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The plain English movement in legal writing and its (dis)advantages for non-native speakers of English. Theoretical background and survey results

Summary: The objective of this paper is to discuss the theoretical background behind the simplification of legal English, and to present current tendencies based on the conducted survey.
Section 2 provides a brief overview of the plain English movement in general, including the analysis of the views of prominent English writers and linguists, such as G. Orwell and E. Gowers. Then, Section 3 offers a more specialist approach to the movement within the field of professional legal writing. A special focus is placed on the limitations of plain English when it is applied within communication involving L2 speakers of English. Finally, Section 4 discusses the results of the survey conducted on persons with a legal background and laypersons. The work ends with conclusions on the use of simplified legal English in professional contexts (including, in particular, specialised translation).
Plain English may be a valid alternative for formalised jargon wherever it is possible to apply it without a loss of precision. In many cases, the use of formal legal English is caused rather by aesthetical or historical reasons, not by a real necessity. Therefore, it would be feasible to replace it in communication with clients and citizens for the sake of clarity. However, several reservations have to be made. Firstly, certain elements of "plain" English are not, in fact, plain for those who are not native speakers. A good example of that are phrasal verbs, which constitute a difficult part of the language for foreigners (as shown in the survey results). Secondly, certain elements of legal English are already so widely recognised, that it may be not particularly reasonable to replace them. Therefore, the plain English movement should incorporate a broader linguistic context and look for solutions that are useful not only to L1 speakers of English but also to L2 speakers.

Keywords: plain English movement, legal English, legal writing, legal translation

1. Introduction

> POLONIUS: (…)
> *Therefore, since* ***brevity is the soul of wit****,*
> *And tediousness the limbs and outward flourishes,*
> *I will be brief. Your noble son is mad*
> [emphasis added]
> (William Shakespeare, Hamlet, Act 2, Scene 2, lines 86–88)

Polonius used the above words while attempting to convince the royal couple about Hamlet's madness. Ironically, his long passages spoken throughout the play are certainly far from being brief, neither are they formidably witty. Nevertheless, "brevity is the soul of wit" became another Shakespearean phrase widely used by speakers of English as an idiom. However, a widespread tendency to use jargon, words of foreign origin, passive voice or unbearably long sentences is often hard to resist; otherwise, the speaker may be considered unprofessional or incapable in the professional context.

The objective of this paper is to discuss the theoretical background behind the movement towards the simplification of legal English and to present the perspective of language users based on the conducted survey. Section 2 provides a brief overview of the plain English movement in general, including the analysis of the views of prominent English writers and linguists, such as G. Orwell and E. Gowers. Then, Section 3 offers a more specialist approach to the movement within the field of professional legal writing. A special focus is placed on the limitations of plain English when it is applied within communication involving L2 speakers of English. Finally, Section 4 discusses the results of the survey conducted on respondents with a legal background and laypersons. The work ends with conclusions on the use of simplified legal English in professional contexts (including legal drafting and specialised translation).

2. The plain English movement – its origins and aims

2.1. The King's English and Fowler's rules of good writing

The topic of simplifying English has been explored by many scholars and practitioners. H. Fowler, a well-known English grammarian and lexicog-

rapher, formed the following general rules in his iconic "The King's English" (Fowler 1908: 11):[1]

1. *Prefer the familiar word to the far-fetched.*
2. *Prefer the concrete word to the abstract.*
3. *Prefer the single word to the circumlocution.*
4. *Prefer the short word to the long.*
5. *Prefer the Saxon word to the Romance.*

Fowler's rules do not form any kind of binding linguistic commandments. As Fowler himself rightly pointed out: "[…] what is suitable for one sort of composition may be unsuitable for another" (Fowler 1908: 16). Later Sir Ernest Gowers, the author of "The Complete Plain Words", referred to Fowler's rules, albeit with caution. He pointed out that they cannot be applied rigidly, especially the preference of the short word to the longer and the Saxon one to the Romance (Gowers 1987: 47). The context and target audience matter.

The line may be drawn between distinctive styles of writing and target audiences, as it is the case with academic writing. Fowler noticed, however, one intriguing phenomenon: it is often easier to write a lot and unclearly than shortly, simply and concretely (Fowler 1908: 16). In other words, it is not necessarily a sole influence of a particular style which forces journalists, scholars, or lawyers to write obscurely, but also a lack of time to thoughtfully reduce the message. The second reason might be that using more abstract and complicated words tends to be seen as a "sign of a superior mind" (Fowler 1908: 16) – a notion that is visibly present in several answers to the survey I conducted.

2.2. George Orwell and plain English

The concern with which George Orwell treated the use of language is easy to notice, starting with the world-famous dystopian novel "1984" and ending with his shorter works. In "Politics and the English Language", Orwell argues that not only do we change the language, but also the language profoundly influences our abilities to think (Orwell 1968: 127-128). He identifies several bad writing habits that, in his view, spoil English.

[1] I use the version distributed by Bartleby in 1999. The King's English comprised of a commentary with examples on a variety of topics chosen by the author, including vocabulary, syntax and style. Even though partially outdated, especially in parts relating to Americanisms and usage of certain vocabulary, it may be still considered as valuable guidelines for proper writing. Another Fowler's book, "A Dictionary of Modern English Usage", has gained even more popularity and in revised versions continues to be a widely used set of recommendations on the use of English.

Firstly, using worn-out metaphors and word patterns which already lost their original meaning and vividness, such as "to stand shoulder to shoulder with" or "the hammer and the anvil" (Orwell 1968: 130). Secondly, over-using nominalisation, the passive voice and lengthy phrasal verbs ("brought to a satisfactory conclusion") (1968: 130-131). Thirdly, overusing words of foreign origin, especially Latinisms ("*mutatis mutandis*") (1968: 131-132). At last, over-using abstract and meaningless words and phrases ("the immediately striking thing about Mr. X's work is its peculiar deadness") (Orwell 1968: 132-133).

In his answer to those issues, Orwell proposes the following set of golden rules (Orwell 1968: 139):

1. *Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.*
2. *Never use a long word where a short one will do.*
3. *If it is possible to cut a word out, always cut it out.*
4. *Never use the passive where you can use the active.*
5. *Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.*
6. *Break any of these rules sooner than say anything outright barbarous.*

Fowler and Orwell's rules overlap strongly, suggesting that Orwell might have been inspired by his predecessor. While such recommendations are not a remedy to all possible issues related to bad writing and they should not be followed unreservedly (as recognised already by Orwell's rule no. 6), following them can increase the readability of the content.

