



Francis Taylor Building

**FTB Kingsland Cup and Prize Moot**  
**Public Law Mooting Competition**

**Guide for participants – 2016/2017**



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### Front cover image: The Kingsland Cup

The Kingsland Cup is a vintage solid sterling silver trophy cup made in Birmingham, England in 1925 by the famous silversmiths, The Usher Manufacturing Company, founded by Charles Usher at their Vittoria Street workshops. It weighs 335.4 grams. It stands 9" tall (11 1/4" on its Bakelite base), is 3 3/4" diameter at the rim and is 6 1/8" across the handles.

## 1. Foreword

*“An eminent barrister with strong academic credentials who developed expertise in the field of international economics” (Times, 14 July 2009)*

Lord Kingsland QC was one of very few able to maintain high profile careers at the modern bar and in politics. Christopher was the MEP for Shropshire and Stafford from 1979 to 1994 during which he came to lead the British contingent of Conservative MEPs. He was elevated to the House of Lords and became Shadow Lord Chancellor. In 2008 he became the opposition spokesman on legal affairs, a post he held at his death in 2009. Had he not died it was widely expected that he would have played an important part in government, as he had while his party was in opposition.

Christopher also served as vice-chairman of Justice, the all-party group set up to promote the rule of law and to assist the fair administration of legal process. As an advocate he appeared before the European Court of Justice in some of the leading cases of the day including acting for the whistle-blower, Stanley Adams, against the European Commission in the 1980s and, in the 1990s, in high profile competition and free trade cases. Later he became a leading member of the environmental law bar with particular expertise in the field of waste. He was an engaging and companionable member of Chambers.

The topics of the Kingsland Moot, European, administrative and environmental law reflect Christopher's own practice at the Bar. Christopher prided himself in speaking without notes in the House of Lords on even the most complex legislative areas. The Kingsland Moot aims to encourage and reward the virtues he possessed – intellectual rigor, clarity and fluency of expression and unfailing courtesy. These are qualities which are the essential tools of any advocate. FTB has



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a strong commitment to academic excellence and of promoting access to the Bar – including through our academic panel of university lecturers and our sponsorship of university prizes.

## 2. About FTB

FTB has a longstanding reputation for excellence. FTB was awarded Real Estate, Environment and Planning Set of the Year at the 2014 Legal 500 UK awards, and is consistently featured as a leading set in the legal directories for its expertise and leading role in planning, land valuation, infrastructure, environmental, public law, licensing and regulatory law.

Members of Chambers undertake specialist advisory work and regularly appear in courts at all levels in this country and abroad, including specialist tribunals and public inquiries. Chambers owes its long-standing reputation for excellence to its wide range of clients, the major projects it handles and the quality of its practitioners at all levels. Members of Chambers are also supported by a highly motivated and professional clerking team, recognised by Chambers being named the Client Service Set of the Year by Chambers and Partners at the 2015 Bar Awards.

Each year FTB seeks to recruit up to two exceptionally able individuals to undertake a twelve-month pupillage in Chambers. Competition for places is fierce, but the rewards for those selected are substantial. Pupils at FTB are provided with first class training in all aspects of practice at the Bar from some of the leading practitioners in their fields, together with a pupillage award of not less than £60,000 (including £10,000 guaranteed earnings) and the opportunity to obtain tenancy in Chambers at the end of their pupillage.

Chambers is not a member of the Pupillage Gateway and applications for pupillage usually open in each New Year and close in late January. More information is available on our website at:



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<https://www.ftbchambers.co.uk/recruitment/twelve-month-pupillage>

FTB also offers unfunded mini-pupillages on a rolling basis throughout the year, with more information available on our website at:

<https://www.ftbchambers.co.uk/recruitment/mini-pupillage>

FTB supports equal opportunities for all and will select candidates solely on merit irrespective of race, sex, disability, age, sexual orientation, religion or belief.

### 3. Eligibility and entry

The FTB Kingsland Cup is open to all UK undergraduates, postgraduates, GDL, BPTC and LPC students. It is free to enter.

