



Speaking Each Other's Language

Writing reader-friendly disclosure documents that
satisfy legal and business requirements

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The abstract

Speaking Each Other's Language: Writing reader-friendly disclosure documents that satisfy legal and business requirements

The raft of proposed disclosure changes indicates not only that more communication between issuers and their shareholders is needed, but also that the documents must be as clear as possible for the reader. Given the amount of legalese and financial jargon traditionally used in disclosure statements, this new requirement poses a challenge for law firms and in-house counsel.

Using case studies from the finance sector, Lynda Harris, plain English specialist and advocate, shares her thoughts on how to make crucial information clear to everyday investors.

This paper covers:

- Financial literacy v technical terms and concepts—are they competing requirements or simply misunderstood?
- The role of the advisor—does plain English eliminate the need for professional advice?
- Tools for success—how to transform even the most complex document.

To begin

In my 20-plus years of helping business and government writers convey complex information clearly, I've found that many writers are worried about the consequences of applying plain English techniques to their work. Writers worry that the integrity of their document will be compromised. They fear that important information will be watered down or lost and that the business will be exposed to unwelcome risk. This is especially true of legal and financial texts.

So perhaps the most important thing I want to get across in my presentation today is that plain English principles, properly applied, must serve the business need, not work against it. Plain English principles are simply a set of communication tools that ensure your message gets through to your intended audience.

As Joseph Kimble, editor-in-chief of *The Scribes Journal of Legal Writing* and the long-time editor of the 'Plain Language' column in the *Michigan Bar Journal*, put it, 'Plain language has to do with clear and effective communication—nothing more or less. It does, though, signify a new attitude and a fundamental change from past practices'.¹

My purpose in this paper is to first define plain English and then:

- show that financial literacy and technical terms and concepts can live happily together
- show that clear disclosure documents will support the advisor's role and strengthen relationships with clients
- offer some practical tools and examples to help writers create clear disclosure documents.

Defining plain English

What do we mean by the term 'plain English'? It's a common misconception that plain English refers only to the words used, rather than the other elements that contribute to making meaning plain. Language is, of course, very important. But so too are structure and presentation. And these three approaches embody a variety of techniques that all work together to communicate meaning. I'll discuss them in more detail soon. But before I do, I'd like to introduce two other ways of looking at plain English.

As well as being a set of techniques, plain English can be seen as a test—'Can this document be read and understood on one reading?'. And we can also think of plain English as a feeling a writer creates for their reader—a sense of ease, calm, comfort, clarity, and connection.

Three approaches to plain English

Techniques / features	Test with a reader	Feeling / reader reaction
Clear purpose Appropriate content Logical structure Shorter, focused paragraphs Shorter, straightforward sentences Precise, familiar words Appropriate tone Effective presentation	The document can be understood and acted on after one reading	A sense of : <ul style="list-style-type: none"> • ease • calm • clarity • comfort • connection • trust

These last two ways of looking at plain English capture the most important point of all, that plain English is a style of writing that serves the reader. It then follows that to write in plain English, before you do anything else, you must carefully consider your reader. That may involve simply picturing your reader and their circumstances, or it may mean that you create a full profile of your reader.

Since plain English is so fundamentally based on the needs of the reader, it also follows that documents will be written with varying levels of language, tone, and technical content. Everything depends on who you are writing for. It's not one-size-fits-all. But on the other hand, when your audience is very wide, you may well need to consider the needs of the least-informed reader.

Financial literacy v technical terms and concepts

Let's first tackle the question of whether it's possible to meet the new financial literacy requirements when financial disclosure documents are rife with financial terms and concepts. I've worked on a variety of legal documents in the insurance, government, real estate, and finance sectors. I know that it **is** possible to write disclosure documents that meet your new obligations and satisfy your legal and business requirements.

Joseph Kimble put the question another way when he asked, 'Are clarity and precision antagonists?'. His response was that clarity and precision are complementary goals and that both should be pursued. As he put it, 'The obligation to be intelligible, to convey the intended meaning so that it is comprehensible and easily understood ... requires the unremitting pursuit of clarity by drafters. Clarity ... requires simplicity and precision'.

He goes on to say that plain language is an ally to lawyers, not an enemy.

Plain language lays bare the ambiguities and uncertainties and conflicts that traditional style tends to hide. At the same time, the process of revising into plain language will often reveal all kinds of unnecessary detail. In short, you are bound to improve the substance—even difficult substance—if you give it to someone who is devoted to being intelligible. In Australia, the Law Reform Commission of Victoria redrafted Victoria's complex Takeovers Code in plain English. They cut it by almost half. And the redraft was checked and rechecked for accuracy by substantive experts.ⁱⁱ

But I must also acknowledge that conveying complex concepts and industry terms in plain English is not necessarily an easy task. It's hard, but it is possible.

