



**Trust for London and Esmée Fairbairn Foundation in partnership
with MigrationWork CIC**

Strategic Legal Fund for Vulnerable Young Migrants

Evaluation Report



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Abbreviations used in this report

ARE	Appeal Rights Exhausted
ASAP	Asylum Support Appeals Project
CFA	Conditional Fee Agreement
DLR	Discretionary Leave to Remain is a form of immigration status granted to a person who the Home Office has decided does not qualify for refugee status or humanitarian protection but where there are other strong reasons why the person needs to stay in the UK temporarily.
DPOWMF	The Diana Princess of Wales Memorial Fund
EP	Expert Panel, the advisory panel of experts for the Strategic Legal Fund.
ERPUM	European Returns Platform for Unaccompanied Minors (project which makes it possible to speed the return of Afghan unaccompanied young minors, funded by the European Commission)
FNP	Foreign National Prisoner
FOI	Freedom of Information
GMIAU	Greater Manchester Immigration and Asylum Unit
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
ILC	Islington Law Centre
IPCC	Independent Police Complaints Commission
JCWI	Joint Council for the Welfare of Immigrants
JFK Law	Just For Kids Law
JR	Judicial Review
LAA	Legal Aid Agency
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LCCSA	London Criminal Courts Solicitors' Association
LCF	Law Centres Federation
MLP	Migrant Legal Project (legal aid practice in Bristol)
MLP (ILC)	Migrants' Law Project (a legal and public education project hosted by Islington Law Centre)
NGO	Non-governmental organisation. In the UK, this usually refers to charities and other non-profit making organisations such as social enterprises. It is generally used in this report to denote a charity or not-for-profit organisation.
NRM	National Referral Mechanism (a process for identifying and supporting victims of trafficking)
NRPF	No Recourse to Public Funds
OCC	a) Office of the Children's Champion (an office within the UKBA which supports the work of the Children's Champion, appointed 'to promote the Home Office duty to have regard to the need to safeguard and promote the welfare of children in the UK when carrying out immigration, asylum, nationality and customs functions' b) Office of the Children's Commissioner, an agency which supports the work of the Children's Commissioner whose role was created by the Children Act 2004
PCO	Protective Costs Order
PIL	Public Interest Lawyers
PLP	Public Law Project
RAMFEL	Refugee and Migrant Forum of East London
SLF	Strategic Legal Fund (for vulnerable young migrants)
SSHD	Secretary of State for the Home Department
TCS	The Children's Society
THLC	Tower Hamlets Law Centre
TPI	Third Party Intervention – where a court allows applications by public bodies, private individuals or companies, or NGOs to make submissions which raise some issue of public importance.
UASC	Unaccompanied Asylum Seeking Children i.e. children under the age of 18 who arrive without any known guardian
UKBA	United Kingdom Border Agency

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Introduction

The Strategic Legal Fund for Vulnerable Young Migrants¹ (SLF) was set up by the Diana Princess of Wales Memorial Fund (DPOWMF) in 2011. When the Diana Fund closed down in late 2012, Trust for London agreed to take over the hosting of the SLF and provided additional funding with Esmée Fairbairn Foundation for a second phase (December 2012 to March 2014 initially, though this has now been extended).

The work associated with setting up, publicising and administering the fund has been provided throughout by MigrationWork, a community interest company (CIC) with a specialism in migration.

The SLF is trying something new and unique in the UK. Its main purpose is to try and identify and challenge some of the root causes of disadvantage, poverty and discrimination faced by young migrants. It hoped to do this by picking up on issues being identified by lawyers and other practitioners 'on the frontline' and enabling them to address these problems 'upstream' by challenging and influencing the legal and policy context. SLF support has involved providing small grants (up to £30K) to both NGOs² and private solicitors practices to fund pre-litigation research to help prime and inform legal cases and to enable Third Party Interventions (TPIs) in court which can develop the law in some way in favour of young migrants. The SLF has also sought to support and inform grantees to a limited extent through its website, bulletins and networking events.

In 2012 an interim evaluation of the SLF concluded that it was achieving results, and suggested some changes of focus and operation for the future. One year on, the purpose of this further evaluation is:

- a. to identify the full range of outcomes, benefits and changes to which the SLF project has contributed in order to understand the value of what has been funded to date.
- b. to help Trust for London, Esmée Fairbairn Foundation and other potential funders discuss and decide if and how they want to take forward the funding of strategic legal work on migration issues in the current climate.
- c. to take stock of the model being used to identify, assess, support and review SLF grants and learn lessons about this which can:
 - i) help improve current ways of working;
 - ii) enable decisions about how such a fund should be administered in the future.
- d. to stimulate discussions about the potential use of such a model in funding strategic legal work in other areas of law.

This report is divided into seven sections. In Section One of this report we give an overview of what has been funded to date, and look at a breakdown of projects examined (all those funded between December 2011 and June 2013). In this section we also look at how these came to be formulated as projects, and the degree to which they seem to have enhanced and complemented existing legal work in this area.

Section Two looks at the full range of outcomes identified during the fieldwork and summarises these in some detail.

Sections Three and Four explore two of the recurring concepts of the SLF: success and risk. In Section Three we look at how success has been thought about and achieved in the SLF, as well as how other

¹ This fund is referred to as the SLF throughout this report. Its original name was the 'Strategic Legal Fund for Refugee Children and Young People' which, following a decision to expand its focus, was changed to the 'Strategic Legal Fund for Vulnerable Young Migrants'. SLF is used as a shorthand for both of these.

² Non-governmental organisations. Throughout this report, NGO is used to denote a not-for-profit organisation (normally a charity and/or voluntary organisation).

funders approach success in this area. We go on to identify a range of success factors for future projects. Section Four looks at the funded work from a risk perspective, and notes some of the key risks associated with doing this kind of work.

Section Five looks at various aspects of the 'model': how the SLF is set up and run and the strengths and weaknesses of the adopted approach including the outsourcing of the management and administration of the fund to MigrationWork and the use of an Expert Panel (EP) to advise on funding applications. It also reprises the theme of risk in relation to the model: how has the model approached and managed risk, and has that been proportionate and successful? Finally this section attempts to address the issue of whether the SLF is 'value for money' given its unusual configuration of resources and the outsourcing of management and administration function by the funders.

Section Six looks at the current context for legal work on young migrants, and what might be appropriate in terms of a funder response. It also summarises potential topics for other funds were the model of the SLF to be replicated in some form.

Finally, Section 7 provides some top level recommendations for funders and other stakeholders to consider including suggestions about the future of the fund, additional work it may be useful to consider and adjustments to the current method of operation.

Note on confidentiality

As is normal in evaluative fieldwork, all interviewees were told that their comments would be reported back anonymously. However, in the section on achievements in particular there are a number of benefits or outcomes where the facts of the case make it clear which project is being considered. We discussed this with interviewees who were happy to have identifying details, including the name of their organisations if relevant, left in within this section if that seemed appropriate.

A full methodology plus a list of all those interviewed is to be found at Appendix A.

Section 1: What has been funded?

Overview of projects funded

What activity has been funded through the SLF?

The SLF provided funding for pre-litigation research which enhances understanding of how current practices, policies and laws contribute to the disadvantage and discrimination faced by young migrants in order to address this, where possible and desirable, through future strategic legal work. It also provided funding for TPIs to enable key evidence to be presented to the courts by an interested third party in cases which are already underway.

This research work included, for example:

- **Freedom of Information (FOI) requests:** Tower Hamlets Law Centre (THLC) used FOI requests to gain information on leaving care arrangements for refugees and asylum seekers in London boroughs; Lambeth Law Centre about the role of the UKBA's Office of the Children's Champion (OCC).
- **Disclosure:** the legal intervention taken forward by Migrants' Law Project (a legal and public education project hosted by Islington Law Centre) (MLP (ILC)) with Refugee Action brought to light a copy of an internal Home Office (HO) policy guidance on delays which various requests pre-action had not uncovered.
- **Case file review:** Greater Manchester Immigration Aid Unit (GMIAU) looked at over 30 case files to try and see if the UKBA had been implementing its legal duty to treat the best interests of the child as a primary consideration in unaccompanied children's asylum cases; BID made a requests for clients' files to the HO and the Ministry of Justice; Kesar & Co have been reviewing clients files to see why and how asylum claims are rejected.
- **Interviews with young migrants:** THLC interviewed a number of young migrants; Joint Council for the Welfare of Immigrants (JCWI) is speaking to young migrants about family returns.
- **Information chasing, collation and analysis:** Public Law Project (PLP) collected policies from over a hundred local authorities to review their policy and practice towards families with no recourse to public funds (NRPF).
- **Review of documentation relating to specific issues:** Coventry Law Centre did a review of information in relation to European and international law on separated children and developments with ERPUM (European Returns Platform for Unaccompanied Minors).
- **Gaining Counsel's advice and opinion on various topics:** MLP (ILC) gained advice from Doughty Street Chambers on merits of challenge to Secretary of State for the Home Department (SSH) on 72 hours notice for immigration removals from the UK; Islington Law Centre (ILC) gained detailed Counsel's opinion on the Scope for Legal Challenge of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

TPI work included funding costs of travel to attend court (in Luxembourg) and collecting and preparing evidence for the TPI in court.

As well as this, the SLF has itself had a range of mechanisms set up to oversee and advise on the work and to enable exchange and dialogue on legal issues relating to young migrants. These included EP meetings, grantees meetings and a range of outreach and information sessions organised by MigrationWork CIC, the community interest company which has managed and administered the fund since it started.

Amounts awarded

Thirty two grants were awarded during the period from November 2011 to June 2013. This figure includes four extension grants for previously funded projects.

The vast majority of grants were awarded for pre-litigation research (27), with four grants helping to fund TPIs and one for a combination of research and intervention.

Table 1.1: Total value of grants in each category, and the average value of each grant

Project type	Number of grants	Total value	Average value
Pre-litigation research	27	£307,500	£11,389
TPI	4	£37,682	£9,421
Pre-litigation research and TPI ³	1	£20,000	£20,000
Archive	1	£15,000	N/A
Total	32	£380,182	£11,881

The £15,000 grant to set up and maintain an archive for the SLF was awarded to the Coram Children's Legal Centre in 2013, with the archive expected to go 'live' in 2014. It was a one off grant.

Types of organisations receiving the grants

Grants were awarded to twenty eight organisations or partnerships. Over 70% of these were grants to voluntary organisations (including law centres); six⁴ were grants to partnerships of voluntary organisations and private firms of solicitors, and two were made to a private firm alone.

Table 1.2: Grants received by sectoral type

Grant recipients by sector	Number of grants
Voluntary organisation	20
Voluntary/private partnership	6
Private firm	2
Total	28

Issues addressed through the work

The SLF has funded work covering a variety of topic areas. More than one grant has been made in three topic areas: local authority (LA) duties towards young refugees and asylum seekers leaving care; local authority practice towards families with no recourse to public funds and; the interests of trafficked children. In the case of LA duties towards young refugees and asylum seekers, there is some overlap between the three grants awarded.

Table 1.3: Issues addressed by the SLF and responsible agency (where known)

Research/TPI subject	Responsible agency/agencies
Lawfulness of 72 hours notice of removal policy	HO/UKBA
Families separated by detention	HO/UKBA
Local authority leaving care duties for young refugees/asylum seekers (3 grants)	Local authorities
Delays in making decisions on Section 4 claims for destitute	HO/UKBA

³ This project also allowed, for the first time in for the SLF, a small amount of casework and representation in the First Tier and Upper tribunals.

⁴ Though Elder Rahimi Solicitors originally submitted their project as being in partnership with the Howard League, this partnership was not formal and in hindsight was felt by both parties not to have been an accurate description of the working relationship between the two organisations. It is therefore not included. Tower Hamlets Law Centre (THLC) and Brighter Futures (BF) had a similarly informal partnership but this involved closer working relationships with a member of BF/Praxis sitting on the steering group for the THLC project. It is thus included.

asylum seekers ⁵	
Delays in deciding social security applications from asylum seekers granted leave to remain	DWP/HMRC
Section 55 ⁶ duty to safeguard the interests of the child in asylum decision-making	HO/UKBA
Pregnant women and section 4 support for destitute asylum seekers	HO/UKBA
Treatment of young refugees and asylum seekers in the criminal justice system	Statutory criminal justice services
Discriminatory practice in schools	Schools/Local authorities
Discriminatory family reunion policy	HO/UKBA
Local authority practice towards families with No Recourse to Public Funds (2 grants)	Local authorities
Scoping potential challenges to LASPO	Ministry of Justice/Legal Aid Agency (LAA) Government
Third country removals	EU member states
Higher education fees for young people with Discretionary Leave to Remain (DLR)	Student Finance England, Dept of Business, Innovation and Skills
Returning minors to Iraq and Afghanistan	European Union project, potentially carried out by member states
Deeming age in criminal courts	Criminal courts, Ministry of Justice
Grant of Discretionary Leave to Remain rather than Indefinite Leave to Remain	HO/UKBA
Interests of trafficked children (3 grants)	HO/UKBA
Operation Nexus ⁷	HO/UKBA, Metropolitan Police
Right to reside test for social security benefits	Department for Work and Pensions /HMRC
Enforced removal of children and pregnant women	UKBA
Free school meals and pupil premium	Local authorities, Department for Education

Why did these projects get submitted to the SLF?

It has been of particular concern to ensure that the projects funded are tackling immediate problems for which there may be strategic legal remedy. The criteria makes it clear, for instance, that *“the SLF ONLY funds research that is tied to the possible future taking of legal cases..... We recognise that some research and interventions may not lead to the desired legal outcome, but will only make a grant where we believe that those undertaking the work have sufficient expertise and experience to maximise the chances of success.”*

By and large, this has been the case. Funded projects appear to fall into four broad categories:

- i. Projects which tackle problems observed through working with young migrants ‘on the front line’, as case workers or lawyers. These types of grants have helped organisations to find out whether the individual cases they are noticing are part of a wider problem and are suitable for legal challenge.
- ii. Projects which anticipate future problems: these arise from practitioners thinking about the impact of actual changes in policy and legislation, such as LASPO, social security and education legislation.

⁵ Section 4 support is provided to destitute asylum seekers who have been refused and exhausted their rights of appeal. It is given under the terms of Section 4 of the Immigration and Asylum Act 1999.

⁶ Section 55 of the Borders, Citizenship and Immigration Act 2009 places a duty on the UK Border Agency to safeguard and promote the welfare of children in its activity.

⁷ Operation Nexus is a collaboration between the Metropolitan Police and the UK Border Agency designed to clear foreign criminals off the streets of London and send them home. It embedded immigration officers in dozens of London’s custody suites where suspects are booked in after arrest.

- iii. Projects which are more exploratory in nature and arise from a desire to research a specific concern and potential line of challenge rather than reacting to a specific practice, policy or law. These are the least obviously geared to future legal challenge.
- iv. Grants for legal interventions which are already in train but which grantees would not be able to pursue without further funding.

Projects which tackle known, 'frontline' problems

There are 14 projects which were described by grantees in interviews as arising from issues observed in practice. They are:

- **Bhatt Murphy Solicitors and Medical Justice (also Bhatt Murphy and BID):** *"When seeing families at Yarlswood, it is completely routine for those raids to take place in a dawn raid, vests, very heavy-handed techniques. The main point was that having zero policy in place was an inherently massive risk to human rights breaches. We were saying 'these are the standards for British kids in prison – where's your guidance to using force to kids en route to another jurisdiction?'"*
- **Kesar & Co:** *"The project came from an observation on the part of both the solicitor and barrister that cases were being rejected on very standard grounds and that more complex arguments that could be made were either not being made or were not being taken into account. One thing we noticed was a particular way in which the local division of the Home Office was dealing with cases. I began to suspect foul play from the local immigration team because this issue was coming up time and time again. Because I had no idea that such a widespread trend it hadn't occurred to me that needed to be investigated or interrogated further. Then just seeing how widespread it was and it became very clear that this was a policy thing from Kent immigration team."*
- **Migrant Legal Project (MLP) (Bristol):** *"As part of what I do I have been representing Vietnamese trafficked boys who have ended up at the Steiner institute in Bristol. A number of these boys when they were released would go missing. After they went missing, it became impossible to get legal aid as the Legal Aid Agency won't fund where there are no clients. However, my strong feeling was that these children hadn't disappeared from the system and the Home Office was continuing to make decisions about them in their absence. They needed continued representation, so the point of the project was to find out what could be done to protect a child through other means, possibly the Legal Aid Agency (LAA), or perhaps you would need to challenge the LAA itself."*
- **Elder Rahimi:** *"We were seeing case after case showing terrible treatment of young Foreign National Prisoners (FNPs) in the criminal justice system - for instance, the Home Office saying they were going to deport someone with refugee status."*
- **Asylum Support Appeals Project (ASAP) and Maternity Action:** *"We had been concerned about the issue for a long time. We were finding that a lot of women even in the later stages of pregnancy were losing their support and we had won a couple of tribunal appeals on the issue. But my concern was that we needed medical evidence. So I thought the SLF being set up would be a good opportunity to do something about that. I thought the fund could help us particularly in getting an expert report to use in litigation."*
- **GMIAU:** *"The work comes from my experience and the experience of colleagues who represent children and thinking 'isn't this awful?' and feeling that children have a worse chance – they were most likely to be refused."*
- **ECPAT and Fadiga & Co:** *"We were aware of children being let down by the local authority."*
- **Child Poverty Action Group:** *"The impetus was I think that another law firm had been seeing a lot of clients who were suffering delays, then sending pre action letters and not getting*

anywhere. There wasn't anything going on that would make a difference. The delays are quite horrendous; the impact on certain groups of migrants are severe and in effect pushed them into destitution. This was being reported by various organisations: ASAP, London Destitution Awareness Network and conversations with the Red Cross."

