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Plain English: Harriet Harman Bends The Truth

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Introductory

This article is about a piece of misbehaviour by the Right Honourable Harriet Harman that occurred last year but has been drawn to current notice by a recent item in the satirical journal *Private Eye*. I found her conduct particularly objectionable because it concerns something to which I have been devoted throughout my working life, namely the drafting of legislation.

The Report in *Private Eye*

Harriet Harman is one of those people who, despite all the evidence to the contrary, persist in holding and advocating the view that parliamentary counsel ought to draft legislation in plain English rather than so-called legalese.¹ This view is also held by the Plain English Campaign (PEC). The two deserve each other. They have recently come into conjunction, as *Private Eye* has just reported.²

Headed **TANGLED WEB AWARD**, the report said the Prison Service was thrilled when its website won a PEC award last year and was praised for its warm and sensitive tone. The year before, said the report, the Prison Service "had spent £11,628 on consultancy services from, er, PEC, which is really more a business and had profit of almost £2m last year". The Department for Work and Pensions paid PEC £124,235 between 2003 and 2006, coincidentally winning its Inside Write award last year. "Then minister for constitutional affairs Harriet Harman also won an award for her work on the coroner reform bill; her department paid £35,400 to PEC in the five years to 2006". The *Eye* says the expenditure was uncovered by a rival training and editing business, the Plain Language Commission.

There is a suggestion here that PEC are behaving wrongly in giving awards to people connected with organizations who are or have been its clients. Martin Cutts, head of the Plain Language Commission, carries the allegations further on a website.³ In my view there is nothing wrong with what the PEC do in this respect, provided the position is made clear. On its website PEC says it does not allow award entries of documents that its own staff have worked on in any way. We do not object when a school or college gives prizes to pupils it has taught.

The PEC website says Harriet Harman was given the Osborne Award, but does not say what for. I will assume that the *Eye* correctly gives the reason, so let's move on to that.

The Draft Coroners Bill

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¹ For my most recent effort to demonstrate that such people are mistaken see F A R Bennion, 'Confusion Over Plain Language Law', 16 *Commonwealth Lawyer* (Aug 2007), p. 61, www.francisbennion.com/2007/018.htm.

² *Private Eye* No. 1198, December 6, 2007, page 6.

³ Martin Cutts, *Plain English Awards Scandal*, www.clearest.co.uk/files/PlainEnglishAwardsScandal.pdf

A news release about the draft Coroners Bill was published by Harriet Harman, then a minister of state in the Department for Constitutional Affairs, on June 12, 2006.⁴ The release was headed:

**GOVERNMENT PUBLISHES CORONER REFORM BILL
NEW FOCUS ON THE BEREAVED
FIRST BILL TO BE WRITTEN IN PLAIN ENGLISH**

The text of the news release included the following: “The Coroner Reform Bill will also be the first Bill that will be published in plain English – so that anyone can read it and know what changes it is making.” In fact this statement was untrue, as I shall show.

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On the same day, June 12, 2006, Harriet Harman published a statement on a website.⁵ It was headed “Now do you understand me?” and contained the following:

“So it’s to help the public that my new bill which reforms the inquest system is drafted in - shock, horror - ordinary English. The ‘Plain English’ coroner reform bill is accompanied by the usual legalese on the facing page. But any bereaved relative who wants to see how the new bill will enable them to appeal, make a complaint, ask for or refuse a post-mortem or understand the powers and duties of the new chief coroner, will be able to read the bill and see for themselves.”

In fact the draft bill is not drafted in ordinary English but in what Ms Harman calls ‘the usual legalese’. What are drafted in ordinary English are the explanatory notes. Unusually, the latter do not appear in a separate document but instead are interleaved with the provisions of the draft bill. This means that a provision of the bill appears on a left-hand page while opposite it on a right-hand page is the corresponding part of the explanatory notes. Apart from this feature, both the bill and the explanatory notes are drafted in the usual way.

So Ms Harman’s statement quoted above is incorrect, and calculated to mislead. I will examine various phrases in order, followed by my comment.

‘my new bill’

Comment In fact it is not a bill but a draft bill. The Lord Chancellor Lord Falconer, not Ms Harman (who was a mere minister of state), was the senior minister in charge of it.

‘drafted in . . . ordinary English’

Comment This is untrue. In fact the draft bill is drafted in the technical way usually employed by Parliamentary Counsel.

‘The . . . bill is accompanied by the usual legalese on the facing page’

Comment This is also untrue. In fact it is the explanatory notes, not the draft bill, that are accompanied by the ‘usual legalese’ on the facing page.

‘will be able to read the bill and see for themselves’

Comment In fact a bereaved relative would need to read the resulting Act rather than the Bill. This would not have its pages interleaved with the explanatory notes. So far there has been no resulting Act, nor even an actual bill. The bill was not mentioned in the recent Queen’s Speech setting out the Government’s legislative programme for the session ending in October 2008.

Responses to Harman

Harriet Harman’s misstatement that she had procured the first British bill in plain English was widely believed, and had an enthusiastic reception in many quarters. I myself corrected a

⁴ News Release 141/06.

⁵ http://commentisfree.guardian.co.uk/harriet_harman/2006/06/we_must_listen_to_the_bereaved.html

misconceived welcome by the *New Law Journal*.⁶ Ms Harman, who vaguely calls herself a “lawyer” rather than a solicitor (which is what she actually is) published no objection to the correction, published in a leading law journal. This must be taken as a tacit admission of her guilt.

Two other attempts at correction I made concerning *The Times* and *The Guardian* were not published by those journals. This omission was particularly remiss in the case of *The Times*, as appears from the terms of my spurned letter:

“Now that the Draft Coroners Bill has been published we can see that Rosemary Bennett was wide of the mark in her article ‘At last, a piece of legal history – it’s the law in plain English’ (7 June 2006). The heading to the piece said ‘Centuries of parliamentary tradition will be swept away . . . with a new-style Bill offering a “plain English” translation of the usual impenetrable legal language’. This was a gross exaggeration. Nothing has been ‘swept away’. All that has happened is that the usual explanatory notes are more extensive than usual. They cannot accurately be described as a ‘translation’ of the Bill. A moment’s thought will show that it would produce chaos for Parliament to enact a Bill which really did contain two different English texts that were intended to bear an identical legal meaning. It would lead to endless arguments in the courts about which version was intended to carry the day on a particular point.”

Endnote

The final irony is that Ms Harman should have been given an award by the PEC for a non-existent “achievement”. Or perhaps it is that the ironical journal *Private Eye* failed to spot the real point of complaint when it published its report.

⁶ See the issue of June 23, 2006.