

JUDICIAL REVIEW REFORMS UPDATE

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Brick Court Chambers

13 October 2014



The Spectator, 8 June 2013

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Judicial Review proposals for reform

13 December 2012

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Reduced time limits

- Planning – six weeks
- Procurement – 30 days
- Came into effect on 1 July 2013, through the Civil Procedure (Amendment No 4) Rules 2013 (SI 2012/1412), made to implement the changes by way of amendments to the Civil Procedure Rules.

Oral renewal of applications certified as “totally without merit”

- Where a judge refuses permission and records the application as being totally without merit in accordance with rule 23.12, the claimant cannot request that the decision be reconsidered at an oral hearing (CPR 54.12(7))
- CPR 52.15(1A)(b) the Court of Appeal may only consider an appeal from TWM decision on the papers.
- Came into effect on 1 July 2013, through the Civil Procedure (Amendment No 4) Rules 2013 (SI 2012/1412).

Oral renewal fee

- Oral renewal incurs an additional fee of £215
- Also introduced through the Civil Procedure (Amendment No 4) Rules 2013 (SI 2012/1412), and took effect from 1 July 2013.

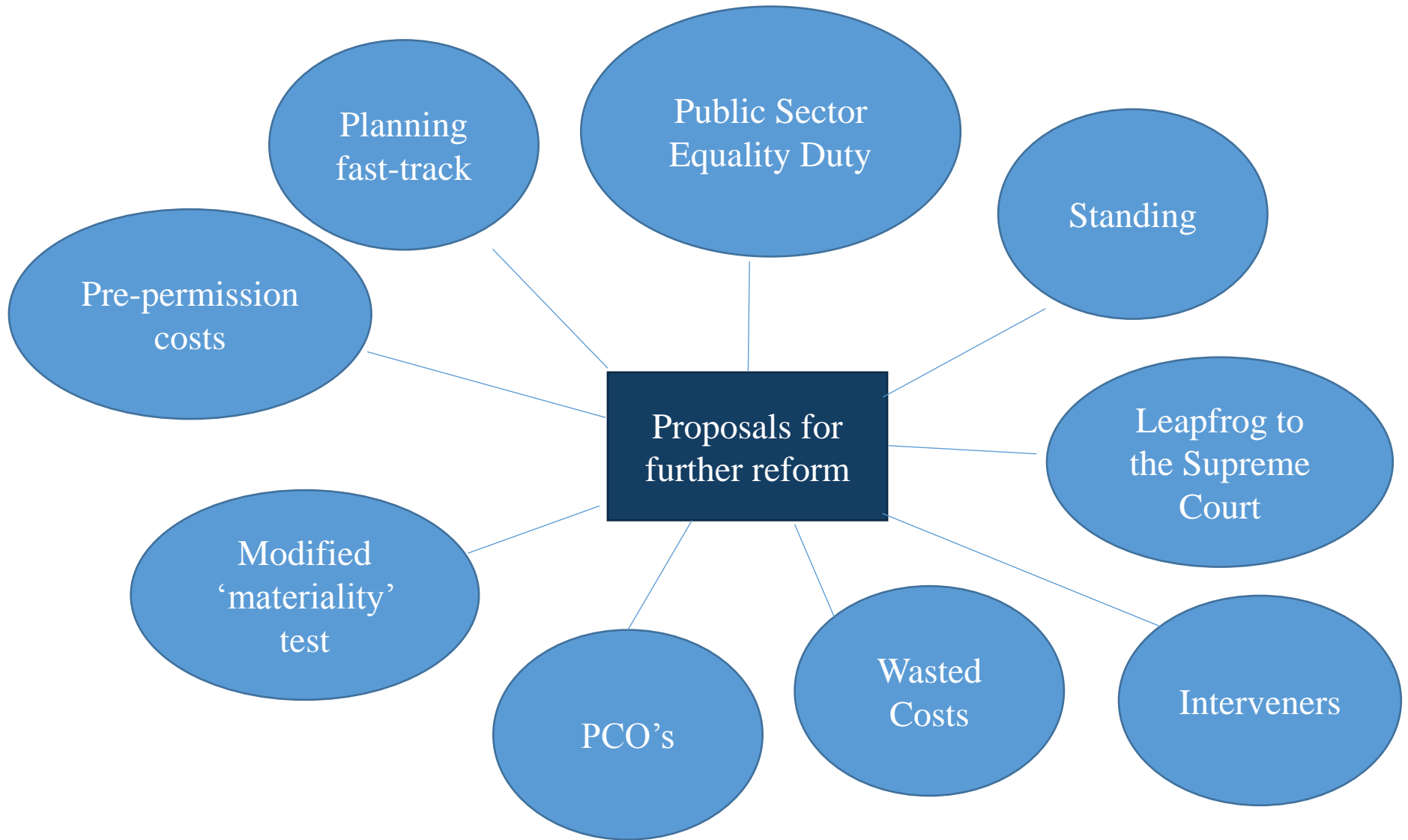
Transforming Legal Aid: Delivering a
more credible and efficient system
09 April 2013

