

ALBA mooting competition 2024

Instructions to candidates

1. The competition is open to current law students, including LLB, GDL, LPC/SQE and BPTC/BTC/BPC students, and also to those who have completed the BPTC/BTC/BPC but not yet secured pupillage.
2. Entries must be from a team of two mooters. It is a speed moot with three stages.

The Moot Exercise

3. The moot will be based on an appeal to the Supreme Court from the judgment of the Court of Appeal in in *R (Good Law Project) v Prime Minister* [2022] EWCA Civ 1580, [2023] 1 WLR 785.
4. The case concerns the Government's practice of using non-governmental, "private" communication systems such as WhatsApp and private email for the purpose of government business. The claimant contended that the use of such systems, which contained auto-delete functions, meant that public records which ought to be retained were instead deleted, or otherwise not retained for the public record, contrary to (i) section 3(1) of the Public Records Act 1958 ("Section 3(1)") and (ii) contrary to the Government's own internal policies ("the Policies").
5. The Divisional Court ([2022] EWHC 960 (Admin), [2022] 1 WLR 3748) and the Court of Appeal rejected both arguments.

Stage one: Paper sift

6. Teams are asked to submit a written application for permission to appeal to the Supreme Court, on behalf of the claimant / appellant, the Good Law Project, against the decision of the Court of Appeal.
7. Permission to appeal should be sought on two grounds:
 - (i) Ground 1: That the Court of Appeal was wrong in its construction of Section 3(1), that there was no duty to preserve public records prior to selection,¹ and / or that Section 3(1) created no implied duties that were inconsistent with the Government's practice,² and hence wrong to conclude that the Government's practice was consistent with Section 3(1).
 - (ii) Ground 2: That the Court of Appeal was wrong to conclude that there was not an enforceable duty in public law to comply with the Policies (or any of them), absent good reason to depart from them.³
8. You should assume for present purposes that all procedural requirements (as to time limits etc) are satisfied and do not need to be addressed.

¹ Court of Appeal §§50-54, Divisional Court §§53-60, §139

² Court of Appeal §51, Divisional Court §61

³ Court of Appeal §§55-66, Divisional Court §§97-115, §138

9. The application should take the form of a stand-alone document of no more than 5 pages of 12-point type, at least 1.5 line spacing, setting out the reasons why the Court of Appeal was wrong, and why the appeal should be allowed, on the two issues. The application should comply with the LCJ Practice Direction: Citation of Authorities [2012] 1 WLR 780,⁴ save that the only authorities which may be cited are those listed at the end of these instructions.
10. Applications should be submitted by email to Rachel Jones at racheljones@blackstonechambers.com by **5.00pm on Friday 8 November 2024**.
11. Applications will be marked on the papers by members of the ALBA Committee who will draw up a shortlist of candidates for the mooting competition, and a reserve list.
12. The outcome will be notified by email by **Wednesday 20 November 2024**. We regret that we will not be able to provide feedback to candidates who are unsuccessful at this stage.

Stage two: Oral presentation in the Supreme Court, First Round

13. Six shortlisted teams will be invited to participate in the mooting competition, which will take place at the Supreme Court of the United Kingdom in Parliament Square on **Thursday 12 December 2024** from 5pm.
14. Teams should come prepared to argue either side of the appeal on the two identified grounds in the Supreme Court. They should submit a short skeleton argument (no more than four sides of A4) for the Respondent by **5.00pm on Thursday 5 December 2023**. When presenting the case for the Appellant they should use their written application for permission to appeal submitted at Stage 1.
15. There will be three full judges for this occasion, who will be drawn from members of the Senior Judiciary. The judges will be assisted by three KC members of the ALBA committee in the first round.
16. There will be six teams in the first round, split into three moots. Each moot will be judged by one full judge sitting with a silk. Judges will flip a coin in order to decide who will argue which side. Each team will be given 15 minutes to present or respond to the appeal (as the case may be), and each team member should present or respond to one of the grounds of appeal. Teams should decide for themselves how to divide up the time. Teams should be prepared to deal with some judicial intervention in the course of argument.
17. Shortlisted candidates will be provided with a link to a tabbed PDF of the authorities bundle and may not refer to any other case authorities. A list of the approved authorities is below. The judges will be provided with a copy of the authorities bundles and candidates should bring their own copy for their use during the moot: they may use electronic or paper authorities bundles as they wish.
18. The winner of each moot will be decided by the judges in their absolute discretion, who will also award a score out of five to each team for quality of written argument, oral advocacy

⁴ <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Practice+Directions/lcj-pract-dir-citation-authorities-2012.pdf>

presentation and style, legal analysis and response to judicial intervention. Judges will provide brief oral feedback to all teams, time allowing.

19. The first-round judges will meet to discuss the candidates, and the two highest scoring teams will go through to the final.

Stage three: Oral presentation in the Supreme Court, Final

20. For the final, teams will have 20 minutes to present, or, as the case may be, respond, to the appeal. Some of the additional time compared with the first round may be taken up with responding to further judicial intervention. The winning team will be selected in the absolute discretion of the judges on the basis of the quality of written argument, oral advocacy presentation and style, legal analysis and response to judicial intervention.
21. There will be a short drinks reception after the event, for all those involved in Stages 2 and 3, along with the second and third round judges and other ALBA members.
22. The prizes are:
 - (i) For the winning team: £1000 For the 2nd-placed team: £500.
 - (ii) The four members of the winning and 2nd-placed team will each be entitled to a free place at the ALBA summer conference in 2025.

List of permitted authorities:

In addition to the Divisional Court and Court of Appeal judgments in the *Good Law Project* case:

- (i) *R v Secretary of State for the Home Department, ex parte Urmaza* [1996] COD 479, The Times 23 July 1996
- (ii) *Mandalia v Secretary of State for the Home Department* [\[2015\] UKSC 59](#); [2015] 1 WLR 4546
- (iii) *R (Lee-Hirons) v Secretary of State for Justice* [\[2016\] UKSC 46](#); [2017] AC 52
- (iv) *R (Friends of the Earth Ltd) v Secretary of State for Transport* [\[2020\] UKSC 52](#), [2021] 2 All ER 967
- (v) *R (A) v Secretary of State for the Home Department* [\[2021\] UKSC 37](#), [2021] 1 WLR 3931
- (vi) *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [\[2021\] EWHC 346](#) (Admin); [2021] PTSR 1251

A copy of *Urmaza* will be available on the ALBA website alongside these instructions, because it is not readily available online. The other cases are all accessible on official websites for the purposes of preparing written material ahead of the oral hearing.

14 October 2024