Teams must comprise two students satisfying the above criteria. There is no restriction on the number of teams that can enter from any one institution, and teams may comprise students from different institutions.

Teams will be deemed to have entered the competition when they send to the contact email address ([kingslandcup@ftbchambers.co.uk](mailto:kingslandcup@ftbchambers.co.uk)) the following by the deadline:

- a completed entry and scoring form (entrants should complete the “Candidate Entrance Details” section only); and
- electronic copies of both skeleton arguments (see below).

As a result of practitioner and judge commitments, dates for the second and third rounds have not yet been confirmed, though an indicative timetable is provided in Section 5 of this Guide. At any stage of the competition, in the event that one or both members of a team are unable to compete in that round, they will forfeit their place in the competition and their place will be offered to the team who scored the next highest mark (*the ranking principle*). Places will be offered in accordance with the ranking principle until a team who is able to compete accepts a place.

Any decisions made by or on behalf of FTB in relation to entrance to the competition and / or in relation to any of the rounds and their determination are final. There shall be no appeal on any grounds from the decision of a judge or upon the conduct of the moot itself in any round.

Any complaints about the conduct of any of the teams during a round must be made by email ([kingslandcup@ftbchambers.co.uk](mailto:kingslandcup@ftbchambers.co.uk)). The Moot Coordinator may then investigate and resolve the problem as he or she thinks in the best interests of the competition.

FTB has the discretion to disqualify at any stage and without compensation any team that fails to comply with these rules or with the spirit of the competition.



## 4. Competition format and timetable

### First Round: Skeleton Arguments

The First Round problem can be found later in this Guide along with instructions. Each team is required to produce two skeleton arguments: one on behalf of the Appellant, and one on behalf of the Respondent. Teams not submitting two skeleton arguments complying with the requirement set out in the instructions below will be disqualified.

The closing time and date for First Round entries is **16:00, Friday 9 December 2016**. Entries received after that time will not be considered whatever the circumstances, so please ensure that you leave plenty of time.

Teams will be notified of whether or not they have progressed to the Second Round (the Semi Final) in the New Year.

## Second Round (Semi Finals): Moot

There are two Semi Finals. The four teams participating in the Semi Finals will be assigned a competitor team and told in advance whether they are mooting on behalf of the Appellant or the Respondent. The moot problem will be the same as for the First Round. No amendments to skeleton arguments are permitted.

The Semi Finals are usually held in Chambers and teams participating should dress appropriately for court. Robes will be provided, subject to availability. Full details of the arrangements will be provided closer to the time.

Timings are at the discretion of the judge, but each team can expect to be given 30 minutes on their feet to be shared between team members. Judges may award extra time if there have been judicial interventions. It is crucial that teams remember that, as in court, they are responsible for managing their own time keeping.

The opportunity for the team representing the Appellant to give a short (less than five minutes) reply following the Respondents' submissions will be at the judge's discretion. Time for a reply will be additional to the 30 minutes given for submissions.

After both teams have made their submissions, the judge will give feedback.

The names of the teams going through to the Final will be announced once both moots have been completed.

### Round Three (Final): Skeleton Arguments and Moot

Two teams will take place in the Final. The Final will involve a different moot problem to the first two rounds, and each team participating will be required to submit two skeleton arguments (again addressing the problem from the perspective of the Appellant and Respondent). The moot usually takes place outside of chambers and before a senior member of the Judiciary.

The procedure on the day reflects that in place the Semi Finals and full details will be provided to the participating teams near the time.

The winning team will be presented with the Kingsland Cup;<sup>1</sup> any other prizes will be announced nearer the time. The 2015/2016 competition included cash prizes for the winning team, and mini-pupillages at FTB for all finalists.

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<sup>1</sup> The winning team will be photographed with the Kingsland Cup, but the Cup will remain the property of and in possession of Francis Taylor Building.

