

CONTEMPORARY LEGISLATIVE DRAFTING: PLAIN ENGLISH PRINCIPLES*

Abstract

This paper established that the primitive language used for legal drafting has occasioned poor arrangement, poor structure, inconsistent and elaborate mode of expression as opposed to the use of plain English language. It has been discovered that the language used by conveyances for drafting of legislation is particularly tailored towards the style used for drafting of conveyances thereby making legislations an uphill for laymen. This paper therefore examine how drafters of legislation can adopt the use of plain English in legislative drafting without necessarily altering the intention the legislators and causing any ambiguity. It is argued in this paper that the use of plain English has offered a lot of benefits to the executive, legislators and judiciary particularly for interpretation of laws. Finally, the paper affirms that the use of plain English as modern language in legislative drafting has brought positive change in legislative drafting in UK and many of the Commonwealth countries. The result of the study showed that much as legislation and the drafting style in UK were readily received and adopted in Nigeria, however, changes like the adoption of plain English, gender neutral language and devices that would enhance clarity are not adopted with as much gusto hence, the need for the Nigerian drafters to learn from other Commonwealth counterparts.

Keywords: Legislative Drafting, Contemporary, Plain English Principle

1. Introduction

This paper suggests the use of plain English in legislative drafting as a solution to drafting legislation in traditional style. The first part is introduction while the second part covers communication and aim, the third part examines plain language movement globally. The fourth part discusses plain English movement in Nigeria. Lastly, a distinction is drawn between Nigeria and other common wealth jurisdiction where plain language movement has made immense progress. In the later part of 18th century, legislation in the United Kingdom (UK) were drafted by conveyancers, which used the same language used in drafting conveyances which was lengthy and because they were paid according to the length of their conveyances, when employed to draft legislation, they used the same style they had found profitable.¹ By the 19th century, lay readers found the contents of most statutes unintelligible as legislation generally suffered from poor arrangement, poor structure, inconsistent and elaborate mode of expression, dense and unhelpful format and obscure language.² It was in an attempt to counter these trends that the UK Government took some measures. First, was the move towards professionalization in drafting legislation that began with the creation of the office of parliamentary counsels in 1869 and the appointment of Jnr. Henry Thring as the first parliamentary counsel. This remains one of the greatest moves towards drafting legislation in plain and clear language.³ Second, was the Renton's report, it is noted as one of the measures that influenced the change from traditional style of drafting to modern one. The report itself was concerned with improving the quality of legislation⁴ and it did play a prominent role in highlighting the complexities in traditional style of drafting and recommended changes.⁵ Even though 'its technological horizons were limited by the capabilities of the 1970s, it's principles by modern users is still relatively unchanged.⁶ For example, it was proposed that legislation should move away from the traditional style⁷ to either drafting in general principles or drafting in plain English.

Drafting in general principles was strongly advocated for by the Renton's committee and even Sir William Dale who have also emphasized that though drafting in general principles may result in simple and clearer legislation as unnecessary details are excluded, it is firstly, lacking in that certainty which a detailed application of the principles will be provided and secondly, it shifts legislative responsibilities to the courts or even the executive.⁸

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¹Xanthaki, Helen, and G. Pennisi, 'Crossing the Borders between Legislative Drafting and Linguistics: Linguists to the Aid of Legislative Drafters,' *Explorations in Language and Law* (2012): 83-109.

²Roman, Cormacain, 'Legislative Drafting and the Rule of Law,' (PhD diss., University of London, 2017).

³Cornelius, Eleanor, 'Defining 'Plain Language' in Contemporary South Africa,' *Stellenbosch Papers in Linguistics* 44 (2015): 1-18

⁴ Stefanou, Constantin, 'Drafting Legislation: a Modern Approach,' Routledge, 2016; Lam, Kally, 'Plain Language-a promising tool for quality legislation,' (PhD diss., University of London, 2015).

⁵T. K. Vishwanathan, 'Legislative Drafting Shaping the Law for the New Millennium,' *Indian Law Institute, New Delhi*, 2015.

⁶R Cormacian, 'Have the Renton Committee's Recommendations an Electronics Access to Legislation Been Fulfilled,' *EJCL* 19, (3), (2013).

⁷Christopher, Williams, 'Legal English and Plain Language: an Update,' *ESP Across Cultures* 8 (2011): 139-151.

