and rejecting the policies of passing on the effects of cuts to working class people.

Surely it is also time for food banks and those who organise them to get political and mobilise. Like the National Unemployed Workers Movement in the 1930s, they could play a key role in galvanising the fight for the right to work and the right to a living wage rather than poor people having to constantly fall back on charity. There is a danger that without such a struggle, food banks will become an acceptable part of life.

There is a danger that without constantly falling back on charity, rather than poor people having to work and the right to a living wage passing on the effects of cuts to residents. And so the test was ultra vires. An argument elegant in its simplicity, as the mathematicians might say.

Paul Heron

28: The Social Mobility and Child Poverty Commission released a study on elitism in British society. The report found that the judiciary was the most elitist profession in the UK. Seventy-one per cent of senior judges attended private school despite only seven per cent of the general public attending a private school.

Testing times for Grayling

O n 15th July 2014, the High Court handed down its eagerly anticipated judgment in R (Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin). This was the Public Law Project’s challenge to Secretary of State for Justice and Lord Chancellor Chris Grayling MP’s abhorrent residence test. The residence test – which I have written about before in this column – would restrict legal aid to those who can prove 12 months’ lawful residence in the UK, denying many migrants, as well as a sizeable proportion of Britons unable to produce the documents to prove their residency, the protection of the law. Just over a fortnight before the residence test was due to come into force, a specially convened three court division of the High Court unanimously condemned the measure as unlawful. The Ministry of Justice has been granted permission to appeal but for now at least, the introduction of the residence test is on hold.

The judgment is a significant one for a number of reasons. Firstly, it is a rare and much needed victory for supporters of a fair justice system. Since the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the political will in Parliament to fight for legal aid has waned. The result has been several further rounds of cuts implemented without demur on the part of our elected representatives. Meanwhile, the courts, which have been called on to adjudicate on the legality of the cuts and on the inevitable systemic problems which have resulted, have shown their traditional reluctance to intervene with matters of policy. The decision of the High Court in R (Howard League) v Lord Chancellor [2014] EWHC 709 (Admin) (an unsuccessful challenge to the legality of regulations cutting legal aid for prison law which is presently being appealed) and the Court of Appeal in R v Crawford [2014] EWCA Crim 1028 (allowing a large scale fraud trial
Thinking back to 2010, some may recall Jonathan Djanogly MP’s wearisome refrain in debate after Parliamentary debate, that LASPO preserved legal aid for the most important cases, where it was needed most: arrogant nonsense given the extent of the cuts and used by the Minister as a device to stymie debate and avoid answering the difficult questions thrown up by LASPO. There is a certain irony that this empty rhetoric should now come back to haunt the Government in this way.

The second ground was more involved: that the residence test unconstitutionally discriminated between those cases of the highest priority for which the State had chosen to provide legal assistance, on grounds of nationality. That this distinction was discriminatory was ‘beyond question’. The issue was whether the discrimination could be justified. According to the High Court, it could not be. The context of the measure was not akin to the distribution of welfare benefits, where the State will be afforded a check the exercise of executive power, and was now seeking to restrict that protection on the basis of residence, in order to save money. This, the High Court held, was not permissible. The State may choose for itself what money it invests in the justice system. But within that system, the choices made must not be discriminatory.

An argument which, in a neat piece of constitutional symmetry, found its roots in A v Secretary of State for the Home Department [2004] UKHL 56, the first of the Belmarsh cases. Perhaps the most striking aspect of the decision was the highly politised language of the judgment. Lord Justice Moses, giving the judgment of the High Court, was unflinching in his criticism of the Government’s motivations. ‘Invoking public confidence’ he observed ‘amounts to little more than reliance on public prejudice’. His disapproval of the Lord Chancellor was no less, featuring with Chris Grayling MP personally coming in for criticism for his briefing of The Daily Telegraph, mid-case, against the ‘left-wing lawyers’ (the Public Law Project) who had the temerity to bring the challenge. ‘Unrestrained by any courtesy’ Moses opined, the Lord Chancellor had overlooked ‘that it is usually more persuasive to kick your ball than your opponent’s shin’.

On those final thoughts it is interesting to note that on 8th September 2014, Sir Alan Moses – formerly Lord Justice Moses – having stepped down as a judge of the Court of Appeal, began his tenure as the inaugural chair of the Independent Press Standards Organisation (IPSO). Those who fear that IPSO will be afraid to speak out against abuses by the press may be in for a pleasant surprise. Connor Johnston is a barrister and the Co-Chairperson of Young Legal Aid Lawyers.