



Francis Taylor Building

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

**Guide for participants 2015/2015**



## Contents

1. Foreword
2. About FTB
3. Eligibility
4. Competition Format and Timetable
  - i. *Round 1 – Skeleton Arguments*
  - ii. *Rounds 2 and 3 (Semi-finals and Finals) – the Moots*
5. Judges and judging criteria
6. Round 1 problem
7. Mooting resources
8. Contacts

### 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. Had he not died it was widely expected that he would have played an important part in the current government, as he had while his party was in opposition. 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.

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 whistleblower, 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 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 a strong commitment to academic excellence and of promoting access to the bar – this includes our academic panel of university lecturers and our sponsorship of university prizes.

## **2. About FTB**

**2.1.** FTB Francis Taylor Building has a longstanding reputation for excellence. FTB was awarded Real estate, environment and planning set of the year at the Legal 500 UK awards, 2014, 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.

**2.2.** 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. The set 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. They are also supported by a highly motivated and professional clerking team.

**2.3.** Each year FTB seeks to recruit 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 Francis Taylor Building are provided with first class structured training in all aspects of practice at the bar from some of the leading practitioners in their fields, together with an award of not less than £45,000 and the opportunity to obtain tenancy in Chambers at the end of their pupillage. Although tenancy is not guaranteed, FTB has since 2008 recruited ten junior tenants from amongst its pupils.

- 2.4.** Chambers is not a member of OLPAS and applications for pupillage usually open in each New Year. Please see <http://www.ftb.eu.com/home/pupillage.asp> for further information.
- 2.5.** 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

- 3.1.** The FTB Kingsland Cup Mooting competition is open to all UK undergraduates, GDL and BPTC students. It is free to enter.
- 3.2.** Teams should comprise two students. There is no restriction on the number of teams that can enter from any one institution.
- 3.3.** Teams will be deemed to have entered the competition when they send to the contact email address ([kingslandcup@ftb.eu.com](mailto:kingslandcup@ftb.eu.com)) the following:
- A completed entry form
  - Electronic copies of both two skeleton arguments
- 3.4.** As a result of practitioner commitments, final dates for the 2<sup>nd</sup> and 3<sup>rd</sup> 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.
- 3.5.** 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.

- 3.6.** Any complaints about the conduct of any of the teams during a round must be made by email, for the attention of the FTB Moot Coordinator, who 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

### 4.1. Round 1: Skeleton Arguments

4.1.1. The Round 1 problem can be found in this handbook. Each team is required to produce two short skeleton arguments: one on behalf of the Claimant, and one on behalf of the Defendant. Teams not submitting two skeleton arguments will be disqualified.

4.1.2. Each separate skeleton argument must be:

- no more than 6 typed A4 sides;
- in Times New Roman font, size 12;
- have 1.5 spacing and spaces between paragraphs (as indicated in the Instructions); and
- include reference to no more than 6 authorities (to include any cited in the problem) and 2 academic writings (to include the any cited in the problem).

4.1.3. Reference to legislative materials (statutes, treaties etc) is not subject to restrictions.

4.1.4. Closing date for First Round entries is **4pm, Friday 19 December 2014.**



## **4.2. Round 2 (Semi Finals): The Moot**

4.2.1. Teams participating in the Semi Finals will be assigned a competitor and told in advance whether they are mooting on behalf of the appellants or the respondents.

4.2.2. Each team will be given 30 minutes on their feet (15 minutes per team member). This will include interventions by the judge. Timings will be strictly adhered to.

4.2.3. The opportunity for the Appellants to give a short reply following the Respondents' submissions will be at the judge's discretion. Time for a reply will be additional to the 30mins given for submissions.

4.2.4. 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 all moots have been completed.

4.2.5. Teams participating in the moot should dress appropriately for court. Gowns will be provided, subject to availability.

4.2.6. Full details will be provided at the time.

## **4.3. Round 3: The Final**

4.3.1. Round 3 involves both the submission of skeleton arguments, and the moot before a senior judge (to be confirmed). Procedure will reflect that in place for Rounds 1 and 2. Full details will be provided to participating teams at the time.

4.3.2. The winning team will be presented with the Kingsland Cup<sup>1</sup>. Other prizes will be announced nearer the time. The 2013/2014 competition included cash prizes for the winning team, and journal subscriptions for all finalists.

#### 4.4. Timetable

4.4.1. 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. The same information will also appear on the FTB website.

