

An Independent Evaluation of the Strategic Legal Fund for Vulnerable Young Migrants

This is a summary of an independent evaluation of The Strategic Legal Fund for Vulnerable Young Migrants (SLF) by On the Tin Ltd. The SLF is a project of Trust for London, delivered in partnership with Esmée Fairbairn Foundation and MigrationWork CIC.

Key findings

The SLF has awarded grants to fund pre-litigation research and third party interventions which contribute to potential legal action in favour of young migrants experiencing disadvantage and discrimination because of their migration status. From November 2011 to June 2013, the SLF made 32 grants totalling £380,182.

- A majority of grantees reported that the work would either not have happened at all or to anything like the same level of detail without SLF funding.
- SLF funding has resulted in court judgements being influenced in favour of disadvantaged young migrants.
- SLF-funded work has directly influenced policy change locally and nationally.
- Some participating organisations have used their pre-litigation research, funded by the SLF, to increase their ability to influence policy.
- Eight grantees reported that, as a result of the SLF-funded research work, they have identified a potential legal challenge to discrimination or disadvantage.
- Young migrants have directly benefited from SLF work.
- Wider practitioner and policy networks have been fostered by research work.
- Organisations have benefited from being involved in SLF-funded work, including gaining confidence in undertaking strategic litigation.
- The work has helped maintain morale and motivation among grantees.
- It is very early to judge whether the programme has been a success and defining what 'success' would look like is still a difficult task.
- The SLF and grantees face a number of risks which are inherent to the nature of their work. The SLF has generally handled risk well and has been risk averse in applying strict scrutiny to applications.
- The current SLF model has a number of strengths and weaknesses.
- The SLF is felt to be practically and symbolically important to maintain a strategic challenge to the erosion of young migrants' rights, who are particularly susceptible to discrimination and disadvantage in the current climate.
- Overall it was felt that the SLF has achieved concrete results and, at a time of great change, represents an important contribution to the support for disadvantaged and vulnerable young migrants in the UK. As such, it should continue and at present should not seek to change too much.

1. About the Strategic Legal Fund and this evaluation

- a. The Strategic Legal Fund for Vulnerable Young Migrants (SLF)¹ was set up in 2011 by The Diana, Princess of Wales Memorial Fund. Trust for London took over its hosting with co-funding from Esmée Fairbairn Foundation in 2012. The second phase of grant-making extends until July 2014. The SLF awards grants to fund pre-litigation research and Third Party Interventions which further potential legal action in favour of young migrants experiencing disadvantage and discrimination because of their migration status. A panel of legal and policy experts advise the funders.
- b. The evaluation sought to identify the main benefits and outcomes that had resulted from SLF funding. It also sought to identify lessons about the way the fund has been set up and run, and make recommendations for its future focus and operation. The evaluators conducted extensive desk research, attended various meetings and interviewed 86 stakeholders.

2. Overview of work funded by the Strategic Legal Fund

- a. From November 2011 to June 2013 the SLF made 32 grants to 28 organisations or partnerships² totalling £380,182. Over 70% were grants to voluntary organisations and eight were to private law firms.
- b. Most grantees say that the work would either not have happened at all or to anything like the same level without SLF funding. Other interviewees did not express a view or said they might have tried to find alternative funding.

3. Achievements of the SLF funded work

Legal and policy gains

- a. **Influencing court judgements.** SLF-funded work has resulted in court judgements being influenced in favour of disadvantaged young migrants. In three cases, funded Third Party Interventions have clearly had a positive impact on how the courts have viewed and judged the matters under consideration, and there are a further three examples where SLF-funded work has influenced how the courts and policy makers deal with issues.
- b. **Changing policy.** SLF-funded work contributed to local and national policy change. One local authority changed its policy towards unaccompanied minors in their care when their unlawful practice was unearthed during pre-litigation research. At national level, Home Office policy on Discretionary Leave will need to be changed in light of the court judgement, enabled in part by an SLF-funded third party intervention, that child safeguarding and welfare duties must be considered in all aspects of immigration decisions. Judgement on Home Office policy on delays to Section 4 support for destitute asylum seekers also resulted in at least two changes of policy.
- c. **Policy influence.** Organisations have used their research to further their policy influence, including training, launch events in Parliament and meetings with policy makers. Other grantees reported that they had gained invitations to key policy groupings as a result of doing the work.
- d. **'In the pipeline' legal challenge.** Eight grantees reported that, as a result of the SLF-funded research work, they have identified a strong argument to challenge discrimination or disadvantage, and are looking for individual cases to take forward the work they have done in the courts.

¹ The programme was originally called the Strategic Legal Fund for Refugee Children & Young People. It changed its name and remit in November 2012.

²All 32 grants were examined during the evaluation, 18 of these in detail.