⁸Kally, Lam, 'Plain Language-a Promising Tool for Quality Legislation,' PhD diss., University of London, 2015.

This situation led to a great legal change and a better style, which is drafting in plain English and was deliberately developed to counter the shortcomings in legislation.

2. The Concept of Plain English

Plain English, also referred to as 'plain language' is a generic term for communication style that emphasizes clarity, brevity and avoidance of technical language particularly in relation to official government communication, including laws. Plain English has been described as good professional writing and practice, simplification of legal communicating, plain language and as promoting access to law.⁹ It entails presenting information in a way that intended audience can read, understand and act upon it after a single reading¹⁰, or as quickly and as clearly as the subject matter allows.¹¹ This, however, is not an inherent requirement of plain English movement but understanding the message the very first or time helps to make the text more inviting.¹² Plain English does not alter or jeopardize the legislation; rather it makes the legislation clear and easier to understand.¹³ It is an efficient and modern form of communication which depends on the reception of what is communicated. Consequently, in order to communicate, drafters must keep in mind the interests of those to whom they are communicating. Thornton¹⁴ classified the people to whom communication of law is relevant into three broad groups: Lawmakers; Persons who are concerned with or affected by the law; and Members of judiciary

In order to facilitate understanding by the audience, while applying the principles of plain English, drafters should consider from the audience's perspective such questions as¹⁵: What are the main points to be emphasized? Are there any misconceptions about the subject in the community? How much background material needs to be included? What information is new to readers? Garner points out rightly that our current age prefers a plain writing approach. A person shall not communicate to another in obscene message or threat to another person.¹⁶ Problems with legal language also effect private documents which address a much more restricted audience. Defects in such documents are sometimes noted during litigation, as was done in *Guardian Assurance Company v Underwood Constructions* when Justice Manson referred to an insurance policy as being made up of a jumble of ill-assorted documents expressed in that distinctive style which insurance companies have made their own.¹⁷ In another case, Justice Owell of the Supreme Court of New South Wales said that a partnership agreement 'can hardly be described as a shining example of the draftsman's art, indeed, it is not going too far to describe it as excluding the glutinous aroma of paste pot and scissors.'¹⁸

3. The Aim of the Plain English

The aim of plain English is to achieve effective communication not to reduce important matters to simple statements for the sake of simplicity.¹⁹ Thus, the aim of plain English in legislative drafting is to communicate effectively with those whom the legislation is addressed.²⁰ Misunderstanding or ignorance of the law increases the likelihood of non-compliance and jeopardizes the exercise of rights. Plain English focuses on legal and other official documents which affects the public. It re-emphasizes reliance not on words alone and look beyond the meaning of words used to how they are perceived by users, how the information is organized and presented. That is to say the organization of words in sentences, the sentences in legislation, the design and layout as they all effect

⁹Jhaveri, Swati, and Anne Scully-Hill, 'Executive and Legislative Reactions to Judicial Declarations of Constitutional Invalidity in Hong Kong: Engagement, Acceptance or Avoidance?' *International Journal of Constitutional Law* 13, (2), (2015): 507-529.

¹⁰Dusunge, Rameshwar Barku, 'Legal English: Background and Perspectives,' *Language in India* 18, (3), (2018).

¹¹C. A. Osborne, 'Summary of Findings & Recommendations,' *Civil Justice Reform Project*, (2015); Sobota, Anna, 'The Plain Language Movement and Modern Legal Drafting,' *Comparative Legilinguistics* 20 (2014): 19-30.

¹²Adriana, Pennisi, Giulia, 'Legislative Drafting and Language: Legal Language in Context,' *Statute Law Review* 37, (2), (2016).

¹³I. A. Семьонкина and O. O. Ходаковська, 'What does the future hold for legalese,' *Problems of Legality* 131 (2015): 176-183; Butt, Peter, 'Legalese versus plain language,' *Amicus Curiae* 2001, no. 35 (2012): 28-32.

¹⁴Mazur, Joanna, 'Plain Language as an Alternative to Specialised Language (s),' *Prace Naukowe/Uniwersytet Ekonomiczny w Katowicach* (2016): 109-121.

¹⁵); E. Onoge, 'Structure of Legislation: A Paradigm for Accessibility and Effectiveness,' *Eur. JL Reform*, 17, (2015): 440.