- **Deighton Pierce Glynn and The Children's Society (TCS) (and DPG and Roma Support Group):** *"We obviously get to see clients who are having problems with support arrangements from their local authority. And we were wondering if this was a systemic practice, or if these were one off incidents. And indeed if these were systemic, we felt this was something which should be pursued and litigated. We were very excited when the SLF came out – a lot of the issues that were highlighted were reflected in some of the issues we were seeing on the ground."*
- **PLP's** research into support for destitute migrant families was very much informed by problems encountered on the ground: *"I contacted voluntary groups to tell me of problems they encountered. Counsel's advice was meant to answer the common problems encountered in that situation. It seemed to me there was a disconnect with lawyers and family groups working in that area. So there were a lot of voluntary groups who didn't know the law and didn't know to refer cases on to solicitors."*
- **MLP (ILC):** *"Our own community forum was the way in which the issue of intervening on delay came up."*
- **Just for Kids Law (JFK Law):** *"The project came from having a forum, through which we knew that young migrants were being treated differently in criminal proceedings if they were unable to prove their age."*

Projects which anticipate future problems

Three funded projects arose from concerns about the impact of new legislation or initiatives:

- **Southwark Law Centre's** project comes from the introduction of a new way of limiting benefits to migrants: *"We were very concerned about the immigration changes that came in July 2012 – we anticipated that this would cause a problem for a number of our clients as a lot of our clients are migrants who were previously given discretionary leave to remain (DLR) and therefore would have access to public funds. Now a 'no recourse to public funds' would be imposed on their leave. We anticipated that this would be a problem for families in particular."*
- **ILC's** challenge to LASPO comes from the fact that *"a major Bill was passed, and, although a few concessions were won, there still many issues around immigration which were a serious concern for clients. We decided to take time out to see what we could do for the benefit of migrant clients and to see if any proceedings could be taken on public interest grounds that would benefit a whole class of people."*
- **RAMFEL (Refugee and Migrant Forum of East London):** *"We were aware of Operation Nexus as we were the only legal advice organisation on the Metropolitan Police Force's reference group. We could see the potential damage."*

Projects which explore points or issues

Some projects have looked at issues which are not presenting 'at the coalface' and are more exploratory in terms of their potential benefit. A few interviewees were concerned that such projects may be too unspecific to progress to legal challenge, though others felt that the projects were exploring useful lines of enquiry. One concern expressed was that such projects may arise from

organisations trying to get funding rather than responding to need. This seemed to be in small part true: in two cases interviewees acknowledged that finding a project which might attract funding had figured large in their formulation of a bid to the SLF.

We found four projects which fitted this more exploratory category, though would note in relation to all of these projects that other benefits have accrued from doing the work other than a progression to a legal case, and that in some cases it was still too early to tell whether the work undertaken through the SLF will bear legal fruit.

Support for interventions already in train

This applies to four grants where legal cases were already being pursued and the SLF funding allowed interventions of one kind or another. This category of grant has so far been extremely successful. The four grants (two to the AIRE Centre, one to MLP (ILC) with Refugee Action and one to Coram Children's Legal Centre) have all enabled interventions which have influenced a positive outcome for vulnerable young migrants.

New work has been made possible

There was a concern at the set up phase of the SLF, and still expressed by a few interviewees, that the SLF may provide funding for work which could have got funded elsewhere, or taken forward using pro bono time.

This concern seems to be unfounded. The vast majority of projects said that they felt that the work would not have been possible to progress without the funding provided. Many drew attention to the mounting pressure on those providing services for migrants and pointed out that in such an environment, carving out time to research, think and discuss is a luxury virtually none can afford.

For 18 grants, grant holders confirmed the work would not have or probably would not have happened without SLF funding. In other cases, though they did not rule out having pursued the work, they were doubtful whether it would have happened to anything like the same extent unless alternative sources of funding had been found, and they were not hopeful of having done so. The 18 grants include all three grants which have resulted to date in favourable court judgements.

The following selected quotes from interviewees illustrate the value of the SLF in enabling new work to take place:

"The report wouldn't have been possible without that funding. We recruited somebody specific to do it. If not, we wouldn't have been able to do that. We are a very small organisation so we wouldn't have had the capacity to do the project if we hadn't been funded to do it."

"This work would not have been possible without an SLF grant. The evidence gathering was coordinated by the Refugee Action OSS Policy and Information Manager, a post that is ordinarily funded by UK Border Agency (UKBA). UKBA will, of course, not fund any work undertaken in connection with a legal challenge against it. Therefore the funding from SLF enabled Refugee Action to undertake this vital work as it covered the cost of the OSS Manager post during the research period."

"It would be virtually impossible for us to conduct the kind of information gathering work without the SLF grant and without dedicated resource. Being able to employ a researcher to conduct the work was essential in enabling us to gather the information needed, particularly making and chasing the FOI requests, sourcing and interviewing the young people and writing and analysing the findings."

Value has been added to existing work

Funders and EP members are understandably keen to ensure that SLF grants do not replace pro bono work which would have happened unfunded anyway. There is a requirement to see a pro bono contribution of some kind as an element of all projects. Interviewees were asked whether or not SLF funding had 'replaced' any pro bono contribution, and it appears that the SLF has enabled some grant holders to attract rather than to replace pro bono work.

In the case of ten of the 32 grants, interviewees explained that solicitors or barristers had contributed substantial time pro bono and, in some cases, volunteer law students had also worked on the project. For example, Refugee Action relied largely on volunteers to conduct the monitoring and data gathering element of the intervention as they did not secure funding to cover the earliest stage of the work. The volunteers delivered an excellent piece of work at limited resource cost to Refugee Action. Several grantees accessed pro bono advice from barristers, some of it quite lengthy. Some barristers are also involved with the project in an on-going advisory capacity, again pro bono.

One interviewee summed up the evidence of many when she said: *"What the SLF have said is that they would like to build in a pro bono contribution for all projects – but that's going to be there anyway in any work like this. It was a huge amount of work. It is already relying on pro bono counsel time and extra effort, but without the core funding it wouldn't have been possible to take forward."*

Section 2: What has the funding achieved?

This section looks at what has been achieved by providing financial and other support through the SLF. We looked at 28 projects in detail (four of which had been extended) which were all the projects funded between December 2011 when the pilot phase began until July 2013 when the evaluation began. We include benefits for those funded by the programme, and for those engaged in some way in the programme as funder, adviser or worker.

We include in this section any benefit identified through our fieldwork. This includes legal and policy outcomes and the production of measurable benefits such as the creation of a report, or the running of a training course. It also includes a range of softer benefits around forming relationships, gaining new understanding, connecting up work which otherwise would happen in silos and organisational and personal benefits for those involved.

Unusually perhaps we also include 'potential' benefits where work undertaken through the projects holds significant promise for future benefit, but where it is too early in the process for this to have been realised. We do this partly because some projects had only just started, partly because several people told us that they felt 'the best was yet to come' in terms of the work, and partly because our discussions about strategic legal work in general (particularly with other funders) indicate that it is still very early on to be looking for change for a fund of this nature. Flagging up strong indications of future change will, we hope, give a more rounded sense of achievement and importantly the potential of the fund.

Legal and policy change

Court judgements influenced in favour of young migrants

Three SLF grants have enabled work which has had a direct impact on court judgements in favour of young migrants. All three were TPis, which, because they happen at a more advanced stage in the legal process, are more likely than other SLF-funded work to have achieved a positive outcome at this stage in the life of the fund. One other TPI funded by the SLF is likely to come to court soon. As one person noted: *"If it wound up tomorrow I think the grants have been well spent in terms of outcomes. We have the AIRE Centre case, we have the Coram case, and we have a lot more potential from that..."*

It is clear in all three TPI cases that the intervention funded by the SLF had a significant impact on the outcome.

Refugee Action and the MLP (ILC): delayed decision making on Section 4 claims

"Mr Justice Foskett referred to the material that Refugee Action submitted and it is clear that the submissions made on behalf of Refugee Action and the evidence submitted as part of the intervention influenced his decision. This means that the October 2009 policy to deliberately delay making a decision on an application for Section 4 support from destitute asylum seekers who have made fresh claims for asylum and human rights protection, is unlawful. The Secretary of State will have to formulate a policy that meets the Government's human rights obligations.

Getting the expertise and experience of voluntary organisations heard in court helped with the TPI. Partner agencies including the British Red Cross, Northern Refugee Centre and the Refugee Council were able to contribute supporting witness statements corroborating Refugee Action's statements and evidence. This had a significant beneficial impact on the judge's perception of Refugee Action's evidence in the absence of an opportunity to test the data."

Coram Children's Legal Centre: challenge to grant of discretionary leave rather than indefinite leave

"We did feel we added something they weren't arguing themselves on the impact of these kinds of issues when rehearsed with a children's right perspective. We were really talking about the destabilising nature of keeping children in a state of temporary residence and the fact that children never get to feel that they are here. Their parents never really feel psychologically stable and the impact that has on their parenting abilities – we argued this was counter-productive and counter to the best interests of the child development. It was clear that the court benefited from the children's rights arguments we put in as intervenors."

The Court Judgement⁸ makes it clear that the contribution of the Coram Children's Legal Centre (CCLC) was key, with the judge (Mr. Justice Holman) noting in particular that: *"I am grateful... to the various solicitors and others who were patently providing considerable support and expertise to their respective counsel during the hearing"*. The judge agreed with the analysis put forward by CCLC's barrister acting pro bono on their behalf, concluding that: *"In my view the relevant Discretionary Leave policy and instruction document is unlawful. It effectively precludes case specific consideration of the welfare of the child concerned in making the discretionary decision whether to grant limited DL or ILR..... The policy and instruction fail to give proper effect to the statutory duty under section 55."*

AIRE Centre: oral intervention at the European Court of Justice of the EU on third country removals of child asylum seekers

"It is hard to quantify what would have happened if we hadn't attended the hearing but there are good reasons to think we had an impact. Solicitors firms and bigger welfare groups and so on – they were all saying that they had clients who would directly benefit from the judgement. It is notable that the judgment of the CJEU does not conclusively determine the extent to which future applications by unaccompanied minors who seek asylum in the EU should presumptively be 'kept' by the most recent Member State in which they made an application, or should be considered on a case-by-case basis. However, **it is clear that the best interests of the child will always be a primary consideration and, in accordance with the legal position that we set out, there will be room to argue on behalf of such applicants that it is in their best interests, on the particular facts of the case, for their case to be considered by another Member State in which they previously sought refuge.**

Crucially, we were able to participate in one of the early casework dialogues about the role of fundamental rights.

In future solicitors can wave that judgement at courts and officials to say 'Actually you do have an obligation towards these children and presumptively you have an obligation to look after them'. It was one of those great cases and there is not really any dispute about how it has to be implemented. That's why we got such a big response."

Whilst recognising the effectiveness of TPIs, some interviewees noted possible obstacles to intervention in the future: *"...because of recent government proposals about standing and cost issues it might be more tricky. I also get the impression talking to people that the defendants are violently objecting to third party interventions."*

It is not only successful TPIs that have had an impact on law and policy. Examples were given of other SLF-funded projects which have been significant in changing the way courts or policy makers deal with issues.

⁸ R (SM and others) v Secretary of State for the Home Department (Coram Children's Legal Centre intervening) [2013] EWHC 1144 (Admin).

PLP: Research into local authority practice towards families with no recourse to public funds to develop a challenge/s to illegal practice

“The work we did on this case was extremely helpful. The Freedom of Information requests we made helped expose unlawful local authority policy and practice and enabled us to identify issues for challenge through test cases as well as lay the groundwork for those test cases. When one local authority simply denied that it had an unlawful policy, we were able to use the data we gathered to support our case. And then the work also helped us to identify other areas for challenge: for instance the regulations excluding Zambrano carers from entitlement to benefits.”

JFK Law: supported a challenge by the OCC to the ‘deeming age’ in criminal courts

“We were able to help the Children’s Commissioner in their intervention in the Court of Appeal case with all the research. We gave Nadine all of our research – it would have been nice to have more time, but that’s the legal world for you. I think it was useful that we looked at all those cases where children have been deemed. The recent case of *L, HVN, THN, T v R [2013] EWCA Crim 991*, while not going as far as the Children’s Commissioner’s submission suggested, states at paragraph 21 and 22.7 a requirement for a Court to consider ‘all the relevant evidence’ and to ask for an adjournment to gather such evidence. This is a fundamental shift in the practice of criminal law where deeming took place as a matter of course. What is clear from *L, HVN, THN, T v R [2013] EWCA Crim 991* is that criminal practitioners are not always familiar with the application or rights of those who are potentially trafficked children being prosecuted. The judgment in this case has somewhat circumvented the need as it was a test case, although it is not exclusively about age assessment, and it will need to be put in practice first before potential problems can be identified.”

The AIRE Centre: developing challenges to the lawfulness under European Union (EU) law of the UK’s “right to reside” test for social security benefits

“This has only just started, but basically we have got the EC to agree with us to say that this test is illegal – the hope for a final outcome is that we get the English court to say the same, or refer it to a European court to say the same.”

Policy change and influence

The data from this evaluation shows that SLF-funded work is beginning to play a role in changing policy at a national and local level. The experience and knowledge gained through doing the work has also enabled some organisations to have greater influence with policy makers, as the following examples illustrate.

<p>THLC</p> <p><i>Bringing about policy change in a local authority</i></p>	<p><i>“Our initial research and FOI requests revealed that Wandsworth Council had an unlawful policy of routinely providing services to unaccompanied asylum seeking children under Section 17. By working with Klevis Kola Foundation⁹ and Maxwell Gillot Solicitors, we supported three 17-year-old unaccompanied asylum seeking girls to request their social services file and challenge this policy. The letter before action made the following requests in relation to the policy: (i) to confirm that Wandsworth’s policy was unlawful; (ii) to confirm that the unlawful policy would be immediately withdrawn, and (iii) to confirm that Wandsworth would complete a review of all unaccompanied minors currently accommodated and supported by them under section 17 CA 1989. Wandsworth have now responded and agreed that the three girls have been and still are accommodated under Section 20 and will be eligible for leaving care support after they turn 18. The council has agreed that they will review the policy for all young people in their care.”</i></p>
<p>RAMFEL</p>	<p><i>“As a result of our involvement in challenging the ‘Go Home’ vans, which our initial work on</i></p>

⁹ Klevis Kola Foundation is a community organisation which supports refugee and asylum-seeking families in London.

<p>Being in a position to influence public agencies</p>	<p>Operation Nexus led on to, we have had an improved relationship with the police. Our profile has also been raised through having lawyers engaged with us. We've had a meeting with the Independent Police Complaints' Commission and a commissioner has come to visit us. It's been hugely successful. We have been discussing things like what if somebody is taken in under Operation Nexus and then something happens in custody – who is responsible? The meeting has been helpful to clarify those sorts of things. Our involvement also helps the public generally in terms of greater scrutiny and, obviously, migrants will benefit."</p>
<p>Medical Justice Being 'at the table'</p>	<p>"Being involved in legal work helps get you round the table with people you need to talk with. It adds an extra reason why you need to get to the table with the Home Office. Once you are there of course then you don't just talk about that particular group of people. At our next meeting we will talk about pregnant women in detention, but we will also talk about lots of other things."</p>
<p>PLP Using research and training to influence policy makers</p>	<p>"We put on training based on the guide we produced. We had a launch event in Parliament and we have used the research a lot. We have also met with Lib Dems who are doing a policy review in preparation for their manifesto for the next election and are having on-going discussions with the Home Office in terms of their policy on the separation of families. The Home Office has committed to specific changes we were looking for; some of them come directly from the evidence of the research we did. Making changes to their policy to separating families is slow and intractable but we are keeping that going. The research was also very useful in showing us what the comparative policies of local authorities were. That has enabled us to target particular local authorities whose policies and practices seemed to be weak."</p>
<p>Child Poverty Action Group Identifying a variety of routes to changing policy</p>	<p>"Our report identifies a range of ways forward in policy terms, including writing to the Equalities and Human Rights Commission (EHRC) about delays; putting out feelers for test cases, and releasing the report to help others. In the report we analyse the different types of delay, including policies which conflict with the law; decision makers not following the guidance, and administrative delays, for example HMRC¹⁰ have long targets for international claims (one suggestion is that we take a JR case on this). I think litigation can achieve something; it can highlight the problem and get the guidance changed, but in terms of dealing with the administrative confusion and decision-makers not following their own guidance, really that needs a policy response. To do that we plan to get EHRC involved and to give copies of our report to other agencies."</p>
<p>Coram Children's Legal Centre Impact of law on policy</p>	<p>"The Home Office policy on Discretionary Leave was found to be unlawful because it did not permit consideration of the best interests and welfare of children when deciding the duration of leave to remain that they should be granted. The Home Office will now need to change their policy to reflect the Court's decision. It is likely that the new policy on Discretionary Leave will also need amending, and potentially other policies too. The result of this should be that children's best interests and welfare are given a more prominent role within Home Office policies affecting children, and, specifically, that more children have their best interests considered and are granted leave to remain for a period longer than three years."</p>
<p>The Children's Society and Deighton Pierce Glynn Using evidence in advocating for legal and policy change</p>	<p>"Alongside this project, we have continued to advocate to government, parliamentarians and other local authorities about the need for change in legislation to ensure equal treatment of all care leavers, regardless of their immigration status. This was reflected in the Joint Committee on Human Rights' recent report on the rights of unaccompanied migrant children and young people, which recommended an amendment to Schedule 3 to ensure equal treatment for all care leavers. The Children's Society is working with peers and MPs to explore whether the current Children and Families Bill would enable an opportunity for this amendment."</p>
<p>TCS and Deighton Pierce Glynn Bringing</p>	<p>"We have identified a policy which we are meeting with Croydon to discuss. It emerged that there is an actual written policy in Croydon that migrant care leavers are only entitled to a reduced level of support because anything apart from indefinite leave to remain was regarded as an uncertain immigration status. The project has identified a distinct legal issue which is suitable for litigation; namely whether local authorities are correctly interpreting the</p>

¹⁰ Her Majesty's Revenue and Customs (HMRC).

