



Clarity in drafting: how can we know what works best for the reader?

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Introduction

Office of the Parliamentary Counsel

- Part of the Cabinet Office
- Draft government and some private members' Bills in Parliament
- Review secondary legislation that amends Acts of Parliament

The National Archives

- Agency of the Ministry of Justice
- Publishes all United Kingdom legislation, including-
 - Secondary legislation
 - Acts of Scottish Parliament, Northern Ireland Assembly, Welsh Assembly
- Legislation published in print and online
 - www.legislation.gov.uk



Good law

The Good Law initiative is an appeal to everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users of today and tomorrow.

Good law is law that is

- necessary
- clear
- coherent
- effective
- accessible

“....We want to create confidence among users that legislation is for them...”

www.gov.uk/good-law



Overview

- Background
- For each main part of the study
 - description of method
 - outline of results
 - next steps
- Evaluation
- Conclusion



Background – changing readership

1990s

- Legislation read typically
 - by lawyers
 - on paper

Now

- Lawyers
- www.legislation.gov.uk
 - 2 million separate visitors per month
 - 400 million page impressions per year
 - mainly non-lawyers
- Legislation viewed largely online

Who interacts with Bills and Acts?



PRIMARY PERSONA

Mark Green: Environmental Enforcement Officer, Birmingham City Council

Regular user. Needs to quote legislation. Uses a handful of Acts regularly. No access to subscription services. Web savvy.

"I need to quote legislation as part of my job and so it is essential that the legislation I access is up-to-date. I approach [reading legislation] with a heavy heart"



Jane Booker: Law Librarian

Regular user. Likely to use all the features legislation.gov.uk offers. Expert web researcher and confident researcher of legal documents. Time pressured to respond to queries. Uses subscription services and other sources.

"I think [the language used in legislation] is more difficult than it should be"



Heather Cole: Member of public seeking to defend her rights.

First time user, does want to view legislation, but needs support and advice too. Needs to understand what she is seeing. Web savvy.

"I want to prove to my local council that they are not providing the services they are obligated to provide, but legislation can be hard to understand - it's convoluted, technical and jargony"



Understanding legislation

Why does it matter?

- Rule of law and “democratisation”
- Cost of
 - time spent understanding legislation
 - professional assistance and advice

Drafting Guidance

www.gov.uk/government/publications/drafting-bills-for-parliament



Understanding legislation

What does it mean for readers to understand legislation better?

- How accurately do they understand?
 - questions to test comprehension
- How quickly do they understand?
- Do readers understand better what they prefer?



Usability study – 3 stage approach

Stage 1 – Online survey

Stage 2 – In depth telephone interviews

Stage 3 – User testing sessions

This research was

- conducted by Bunnyfoot Ltd on behalf of The National Archives and the Office of the Parliamentary Counsel
- undertaken between August 2012 and February 2013
- funded by The National Archives



Usability study

Research objective

- To understand more about the categories of reader for whom OPC drafts
- To evaluate examples of drafting styles to understand whether the way a piece of legislation is drafted has a bearing on
 - how users comprehend its meaning and
 - users' feelings that a certain drafting style has helped or hindered their understanding of the text



Stage 1 – Online survey



Stage 1 - Online survey

Part of regular survey by www.legislation.gov.uk to capture data about users and their use of legislation

Participants were

- shown a short provision drafted in one style
- asked a comprehension question
- shown alternative version(s) of the provision drafted in different style(s)
- asked to express a preference for one style
- invited to give reasons for any preference



Stage 1 - Online survey

Topics

- Conditions
- Formulae
- Second sentences
- “Subject to”
- Sandwich provisions



Online survey example: conditions

Option 1

Power of tribunal to impose financial penalty

Where an employment tribunal determining a claim involving an employer and a worker —

- (a) concludes that the employer has breached any of the worker's rights to which the claim relates, and
- (b) is of the opinion that the breach has one or more aggravating features, the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).



Online survey example: conditions

Option 2

Power of tribunal to impose financial penalty

- (1) An employment tribunal may order an employer to pay a penalty to the Secretary of State where Conditions A to C are met.
- (2) Condition A is that the tribunal has determined a claim involving the employer and a worker.
- (3) Condition B is that the tribunal concludes that the employer has breached any of the worker's rights to which the claim relates.
- (4) Condition C is that the tribunal is of the opinion that the breach has one or more aggravating features.
- (5) It makes no difference whether or not the tribunal also makes a financial award against the employer on the claim.