¹⁶D.T. Coenen, 'Freedom of Speech and the Criminal Law,' *BUL Rev.*, 97, (2017):1533.

¹⁷*Assurance Company v Underwood Constructions* (1974), 48 *ALJR* 307, 308; Hume, Nathan, 'Constitutional Possibilities: An Inquiry Concerning Constitutionalism in British Columbia,' (PhD diss., 2012).

¹⁸Golding, Gabrielle Elisabeth, 'Terms implied by law into employment contracts: rethinking their rationale.' PhD diss., 2017.

¹⁹Christine, Garwood Kimberley, 'Plain, But Not Simple: Plain Language Research with Readers, Writers, and Texts,' (2014); Law Reform Commission of Victoria, *Plain English and the Law* (Report No.9): 12.

²⁰Simson Caird, Jack, Robert Hazell, and Dawn Oliver, 'The constitutional standards of the House of Lords Select Committee on the Constitution,' (2014).

readability and understanding.²¹ Since the rule of law is to the effect that the citizens must be informed of what a law demands of them as well as their rights.²² It therefore falls on the drafters to first keep in mind the audience of their legislation at all times; and secondly, to produce legislation that are understandable by as many of the audience as possible Seldman says ‘drafters bear an obligation to maintain the rule of law as part of that burden they must take care that their laws form lends itself to clarity...’²³ Thus, the principle object of a drafter should be to allow the reader to understand, as quickly and as clearly as the subject matter allows, what is required by the legislation. This does not mean that writing should be confined to an elementary level. Rather, what is required is that complex unnecessary wordiness and difficult forms of expression be avoided.

4. Plain English Movement in Nigeria

Many jurisdictions are now publicly committed to producing in clear and concise language. Though it has started in some jurisdiction long before others, the impact is more significant in some jurisdictions than it is in others plain language movement in Nigeria. Plain English movement in spite of making much progress in the UK and other jurisprudence like USA, Australia, Canada, New Zealand, Sweden and South Africa, it is yet to be introduced and adapted in legislation and legislative drafting in Nigeria.²⁴ Nigeria is historically connected to the UK, a lot of her legislation and drafting styles were inherited from the UK long before plain English was introduced and adopted in the UK as a policy direction. Since legislation adopted in Nigeria as a result of colonization was in traditional style, subsequent drafting continued in much the same style even after independence. One would think, since legislation and drafting style used in Nigeria have their origin from the UK, Nigeria would easily adapt to change in legislative drafting in the UK and other common wealth jurisdiction but the reverse is the case. Much as legislation and the drafting style in UK were readily received and adopted in Nigeria, changes like the adoption of plain English, gender neutral language and devices that would enhance clarity are not adopted with as much gusto. Even when such changes have long been adopted in many common wealth jurisdictions; even when plain English movement all over the world is being intensified and in some places, it has even evolved to become a product, a business, an industry, or a professional service.²⁵ Although, there are criticisms over the use of plain English in legislation and other legal documents, critics cannot deny that there are immense benefit that accrue when legislation is drafted in plain English. What is advocated in this article is that though drafting in plain English will definitely not legislation of all the drafting defects now considered traditional, it will go a long way in making legislation clearer, more precise and less unambiguous for a wider audience. Thus, the drafters whose responsibility it is to draft clear, precise and unambiguous legislation must possess the requisite skills, be aware of, and take advantage of plain English principles which can aid them to achieve clarity, precision and unambiguously of legislation.

5. Plain English Principles

These are tools, devices or techniques the drafter employs in the quest for an effective and audience based legislation. In other words, the use of plain English principles can be employed in drafting legislation in order to achieve a legislation that is brief, precise, concise and leads to clearer understanding, although clarity should not be sacrificed for the sake of brevity. There is no hard and fast rule about that and as A.S prey’s note ‘writing in plain language is just writing in clear, straight forward language, with the need of the reader foremost in mind.’ She also adds that there is no an international standard or infallible test.²⁶ If the draft will be unclear, confusing, or difficult to users, it must be redrafted to make it clear, unambiguous, and easy to read.²⁷ One thing that is certain is that the rules are designed to make legislation easier to understand without changing meanings. In analyzing plain English principles, Turn Bull’s three elements of common wealth approach²⁸ are used for easy classification of the devices that should be used or avoided in order to enhance intelligibility of legislation. The three elements are: avoid traditional form of expression; use well known rules of simple drafting; and use aids for enhancement of understanding, structure of legislation is also added as the fourth element because, plain language principles

²¹ C. Calvert, & M. D. Bunker, ‘Know Your Audience: Risky Speech at the Intersection of Meaning and Value in First Amendment Jurisprudence,’ *Loy. LA Ent. L. Rev.*, 35, (2014):141.