The role of the advisor

The next question is about how the new literacy requirements impact on the role of the advisor. In short, do plain English disclosure documents eliminate the need for professional advice?

I was particularly asked to address this issue. I don't know how real the concern is, but my response is that documents that meet the new financial literacy requirements will make the advisor's role easier. The question is an interesting one because it conveys the idea that advisors have previously acted more as interpreters than advisors. The implication is that once the information is clear, advisors may become redundant because they no longer need to interpret for their clients.

I would have thought this was far from the truth. Even if advisors have acted more as interpreters, and in more of a transactional role in the past, expectations are different now. Clear disclosure documents help the advisor build a relationship of trust and integrity with their client. Reducing the need to explain complex information leaves the advisor free to truly understand the client's needs, circumstances, and risk profile. Clear documentation creates a sense of ease—it improves the communication process and therefore the client experience.

Tools for success

Let's now look at how to transform a document using plain English techniques. The following checklist covers the essential techniques you need.

Delivering information effectively—a checklist

Before you write, ask these questions

- What is the purpose of this document?
- What do I want to achieve?
- Who is my reader?

Then apply the following techniques

The 'big picture'

1. Make your purpose clear at the start.
2. Include only relevant content.
3. Structure the document to suit your reader.
4. Break information into meaningful chunks with informative headings.

The language

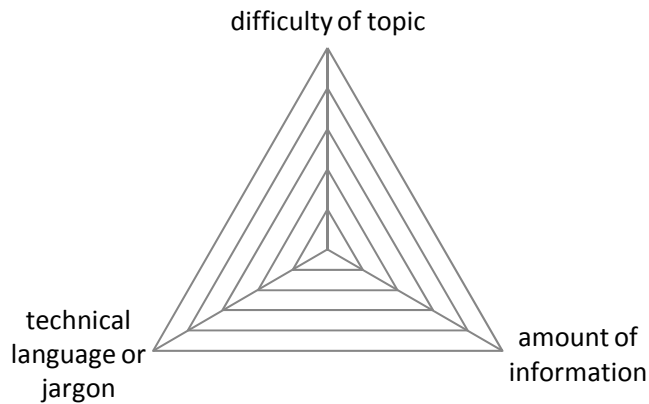
5. Keep paragraphs mostly short and focused on one topic.
6. Write sentences that are mostly short and straightforward.
7. Use precise, familiar words and minimise technical terms and jargon.
8. Use a tone that fits your purpose.

The presentation

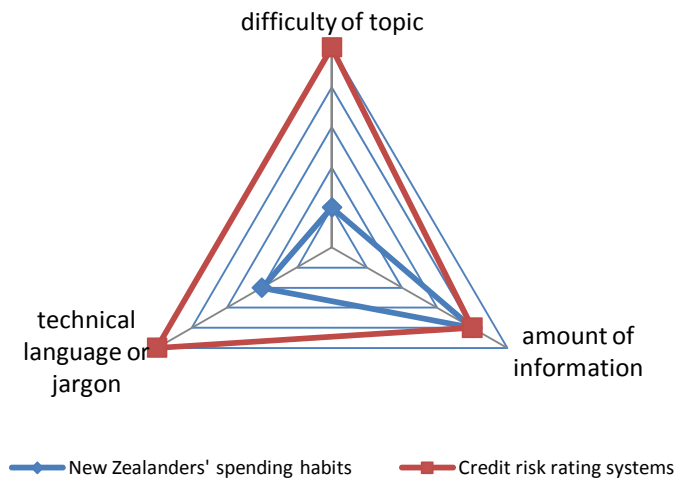
9. Use a layout that helps the reader absorb the messages quickly and easily.
10. Make sure your document is error-free.

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The following diagram shows the three features of a document most likely to cause complexity: difficulty of topic, technical language or jargon, and amount of information.



You can use this diagram to plot the level of complexity of a document. In the diagram below, we see the analysis of a document, *New Zealanders' Spending Habits*, that is made more complex only because it contains a great deal of information. Compare this to the other document, *Credit Risk Rating Systems*, that scores highly on all three complexity features.



Once you understand which of the three features apply to your document, you can choose the appropriate plain English techniques to make your information clearer.

Here's a more detailed breakdown.