*“a small chink
of light in an
otherwise
desolate sector.”*

SLF Grantee

Positive outcomes for vulnerable young migrants

- e. Young migrants directly benefiting from the work. For example, a family will receive compensation for having been separated through detention; several young migrants were helped to access educational grants.

Benefits for those working in the field

- f. **New learning has informed casework.** Grantees feel better informed about a range of issues and have also been able to take some ‘thinking time’ during which they could formulate new arguments. ‘Game-changer’ pieces of information have come to light which are of substantial use in framing new legal arguments, such as having a better understanding of Section 55³ and the UK Border Agency’s (UKBA) interpretation of this.
- g. **Wider practitioner and policy networks informed by research.** Public Law Project produced guidance on social services support for destitute migrant families; Child Poverty Action Group wrote a report on the lawfulness of delays in processing welfare claims for young migrants; Kesar & Co are publishing a paper on the key reasons why children’s asylum claims fail; Just for Kids Law trained criminal lawyers on good practice in ‘deeming’ a young person’s age where it is disputed.
- h. **Organisations have benefited from being involved in SLF-funded work.** Grantees reported a range of benefits, including: gaining more confidence in using strategic litigation as a tool; increased networking opportunities; more referrals; and in some instances being able to earn money by taking on civil cases which have come about as a result of doing research work.

Sectoral benefits

- i. **The work has helped maintain morale and motivation.** SLF grantees welcomed the chance to tackle root causes rather than the negative fallout of discriminatory policies and legislation.
- j. **New initiatives have been generated** including new work tackling the erosion of young migrants’ rights in London, and the creation of a new organisation (Project 17), some of the credit for which is down to the key founders making a connection during their work on the SLF-funded project.

4. Lessons around success and risk

About success

- a. There were different understandings of what constitutes ‘success’. For lawyers, success was often defined in terms of winning or losing a case, whereas for others success was often viewed more broadly. It was also noted that a legal victory may sometimes succeed in “winning the battle but losing the war” if raising the issue results in entitlements being withdrawn. It was felt that a fairly nuanced expectation of success is likely to be necessary for the future.
- b. Generally, people felt it is too early to fully judge the success of the programme but given the profound recent changes in the sector, which has left many working to defend young migrants’ rights feeling that they are ‘swimming against the tide’, any achievements are commendable.

³Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its functions in a way which safeguards and promotes the welfare of children in the UK.

“Litigation is not a silver bullet.”

Funder interviewee

- c. Other funders of strategic legal work noted that longer timeframes (7 – 10 years minimum) were needed to see any emerging consistent change.
- d. Funders emphasised the importance of not seeing strategic legal work in a vacuum, of making sure that it is set in the context of advocacy, research, activist and information work which can both feed it and build on its results.
- e. Emerging success predictors for an SLF project include: (i) the legal provider has a clear strategy for identifying a claimant; is aware of the need to clearly instruct the researchers working alongside them; and has a strong track record of strategic litigation, or support from those who do. (ii) the voluntary organisation or researcher has an understanding of, and ability to comply with, the robust data gathering required for legal evidence.

About risk

- f. Strategic litigation work is inherently risky. Cases did not often move forward in a linear fashion: claimants were either not found, or were reluctant to continue with a case, or cases settled before getting to court. In addition, there was the risk that the most suitable case would not be found by the grantee, which can undermine the progress of the work and prove frustrating for those who have prepared the case but do not ‘hold’ the client. What had not yet happened, but was feared by a number of interviewees, was the risk of a bad case getting taken forward which undermines the chance of successful strategic litigation in the future.
- g. Another risk factor was that work can effectively hit a ‘brick wall’ of policy response, with a reluctance to engage from the relevant government body.
- h. Organisations and individuals doing the SLF-funded work are also carrying risks. Some relate to time and finance pressures, while there is also a risk of projects entering into litigious communication with those who may, before, have been related to in a more engaged and accommodating fashion: two voluntary sector organisations reported they felt that they had been viewed more warily by statutory agencies aware of their involvement in legal action.
- i. Young migrants also bear risks in the work. The research itself may set out to identify young migrants to share their experience without clear potential benefit or redress for their problems. Young migrants may also see risks associated with involvement in research, from loss of support to hostility and discrimination: in at least one case, this fear proved correct.

5. Lessons about the SLF model

- a. The SLF model has prioritised short-term, small-scale grants accessible throughout the year (every 6–8 weeks). Unusually the funders have outsourced the administration to MigrationWork and have an additional advisory mechanism: an Expert Panel of lawyers and policy advisers.
- b. The model has changed and adapted since its inception, including navigating a change of host, widening the original focus on young refugees and asylum seekers to young migrants, allowing a certain proportion of the funding now to fund advice and casework and enabling more private practice solicitors firms to apply by not requiring a legal aid contract. The SLF also extended its remit to Scotland and Northern Ireland just before the start of the evaluation.

