

CSAN & Cardinal Hume Centre response to the consultation on proposals for the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber) fees

The **Cardinal Hume Centre** is one of very few organisations in London that provides free immigration advice, from making applications right up to judicial review. The Centre currently has over 300 open cases. The Centre works mainly with families, especially lone parents who are raising children. The Centre also work with young adults who have been in the country for most of their lives and only when, for example, applying for a national insurance number, or applying to higher education, become aware that they do not have leave to remain in this country. Currently the Centre also have 10 asylum seekers living in their young people's hostel.

CSAN (Caritas Social Action Network) is the domestic social action arm of the Catholic Church and official agency of the Catholic Bishops Conference, England and Wales. Our network includes 44 charities and dioceses, many of whom work extensively with destitute asylum seekers, migrants and refugees all across England and Wales.

Question 1: *Do you agree with the fee charges proposed in the First-tier Tribunal as set out in Table 1? Please give reasons.*

No.

Reasons

The increase in fees in the First-tier Tribunal will act as a **barrier to justice**, preventing people with genuine claims from being able to have their case fairly heard.

The sharp increases in fees, particularly for the oral appeal, will prevent people from having their appeal heard in an appropriate way. **Immigration cases are complex and therefore typically require oral hearings**, with paper hearings rarely being appropriate. The fee changes will lead to many more people opting, inappropriately, for paper hearings. The Cardinal Hume Centre, for example, very rarely use the paper hearing route as they feel a paper hearing will not give their clients the fair hearing their appeal deserves.

The [Impact Assessment](#) (IA) rightly recognises that “appellants may face a cash flow cost as fees are initially paid upfront”, however it does not take into account fully the additional costs on the appellant. Below is a breakdown of the costs, prior to the Tribunal stage (and not inclusive of legal costs).

Example 1

The cost for one person making an application for 30 months leave would be as follows:

1. Application fee	£ 811.00
2. NHS surcharge	£ 500.00
3. Biometric fee	£ 19.20
Total	£1330.20

Additional costs are likely to be as follows:

- | | |
|---------------------------|----------|
| 4. Photos for application | £ 5.00 |
| 5. Passport | £ 100.00 |

There are also other costs which an individual may face, including having birth certificates translated or obtaining a medical reports (although, these vary from case to case).

Where an application is made for a family the same fees are payable per person, **with no distinction for children**. A family of four would therefore pay **£5320.80** simply to make an application for 30 months leave, not including any legal fees.

There is a real fear the proposed fee changes will lead to an **increase in self-representation**, as people will have to choose between paying for legal representation and paying for the fees for an appeal. As stated above, immigration law is notoriously complex and will therefore lead to many people being denied the opportunity to have their case articulated in the appropriate way.

The Cardinal Hume Centre provide a free legal advice service, but most immigration work is out of the scope of legal aid, so if people cannot find free services (which are very limited) they have to find the money to pay. The sourcing of this money can often lead to people taking desperate measures, the Centre are aware of a woman who had admitted to turning to prostitution in order to pay for her legal fees. In other cases, people have borrowed from a variety of sources to pay the fees.

The Cardinal Hume Centre currently act as a vital lifeline for people unable to afford to pay fees. Should the increase in fees be implemented as proposed in this consultation, the Centre will no longer be able to afford to pay the fees, regardless of the individual's situation. This will be a similar scenario for other organisations like the Cardinal Hume Centre, of which there are a decreasing amount, and vulnerable people with nowhere else to turn will therefore be denied any access to justice.

Box 1

Unable to pay the £5,745 for the Visa Application fees and Immigration Health Surcharge for herself, her partner and four children she had to acquire an overdraft and credit cards to pay the remainder of the money. She is now saddled with crippling debt, in addition to which she will need to find the money again in 30 months' time when the family reapply.

Cardinal Hume Centre Case study: *A mother of four children who works for the NHS.*

The burden of having to source the necessary funds to pay the various fees and legal costs upfront is unsurmountable for many and the proposed increased fees will only increase the likelihood of others finding themselves in similarly precarious scenarios.

Introducing fees in an effort to reduce the “misuse of the system” is based on the assumption that the asylum decision making process is perfect, [yet in 2015, 38% of asylum appeals were successful](#). [In Q1 of 2016, the appeal success rate has increased to 44%](#). This demonstrates there are glaring deficiencies within the system, and people need the appeal system to ensure they are granted the decision their case deserves.

Question 2: *Is there merit in us considering an exemption based on the Home Office visa fee waiver policy? If so, do you think there should be a distinction between in country and out of country appellants? Please provide reasons.*

Yes.

The Cardinal Hume Centre and CSAN support the fee waiver exemption being extended to the Immigration and Asylum Chamber (IAC).

However, in practice the **fee waiver system seldom works and many are denied this waiver** despite significant evidence being provided to show that they meet the necessary criteria. The Home Office acknowledge that 84% of fee waiver applications are refused.

The Cardinal Hume Centre also have countless examples of people being incorrectly denied the fee waiver, including one man who was sleeping rough. There is little incentive for the Home Office to ensure they have high quality decision making, as they do not incur a fee and it is the appellant who is burdened with all the up-front costs.

There are also additional costs which must be considered in applying for the fee waiver. The Home Office now insist that a current passport is provided with the application. This is proving to be a major barrier, as many people in this situation are on low incomes. Someone on a fee waiver still has to pay for the passports. So a young adult who is not vulnerable and has no status, can't work, can't claim benefit and isn't eligible for Section 17 support will have to try and raise money to get a passport before they can make any application. Again, this increases the likelihood of that individual being exposed to precarious and dangerous situations.

CSAN and the Cardinal Hume Centre believe that it is vital that the exemption at the IAC remains in place for those in receipt of Section 17 support.