Complexity feature	Plain English technique to apply
Difficulty of topic	<ul style="list-style-type: none"> • Define the audience • Define the purpose(s) for the document • Create a reader profile to guide style and content choices • Include only relevant content • Provide context for increased relevance • Break information into meaningful, well-structured chunks
Technical language or jargon	<ul style="list-style-type: none"> • Prefer words that are clear, familiar, and inclusive • Question and reduce technical terms and jargon—use in-text definitions, glossaries, and context to convey meaning • Use shorter, straightforward sentences with one main idea
Amount of information	<ul style="list-style-type: none"> • Include only relevant content • Define key messages • Apply a clear, reader-focused structure that highlights key messages • Break information into meaningful chunks with many informative headings • Keep paragraphs relatively short and focused on one topic • Use a layout that best communicates key messages

The rest of this paper shows how we used plain English to redraft all or parts of three financial sector documents—the New Zealand Superannuation Fund's *How we Invest*, the Financial Services Federation's *Responsible Lending* brochure, and the Commerce Commission's *CCCFA Draft Guidelines on Fees*.

Worked examples

In each of the three examples that follow, the document covered a difficult topic and included technical language and jargon.

New Zealand Superannuation Fund—*How we Invest*

The overall effect of the language in the two extracts below is to make the text ‘feel’ difficult. By paraphrasing and capturing the intent of original, we can create a feeling of ease for the intelligent, but relatively uninformed, reader.

Original

When we invest overseas we have exposure to foreign currencies (FX), which means that we are impacted when the value of those currencies moves up and down. This impacts the fund’s returns and amplifies volatility.

Redraft

Investing overseas means our investments are affected when currencies rise and fall. This makes short-term returns on the fund less predictable.

Original

We hedge at the fund level, which means that we look at our total FX exposure, regardless of the underlying instruments (eg whether the FX arises from equities, bonds, private markets investments etc), and hedge out each major currency.

Redraft

We hedge the whole fund, regardless of what it includes (equities, bonds, private markets investments etc), and we hedge each major currency involved.

In the next example (which occurred earlier in the document), the explanation of hedging is inadequate for the uninformed reader.

Original

We hedge by entering into FX contracts where we sell our underlying FX exposure and buy NZD.

Redraft

Hedging is a financial strategy that involves making an agreement now on the exchange rate for future transactions. This strategy means that when returns on foreign investments are received, the returns are in New Zealand dollars at the rate we have agreed.

Financial Services Federation—*Responsible Lending* brochure

This brochure covered very important information about lending, particularly for those with relatively poor financial literacy.

The most significant plain English technique we applied to the draft text was to examine the purpose of the brochure and create a reader profile. All other decisions flowed from that and led us to change the title, reader set-up (opening line), language, structure, and headings.

The title and the first line (reader set-up)

The original title and first line gave the impression that the brochure was for lenders, rather than consumers. There was no ‘what’s in it for me?’ for the intended audience—no sense of connection for consumers. By changing the wording to reflect the purpose of the brochure, consumers immediately see its relevance to their circumstances. The new wording creates a reason to read on and sets up the content and tone of the whole brochure.

Original

RESPONSIBLE LENDING

These guidelines have been developed to encourage responsible lending. They involve lenders taking greater responsibility for assessing your situation, your needs, and your ability to make repayments when you borrow money.

They will improve customer protection and raise standards across the industry by helping to ensure that you are not provided with a loan that you cannot afford to repay.

Redraft

What you can expect when you apply for a loan

When you apply for a loan, the organisation lending you money (the lender) has some responsibilities to you.

Lenders need to make sure they understand your situation and your needs.

This brochure tells you what a responsible lender will do to protect you and make sure you don’t get a loan that you can’t repay.

The language

We eased the wording throughout the brochure, making seemingly small changes such as those in the following table. The aim was to use plainer, more familiar words to express the same idea.

Original term	More familiar alternative
nature of your employment (for example whether you are working on a full-time, part-time, or casual basis)	whether you have a full-time, part-time, or casual job
variable expenses	expenses that come up from time to time
accessing your credit report	getting a copy of your credit report
whether you would like any particular products or flexibility	the type of loan that would suit you best
making enquiries with your employer	talking with your employer
ensure that any repossession process is reasonable, balancing your right to a fair process and the lender's right to be repaid	make sure that, if your property needs to be repossessed, you are treated fairly, remembering that the lender also has a right to be repaid

The structure and headings

The new structure and headings were written from the reader’s point of view. They make it clear that the lender has four main areas of responsibility. The arrows in the table below show where information was moved into a more appropriate place in the document.

Original structure and headings	Redraft
Responsible Lending	What you can expect when you apply for a loan
What this involves Lenders may need to make reasonable enquiries into your financial situation Lenders may need to make reasonable enquiries into your needs and goals Lenders may need to take reasonable steps to verify your financial situation Lenders may need to assess whether you are able to repay the loan ¹	Understanding your needs Responsible lenders may need to ask questions about your financial situation Responsible lenders may need to ask for proof about your financial situation Responsible lenders will do their best to understand your needs and goals
Best practice ²	Deciding if the loan is right for you
Dispute resolution ³	Making sure you understand Helping you if things go wrong
Websites which provide useful information	Websites that provide useful information about borrowing money

1. This last sub-section covers a different type of information so has been separated out
2. The original section covered two types of information—information about the lender’s obligation to make sure the consumer understands, and information to help the consumer if things go wrong
3. Information about dispute resolution is included in ‘Helping you if things go wrong’

Commerce Commission—*CCCFA Draft Guidelines on Fees*

We were asked to redraft this document to demonstrate how plain English principles could be applied to complex subject matter. (The redraft is not complete at this stage.)

