



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

January 2011

Understanding and supporting  
women and their organisations

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## About the Women's Resource Centre

WRC is a charity which supports women's organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women's not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

For more information about this response contact:

Helen Johnson

Policy Officer

Email: [helen@wrc.org.uk](mailto:helen@wrc.org.uk)

Tel: 020 7324 3030

Women's Resource Centre

Ground Floor East, 33-41 Dallington Street

London EC1V 0BB

[www.wrc.org.uk](http://www.wrc.org.uk)

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## About this consultation

The consultation paper makes proposals for the charging of fees for appeals on Immigration and Asylum matters. The proposals are based on three central points:

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

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 than paper hearings ;
- 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 (which the Tribunal will reimburse);
- 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 ;
- 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.

This Department is currently undertaking an internal review of Legal Aid and is holding a consultation on this (<http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>). 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 their assumptions about the impact of charging appeal fees to appellants of limited means, the Government has stated that they 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.

## **Response:**

### **Imposing financial burdens of vulnerable women**

The women's sector has a breadth of experience of supporting women with legal asylum and immigration issues. However, there continues to be a shortage in provision of women only services that are appropriate for complex needs<sup>1</sup>. Further, the current economic climate means that many of these organisations are likely to lose their funding. In this context, WRC is concerned about a growing gap in provision for these women and wishes to prevent any further burden on vulnerable women with asylum and immigration issues. WRC urges the government to promote policies that reduce this burden and to support the women's sector in providing services.

WRC is concerned about the introduction of fees for asylum and immigration cases for non-legally aided appellants. Current plans to abolish legal aid for immigration and asylum support cases mean that many vulnerable women will be forced to pay for their cases and incur additional charges for appeal. There are many vulnerable women who will not fit into the category of asylum or who have been let down by the asylum system – there will be no recourse for these women. For example, women with immigration issues (including women who have been trafficked), women with no recourse to public funds and women who are seeking asylum support may face a number of barriers to legal redress and may be vulnerable or marginalised (see Annex 1 and 2).

### **Immigration**

In order to fully assess the impact of the proposals in relation to fees, the vulnerabilities of women with immigration issues who will potentially have legal aid removed must be considered:

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<sup>1</sup> **Not just bread, but roses, too: Funding to the women's voluntary and community sector in England 2004-07** WRC (2009)

[http://www.wrc.org.uk/resources/wrcs\\_research\\_and\\_reports/not\\_just\\_bread\\_but\\_roses\\_too.aspx](http://www.wrc.org.uk/resources/wrcs_research_and_reports/not_just_bread_but_roses_too.aspx)

This report maps women's organisations across all of the English regions. WRC have looked at areas organisations work in, equalities strands focused on and tracked income and expenditure data for 2004 to 2007. The report is divided into an England-wide overview and a comparison of the regions as well as appendices for each of the nine Government Office Regions in England.

### **Power and Prejudice: combating gender inequality through women's organisations**

WRC (2010)

[http://www.wrc.org.uk/includes/documents/cm\\_docs/2010/w/wrc\\_power\\_and\\_prejudice\\_final.pdf](http://www.wrc.org.uk/includes/documents/cm_docs/2010/w/wrc_power_and_prejudice_final.pdf)

WRC's groundbreaking new report examines what helps - and what hinders - women's organisations in creating change at a local level. The research identifies the barriers facing women's organisations in being able to create these changes, presents learnings on what factors and what useful tools can help with local engagement and offers clear, practical solutions to both public bodies and women's organisations to improve this local engagement.

The project used a participatory action model, a social justice model of research that aims to empower those taking part in the research to act on improving conditions in their lives. In addition, the project was complemented by a literature review of existing research on the issue and a gender equality audit of local public bodies' policies.

