Ministry of JUSTICE

Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. Please return the completed form by email to IPTInbox@tribunals.gsi.gov.uk Thank you.

Q1. We intend that individuals who bring either an immigration or asylum appeal, and who can afford to pay, should pay. **We will exempt from payment 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?**
Comments: ILPA opposes the Government's proposal to charge fees for immigration and asylum appeals and all our comments should be read in the light of this. Those appealing have already paid substantial fees just to make the application which was refused. An application for Indefinite Leave to Remain in the UK made by post costs £900 per person, and if made in person at the UK Border Agency, £1250. A visit visa from abroad is £70; a student applying for a visa from abroad must pay £220, and applying for a student extension of stay in the UK by post costs £357, or in person, £650. These fees are not refunded if the application is refused. There is a statutory power to act: s. 42 (1) of theTribunals, Courts and Enforcement Act 2007. The power is not mandatory in terms, and its exercise is in ILPA's view unjustified in principle and unlikely to operate fairly in practice for the reasons set out in this response. Alternatively, it is noted that under s. 42 (2) of the 2007 Act, an order under subsection s. 42 (1) may contain provision to set (a) scales or rates of fees; (b) exemptions from or reductions in fees; and (c) remission of fees in whole or in part. Although the Government has set out proposals relating to rates and scope (and a discretionary power to exempt), remissions are not discussed and/or dismissed without explanation in this document. ILPA urges that remissions be considered. There is no justification given for imposing fees for appeals, except that this is possible. The UK Border Agency's most recent consultation on fees for immigration applications asked for views about whether the fee should include a proportion for the cost of appeals; 24 out of the 46 responses to that question said that they should, only 12 out of those 24 thought that it should be by paying a fee to appeal. Respondents also stressed that the fee should not be at a level to discourage appeals. The whole consultation attracted 98 responses; these alone are not a sufficient evidence base on which to change a policy. The results of the consultation are at: http://webarchive.nationalarchives.gov.uk/20100422120657/http:/www.ukba.homeoffi

ce.gov.uk/sitecontent/documents/aboutus/consultations/charging09/ .

There are many circumstances where people cannot afford fees which are not covered in the list in the document. Some destitute asylum seekers are staying with friends or family and may not have applied for asylum support because that would entail dispersal, but that does not mean that they can afford to pay fees. The related consultation on legal aid proposes removing legal aid from nearly all immigration appeals; ILPA opposes this proposal and will respond to the further consultation on fees promised if it decided to proceed with changes to the scope of legal aid.

The Tribunals Service Q & A on this proposal states

"The Tribunals Service has always reserved the right to charge fees for appeals and, in some cases, has exercised that right (e.g. Lands and Gender Recognition jurisdictions)."

But it is notable that those applying for a Gender Recognition certificate with an income of less than £26,204 pay a fee of £30 and no fee exceeds £140. That demonstrates the unfairness of the level of fees proposed as opposed to supporting the proposals.

In the Lands Chamber, fees (new fees from 29 November 2010 (SI 2010/2601) are higher but the matters with which they deal, such as restrictive covenants and right to light applications, are not by definition disputes between persons and the State and are wholly dissimilar from immigration and asylum appeals. They are not precedents for the fees proposed for the Immigration and Asylum chambers. Moreover, the Land Chamber has power to award costs.

Other chambers of the First-tier Tribunal do not charge fees. These include the Employment Tribunal, the Immigration Services Tribunal, the Care Standards Tribunal and the Mental Health Tribunal. This proposal risks unlawful race discrimination as the majority of immigration and asylum appellants are of minority ethnic origin.

Of particular note is that the Tax Chamber - which hears appeals solely against decisions of the State - does not charge fees, even where the appeal concerns a very substantial and expensive financial dispute. It is apparent from both the examples the consultation document gives, and all other areas of the Tribunal Service's work, that immigration and asylum is being singled out, both by having fees at all, and in respect of their substantial level. No justification whatsoever is offered in the consultation document for this different treatment for asylum and immigration and no legitimate basis for the different treatment is apparent. If it is to be suggested that other chambers are also bringing in fees then there is no justification for singling out immigration and asylum by bringing in fees for this area of law more quickly.

ILPA asks for clarification on whether that is the intention as we understand that other chambers of the Tribunal do not have plans to introduce new fees.