<p>about policy change in a local authority</p>	<p>operation of Schedule 3 of the Nationality Immigration Act 2002 as they apply to migrant care leavers. The project has also substantiated this point with evidence both in the form of policy statements from the London Borough of Croydon and evidence from the care leavers who were interviewed. The real moment of clarity was when we got that policy from Croydon; they were denying they had a 'no recourse to public funds' team, but then we got documents to show there was in fact a team specifically dealing with migrant care leavers and one of their objectives was to work with the Home Office to get the care leavers back as soon as possible."</p>
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Individual client casework

Although the intention of the SLF is to facilitate strategic work, grantees have also found that being involved in SLF-funded projects has helped them in their casework with individual clients. The following examples illustrate this point:

- i. BID has been able to use the information to build cases which have been successful for individuals: *"Some of the cases we referred were JRs but most became civil claims. The impact is around the individual rather than changes in case law. It is looking as though the Home Office is inclined to settle rather than risk new case law, and that is more beneficial for the individual. On the other hand, you would hope that the fact that there is a series of quite hefty pay-outs being made would spark more internal thinking in the HO to stop the long term detention of parents so they won't have to pay out."*
- ii. Kesar & Co have come up with ways to help other practitioners to improve their casework: *"We have come up with arguments about how to better prepare and how to successfully appeal to the higher courts. We are going to publish the paper and it will be disseminated by Garden Court to all their solicitors, of whom there are around a thousand on the database. We will also send a summary to ILPA and offer a presentation free to attend accredited with professional development points. We hope all this will help people who represent child asylum seekers to improve their casework."*
- iii. For Lambeth Law Centre, the SLF-funded project has produced knowledge which has been cascaded to other teams within the organisation: *"We have a greater understanding of Section 55 and UKBA's interpretation of this and we have passed this on not only within the immigration team but also to our housing team. It has definitely strengthened our casework outside those directly involved in the project. What it means is that when making representations back to them (UKBA) we can say 'you are not following your own policy.' We talk and think much more about how they should be approaching it as a result of the work we did."*
- iv. GMIAU also felt the experience of the SLF project had benefited their casework with individuals: *"The fact that we did the research and I had time and space to think a bit more strategically about the work we do with unaccompanied children has probably led to us improving the quality of the work we do for them. It gave us time to think about some new legal arguments we could put forward and helped us to build some relationships with other organisations who refer these young people to us. We have learnt new ways of dealing with children's cases in the light of what has been thrown up in the research. Specifically, we have examined how Chapter 53 of the Enforcement Instructions and Guidance can be used to benefit a client's case when it is being decided whether or not removal should go ahead."*
- v. For Harrow Law Centre the knowledge gained about individual schools' policies has made it easier to challenge on behalf of individuals: *"We have gained knowledge about what is going on in local schools and developed skills in that area. That has helped us as we regularly take on cases in this area and mostly we succeed in them, for example challenging exclusions, 'easing out' or inappropriate punishments."*

Potential future challenge and change

Four grantees have cases in the pipeline, and one was due to be heard as early as 6th November 2013. There are five cases in all being brought, as ILC is involved in two separate cases, one challenging higher student fees for young people with DLR and the other challenging LASPO. The other grantees with cases initiated are BID, JCWI and PLP.

Eight grantees believe on the basis of the SLF-funded work that they have identified a strong argument, and are looking for test cases. As work on these cases is still being developed, these are not named.

One organisation, MLP (Bristol) are considering the potential of requesting a public enquiry to examine the HO policy on identifying and dealing with victims of trafficking. However, they acknowledge that the HO is unlikely to agree to this and this is still under discussion with their advisers.

Migrants lives changed for the better

As other funders of strategic litigation work have emphasised, it is very early in the life of the fund to expect to see outcomes in terms of the lives of migrants being changed. As one interviewee said: *“The fact that we have any positive legal outcomes within its life is fantastic – that’s a first hurdle really. To be frank, with a lot of pre litigation research, we were not sure how much further down the line we would get things. For the longer term it would be good to see evidence about what clients experience. Ultimately we would want to see genuine positive impact on disadvantaged individuals, but it will take a long time for that sort of thing to feed through.”*

Young migrants who have been helped by the work

Despite the expectation that it will take time for SLF-funded work to have an impact on young migrants directly, there are early indications of positive outcomes for individuals and groups.

Elder Rahimi received SLF funding for pre-litigation research on discriminatory treatment of young refugees and asylum seekers in the criminal justice system. The research has not yet resulted in legal or policy change, but has had a direct impact on individuals through the relationship Elder Rahimi now have with Haringey Social Services: *“They are getting accommodation for him when he finishes this sentence. Their engagement has changed completely – now they ring us up and ask us what they need to do. It has been easy to explain what needs to be done; social services need to have accommodation lined up for his release date. Originally Haringey thought the client had no recourse to public funds so they didn’t have to do anything, but they do as he is a care leaver. The Home Office were misleading them about their duties and we were able to correct that and ensure a service for this young person.”*

Brighter Futures is a campaigning group of refugee and asylum seeking young people whose home is at Praxis. The SLF research work gave the group ‘a real boost’ and helped them understand legal and policy issues, which in turn has helped individuals understand how they are located in the system and how they might want to engage with it in the future. Brighter Futures found it was useful to have a tangible piece of research on which to base its meetings and campaigning for the young refugee and asylum seekers who attend it. According to one person involved: *“Brighter Futures were really good at giving practical advice but the young refugees and asylum seekers struggled to place their experience within a specific policy context. And the Strategic Legal Fund helped them do that and gave them a much better insight into the policy scenario. They are now more aware that maybe they should seek legal advice more quickly. Solicitors will work with you in a constructive way – they are not beasts one should keep away from.”*

One of the first projects to be funded was the work BID did on families separated by detention. As a result of referring individuals who came into contact with BID to solicitors, some have received substantial compensation for their treatment: *“One case which we referred to Bhatt Murphy solicitors before January this year has now settled out of court, and compensation will be granted to the children as well as the mother. We understand that this is the first time that a child has received compensation in a case of this type. People are getting compensation for their detentions; so, for example, there is a mother and son who got £5,000 and another mother who got a large pay-out. The women we are talking about are foreign national prisoners who have children in the community. It’s hugely impactful to them that we have managed to litigate so well thus far. The Home Office pretty well detains foreign national prisoners, so you are talking about hundreds of people who could be assisted in future.”*

THLC have helped some of the young people they encountered through their research access a range of benefits, including educational grants they were entitled to but had not previously accessed. *“We’ve just got a young person into university with a local authority fronting their fees. £17,000 a year – for the young person this is just amazing. We are so excited about it.”*

Indirect benefit of legal and policy changes

Alongside benefits for individuals, the legal and policy changes to which SLF funding has already contributed will benefit specific groups of young migrants. Several grantees gave examples of this. For instance, MLP (ILC) and Refugee Action’s successful challenge to delays in making decisions on Section 4 funding for destitute asylum seekers *“has resulted in at least two changes of policy, and those will directly benefit migrants who will be able to access two types of support they wouldn’t have been able to access otherwise, including families with children who otherwise would have been destitute. There has been a change for all migrants now going through the fresh claim route. That means hundreds of people will benefit.”*

In other cases, although there has not been a change in the law or policy, the project has contributed to raising awareness of issues for young migrants, which is already having a beneficial impact. For example, one person involved in the ASAP and Maternity Action project told us: *“Many of the midwives have written various letters to support the women in some way, such as writing to the UKBA to ask for them not to be moved and so on. We gave the midwives model letters and this has been another step in sensitising them. It has resulted in increased advocacy for the women. Maybe before we started doing this the midwives might not have realised that they have a role in this woman’s life, but now they do.”*

Potential benefits ‘down the line’ for migrants

A few interviewees who had not already seen benefits for young migrants were able to identify specific future impacts. For example, DPG and TCS note that: *“If the Croydon policy gets reviewed in relation to 600 young people plus all Unaccompanied Asylum Seeking Children, it will be a marker for other local authorities.”* ILC’s challenge to LASPO has the potential to benefit many further down the line: *“We are focussing on separated children under 18, by and large in local authority care. If hypothetically we win that, it means those children will be eligible for legal aid even if their cases are on non-asylum issues. We are bringing a challenge to bring children back into scope, also potentially about refugee family reunion and whether that should be regarded as in scope or whether there should be exceptional funding for it. And then, having done the thinking and research we’ll be in a position to advise and make arguments on individual cases.”*

Increased knowledge and understanding

Learning for grantees

The information and understanding gained through the legal research has fed and supported grantees' work in a number of ways. These include:

- i. **Making future work easier:** *"I was just talking to my colleague about how useful this is, and she said that it is great in terms of having all the policies in one place, and also having a template for the kinds of evidence she should be following in those applications."*
- ii. **Clarifying arguments which can be taken forward in litigation:** *"The work is about the interpretation of Schedule 3 provision and what they are mandated to do. We have one interpretation, they have another and that's one of the reasons why it's a good case for litigation. Our interviews have grown to substantiate the impact of their policies on migrant young people – it is quite clear that they are providing a lower level of service to those who are ARE [Appeal Rights Exhausted]."*
- iii. **Clarifying what strategies will be useful in the future:** *"It will give us a better steer on what we get involved in in the future. We know far better now what the Court of Justice is interested in doing and not doing."*
- iv. **Developing arguments which can be used in other cases:** *"It is important in developing arguments about how certain laws should be interpreted in relation to children. Some arguments can be used in other cases with slightly different policies". Or from another project: "We've formulated arguments through our research which I hope can be fed into proceedings even if we are not given permission to intervene."*
- v. **Finding out 'game-changer' pieces of information:** *"Finding out the internal policy guidance relating to Section 4, which was released to the court, was vital." Or from another project: "Information from the National Pro Bono Centre... will be helpful in ensuring that it is made clear that pro bono provision would not be able to make up for the shortages in legally aided advice".*
- vi. **Having a better idea of the legal landscape in relation to an issue:** *"We have a much better idea of the landscape as it affects those subject to the 72 hours' rule." Or from another project: "It was useful to do the European research and hone down what we would want the guardian to be and how."*
- vii. **Having a better idea of the policy framework:** *"We have learnt a lot about the role of the UKBA's Children Champion, mainly confirming a lack of awareness (which is useful to know). Usefully, we also now know through the FOI request¹¹ the practical case recording steps that would reveal their involvement in a case." Or from another project: "We've got a much better idea in terms of what is going on internally in the DWP – that will be really useful for litigation but also for policy work too."*
- viii. **Having a better idea of what's happening at practice level for young migrants:** *"An apparent problem is the pathway process [in local authorities]. There's no evidence that any local authority is doing these properly – they are obvious cut and paste jobs, with names wrong. One of the worst has got five different names for one young person. It seems to have been done as a purely administrative task in spite of the fact that the guidance and courts talk about this as being a living document to help the corporate parent and the young person plan for the future. This is a systemic problem."*

¹¹ FOI response is here:

http://www.whatdotheyknow.com/request/information_regarding_the_office#incoming-364259

- ix. **Unearthing new issues which it may be useful to pursue:** *“There’s evidence emerging through the research that colleges are routinely asking for proof of immigration status and this might be something we want to pursue further”.*

In addition, there has been a range of learning about how to approach similar work in the future, considered below in the section ‘Organisational Benefits’.

Learning from the SLF for those in wider networks

Grantees have made information available to wider networks through publishing reports, making legal opinions available, putting information on their websites and running training courses. In addition, in some instances the process of doing the research itself was useful in and of itself as it has helped the research ‘subjects’ get informed about matters they might otherwise not have known about. Here are some examples of how SLF-funded research work is ‘trickling down’ to inform wider networks:

- i. PLP has produced a report on social services support for destitute migrant families¹². The issues it deals with were first identified through pre-research with voluntary sector providers struggling to deal with destitute migrant families, so the questions it provides answers to are live and pertinent to those on the frontline. *“It has been deliberately written so that voluntary groups will be able to use it.”* The report has been sent out through their own website, the London Destitution Advice Network¹³ and Rightsnet¹⁴. Interestingly, one of the trickle-down benefits of the work has been for COMPAS (Oxford)¹⁵ which is also doing research into families with NRPF, as PLP did. Having been signposted to PLP’s work by MigrationWork, COMPAS found PLP’s experience useful to inform the approaches they are taking with their own research work in this area: *“The PLP project was really helpful – they had done all these FOI requests to local authorities. It was useful to get advice on how to frame questions and learn some of the things to say and not say.”*
- ii. CPAG has written a report on the lawfulness of delays in processing benefit and tax credit claims for migrants. Though the entire report is at present confidential, elements of it are going to be published to help those campaigning in the field as it is clear from research that some of the work needed to tackle delays is policy, not litigation.
- iii. Kesar & Co Solicitors are publishing a paper from their research which has looked into the reasons why children’s asylum claims fail. This will indicate some of the legal arguments which are being missed by judges in terms of adjudicating on asylum claims of children in order that cases can be better prepared and successfully appealed to the higher courts. As well as an online version, this will be sent through various mailing lists, including those of Kesar & Co and Garden Court Chambers. A summary will go to ILPA for distribution as well.
- iv. JFK Law trained criminal lawyers at London Criminal Courts Solicitors’ Association (LCCSA) about the practice of deeming age which they researched through the SLF. LCCSA found it extremely helpful: *“It was a very valuable course. Very appreciated, and the preparation and the thoroughness of the work was astonishing.”* It was clear on the course that some criminal solicitors were not aware about standard trafficking indicators (such as a young person being convicted for cannabis cultivation), and LCCSA felt the training heightened awareness significantly amongst those attending. JFK Law have also produced a court pack which includes information and advice about deeming age which has been sent out to over 100 people round

¹² Public Law Project Report: Social Services Support for Destitute Migrant Families: A guide to support under s 17 Children Act 1989 – on website.

¹³ <http://www.asaproject.org/what-we-do/ldan-project/>

¹⁴ <http://www.rightsnet.org.uk/>

¹⁵ COMPAS (Centre on Migration, Policy and Society) is an ESRC-funded Research Centre within the University of Oxford which undertakes research on migration.

England working with young people in the criminal justice system. *"We have spotted people coming into court with it, so it's being used. It's bright orange, so it's difficult to miss!"*

- v. Coventry Law Centre have collated findings on ERPUM and established contact with a network of academics. They are planning to make the findings of their research available through a website, and publish this through a variety of networks including the Law Centres Federation (LCF).
- vi. MLP is hopeful that, even if they are unable to mount a legal challenge, they can make their evidence available to practitioners and campaigning organisations to try and mitigate the effects of the 72 hour rule.
- vii. Bhatt Murphy solicitors and Medical Justice have only recently been funded to research potential challenges to unlawful policy and practice around the enforced removal of children and pregnant women. *"We're hopeful that we will be coming out with information we can spin out to others – we'll certainly be putting what we have gathered on our website."*
- viii. THLC delivered a range of Rights and Entitlements workshops to groups such as Newham Social Services and Refugee Youth using the information they had unearthed through their SLF-funded research.
- ix. Maternity Action reports how the process of doing the research they undertook with ASAP enabled the researcher to talk with midwives round the UK about how they identified refused asylum seekers, and how this in turn enabled those midwives to better understand and advocate for the women in their care.
- x. ILC held a seminar at Doughty Street Chambers one month after LASPO came into force. The seminar enabled practitioners from around the field to look at detailed advice to the scope and potential challenges to LASPO. Several interviewees, including other grantees and EP members reported finding it extremely useful. *"I think that ability to be able to have people thinking about what it is we can challenge in LASPO before came into force has been great and valuable".* Or another: *"This needs a broader circulation – it has saved me loads of time in terms of not reinventing the wheel."*
- xi. Brighter Futures (a campaign group of young refugees and asylum seekers) found the process of participating in the research with THLC useful, particularly because it made them aware of new sources of information which they are using for wider campaigning.¹⁶
- xii. GMIAU are going to use their research and incorporate their findings in training they are planning with Manchester Children's Services. They will try and use this to spread awareness about their findings on inadequate decision making in relation to asylum status, including a lack of consideration of Section 55. *"We've increased expertise around this area and can train and teach others."*

Organisational Benefits

Organisations funded by the SLF reported a range of benefits.

Gaining new skills and awareness

Several grantees said that the work had helped them gain new skills or awareness. It had made some think about new legal strategies, for instance: *"The way we worked on the intervention was slightly different. We gained some additional experience there."* Or another: *"We were able to develop a very*

¹⁶ For instance, <https://www.whatdotheyknow.com/> where FOI requests can be trawled.

clear litigation strategy setting out the arguments and detailing all the steps. This is useful for this and other cases."

Others reported having a clearer idea of strategic litigation and what this means. *"The firm is much more aware of strategic litigation and the benefits it can bring. I've noticed particularly with the junior colleagues in the firm they are more plugged in to the potential of taking a wider view. It's made a real difference to how they are now approaching some of their cases."*

Other organisations noted the benefit of working in a slightly different way. A regular theme was around people learning how to work with other disciplines: lawyers learning how to work with researchers and policy workers, and vice versa. *"From an organisational perspective it has been immensely useful. It's helped us think how we would prepare for a Judicial Review, how we work with experts and how we work with barristers."* Another interviewee spoke about learning how to use temporary staff well: *"We've learnt that it's possible to effectively use locum support in order to undertake discrete work, and we'll be doing so in the future now to provide a better service."*

The most regularly mentioned new skill was that of research. NGOs were recognising the particular type of research and data recording needed to 'prime' a legal case: *"We understand much better now how we need to record and research information to prepare for a case."* Others had realised the limitations of doing research with vulnerable young migrants. *"It took far, far longer than we thought. We actually had to scrap that approach in the end – they were too fearful of the research affecting their status in the UK to engage."*

Some workers and volunteers had also been able to gain experience which would serve them well in the future. In Coventry, the work has given one law student the opportunity to do research work and work in a law centre prior to making their future career choice. *"Giving the law centres access to bright researchers is fantastic – the more we can get students a taster of what working in a law centre is like, and the rewards it can bring, the better."*

At funder level, Trust for London has also been piloting a new way of working by out-sourcing a specialist grant assessment function to MigrationWork CIC, and also reports learning a great deal about the whole area of strategic litigation, the legal system and the use of the law in social change.

