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JUST FOR KIDS



## Case Study of Just for Kids Law's Strategic Intervention in the UK Supreme Court.

*R (Tigere) v Secretary of State for Business, Innovation and Skills.*

*Research Report by Dr Lisa Vanhala,  
University College London.*

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# Case Study of Just for Kids Law's Strategic Intervention in the UK Supreme Court. *R (Tigere) v Secretary of State for Business, Innovation and Skills*.

September 11th 2017

Dr Lisa Vanhala, School of Public Policy, UCL

## Executive Summary

For organizations interested in taking a strategic approach to using the law in their policy and campaigning work it is important to reflect on the risks and benefits of taking legal action. This executive summary highlights some of the key lessons learned from Just for Kids Law's involvement in a Supreme Court case on student finance for young people whose immigration status meant they were unable to access student loans. Just for Kids Law acted as a third-party intervener in the 2015 *Tigere* case and pursued a series of campaigning and communications activities over the course of this litigation. This process also played a catalytic role in the establishment of a new, youth-led campaign called "Let Us Learn". The report seeks to address the following **research questions**:

- What are the ways in which an organization can plan a strategic litigation campaign on a particular issue?
- What are the benefits and what are the risks of pursuing campaigning and press activities around litigation? How can these risks be anticipated and managed?

The **objectives** of the case study are:

- To highlight and evaluate the strategic decisions taken over the course of the legal campaign.
- To assess what worked well and what could have been more effective.
- To consider the broader lessons learned from this strategic legal intervention that may be useful in the future and to other organizations considering strategic legal action, including the skills and resources needed.

In this project, data-gathering and analysis included document and press analysis and 14 semi-structured interviews with those involved in all aspects of the case. It focuses on activities and decision-making at four different stages of the legal action:

- a. Initiation: identification of a legal problem and a legal case
- b. Preparation for strategic litigation
- c. Communications and campaigning
- d. Legacy activities

## Key Lessons

Being involved in a strategic legal intervention requires an organization to be open and willing to use the law. This requires leadership on the part of senior management and trustees on both the legal and communications side over the course of the legal campaign.

### *Initiation: Identification of a Legal Problem and a Legal Case*

- **Internal sources of legal issues:**

- Organizations working directly with those with lived experience of a problem are likely to be able to identify systemic issues that can then be translated into “legal problems”. This knowledge can also be deployed later in the process by highlighting the breadth of the problem and the nature of the affected population in the litigation in the form of e.g. witness statements, case studies or expert witnesses.
- Problems often arise when an issue spans two areas of law/policy-making. If this is the case it is important to work with solicitors and barristers who have familiarity with all of these areas. A political diagnosis of some of the power struggles (whether explicit or implicit) can help to understand some of the dynamics at play that may lead to the policy problem in the first place.

- **External sources of legal cases:** A strong external network with those in advice service roles and legal practice is likely to expand opportunities for identifying strong potential cases when they arise. Being in touch with those in advice services and in legal practice will mean that when a case arises an organization is likely to be made aware of it.

- **Nature of role in strategic legal action:** The report discusses the pros and cons of taking on different positions in terms of supporting a claimant, acting as an intervener or providing a witness statement. When considering what role to take on organizations should consider:

- Opportunities: selecting what role to play will often feel more reactive than proactive, e.g. a case will already be in motion and the only way to participate will be as a third-party intervener. Nonetheless, by taking a broader perspective over a longer time frame it can be possible to take a more proactive approach to selecting how to become involved in a case.
- Considering what value an organization can add: it is seen as important by the Court not to duplicate arguments or material already before the Court. Organizations with specialist knowledge or able to gather new evidence highlighting the broader context are more likely to put together interventions that are considered helpful by the Court.
- (Potential) costs of the various forms of participating: the resources required to undertake legal action will vary largely depending on the type of role an organization takes.
- The degree of influence each role offers on the development of law or the shaping of the narrative.
- The facts of the case; lawyers often speak about cases with “good facts” and “sympathetic” claimants.

### *Preparation for Strategic Litigation*

- **Inclusion of affected individuals in preparation for litigation:** There are many benefits to including individuals facing an issue in decision-making about a strategic intervention. These relate to both legitimacy of acting on behalf of a group and the expertise and knowledge that comes with this relationship.

- **The legal argument:** an important tactical decision in litigation is how bold to be in terms of the changes in law requested. As one interviewee noted “you need to know your terrain” and “victories can help move the goal posts”.

- **Choosing counsel:** Problems often arise when a policy issue spans two areas of law/policy-making. If this is the case it is important to work with solicitors and barristers who have familiarity with all of these areas.

## Communications and Campaigning

- **Plan early and coordinate often:** The communication strategy requires investment of senior management's time and resources throughout the course of the legal case and well into the legacy phase. Being aware of reporting on previous cases or issues can help to guide planning. The work should also anticipate critiques and backlash and plan a way of responding to that. Training key spokespeople can also help in putting the organisation's best foot forward.
- **"Ownership" of the case in the media:** Claimants and interveners can have different goals in terms of broader publicity and campaigning. Clear communication, planning and a division of labour can help avoid problems down the road.
- **Framing the message:** Disagreements within organisations about how to frame an issue can be creative. Negotiation and compromise is crucial both with the message in the courtroom and outside. Anticipating the types of critiques that may come and crafting concise responses to them can help to shape the narrative.
- **Be aware of the tensions between the legal work and the campaigning work:** This includes: 1) trade-offs between accuracy and clarity and 2) tensions between the need to protect anonymity and the desires of those with lived experience who want to share their story.
- **Serendipity matters:** Luck is a powerful force in strategic litigation. Outcomes are often difficult to predict at the outset and the timing of legal cases is unpredictable. This is particularly true at the Supreme Court level where by definition issues are contentious and law is not settled.

## Legacy Activities

- **Re-defining "winning" a legal case:** Even a victory in the Supreme Court won't automatically translate to change on the ground. A lot of work may need to be done to achieve an effective remedy even for the individual claimant let alone for the others in similar situations.
- **Be prepared for a tsunami of enquiries:** especially after a case when there is media attention on the organization. Preparing for this could include:
  - Resourcing an organisation to ensure they can manage the workload in terms of advising clients and capturing information about the scale and nature of the problem.
  - Undertaking follow-on work with relevant partners, such as e.g. raising awareness among relevant communities of the result of the case and training those practitioners who may play an important role in translating the legal change into changing practices on the ground, e.g. school advisors, immigration lawyers.
- **Anticipate and plan for backlash:** Backlash refers to negative responses to legal victories and can be targeted at the individual claimant or organization or at the law/policy that has changed as a result of a case. Anticipating this can involve a plan to support individuals who are affected and monitoring proposed legislative policy changes that may seek to minimize any changes to law.
- **"Ownership" of the case in lobbying efforts:** Other organizations may use the critical juncture a change in law offers to either broaden or narrow the legal/policy framework. It is important to be aware of their involvement and to coordinate any lobbying in advance.



# Case Study of Just for Kids Law's Strategic Intervention in the UK Supreme Court. *R (Tigere) v Secretary of State for Business, Innovation and Skills*.

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Dr Lisa Vanhala, School of Public Policy, UCL<sup>1</sup>

## 1. Introduction

For organizations interested in taking a *strategic* approach to using the law in their policy/campaigning work it is important to reflect on the risks and benefits of taking legal action. Just for Kids Law is interested in learning lessons from their involvement in a key legal case on student finance for young people whose immigration status meant they were unable to access student loans. Student finance litigation has played an important role in changing policy on who is considered eligible for student loans in order to pursue higher education and who is not. The Supreme Court decision in *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] is a key case in this regard. Just for Kids Law acted as a third-party intervener in the *Tigere* case and pursued a series of campaigning and communications activities over the course of this litigation. This process also played a catalytic role in the establishment of a new, youth-led campaign called "Let Us Learn".

This report captures the lessons learned by those involved over the course of the strategic legal intervention. It seeks to address the following research questions:

- What are the ways in which an organization can plan a strategic litigation campaign on a particular issue?
- What are the benefits and what are the risks of pursuing campaigning and press activities around litigation? How can these risks be anticipated and managed?

The report is structured as follows:

**Section 2** discusses the methodology and sources of data used for the research.

**Section 3** provides some important legal and political background to the analysis.

**Section 4** constitutes the main body of the report and presents the empirical analysis of the strategic legal intervention focusing on different stages of the process.

**Section 5** presents the conclusions and recommendations.

The objectives of this case study are:

- To highlight and evaluate the strategic decisions taken over the course of the legal campaign.
- To assess what worked well and what could have been more effective.
- To consider the broader lessons learned from this strategic legal intervention that may be useful in the future and to other organizations considering strategic legal action, including the skills and resources needed.

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<sup>1</sup> I am grateful to my students Kaitlyn Garbe and Alice Lemkes for their research assistance on this project.

## 2. Methodology

Evaluating the success of legal cases is notoriously difficult<sup>2</sup>. The impact of a strategic legal intervention and on subsequent changes in policy, practice and movement-building is not always clear-cut. This research addresses the challenge by seeking to identify possible causal connections between activities/decisions on one hand and outcomes on the other. This involves developing a “thick description” of each stage of the litigation process to identify strategic considerations and activities, engagement an organization makes with other actors and critical junctures over the course of the process. In this project, data-gathering and analysis was focused on activities and decision-making at four different stages of the legal action:

- a. Initiation: identification of a legal problem and a legal case
- b. Preparation for strategic litigation
- c. Communications and campaigning
- d. Legacy activities

The data gathering and analysis included a wide range of sources including:

- The legal documents associated with the case including, for example, the Court’s judgments in earlier cases, the intervener’s statement of case and evidence.
- Organizational data including documents detailing the planning undertaken for the case, organizational data on communications activities and outcomes, data on the number of referrals the organization received on the issue.
- Media data collected by the researcher (with the support of a research assistant) on newspaper reporting on the *Tigere* case and the earlier Kebede cases.
- Interview data from qualitative interviews with 14 respondents who encountered the case or the campaign in some way. This included those working on the issue within Just for Kids Law, working with the Let Us Learn Campaign, the various lawyers involved in the case either acting for the claimant or acting for the intervener as well as “outsiders” working in civil society organizations who work in the immigration-policy space who are aware of the case and the organization’s work. Interview quotes have been anonymized. I have sought to bring in the voices of those involved in the process as much as possible in the analysis.

