

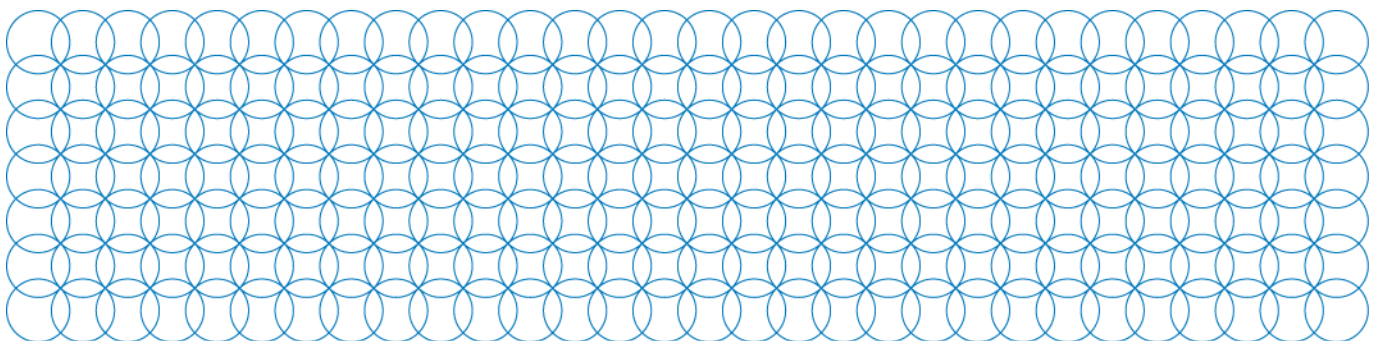


INTRODUCING FEE CHARGES FOR APPEALS IN THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

Consultation Paper CP10/10

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Tribunals Service

INTRODUCING FEE CHARGES FOR APPEALS IN THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

A consultation produced by the Tribunals Service, part of the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

About this consultation

- To:** This consultation is aimed at all stakeholders with an interest in immigration and asylum matters, or who would be affected by the introduction of fee charges for immigration and asylum appeals.
- Duration:** From 21st October 2010 to 21st January 2011
- Enquiries (including requests for the paper in an alternative format) to:** Roy Ketley
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Email: IPTInbox@tribunals.gsi.gov.uk
- Additional ways to feed in your views:** Should you wish to discuss further please use 'Enquiries' contact details above to arrange a meeting.
- Response paper:** A response to this consultation exercise is due to be published by April 2011 at:
<http://www.justice.gov.uk>

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Foreword by Jonathan Djanogly MP

I believe strongly in the Coalition's values of responsibility, freedom and fairness. It is these values which inform my judgements as we face up to the exceptionally tough fiscal situation we have inherited, and it is with these values in mind that I am introducing fees to the Immigration and Asylum appeals system.

I believe that it is reasonable to ask non-UK citizens appealing against some categories of Immigration and Asylum decisions to contribute to the costs of the administration of that appeal, where they are able to. This is particularly the case, given that some two thirds of appeal cases are declined each year.

Currently, Tribunals Service Immigration and Asylum (TSIA) charges no appeal fee. Costs are met by the Ministry of Justice through funds provided by the UK taxpayer and in part from fees levied on visa applicants by the United Kingdom Border Agency (UKBA). However, the sums collected by UKBA are only a small proportion of the costs of providing the appeal system. For 2009/10 TSIA had an overall budget of £114.7m of which approximately £85m was spent on judicial and administrative costs, £13.5m on estates and buildings and £15m on overheads.

The last Government consulted on whether users of the immigration system should contribute to the costs of the appeal system, but did not take any action. Since then the idea of charging for appeals was submitted to address the spending challenge and this Government firmly believes that it is time to take action.

We are now moving forward, and this consultation paper makes proposals for the charging of fees for appeals on Immigration and Asylum matters. The proposals are based on three central points, namely that:

- 1) those who use the appeals system, and can afford to pay, should pay a fee as a contribution towards the cost of their appeal;
- 2) total income raised will be initially set at around 25% of the full cost of the appeal system;
- 3) the fee charging process should be simple to understand and administer.

This Department is currently undertaking an internal review of Legal Aid and will be seeking views on reform shortly. If the proposals taken forward in the future as a result of that consultation affect the availability of Legal Aid in immigration appeals and consequently our assumptions about the impact of charging appeal fees to appellants of limited means, we will consult again as necessary on an alternative remissions and exemptions policy in respect of the fees to ensure that access to justice in immigration appeals is appropriately maintained.

I look forward to receiving your views on the questions asked about the practical arrangements for introducing fees for Immigration and Asylum appeals.

Jonathan Djanogly

Parliamentary Under-Secretary of State

Executive Summary

At present, an individual pays a fee when they apply for leave to enter or remain in the United Kingdom. There is currently no fee for any appeal against a decision to refuse leave.

The purpose of this consultation paper is to seek your views on the best way to implement our proposals to introduce a fee for the majority of individuals who wish to bring an appeal against: a decision to refuse them leave to enter the UK; leave to remain in the UK; or permission to vary their current leave to remain in the UK.

There is no intention that an individual who is bringing an appeal against a decision refusing to grant them asylum and who is in receipt of asylum support or who qualifies for Legal Aid will have to pay a fee.

The Lord Chancellor has the power, under section 42(1)(c) of the Tribunals, Courts and Enforcement Act 2007, to introduce fees in both the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC) and Upper Tribunal Immigration and Asylum Chamber (UTIAC). The underlying policy of recovering costs through introducing fees is therefore not in question in this consultation.

However, we believe that there is a sound policy reason to introduce fee charges at this initial level, with the proposed exclusions policy this will ensure that access to justice is properly available.

The main proposals in this consultation paper are:

- To charge fees if a person is refused leave to enter the country, refused leave to remain in the country, or an application to vary his/her leave is refused;
- To charge a higher fee for oral hearings (when the relevant parties attend a hearing with a judge) than paper hearings (when a judge considers the merits of an appeal based on papers submitted to him or her) as the costs of an oral hearing are more than those of a paper hearing;
- That appeals from individuals who are facing action initiated by the State (e.g. deportation; revocation of indefinite leave to remain; or deprivation of citizenship) will not have a fee charged;
- To exempt asylum applicants in the Detained Fast Track process, and those in receipt of asylum support under section 95 of the Immigration and Asylum Act 1999;
- That those who qualify for Legal Aid have the fee paid for them by the Legal Aid budget. The Tribunal will reimburse the Legal Aid budget for the costs of an appeal fee;
- That overseas appellants should generally be liable to pay a fee;
- To introduce a special power, to be used at the discretion of the Lord Chancellor, to waive fees in exceptional or compelling circumstances;
- To allow payment of the fee to be made by someone other than the person bringing the appeal;
- Not to refund the fee if an appeal is successful, withdrawn, invalid or out of time (as the Tribunal incurs costs in processing the appeal irrespective of the outcome);
- To charge a two stage fee for some appeals to the Upper Tribunal;
- To move to a system where all appeals will be lodged at the Tribunal in the UK, with payment made shortly after the time the appeal is lodged;
- That all individuals bringing an appeal (unless exempt), including dependents and children, must pay a fee.

Introduction and Background

This paper sets out our proposals for introducing a fee for the majority of people exercising a right of appeal against a decision made by the United Kingdom Border Agency. The consultation is aimed at anyone who has an interest in immigration and asylum matters or who would be affected by the introduction of fees.

In 2009/10 the Immigration and Asylum Chamber of the First-tier Tribunal (previously the Asylum and Immigration Tribunal) dealt with approximately 197,000 immigration and asylum appeals. In dealing with these, the administration of the Tribunal (known as Tribunals Service Immigration and Asylum, TSIA) incurs administrative costs in processing the papers, arranging hearings, dealing with enquiries, and promulgating judicial decisions. There are also the judicial costs of considering the appeals and reaching a decision. The TSIA budget for dealing with immigration and asylum matters in 2009/10 was £114.7 million.

The volume of visa appeals has risen beyond expectations over the last few years. In 2010/11 we are expecting to process approximately 180,000 appeals.

We consider that, in the current economic climate, it is not appropriate that the majority of the funding burden should fall on the taxpayer. Instead, we feel that it is only fair that those who are actually using the service to bring an appeal should contribute towards the cost, as a charge for a public service serves the legitimate purpose of making the potential user consider its value and importance.

The underlying policy of introducing fees to contribute to the costs of running the Tribunal is not in question in this consultation, as Parliament has already provided the power to do so in section 42(1)(c) of the Tribunals, Courts and Enforcement Act 2007. Without fees the service offered by both the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC) and Upper Tribunal Immigration and Asylum Chamber (UTIAC) would potentially be compromised, as the Tribunals Service would be forced to consider cost reduction measures. A description of the lower and upper Tribunal structure can be found at **Annex A**.

We are aware that under the previous Government fees were introduced for Family Visit Visa appeals in 2000, but were abolished in 2002 as the level of funds recovered was insufficient to continue to operate a fee collection scheme. Following full evaluation of this earlier fees arrangement, we believe that the proposals in this consultation paper address the concerns and criticisms of the previous system of charging fees. The main difference is that many of the complications that arose from operating a system where appeals were lodged and fees paid at overseas posts will be avoided by having a single point for lodging appeals in the UK. The administratively complex and costly process of collecting fees in local currencies and recording and reconciling these is thereby avoided by providing methods for making electronic payment in sterling directly to the Tribunals Service.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 88, have been followed.

This consultation includes questions about changes to the rules governing tribunal procedure which fee charging may make appropriate. The decision whether to make changes to the procedure rules is taken by the Tribunal Procedure Committee (TPC), which is independent of the Government. The TPC takes no part in the decision to introduce fees. The responses to this consultation will inform the TPC's decision about what changes, if any, to the rules would be appropriate on the introduction of fees.

Specific questions for comment are summarised at page 28 to 29. Replies are sought by 21 **January 2011**.

An Impact Assessment has been completed and indicates that appellants, the Government, the First-tier Tribunal and Upper Tribunal of the Immigration Asylum Chamber, the United Kingdom Border Agency, charities and non-profit organisations are likely to be particularly affected.

An Impact Assessment is attached at Annex C. Comments on the Impact Assessment and the specific questions it contains are particularly welcome.

Copies of the consultation paper are being sent to:

- Administrative Justice and Tribunals Council
- The Association of Regulated Immigration Advisors, Law Society
- Asylum Aid
- Bail for Immigration Detainees
- Bar Council of Northern Ireland
- Cabinet Office
- Citizen's Advice Bureau
- Council of Immigration Judges
- Department for International Development
- Equality and Human Rights Commission
- Ethnic Minority Law Centre
- General Council of the Bar
- HM Treasury
- Immigration Advisory Service
- Immigration Law Practitioners Association
- Law reform Committee
- Legal Action Group
- Legal Aid Support Group
- Legal Services Commission
- Legal Services Ombudsman
- Lord Chief Justice of England and Wales
- Lord Chief Justice of Northern Ireland's Office
- Lord President's Office-Scotland
- The National Assembly For Wales
- National Association for Voluntary and Community Action
- National Council for Civil Liberties
- Northern Ireland Legal Services Commission
- The Office of the Immigration Services Commissioner

- Public Law Project, Joint Council for the Welfare of Immigrants
- Refugee Action, Refugee Council
- Senior President of Tribunals
- Scottish Legal Aid Board
- The Scottish Parliament
- The Scottish Government
- UK Border Agency
- The Welsh Assembly Government

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in, or views on, the subject covered by this paper.

Chapter 1 – Types Of Appeal Attracting a Fee

In the current economic climate we believe it is appropriate that individuals who wish to bring an appeal to either the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC), or the Upper Tribunal Immigration and Asylum Chamber (UTIAC), should pay a fee to contribute towards the cost of the administration of that appeal.

We also consider that any fee charging process should be kept as simple as possible. Noting the many different types of appeal that can be made, we believe that it is simplest, both for the user to understand and for us to administer, to charge a flat appeal fee if an individual is refused leave to enter the country or refused leave to remain in the country, or if an application to vary leave is refused.

The key appeal categories that we propose charging for are:

- 1) Family Visit Visa (FVV) – appeals against decisions not to allow temporary visits to see family in the UK.
- 2) Managed Migration – Settlement – appeals generated by people who are already in the UK and are seeking to stay here permanently (e.g. they are appealing against a decision that has been made which means they cannot stay in the UK beyond a particular date).
- 3) Managed Migration – Non settlement – appeals generated by people who are already in the UK, and are seeking to stay here longer than they are currently allowed (but are not trying to stay here permanently). An example might be a student seeking to extend their stay temporarily, because they want to go on an additional course.
- 4) Entry Clearance Officer – Settlement – appeals generated by people who are not already in the UK, but want to live here permanently.
- 5) Entry Clearance Officer – Non-settlement, non-FVV overseas: This is a new category of appeals based on specific Human Rights or Racial Discrimination grounds, arising from the recently introduced Points-Based System for visa applications.
- 6) Asylum Appeals – appeals against a refusal to grant asylum, including asylum claims which raise Human Rights grounds.
- 7) European applications – appeals against refused applications from EEA nationals and their family members for documentation to evidence their right of residence, for an EEA family permit, or under transitional work schemes for workers from EU Accession states.
- 8) Please also see chapter 4 for details of appeals brought to the Upper Tribunal which will attract a fee.

Appeal categories that we will **not** be charging for are:

- 1) Cases where action is initiated by the State upon an appellant, such as deportation, deprivation of citizenship or revocation of indefinite leave to remain.
- 2) Cases that meet our exclusions criteria.

Of the approximately 197,000 appeals processed by the FTTIAC last year, some 17,000 were appeals against an asylum decision.

Some asylum seekers are able to support themselves whilst in the UK and we believe it appropriate that these individuals, who can afford to pay, should make a contribution. We also recognise that this is not true for many asylum seekers who need support from the State to reside in the UK while their asylum

application is considered and any subsequent appeal dealt with should they be refused. Individuals in this situation can seek asylum support.

We consider it appropriate that anyone who brings an asylum appeal or an immigration appeal (which may or may not include asylum grounds in that appeal), and who can afford to pay, should pay a fee.

In operating a fee collection system this would mean that an asylum seeker who cannot support themselves (identified as someone in receipt of asylum support), would be exempt from having to pay a fee. Whereas an appellant appealing against an immigration decision (i.e. who is not in receipt of asylum support) would be expected to pay the fee, even though the appeal may include asylum grounds.

In practice this would mean that a significant number of appellants with appeals against a decision to refuse them asylum will not have to pay a fee either because they are in receipt of asylum support and/or because they qualify for Legal Aid funding (see chapter 3). The Tribunal will reimburse the Legal Aid budget for the costs of an appeal fee.

Q1. We intend that individuals who bring an immigration or asylum appeal, and who can afford to pay, should pay.

We will exempt from a fee those asylum appeals where the appellant is in receipt of asylum support, is in the Detained Fast Track process and/or qualifies for Legal Aid.

Are there any implications of this approach that we have not considered that would make this unworkable?

Chapter 2 – Proposed Fee Levels

The Tribunals Service budget for the cost of administering immigration and asylum appeals (approximately 197,000 appeals in 2009/10) is increasingly insufficient, as costs are escalating as the volume of appeals rise. As noted in chapter 1, we intend to recover part of our costs by charging a fee for appeals against decisions made by UKBA.

The table below sets out the average estimated cost for each individual appeal type from start to finish within the FTTIAC. These figures include the administrative costs to arrange the hearings and the judicial costs to hold the hearing and reach a decision and the administrative costs of ensuring that decision is sent to the appellant, the appellant's legal representatives and UKBA.

Individuals, when they make an appeal, can choose to have it dealt with on the papers they submit (this is known as a paper hearing) or can choose to appear at (or send a representative on their behalf to attend) a hearing held by a judge to present their evidence (this is known as an oral hearing). The table below therefore also details the difference in costs between a paper and oral hearing.

Family Visit Visa	Predicted unit costs for 2010/11 ¹
Paper	£317
Oral	£586
Managed Migration – Settlement	
Paper	£642
Oral	£1,168
Managed Migration – Non Settlement	
Paper	£352
Oral	£559
Entry Clearance Officer – Settlement	
Paper	£507
Oral	£808
Entry Clearance Officer - Non Settlement	
Paper	£338
Oral	£605

¹ The predicted unit costs have been calculated by using 2009/10 FTTIAC cost information and predicted number of promulgations for the FTTIAC in 2010/11

Asylum Appeals	
Oral	£1,137
Paper	£1,000

In considering the cost of administering an appeal we have looked at options for charging appeals at 25%, 50%, 75% and 100% of the average unit cost on the basis that this would significantly reduce the funding burden on taxpayers.

