

Extract from Hansard - 26th June 1997

Lord Brightman: My Lords, I believe that plain English should be used in the drafting of Acts of Parliament. My amendment does nothing except turn a subsection of the Bill into plain English. ...

A lawyer will probably be able to work out what subsection (6) is driving at. But what about the manager of an NHS trust; the manager of a bank which is to put up the money for a development; or the building contractor who will build the new hospital? Will they be certain what subsection (6) means?

They can find out what the subsection is meant to say by coming to the House of Lords, going to the Printer Paper Office and asking for the *Notes on Clauses*. If they do that they will read:

Subsection (6) ... The validity of an agreement which meets the conditions set out in subsection (3) cannot be challenged merely because it has not been issued with a certificate under this clause.

The wording is crystal clear. It is also the precise wording of my amendment. Why can we not have that wording in the Bill? ... All I ask now is that your Lordships should say which is the plainer

English, the provision in the Bill, which states that an uncertified agreement is valid if it

would have been an externally financed development agreement if it had been so certified

or the *Notes on Clauses*, and my amendment in exactly the same terms:

The validity of an agreement which meets the conditions set out in subsection (3) cannot be challenged merely because it has not been issued with a certificate under this section.

I beg to move.

Lord Simon of Glaisdale: My Lords, I support this amendment by my noble and learned friend. We have simply no right to legislate in a manner that is incomprehensible to the people to whom the legislation is addressed and who are primarily concerned, particularly if the matter can be put in lucid and plain terms as it has been by my noble and learned friend, to whom we are deeply indebted. Like many great Chancery lawyers, my noble and learned friend is a gifted draftsman. It behoves us all,

including parliamentary counsel, to show a little humility in the face of that.

This [the original clause in the Bill] is not a new style of drafting. It is a form of drafting based on hypothesis. When I gave evidence to the Renton Committee on the preparation of legislation, I drew attention to a provision in a national insurance Act which went very much on the same lines. I venture to read it:

For the purpose of this Part of the Schedule a person over pensionable age, not being an insured person, shall be treated as an employed person if he would be an insured person were he under pensionable age and would be an employed person were he an insured person.

Your Lordships will see the relationship between the two styles of drafting.

The matter was put very plainly by my noble and learned friend. It is extremely important because the legislation is a vital part of the process whereby democratic society frames rules which bind of themselves. If the rules are incomprehensible, then the process of democratic legislation has broken down. ...

Lord Renton: My Lords, I wish briefly, but warmly, to support the amendment moved by the noble and learned Lord, Lord Brightman. The interesting quotation given by the noble and learned Lord, Lord Simon of Glaisdale, was in fact a piece of legislation drafted by a former first parliamentary draftsman who was a member of our committee. We teased him about it a certain amount. ... He conceded that it could have been done better.

What I find very interesting about the amendment is that the noble and learned Lord, Lord Brightman, was prompted to draft it having studied the *Notes on Clauses*. The *Notes* frequently declare the Government's intention as to what the legislation should contain. However, instead of sticking to the simple language of the *Notes to Clauses*, the draftsman very often thinks that he has to elaborate it in what he considers to be more legal English, and defeats his own purpose in doing so.

I stand open to correction, but I believe that this is the first time that an amendment has been table in identical language to that contained in the *Notes on Clauses*, I hope that the noble and learned Lord, Lord Brightman, has perhaps introduced a useful precedent.

Noble Lords: Hear, hear!

Lord Renton: As the noble and learned Lord, Lord Simon of Glaisdale, said, we have a duty to make our laws easily understood, especially to those who have to observe them. Sometimes our laws are rather technical and those who have to observe them may not have had any kind of legal training. They may be technically excellent in their own work but not in legal matters. It is therefore essential that we should try to get the matter right. ...

Lord Hooson: My Lords, from these Benches I congratulate the noble and learned Lord, Lord Brightman, on raising this very important matter. It seems to me that he flatters lawyers when he says that subsection (6) can probably only be understood by a lawyer. I did not understand it; its meaning only became clear when I turned to the noble and learned Lord's amendment. I had not had the wit to go to the *Notes*.

The noble and learned Lord raises a very important point. We are continuing with an old style of draftsmanship which is no longer relevant or acceptable. The new style, which, on this occasion, happens to have been imported from the exact language of the *Notes* to help people understand the original draftsmanship, shows that we have reached a watershed. The House and the legislature should consider whether it is time to adopt the new style of direct-approach English imported into the amendment. I am sure that the House will be intrigued to hear the noble Baroness's answer. When a former Law Lord puts down an amendment which he says

spells out exactly what the legislature intends, is the parliamentary draftsman's view nevertheless to take precedence? ...

Baroness Anclay of St Johns: The noble and learned Lord, Lord Brightman, spoke in Committee and today about the need to use plain English in legislation wherever possible.. Like other speakers, I agree wholeheartedly with him.

When I read Bills I often feel myself transported back some 30 years to my days at university when I struggled with the convoluted syntax of Latin texts. I hope we can escape that one day - 30 years on my nightmares ought to have finished. I hope that one day we shall find a way of following the noble and learned Lord's example and write legislation in plain English.

Today, we on these Benches recognise the valuable contribution that the noble and learned Lord has made in rewriting this subsection. We support his amendment.

The National Health Service (Private Finance) Act was passed with Lord Brightman's amendment.

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