- All victims of violence must be protected; cases under the domestic violence rule or that raise domestic violence or violence against women more generally (e.g. application made outside of the immigration rules because the person is not on a spousal visa) raise all the same issues as asylum cases (e.g. risk of physical harm, vulnerability, trauma, ability to self represent etc).
- All immigration law is complex, the chances of success of applicants without representation is currently much lower than those with.
- Trafficking victims seeking residence orders under the NRM (National Referral Mechanism – designed to facilitate cooperation between agencies dealing with trafficking issues) are not covered and have the same vulnerability issues raised as in asylum cases. Under the Council of Europe Convention on Trafficking legal advice has to be available.
- Migrant domestic workers (MDWs) in domestic servitude or MDWs more generally are also vulnerable.
- Art 8 cases involve significant relationships and often the best interests of the child.
- Problem of too few providers and cannot guarantee quality of legal advice.
- The UK Border Agency (UKBA, an executive agency of the Home Office) policies and regulations often don't reflect the correct legal position. Further, the complexity of immigration law makes it difficult for individuals to navigate. Individuals should not be penalised with fees because they are forced into litigation due to the complexities and inconsistencies of the law and regulations relating to immigration.

In this context, adding the additional financial burden of fees for appeals will impose an unnecessary burden on women in an already complex situation.

### **Asylum support**

Further, the Government's proposal to exempt those receiving asylum support from paying the fee, supposes that those who are not in receipt of asylum support will be able to pay the fees. This is simply not the case. Not all destitute asylum seekers will be on asylum support. There are a number of reasons why this may be the case, for example, problems with timing, mistakes in decisions regarding asylum support etc. Proposals to withdraw legal aid from asylum support cases with exacerbate this problem. Similarly (notwithstanding the current proposals relating to changes to legal aid) under the current rules relating to immigration, whether or not a person is in receipt of legal aid is not a reliable indicator of their ability to pay.

**The complexity of asylum and immigration law, the potential language barrier faced by many applicants, inequalities, and the vulnerability of many women who do not fit into the category of asylum, mean that adequate legal advice and representation is of the utmost importance to ensure access to justice.**

**WRC urges the government to develop a comprehensive plan to support these women and to ensure that these women are exempted from the fees.**

## **Annex 1:**

### **No recourse to public funds**

The Women's Resource Centre is part of a coalition of organisations working to highlight the devastating impact of this restriction on access to public funds on a particularly vulnerable group of women. The coalition includes Amnesty International UK, Ashiana Network, Apna Haq Project (Rotherham), BAWSO (Wales), British Red Cross, Greater London Domestic Violence Project, Imkaan, IMECE Turkish Speaking Women's Group, Iranian and Kurdish Women's Rights Organisation (IKWRO), Kalayaan, Newham Asian Women's Project, Refuge, Roshni Asian Women's Resource Centre (Sheffield), Scottish Women's Aid, Shakti Women's Aid, Southall Black Sisters, The Kiran Project, Welsh Women's Aid, Women's Aid (England), Women's Aid Federation of Northern Ireland, and Women's Resource Centre.

We call on the government to:

- Abolish the 'no recourse' requirement for abused women who have insecure status.
- Provide a special fund pending long term solutions, to enable all women to have living expenses and have access to refuges and local authority accommodation pending a final decision on applications to remain in the UK.
- Fast track applications to remain in the UK (process within 2 months) where there is prima facie evidence of domestic violence.
- Reform the Domestic Violence Rule so that all types of evidence of domestic violence are accepted.
- Extend the Domestic Violence Rule to all abused women with an insecure immigration status and introduce similar protection for trafficked women subjected to sexual and economic abuse and to overseas domestic workers experiencing violence from employers.
- Provide adequate levels of legal aid so that there is access to good quality legal advice and assistance.

