



## **Rights of Women response: Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier and Upper Tribunal**

### **About Rights of Women**

Celebrating our 35<sup>th</sup> anniversary this year, Rights of Women<sup>1</sup> works to secure, equality and respect for all women. Our mission is to advise, educate and empower women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives. We received the Mayor of London's Award for Distinction for outstanding and innovative work in relation to domestic violence (November 2007) and the Lilith Project's Best Voluntary Sector Violence against Women Campaign (November 2005).

### **Summary**

Rights of Women disagrees with the Government's proposal to charge fees for immigration and asylum appeals and all our comments in this response and our answers to particular questions should be understood in this light. We are concerned that the underlying policy for the introduction of fees is not open for consultation. We understand that there is a statutory power to act in s42 (1) of *Tribunals Courts Enforcement Act [2007]*. However, this power does not appear to be mandatory in terms, and its exercise now cannot be justified

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<sup>1</sup> Rights of Women is an Industrial and Provident Society and an exempt charity. Our Rules set out our charitable purposes. Pursuant to the Charity Act 2006 we intend to register as a charity in 2011. For further information see [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

and will operate to disadvantage the most vulnerable and disadvantaged users of the Tribunal.

This consultation was issued before the Ministry of Justice's consultation on the reform of legal aid, which has radical implications for immigration cases. Given the interconnected nature of these issues Rights of Women will revisit these issues raised in this consultation if necessary, depending on the outcome of that consultation. Rights of Women would also like to make the point that reform proposals of this nature should not be made in isolation from other proposals that affect that same group, some of whom are extremely vulnerable.

## **Reducing costs**

Rather than seeking to recover costs from appellants by charging them for appeals, Rights of Women believes that costs to the Tribunal could be reduced by:

- Reducing the number of appeals to the First-Tier Tribunal by improving the quality of initial decisions taken by the UK Border Agency (the UKBA). Evidence from Richard Thomas, Chair of the Administrative Justice and Tribunals Council, suggests that the success rate on appeal in immigration cases was 48%.<sup>2</sup> Research carried out by Asylum Aid found that 50% of refusals of women's asylum claims were overturned when subjected to independent scrutiny at Tribunal level.<sup>3</sup> Improvements to the quality of decision making would reduce the number of appeals and make considerable savings for both for the UKBA and the Ministry of Justice.
- Ensuring that a representative from the UKBA was present at all appeals to enable the Immigration Judge to reach a properly informed decision following advocacy from both parties;
- Enabling the UKBA representative to decide before the appeal to decide whether to concede substantive parts of the appeal.
  
- **Q1. We intend that individuals who bring an immigration or asylum appeal, and who can afford to pay, should pay. We will exempt from a fee those asylum appeals where the appellant is in receipt of asylum support, is in the Detained Fast Track process and/or qualifies for Legal Aid. Are there any implications of this approach that we have not considered that would make this unworkable?**
- **Q6. Do you agree that appeals against decisions with regard to deportation, revoking a person's leave to remain, or deprivation of citizenship or right of abode should not attract a fee? Please give reasons if you disagree.**
- **Q7. We intend to exempt appellants who receive asylum support from paying a fee. Are there any other situations where you believe an appellant should be exempt from paying a fee?**

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<sup>2</sup> November 2010, as quoted in the initial consultation response on legal aid of the Immigration Lawyers Practitioners Association available at [www.ilpa.org.uk](http://www.ilpa.org.uk).

<sup>3</sup> *Unsustainable: the quality of initial decision-making in women's asylum claims*, Asylum Aid, January 2011 [www.asylumaid.org.uk/pages/.html](http://www.asylumaid.org.uk/pages/.html).

- **Q8. We propose that asylum appellants in UKBA's Detained Fast Track process should not have to pay a fee. Do you have any comments on this proposal?**

Rights of Women believe that this approach is unworkable because it does not take into account:

- the complexities of the asylum support system and how this impacts on asylum seekers; and,
- the Ministry of Justice's consultation on legal aid which proposes to remove all immigration cases from the scope of legal aid.

Most asylum-seekers who are not (currently) in receipt of asylum-support are either destitute or unable to pay an application fee, this may be because:

- of delays processing applications for section 4 Immigration and Asylum Act 1999 support;
- because an applicant is living with friends or family because they do not want to be dispersed;
- because the applicant has been wrongly denied asylum-support.