²²Green, Fergus, ‘Legitimate Expectations, Legal Transitions, and Wide Reflective Equilibrium,’ *Moral Philosophy and Politics* 4, no. 2 (2017): 177-205.

²³Gashabizi, Alain Songa, ‘Challenges of Rwandan Drafters in the Drafting Process for Good Quality Legislation,’ *Eur. JL Reform* 14 (2012): 280.

²⁴Alain Songa. ‘Challenges of Rwandan Drafters in the Drafting Process for Good Quality Legislation.’ *Eur. JL Reform* 14 (2012): 280.

²⁵Plain Language: Beyond a ‘Movement’ Repositioning clear communication in the minds of decision-makers <http://www.plainlanguage.govt/whatisPL/definition/balmford.cfm2>> accessed on 16th January, 2018; Peter, M. Tiersma, ‘The Plain English Movement,’ *Language and Law. Org.*,(2017).

²⁶Christopher, Williams, ‘Further Reflections on Popularization and Plain Language in Legal Discourse: Some Recent Developments,’ *Variations in Specialized Genres: Standardization and Popularization. Magdeburg: Narr* (2015): 81-94.

²⁷Kimberley Christine, Garwood, ‘Plain, but Not Simple: Plain Language Research with Readers, Writers, and Texts,’ (2014).

²⁸Elohor, Onoge, ‘Structure of Legislation: A Paradigm for Accessibility and Effectiveness,’ *Eur. JL Reform* 17 (2015): 440.

also look at the design and layout legislation enhance clarity and accessibility of legislation. The following plain English principles could be adopted to enhance intelligibility and minimize cases of unclear use of English.

Avoid Traditional Legal Form of Expression

The major complaints about legislation is the style used in drafting it which, even if it is at its very best, may still be difficult to read and understand because of its ‘long convoluted sentences, archaic legal expression, Latin words and pompous language considered sociable for use in parliament.’²⁹

Avoid Foreign Expressions

Lawyers use a lot of Latin and French words or expressions with the mistaken belief that the ideas they denote cannot be adequately expressed in ordinary English or that the old phrases are more precise than their ordinary English equivalents. The use of words or expressions borrowed from foreign languages is only testified when they have been integrated into the English language which is the language of legislation. Unless they have a particular technical meaning in law and no ordinary English equivalents or alternatives exist, expressions in Latin, French or any other language are best avoided because they do not only confuse but also irritate users.³⁰

Avoid Archaic Words and Legalese

Archaic words are old-fashioned. They are no longer in general use in modern drafting because they are unduly formal, unnecessary, cumbersome and give the text a false sense of precision. Archaic words should be avoided as much as possible be replaced with their modern alternatives. Some examples of archaic words and their possible replacement:-

I n s t e a d	W h y n o t
A f f o r d e d	G i v e n
A f o r e s a i d	This, that; named earlier
F o r t h w i t h	Immediately, now
H e r e a f t e r	A f t e r t h i s
H e r e i n	I n t h i s m a t t e r
H e r e i n a b o v e	A b o v e
H e r e i n a f t e r	F r o m t h i s p o i n t
H e r e i n b e f o r e	E a r l i e r
H e r e t o	T o t h i s m a t t e r

Do not use Redundant Legal Phrases

Redundant words occur in legislation when synonyms are used to convey a single concept. Coupled synonyms were used in traditional drafting for alliterative purposes meaning that the joined terms begin with the same sound. For example ‘any and all’, ‘attached and annexed’, ‘part and parcel’, ‘unless and until’ etc. Alliteration is an ancient poetic device and was used as an aid to memory in the days when many legal transactions were oral. However, this only makes legislation more complex and unnecessarily lengthy.