Online survey example: conditions

Question

Bob, an employee of Trevor, makes a claim against Trevor in the employment tribunal for not allowing him time off work for trade union activities. The tribunal makes a declaration that Trevor has infringed Bob's entitlement to time off for these activities, and orders Trevor to allow Bob the appropriate time off in future. The tribunal also finds that, in turning down Bob's request for time off, Trevor used abusive language, which it decides was an aggravating feature. However it decides not to order Trevor to pay compensation to Bob.

May the employment tribunal order Trevor to pay a penalty to the Secretary of State?

- Yes (correct)
- No
- I don't know



Findings: Stage 1 – Online survey

- Large number of responses – 1901 complete, 3379 partial
- Majority of respondents were not legally trained but were familiar with legislation
- Majority of respondents got answers right but a significant proportion did not
- The more complex the example, the fewer correct answers
- A respondent's profession, familiarity with legislation or the order in which they saw an example had no bearing on their preference or their understanding of the question
- Large number of comments explaining preferences



Online survey: examples of comments

Examples of comments preferring conditions option 1

Although the single sentence in [Option 1] is lengthy, the paragraphing and parentheses make it fairly easy to follow. [Option 2] uses shorter sentences - usually a good idea - but sacrifices clarity and ease of reading: the concept is split into five sentences, with the consequence before the conditions (forcing the reader to stop, start, and probably go back in order to understand how they relate to each other); and the need to name each condition and express it in a stand-alone sentence results in many extra words being required.

[Option 1] is preferable due to being set out as a continuous (if long) sentence, rather than being split into various different conditions

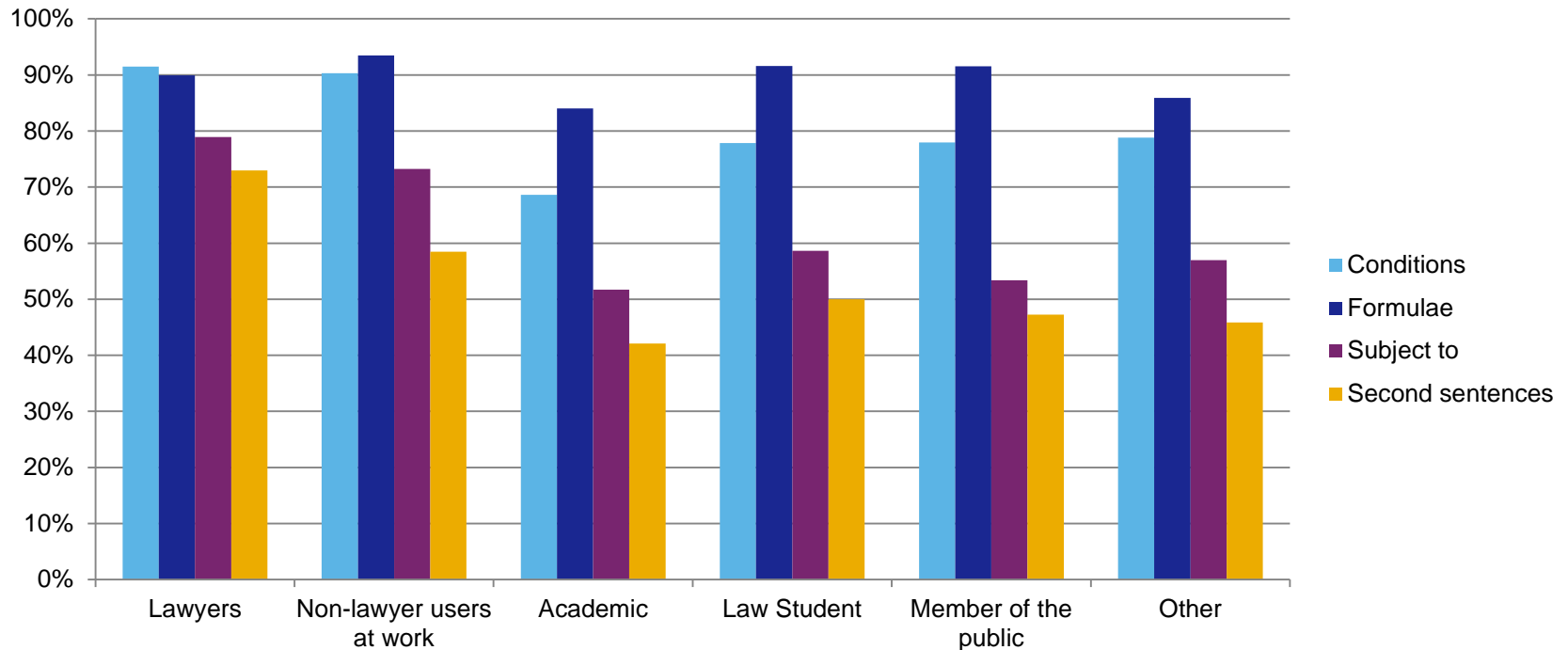
The penalty is the consequence, there it more logically follows to have that stated at the conclusion of the paragraph

