



**The UK Environmental Law Association is delighted to be able to offer a range of competitions and schemes aimed at supporting and encouraging undergraduate and postgraduate students and newly qualified professionals studying or qualified in environmental law or related disciplines.**

**You can find out about the competitions and schemes here:**

- 1. The Simon Ball Prize for Outstanding Academic Achievement supported by OUP**
- 2. The 2009/2010 Andrew Lees Prize**
- 3. The 2009/2010 Moots**
- 4. The Bursary Scheme**

**Some of the rules of the competitions refer to UKELA's Charitable Objects.** The relevant charitable object of UKELA is:

"To promote for the benefit of the public generally the enhancement and conservation of the environment in the United Kingdom and in particular to advance the education of the public in all matters relating to the development, teaching, application and practice of law relating to the environment."

**Invitations to the 2010 Competition Finals Day (for the Andrew Lees Prize and Moots) will be sent out once the date is finalised.**

**The 2009 moot final:**



## **The UKELA Simon Ball Academic Prize for Outstanding Student Achievement sponsored by OUP**

**Deadline: April 30<sup>th</sup> 2010**

The UKELA Simon Ball Prize is a new award and will be awarded annually to recognise and celebrate student achievement in the field of environmental law. The award is open to undergraduate and postgraduate students at a UK higher education institution from any academic discipline so long as the basis of the contribution has relevance to the advancement of environmental law or otherwise to the charitable objects of UKELA. The basis of the award is not limited to academic achievement and may extend to any achievement attained by, or contribution made by, the student.

### **Criteria and Rules**

1. The UKELA Simon Ball Prize for Student Achievement (the Prize) is awarded annually to recognize and celebrate student achievement in the field of environmental law. The winner will receive £250 of books from OUP and a subscription to the Journal of Environmental Law. Runners up (maximum four) may also receive the JEL subscription. All shortlisted will be offered free UKELA student membership for one year (current members qualify for the following year free provided they are still students).
2. The Prize is open to undergraduate and postgraduate students (the student) at a UK higher education institution from any academic discipline so long as the basis of the achievement or contribution has relevance to the advancement of environmental law or otherwise to the charitable objects of UKELA (see below).
3. Joint nominations may be made (in which case, student includes the plural).
4. Academic achievement may be demonstrated on the basis of work submitted as part of a degree programme or to any other demonstrable achievement.
5. The basis of the Prize is not limited to academic achievement and may extend to any achievement attained by, or contribution made by, the student. This may include, but is not limited to, charitable work, university or community involvement, clinical legal education or support or the like where the contribution has relevance to the advancement of environmental law or otherwise to the charitable objects of UKELA (see below).
6. Achievement in any other UKELA competition may not form the basis of any nomination.
7. Up to four nominees will be chosen on the basis of submissions made on their behalf by a teacher at their institution. Students may be nominated in more than one year.
8. Submissions should not exceed 500 words and should identify clearly the achievement or contribution made by the student. A form will be available at [www.ukela.org](http://www.ukela.org) to accompany submissions.
9. Submissions should be sent to Alison Boyd ([alisonboyd.ukela@ntlbusiness.com](mailto:alisonboyd.ukela@ntlbusiness.com)) and received no later than **April 30<sup>th</sup> 2010**.
10. Where appropriate, submissions should be accompanied by any relevant supporting material (e.g. a copy of an essay or dissertation which should be made available electronically).
11. The winner will be chosen by the judges, whose decision is final and will be announced by May 31<sup>st</sup> 2010.
12. The competition will be reported in UKELA's journal, e-law, and on the UKELA website, and the winner will be asked to provide a photo for this purpose.

### **Simon Ball**

Simon Ball taught law at Sheffield University from 1979 until his death, aged 39, in 1996. He was a founder member of UKELA and actively involved in the Association. Simon was one of the first to teach environmental law as a subject and in 1991, with Stuart Bell, authored one of the first texts on Environmental Law. He was very highly regarded as a teacher, and his textbook writing set the standard for work that was both academically rigorous and considered but also accessible to students.

## The Andrew Lees Prize

### Deadline: 4pm January 29<sup>th</sup> 2010

The United Kingdom Environmental Law Association is pleased to announce its annual article competition - "the Andrew Lees Prize" which, for the first time in 2010, will also be judged by presentation. This competition is open to any student, trainee solicitor, pupil or solicitor / barrister with not more than 2 years' post qualification experience.