A c k n o w l e d g e a n d c o n f e s s
A g r e e d a n d d e c l a r e d
A l l a n d s i n g u l a r
A l t e r o r c h a n g e
A n n u l a n d s e t - a s i d e
A t t a c h e d a n d a n n e x e d
B y o r u n d e r
C e a s e a n d d e s i s t
C o v e n a n t a n d a g r e e
C u s t o m a n d u s a g e
D e m i s e a n d l e a s e s
D o m i n i o n a n d a u t h o r i t y

²⁹Christine, Kimberley, Garwood, ‘Plain, but Not Simple: Plain Language Research with Readers, Writers, and Texts,’ (2014).

³⁰Ivar, Timmer, ‘Changing Roles of Legal: On the Impact of Innovations on the Role of Legal Professionals and Legal Departments in Contracting Practice,’ *Journal of Strategic Contracting and Negotiation* 2, no. 1-2 (2016).

D u e a n d o w i n g
E a c h a n d e v e r y
E s c a p e a n d e v a d e
E x e c u t e a n d p e r f o r m

The following are common examples of multiple synonyms which should be avoided are:

Assign, transfer and set-over
Cancel, annul and set aside
Convey, transfer and set over
Covenant, promise and agree
Give, devise and bequeath
Hold, posses and enjoy
Legal, valid and binding
Located, being and situate
Make, publish and declare
Null, void and of no effect
Ordered, decreed and adjudged
Possession, custody and control
Purchase, lease or otherwise acquire
Rest, residue and remainder
Right, title and interest
Situate, lying and being

Avoid Compound Constructions

A compound construction is one that uses two or more words instead of just one. Such wordy constructions are common in the legal profession, even amounting to a tradition. They should however be avoided; use simple forms instead of compound words:

I n s t e a d o f	U s e
Acquire knowledge	L e a r n
A large number of	M a n y
As a consequence of	B e c a u s e o f
As a matter of fact	I n f a c t
As previously stated	A g a i n
As the result of	F r o m
At this point in time	N o w
B y r e a s o n o f	B e c a u s e o f

Do not use Contractions

Although contractions such as aren't, cant, doesn't, don't, shouldn't, wouldn't and so forth are in everyday use, they are not part of conventional formal modes of expression and should not be used in legislation or other legal documents.

Avoid Enumerations

As far as possible, enumerations should be avoided for the following two reasons:

- a. They will rarely be complete and the longer they are, the more the reader will be tempted to conclude that the items not included have deliberately been excluded; and
- b. In order to solve this problem, the drafter will normally add general expressions following a shorter enumeration. In that case, the reader may assume that the general terms are limited to the implied category described in the preceding enumeration.

Therefore, as far as possible, enumerations must be avoided or at best, used with great care.

Use Rules of Simple Drafting

Rules of simple drafting are not new rules; they have been well-known for long³¹ in other forms of literary works. This has been hindered in legislation because firstly, drafters are lawyers trained in precedents which they use in their professional corners; secondly, drafters as lawyers learn from judgements handed down by courts and thus became influenced by judicial language which, in most cases, is not easy to read and understand; thirdly, the mistaken belief that the language of law must be appropriate to the dignity of the parliament³². However, paying more attention to the following rules of simple drafting has the advantage of making legislation more intelligible. The following rules should be used or used with great care.

Use Familiar Words

Avoid unfamiliar words, unnecessary formality and jargons particularly when commonly used. However, this however does not mean that familiar words should be chosen over much more precise ones. By its very nature, Jargons refers to the technical words or peculiar expressions of a particular trade or profession using it so it is best avoided not those that will always send the readers to the dictionary. The following words are suggested instead of making use of jargon:

I n s t e a d o f	U s e
A c c e d e t o	A l l o w , g r a n t
A c c o r d i n g l y	S o
A c c o m p l i s h	D o
A c q u i t t e d w i t h	K n o w s ; f a m i l i a r w i t h
A c q u i r e	G e t
A d d i t i o n a l	M o r e ; o t h e r
A d j a c e n t t o	N e x t t o
A d m i n i s t e r	G i v e
A g g r e g a t e	T o t a l
A l l o c a t e	G i v e
A p p a r e n t	P l a n

Use Clear Expression

Even when faced with having to draft legislation based on complex policy or subject, the complexity of a subject-matter is not an excuse for making a legislation to be complicated. The language of legislation should be as clear and simple as possible. Words must be used in their ordinary meanings, having the audience to whom the legislation is meant to apply to in mind. The more complicated the situation is, the more difficult the conceptual work becomes. It is easy to express even a simple reality in a complicated manner, but a good and experienced drafter should be able to express complex in very clear terms.