However, we also need to ensure that the introduction of fees does not deny access to justice for those individuals of limited means. We believe that there is a sound policy reason to set fees initially at a level considerably below the full cost of particular appeals, and with the proposed exclusions policy, this approach is reflected in the consultation Impact Assessment attached at **Annex C**. In reaching this decision, we took into account that fees were introduced by the previous Government for Family Visit Visa appeals in 2000. Suggestions were raised that those with legitimate claims were being deterred from appealing. Research was undertaken between August 2001 and January 2002, with the results published as a Home Office paper in 2003 (*Family visitor appeals: an evaluation of the decision to appeal and disparities in success rates by appeal type*). The paper found no conclusive evidence that the fee was a deterrent to legitimate appeals.

Approximately two thirds of current appeals (across all immigration appeal categories) are unsuccessful. Research² indicates that cost is considered to be a very low factor when bringing a court case. We consider that charging for a public service serves the legitimate purpose of making the potential user consider its value and importance, but we are keen to introduce fees at a level that is affordable.

To that end we propose to introduce fees at an initial level to achieve total fee income of around 25% of full cost. One approach may well be to introduce fees of around £125 for oral hearings, £65 for paper hearings in the First-tier Tribunal and £250 in the Upper Tribunal. We have concluded that fees set at around this level are affordable, on the basis that they are similar to the cost of the original visa application fee, and should therefore be equally affordable to those wishing to come to the UK. In addition, appellants seeking a visa should be capable of supporting themselves in the UK, and should therefore be capable of paying an appeal fee. Alternatively, if the appellant cannot support themselves in the UK, the expectation is that they would be supported (e.g. by a family member) who would be able to fund the appeal, just as they might assist the appellant with travel costs. We will decide on the final level of fees once the responses to this consultation paper have been analysed. Once appeal fees have been introduced, we will also keep the fee level under review with the intention that total fee income (as a percentage of full cost) will increase over time.

Q2. We propose that fee income should not initially 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.

As indicated in the table above, an oral hearing is more expensive than a paper hearing as there are additional costs incurred (for example: arranging the hearing date and venue, employing clerks and interpreters, etc).

Appellants making claims from overseas (known as ‘out of country’ cases) do not attend the hearings in the UK. In some circumstances (e.g. where they have no UK based representative or sponsor) the Tribunal will list their case for a paper hearing.

Since oral hearings are more expensive to administer, we believe it is fair and appropriate to have a different fee for oral and paper hearings, and to charge a higher fee for oral hearings in order to recover the increased costs.

² “What’s cost got to do with it? The impact of charging court fees on users.”
<http://www.justice.gov.uk/publications/research280607.htm>

Q3. We intend to charge more for an oral hearing than a paper 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?

We believe it would be proportionate to charge a higher rate of fee for such cases as managed migration (settlement) cases and entry clearance officer (settlement) cases which typically involve a greater duration of Tribunal proceedings. These appeals determine whether an individual can remain indefinitely and therefore are of significant benefit to successful appellants.

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)?

Q5 What other factors do you think we should take into account when setting a fee?

Chapter 3 – When a Fee is not Payable, Exemptions and Refunds

We consider that it would be inappropriate to charge a fee where an appellant has decided to bring an appeal because of an action the State has taken against them (i.e. they have not initiated the action). Specifically, we are considering situations where an appeal is being made against actions by the State with regard to:

- deportation;
- revoking (or in some circumstances curtailing) a person's leave to remain; and
- deprivation of citizenship or right of abode.

Q6. Do you agree that appeals against decisions with regard to deportation, revoking a person's leave to remain, or deprivation of citizenship or right of abode should not attract a fee? Please give reasons if you disagree.

An exemption specifies certain situations where an appellant does not need to pay a fee.

We intend to charge a fee for asylum appeals unless the appellant is in receipt of asylum support or is in the Detained Fast Track process.

Those asylum seekers who cannot support themselves financially can apply to UKBA for asylum support. We therefore intend to exempt from a fee those appellants in receipt of asylum support under section 95 of the Immigration and Asylum Act 1999.

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?

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?

We have carefully considered the possibility that introducing fees would cause some potential appellants to forego an appeal because they could not afford the fee. We have therefore decided that those appellants who qualify for Legal Aid³ will not have to pay the fee themselves. It is our intention that for those who qualify for Legal Aid, the legal representative/solicitor who has determined an appellant to have met the means and merits test and will represent them will pay the appeal fee on the behalf of the appellant and claim the fee back from the Legal Services Commission or equivalent bodies in Scotland and Northern Ireland as a disbursement. The Tribunal will reimburse the Legal Aid budget for the cost of an appeal fee. Overseas appellants should generally be liable to pay a fee.

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?

Please note that this Department is currently undertaking an internal review of Legal Aid and will be seeking views on reform shortly. If the proposals taken forward in the future as a result of that consultation affect the availability of Legal Aid in immigration appeals and consequently our assumptions about the impact of charging appeal fees to appellants of limited means, we will consult again as necessary on an alternative remissions and exemptions policy in respect of the fees to ensure that access to justice in immigration appeals is appropriately maintained.

Our intention is to offer no refunds unless a payment has been made in error as a cost will be incurred to administer an appeal irrespective of the outcome and we consider it appropriate that the user of the system should make a contribution towards that cost.

³ People making appeals may be eligible for Legal Aid, if they meet a number of specific conditions.

We have also considered whether a refund or cost orders (e.g. where a judge determines that one party should pay the costs of the other party to the proceedings) should be introduced, but have rejected this on the following grounds:

- a. The purpose of the appeal fee is to make a contribution towards the cost of the administration of the appeal. This cost is incurred irrespective of the outcome.
- b. The fact that an appeal is upheld does not automatically mean that the original UKBA decision was wrong. For example, new evidence may have been provided as part of the appeal which was not available to UKBA at the time the original decision was taken.
- c. The principle of no costs-shifting between parties is well established in asylum cases, and we do not consider the introduction of fees makes it right to depart from that principle.

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?

In 2009/10 we received approximately 30,000 appeal applications (across the different categories) which were deemed to be out of time (i.e. received after the statutory limit for bringing such an appeal) or invalid (i.e. there was no right of appeal). These are sometimes referred to as appeals with preliminary issues. The process of identifying such cases imposes a significant administrative cost on the Tribunal.

We therefore do not propose to refund the fee in the instances that the appeal is ruled invalid or out of time, and therefore does not progress beyond the preliminary issues stage. (For further information on the practical logistics of the fee charging process, please see chapter 5.)

There are many instances where appeals are withdrawn before a judicial decision has been made. This can be because UKBA has altered its original decision (so that the appellant achieves the outcome they were seeking anyway), or because the appellant decides to withdraw the appeal. In either case, the TSIA and FTTIAC will have incurred costs in processing the appeal to the point that it has been withdrawn. As the FTTIAC/TSIA has no control over a decision to withdraw an appeal, we do not intend to refund the appeal fee in the instances that an appeal is withdrawn (for further information on the practical logistics of the fee charging process, please see chapter 5).

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?

In stating that there will be no refunds and limited exemptions we recognise that there may be specific situations where it may be appropriate for a fee to be waived. We propose to introduce a discretionary power for the Lord Chancellor to exempt payment of an appeal fee in certain exceptional or compelling circumstances.

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?

Chapter 4 – Upper Tribunal Appeals

Following the transfer of the Asylum & Immigration Tribunal (AIT) into the Unified Tribunal structure, all initial appeals are now heard by the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC), and onward appeals are reviewed and heard by the Upper Tribunal Immigration and Asylum Chamber (UTIAC). Under the old system appellants could make an application for their appeal to be reviewed directly to the Administrative Court in England and Wales and in doing so would incur a fee of £400.

As there is already a principle of charging a fee for such onward appeals, we consider that it is appropriate to continue to charge onward appeal fees for the same seven categories of appeals designated in Chapter One that have been charged for in the FTTIAC. We do not intend to charge for onward appeals in relation to State initiated cases (such as deportation, revocation of indefinite leave to remain and deprivation of citizenship).

If a party (appellant or respondent) thinks that the First-tier Tribunal made an error of law when reaching its decision, either party can make an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal (known as a FTPA). If the application is refused, an application for permission to appeal can be made directly to the Upper Tribunal.

An Upper Tribunal Permission Application (known as a UTPA) would only arise where a FTPA had been refused. Therefore a UTPA is a 'new' appeal as all other recourses to address the original FTTIAC decision have been followed (i.e. the appellant will have exhausted the appeal routes covered by the original appeal fee and is now seeking a further recourse in terms of wishing to have that original decision reviewed). Usually the decision to pursue a UTPA (i.e. to continue to challenge the Tribunal's decision) is taken by the appellant, and where this is the case, we consider that it is appropriate for the appellant to pay a further fee to recover the additional administrative costs of dealing with the further application.

We also consider that charging for a UTPA, like charging for any public service, serves the legitimate purpose of making the potential user consider its value and importance.

Again, as the Upper Tribunal has incurred cost irrespective of the outcome, we would not refund this fee if the onward appeal was successful.

Again, to ensure fairness we would also propose to apply our proposed exemptions policy to a UTPA and Upper Tribunal hearing.

We consider that the UTPA fee should be set initially at around £250, as we consider this amount to be reasonable. We propose to charge the fee in stages initially around £50 for an application for permission to appeal, and a further fee of initially around £200 for a full hearing, if permission is granted. We are aware that this is less than the £400 previously charged by the Administrative Court

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?

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?

Chapter 5 – Fee Charging Process

Currently, a person wishing to appeal against an immigration decision can submit his/her application either at the Tribunals Service in Leicester, or at any UK Embassy or High Commission around the world where there is an appropriately qualified person to receive such an application (such as an Entry Clearance Officer). This system is known as ‘dual lodgement.’

A problem of this ‘dual lodgement’ system is that there are sometimes significant delays between an overseas post receiving an appeal, and it arriving at the Tribunals Service. Another problem is that some people will send their appeal directly to the Tribunals Service in Leicester, and will also put in an appeal at an overseas post, which can cause costly administrative confusion and duplication. When the previous Government introduced appeal fees for Family Visit Visas in 2000, the lodgement system also caused a number of practical problems associated with linking payments to appeals, and waiting for payment to clear.

We have therefore asked the Tribunal Procedure Committee to consider changing the procedure rules to provide that all appeals be made directly to the Tribunal in the UK.

For appeals (of any type) made by people already in the UK, the current process of lodging an appeal with the Tribunal will remain the same, with the exception of now having to make a payment.

Single lodgement at the Tribunal also has a number of other practical benefits, including that:

- TSIA will hold all necessary information on appeal receipts / lodgement data;
- TSIA will be able to offer a better service to customers as a result of holding more comprehensive information on received appeals;
- There will be a reduction in duplicate appeals lodged at other locations;
- Single lodgement better supports our aim of payment by electronic means;
- There is a single, clear point of lodgement for users;
- There will be a single, clear process and timescale for both TSIA and UKBA to work to in preparing for the appeal hearing (there are currently two different processes depending on where the appeal is lodged).

Single lodgement is a key element of introducing fees in immigration appeals. Alternative models were developed and rejected because allowing lodging of an appeal at two places would create a split process and the complexity and difficulties experienced in 2000 would be more likely to reoccur. Single lodgement will enable preliminary issues (such as whether there is a valid right of appeal) to be dealt with much more speedily. This is because the FTTIAC will not have to wait to receive the papers from the overseas post before such matters can be considered. We believe a single lodgement system will also give the TSIA more control over matching payments with appeals.

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?

When Family Visit Visa appeals and fees were introduced in 2000, entire families were allowed to make multiple/individual appeals but only pay a single fee. Our intention for the fees we will now introduce is that all appellants wishing to appeal against a decision should pay a fee, including dependents and children. This is consistent with the fact that family members and dependents have to pay an individual visa application fee, but more importantly, reflects the fact that TSIA/ FTTIAC will incur administrative and judicial costs for processing each individual appeal and we are seeking to receive contributions from users of the appeals system.

We recognise that it is often the case that, where an appeal is brought by multiple family members, the hearings of these individual appeals are ‘linked’ and heard all together in a single hearing. This has advantages for the appellants as a decision on all of the appeals is reached at the same time. We intend to continue the process of linking appeals, but do not consider it appropriate however to only charge one appeal fee for these ‘linked’ appeals. This is because the TSIA/ FTTIAC will still incur additional administrative costs in processing the individual appeals and in linking them to one hearing. Furthermore

a linked hearing will last longer than a hearing for a single appellant and therefore there will be additional costs in terms of judicial time (albeit less than if each of the appeals had to be heard individually).

We therefore propose that where UKBA issues a Notice of Decision to a single named individual on their visa application (which is required under the 2003 Notices Regulations) a fee will be charged if an appeal is brought by the individual named on that Notice of Decision. As separate Notices of Decision are produced for children and dependents and similar administrative costs are incurred by the Tribunal, it is only reasonable that an appeal fee should also be paid.

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.

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

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)?

We recognise that the introduction of fees is likely to have a potential impact on Business, Universities, Charities and Non-Profit Organisations should they choose to pay the fee on behalf of an appellant. As no fee is charged at present, there is no supporting data to show the extent to which this potential impact would be realised once fees are implemented. The grounds on which an individual application is refused and what subsequent right of appeal would be associated with that decision are also likely to be factors in deciding whether to pay the fee on the appellant's behalf.

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.

The proposed fee charging process

Details of the process for collecting fees are still under consideration, but our preference is to take payment by debit/credit card, bank or wire transfer or by on-line payment. The civil and family courts are seeking to move away from cash or cheque handling, and we would plan to do the same as there are additional costs associated with the collection and auditing of cash and cheques. There are also further considerations to do with exchange rates when receiving cash in currencies other than sterling, and the length of time for cheques to clear (often many weeks when dealing with overseas banks) which would be avoided by a focus on electronic payment. We have also taken into account the fact that, by extending the ability to pay beyond that of the person bringing the appeal, payment could be made by an individual in the UK (e.g. the sponsor) who has ready access to a bank account or debit/credit card.

Our intention is that when an appeal is submitted the appellant includes on the appeal form details of a credit or debit card against which payment can be taken. An appeal form and payment details will need to be provided for each appellant (e.g. in the case of dependents/children).

In broad terms, upon receipt of the appeal the following steps would then take place:

- 1) The amount of fee to be taken would be calculated based on the appellant's stated choice (e.g. paper or oral hearing).
- 2) Payment would be taken (unless the appellant is exempt/does not need to pay a fee).

Where the appellant does not possess a credit/debit card, they can provide payment details of a third party's credit/debit card. We estimate that this will be required primarily for appeals arising outside the UK and that such appellants will be able to nominate someone else (e.g. their UK sponsor) to pay for the appeal on their behalf.

In cases where the appellant does not provide credit/debit card details, the following process would take place:

- 1) The fee to be taken would still be calculated based on the appellant's stated choice (e.g. paper or oral hearing).
- 2) A request for payment would be sent to the appellant providing a Unique Identifying Number and seeking credit/debit card details or optionally providing details on alternative payment methods (e.g. bank or wire transfer - see below) and give them a fixed period of time to pay or the appeal would be deemed to have lapsed or to have been withdrawn as it was incomplete.
- 3) Where payment was made, the appeal would be processed as normally; or
- 4) Where payment was not made, the appeal would lapse.

For those individuals overseas with no bank account, or access to the internet we consider that they would still be able to deposit a cash fee either with a bank or specialist wire transfer organisation and then arrange an electronic wire transfer of the fee to a specific TSIA bank account.

We would intend to publish information about alternative payment methods as part of the information provided by UKBA to unsuccessful applicants about appeal rights; and on both the FTIAC and UTIAC websites; and for details to be provided if appellants contact our customer helpline/phone centre. We will also consider ways of providing information to those who do not speak English, or in alternative formats for those with a disability (e.g. in braille or large font for those appellants who have a visual impairment).

Cash and Cheques

Owing to the costs and risks of handling payment by cash or cheque (for example a cheque drawn on an overseas bank account can take six months to clear), we do not propose to take payment by these methods.

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

Disregarded options:

There are alternative approaches which we have disregarded on the grounds that they bring additional complexity or risk to the process. These included: options regarding making payment later in the appeals processes (e.g. after the appeal has been determined); and options that allowed for overseas appeals to continue to be lodged overseas. The difficulty with taking payment later in the appeals process is that many appellants will have their appeals resolved before they reach a stage where payment is due. This is unfair to those who do have to pay, and is at odds with our policy intention that all users who bring an immigration appeal should make a contribution. The difficulty with dual lodgement is that it would either require the fee to be lodged with the Tribunals Service separately from the appeal application (which would be made at overseas posts), or we would have to develop a separate collection process for fees where appeals are lodged overseas, adding considerably to costs, development time and implementation of this policy. Furthermore this approach was tried, for the payment of fees for Family Visit Visa in 2000, and was thought to be overly complex, and not cost effective.

We consider that any option which continues to allow lodgement in two places for an appeal means wasted resources dealing with duplicate appeals as some appellants will lodge the same appeal both in the UK and overseas. We have also considered that there would be an added complication when there is a fee as it could involve a fee being taken for the same appeal twice. By only taking a fee in the UK, it also means that payments will be made in sterling, easing money handling issues and making any (limited) refunds more straight forward. We have also determined that lodging an appeal overseas does

not result in a quicker outcome of appeal: in fact it can take on average 45-60 days for appeals lodged outside the UK to arrive at the Tribunal.