Andrew Lees was the Campaigns Director for Friends of the Earth and a leading environmental campaigner on a range of issues from water pollution to illegal waste dumping. He died suddenly in 1994 while on a working holiday in Madagascar campaigning against a large opencast mine.

A shortlist of no more than four entries will be invited to present their paper to a panel of judges in London in March. The presentation may be accompanied by AV or other material and will take no more than 15 minutes. It will subject to Q&A from the audience invited from UKELA's membership and entrants' supporters.

- The winner will receive a free place (including travel expenses from within the UK) to the 2010 UKELA conference which is being held at Exeter University on June 25-27<sup>th</sup>.

The winner will also have their article published in UKELA's journal e-law.

The title of the article is:

"The UK's care of the environment has been more hindered than enhanced by European law"  
Discuss

With your entry please let us know:

Your full name and postal address, your contact phone number, your academic institution, course and year of study or your place of work and date you started there. Your name should appear on the top right hand corner of each page and the number of words should appear at the end of the article along with your contact details. The word count should relate only to the text of the article and does not include your name, the title nor your contact details. However, if the article text exceeds 1000 words your entry will be disqualified.

All essays should be submitted electronically in 12 point Arial and 1.5 line spacing.

The judges have been appointed by UKELA Council and their decision on all matters relating to the competition is final.

Your article should be sent by email to Richard Kimblin at No5 Chambers ([rk@no5.com](mailto:rk@no5.com)) by 4pm on 29<sup>th</sup> January 2010.

## The UKELA Mooting Competitions 2010

### Deadline for submission of skeletons: January 28<sup>th</sup> 2010

1. The United Kingdom Environmental Law Association is pleased to announce the opening of entries for the 2010 Mooting Competitions.
2. Further information about UKELA may be found at [www.ukela.org.uk](http://www.ukela.org.uk).
3. There are two mooting competitions:
  - a. *The Lord Slynn of Hadley Mooting Trophy Competition* (the senior competition) is open to all those who as of 31st October 2009 are in pupillage, a trainee solicitor, on the bar vocational course or legal practice course, or who are on taking the CPE. In essence this competition is for those on vocational courses
  - b. *The UKELA Student Prize Moot* (the junior competition) is open to those who as of 31st October 2009 do not qualify for the Lord Slynn Trophy Competition but who are studying for a degree (including graduate degrees, e.g. LLM's or non law degrees). In essence this competition is for those who are students not yet on vocational courses.
4. Teams consist of two members. An institution may enter more than one team. Teams may comprise of competitors from different institutions.
5. Each team should submit two skeleton arguments, one on behalf of Luckless Ltd (the Appellant) and one on behalf of the Crown (Respondent). No more than two authorities may be cited in each skeleton in addition to those referred to in the Moot problem. Each skeleton argument should be no more than six pages of A4 paper. The font should be Times New Roman, size 12, with 1.5 line spacing. Paragraphs and pages should be numbered. The skeleton arguments should include a contact name, address and day and evening telephone number. A copy of the skeleton argument should be forwarded electronically, by email to [rk@no5.com](mailto:rk@no5.com) **no later than 4pm on Monday 28<sup>th</sup> January 2010.**
6. The semi-finalists will be selected on the basis of the skeleton arguments. All competitors will be notified of the outcome. The semi-finals and finals will be held in London on a single date be announced during March 2010.
7. The Master of the Moot reserves the right to change the rules of the competition without notice as he thinks fit and his decision is final.
8. The winners of both competitions will receive a cash prize of £100 (per team member) from No5 Chambers plus a year's subscription to Environmental Law and Management, kindly donated by Lawtext. The winners of the Senior competition will receive the Lord Slynn of Hadley Mooting Trophy and the Junior competition winners will receive the Junior Trophy. All finalists receive free UKELA student membership.