2.3. Sir Ernest Gowers: teaching the officials to write clearly

Having seen the need to teach British officials how to address the Queen's subjects clearly, Sir Ernest Gowers wrote "The Complete Plain Words", guidelines for good writing.[2] Similarly to Orwell and Fowler, Gowers recognised that there is a linguistic disease spreading among English speakers which makes them write in a too complicated way (Gowers 1987: 38).

Gowers noticed that there had been a tendency within the British establishment to cling to archaisms as a matter of tradition. That, in turn, led to the use of outworn and over-formalistic phrases in official correspondence (Gowers

[2] Originally published in 1954, it has been revised many times by several other scholars and civil servants, including Sir Bruce Fraser and Sidney Greenbaum, hence it is impossible now to attribute particular thoughts to a single person. However, for the sake of clarity, I will refer to Sir Ernest Gowers as he was the main contributor.

1987: 40). Furthermore, he criticised an unreasonable love of long words and lack of precision (Gowers 1987: 40-41).

Vagueness tends to go along with "cautionary clichés" (Gowers 1987: 42).[3] Cautionary clichés are used automatically and do not transfer much relevant information. This may happen when the speaker decides to avoid precision to stay polite, leading to the use of euphemisms (Gowers 1987: 42). Both Gowers and Orwell heavily criticised the overuse of the "not un-" device, as in this example: "I think the officer's attitude was *not unduly unreasonable*" [emphasis added] (Gowers 1987: 43). Orwell's rule no. 6 acknowledged that in some instances the speaker may be forced to avoid precision; however, that does not excuse the constant use of troubling understatements (Orwell 1968: 139).

Gowers slightly modified Fowler's rules. Firstly, the author should not use more words than necessary to convey the meaning, since the overflow may render the message unclear and tire the reader (Gowers 1987: 48). Here Gowers focuses on superfluous constructions similar to Orwell's ready-made phrases: "*Do not use roundabout phrases where single words would serve*" (Gowers 1987: 48). Secondly, Gowers duplicates Fowler's rule of preferring familiar words to far-fetched ones but adds a practical condition: "*if they express your meaning equally well*" (Gowers 1987: 48). Thirdly, the author should prefer concrete words to abstract ones to convey the message clearly (Gowers 1987: 48). Gowers skipped Fowler's fifth rule of the preference towards the Saxon word, but in many cases choosing a shorter word will indeed satisfy this criterion. Perhaps what Fowler wanted to achieve by that rule is better outlined by Orwell's rule no. 5: "*never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent*" (Orwell 1968: 139).

3. Plain English in legal writing

3.1. "Legalese" as the language of law

Legal writing is frequently a subject of plain English postulates in modern times. This is because, firstly, legal English tends to involve a highly specialised register and structure which are not familiar to lay-persons. Secondly, it is rather difficult to escape its reach. We are surrounded by law as its subjects no matter how well we are educated in terms of legal knowledge. We enter into contracts every day while buying and selling items, using transportation serv-

[3] Gowers provides a baffling example from a letter drafted by one of the British officials: "[…] he is inclined to think that, in existing circumstances, there is, prima facie, a case for...".

ices or working for our employers. Death, which inevitably surrounds our daily fortunes, is not only a tragic fact but also a legal event resulting in a loss of legal capacity and opening of succession. Wills, lawsuits, tenancy agreements, regulations, and administrative decisions – all those documents are written in a language that is, in fact, a foreign language to everyday people, and which is traditionally taught in law schools. It is not surprising that the public is willing to fight for the simplicity and clarity of what they pejoratively call "legalese". After all, it is not possible to actively participate in public life if one does not understand the language of its proceedings.

That fight against legalese has a surprisingly long tradition on the British Isles. There was a time when the language of the law was literally a foreign language for English subjects. The victory of William the Conqueror in the bloody battle of Hastings (1066) opened the English language to Norman influences. At first, Latin remained the language of law, but when England started to remove it, what came as a replacement was not English, but French, which retained this privileged character for hundreds of years (Gillies 2011: 170). Interestingly, Law French, which was a technical dialect used by the legal profession in England, remained the language of law even long after French was abandoned in everyday life (Gillies 2011: 169). There were even several statutes adopted to force the legal profession to use English but to little avail at least until the 18th century (Gillies 2011: 168).

Eventually, in the 1970s, the modern plain English movement launched its fierce campaign against the unreadability of legal language in two English-speaking countries: the United States and the United Kingdom. The following sections are intended to depict characteristic features of legal English and then to synthesise the answer of the plain English movement to the alleged overcomplexity of that language.

3.2. The main characteristics of legal English

The distinctiveness and peculiarity of legal English collapse to several linguistic features which have been well described by practitioners and scholars. This section aims to outline the most important ones.

What perhaps usually baffles an unprepared reader is the register composed of words which are often either archaic or long and odd-sounding. This is, however, not only due to the often-criticised pompous style of legal writing. The very practical reason for such distinctiveness is the need for precision. Words that are in use in everyday English may have blurry definitions whereas the language of law prefers to use specific terms; these are often obsolete, out of

use and of foreign origin but at the same time well-defined. Typical examples of the legal register include adverbials such as "hereinafter", "thereto", "whereas", "whereby"; noun phrases such as "promissory estoppel", "conveyance", "gross negligence", "servitude", "collateral", "consideration"; verbs such as "to accrue", "to discharge", "to default", "to render", foreign expressions such as "*ratio legis*", "*ex nunc*", "*acquis communautaire*", "*ex parte*".

Several of those phrases have acquired a special legal meaning apart from what a lay-person could reasonably expect. For example, "whereas" is a subordinator that is in use in contexts other than legal writing; in legal English, however, that word serves as a special introduction in recitals, which have a function of a preamble depicting the purpose of a document and intentions of the parties (Fotaine 2006: 62). Similarly, "consideration" within English common contract law stands for a doctrine of a reciprocal exchange of promises between parties, not for a plain "careful thought" (McKendrick 2017: 5.2). As it may be expected, such phrases and constructions impose a problem for lay-persons, as their meaning and purpose in legal English is counter-intuitive and does not reflect plain everyday English.

