Dear Ms Homer,

Points Based System fees – ILPA response to consultation 9 November 2007

Thank you for your letter of 24 October, asking for views on the fees it is proposed to charge for the first phase of the points-based system by 9 November. ILPA has already been in touch with the Border and Immigration Agency (BIA) to protest at the short time allowed for this consultation.

The letter of 24 October sets out the more general, and not Points-Based system specific, commitment to restrict any fee rises for existing work in 2008/9 to the level of inflation. This is welcome, but ILPA does not consider that it is enough. The fees for settlement were increased more than 100% with effect from 1 April 2007, with very short notice, causing severe and continuing hardship to many families. ILPA does not accept that it is right that people applying for settlement, rather than the whole of society, should pay for the costs of enforcing immigration controls, and urges that this decision be reconsidered and that the fees for settlement be reduced. ILPA is particularly concerned that settlement applications from family members of settled people, and from those recognised as refugees or given humanitarian protection or discretionary leave (or Exceptional Leave to Remain, the former category) are charged at the same rate as those from people who have come here with work permits or under the Highly Skilled Migrant Programme (HSMP). Work permits are generally given for skilled and higher-paid jobs; people are better able to pay the fees than many people from long-settled communities where race discrimination in employment is still in evidence, or many refugees who may have been out of the workforce for a considerable period.
To understand whether, and to what extent, fees are charged at, below, or above cost recovery levels, it is necessary to be clear on what the costs of an application are calculated to be, and what is included in that calculation. This is essential for transparency. It is one thing to pay for the time for an Entry Clearance Officer to look at your application, and quite another to be subsidising the roll-out of the Points-Based or the management of the relationship with the commercial partner. In this response we have assumed that 'costs recovery' is about the cost of dealing with the individual application, not the wider system.

Proposal 1 – We expect to set fees for applications under each of the Tier 1 categories at levels that will continue to recover more than the normal administrative costs of considering the application, in-line with the approach currently adopted in respect to fees for applications for the Highly Skilled Migrant Programme, Investors and Entrepreneurs.

The primary point is that in order to charge 'above cost recovery' there has to be recognition that the levels of service being provided must be equivalent to that offered by profit-making companies. At present, ILPA members are finding that many incorrect decisions are being made on HSMP applications. This is time-consuming, distressing and expensive for the applicant. Fees charged above cost recovery would only be acceptable if the current refusal rate under the Tier is reduced. At present the number of refusals of HSMP applications which are overturned on review appears to members to be unacceptably high and to indicate that there are problems in the efficient management of the scheme/decision making. Similarly, at the Diplomatic Posts overseas, applicants are finding that there are lengthy waits for appointments to submit applications (for example in France). This worsening in service levels has coincided with the increase in entry clearance fees. As with a commercial service, applicants are generally prepared to pay fees if they represent value for money. However, without competition to drive service levels up and protect the consumers, it is not fair to expect large profits,

The UK competes in a global market for the highly skilled: we are lucky to be currently able to attract highly skilled workers to the UK, given the competition from other countries. Highly Skilled individuals make a vital contribution to both the economic and cultural prosperity of the UK. By seeking to levy unnecessarily high fees for making an application to enter the UK we are in danger of sending a message to the highly skilled that the contribution they make to the UK is not as valued as it would be elsewhere. The potential migrants choose from a number of different countries to find the best environment for them – costs should not be set at a level to deter the highly skilled

The economy as a whole suffers if we cannot fill gaps in the labour market, at whatever level: the benefits of attracting people to do jobs that need doing are felt by the UK as a whole and not only by the migrants themselves.

There are alternatives to charging prohibitively high fees – such as recognising that migration benefits all of society and therefore some costs should be met through taxation.

At present the HSMP allocates points for earnings depending on the country in which the applicant has worked to earn this sum. This allows high earners in China to enter the UK even though, when converted, the actual amount in earned British pounds is low. The scheme has been designed to award supplementary points to those under 32 years old on the basis that their current earnings are lower than those who are older and have more established careers. It would be counterproductive to set fees at such a level that talented people with potential to earn well in the UK and benefit the economy were discouraged from applying because they simply cannot afford a high initial outlay for the Tier 1 application.

It would therefore be worth considering a charging scheme akin to the student charges where initial grant of Tier 1 would cost less than the extension application dealt with in-country, where the individual has benefited from being in the UK, through successful earnings, investments, other business activities permitted mean they are in a position to pay the higher fees.

Current fees for these categories are:
HSMP - £600 (out of country); £750 (in country); £350 (extension)
Investor - £200 (out of country); £750 (extension)
Entrepreneur - £200 (out of country); £750 (extension)
We would expect to see fees set (at the very highest) as an average of these levels and not raised to the highest amount.
More consideration needs to be given to the position of family members who pay a separate fee for a visa but, once recognised as dependants, do not pay an additional fee as they are included within the main application and its fee. It is appropriate that family members' applications are included within the fee charged to the main applicant and do not bear an additional cost. For clarity this could be rolled out to the visa application stage as well. However, this should not be seen as an opportunity to increase the cost to the main applicant.
It should be clear to applicants what the total fee is: and how it is affected by, for example, dependants making their applications at the same time. Applicants have no choice but to pay the fee for applying at an outsourced centre and a total amount that includes this should be clearly presented. We consider it appropriate in the interests of transparency and assuring value for money that it continues to be possible to obtain an itemised breakdown of the elements in the fee.