Language such as 'where conditions A to C have been met' [is] unnecessarily jargonistic. [Option 1] expresses same idea simply and clearly



Findings: Stage 1 - Online survey

Percentage answering the question correctly, of all who answered (including those who answered don't know)





Findings: Stage 1 – Online survey

For most drafting techniques tested, there was no clear preference for one style over another

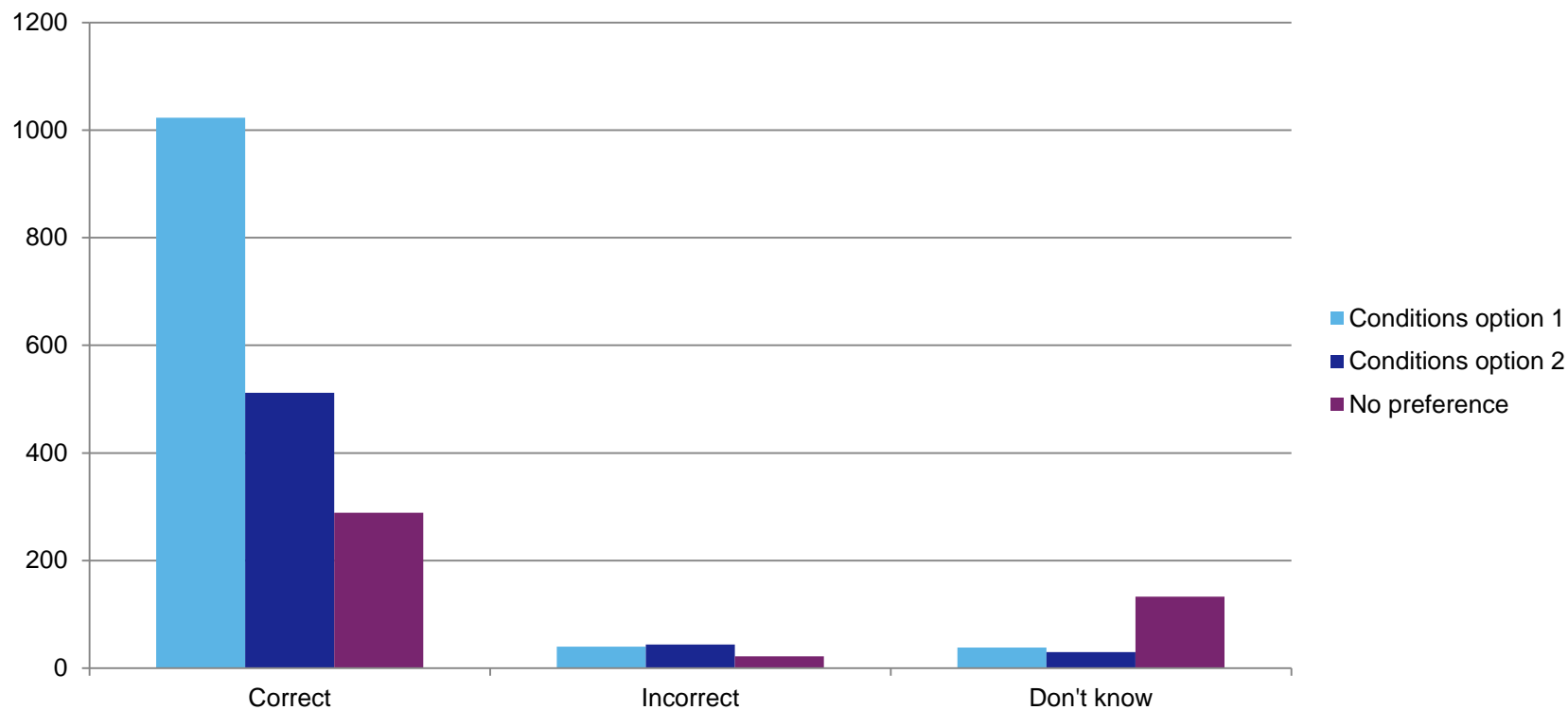
Conditions and formulae

- slight preference for narrative style over “Condition A”, “Condition B” etc
- clear preference for fairly straightforward formula over narrative
- examples used were fairly straightforward propositions
- substantial majority answered correctly
- the few who answered incorrectly were more likely to prefer a less popular option



Conditions: results

Numbers preferring each option who answered correctly