The Moot Grounds



**Richard Kimblin, Master of the Moots**  
**No5 Chambers**  
**76 Shoe Lane**  
**London**  
**EC4A 3JB**  
**(DX449 Chancery Lane)**  
  
**rk@no5.com**

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM CLEANTOWN CROWN COURT

His Honour Judge Stern QC

BETWEEN

REGINA

(On the prosecution of the Environment Agency)

V

LUCKLESS LIMITED

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ADVICE ON APPEAL AGAINST SENTENCE

&

FOUNDATIONS OF APPEAL

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### Introduction

1. The Company pleaded guilty on 10 September 2011 before HHJ Stern QC at Cleantown Crown Court to: one count under Section 85 Water Resources Act 1991, namely causing poisonous noxious or polluting matter to enter controlled waters, and; one count under Section 33 (1) c Environmental Protection Act 1990, namely keeping controlled waste in a manner likely to cause pollution to the environment or harm to human health.
2. The plea was entered upon the particular basis and upon aggravating and mitigating features which were not disputed between the parties.
3. The learned judge sentenced the company to pay a fine of £140,000 and to pay prosecution costs of £10,000.
4. The Company now seeks permission to appeal against the fine.

### Facts

5. Luckless Limited have premises adjacent to the Clean River. Their operation includes the use of water based paints. The means by which the paints are contained is less than adequate. On two occasions paint escaped from the works into a surface water drain which discharged directly to the Clean River. The date of the first uncontrolled release was 1<sup>st</sup> April 2009. The date of the second uncontrolled release was 1<sup>st</sup> April 2010.
6. The Environment Agency investigated both releases. It did not prosecute for the first incident, but and issued a Summons in respect of the second incident.
7. The company took advice rather late. It appeared without representation before the Magistrates on the return date on the summons. In determining mode of trial, the Magistrates would have accepted jurisdiction. However, the company elected trial on indictment and was committed to the Crown Court. The company then took advice and accepted that an offence contrary to Section 85(1) and (6) Water Resources Act 1991 was a strict liability offence to which none of the statutory offences applied. Likewise, it was advised that there was no reasonable prospect of defending the s33 EPA matter.

The elements of the offence were made out. It promptly informed the prosecution of its intended change of plea.

8. The company entered a guilty plea at the Cleantown Crown Court on 10 September 2011. The agreed aggravating and mitigating features of the offence were: that the escape was easily avoidable; that an Environment Agency pollution prevention visit had highlighted the possibility of such an escape; that there was a risk of harm to aquatic life; there had not, as a matter of fact, been any harm to any aquatic life; the company was otherwise of good character; the company had cleaned up the release in a speedy manner; there was full cooperation with the Environment Agency; there was a guilty plea as soon as advice had been received.
9. The maximum penalty available in the Magistrates' Court was £20,000 in respect of the WRA offence and £50,000 in respect of the EPA offence. The company was in a substantial way of business and could pay any reasonable fine and hence its means were irrelevant.

#### Ground One

10. The fine is manifestly excessive because, notwithstanding the absence of a tariff for regulatory offences<sup>1,2,3</sup>, the penalty is out of scale.
11. Environmental offences fall within the general bracket of regulatory offences, of which health and safety and environmental offences are the most numerous. The penalty is within the highest bracket, save those penalties imposed in cases of national disaster. So much is demonstrated by the table of penalties set out in the HSE Enforcement Report 2004/5 (no later report exists to date):

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<sup>1</sup> R v F Howe (Engineering) Ltd [1999] 2 Cr App R (S) 37 “... it is impossible to lay down any tariff or to say that the fine should bear any specific relationship to the turnover or net profit of the defendant. Each case must be dealt with according to its own particular circumstances.”

<sup>2</sup> R v ESB Hotels Ltd [2005] EWCA Crim 132, per Beaston J at para31: ‘Whilst guidance can certainly be taken from a comparison of the circumstances of cases care must be taken.’

<sup>3</sup> R v Yorkshire Water [2000] 2 Cr App R (S) 423 at 454 “So care should be taken to fit any penalty within the framework of previously imposed fines. So in the light of the main variables which will exist we think that any rigid approach is not realistic since that framework will necessarily be wide.”