This document needed a whole new approach to fulfil its purpose. Once the purpose was clear, the direction for redrafting also became clear.

In the original text below, the purpose of the document looks clear enough, despite a bureaucratic, legalistic style. However, after a close reading of the whole document and the preamble on the website, it became obvious that the purpose was somewhat different. See the redrafted text, in which the purpose of the guidelines is made clear, along with what the guidelines cover.

Original

Purpose of the Draft Guidelines

These draft guidelines provide the Commerce Commission’s current views on the CCCF Act’s fees provisions, in relation to these aspects of the Act:

- establishment fees;
- credit fees; and
- default fees.

The draft guidelines **do not** deal with the charging by creditors of early prepayment fees or creditors passing on third-party fees to debtors.

Redraft

The purpose of these guidelines

These guidelines help lenders and borrowers:

- work out if a contract breaches any of the rules about fees in the Act
- understand when the Commission is likely to take action to investigate or enforce the Act.

What these guidelines cover

The guidelines include some background on the Act, how the Commission interprets the Act, and when the Commission is likely to enforce the Act.

In particular these guidelines cover:

- establishment fees
- credit fees, and
- default fees.

The draft guidelines do not cover early prepayment fees or lenders passing on third-party fees to borrowers.

Other changes to the CCCFA document involved the full range of plain English techniques including restructuring information, adding headings to reflect key information, providing context, and removing text that did not serve the purpose of the document. In particular, this work involved paraphrasing and synthesising information to capture intent without losing meaning.

A few examples of language changes to change the tone:

Original	Redraft
creditors	lenders
debtors	consumers (to match name of Act)
CCCFA	the Act
apportionment	part
These guidelines are not exhaustive.	These guidelines do not cover every situation.
The Commission will modify the guidelines to reflect any significant court judgments or amendments to the CCCF Act.	These guidelines may change over time as the Commission deals with more enquiries and breaches of the Act, and as the courts make new judgments.

A thought to finish

Although I didn't hear David Ireland's talk yesterday, I noticed that the title was 'In pursuit of clarity'. I hope that what I have covered gives you at least three useful things to use in your pursuit of clarity:

- first, the belief that it is possible to write disclosure documents in a plain, clear style
- next, some practical tools to help you achieve clarity and retain precision, and above all
- the confidence that clear, client-focused disclosure documents will serve your business well.

And now I'll let two people, who wrote on this topic many years ago, conclude my presentation for me.

From Albert Einstein, 'If you can't explain it simply, you don't understand it well enough'.

And from E F Schumacker, 'Any intelligent fool can make things bigger and more complex. It takes a touch of genius—and a lot of courage—to move in the opposite direction.'

I'd like to challenge you to do that.

Endnotes

ⁱ *Answering the Critics of Plain Language*, Joseph Kimble, retrieved from <http://www.plainlanguagenetwork.org/kimble/critics.htm> 25 June 2011

ⁱⁱ Plain English and the Law, *supra* note 2, app 2 (Takeovers Code). The figure of reducing the original legislation by almost half comes from David St L Kelly, 'Plain English in Legislation: The Movement Gathers Pace', in *Essays on Legislative Drafting* 57, 57 (David St L Kelly ed, 1988)

Useful resources

The Oxford Guide to Plain English by Martin Cutts

Plain Language for Lawyers by Michele Asprey

Unravelling legal jargon—a free download from www.write.co.nz home page

StyleWriter plain English editing software available at www.write.co.nz
search: StyleWriter

Lynda Harris, profile

CEO of Write Limited

Founder of the WriteMark New Zealand Plain English Awards



Lynda is founder and director of Write Limited, New Zealand's leading plain English communications company. Write has been well established in the professional services market for over 20 years and has a broad client base of public and private sector clients. Write specialises in creating custom-built training and provides a wide range of writing and advisory services.

Lynda established the WriteMark, New Zealand's document quality mark, and is the founder of New Zealand's annual plain English awards. Her landmark work in bringing the issue of plain language to the attention of the public through the annual awards programme was one of the main inspirations for the US Center for Plain Language introducing its ClearMark Awards. Lynda was a guest judge for the 2011 US ClearMark Awards.

Lynda is the New Zealand representative for Clarity (www.clarity.com), an international association promoting plain language in the legal profession. She is also a member of the International Plain Language Working Group, which is working to establish international standards for plain language that apply across cultures and languages.