Online survey: formulae

Option 1

In this Part, “scheme transfer factor” means the amount of any sums transferred on the scheme transfer reduced by the relevant relievable amount and then divided by the standard lifetime allowance at the time when the scheme transfer took place.

Option 3

In Part, “scheme transfer factor” means —

$$\frac{A}{B}$$

where —

A is the amount of any sums transferred on the scheme transfer minus the relevant relievable amount, and

B is the standard lifetime allowance at the time when the scheme transfer took place.



Online survey: formulae

Option 2

Definition of “scheme transfer factor”

In this Part, “scheme transfer factor” means –

$$\frac{T - R}{S}$$

where –

T is the amount of any sums transferred on the scheme transfer,

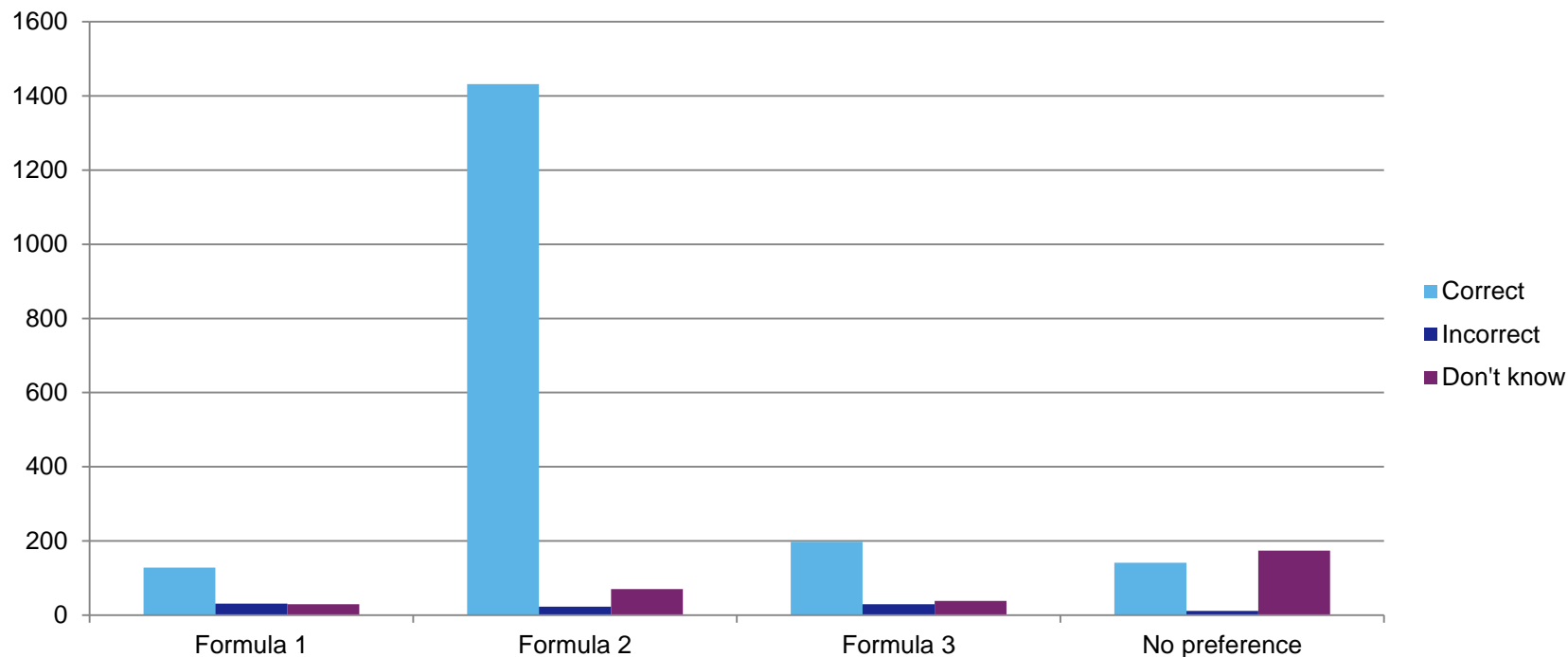
R is the relevant relievable amount, and