In relation to asylum cases, if fees are to be introduced it would be much more straightforward for all asylum-seekers to be exempt. Given the importance to the individual of the issues involved (asylum cases involve protecting individuals from persecution, serious indiscriminate violence and torture, inhuman or other degrading treatment) and the vulnerability of appellants (who may have experienced serious ill-treatment in their country of origin and be experiencing trauma and other health consequences) it is vital that the right of access to the Tribunal is preserved.

Asylum appeals are not the only appeals that engage fundamental human rights issues. Immigration law appeals may involve:

- granting protection to victims of domestic violence (for example, under the domestic violence rule);
- enabling family reunion (for those who are granted Refugee Leave or Humanitarian Protection); and
- seeking respect for established family and/or private life in the UK.

Consequently Rights of Women believes that any immigration case that engages an appellant's rights under the European Convention of Human Rights (ECHR) or involves family reunion should be exempt from any introduction of fees.

If the consultation wishes to focus on those charging fees to who can afford to pay them, it should limit its proposals to those who are working or who have sufficient income to pay them.

- **Questions 2-5 on what factors should be considered when setting fees**

Rights of Women believes that there is no basis for the introduction of fees at the levels proposed. For example, while the consultation is correct in stating that fees are charged in relation to issues like Gender Recognition, no fee in

that jurisdiction exceeds £140 while those with an income of less than £26,204 pay a fee of just £30. The introduction of fees for asylum and immigration cases that are considerably higher than fees charged in other jurisdictions raise equality issues.

**Q10. We do not intend to make refunds (unless a payment has been made by mistake) or enable cost orders to be awarded if an appellant is successful. Are there other evidence or arguments that you believe the Government should take into consideration on this particular point before making a final decision?**

- Q11. Do you agree with our proposal that refunds will not be provided by the Tribunals Service if an appeal is withdrawn, invalid or out of time?
- Q12. We propose to introduce a discretionary power for the Lord Chancellor to use to exempt payment of the appeal fee in certain exceptional or compelling circumstances. Are there any other situations we have not considered where an exemption would be appropriate?
- Q16. We intend that, unless exempt, any named individual bringing an appeal, including children and dependents, must pay a fee. Please provide any comments about the consequences of this approach, which you feel ought to be taken into consideration.

Rights of Women believes that it is deeply inappropriate and unfair to charge each family member in a linked case as in most cases dependants will be seeking leave enter or remain on the same or very similar grounds as the main appellant. We believe that tribunal administration should be reduced by that promulgation of one notice of appeal for the main appellant (an if necessary, by the payment of one fee).

**Q17. Do you agree with the principle that we should extend the ability to pay the fee to someone other than the individual bringing the appeal (e.g. their sponsor)?**

The consultation states that:

“When a fee for Family Visit Visa appeals was introduced in 2000, it emerged that the vast majority of payments were made by third parties (usually family members already in the UK) on behalf of the appellant. We are also aware that not all appellants will find it easy to make payments because they do not have access to bank accounts or credit cards. We have therefore decided that it would be appropriate to enable another person to pay an applicant’s appeal fee on their behalf.”

We believe that this evidence should be taken as evidence that that majority if appellants cannot afford to pay fees. If the consultation is focusing on introducing fees from those who can afford it is should not create a system that requires family members to pay where the appellant cannot. It is difficult to see how appellants without access to bank accounts or other means of payment would be in a position to afford to pay a fee.

**Impact Assessment**

**Q21. Do you consider that any of the proposals in this paper would have an unconsidered adverse impact on any particular group according to race, gender (including gender identity), disability, age, religion or belief or sexual orientation? If so please outline the likely adverse impact and the group(s). Please also see the specific question in the Equality Impact Assessment that accompanies this consultation paper.**

Fees are not charged to appellants in the Employment Tribunal, Immigration Services Tribunal, Care Standards Tribunal or Mental Health Tribunal. The proposal to introduce fees for asylum and immigration fees when fees are not charged in comparative cases could be argued to unlawful discrimination on the grounds of race as the majority of immigration and asylum appellants are of minority ethnic origin.

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