:

“To insist on precisely the same terminology and a uniform tone may make the document mind-numbingly boring. Thus, it may be appropriate to use both *must* and *is to* in the same document. Variation can add interest, provided it does not introduce ambiguity or uncertainty.”²⁸

But it *does* introduce ambiguity or uncertainty – inevitably. It breaks one of the clearest rules of legal drafting, which is “never to change the form of words unless you are going to change the meaning”.²⁹ It is dangerous.

Another danger of the Plain Language Movement is that it causes mistaken changes in the methods applying to the drafting of legal texts. A stark example is the way it has persuaded some legislative drafters to exchange imperative for descriptive language, as if the law text were a mere commentary instead of a command. Political correctness has a share of responsibility for this: it is nowadays thought rather rude for Parliament actually to order anyone to do anything. Surprisingly, this was a problem even in Bentham’s day. Hart said:

“But this fundamentally imperative character of law is, according to Bentham, ‘clouded and concealed from ordinary apprehension’ . . . by the fact that in statutes . . . law is very rarely formulated in imperative language. Hence the illusion arises that there are laws that are not imperative at all . . . Frequently [statutes] appear to be describing something already existing, not prescribing something to be done.”³⁰

So-called plain language drafting has attracted judicial criticism. The full Federal Court of Australia strongly criticised the redrafting in so-called clear English of the Social Security Act 1991 (Cth), which contains almost 1400 sections. The Court stated that “an Act that is two or three times as long is not necessarily easier to read because some technical expressions (which once understood were succinct) have been replaced by wordier ones”. It noted that “[t]he professed aim of the drafting . . . is to make it more accessible to persons without legal training” yet found that “no one seriously believes the layman can master the Act unaided”.³¹ In another Australian case the appeal court judge criticised the plain English of the *Corporation Law* as ‘the language of the pop songs’.³²

²⁴ *Whitehouse v Ellam (Inspector of Taxes)* [1995] STC 503n.

²⁵ Clarity Submission, Pt.1.

²⁶ Clarity Submission, Pt 3.

²⁷ P. 120. The epithet “unique” cannot be accurate here.

²⁸ P. 203.

²⁹ *Hadley v Perks* (1866) LR I QB 444, per Blackburn J at 457.

³⁰ H. L. A. Hart, “Bentham and the Demystification of the Law”, 36 *The Modern Law Review*, January 1973, p. 4.

³¹ *Blunn v Cleaver* (1993) 119 ALR 65 at 81–83. See J W Barnes, ‘Statutory Interpretation, Law Reform and Sampford’s Theory of the Disorder of Law’ Pt I (1994) *Federal Law Review* (Australia) pp. 142–143), citing J Turnbull, ‘Clear Legislative Drafting: New Approaches in Australia’ (1990) *Statute Law Review* 161.

³² *GM & AM Pearce & Co Pty Ltd v R G M Australia Pty Ltd* (1998) 16 ACLC 429 at 432, per Calloway JA. This, together with several other Australian examples, is cited in *Butt and Castle* at p. 111.

In my days as one of the Parliamentary Counsel at Westminster I always strove to be as plain as possible, while observing the need to fit in with existing legislation as one must. My colleagues did likewise, to the best of their ability. A former First Parliamentary Counsel, Sir Peter Graham, is quoted by the plain English campaigner Martin Cutts as writing:

“We do not needlessly make things complicated: we have as great a love of the English language as the next man: we do draft against a background of judicial decisions, rules of interpretation, the basic premise that statute law is an intrusion into the common law and, perhaps most important, the salutary rule that all enactments are construed against the Crown (using that expression in its widest sense) and in favour of the subject”.³³

At the age of 84 I am bound to admit that I may not be best fitted as an *arbiter elegantiarum* to the rising generation. Doubtless I should leave it to younger people to judge what is nowadays required in the way of style and tone. Perhaps, contrary to my view, it is appropriate in the twenty-first century to be conversational in contracts, arch in Acts of Parliament, and warm and friendly in writs. (Oh no, I was forgetting, the term *writ* is now abolished in favour of *claim form*. There’s elegance!³⁴)

Acts in law

I next want to consider a type of text which is not a law text but the text involved in what is called an act in law, that is the act of a person which has legal effect, as compared to an “act in fact” which does not.³⁵ A typical act in law is the entering into a contract, the making of a will, or the execution of a conveyance of land. Usually they are important acts, often effected by persons without legal skill. They require the drafting of a text, usually drawn up by a person who does have legal skill, in other words a lawyer. All have legal consequences.