There are several caveats that are worth enumerating up front. A single case study cannot:

- Definitively rule out that other factors may have contributed to the successful results in this case.
- Necessarily allow us to generalize from the factors identified as contributing to success in this case to the broader population of cases of strategic litigation.
- Allow us to draw broader conclusions about the extent to which strategic litigation is a useful tool vis-à-vis other potential tactics (legal or otherwise).

The ways in which the *Tigere* case moved law forward have been analysed extensively elsewhere<sup>3</sup>. This report focuses on the factors that the participants and observers of this strategic legal intervention identified as having contributed to a series of successful outcomes which included a legal victory in the Supreme Court, policy change after the legal case and the growth of a youth-led movement advocating for access to higher education.

<sup>2</sup> See, for example, Alice Donald and Elizabeth Mottershaw. 2009. “Evaluating the Impact of Human Rights Litigation on Policy and Practice: A Case Study of the UK” *Journal of Human Rights Practice* 1(3): pp. 339-361; Thomas Keck. 2009. “Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights”. *Law & Society Review* 43(1), 158-186; Alice Donald, Elizabeth Mottershaw, Philip Leach and Jenny Watson. 2009. *Evaluating the impact of selected cases under the Human Rights Act on public services provision*. Manchester: Equality and Human Rights Commission. Gerald Rosenberg. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press. Lisa Vanhala. 2011. *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

<sup>3</sup> See e.g. Case Comment, UK Supreme Court Blog, <http://ukscblog.com/case-comment-r-tigere-v-secretary-of-state-for-business-innovation-and-skills-2015-uksc-57/>. Last accessed: 30 August 2017; Supreme Court: Right to a Student Loan, UK Human Rights Blog, <https://ukhumanrightsblog.com/2015/08/03/supreme-court-a-right-to-a-student-loan/>. Last accessed 3 September 2017.



### 3. The Tigere Case in the Socio-Political Context

Appreciating both the main legal issues in the case and the nature of the contemporary socio-political environment is crucial for understanding the decision-making and campaigning context Just for Kids Law was operating in at the time. This section briefly describes the legal issues and the socio-political context.

#### The Legal Issues in the Tigere Case

The *Tigere* case in the Supreme Court in 2015 concerned an appellant, Beaurish Tigere, who came to the UK lawfully from Zambia as a young child in 2001 as a dependant of her father. She overstayed with her mother and then obtained discretionary leave to remain (DLR) in 2012 and was considered highly likely to obtain indefinite leave to remain in 2018. Ms Tigere completed all of her primary and secondary education in the United Kingdom. She was head girl of her school and obtained 7 GCSEs and 3 A levels. She received a number of offers to attend university. However, she was treated as ineligible for a student loan because she did not have “settled” immigration status. The relevant regulations had come into effect in 2011<sup>4</sup>.

At the time, in order to qualify for a student loan from the Government under the relevant regulations, an applicant had to be both settled in the UK and have been ordinarily resident throughout the three- year period prior to the first day of the course. Ms Tigere, who had only DLR, did not meet these criteria. She challenged the application of the criteria to a person (such as her) who had a clearly established private life right to remain in the UK. She argued that the criteria breached her right to education, under Article 2 of Protocol 1 of the European Convention on Human Rights, and unjustifiably discriminated against her in the enjoyment of that right on the grounds of her immigration status, contrary to Article 14 of the European Convention on Human Rights.

The High Court found that the blanket exclusion from eligibility for student loans based on Ms Tigere’s immigration status was a disproportionate interference with her right of access to education and unjustifiable discrimination linked to national origin. The Court of Appeal allowed the Secretary of State’s appeal on the basis that this was an area of national strategic policy related to the distribution of scarce resources, and so a broad margin of appreciation should be afforded to government policy. Ms Tigere appealed to the Supreme Court. In *R (Tigere) v Secretary of State for Business Innovation and Skills* [2015] UKSC 57 the Supreme Court held by a 3:2 majority that the blanket requirement was discriminatory.

#### The Socio-political Context

The political situation at the time of the *Tigere* case provides some important context for the discussion that follows. The Conservative-Liberal Democrat Coalition government established in 2010 resulted in some policy tensions that are at the heart of the legal case and the campaign around it. On one hand, there was an explicit aim in the 2010 coalition agreement to “attract a higher proportion of students from disadvantaged backgrounds” into higher education.

“...established on the explicit instructions of the Prime Minister for the purpose of making Britain a hostile environment for unwanted immigrants.”

On the other hand, immigration policy was becoming increasingly hostile in tone, particularly for those whose status was not settled<sup>5</sup>. One facet of this was the establishment of what was initially called the “hostile environment working group”. The group was established on the explicit instructions of the Prime Minister for the purpose of making Britain a hostile environment for unwanted immigrants. It involved ministers across government generating new ways to make immigrants’ lives more difficult. Proposals and policies included, for example, having landlords check the immigration status of their tenants and requiring GPs to check the status of immigrant patients before treating them or sharing data with the Home Office.<sup>6</sup> Much of this tension was exacerbated by the “migration crisis” which had its peak in the public consciousness in 2015. The human cost of the crisis was only brought to the fore after the legal judgment in *Tigere* by media images of the body of three-year old Alan Kurdi washed up on a Turkish beach and the subsequent deal between European leaders and President Erdogan to have Turkey handle the inflow of asylum seekers.

<sup>4</sup> Education (Student Support) Regulations 2011.

<sup>5</sup> Solange Valdez and Declan O’Callaghan (2015) “Children pay the price of tough immigration policies”. *Legal Action*, pp. 12-13.

<sup>6</sup> Decca Aitkenhead. 2013. “Sarah Teather: I’m angry there are no alternative voices on immigration”. *The Guardian* 12 July 2013.

## 4. Just For Kids Law Intervention In Tigere

### 4.1 Initiation: Identification Of A Legal Problem And A Legal Case

This section discusses how the existence of legal problems is recognised by organizations, discusses how organizations “find” legal cases and the types of decisions that are made in relation to trying to find a solution to legal problems, focusing specifically on the decision of whether to pursue a strategic legal approach.

There are a variety of ways in which legal issues and potentially strategic legal cases come across an organization’s radar. Issues and/or cases can be identified internally, that is through the work of an organization or through a constituency the organization is working with directly. Or issues and/or cases can be identified externally, that is, from outside of the organization, often through the networks an organization has.

Just for Kids Law’s identification of the *Tigere* case is an example of an issue emerging internally and a legal case emerging externally. The emergence of the legal problem and the identification of the specific legal case happened within a relatively short period of time (about a year and a half). The legal issue emerged very much in a bottom-up manner as a growing number of young people who were having problems accessing student finance because of their immigration status were contacting the organization. It became increasingly clear that there was a strong feeling of injustice among the affected population, a clear legal problem and a gap in the advocacy and financial support that was available. A young woman named Chrisann Jarrett who had approached Just for Kids Law for help then decided to set up the Let Us Learn group to advocate on the issue.

*“I was an ambassador for Just for Kids Law and I started meeting other young people who were in the same situation ... we would go to meetings and there would be groups that were organizing and creating change for refugees and asylum seekers but not for young people who had actually lived here for a really long time. So not “the usual migrants”.” (Let Us Learn representative).*

*“They found a lot of the scholarships were limited to asylum-seekers ... There’s a big gap – they couldn’t get student loans, there were no scholarships available. There was basically no option other than to wait until they got indefinite leave and for Chrisann that wasn’t acceptable.” (Just for Kids Law representative).*

*“I knew that we were getting a lot of student finance enquiries and I knew that Joel was setting up Let Us Learn ... He kept asking questions about what legal support we could offer these people .... I didn’t have any solution” (Just for Kids Law representative).*

One interviewee compared the campaign and legal

solution with another issue Just for Kids Law had worked on regarding children in police detention.

*“Some young people were involved with the “Still a child at 17” [campaign], but I wouldn’t say it was youth-driven. There was a massive need identified by solicitors. ... With Let Us Learn it was like “right now we’re all trying to get to university”. It was people hammering down the door to go to university. They’ve been told every day of their lives that they’re going to go” (Just for Kids Law Representative).*

At the same time that this frustration was brewing there was a growing recognition of the legal problem and the political challenges of tackling it.

*“The real problems in law and in policy change are where things are from two different areas of law or from two different government departments. And that’s where it’s hardest to make the change because no one’s actually taking responsibility for the decision making... So in the Tigere case, you’ve got BIS and the Home Office, who are applying all of their immigration rules ... “ (Just for Kids Law Representative).*

*“It also means these policies aren’t a priority for anybody or they have arisen by default or by accident. That makes them harder to change or challenge. Because when you write your pre-action letter and say “Please can you re consider?” It’s always much harder to get anyone to reconsider when you have more than one department involved.” (Lawyer).*

Some interviewees also noticed the political tensions playing out in the background of the *Tigere* case though this was not uniform.