Q2. We propose that fee income should not exceed about 25% of full cost

recovery. If you believe that we should be charging a higher percentage of cost recovery initially, please explain your reasons and how we can ensure access to justice for those of limited means.
Comments: ILPA does not think that a higher proportion of the cost should be charged to appellants. ILPA considers that the proposed fees are plainly too high for persons of modest means - see the above comparison with gender recognition. The document gives only an estimated cost of the Tribunals Service's dealing with immigration and asylum appeals. This could be subject to change if the numbers of appeals fluctuate, as they may do with the proposals for the migration cap and other changes, which could lead to appellants paying more than the 25% suggested. ILPA would oppose any higher proportion being charged to appellants. We should also oppose fees being raised in the future to cover a higher proportion of costs. The justice system is of benefit to the whole of the country, not only to those who need to use it directly, and should be the responsibility of all. The current economic circumstances are not expected to last for ever and justice should remain part of the State provision. Increased fees, and the possibility of the end of legal aid for most immigration and some asylum appeals, underlines the need for affordable access to justice.
Q3. We intend to charge more for an oral hearing in order to make a contribution towards the additional administrative and judicial cost of the appeal. Are there any implications of this decision that we have not considered?
Comments: In relation to immigration appeals, there has been previous research indicating a substantial disparity between the prospects of success for appellants at oral hearings as compared to paper appeals. In 2004, the Constitutional Affairs Committee (now the Justice Committee) stated: "We are deeply concerned at the current disparity in success rates between oral appeals and appeals which have been decided only on the basis of the papers in relation to family visitors. This indicates that there may be substantial injustice done to those who decide not to opt for an oral appeal." (Asylum and Immigration Appeals, Second Report for Session 2003-04, HC 211-I, 2 March 2004, Summary) The Committee had visited the entry clearance post at Mumbai, and reported that officials there had "acknowledged that oral appeals were more likely to be successful than written ones (over 70% of oral appeals, as compared to 40% of written appeals were successful)" (paragraph 118 op cit). Evidence from Citizens Advice identified "a marked and deeply worrying—but as yet unexplained—disparity between the success rate at oral hearings (70%) and in those appeals determined on the papers

only (40%)" (paragraph 119 op cit); and Citizens Advice said in their evidence:

"In common with other organisations, we have consistently maintained that an oral hearing offers the best chance of justice in appeals of this kind, where the credibility of both the appellant and his/her UK-based relatives is often at issue. At an oral hearing, the IAA adjudicator can assess the credibility of the appellant's relatives (although not, for obvious reasons, that of the appellant) to a degree that is simply not possible in paper-only appeals. And, of course, in oral appeals the appellant's case may benefit from its oral presentation to the adjudicator by a skilled legal representative". (paragraph 119 op cit)

Suggestions made to the Committee included that: "the differential success rates are caused by the presence of the sponsor at oral appeals, legal representation and that some adjudicators merely give pro forma determinations in paper appeals that just rubber stamp the ECO's decision" (paragraph 120 op cit). The Committee itself observed:

"As many asylum appeals turn on questions of credibility, it is particularly disadvantageous for the applicant to be absent from the oral hearing. Research into the relative success rates of oral as opposed to paper based appeals in family visitor cases has shown that oral appeals have a higher rate of success, particularly when the sponsor is available to give oral evidence." (paragraph 79 op cit)

The research, to which the Committee there referred, was H. Crawley and others, Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities in Success Rates by Appeal Type (London, Home Office, 2003; ISN 1473-8406) The following key points were drawn from that research:

- In October 2000, an appeal right for visa applicants who are refused a visa to visit the UK for family reasons was reintroduced. Although the fees were reduced in January 2001 – an oral appeal cost £125 and a paper appeal cost £50 – the family visitor appeal rate remained lower than anticipated;

- For appeals determined between October 2000 and September 2001, 73% of oral appeals were successful, compared with 38% of paper appeals;

- Key factors which influenced the decision about whether or not to appeal included the information provided about the appeal, expectations and experience, timeliness, the fee, and the availability of alternative means of redress, particularly the ability to reapply for another visa at any time after the refusal;

- Between October 2000 and December 2001, 51% of appeals were heard orally and 49% were decided on the papers. The lower fee was found to be a key factor in selecting a paper appeal. The influence of third parties, especially legal representatives, was an important factor when an oral appeal was chose;.