**Round 1 – Skeleton Arguments**

**Opens:** 21 November 2014 **Closing date for entries:** 4pm, 19th December 2013

**Teams notified of results by:** End January 2015

**Round 2 – Semi Final – Moot**

**To take place by** 31 March 2015

**Teams notified of results on the day**

**Round 3 – Final – Moot**

**FINAL TO BE HELD BY 31 May 2015**

---

<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.

## 5. Judges and Judging Criteria

### 5.1. Judges

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

5.1.2. The First Round, where entrants are judged upon the quality of their Skeleton Arguments, is to 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 Panel will comprise Members of varying seniority.

5.1.3. The Second Round, where entrants are judged upon their advocacy skills in the Moot, is to be judged by High Court or Tribunal judges (names to be confirmed) and/or senior current Members of Chambers (Queen's Counsel).

5.1.4. The Third Round, the Grand Final, where entrants will be judged on both the quality of their Skeleton Arguments and their advocacy skills, is to be judged by a senior member of the judiciary (subject to confirmation). The 2013/2014 competition was judged by Justice of the Supreme Court, Lord Carnwath of Notting Hill.

## 5.2. The Judging Criteria

5.2.1. The judging criteria will vary slightly between of the three rounds.

This is because of the different nature of each.

5.2.2. 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.
- Presentation (including accuracy of spelling and grammar)

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

5.2.4. In the event that more than four teams score equally, the four semi-finalists will be selected on a 'first-come, first-served' basis – those whose entries were received earliest (by date and time of email) will go through.

5.2.5. In the Second Round (semi final), entrants will be judged solely on their performance during the moot. The judges will have regard to the following criteria:

- Content of oral argument
- Response to questioning
- Structure/strategy employed
- Style
- Courtroom etiquette (including timing)

5.2.6. The top performing team from each moot will go through.

5.2.7. 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 Rounds 1 and 2 will continue to apply.

5.2.8. A sample scorecard for the first round is available on the FTB website.

## 6. Round 1 Problem

**FRANCIS TAYLOR BUILDING  
KINGSLAND MOOT CUP 2014/2015  
FIRST ROUND PROBLEM**

**THE HABANERO ESTATE RESIDENTS' ASSOCIATION**

Claimant

and

**SCOVILLE DISTRICT COUNCIL**

Defendant

---

**INSTRUCTIONS TO COUNSEL**

---

### A. INTRODUCTION

1. The Burning Hot Chilli Company operates a factory (“the Factory”) manufacturing chilli sauces. It prides itself on sourcing rare and extremely hot chillies to make its sauces, which are claimed to be among the hottest chilli sauces in the world.
2. The Factory is situated on the outskirts of the town of Naga, in Dorset. At one time the factory was surrounded by green fields and undeveloped land; however, increased demand for housing in the area has seen large tracts of land developed so that a large housing estate, the Habanero Estate, now borders one side of the Factory.

3. Since around early 2012 there have been an increasing number of complaints of nuisance caused by chilli odour emanating from the Factory. These complaints have generally been from the residents of the Habanero Estate, although complaints have also been received from further afield.
4. The complaints are that the odour from the factory is so strong and unpleasant that residents are unable to use their gardens and have to keep all the windows closed. Even then, there have been complaints that the odour still permeates into the residents' houses, particularly at night when the chilli grinding takes place. This has led to complaints from residents who have been woken up by the smell.
5. In addition to the nuisance caused by the odour, some residents have also complained that it appears to be affecting their health. In particular, there have been complaints that it is causing coughing, sore throats and eyes, headaches and occasional vomiting. These complaints have been confirmed by the local GP, Dr Cayenne, who has produced evidence showing that such symptoms can be caused by the high levels of capsaicin in the air and that the very young, elderly and vulnerable are likely to be worse affected.
6. Following a rise in the level of complaints, the local authority, Scoville District Council ("the Council"), conducted an investigation into the odour said to be coming from the Factory to determine whether it constituted a statutory nuisance. The environmental health officers at the Council found that there was, at times, an extremely unpleasant smell in the area and that it was coming from the Factory. They considered that it was certainly sufficient to amount to a nuisance and also, on the basis of Dr Cayenne's evidence, that it was prejudicial to health.

