ILPA Response & Executive Summary to Consultation on Review of Charges for Immigration Applications

ILPA opposes the increase and extension of charges for immigration applications.

ILPA believes that the proposals are unjust and they do not reflect the Home Office document's stated principles of fairness, customer service, sustainable impact, impact on demand and the UK's competitiveness. ILPA believes that:

- People making immigration applications should not have to pay charges and certainly not also have to pay for any potential appeals and removal costs. Immigration controls are operated by the government on behalf of the whole society and people subject to immigration control should not pay disproportionately for a part of the state's administrative machinery which is the responsibility of the whole of society. There is no justification for those who enter and remain legally and who abide by their conditions to be charged extra for those who do not.
- The charges will impact most harshly on already-disadvantaged groups, from within minority ethnic communities in the UK already widely recognised as suffering disadvantage and discrimination, who will have to pay higher proportions of their income for making applications to remain for shorter periods.

- The charges do not give value for money and have not turned round a deteriorating service. The parts of the service for which they are charged which used to work most quickly, such as work permission, are now deteriorating and the parts which have always been slow, such as family settlement applications, remain slow.

ILPA's views on some specific consultation points:

- Settled people should not have to pay for the administrative routine re-endorsement of their settlement on a new passport or travel document. There is huge anger in long-settled communities about this extra tax on their travel, widely seen as discriminatory and militating against community cohesion.
- The proposed extension of this charge to endorsement of limited leave on new passports should not take place.
- Those people granted leave for shorter periods that normal, for example domestic workers who are given a year's stay rather than four years as work permit holders, should pay a proportionately lower fee.
- Travel documents for those who are given discretionary or humanitarian leave and who cannot obtain national passports should be charged at the same rate as refugee travel documents and British passports.
- Businesses should not be required to pay higher fees when the standard of service they expect and need is inadequate.

ILPA

December 2004

ILPA Response to Consultation on Review of Charges for Immigration Applications

6 December 2004

Charging Programme Office

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Dear Charging Programme Office

CONSULTATION: REVIEW OF CHARGES FOR IMMIGRATION APPLICATIONS

About ILPA

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration, nationality and asylum law and practice, through teaching courses and the provision of high quality resources and information, and to campaign for just and non-discriminatory immigration law and policy. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups and offers its views on the consultation in the spirit of constructive criticism in the hope that there will be genuine improvements when the policy is implemented.

Introduction

ILPA strongly supports the government's managed migration policy

and the positive way in which migration for work and business is portrayed in much Home Office publicity, from Barbara Roche's speech to the IPPR onwards. Moreover, ILPA recognises the work that the government has done to popularise this view and to make it easier for people to come here to work, ranging from schemes like those for highly skilled migrants and graduates of selected business schools to domestic workers and the sectors-based schemes. ILPA agrees with the importance of migrants to the British economy and to the cultural richness and diversity of society.

ILPA is therefore extremely concerned about the proposal massively to increase the charges for making applications for leave to remain, way above inflation, and rejects the argument that immigration applicants should have to pay extra for services that they themselves would not be using. ILPA rejects the idea of turning the immigration system into a money-spinning machine for what should normally form part of the country's general administrative budget.

ILPA opposed the imposition of charges in August 2003 and made detailed representations then – I enclose a copy for ease of reference. The Home Office then carried out its plans without amendment, and Beverley Hughes' response to ILPA of 23 September 2003 stated that consultation would not have changed the plans. She did however acknowledge that charges would be reviewed at the end of the year, and stressed the connection between charging fees and standards of service offered.

ILPA opposes the increase of fees and disagrees with the argument that people making applications should also have to pay for any potential appeal and removal. Immigration controls are operated by the government on behalf of the whole society and the arguments used for them generally are those which are expected to resonate with the majority settled and British population rather than with those who are refused and excluded. Certainly there is no justification for those who enter and remain legally and who abide by their conditions to be charged extra for those who do not.

ILPA is responding in ticking the boxes of the questionnaire but also in more detail through this letter, so I hope that both will be fully considered.