Concerning syntax, legal writing often manifests itself in long sentences with key terms repeated multiple times (Williams 2004: 113-114). That may help to avoid ambiguity but at the same time renders reading more difficult. Legal writing is also full of so-called "doublets" and "triplets" consisting of irreversible binomials – they are fixed expressions made of two or several words, often synonyms, connected by a preposition, as in: "null and void", "due and payable", "to perform and discharge", "power and authority" (Espenschied 2010: 164-165; Gustafsson 1984: 123-124). Usually, the added synonym does not convey any special meaning and is in fact superfluous but adds the "flavour of the law" and reflects the long tradition of using such fixed phrases. Lawyers also tend to overuse the passive voice – "approximately one-quarter of all finite verbal constructions in prescriptive legal English take the passive form" (Williams 2004: 114). Along with the preference for passive and impersonal forms comes often applied nominalisation.

The following excerpt is taken from a contract clause published by the UK Plain English Campaign as an example of an unreasonably long sentence. I shortened it – originally it contained 516 words:

> *In the event that* the Purchaser *defaults* in the payment of any instalment of purchase price, taxes, insurance, interest, or the annual charge described elsewhere *herein*, or *shall default* in the performance of any other *obligations set forth in* this Contract, the Seller may: at his option: (a) Declare immediately *due and payable* the entire unpaid *balance* of purchase price, with *accrued interest*, taxes,

> and annual charge, and demand full payment *thereof*, and enforce *conveyance* of the land by *termination* of the contract or according to the terms *hereof*, in which case the Purchaser shall also be liable to the Seller for *reasonable* attorney's fees for services *rendered* by any attorney *on behalf of* the Seller […] [emphasis added]. (Plain English Campaign Website)

I underlined the repeated expressions and italicised the phrases characteristic of legal writing. That excerpt illustrates most of the features mentioned above – specific register (e.g. "defaults", "conveyance"), adverbials ("thereof", "hereof"), repetitions ("the Seller", "the Purchaser"), doublets ("due and payable"). The sentence is excessively long and consists of dimly conjugated clauses. The question is: would it be possible to rewrite such clauses so that they become more readable for non-lawyers but at the same time not lose the precision required by the profession? Should lawyers change the way of formulating their thoughts or maybe legal language is inevitably difficult to comprehend and not much can be done?

3.3. The development of the plain English movement in legal writing

Although the fight against the complexity of legal language has a long tradition in English-speaking countries, it has gained special momentum only in the last decades. Scholars such as David Mellinkoff initiated a thorough analysis of the inadequacy of legal English and, at the same time, the public started to display its impatience with what they called a legal "gobbledygook" (Williams 2004: 116). Stunts such as the public shredding of government documents before Westminster became part of the wide movement for which unreadable legalese is still the main foe (Williams 2004: 116).

The change in views on the role of legal English was immense. Sir Ernest Gowers, whose achievements are outlined in Section 2, still held a rather conservative view that legal English was outside of the scope of his recommendations on good writing. "Legal drafting must […] be unambiguous, precise, comprehensive and largely conventional. […] Legal draftsmen cannot afford to give much attention, if any, to euphony or literary elegance," he wrote (Gowers 1987: 6). The public and more progressive scholars, however, asked themselves: is there truly a good reason not to apply common standards to legal English? Out of this question, recommendations were formed, and several of them were successfully implemented at the governmental level.

The plain English movement is mostly directed towards governments but also practising lawyers. It has achieved substantial results mainly with the first target group. For example, the UK Unfair Terms in Consumer Contracts

Regulations of 1999 set out a requirement of using "plain, intelligible language" in consumer contracts to protect customers (Regulation 7). That rule was later upheld in the UK Consumer Rights Act 2015 (see e.g. Section 64.3). Additionally, the UK Civil Procedure Rules of 1998 introduced changes to legal terminology in England and Wales, e.g. exchanging "plaintiff" for "claimant" (see e.g. Section 2.3).

In the US, legislative efforts were broad and first resulted in the Paperwork Reduction Act of 1976 and then in the Plain Writing Act of 2010 which requires all federal executive agencies to issue documents written in plain English (Section 4[b]). Plain writing was defined there as "writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience" (Section 3[3]). The US Government prepared several guidelines to train federal employees to comply with that requirement.[4]

Over the recent decades, thanks to such initiatives, the formal language of legislature has become more accessible in many Anglophone countries. The tendency gained momentum first in Australia and New Zealand, then moved to the UK, and finally (and more reluctantly) to the US (Williams 2011: 140). As can be seen in the above examples, in many instances governments' efforts are mostly focused on facilitating communication between governmental agencies and citizens; they also attempt to force parties seen as stronger to implement plain English in relations with consumers, most notably in services such as banking. At the same time, governments are rather hesitant to change traditional legal settings such as statutes. For example, after extensive debates and reports, the use of "shall" eventually dropped significantly in the UK legislature, as confirmed by empirical research (Williams 2011: 143), but nevertheless that highly controversial modal has not been eradicated from the Acts of Parliament and is still persistent, as the reader may easily see in the recently published UK Public General Acts.[5] As to the US, Williams rightly noticed that despite the visible progress, especially in court procedure, "[…] the ethos of modernizing the legislative drafting style has still not penetrated the US Establishment […]" (Williams 2011: 145).

As regards the language used by lawyers outside of consumer contracts, it is more about convincing professionals to use plain English than about imposing any binding restrictions. Bar associations, such as the American Bar As-

[4] See e.g.: *A Plain English Handbook. How to create clear SEC disclosure documents* issued by the Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, Washington DC 1998.

[5] See the "legislation.gov.uk" website maintained by the UK National Archives (consulted 28 October 2023).

sociation, are actively promoting plain English within the legal profession and similar efforts are made by scholars teaching legal writing at American universities.[6]

3.4. The postulates of the plain English movement

The postulates of the movement are usually formulated in a similar vein. Primarily, they advise eliminating particular features of legal English described above in Section 3.2. For example, the Plain English Campaign proposes in its guidelines to shorten the sentences, opt for the active voice instead of the passive, use pronouns "you" and "we" instead of the third person, and to avoid nominalisation. When it comes to the register, the Campaign recommends adjusting the used words to the reader, which is essential in direct communication between lawyers and clients. They also propose "the A-Z of alternative words" offering plain substitutes to "the pompous words and phrases that litter official writing" (Plain English Campaign Website). Williams suggested similar measures, including replacing archaic and foreign terms with plain English equivalents, removing superfluity, shortening sentences, and reducing the use of the passive voice and nominalisation (Williams 2004: 117-123).