S is the standard lifetime allowance at the time when the scheme transfer took place.



Formulae: results

Numbers preferring each option who answered the question correctly





Findings: Stage 1 – Online survey

- Examples using more complicated propositions
 - second sentences and “subject to”
 - fewer correct answers
 - no clear preferences
 - no option associated with higher proportion of correct answers
- One surprise...
 - sandwich provisions popular
 - “double sandwich” option was particularly popular
 - “if A and/or B, then X and/or Y”



Stage 2 – Telephone interviews



Stage 3 – User testing sessions



Stage 3 – User testing sessions

- Sample of 12 people
 - 4 people matching each of the 3 existing legislation.gov.uk personas
- Compared longer pieces of legislation in hard copy
 - narrative/staccato style
 - provisions arranged all in clauses or divided between clauses and schedules
- Tested possible developments for legislation.gov.uk for bridging gap between legislation and readers' lack of understanding of the structure, eg-
 - hover-over features for definitions
 - facility for titles of provisions not yet in force to be greyed-out in contents page
- Observation methods
 - video link
 - eye-tracking



Findings

What we set out to find

- comparing different drafting styles
- characteristics of readers

BUT

What we did not expect....



Principal finding

Readers, of all categories, generally have little understanding of

- what legislation is
- how it works
- how it is structured

Their “mental model” of legislation is not very good



Findings: Stage 3 – User testing

- Users really struggled to find their way around legislation (hard copy and online)
- Users did not understand common terms, e.g. “*commencement*” or “*prescribed*”
- Users were puzzled by cross-references, e.g. references to “*subsection (1)*” or “*Schedule x makes provision about...*”
- Users did not know what “*in force*” meant
- Users tended to open legislation online by clicking on a particular section and did not look at neighbouring provisions



Findings: User testing – users' needs

Understanding the context

- how legislation is put together
 - what sections, subsections, schedules etc are
 - powers to make orders and regulations
- what happens to it after it is passed
- common concepts
 - extent and application
 - commencement
 - statutory instruments
- how key provisions relate
 - definitions
 - related subordinate legislation



Outcomes

Solutions may lie in drafting changes or changes to online presentation

- changes to Drafting Guidance:
 - “comes into force”/commences
 - double sandwiches
 - formulae
 - conditions
 - use of single type of subordinate legislation
- re-imagining how legislation is presented on www.legislation.gov.uk
 - work underway: user testing of wireframes
 - text presented alongside “must know” information
 - adaptive user interface prompting and enabling reader to find out more



Evaluation

- **Wealth of feedback available**
 - willingness to comment and participate in research
 - subject matter of examples affects participants' interest in examples
- **Online survey**
 - clear evidence to prefer certain specific techniques over other specific techniques in given situations
 - evenly balanced preferences for other styles
 - provides some evidence to justify leaving choice of style to drafter's judgement
- **User testing**
 - approach with open mind
 - can challenge assumptions



Next steps

Invitation

- We would welcome an exchange of knowledge and experience
- Have you done anything similar, or tackled similar questions on the presentation or drafting of legislation in a different way?

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