i. Authoritative Language

An act does not express desire, wishes or justifies. It orders, authorizes, prohibits, governs or imposes penalties. Therefore, its language must be authoritative.

ii. Gender Neutral Language (GNL)

The drafter should always use gender-neutral language and avoid the use of gender sensitive words because, gender neutral language aims to promote gender specificity in the pronouns used when drafting legislation for clarity, intelligibility and precision. Gender neutral or more appropriately gender specific³³ language has already gained momentum in many jurisdictions³⁴ and lawmakers 'in a growing number of jurisdictions have accepted that sexist language offends the sensitivities of many women and now draft legislation in gender-neutral language.'³⁵ However, Thornton viewed this acceptance as:

A social response to the assertion that the enactment of legislation in 'masculine' language contributes to the perpetuation of a male-oriented society in which women are seen as having

³¹Turnbull, 161-166; Green, Fergus, 'Legitimate Expectations, Legal Transitions, and Wide Reflective Equilibrium,' *Moral Philosophy and Politics* 4, no. 2 (2017): 177-205.

³²Cormacain, Ronan, 'Legislative Drafting and the Rule of Law,' (PhD diss., School of Advanced Study, University of London, 2017).

³³Gashabizi, Alain Songa, 'Challenges of Rwandan Drafters in the Drafting Process for Good Quality Legislation,' *Eur. JL Reform* 14 (2012): 280

³⁴Xanthaki, Drafting Legislation Art and technology of Rules for Regulation, Supra 105.

³⁵Pamela R, Ferguson, 'The Drafting of Offence Provisions by the Scottish Parliament,' *Statute Law Review* 32, (3), (2011): 161-185.

a lower status and value. It has been argued that the general use of masculine nouns and pronouns ‘implies that personality is really a male attribute and that women are a human sub-species’. The argument is a social rather than a legal one for interpretation legislation generally declares that masculine pronouns in legislation are taken to refer to both males and females. Such legislation does no more than follow common usage in the community, particularly with regard to spoken language. Nevertheless, changes in written language have been rapid and wide-spread. Many publishing companies now recommend authors to avoid language that may be regarded as sexist.³⁶

Thus, sexist language is no longer acceptable to a large section of society and drafters must avoid their use in legislation. Legislation speaks to both women and men and expressions that appear to refer only to men should be avoided. Although some provisions may be gender specific applying to only women essentially, for example, a Bill dealing with ovarian cancer or cervical cancer may, by necessity, include the word ‘she’ or ‘her’ and similarly, a Bill regarding prostate cancer may, by necessity, include ‘he’ or ‘his.’ In applying GNL in legislation, the following rule is useful; firstly, avoid pronouns, unless an unnecessarily lengthy, clumsy or ambiguous construction would result, so, the use of masculine pronouns to cover all persons should be avoided; secondly, repeat the noun instead of using a pronoun, for example, instead of ‘A person charged with a criminal offence shall be entitled to adequate time and facilities for the preparation of **his** defence’, rather say, ‘A person charged with a criminal offence shall be entitled to adequate time and facilities for the preparation of **that person’s** defence; thirdly, replace third-person singular pronouns wherever possible for example, instead of, ‘The Senator must move **his** motion’, it is better to say, ‘the Senator must move the motion’; fourthly, use the construction he or she for example, ‘A person who shows that **he or she** has been pardoned for a criminal offence shall not be tried for the same offence again’, fifthly, if appropriate, recast singular nouns as plurals, for example, ‘**Persons** who show that **they** have been pardoned for a criminal offence shall not be tried for the same offence’; and lastly, avoid using words that use man to refer to humanity generally because they are gender-biased and suggest a value judgment based on sex or gender. For instance:

Instead of	Use
Chairman	Chairperson
Draftsman	Drafter
Fireman	Fire-fighter
Fisherman	Fisher
Man-made	Manufactured
Manhood	Adulthood; maturity
Mankind	Humanity; people
Manned	Staffed; operated
Workman	Worker

Use Correct Grammar

Legislation must be drafted in accordance with the rules of grammar that normally apply to every document. Terminologies used must also be as simple as possible, depending on the complexity of the subject in question. Expressions borrowed from foreign languages must only be used where necessary as they may not be understood by the targeted audience of the legislation. The drafter’s responsibility is very great in terms of terminologies, especially in technical and scientific fields as they may be difficult to understand even by the drafter. The legislature must use correct grammar. The drafter must suggest to the legislature the best way to make legislation understandable to the public by using simple rules of drafting legislative sentences.