Q20. If there are any other options or approaches you believe the Government should take into consideration please provide comments with your consultation response.

Impact Assessment

We have developed an initial impact assessment (attached to this consultation paper) which details how we consider our proposals will affect people. We recognise that the nature of this policy will have a greater impact on particular nationalities, and consequently, ethnicities, than others. However, we would be grateful for any information you may have on any further impacts not considered in this paper.

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.

Chapter 6 – Changes to the Asylum and Immigration Tribunal (Procedure) Rules 2005 and the Tribunal Procedure (Upper Tribunal) Rules 2008

The introduction of fee charging may require changes to the rules on procedure for these Tribunals. Changes to these rules can only be made by the Tribunal Procedure Committee (TPC). The TPC is independent of the Government and plays no part in the decision to charge fees. More details about the work of the TPC can be found at:

<http://www.tribunals.gov.uk/tribunals/rules/tribunalprocedurecommittee.htm>

We have, after consulting the TPC, included in this consultation changes which the Government would wish the TPC to make to the rules. We hope you will be able to consider all aspects of the proposed changes and be able to comment once on all issues.

The responses made on the proposed rules will be provided to the TPC which will consider what changes to the rules are appropriate. Any changes to the rules will be laid before Parliament as a Statutory Instrument.

Removal of dual lodgement option

- 1) The Government wishes to see the removal of the option of lodging some immigration appeals with the original decision maker overseas (the Entry Clearance Officer or ECO), thereby moving to a system where all appeals will be lodged at the Tribunal in the United Kingdom.
- 2) The Government considers that the following changes to the **Asylum and Immigration Tribunal (Procedure) Rules 2005** would be appropriate to achieve this objective.

The Asylum and Immigration Tribunal (Procedure) Rules 2005 govern the practice and procedure of the First-tier Tribunal Asylum and Immigration Chamber. You can find the rules using the following link or you can obtain a copy by using the contact details provided in this consultation.

<http://www.tribunals.gov.uk/Tribunals/Documents/Rules/ConsolidatedAsylumandImmigrationProcedureRules2005forFirst-tierTribunal-FINAL.pdf>

Rule 6 – Giving notice of appeal.

Rule 6 sets out how notice of appeal to the Tribunal is given. It currently allows for out of country appeals to be lodged with the Tribunal or with an ECO. To require all appeals to be lodged directly with the Tribunal, we suggest the removal of paragraphs (4) and (6) of rule 6 in their entirety and the consequential removal of the reference in paragraph (2) to paragraph (4)

Rule 12 – Service of notice on Respondent

Paragraph (2) relates to appeals lodged with ECO and refers to parts of rule 6 we are asking to be removed. It is suggested that this paragraph be deleted with the consequential removal of the reference in paragraph (1) to paragraph (2).

Rule 13 – Filing of documents by respondent

Rule 13(1) refers to the possibility that a respondent may have filed documents in an appeal before it is served with the notice of appeal by the Tribunal. This arises where an appeal is lodged with an ECO. We would suggest that the ending of dual lodgement would mean that the words '(unless it has already done so)' should be deleted from rule 13(1).

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?

Rule changes consequent on introduction of charging

The Government is proposing to:

- 3) Charge a fee either at the time of lodgement or when advising an appellant that a fee is payable for those immigration appeal types in the FTT where it is considered appropriate. These appeal types are outlined in **Chapter 1** in this consultation and will be identified in a separate Fees Order.
- 4) Charge a two stage fee for some appeals to the UTIAC as per the current arrangements for judicial reviews.

The introduction of fee charging may make it appropriate to change both the **Asylum and Immigration (Procedure) Rules 2005** and the **Tribunal Procedure (Upper Tribunal) Rules 2008**.

The Tribunal Procedure (Upper Tribunal) Rules 2008 govern the practice and procedure of the Upper Tribunal. You can find the rules using the following link or you can obtain a copy by using the contact details provided in this consultation.

The Tribunal Procedure (Upper Tribunal) Rules 2008 SI 2698/2008 showing amendments made by S.I. 2009/274, S.I.

The detail of the appropriate changes may depend upon the detail of the Fees Order. **Your views** are sought on the changes which may be appropriate to both the First –tier Tribunal Rules and Upper Tribunal Rules based upon the Government’s proposals contained within this paper. In particular

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?

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?

Q25. Should other changes to the rules for the First-tier Tribunal and Upper Tribunal be made in the light of the introduction of fees?

Annex A – Description of the Tribunals Structure

The First-tier Tribunal is a generic tribunal established by Parliament under the Tribunals, Courts and Enforcement Act 2007.

The First-tier Tribunal has jurisdiction over a range of appeals and is divided into six chambers:

- General Regulatory Chamber
- Social Entitlement Chamber
- Health, Education and Social Care Chamber
- War Pensions and Armed Forces Compensation Chamber
- Tax Chamber and
- Immigration and Asylum Chamber

The Upper Tribunal is a newly created court of record with jurisdiction throughout the United Kingdom. It has been established by Parliament under the Tribunals, Courts and Enforcement Act 2007. Its main functions are:

- To take over hearing appeals to the courts, and similar bodies from the decisions of local tribunals;
- To decide certain cases that do not go through the First-tier Tribunal
- To exercise powers of judicial review in certain circumstances ; and
- To deal with enforcement of decisions, directions and orders made by tribunals.

On 15 February 2010, Immigration and Asylum Chambers were established in both tiers of the Unified Tribunals framework created by the Tribunals, Courts and Enforcement Act 2007. The new chambers replace the former Asylum and Immigration Tribunal.

The First-tier Tribunal (Immigration and Asylum Chamber) is an independent Tribunal dealing with appeals against decisions made by the Home Secretary and her officials in immigration, asylum and nationality matters.

All immigration and asylum appeals must be lodged with the First-tier Tribunal. The appeal is determined either at an oral hearing with witnesses or on the papers based on the evidence presented to the tribunal by the appellant and respondent.

The Upper Tribunal (Immigration and Asylum Chamber) deals with appeals against decisions made by the First-tier Tribunal (Immigration and Asylum Chamber).

Parties to the appeal who wish to challenge the decision of the First-tier Tribunal can do so by seeking permission to appeal to the Upper Tribunal, in the first instance by application to the First-tier Tribunal. If this is refused, the party can apply to the Upper Tribunal for permission to appeal. Permission applications are usually dealt with on the papers.

Where permission is granted, the Upper Tribunal will hold an appeal hearing, which will determine if the First-tier made an error of law and may in some circumstances consider further evidence.

Annex B - Abbreviations used in the Consultation Paper

AIT	Asylum and Immigration Tribunal
AS	Asylum Support
ECM	Entry Clearance Manager
ECO	Entry Clearance Officer
EEA	European Economic Area
FCO	Foreign and Commonwealth Office
FTPA	First-tier Permission Application
FTT (IAC)	First-tier Tribunal (Immigration and Asylum Chamber)
FVV	Family Visit Visa
NoD	Notice of Decision
SSHD	Secretary of State for the Home Department (Home Secretary)
TPC	Tribunal Procedure Committee
TSIA	Tribunals Service Immigration and Asylum
UKBA	United Kingdom Border Agency
UT (IAC)	Upper Tribunal (Immigration and Asylum Chamber)
UTPA	Upper Tribunal Permission Application

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

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, 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?

Q2. We propose that fee income should not initially 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.

Q3. We intend to charge more for an oral hearing than a paper 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?

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)?

Q5 What other factors do you think we should take into account when setting a fee?

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.

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?

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

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?

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

Q11. Do you agree with our proposal that refunds will not be provided by the Tribunals Service if an appeal is withdrawn, invalid or out of time?

Q12. We propose to introduce a discretionary power for the Lord Chancellor to use to exempt payment of the appeal fee in certain exceptional or compelling circumstances. Are there any other situations we have not considered where an exemption would be appropriate?

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?

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?

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?

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.

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)?

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.

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

Q20. If there are any other options or approaches you believe the Government should take into consideration please provide comments with your consultation response.

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.

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?

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?

Q24. What provision should the rules for First-tier Tribunal and Upper Tribunal make for disposal of appeals where a required fee has not been paid?

Q25. Should other changes to the rules for First-tier Tribunal and Upper Tribunal be made in the light of the introduction of fees?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 21st January 2011 to:

Roy Ketley
Ministry of Justice
5th Floor, Field House
15-25 Breems Building

London EC4A 1DZ

Tel: 020 7073 4084
Fax: 020 7073 4275
Email: IPTInbox@tribunals.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from IPTInbox@tribunals.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published April 2011. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Annex C - Impact Assessment

Title: INTRODUCING FEE CHARGES FOR APPEALS IN THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL Lead department or agency: Tribunals Service Other departments or agencies:	
	IA No: TS001
	Date: 21 October 2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Roy Ketley Email: IPTInbox@tribunals.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Tribunals Service - Immigration and Asylum (TSIA) is funded to deal with a set number of appeals per year and currently no fee is charged for appeals. Volumes of appeals have fluctuated in recent years and funding for the Tribunal has not matched these unexpected increases. In order for the Tribunal to maintain the flexibility to respond to such fluctuations and against the backdrop of a wider need to review all aspects of public spending, the Government considers that it is reasonable to ask users of the service to contribute to the cost of providing that service by paying a fee.

What are the policy objectives and the intended effects?

To ensure that the funding and operation of TSIA is sustainable by developing and introducing a charging policy for bringing appeals to the Tribunal where appellants have been refused leave to enter the country, refused leave to remain in the country, or an application to vary their current leave to remain is refused. The objective is for users of the service, who can afford to pay, to contribute towards the cost of providing the service whilst ensuring that access to justice is properly available.

What policy options have been considered?

Option 0 – Do nothing. Charge no fee and continue to fund the tribunal through taxation and a partial subsidy from visa fees.

Option 1 - We propose initially set fees of around £65 for appeals heard on paper and around £125 for oral hearing in the First-tier Tribunal. As now, appellant will be able to decide between an oral or paper hearing. A fee of around £250 is proposed for appeals to the Upper Tribunal.

Option 2 - We propose to initially set fees of around 25% of full cost recovery (fees will therefore differ by appeal type - they are detailed on page 49) in the First-tier Tribunal and around £250 for an appeal to the Upper Tribunal.

For both options, appeals will not be heard until the fees has been paid, except for Asylum appeals , which will not be delayed.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed within 3 years of implementation.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Under development

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:..... **Date:**

Summary: Analysis and Evidence Policy Option 1

Description:

Fee of around £125, Appellant submits appeal to the Tribunal and it is registered. If fee paid or exemption proved, appeal continues on clearance of funds (Asylum appeals continue regardless). If no fee or proof of exemption received the appellant is advised of fee due and appeal is processed on clearance of funds or proof of exemption. Model set at £65 fee for a hearing on papers, £125 fee for oral hearing.

Price Base Year 2010	PV Base Year n/a	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	11.4	Optional
High	Optional	14.9	Optional
Best Estimate	0.1		

Description and scale of key monetised costs by 'main affected groups'

Additional fees paid by appellants of £11-14.5m pa for first tier appeals.
Set up cost of £100k and running costs of £400k pa for the fee system for Tribunals Service.

Other key non-monetised costs by 'main affected groups'

Additional fees for appellants for appeals to the Upper Tribunal.
Appellants that decide not to appeal after the fee increase will lose the benefit of the service.
UKBA may experience an increase in applications and costs from appellants who decide to re-apply for a visa instead of appealing.
Fee costs paid by the LSC and equivalent bodies and reimbursed to them by the Tribunal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	17.5	Optional
High	Optional	22.2	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Fee income of £11-14.5m pa for Tribunals Service.
Operational savings of £3-11.2m pa for Tribunals Service.

Other key non-monetised benefits by 'main affected groups'

Fee income from the Upper Tribunal for Tribunals Service.
Efficiency and equity gains for wider society as the taxpayer subsidisation of Immigration appeals will be reduced.

Key assumptions/sensitivities/risks

Discount rate

N/A

We do not know how appellants will respond to an increase in fees. Therefore we have made a series of assumptions to generate indicative fee income and savings figures. These assumptions are detailed on page 45. If the actual response is significantly different to our assumptions then the operational savings and fee income could be significantly higher or lower than the projections in this Impact Assessment.
The Home Office is considering significant change to the immigration system, this may affect the costs and benefits of this proposal.
The MOJ is considering changes to Legal Aid that could, if taken forward, change the costs and benefits of this proposal.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: 0	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Other		
From what date will the policy be implemented?			July 2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium	Large N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ⁴ Statutory Equality Duties Impact Test guidance	Yes	56
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	53
Small firms Small Firms Impact Test guidance	Yes	53
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	53
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	53

⁴ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	53
Human rights Human Rights Impact Test guidance	No	53
Justice system Justice Impact Test guidance	Yes	53
Rural proofing Rural Proofing Impact Test guidance	No	53
Sustainable development Sustainable Development Impact Test guidance	Yes	54

Summary: Analysis and Evidence Policy Option 2

Description:

Fee of around 25% full cost recovery. Appellant submits appeal to the Tribunal and it is registered. If fee paid or exemption proved, appeal continues on clearance of funds (Asylum appeals continue regardless). If no fee or proof of exemption received the appellant is advised of fee due and appeal is processed on clearance of funds or proof of exemption. Model set at 25%.

Price Base Year	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	14.1	Optional
High	Optional	19.6	Optional
Best Estimate	0.1		

Description and scale of key monetised costs by 'main affected groups'

Additional fees paid by appellants of £13.7-19.2m pa for first tier appeals.
Set up cost of £100k and running costs of £400k pa for the fee system for Tribunals Service.

Other key non-monetised costs by 'main affected groups'

Additional fees for appellants for appeals to the Upper Tribunal.
Appellants that decide not to appeal after the fee increase will lose the benefit of the service.
UKBA may experience an increase in applications and costs from appellants who decide to re-apply for a visa instead of appealing.
Fee costs paid by the LSC and equivalent bodies and reimbursed to them by the Tribunal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	23.7	Optional
High	Optional	29.6	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Fee income of £13.7-19.2m pa for Tribunals Service.
Operational savings of £4.6-15.9m pa for Tribunals Service.

Other key non-monetised benefits by 'main affected groups'

Fee income from the Upper Tribunal for Tribunals Service.
Efficiency and equity gains for wider society as the taxpayer subsidisation of Immigration appeals will be reduced.

Key assumptions/sensitivities/risks	Discount rate	n/a
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We do not know how appellants will respond to an increase in fees. Therefore we have made a series of assumptions to generate indicative fee income and savings figures. These assumptions are detailed on page 45. If the actual response is significantly different to our assumptions then the operational savings and fee income could be significantly higher or lower than the projections in this Impact Assessment.

The Home Office is considering significant change to the immigration system, this may affect the costs and benefits of this proposal.

The MOJ is considering changes to Legal Aid that could, if taken forward, change the costs and benefits of this proposal.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In
New AB: 0	AB savings:	Net: 0	Policy cost savings: 0	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Other				
From what date will the policy be implemented?	July 2011				
Which organisation(s) will enforce the policy?	MoJ/Tribunals Service				
What is the annual change in enforcement cost (£m)?	TBC				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium	Large N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁵ Statutory Equality Duties Impact Test guidance	Yes	56
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	53
Small firms Small Firms Impact Test guidance	Yes	53
Environmental impacts		

⁵ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	53
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	53
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	53
Human rights Human Rights Impact Test guidance	No	53
Justice system Justice Impact Test guidance	Yes	53
Rural proofing Rural Proofing Impact Test guidance	No	53
Sustainable development Sustainable Development Impact Test guidance	Yes	54

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No	Legislation or publication
1	INTRODUCING FEE CHARGES FOR APPEALS IN THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL CONSULTATION PAPER CP10/10
2	
3	
4	

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages).

Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

1. Introduction and Background

1.1 At present individuals who have been refused an application for asylum, leave to come to the United Kingdom or to vary the terms of their current leave to remain, can bring an appeal to the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC). If a party to the appeal feels that there has been an error of law in the decision of the First-tier Tribunal they are able to apply for permission to appeal to the Upper Tribunal Immigration and Asylum Chamber (UTIAC) from the First-tier Tribunal and, if unsuccessful, directly to the Upper Tribunal itself. The administration of both of these Chambers is provided by TSIA. Users are not currently charged for this service, which is funded by the taxpayer. The cost of administering appeals in TSIA (and its predecessor, the Asylum and Immigration Tribunal [AIT]) has risen in recent years and is currently over £114.7m per year.

1.2 The number of appeals administered by TSIA can fluctuate greatly against the number of appeals predicted, often generating costs at a level beyond which funding is set: For example: In 2005-06 the AIT heard around 170,000 appeals which had already exceeded the AIT funding allocation. In 2008-09 around 190,000 appeals were heard: an increase of around 10% on 2005-06 volumes and again exceeded predicted funding requirements. In modelling the potential impacts of fees in each of the options in this assessment, we have used figures that combine the actual costs incurred by the Tribunal in 2009/2010 and the predicted numbers of appeals to be disposed of in 2010/2011 to work out the potential costs incurred per appeal for the Tribunals service.