*“At that time, Theresa May was Home Secretary, she’s pretty powerful. Jo Johnson was the Universities Minister, he was very new in post ... the Home Office was very much in the background because of the immigration context.” (Lawyer).*

*“From recollection, BIS were more successful in the Court of Appeal in saying “this is more a Home Office issue than our issue”. And they did try to make this a Home Office issue: “we’re just acting on what the Home Office is telling us to do” kind of thing ... But I don’t think that was really entertained at that point in the Supreme Court .” (Lawyer).*

The legal case came to the attention of individuals within the organization in two different ways from external sources. At the senior level, a barrister involved with the Tigere case in the lower courts was in conversation with one of the Joint Chief Executives at Just for Kids Law, Shauneen Lambe, about potentially intervening. At roughly the same time, similar conversations were happening between Joel Carter (Just for Kids Law's Programmes Director), Rachel Knowles (Just for Kids Law's Senior Solicitor for Community Care and Education) and immigration lawyers at Coram Children's Legal Centre's Migrant Children's Project. The latter were aware of the case and knew about Just for Kids Law's work with young people from having sat together on the Access to Higher Education Working Group (AHEWG). The role of networks was highlighted by almost all interviewees in discussing how the case came to their attention. For example:

*"Anita [Hurrell at Coram's Children's Legal Centre] basically sent an email saying "would you guys like to intervene?" You've got this unique access to all these young people who are affected..." (Just for Kids Law Representative).*

*"It's about knowing that things are happening and that's about being plugged into the advocacy stuff. So Rachel [Knowles] would see the kids coming in and know the trends and be able to think about the legal issues around that." (Lawyer).*

The fact that news of the case and the possibility to intervene came to those at Just for Kids Law via two independent routes suggests individuals within the organization have solid external networks in place at all levels of the organization which increases opportunities to engage with strategic legal action. The interview data also suggests that Just for Kids Law had strong communication within the organization between the legal and non-legal streams of work.

### Choices about Nature of Involvement in a Legal Case

Organizations can be involved in the deployment of legal knowledge and approaches around a specific case in a variety of ways as well. This includes:

- Undertaking pre-litigation research;
- the organization acting as claimant;
- the organization supporting a claimant;
- the organization intervening as a third-party;
- the organization or an individual within the organization providing a witness statement

It is worth pointing out that much of the involvement in litigation may feel reactive even when it is strategic in nature. It requires first a case to be available to be involved with. One lawyer pointed out that many cases settle which changes the complexion of what can be achieved systemically.

*"What happens quite a lot is that you'll have cases that raise issues or people will tell you that issues are happening. Cases will perhaps start but then settle or you may have a client who is not perfect factually ..."* (Lawyer).

Each role has different implications in terms of the resources and capacity an organization needs to be able to deploy. Acting as a claimant or directly supporting a claimant are among the most resource intensive and there are uncertainties about the duration and nature of the engagement at the outset. Providing a witness statement can be a better option where an organization has limited capacity or wants to be able to draw clear boundaries around their participation in case. Some interviewees did not see much difference between providing a witness statement and acting as the intervener whereas others saw much more of a distinction and appreciated the perception of neutrality that acting as a third-party offers.

*"In some ways there is limited difference in the impact in the court with a witness statement which is from a larger charity ... or the charity themselves intervening in order to put that evidence in front of the court ... unless it's a really wide ranging intervention as Just For Kids ultimately did, in which case it's better coming from a separate intervener ... The fact that we had that intervention and the emotional impact may have helped carry the majority of the court."* (One of the lawyers for the claimant).

*"The complication of doing strategic litigation with a claimant is, there's sometime a conflict between the strategic change you want and the individual rights. We just recently had a case ... where we got [to a place where we were saying] "on an individual [claimant] level we want this outcome" and "on a strategic level we want that one ...". Whereas if you're an intervener you're able to be more removed and put more objective evidence forward."* (Just for Kids Law Representative).

In acting as a third-party intervener there can be varying levels of (intentional or unintentional) complementarity or conflict with the arguments and evidence being put forward by the parties to the legal case.

*"What can we actually we add [as an intervener]? That can be really difficult to do when you've got a good legal team [for the claimant] and you're not going to add anything to the legal argument."* (Lawyer).

*"An intervention can be put in a way that cuts across your [the claimant's] case ... You might be asking for a modest change to the law or attacking one discreet element of a legal framework. An intervention that comes in and puts those things more broadly can be unhelpful. And I say "can be", sometimes it's not and it's complementary because you appear moderate because they're taking the more extreme position."* (Lawyer).

## 4.2 Preparing For a Legal Intervention

This section discusses the funding situation, the development of the legal strategy (including evidence gathering networking activity and the development of Let Us Learn in the lead-up to the legal case.

### Funding

The resources required to undertake legal action will vary largely depending on the type of role an organization takes (as discussed above). In the *Tigere* case Just for Kids Law successfully applied to the Strategic Legal Fund for Vulnerable Young Migrants (at that time hosted by Trust for London) for a grant of £9,666 to carry out research and prepare the intervention. Support for other activities undertaken by the Let Us Learn group was provided by the Paul Hamlyn Foundation, Unbound Philanthropy and others such as the Social Change Initiative and a wage contribution scheme at PWC. The Paul Hamlyn Foundation also helped to fund a post in the Let Us Learn team to help with the post-litigation workload.

Another important way of managing costs is the provision of pro bono services. This took two forms for Just for Kids Law in the *Tigere* intervention:

1. Support in evidence gathering: The case studies were collected with the support of law students from UCL as part of their clinical legal education. Several interviewees noted that the 26 case studies Just for Kids Law submitted as evidence were crucial in highlighting the impact and scale of the problem. Without that free resource the range and volume of evidence would have been impossible to gather.
2. Free or discounted legal services: Legal services can be offered at reduced rates or for free by barristers acting for an intervener or claimant. The Barristers for Just for Kids Law's intervention acted for free in this case.

It is also worth noting that there are new criteria that need to be met by third-party interveners and associated costs risks that were not in force during the period of the *Tigere* case. These were introduced by the Criminal Justice and Courts Act 2015 and will need to be considered by organisations contemplating the costs and risks of intervening.

### Development of Legal Strategy

In general terms, developing an organization's legal strategy can involve several various streams of work and engagement. These include:

- Getting to grips with the legal problem and potential solutions; considering the pros and cons of various legal arguments.

- Identifying evidence an organization may be able to provide based on their own records or contacts.

In the *Tigere* intervention the solicitor leading the legal work at Just for Kids Law spent a good deal of time upfront getting to grips with the legal situation, going over the law, closely reading the previous judgments and considering the pros and cons of different legal positions. She also worked closely with the barristers and others within Just for Kids Law in doing this and, in particular, in thinking through the evidence that would best support the claimant's case.

*I was thinking "what could we actually produce that would be useful in terms of an intervention?" And case studies seemed like an obvious thing to do ... And also doing some research into what policy papers might be out there about the benefits of higher education (Just for Kids Law Representative).*

*Rachel (Knowles) was quite clear from the start that she didn't want it just to be about the kid with 3 A\* going to Cambridge but also the kid going on to do a much less flashy course but which was nonetheless really important to their life ... We wanted to show the range of children that this affected (Lawyer).*

*Everyone treated it like a mission they were on ... There was a lot of dedication on the part of the Just for Kids Law staff to really succeed in something really serious and something that would potentially change policy (Let Us Learn Representative).*

*We picked bits of the government's argument that we thought we could help the claimant's counsel address in an evidential sense ... We were trying to drill down into the statistics, put together the case studies, we went back to one of the [BIS] reports. We were trying to plug holes where we thought the government was making assertions which were un-evidenced. We also didn't want to over-burden the Court. We wanted to be succinct and helpful (Lawyer).*

Interviewees also spoke about the need to be pragmatic about the argument being made:

*"I think we would have gone for a much broader argument. As in "if you've got discretionary leave now you should be entitled and it doesn't matter if you've spent two months or seven years here". I would have liked to run that argument but I think there was a risk that we would have come away with nothing (Lawyer).*

*Is Tigere seen as a victory or a defeat? It seems a victory ... You've got to know your terrain. Tactically ... victories are important to move the goal post a little bit. You know we only won it 3-2 ... You have to take a victory even if it doesn't get it for everyone ... And it's like "oh I've got to wait" and it must be really frustrating. But at least it's something." (Lawyer).*

Just for Kids Law's intervention was very wide ranging with a variety of types of evidence. This included:

- A witness statement by Alison East of Coram Children's Legal Centre which summarised the route by which indefinite leave to remain ("settled status") could be obtained by young people with discretionary or limited leave to remain.
- A witness statement from Chrisann Jarrett, founder of the Let Us Learn campaign.
- A witness statement from Professor Ian Walker that confirmed that the economic analysis he undertook for BIS (which showed a significant average lifetime return to the Exchequer or a person being education to degree level) applies equally to those with discretionary or limited leave to remain.
- A witness statement from Peter Hughes, Principal of Mossbourne Academy which explained the negative impact the ban on student finance for those without settled status has on the young people in his school.
- A witness statement from Joel Carter in which he addressed the timetable for applying for student support, the lack of alternative funding, and the impact of the exclusion from higher education on young people. This included case studies from 26 students in positions similar to Ms Tigere.

Timing is one element that is often out of the hands of an organization participating in strategic litigation and can be difficult to plan around. For example, several interviewees pointed out that permission to intervene was granted at a very late stage, about two to three weeks before the hearing. One lawyer noted:

*"We didn't get permission to intervene until about two seconds before the case. We were all proceeding on the assumption that we would get permission. We were doing all the work putting in a case like everyone else without formally having permission. It was a bit bonkers." (Lawyer).*

## Networking

Identifying and engaging with stakeholders is important in the lead-up to litigation. This includes:

One of the tensions in pursuing strategic legal action is the distance that can sometimes emerge between those with the technical legal knowledge and those with lived experience of an issue. This is something that Just for Kids Law staff were all aware of and did their best to address

- Collaboration by those within the organisation: Ensuring that everyone working on an issue – whether in legal work, campaigns work, advocacy or direct support to the client group – is up-to-date on legal developments.
- Networking externally: Particularly for those operating in policy areas where there are a number of civil society groups it is often useful to be in touch with what these groups are doing and running ideas about legal arguments and evidence by them to gain an external perspective.
- Working with barristers: this involves identifying a team that will be well suited to addressing the range of legal issues a particular case raises.