Offences prosecuted                      Convictions                      Fine

2002/03	1,659	1,273	£6,251 (n)
2003/04	1,720	1,317	£9,633 (o)
2004/05p	1,267	999	£12,642 (p)

12. Having regard to the plea, and the mitigation which was accepted by the prosecution, it appears that the starting point in setting the penalty was in excess of £200,000. It is evident that only a very small proportion of penalties exceed £100,000, hence the HSE go to the trouble of finding averages which exclude such high penalties in order to avoid the skewing effect. It seems to me that there is nothing to put this case within the top 3% of penalties for health and safety offences, still less for environmental offences. It is likely that the penalty imposed was one which would bring the case within the top 20 health and safety fines imposed during 2007.
13. The above data were provided to the learned judge in advance of the hearing in the form of a Note and these points were fully canvassed with him.
14. It is to be acknowledged that sentencing in this area is unusual because of the absence of a tariff and because the range of penalties extends over several orders of magnitude, i.e. penalties range from hundreds of pounds to millions of pounds. However, in my opinion this case is unremarkable and absent the particularly aggravating features of (1) serious, or any, harm; (2) cutting corners to save money or make money, or (3) a defendant who shows a reckless disregard for health, safety or the environment. So far as the learned judge repeatedly emphasised the deterrent effect of penalties such cases, that must apply to all cases which come before the court and I was unable to discern any particular reason for a deterrent sentence; certainly, no reason was given.
15. It is also acknowledged that the principles which are to be applied in such sentencing exercises tend to be set out in the context of the most serious cases. This is because the small number of cases which reach the Court of Appeal must (a) have been committed to the Crown Court, and (b) have been dealt with in such a way as to justify the costs of the appeal.

16. Put shortly, the penalty might be appropriate to a fatality in a health and safety case. While protection of the environment is a significant public interest, proportion and scale are required as between sentencing outcomes in the general field of regulatory crime.

Ground 2

17. The learned judge misdirected himself by applying a method of calculation to the setting of sentence which was not applicable to the criminal jurisdiction
18. It was explained by the prosecution that since early 2010 there was a new system of 'administrative' penalties in place pursuant to Part III of the Regulatory Enforcement and Sanctions Act 2008. It provided for the Environment Agency to impose Variable Monetary Penalties, the amounts of which were subject of appeal to the General Regulatory Chamber (First Tier Tribunal). It is, therefore, a distinct and separate scheme of regulatory sanctions.
19. In approaching the question of quantum of the VMP, the Environment Agency applies ministerial guidance<sup>4</sup>. In applying that guidance to the instant case, the Environment Agency had concluded that there was neither significant financial benefit to the defendant by way of money saved, nor significant restoration costs associated with the offence. Hence, according to the guidance, the starting point for determining the deterrent element was the maximum fine available to the magistrates' court, namely £50,000 in respect of the EPA offence, and/or £20,000 in respect of the WRA offence.
20. The Environment Agency concluded that the starting point was a sum of £70,000. The Environment Agency considered that the guidance did not require or anticipate that the principle of 'totality' would apply, i.e. to avoid double counting where offences overlap.
21. The next step in the guidance is to apply a multiplier, which must be less than four. On the basis that the company: (a) was clearly on notice as to the risks because of the previous identical incident, and; (b) caused harm to the environment, it was appropriate to apply a factor of 2.
22. In the result, a VMP of £140,000 would have been imposed. The learned judge accepted the Environment Agency's approach and imposed a penalty of £140,000, plus costs.

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<sup>4</sup> See DEFRA's Consultation Draft of the Statutory Guidance to the RESA 2008 re VMPs

23. The judge fell into serious error because:

- i. there is no principle in the criminal law that the court starts at the maximum available and multiplies it upwards;
- ii. the approach adopted provided no credit for a guilty plea
- iii. the principle of totality was ignored
- iv. the administrative penalties regime is intended for offences at the lower end of the scale of seriousness and was not intended to be applied in the criminal jurisdiction

Advice

24. In my opinion, the penalty was manifestly excessive and wrong in law. This is not a marginal case, but one in which the penalty is very much out of scale and to the extent that it will be necessary to invite the court to reduce the penalty very substantially.