1.3 Prior to 15 February 2010 challenges to Immigration Judge decisions were made by making an application to review the decision. This process took place within the single tier of the AIT. The review process determined if there may have been an error of law and a review hearing would determine this. If the application for review was refused the appellant could then 'opt in' directly to the High Court and ask them to review the potential error of law. While applications to the AIT did not attract a fee, the High Court charged a fee of £400 for the statutory review unless the appellant was exempt or successfully applied for remittal.

1.4 On 15 February 2010 the AIT transferred into the Unified Tribunals Structure under the provisions of the Tribunals, Courts and Enforcement Act 2007 and the reconsideration and review process was replaced. Under the new system a permission application is made first to the FTTIAC, and then to the UTIAC if the first application is unsuccessful. If the application is granted at either stage, the UTIAC will consider the onward appeal. Currently there is no fee charged for this process.

1.5 The introduction of fee charges for appeals is considered necessary to contribute to these costs to ensure the provision of appeals in TSIA is sustainable. Under the proposals it should be noted that a significant taxpayer subsidy of the administration of appeals will remain and a contribution will be made by the UK Border Agency (UKBA) through a small proportion of the visa application fee that relates to the appeal process. The proposals seek to take into account costs when setting fee levels – in particular oral hearings will be charged a higher fee than paper based appeals, which are cheaper for TSIA to administer (they require less administrative and judicial resources).

2. Scope of the Impact Assessment

Scope of the proposals

2.1 The proposals in this IA relate primarily to the amount of fee that should be charged. The impact of fees have been modelled for 25%, 50%, 75% and 100% of cost pricing, as well as a fixed fee of £65 for a hearing on papers and £125 for oral hearings. The options present here are for the fixed fee and up to 25% cost pricing. By initially setting a fee at not more 25% we will be able to monitor and review the impact of introducing fees on the Tribunal and its users in the context of our policy decision to set fees considerably below full cost recovery.

2.2 Fees will be introduced for FTTIAC appeals under the proposals. These fees will apply to the following areas of FTTIAC business:

- 9) Family Visit Visa – which relate to appeals against decisions not to allow temporary visits to the UK.

- 10) Managed Migration – Settlement, appeals generated by people who are already in the UK and seeking to stay permanently.
- 11) Managed Migration – Non Settlement, appeals generated by people who are already in the UK and seeking to stay longer than they are already allowed to.
- 12) Entry Clearance Officer – Non settlement – All non-FVV overseas, non-settlement entry clearance applications do not now attract a full right of appeal. They are dealt with by the points based system and appeals can only be brought on residual grounds (that is, on specific Human Rights or Racial Discrimination grounds).
- 13) Entry Clearance Officer – Settlement – these appeals are most commonly against the refusal of a settlement application for a person to reside permanently in the UK.
- 14) Asylum Appeals – appeals against asylum decisions, including those that raise Human Rights grounds.
- 15) European applications – applications from EEA nationals and their family members for documentation to evidence their right of residence, for an EEA family permit, or under transitional work schemes for workers from EU Accession states.

2.3 An appeal that is being made against actions by the State with regard to the following does not fall within the scope of these proposals:

- deportation,
- revoking (or in some circumstances curtailing) a person’s leave to remain,
- deprivation of citizenship or right of abode.

Exemptions

- 2.4 For Asylum appeals we will also exempt those in receipt of Asylum Support Funding under section 95 of the Immigration and Asylum Act 2009.
- 2.5 That asylum appellants who are detained under the UK Border Agency’s Detention Fast Track process will not have a fee charged⁶
- 2.6 In addition to this we also intend to introduce a discretionary power for the Justice Secretary to be able to exempt appellants from paying fee in exceptional or compelling circumstances.
- 2.7 These apply in each of the proposed charging options.

Legal Aid

2.8 Legal Aid is currently available to appellants both in the UK and abroad. Further detail about Legal Aid entitlement can be found at <http://www.legalservices.gov.uk> for England and Wales, <http://www.slab.org.uk> in Scotland and for Northern Ireland <http://www.nilsc.org.uk>. A fee will not be paid directly by the appellant if they are in receipt of Legal Aid as the cost of the appeal fee will be met by the Legal Services Commission (LSC) and equivalent bodies. The policy intention is for the legal representative/Solicitor to pay the Tribunal their appellant’s fee and for them to claim this as a disbursement from the LSC or their equivalent. The Tribunal will reimburse the Legal Aid budget for any fee costs incurred.

⁶ The Fast Track Process is explained here: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/>

Refunds

2.9 It is proposed that as the Tribunal will have incurred costs in dealing with the appeal in all cases, there will be no refunds, irrespective of whether the appellant is successful or not. There will be a refund process for when a fee is paid in error. This applies in each of the proposed charging options.

Linked Appeals

2.10 Where more than one member of a family makes an appeal, the standard approach is that the cases are linked and dealt with at one hearing. UKBA have confirmed that a separate application fee is paid and separate Notice of Decisions should be served on all in order to comply with the 2003 Notices Regulations. While these cases are heard together, a separate appeal will be raised for each separate Notice of Decision and other than the joint hearing, the cost of the administration of the appeal is the same at all other stages.

2.11 The proposals therefore assume that an appeal will be received for each separate Notice of Decision that has been issued by the UK Border Agency and as we are seeking a contribution to the administration of the appeal, a fee will be charged for each separate appeal, even if the cases are linked and dealt with at the same hearing.

Asylum Appeals

2.12 While our policy is that those who can afford to pay should make a contribution towards the cost of administering their appeal, we recognise that those making asylum appeals face different circumstances to those making immigration appeals. We have sought to address this through our exemption and exclusions policy (see 2.3 to 2.8).

Upper Tribunal Appeals

2.13 The Upper Tribunal Immigration and Asylum Chamber came into existence on 15 February 2010 and replaced both the AIT's reconsideration process and the subsequent 'opt in' process to the High Court. In this process, if an appellant disagreed with a decision of the Tribunal they could ask for the case to be looked at again on an error of law by a more senior judge. If refused, they could then apply for a statutory review directly with the High Court, for which a fee of £400 was charged unless the appellant was exempt or successfully applied for remittal.

2.14 Since the creation of the Upper Tribunal the appellant can no longer apply to the Tribunal for a reconsideration of their case. They must first apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal (FTPA). If this is refused, they can then apply for permission to appeal directly to the Upper Tribunal (UTPA) itself. If permission is granted at either stage, an Upper Tribunal hearing will take place. At present no fee is charged in anticipation of this consultation taking place.

2.15 Unlike the initial appeal, both a reconsideration request and a permission application in the AIT and a FTPA and UTPA have all been required to be made directly to the Tribunal, and subsequently the Administrative Court, so there is a broad similarity between the two processes.

2.16 We propose initially to charge around a £50 fee for the Upper Tribunal Permission Application, which is heard on papers, and a fee of around £200 for a resulting Upper Tribunal hearing for all of the appeal types charged a fee in the First-tier Tribunal.

Single Lodgement

2.17 Our current preference for the fee collection process is that all appeal forms will be sent to the Tribunal in the UK. This is a significant departure from the current process of dual lodgement in the First-tier Tribunal where an appellant can send their appeal through an overseas post (e.g. an embassy or High Commission) or directly to the Tribunal in the UK. The Upper Tribunal already operates on a single lodgement basis. By only receiving the appeal (and taking payments) in the UK we hope to remove some of the practical problems primarily with linking payments to appeal, waiting for payment to clear, having identical appeals lodged in different places leading to unnecessary duplication (and potentially double charging) and having different systems for dealing with appeals and payments from appellants both in the UK and overseas.

Main Affected Groups

2.18 The main groups that would be affected by proposals are set out below.

2.19 Appellants: the introduction of a fee would primarily target appellants across eight different categories both for oral and paper appeals. Fees for Family Visit Visas were introduced in 2000 and subsequently reduced and then abolished in 2002. Research published by the Home Office in 2003 (<http://rds.homeoffice.gov.uk/rds/pdfs2/rdsolr2603.pdf>) did not find any conclusive evidence that these fees were a significant deterrent to legitimate Family Visit Visa appeals. However, it is accepted that some individuals may currently choose to appeal because it is free, but would not do so if a fee was payable. In particular, one alternative to an appeal may be that users may choose to re-apply for a visa.

2.20 Business, Universities, Charities and Non – Profit Organisations: Currently there are organisations that choose to financially assist appellants who do not qualify for legal aid with their appeals. There is a potential impact on these organisations should they choose to extend this financial assistance to cover the cost of the fee.

2.21 Government: the primary goal of the proposals would be to reduce the subsidy currently provided by taxpayers.

2.22 The FTTIAC and UTIAC: the proposals will require the implementation of a fee charging and collection process, which will clearly have consequences for the scale and nature of the work conducted by the Tribunal.

2.23 UKBA: the proposed move from dual to single lodgement will disallow visa appeals being made through UKBA offices. Appeals will instead be required to be lodged with the Tribunal directly. UKBA may experience an increase in applications for Family Visit Visas because the proposed appeal fees are greater than the visa application fee so appellants may decide to re-apply rather than appeal.

2.24 The Legal Services Commission (LSC) and equivalent bodies: Appellants who are eligible for legal aid will have their fees paid by their legal representative, who can reclaim the money from the LSC or equivalent body. The Tribunal will then reimburse LSC any fee costs incurred.

3. Rationale for Government Intervention

3.1 At present, users who bring an immigration appeal to the Tribunal are not charged. The number of appeals administered by TSIA can fluctuate greatly against the number of appeals predicted, often generating costs at a level beyond which funding is set: For example: In 2005-06 the AIT heard around 170,000 appeals which had already exceeded the AIT funding allocation. In 2008-09 around 190,000 appeals were heard: an increase of around 10% on 2005-06 volumes and again exceeded predicted funding requirements. This situation is not considered sustainable and it is appropriate that those who can afford to pay should make a contribution to the cost of administering the service used.

3.2 We plan to introduce fee charges in line with Government policy that users of a service should contribute to the cost of providing that service. This would remove some of the funding burden from the taxpayer. This Impact Assessment considers a range of options for the level of fee that would be collected.

Economic rationale

3.3 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this case, intervention is justified primarily on efficiency grounds. Each of the options involves an increase in fees. Currently, the Tribunal receives a contribution to its costs of £14m from UKBA (from visa application fees) and the remainder is subsidised by taxpayers, and given this is the case, for some tribunal users, the benefit of using the service (their willingness to pay) may be less than the cost of providing the service. There is a technical economic welfare 'deadweight loss' associated with the fact that fees are currently subsidised. In effect this relates theoretically to people using the Tribunal too much. By reducing the extent of subsidisation through a fixed fee these technical 'deadweight losses' would be reduced.

In addition, the Government feels that it is appropriate that those using the service to make a contribution, reducing the burden on public finances.

3.5 Increasing fees would also have important equity implications – not least for the users of the Tribunal who must now pay for the service. It is considered that the efficiency gains outweigh any equity impacts, particularly as society may think it fairer for users of the Tribunal to pay for the service, rather than this service being paid for by the taxpayer.

3.6 All options involve a move from dual to single lodgement with payment in sterling, which should address the issues of complexity identified in the Home Office review of FVV Fees in 2003 (see 2.19) where fees were collected at individual overseas posts in local currency. This will provide benefits for the Tribunal in terms of administering a single process from a minimum of locations, without the need for complex accounting - which keeps down the associated costs and potentially appellants as the process will be more straightforward and consistent where ever you appeal from and appeals will not be delayed while payments from a large number of sources and currencies are accounted for and reconciled with individual appeals.

4. Cost Benefit Analysis

4.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

4.2 It is likely that some of the fees for appeals will be paid by people living outside of the UK. As such they would have no negative impact on the UK economy and would usually be excluded from the Impact Assessment process. However, we believe that although appellants may be resident abroad fees are sometime paid by friends or relatives in the UK. We have no information on the scale of these payments. Therefore we have not excluded any fee payments from the costs of the option.

4.3 We do not know how appellants will respond to the introduction of fees. We have assumed that those appellants who are legally aided or are exempt will not respond to the fee increase (as they will not pay it) and they will appeal at the same level as before. For those appellants who will pay the fee, we assume that some of these appellants will decide not to appeal but we can not predict the size of this effect. Because of this we have used two different assumptions regarding the response to the increase in fees. The high assumption is that a £1 increase in price leads to a 0.1 percentage point reduction in the number of appeals (so for a £100 increase in fees would lead to 10% decrease in appeal volumes). We have also used a low assumption that a £1 increase in price leads to a 0.05 percentage point reduction in the number of appeals (so for a £100 increase in fees would lead to 5% decrease in appeal volumes). These assumptions are critical to our estimates of the potential costs and benefits of the policy.

4.4 Aside from these overall volume changes, we have conducted further sensitivity analysis by modelling two substitution effects. Firstly, as oral appeal fees are higher than paper appeals, appellants may switch from oral to paper appeals. It is assumed for modelling purposes that 25% of oral appeals switch to paper as a result of the introduction of fees. This acknowledges that the fee is one important factor in deciding which appeal route to follow, but other factors are also likely to be important e.g. the perceived success rate of paper and oral appeals.

4.5 The second substitution effect relates to the fact that the fees apply to appeals, but that there are no rules precluding individuals from submitting a new visa application rather than appealing an existing one. Visit Visa application fees are currently £68, cheaper than the proposed £125 for oral appeals. The analysis assumes for modelling purposes that 25% of visit visa oral appeals would switch to new applications as a result of the proposed fee increases. Again, this acknowledges that factors other than fees are likely to be important when determining behaviour. For all other types of appeal the visa fee is likely to be higher than the appeal fee and so we have not included this substitution effect. We have not assumed any substitution to re-application for Asylum appellants.

4.6 We have assumed that appellants who do not pay the fee because they are exempt or receive legal aid, will be unaffected by the fee increase and will make the same appeal decisions as before. We have assumed that 9% of appellants are legally aided for non asylum cases and that 72% of asylum appellant wont pay the fee (58% are assumed to be exempt and an additional 14% to receive legal aid). These are assumptions based on claims made to the LSC and appeal volumes in 2009/10. It is likely

these numbers will change each year and so are subject to uncertainty. This Department is currently undertaking an internal review of Legal Aid and will be seeking views on reform shortly. We will monitor the outcome and any legal aid proposals which impact on the policies proposed here will be considered and addressed as appropriate.

4.7 For each of the options we assume £400,000 annual administrative costs for operating the fee system. This is based on initial discussions with the Tribunal's contractor and may change as the fee collection process is developed and defined and actual costs are confirmed

OPTIONS NOT CONSIDERED IN DETAIL

4.8 The consultation paper covers a number of options in addition to the ones covered in detail in this Impact Assessment. These options relate primarily to dual lodgement and higher levels of fees requiring complex and costly remission and exemption policies. They have not been developed here as they are not considered as practical and realistic alternatives to the policy objectives defined above. The Impact Assessment therefore presents only two options, in addition to the base case.

BASE CASE / OPTION 0 ("Do Nothing")

Description

4.9 At present, the cost of running the Tribunal is met by the Ministry of Justice (MoJ), through funds provided by the taxpayer and a contribution to its costs of £14m from UKBA (from Visa application fees). The implications of not introducing fees is that the funds required to maintain the Tribunal in its current form would have to be found from efficiency savings within the Tribunal or from elsewhere within the MoJ budget.

4.10 Currently, the appeals process can be described as one of 'dual lodgement'. Appeals from UK-based appellants are lodged directly with the Tribunal. However, non-UK appellants can lodge appeals with their local UKBA office, which then begins work on their evidence for the hearing, and then forwards the appeal on to the Tribunal in the UK.

4.11 The costs and benefits of the proposed options are scored against the base case. The base case therefore has no associated costs or benefits, and has a net present value (NPV) of zero.

The projected volumes of appeals that the tribunal expects to process (in absence of a fee) are detailed in Annex 3.

OPTION 1 – Fee of around £125, Appellant submits appeal to the Tribunal and it is registered. If fee paid or exemption proved, appeal continues on clearance of funds (Asylum appeals continue regardless). If no fee or proof of exemption received the appellant is advised of fee due and appeal is processed on clearance of funds or proof of exemption. Model set at £65 fee for a hearing on papers and £125 fee for oral hearing.

Description

4.12 This option would involve the introduction of fees for FTTIAC appeals. These fees would be initially set at around £65 for a written hearing and around £125 for an oral hearing. A fee of around £250 would be charged for an appeal to the Upper Tribunal (£50 for permission to appeal and £200 any subsequent hearing)

4.13 Under this option, all appeals - both overseas and in-country - would be required to be lodged with the Tribunal in the UK. Payment of fees would be requested at the time the appeal is registered if not included with the appeal. Appeals would only proceed if funds are cleared or exemption proved, except for Asylum appeals (these will not be delayed).