Again, Just for Kids Law was undertaking all of these activities in their preparations. In the months leading up to the Supreme Court intervention a small team within Just for Kids Law used to meet on a weekly basis to coordinate activities in terms of the campaigning side of things, the support being provided to those affected in terms of access higher education and the legal case. Several of the young people were involved in these regular meetings in the lead-up to the legal intervention. One of the tensions in pursuing strategic legal action is the distance that can sometimes emerge between those with the technical legal knowledge and those with lived experience of an issue. This is something that Just for Kids Law staff were all aware of and did their best to address both in the meetings and in communicating with the broader group.

*"I sat in on a few of them [the meetings] but then sometimes it clashed with Uni ... There were points where I was like "this is all lawyer speak and I'm*

just a student” ... if I didn’t understand something I’d admit it and for the most part they did try to ensure we understood.” (Let Us Learn Representative).

“I remember Joel [Carter] asked if I wanted to come along to the meetings. I thought I don’t know how I’m going to do this because I work in retail ... so I negotiated with my employer ...” (Let Us Learn Representative).

“Every Monday morning I was with them in terms of strategizing. I was so new to the whole thing ... I didn’t know what they were talking about. I sat there quite cluelessly just trying to listen and take it in ... Eventually I started to understand a lot more ... I didn’t know if I could contribute ... But then they started asking me to speak about my story and how I got here in terms of my journey from Nigeria and having status, not having status, going to university.” (Let Us Learn Representative).

“I would have liked to have even more young people involved ... for them to really have equal say in everything we do because it was their campaign ... Being in those meetings ... I could imagine that would be quite an intimidating experience to be in that situation. Don’t get me wrong, there were plenty of cases where they [the young people] were invited to talk but I still wonder if there was a way that we could have been even more inclusive.” (Just for Kids Law Representative).

In terms of external networking representatives of Just for Kids Law were doing this throughout the preparation stage. Solange Valdez, who runs the Project for the Registration of Children as British Citizens (PRCBC) was invited to speak with the young people about how the policy situation had arisen in the first place in April 2015. One interviewee spoke about the need to engage with those outside of the organization that had expertise in the sector about the different elements of the legal intervention. Several interviewees spoke about the important support they received from Solange Valdez and Baljeet Sandhu at Islington Law Centre.

Finally, all of the lawyers I spoke to discussed the importance of selecting a legal team that can cover the range of issues a legal case raises. One interviewee said:

Just for Kids Law focuses on ensuring that the voices of children and young people are heard in matters of law relating to them.

“You need to get lawyers who know both areas [of law]. And this is a problem I have again and again ... we needed to have a team who had both immigration expertise and education expertise. And you know not being an immigration lawyer myself and not having that expertise in-house I felt put at a bit of a disadvantage.” (Just for Kids Law Representative).<sup>7</sup>

## The Involvement of Young People and the Growth of Let Us Learn

One of the issues highlighted over the course of interviews was the involvement of the young people. Just for Kids Law focuses on ensuring that the voices of children and young people are heard in matters of law relating to them.

“Joel [Carter]’s very good at making sure young people are treated equally in our organization and participate in decision making processes ... He’s very much about empowering people to make decisions and take action for themselves.” (Just for Kids Law Representative).

“By the time we started talking about gathering case studies for the Supreme Court we were in contact with a load of young people ... There was that dual thing of trying to help people advocate for themselves to get scholarships but also trying to enable them to understand the route to doing it might be through collective action, getting involved in a court case.” (Just for Kids Law Representative).

I asked several interviewees about hesitation among some of the young people about going forward with the legal intervention.

“Some of them weren’t comfortable with having their stories public.” (Just for Kids Law Representative).

“Everyone is on a journey from being completely secret, even with their closest friends to – if they want to be – out there and open ... There was lots of young people who wanted to be anonymous, who weren’t sure about it, quite a few people who said “what’s in it for me?” ... People weren’t contacting us to address their immigration stuff. They were contacting us to go to university. They weren’t contacting us because they were annoyed at how badly they were being treated as immigrants.” (Just for Kids Law Representative).

“The worse thing, for me, is for young people who have been able to go to university and have been keeping under the radar versus the guys who were forced to come out, they’re like “I’m so much happier now that ...” (Just for Kids Law Representative).

“Growing up you’re told “shh don’t tell anyone about your situation otherwise you’ll be deported”. But they

<sup>7</sup> It is worth noting that Just for Kids Law does now have in-house immigration support.

*[the staff of the organization] actually tell you “do this, do that because it’s going to get you here and here” It’s almost like they flipped my world from having to be quiet and not say anything about my situation to actually speak about your story, because that’s how you’re going to be exposed to opportunities, that’s how you’re going to be exposed to things happening or you, and that’s how you’re going to be exposed to other young people and [play a role] empowering other young people and becoming a leader.” (Let Us Learn Representative).*

*people from Pakistan and India? Are we not appealing to them?” (Just for Kids Law Representative).*

One particular set of networking activities played an important role in the development of the Let Us Learn campaign and in the empowerment of some of the young people. Many interviewees identified the interactions between the Let Us Learn group and young people from the US-based United We Dream (or “Dreamers”) movement as catalytic. Several Let Us Learn delegates and youth workers were funded to meet with the Dreamers in March 2015 in Washington D.C. Further funding also allowed several young people to participate in the United We Dream Congress in Houston in June 2016. The inspiration the young people (and those who work with them) took from that experience was palpable in the interviews.

*“The Dreamers are very much about not being afraid to talk about their status, so there’s a lot about how to share your story, how to make people interested in what you’re talking about. That brought people together, being brave ... They’re all about empowering you to take ownership over your issues and turning it into something positive instead of hiding in the shadows and being afraid.” (Just for Kids Law Representative).*

*“What I learned from them [the Dreamers] – and that’s what we kept reinforcing throughout [the legal case] and before the judgment and since then – is when you “lose” it doesn’t mean that you’ve lost in some ways because you’ve worked so hard.” (Let Us Learn Representative).*

*“The passion they [the Dreamers] have ... amidst what’s happening in America now with countless people being picked up on the street and deported, they still go out there – undocumented or documented – and they still fight for that change.” (Let Us Learn Representative).*

*“Their [the Dreamers] tactics were just so different ... more radical than movements here. We want to create change ... through policy. But they create change at the grassroots level and then they build up... they take risks.” (Let Us Learn Representative).*

*“[The young people] were reflecting on things like the Dreamers] being Latino and Let Us Learn being quite black/African: “Is this something you can try and avoid or is it sort of natural? Are we excluding*

### 4.3 Communications and Campaigning

This section focuses on the communications work and the campaigning work undertaken in collaboration with the young people. The first part focuses on the press coverage of the case. The rest focuses on decision-making around the framing of the issue, the activities and resources devoted to engaging with the media and the mobilization activity at the hearing and at the announcement of the judgment.

#### Reviewing the Media Coverage

The data gathered through a review and content analysis of media related to coverage of the *Tigere* case shows that both the case and the affected population were portrayed sympathetically. The articles that were reviewed and coded are listed in Appendix 2. The articles were coded for their portrayal of the individual, the characteristics associated with the claimant and those associated with the wider, similarly-affected group as well as of the outcomes of the case. There was a good degree of press coverage, particularly around the time of the trial (see figure 1).

