

Strategic Legal Fund for Vulnerable Young Migrants: Evaluation of achievements

Key findings

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

The Strategic Legal Fund for Vulnerable Young Migrants (SLF) provides small grants for pre-litigation research and third party interventions at court which contribute towards upholding and promoting the rights of vulnerable migrant children and young people in the UK. The evaluation found that:

- **Vulnerable young migrants have benefited from the SLF on a range of issues.** It has helped both to prevent the introduction of discriminatory law and policy (e.g. the Legal Aid residence test); and to mount effective challenges to existing laws and policies causing significant disadvantage to young migrants, such as exclusion from student loans.
- **SLF-funded work has influenced court judgments** by enabling the collection of a solid evidence base.
- **The SLF is contributing to policy change.** Evidence gained through SLF-funded research, or judgments made in court, are either having a direct effect on policy or are being used in discussions with policy makers.
- **The information and understanding gained through SLF work** is supporting further **legal casework**, for example for young migrants who have been refused Jobseeker's Allowance.
- **Relatively small injections of funding can have profound and long-lasting effects.** The level of impact cannot be determined by the amount of funding invested, as the value of the SLF is sometimes in enabling critical research and thinking time when it matters.
- **High 'hit rate'.** Virtually all projects funded by the SLF have yielded some positive benefits in relation to legal or policy change. This may be due to tight screening for appropriately strategic projects, including by the Expert Panel of legal and policy advisors.
- **Legal challenge is achieving change where other routes do not.** Incorporating legal challenge (or the threat of legal challenge) into a strategy to tackle the discrimination and disadvantage facing young migrants is proving effective, even when change through other routes (such as lobbying) has failed to deliver results.
- **The need for the SLF is increasing.** Given the government's stated aim of making the environment 'hostile to migrants', the law is a critical tool to protect young people.

About the SLF

The SLF's model has been to provide funding which can be accessed quickly by both voluntary organisations (including law centres) and private law firms. It is advised by a panel of legal and policy experts¹, and, since 2012, hosted by Trust for London and administered by MigrationWork CIC. During the current phase, five funders have contributed to the SLF: Esmée Fairbairn Foundation, Paul Hamlyn Foundation, Joseph Rowntree Charitable Trust, Trust for London and Unbound Philanthropy.

Since its inception in 2011, the SLF has awarded 71 grants, of which 13 have been extensions or continuations to existing grants. 18 grants were awarded between January 2015 and May 2016, of which five are extension grants. 14 of these grants (totalling £165,843) were awarded for pre-litigation research and four (totalling £42,332) for the preparation of interventions at court ('Third Party Interventions'). Most were awarded to voluntary organisations, with two grants awarded to partnerships of voluntary organisations and private firms of solicitors.

About the evaluation and this report

This evaluation adopts a case study approach, and focuses on outcomes and benefits from work funded – or showing significant results – during Phase Three (January 2015 to date). The report describes only a portion of the outcomes of the SLF thus far. Fieldwork for the report involved a document review and 29 interviews with a range of SLF stakeholders, including funders and grantees. In addition, eight case studies were selected to illustrate some of the complexity and detail of the work funded.

This is a summary of a full report which is available online via the Strategic Legal Fund website at <http://www.strategiclegalfund.org.uk>

What the funding has achieved

Legal challenge and change

- A **wide range of issues are being challenged through SLF funding**, showing both the diversity of the migrant population and the complexity of the laws and policies which affect them. The main focus continues to be on the most seriously disadvantaged and vulnerable young migrants, though SLF-funded work is also helping to challenge clear instances of discrimination towards, for example, prospective young students.
- SLF-funded work has **influenced court judgments**. It has done this by enabling the collection of a solid evidence base which has helped build a case and been relied on in court, for example, Bindmans showing how the residence test would negatively impact on young migrants. It has also enabled interventions by Third Parties to inform the court, for example by Just for Kids Law about fees for migrant students which was subsequently cited in the leading judgment in favour of the students.
- Research funded by the SLF is also **feeding legal challenges taken forward by others**. For example, research done by Child Poverty Action Group (CPAG) on the negative impact of the 'genuine prospects of work test' on young migrants has been used in appeals by other advisers in the field, and detailed research by Hackney

[1] SLF Expert Panel

Community Law Centre on the quality of accommodation provided to destitute migrant families by local authorities has been used by Birmingham Community Law Centre when challenging inadequate provision locally.