Cost of Option 1

Transition Costs

Tribunals Service

4.14 There would be implementation and administration costs for the Tribunal when setting up and running the fee collection system. We estimate these to be £0.1m.

4.15 It is anticipated that training for staff will be focussed and delivered within existing training and development processes and so will be met within the current fixed costs of the Tribunal. Marketing costs are expected to be minimal and further work is being undertaken to identify the most effective and cost effective methods of communication for this change.

Appellants

4.16 Appellants will have to spend some time familiarising themselves with the new fee system.

Ongoing Costs

Appellants

4.17 Appellants will now have to pay a fee to appeal a decision to refuse their visa. In 2009/10 177,454 people appealed their visa decision to the FTTIAC. We expect this number to decrease when a fee is introduced. Appellants will be able to choose to have their appeal heard on paper or in an oral hearing. We expect appellants to pay approximately £11m to £15m in fees for appeals to the First Tier. They will also face costs from appealing to the Upper Tribunal; we have not costed these appeals because of uncertainty over the number of likely appeals.

4.18 A breakdown of these numbers, and the assumptions that underpin them, are contained in Annex 3. These figures are subject to considerable uncertainty because we do not know how appellants will react to the fee.

4.19 Appellants will also face increased time and administrative costs from paying the fee.

4.20 Appellants whose payments do not clear or is paid after registration will experience delays beyond current timescales.

4.21 Costs to appellants who may have chosen to lodge with the Overseas Post will be incurred as they now have to pay international postage rates rather than local and, depending on how they choose to pay a fee, may incur additional costs by way of fees charged by banks or other money transfer businesses.

4.22 For both in an out of country appeals there may be more enquiries about how to appeal , which would have previously been dealt with at overseas posts, how the fees system works and where payment has not been made at the outset and the appellant seeks to confirm that payment has reached the Tribunal and the appeal will proceed. It is not possible at this stage to quantify the associated postal or telephone costs.

4.23 Some appellants will now decide not to appeal because of the fee. These appellants will lose the benefit to appeals process.

Tribunals Service

4.24 These costs are likely to involve dealing with an increased volume of customer enquiries (relating to financial aspects of the appeal process), and the operation of a contract to collect, bank and administer the fee. Initial estimates suggest the set-up costs of the policy would be £400K p.a. running costs

4.25 In receiving all appeals directly to the Tribunal there will be increased photocopying and storage requirements and increased postal costs for the returning of original documents.

Legal Aid

4.26 Some appellants will be eligible for legal aid. In these cases, the appeal fee will be paid by their legal representative/Solicitor and reimbursed as a disbursement by the Legal Services Commission or equivalent body in Scotland or Northern Ireland.

HMCS

4.27 Asylum appeals will not be delayed if the fee is not received. Therefore it is possible that some appellants could incur a debt with Tribunals Service. The mechanisms for recovering this debt are being developed but they may include the civil courts. We expect that the majority of asylum appellants will be exempt or in receipt of a legal aid so wont pay the fee. Therefore we expect any affect on HMCS to be minimal.

UKBA

4.28 UKBA could receive an increase in application for Family Visit Visas because the visa fee is less than the oral appeal fee and some appellants may decide to re-apply for a visa instead of appealing so this could lead to an increase in costs.

Business, Universities, Charities and Non-Profit Organisations

4.29 Some organisations could choose to take on the additional costs incurred by any appellant to whom they are providing assistance.

Benefits of Option 1

Tribunals Service

4.30 The Tribunals Service will benefit from the receipt of fee income and from operational savings from reduced volumes of appeals. We estimate the benefit to tribunals to be in the region of £18m to £22m per annum. These numbers are subject to considerable uncertainty.

4.31 Operational costs are made up of fixed costs (buildings etc.) and variable cost (fee paid judiciary etc). Therefore, when the volume of appeals decreases, in the short term only the variable costs can be saved. Operational savings are based on the assumption that approximately 65% of the costs of processing an appeal can be saved if the appeal is not received.

4.32 Tribunals Service will also receive income from fees to the Upper Tribunal, We have not costed this because of uncertainty over the number of likely appeals.

4.33 The proposal introduces a single-lodgement process for all appeals, whereby both in country and out of country appeals would be lodged only with the Tribunal. Given this process is simpler than the current dual lodgement system, this should be more straightforward to administer in relation to accounting for fees. By halting non asylum appeals at the registration stage until payment has cleared, or an exemption proved, the Tribunal will ensure maximum income as cases that are out of time or potentially invalid must still go through the registration process and go before a judge, for which the Tribunal incurs a cost.

Wider Benefits

4.34 Immigration appeals are currently subsidised by the taxpayer. Given this is the case, for some tribunal users, the benefit of using the service (their willingness to pay) may be less than the cost of providing the service. There is a technical economic welfare 'deadweight loss' associated with the fact that fees are currently subsidised. In effect this relates theoretically to people using the Tribunal too much. By reducing the extent of subsidisation through a fixed fee these technical 'deadweight losses' would be reduced. This generates efficiently gains for society.

UKBA

4.35 UKBA will no longer have to deal with lodgement of appeals from the outset. This is likely to reduce the number of initial queries they currently deal with and transfers the cost of returning original documents to the Tribunal.

Appellants

4.36 Costs offset for some appellants that don't have to travel to UKBA post which may be some considerable distance away e.g. travel costs and overnight stay.

Net Impact of Option 1

4.37 Based on the assumptions detailed above we project that Tribunals Service will benefit by £18-22m pa from the introduction of these fees. Appellants will face additional fees of £11-15m pa. We expect that there will be efficiency and equity gains for wider society from the reduction in the taxpayer subsidy of immigration appeals.

OPTION 2 – Fee of not more than 25% full cost recovery

4.38 Appellant submits appeal to the Tribunal and it is registered. If fee paid or exemption proved, appeal continues on clearance of funds (Asylum appeals continue regardless). If no fee or proof of exemption received the appellant is advised of fee due and appeal is processed on clearance of funds or proof of exemption.

Description

4.39 This option would involve the introduction of fees for FTTIAC appeals. These fees would be initially set around 25% of full cost pricing.

4.40 Under this option all appeals - both overseas and in-country would be required to be lodged with the Tribunal in the UK. Payment of fees would be requested at the time the appeal is registered if not included with the appeal. Non Asylum appeals would only proceed if funds are cleared or exemption proved.

The table below shows the proposed fee levels.

Appeal Type	Fee
ECO Settlement Paper	£127
ECO Settlement Oral	£202
ECO Non Settlement Paper	£85
ECO Non Settlement Oral	£151
Managed Migration Settlement Paper	£161
Managed Migration Settlement Oral	£292
Managed Migration Non Settlement Paper	£88
Managed Migration Non Settlement Oral	£140
Family Visit Visa Paper	£79
Family Visit Visa Oral	£147
Asylum Oral	£308
Asylum Paper	£262

4.41 Fees for appeals to the Upper Tribunal would be the same as in option 1: around £50 for permission to appeal and £200 for any subsequent hearing.

Cost of Option 2

Tribunals Service

Transition costs

4.42 As in Option 1.

Annual (on going) costs

Tribunals Service

4.43 As in Option 1

Appellants

4.44 Appellants will now have to pay a fee to appeal a decision to refuse their visa. In 2009/10 177,454 people appealed their visa decision to the FTTIAC. We expect this number to decrease when a fee is introduced. Appellants will be able to choose to have their appeal heard on paper or in an oral hearing. We expect appellants to pay approximately £14m to £19m pa in fees for appeals to the First Tier.

4.45 Appellants will also face costs from appealing to the Upper Tribunal; we have not costed these appeals because of uncertainty over the number of likely appeals.

4.46 A breakdown of these numbers, and the assumptions that underpin them, are contained in Annex 3. These figures are subject to considerable uncertainty because we do not know how appellants will react to the fee.

4.47 Appellants will also face increased administrative costs from the time taken to pay the fee.

4.48 Appellants whose payments have not cleared or is paid after registration, will experience delays beyond current timescales.

4.49 Costs to appellants who may have chosen to lodge with the Overseas Post will be incurred as they now have to pay international postage rates rather than local and, depending on how they choose to pay a fee, may incur additional costs by way of fees charged by banks or other money transfer businesses.

4.50 For both in an out of country appeals there may be more enquiries about how to appeal , which would have previously been dealt with at overseas posts, how the fees system works and where payment has not been made at the outset and the appellant seeks to confirm that payment has reached the Tribunal and the appeal will proceed. It is not possible at this stage to quantify the associated postal or telephone costs.

4.51 Some appellants will now decide not to appeal because of the fee. These appellants will lose the benefit of the appeals process.

UKBA

4.52 UKBA could receive an increase in applications for Family Visit Visas because the visa fee is less than the oral and paper appeal fee and some appellants may decide to re-apply for a visa instead of appealing, so this could lead to an increase in costs.

Legal Aid

4.53 Some appellants will be eligible for legal aid. In these cases, the appeal fee will be paid by their legal representative/Solicitor and reimbursed as a disbursement by the Legal Services Commission or equivalent body in Scotland or Northern Ireland.

HMCS

4.54 Asylum appeals will not be delayed if the fee is not received. .Therefore it is possible that some appellants could incur a debt with Tribunals Service. The mechanisms for recovering this debt are being developed but they may include the civil courts. We expect that the majority of asylum appellants will be exempt or in receipt of a legal aid so wont pay the fee. Therefore we expect any affect on HMCS to be minimal.

Business, Universities, Charities and Non-Profit Organisations

4.55 Some organisations could choose to take on any additional costs incurred by any appellant to whom they are providing assistance.

Benefits of Option 2

Tribunals Service

4.56 The Tribunals Service will benefit from the receipt of fee income and from operational savings from reduced volumes of appeals. We estimate the benefit to tribunals to be in the region of £24m to £30 m per annum. These numbers are subject to considerable uncertainty. Operational savings are based on the assumption that approximately 65% of the costs of processing an appeal can be saved if the appeal is not received.

4.57 Tribunals Service will also receive income from fees to the Upper Tribunal, we have not costed this because of uncertainty over the number of likely appeals.

4.58 The proposal introduces a single-lodgement process for all appeals, whereby both in country and out of country appeals would be lodged only with the Tribunal. Given this process is simpler than the current dual lodgement system, this should be more straightforward to administer in relation to accounting for fees. By halting non asylum appeals at the registration stage until payment has cleared, or an exemption proved, the Tribunal will ensure maximum income as cases that are out of time or potentially invalid must still go through the registration process and go before a judge, for which the Tribunal incurs a cost.

Wider Benefits

4.59 Immigration appeals are currently subsidised by the taxpayer. Given this is the case, for some tribunal users, the benefit of using the service (their willingness to pay) may be less than the cost of providing the service. There is a technical economic welfare 'deadweight loss' associated with the fact that fees are currently subsidised. In effect this relates theoretically to people using the Tribunal too

much. By reducing the extent of subsidisation through a fixed fee these technical 'deadweight losses' would be reduced. This generates efficiency gains for society.

UKBA

4.60 UKBA will no longer have to deal with appeal applications from the outset. This is likely to reduce the number of initial queries they currently deal with and transfers the cost of returning original documents to the Tribunal.

Appellants

4.61 Costs offset for some appellants that don't have to travel to UKBA post which may be some considerable distance away e.g. travel costs and overnight stay.

Net Impact of Option 2

4.62 Based on the assumptions detailed above we project that Tribunals Service will benefit by £24-30m pa from the introduction of these fees. Appellants will face additional fees of £14-19m pa. We expect that there will be efficiency and equity gains for wider society from the reduction in the taxpayer subsidy of immigration appeals.

Risks and Assumptions

4.63 The costs and benefits are dependent on a series of assumptions regarding the response of appellants to the fee increase. These assumptions are detailed above. If the response is significantly different the assumptions in this Impact Assessment then the costs and benefits could be significantly higher or lower.

4.64 To calculate the indicative operational savings we have assumed that 65% of the unit cost of each appeal could be saved if the appeal is not made. It is likely that in the short term, savings may be lower than this. Operational costs are made up of fixed costs (buildings etc.) and variable cost (fee paid judiciary etc). Therefore, when the volume of appeals decreases, in the short term only the variable costs can be saved. Operational savings are based on the assumption that approximately 65% of the costs of processing an appeal can be saved if the appeal is not received. It is likely that not all of these savings will be realised immediately.

4.65 We have assumed that legal aid is available for eligible appellants. We have assumed that 9% of non-asylum appellants will receive legal aid and therefore will not pay the fee. For paper asylum appeals we have assumed that 72% (comprising of 58% who receive asylum support and are exempt and an additional 14% who receive legal aid). For oral asylum appeals we have assumed that 78% will not pay the fee (58% in receipt of asylum support, 14% in receipt of legal aid and an additional 6% exempt because they are on the fast track). These numbers are estimates based on claims for legal aid in one year and it is likely that these proportions will vary of time.

We intend to introduce a discretionary power for the Justice Secretary to be able to exempt appellants from paying fee in exceptional or compelling circumstances. We have not included this in the modelling.

4.66 This Department is currently undertaking an internal review of Legal Aid and will be seeking views on reform shortly. We will monitor the outcome and any legal aid proposals which impact on the policies proposed here will be considered and addressed as appropriate.

4.67 The Home Office is considering wide-ranging changes to the immigration system in the UK. These changes may impact on the number of cases the tribunal hears and therefore could significantly alter the costs and benefits presented here.

4.68 We have not included any costs or benefits of changes in the levels of immigration in this impact assessment. We expect that increased fees will lead to fewer appeals and that (as some of these appeals may have been successful) this may reduce the number of people coming to the UK. We consider that, if this effect exists, it is very small relative to total immigration.

5. Enforcement and Implementation

5.1 A fees order will confirm that without either the payment or the supporting evidence for exemption or legal aid funding, an appeal will not proceed beyond the appropriate point, with the exception of

asylum appeals. Asylum appeals will continue to be processed in order to meet our Human Rights and Convention obligations to the overall asylum process.

5.2 Debt collection will fall within the scope of the current Ministry of Justice processes for fee collection in the Courts, and will use the existing provisions for the prevention of fraud that are built into those processes. It is difficult to anticipate the additional costs associated with enforcement and the effect that return of funds as a result of fraud related activities may have on the benefits. We will be liaising with Tribunals Service Corporate Governance and other related Government departments to implement systems to efficiently deal with fraud related activities and minimise their effects.

5.3 The key success criteria for the project are that an appropriate fee charging mechanism is introduced to time and budget, which delivers the benefits identified without adding any unnecessary or unexpected burden on either the Tribunal, or its customers, clients, or stakeholders.

6. Specific Impact Tests

Equalities Impact Test

6.1 An Equalities Impact Assessment has been prepared and is included as an Annex to the Impact Assessment.

Competition Assessment

6.2 The main sectors affected by the proposed policy are solicitors and individuals. We have considered the four key questions set out in the Office of Fair Trading Impact Assessment guidance for policy makers (August 2007) and assess that the proposed policy would have no disproportionate impact on solicitors or individuals. The preliminary conclusion is therefore that there are no anticipated impacts on competition, and hence that a full competition assessment is not required.

Small Firms

6.3 Assessment of the potential impact of additional capacity on small firms has relied on the Department for Business, Innovation and Skill's Small Firms Impact Assessment Guidance (September 2007). Based on the latest advice there is a potential for small business and Universities to be affected by the introduction of fees should they choose to pay the fee on appellant's behalf and we will explore the possible impacts of this through the consultation process.

6.4 After discussion with the Legal services commission we do not believe there will be a significant increase in legal aid applications. Where there are additional legal aid applications there is a possible impact on small legal firms who will have to pay a fee on behalf of multiple appellants which for which they will then have to seek reimbursement from the LSC. Discussions will take place with the LSC to consider how to minimise this potential impact.

Greenhouse Gas Assessment

6.5 The proposals are unlikely to have any significant impact on greenhouse gases. It is possible that fewer appellants will decide to travel for oral appeals after the introduction of a fee and this could possibly reduce travel related emission. However, if there is any impact, we expect it to be minimal. Therefore, we have not quantified this impact.

Wider Environmental Impacts

6.6 We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

Justice System Impacts

6.7 The proposal will affect the Tribunals Service, primarily in the area of enforcement (see Part 5) and potentially legal aid (see 2.7 and 6.3), which are both addressed within the main impact assessment.

Human Rights

6.8 We believe that our Human Rights obligations are met by the proposed level of fee and exemptions policy, along with the existing ability for the appellant to apply for legal aid. We will keep these under review as our policy is developed in light of consultation responses and developments on legal aid policy.

Health Impact Assessment

6.9 We have identified no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health: a significant impact on any lifestyle related variables or that it will place a significant demand on any of the following health and social care services.