It is important that the text involved in an act in law should be so worded as to secure that the act is legally effective. Where it is the act of a non-lawyer (the client) it is also important that the client understands its legal effect. This is prime hunting ground for the plain language campaigner, who tends to be more pressing about the latter requirement than the former.

Here I return to *Butt and Castle*. In many ways it is a useful book, but it includes serious errors.³⁶ In one place it sets out “the benefits of using clear modern English in legal documents”.³⁷

“The first benefit is increased efficiency and understanding. Plain language documents are easier to read and understand. Consider the following clauses, where traditional and plain language versions are juxtaposed.”

The first example then given relates to a contract for constructing a street. The traditional wording is reproduced as follows:

“The Builder shall at his own expense construct sewer level pave metal kerb flag channel drain light and otherwise make good (including the provision of street name plates in accordance with the requirements of the appropriate District Council and road

³³ See Martin Cutts, *Lucid Law* (2nd ed., London, 2000) at p. 44.

³⁴ There was no need to abolish the term *writ* in court usage in order to be “modern”. For centuries it has been a term well understood by every educated person as meaning, as the OED puts it “A written command, precept, or formal order issued by a court in the name of the sovereign, state, or other competent legal authority, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein”.

³⁵ See e.g. the words “with no act in law or in fact to take place on the [election] date chosen by Congress” in *Foster v Love* (1997) US 96-670 II.

³⁶ For example it praises (p. 61) the so-called golden rule of interpretation, citing in support an extra-judicial remark of Lord Macmillan from as far back as 1931. There have been many developments in statutory interpretation since then, and this “rule” was exploded many years ago by the late Sir Rupert Cross.

³⁷ Pp. 113- 114.

markings and traffic signs in accordance with the requirements of the Council) the street.”

Set against this is an alternative version of this clause recommended by *Butt and Castle* as being in plain language: “The Builder must construct the street to Council specifications”. That is all.

This alternative version may be plain, but it is obviously deficient in many ways as an equivalent to the traditional version. It omits to say that the work shall be done at the Builder’s own expense. It does not mention items whose inclusion may be in doubt if they are not specified, such as sewerage, lighting and street name plates. It speaks of “Council specifications” without identifying the “Council” as the appropriate District Council.

More importantly, it places no limit on what under the contract the Council are entitled to specify - though limits there must plainly be. They are left to be gathered by implication, about which there could be endless doubt and argument. No contractor could safely tender for the project when so much was left uncertain. No good lawyer would draft in such terms. If a lawyer did draft this example he or she should be disciplined.

We see that for texts having legal effect the so-called plain language version may be an obscure disaster likely to lead to costly litigation if actually used. What was needed here was a more precise version of the traditional text, supplying the deficiencies that are undoubtedly there. For example what exactly is meant by “pave” and “metal”? What kind of materials and processes are required to be used for this?

We here see exposed what I have already identified above as a serious drawback of the plain language movement. *It distracts attention from more important matters.*³⁸

The authors might have realised their mistake in citing this example if they had asked themselves the question: “plain to whom?” What is the intended readership of this building contract which is to be made (self-evidently) between one large corporation and another? The actual readership is not likely to extend much beyond the legal departments of the two corporations and the clerk of the works of the successful contractor. They will have no trouble with the traditional version’s absence of punctuation or lack of elegance. There might however be minor difficulties over its (comparatively few) deficiencies of substance.

The legal text meant for the public

Now I want to look briefly at another type of legal text, where the contribution of the plain language movement has been positive. This is the text which gives legal guidance to a lay client or to members of the public generally, or is designed for use by lay persons (such as a statutory form for a self-assessment tax return or hire-purchase contract).

The question “plain to whom?”, brings in the key question of the intended readership. No one should begin to draft any writing without first being aware of the sort of people who will read it. A journalist does not write in the same way for the *Times Literary Supplement* (TLS) as for the *Sun* because the readership is different. A passage that is plain to the average TLS reader with a wide vocabulary may be opaque to the average *Sun* reader with a narrow one. It is horses for courses.

When it comes to drafting texts for use by the general public there is value in plain language skills. But even here legal skills are also requisite. Without them, there is an obvious risk that the text, while easy to read, will be wrong in law.