Legal aid: the residence test

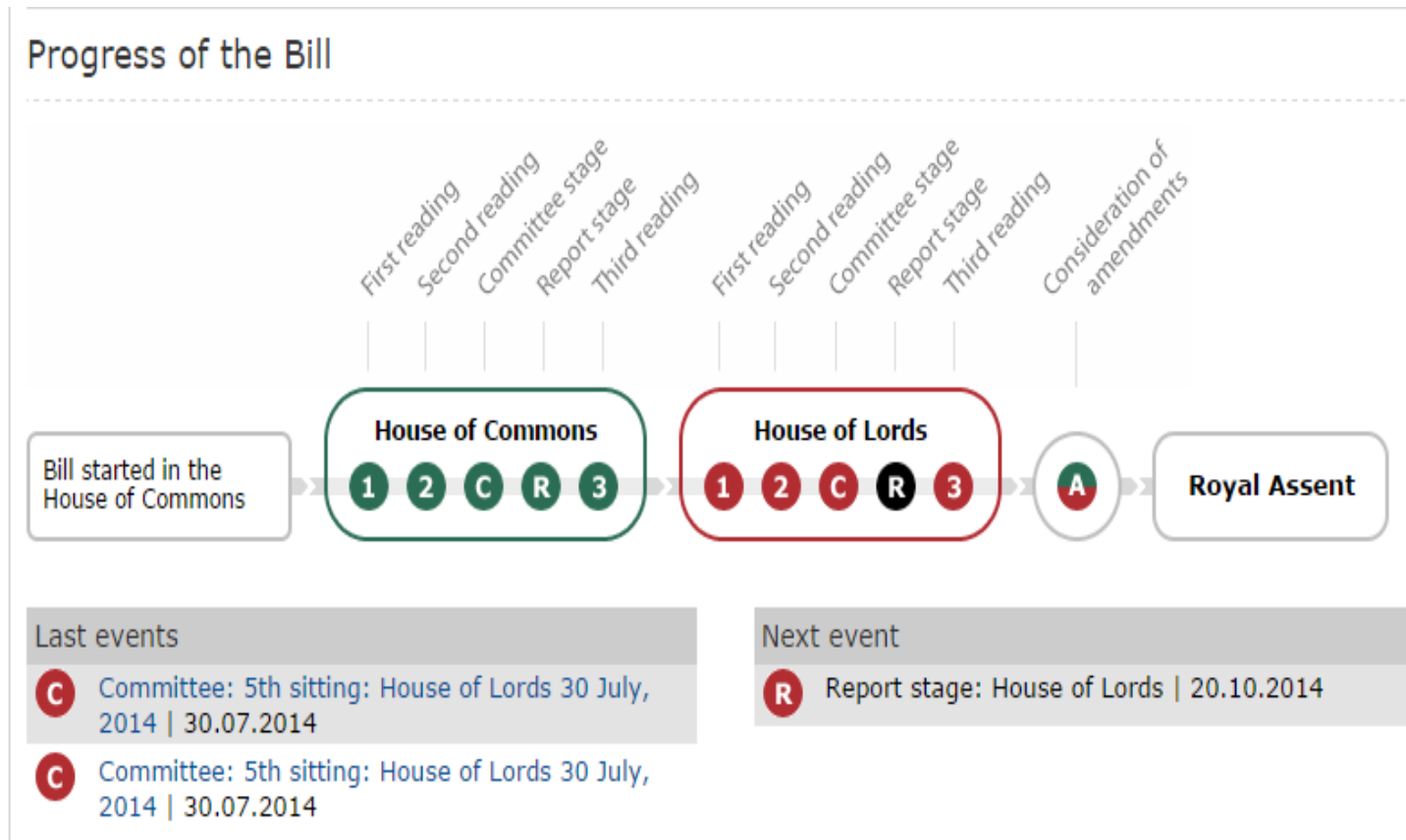
- Requirement that those accessing the legal aid scheme must prove 12 months lawful residence in the UK
- Introduced through the Legal Aid Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014
- Successfully challenged in *The Queen on the Application of the Public Law Project v The Secretary of State for Justice [2014] EWHC 2365 (Admin)*. Appeal to the Court of Appeal currently outstanding.

Judicial Review – proposals for further reform

06 September 2013



Criminal Justice and Courts Bill



Likelihood of substantially different outcome

- [Clause 70 of the Criminal Justice and Courts Bill](#)
 - Court *must* refuse to grant relief where it appears to the court to be *highly likely* that the outcome for the applicant would not have been *substantially* different if the conduct complained of had not occurred
 - Court *must* consider this question at permission stage if the defendant asks it to do so
- Bingham Centre report on streamlining JR rejected this proposal as being objectionable in principle (para [5.7](#)), in addition to the practical problems identified by the [senior judiciary](#) given the very real prospect of dress rehearsals
- The Joint Committee on Human Rights [criticised](#) lowering the threshold for non-materiality. Government [responded](#) on 15 July 2014.

