

ILPA response to the Ministry of Justice consultation *Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal*

ILPA's response to the Ministry of Justice consultation *Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal* is attached.

ILPA does not accept that imposing fees on appellants in the immigration and asylum appellate system is fair or sensible.

ILPA understands that the Government's intention to cut the Government deficit and to save money from Government services. It would be more effective to take measures to reduce the need for appeals, and thus the cost of the system, by:

- ensuring that the UK Border Agency abides by the law, changes its practice immediately when it has been found to be illegal (for just one example of a case in which it did not, see its reaction to the decision of the European Court of Justice in *Metock* (C127/08) and makes more correct decisions in individual cases;
- the UK Border Agency's reviewing decisions when appeals have been lodged and before the appeal is fixed for hearing, thus avoiding prolonged unsustainable opposition to appeals.
- the UK Border Agency's not applying to pursue cases after it has lost the case at the First-Tier Tribunal where its arguments are not sustainable in law.

Imposing fees on appellants adds to the inequality of arms in the system, where in all cases individuals are appealing against Government decisions. Appellants have already paid a large immigration application fee to make the application that has been refused, and may have to pay for legal representation if the proposed changes in the legal aid system are implemented.

Similar Tribunals do not impose fees on appellants. The majority of immigration and asylum appellants are from minority ethnic groups, and imposing fees for this part of the justice system only risks creating unlawful race discrimination.

If, contrary to the submissions above, fees are imposed, ILPA considers that they should be paid by the UK Border Agency if the appeal is successful. This would work towards equality of arms and could discourage the UK Border Agency from making unsustainable decisions.

The enabling legislation permits discretion not to charge fees. ILPA believes that fees should not be charged for:

- all asylum appeals
- all appeals which raise issues under the UK's international obligations
- all appeals where an appellant is a child
- all appeals where the appellant is/was an unaccompanied child seeking asylum

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- all appeals by survivors of domestic violence
- appeals of all appellants who would have met the means and merits tests to qualify for legal aid, even if legal aid is removed from some appeals.

All ILPA's comments on the consultation questionnaire should be read in the light of these principles.

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