- The SLF's ability to provide a **'thinking space' to collect research and consider legal arguments** was emphasised as a vital contribution. The funding enables highly pressurised organisations and individuals to take a step back and consider how emerging instances of discriminatory policy and practice can be legally challenged. One member of the Expert Panel described how *"organisations on the frontline become empowered with a tool of understanding lawfulness rather than unfairness."*
- There were numerous examples of how the SLF is **enabling organisations to take stock of legal options**, including JCWI's research on the 'right to rent' which is following up on preliminary evidence from the pilot showing that Landlord Checks are putting children and young migrants at serious risk. Another example is the work being taken forward by Bindmans, investigating how NHS data sharing may be deterring some migrants from accessing NHS services for themselves and their children, and looking at how potential legal arguments may be framed to challenge this.

Policy and practice change

- The SLF is **contributing to policy change**. Evidence gained through SLF-funded research, as well as judgments gained in courts, are either having a direct effect on policy (because some judgments require a revision of policy in their wake) or are being used in discussions with policy makers. For example, Public Law Project influenced the "no notice" removals policy through collecting evidence and legally challenging the policy; Coram Children's Legal Centre produced guidance for local authorities on supporting children; and JCWI's joint intervention with the Children's Commissioner in February 2016 on the Family Migration Rules resulted in the Home Office agreeing to review the Guidance concerning the Best Interests of Children Outside the UK.
- The **information and understanding gained through SLF work is also supporting further legal casework**. This casework is essential, particularly for judgments which do not automatically come into force. For example, CPAG has drafted a paper to help other workers prepare appeals against decisions removing Jobseeker's Allowance (JSA) from their young migrant clients; the AIRE Centre is producing an advocacy toolkit for organisations with clients facing removals under Operation Nexus; and ASAP has been 'spreading the word' on the clarity gained on accessing Section 4 support for destitute refused asylum seekers.
- Whilst there are significant risks in highlighting migrant issues to the media, some projects have **stimulated media and public interest and sympathy with the issues raised** through litigation. The AIRE Centre for example gained positive coverage for the work done on uncovering the reality of Operation Nexus, and Just for Kids Law was successful in getting the media to pick up on the unfairness of young people from migrant backgrounds being denied access to higher education.

Positive outcomes for young migrants

- In some instances the SLF has **benefited young migrants by 'preventing a negative'** and stopping a discriminatory proposal from being introduced. The prime example of this is the successful legal battle against the introduction of the residence test for access to Legal Aid, which received kick-start funding from the SLF in 2013 and eventually resulted in this proposal being dropped in 2016.

“Every day there will be people who get legal aid who would not have got it had the residence test been brought in – and that has been true of every day for the past two years. There will be hundreds and thousands of people affected.”

- Existing law and policy has also been challenged, and here successes have meant that **young migrants previously subjected to legal discrimination and disadvantage now are not**. There are significant examples of this, including the two case studies below. In addition, refugee children separated from their family now have the prospect of unification owing to the judgment by Justice McCloskey which drew on the intervention by JCWI.
- SLF grantees are investigating challenges to other discriminatory laws or policies which promise to contribute directly or indirectly towards improving the lives of young migrants. Though such outcomes are only ‘in the pipeline’ at present, evidence showing their negative impact is mounting as are the prospects of a legal challenge. Greater Manchester Immigration Aid Unit’s pre-litigation research into the fee waiver policy, which looks at the effect of the administrative fee for extending leave to remain, is a good example of this.

“The fees are £1,149 per person and are so high as to effectively prevent families on low incomes from extending their leave to remain or making applications in the first place. The effect is that families, including migrant children, can lose their leave entitlement and all that goes with it – access to benefits, housing etc – and end up destitute with no recourse to public funds. We have 100+ families affected by the policy in our current caseload.”

Organisational and sectoral benefits

- Funded organisations report many benefits in having had the **opportunity to gather evidence and formulate arguments** through SLF funding. For example, Detention Action reported going through a ‘huge learning experience’ in the course of taking a successful challenge on the Fast Track Rules and feel that their standing as a serious player with the Home Office has been enhanced rather than undermined as a result. Public Law Project noted that their work on ‘no notice’ removals has greatly increased their knowledge of the issues associated with the policy, and feel it fits well with work under their legal aid support programme.
- Some organisations feel that they have **gained learning and understanding to build on for future strategic legal work**. The AIRE Centre has used CrowdJustice funding for the first time to take forward a challenge which they may use again; ASAP reports learning how to do an intervention; and JCWI is increasingly positioning as a tough and expert strategic legal player, encouraged in no small part by the SLF.
- SLF-funded work has **sparked projects or initiatives which are further challenging policy or practice**. For example, Just for Kids Law’s work on student fees has helped build a movement of young people, who following the legal judgment in their favour are now engaged in encouraging other young migrants to come forward to access higher education.