Use Aids for Enhancement of Understanding

Today, the trend is to use all the devices available in drafting legislation as long as they facilitate the communication of legislative intent. Legislation is inherently complex as they are used to regulate complex human activities. Therefore, both textual and non textual devices can and should be utilized by drafters in drafting simple or complex legislation so as to enhance effectiveness in legislation.³⁷ However, modern drafters have developed a number of crafty techniques to ensure clarity, precision, unambiguity and accessibility. These devices are in

³⁶Karen, Schriver, Annetta L. Cheek, and Melodee Mercer, ‘The Research Basis of Plain Language Techniques: Implications for Establishing Standard,’ *Clarity* 63 (2010): 26-32.

³⁷Victoria E. Aitken, ‘An Exposition of Legislative Quality and its Relevance for Effective Development,’ *Pro-Law Student Journal* 2, (2013): 1-43.

common usage in many countries and are often easy to understand. It is an exciting development in countries like UK, USA and Australia³⁸ where they are seriously being used to enhance intelligibility of legislation. Devices that can be employed by the drafter in drafting legislation are classified into three main groups which are: Mathematics or Algebraic formulae, Explanatory materials and finding aids; and diagrams or Graphics and the list is not closed.³⁹ These devices can be used in place of or in addition towards legislation in order to enhance clarity and accessibility of complex legislation; and indeed to assist in understanding the procedure that has to be followed⁴⁰.

6. Structure of Legislation

Plain English in legislation looks beyond words and the language used in legislation as well as legislative drafting devices employed in drafting legislation to the design and layout of the legislation because the design and layout affects readability and accessibility. According to Prey:

When we draft in plain language, we look at more than just the meaning of the words we are using and how they will be perceived by our readers. We also look at how the information is organized and presented. We look at the organization of the words in a sentence, and of the sentence in a document, and the design and layout of the document itself.⁴¹

The structure of legislation above is the style in use in Nigeria and in some other Common wealth countries. The use of the same or similar structure is based on precedents, practice or in house style of the jurisdiction.⁴² A very effective and well structured legislation can only be achieved with a measure of creative effort.⁴³ As Prey put it, 'there is something about the structure of a document that looks permanent, and we are tempted to stay with the existing structure and try to fit our own ideas in here and there.... Your ideas can set the structure; they shouldn't have to fit into an existing structure if it isn't the best structure'. Therefore, the provisions of the legislation must be formulated from the point of view of those whose rights, powers, privileges, duties and responsibilities would be affected by the legislation⁴⁴. The essence of legislation is defeated if the people for whom it is meant, cannot access it. Even the implementing authority, once they cannot access it, implementation will be poor.

Types of Structure

Structure and form are crucial to any effective or readable legal documents legislation inclusive. Thus, the three basic types of logical structures for legal documents are telescoping structure, the thematic structure and the chronological structure. However, the drafter must at all-time employ the use of the structure that is audience based and user friendly. These three logical structures for legal documents could as well be applied to the drafting thus:

Telescoping Structure: In telescoping structure, the legislation is 'front loaded', in other word that most important essential or key information which has to do with the subject matter that are important to the audience are put first before the less important materials to the audience. Thus, the telescoping structure meets that expectation by front loading the legislation with the key issues.

In supporting of telescoping structure, A.S Prey has this to say:

Organization of the Bill will depend on what the document is, but it is important to set out the substantive provisions of the law preferably from the onset or beginning, so that they should not be hidden among administrative and procedural aspects of law. To organize the draft in the above manner therefore necessitates the drafts looking at things from the reason's perspective⁴⁵.

³⁸Parliamentary Counsel, Common Wealth of Australia 'Working with OPC: A Guide for Client' www.OPC.gov.au/about/documents accessed 12th July, 2016.

³⁹Esther, Majambere, 'Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting,' *Commonwealth Law Bulletin* 37, no. 3 (2011): 417-426.

⁴⁰Kenneth J. Keith, 'Interpreting Treaties, Statutes and Contracts.' *Victoria University of Wellington Legal Research Paper Series, Keith Paper 1*, (2018).