Proposal 2: We similarly expect to set fees for applications for entry clearance or leave to remain under Tier 2 above normal recovery levels

This may be acceptable depending on what the cost recovery amount is considered to be (as we argued in our introduction, what is included or excluded from the calculation would need to be made transparent) and the margin above cost recovery that is proposed. Furthermore, to charge 'above cost recovery' there has to be a recognition that levels of service being provided must be equivalent to that offered by profit-making companies. At present this is not the case, for example in the following areas:

1. Visa application delays – for instance in France, and the removal of the business fast-track facility in France. The resultant delays of 1-2 months between applying for a visa and obtaining an appointment to submit the application is preventing businesses from meeting staffing needs.

2. Having no recourse to Entry Clearance Officers for complex problems, but rather reaching only the telephone call centres run by outsourced partners who are not able to assist. It can cost USD 14 or £1.50 a minute (for example the website of the UK consulate in New York records that calls to WorldBridge cost 3USD per minute) to speak to a person at a WorldBridge call centre and ILPA has repeatedly raised grave concerns at the level of service provided. The 'advice' given is often simply wrong, sometimes so wrong as to seem to be a wholly random guess. UKvisas have assured ILPA (most recently at the October User Panel meeting) that their commercial partners are instructed to 'escalate' enquiries with which they cannot deal to Entry Clearance Officers but in practice this is not happening, or only happening following lengthy (and expensive) discussions. There is little incentive for a commercial partner to 'escalate' a call or to say that they do not know when the commercial partner makes 3 USD every minute that the caller stays on the line.

ILPA would welcome a more sensible approach to the business visitor/ work permit holder divide and to allowing those coming to work in the UK for very short periods e.g. one week to cover a colleague's sickness, be allowed entry as visitors, to avoid expense and delays caused by having to obtain a work permit.

Employers should be given a choice as to whether or not they pay the visa application for their employee. Some employers would welcome the opportunity to pay for these costs without having the hassle of the employee paying and then reclaiming the sum as an expense. Other employers ask their employees to pay for the visa application and do not refund it. Flexibility is key. It is not acceptable for the certificate fee and further leave/entry clearance fee to be paid in one step, as this would necessitate fee refunds in the event that a further leave or entry clearance application is not subsequently made. It is not desirable for users to pay fees and then have to seek refunds, as this is likely to be an inefficient process, judging by current processes for refunds.

Proposal 3: To help maintain a competitive international position or reflect wider Government objectives, it is likely that fees for applications under Tier 4&5 should be set at or below cost recovery levels.

As stated in our introduction it would necessary to look at what the cost recovery amount is considered to be (what is included or excluded from the calculation would need to be made transparent) and then at the margin below cost recovery that is proposed.

However, as a general premise, we welcome the suggestion that students and youth mobility categories will be charged below cost recovery in recognition of the value they bring to the UK. We would welcome this approach for all skilled migration and for family settlement applications, in recognition of Government objectives regarding community cohesion and race equality.

Proposal 4 – We propose that relevant organisations and bodies should pay a renewable licence fee if they wish to sponsor migrants to the UK, plus a certificate fee for each certificate of sponsorship

As employers already pay the work permit fee, the presence of a certificate fee is not an unexpected cost for them to bear. The issue is whether the licence fee will be tied to the number of certificates issued and skilled workers brought into the UK or whether it will be a level fee for all employers. The certificate fee should be a fixed fee, in order that the revenue accruing to the Border and Immigration Agency varies in line with the number of employees a particular sponsor brings to the UK. Costs would thus reflect level of use of the system.

The licence fee should be fixed (assuming this is for assessing whether an employer is active and trading in the UK) and should be limited to a nominal fee for verifying the employers' eligibility for the licence (i.e. cost recovery). We note that at present, an employer who has never before requested a work permit can obtain such a permit for £190, which cost includes dealing with the individual application. This we understand to be calculated on an above cost-recovery basis. On this basis, the licence fee should be lower than £190.

If the licence fee were higher than this level, it would make the process administratively difficult for large employers who seek to administer the costs associated with relocation on a per capita basis. Some large employers would much prefer that any costs be made on a per applicant basis, so they can be charged back to individual business units who receive the relocated resource, rather than separate licence fee. For smaller employers, bringing in perhaps only one worker, a licence fee set any higher than this level would add substantially to the cost of bringing in the worker.

Proposal 5 – We want to consider the appropriate cost apportionment between the licence and certificate fees, with one contributing proportionately more in order to keep the other as low as possible

As stated in our introduction it would be necessary to know what the cost recovery amount was considered to be (what is included or excluded from the calculation would need to be made transparent).