- That the appellant's sponsor can attend an oral appeal and give evidence is the most important factor in the different success rates.

The initial appeal is an entitlement by operation of statute. It is so for a reason; because it is a fundamental tenet of justice that an individual is permitted to challenge the decision of a Government department and for that challenge to be seen and heard by the judicial decision maker. Appeals involve delicate judgements about evidence. The facts are determinative of how the decision maker disposes of an appeal. Where such decisions affect an individual's life in the way that immigration

decisions do, whether to accept what an appellant says, or the evidence secured and advanced, is not something that can always fairly be based upon sight of the papers alone. This is especially so where the appellant's evidence (in all its forms) is the only evidence before the decision maker. It is contended that access to justice demands that the exercise of a right of appeal should not be inhibited by lack of financial resources. The introduction of appeal fees will have exactly that effect. Charging a higher fee for a more effective appeal, thus putting financial pressure on appellants to opt for a second-best appeal, is contrary to the interests of justice.

It is said that higher fees should be paid for oral hearings because they cost more, however the need for oral hearings might be reduced if

(a) the Secretary of State for the Home Department made legally adequate decisions based on a proper approach to the evidence and law in the first instance;

(b) the Secretary of State for the Home Department were present at initial appeal hearings so that the judicial decision maker might take a more informed view of the case before him/her;

(c) if the Secretary of State for the Home Department's representative were empowered in advance to decide whether to concede substantive parts of the appeal (a ground of appeal) and/or constituent elements of what is in issue e.g. a limb of the immigration rules etc;

(d) if the Secretary of State for the Home Department were more engaged with case management and procedures, including at the stage of onward appeals, where the Secretary of State for the Home Department is obliged but fails (refuses) to respond and/or to reply to successful applications for permission to appeal.

ILPA urges the Ministry of Justice to press the UK Border Agency on these points, which would greatly enhance the effectiveness of appeals.

The importance of oral hearings has been, in another context, firmly established by the House of Lords. In R (Smith & West) v Parole Board [2005] UKHL 1, Lord Slynn of Hadley said:

"There is no absolute rule that there must be an oral hearing automatically in every case. Where, however, there are issues of fact, or where explanations are put forward to justify actions said to be a breach of licence conditions, or where the officer's assessment needs further probing, fairness may well require that there should be an oral hearing. If there is doubt as to whether the matter can fairly be dealt with on paper then in my view the Board should be predisposed in favour of an oral hearing." (paragraph 50)

Lord Hope of Craighead said:

"If the system is such that oral hearings are hardly ever held, there is a risk that cases will be dealt with instead by making assumptions. Assumptions based on general knowledge and experience tend to favour the official version as against that which the prisoner wishes to put forward. Denying the prisoner of the opportunity to put forward his own case may lead to a lack of focus on him as an individual." (paragraph 66)

Lord Bingham of Cornhill, giving the lead opinion said:

"While an oral hearing is most obviously necessary to achieve a just decision in a case where facts are in issue which may affect the outcome, there are other cases in which an oral hearing may well contribute to achieving a just decision." (paragraph 31).

At that same paragraph, Lord Bingham cited with approval the following from the US Supreme Court:

"Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decisionmaker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore, a recipient must be allowed to state his position orally." (per Brennan J Goldberg v Kelly 397 US 254, 269 (1970))

It is significant that in immigration and asylum appeals it is not uncommon for the relevant evidence or factual issues to appear differently from how they appear in the initial refusal decision, and this is just as likely to result from the paucity of the initial decision and reasons given as from the way in which the appellant has presented his or her case to that decision maker. It is significant that in many immigration decisions the decision maker may rely on points that the appellant had not even been aware of as being in issue at the time of his or her application (e.g. general grounds for refusal in the Immigration Rules). The likelihood of appellants being gravely disadvantaged without an oral hearing for the reasons identified by their Lordships are as likely to apply in immigration and asylum appeals as in the parole proceedings at issue in the particular case. Charging a higher fee for an oral hearing thus militates against access to justice.

Q4 Do you consider that a higher fee should be charged for managed migration (settlement) cases, and entry clearance officer (settlement) cases? If you do, what level of charge do you think would be appropriate for settlement appeals (please specify for both oral and paper appeals)?

Comments: ILPA does not support the idea of fees and is not prepared to make such suggestions about their levels. We do not think that higher fees should be charged for these cases.