## Timetable

The FTB Kingsland Cup will adhere to the following timetable as closely as possible. Entrants will be advised of any finalised dates or unavoidable changes by email and the same information will also appear on the FTB website.

### **Round 1 – Skeleton Arguments**

**Opens:** 31 October 2016 **Closing date for entries:** 16:00, 9 December 2016

**Teams notified of results by:** end of January 2016

### **Round 2 – Semi Final – Moot**

**To take place by:** 30 April 2017

**Teams notified of results by:** on the day

### **Round 3 – Final – Moot**

**Moot problem available:** by 31 May 2017 **To take place by:** 30 June 2017

**Teams notified of results by:** on the day

## Judges and judging criteria

### Judges

The judging panel will vary between the First, Second (Semi Final) and Third (Final) Rounds of the competition.

The First Round, where entrants are judged upon the quality of their skeleton arguments, will be judged by a panel of current Members of Chambers. Members are barristers currently practising in the fields of Public, European and Environmental law, and many of them are leaders in those fields.

The Second Round (Semi Final), where entrants are judged upon their advocacy skills in the Moot, is to be judged by the judges of that Round (usually High Court or Tribunal judges and/or senior current Members of Chambers). The 2015/16 competition Semi Finals were judged by Lord Justice Lindblom and Simon Bird QC.

The Third Round (Final), where entrants will be judged on both the quality of their skeleton arguments and their advocacy skills, is usually judged by a senior member of the judiciary. The 2015/16 competition was judged by Supreme Court Justice, Lord Kerr of Tonaghmore.

### Judging criteria and scoring

The judging criteria will vary slightly between of the three rounds. This is because of the different nature of each.

The First Round will see entrants judged on the quality of their skeleton arguments alone. A total of 100 marks will be available to each team (50 per Skeleton Argument), with marks being awarded in each of the following categories:

- Understanding of the law;
- Coherence of arguments;
- Clarity of expression;
- Compliance with competition requirements on length of arguments and use of authorities; and
- Presentation (including accuracy of spelling and grammar).

The four highest-scoring teams will be invited to the Second Round (Semi Final).

In the event of a tie (two or more teams scoring equally), the four semi-finalists will be selected on a 'first-come, first-served' basis (ie those whose entries were received earliest (by date and time of email) will go through), proving a further incentive to submit your entries in good time.

In the Second Round (Semi Final), entrants will be judged solely on their performance during the moot by the judge of their moot. The judges will have regard to the following criteria:

- Content of oral argument;

- Response to questioning;
- Structure/strategy employed;
- Style; and
- Courtroom etiquette (including timing).

The top performing team from each moot will go through to the Final.

In the Third Round (the Final), entrants will be judged on a combination of the quality of their skeleton arguments and their performance during the moot. The criteria employed in the First and Second Rounds will continue to apply, and will be applied by the judge(s) of the Final.

## 5. First and second round problem

The following pages contain the problem scenario for the First and Second Rounds of the competition, along with instructions to Counsel that must be followed. For the First Round, each team is required to submit **two** skeleton arguments; one for the Appellant and one for the Respondent. More detail is provided in the instructions.



**IN THE HIGH COURT OF JUSTICE**  
**KINGSLAND CUP MOOT DIVISION**  
**FIRST ROUND COURT**

CO/180C/2016

Monday, 31 October 2016

**B e f o r e:**

**Mr Justice Roulade**

**Between:**

**SAVE OUR BAKING EVENT GROUP**

Claimant

and

**THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL  
GOVERNMENT**

Defendant

and

**JAFFA BAKEWELL DISTRICT COUNCIL**

Interested Party

**JUDGMENT ON PERMISSION APPLICATION**

(Approved)

## A. INTRODUCTION

1. This is an oral renewal of an application for permission to bring a claim under section 288 of the Town and Country Planning Act 1990 challenging a decision of the Secretary of State for Communities and Local Government's decision upholding an appeal by the Fourth Channel ["4C"] against the decision of Jaffa Bakewell District Council ["the Council"] refusing 4C planning permission for a permanent marquee. Permission was originally refused on the papers by Mrs Justice Madeleine. The Interested Party is taking no part in proceedings.