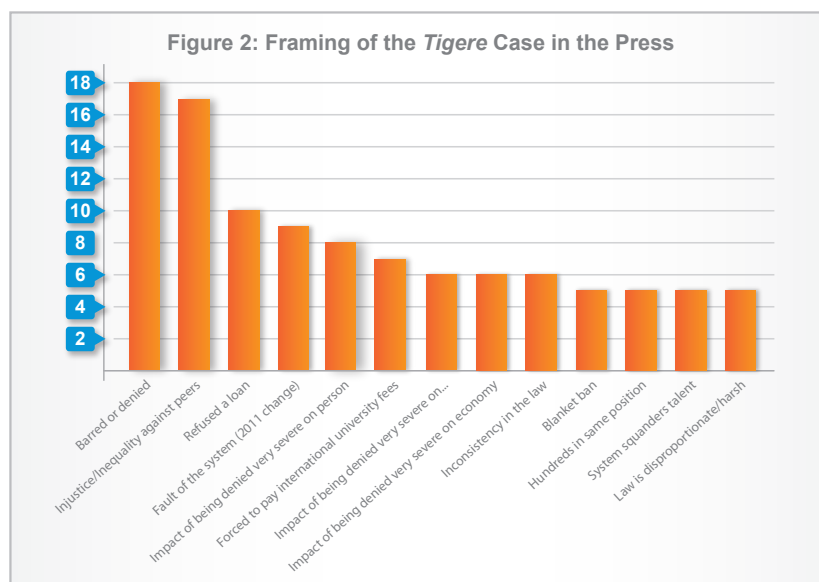
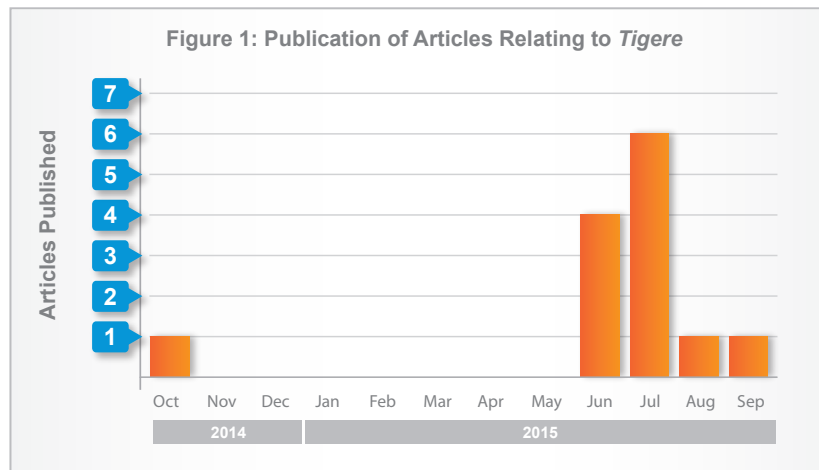
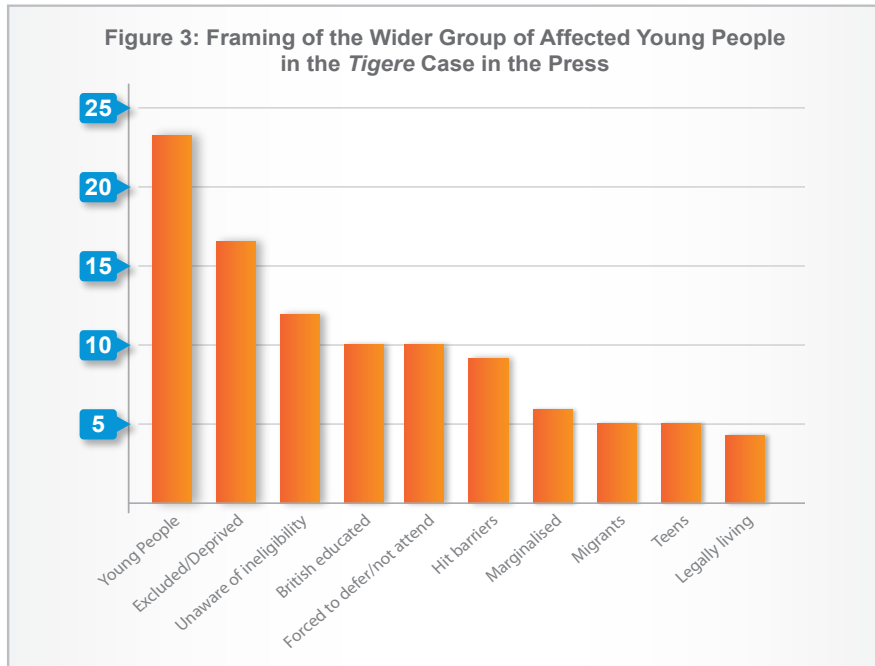
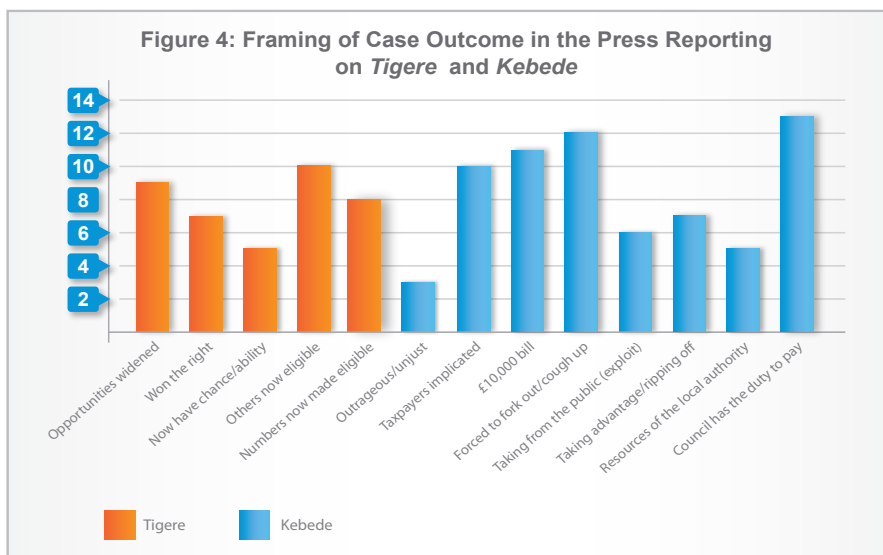


Figure 2 shows that this coverage tended to focus on “the system” rather than the individual in its portrayal of the case. The main frames were about being “barred or denied”, “injustice/inequality”, and this being the “fault of the system”. There was also a good deal of discussion about the negative impact of the situation on the individual, on society and on the economy.





When the wider group of affected young people were mentioned in press coverage it was almost exclusively in a positive light in the articles surveyed (see figure 3). The group was most often referred to as “young people” and commonly referred to as “British Educated” and were commonly described as being “excluded/deprived”. The portrayal of the young people as “migrants” was fairly low down the list of descriptors.



This positive portrayal is even more striking when comparing the coverage of the Tigere case and the earlier Kebede cases. Figure 4 shows the most common descriptors of the outcome in the two cases. In the Kebede case there was a lot of very negative rhetoric around the cost of the education of the claimant and the burden on taxpayers. In the Tigere case the language was much more about the “widening of opportunities”.

## Paying Attention to Language

An important consideration from the outset in terms of the campaigning work was the language used to discuss this population of young people. From the beginning there was a decision, where possible, to focus on the academic achievements and ambitions of these young people rather than their immigration status in the messaging. Some within the organisation were particularly aware of the reporting on a previous legal campaign, the 2013 Kebede case, which dealt with the student finance issues of two young men who had been unaccompanied minors and were looked after by their local council. Kebede had been picked up by the Daily Mail and the portrayal of the two brothers in that case was particularly harsh.

*“If you look at the press around the Kebede case ... how that was reported by the Daily Mail, it was awful. Really awful ... we didn’t want any person we were working with to be subjected to that and we didn’t want to jeopardize the campaign by bringing that language and media attention to this.” (Just for Kids Law Representative)*

*“I would draft something and someone else would go through and take out any reference to migrants or migration ... So it would be “British-born”, or “British-educated young people who can’t go to university” ... That’s still a work in progress in terms of how you hone the language.” (Just for Kids Law Representative)*

## Tensions between Legal Work and Communications/Campaigning Work

There are a number of tensions between doing the legal work for a strategic intervention and the associated campaigning and communications work. Interviewees identified two key sources of tension. The first is between the need for legal accuracy and clarity of the message being put out into the press.

*“Coming from a journalistic background ... you need clarity ... Shauneen [Lambe, Joint CEO of Just for Kids Law] being a lawyer would be adding in caveats [to the press releases] and then I’m running around taking them all out again. But that’s actually a really creative relationship and we would invariably end up somewhere in the middle that actually worked ... “ (Just for Kids Law Representative).*

*“You sometimes have to sacrifice accuracy for clarity. Because most people don’t know what “immigration status” or “problems of unsettled immigration status” is.” (Just for Kids Law Representative).*

*“There’s a lot of that sort of negotiation ... so we could find messages that were legally accurate enough*

*while still interesting to the outside world.” (Just for Kids Law Representative).*

The second tension was the goal of protecting anonymity on one hand in terms of the evidence submitted to the Court in the form of the case studies and the desire to tell a story and/or to be “out and unafraid” among some of the young people.

*“I think there was an interview with me [sitting on the side] saying, “no, no you can’t say that. No, you can’t say that, no that’s wrong. No, I don’t want this person to name this college. No, that’s too much information.” And then they go “come on!”.” (Just for Kids Law Representative).*

*“The young people were learning from the Dreamers at the time, people wanted to take ownership over their stories. So there was the mixture of me going “shhhh” and everyone else going “let them tell their story.” (Just for Kids Law Representative).*

*“Anonymity was a big thing for me [in developing the case studies for the legal intervention] ... I could have been a little less obstructive. There are young people who don’t care about anonymity and were happy to tell their story ... Just let them if that’s what they want to do ... Maybe I am taking away some of that power ... So that was a lesson for me.” (Just for Kids Law Representative).*

*“Anything happening at the Supreme Court is by definition news worthy ... we wanted to be able to shape that coverage as much as we realistically could because of the issue around some of the young people not having their status ... so they were potentially vulnerable ... And we certainly didn’t say to people who didn’t have status “don’t come or anything like that.” (Just for Kids Law Representative).*

## Communicating the Issue: The Hearing

On June 24th 2015 the Supreme Court heard the Tigere case. A group of young people involved with Let Us Learn and Just for Kids Law demonstrated outside the Supreme Court before the hearing and then attended the hearing. Campaigners had been liaising with MPs and the media in the lead-up. This resulted in solid attendance at the demonstration both by the young people and politicians including David Lammy and Dianne Abbott.

*“We have found over time that you can get the media interested in litigation because it’s adversarial. Taking the government to court, there’s a sense of David and Goliath about it ... in some situations litigation has been our main tool in getting the story out there.” (Just for Kids Law Representative).*

*“We did a demonstration outside court before the hearing because that was an immediate tactic in the sense that we wanted to get some coverage. We had all the t-shirts, we had the mortarboards, we had the MPs coming down ... I was surprised by how many of them [the young people] actually wanted to come down to court.” (Just for Kids Law Representative).*

*“We were talking to people like David Lammy, one of his constituents had been affected by the issue and she had been to see him and he had been pretty supportive. He was also, as luck would have it, being followed around by a documentary film crew at the time ... he came and was very supportive and very interested and very involved.” (Just for Kids Law Representative).*

The presence of young people at the hearing was viewed very positively by most interviewees.

*“It was phenomenal ... there was such a rush of excitement. Everyone was buzzing ... People were talking to journalists. People were talking to each other. It was an amazing day. We wanted to go in and they were trying to stop us because we’d been shouting “Let Us Learn, Let Us Learn.” ... Eventually they let us in (Let Us Learn Representative).*

*“There were so many of us that we couldn’t all fit in the room and spilled out into the corridor ... And I remember just coming out of it and feeling exhausted.” (Let Us Learn Representative).*

*“I remember turning up to the Supreme Court on the day and there were loads of young people with the t-shirts on and there was press and publicity. And it was great.” I’m all for that. Brilliant (Lawyer).*

There was some debate about whether having lots of affected people in the courtroom is a useful tactic in trying to win a legal case. The organization undertook discussions with young people to prepare them in terms of appropriate behaviour in the courtroom and their conversations with the media.