Richard Wydick, a well-known American professor of law, drafted one of the most comprehensive practical guidelines for clear legal writing. His "Plain English for Lawyers" is still widely in use in reviewed editions. Wydick's recommendations are specific to legal writing; he advises, among others, avoiding compound constructions and "it is [...]" sentences, avoiding wide gaps between classic S-V-O elements[7] of the sentence, and putting modifiers close to what they modify (Wydick 2019: 22, 27, 50, 55). The last chapters of his work are devoted to careful punctuation and matters of the graphic style of documents, such as margins, space between lines, fonts, and appropriate headings serving as "visual clues" (Wydick 2019: Chapters 8 and 9). One of the particularly useful exercises proposed by Wydick is to underline all "glue words" in a sentence, or as a grammarian would call them: function words. A surplus of function words in contrast with lexical words may suggest a badly written piece (Wydick 2019, 18-21). Let us see again the contract clause cited before:

> In the event that the Purchaser defaults in the payment of any instalment of purchase price, taxes, insurance, interest, or the annual charge described else-

[6] See e.g.: the Resolution of 9th-10th August 1999 adopted by the House of Delegates of the American Bar Association.

[7] I.e., subject – verb – object word order.

> where herein, or shall default in the performance of any other obligations set forth in this Contract, the Seller may: at his option: (a) Declare immediately due and payable the entire unpaid balance of purchase price, with accrued interest, taxes, and annual charge, and demand full payment thereof, and enforce conveyance of the land by termination of the contract or according to the terms hereof, in which case the Purchaser shall also be liable to the Seller for reasonable attorney's fees for services rendered by any attorney on behalf of the Seller […] [emphasis added]. (Plain English Campaign Website)

After underlining all function words, it becomes evident that the clause could be rewritten to be clearer. Wydick proposes to avoid compound phrases such as "in the event that" and to substitute them with simple "if", "by" "since" etc., depending on the context (Wydick 2019: 23). He also recommends avoiding the passive voice, nominalisation, and superfluity (Wydick 2019: 30-43). A good example of such superfluity is a typically legal doublet "due and payable" which could be easily replaced by one word. Similarly, it was rather abundant in the above clause to repeat what "the unpaid balance" would consist of since it is clearly stated one line before. Such tricks are, according to Wydick, "word-wasting expressions" (Wydick 2019: 24-25). As to the length of sentences, Wydick recommended that one sentence should usually convey only one main thought with an average length below 25 words – the cited excerpt has 116 and originally contained 516 words (Wydick 2019: 47).

3.5. The limits of applying plain English in legal writing

Although plain English postulates are convincing, they should not be applied universally without appropriate reflection. They are also not a remedy for a lack of legal knowledge. As E. Assy points out, the plain English movement will not itself let untrained persons effectively represent themselves in courts (Assy 2011: 11). Neither will simplifying the terminology make lay-persons understand legal concepts behind those terms as this is part of comprehensive legal education. Plain English may, however, facilitate communication between clients and members of the legal profession, as well as between citizens and governments. Moreover, overcomplicated legal English may be as bad for lawyers as it is for lay-persons, befogging the meaning and making regulations and contracts unreadable even for trained professionals.

Some of the widely criticised features of legal English are, in fact, particularly useful in technical communication between professionals. For example, adverbials such as "hereinafter" or "thereto" are highly logical in their morphological construction and they allow lawyers to avoid constant repetitions,

precisely pointing out the scope of reference for lexical words. However, they would perhaps not be appropriate in correspondence with a client and are not necessary for simple contracts concluded between two individuals without any legal background or for GDPR notices.[8]

Similarly with foreign expressions – Latin phrases such as "*ratio legis*" or "*ex parte*" form an international language of law and may be useful in communication between lawyers from various parts of the world since they automatically convey a specific meaning within legal knowledge. Some of them are still crucial for describing certain legal events. For example, there is no English or Polish short equivalent to Latin *"ex nunc"* and "*ex tunc*", which describe whether the effects of nullification are applied from now on or from the outset. Using those terms, however, would not make it easier for a lay-person to understand a piece of writing.

Therefore, legal drafting (and translation) requires a careful, case-to-case deliberation on style and register. The applied linguistic variant should be adjusted to the audience and particular circumstances. While the plain English movement may considerably help us in achieving that equilibrium, there are noticeable limits to its claims.

3.6. Suitability of plain English for non-native speakers

As underlined above, the modern plain English movement started in the United Kingdom and developed in countries such as the United States and Australia, mostly as a remedy for incomprehensible "officialese", the language of officials.[9] Therefore, it was created by native speakers to facilitate communication between L1 speakers of English, especially in the context of law and state-citizen relations. That raises the question of whether plain English is indeed suitable for non-native speakers of English, namely if the same recommendations remain valid if one wants to simplify communication with L2 speakers of English[10].

Such a question gains in importance in the context of a rising number of non-native speakers who already greatly outnumber native speakers (British Council: 3).[11] English is no longer a language of particular nations but has be-

[8] GDPR stands for General Data Protection Regulation, i.e. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (EU Official Journal L 119/1). GDPR notices are given on everyday basis to data subjects whose data are processed by data controllers (such as companies).

[9] See for example the US Plain Writing Act of 2010.

[10] L1 stands for a speaker's first language and L2 is their second language.

[11] The report can be found on-line: https://www.britishcouncil.org/sites/default/files/english-effect-report-v2.pdf (consulted 5 May 2023).

come a true *lingua franca,* a bridge language of the world, used internationally for a variety of purposes and in diverse places, including work environment, academia and customer service. Without a doubt, it poses a significant challenge both for L2 users and for those native speakers who are concerned with the intelligibility of their language. It is no longer sufficient to verify whether a message is clear for typical L1 speakers of English since one has to also analyse it within a broader linguistic and cultural context.

E. Thrush conducted a study particularly germane to this issue. Thrush starts with a tragic history of Chinese pilots who had to navigate in thick fog (Thrush 2001: 289). A moment before the crash the pilots asked each other what "pull up" meant. As it occurs, they were trained in a standardised version of English for aviation in which the term used for the upward movement of a plane is "climbing". A seemingly easier command to "pull up", which was displayed by the plane's system, was not properly understood by the pilots. As E. Thrush points out, phrasal verbs, though intuitively well understood by native speakers of English, pose a significant challenge even for advanced L2 speakers (Thrush 2001: 289). That is because they have idiomatic meanings and are often learned only after a speaker has already mastered other vocabulary (Thrush 2001: 289).