Increased confidence to use strategic litigation as a tool

Various voluntary sector grantees reported feeling more confident in relation to litigation. The Chair of one NGO noted that: *"I have seen people really starting to understand more about litigation and how it works. Usually they are not dealing with High Court Judicial Reviews, but with this work the potential benefits of what can be achieved is dawning on people, I think, as well as the numerous challenges. That's likely to be true of other NGOs, I think."*

Several NGOs did indeed report gaining confidence in relation to strategic litigation work. *"We hadn't done an intervention in the High Court before, so that's been good for us. We are generally trying to think through the practicalities of how it works, so it really helped us build up our expertise as a neutral third party intervenor."* Or from another: *"I think we are a bit more confident in taking a case ourselves now. I think we are perhaps more prepared to take that slightly more aggressive position than we have in the past if it is the more effective way of going forwards."*

Not only NGOs reported gains in confidence. A private practice also noted how doing the work had been beneficial. *"Strategic litigation is almost like a switch - once you flick it on you think in a completely different way. You open a door that wasn't previously opened. The way you run your cases is completely different. Already the conversations I have had with people in the firm are different - they are actually now asking 'Do you think that this might be a strategic case?'. I don't know if that's directly attributable to the SLF, but it has certainly helped."* Several lawyers talked about how much they had appreciated the chance to take some time to think away from the thrumming demands of casework: *"It's a really interesting opportunity to step back. Without the chance to think, I wouldn't have come up with a number of the arguments I did."*

Increased referrals and contact

A number of the projects had found that from doing the work they had raised awareness both of their organisation and their line of enquiry. As a result, people had started to contact them. One private practice noted that: *"We've been speaking to organisations to try and find the ideal case. Just by speaking with them you are raising awareness of the issues. One organisation recently contacted me to ask 'What do you think of these cases?' - that's good, it shows people are starting to engage."* The same phenomenon was reported by others. *"Every solicitor who works in legal aid with families will come across families who may be affected – we've had a few enquiries [about the case] from people aware we did the case. Some from solicitors, some from families themselves"*. ASAP has been trying to find a case through Maternity Action's networks. *"Lots of people are on board in Manchester, Leeds, Sheffield – it's a great network. We can use this model again. Whenever they find a potential case they phone and say 'Do you think this case will fit?'"*

Two examples particularly illustrate this point. Harrow Law Centre spread the word about what they found on school exclusions through information sessions and meetings with community leaders. Increased referrals followed, from Children's Services and also from young refugees themselves. *"We find that now young people as well as politicians are coming to us about this. We've had young people putting information about us on Facebook saying 'Go down the law centre'. Other young people bring people to us. We feel we are becoming a real resource."*

In East London, RAMFEL has been researching and raising awareness about Operation Nexus. Though RAMFEL were not funded to respond to the Go Home vans, these were introduced as their work on Operation Nexus started up and their work therefore branched out to include networking and information on the vans as well as on Operation Nexus. Public meetings, and a place at the table at the Reference Group at Scotland Yard have led to police knowing they are there and recognising they have a role to play in supporting migrants. *"We have had three [young, migrant] clients referred to us in the last ten days by the police. We think the work has forced the police locally to rethink their relationship with us."*

Profile and Reputation

One law centre spoke about how doing the work has been helpful in raising their profile. *"Reputationally, it's been a good thing to do. On more than one occasion we have had the opportunity to demonstrate a detailed knowledge on this matter. It's an extra string to our bow, and it helps our relationship with funders."* Other organisations reported how they had found being involved in the work had helped them get to policy tables and, once there, get listened to. *"It's added an extra reason why we need to get round the table with the Home Office."* Another law centre reported that it had helped them show that they were campaigning for the rights of migrants: *"It's brilliant for us – it adds to our body of work and we get known as an agency which is here to assist NGOs and make sure that their voice is heard."*

Financial benefit

Where the work has resulted in civil cases which have been referred through the project there may even be financial benefit for some of the work. A couple of law firms mentioned this: *"We have a group of civil cases referred through the project which we will assess for merit, litigate and settle and we may make some money on that."*

Relationships and connections

Developing mutually beneficial working relationships between sectors

One barrister observed that: *“If lawyers want to do strategic litigation in fields NGOs are working in, it’s really valuable for lawyers to understand that they can benefit from NGOs”* and this does seem to have happened in several cases, as well as NGOs benefitting from the input of lawyers. The partnership between MLP (ILC) and Refugee Action has cemented, with Refugee Action now instructing MLP in another matter. In Bristol, MLP is working with PIL (Public Interest Lawyers), Garden Court Chambers and the AIRE centre on an interesting and complex piece of work looking at the failure to protect trafficked children. RAMFEL has found it extremely beneficial working with the advisory group set up to oversee the SLF-funded work, and both the organisation and a lawyer involved report gaining greatly from the experience.

Creating new relationships and networks through SLF activity

The SLF has created a variety of mechanisms to help foster new relationships. The EP is one, and brings together key players in the field to advise on projects seeking funding. Some say they have found this very helpful. One EP noted for instance that: *“I’ve found out about a range of legal cases through being on the Expert Panel where I’ve followed them up and have used the contact to progress work here. I got one group I found out about to intervene in a Court of Appeal case, for instance, and another [SLF-funded] project provided really useful information on school exclusions for a colleague in the office.”* Other EP members said they appreciate finding out about what is going on across the field, and that having the panel has particularly helped lawyers with fairly isolated working lives coming together, albeit briefly, in common cause. *“We often work in such an isolated way – it’s useful to have somewhere where you can find out about what’s going on.”*

The grantees’ meetings have also been appreciated as a way of connecting up with others. One person said that they had been pleasantly surprised at how useful they had found it. *“I thought I had to go, as it was kind of expected of us as a grantee. But in fact it was incredibly helpful. I found out about two initiatives which I could follow up afterwards.”* Several others said that they had found the meetings useful both to identify other work, and to combat feelings of isolation. *“It was good to meet other people – I wouldn’t have met any of them elsewhere”* was one comment from an NGO whilst another solicitor observed that *“I’m the only one doing cases on migrant children here, so it was good to meet others. Helped me focus.”* Relationships and connections have also been made through the work of MigrationWork CIC who, as the fund’s administrator, has linked up organisations, referring them to others in the field who might help.

The SLF has also enabled new partnerships: for example, one of the projects has brought Deighton Pierce Glynn and TCS to work together very successfully for the first time. Trust for London and Esmée Fairbairn Foundation have developed a new partnership relationship with MigrationWork CIC, as well as with the group of individuals on the EP who have been advising on the grants.

In addition, four expert steering groups have been set up on projects. THLC set up their own steering group, and for three other projects (Coventry Law Centre, RAMFEL and Kesar & Co) the creation of an expert steering group was a condition of the grant and included EP members. These have worked well, in spite of some initial concerns about potential conflict of interest around EP members’ involvement.

Creating new connections with practitioners and policy makers

The work has led to new connections for many of those funded. BID is building relationships with additional solicitors’ firms, for instance, as a result of the SLF project. JFK Law has forged new links through the London Criminal Court Solicitors Association. GMIAU feels that its relationships with

social workers and other NGOs have been strengthened: *"I think maybe the fact that we were interviewing for the project enabled us to make links"*. CPAG reports that their research has kick-started conversations with other agencies in Birmingham and Northern Ireland, as well as with other key human rights agencies who will help feed their research work. Elder Rahimi now finds that, as a result of their work, Haringey Social Services is phoning them up when a young migrant is about to be released from prison to find out what they need to do to help them. TCS has used the opportunity of the research they have done to meet with people from the London Borough of Croydon: *"We are keen to use our research to influence dialogue and we met with them a few months back and talked about our findings. We thought it would make more sense to do that first and have the opportunity to discuss it."*

Increasing morale and motivation

A common theme was how motivating strategic legal work was, particularly in light of the grimness of the current context for migrants and those working to defend their rights. One private practice solicitor noted that: *"The day to day job is incredibly stressful and you can get very little reward - so to have this where we have been given a bit of time and space to try and generate something which is going to make a difference is a feel good factor in the office."* Or from a law centre solicitor: *"It's essential to take forward strategic litigation, partly so it will benefit more than one person, but also so we don't feel completely demoralised."* One law centre worker observed that the work was motivating not only for those doing strategic legal work, but also for colleagues who were not. *"My observation is that the people in the community facing team have found it rewarding just having it happen around them."*

It was also motivating for non-lawyers. For example, workers at RAMFEL felt energised by the impetus gained for their work around Operation Nexus and the fact that, through examining legal issues and involving lawyers, they feel they have *"stepped up a gear"*. Another example was the midwives contacted through ASAP/Maternity Action project to help find potential 'cases' of failed asylum seekers who are pregnant and destitute. *"So often midwives working on the front line are not sufficiently clear about the process that is required to generate change in policies and laws and guidance and this is a way in which they can participate in that process and understand the complexities of it. And for those midwives that do have a strong interest in this area, there's an appreciation of the opportunity to contribute to change. It's empowering for them."*

Positive judgements have a boosting effect on morale as well. For example, the AIRE Centre noted how many practitioners emailed them from all over the country following the judgement at the Court of Justice. *"As soon as the judgement came out lots of solicitors went on google groups and posted the result so we had loads of people contact us in response to that. Everybody was saying how pleased they were, and that they had clients who would directly benefit from that judgement."*

Finally, a few interviewees noted the symbolic importance for many of having a funder who is prepared to back a fund doing this work, particularly given the current anti-migrant zeitgeist. One barrister observed that: *"I think it has been good for organisations to feel that there is somebody willing to fund this work."* Another solicitor put it more starkly. *"The SLF is a small chink of light in an otherwise desolate sector."*

Generating new initiatives

Though early days, some of the work seems to be spawning new endeavours, partly through the connections made. Work in train with RAMFEL is at present multi-faceted, but there is no doubt in the mind of one of the lawyers on the advisory group that the connections being made are positive and that a movement against migrant rights erosion is being forged. The work started at THLC will, it is hoped, continue to some degree at Shelter when the worker moves there. *"I am hoping that I can use some of my influence there to keep it going."*

One interviewee has gone on to set up their own organisation, in part responding to the issues raised in the research done by PLP. Project 17¹⁷ works 'to end destitution amongst migrant children' and is running free outreach sessions every week. It is apparently 'chocker' with people who need their services already. *"I think there are thousands of people in this situation. Time and time again when doing the [SLF-funded] research I heard that most people go to their local authority and don't get the help they need."* Whilst the worker does not attribute the existence of the organisation completely to SLF funding, she definitely thinks that the funding helped. *"One of the people I set it up with was somebody I encountered through the SLF-funded work. In fact, it was her idea. I definitely offer more to the project than I would have done before the SLF work. Our idea is that we will work nationally, but we are currently based in London. We may even make our own application to the SLF in partnership with a law firm."*

¹⁷ www.project17.org.uk

Section 3: Lessons around success

Ideas of success within the SLF

The vision of the SLF is to influence the policy and legal context so that it does not disadvantage and discriminate against young migrants. As some interviewees pointed out, this is a broad aspiration and there is no explicit and articulated 'theory of change' (if we do X, Y will happen) of impacting on a particular area of law, or advancing or shaping the interpretation of a particular piece of primary legislation. It should also be remembered that the SLF was originally intended to sit alongside and complement other non-legal initiatives aimed at improving the lives of young migrants so original hopes for the SLF could achieve were developed within this broader context.

Success is therefore difficult to define or measure. This section explores interviewees' views about what success looks like, what it is possible for the SLF to achieve, and the extent to which people feel the SLF has been successful.

Concept of 'success' at fund level

The concept of success seems to have shifted slightly since the start of the SLF at the DPOWMF. There is a view that there were then somewhat more ambitious hopes of system change, whereas interviewees said that they feel the SLF now is more about tackling a range of issues to enable wins in different parts of the system wherever they can be achieved (a 'string of pearls' approach). The SLF was described as 'interconnected' with TFL's advice programme and its funding of casework. The funders acknowledge that there is "no clear vision on how we can transform the lives of migrant children."

One interviewee put it thus: *"To be honest we did not have a scale in mind. Given the novelty of the project, it was difficult to predict. We hoped we would fund some good challenges and we seem to have done so, and they make a real difference to people, for example the Section 4 intervention."*

Given the funders' openness to waiting to see what would come out of the SLF, do people think it has been a success and what can be learned from what has happened?

Too early to call

In many ways it is too early to judge whether or not the programme has been a success. One interviewee summed up this point: *"A strategic legal fund takes an awful lot of time to set up and have any effect. I think perhaps that the Diana Fund expected much quicker outcomes. I wonder whether TFL may have inherited that? I think it would be a pity to let it go at this point before it has had a chance to make a real difference."* Another commented: *"I do think that there is a need for funders to understand that strategic litigation is not a sexy thing; change comes in tiny increments, not big steps."*

On the other hand there was acknowledgement of what the SLF has already achieved: *"All the grants have achieved some success to some extent or another I think",* and: *"Different things matter: the Refugee Action intervention, because it made a real difference, Public Law Project because it seems to be generating several useful cases, the Bindmans residence test stuff which has huge potential to challenge a major horrific problem, and RAMFEL because they have got the bit between their teeth and I think we actually supported them and gave them confidence to do terrific work on the 'racist van' which was a success."*

Success at a time of profound change

Interviewees all mentioned the challenges faced by voluntary organisation and legal providers at a time of major change in law and policy relating to migrants and to the system of legal aid itself. One person summed up how this felt: *"You start up and find yourself in a continuous blizzard and it's difficult to stand upright, let alone progress."* Another said: *"The scale of achievement [of the SLF] has to be set against a backdrop of rights dropping away, and increasing focus on 'migrantophobia'."*

Views on whether the SLF has been a success strategically

The majority of interviewees, while praising the achievements of the SLF, found difficulty in identifying or describing how the fund was 'strategic'. For example one EP member thought that: *"Some of the applicants already had a case¹⁸ they were doing and weren't understanding the strategic bit. 'We have this case, let's get money'. Others think it's blue sky thinking and want to use the money to explore an idea. Some of the applications were for things they were doing already. There is no shared idea of where we are going."*

Another EP member summed up a general sense that the basics of the SLF may be going well, but there is not yet a unifying strategy on tackling the underlying issues which mean the SLF needs to exist: *"What I don't get a sense of is where there is a unifying theme on big changes for children or how children's rights are being pursued. These are all discrete areas of concern about children, but we haven't lifted that up yet to say 'overall, are we addressing the discrimination that has existed between migrant and non-migrant children?'"*

Others felt that strategy needed to be built through practice; as one person said: *"I don't think that we have seen enough concrete legal changes arising from the work. Let's say it raises an awareness that is yet to be capitalised on; there's a body of knowledge waiting to be harnessed. If anything these last couple of years have been inherently a precursor to legal change."*

How a legal approach might influence concepts of success

From an external perspective, one of the 'success measures' might seem to be whether the SLF enabled a piece of strategic litigation. However, it is not necessarily helpful to think along these lines and there are alternative definitions of success. For example, the SLF is valued because it enables lawyers to think about 'whether this is a good piece of litigation to bring'. From a lawyer perspective, having 'the thinking space to really research and then decide not to litigate' may also be valuable. For these reasons members of the EP do feel that there is benefit to funding work which is not directly focused on specific or immediate litigation.

Why success cannot just be judged by successful legal outcomes

For some lawyer-grantees the definition of success was quite narrowly legal, and the fact that work had not come to fruition as a case was seen as a 'failure'. However, there are a number of reasons why taking forward a case and achieving a judgement cannot be the only measure of success for the SLF.

There are other outcomes which constitute a good use of funding, for example people being trained, useful information being disseminated, organisational learning, increased public awareness and positive publicity for the cause of young migrants. In addition, some of the research undertaken may not be immediately useful, but might be drawn on in months or even years to come. Conversely, winning a case may not in the end bring great benefit: *"There's also an issue about so you win a case,*

¹⁸ The SLF does not fund cases as such: the interviewee was referring to people already working on a particular issue.

so what? If the case is just won by a private solicitor's firm where nobody knows about it, there is no mechanism for taking it out and saying 'as a result of this you can do X'. The problem is that the original idea of the fund was part of this suite of projects, some of which had policy responsibilities. So the idea was that the SLF would think it through, and the practitioners would take it forward. But what happened was that the Diana Fund ended and then the whole sector got slashed to pieces. We could usefully now ask how to make the connections with other types of work to advance what we have done to date."

Similarly, winning cases does bring with it the risk of negative publicity undermining the cause of those the case is intended to benefit, as a funder said: *"We do embrace unpopular causes, but we are particularly wary of strategic litigation being used because if it creates a furore when you win you may win the battle but lose the war. What you hope to achieve is to win legally but not lose on the PR front."*

Lawyers themselves will disagree on what is the best strategy for achieving change. A member of the EP explained their view of the dilemma over challenging LASPO in respect of children: *"The Lord Chancellor has failed to exercise his power to bring children as children back within the scope of legal aid. That is being challenged through one of the projects. But I think part of that involves downplaying the responsibility of local authorities to pay for children in their care. And that seems to me to go after something you may not win and risk throwing out this other factor which you could enforce."* Another view put forward was that this is not an 'either-or' scenario, but that both LASPO and local authorities need to be pursued.

Finally, achieving a successful or unsuccessful outcome may not be a determinant of longer-term impact. Unsuccessful cases may still have considerable merit, raising the issues and going on to effect change 'down the line'. It is also the case that when a case is successful, it is far from being the end of the road. One interviewee explained: *"The Refugee Action case (on Section 4 delays) was a fantastic result. It meant at a basic level that people would not be subjected to a minimum 15 days' delay. After the case in some places the delay did come down. But elsewhere it is still happening. Why? Our own statistics taken from all our offices show that delays on deciding those applications haven't decreased. When we put this to the Home Office we said 'you are not applying your deadlines' and their response was 'we are following those deadlines as we can; if we require further information we are entitled to request it and that will result in a further impact on the client.' So we believe that they might have shifted the delay from being a policy delay to be an inbuilt operational one. We are looking into this now, so we can't say that it is definite, but we suspect that they are using increasing questioning to build delay into the process. We will be challenging that."*

Ideas on success from other funders

We spoke to a range of funders about their own experience of funding strategic legal work. In all cases funders felt that there were a range of inbuilt risks which had to be accepted, and that success, if it came, would be slow. Overall it was felt that expectations around success need to be recalibrated. One long term funder of strategic litigation put it thus: *"by and large, with the exception of a few breakthroughs, many of the cases we fund end up being piecemeal, incremental shifts rather than significant breakthroughs. One's expectations in terms of what this kind of legal work can deliver need to be calibrated."*

One interviewee described for instance how change in the field of gay rights had been influenced, changed, retarded and eventually enabled over years and years of policy influence, cultural influence, activism as well as litigation to get to the point we are now.

Another funder noted that a key success factor for them was the degree to which you were clear at the start as to what you had to achieve. *"The most important thing for the strategies we fund is to know what you want to get at in the end. For me, the focus on young vulnerable migrants is broad. I'd say you need to think in terms of a 10 or 20 year goal, and describe what normative cultural rules, or laws, or skill sets you want to see materialise at the end of your programme."*

Another over-arching message was that legal challenge alone is never enough. It has to sit fairly and squarely within a larger ecosystem of challenge. *“There is no point litigating without advocacy. Litigation is not a silver bullet – it is helpful, but it needs to be accompanied by campaigning, information, cultural movements and much more besides.”* For this reason some of the other funders interviewed were investing in campaigning and recording tools which could feed litigation and evidence-gathering (such as documentary and recording equipment) and including this as an inherent element of a successful and rounded strategic legal approach. *“For me, the critical success factor is not the judgement, it is getting the flow happening from the judgement. For that you need community groups, advocates, campaigners, artists and activists.”*

Emerging ‘success predictors’ in a project

This section draws together interviewees’ thoughts on the ‘success factors’ for strategic legal work. These are presented as lessons which apply to:

- the legal provider;
- the voluntary organisation and/or researcher;
- both of the above.