1. Basic administrative fees

The Home Office has given no breakdown of how it arrives at the amount it states meets its full administrative costs, but has suggested this will be made available at the time of implementation. It would have been helpful to do so earlier, so this could be scrutinised and any possible suggestions for savings be made, as well as showing clearly the separate costs for the immigration and asylum systems, during the process of consultation rather than when it is too late to have any effect. Although this document has moved on from the current flat fee for all applications, which ILPA urged in 2003 and welcomes now, the variations do not appear to reflect the actual work which must be done for a particular application. It cannot

cost £170 for the administrative transfer of indefinite leave, or the proposed new charge for transfer of conditions of stay, to a new passport. This is only £25 less than a complicated application requiring complex scrutiny. Similarly, when an employer has already gone through the process of applying for and making a case for a work permit to be issued to a person, how can it still cost £130 merely to confirm that leave on a passport? This process in the vast majority of cases involves only looking at a work permission document to ensure it is correct, checking that the person has a valid immigration status then putting a stamp on a passport merely to confirm permission already given. Although a small proportion of those granted work permission will have some immigration complications, in general this is only slightly more complicated than a simple transfer of leave already granted on to a new passport but it is proposed that it will cost £40 less. When no explanation for the costing is given, ILPA cannot accept that these figures are justified or reflect the principles on which the charges review are stated to be based.

The consultation document repeatedly states that asylum costs are not covered. It seems unlikely that no spin-off costs will be met. More assurances, backed up with hard information and costings, will be required for this to be accepted. Many people coming here to join their families are not wealthy. Whilst they must establish that they can be supported and accommodated here without recourse to public funds this ought not have to extend to paying more than their fair share of the costs of the society they are moving to. A high proportion of the costs of IND are for dealing with asylum applications (49,405 applications in 2003). The Home Office Corporate Plan of 2004/5 suggests a resources budget of £1.86 billion in 2003/4 and £1.6 billion in 2004/5, with 74% of this money spent on asylum costs (p. 26). It is wrong to require a small part of the community to pay disproportionately for the operation of a managed migration system, itself a small proportion of the total costs of IND.

The principles on which the Home Office states it bases its document (page 12) do not seem to be reflected in the proposals. It cannot be argued that dealing with an application for permission to stay, when the person does not know whether or not it will be granted, and whether or not he will be able to continue his life how he wants, is equivalent in the benefit it provides to the purely administrative routine of endorsing a new passport with the same conditions as were on an old one. There is no way that this endorsement could be construed as giving value for money, as the only reason why people feel they need to do it is to be able to satisfy airlines or the visa authorities of other countries that they qualify to return here. If the immigration authorities were to make it sufficiently clear to all relevant authorities that an immigration stamp or sticker on an expired passport is valid to the date it states, and the validity of the passport it is on is irrelevant, then there would be a saving of time for Home Office staff and of money and worry for the people concerned.

The consultation document does not give any consideration as to whether certain categories of applicant may be more seriously affected by the proposed fee increases. In particular we would cite the case of domestic workers who are given leave to remain in the UK for periods of 12 months only. If such a worker is to obtain indefinite leave to remain in the United Kingdom then she or he will incur, at the very least, one visa application fee, three leave to remain application fees and one indefinite leave to remain application fee. This seems to be a particularly punitive arrangement for individuals who are often poorly paid, especially when compared to a work permit holder who may have only a visa application fee and then the fee for indefinite leave to remain. Whilst the application fees reflect the administrative costs of the relevant application it may be reasonable to expect that the individual who benefits bears the cost but it is impossible to see why such a person should pay effectively four times for leave to stay for four years (which would include paying four times for a share of appeals and refusals).

Similarly students and trainee health professionals are also often enrolled on short term courses or have short-term, renewable contracts and would have fees to pay several times over for shorter periods of stay.

The Home Office should also take the principle of justice into account: it is unjust to place a heavier burden on black and other minority ethnic communities widely recognised to be suffering disadvantage and discrimination, in their families being able to stay here, their friends coming to study or to work here. Those applying for visas with a view to settlement have paid £260 for the visa and then will need to pay again some years later when they apply for settlement. In 2003, nearly 12,000 out of 19,500 husbands, 17,000 out of 38,000 wives and 15,600 out of 27,000 children granted settlement came from Africa or the Asian subcontinent. These fees will impact particularly seriously on them. Even in discussion of its basic fee, the Home Office suggests that it 'incorporates the cost of a more rigorous approach to tackling potential abuse'. This is not justified. It suggests that all people applying for leave to remain have the propensity to 'abuse' the system and therefore should be treated as though they will do so and be charged accordingly.