⁴¹Helen, Xanthaki, 'United Kingdom Quality of Legislation: An Achievable Universal Concept or a Utopia Pursuit?' In *Quality of Legislation-Principles and Instruments*, Nomos Verlagsgesellschaft mbH & Co. KG, (2011): 75-86.

⁴²Jeremy, Waldron, 'The Rule of Law,' (2016); Green, Fergus. 'Legitimate Expectations, Legal Transitions, and Wide Reflective Equilibrium,' *Moral Philosophy and Politics* 4, no. 2 (2017): 177-205.

⁴³Nick, Hom, 'Legislative Section Headings: Drafting Techniques, Plain Language, and Redundancy,' *Statute Law Review* 32, no. 3 (2011): 186-208.

⁴³Schipor, Delia, 'Multilingual Practices in Late Medieval English Official Writing: An Edition of Documents from the Beverley Town Cartulary,' (Master's thesis, University of Stavanger, Norway, 2013).

⁴⁴Simson Caird, Jack, Robert Hazell, and Dawn Oliver, 'The Constitutional Standards of the House of Lords Select Committee on the Constitution,' (2014).

⁴⁵Onoge, Elohor, 'Structure of Legislation: A Paradigm for Accessibility and Effectiveness,' *Eur. JL Reform* 17 (2015): 440.

Chronological Structure: In chronological structure, the provisions of the legislation are presented in a chronological order⁴⁶. This means the legislation is drafted in the logical order of possession. In other words, as the important information is relatively in every part of the legislation, the audience has to pay keen attention to every part of the legislation in order not to miss it out.

Thematic Structure: Unlike telescoping structure, thematic structure does not necessarily place the key topics at the beginning of the legislation. But each main topic to be provided for in the legislation is dealt with seriatim and all the provisions relevant to each of those topics are presented accordingly. Thematic structure keeps related materials together promoting ease of understanding⁴⁷ however, the audience of legislation with this type of structure may have to go through the whole legislation because there may just be provisions relating to them in every thematic segment of the legislation.

Structure of Legislation and Accessibility

However, drafters are still obliged to draft in such a way that must address the accessibility to the audience no matter the structure they adopt. It should be noted that no single structure can be suitable for all transactions, however, it is clear that reader may prefer the telescoping (or front-loading) structure more, because this structure gives them key information as early as possible. Indeed, well conceived structure will invariably lead the audience to the place of interest and, therefore the overall accessibility of legislation.⁴⁸ However, mere front loading of the vital information in legislation is not enough. The drafter must add to that, proper arrangement of words and sentences, clarity, simplicity, intelligibility and unambiguous.

7. Conclusion

Drafters in Nigeria usually rely on words, numbers and figures only, even when formulae, maps, charts tables or graphics and many other unconventional devices would be more effective. The purpose of the plain English in legislation is to make the legislation clearer, more precise and unambiguous. This article enjoins Nigerian drafters to, in addition to rules of language, to also use aids to understanding which are unconnected to language as well as structure of legislation because they are also advocated for by the plain English movement. Thus, using Mathematics, or algebraic formulae, maps, charts, tables, diagrams or graphics, explanatory materials, finding aids and other devices outside the conventional form of drafting legislation means drafting with audience in mind. It means open to a multi-disciplinary approach to drafting legislation for easy communication and intelligibility. That indeed, is the essence of modern trend in legislative drafting. That is the essence of drafting in plain English. These devices are in common usage in many jurisdictions intelligible and easy to understand. Indeed, this is an exciting development in countries like the UK, USA and Austria and Nigeria should not be left out⁴⁹.

⁴⁶Lidia, Borisova, 'How Plain is Legal English in Statutes?,' *Linguistica* 53, no. 2 (2013): 141-152.

⁴⁷Laws, Stephen, 'Legislation and Politics,' *Law in Politic, Politics in Law. Oxford: Hart Publishing* (2013).

⁴⁸ Paul, Burgess, 'Neglecting the History of the Rule of Law:(Unintended) Conceptual Eugenics,' *Hague Journal on the Rule of Law* 9, no. 2 (2017): 195-209.

⁴⁹Heaton, Richard, 'Making the Law Easier for Users: The Role of Statutes,' *Talk delivered on* 14 (2013).