

## **Eaves Response: Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier and Upper Tribunal**

### **About Eaves**

Eaves is a London-based charity that provides high quality housing and support to vulnerable women. One of our projects, the Scarlet Centre, provides advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

Another of our services in the POPPY Project which provides support, accommodation and advocacy for women trafficked into domestic slavery and sexual exploitation in the UK. We also run an outreach service which works with women who cannot be housed in Poppy accommodation, either because there is no room for her or she does not meet the criteria for support set by Poppy's funder, the Office for Criminal Justice Reform (reporting to the Ministry of Justice).

The Research & Development team at Eaves have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative change and to working directly with women who have experienced sexual violence.

A major part of our work is to provide support and networking opportunities for the women's sector – to enable them to keep up-to-date with new legislation, best practice and developments in the field.

We also work to demonstrate, through campaigning and training, that violence against women is both a cause and effect of gender inequality.

### **Introduction**

The consultation document makes a proposal:

- to charge fees where applicants appeal on a decision denying them leave to enter the country, remain in the country, or vary their leave to remain (except on cases when the appeal against deportation or revocation of citizenship or leave to remain, by asylum seekers in the Detained Fast Track process and those in receipt of asylum support and/or Legal Aid)
- to charge a higher fee for 'oral hearings' than 'paper hearings'
- to waive fees in only 'exceptional or compelling circumstances'

## Scope of Change

The proposed changes apply on:

- Family Visit Visa – appeals against decisions not to allow temporary visits to see family in the UK.
- Managed Migration (Settlement) – appeals generated by people who are already in the UK and are seeking to stay here permanently
- Managed Migration (Non settlement) – appeals generated by people who are already in the UK, and are seeking to stay longer than they are currently allowed, but are not trying to stay here permanently.
- Entry Clearance Officer (Settlement) – appeals generated by people who are not already in the UK, but want to live here permanently.
- 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.
- Asylum Appeals – appeals against a refusal to grant asylum, including asylum claims which raise human rights grounds
- 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.

## Some key concerns

- It infringes the right of individuals to challenge Governments' decisions which could have a huge impact on their lives. An ongoing consultation from the Ministry of Justice (MOJ) into reforming legal aid provision clearly states that proceedings where an individual is seeking to hold the state to account are very important and worth of legal aid since these cases are the means by which individuals seek to check the exercise of executive power. It seems that there is a double standard in these case were its proposed to introduce fees when individuals appeal against the decision of the UK Boarder Agency (UKBA) in asylum and immigration cases.
- This proposal clearly works against the most disadvantaged, vulnerable and marginalized members of society. Asylum seekers and their dependants are individuals who come to the UK fleeing persecution from their own country. They arrive here often with no money or anywhere to stay. Many asylum seekers are destitute and receive no asylum-support because they are wrongly denied asylum-support. Besides, by law, neither asylum seekers nor failed asylum seekers are allowed to be employed, which makes it even harder for them to pay the proposed fees.