2. Incorporating appeal costs

When the present government, rightly, restored a right of appeal against refusal of entry clearance for family visitors, it initially proposed a fee of £500 and £150 for oral and paper appeals. There was an outcry against this charge for justice, and the fees were first lowered and then abolished altogether in 2002. It does not appear that the Home Office has learned from this fiasco, in that it is now proposing, as ILPA and others feared at the time, that a selective group of people should have to pay not only towards their own potential appeals, but towards others' appeals as well. The immigration appeals system (excluding asylum) is used by relatively few people in the UK. In 2003 there were 5580 such appeals, of which 1865 were allowed and 3445 dismissed. This compared to

81,725 asylum appeals and 21,045 entry clearance appeals. The suggestion of an extra £40 per applicant towards a system used by so few people, and which represents a minuscule proportion of total appeals expenditure, cannot be justified.

It is a national responsibility to provide a justice system for all and it should, along with the magistrates' courts and other court systems, be paid for through general taxation. As yet there is no proposal to suggest that those who are charged with an offence should have to pay more than others towards the cost of the justice system, and fines are not hypothecated. Some applicants to courts do pay a fee for their own application and this is something which they consider in deciding whether to apply. But the cost of the application fee does not represent a percentage cost of the judicial costs and applicants pay simply because they are using a system, they do not pay extra towards all the other applications which other people make. General taxation funds this, irrespective of whether the individual uses a particular service or not. This suggestion is similar to suggesting that all parents should pay an extra contribution towards a school admission appeals system, simply because they are parents, whether or not they will use it.

3. Incorporating removal costs

ILPA opposes incorporating removal costs for similar reasons for opposing incorporating appeal costs. In 2003, 11,365 people who had not sought asylum were removed. The Home Office argument that this benefits 'genuine migrants' more than the general population is specious. All people benefit from enforcement of the minimum wage and improvement of working conditions which will follow from discouragement of illegal working, all from the perception that the government is in charge of the country's borders and has a plan for migration. The government has a stated objective of community cohesion, showing that we are all together as a society. Hiving off costs for removals to a particular group will militate against that aim, suggesting that all people subject to immigration control are equally likely to break their conditions and should have an extra penalty put on them.

It is vital that applications for leave to remain are made in time. Unlike applying for British citizenship or a passport, or saving up long enough to be able to afford an entry clearance fee, applying in-time is not 'optional' if a person is to remain lawfully present in the United Kingdom. If the fee goes up to nearly £400, this will be a serious hardship for many families and a disincentive for applying. Although applicants must show they can support and accommodate themselves, this is a significant amount of money for an ordinary family, who are likely anyway to have higher costs of establishing themselves here, or keeping in touch with family abroad, of understanding the system. It is also not clear how the costs of the asylum and the immigration systems would be disaggregated – people who have to report to reporting centres, for example, are predominantly asylum seekers yet these costs are listed, as are costs for people in detention. Advisers would have to tell people to

go without, or to get into debt, in order to give priority to paying these application fees. If this proposal were implemented, the Home Office would have in effect a captive audience which will have no option but to pay unjustly-increased fees.

A short transition period of implementation of full cost fees of only a year would be inadequate. If people have to save up to find the full cost fees, they need to know in advance that this is an expense that they will face. If fees are to be increased again, the period should be longer to prepare for it.

It is unfair for those complying with UK immigration law to be subsidising a system tracking and finding those who are non-compliant. A system for fining those who are non compliant with immigration laws exists, but is rarely used. Surely the principle of fairness should dictate that before the burden is passed on to users of the immigration system generally, the current procedures in place for dealing with non-compliance should be maximised fully.

4. Exemptions

ILPA welcomes the Home Office belated recognition of the special position of separated children asylum seekers and children cared for by local authorities. We urge that the Home Office add to these groups, for example, those applying for humanitarian leave, and those applying under any provision of the ECHR.