Focus of the SLF

- c. Broadly, it is felt that widening the remit to young migrants was a good idea. While some feel broadening the scope to 'migrants' would be desirable, on balance most feel that maintaining the current focus is advisable.
- d. Focus on a client group rather than an area of law is unusual and makes measuring progress challenging.

Accessibility and reach

- e. MigrationWork has done a good job of promoting the SLF but concerns about its 'reach' persist: (i) applications are still being received from a relatively small number of legal providers, and some key private law firms have not yet applied; (ii) only one community group has been named as a partner, resulting in ongoing questions about how to meaningfully involve and engage migrant community organisations; (iii) the geographical spread of applications is largely London-centric though several are national in scope, as is the actual or potential impact of the work undertaken. Recent extension to Northern Ireland and Scotland may broaden the number of funded organisations which are not based in London.

Strengths and weaknesses of the current model

- e. Strengths reported by grantees and other stakeholders included: a streamlined and easy to follow application and reporting process; the speed with which applications could be processed; helpful guidelines; pre- and post- application support offered by MigrationWork; the Expert Panel's legal knowledge, credibility and connections.
- f. Weaknesses included: an inconsistent approach to costing, with budget scrutiny sometimes taking precedence over the strategic legal viability of the work; assessment by a 'jury of peers' who are often well known to grantees; and lack of clarity about key SLF roles.

SLF approach to risk

- g. There is a keen awareness of potential risks in the SLF but everybody is concerned about different risks depending on where they are in the system. The funders are particularly aware of the potential for negative publicity, whilst Expert Panel members are concerned with the risk of supporting unstrategic work, poor cases or even replacing existing pro bono work.
- h. The SLF has generally handled risk well and has been risk averse in applying strict scrutiny to applications. The evaluation concludes that scrutiny of costings as well as pro bono contributions should be relaxed, that due diligence is accepted as being handled well, and that mechanisms to allay concerns about less experienced providers should be encouraged.
- i. It is difficult to assess whether the SLF is value for money. However, direct costs are broadly in line with the benchmark figure suggested by the Big Lottery Fund, which puts the running of outsourced grant-making costs at around 14% for smaller funds. Over the period considered, the SLF administration costs were 15%, including the inevitably higher costs of set up. These costs do not include the time spent by the funders.
- j. Those interviewed felt that this type of funding provided good value for money in the sense that small amounts potentially levered large benefits and outcomes by dint of intervening strategically and at the right time.

6. The future given the present

- a. The current legislative and policy climate in the UK mean that both migrants' rights and access to justice are simultaneously under what feels for many to be an unprecedented assault. Interviewees spoke about "tsunamis of demand" already being witnessed in legal and advice centres.
- b. Against this backdrop, the SLF is felt to be both practically and symbolically important. Continuing to challenge the erosion of young migrants' rights is felt to be more important than ever by most interviewed.
- c. It was felt that the model of the SLF could well be extended to other areas of law, though by setting up new funds rather than extending the scope of the existing fund. In particular, there could be considerable scope in replicating the SLF model for social welfare law and benefits.

Recommendations

Overall it was felt that the SLF has achieved concrete results and, at a time of great change, represents an important contribution to the support for disadvantaged and vulnerable young migrants in the UK. We recommend:

1. Continue with the SLF and don't rush to change too much. Maintain the focus on young migrants.
2. Be clear about what 'success' looks like, and the broad definition of this for the fund. Preserve high-level principles to guide the work but accept pragmatic limitations of developing a coherent 'theory of change'.
3. Ensure ongoing publicity and engagement to enable as wide a range of providers as possible to get involved.
4. Take proactive steps to connect with migrants networks which can feed and disseminate the SLF-funded research.
5. Ensure more systematic follow through on the work. Practical ways of disseminating the work enabled by the SLF include requiring all applicants to build dissemination into their work and a closing debrief on all projects.
6. Support legal providers to better engage with strategic legal and research work with training and support on a) strategic litigation and b) how to commission and manage research.
7. Enable NGOs to collect evidence which can fuel legal work in a more systematic manner making it quickly accessible for legal challenges.
8. Ensure that grantees provide evidence as to the human impact of the work (rather than simply describing success in legal terms).
9. Pending specialist advice, consider extending the scope of what the SLF can fund in order to sustain the prospects of legal challenge in the future.
10. Streamline the Expert Panel input to increase continuity of decision-making.
11. Frame Expert Panel meetings around a set of standard questions to ensure discussions are strategically focussed.
12. Maintain MigrationWork CIC to manage the SLF but better clarify the core tasks and responsibilities of its contribution.