Success factors for the legal provider

- ***Having a clear strategy for identifying the claimant***

Several of the grants awarded have resulted in work which points to the possibility of a successful challenge, but no case has yet been taken because the organisation or organisations involved have not been able to identify a client.

In the words of one legal provider: *“If you are going to do pre-litigation research you have to have in mind what your case is and be sure that you can find a client at the end of it. I think if this is a predictor of how well the project is likely to work out, it might also point to an understanding of what constitutes a strategic legal project.”*

- ***Understanding how research works and what is needed to ensure its success***

Some legal providers are not used to working with researchers and do not know how to ask for what is needed. As one interviewee explained, *“we found that gathering the evidence for this work was quite difficult, as some organisations were unsure as to what documents might be relevant. However, this has been useful in itself as we have been able to better gauge the legal capacity of some of our partner organisations, which is helpful for us in improving the way we assist such groups in future.”*

Another interviewee observed: *“It may be that the academic element is missing and actually as a fund we were asking lawyers and NGO partners to do work which may have been a bit out of their league and scope in some cases. Some of the projects seem to have been able to gather information effectively, but not known what to do with it later.”*

- ***Strong strategic track record or connected to those who have***

One of the questions the funders and the EP ask is ‘is the organisation capable of doing the work and does it have a good track record?’ Factors which are likely to affect an organisation’s ability to deliver a project include having a strong mentality, questioning, and the ability to ‘bounce ideas around’. The risk of not funding good work from organisations which are unknown is recognised: *“We do consider ‘is this the best organisation to do it?’ We’ve actually had discussions about this in the past but basically have ended up saying ‘you can sit around forever waiting for the right organisation to do this and there is a huge risk of favouritism in that. As we all know, some of the most important steps in really strategic litigation have come out of the blue from organisations which went for it like Southall*

Black Sisters and the equalities impact evaluation, and the Guildford Four, who had high street solicitor Alastair Logan who recognised there was something wrong and wanted to do something about it. So the idea of a 'charmed circle' is dangerous, but there must be an ability to question and a determination to take it forward."

For the voluntary organisation/researcher

- ***Understanding of and compliance with what is required in a legal setting in terms of evidence***

Having a systematic and easily analysable body of evidence, collected over time, is vitally important to feed legal cases as they come up. This is illustrated by the experience of one NGO¹⁹ which was able to provide evidence to enable solicitors to challenge the use of force against pregnant women being forcibly removed. An interviewee who was involved explained: *"Suddenly we got a call: can you write a witness statement about short term rules? We dug out the files, found all the comments and quite a few of them fitted for this witness statement. It felt really great after you have been studiously taking all these notes over the years to get them all out and use them and have it there so effectively and so quickly to end the use of force against all pregnant women. It was great to be able to do that. So we know that it is important to keep a paper trail and we're setting the right expectations in our own minds of how these things work. It does take experience to do it - now I understand why some people have been doing it for years and that if you do it in the right way it can get used."*

Lessons have also been learnt through not having methodical data storage procedures. One interviewee noted the large amount of time it took to assemble the necessary evidence for a case from the NGO office, even though the data was all held on record. *"Locating the minutes and email correspondence was more difficult than anticipated due to a lack of systematic filing of communications. This meant that it took longer than expected to compile a comprehensive bundle of evidence to submit with the witness statement."*

For both legal providers and researchers

- ***Being clear about the work but prepared for the inevitability of change***

Interviewees emphasised the importance of having a clear idea about what the piece of work was they wanted to do and how it would have a strategic impact. However, in practice the process of doing the work rarely went to plan or to timetable. Dealing with setbacks or delays and being flexible emerge as key lessons for both legal providers and voluntary organisations. This example illustrates the point:

"Half way through the project I got calls from clients who were the kind of cases I wanted. I was actually managing the litigation and being the solicitor responsible for the claim that I hoped to generate and getting the other stuff done at the same time. I basically didn't have time to run the litigation and do everything I told the Trust I was going to do in months 3 to 4. Those were the major problems I encountered."

One of the ways to deal with the inevitable slippage in projects it is to start the work as soon as possible. One NGO, for example, said: *"We have learnt the importance of initiating contact with legal representatives and potential funders at the earliest stage in the development of a strategic legal challenge in order to begin preparation for the case well within the tight court timescales."*

¹⁹ This example was not from an SLF-funded project, but was from a grantee who had made their connection with the case through the SLF.

- **Having a partnership forged in mutual understanding of skills and cultures**

Some people initially found it difficult to get to grips with the different cultures of either NGOs or legal providers. In particular, NGOs who had not worked closely with lawyers before said they felt 'pressured' by the demands for information, such as last minute demands for *"any minutes which ever mention this word"* and *"every case file that has ever applied to this element"*.

However, when the relationship worked well it was described in glowing terms: *"We seemed almost to inspire and keep one another going. When things were working well we fed off one another."*

Pointers for making the relationship work despite differences in working practices are:

- having clear instructions and support from lawyers to NGOs on the information being collected;
- NGOs understanding some basics of legal process, for example what an intervention is, how the Judicial Review (JR) timetable works and what solicitors' expectations are of clients;
- lawyers understanding how to manage researchers, and how research works, in particular in relation to timescales, ethics and limitations of 'proof';
- knowledge by the legal provider of how to conduct a strategic case and knowing how to involve NGOs appropriately;
- taking advantage of the access that many NGOs have to high level policy officials, which enable them to sit down and talk to them in a way that lawyers don't or can't: *"I think 'strategic' is proactive really; ideally the lawyers should be working closely with the policy people."*

- **Publicising and disseminating the information**

It is vital to publicise the decision and disseminate information about the research that has taken place, provided that doing so would not undermine any future case. In particular, there are likely to be nuances in judgements which other organisations ought to know about, for example, in the case of Refugee Action and MLP, making sure people knew that the judge had clarified the point that the UKBA cannot use the appointments system to create delays.

Section 4: Lessons around risk

Funders were aware that this kind of funding could be risky. In Section Five we look at how the SLF managed its own (funder) risk (see Section 5: The SLF's approach to risk). This section looks at other risks affecting the work itself, those doing the work, and those who are the subjects of strategic legal action – the young migrants.

Risks affecting the progress and outcome of the work

External and internal factors derail timetable for work

Almost half of funded projects over-ran their original timetable, demonstrating the inherent difficulty in predicting timescales for work of this nature. There were a number of different reasons for projects being delayed. Interestingly, the majority of these were internal: finding the resources within the organisation to do the work, and focusing on the approach to the research after having the initial idea for a topic. Only two grants were delayed for reasons relating to others involved, either local authorities or clients.

Table 4.1: Delays in delivering the projects

Reasons for delay in project delivery	Number of grants affected
Workload and staff changes/illness	5
Delay in project set up (e.g. agreeing focus of the work and how to approach it)	3
Delays in getting local authority responses to requests for information	2
Permission to intervene being challenged	1
Awaiting decision on underspend	1
Difficulty in dealing with chaotic client group	1
Additional work needed on cases	1
Delay in identifying an expert to assist	1
	15

Lack of co-operation or engagement from NGOs or legal providers

There is a risk that being in competition with other agencies may undermine the process. Three organisations described to us that they had found it difficult to get cases as people wanted to 'hold on to them'.

"We weren't in the time able to get a test case. When we met NGO workers who may have had relevant cases, they were reluctant to give them to us."

"There was a combination of lack of capacity, lack of willingness, lack of understanding – in terms of their (other NGOs') priorities as well. It is a shame as well – it's such a fundamental issue. We are dealing with people in detention facing removal and I'm really surprised that NGOs are not prepared to prioritise it actually."

"We tried to identify young people through community care law who were being age assessed ['deemed' in a criminal context]. These young people had community care lawyers who were challenging their age assessment but then they also had criminal lawyers separately who were not challenging the deeming [of age] of these kids. In other words, they had two different legal teams, so the community care lawyers knew we were doing the work [on deeming] and would ask us to take on the criminal part of the work and then take on the challenge. So we would go to

court and argue for a transfer of legal aid, and the criminal lawyers in place would object. Effectively these were the lawyers allowing the treating of these individuals as adults – it was very frustrating.”

Potential claimants not found or reluctant to stick with the process of litigation

Several organisations have struggled either to find claimants at all or to find people who are willing and able to stick with the process.

Elder Rahimi, for example, tried to find potential claimants by working with the Somali Youth Forum, but found that all the cases which might have turned into strategic litigation collapsed – either because people absconded, or because their immediate problem was resolved and they decided not to carry on taking forward a case. This is not surprising; as the solicitor involved explained: *“This group particularly have had a lot of dealing with the courts. They are bored by it – ‘more court’ isn’t what they want and they are in precarious positions.”*

JFK Law had a similar story: *“On one occasion we attended court to argue for transfer of legal aid but ultimately the judge refused. This made it particularly difficult to find suitable cases. Even where we did find suitable cases, other external factors prevented them from being used as a test case, as in another potential case where the client went on the run after being bailed so the matter could not be pursued.”*

Cases settle

There have been a number of instances where SLF-funded work could have resulted in a strategic case, but the case has been settled before it could come to court. Some interviewees felt that this was a deliberate tactic on behalf of the HO and other agencies: by settling the cases that were likely to succeed they could carry on with the practice that the claimant was seeking to challenge.

Some of the potential judicial reviews became civil claims, which meant that the impact was around the individual rather than bringing about changes in case law. There is a dilemma for lawyers here, in that this outcome is beneficial to the individual, but prevents strategic litigation from going forward.

The case which gets taken is poor

The risk that most concerned some members of the EP in particular was the risk of taking a ‘bad case’, where the case turns out to be not wisely selected, for a variety of reasons, and the failure to win undermines the chance of strategic litigation in the future. It is interesting to note that there were no examples given of this actually happening with SLF-funded projects to date. This may be for a variety of reasons, including good assessment procedures and the choice of strong and expert lawyers to do the work (sometimes advised by experts) who know a bad case when they see it and can steer clear if at all possible.

Policy makers are not receptive or accessible

As some interviewees pointed out, strategic litigation is only one approach to problem solving, and often sits alongside advocacy and influencing, for example. However, one of the risks involved in doing pre-litigation research is that policy makers will be unwilling to take on board the findings, or even listen to them or meet with you. One NGO described such an experience: *“We have asked for a meeting about pregnant women in detention, having published a report in June on the detention of pregnant women, which contained in depth analysis and key findings such as only 5% of pregnant women are removed. We have asked the Home Office to discuss this. But the immigration minister has said ‘there’s no point in meeting’ and yet they are willing to meet the Royal College of Midwives and Gynaecologists; it is very disturbing and depressing that you put a lot of effort into doing their work for them and they completely ignore you.”*

Learning and information collects dust

Finally, there is a risk that after all the effort and cost involved in researching an issue, the findings of the research are not disseminated and used. There are reports produced by the SLF where there is not a proactive dissemination strategy, and these risk at present gathering dust on a shelf. *"I think maybe I don't have the skills to disseminate or promote the research. Certainly from somebody in my position, if my job is working on something like this and having an ordinary caseload it is very difficult to combine the two."* It is hoped that the archive will address this at least in part. However, it should be noted that many felt that proper dissemination did not just mean making the information available, but also being proactive in bringing it to the attention of relevant audiences.

Risks for the funded organisations and individuals

Organisations may carry financial risk of taking cases forward

Given the legal aid changes, some voluntary legal providers are already significantly increasing the amount of cases they take 'at risk'. They do this as otherwise important legal work will not get taken forwards, obviously, but organisations realise that this is making them increasingly exposed. ILC has two of these cases currently, others report increasing substantially their pro bono work.

Work develops and takes longer than expected

It has sometimes been the case that the funded work has taken far longer than anticipated, and organisations have had to absorb the extra time and costs themselves. *"It has taken much more time than I anticipated and has definitely brought pressure to bear in terms of my ability to get my legal work done. But we try to do strategic work and call it 'work', and without it we don't get to do that great stuff. For instance, we are doing work with BID on separated family issues; we have been litigating with them for several years and we have been able to do that in the High Court."*

People may leave given short term contracting

The nature of pre-litigation research often means that people are employed on temporary and short-term contracts to undertake specific pieces of work. This carries with it the risk that people will leave if a permanent or longer term opportunity comes along, and the work may be compromised. It has been the case that staff in funded organisations have left at crucial times, but the organisations involved have managed to cope with this.

Litigious approach may affect NGO relationships with policy 'objects'

Being involved in taking a case or seeking to take a case against another organisation can cause problems for people, particularly those in NGOs, who have to work with those agencies. As one person said: *"My involvement in this [SLF] project in some ways has made my work in this sector a little bit challenging going forward in that the charity I now work for works in Barnet and Croydon, two of the boroughs where I was working. I used the links but they responded in such an aggressive way I never contact them now, I work through a colleague."*

Risks to the conduct of ethical research

Several interviewees raised issues around ensuring that the pre-litigation research was conducted in an ethical manner, and mentioned the risks to organisations and individuals if this did not happen.

By its nature the research funded by the SLF is speculative and it is therefore difficult to explain to people when gaining their consent to participate what the outcomes will be and what the benefits or otherwise may be for them. As one researcher explained: *"It is not clear what the benefit is for clients. Normally if you are writing a report you know what it is you are asking people to sign up to and what guarantees you can offer; that's what I struggled with in this project: not knowing where it was going to end up, and then having these young people caught in the middle of me and their social workers. That was quite an uncomfortable experience. Perhaps it is something for the SLF to think about - requiring projects to say how they are going to make the research ethical or at least to show they have thought that through?"*

There is also an ethical issue about doing something which may have an adverse impact on individual young people. For example: *"Highlighting the kind of circumstances where the young people you work with have been short changed, that can be very frustrating for young people. There were a number of young people who were interviewed who realised that they didn't get the services they were entitled to, but who were afraid to challenge it and didn't feel they had the ability to do anything about it as they worried about future discrimination. This isn't something which is only about this project, just to stress - when we talk about campaigns we often come across instances where young people realise something shouldn't have happened but don't know how to address it."*

Risks affecting migrants directly

Adverse consequences of being involved in research and/or casework

For young migrants themselves, there may be perceived or real risks associated with being involved in research or case work. In most cases, individuals are not primarily concerned with being a test case, but with resolving their own issues. Many have already endured a good deal of trauma, as is the case, for example for a victim of trafficking in whose case PIL hope to be granted permission to intervene; as the lawyer involved told us: *"I have had no contact with her apart from through her lawyers telling her about the intervention. We are going to meet up. I don't know much about it but my understanding is that she is a very vulnerable girl who is a bit exhausted from all the legal proceedings and cannot understand why she hasn't got recompense for the dreadful things she has endured. The court has punished her for unlawfully coming here when she was trafficked here, an extraordinary application of the doctrine of illegality."*

It is also common for young people to fear that they will lose the services they have if they get involved. This fear is in some cases, unfortunately, fuelled by bullying by statutory agencies. One person gave an example: *"One of them [the young people involved] said they were in a difficult position. One of them didn't want anything more to do with the project. We sat in a café having a chat and one went ahead with the request but then the personal adviser told him he would have to come in and photocopy it himself. It did feel quite frustrating that I knew from talking to a semi-independent accommodation provider I work with that there were definitely issues going on with the level of support [name of local authority] was providing but really obviously they didn't want us to get hold of files. I just felt that it was putting the young person in a difficult position. In the end we didn't get the information."*

Difficult to meaningfully involve community groups

The difficulty in involving community groups in the SLF is both an issue for migrants and the funder. Though the 'holy grail' may be that there is a linear feed from the frontline through to legal work, in fact the pace of legal work and its distance as well as specialism can mean that community groups are either confused by the work, or simply don't see its relevance. Examples of emails sent by MigrationWork to community groups show, for instance, that groups have looked at the information but consider it not to be 'for them'.

Harrow Law Centre summed up some of the problems they encountered in involving community groups: *"We had some difficulty in being able to explain the nature of what we were doing. Our workshops and increased involvement with community groups led to us getting significantly more education cases. However, some community groups were confused about what we were seeking to achieve and wanted leaflets that they could distribute. We were not keen to have leaflets stating that we were looking to bring a judicial review against a school."*

In the case of Brighter Futures and Tower Hamlets, *"there is a partnership between a voluntary sector organisation and a law firm which is brilliant. And also for this youth group – giving them a chance in a different way has been really useful for them. But one of the challenges was that because the project worker was based within the law centre the relationship became that we were an access point to a number of young people, so we just became a source of participants. We were very supportive of that – we had realised that there were challenges in finding people and we had realised that there was a way of changing things systematically for others. But there is a challenge about NGOs being involved beyond the role of advising or providing participants."*

Section 5: Lessons about the SLF Model

This section looks at the way in which the SLF has been set up and run and what interviewees felt has been learnt in the process of doing this.

Overview of the SLF Model

What is the focus of the fund?

The key characteristics of the funding provided by the SLF are that:

- it is predicated on funding legal opportunity (rather than investing in an organisation, for example);
- given this, it funds both NGOs and private practice solicitors, the funding of the latter being both innovative and unusual;
- it encourages partnership working between legal providers and other NGO and community groups, but the application and contract needs to be held by the legal provider even if the bulk of the funding is used by the NGO partner doing the research;
- the grants are limited, short-term grants (up to £30,000 for each project);
- projects can apply for extension grants (this has happened with four so far);
- grants are mainly for pre-litigation research and TPIs;
- grants are made frequently, on a rolling programme, and considered every 6 – 8 weeks (at present) to enable emergency work to be considered when it needs to be. If a strong case is made for an application to be considered between meetings, the SLF will consider this favourably;
- the criteria are broad in relation to the area of law which can be funded, provided potential benefit to vulnerable young migrants (up to the age of 25) can be demonstrated;
- grants are made in order to add to existing work, not replace funding or cover core costs;
- pro bono contributions to the work are examined and actively encouraged;
- support is provided for all applicants if they want it and they are actively encouraged to make contact with the SLF prior to applying.

Following Counsel's opinion gained prior to setting up the fund at the DPOWMF, direct litigation costs are not funded owing to the potential for this to expose the funders to costs risk in breach of their charitable duty of prudence. Though Counsel advised that it would be possible to fund legal representation provided strict criteria were adhered to, one of these was that there was no legal aid funding available for the legal work which effectively ruled many of the potential cases out of court if they were to be funded without risk.

How has the SLF Model worked?

Given its specialist and technical nature, the SLF has invested in activities such as publicity, outreach and advice to applicants to try and ensure it is better known and to provide encouragement and practical support for those applying. It has also had grantees meetings to encourage people to meet and think about the work they are doing. To this extent it has sought to be relatively nuanced and bespoke as a fund.