5. Service standards in dealing with all applications

With an increased fee, there must also be an increased obligation on the Home Office to deal with cases quickly and efficiently and correctly and justly. There should be a penalty on the Home Office if its time standards are not met. ILPA suggests that at the very least a proportion of the fee should be refunded, when the application is decided, for each month or three month period over the time that the Home Office advertises as its target. This would help to concentrate the Home Office mind on efficiency and would also help to defuse some of the anger currently felt at the insupportable delays taken to deal with some applications, especially those made after the applicant's previous leave to remain had expired. The longest-running applications were made before fees were imposed in August 2003, but the Home Office has still given people unrealistic target dates for dealing with the application and does not respond to inquiries about them.

6. Students

The Home Office and Foreign Office, through UK Visas, must ensure that students who are enrolled on *bona fide* courses are granted visas with leave to enter for the length of time of the course, so that they do not need to have to pay these fees. Thus only students who change their courses, or continue to a higher course after completing their original plans, should have to pay. The Home Office has stated that this is the intention, but anecdotal evidence suggests that this

does not always happen. It is unfair that because of different actions of visa officers abroad students may have very different financial commitments. Together with other measures the Home Office is contemplating, such as requiring colleges to inform them if students cease attendance, and establishing a register of *bona fide* colleges, with effect from January 2005, this would not add to abuse but would enhance fairness. ILPA has discussed this with UKCOSA who are responding in more depth along with other student-focused organisations.

On methods of payment, ILPA members have reported a limited use of the facility to pay for multiple applications with a single payment. Whilst this option is welcomed, it is believed that the largest take up with be in the education sector where leave to remain for a number of individuals is likely to be expiring around the same time.

7. Business and employment applications

The consultation document cites practical experience in the operation of the HSMP scheme as a justification for an increase in the basic fee and refers specifically to the fact that applicants have tended to send large amounts of supporting evidence with applications (page 11). The quality of the decision making within the HSMP team is not consistent and applicants have been forced to include large numbers of documents because case workers consistently either misinterpret data that is already available to them or simply fail to consider a valid piece of evidence. A significant increase in work load must be proportioned to caseworkers' own lack of experience and knowledge. Moreover, it is essential that basic training and consistency in decision making is addressed before an increase of fees in this particular area can be justified.

There has been a significant and well documented deterioration in the service provided to business and employment applicants since the introduction and subsequent increase in fees. At time of writing HSMP applications are taking 24 weeks to process. Applications for FLR (IED) applications are taking up to 13 weeks to process. No specific proposals whatsoever have been forthcoming in relation to reducing the processing time for HSMP applications. It is inconceivable that an increase in charging can be contemplated on any level whilst delays of this length are occurring in a flagship service.

It is the Home Office's stated aim - reiterated in the consultation document - to 'attract highly skilled migrants and foreign students to the UK.....' (page 10) .The increase in fees and the lowering of service standards are likely instead to cause some highly skilled migrants to seek employment elsewhere in the world. There is a net gain to the UK economy from businesses, HSMP applicants, work permit holders, innovators and so on and this has not been taken into account in relation to the basic increase in fees for individuals in these categories.

8. Immigration Employment Document Leave to Remain

proposals

Individuals who hold an Immigration Employment Document have already submitted one application form and fee to the Home Office. The requirement for a second application form and with it a separate application fee was only imposed in April of this year. Since that time processing times have significantly deteriorated (from around 2 weeks maximum to more than 13 weeks at present).

Applicants and their employers already feel that fees are directly related to a poor performance record on the part of the Home Office and the delays brought about by the introduction of a second application form and payment of fees are already impacting on business. Delays in starting employment have meant losses to businesses in terms of sales and growth but also to the UK economy in lost national insurance and tax revenue from employees and lost taxable profits from employers.

It is noted that at 12.3 of the consultation document the statement is made that “We aim to decide 90% of valid in country approval decisions within 5 working days of the IED decision.” This is clearly nonsense in the light of current service levels and indeed Chris Hudson stated at the ILPA meeting on 5 November of this year that “there are no service levels” aimed for at present, and that staff are simply doing what they can. To introduce any increase in application fee in this area is to add insult to injury.