6.10 On this basis we do not believe a full health impact assessment is required.

Rural proofing

6.11 The proposals are not expected to have any significant rural impacts.

Sustainable Development

6.12 The primary impact on sustainable development is that those who use the service and can afford to pay will make a contribution towards the costs of administering their appeal, thereby reducing public spending and the benefit this will bring to the economy. Any potential impact on communities and equality groups will continue to be monitored through our Equality Impact Assessment and Post Implementation Review processes.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>Review of fees policy to check realisation of policy aims - contribution to appeal costs while maintaining access to justice. Check for indirect Equality Impacts.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To verify income, savings, benefits realisation and effect on equality groups.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>Primarily monitoring intake data and financial accounting to assess achievements and impacts, review policy rationale accordingly and monitor result of any changes.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>2009/10 appeals volumes data.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Tribunal maintains service on reduced Treasury funding without restricting access to justice or disproportionately affecting equality groups.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Existing monthly stats give relevant breakdowns, new collection contract to include accounting information, also keep record of changes to process, UKBA etc that may impact on appeal levels so effects can be filtered out.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

ANNEX 2 – EQUALITY IMPACT ASSESSMENT

IMPLEMENTATION OF FEE - CHARGING FOR APPEALS IN THE IMMIGRATION & ASYLUM CHAMBER OF THE FIRST-TIER AND UPPER TRIBUNAL

Equalities Impact Assessment
Immigration Policy Team

1) Introduction

2) Aims/objectives

3) Outcomes

4) Evidence Base - Initial Screening

5) Evidence Base - Financial Modelling

6) Evidence Base - Additional Evidence Considered

7) Evidence Base - Fees For Family Visit Visas October 2000 to May 2002

8) Equality Impacts and Policy Development

Appeal Types and Introduction of Fees

Fee Levels and Recovering Costs

Exemptions, Remissions and Refunds

Upper Tribunal Appeals

Fee Charging Process

9) Consultation and Review

1) Introduction

1.1 In 2009/10 the Asylum and Immigration Tribunal (AIT), which became the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC) and Upper Tribunal Immigration and Asylum Chamber from 15 February 2010, dealt with approximately 197,000 asylum and immigration appeals. In dealing with these, the Tribunal incurs administrative costs in processing the papers, arranging hearings, dealing with enquiries, and promulgating judicial decisions. There are also the judicial costs of considering the appeals and reaching a decision. The total budget for dealing with immigration and asylum matters in 2009/10 was £114.7m.

1.2 The Treasury's Fees and Charges Guide requires that Government departments and agencies should normally recover the full accounting cost of the services they provide. In the current economic climate, it has been determined that it is no longer appropriate that the taxpayer should fund in its entirety an asylum and immigration appeals process, without some contribution to the costs from those who are actually using the service to bring an appeal.

1.3 Without fees the service offered by Tribunals Service – Immigration and Asylum would potentially be compromised, as it would be forced to consider cost-cutting measures.

2) Aims/objectives

2.1 The aim of the project is to develop and introduce a charging policy for bringing appeals to the Tribunal where appellants have been refused leave to enter the country, refused leave to remain in the country, or an application to vary current leave to remain is refused.

2.2 It is not intended to extend charging to appeals made because of an action initiated by the State (i.e. where the government seeks to deport someone).

2.3 The objective is for users of the service to contribute towards the cost of providing the service whilst ensuring that access to justice is protected for those who cannot afford to pay the fee.

3) Outcomes

3.1 The project will transfer more of the cost of the Tribunal's business to the users, generating a fee income each year by the end of financial year 10/11 by introducing a model that is affordable and straightforward to use for both our service users and the Tribunal which supports access to justice. The major impact is a transfer of cost from one group (taxpayers) to another (users).

4) Initial Screening Evidence Base

4.1 Since the introduction of the Tribunals Service in 2006 resulting in the union merger of 26 different Tribunal jurisdictions the organisation has been working towards introducing standard corporate approaches across a number of areas within the organisation. At present the Tribunals Service does not have a standard approach to collecting customer diversity data. Some data has been collected in some jurisdictions and none in others. However the Tribunals Service is currently taking steps to ensure that diversity data collection is included in the Tribunals Service National Customer Satisfaction Survey for 2010/2011.

4.2 The potential impact of the introduction of fees for appeals to the Tribunal on equality groups cannot be easily assessed. Appellants to the Asylum and Immigration Tribunal (AIT) and its successors, the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC) and Upper Tribunal Immigration and Asylum Chamber (UTTIAC), are not required to provide personal information that identifies them as a member of specific equality groups, so there is a lack of evidence as to how the introduction of immigration appeal fees might specifically affect diverse communities/individuals.

4.3 In addition to this, comparative data for a 'before and after' scenario is not available as fees are not currently charged. When fees were introduced in 2000 (for Family Visit Visas only), they were introduced as part of a new appeal right and there was no Family Visit Visa appeal up to that point. Similarly, there has been no fee associated with most of the appeal types we will now be charging for and no fee has been charged for a Family Visit Visa since they were abolished in 2002. There is therefore little actual data to determine what the impact of introducing fees will be.

4.4 In the absence of specific evidence and comparable data we have based our initial screening and policy development on three main areas:

- We have developed a model to try and predict the impacts of introducing a fee which has produced a wide range of options for consideration. This model makes a range of assumptions on how demand for appeals changes with price. The model therefore yields a range of reductions in the number of appeals received. The model is, however, unable to robustly identify any specific drivers or behaviours behind the anticipated reductions or which of our service users will be impacted.
- To understand more around the potential drivers and behaviours of appellants as a result of the introduction of fees to the Tribunal we have looked at academic studies produced for equality organisations and equality impact assessments and reports published by both the UK Border Agency and other areas of Civil Justice where there is a client base or process that is broadly comparable.

(In our modelling, economists have not been able to accurately forecast the impact of introducing a fee where there was none before and on this basis we have assumed that the role of income on the ability to pay for a fee has a greater impact when introducing a new fee than increasing an existing fee within an established fee regime.)

- The introduction of fees for Family Visit Visa (FVV) appeals in October 2000, the review of those fees conducted between August 2001 and January 2002 and internal statistics that cover this period and the period after these fees ceased in May 2002.

4.5 In order to identify the nationalities most likely to be affected by the introduction of a fee we have looked at internal management information figures for appeal receipts from April 2008. **Please note that the internal figures in Table 1 below are indicative only and are not subject to the checks applied to data produced for publication.**

4.6 The Tribunal consistently receives the majority of immigration appeals in all categories from Pakistan, India, Nigeria and Bangladesh. Below these there is more variation depending on the type of appeal being made. We have centred our research around the top six countries in each appeal type. For appeals against decisions made by entry clearance officers (ECO) this adds The Philippines, Ghana and Somalia to the list; for appeals against immigration officer decisions - Ghana, Jamaica and China; and for appeals against Family Visit Visa refusals - Iran and Zimbabwe.

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?

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?

Table 1 – Receipts by country April 2008 to March 2010

Receipts By Country Top 6 1 Apr 2008 to 31 March 2009 (as at 29.1.2010) Indicative figures intended for internal use			Receipts By Country Top 6 1 Apr 2009 to 31 March 2010 (as at 28.5.2010) Indicative figures intended for internal use		
Percentages rounded to the nearest 1%					
FAMILY VISIT VISA					
Country	Appeals Received	% of Total FVV Appeals	Country	Appeals Received	% of Total FVV Appeals
Pakistan	27,742	39	Pakistan	30,003	44
Nigeria	11,270	16	India	8,789	13
India	10,921	15	Nigeria	8,227	12
Bangladesh	5,238	7	Bangladesh	5,227	8

Iran	2,534	4	Iran	3,041	4
Zimbabwe	1,632	2	Zimbabwe	1,550	2
ENTRY CLEARANCE OFFICER					
Country	Appeals Received	% of Total ECO Appeals	Country	Appeals Received	% of Total ECO Appeals
Pakistan	25,143	26	Pakistan	9,411	24
India	23,167	24	India	5,911	15
Nigeria	11,148	11	Nigeria	3,282	8
Bangladesh	9,974	10	Bangladesh	2,980	7
Ghana	2,396	2	Philippines	1,789	4
Somalia	2,232	2	Somalia	1,771	4
MANAGED MIGRATION					
Country	Appeals Received	% of Total MM Appeals	Country	Appeals Received	% of Total MM Appeals
Pakistan	3,556	14	Pakistan	6,359	14
Nigeria	3,149	13	Nigeria	6,251	14
India	2,800	11	India	5,224	12
Ghana	1,473	6	Bangladesh	3,023	7
Bangladesh	1,442	6	Ghana	2,056	5
Jamaica	1,297	5	China	1805	4

4.7 An accurate assessment of the impact on equality groups is further complicated by the fact that the equality group of the person paying the fee may not correspond to that of the appellant. The findings of the review of the 2000 fees implementation detailed at section 7 shows that although the appellants affected by the introduction of the fees were overseas, a disproportionate majority of those fees were paid by UK residents on their behalf.

5) Evidence Base - Financial Modelling

5.1 Our economists have developed a model of fee levels based on the costs for dealing with appeals for 2009/2010 and the predicted receipts and disposals of appeals for 2010/2011. The Treasury's Fees and Charges Guide requires that government departments and agencies should normally recover the full accounting cost of the services they provide, unless a compelling case can be made for less than full cost recovery.

5.2 We believe there is a compelling case to set a fee at less than full cost recovery in order to ensure access to justice for those wishing to appeal a decision made by the UK Border Agency.

5.3 We are currently consulting on options to initially introduce either a fixed level of fee of around £125 (£65 for paper cases and £125 for oral cases) in the FTTIAC or the more flexible level of around 25% of full cost recovery. These both provide a meaningful contribution by the appellant to the administration of their appeal and careful consideration has been given to the process for collecting fees to ensure that our collection process, covered later in this EIA, does not drive up costs and necessitate a higher level of fee.

Table 2 – Full cost recovery and possible Fee Levels (Calculated on actual costs for 2009/10 and predicted receipts and disposals for 2010/11).

Appeal Type	Full Cost recovery (100%)	25% of Cost Recovery	£65 - £125 fee
ECO Settlement			
Paper	£507	£127	£65
Oral	£808	£202	£125
ECO Non Settlement			
Paper	£338	£85	£65
Oral	£605	£151	£125
Managed Migration Settlement			
Paper	£642	£161	£65
Oral	£1,168	£292	£125
Managed Migration Non Settlement			
Paper	£352	£88	£65
Oral	£559	£140	£125
Family Visit Visa			
Paper	£317	£79	£65
Oral	£586	£147	£125
Asylum			
Paper	£1048	£262	£65

Oral	£1233	£308	£125
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6) Evidence Base - Additional Evidence Considered

Race (inc. Ethnicity and Nationality)

6.1 The Tribunal does not currently collect data on the ethnic origins of its appellants but it does collect data on nationality.

6.2 The only direct comparison available is for Family Visit Visas. While the number of appeals received in 2009 is substantially above that of 2001 (when the fee was in place) there is little movement in the main nationalities of our service users – the top three (accounting for 70% of appeals in 2008/2009 and 69% from April to March 2009/2010) being Pakistan, India and Nigeria (compared with 62% in 2001).

Table 3 – Comparison of percentage of total appeals received Jan 2001 to Aug 2001 when fees were payable, against the last two financial years intake.

Receipts By Country. Top 6. Jan 2001 to Aug 2001 (Figures from "Family Visit Visa Appeals: an evaluation of the decision to appeal and success rates by appeal type")			Receipts By Country Top 6 1 Apr 2008 to 31 March 2009 (as at 29.1.2010) Indicative figures intended for internal use			Receipts By Country Top 6 1 Apr 2009 to 31 March 2010 (as at 28.5.2010) Indicative figures intended for internal use		
Percentages rounded to the nearest 1%								
FAMILY VISIT VISA								
Country	Appeals Received	% of Total FVV Appeals	Country	Appeals Received	% of Total FVV Appeals	Country	Appeals Received	% of Total FVV Appeals
Pakistan	925	30	Pakistan	27,742	39	Pakistan	30,003	44
India	635	21	Nigeria	11,270	16	India	8,789	13
Nigeria	350	11	India	10,921	15	Nigeria	8227	12
Ghana	230	8	Bangladesh	5,238	7	Bangladesh	5227	8
Bangladesh	170	6	Iran	2,534	4	Iran	3041	4
Turkey	40	1	Zimbabwe	1,632	2	Zimbabwe	1,550	2

6.3 Since the abolition of fees the proportion of appeals against the total number received from Bangladesh, Nigeria and Pakistan have increased by between 1 and 14 %, compared with a reduction of 6-7% in the proportion of appeals from India and 6% for Ghana. The analysis of the historical data for the 2000 – 2002 fees process at section 7 suggests that the abolition of the fee is not an overriding factor in this trend but should be considered along side wider socio-economic changes and other factors.

6.4 A study of records for the UK for 2004/5⁷ shows that all men from ethnic minority groups, other than those of Indian origin, earned significantly less than white men. For example, the gross weekly earnings of Pakistani and Bangladeshi men were 64% of those of their white counterparts and this figure had not risen since 1996/7. In terms of earnings over 2004/5, women's earnings against those of men has risen overall from 54% in 1996/7 to 61%. Black Caribbean and Indian women earned significantly more than White women but their Pakistani and Bangladeshi counterparts earned significantly less at 76%. This would imply that the introduction of a fee would have a greater impact on these groups.

6.5 The Labour Force Survey 2006⁸ shows a wide range of economic inactivity (those neither employed nor claiming out of work benefits) on both nationality and gender grounds. Within the group 'Chinese nationals' 49.9% of men were economically inactive, as were 46.6% of women. This compares with 30% and 79.5% of Bangladeshi men and women and 15.6% and 34.2% for Nigerian men and women. There are many reasons for economic inactivity within the ethnic and gender groups. There are, for example, a proportionately higher number of Chinese students in education, whereas a large proportion of Bangladeshi women care for their families.

6.6 The World Bank Annual Report 2008⁹ gives a breakdown of the Gross National Income per capita by Region that suggests a similar disparity of income for overseas appellants for 2007: \$6051 for Europe and Central Asia; \$5540 for Latin America and the Caribbean, \$2794 for the Middle East and North Africa; \$2180 East Asia and Pacific; \$952 for Africa and \$880 for South Asia.

⁷ Li, Y. Devine, F. University of Manchester. Heath, A. University of Oxford. 2008. *"Equality group inequalities in education, employment and earnings: A research review and analysis of trends over time"*. (Research Report 10). London. Equality and Human Rights Commission.

⁸ Kofman, E. Lukes, S. D'Angelo, A. Montanga, N. Social Policy Research Centre, Middlesex University. 2009. *"The equality implications of being a migrant in Britain"*.

(Research Report 19). London. Equality and Human Rights Commission.

⁹ The World Bank. 2008. "The World Bank Annual report 2008. Regional summaries."

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTANNREP/EXTANNREP2K8/0,,contentMDK:21918085~menuPK:5405445~pagePK:64168445~piPK:64168309~theSitePK:5164354,00.html>

6.7 The Department for International Development (DFID) publish on their website details of the countries where they have projects, which includes the top four nationalities of our appellants. Again this would suggest that there may be a disproportional impact on different nationalities paying to bring an immigration appeal.

Table 4 – Average Income per capita

COUNTRY	Average income per capita \$ (figures taken from DFID website)	Average income per capita £ (assumes 1.5 exchange rate)	Average weekly income (AIPC/52)
Pakistan	\$1085 (2007/8)	£723.33	£13.91
Nigeria	\$1160 (2008)	£773.33	£14.87
Bangladesh	\$1340 (2007)	£893.33	£17.18
India	\$2780 (2008)	£1853.33	£35.64

6.8 There is, however, evidence to suggest that, when increasing fees within an existing regime, income is not an overriding factor for those that have chosen to make their application. The Home Office Equality Impact Assessment Report¹⁰ of 2007 (concerned with their yearly review of visa fees) found that “While it is recognised that differing local economies across the world will create a disparity in the affordability of application, the charging policy will not limit the participation in any aspect of public life for any visitor to UK” and their impact assessment concluded that charging policy did not cause unlawful direct or indirect discrimination.

6.9 The Managed Migration Pricing Research¹¹ considered by the Home Office excluded unsuccessful applicants so direct comparison cannot be drawn as the research sample will not have had to consider the implications of an additional cost of an appeal. However, broad inferences can be made. Fees were not a major factor in deciding whether to apply for a visa for students, highly skilled migrants and others seeking leave to remain. It was a major consideration for those applying for a visitor’s visa (41%). This would suggest that the potential impact of charging a fee may also vary by appeal type.

¹⁰ Home Office Race Equality Impact Assessment Report 15 March 2007 “A new charging regime for Immigration and Nationality fees”

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/newchargingregime/>

¹¹ Managed Migration Pricing Research, Report of Findings JN 150446 19 March 2007. TNS UK Ltd

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/newchargingregime/>

6.10 The Civil Court Fees consultation of 2008¹² carried out a similar study of those who had chosen to take their case to court. Again, broad inferences can be drawn from this. Evidence from a 2007 MoJ report on fees in the court system¹³ stated that “individuals feel that cost played a minor role in their initial decision-making process (ranked 8th from a list of 9 factors)” in terms of whether to take a matter to court. In this study factors relating to obtaining a satisfactory result or outcome were the major influences on deciding to take a case to court, particularly in family cases.