Its funders (DPOWMF and now Trust for London and Esmée Fairbairn Foundation) have invested in two mechanisms to help publicise, administer and advise on the fund. The day to day running and management of the SLF has been provided by MigrationWork CIC, contracted to help publicise the SLF, direct and administrate it and provide much of the liaison work and support for actual and

potential grantees. The EP, a panel of lawyers and policy experts in the area of children and migrants rights, is an advisory panel which gives advice on specific applications.

Changes and adaptations to the SLF model

The key changes over the life of the SLF thus far have been:

- a. At the end of 2012 the SLF was transferred from the DPOWMF to Trust for London. This involved a renegotiation of the role of MigrationWork CIC which was decreased, partly in acknowledgement of the fact that set up and publicity functions associated with the SLF's set up had been completed.
- b. The original scope of the SLF was widened from being focussed on refugee and asylum seeker children to young migrants up to the age of 25.
- c. In response to LASPO, the SLF is now allowing up to 25% of its funding to go to advice and casework in the First Tier and upper tribunals where no other funding is available.
- d. The SLF has also extended its reach in terms of who can apply, and private firms are no longer required to have a legal aid contract. In addition, applications are now open to those working in Scotland and Northern Ireland, and EP members have joined from each of those jurisdictions.
- e. There have been a variety of changes and refinements to application forms and funding criteria to seek to make these clearer.

Is the focus of the SLF the right one?

Everybody interviewed felt that the shift from funding refugee and asylum seeking children to funding vulnerable young migrants had been a good move. It was generally acknowledged that this had enabled a far broader scope of work, and in particular that with immigration going mainly out of scope in legal aid the change had been essential to meet the increasing pressures of disadvantage and discrimination faced by migrant communities.

Some people raised the question of whether the fund should not now be extended to all migrants. The reasons for this were both pragmatic and political. Pragmatically, it felt that maintaining a focus on migrant young people was sometimes challenging and that limiting the potential cases to those under 25 could prove challenging. *"It can be quite difficult to line up a suitable case in strategic legal work, and sometimes it feels that the age limit of 25 is a bit arbitrary"* was one comment. Though the SLF does not require the issue to only affect young migrants or indeed for the case to be a young person, there was a perception at least that the pool of potential clients was limited somewhat arbitrarily by the 25 year age limit. Politically, a few interviewees noted that given the increasing discrimination faced by migrants, having a fund which openly supported migrants across the board could be a symbolically important step, and encouraging both to migrant communities and those working on their behalf.

However generally the bulk of opinion came down in favour of maintaining a focus on young migrants, primarily because it was felt that this allowed a degree of protection from criticism of the SLF itself (children and young people being the 'palatable' end of the migrant spectrum for sceptics who may wish to challenge its existence). It is also the case that the UN Convention on the Rights of the Child is the fundamental framework which informs the development of the work. Some interviewees also noted that they felt that all significant issues could be tackled through approaching issues through the prism of children and young people. And given that the SLF has just awarded a grant to the Coram's Children Legal Centre for the creation and maintenance of an archive this would seem to cement at least for now the work within the context of children and young people rather than immigration more widely.

Two other specific points were raised. One person felt that the term 'vulnerable' was meaningless and should be dropped. *"The term 'vulnerable' is spread over everything like jam. It's meaningless –*

people are vulnerable only by dint of external factors, not intrinsically. Drop the term.” Two other people raised the fact that the inclusion of pregnant women needed to be clarified, though it should be noted that the project funded with ASAP and Maternity Action has meant de facto that pregnant women and their babies have been included as ‘qualifying subjects’ in relation to the fund.

There is a wider point about the focus raised by other funders’ experience. Having a focus on a target group of people makes it difficult to formulate a cohesive sense of purpose in terms of a legal or litigation strategy, they felt. The issues raised are inevitably multi-faceted, and it means that the SLF is effectively fighting on a range of fronts at any given time, with no clearly defined ‘end point’. The projects funded bear this out: the practice of ‘deeming age’ in a criminal court is a source of concern for young migrants, but so is the inability of a certain group of young migrants (Roma children) to access school meals through the Pupil Premium, and so might be the potential returns of Afghan minors through the ERPUM project. Funders who systematically fund strategic litigation advise that a narrow focus on the development of law in a particular area (for example, to tackle egregious human rights abuses within the criminal justice system, or to develop case law in relation to a recently introduced piece of primary legislation such as the Human Rights Act) is more susceptible to focussed investment and targeted work which might yield more measurable change. They advise, however, that investing in such areas is still risky and results are still unlikely to be noticeable without adopting a much longer timeframe (10 – 15 years was the average mentioned).

However, any concerns about lack of a clear purpose must be balanced against other factors. The SLF is undoubtedly helping some of the poorest and most disadvantaged in society to improve their circumstances (in the short or long term) by supporting this work, and as such the fund is contributing towards funders’ existing policy priorities. In addition, the SLF is unique and still innovating, and is trying to do something previously untried within the UK context.

How successful has the SLF been in targeting groups?

MigrationWork CIC have been active in promoting the SLF amongst a wide range of legal practices, NGOs and community groups. It has done this by attending meetings, speaking up at conferences, inserting articles in magazines and bulletins read by lawyers and community groups and proactively contacting migrant and community groups and initiatives where they felt people may be interested in the fund. In addition Trust for London publicises the SLF at, for instance, funding fairs. The SLF also has its own website.

It was generally agreed that these methods have been pretty successful in spreading the word. There has certainly been a regular trickle of applications, and increasingly the SLF is attracting applications from firms such as Bindmans wishing to pursue key points in relation to the legal aid changes.

Targeting of legal providers

There were still some concerns about the reach of the SLF to those undertaking legal work for young migrants.

- i. The immigration sector has always been relatively small and, with the disappearance of key providers Refugee and Migrant Justice and the Immigration Advisory Service, is increasingly squeezed. Individuals know one another well within this. Those outside this world (for example, from Children’s Rights groups) can feel that it is something of a “*charmed, networked world*” as one interviewee put it.
- ii. Whilst the SLF is known within some private practices (although it has taken time for them to get to know and understand the SLF), some of the largest immigration private practice providers have yet to have any significant contact with it. It may or may not be desirable to try and encourage these larger practices to join: some felt it was, others less so. There is also a recurring theme of the SLF being difficult for private practice to access and whether or not

people agree that it is, word of mouth about negative experiences thus far may put other firms off applying. This may be an issue in terms of its future reach.

- iii. Law Centres are an obvious potential beneficiary of the SLF, and several have already applied. However, these are increasingly finding themselves dealing with unprecedented demand and pressure as a result of legal aid changes. One law centre reported that their advice drop ins have been cut substantially and there are queues outside from five o'clock in the morning. Against this back drop, carving out time to do an application and think may be well nigh impossible for many of the most community-facing centres. In addition, some law centres reported feeling rather confused by the SLF in terms of its processes and as a result were cautious about putting forward funding suggestions. One law centre noted that: *"I put in a suggestion a while back but it was attacked so I gave up for a while. It was only because I got encouragement from MigrationWork that I put in again"*.

Involvement of community groups

The SLF has done outreach to community groups and held a community outreach meeting which was felt to have been successful. However, only one community group has been involved to date in delivering a project (RAMFEL). Brighter Futures is also a frontline, community group which was involved in one of the projects, but they did not receive funding. They also raised the point that, though they had hugely appreciated the chance to feed the research undertaken by THLC and found this in some ways genuinely useful, they had struggled somewhat with ways to get involved in the project over and beyond being a conduit for potential claimants.

Overall the SLF seems to be still finding its feet as to the best ways to consult and involve these groups. Issues here are complex, and include the difficulty of translating often dry and complex legal concepts to groups who deal first and foremost in people, often people who do not have English as their first language. We viewed email correspondence between MigrationWork and community groups in the Yorkshire, for instance, where an excellent but under-resourced group fed back that they were appreciative of being consulted, but felt that the SLF did not really hold any potential for them.

Geographical spread

The SLF has funded groups predominantly based in London though the implications of work undertaken are often national. It has also extended its geographical remit to Scotland and Northern Ireland in July 2013, and added advisers from both countries to its EP which may encourage new bids. It was generally felt that, whilst there is significant need in the capital, there are also other significant population centres where migrants are experiencing extreme hardship as a result of the cut backs to legal aid services. The legal providers in these centres struggle to keep in the loop, partly as a result of their distance from the main hub of London, partly because of the literal physical pressure of coping with demand, often in considerable isolation. One person who had worked outside London before moving to a chambers in the capital described the huge difference of how it felt being in and out of the 'London loop'. Generally, it was felt that encouraging further out of London work was essential if the SLF was not to end up too London-centric which ultimately runs the risk of missing out on the potential to support and develop good work elsewhere as well as find potential claimants.

What has worked well about the SLF model?

Strengths identified by grantees

Grantees appreciated the following characteristics of the SLF:

- i. pre-registration of documents required for 'due diligence' is essential and time-saving;
- ii. most grantees feel that the guidelines and criteria are clear and accessible (there are some caveats to this, covered in 'Concerns', below);
- iii. reporting requirements are not onerous and are proportionate;
- iv. the support, encouragement and connections made through the activities designed to inform and connect up the work of grantees (meetings, website and bulletin) are appreciated.

Grantees felt that the following elements of the SLF model were essential:

- i. speed with which applications can be received and considered;
- ii. frequent funding deadlines (particularly essential in a rapidly-changing world);
- iii. the ability to discuss and refine applications before they get submitted for funding consideration. This was highly appreciated by a wide range of grantees. In relation to this point, MigrationWork's role was positively commented on by many grantees who had felt more able to be full and frank prior to submitting their application given their separation from Trust for London and Esmée Fairbairn Foundation. They felt they could be more honest, and express confusion without fear that this may affect the outcome of their proposal. This may not be fair of course (as Trust for London may not be affected by any such discussions) but it is a perception.
- iv. the legal knowledge and awareness of those funding, administering and assessing the grants. This was mentioned time and time again by grantees: *"Law Centres are not cuddly groups to fund, and we often struggle to explain why our work is important. We are not necessarily good at presenting what we do in real, human terms. Having a funder who understands that is a huge relief."*
- v. the input of a panel of experts capable of assessing the overall 'strategic-ness' of any proposal, with the ability to connect the work to a wider community and policy context.

Strengths identified by other stakeholders

A number of other strengths were identified by those involved in the SLF, the main ones being:

- i. the continuity brought to the SLF by the involvement of MigrationWork. It was noted that this may be particularly important if the SLF is to find another home in the future.
- ii. the strong connections, relationships and oversight of the field which MigrationWork brings to the outreach work and to the potential shaping of the direction of the SLF's work. Some noted that this was particularly important given the current rate of change, and the need to keep up to date on what is happening in the immigration and legal aid environment.
- iii. skills of diplomacy and approachability which MigrationWork brings to the task of mediating between different parties (grantees; EP members and funders).
- iv. the huge credibility and expertise which EP members contribute to the SLF. People particularly commended the high degree of commitment which had been secured from such a range of busy people. *"They [the Expert Panel] are sharing expertise and that is a really positive thing. There's a lot of pro-bono work there. That passion is contagious."*
- v. the ability of the SLF to 'horizon-scan' in terms of ensuring non-duplication of work which might be happening elsewhere through the involvement of specialists.

What has not worked so well about the SLF Model?

Weaknesses identified by grantees

Grantees had found the SLF process difficult for the following reasons:

- i. lack of clarity and, as some saw it, logic about the application of costing formulae. Particularly mentioned were the fact that paying senior lawyers on lower rates is not viable for private practice; the fact that the SLF funds barristers rates at a higher rates and the fact that NGO rates seem to be differently set which to some feels unfair.
- ii. linked to this, some made the point that the current costing structure does not enable full cost recovery for their organisations.
- iii. more generally on costing, some grantees said that they had found what one person described as the “forensic dissection” of their submitted budget unnerving and unhelpful. One NGO respondent said that they felt that they had been hoisted by their own petard in initially submitting detailed cost breakdowns for the work, only to then find that they were quizzed about exactly why they would be spending X hours on Y task. *“I ended up fielding a range of penetrating financial questions, and if I had just said up front that the tasks would be completed without that level of detail it might have been easier. It made me realise that if you are a complete fraudster, it’s pretty easy to present what you are doing in a good way, and that trying to be overly detailed and transparent can actually work to your disadvantage.”*
- iv. cost discussions, for some, had tainted a process which they would have preferred to be about the strategic need for and viability of the work. A phrase used by several grantees was that they felt ‘untrusted’ by virtue of these exchanges. Some said that they felt the experience would deter them from applying again.
- v. again on cost, several grantees raised whether the level of focus on precise costings was proportionate for the amount of funding available. One NGO observed that: *“The requirements and hurdles seemed pretty high for a small amount of money”*. A private practice solicitor agreed: *“The process didn’t seem to me to match the project in a weird kind of way. My observation would be that if you are taking on a pre-litigation project, there has to be some trust involved in the fact that your organisation or project will figure out what it is doing and take the right decisions as it goes along.”*
- vi. moving on from costings, the role of the EP was in the main appreciated but some grantees raised doubts about whether they could always add value to what was being put forward, often by acknowledged specialists in the field. *“The trouble is that they will always have conflicting opinions – that’s the way lawyers work. I’m not sure they can add much to what I, as an expert on the subject, already know.”*
- vii. some felt the process was difficult precisely because of the EP. *“It’s a bit unnerving. We all know one another. Submitting an application to be judged by people I see on a daily basis is quite an odd feeling. It kind of feels rather random who is there and who isn’t.”*
- viii. some applicants had struggled with the application form and with understanding what the SLF is looking for. This was true of private practice solicitors, law centre workers and NGOs. Some particularly mentioned that they found the need to be clear about legal arguments a confusing point. *“I thought that was what we were meant to be researching?”*
- ix. two respondents thought it would be helpful to allow NGOs without a legal capacity to apply directly for funds.

Weaknesses identified by other stakeholders

Encouragingly, some of the weaknesses identified by grantees were also weaknesses identified by those engaged in overseeing and running the SLF. Key concerns raised were:

- i. several stakeholders feel that the EP has on occasion got too fixated on precise costings. This has not been helpful, and is not the best use of their skills and expertise which should be about giving a broad steer.
- ii. the roles of MigrationWork, Trust for London and the EP in taking decisions was still unclear to some. Some EP members, for instance, had a perception that they had previously been allowed to make more decisions, including funding decisions, and that this authority has been eroded more recently. In fact, it has never been the case that the EP has been allowed to take such decisions but it is interesting to note this view. In addition, MigrationWork's role in providing information and advice to the process could sometimes stray, it was felt, into advocating for or against (usually for) grants. EP members and funders feel that this is not its role.
- iii. some EP members feel that they could benefit from having a more systematic consideration of each application, with clear guidelines as to the questions they need to consider and the areas, conversely, they should avoid.
- iv. sub-contracting the grant assessment function to an external, specialist agency (MigrationWork) has downsides as well as upsides. Grantees can feel, on occasion, too 'distant', particularly for a funder (Trust for London) which forges close links with and visits potential grantees to get a deeper understanding of their work. This distance may contribute to an over-reliance on written information at the expense of trust-based decisions.
- v. the assessment mechanism overall feels quite labour-intensive and 'clunky' to some.
- vi. whilst being flexible is a strength, some were exasperated at the amount of tweaks and changes to criteria and wording which seemed to accompany the evolution of the SLF. *"I kind of think it's fine to let it run for a bit now, unless there's any compelling reason to change."*

The SLF's approach to risk

Interviewees were asked which risks they considered to be the main ones for the SLF. Unsurprisingly, all answered that question differently depending on where they are located in the system. The section on *Lessons around risk* earlier in this report takes an overview of the kind of risk which has surfaced through the SLF and we will not repeat that here, but make the following observations in order to come to a view about the current proportionality (or lack of it) as to current risk assessment.

For the funders, the risks are felt to be primarily those of potential reputation damage, either by work getting funded which 'comes back to bite' when seized on by the (largely migrant-phobic) media, or where a project or organisation is funded which then goes belly up, with again the subsequent risk of adverse publicity in relation to misuse of charity funds. Whilst some of the grantees were surprised at sensitivities in this area, the risks are real and have been encountered by several major funders over the years, sufficient to make prudence in this area both understandable and relevant.

Another risk was about the potential exposure to adverse cost orders which has been mitigated by the SLF having decided, on the basis of Counsel's opinion, not to fund direct litigation costs relating to a particular case.

Less major risks from the point of view of the SLF in general perhaps are associated in some people's minds with the potential capacity of the funded work to replace pro bono contributions, thus effectively adding little to the overall pot of legal endeavour in this area. In addition, there are

concerns, largely expressed by EP members, that funding should be directed towards genuinely strategic work (rather than speculative work with little prospect of legal progress), and that funding should also be awarded prudently in order to weed out potential over-funding or worse, double funding of work.

For grantees the risks are different. As the previous section indicates, risks here are more to the work itself, and the potential for this to be derailed or go off at a tangent which may, in the worst scenario, prove damaging for the issue and/or client. For migrants the risks are different again, as their involvement as claimants brings them into contact with a world of high visibility and huge fears and potential losses around privacy, immigration status, funding and safety.

