



## **Proposals to Charge Fees for Immigration and Asylum Appeals**

The Ministry of Justice has recently published a consultation paper on proposals to start charging fees for certain categories of appeals against adverse decisions by the UK Border Agency on asylum and immigration applications. Such appeals are heard in the first instance by the First Tier Tribunal, Immigration and Asylum Chamber and by the Upper Tier Tribunal beyond that. Section 42(1) of the Tribunals, Courts and Enforcement Act 2007, under which the Tribunals are established, empowers the Lord Chancellor to impose fees in respect of anything dealt with by the Tribunals. The consultation paper has been circulated to organisations such as the Immigration Law Practitioners' Association and other bodies concerned with the welfare of immigrants and asylum seekers or with assisting them in the conduct of their appeals. Responses to the consultation paper are invited and may be submitted up to 21 January 2011.

Fees are charged by the UK Border Agency for dealing with visa applications, but the costs of appeals, other than costs incurred by appellants which are not covered by legal aid, are at present borne wholly by public funds.

The main proposals in the consultation paper are as follows:

- Fees to be charged for appeals against refusal of leave to enter the UK or leave to remain.
- A higher fee to be charged for oral hearings before an immigration judge than for paper hearings, i.e. when the immigration judge decides the appeal on the basis of the papers before him.
- No fee to be charged in cases where individuals are appealing against action initiated by the State, such as deportation or removal from the UK or revocation of indefinite leave to remain.
- Fees to be charged to asylum appellants who are judged to be able to pay. However, no fee to be charged to asylum appellants who are in the Detained Fast Track Process or who are in receipt of asylum support under section 95 of the Immigration and Asylum Act 1999. The fast track asylum appeals procedure provides an accelerated appeal hearing for appellants who are detained. Section 95 empowers the Home Secretary to provide or arrange for the provision of support for asylum seekers and their dependants who are destitute or who appear to be likely to become destitute.
- Persons who qualify for legal aid will have their fees paid out of the legal aid budget.
- The Lord Chancellor to have the power, to be used at his discretion, to waive fees in exceptional or compelling circumstances. The consultation paper does not give any examples of what such circumstances might be.
- No refund of the fee if the appeal is successful as the Tribunal incurs costs in processing the appeal regardless of the result.
- Fees to be paid by all individuals bringing appeals, including dependants and children, unless they are exempt.

### **Fee levels**

The justification for the proposal to charge fees is that the number of asylum and immigration appeals is inexorably rising, rising towards 200,000 annually creating problems for the Tribunal to meet the costs

within expected budgetary constraints, therefore some part of the cost of the appeals system must be recovered from the users. The total cost to the Ministry of Justice of immigration and asylum appeals in 2009-10 was £114 million. The paper gives estimated average costs for different categories of appeals. The following examples are the lowest and highest estimated costs.

Family visit visa appeals	Paper hearings £317
	Oral hearings £586
Asylum appeals	Paper hearings £1000
	Oral hearings £1137

The proposal is that fees should be set at a level which will recover approximately 25% of actual costs, so the tentative proposal is that fees for the First Tier Tribunal should be £125 for oral hearings, £65 for paper hearings and for the Upper Tribunal £250. Many cases which in the past would have been taken to the High Court on judicial review are now justiciable by the Upper Tribunal, which was constituted from February 2010 as a court of record, and the fee charged for applications to the High Court was £400. The intention is that the system for charging fees should be introduced in July 2011.

### **Comment**

Migration Watch welcomes these proposals, which if successfully implemented could well have the result of reducing the volume of appeals, since the prospect of having to pay fees might well have the result of deterring some unsuccessful visa or asylum applicants from pursuing appeals if they do not have cases worth pursuing. It is notorious that many people pursue appeals which are without merit, simply because they cannot be removed from the UK while they still have appeals pending.

A previous regime of charging fees for family visit visa appeals was introduced in 2000 but abandoned in 2002 because, according to the Consultation Paper, recoveries were not enough to cover the cost of collection. Obviously any new system will have its own complications including costs of collection. Procedures will have to be devised and civil servants employed to administer the system. Immigration judges may well find that they have to adjudicate on whether fees are chargeable or whether particular exemptions apply. These and other factors will need to be taken into account in assessing the likelihood of success of any new scheme.

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