## A. BACKGROUND

2. In summer 2016 it was announced that the Corporation of British Broadcasting ["CBB"] had lost the rights to broadcast its popular flagship show, the Great British Baking Event ["GBBE"], to its rival broadcaster, the Fourth Channel ["4C"].
3. As those familiar with the show will know, each episode sees a number of amateur bakers baking a variety of delicacies of variable quality. The show is set in a temporary marquee located in the grounds of a grand stately home. At the time of its acquisition, the then Secretary of State for Culture Media and Sport ["DCMS"], Ms Gateaux, gave a speech in which she said that: *"The Government welcomes 4C's acquisition of the Great British Baking Event and will give 4C whatever support it needs to make a success of its new venture"*.
4. Keen to make the most of its new acquisition, 4C decided that it would give the GBBE a more permanent home than had previously been the case. It therefore decided to construct a permanent marquee so that its facilities could be hired out for private events when the GBBE was not being filmed. 4C therefore entered into an option agreement with the owner of the Dacquoise Estate, Lord Pithivier-Genoese (a sitting cross-bench

peer in the House of Lords), permitting them to take out a long lease and construct the marquee near the estate's Grade II\* listed Dampfudel Hall should planning permission have been obtained.

5. It is common ground between the parties that the marquees previously used by the GBBE fell under Class B of Part 4 of Schedule 2 of the Town and Country Planning Act (General Permitted Development) (England) Order 2015 ["the GPDO"], and so due to Article 3 of the GPDO automatically benefitted from planning permission.
6. However, Class B of the GPDO only applies to temporary uses of land lasting for not more than 28 days in total in any calendar year. As I previously mentioned, 4C wished to inaugurate a more permanent home for the GBBE and so they were required to apply to the local planning authority, Jaffa Bakewell District Council ["the Council"], for planning permission.
7. The application was controversial and attracted a large number of objections, including from the Save our Baking Event Group ["SOBEG"], chaired by Victoria Battenberg.
8. The Council ultimately refused planning permission on the basis that the marquee would cause substantial harm to the setting of Dampfudel Hall, contrary to para 133 of the National Planning Policy Framework. As they were entitled to do, 4C appealed that refusal. Ordinarily, that appeal would have been heard and determined by a Planning Inspector. However, on this occasion the appeal was 'recovered' by the then Secretary of State for Communities and Local Government ["DCLG"], Mr Lebkuchen, applying his published criteria for such recovery (see the written Ministerial Statement of 30 June 2008), on the twin bases that it was a proposal:
  - a. for development of major importance having more than local significance; and
  - b. giving rise to substantial regional or national controversy.

9. As a result, an inquiry lasting two weeks was subsequently held into the Council's refusal of planning permission. It was presided over by a Planning Inspector, Ms Mokatine. SOBEG attended and made representations against the grant of planning permission. As one might expect, the discussion at the inquiry focused on the heritage significance of Dampfndel Hall at the impact that the proposed marquee and its use would have on that significance. The Inspector delivered her Report to the DCLG Secretary of State on 5 September 2016 and recommended that the appeal be dismissed and planning permission be refused for essentially the reason given by the Council.
10. On 12 September 2016, the new Prime Minister reshuffled her cabinet and Ms Gateaux moved from DCMS to DCLG and so took over responsibility for determining the application. On 19 September 2016, with remarkable speed, Ms Gateaux published her decision, disagreeing with the Inspector's conclusions on the harm caused to Dampfndel Hall, allowing the appeal and granting planning permission. The substance of that decision is not challenged before this court.
11. Subsequent to that decision, SOBEG applied under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 for details of all internal discussions concerning the appeal. They discovered that Ms Gateaux had a number of conversations, both oral and written, with Lord Pithivier-Genoese in which Lord Pithivier-Genoese had explained the financial benefits of what 4C were proposing, and reminding Ms Gateaux of the comments made in her speech I have quoted above. Ms Gateaux's responses were short; her final written response noting that "*I will be making my decision in accordance with proper procedure, taking into account only relevant considerations, in due course?*".
12. It is those conversations, and Ms Gateaux's speech, which form the basis of SOBEG's challenge.