A BARRISTER

UKELA Chambers

12 September 2011

IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL (CRIMINAL DIVISION)  
ON APPEAL FROM NORTHAMPTON CROWN  
COURT

His Honour Judge Stern QC

BETWEEN

REGINA

(On the prosecution of the Environment Agency)

V

LUCKLESS LIMITED

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ADVICE ON APPEAL AGAINST SENTENCE  
& GROUNDS OF APPEAL

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A BARRISTER

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CRIMINAL DIVISION)

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His Honour Judge Stern QC

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(On the prosecution of the Environment Agency)

V

LUCKLESS LIMITED

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ORDER OF THE SINGLE JUDGE

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I grant leave to appeal on both grounds. The case raises important questions of sentencing practice both in the criminal jurisdiction and as to how the new administrative penalties are to relate to penalties imposed in the Magistrates' and Crown Courts.

The prosecution does not generally play a significant role in an appeal against sentence. However, in this case it would be of assistance to the court to receive submissions as to (a) how penalties in environmental cases are to fit in with other spheres of regulation – in particular I note that the summary maxima are quite different, and (b) the relationship between VMPs and fines.

A High Court Judge [date]

## UKELA VOCATIONAL BURSARY FUND

**Deadline: 19<sup>th</sup> February 2010**

The UKELA Vocational Bursary Fund enables students to undertake a period of vocational placement (such as an internship or externship) in the field of environmental law. Placements may be with a public body (e.g. a government department, local authority, regulatory agency), with a non-for-profit organisation such as a non-governmental organisation, with a university department, in private practice (legal or otherwise), or any other vocational placement which would further the charitable objects of UKELA (see note at the end).

The maximum available for 2009/2010 is £1500.

### Criteria

1. A person is eligible to apply if he or she is studying for, or has recently undertaken, an undergraduate or postgraduate degree in any relevant subject; this includes the PGDL, BVC or LPC or similar qualifications outside law and legal practice. "Recently" will be determined on a case by case basis at the discretion of UKELA, but it is expected that only those who are yet to have secured full time paid employment (excluding para legal or legal assistant roles and the like), or yet to begin practice, will be eligible. The applicant must demonstrate that he or she is committed to finding relevant employment in the future. "Relevant" means relevant to the charitable objects of UKELA. The Fund is open to non-UK nationals.
2. Placements may be undertaken in the UK by any student, or anywhere by students from a UK institution of higher education, so long as the placement contributes to UKELA's objects.
3. Applicants are required to carry out a specific programme of work, agreed in advance with the placement organisation. The Fund does not normally support placements on chambers' or firms' recruitment-based mini-pupillages or vacation placement schemes.
4. The placement should normally engage the student full-time.
5. It is a condition of the award that successful applicants will make a short report to UKELA when the work has been completed.
6. Applicants from any relevant academic discipline are eligible.
7. The Fund is intended to support students who would otherwise have difficulty supporting themselves financially and is not intended to compete with industrial or labour employment.

### Awards

Awards will be made on the basis of a maximum six-week placement. Shorter periods will also be considered.

The support given is not 'pay' and will be given at the following maximum rates:

Living at home: £90 per week

Living away from home: £120 per week

Living abroad: £155 per week

Awards are at the discretion of UKELA, which will in particular take into account UKELA's charitable objectives, the quality of the proposal and the anticipated output from the placement period, the benefit to the student, to the placement organization and to the wider community, and the desirability of maximising the number of awards that can be made in any year.

A decision by UKELA on an application is final.

### To apply

Application forms can be found on our website [www.ukela.org](http://www.ukela.org) under the student section.

Along with the completed application form you must submit:

1. Your Internship proposal

This must not exceed 1000 words and must include

- Brief information about the placement organisation.
- The amount of financial support you are seeking.
- A short personal statement addressing:

- a) What you will be doing and/or what project(s) will you be working on during your internship?
- b) Why you want to work in this particular area and/or with this particular organisation?

- c) How your academic studies, work, and personal experiences have prepared you for this placement? And
  - d) How you expect the placement to relate to your academic, extracurricular, and/or career path?
2. A short letter of commitment from the placement organisation (this can be sent by letter or by e-mail to the address given above). (Note: You may submit an application without having received a letter of commitment, but you will not receive funding until you submit one.)
  3. A CV (max 2 sides A4), including details of university results to date

Completed forms should be submitted to UKELA at [alisonboyd.ukela@ntlbusiness.com](mailto:alisonboyd.ukela@ntlbusiness.com) to be received no later than 5pm on **19 February 2010**. Decisions will be announced by 19 March 2010.

In any year normally only one award per placement organisation will be made.