

PLAIN LANGUAGE

Capitalizing defined terms: Should consumer contracts use capitals for definitions?

BY MARTIN CUTTS

INITIAL CAPITALS IN UNEXPECTED PLACES

To lawyers, they're a familiar sight and utterly normal. Scattered through most agreements for loans, mortgages, and services are words and phrases with initial capitals. They don't usually start sentences, though they could, and they're not proper nouns or document titles, though they could be. Instead, they occur in unexpected places, e.g., "the Borrower must pay the Bank or its Representative a Recurring Charge on the Appointed Day."

So what are these capped-up show-offs, looking so smug in their shift-key superiority? They are, of course, terms specially defined in the agreement. They've acquired their extra glory because lawyers think that they should be highlighted and that this is the best—or at least the conventional—way to do it. But is this good practice, particularly in consumer contracts?

Much has been written about definitions and their uses and abuses,¹ but rather less about whether they should take initial capitals. It matters, because capitals in unexpected places look strange to laypeople, who often need to read legal documents like consumer contracts. As a plain-language editor, I want to reduce strangeness. So I savage long sentences, unusual constructions, the excessive use of passive-voice verbs, and words likely to be unfamiliar to most readers. And when Lawyers—or Authors aping lawyers—capitalize Nouns (they're usually nouns) that don't normally take Caps, I'm keen to downgrade them to Lowercase because they look inconsistent (or like the product of a disheveled Mind).

Agreements sometimes tell readers at the outset that defined terms will take initial capitals. A typical formula might say: "In this document, we use some words that have special meanings. We list them here and give them initial capitals wherever they appear in the document." But the agreement might then use initial capitals for several undefined things too, such as the first word of every sentence; names of countries

and streets; headings; section titles; and titles of documents mentioned in the text. This sows doubt among alert or combative readers.

Modern agreements often define the main parties using *we* and *you*. To give these words initial caps looks particularly horrible, especially when they're used hundreds of times in a document, which is likely if the active voice predominates (as it normally should). So even lawyers who use initial caps for definitions will generally put *we* and *you* in lowercase. This exception tends to be explained in the text, which adds to the reader's burden—yet another legal oddity to learn about and then immediately discard as verbal frass.

ALTERNATIVES TO INITIAL CAPITALS

Rather than initial caps for defined terms, **bold type** is sometimes used. But when there are many defined terms and they're often used, the bold will dominate and dazzle—especially when *we* and *you* are also in bold. Because it's so clearly repulsive, I normally refuse to give our accreditation mark, the Clear English Standard,² to documents that adopt this style, hoping to persuade authors to drop it. Using bold for defined terms also means that it can't sensibly be used for other things, such as subheadings at the same type size, because alert readers will wonder whether these are defined too.

Using *italics* for defined terms is probably unfeasible nowadays. Okay, italics are not as obtrusive as bold but are widely thought to be less readable for people with visual impairments and those reading on screen. Moreover, the italics available in sans-serif fonts are often merely slanted versions of the roman type and don't look different enough from it; they tend to be typographically unappealing too, compared to some of the attractive italics available in serif fonts.

The use of SMALL CAPITALS for definitions has been advocated in a well-regarded writing guide by Mark Adler and Daphne Perry: "If

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it is necessary to highlight defined terms we suggest SMALL CAPS, as clear but relatively unobtrusive and still allowing an initial (full size) capital when the ordinary rules demand it. Or in text to be read on screen, add a distinctively formatted hypertext link to the definition.”³ Their final point might lead to differences between on-screen and printed versions (if both exist), though this problem could be prevented by ensuring that all definitions are stated somewhere in both.

Small caps might have readability drawbacks similar to italics for people with visual impairments, though I doubt this has been researched. Like italics and boldface, small caps may lose their formatting when text is copied between programs and team members during the hurly-burly of drafting and design, a process that could lead to errors if the publishers are careless.

As ever, we and you and their grammatical cousins like *our*, *us*, and *your* would best be excluded from any small-caps regime. To date, I’ve not seen a consumer contract that uses small caps for defined terms, but that doesn’t mean it’s not feasible.

WHAT DOES BRYAN GARNER SAY?

Bryan Garner, a noted authority on clear legal drafting, shows a model 5,000-word Time Warner plain-language business-to-business contract in his book *Legal Writing in Plain English*.⁴ Apart from we and you, the contract’s eight defined terms are listed in a section at the end (readers are told at the start where to find them). Whenever they’re used, the terms don’t have initial caps or any other marker. Garner doesn’t comment on the lack of signaling, although his description of the contract as a model implies tacit approval.