## **Annex 2:**

### **Facts and Statistics on women's inequality relating to Asylum and Immigration:**

#### **Seeking asylum**

- A report from The Independent Asylum Commission in 2008 received evidence of the inappropriate use of leading questions by government officials at interview and non-implementation of gender-guidelines when engaging with traumatized women seeking asylum.<sup>i</sup> The report found that:
  - A woman's claim may often, to her detriment, be made together with that of her husband or partner instead of being given independent consideration
  - There was a lack of understanding and recognition that women may have particular problems in accessing help and support
  - The Government's own gender guidelines were inconsistently observed
  - Women were being wrongly selected for detained fast track against the guidelines in the Asylum Policy Instructions
  - The detention of pregnant women has a negative impact on their health and well-being
  - Women's cases based on sexual violence were not properly presented under the fast-track system
  - Gender-specific claims for asylum such as Female Genital Mutilation and trafficking were not adequately addressed by the asylum system<sup>ii</sup>
- A 2004 study found that, although women's claims make up one third of all applications for asylum in Europe, gender issues were not fully addressed when dealing with female asylum seekers and refugees.<sup>iii</sup>
- A study in 2006 found there to be a lack of awareness of gender issues in dealing with asylum seekers and that the Home Office Gender Guidance issued in 2004 was not being followed.<sup>iv</sup>
- The 2006 study found 'a culture of disbelief' at the Home Office, when combined with ignorance or bias against women, had a particularly severe impact on fair decision making. The effects of trauma on recounting events were often not taken into account and in fact were occasionally held against women.<sup>v</sup>

#### **Background of women asylum seekers**

- It was estimated in 2003 that over 50% of women refugee and asylum seekers in the UK, the majority of whom come from Africa, were fleeing rape - mostly perpetrated by soldiers, police or agents of the state.<sup>vi</sup>
- Women often find that if they are fleeing rape and other kinds of gender-related persecution, such as honour crimes, forced marriage and female genital

mutilation, the Home Office will not see this as grounds for giving refugee status.<sup>vii</sup>

### **Lack of support for asylum seeker women**

- The Independent Asylum Commission in 2008 found that some of those seeking sanctuary had additional vulnerabilities that were not appropriately addressed in the way children, women, older, disabled, and lesbian, gay, bisexual and transgender (LGBT) asylum seekers, and torture survivors were treated.<sup>viii</sup>
- A study conducted in 2003 found that refugee and asylum seeking women lived in constant fear of violence in the UK. Many felt so unsafe that 83% of women interviewed lived under self-imposed curfew. A third of interviewees walked everywhere because they could not afford public transport, adding to their feeling of vulnerability, and a further third had been verbally or physically abused, including being spat on or shouted at.<sup>ix</sup>
- During 2001, a Maternity Alliance study found that asylum seekers and their babies survived in a support system that fell far short of meeting their most basic needs for adequate food and safe shelter. Already lonely, disorientated and grieving, half of the women also experienced neglect, disrespect and racism from the maternity services.<sup>x</sup>

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<sup>i</sup> Independent Asylum Commission *'Fit for purpose yet?'* Interim Findings, 27<sup>th</sup> March 2008 <http://www.independentasylumcommission.org.uk/>

<sup>ii</sup> Ibid

<sup>iii</sup> Joshi, P. (2004). *Refugee Women: Rights and Wrongs – Gender and Procedural Issues in the UK*, Amnesty International UK: London, <http://www.amnesty.org.uk/content.asp?CategoryID=1081> and <http://www.refugeecouncil.org.uk/NR/rdonlyres/1127FA60-B21C-4613-B0B6-9A8F7B1A7048/0/WomenstrategyMarch2005.pdf>

<sup>iv</sup> Refugee Women's Resource Project, Asylum Aid (March 2006) 'Lip Service' or Implementation? The Home Office Gender Guidance and women's asylum claims in the UK,

<sup>v</sup> Ibid

<sup>vi</sup> Ibid

<sup>vii</sup> <http://www.refugeewomen.com/women.php>

<sup>viii</sup> Independent Asylum Commission *'Fit for purpose yet?'* Interim Findings, 27<sup>th</sup> March 2008 <http://www.independentasylumcommission.org.uk/>

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<sup>ix</sup> Joshi, P. (2004), Refugee women: Rights and wrongs – gender and procedural issues in the UK, Amnesty International UK: London  
([www.amnesty.org.uk/content.asp?CategoryID=1081](http://www.amnesty.org.uk/content.asp?CategoryID=1081))

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<http://www.harpweb.org.uk/external.php?url=http://www.asylumsupport.info/mothersinexile.htm&harpid=1682>