The decision making process is also often inordinately slow. The examples below are from three ongoing cases at the Cardinal Hume Centre, all of which show the period between initial refusal and the appeal hearing date.

Examples: **Initial refusal:** 07.07.2015 **Appeal date:** 01.11.2016

Initial refusal: 10.07.2015 **Appeal date:** 08.12.2016

Initial refusal: 08.06.2015 **Appeal date:** 27.09.2016

When evaluating the current decision making process for Immigration and Asylum claims, it is important to consider the costs not just to the individuals involved but also the cost to the charities supporting them. Charities, such as the Cardinal Hume Centre, have to offset costs and have valuable staff time spent on a process which frequently delivers incorrect decisions.

The relevance of staff time being wasted on incorrect decisions is that, in the absence of charities offering this service for free (of which there are very few remaining), individuals will have to seek and pay for legal help. They will therefore have to pay a lawyer to navigate the process, which could take up to a year just to get an appeal date, and challenge incorrect decisions. As this will prove extremely costly, the reality is that people will not be able to

seek legal representation, incur unsurmountable debts or be denied justice altogether. The below example in Box 2 is average for the cohort that the Centre help, although a straightforward cases involving just one person can be processed more quickly. A major factor remains the form filling, and the length of time it takes (e.g. the current family application form *FLR(FP)* is 60 pages long, and whilst not all sections have to be completed if there are family members some sections, such as immigration history, need to be copied and filled out for each person on the application).

The Cardinal Hume Centre do not have an hourly rate as they do not provide private work, but the current legal aid rate for preparation is £52.65 an hour so on this basis costs would be as follows: 12 hours work £631.80; 3 hours work £157.95; 21 hours work £1105.65

However, this should be compared to private legal advice. One legal firm's website shows private charges for an application of a **thousand pounds plus VAT**, and an appeal **£2500 plus VAT**. This will be in addition to the application fees, Immigration Health Surcharge and any court fees.

Box 2

Costs/Time in an immigration case

Time spent

1. Client introduction and initial instruction. Information provided on type of application and supporting documents the client will be need. **2 hours**
2. Confirm advice in writing (including client care letter and further correspondence). At this stage, additional information is sources (e.g. obtaining letters from schools). **2 hours**
3. Meeting with client to finalise and complete application. **2 hours**
 - a. If the client is applying for a fee waiver, an additional **2 hours** are needed
4. Application is completed, with final check of legal documents. A letter is provided with the application to set out the applicant's case. **3 hours** (for families, although can be quicker if just one applicant).
5. Further correspondence on behalf of the client and Home Office. **1 hour**

Time spent on average 12 hours

6. If the fee waiver is rejected as 'invalid', the Centre will need to see client again and go through the refusal letter with them.
 - a. If the case being taken further, it is necessary to obtain further evidence (letters will be out of date from supporting agencies, charities and schools, so new letters will be needed).
 - b. Complete the fee waiver appeal. **3 hours**.

Time where application held to be invalid 3 hours

7. If the case is refused staff consider the justification and meet with the client to advise on next steps. **3 hours**
8. Draft and submit appeal. **2 hours**
9. Preparation for appeal. **8 hours**
10. Appeal hearing advocacy 3 hours, travel/ waiting **5 hours**.

Appeal time total **21 hours**

Question 3: *Do you believe that there are alternative options that the Ministry of Justice should consider in relation to the fee exemptions scheme in the Immigration and Asylum Chamber of the First-tier Tribunal?*

Although we do not agree with the proposal to increase the fees to full cost recovery levels, there are a number of exemptions we feel you should consider should the proposals be implemented.

Hearing as part of one family: Currently a family must pay for each individual member of the family, despite having one oral hearing (the papers are presented together). To ensure families are able to afford the costs of the application, there **should be one cost for a family application** (ideally, this should be extended to include the Visa application fee and Immigration Health Surcharge).

Simple means test: In addition to the fee waiver, there should be a simple means test, set at the current Benefit Cap for example, to ensure those on low incomes are not unfairly affected by the new fees. As described above, there are additional costs to making an application which are increasingly pushing people into vulnerable positions.

Undue Hardship Test: To cover instances when an individual does not meet a simple means test, we recommend introducing an 'undue hardship exemption' to cover those individuals who encounter unexpected costs and are therefore unable to meet the additional costs of the appeal fees.

Exemption for victims of domestic abuse: The fee waiver exemption only applies to victims of domestic violence who have been granted the Destitute Domestic Violence Concession, this should be extended to cover all victims of domestic violence.

Time to pay: Instead of demanding the fees upfront, it would be fairer to allow appellants sufficient time to pay. In an appeal context, we would recommend linking the time to pay to specific dates, for example if there was a case review hearing.

Question 4: *Do you agree with our proposal to introduce fees at full cost recovery levels in the Upper Tribunal? Please provide reasons.*

No.

Please refer to reasons provided in Question 1.

Question 5: *Do you agree with our proposals to introduce fees for applications for permission to appeal both in the First-tier Tribunal and the Upper Tribunal? Please provide reasons.*

No.

In addition to the reasons provided in Question 1, we believe the introduction of fees to apply for the right to appeal is an unnecessary and prohibitive barrier justice. To deny an individual the right to appeal a decision on monetary grounds, is unjust and cannot be compatible with a fair and just legal system.

Question 6: *Do you believe that alongside the fees proposals in the Upper Tribunal, the Government should extend the fee exemptions policy that applies in the First-tier Tribunal to fees for appeals to the Upper Tribunal? Please provide reasons.*

Yes.

We believe that the exemptions for the IAC should be consistent throughout and should be extended as explained in Question 3.