- The proposal exempts payment of fee for an appeal if the individual is on asylum-support. However, due to mainly the appellant's inability to argue their cases because of inadequate representation available at asylum-support claims and appeals and language barriers appellants have been wrongfully denied support. Moreover, even though asylum seekers live in different parts of the UK, the Asylum Support Tribunal (AST) has only one hearing center in Croydon, London. This fact added to the fact that asylum seekers could not work leaves them not only being unable to access asylum-support but also according to this proposal, obliged to pay for any appeal on their asylum claims.
- According to Refugee Council, an organisation working with refugees and asylum seekers, UKBA initial decision-making remains poor with for instance, 28 % decisions overturned by courts in 2009 on asylum appeals. According to a recent research, '[Unsustainable: the quality of initial decision-making in women's asylum claims](#)', published by Asylum Aid 87% (a disproportionately higher than average rate) of the asylum claims of women involved in the research were initially refused. However, 50% of these decisions on women's cases were overturned on appeal – again a disproportionately higher than average rate. This shows that it would be more cost-effective, practical and fair to improve the initial decision making process rather than, as would appear from this proposal, attempting to prevent people accessing the appeal system by expecting appellants to pay for an appeal which in some cases shouldn't have happened in the first place.
- A report "[Hope Betrayed](#)", which considers asylum claims made by women who were trafficked into the UK and subsequently supported by the [POPPY Project](#), states that 80% of the women who applied for asylum were granted either refugee status or humanitarian protection only on appeal. The women in this study appear to have a marginally higher rate of refusals at the initial decision stage than all other female asylum seekers. A proposal to introduce fees to appeals on these cases is particularly worrying for Eaves, being a national provider of support to victims of trafficking for sexual exploitation and domestic servitude.
- This consultation is conducted before the evaluation of the ongoing legal aid reform consultation from the Ministry of Justice which would have a further enormous implication on immigrants and asylum seekers and their access to justice.
- Under the Sojourner project victims of domestic violence who have no recourse to public funds and who are staying in the UK as a spouse, civil partner, unmarried or same sex partner might be granted indefinite leave to remain under the Domestic Violence Rule. Having recognized the vulnerability of this group the UKBA exempts them from paying the usual

application fee for their application. However, this proposal does not make any distinction or exemption for this group in cases of appeal for failed applications.

- The high level of the proposed fees is also particularly worrying. The fees proposed to be introduced in this case are much higher than fees charged in other jurisdictions and raised the issues of equality and discrimination.
- The questionnaire states that the intention of the proposal is to make individuals who could afford to pay, pay for immigration and asylum appeals. This is ambiguous and might cause very vulnerable and destitute individuals to be forced to pay for appeals or forced to waive their legal right to appeal. It's important to specify how much an individual should earn to have to be able to pay the fee.
- The proposal, even after stating that the purpose behind it is to make people capable of paying make payments, it only specifies very few cases as being exempted from payment - appeal against deportation or revocation of citizenship or leave to remain, asylum seekers in the Detained Fast Track process and those in receipt of asylum support and/or Legal Aid. It should be duly noted that there are many who don't have the means to pay the fees which do not fall under the above exemption.
- With no apparent evidence referred in the consultation that cases involving dependants are more complicated and deserve extra work, the proposal states that fees will be charged for each member of a family in linked cases. There is no justification to propose such additional fees while immigration and asylum cases of dependants totally depend of the status of the principal applicant.
- The means of payment is proposed to be electronic - debit/credit card, or bank transfer. However the consultation itself admits the difficulty stating, "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." This also makes it hard for appellants even if they are to pay the fee.
- It is proposed not to refund the fee if an appeal is successful, withdrawn, invalid or out of time. Given the above stated statistics on the poor initial decision making process especially in asylum cases, it would be unfair to burden an appellant with the failure of the state.

## **Recommendations**

- The proposal gives discretionary power to the Lord Chancellor to exempt payment of appeal fee in certain exceptional or compelling circumstance; Eaves don't believe this is enough to safeguard the interest of the most vulnerable people we work with. We recommend that the government withdraw its proposal of introducing fees on appeals of immigration and asylum cases.
- Besides, there is already a system in place which gives the Lord Chancellor a discretionary power to charge fees. Section 42 of the Tribunals Courts Enforcement Act (2007), states that 'the Lord Chancellor may by order prescribe fees payable in respect of—
  - anything dealt with by the First-tier Tribunal,
  - anything dealt with by the Upper Tribunal,
  - anything dealt with by the Asylum and Immigration Tribunal,
  - anything dealt with by an added tribunal, and
  - mediation conducted by staff appointed under section 40(1).

This however should be under a careful consideration, according to the Act, which orders the Lord Chancellor to consult with the Senior President of Tribunals and the Administrative Justice and Tribunals Council before making an order under this section.

- Eaves strongly calls for a betterment of the initial asylum and immigration process which would be more cost efficient and practical.