6.11 When looking at employment and income in their sample they found that those who are working (full or part-time) are significantly more likely to say that an increase in court fees would not affect their decision to proceed to court, compared with those who are not working (71% compared to 62%) and that there were no statistically significant differences by gender, age, socio-economic group or household income within this.

6.12 The Equality Impact Assessment carried out as part of the Civil Fees consultation found that there was potential impact across the equality groups but held that these were mitigated by their existing system of concessions (i.e. that those below a certain income threshold or in receipt of certain state benefits were exempt from paying some/all of the fee. Please see 8.15 and 8.16 for our current thinking on exemptions).

Other Equality Groups

6.13 The Tribunal does not currently collect data on appellant’s gender or gender identity, age, disability, Religion and belief, sexual orientation or caring responsibilities.

6.14 We recognise that within the national groups we have highlighted, there will be those that face additional issues when paying a fee, particularly around affordability and their earnings potential both in the UK and abroad. The studies referred to above indicate that there is evidence that there is inequality in earnings potential relating to gender and the Civil Court Fees consultation of 2008 did find the potential for their fees to impact on this group on similar evidence to that already presented here on nationality and income (they cited their existing concession process as mitigation).

6.15 There is similar evidence for other equality groups:

- According to the Office of National Statistics Annual Survey of Hours and Earnings, both the young and those over 65 are most likely to be economically inactive (either because they have not yet, or only just, started or have retired from full time employment). In both the Civil Court and Home Office consultations concerns were raised regarding the ability to pay a fee for the young and old based on their earnings potential.
- According to the Office of National Statistics labour force survey approximately 50% of people of working age with a disability are in work.

¹² Civil Court Fees Consultation and Impact Assessment 2008.

<http://www.justice.gov.uk/consultations/civil-court-fees-2008-consultation.htm>

¹³ Ministry of Justice Research Series 4/07 “*What’s cost got to do with it? The impact of changing court fees on users*” <http://www.justice.gov.uk/publications/research280607.htm> June 2007

When comparing employment rates against able bodied counter parts the likelihood of employment is 82% for men and 84% for women. Disabled men's gross weekly earnings reduced from 83% of that earned by their non-disabled counterparts to 82% between 1996/7 and 2004/5 and Disabled women's reduced from 87% to 84% during the same period.

- There is some evidence to suggest a disparity of earnings between Muslim and non-Muslims¹⁴. This is closely linked to the issues surrounding nationality already discussed.
- Someone with caring responsibilities may have less disposable income because of those responsibilities.

6.16 We have found no evidence that fees will impact on appellants on the grounds of sexual orientation.

6.17 We are also considering the impact of the method of fee collection on the disability equality group, which is dealt with later in this initial screening.

7) Evidence Base - Fees for Family Visit Visas October 2000 to May 2002

7.1 The 1999 Immigration Act reinstated the right to appeal against the refusal of a visit visa and in July 2000 a consultation was published proposing fees for a visit visa appeal set at £280 for a paper hearing and £580 for an oral hearing for when the Act came into force in October 2000.

7.2 This consultation resulted in negative reaction from stakeholders and a sustained campaign against the fees from organisations such as the Citizens Advice Bureau on the grounds that it was discriminatory and created a barrier to justice that could not be justified¹⁵. In response fees were initially reduced to £150 and £500 respectively.

7.3 The appeal and fee was submitted by single lodgement at the overseas post and the fee paid in local currency. The application was then reviewed by the Entry Clearance Manager and the fee refunded if the refusal was overturned and the visa granted. If not, the appeal was sent to the Immigration Appellate Authority (the predecessor of the AIT and TSIA) to be heard. If the appeal was successful, the exact fee paid was refunded to the appellant by the overseas post when the visa was issued¹⁶.

¹⁴ Metcalf, H. The National Institute of Economic and Social Research. 2009. *"Pay gaps across the equality strands: a review"*. (Research Report 14). London. Equality and Human Rights Commission.

¹⁵ Citizen's Advice Bureau, *"No fees for Salma's family visitor visa appeal"*
<http://www.citizensadvice.org.uk/index/campaigns/campaign_success/family-visa-appeal-fees.htm>

¹⁶ Gelsthorpe, V et al, *"Family Visit Visa Appeals: an evaluation of the decision to appeal and success rates by appeal type"*, summary. www.homeoffice.gov.uk/rds/pdfs2/r199.pdf, 2003.

7.4 In November 2000 debates in both the House of Lords¹⁷ and House of Commons¹⁸ voiced similar concerns to those of the stakeholders. The Secretary of State for the Home Department defended the policy in the Commons and agreed to an internal review.

7.5 In January 2001 the results of the review were announced and fees were subsequently reduced to £50 and £125 respectively. This was primarily due to the low number of appeals received against predictions¹⁹. Stakeholders continued to challenge the fee, focussing on continuing low receipts and the disparity of success rates between oral and paper hearings.

7.6 In February 2002 the Secretary of State announced that he was minded to abolish fees²⁰ and this was confirmed in April 2002²¹, with the fee subsequently set at zero from 15 May 2002.

7.7 The full review was published in 2003²². Research conducted for the review found that the impact of the fee on those who decided not to pursue an appeal remained largely unknown but for those who did, there were five main considerations in deciding to appeal: information about the appeal process; expectations and experience; timeliness; the fee and availability of an alternative means of redress.

7.8 The research found no clear evidence that the fee in itself was a deterrent to making an appeal and while clear instances were identified where the level of fee had deterred an applicant from making an appeal; in many cases the sponsor played

¹⁷ House of Lords, Hansard debate, 2 November 2000, <<http://www.publications.parliament.uk/pa/ld199900/ldhansrd/vo001102/text/011102-25.htm>>

¹⁸ House of Commons Hansard debates, 20 November 2000, <http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo001120/debtext/011120-32.htm>,

¹⁹ Select Committee on Home Affairs. Minutes of Evidence Examination of Witnesses (Questions 20-39) Tuesday 23 January 2001.

<http://www.publications.parliament.uk/pa/cm200001/cmselect/cmhaff/164/1012303.htm>

²⁰ http://hansard.millbanksystems.com/commons/2002/feb/07/nationality-immigration-and-asylum#column_1034

²¹ http://hansard.millbanksystems.com/commons/2002/apr/24/nationality-immigration-and-asylum-bill#column_357

²² Gelsthorpe, V et al, "Family Visit Visa Appeals: an evaluation of the decision to appeal and success rates by appeal type", <http://rds.homeoffice.gov.uk/rds/pdfs2/rdsolr2603.pdf> .

an important role in the decision to appeal. In 65% of the cases looked at the sponsor paid for the appeal, compared to 25% paid by the appellant.

7.9 The fee did prove to be the biggest influence on the choice between an oral hearing or a hearing on papers only with 37% of those surveyed confirming they had chosen a paper hearing because it was cheaper.

7.10 We have been able to gather retrospective statistical data to cover FVV Appeals for the period from the introduction of the appeal right and fee and beyond its abolishment in May 2002. **Please note that the internal figures in Table 5 and 6 are indicative only and are not subject to the checks applied to data produced for publication.**

Table 5 – Visit Visa Receipts and Disposals by hearing type 2000 - 2003

	Visit Visa Receipt				Visit Visa Paper Disposals				Visit Visa Oral Disposals			
	2000*	2001	2002	2003	2000*	2001	2002	2003	2000*	2001	2002	2003
JAN		116	365	1171		92	152	568		10	142	309
FEB		135	357	805		56	148	541		15	139	413
MAR		278	497	1102		141	201	417		70	178	446
APR		210	594	1023		132	221	449		67	214	413
MAY		373	860	1106		162	332	596		155	251	500
JUN		490	697	1234		263	458	497		152	254	396
JLY		525	597	1682		213	377	389		283	376	518
AUG		608	763	1828		352	283	412		231	363	473
SEPT		551	703	1818		242	444	708		229	262	646
OCT	0	514	924	1713	0	240	421	732	0	319	277	829
NOV	58	343	774	1398	20	218	439	1021	0	307	351	1311
DEC	80	223	866	898	45	173	472	858	5	161	336	772
TOTAL	138	4366	7997	15778	65	2284	3948	7188	5	1999	3143	7026

FVV and FVV Fees introduced 2.10.2000 £150 Paper Case, £500 Oral Case
Fees reduced after review Jan 2001 £50 Paper Case, £125 Oral Case
Period of Gelsthorpe Study Aug 2001 to Jan 2002
Fees no longer payable from 15.5.2002
2009/10 figures show the oral/paper split running at approx 60/40 in favour of oral hearings.
*2000 figures from Gelsthorpe report, 2001-2003 figures from TS-IA website.

7.11 These figures do support the findings of the Gelsthorpe review and show that both appeal numbers and the balance between paper and oral appeals developed over a period of time rather than clear leaps associated with fee related milestones, which further suggests that the fee and subsequent abolition is one of a number of factors to consider, such as appellants become more familiar with the new appeal right, varying rates of application refusals, the emergence of now familiar seasonal trends and other socio-economic factors.

7.12 The influence of other factors also became clearer when we were also able to break down these receipts by country in order to look for any indication of disproportional impacts on our top six sources of appeal. In table 5, May 2002 did show a jump in applications on abolition of the fee but this was not carried forward into subsequent months and it took some time for receipts to return to that level. Table 6 then showed a dramatic slump in receipts from our main source of appeals, Pakistan, in 2003. This initial down turn and subsequent decline in appeal receipts from that area of the world is mainly associated with the recall of staff for security reasons from UK consular services in Pakistan in May 2002, which also included the suspension of visa services. Normal consular services were not fully resumed until 2004.

Table 6 – Receipts by country October 2000 to December 2003

Country	ORAL			PAPER			TOTAL		
	2001	2002	2003	2001	2002	2003	2001	2002	2003
Pakistan	963	1048	344	601	430	244	1564	1478	588
Percentage %	62	71	58	38	29	42	100	100	100
India	483	1061	2361	309	450	839	792	1511	3200
Percentage %	61	70	74	39	30	26	100	100	100
Nigeria	217	449	994	359	817	1345	576	1266	2339
Percentage %	38	35	42	62	65	58	100	100	100
Bangladesh	154	350	729	137	165	205	291	515	934
Percentage %	53	68	78	47	32	22	100	100	100
Ghana	70	278	808	205	749	944	275	1027	1752
Percentage %	25	27	46	75	73	54	100	100	100
Philippines	19	88	225	161	364	887	180	452	1112
Percentage %	11	19	20	89	81	80	100	100	100
Jamaica	2	5	393	2	16	1288	4	21	1681
Percentage %	50	24	23	50	76	77	100	100	100
Based on unrefined figures intended for internal use, run on 3 August 2006. Presented for comparison purposes only.									

7.13 Table 6 suggests that there have been established preferences in certain countries for oral hearings or paper hearings throughout the period that have remained fairly consistent, although there has been a general shift towards oral hearings in most countries. There is a discernable 10-20% jump in oral hearings from Bangladesh and Ghana after fees were abolished and taken in context of the Review findings, it suggests fees were one of a number of factors contributing to this.

8) Equality Impacts and Policy Development

8.1 We have carefully considered the evidence above and concluded that there is no evidence of direct discrimination in our intention to charge a fee to users of the Tribunal to contribute towards the cost of administering their appeal, as fees will be applied equally across all equality groups.

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?

8.2 The evidence does suggest that charging of a fee could have the potential for an indirect discriminatory effect on certain nationals, in that it is more difficult for nationals of certain countries to pay a fee than others and this potential could also apply to other equality groups.

8.3 On this basis, we will complete a full Equality Impact Assessment over the course of the development of the fees process and to date we have looked to mitigate any potential impact in the development of our options for consultation where ever possible (See 8.10 – 8.12).

Appeal Types and Introduction of Fees

8.4 In the current economic climate the Government has determined that it is no longer appropriate that the taxpayer should fund in its entirety the appeals process, without some contribution to the costs from those who are actually using the service to bring an appeal. Given the Treasury's Fees and Charges Guide requires that government departments and agencies should normally recover the full accounting cost of the services they provide, and that the alternative to charging fees is to find other efficiencies that may detract from the Tribunal's ability to carry out its business, we believe that it is both legitimate and proportionate to introduce a fee for appellants, below full cost recovery, to contribute towards the administration of their appeal.

8.5 As such, the introduction of a fee does not fall within the scope of this consultation process and we have sought to examine the equality impacts of how the level of the fee and such a fee charging system would work through this assessment and accompanying consultation.

8.6 We intend to charge a fee if you are refused leave to enter the country, refused leave to remain in the country, or an application to vary your leave is refused. This will encompass the following appeal types:

- Family Visit Visa – which relate to appeals against decisions not to allow temporary visits to the UK;
- Managed Migration – Settlement , appeals generated by people who are already in the UK and seeking to stay permanently;

- Managed Migration – Non Settlement, appeals generated by people who are already in the UK and seeking to stay longer than their current leave to remain;
- Entry Clearance Officer – Non settlement – All non-FVV overseas, non-settlement entry clearance applications do not now attract a full right of appeal. They are dealt with by the points based system and appeals can only be brought on residual grounds (that is, on specific Human Rights or Racial Discrimination grounds);
- Entry Clearance Officer – Settlement – these appeals are most commonly against the refusal of a settlement application for a person to reside permanently in the UK;
- Asylum Appeals – appeals against asylum decisions, including those that raise Human Rights grounds;
- European applications – applications from EEA nationals and their family members for documentation to evidence their right of residence, for an EEA family permit, or under transitional work schemes for workers from EU Accession states.

8.7 This excludes an appeal that is being made against actions by the State with regard to:

- deportation;
- revoking (or in some circumstances curtailing) a person's leave to remain;
- deprivation of citizenship or right of abode.

8.8 On the evidence available we do not believe that this approach impacts directly or indirectly on any equality group.

Q4 – Do you have any evidence that the approach describe at 8.6 and 8.7 will impact on equality groups?

8.9 Please note that the inclusion of Asylum appeals in the above list reflects our policy that those who can afford to contribute towards the cost of administering their appeal should do so. While we recognise that asylum appellants face different circumstances from those bringing immigration appeals, we also recognise that they may also face the same potential equality impacts as those going through the immigration process and have taken this into account when considering mitigation of these impacts (see 8.13-8.17).

Fee Levels and Recovering Costs

8.10 We have established the cost to the Tribunal of dealing with each appeal type in 2009/2010 (Table 2) and run these through our economic model to predict the potential contribution to the costs of the Tribunal at full cost recovery; a percentage

range of cost recovery and a fixed fee approach, which produced a range of income potentially available through the introduction of fees. We then looked at the impact of these fee levels on the appellant from an Equality perspective.

8.11 It is arguable that those who wish to visit, or settle in, the UK have made their application on the basis that they are able to support themselves, and that accordingly should be able to afford to pay for an appeal if they wish to challenge a decision to refuse them entry.

8.12 However, on considering the available evidence around average earnings, earnings potential and the outcome of the challenges and reviews of fee levels in 2000-2002 we feel that a fee set at full or high level of cost recovery would be prohibitive to appellant's ability to access justice and potentially impact on equality groups. The options put forward for consultation consider a range of fee for appeals to the First-tier Tribunal of around £125 for oral hearings and £65 for less costly to administer paper hearings to a fee that represents around 25% of full cost recovery. We believe these would provide a meaningful contribution towards the cost of using the Tribunal's services whilst minimising the impact on those who may struggle to pay.

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?

Exemptions, Remissions and Refunds

8.13 Under our proposal, the appellant will pay a fee as a contribution to the cost of administering their appeal. As all cases incur administrative costs we do not propose to refund a fee regardless of the outcome of the appeal, including if the appeal is subsequently withdrawn as the Tribunal will have incurred costs up to that point. We will develop a process to refund fees paid in error. We do not consider this to disproportionately affect any equality group.

8.14 Other Courts and Tribunals have developed extensive exemptions and remission policies to mitigate their high to full cost recovery fees. These are based on the receipt of UK Benefits and income assessments. In these cases the majority, if not all, of their service users live in the UK.

8.15 In developing our exemption and remission policy we have considered the implications of attempting to run a similar system on an international scale and we believe this would be both complex and costly to both implement and run, which would then have to be passed on to the appellant through a higher level of fee. In order to keep the fee low we propose a minimal, straightforward exemption policy based on existing avenues of assistance open to the appellant. In proposing this we have also considered the finding of the Gelsthorpe Review that in 65% of the cases they studied, the appellant's fee was paid by a third party and only 25% were paid directly by the appellant, so the individual circumstances of the appellant was only a factor in a quarter of the cases studied.