## B. GROUNDS OF CHALLENGE

13. The Claimant, alleges that the Secretary of State's decision is unlawful on two grounds:

- a. procedural unfairness; and
- b. actual or perceived bias.

14. I address both of those grounds in turn. Since I have decided to grant permission it is better that I limit myself to stating shortly why I could consider that the permission threshold - that the claim is arguable - has been reached.

### Procedural unfairness

15. This Ground concerns communications between Lord Pithivier-Genoese and Ms Gateaux. It is not disputed that on several occasions Lord Pithivier Genoese met with Ms Gateaux and discussed the merits of the case.

16. The Claimant alleges that Lord Pithivier-Genoese clearly had a financial interest in the outcome of the appeal by virtue of the option agreement; while that does not disbar him from making representations, the Claimant was unaware of the content of those representations until after the determination of the appeal. It now appears that those representations focused on matters not canvassed at the inquiry; namely the financial implications of allowing the appeal. The Claimant also complains that they were not afforded similar personal access to Ms Gateaux.

17. It seems to me that the situation here is sufficiently distinct from that in *Broadview Energy v Secretary of State for Communities and Local Government* [2016] EWCA Civ 562 and so I

consider it arguable that there was procedural unfairness here to the detriment of SOBEG, and indeed other objectors.

### Bias

18. It is not disputed that prior to her move to DCLG, Ms Gateaux expressly stated that the Government would give 4C “*whatever support it needs*” to make a success of the GBBE. 4C clearly considered that in order to make a success of the GBBE it needed to construct the marquee for which planning permission was sought.
19. In those circumstances I consider it to be arguable that those prior comments, although made during her time at DCMS, are sufficient to give rise to an appearance of bias in her determination of the appeal in line with the approach set out in *Porter v Magill* [2001] UKHL 67.

## **C. CONCLUSIONS**

20. For the reasons given above, I therefore grant permission to the Claimant on both Grounds. I express no view on the ultimate prospects of this claim. I pause here only to observe that during a time of much uncertainty for the future of this country, Lady Roulade and I have found much comfort in watching the Great British Baking Event on a Wednesday evening. I am sure we are not alone in that respect. I do hope that the parties will use the time before the substantive hearing to see if an amicable solution can be reached in what must be a distressing case for many of the British people.

**IN THE HIGH COURT OF JUSTICE**  
**KINGSLAND CUP MOOT DIVISION**  
**FIRST ROUND COURT**

CO/180C/2016

**SAVE OUR BAKING EVENT GROUP**

Claimant

and

**THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL  
GOVERNMENT**

Defendant

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**INSTRUCTIONS TO COUNSEL**

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1. In advance of the hearing of this matter, each legal team, consisting of Senior and Junior Counsel, is to produce two skeleton arguments: one addressing the grounds of claim from the perspective of the Claimant and another from the Defendant's perspective.
2. The High Court has made directions requiring that those skeleton arguments must:
  - (1) be no more than 6 A4 pages in length each;
  - (2) be in Times New Roman, size 12;
  - (3) have 1.5 spacing between each line and have a space between paragraphs; and
  - (4) include no more than 6 authorities (to include those referred to in the judgment of the High Court) and no more than 2 academic writings, if used. There is no restriction on reference to legislative or treaty provisions.
3. Each legal team should therefore ensure that their skeleton arguments are accompanied by a completed scoring sheet and served by 16:00 on Friday 9 December 2016 by email to [kingslandcup@ftb.eu.com](mailto:kingslandcup@ftb.eu.com).