As may be expected, most plain English guidelines promote the use of phrasal verbs instead of single words perceived as more difficult, e.g. the US Security Exchange Commission recommended the use of "cross out" instead of "delete" or "get round" instead of "circumvent" (Thrush 2001: 293). In her study, E. Thrush revealed that comprehension of phrasal verbs among L2 speakers of English is much lower than among native speakers. The participants had to match the Latinate terms with phrasal verbs. While L1 speakers averaged 26.5 correct answers out of 27, German and French students could only match the meaning of circa one-third of them (Thrush 2001: 294). That may be surprising taking into consideration that they were all advanced speakers of English, and they did well on the general reading proficiency test (Thrush 2001: 294). It indicates that phrasal verbs are indeed one of the most difficult aspects of English as a second language. Therefore, guidelines which set out a preference towards phrasal verbs in plain English may at the same time unintentionally render the message incomprehensible for non-native speakers.

The second part of Thrush's study explored what are the preferences of French and German students when they are faced with the choice between English words of either Latinate or Germanic (Saxon) origin. All the participants showed a general inclination towards Latinate terms (Thrush 2001: 294). While Saxon-derived words may seem simpler to native speakers of English, excluding

Latinate terms in an international setting may paradoxically negatively influence the reading comprehension of L2 speakers of English.

Rules proposed by plain English guidelines in many cases prove to be successful in rendering the language more comprehensible. However, the authors should take into consideration the societal and cultural background of their audience. What is more comprehensible for native speakers, does not necessarily have to improve communication with L2 speakers of English. Section 4 presents the results of the survey that reinforce this notion.

4. The analysis of the results of the legal English survey

4.1. The structure of the survey and background information

The survey was conducted online via Google Forms and was open to respondents both with and without a legal background. Its goal was mainly to verify linguistic preferences among the respondents regarding legal English and to check their knowledge of the professional register. The survey was advertised on social media such as Facebook and LinkedIn, which included also closed groups for legal professionals. 76 persons participated in total. 72.4% of the respondents had experience within the legal profession. 11.8% were native speakers, and the rest – speakers of English as a second language (predominantly native speakers of Polish). The survey was composed of questions divided into parts – their full list and collected data are available in the data repository linked in the data statement. The examples used in the survey exercises were mainly based on professional legal manuals (Mason & Canham 2021) and plain English guidelines (Plain English Campaign).

It is important to note that the survey was not pre-designed to be representative and hence I do not extrapolate the results on the general population. However, the survey may serve as a valuable source for qualitative reflection on the use of legal English and its plain version, both in professional and everyday contexts, especially when the answers to the close-ended questions are contrasted with the open-ended questions.

In Part 1 of the survey, the respondents were asked to tick the words whose meaning they understood as "known" words – those were legal terms of varying levels of difficulty. In Part 2, two sentences were given, one in the passive and the second one in the active voice. The respondents were asked to decide whether those sentences conveyed a similar meaning. Then, they had to choose which option was easier to understand and which one was, in their opinion, more suitable for legal documents.

Next, after answering a question about their experience with law, the respondents were divided into two groups. For the purpose of this study, by persons with a "legal background", I broadly understand both legal professionals with full professional rights (attorneys-at-law, public notaries, judges etc.) and undergraduate students of law, as well as legal and sworn translators. In contrast to lay-persons, all those groups are significantly exposed to the legal register and use it in their everyday activities.

The respondents with a legal background were asked to choose one word out of a given pair which was, according to them, more suitable for legal documents; those without legal experience had to pick an easier one from the same list of pairs (Part 3). Part 4 was designed to investigate linguistic preferences among all respondents. They had to choose one word or phrase out of the two given options to fill the gaps in the proposed sentences. One of the options was always more typical for plain English and the second one for a more formal, specialised variant of the language. Finally, Part 5 was meant to check the knowledge of phrasal verbs. The respondents had to link single words, mostly of Latin origin, with phrasal verbs proposed in the list.

4.2. The results: an analysis of the answers to the closed-ended questions

Part 1 shows which legal words are generally well-known by the respondents and which ones are not familiar. For example, 97% of the respondents knew the meaning of "to appeal", 94% – "defendant", and 93% – "mortgage". "Hereby" and "whereas" are similarly well known and the legal background was not necessary to recognise those. Slightly worse with "plaintiff" – 75%. At the other end of the scale is "recitals", a word unknown to most of the respondents, regardless of their legal knowledge. Only 44% knew "conveyancing" and 53% – "in lieu of". The last two are, of course, phrases of French origin. "Extinguishment", "tangible" and "to convene" appear also not to be well known.

Part 2 provides intriguing results on the linguistic perception of the passive voice. The respondents had to compare two sentences: "the court decided the case" (Option A) and "the case was decided by the court" (Option B). 82% of the participants agreed that both sentences – in the passive and active voice – convey a similar meaning. However, while most respondents decided that the active is easier to understand, 72% of them still chose the passive as more appropriate for a legal document. It seems that the respondents deliberately chose a less clear option only for stylistic reasons. Although the passive voice can be particularly useful for certain purposes (e.g. if there is a need to omit the subject), the literature points out its overuse in legal writing (Williams 2004: 114).