Q5 What other factors do you think we should take into account when

setting a fee?

Comments: That people who are appealing against immigration decisions have already paid high fees to make the application that has been refused, and may have paid for representation (this could be affected also by any further restrictions on eligibility for legal aid in immigration and asylum cases). As the UK Border Agency makes so many wrong decisions, and fails to correct them in time for an appeal, it is unfair for appellants to have to pay extra to correct them.

The decisions appealed against are made by the Government in response to an application from an individual. Government's resources to make decisions and to appeal are much greater than appellants', and appellants should not be further disadvantaged by having to pay these fees.

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 to abode should not attract a fee? Please give reasons if you disagree.

Comments: Yes, ILPA agrees with this proposal.

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?

Comments: .Yes.

All asylum applicants who have no other means of support, (even if they are not claiming asylum support because they are living with friends and do not want to be dispersed); all people who meet the current financial and merits criteria for legal aid and all children (whether applying alone or as part of a family group, whether making an immigration or an asylum application) should not have to pay appeal fees.

ILPA also considers that people who are applying on the basis that they:

- have been /are victims of domestic violence; or

- were/are unaccompanied children seeking asylum, including those receiving support and/or services from a local authority; or

- have a case under any article of the European Convention on Human Rights or of the 1951 UN Convention Relating to the Status of Refugees, or under any of the UK's international obligations including under European Union law and the Council of Europe Convention on Action against Trafficking in Human Beings should not have to pay fees.

If fees are set at unaffordable levels, then the appeal will not constitute an effective remedy for the purposes of the UK's international obligations.

There should also be clear criteria for deciding on remission of fees for those who simply do not have the resources to pay appeal fees.

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?

Comments:

We agree.

Q9. We propose that appellants who qualify for legal aid will not have to pay the fee themselves. Instead this will be funded by the legal aid budget. Do you have any comments on this proposal?

Comments: We agree - if legal aid remains available. If it does not, people who would have qualified under the previous financial and merits eligibility criteria should not have to pay a fee. However, given that this would be an artificial transfer of funds within the Ministry of Justice, any such transfer should not be used to justify claims

about increases in legal aid costs.

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?

Comments: ILPA believes that the Secretary of State for the Home Department should pay the appeal fee if the appeal is successful.

The appeal was made because the initial immigration or asylum decision was negative and the Tribunal has then reversed it. Such a provision would help to encourage the Secretary of State to make initial decisions that are 'right first time' and thus reduce the number of appeals and thus the costs to both the UK Border Agency and the Ministry of Justice.

The consultation document makes three points. Firstly, it indicates that the Tribunal Service incurs the cost whoever wins. This is an argument against refunding fees, not an argument about which party pays the fee.

Secondly, the consultation document says that sometimes an appeal may be allowed by reason of fresh evidence and thus success may not indicate that the original decision was wrong in any respect. The proportion of appeals in which the judge agrees with the original decision and allows the appeal solely on the basis of fresh evidence is a small minority compared to appeals in which the judge finds the UK Border Agency's decision to be wrong. There are similarly a small minority of appeals where the judge thinks the initial decision was wrong subsequent developments mean that the appeal cannot succeed. If there is to be a single rule about which party pays depending on whether the appeal is allowed or dismissed it should reflect the position in the case of the majority of appeals.

The third objection identified by the consultation document is that each side currently pays its own legal costs (if any) regardless of the result. However, this reflects the original (and out-dated) notion that lawyers are unnecessary. In any event, this is not an issue about payment of lawyers. The Tribunal Service is seeking a payment towards its costs and the issue is from which party is it fairer to seek this payment in the case of (a) dismissed and (b)allowed appeals.

If this proposal is not accepted, if appellants win their first-tier appeal and the UK Border Agency applies to appeal further and is unsuccessful in that application, or in the further appeal itself, the appellant's initial fee should be reimbursed. By continuing the case the UK Border Agency has continued to use much more public money to try to justify a decision which has twice been held to be wrong.

Alternatively, the Ministry of Justice should reimburse the fees when the Upper

Tribunal sets aside the decision of the First Tier Tribunal as this demonstrates that that decision was wrong and the appellant should not have to pay for the Tribunal's mistake.

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?