It should also be noted that any element of recovery of overheads, rather than merely the cost of considering the application for leave to remain is to create a double penalty for those in this situation. Applicants for the HSMP programme and SBS will, if the principle of recovery of appeal and removal costs is introduced, pay once for these costs on their initial application and then again when the application for further leave to remain is made. Such a double loading cannot be justified in any way.

It is the experience of ILPA members that the vast majority of application fees for leave to remain on the basis of an Immigration Employment Document are paid for by the employer. Whilst it is fair to say that the impact on big businesses of fee increases will be minimal, small and medium sized businesses will find the extra costs (not to mention the poor service standards) a significant burden and in some cases a further disincentive to employ overseas nationals. When the employer is in the public service, for example a local education authority or a hospital trust, extra fees are just moving public money around. We believe that fee increases will decrease the number of employers prepared to meet the cost of this application for their employees. This would increase the burden on just those individuals that the UK government is seeking to attract and retain in the UK in areas where there are acknowledged skills and/or labour shortages.

For Highly Skilled Migrants the fee will usually fall on the applicant in person creating a double billing (once for the IED approval and again

for the application for further leave to remain) for just those overseas nationals whom the UK government is specifically seeking to attract to the UK. Highly Skilled Migrants are initially granted leave to remain for just one year, therefore necessitating another application and a third application fee less than 12 months later.

Practitioners have already seen that the current level of fees and service standards have resulted in a change in the way that applications are filed. A greater number of employers now seek work permits for the maximum 5 year period to avoid the need for any work permit extensions once the individual has arrived in the UK.

Where extensions are needed, employers using the work permit scheme are making greater use of visa issuing posts overseas, filing a work permit application on an out of country basis and then requiring the individual to obtain fresh entry clearance from a visa issuing post overseas. The work permit approval stage still takes around 1 to 2 weeks but entry clearance can usually be completed on a same day basis if the individual makes the application in person in comparison with around 13 weeks if an application is made for further leave to remain from within the UK.

The current application fee for entry clearance for a work permit holder coming to the UK for more than 6 months is £75, a saving of £46 on the current leave to remain application fee. Any increase in the application fee payable for the grant of further leave to remain on the basis of the Immigration Employment Document will increase further this saving and unless accompanied by a marked improvement in service levels will increase further the use of visa issuing posts overseas simply transferring costs and pressures within the existing system.

The government's own statistics show that immigration brings substantial benefits to the UK economy in terms of filling otherwise vacant positions, extra tax revenue and benefit to business. In these circumstances it is difficult to see how penalising those businesses and individuals adding to this benefit is logical.

Whilst any increase in fees is inappropriate, practitioners would welcome the option of making payments by BACs transfer provided that appropriate controls are in place to ensure that payment is properly allocated to the relevant application and only taken once – we have heard of a number of instances where credit card details have been processed more than once resulting in multiple payments for a single application.

9. HSMP proposals

As mentioned above, incorporating an element of recovery of overheads is particularly punitive in relation to highly skilled migrants who will bear a disproportionate share of such costs – paying once when applying for the Immigration Employment Document, again when applying for further leave to remain in line with the Immigration

Employment Document and again less than 12 months later when an extension is required. Such a triple burden cannot be objectively justified particularly in view of the fact that applicants have limited rights to have recourse to an appeal.

ILPA would wish to ascertain how the figures for basic recovery are calculated for this category. It is assumed that the administrative costs are divided between the numbers of applications received. However, the number of applications received has escalated beyond Home Office anticipated levels. On what volume of applications have fees been calculated? Has the increase in volume of applications led to any economies of scale? Has any consideration been given to the forthcoming review of the HSMP programme, which practitioners believe is likely to reduce the volume of applications by raising the criteria for applicants? Has any consideration been given to the current delays which act as a major disincentive for most applicants considering this category?