*“They [the young people] had never been into a court before and until somebody tells them, “this is the appropriate mode of behaviour”, how would they know? And they’ve just come from being outside in t-shirts ... having a bit of a laugh and a joke and selfies and David Lammy doing his “I Have A Dream speech” ... and then to switch from that to “right, now we’re going into court, phones off, this is where it gets serious.” (Just for Kids Law Representative).*

*“I have an instinctive discomfort with how that [having lots of people in the court] is perceived by our judges ... I think the perception is you’re trying to have an impact on the judges, rather than just through the legal issues. And that’s how it’s perceived rightly or wrongly ... it’s something to carefully manage.” (Lawyer).*

*“Having affected individuals turn up and care can be helpful. It’s just another illustration of the affected group; people care so much they were turning up ... These people sitting in the room might want to go to university that September and might not be able to.” (lawyer).*

One important angle to this is that Ms Tigere, the litigant, was extremely publicity-averse. This created an opportunity for Just for Kids Law and Let Us Learn to take a lead on the media side with the agreement of the claimant’s legal team. This avoided one of the main tensions that can arise with a third-party intervention: ownership over the issue and the case in the media coverage and in the public consciousness. Interviewees noted that clear communication, planning and a division of labour on this front can help avoid problems down the road.

*“When you’re representing an individual it [the media strategy] follows from their aversion or attraction to the media. Ms. Tigere is extremely averse to publicity. I remember her being resistant about coming to hearings because she was worried about the attention. That’s quite normal. There was definitely a strategy to manage it in light of what had gone on with the Kebede case ... “ (Lawyer).*

*“The claimant’s lawyers didn’t want to do any publicity. They were really happy for us to do it. There was also that other slightly political thing, it’s not our case, we’re just interveners.” (Just for Kids Law Representative).*

*“Just for Kids Law took a lead, particularly on the publicity side of things and put a human face to how these laws affect people. I thought they did really well and I think it helped the case.” (Lawyer).*

Just for Kids Law undertook extensive media preparation with the young people. This included what the organisation calls “defensive briefings” which is a brief note with a series of key points about the issue. They are developed by anticipating what people would say to attack the campaign.

*“We set out the obvious things people would say to attack this campaign and we had to think about what our answers to those would be ... hone those to a series of bullet points and then circulate those*

**Interviewees noted that clear communication, planning and a division of labour on this front can help avoid problems down the road.**

to everybody. Not so that people had to stick to that at all, but people have got that as an aide-memoire.” (Just for Kids Law Representative).

“When my head’s in the litigation ... I need those bits of paper to pull me back to what the key messages are ... I clear my mind about everything else and just have those to keep me on point ...” (Just for Kids Law Representative).

The campaigns team also offered the young people advice on honing their public profile on social media.

“Go through your social media and delete anything that could possibly be misconstrued by anybody who wanted to write a very negative story. We’re putting you forward as a spokesperson, you are possibly going to attract attention ...” (Just for Kids Law Representative).

I asked one of the young people what her first experiences of doing mainstream media were like.

“Scary, very scary ... I did the worst thing ever: I read the comments at the end of it and I was just like, “Wow. People are vile, people are ignorant”. And I don’t know how they managed to turn a story that I felt was my story and personal to me and not in any way victimizing myself to trying to portray me as someone I wasn’t ... when I read that I called Shauneen and I was like, “I’m not doing this anymore. The campaign is great and I obviously feel passionate about it but I can’t do this personal attacks stuff.” She let me cry about it. She then said this quote to me: “don’t be afraid of what you are doing if what you are doing is right”. So that’s Rosa Parks right there. So Shauneen led with that. I felt, “Okay. Great. I know this is right”. Obviously not everyone is going to agree with you.” (Let Us Learn Representative).

Just for Kids Law is reflective about this and has put strategies in place for handling it and supporting the individual.

“I really strongly advise you not to read the [below-the-line] comments. There’s nothing in it for you. Even the supportive comments are as ill-informed as the critical ones. So my advice is don’t bother to read them.”

“I always tell people, “I really strongly advise you not to read the [below-the-line] comments. There’s nothing in it for you. Even the supportive comments are as ill-informed as the critical ones. So my advice is don’t bother to read them.” (Just for Kids Law Representative).

“There’s always a moment ... we’ve supported and encouraged somebody to do something like that and then the horrible backlash kicks in and there’s a moment for me where I think, “oh god what have I done?” I’ve exposed them to all this bile and general horribleness... And that doesn’t go away, Every single time it happens, I’m like “oh God”.” (Just for Kids Law Representative)

“If there is negative stuff, we envelop the people whose names may have been taken in vain and we support them afterwards ... The next time you talk to them they are really empowered and thrilled and it’s given them standing that they didn’t previously know that they had.” (Just for Kids Law Representative).

## The Judgment

On 29 July 2015 the Supreme Court issued a judgment in the case. There was a good deal of work put in to manage the expectations of the young people in anticipation of a potentially negative result in the Supreme Court though one interviewee noted that perhaps more could have been done to inform them of the range of possible outcomes.

“I think a week before what they [the leadership at Just for Kids Law] were saying to us is that if it is a no, that doesn’t mean it’s a no forever. Just trying to prepare people emotionally for it because a lot of people did put everything on that yes.” (Let Us Learn Representative).

“Then we made a video, which was sent to Jo Johnson, before the judgment. Because I thought even if we don’t win in court it doesn’t mean we have to give up.” (Just for Kids Law Representative).

In the end, of course, the Court ruled that it would be unlawful to refuse Ms Tigere a student loan solely on the basis that she was not settled in the United Kingdom. Many of the young people and the communications team were present in the Court on the day of the judgment. One of the surprising victories of the campaign was favourable coverage in the online version of the Daily Mail, the Mail Online (though some interviewees noted that coverage in the paper version of the newspaper was less positive).

“The judgment was definitely the best day. I mean, it was only five minutes but it was the most amazing five minutes. To know that maybe not all of us

would be able to go to uni at that time but at least some of us ...” It was bittersweet.” (Let Us Learn Representative).

“We always knew that there was a risk that the Daily Mail, for example, might seize on the story ... And then on the day of the judgment there was a photographer and a reporter [from the Mail] and I thought I’m going to confront this head on. I ran up to him and I gave him the information sheet and I talked to him about the issue as if he was someone who was going to be really sympathetic ... I introduced him to the young people we had prepared as spokespeople, gave him my number, got his number and then just when he was going to go I said “look I understand why you’ve been sent here, I know the kind of story they want you to write. If there is any way you can influence and give these kids a fair run at it, I think that would be great” ... They have these pictures of these kids embracing and being really emotional over the fact that they could go to university.” (Just for Kids Law Representative).

The campaigning around the Tigere case also highlights that fact that a certain amount of serendipity is inevitable in campaigning activity.

“I always say to people it’s not science, we just do what we do. Sometimes it works and sometimes it doesn’t ... At one point there was a film crew there and then they were pulled off to go to Calais ... really apologetic but it’s just “there’s only one migrant story today and it’s not you”. A bunch of high achieving kids protesting peacefully at the Supreme Court is not going to win out over a bunch of men in Calais trying to get on trains to the UK.” (Just for Kids Law Representative).

A number of interviewees stressed how demanding of time and resources the media side of the strategic legal campaign was, and the high level of specialist skills and knowledge needed, to maximise the chances of generating the level and tenor of coverage sought.

## 4.4 Legacy Activities

It is often difficult to define an endpoint to strategic litigation. Providing legal advice to the affected population after the judgment, undertaking follow-up litigation, lobbying government and networking and strategizing with other stakeholders may be necessary and can require an organization “being in it for the long haul”. This type of work can improve the likelihood that a court judgment is translated into changing practices on the ground. This section considers the types of issues that may arise during the “legacy phase” and what types of activities can help create the conditions by which a court victory will translate into real change for the affected population.

### *Interpreting the Judgment*

Legal cases are commonly presented as clear victories or losses but more often than not the judgments are not clear cut. A range of issues may be addressed in a case and a group may win some and may lose others. Or the victory does not go as far as the affected group would like it to go. This was true with the *Tigere* case for many of the young people Just for Kids Law was working with.

*“Before Tigere, the issue was really clear cut and could be explained pretty simply ... At the time we presented Tigere as this great victory. But then after closer analysis ... for a lot of people it didn’t change anything because of the three year settled status rule and possibly the half of life for some people. It didn’t benefit as many of the Let Us Learners as we initially assumed that it would.” (Just for Kids Law Representative).*

*“Obviously it was a fantastic victory. But in terms of messaging and campaigning it definitely complicated things ... in terms of building a campaign it’s almost like we peaked too quickly ... Now if we approach them [journalists] about things they’ll often say, “I thought this was all resolved”. That has stopped us being able to get more coverage recently because it’s a much more muddled message.” (Just for Kids Law Representative).*

*“You know, you could just jump in and do this [strategic legal] work and say “see you later”. But when you’re working with young people then you’ve got to carry on – whatever change happens there’s always going to be someone it still doesn’t quite work for.” (Just for Kids Law Representative).*

*“After the Supreme Court case we realized that actually we [Let Us Learn] still need to keep going. Because at that point we realized the new law may not be perfect.” (Let Us Learn Representative).*

Let Us Learn did a blog offering clear guidance on the eligibility criteria and instructions on how to apply for student finance.

### *Inundation of Requests for Help*

Following the *Tigere* judgment an interim policy was put into place. Let Us Learn did a blog offering clear guidance on the eligibility criteria and instructions on how to apply for student finance.

There were extensive delays by Student Finance England in incorporating the new changes. Their online application system did not include an option for those with limited or discretionary leave to remain to apply and the advice they were providing on their helplines was often incorrect.