The Future

There is a universal appetite among stakeholders for the continuation of the SLF. In future, it could be useful to build in opportunities to reflect as a fund on the complexity of the body of laws, rules and regulations which now exist around young migrants in the UK, as well as learning lessons from other countries. The range of outcomes achieved, the high success rate of the projects funded and the increasing need for work which challenges discrimination and disadvantage in the current hostile climate for young migrants make the SLF a compelling proposition for funder investment.

Case study: Giving young migrants the chance to study

In 2012, a rule change meant that young migrants with a certain type of legal status (DLR²) could no longer get student loans. Effectively this meant that some young migrant people would be barred from attending higher education. Many were distraught at this news.

The SLF funded Just for Kids Law to prepare a Third Party intervention in a case already being taken forward by a young woman in York. Just for Kids Law felt they could raise the profile of the issue and make her case far more compelling with evidence showing how widely applicable her individual circumstances were, and how damaging such a rule was both to the life chances of young migrants and to the UK economy as a whole. They collected case studies, commissioned research on the economic value of higher education, and researched the numbers affected by submitting Freedom of Information requests. They also took detailed witness statements from experts in the field.

When the case came to court, young migrants held a peaceful protest outside and it attracted considerable media attention. Young migrants also attended the court to hear the submission of the evidence prepared by Just for Kids Law. They returned a month later to hear the judgment handed down by Lady Hale, which confirmed that the regulations breached European Convention rights and should be changed. Judges were visibly moved by the emotion of the delighted young people when hearing that they could now attend higher education.

Just for Kids Law was instrumental not only in achieving a positive outcome in the court case, but subsequently in lobbying successfully for alternative regulations which reduced the proposed 'lawful residence' to qualify for student loans to three years. The case has also kick-started the 'Let us Learn' campaign which is encouraging more young migrants to investigate their opportunities for higher education. This responds to a problem identified during the research: that many young migrants are not coming forward while still in school, when the problem is easier to resolve, as they are embarrassed and afraid about their immigration status being discovered.

It is difficult to know how many young migrants this judgment affected, but reasonable estimates are in the low thousands. Let Us Learn has now worked with over 600 young people. Certainly for the young migrants affected by the positive judgment in the Supreme Court, the impact of the case has been life-changing.

"I met a young woman who was very depressed because of this issue. She had 30 months' leave and her mum was saying 'I have to watch her, she is going to do something to herself' because she was so down about it. The court ruling came through and she was ecstatic – a completely different woman."

[2] Discretionary Leave to Remain in the UK

Case study: Challenging discriminatory 'Fast Track' rules

If the Home Office considered an asylum seeker to have a case that was 'suitable for a quick decision', the Detained Fast Track (DFT) system locked them up in immigration detention centres to process their asylum claim. It had caused extreme concern to NGOs and human rights lawyers since its introduction in 2003. Separated from family and friends, accessing advice and representation was notoriously difficult with many only able to access a duty solicitor on the same day as their asylum interview, too frequently only minutes before. They were given unrealistically short deadlines to obtain evidence or lodge appeals. The Home Office refused 99% of claims placed on the DFT.

Detention Action and Migrants' Law Project had campaigned against the DFT for years and taken legal challenges. However, though legal judgments were damning and found 'discriminatory practice', they still gave the Home Office the chance to rectify the problem and carry on administering the system.

"We had been starting to despair. The Home Office did unlawful stuff on detention, we would litigate, the court would say 'this little thing is unlawful, this thing is unlawful' and the HO was making small changes and carrying on regardless... We were panicking that we were committing ourselves to doing this forever" (Grantee)

SLF funds enabled pre-litigation research to help tackle the problem from a different angle. Through this, they gathered extensive and detailed evidence to see if the Home Office had in fact rectified discriminatory practices highlighted in previous judgments. The grantees note how the SLF funding helped reframe their approach: *"I think that the involvement of the SLF allows that kind of strategizing, thinking approach rather than the more reactive bare bones approach which is the reality of most litigation these days."*

This led ultimately to a new claim, and also to them deciding to claim against the Tribunals and the Lord Chancellor.

"That was a radical stroke. When we put our claim in, the Home Office told us we were mad and told the court it was preposterous. [...] It was an unorthodox move and we were taking a risk." (Grantee)

The judgment in May 2015 found the Fast Track rules to be 'unlawful' (ultra vires) and suspended them.

The work had ended 15 years of discriminatory practice in immigration detention centres. 4,286 asylum seekers were detained on the Fast Track in 2013 alone, and around a quarter of these will have been under 24 years old. *"To date, over 300 people have been released from detention, and those asylum seekers who remain detained and have rights of appeal are now having their appeals heard under the Principal Appeals Procedure Rules. This represents huge progress in effectively challenging an aspect of the asylum and immigration system, which impacts on very many young migrants."*

The full evaluation report by On the Tin Ltd can be downloaded from www.strategiclegalfund.org.uk