At 13.4 the consultation document states that the aim is to "decide 90% of valid complete applications within 1 day of receipt and 90% within one week". The repetition of this vastly outdated service standard is inappropriate. On average, applications are currently taking some 24 weeks to consider with urgent applications (which only cover applicants changing employment) still taking over 7 weeks to consider. Once the Immigration Employment Document has been approved applicants within the UK still need to make a further application for leave to remain which, as mentioned above, takes around 13 weeks to consider.

It would be a far greater benefit to the UK economy to reduce the application times rather than to increase the application fee.

We have already mentioned above the poor quality of decision making which seems to particularly affect this category. No increase in fees can be justified until the level of decision-making is both prompt and consistent.

It should also be noted that the application fee is payable by all applicants, whether they are in the UK or based overseas. To incorporate an element for appeals and removals for those overseas who have no such rights to appeal and cannot create any removal risk is not only illogical but incapable of justification.

An increase in application fees is also very likely to create effective discrimination between those applying to the scheme from affluent western countries and those applying from third world or developing countries. For example, an applicant under the age of 27 living in Cuba needs to show annual earnings of at least £5000 in order to score points for being in one of the top income brackets of his home country. An application fee of £375 would represent up to 7.5% of his annual income. An applicant of the same age and in the same income level from America would be expected to show earnings of £27,000, the same fee would represent up to 1.4% of his annual income. Fees set at such a level would necessarily act as a

disincentive to applications from those in poorer countries. This simply cannot be justified.

Payment by BACs method is welcomed subject to the comments made above in relation to proper allocation of fees.

10. SBS proposals

It is noted that the pilot programme is under review and a decision will be made later this year as to whether the category is to continue.

ILPA's concerns stated above in relation to Immigration Employment Document leave to remain applications apply equally here. A double levy is effectively made with one payment for the SBS approval and a further levy for applicants within the UK who will be required to apply for further leave to remain.

The impact of this double levy is likely to be more keenly felt both by employers and individuals alike given the lower income nature of SBS employment and the fact that leave to remain is for a maximum duration of 12 months only.

In addition, as for the Highly Skilled Migrant programme, where the individual is outside the UK it is illogical that the applicant should bear a proportion of the costs of appeals and removals.

11. Travel documents proposal

ILPA strongly opposes the suggestion that travel documents for people granted humanitarian or discretionary leave should cost £235-£270. This huge increase cannot be justified. ILPA believes that these documents' cost should never have been separated from the fees for Convention travel documents, which are pegged in line with national passports. The Home Office makes people go through a complicated process before they are issued with travel documents. All the work of checking with the High Commission or Embassy of the country concerned has to be done by the individual, not by the Home Office. The document issued is only recognised by a limited number of countries and people need to apply and pay for visas to travel almost anywhere. Yet without other official photographic proof of identity (status letters aren't good enough) people have difficulty in proving their entitlement to be in the UK, or to work. This has become even more acute after the changes to the documents required by employers to prove a statutory defence under section 8 of the 1999 Act. ILPA considers that in many cases it is both unrealistic and unreasonable to imagine that a person will be likely to possess £235 for a travel document. Such a person will have been through a process of application for asylum, refusal, appeal, further representations and at last has been allowed to remain, with probably no financial support through the last stages of the application and even if he had been allowed to work initially will have been unable to satisfy employers of this fact. If the Home Office actually intends to phase out the issue of travel documents altogether, it should say so.

The Home Office states nothing about any negotiations it has had with the authorities of other European partners or countries further afield to see whether they will recognise these 'Certificates of Travel' as such and allow people to use them. Without such assurances, they are almost worthless and the proposal to charge a hugely-increased fee for them cannot be justified.

ILPA does not object to children having to have their own documents, provided that the fees are set at a more realistic level. Inflation has been nothing like the fourfold price increase proposed for adults, or doubling for children. Again, ILPA welcomes more flexibility in payment methods.

Conclusion

ILPA urges the Home Office to consider the comments it receives and to ensure that when the proposals are finalised they do meet its stated principles and no longer discriminate unfairly between individuals and between groups. We look forward to seeing the Home Office response to the comments it receives and any change in the policy. We hope also that details of the comments will be published as well as statistical analysis of the tick boxes in the questionnaire.

Yours sincerely

Rick Scannell

Chair, ILPA