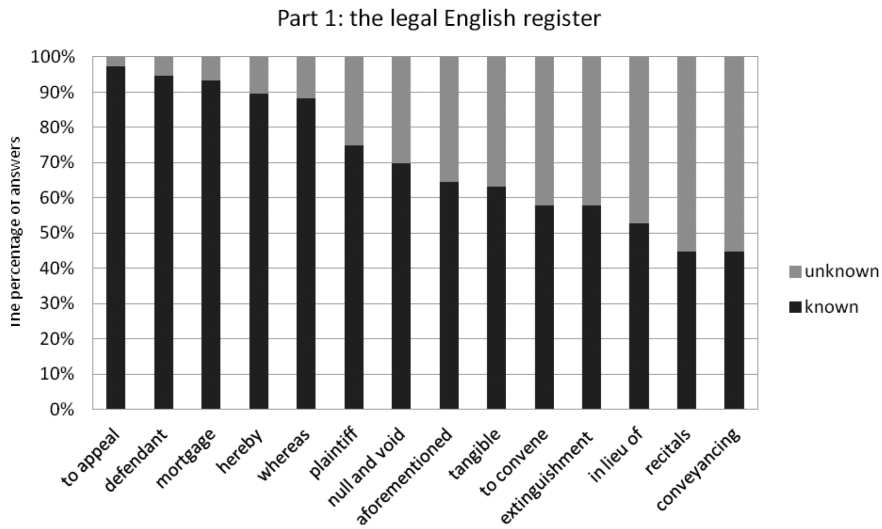

Figure 1

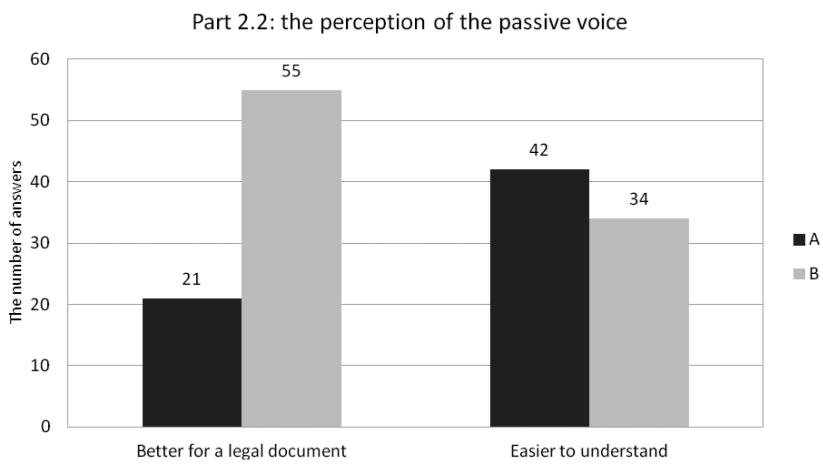

Figure 2
A – the active voice; B – the passive voice.

Most plain English guidelines advise omitting the passive voice where it is unnecessary (Plain English Campaign).

Part 3 displays differences in linguistic preferences between respondents with and without legal experience. The former were asked to choose one word out of a given pair which was, according to them, more suitable for legal documents. The latter were asked to pick an easier one. The results were almost

a mirror image: identical in reverse. One example is particularly interesting. As stated above, only around 53% of all the respondents knew the phrase "in lieu of". Given the alternative between "in lieu of" and "instead of", striking 100% of the respondents without legal experience chose "instead of" as easier to understand. At the same time, 87% of those with a legal background decided on "in lieu of" as more suitable for legal documents. Surprisingly, some respondents with a legal background who had previously admitted that they did not know the meaning of "in lieu of" still chose it as a better option than "instead of". The answers in percentages are displayed in the tables below.

Part 3.1: the perception of legal register v. plain equivalents

	1A	**1B**	**2A**	**2B**	**3A**	**3B**	**4A**	**4B**	**5A**	**5B**
words	in lieu of	instead of	material	tangible	abundance	enough	to commence	to begin	because of	due to
lawyers	87%	13%	25%	75%	71%	29%	89%	11%	2%	98%
non-lawyers	0%	100%	81%	19%	5%	95%	14%	86%	57%	43%

Table 1

Part 3.2: the perception of legal register v. plain equivalents

	6A	**6B**	**7A**	**7B**	**8A**	**8B**	**9A**	**9B**	**10A**	**10B**
words	ended	termi-nated	remunera-tion	pay-ment	to repay	to reimburse	to obtain	to receive	to give	to grant
lawyers	7%	93%	78%	22%	5%	95%	80%	20%	7%	93%
non-lawyers	67%	33%	10%	90%	81%	19%	33%	67%	76%	24%

Table 2

Description: the respondents had to choose between options "A" and "B". The results in two neighbouring columns of the same number always sum to 100%. "Lawyers" stands for respondents with a legal background, including law students and legal translators, as defined above. "Non-lawyers" are those without any legal background.

Part 4 was meant to check linguistic preferences among all the respondents. The participants were asked to fill blank spots in sentences with one chosen option from a given pair – the full list of sentences is available in the data repository. In some cases, the results were split. For example, fairly the same number of respondents preferred plain "set up" (a company) as legal "establish". Interestingly, 91% preferred legal "comply with" (the rules) to plain "keep to", although the UK "Plain English Campaign" recommends "keep to" as a plain alternative to "comply with" (Plain English Campaign Website). Similarly with more formal "purchased" and plainer "bought" – the majority preferred "purchased". Most respondents preferred also seemingly more difficult "circumvent" to plain "get

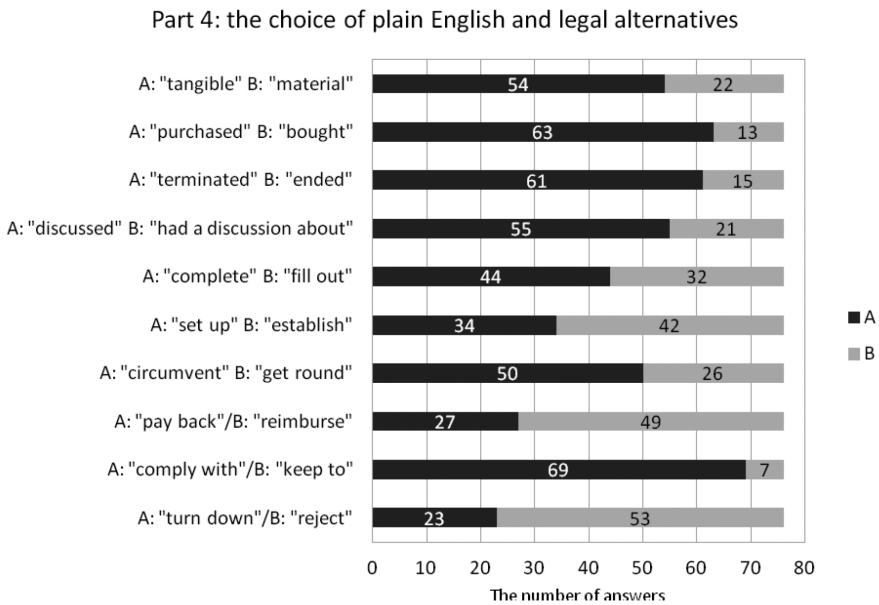

Figure 3

round" and "reimburse" to "pay back". Those results suggest that certain legal phrases are so well recognised that it is not particularly reasonable to forcefully replace them. Nevertheless, in many cases, a legal term may not be more precise than its plain version. If plain alternatives are recognised by the majority and legal ones are not, it would be advisable to use the former in correspondence with non-lawyers.