Comments: No. If the UK Border Agency withdraws the decision it has made before the appeal, having decided that it cannot justify the refusal, the appellant should not have to pay any fee. The UK Border Agency should pay any fee in those circumstances for the reasons set out in response to the previous question. In any event, the administrative costs to the Ministry of Justice in dealing with a case which does not go to a full hearing/ determination must be less than for those that do.

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?

Comments: See ILPA's response to question 7.

ILPA would prefer that the statutory exemptions from paying the fee should be greater, without appellants having specifically to apply for exemption. If this is not done, then there should be a presumption of exemption in those circumstances listed at the answer to question 7.

Q13. As additional administrative and judicial costs will be incurred by the Tribunal, do you agree that an additional fee, should be charged to those

people who make an onward appeal to the Upper Tribunal?
Comments: No. If, as proposed by the Ministry of Justice, legal aid is removed from most immigration applicants, then people who will have to decide on their own, without legal advice, about whether and how to make such an application should not also be charged for doing so. If there is to be a fee, then either the UK Border Agency should pay it if the appeal is successful or it should be reimbursed if the First Tier Tribunal determination is set aside. As a matter of fairness, ILPA seeks confirmation that the fee will also be charged if the applicant/ appellant in the Upper Tribunal is the UK Border Agency. The UK Border Agency is charged where it applies to the Administrative Court.
Q14. Do you agree that the cost of an additional fee, for those people who make an onward appeal to the Upper Tribunal, should be introduced at a lower level than that previously charged by the Administrative Court?
Comments: ILPA does not agree that a fee should be introduced, but if it is, yes.
Q15. For the reasons detailed above, we consider it necessary to move to a system of single lodgement of appeals in the UK for out of country appeals. In proposing single lodgement, what implications do you think there will be for people overseas who wish to make an appeal that we have not considered?
Comments: ILPA fears that some appeals will not be lodged at all, when appellants do not have a UK sponsor and do not have access to good legal advice about appealing. Having to pay a fee, and to pay for secure transmission of an appeal and substantial documents to the UK will be a significant disincentive. ILPA fears there will be more instances of disputes as to whether an appeal has been lodged or not. ILPA urges that the Tribunal should always accept faxed appeals and faxed documents as a valid method of service. The difficulties of paying a fee in sterling include that not all people will have access to credit cards and that the fee will be a higher proportion of people's salary/savings in many other countries than it is in the UK, thus militating against justice.

All overseas appeals being lodged in the UK, as well as collecting the fees, will add to the administrative work of the Tribunals Service. It is not clear what work has been done to quantify that potential cost, and whether the proposal will actually produce the savings claimed for it.

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.

Comments: ILPA does not agree that all appellants should pay a separate fee when the decision appealed against is on the same grounds for all. Frequently in family visit cases, a child or wife will be refused on the grounds only that "you have applied to visit with your parent/husband but his application has been refused." It is unfair that there should be several fees to pay when the appeal is the same.

ILPA urges that all children should in any case be exempt from fees.

Charging an appeal fee for each family member when the issues are the same and the appeals are determined in a single determination would be plainly disproportionate to the cost. Such disproportionate and unfair appeal fees would make the appeal unaffordable for many families.

At the very least, an appellant whose case depends on the result of another family member's case, where they have appealed together, should pay a reduced fee, in a similar way as such people do for leave to remain applications. Family members of people applying for settlement in the UK pay a fee of £250 (compared to £900 for the principal applicant) or £350 for an application in person; family members of a student pay £100 by post and £150 in person, compared to £357 and £650 for the student.

It is also vital that the benefit of the doubt be given to applicants, and that appeals are not treated as invalid if the Tribunals Service make a mistake in processing the fee. The UK Border Agency regularly makes mistakes about taking payment for applications and this turns people into overstayers through no fault of their own. It is

vital that the Tribunals do not remove rights of appeal in this way.

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)?

Comments: No. It is the individual bringing the appeal who should decide whether or not to appeal the decision. Were this principle applied, it would not be.

Q18 To what extent do our proposals impact on you as a Business, University, Charity or Non-Profit Organisation? Please provide any evidence you have to support this that you would like us to consider.

Comments: We should expect more inquiries from individuals and organisations about any other sources of funding for paying the appeal fees for indigent clients.

Q19. Noting our intention to only take payment by credit/debit card, bank or wire transfer or by an on-line payment system, can you foresee any problems with this approach that we have not considered? Please provide details.