The fee paid by employers to be entered onto the sponsorship register should be set at a low level, so as not to disadvantage employers who do not regularly sponsor migrants. It is important not to set the licence fee at a level that would discourage companies from employing migrant workers. Protection of the resident labour force (UK and EEA nationals) is built into the scheme. Where there is recruitment from outside the EEA it is because there is a demonstrable need for that worker's skills. In such circumstances, it is in the UK's interests that the migrant worker can enter.

ILPA would recommend that registration last for at least six years to enable the sponsor to employ the migrant for 5 years, until the employee may obtain ILR (six years ensures that this period is covered even if the employee does not travel immediately on receipt of the visa and allows time to apply for Indefinite Leave to Remain, a five year period, the exact period needed to apply for settlement, does not achieve this and can lead to an awkward need to get a new certificate to cover just the last few weeks of an employee's period of limited leave).

The cost of registering, issuing certificates and paying for the visa applications should not exceed the £390 paid at present for a work permit and visa.

Proposal 6: We think that the fees paid by licensed sponsors bringing migrants under Tier 2 should be broadly similar to the current fees paid by employers using the work permit system and, in the same way that work permits currently contribute to the end to end costs of migration, expect to set these fees above normal cost recovery levels also.

As stated in our introduction it would be necessary to know what the cost recovery amount was considered to be (i.e. what is included or excluded from the calculation would need to be made transparent) and the margin above cost recovery that is proposed.

If employers are being asked to pay above cost recovery to fund the whole immigration system in the UK, they will want to see an improvement to the whole immigration system, for example, to EEA applications. At the moment, unless family members of EEA nationals are given a six-month EEA family permit and unless they submit an application for a residence card on the first day they arrive in UK then they will struggle to travel once EEA family permit has expired because the application for a residence card is taking six months to process. This particularly affects visa nationals, but in practice

can cause difficulties for non-visa nationals where their entitlements are not understood. Employees who are family members thus have difficulties in travelling for business.

Employers are likely to be reluctant to pay above cost recovery to subsidise work carried out in relation to non-compliant employers. Such an approach penalises the wrong party.

Any charges should be balanced against the added expense that employers will bear by when the Points-Based System is introduced. For example, increased checking, monitoring and other compliance requirements will be costly to implement and maintain. Similarly, additional costs which will be incurred in meeting the proposed stringent advertising requirements under Tier 2, (which will need to be used in addition to the 'tried and tested' ways which are relied on to recruit strong candidates (e.g. milk rounds, use of head-hunters, recruitment agents etc which are currently recognised by BIA)).

Proposal 7: We expect that the licence fees for sponsors of migrants coming to the UK under Tiers 4 and 5 will be set at or below normal cost recovery levels.

As set out in our introduction, it is necessary to consider what the cost recovery amount is considered to be (what is included or excluded from the calculation would need to be made transparent) and the margin below cost recovery that is proposed.

Proposal 8: We need to ensure that the fees are set at levels that do not unduly impact on the competitive position of the UK and the cultural benefits that well-managed migration brings to the country

This seems to suggest that a negative impact on the competitive position of the UK may be acceptable/inevitable. We do not consider that sights should be set so low. Migrants, particularly those who would come to the UK under Tier 1 often are considering an international move to more than one country and application fees and processing times are a factor considered by them in determining to which country to move.

ILPA reminds the BIA that the question of the competitive position of the UK applies to the Points Based System a whole and in particular, careers in science, arts and entertainment which have lower salary levels but contribute to a culturally vibrant society. Well-managed migration including family reunion is necessary for a cohesive society and to recognise the benefits migration brings.

Proposal 9: One way to achieve a fair fee level may be to cross-subsidise between the people who will actually receive the ID card during the initial years of the programme and those who will not receive a card immediately but in the meantime benefit from the significant enhanced security that biometric capture brings to the immigration system

The proposal as stated is not clear – who are the groups the Border and Immigration Agency has in mind? What timeframe does the Border and Immigration Agency have in mind?

This proposal seems to be saying that all application fees should be higher to meet the cost of biometric ID cards. ILPA opposed ID cards and opposes their discriminatory implementation. The enforcement of immigration control is a general taxpayers' responsibility and the burden of payment should not fall on law-abiding applicants.

Biometrics do not benefit employers as employers do not have the technology to read the biometrics and identify fraudulent documents. This would therefore seem to be a cost which should be born by the tax-payer. We are not aware that government has ever suggested that secure borders are solely for the benefit of migrants and/or their employers.

General

ILPA is very concerned about the level of service that can be expected under the new system. Users should not be expected to pay premium fees for a service that is not accessible (for example if there is no access to the decision-makers because of the overuse of commercial partners, including to do tasks that they do not have the skills to do, or overuse of technology, e.g. automated email responses).

One of the aims of the Points-Based System is to simplify immigration applications – by simplifying the consideration process, the BIA and UKvisas would be expected to make cost savings that should be passed onto the applicant/ sponsor.

Yours sincerely
Chris Randall
Chair, ILPA