*“Because we generated so much coverage everybody came to us as this sort of guru. Initially there was no guidance from the Secretary of State ... People were desperate to know because they wanted to go to university that September.” (Just for Kids Law Representative).*

*“Because the student loans company was so useless at coherently passing on the information to people, we became the point of contact for people asking the questions and trying to understand what their circumstances were. So we were effectively advising hundreds and hundreds of people on where they stood .” (Just for Kids Law Representative).*

*“The first year [after the case] was a nightmare [in terms of the requests for information] ... The second year was still pretty bad. This year ... schools might know, university advisors might know. Student finance should know but they don’t ... so in practice people get the wrong information.” (Just for Kids Law Representative).*

*“The student loan company apparently didn’t tell its employees about the change. I don’t think we dealt with that very well. I think we could have kicked up a lot more fuss, a lot more quickly ... But again, you hear about it in ones or twos ... by the time you realize “no, this is systemic” ... We could have really gone to town on them.” (Just for Kids Law Representative).*

### *Follow up work with the Department of Business, Innovation and Skills*

The Secretary of State held a consultation on the creation of a new category of eligibility for student

support based on long residence in the UK. The Consultation opened on 2 December 2015 for response by 30 December 2015. The deadline was extended to 8 January 2016 at the request of some respondents, including Just for Kids Law/Let Us Learn. On 15 December 2015 the Department met representatives of Just for Kids Law and Let Us Learn, Coram Children's Legal Centre, Student Action for Refugees (STAR) and UKCISA to discuss the proposals. Several interviewees noted the range of groups riding the wave of the legal victory and some political tensions between groups.

*"After the decision came down we knew BIS would have to put out a consultation. That's when other NGOs started to get involved ... We had a few strategic meetings about how we were going to respond to the consultation because we wanted to be consistent in the things that we were going to concede, as a movement, and things that we weren't going to budge on." (Just for Kids Law Representative).*

*"I have observed that within those collaborations of NGOs it can become very competitive. So if you articulate where everyone should be on the spectrum – "are you happy with being good cop, are you happy with being bad cop?" That's fine as long as we communicate with each other. That's much more likely to be effective." (Just for Kids Law Representative).*

The government proposal out for consultation would have meant those over 24 years old would have faced the tougher criteria of having lived in the UK for 20 years in order to qualify. The Let Us Learn representatives played an important role in highlighting the problem with the proposed criterion.

*"So [the civil servant at BIS] was able to hear our stories ... And I said to him "if you go through with this [proposal regarding those 25 or over] you're basically putting me back about three years ... I've been waiting to go to uni since I was 18, can you see the effect it's having on me?" And I remember breaking down, I didn't intentionally mean to it's just the way you think about your life and you had hopes and dreams and every time the goal post keeps moving ... I think that's what changed his mind. He didn't say it in that moment but you could see it and you could feel it in the room. And he really looked apologetic, like "oh shit what are we doing to these people?". And so ... they didn't put that in the rules ... So it was good to know that they actually listened and heard." (Let Us Learn Representative).*

After the consultation the government introduced a new 'long residency' qualification for student loans, allowing over 18s who were born abroad but have lived in the UK half their life to apply. Applicants' time in this

After the consultation the government introduced a new 'long residency' qualification for student loans, allowing over 18s who were born abroad but have lived in the UK half their life to apply.

country must include at least 'three years lawful ordinary residence', in order for them to be eligible for a loan.

The Government's responses states that "we were persuaded by the argument respondents made about the marked difference in treatment between those aged 24 and those aged 25 or over."

### Follow-up legal action

There was also an extensive amount of follow up legal work after the Tigere case.

*"Universities and student finance were still refusing people. So you could speak to universities and student finance people and direct them to their own website where they had posted the interim policy but they were saying "that's not in our guidance". So every case had to be referred to solicitors to force them to do it. It was crazy, for a long while it was crazy." (Just for Kids Law Representative).*

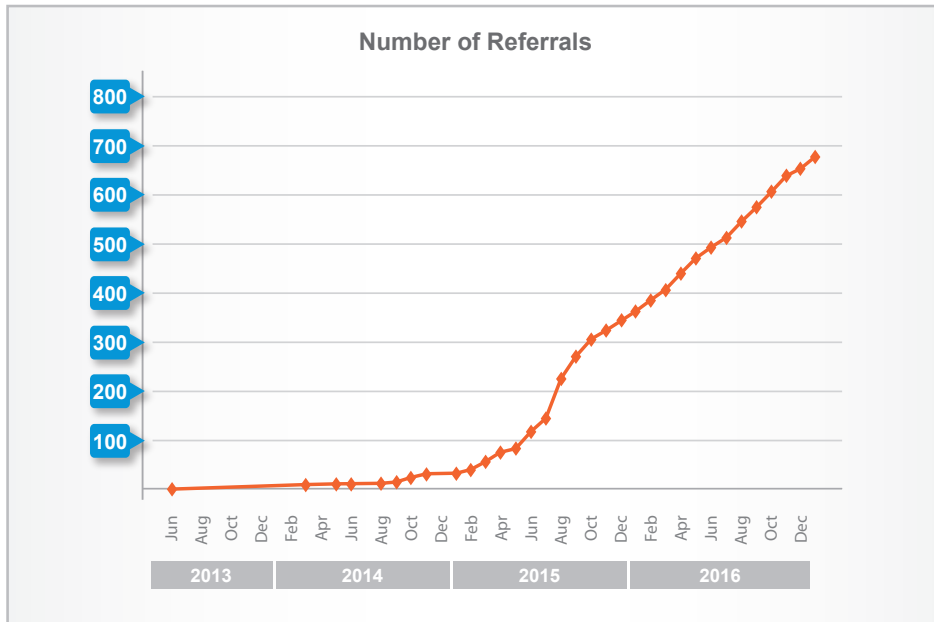
*"So we were doing a lot of pre-action work [for students who] couldn't get a student loan, we went through their case, and then just hit the student loans company with a pre-action letter. We did about 30. I'm still doing them now. I've had about 10 cases from Just for Kids Law." (Lawyer).*

One lawyer from outside the organization noted however that awareness was not as widespread as it could have been.

*"One of the things I've noticed is that in spite of all the publicity that Just for Kids Law had done immigration lawyers are still not up-to-date. Perhaps that wasn't out there enough. Perhaps that's not in Just for Kids Law's remit. But certainly the message wasn't put out there to immigration lawyers. Especially for those working with children. The citizenship thing before they turn 18. It's heart-breaking. It needs to be sold to different lawyers, in different languages at different levels." (Lawyers).*

### The Coalescing of the Let Us Learn Movement

Interviewees across the board identified the catalytic role that involvement with the *Tigere* case played in the development of Let Us Learn. The graph below shows the number of young people that contacted the Let Us Learn team between June 2013 and December 2016.



At the time of the *Tigere* hearing the group was in contact with about 100 people. There was a marked spike in the number of people who got in touch immediately after the Supreme Court case. According to the Programmes Director, at last count, the organisation has spoken one-to-one with more than 800 people. This figure does not include those young people who may have accessed advice available on the Let Us Learn web page without getting in touch with the group.

In addition to quantitative growth in the number of individuals contacting the Let Us Learn team around the time of the Supreme Court case, interviewees also commented on the way in which involvement in *Tigere* deepened the young people’s engagement with the issue and the campaign.

There’s something hugely empowering for the young people to be able to be involved in a win. They saw that they can effect change. And that has to be a gift for life. When you ask people why they don’t get involved in politics, why people are apathetic about social change, it’s because they don’t believe they have any way of making social change (Just for Kids Law Representative).

Before the Supreme Court we’d been in contact with some people but it wasn’t anything solid. We didn’t think that they’d stay or want to keep getting involved ... So it was more like come and go if you need advice ... I think

after the Supreme Court people realized “okay they’re actually doing something about this, they’re out there and they’re speaking about it”. I think it gave people the strength (Let Us Learn Representative).

*“No matter what the outcome of the Supreme Court case ... people would have felt empowered by the fact that we were migrants, we were young and we created a platform where we could speak about our own stories and not let someone else take that away from us.” (Let Us Learn Representative).*

*“For me that [the Supreme Court case] was probably the highlight of Let Us Learn ... It wasn’t until the Tigere case that I knew this is a campaign to fight for equal rights and equal access. I started seeing what could be done ... young people being organized to fight for a cause and to say “listen it’s not just one person in this situation, it’s actually quite a lot of people. And if you’re going to listen to her you’re going to listen to all of us as well”. And so that’s why it felt powerful in that moment, really powerful.” (Let Us Learn Representative).*

When asked about the evolution of Let Us Learn since the case two key themes emerged in interviews. The first is the relationship between Let Us Learn and Just for Kids Law. The former sits under the governance structures of the latter which in some ways limits the types of positions and tactics that can be deployed.



Overall, interviewees thought this had been a positive relationship.

*“Just for Kids Law has been a massive help in developing Let Us Learn from where it’s been to right now. If it wasn’t for them it would probably crumble.” (Let Us Learn Representative).*

*“The negative thing is that we are under their umbrella so we do have to succumb to their rules ... we can’t be as radical as we’d like to be and everything we do does need to be scrutinized by Just for Kids Law.” (Let Us Learn Representative).*

*“While Let Us Learn is under the auspices of Just For Kids, they are going to be limited by us in some way. When they go off on their own that’s when they’re finally going to be able to make decisions. At the moment they feel that they still need our support, which is probably right to make them sustainable in the long term. They need to strengthen, build young people up so they can sustain themselves.” (Just for Kids Law Representative).*

The second feature of the Let Us Learn campaign’s evolution concerns a broadening of their mandate away from an exclusive focus on education to other issues related to immigration policy.