8.16 The main area where we would not expect the appellant to pay is where they are in receipt of Legal Aid. This is on the basis that this is currently available to appellants on a low income where certain criteria are met and entitlement to it will not

be affected by the introduction of a fee. It is available to appellants both in the UK and abroad. Further detail about Legal Aid entitlement can be found at <http://www.legalservices.gov.uk> for England and Wales, <http://www.slab.org.uk> in Scotland and for Northern Ireland <http://www.nilsc.org.uk>. This Department is currently undertaking an internal review of Legal Aid and will be seeking views on reform shortly. We will monitor the outcome and any legal aid proposals which impact on the policies proposed here will be considered and addressed as appropriate.

8.17 For Asylum appeals we will exempt those in receipt of Asylum Support Funding under section 95 of the Immigration and Asylum Act 2009 and those who are a part of the Asylum Fast Track process.

8.18 In addition to these circumstances and appeals where action has been instigated by the state, we also intend to introduce a discretionary power for the Justice Secretary to be able to exempt appellants from paying fee in exceptional or compelling circumstances.

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?

Upper Tribunal Appeals

8.19 The Upper Tribunal Immigration and Asylum Chamber came into existence on 15 February 2010. Prior to 15 February 2010 challenges to Immigration Judge decisions were made by making an application to review the decision. This process took place within the single tier of the AIT. The review process determined if there may have been an error of law and a review hearing would determine this. If the application for review was refused the appellant could then 'opt in' directly to the High Court and ask them to review the potential error of law. While applications to the AIT did not attract a fee, the High Court charged a fee of £400 for the statutory review unless the appellant was exempt or successfully applied for remittal.

8.20 Since the creation of the Upper Tribunal the appellant can no longer apply to the Tribunal for a reconsideration of their case. They must first apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal (FTPA). If this is refused, they can then apply for permission to appeal directly to the Upper Tribunal itself (UTPA). If permission is granted at either stage, an Upper Tribunal hearing will take place. At present no fee is charged in anticipation of this consultation taking place.

8.21 Unlike the initial appeal, both a reconsideration request and a permission application in the AIT and a FTPA and UTPA have all been required to be made directly to the Tribunal, so there is a broad similarity between the two processes.

8.22 To reflect the move from a Statutory Review to an Upper Tribunal Permission Application and an Upper Tribunal hearing we propose to replace the £400 fee previously charged initially with a £50 fee for the Upper Tribunal Permission Application, which is heard on papers, and a fee of £200 for any resulting Upper Tribunal hearing. We believe that by setting the fee at half the original amount it is reasonable to apply our remission, exemption and refund policy consistently across both the FTIAC and UTIAC.

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?

Fee Charging Process

8.23 Our current preference for the fee collection process is that an appeal will be sent to the Tribunal in the UK. This is a significant departure from the current process of dual lodgement where an appellant can send their appeal through an overseas post (e.g. an embassy or High Commission) or directly to the Tribunal in the UK.

8.24 In reaching this preference we have considered the difficulties associated with implementing and running the appeal fees for Family Visit Visas when they were introduced in 2000. At this time appeals and the accompanying fee were administered by the individual overseas post. The administration was expensive and unwieldy and this was a significant factor in the decision to abolish the fee in 2002. We have also considered the need for any system to be cost effective in order to keep the level of fee charged as low as possible.

8.25 By only receiving the appeal (and taking payments) in the UK we hope to remove some of the practical problems primarily with linking payments to appeal, waiting for payment to clear, having identical appeals lodged in different places leading to unnecessary duplication (and potentially double charging) and having a single system for dealing with appeals and payments from appellants both in the UK and overseas.

8.26 In reviewing all of the evidence available and taking into account practicality and cost, we have developed the following broad process:

- An appeal is submitted to the Tribunal and the appellant has the opportunity at this stage to make payment or submit evidence of legal aid entitlement or an exemption.
- Payment details are processed while the appeal is registered and the appeal continues when payment is cleared.
- Where the appellant does not submit payment details or evidence why they should not pay at the outset, the appeal is registered and the appellant advised of the payment due and reminded of the evidence needed if they satisfy the criteria for not paying the fee.
- No further action is taken until payment is cleared or exemption confirmed and then the appeal progresses to hearing.

NB. Asylum Appeals will continue to be processed while awaiting a fee. This is to ensure that we meet our convention obligations to the asylum process.

8.27 It is appreciated that the speed at which you pay the fee will have an impact on how quickly your appeal is heard but at this stage of development we have no evidence that this will disproportionately impact any particular equality group.

Q8 – Do you have any evidence of any potential equality impacts of the process described at 8.26 you think we should consider?

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

8.28 In considering how a fee may be paid we have also taken into account that the Tribunals Service as a whole is seeking to move towards making appeals by electronic means where ever possible and the difficulties of processing cash and cheques from overseas.

8.29 Our development of this area is on going and we are very interested in your thoughts about how we can develop payment systems that are both easy to use for appellants and straightforward and cost effective for the Tribunal.

8.30 Payment must be made in sterling and we are currently researching the implications of the following methods of payment both for the appellant and the Tribunal:

- Payment by credit or debit card. Details will have to be submitted with the appeal form.
- Payment by credit or debit card through a website.
- Bank to Bank transfer (this may require the appellant to open a bank account).
- The ability for a third party to pay on the appellants' behalf – this was prevalent in the payment of FVV fees in 2000-2002 and may include an organisation, a sponsor, family or friends. This will also allow appellants to wire cash to someone who would then be able to make payment on their behalf by credit/debit card or bank transfer.

8.31 The international dimension to our service user base makes this aspect of the process particularly challenging and we are considering issues such as accessibility to bank accounts, international and local laws on the transfer of money, particularly across borders, and the physical accessibility to financial services in remote areas.

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.

8.32 A major departure from the 2000 – 2002 Fees is that we intend to charge for each appeal, whereas previously a charge was made by family. We believe this is reasonable and justified on the basis that each application for a Visa attracted a fee and that although the appeals may be heard together at a hearing, the level of administration for those appeals to reach the hearing is the same and so an equal cost has been incurred by the Tribunal.

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

9) Consultation and Review

9.1 In considering this initial impact assessment and developing our policy proposals we have carefully considered the evidence presented by the United Kingdom Border Agency and other areas within the Ministry of Justice as broadly comparable organisations, as well as academic studies and the published review of historical fee charging within our own Tribunal.

9.2 We accept that in doing this we are making broad links between behaviours related to the decision to make a visa application as a result of an increase in fees, or the decision to instigate court proceedings, and the decision to make an appeal against the refusal of that application where no fee has been charged before. We will test these assumptions and comparisons through the responses to the questions raised within this EIA and associated consultation. We have identified a number of groups, such as the Citizen's Advice Bureau, The Immigration Law Practitioners Association and the Joint Council for the Welfare of Immigrants, who represent the interests of appellants and others involved in the appeal process. Each will receive a copy of the consultation and associated impact assessments and we will encourage their participation, which will inform our final decision on setting the level of fees and the method of collection.

9.3 When fees for Family Visit Visas were introduced in 2000 there were concerns raised in both Houses on behalf of the communities most affected by the change. As part of our consultation and communications strategy we will engage with relevant interested parties, including representative/industry bodies and other specialist/interest groups from within the UK and abroad, to encourage feedback on proposals. This will be accompanied by communications activity to raise awareness of the changes.

9.4 Importantly we will also develop, publish and introduce a monitoring and review process to establish the actual impact of the introduction of fees on volumes of appeal applications to see if any of the potential issues manifest or there are any unexpected consequences and act on them appropriately.

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. Thank you.

QUESTION SUMMARY

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?

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?

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?

Q4 – Do you have any evidence that the approach describe at 8.6 and 8.7 will impact on equality groups?

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?

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?

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?

Q8 – Do you have any evidence of any potential equality impacts of the process described at 8.26 you think we should consider?

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

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.

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

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. Thank you.

Annex 3: Tables detailing fee income and operational savings under different assumptions.

Option 1

Scenario 1: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.05 percentage points. We assume no switching from oral to paper appeals and no substitution to re-apply for a visa.

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)**
ECO Settlement					
Paper	£65	1,308	3.25%	£80	£10
Oral	£125	11,008	6.25%	£1,180	£330
ECO Non Settlement					
Paper	£65	17,057	3.25%	£980	£110
Oral	£125	8,745	6.25%	£940	£200
Managed Migration Settlement					
Paper	£65	898	3.25%	£50	£10
Oral	£125	10,620	6.25%	£1,140	£460
Managed Migration Non Settlement					
Paper	£65	6,020	3.25%	£350	£40
Oral	£125	24,106	6.25%	£2,580	£500
Family Visit Visa					
Paper	£65	34,712	3.25%	£2,000	£210
Oral	£125	43,743	6.25%	£4,690	£950
Asylum					
Paper	£65	13	3.25%	£0	£0
Oral	£125	19,224	6.25%	£490	£210
Total		177,454	5.14%	£14,470	£3,040

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 2: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.1 percentage points. We assume no switching from oral to paper appeals and no substitution to re-apply for a visa.

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)**
ECO Settlement					
Paper	£65	1,308	6.50%	£70	£30
Oral	£125	11,008	12.50%	£1,100	£660
ECO Non Settlement					
Paper	£65	17,057	6.50%	£950	£220
Oral	£125	8,745	12.50%	£870	£390
Managed Migration Settlement					
Paper	£65	898	6.50%	£50	£20
Oral	£125	10,620	12.50%	£1,060	£920
Managed Migration Non Settlement					
Paper	£65	6,020	6.50%	£330	£80
Oral	£125	24,106	12.50%	£2,410	£1,000
Family Visit Visa					
Paper	£65	34,712	6.50%	£1,930	£430
Oral	£125	43,743	12.50%	£4,380	£1,910
Asylum					
Paper	£65	13	6.50%	£0	£0
Oral	£125	19,224	12.50%	£460	£420
Total		177,454	10.29%	£13,620	£6,080

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 3: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.05 percentage points. We assume 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of appellant who pay the fee decide to reapply for the visa instead of appealing (where the visa is cheaper)

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes (negative numbers indicate an increase in volumes)*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)** (negative numbers indicate an increase in costs)
ECO Settlement					
Paper	£65	1,308	-207%	£240	-\$1,260
Oral	£125	11,008	31%	£870	£1,650
ECO Non Settlement					
Paper	£65	17,057	-10%	£1,110	-\$560
Oral	£125	8,745	31%	£690	£980
Managed Migration Settlement					
Paper	£65	898	-292%	£210	-\$1,550
Oral	£125	10,620	31%	£830	£2,310
Managed Migration Non Settlement					
Paper	£65	6,020	-97%	£700	-\$1,900
Oral	£125	24,106	31%	£1,890	£2,500
Family Visit Visa					
Paper	£65	34,712	-28%	£2,650	-\$2,960
Oral	£125	43,743	56%	£2,190	£8,570
Asylum					
Paper	£65	13	-28661%	£70	-\$1,090
Oral	£125	19,224	31%	£360	£1,500
Total		177,454	12%	£11,810	£8,190

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 4: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.1 percentage points. We assume 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of appellant who pay the fee decide to reapply for the visa instead of appealing (where the visa is cheaper)

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes (negative numbers indicate an increase in volumes)*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)** (negative numbers indicate an increase in costs)
ECO Settlement					
Paper	£65	1,308	-204%	£240	£1,250
Oral	£125	11,008	38%	£790	£1,980
ECO Non Settlement					
Paper	£65	17,057	-6%	£1,080	£450
Oral	£125	8,745	38%	£620	£1,180
Managed Migration Settlement					
Paper	£65	898	-289%	£210	£1,540
Oral	£125	10,620	38%	£760	£2,770
Managed Migration Non Settlement					
Paper	£65	6,020	-94%	£690	£1,860
Oral	£125	24,106	38%	£1,720	£3,010
Family Visit Visa					
Paper	£65	34,712	-25%	£2,580	£2,750
Oral	£125	43,743	63%	£1,880	£9,530
Asylum					
Paper	£65	13	-28658%	£70	£1,090
Oral	£125	19,224	38%	£330	£1,700
Total					
		177,454	17%	£10,960	£11,230

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Option 2

Scenario 1: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.05 percentage points. We assume no switching from oral to paper appeals and no substitution to re-apply for a visa.

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)**
ECO Settlement					
Paper	£127	1,308	6%	£140	£20
Oral	£202	11,008	10%	£1,830	£530
ECO Non Settlement					
Paper	£85	17,057	4%	£1,260	£140
Oral	£151	8,745	8%	£1,120	£240
Managed Migration Settlement					
Paper	£161	898	8%	£120	£30
Oral	£292	10,620	15%	£2,420	£1,080
Managed Migration Non Settlement					
Paper	£88	6,020	4%	£460	£60
Oral	£140	24,106	7%	£2,870	£560
Family Visit Visa					
Paper	£79	34,712	4%	£2,420	£260
Oral	£147	43,743	7%	£5,430	£1,120
Asylum					
Paper	£262	13	13%	£0	£0
Oral	£308	19,224	15%	£1,090	£520
Total		177,454	7%	£19,160	£4,550

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 2: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.1 percentage points. We assume no switching from oral to paper appeals and no substitution to re-apply for a visa.

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)**
ECO Settlement					
Paper	£127	1,308	12.68%	£130	£50
Oral	£202	11,008	20.20%	£1,620	£1,070
ECO Non Settlement					
Paper	£85	17,057	8.45%	£1,210	£290
Oral	£151	8,745	15.13%	£1,030	£480
Managed Migration Settlement					
Paper	£161	898	16.05%	£110	£60
Oral	£292	10,620	29.20%	£2,010	£2,150
Managed Migration Non Settlement					
Paper	£88	6,020	8.80%	£440	£110
Oral	£140	24,106	13.98%	£2,650	£1,120
Family Visit Visa					
Paper	£79	34,712	7.93%	£2,320	£520
Oral	£147	43,743	14.65%	£5,000	£2,230
Asylum					
Paper	£262	13	26.20%	£0	£0
Oral	£308	19,224	30.83%	£890	£1,030
Total		177,454	14.05%	£17,410	£9,110

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 3: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.05 percentage points. We assume 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of appellant who pay the fee decide to reapply for the visa instead of appealing (where the visa is cheaper)

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes (negative numbers indicate an increase in volumes)*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)** (negative numbers indicate an increase in costs)
ECO Settlement					
Paper	£127	1,308	-204%	£460	-\$1,250
Oral	£202	11,008	35%	£1,320	£1,860
ECO Non Settlement					
Paper	£85	17,057	-9%	£1,430	-\$530
Oral	£151	8,745	33%	£820	£1,020
Managed Migration Settlement					
Paper	£161	898	-288%	£510	-\$1,530
Oral	£292	10,620	40%	£1,710	£2,920
Managed Migration Non Settlement					
Paper	£88	6,020	-96%	£950	-\$1,880
Oral	£140	24,106	32%	£2,100	£2,560
Family Visit Visa					
Paper	£79	34,712	-3%	£2,580	-\$1,280
Oral	£147	43,743	57%	£2,500	£8,740
Asylum					
Paper	£262	13	-28651%	£270	-\$1,090
Oral	£308	19,224	40%	£770	£1,800
Total		177,454	19%	£15,420	£11,340

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

Scenario 4: We assume that for each additional £1 of fee introduced, the number of appeals fall by 0.1 percentage points. We assume 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of appellant who pay the fee decide to reapply for the visa instead of appealing (where the visa is cheaper)

Appeal Type	Proposed Fee	2010/11 volume of appeals forecast (if no fee was introduced)	Projected percentage decrease in volumes (negative numbers indicate an increase in volumes)*	Projected Revenue Received (£000s)**	Projected Operational savings (£000s)** (negative numbers indicate an increase in costs)
ECO Settlement					
Paper	£127	1,308	-198%	£450	£-1,230
Oral	£202	11,008	45%	£1,110	£2,390
ECO Non Settlement					
Paper	£85	17,057	-4%	£1,380	£-390
Oral	£151	8,745	40%	£720	£1,260
Managed Migration Settlement					
Paper	£161	898	-280%	£500	£-1,500
Oral	£292	10,620	54%	£1,300	£4,000
Managed Migration Non Settlement					
Paper	£88	6,020	-91%	£930	£-1,830
Oral	£140	24,106	39%	£1,880	£3,120
Family Visit Visa					
Paper	£79	34,712	1%	£2,480	£-1,020
Oral	£147	43,743	65%	£2,070	£9,860
Asylum					
Paper	£262	13	-28638%	£270	£-1,090
Oral	£308	19,224	56%	£570	£2,320
Total					
		177,454	26%	£13,670	£15,890

* 9% of non asylum appellants are assumed to be exempt from the fee increase because they receive legal aid. 72% of asylum appellants are assumed to be exempt (58% because they receive Asylum Support and an additional 14% because they receive legal aid). An additional 6% of asylum appellants for oral hearings are assumed to be exempt because they are Fast Tracked. The decrease shown here is the percentage decrease of non-exempt appellants.

** rounded to nearest £10,000

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation process rather than about the topic covered by this paper, you should contact Sheila Morson, Ministry of Justice Consultation Co-ordinator, on 020 3334 4498, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Sheila Morson
Consultation Co-ordinator
Ministry of Justice
102 Petty France
London SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 31.

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