Comments: Yes - it is important to recognise that there may be problems for asylum seekers and anyone without status in the UK in getting a credit card or accessing any other way of paying electronically, and they cannot open bank accounts without evidence of their immigration status and identity, so may have great difficulties in making payment of fees.

Q20. If there are any other options or approaches you believe the Government should take into consideration please provide comments with your consultation response.
Comments: See above, especially concerning liability for payment of fees being shared fairly between the parties. Any fees should only be introduced for immigration and asylum if also introduced for other similar tribunals and at similar, affordable levels (although, for the avoidance of doubt, ILPA does not support a general imposition of fees).
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.
Comments: Yes; the majority of people who have immigration and asylum appeals are from minority ethnic groups and they will be most affected. Some of the highest proportions of visa refusals are of nationals from countries where there are settled communities in the UK who often suffer multiple deprivation and are therefore less able to afford the fees - Pakistan is a case in point.
Q22. What are your views on the proposed removal of the dual lodgement option? Are there other changes to the rules which should be made as part of the removal of this option?
Comments: See answer to question 15 above. There must be safeguards to explain clearly how appellants from overseas can lodge appeals in the UK in relation to proof of lodging, documents required and the method of sending the fee.
Q23. What provision should the rules for the First-tier Tribunal and Upper

Tribunal make for those appeals where the Fees Order requires that a fee be paid?
Comments: There should be provision for the Tribunal to determine which party pays the fee or whether the fee should be reimbursed/ waived in an individual case.
Q24. What provision should the rules for the First-tier Tribunal and Upper Tribunal make for disposal of appeals where a required fee has not been paid?
Comments: There should be provision for the appellant to be requested either to pay the fee or give reasons why the appeal should be permitted to proceed in the absence of a fee.
Q25. Should other changes to the rules for First-tier Tribunal and Upper Tribunal be made in the light of the introduction of fees?
Comments:

Equality Impact Assessment

Q1 – Are there other sources of historical data you feel would give us additional or more accurate data on how fees for immigration appeals could impact on equality groups?
Comments: ILPA is not aware of further research data.
Q2 – Do you agree that our assumption that the role of income has a potentially greater impact on an appellant's decision to appeal when introducing a new fee is reasonable?
Comments: Yes
Q3 – Do you have evidence that the introduction of fees for all immigration appellants, except those who are exempt, directly discriminates against a particular ethnic group?
Comments: Because a high proportion of immigration and asylum appellants are from minority ethnic groups, the decision to impose fees will have a greater impact on them.
Q4 – Do you have any evidence that the approach describe at 8.6 and 8.7 will impact on equality groups?
Comments: ILPA has indicated above that it considers the proposals to be racially discriminatory given that other comparable tribunals do not charge fees for appeals.

Q5 - Do you have evidence that you believe shows that the level of fee proposed will have a disproportionate impact on any of the equality groups that you think should be considered in the development of a full Equality Impact Assessment?
Comments: As discussed above.
Q6 – Are there other options for exemption or remittal you think we should consider that may mitigate any potential equality impacts while allowing us to keep the level of fee charged to the level we propose?
Comments: As discussed above.
Q7 – Do you have any evidence that charging a two stage, lower fee than that in the previous system will have a disproportional impact on any of the equality groups?
Comments: As discussed above.
Q8 – Do you have any evidence of any potential equality impacts of the process described at 8.26 you think we should consider?
Comments: As discussed above

Q9 – Do you have any suggestions on how those potential equality impacts could be further mitigated?

Comments: As discussed above.

Q10 This is an area where we would particularly welcome your views on any evidence for potential equality impacts you have access to that we have not identified and any suggestions you may have of steps we can take to mitigate these issues.

Comments: As discussed above.

Q11 – Do you have any evidence that our approach to family appeals is not reasonable or justified?

Comments: Charging a full fee to each individual in a family cannot be justified, when it is clear that the costs of a family's appeal are less than those there would be for each individual member if they lodged and fought an individual appeal. The UK Border Agency recognises this in relation to immigration applications from family members.

Q12 – Where, in answer to any of the questions that have been asked, you have evidence of a potential impact on an equality group and have a proposal on how we may be able to address this, please let us know so that we may consider it as part of our consultation process.

Comments: Charge no fees. Charge reduced fees for family members whose appeal depends on the determination of another family member's appeal.