Based on our observations across the board of the way in which the SLF is currently dealing with these risks, we would make the following comments:

- i. Nothing significant has emerged to concern the two funders from a reputational point of view. A focus on young migrants has been felt to be helpful in this regard, as it enables any potential criticism to be met by focussing on the experience of children and young people around whom it is generally easier to attract sympathy and support.
- ii. The handling of reputational risks in the future could be helped by having a better sense, both before and after funding is awarded, of the extent of need and the 'human face' of what the funding may achieve or is achieving. Legal work can sound dry, and in the current climate of attack on legal work it is easier to defend and explain funding where the purpose and outcome is expressed in terms of real individuals experiencing real disadvantage. *"Sometimes the work sounds so technical, but if you dig beneath it you realise it is about deep hardship and destitution and homelessness arising from, for instance, administrative delays. It would be good to develop a better story around that."*
- iii. Whilst not funding direct litigation costs will continue to be sensible in terms of risk, there is a genuine need expressed by several for the SLF to consider ways in which it can help progress cases which otherwise, given the legal aid cuts, may get stuck in a system with nobody available to take them further. For instance, giving consideration to how to help advance cases not eligible for legal aid, or support existing cases through Protective Costs Orders (PCO) may be appropriate though would need further advice to work through the implications. It may also be appropriate to consider how to enable existing strategic legal providers to develop capacity to take on cases where otherwise there is no significant prospect of progress.
- iv. Due diligence on organisations seems to have been carried out well, and there is no evidence to suggest that the SLF is exposed to any risk around organisations collapsing. Having said that, the changes in legal aid funding introduce new levels of organisational vulnerability, and it should be noted that even amongst the most dedicated legal providers, cases are already being taken on 'at risk', which is exposing them down the line to resource crises.
- v. Linked to this, the zeal with which pro bono contributions are examined needs to be set against a backdrop of increasing amounts of work being done for free by a beleaguered sector. Whilst this is not a reason not to consider pro bono contributions, there is no evidence to suggest that organisations are not contributing more than they are paid, and getting others to contribute pro bono time to projects as well. In addition, some reported that the amount of time available for pro bono work is getting increasingly squeezed as legal aid reduces, income falls and existing caseloads require more and more free input if they are to survive. Relaxing scrutiny of the pro bono element of the work may be useful against this backdrop.
- vi. In terms of costs being over-estimated and work being funded unnecessarily, there is little evidence that this is happening. It may be advisable to relax focus on this area and leave a larger amount of discretion to the funder whilst taking just a general steer from EP members.
- vii. Regarding experience and expertise, there is a risk that a relatively unknown legal provider is not as well placed as others to take forward a piece of work. This is a risk, undoubtedly – more experienced lawyers are likely to add considerable value to litigation proceedings. However,

there is a risk here which needs to be balanced: that of the SLF contracting to a range of 'usual suspects' and failing therefore to enable new activity, encourage new projects, find new clients and spread its range of influence as a result. For many this is a greater risk than the risk to case progress.

- viii. The SLF has, in any event, been excellent at introducing Advisory Panel mechanisms where these are needed which have in and of themselves provided benefits to the organisation being advised. Kesar and Co's advisory group has been greatly welcomed, and the work has been well steered and informed as a result by some extremely experienced people. Similarly, RAMFEL has been guided by an Advisory panel which speaks enthusiastically about the mutual benefit of this work, and Coventry Law Centre has also had an advisory panel. In all instances, the panel seems to have helped considerably towards steering and enhancing the work. It would seem sensible to preserve this approach and indeed expand it to enable less experienced grantees to take forward pieces of work.
- ix. Other than this, the risks to the work being derailed are to a large extent impossible to mitigate against. A wide range of external factors have got in the way of work being delivered on time, for instance, and our only observation would be that this seems to be inevitable in this line of work and on this issue given that attacks on migrant rights have been fairly relentless. Being braced for change and fluidity, and not requiring grantees to jump through too many explanatory hoops, would seem to be the only sensible approach.
- x. Finally in relation to migrants themselves, the risks are potentially huge but it is difficult to see how the process can be made better for those who take a case forward. The [migrant] litigant may feel sufficiently exposed, intimidated or harassed that they want to drop the case and it is difficult to see how they can be supported through this other than to refer them to support organisations as far as possible.

Does the SLF represent 'value for money'?

There are problems with applying traditional approaches to measuring value for money to the SLF. The principal approaches which might be used to assess the value for money of projects or programmes with a social purpose are:

- analysis of the cost and outcomes of the project compared with those of other similar projects;
- analysis of the cost and outcomes of the project compared with those of other projects which aim to achieve the same outcomes but involve different activities;
- analysis of the monetised benefits or savings (for organisations or individuals) made through delivering the project, compared with the cost of delivery.

Reasons why the SLF does not lend itself easily to any of these approaches at this time are:

- the length of time it takes for the SLF to have an impact, and the relatively short time this programme has been running (other funders interviewed said they would not expect to see results much before 7 or 8 years).
- difficulty in both identifying and measuring success. The objectives of the SLF are broad, for example, and although grants may not result in strategic litigation, they may have other beneficial outcomes which are difficult to measure or monetise for the purposes of a value for money assessment.
- difficulty in being able to compare the SLF with other approaches to legal and policy change, which may take many different forms and whose outcomes are equally difficult to measure.

However, it is possible and within the scope of this evaluation to attempt to answer the following questions:

- What does it cost to run the fund and how does this compare to the costs of running other grant programmes? In other words, is the SLF a particularly expensive or cost-effective way of making grants?
- How many grants have already contributed directly to legal or policy change and is this a reasonable outcome within the timeframe of the fund?
- What has been the cost to the SLF of contributing to legal and / or policy change?
- In some cases where it is possible to know, how many people are affected by the change or potential change?

There are additional considerations which affect any assessment of value for money, but are impossible or very difficult to quantify:

- What is the 'value added' in terms of the unfunded contribution made by the EP, MigrationWork, grantees and the funders themselves?
- In how many cases are there other outcomes, apart from legal or policy change, and what are these outcomes?
- In how many cases would the work have happened anyway without SLF funding?
- What is the potential for future legal/policy change?
- What are the other potential future benefits?
- To what extent might the same or greater benefits be achieved by funding alternative work?

These questions are addressed in this report to some extent by analysis of the qualitative data gathered through interviews with stakeholders. Judgements on 'benefit' are essentially subjective, but it would appear that for the scale of funding provided, considerable benefit has been gained in a relatively short time frame.

Project inputs and outputs

In the period covered by this evaluation (November 2011 to June 2013) the SLF approved 32 grants totalling £380,182. Four of the funded projects had not yet started by June 2013. The average value of grants was £11,881. As noted earlier, the majority of the work funded was pre-litigation research, whose outcomes at the point of funding were largely unknown.

Table 5.1: Total and average value of grants by project type

	Number of grants	Total value	Average value
Pre-litigation research	27	£307,500	£11,389
TPI	4	£37,682	£9,421
PLR and TPI and some casework/representation	1	£20,000	£20,000
Archive		£15,000	
	32	£380,182	£11,881

Five of the 32 grants have already contributed directly to legal or policy change, with a number of others demonstrating potential to do so. Six grants have resulted in cases being taken or awaiting hearing. Considering the comments of others involved in funding or delivering strategic legal work, bringing about any legal or policy change within such a short timescale seems to be a notable achievement.

Table 5.2: Number of grants contributing to legal or policy change

Project type	Number of grants	Grants directly contributing to legal or policy change	Cases heard or due to be taken
Pre-litigation research	27	2	2
TPI	4	3	3
PLR and TPI and casework/representation	1	0	1
Total	32	5	6

At least one person was interviewed about each of the 32 grants awarded. Respondents were asked about the population they thought might be affected by the work they were doing and, in some cases, they were able to estimate the number of people involved. For example, the number of young refugees and asylum seekers currently under the care of local authorities is known, and so it is possible to estimate the number of people who would benefit from challenges to current local authority practice. Twelve grant-holders were able to cite evidence of the number of beneficiaries potentially affected, while in other cases the number is unknown, but likely to be many.

In the twelve cases where numbers could be estimated, there are likely to be around 110,000 beneficiaries of legal or policy change.

Table 5.3: Number of potential beneficiaries (where known)

Project type	Number of grant-holders interviewed	Grant holders able to estimate no. of beneficiaries	Estimated no. of beneficiaries
Pre-litigation research	27	10	103,550
TPI	4	2	6,500
PLR and TPI and casework/representation	1	0	N/K
	32	12	110,050

In addition to these principal measurable outcomes, there are other soft outcomes and tangential achievements which are explained elsewhere in this report.

Fund administration costs

The outsourced administration costs of the SLF represent approximately 15% of the total value of the fund. This excludes the cost of time spent by funders, Trust for London and Esmée Fairbairn. Assumptions made are:

Table 5.4: Cost assumptions

Cost	Amount
MigrationWork fees August 2011 – June 2013	£96,203
EP fees and expenses (current year to date)	£1,854.97
Website costs	£3,600
Other costs	£1,000
Total	£102,657.97

In the pilot phase the SLF awarded grants totalling £256,626; when Trust for London took over the running of the fund a further £400,000 was made available. The total value of the fund is therefore £656,626.

It is difficult to compare the costs of running the SLF with the costs of running other grants programmes, as outsourcing grant-making functions seems to be uncommon among funders. The

rationale for outsourcing grants programmes is not usually to reduce administration costs but to bring in additional expertise and reach harder to reach groups. On the whole it usually costs more (per £ of grant) to administer smaller and more specialist grant programmes. Findings from a recent study carried out on behalf of the Big Lottery²⁰ suggest that these costs can be anything from four per cent of programme expenditure for larger outsourced programmes to 14 per cent for smaller programmes.

The authors of this report also note that costs are likely to be higher during the set up phase of a new grants programme. This was the case with the SLF; MigrationWork were paid, on average, £5,600 per month in the pilot phase of the project. Under the new arrangement with Trust for London, MigrationWork is paid a fixed fee of £3,504 per month.

While the costs of administering the fund are broadly in line with benchmark costs for a fund of this type, it is also the case that the Project Manager and Director from MigrationWork bring added value to the project. All interviewees acknowledged their expertise and experience in the field and felt that this would be more difficult to obtain through having one grants officer employed in house. There is also the possibility for MigrationWork to contribute more as an organisation, since a number of leading migration policy experts and researchers are involved as directors or associates, and for these to provide back up information, advice and risk management for the project. On a practical level, it is MigrationWork's responsibility to staff the project should current workers be, for whatever reason, unavailable.

Alternatives to funding the SLF

It is impossible to carry out any rigorous analysis of how the SLF compares to other interventions designed to further the rights of young migrants, given the limitations of the data available from the SLF so far and ethical considerations around asking other agencies for data for comparative purposes.

However, we did ask interviewees for their views on whether funders could achieve more or better outcomes by funding anything else instead. Although people could see the value of other work, almost everyone we interviewed thought the SLF was the option that delivered the most value. Many mentioned as possible alternatives funding a post or posts within existing organisations doing strategic legal work, but gave reasons why they thought funding the SLF was preferable. For example, people said:

“One of the benefits of the current set up is that we are drawing on the expertise of everybody working in the field.”

“The funding we are currently making available is comparable to the law centres and advice work we fund on a regular basis I think. I would have thought it is really important to continue - if it proves that the cases it takes on have a serious impact on things, it is worth investing in the project. We all know that money to individual law centres will only go so far.”

“I think it [the SLF] has been well used. It has funded interesting projects, produced good and tangible results. It's still quite a young piece of funding and these things take time to come to fruition. I can't think of any projects which were a waste of time. They were all worth funding and seeing where they went.”

“In this climate, more than ever, and given the way the Home Office is bringing in more restrictive immigration rules and talking about repealing the Human Rights Act – the only way that can be met is through litigation in my opinion.”

“From a practical point of view it is very important that the SLF is diverse – short term, straightforward applications – willing to take some risks by funding things which are sometimes unclear and might never really see a clear legal result. If they are not funded by

²⁰ Source: *Research Study into Outsourcing Grantmaking Final Report*, Sheffield Hallam University and The Centre for Regional Economic and Social Research for the Big Lottery Fund, August 2012.

the SLF they won't be pursued. The thing about people not getting legal aid at a low level now makes it all the more important to set higher level precedents."

"It [the SLF] will be a vital lifeline – there is more of a reason to fund it than less. There are challenges beginning to happen against the LASPO act, against the residence test – all these things that the government is attempting to bring in. I think it is vital that there is a challenge to what is happening through the courts. It feels like a bulldozer going over us."

Interviewees also had some ideas about ways in which the SLF could increase its value by diversifying beyond funding pre-litigation research and TPIs. Suggestions put forward included extending the funding to include more policy work, making sure that advice does not collapse to feed litigation strategies and limited support for strategic litigation, possibly by contributing to cases being taken forward under Conditional Fee Agreements or Protective Cost Order arrangements. However, the potential of this will need to be investigated by specialist advisers to the fund.

Section 6: The future given the present

The changing context for the SLF

“There are a number of reasons why it is difficult to predict what is going to happen for the SLF. The immigration sector is reeling, the legal sector is in chaos, the capacity to mount legal challenges is being eroded seemingly daily, and if we decide on priorities today, Theresa May will make another speech tomorrow and we’ll be off again trying to adapt.”

This quote illustrates a common theme of interviews about the SLF and where it should be heading. The SLF was conceived of and brought into existence in very different times, and the landscape has substantially changed for the worse. Changes are being and have been introduced both around immigration and around the provision of legal aid. The rate of change is bewilderingly fast for those in the field who feel caught in an unprecedented attack on citizens’ access to justice.

As a result of LASPO the majority of immigration work is no longer covered by legal aid, except for those in immigration detention or for some cases involving trafficking, domestic violence, torture or claims under the Refugee Convention. Only four applications thus far have been successful and given the number of applications for legal aid being refused, many of them for extremely vulnerable people, this safeguard would appear to be less than adequate. There is a provision for ‘Exceptional Case’ funding where a case may be funded, if out of scope, if failure to provide legal aid would be, or would result in, a breach of the individual’s rights under the European Convention of Human Rights. This is little comfort to the thousands of migrants who now find themselves with no recourse to legally-aided justice.

Other changes are also in the pipeline. On 5 September 2013 the Government published its response to the legal aid consultation, *Transforming Legal Aid: Next Steps*. On 6 September 2013 the Ministry of Justice issued a consultation: Judicial Review – proposals for further reform, with a deadline of 1 November 2013 for responses. The main changes offered on the initial legal aid proposals relate to the availability of legal aid for criminal law and representation of those in prison, and the arrangements for this. The proposals that most affect vulnerable young migrants, however, were those about applying a “residence test” for all legal aid. This residence test is currently the subject of research and potential challenge by an SLF-funded project.

There are further changes proposed on JRs, on ‘Standing’ (whereby indirect interest in a case, such as that demonstrated by many NGO Third Party Intervenors) and a consultation on PCOs with it seems a fairly clear intention to try and restrict these for JRs. Overall, the picture is grim with sweeping changes being introduced which will seriously undermine the ability to take cases and inform cases on behalf of vulnerable young migrants.

Meanwhile, the Immigration Bill was introduced to Parliament in October 2013 with cross-party support for its range of measures to ‘toughen up’ on immigration. Amongst its range of measures are:

- requiring private landlords, including those offering lodgings or accommodating family or friends, to check the immigration status of new occupants and inform the HO;
- making temporary residents, such as students, pay towards care provided by the NHS;
- powers to check driving licence applicants’ immigration status;
- cutting the number of deportation decisions that can be appealed against from 17 to four
- clamping down on people who try to gain an immigration advantage by entering into a “sham” marriage or civil partnership;
- requiring banks to check against a database of known immigration offenders before opening bank accounts²¹.

The future of the SLF is affected in two key ways by these proposals: firstly, there will be more need, and secondly, there will be less funded legal activity to challenge discrimination, disadvantage and

²¹ Source: BBC News, 22nd October 2013.

extreme hardship through appeals. Interviewees spoke about “tsunamis of demand” which they are beginning to witness amongst migrants and which, with the best intentions in the world, they cannot now meet. It is a depressing, dispiriting and desperate scenario for migrants and for those seeking to protect and defend their rights.

Fuelling these changes is a concerted policy and press campaign seemingly designed to stir up ill feeling and hatred towards migrant communities. The much publicised Go Home Vans, for instance, have formed part of this, and press coverage on migrants amongst the popular press has been mainly unrelentingly negative.

Amongst all these changes young migrants are trying to reorientate and survive. Some of the most telling evidence we received on the ‘end result’ of such laws, policies and publicity campaigns came from those working on the frontline with migrants and seeing them on a day to day basis.

“There are widespread beliefs amongst migrants now that they are not entitled to anything – for instance, that we cannot help asylum seekers. Some workers [in homeless charities] are themselves frightened of getting mixed up with that – they are now asking to see people’s status or if somebody’s status is not clear they are saying ‘we can’t help you’. People are self policing on the basis of myth, almost. Young people are the most vulnerable to that as there is nobody to support their access to services. Amongst young migrant clients we have seen a case of somebody who did not go to a doctor as he erroneously believed he wasn’t entitled to it.”

Role of funders in relation to the changes

“It is almost like it is against the law to be kind to people now. This is about access to anything. I kind of think there is a significant role for SLF not only in the very specific legal challenges but in the kind of promotion of work with this client group as legitimate work which needs to be done to preserve fundamental societal values.”

New funding mechanisms for legal work are emerging, for instance the crowd-sourcing model *Privacy not Prism* which seeks to fund a legal challenge around data usage by the UK Government (GCHQ)²². Elsewhere campaign groups such as 38 Degrees are also using crowd-sourcing to fund legal challenges, and a new era of direct public funding of challenges to rights infringements would seem to be underway.

However, when the individual rights of large numbers of poor and disadvantaged people are threatened to the extent they are at present, funders can clearly not hope to ‘plug the gap’ in terms of service loss, even if this were desirable which for various reasons those interviewed felt it is not. Faced with the changes underfoot, funders have a decision to make in terms of positioning themselves in what may be felt to be ‘political’ arenas and using their funds effectively to support challenges to changes in government policy which evidence shows is impacting disproportionately on poor and multiply disadvantaged communities.

Virtually everybody interviewed felt that the SLF is a vital strand of the ecosystem of challenge and defence which will be needed over the coming months and years. The encouragement and morale-boost gained by having major funders support such work goes, it was felt by many, way beyond the tangible benefits of the projects funded (considerable as these seem, so far, to be). Its importance is for many symbolic, as the above quote illustrates.

A key consideration will be how best to ensure that the work gains traction and value by undertaking work designed to both feed it and augment the value of its work. For instance, a key theme returned to many times in interviews was the need to ensure that the work does not get left on the shelf to gather dust, but put out there to be used by those who need it. Another theme was the role the SLF may potentially play in raising policy issues on behalf of those it funds (and those they seek to support), and this was felt to be another important role.

²² See <http://www.privacynotprism.org.uk/>

Potential Replicability of the SLF in other areas

Overall it was felt that there may be merit in setting up other separate funds to advance other areas of law. In order to do this, some key elements of the SLF would need to be replicated to support their successful establishment and administration. These elements include having specialist (i.e. knowledgeable) support and administration in order to properly publicise and support grantees in making applications to any new fund and setting up a similar panel of experts who could inform and oversee its development and operation. It was not felt by any interviewee that the existing fund could 'branch out' to incorporate new areas of law.