Interveners and costs

- Clause 73:
 - Interveners *must* bear their own costs, unless there are exceptional circumstances
 - The court *must* order the intervener to pay any costs specified in the application that the court considers have been incurred by that party as a result of the intervener's involvement in the proceedings, unless there are exceptional circumstances that make it inappropriate to do so.
- Explanatory note refers to this as a presumption
- Criticised by the Joint Committee on Human Rights on 30 April 2014. Government responded on 15 July 2014.

Permission costs

- New Regulation 5A of the Civil Legal Aid (Remuneration) Regulations 2013, as inserted by Regulation 2(5) of the Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014
- The Regulations provide that legal aid practitioners will not be paid for their work on making an application for permission in a judicial review case, where that application has been issued, unless
 - (i) permission is given by the court or
 - (ii) the case concludes before a permission decision is made but the Lord Chancellor (in practice, the Legal Aid Agency) considers that it is reasonable to pay, taking into account the circumstances of the case.
- Concern expressed by the [Secondary Legislation Scrutiny Committee](#).
- [Motion of regret](#) tabled by Lord Pannick on 7 May 2014
- Criticised by the [Joint Committee on Human Rights](#) on 30 April 2014. Government [responded](#) on 15 July 2014.

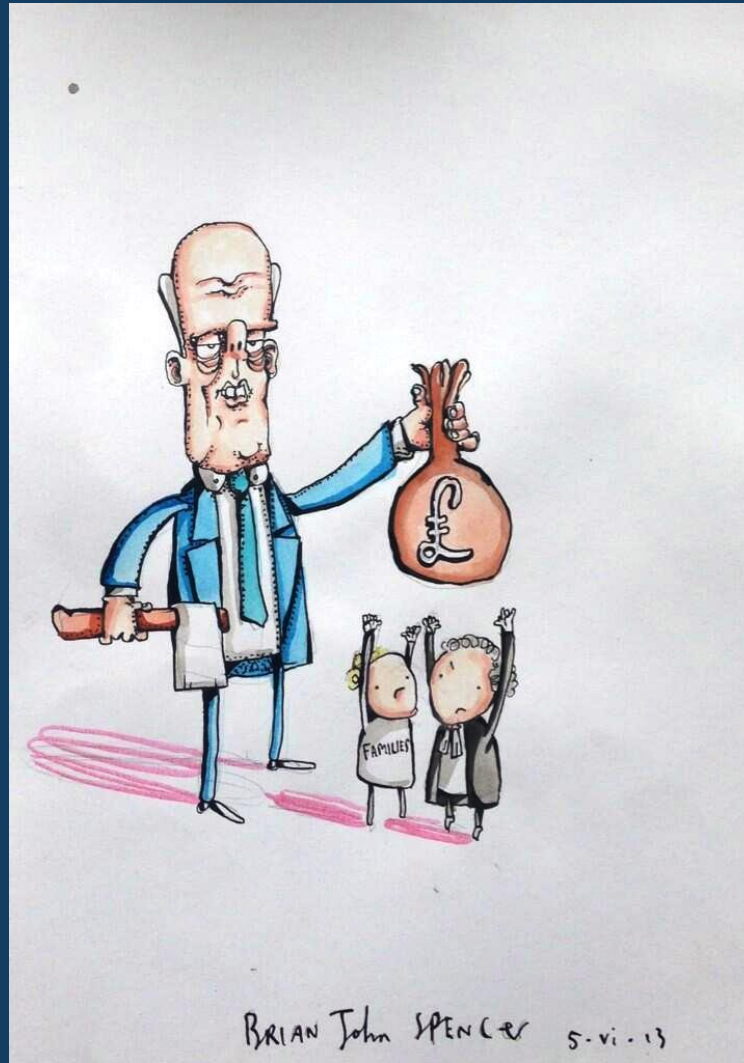
Information about financial resources

- [Clause 71 – 72 of the Criminal Justice and Courts Bill](#)
 - Permission cannot be given unless information about source, nature and extent of financial resources is provided
 - The court or tribunal *must* consider whether to order costs to be paid by a person, other than a party to the proceedings, who is identified in that information as someone who is providing financial support for the purposes of the proceedings or likely or able to do so.

Cost capping orders (PCO's)

▪ Clauses 74 – 76

- Codifies rules for granting a PCO, requiring that proceedings are in the public interest and defining the latter as involving:
 - the number of people likely to be directly affected;
 - how significant the effect on these people is likely to be; and
 - whether the proceedings involve consideration of a point of law of general public importance
- May only be granted *after* the grant of permission
- Excludes environmental cases
- Joint Committee on Human Rights recommended removal of permission requirement. Government responded on 15 July 2014.



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