Finally, Part 5 was designed to check the knowledge of phrasal verbs. The participants had to attach single words to phrasal verbs provided to them in a list. Some of those verbs were well recognised, e.g. 88% of the respondents rightly connected "insert" with "put in". On the other hand, only 49% knew that "ascertain" means "find out". As expected, the native speakers did not have much problem with matching phrasal verbs with their seemingly more difficult one-word counterparts. E.g. for 89% of the native speakers "deduct" means "take off", but only 27% of L2 respondents recognised it as such. Most associate "deduct" with "find out". I presume that it is because "deduct" is close to the Polish "*dedukcja*" meaning the process of reaching a decision by thinking about the known facts. However, the verb would then be "to deduce" (in Polish "*wnioskować*"). To deduct means to take off or to count out, like in the sentence "the company deducts $60.00 each week from my salary for health insurance."

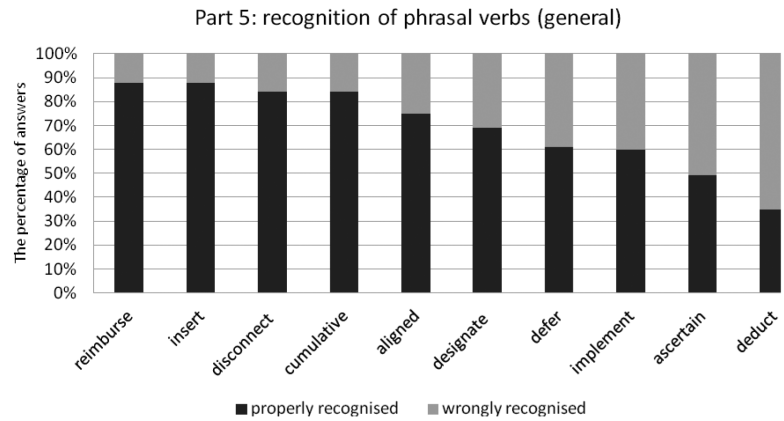

Figure 4

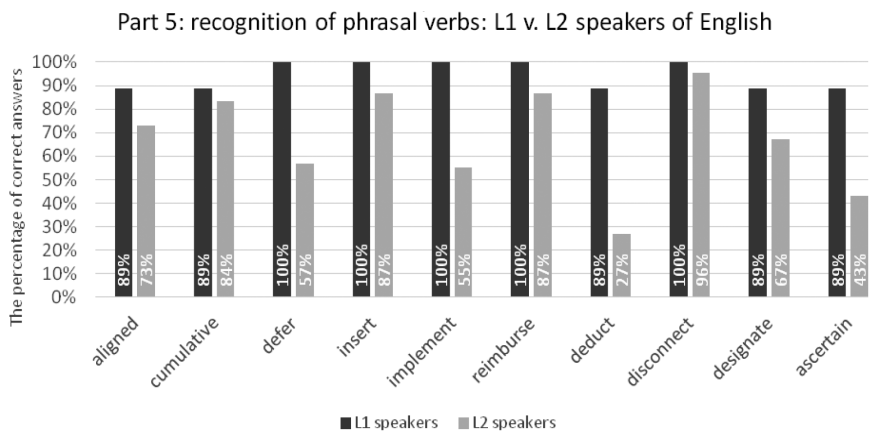

Figure 5

What is intuitive for native speakers may be particularly challenging for those learning English as a second language (see Ellis 1999: 57-58, 185, 307; Thrush 2001: 289). Many respondents commented that they had understood the meaning of seemingly more difficult words of Latin origin (like "reimburse" derived from Middle French *embourser*, from Medieval Latin *bursa*), but they struggled to find an appropriate phrasal verb.[12] And yet, most guidelines of plain English suggest replacing Latin-based English vocabulary with phrasal verbs. Phrasal verbs are, however, one of the most difficult aspects of English for foreigners (Dagut & Laufer 1985: 77-78).

[12] For the etymology of "reimburse" see: Online Etymology Dictionary, https://www.etymonline.com/word/reimburse (consulted 5 May 2023).

The survey reinforces the results of E. Thrush's study cited above, suggesting that non-native speakers have significant difficulties with properly recognising phrasal verbs. Furthermore, they often show an inclination towards Latin-based English vocabulary. However, it would be useful to make a distinction between generally well-understood, often-used phrasal verbs, such as "put in", and those not very well known, like "take off" with the meaning of "deduct". As can be seen in the chart below, the results varied from 88% to only 35% of good answers.

There seems to be a need for a partial revaluation of what is truly "plain" in our world language. Since most people speaking English are currently no longer native speakers (British Council: 3), it should lead, in turn, to changes to a paradigm of what is easily understandable in English and what is not. The plain English movement would benefit from incorporating the cultural and linguistic background of non-native speakers to retain its effectiveness.

4.3. The results: an analysis of the answers to the open-ended question

The last question was optional, formulated as follows: *"Do you see a tendency towards simplification of legal English in your work? Would you rather use plain English or professional legal English when drafting a document? Why? Please share your opinion. You can comment on any issues related to the use of plain and legal English in legal-related work."* Out of 76 respondents, 33 decided to answer those questions. The answers varied from simple and short to elaborate ones. Since the survey was anonymous, the answers were labelled with pseudonyms, starting with R1 and ending with R32. I did not introduce any corrections to the answers, and they are cited "as is", besides additions that are marked with the square brackets. The full list of the answers is provided in the data repository.

11 respondents indicated that they noticed a tendency towards the simplification of legal English in their work, although the scope of this trend varies in their reception. For example, R1 is sure of the tendency itself, but then they add that they would use legal English anyway due to its perceived professionalism. A remark that *"people reading the document would probably treat me more serious and competent"* is particularly interesting, suggesting that, indeed, a formalised version of legal English may be often used not necessarily because of its usefulness but because of the "legal flavour" which adds seriousness and elevates lawyers' competences in the eyes of clients. Similarly, R5: *"[…] I feel there should be a degree of formality - reading a document from the courts with the use of plain English would not meet expectations or be as creditable. I think it*

also upholds tradition." That opinion introduces an additional factor of tradition. Tradition, indeed, plays a significant role in developing rituals related to professional legal jargon (see e.g. the history of Law French: Section 3.1 above). Legal English still draws abundantly from sources of foreign origin, including French terminology; it also promotes the use of archaisms.