*“It [The Let Us Learn campaign]’s slightly morphing in a different direction because the issue now seems to be the delays people face in getting their application assessed ... moving slightly away from education as its key battleground to the whole issue around people being able to regularize their status and get on with their lives. There could be a huge campaign issue around that that we could get really stuck into. I’d be very happy to.” (Just for Kids Law Representative).*

*“I guess we’ve [Just for Kids Law] been moving into a different terrain. There’s an awful lot of migrants rights organizations out there. We would be a real Johnny-come-lately ... These things are all very political ...” (Just for Kids Law Representative).*

*“Once you’re talking about immigration issues more generally, rather than those related to education and high achieving ambitious young people, there’s a whole load of unpleasantness that goes with that in terms of messaging and campaigning. I’m not saying it’s not do-able but you’d just need to take all of that on board – which we could do.” (Just for Kids Law Representative).*

*“Tigere was really important for those young people who are academic. My take now is that not all undocumented young migrants are academic. Some are vulnerable and it doesn’t address all of those positions.” (Lawyer).*

## 5. Conclusions and Recommendations

A number of key lessons have emerged based on this review of Just for Kids Law’s experience with the *Tigere* case. This set of recommendations is based on the assumption that organisations are generally open to the idea of using strategic legal action. Organisations can really know the issues on the ground but still be hesitant about using the law for a variety of reasons: the costs, the risks, reluctant trustees etc. While these obstacles are real they are by no means immovable and this list offers a preliminary framework for anticipating and managing some of these risks and costs.

### *Initiation: Identification of a Legal Problem and a Legal Case*

- Internal sources of legal issues:
  - Organizations working directly with those with lived experience of a problem are likely to be able to identify systemic issues that can then be translated into “legal problems”. This knowledge can also be deployed later in the process by highlighting the breadth of the problem and the nature of the affected population in the litigation in the form of e.g. witness statements, case studies or expert witnesses.
  - Problems often arise when an issue spans two areas of law/policy-making. If this is the case it is important to work with solicitors and barristers who have familiarity with all of these areas. A political diagnosis of some of the power struggles (whether explicit or implicit) can help to understand some of the dynamics at play that may lead to the policy problem in the first place.
- External sources of legal cases: A strong external network with those in advice service roles and legal practice is likely to expand opportunities for identifying strong potential cases when they arise. Being in touch with those in advice services and in legal practice will mean that when a case arises an organization is likely to be made aware of it.
- Nature of role in strategic legal action: This research has discussed the pros and cons of taking on different positions in terms of supporting a claimant, acting as an intervener or providing a witness statement. When considering what role to take on organizations should consider:
  - Opportunities: selecting what role to play will often feel more reactive than proactive, e.g. a case will already be in motion and the only way to participate will be as a third-party intervener. Nonetheless, by taking a broader perspective over a longer time frame it can be possible to take a more proactive approach to selecting how to become involved in a case.

- Considering what value an organization can add: it is seen as important by the Court not to duplicate arguments or material already before the Court. Organizations with specialist knowledge or able to gather new evidence highlighting the broader context are more likely to put together interventions that are considered helpful by the Court.
- (Potential) costs of the various forms of participating.
- The degree of influence each role offers.
- The facts of the case; lawyers often speak about cases with “good facts” and “sympathetic” claimants.

### *Preparation for Strategic Litigation*

- Inclusion of affected individuals in preparation for litigation: There are many benefits to including individuals facing an issue in decision-making about a strategic intervention. These relate to both legitimacy of acting on behalf of a group and the expertise and knowledge that comes with this relationship. Nonetheless, there are challenges to including affected individuals in strategizing including 1) issues of availability and the burden that attending many meetings can put on individuals and 2) levels of technical understanding. The literature on cause lawyers has identified the risk of lawyers hijacking an issue and having a disempowering impact on the affected population. Promoting meaningful participation in strategizing and evidence-gathering can reduce the likelihood of this form of demobilization.
- The legal argument: an important tactical decision in litigation is how bold to be in terms of the changes in law requested. As one interviewee noted “you need to know your terrain” and “victories can help move the goal posts a little”.
- Choosing counsel: As discussed above, problems often arise when a policy issue spans two areas of law/policy-making. If this is the case it is important

to work with solicitors and barristers who have familiarity with all of these areas.

clients and capturing information about the scale and nature of the problem.

### Communications and Campaigning

- Plan early: The communication strategy requires investment of both time and resources throughout the course of the legal case and well into the legacy phase. Being aware of reporting on previous cases or issues can help to guide planning. The work should also anticipate critiques and backlash and plan a way of responding to that. Training key spokespeople can also help in putting the organisation's best foot forward.
- "Ownership" of the case in the media: Claimants and interveners can have different goals in terms of broader publicity and campaigning. Clear communication, planning and a division of labour can help avoid problems down the road.
- Framing the message: Disagreements within organisations about how to frame an issue can be creative. Negotiation and compromise is crucial both with the message in the courtroom and outside. Anticipating the types of critiques that may come and crafting concise responses to them can help to shape the narrative.
- Be aware of the tensions between the legal work and the campaigning work: This includes: 1) trade-offs between accuracy and clarity and 2) tensions between the need to protect anonymity and the desires of those with lived experience who want to share their story.
- Serendipity matters: luck is a powerful force in strategic litigation. Outcomes are often difficult to predict at the outset. This is particularly true at the Supreme Court level where by definition issues are contentious and law is not settled.

- Undertaking follow-on work with relevant partners, such as e.g. raising awareness among relevant communities of the result of the case and training those practitioners who may play an important role in translating the legal change into changing practices on the ground, e.g. school advisors, immigration lawyers.
- Anticipate and plan for backlash: Backlash refers to negative responses to legal victories and can be targeted at the individual claimant or organization or at the law/policy that has changed as a result of a case. Anticipating this can involve a plan to support individuals who are affected and monitoring proposed legislative/policy changes that may seek to minimize any changes to law.
- "Ownership" of the case in lobbying efforts: Other organizations may try to seize on the critical juncture a change in law offers to either broaden or narrow the legal/policy framework. It is important to be aware of what the agenda of these groups will be, what meetings they are hoping to set up with government and to coordinate in advance.

Litigation is expensive, risky and time consuming. Yet as this paper has shown those downsides can be minimized and under some circumstances strategic litigation can be very effective in driving systemic changes. This case study has highlighted a number of potential pathways to success in achieving legal victories, policy change and, importantly, the empowerment of those with lived experience of a systemic problem.

### Legacy Activities

- Re-defining "winning" a legal case: Even a victory in the Supreme Court won't automatically translate to change on the ground. A lot of work may need to be done to achieve an effective remedy even for the individual claimant let alone for the others in similar situations.
- Be prepared for a tsunami of enquiries: especially after a case when there is media attention on the organization. Preparing for this could include:
  - Resourcing an organisation to ensure they can manage the workload in terms of advising

## Appendix 1 Interviews

I would like to thank the following people for sharing their knowledge during the research process.

- Fiona Bawdon, Just for Kids Law
- Joel Carter, Let Us Learn/Just for Kids Law
- Raj Desai, Matrix Chambers
- Sarah Hannett, Matrix Chambers
- Paul Heron, UCL and formerly Public Interest Lawyers
- Anita Hurrell, Coram Children's Legal Centre
- Chrisann Jarrett, Let Us Learn/Just for Kids Law
- Rachel Knowles, Just for Kids Law
- Shauneen Lambe, Just for Kids Law
- Dami Makinde, Let Us Learn/Just for Kids Law
- Jack Palmer-Coole, UCL
- Solange Valdez-Symonds, Project for the Registration of Children as British Citizens (PRCBC)
- Professor Ian Walker, Lancaster University
- David Wolfe, Matrix Chambers

## Appendix 2 Content Analysis

This section lists the articles included in the content analysis comparing the coverage of the *Kebede* and *Tigere* cases.

### Coverage of Tigere Case

Source	Headline	Publication Date
Guardian	School-leaver overturns immigration-related blanket ban on student loan	29/07/2015
Express	Zambian who lived in UK illegally WINS court battle for student loan	30/07/2015
Mail	Zambian student who came to the UK when she was six has won high court battle to be granted a student loan	29/07/2015
Independent	Court overturns ban on student loans for resident migrants	24/09/2015
Independent	Migrants legally living in UK being deprived of chance to go to university, says teachers' leader	21/06/2015
Telegraph	British-educated teens finally granted student loans to go to university	30/07/2015
Telegraph	Young, gifted and blocked: Meet the young people denied student loans in Britain	25/06/2015
Times	Migrant who became star pupil wins human rights fight for student loan	31/07/2015
Morning Star	Student Loan Access Opened to Migrants	30/07/2015
BBC	Student loans: The talented state school pupils denied funding	31/10/2014
Guardian	Pupils denied university place due to immigration status 'should get loans'	24/06/2015
Guardian	Schooled in UK but denied student loan: 'It's heartbreaking to be cheated of this'	21/06/2015
Independent	Britain's immigration hysteria is hindering the progress of our best pupils	16/08/2015

### Coverage of Kebede Cases

Source	Headline	Publication Date
Express	Outrage as taxpayers fork out £10,000 bill to teach Ethiopian asylum seeker to fly	05/11/2013
Mail	Taxpayers' £10,000 bill to teach failed asylum seeker to fly: Ethiopian given lessons despite Government saying he must leave country next year	05/11/2013
Mail	Revealed: Asylum seeker given £10,000 flying lessons on the taxpayer lied about his age to be cared for as a child and falsely claimed his parents were dead or missing	09/11/2013
Times	Council liable for university fees	28/10/2013
Independent	Giving the other side: the story behind the asylum seeker's flying lessons that caused fuss in the 'Daily Mail'	07/11/2013
Newcastle Chronicle	Tyneside taxpayer money paying for Ethiopian flying lessons	03/11/2013
Mirror	Asylum seeker will have £10,000 flying lessons paid for by TAXPAYERS	04/11/2013







North London: Unit 4D, Leroy House, 436 Essex Rd, London N1 3QP  
West London: The Saga Centre, Unit FF8, 326 Kensal Road, London W10 5BZ

T: 0203 174 2279 | F: 0207 681 1393

[www.justforkidslaw.org](http://www.justforkidslaw.org)