But in his *Dictionary of Legal Usage*, Garner takes a nuanced view that does seem to prefer initial caps for defined terms:

Drafters’ habits vary. The most common way to tell the reader that a term is defined is by using initial capitals—a practice that is not so bad if you keep definitions to a minimum. Others have experimented with boldfacing or italicizing defined terms wherever they appear in text, but this practice can lead to unsightly text. *Still others don’t signal in any way that a particular word is a defined term, but most legal readers find this practice unacceptable.* Drafters who typeset their materials sometimes use running footers to tell the readers which words on a given page are defined in the schedule at the end—a time-consuming and costly practice.⁵

Likewise, in *The Redbook*, Garner points out, “The established convention in legal writing is to capitalize defined terms to show that they’ve been defined and that they’re being used with a specific meaning.”⁶ And the book’s model contract uses initial caps as well.⁷

WHAT DOES PETER BUTT SAY?

In his magisterial book *The Lawyer’s Style Guide*, Peter Butt devotes several pages to our topic. He says: “Private-sector legal drafters generally highlight a defined term by capitalising the initial letter of the word—eg, *Design*. If the term comprises more than one word, they highlight the initial letter of each main word—eg, *Design of Equipment*.”⁸ (Note that the italics in that quote are merely Professor Butt’s highlighting—initial caps are the only signal being discussed.)

Although Butt says the use of initial caps is “hallowed by convention,” he describes the technique as “less than perfect” for two main reasons:

1. The reader may not understand the technique, perhaps assuming that the initial cap is a mistake and thus missing the point.
2. The defined word may appear at the start of a sentence or at the start of a heading, where a cap is always used, so the reader may be unsure whether the word is being used in its defined sense.⁹

Butt cites two cases in which the second kind of ambiguity has led to litigation. He also mentions that if a defined term is given in lowercase and is thus perhaps being used in its undefined sense, readers might not know whether this is deliberate or a mistake.¹⁰

Parliamentary drafters tend not to signal defined terms beyond putting them in quotation marks the first time they appear, so in the laws of many English-speaking countries and the EU, they occur without any other kind of signaling. Butt points out that some recent Australian law uses an asterisk to precede or follow defined words wherever they appear but notes that “research shows that readers find asterisks puzzling when a term comprises two or more words.”¹¹

There’s also the knotty question of what happens when two defined terms accidentally land next to each other, asterisks and all. Of course, the same problem may occur with all the other markers that could be used: bold, italics, initial caps, small caps. Will readers understand what’s going on (unlikely) or take pity on the poor drafter who has allowed such a muddle to occur (even more unlikely)? These pileups can happen when defined terms are left unsignaled, but they’re less obvious; any readers who do notice are left to resolve the collision of meaning as best they can.

WHAT SOME UK COMPANIES HAVE DONE

In 2023, many UK companies found themselves bound by a new “consumer duty” to make their contracts clearer by the July 31 deadline.¹² Compliance staff, keen to apply the full spirit of the duty, swept away heaps of legalistic rhubarb as they did so. Some of them sent me their draft consumer contracts for an editorial checkup, and it was clear that using initial caps for defined terms was a convention they’d eagerly ditched.

They and their legal advisers who adopted this no-signal approach apparently believed that it would improve customer comprehension. Some of them commissioned testing on how far the new drafts were understood and acceptable to customers. As far as I know, since these contracts went live, few readers have marched in the streets or written to the Law Society demanding that initial caps or other definitional signals be restored. Presumably, not many have noticed that they've gone missing.

Here are three of the “no-signal” contracts I looked at in 2023, to all of which I was happy for my company to give the Clear English Standard:

- Skipton Building Society's 11,300-word mortgage conditions (England & Wales) have no definition section; defined words are explained as they occur—often in explainer panels—and they don't have initial capitals or any other signal.
- Santander Bank's 10,000-word mortgage conditions take a similar approach to Skipton's.
- The RAC's *Breakdown Cover* UK policy booklet (9,600 words) lists and defines ten terms in an early section but doesn't give them any signals when they appear later. The definitions page, headed “Making sense of your policy,” begins: “We want our terms and conditions to be clear and easy to understand. To help with this, we use certain words in a specific way. We show the meaning of these words below.”

You'll see from the word counts that all these new contracts are rather long, much longer than most people will want to tackle unless stranded on a desert island with no other reading material. As is common, customers are urged to read and make sure they've understood the documents, an exhortation rarely heeded in normal life. But consumer contracts are mainly reference works, consulted only if things go wrong. So a good access structure (contents list, heading system, explainer panels) is crucial to help readers find what they need.