The respondents pointed out that, by and large, plain English is more suitable for non-lawyer clients since it is easier to understand (R7, R10, R24, R27). Some of the respondents believe that plain English should be used also in communication between lawyers, e.g.: *"[Plain English] conveys the message to clients and peers much easier, reduces historical barriers within the profession created through language and is much more pleasant to read and understand, particularly when reviewing large contracts"* (R10). Many shared the opinion that legal English is most suitable for formal documents and communication between lawyers. The most common argument to back this view is that of precision (e.g. R4, R19, R23, R31).

However, in most cases, legal terms acquired their specificity through methods that, by definition, render them more difficult to comprehend by laypersons. To maintain its clear meaning, legal English either incorporates words which are not used in everyday language or strictly defines those which are in use. However, in the perception of some non-lawyers, such legal English terminology *"only obstructs the understanding of meaning for people not familiar with legal profession"* (R16).

Interestingly, a considerable number of the respondents expressed a negative or cautious opinion about the possibility of using plain English in legal-related work. As R12 puts it, *"I dont* [sic] *see any excuses from learning the right way of communicating in official language"*. R25 points out that legal English, despite its high degree of difficulty, serves well in legal, formal situations, especially in the context of courtrooms and legal drafting. R30 observes that legal English sounds more professional in a business environment, which is another argument of a rather aesthetic value. R33 is of a similar opinion, although they observe that a transition into plain English could be beneficial for citizens.

When it comes to the arguments in favour of traditional legal English, R31 points out that there are pragmatic reasons for the use of a more formalised language. Ambiguity, so the reasoning goes, leads to unnecessary negotiations and possible legal conflicts. Legal English ensures clarity and coherence. That respondent proposes a valuable distinction between distinct types of legal documentation depending on their recipients. Namely, a typical mortgage loan could be written in simple English due to a reduced ability of a party to such a

contract to understand legal jargon (mortgage loans are taken by numerous citizens on an everyday basis). However, a lender, which is usually a bank, will most probably insist on legal English *"to be legally covered in court"*. Quite straightforwardly, R31 indicates that *"a company will often cover it's own interests, even if this means deliberately complicating terms and conditions for less well versed signee's"*. That is why in many jurisdictions a plain language notice is required as part of the legal relationship between businesses, especially banks, on the one side, and natural persons on the second side, as a way of counteracting unfair competition and preventing misrepresentation.

Remarkably, plain English may be perceived by some users as equally or even more professional than legal English. For example, R6 expresses an inclination towards the simplification of legal English. However, while arguing for it, they do not only refer to the accessibility of plain English but also notice that it is more authentic and professional. As they note, *"it is a common belief that the more complex your language is, the smarter and more professional you seem to be"* – that belief, according to R6, does not necessarily reflect the truth. R6 also recognises problems related to legal translation in the example of Polish-English linguistic pairs. As they observe, Polish lawyers often attempt to make a word-for-word, literal translation from Polish into English, which leads to over-complicated structures. R6 reflects also on the untranslatability of legal language: *"many dictionaries and legal English workbooks use "polonized" terms instead of finding appropriate respective institutions in common law"*. That is, indeed, a common challenge for lawyers and translators originating from different legal systems, such as common law and civil law.

R11 provides the opinion from a translator's perspective. As they observe, legal matters could be simplified by easier language. However, *"when it comes to corporate issues, agreements between big enterprises, dealings with the government"* formal, legal English is more appropriate. As R11 states, *"if I were to translate some documents into plain English instead of official legal I would have had great problems in conveying the exact meaning of words I were to translate"*. That may be partially due to a lack of training of both lawyers and translators to use plain English to express legal concepts. Especially if a translator does not have expertise in law, but deals with legal translation, seemingly proven and safe terminology may be more appealing. At last, there is also an aesthetic argument: *"I just love how proper legal English sounds, it just makes me feel good"* (R11). While it is widely subjective, indeed many respondents indicated attraction to legal English due to its professional or formal flavour.

5. Conclusions

The objective of this paper was to discuss the theoretical background behind the simplification of legal English and to present current tendencies based on the conducted survey. Plain English may be a valid alternative for formalised jargon wherever it is possible to apply it without a detrimental loss of precision. In many cases, the use of legal English is caused rather by aesthetic or historical reasons, not by a professional necessity. Therefore, it would be feasible to replace certain parts of "legalese" in communication with clients and citizens for the sake of clarity. That was also an inclination expressed by many respondents to the survey who did not have a legal background.

Needless to say that the discussion on the plain English movement is relevant not only for lawyers drafting documents in English but also for specialised translators translating legal documents and technical writers. For example, a translator who translates a GDPR notice or a contract from Polish into English, has a variety of translation choices at their disposal and may render the document either plainer or more strictly formal without distorting the original meaning.

However, several reservations should be made. Firstly, certain elements of "plain" English are not, in fact, plain for those who are not native speakers of that language. A good example of that are phrasal verbs, which constitute a difficult part of the language for foreigners, that being confirmed both by E. Thrush's study and my survey. Secondly, certain elements of legal English are already so widely recognised, that it may be not particularly reasonable to replace them, with examples such as "comply with" and "to purchase".

Therefore, the plain English movement should incorporate a broader linguistic context and look for solutions that are useful not only to L1 speakers of English but also to L2 speakers within a given context, taking into account the needs of a diverse target audience (which, in many instances, may be effectively surveyed and tested beforehand). This, in particular, means recognising the linguistic patterns used by non-native speakers of English in their native language if such users form a significant part of a given society or tend to predominantly use certain public services. Even where it is not possible to find one general pattern among L2 speakers of English in each context, at least proper consideration should be given to reconcile the expectations of recipients coming from different countries and (legal) cultures. This is immensely important in the world in which English has become a language of international relations, contracts, customer service, and academia.

Data availability statement

Survey data are available at:
https://osf.io/ufpx7/?view_only=5a61a9d0de4b4b228d77b085f7a72c8a

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