7. However, the Council also found that the factory was, and always had been, employing best practicable means to prevent, and counteract the effects of, the nuisance. Accordingly, the Council decided that it would not be appropriate for it to issue an abatement notice. It provided the following summary of its decision:

*“After a thorough investigation the environmental health team is satisfied that the smell coming from the factory operated by the Burning Hot Chilli Company is a statutory nuisance. However, following an inspection of the factory and discussions with its chief engineer, the Council is satisfied that the Company is employing best practicable means. The Council therefore does not think that it would be appropriate to issue an abatement notice as any notice would inevitably be successfully appealed by the Company under Regulation 2(2)(e) of the Statutory Nuisance (Appeals) Regulations 1995.”*

8. The local residents were outraged by this decision and formed a campaign group, Habanero Estate Residents’ Association (“HERA”), to challenge the decision. Following significant publicity in the local press, the campaign obtained considerable funding which enabled it to instruct Leading and Junior counsel. Counsel advised that the decision not to issue an abatement notice appeared to be unlawful and HERA decided to challenge it by way of judicial review.

## **B. GROUNDS FOR JUDICIAL REVIEW**

9. The grounds for judicial review were:
  - a. The Council was under a statutory duty to issue an abatement notice where it was satisfied that a statutory nuisance existed (per Carnwath J (as he then was)



in *R v Carrick District Council, ex p Shelley* [1996] Env LR 273) and had no discretion not to do so, even where it believed that the premises was employing best practicable means; and

- b. Even if the Council could exercise its discretion not to serve an abatement notice where it considered that best practicable means were being employed, the Council was wrong to interpret the defence of best practicable means as applying to both limbs of statutory nuisance. Instead, the best practicable means ground of appeal is only available to a premises operator causing a nuisance, not one whose activities are prejudicial to health. As a matter of public policy, it cannot be right that a factory is able to continue to operate where it is having seriously harmful effects on the health of local residents.

### C. PERMISSION HEARING

10. The application came before Mr Justice Jalapeño who gave permission for both grounds on the papers, stating that:

*“This application is plainly arguable and raises important points of law which would benefit from clarification. I would grant permission for both grounds for the following reasons:*

- i. *At first blush, section 80(1) Environmental Protection Act 1990 certainly appears to create a statutory duty to serve an abatement notice and I do not see why a local authority should be able to decide not to simply because it considers an appeal against the notice to be likely; and*
- ii. *I would be very surprised if it was the intention of parliament that a business can continue not just to disturb, but to damage the health of those living nearby, so long as it is doing all that it reasonably can to*

*prevent that harm. At the very least, it must be possible for this harmful business to move elsewhere.”*

#### **D. INSTRUCTIONS**

11. Each legal team, consisting of Senior and Junior Counsel, is to produce two skeleton arguments addressing both grounds of challenge. One should address those grounds from the perspective of the Claimant and the other from the perspective of the Defendant. Each team should ensure that both skeleton arguments are served by 16:00 on Friday 19 December 2014 by email to [kingslandcup@ftb.eu.com](mailto:kingslandcup@ftb.eu.com).
  
12. Unusually, the court has issued specific directions about the presentation of skeleton arguments for this matter, requesting that they:
  - a. are no more than 6 typed A4 pages in length;
  - b. are in Times New Roman, size 12;
  - c. have 1.5 spacing between paragraphs; and
  - d. include no more than 6 authorities, and no more than 2 academic writings, if used. There is no restriction on reference to legislative provisions.
  
13. To your Instructing Solicitors’ knowledge, such directions are wholly unprecedented - but, in the circumstances, we think best followed. **A & Co Solicitors**

## 7. Mooting resources

### 7.1. Electronic resources

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

- <http://www.oup.co.uk/academic/highereducation/law/mooting/more/> - a brief introduction for the novice mooter
- <http://learnmore.lawbore.net/index.php/Category:Mooting> – a useful site containing short and readily digestible hints and tips, and practical examples
- <http://www.abdn.ac.uk/law/mooting/page1.shtml> - a more detailed guide to mooting produced by Aberdeen University, with helpful hints and tips
- <http://podcasts.sweetandmaxwell.co.uk/mp3/PopeHill.mp3> - a useful and thorough podcast produced by David Pope, Barrister and Director of Advocacy at SNR Denton, and Daniel Hill, Solicitor and Head of Practice for Dispute Resolution at the College of Law, London.

### 7.2. Printed resources

7.2.1. The following books may also be of assistance:

- *Mooting and Advocacy Skills (2)* by David Pope and Dan Hill

- *How to Moot: A Student Guide to Mooting* by John Snape and Gary Watt

7.2.2. Please note that FTB and its Members cannot be responsible for the content of external websites or publications.

## 8. Contacts

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

[kingslandcup@ftb.eu.com](mailto:kingslandcup@ftb.eu.com)

8.1.2. 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.

8.1.3. 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.