WHAT SIEGEL + GALE DID IN THE 1970S

In scrapping initial caps for definitions, a consumer loan note by Siegel + Gale for Citibank changed everything. It showed how plain English and clear typography could transform the dog's breakfast of long sentences, legalese, and hideous layout that almost everyone had till then accepted as inevitable. The new-style document was simple to follow and easy on the eye, hence its legendary status in the modern plain-language movement. The before-and-after versions are available in Appendix 3 of *Legal Language*¹³ and in the original version of this article on our website.¹⁴

In the old-style Citibank text, the defined terms *Bank*, *Borrower*, *Collateral*, *Code*, *Employer*, and *Obligations* take initial caps. In the revised version, only one defined term, *finance charge*, takes boldface (but lowercase) wherever it appears, perhaps for regula-

tory reasons. None of the other defined terms, of which there are far fewer than in the original, gets any marker at all.

MY PREFERENCES

The no-signal style for defined terms still seems best for consumer and microenterprise contracts. It can work well for the simpler kinds of business-to-business contracts too, though the defined terms should be clearly listed and not used in undefined senses (easily checked using Word's search tools).

The greatest benefit of the no-signal style is that it avoids strangeness in documents that are already pretty strange to most laypeople, compared to their everyday reading. Who knew the meaning of *excess*, *underwriting*, *uninsured perils*, and *indemnity basis* before they read their first insurance policy? For regulations and legislation too, I think the advantages of the no-signal style outweigh the disadvantages, though I've experimented with other approaches, notably in my book *Lucid Law*.¹⁵

My second preference would be to use asterisks for defined terms, but they are obtrusive when numerous terms are defined. My third preference would be small caps. When users wish to cite extracts, they should also retain the signaling and consider explaining what it means.

Comprehension testing may help show what users of different kinds of documents prefer and find helpful to signal defined terms—perhaps an interesting research project for someone in the plain-language field.

In the meantime, we are left with initial caps as the convention followed by most lawyers, especially in the U.S. Perhaps this article will persuade some of them to rethink their approach when it comes to consumer contracts.

This is a shorter version of an article that originally appeared in The Clarity Journal, volume 90 (2025). Some spelling and punctuation has been changed for American readers.

Martin Cutts, director of Plain Language Commission (a UK-based firm providing editorial and training services, see www.clearest.co.uk), has been at the heart of the plain-language movement since the mid-1970s. He conceived and co-founded the Plain English Campaign in 1979. In 2013, he won the Christine Mowat Achievement Award for Outstanding Contributions to Plain Language, and in 2023 he was inducted into Clarity's Plain Language Hall of Fame. He is the author of *The Oxford Guide to Plain English* (5th ed, OUP 2020). On free download from his website are several books showing demonstration projects about plain legal language, along with “Writing Plain English,” a training course on plain-language basics. More than 15,000 documents and websites display Plain Language Commission's Clear English Standard logo.

ENDNOTES

1. Asprey, *Plain Language for Lawyers* (Alexandria, New South Wales: Federation Press, 5th ed, 2024), pp 92–101; Butt, *Modern Legal Drafting: A Guide to Using Clear Language* (Port Melbourne, Victoria: Cambridge University Press, 3d ed, 2013), pp 207–223.
2. See *Reliable document accreditation service*, Plain Language Commission <<https://clearest.co.uk/document-accreditation/>>.
3. Adler & Perry, *Clarity for Lawyers: Effective Legal Language* (London: The Law Society, 3d ed, 2017), p 111.
4. Garner, *Legal Writing in Plain English* (Chicago: University of Chicago Press, 3d ed, 2023), pp 319–336.
5. Garner, *Garner's Dictionary of Legal Usage* (New York: Oxford University Press, 3d ed, 2011), pp 258–259 (emphasis added).
6. Garner, *The Redbook: A Manual on Legal Style* (Eagan, Minnesota: West Academic, 5th ed, 2023), p 73.
7. *Id.* at 582–591.
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11. *Id.*
12. PS22/9: *A New Consumer Duty*, Financial Conduct Authority (July 27, 2022).
13. Tiersma, *Legal Language* (Chicago: University of Chicago Press, 1999), Appendix 3.
14. <<https://clearest.co.uk/articles/>>.
15. Cutts, *Lucid Law* (Whaley Bridge, High Peak, UK: Plain Language Commission, 2d ed, 2000).



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