At the beginning of this article I said that in the field of law the plain language movement has failed, except in one particular. That one particular related to the type of legal text I am now discussing. I would say that here the movement has been a triumphant success. Simplified

³⁸ *Clarity* has spoken of “endless and wasteful discussions about whether ‘plain English’ should or should not be used”: *Clarity Submission*, Pt 1.

forms, and simplified legal advice, have been a boon to the public wherever they have been introduced.

What about Bentham?

Whenever I engage in dispute on the above lines with supporters of the plain language movement some knowledgeable person is bound to say, at some stage, “But what about Bentham?” So I will conclude by dealing with Bentham.

I have to admit that there are many passages in Jeremy Bentham’s voluminous works that plain language campaigners could cite in their support.³⁹ He criticized fiercely the language of English lawyers and condemned the fantastic prolixity and obscurity of English statutes. He was horrified by the ease with which English lawyers swallowed and propagated the enervating superstition that these abuses were natural and inevitable, so that only a visionary would dream of their radical reform. Bentham compared what he called lawyer craft to priest craft and regretted that though religion had received the benefit of the Reformation the legal reformation had yet to redeem us.

Bentham thought that one of the principal instruments of mystification wielded by the lawyer was lawyer’s language: jargon and what he called jargonisation. He claimed that the employment by lawyers in their formal documents, in contracts or conveyances, in indictments, pleadings and judgments of a language so prolix and different from what men naturally use, served a triple sinister purpose.

First, like thieves’ cant, or the language of the sham sciences of alchemy, palmistry, magic and astrology, the cant or “flash language” of lawyers formed a bond of union among them, setting them apart from society and reinforcing their complacency and resistance to reform.

Secondly, it was also an instrument of depredation, since its complexities enormously multiplied lawyers’ business and lawyers’ fees. Thirdly, it created an atmosphere of awe round the lawyer, which intimidated the critic and fostered the impression that human faculties are not really equal to the task of law reform.

The effect of all this, Bentham said, was to hide the defects of the law where ordinary language would make them obvious. Real substantial progress, he thought, ultimately depended on the radical recasting of the form of the law and the adoption of codes framed in a language freed from the lawyer’s triple mystifying blight of ambiguity, obscurity and over-bulkiness.

Bentham’s obsession with the evils of mystification extended over the whole range of law. Law was to be made simpler, more like common sense, better expressed, better known, and better understood. What can one say in reply?

Hart points out that it can plausibly be said that our society has grown so much more complex since Bentham’s day that it is absurd now to call for radical simplification of our law and legal proceedings, or to hold out even as an ideal the natural simplicities of the cottage and of family life. I myself would add that there have been many reforms, and most Victorian abuses pilloried first by Bentham and then by Dickens have been swept away.

As a student of the former free independent English professions and their practices, and author of the last book on them to be published in England⁴⁰, I would stand by my analysis above. In saying that jargon has value when used between professionals I am supported by the Visitor of my Oxford College Balliol, Lord Bingham of Cornhill, the senior Law Lord. In a Presidential Address to the Bentham Club he said this of Bentham’s wish for demystification of the law:

³⁹ In what follows I have drawn extensively on H. L. A. Hart’s 1972 Chorley Lecture “Bentham and the Demystification of the Law”, 36 *The Modern Law Review*, January 1973, pp. 2-17.

⁴⁰ F. A. R. Bennion, *Professional Ethics: the Consultant Professions and their Code* (London, Charles Knight, 1969).

‘Despite his condemnation of lawyers’ jargon and jargonisation . . . I doubt whether Bentham thought that all technicality could or should be avoided when lawyers are speaking to each other. If so, he set a bad example . . . It is obviously desirable that lawyers, when speaking to non-lawyers, should use language which is clear, intelligible and so far as possible untechnical. But it would be as futile and self-defeating to ask them, when speaking to each other, to avoid references (meaningless to the uninstructed) such as Calderbank letter or Bullock order, as it would be to ask doctors in professional conversation with each other to avoid reference to Dupuytren’s contracture, McBurney’s point or Koplík’s spots.’⁴¹

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⁴¹ Rt. Hon. Lord Bingham of Cornhill, ‘Mr Bentham is Present’, Presidential Address to the Bentham Club 2000, University College London, pp. 10-11.