When asking interviewees whether the model of the SLF could hold value for other areas of law or target groups, it was perhaps inevitable that people identified areas of concern according to their professional focus. For example, those working in criminal justice suggested a fund for young people in the criminal justice system, and so on. However, there were several strong contenders for funds to resource challenges in other areas:

- Social Welfare Law and Benefits. Given that all advice is now out of scope, pretty well, in this area, and given the degree of poverty and need people are witnessing in their work, this was felt to be a prime area where the funding of strategic legal work could be beneficial. The Right to Reside, it was pointed out, is at the intersection of welfare and immigration changes. Several challenges occurred to people on the bedroom tax and ATOS tests, for instance. *"I suspect there may be a lot of issues which may be challengeable in a public law perspective."*
- Employment, now out of scope in legal aid, though the role of unions would need to be considered;
- Bankruptcy and consumer debt;
- Housing, for example (and particularly in London) the ways in which local authorities are selling off and/or demolishing social housing in order to sell off the land to developers.
- Environment, in particular enabling community groups to fight planning decisions which are undermining local landscapes and public health. It was particularly noted that the funding of expert reports and surveys would be a key benefit to often unfunded legal campaigns mounted to try and stop such developments.
- Mental Health, an increasingly growing issue amongst those coping with poverty in an industrialised nation.

Other suggestions, all made by one person only, were:

- trafficking;
- traveller communities;
- children's rights within the criminal justice system;
- children in care and care leavers;
- child Sex Tourism, in particular work on UK nationals going overseas.

Section 7: Recommendations

There are a range of measures which emerge from the fieldwork and analysis to do with the focus of the SLF and various new strands of activity it may be useful to consider funding. These are:

Strategic Recommendations

RECOMMENDATION ONE: Continue with the SLF and don't rush to change too much. Given the number of achievements thus far, the support for the focus of the work, the fact that many results are yet to be realised, and the potential to improve the model to effect change at a time when strategic legal work is gaining, not losing, importance, it would seem vital to seek to continue the SLF either hosted by Trust for London or another funder prepared to take it on. We would recommend at least a further two years of operation in order to give results time to filter through and build on what has been achieved to date.

RECOMMENDATION TWO: The focus on young migrants should be maintained. Whilst some felt it might be advisable to focus on a narrower area in order to facilitate a keener sense of direction and ability to assess 'progress', overall people felt that the pros of focussing on young migrants outweighed any drawbacks. In addition, a potential important impact of the SLF may, in the longer run, be to help to build a movement of those working to defend the rights of young migrants who, in the current climate, represent some of the most beleaguered, disadvantaged, discriminated against and poor members of our society.

RECOMMENDATION THREE: Be clear about what 'success' looks like, and the broad definition of this. Overall, the SLF should preserve high-level principles to guide the work but accept pragmatic limitations of developing a coherent 'theory of change'. The guiding principles for the work should continue to be based on the UN Convention of the Rights of the Child and other human rights principles, but it should be recognised that the SLF will continue to be about achieving gains on a range of fronts and in a range of ways.

Related to this, it would however be useful to be clearer about what the SLF considers both a) successful and b) priority outcomes.

- a. In terms of success, it would be useful to make it clearer for grantees that it is considered equally successful to move towards a policy route of advocacy action if, following research, this is found to be a preferable tactic for achieving the required change.
- b. In terms of priority, it may be useful for the SLF itself to reflect annually on the most urgent priorities for vulnerable young migrants (fed, perhaps, by better links to migrant advocacy groups) as well as reflect more broadly on the relative merit and importance of issues which are presenting to the fund. For instance, many felt strongly that challenges to legal aid changes themselves should be one of those priorities at present. There is a caveat to this: these objectives should **not** be 'exclusive' and should be for internal reference only (i.e. not a list drawn up for potential grantees) and projects should still be able to apply on any issue provided they feel there is a compelling strategic case which addresses proven need.

RECOMMENDATION FOUR: Ongoing publicity and engagement to enable as wide a range of providers as possible to get involved. For now, the SLF should continue to seek to be open to as wide a range of providers as possible rather than focus on a few. This means that outreach work, adjustments targeted at overcoming difficulties of access, activity outside London and involvement of migrants' groups should all be prioritised in order to ensure that evidence, cases and potential impact are spread as widely as possible across the sector.

In order to support this, a range of measures which encourage participation and help overcome hurdles to access should be considered whilst preserving the general principle of 'value for money' which the SLF has managed to maintain thus far. Some of the improvements suggested included: visiting new providers, particularly to talk through some of the elements of the SLF which those coming new to it have found confusing; making available successful bids for funding so others can better understand how bids are formulated (particularly if they have little experience of grant-making, as is the case with many private firms of solicitors); and proactive approaches to large immigration practices.

RECOMMENDATION FIVE: Take proactive steps to get an 'SLF migrant community' established. A 'wraparound' set of activities should now be considered (potentially as projects running alongside the SLF funded elsewhere) to help it become more known and relevant to migrant communities and those working with them, including more mainstream children's organisations. Suggestions for this are still embryonic, but could involve a migrant advisory panel (potentially using MigrationWork CIC's own community advisory panel), or a systematic collection of information from some of the emerging migrant-led groups which are responding to the attacks on their rights and services²³. The SLF could look to the example of the stakeholder groups in Northern Ireland which inform strategic legal work undertaken by PILS²⁴.

RECOMMENDATION SIX: Ensure more systematic follow through on the work. The point was made repeatedly in the evaluation that the research and/or litigation was only the beginning of any process of change, and in most if not all cases the full impact of the grant would only be realised if it was followed up on. This will involve, in addition to the archive work, finding proactive ways of disseminating information as well as systematically considering how the work should best be followed through in policy, information, practice and public opinion work.

Suggestions for improvements include:

- requiring all applicants to put in the funding bid an element of the work which is about thinking through the dissemination of any project information and outcomes;
- having a 'closing debrief' with the project holders and selected advisers from to think through complementary strategies to tackle some of the issues uncovered (a kind of mini-campaign how best to take forward the work, to level impact, and to disseminate findings and information to those who need to know);
- more systematic promotion of 'results' to existing mailouts, including e.g. ILPA and Coram mailouts;
- setting up informal mentoring or information exchange groups (a Google group was suggested) to enable people (including prospective and current grantees) to share and exchange views and thoughts on 'maximising impact';
- Mentor system (light touch) which enables less experienced grantees to request and get informal input from some of the more experienced advisory panel members, former grant holders etc. There could be a pool of people prepared to offer thoughts and advice (e.g. CPAG, MLP, PLP).

RECOMMENDATION SEVEN: Support legal providers to better engage with the SLF. Training and support for legal providers would be beneficial, particularly in two areas: a) training on strategic litigation itself in order to help legal providers with little track record understand some of the common benefits and pitfalls and b) training for legal providers who wish to undertake, commission or oversee research to help them do this better.

RECOMMENDATION EIGHT: Support NGOs around collecting evidence. Though some guides exist, more practical information or support for data recording and collecting legally watertight evidence should be considered for key voluntary organisations. One organisation²⁵ had invested heavily in its

²³ See for example, <http://www.citizensuk.org/2013/11/securing-quality-legal-advice-for-migrants/>

²⁴ Public Interest Litigation Support, funded by Atlantic Philanthropies: <http://www.pilsni.org/about-us.html>

²⁵ Medical Justice, which has offered to share its experience with other organisations.

data recording system and as a result found itself able to feed legal cases with relative ease. They had tried to find others to share the cost of purchasing this data recording system (£40K) without success, but in the process of doing this had been told that many NGOs are still using very inaccessible and imprecise data recording systems. Several of these NGOs realised this but were unable to do anything about it. Without investing in this (and potentially other) forms of evidence collection, lawyers are going to find it hard to put the rich information being gathered from community groups and NGOs to use in legal casework. The experience of Refugee Action and MLP would be useful in thinking this through.

RECOMMENDATION NINE: Support work which enables ongoing collection of evidence as to the impact of the work, including human impact. There is an ongoing need to ensure that the human impact of the work funded by the SLF is understood and described. External evaluation (which does and will seek to do this) should be complemented by some basic, ongoing information-gathering which grantees are required to provide on the human impact (actual or potential) of the work they are doing.

RECOMMENDATION TEN: Consider extending the scope of what the SLF can fund. Consider supporting Conditional Fee Agreements and Protective Cost Orders, pending specialist advice, to take forward strategic legal cases. In addition, and alongside other legal provider funders (including the other grants streams of the two existing SLF funders) review the capacity of those undertaking strategic legal work on young migrants and potentially be prepared to divert funds to allow for litigation by way of part funding a post. This is a 'watching' recommendation, and is flagged up as the real prospect of a substantially depleted legal sector draws nearer, and the capacity of the sector to take important cases may be stretched to the limit.

Operational Recommendations

RECOMMENDATION ELEVEN: Streamline the EP input. In order to ensure better continuity of decision-making, more focussed meetings and a more functioning strategic team it would be sensible to have a smaller EP (maximum ten) which regularly consider applications, chosen for their experience and ability in relation to strategic work (legal and policy) rather than individual legal specialism. This smaller panel could have a wider panel of specialist advisers to draw on, (possibly in a paid capacity) for advice on specific areas of the law when needed.

RECOMMENDATION TWELVE: Frame EP meetings more tightly, potentially through the use of a set of standard questions which panel members are asked to address. Areas of 'unconcern', where EP members are discouraged from giving anything more than a broad brush view, should be spelt out (these relate particularly to costs).

RECOMMENDATION THIRTEEN: Maintain MigrationWork CIC to manage the SLF and clarify the core tasks and responsibilities of its contribution. This involves clarifying the role of Director, as well as a list of tasks which funders want MW to undertake in the light of the evaluation and other known requirements for the role.

Appendix A: Methodology

Conceptual underpinning

Given the complexity of the issues involved in funding and delivering the SLF at this time of particular change in law and policy relating to young migrants and to the legal system itself, we took a predominantly qualitative approach to the evaluation. Broadly, our approach was based on the principles of 'action research', which involves collaboration between the action researcher and client to diagnose issues and problems and identify solutions²⁶.

In practice, our methodology comprised the following:

Scoping of the evaluation

This phase of work comprised:

- Scoping out the evaluation with the SLF management group and creating an evaluation framework, the questions in which formed the basis of the fieldwork and reporting;
- Attending one EP meeting;
- Attending one grantees meeting;
- Interviewing MigrationWork staff in detail face to face about the grants pre-interview, and trawling through existing applications and reports;
- Led by the initial interview with MW, identifying 18 of the grants awarded to examine in greater detail during the evaluation. In practice this meant that the evaluators tried to interview as many people as possible who had been involved in, or knew about these projects, including those delivering them and anybody else suggested who might be able to shed light on the usefulness or otherwise of the funded work.

Fieldwork

Between July and October 2013 we carried out fieldwork as follows:

- Document review: all minutes of meetings pre-fund, EP meetings, TFL meetings, grantees meetings, internal documents, and a selection of papers on the funding of strategic legal work.
- 86 semi-structured telephone interviews lasting between 20 minutes and three hours (average over an hour) including:
 - Nine interviews with internal stakeholders (TFL, EFF, MW);
 - 15 interviews with EP members, predominantly about their experience of the 'model' of the SLF and their views on desired changes and focus for the future. Where EP members had been formally involved with funded pieces of work they were also interviewed about specific grants made. Interviews took average of one hour. Two EP members could not make an interview in the time allocated.
 - 53 individual interviews in relation to projects funded by the SLF between December 2011 and July 2013. These included: the grant holders; partner organisations; people involved in delivering or overseeing the work; where possible,

²⁶ Bryman, A. (2001) Social Research Methods.

- people who had benefited from the work. The maximum number of people interviewed per project was four, and the minimum one.
- Nine interviews with other funder organisations about their experience of and views about the funding of strategic legal and litigation work.

Data analysis and reporting

We have used an approach to data analysis known as 'open coding', which is defined as:

"A non-mathematical process of interpretation, carried out for the purpose of discovering concepts and relationships in raw data and then organising these into an explanatory scheme...The key idea of grounded theory is that the processes of data collection and data analysis are intimately connected, each informing and guiding the other."²⁷

Open coding is used in academic qualitative research to develop typologies and theoretical frameworks. However, for the purposes of this evaluation we have tried to use it to draw out lessons which will be practically useful for the SLF management group and funders.

Reporting

Our findings were presented in a draft report in November 2013 alongside a confidential internal management memo for Trust for London, Esmée Fairbairn Foundation and MigrationWork CIC. We held a meeting with this core management team in December, and following this went out to further consultation on the draft through two meetings: one with grantees, and one with members of the EP in January 2014.

Following these two consultation meetings and other feedback we had one final meeting with the management team in February 2014 in order to refine understanding of the recommendations and potential work which could flow from these. We then drew up this final draft of the full report and executive summary, taking all consultations into account.

²⁷ Strauss, A. and Corbin, J., Basics of Qualitative Research Techniques and Procedures for Developing Grounded Theory (2nd edition, London: Sage, 1998).

Appendix B: Interviewees

Name	Organisation	Role
Arena, Adrian	Oak Foundation	Funder of strategic legal work
Bajaria, Smita	JCWI	Grantee
Baxter, Maggie	Trust for London	Funder (Co-optee)
Beecher Bryant, Helen	Maternity Action	Grantee
Bent, Sue	Coventry Law Centre	Grantee
Bezzano, Jo	Elder Rahimi Solicitors	Grantee
Birkumshaw, Robert	Coventry Law Centre	Grantee
Black, Jonathan	bsb law Criminal Solicitors Association	Grantee
Bolton, Syd	Solicitor, Migrant Children's Project, Coram Children's Legal Centre	Expert Panel, grantee
Bolton, Syd	Coram Children's Legal Centre	Grantee
Bragg, Rosalind	Maternity Action	Grantee
Campbell, Sarah	BID	Grantee
Clarke, Sarah	Public Law Project	Grantee
Cockburn, Nicola	MiCLU, Islington Law Centre	Grantee
Cooper, Jonathan	Human Dignity Trust; Trustee of Sigrid Rausing Trust	CEO of strategic legal organisation, funder of strategic legal work
Cox, Simon	Migration Lawyer, Open Society Justice Initiative	Expert Panel
Dennis, Judith	Advocacy and Influencing Officer (Policy), Refugee Council	Expert Panel
Evans, Roz	Refugee Youth Action	Grantee
Evans, Cathy	Southwark Law Centre	Grantee
Farnsworth, David	Diana Princess of Wales Memorial Fund	Former funder
Farrell, Janet	Bhatt Murphy	(Grantee, feedback on two projects)
Finch, Nadine	Barrister, Garden Court Chambers	Expert Panel, grantee
Fitzpatrick, Pamela	Harrow Law Centre	Grantee
Fraser, Suzanne	Islington Law Centre	Grantee
Free, Elli	BID	Grantee
Freeman, Sophie	Coram Children's Legal Centre	Grantee
Ghelani, Sonal	Islington Law Centre	Grantee
Gill, Manjit	Barrister, No 5 Chambers	Chair, Expert Panel
Glynn, Polly	Deighton Pierce Glynn	Grantee
Gregory, Tessa	Public Interest Lawyers	Grantee
Gul, Sorayya	RAMFEL	Grantee
Hallett, Fleur	Just for Kids Law	Grantee
Haregot, Mulat	Trust for London	Funder (Co-optee)
Harrison, James	University of Warwick	Grantee
Harvey, Alison	Legal Director, Immigration Law Practitioners' Association	Expert Panel
Hayes, Ruth	Islington Law Centre	Grantee
Heatley, Ruth	GMIAU	Grantee
Hurrell, Anita	Coram Children's Legal Centre	Grantee
Hyland, Gerald	Solicitor, Hyland Solicitors	Expert Panel
Jennings, Clare	Matthew Gold Ltd, Solicitors (formerly Public Law Project)	Grantee
Kassem, Tabitha	Howard League	Grantee
Kaur, Kalvir	Fadiga & Co	Grantee
Kierney-Grieve, Brian	Atlantic Philanthropies	Funder of strategic legal work
Kilroy, Charlotte	Barrister, Doughty Street Chambers	Expert Panel
Knights, Samantha	Barrister, Matrix Chambers	Expert Panel
Lambe, Shauneen	Just for Kids Law	Grantee
Low-Beer, Ravi	Solicitor, Public Law Project	Expert Panel
Lukes, Sue	MigrationWork	SLF Director, management group

Name	Organisation	Role
Matthews, Adrian	Senior Policy Development Officer, Office of the Children's Commissioner	Expert Panel
McDowell, Denise	GMIAU	Grantee
Meade, Kathy	Tower Hamlets Law Centre	Grantee
Mehta, Bharat	Trust for London	Funder, management group
Mlotshwa, Emma	Medical Justice	Grantee
Moriarty, Matt	AIRE Centre	Grantee
Mulligan, John	Esmée Fairbairn Foundation	Funder, management group
Naftalin, Sophie	Bhatt Murphy Solicitors	Grantee
O'Higgins, Aoife		Grantee
Oddy, Martha	The Children's Society	Grantee
Padfield-Paine, Holly	Law Centres Federation	Infrastructure body for law centres
Petranov, Borislav	Open Society Institute	Funder of strategic legal work
Pickup, Alison	Barrister, Doughty Street Chambers	Expert Panel, grantee
Pinter, Ilona	The Children's Society	Grantee
Price, Jonathan	COMPASS	Grantee
Reynolds, Sile	Refugee Action	Grantee
Rita Chadha,	RAMFEL	Grantee
Sandhu, Baljeet	Director and Solicitor, MiCLU (Migrant and Refugee Children's Unit), Islington Law Centre	Expert Panel
Setter, Chloe	ECPAT	Grantee
Shepherd, Mark	Migrant Legal Project	Grantee
Smerdon, Matthew	The Baring Foundation	Funder of strategic legal work
Smith, Fran	MigrationWork	SLF Project Manager, management group
Smyth, Kevin	Kesar & Co	Grantee
Spencer, Mike	CPAG	Grantee
Stancer, Cathy	LankellyChase Foundation	Funder with interest in strategic legal work
Sutton, Alex	Brighter Futures (Praxis)	Grantee
Symes, Mark	Garden Court	Grantee
Takens-Milne, Rachael	Trust for London	Funder, management group
Tanner, Roopa	Islington Law Centre	Grantee
Tarnoky, Michael	Lambeth Law Centre	Grantee
Thomson, Kirsty	Solicitor, Legal Services Agency Ltd	Expert Panel
van der Weerd, Rogier	Adessium Foundation	Funder of strategic legal work
Vnuk, Stefan	Solicitor, Lawrence Lupin Solicitors	Expert Panel
Vooijs, Maartje	Adessium Foundation	Funder of strategic legal work
Weiss, Adam	European Roma Rights Centre	Grantee
Williams, Hazel	Asylum Appeals Support Project	Grantee
Williams, Peter	Trust for London	Funder (trustee)
Yazdahni, Zubier	Deighton Pierce Glynn	Grantee