## 6. Mooting resources

### Electronic resources

There are a wide range of resources relating to mooting available on the internet. You may find the following sites useful:

- <http://learnmore.lawbore.net/index.php/Category:Mooting> – a useful site containing short and readily digestible hints and tips, and practical examples.
- <http://podcasts.sweetandmaxwell.co.uk/mp3/PopeHill.mp3> – a useful and thorough podcast produced by David Pope, Barrister and Senior Visiting Fellow at UCL, and Daniel Hill, Solicitor and Associated Professor at the University of Law, London.

### Printed resources

The following books may also be of assistance:

- *Mooting and Advocacy Skills* by David Pope and Dan Hill
- *How to Moot: A Student Guide to Mooting* by John Snape and Gary Watt

Please note that the above resources are not exhaustive and FTB and its Members cannot be responsible for the content of external websites or publications.



## 7. Frequently asked questions

Below is a selection of frequently asked questions that you should consult before contacting us with your query.

*I am a student, but I am not studying law; can I enter?*

Yes; although the vast majority of entries are from law students, non-law students are welcome to enter the competition. The only requirement is that you are a current student.

*I am not currently studying / I will be starting my course next year / my course has just finished, can I enter?*

Unfortunately not; the competition rules require you to be a current student (that is, currently enrolled) at the time of entry to the competition.

*I am a masters / PhD / part-time student, can I enter?*

Yes; so long as you are studying at undergraduate level or above you are welcome to enter.

*Do the two members of a team need to be at the same institution / on the same course?*

No; so long as each team member is eligible in their own right, there is no requirement for the two team members to be at the same institution, on the same course or at the same level of study.

*Is there a limit on the number of teams that can apply from one institution?*

No; there is no limit on how many teams may apply from one institution.

*Is the requirement that the skeleton arguments be no more than six pages long each, or together?*

Each skeleton argument can be no more than six pages long, so entries should consist of two skeleton arguments up to six pages in length each.

*Do we have to refer to the authorities listed in the moot problem as part of our six authorities?*

No; there is no requirement to use the authorities given in the moot problem as part of your allocation, but we would recommend that you think carefully about not including them as they have been included in the problem due to their relevance.

*Do treaties count as legislative authorities?*

Yes; treaties are counted as legislative authorities and so there is no limit on how many you may refer to.

*Do both skeleton arguments have to address both grounds of appeal?*

Yes; each skeleton argument must address both grounds of appeal.

*If we quote from a case, and that quote refers to another case, is that taken as referring to one or two authorities?*

If you quote a passage from a case (Case A) and that passage contains a reference to another case (Case B), then that counts as a reference to the first case (Case A) only.

*Can the two skeletons refer to different authorities?*

Yes; each skeleton argument may refer to up to six authorities (to include those referred to in the moot problem) – there is no requirement to refer to the same authorities in each skeleton.

*Can you give more accurate dates for the semi-finals / final?*

Unfortunately not; while we try to arrange dates as soon as possible, dates are subject to the availability of judges and facilities and can often not be confirmed early. Dates will be posted on our website and emailed to successful entrants as soon as they are available.

*I cannot make the date set for the semi-final / final, can it be changed?*

Unfortunately not; in arranging the semi-final and final we try and avoid likely exam dates and holidays, but this is not always possible. If you have any dates you would like us to try and avoid for good reasons (ie exams), please let us know when entering and we will try to accommodate. At any stage of the competition, in the event that one or both members of a team are unable to compete in that round, they will forfeit their place in the competition and their place will be offered to the team who scored the next highest mark (*'the ranking principle'*). Places will be offered in accordance with the ranking principle until a team who is able to compete accepts a place.

## 8. Contacts

For all enquiries relating to the FTB Kingsland Cup mooting competition, please contact us at the following email:

[kingslandcup@ftbchambers.co.uk](mailto:kingslandcup@ftbchambers.co.uk)

We will endeavour to reply to correspondence containing queries within 48hrs of receipt, though this may not always be possible as correspondence will be dealt with by one of our practising Members.

We regret that the Clerking team available on our central telephone number will not be able to deal with enquiries relating to the moot, and callers will be redirected to the above email.