

What is the purpose of increasing fees for immigration tribunals?

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Immigration analysis: Despite opposition, the government has confirmed that tribunal fees for immigration and asylum cases will rise by up to 500%, with the increase taking effect for immigration tribunal hearings on 10 October 2016. Adam Pipe, barrister at No 8 Chambers in Birmingham, looks at the changes in closer detail and explains how practitioners can most effectively advise clients as we enter a new fees regime.

Original news

Government to press ahead with immigration tribunal fee hike, LNB News 16/09/2016 88

Despite an overwhelmingly negative response to proposals to increase First-tier Tribunal (FTT) and Upper Tribunal (UT) fees, the government is to press ahead with the proposed increases on the basis 'it is not reasonable to expect the taxpayer to subsidise access to this tribunal'. The decision is comprised in the government's response to the results of a consultation on proposals for the FTT (Immigration and Asylum Chamber) and UT (Immigration and Asylum Chamber).

What changes does the government plan to implement and why?

Fees for an application to the FTT dealing with immigration and asylum cases will increase from £80 to £490 for a paper appeal, and from £140 to £800 for an oral hearing. Fees to appeal from the FTT to the UT are to be introduced for the first time—£350 for applications and £510 for the appeal hearing.

The Ministry of Justice has said the fee increases would secure the funding of immigration and asylum tribunals. Justice minister Dominic Raab has been quoted as saying:

'We must reduce the burden on the taxpayer of running our courts and tribunals. In meeting our spending review settlement, all parts of the Ministry of Justice must contribute to the national effort to reduce the deficit and restore the government's finances to surplus.'

Such an increase of some 500% is absolutely ridiculous. I understand that the vast majority of responders to the government consultation on the fee rises earlier in 2016 were against it, which makes something of a mockery of the consultation exercise.

The Home Office over recent years has hiked the cost of making applications for leave to remain, and a repeated refrain I hear from solicitors and legal representatives is that clients cannot afford applications, especially if they are families with young children. 2015 saw the introduction of the Immigration Health Surcharge. Traditionally there had been no charge for appeals in the tribunals, and such a huge leap in fees from £0 to £140 in 2011 to £800 to me seems wholly disproportionate. I sense that all these increased costs are part of a Home Office strategy to create a hostile environment for migrants, and that the government is now using the Tribunal Services as a disincentive to immigrants appealing.

What position has the government taken in regards to exemptions?

Existing exemptions will continue to apply, but have been slightly widened to include the following:

- those in possession of a Home Office fee waiver
- those who qualify for legal aid or asylum support
- those who are appealing against a decision to deprive them of their citizenship
- those children bringing appeals to the tribunal who are being supported by a local authority
- those people appealing decisions to revoke their refugee or humanitarian protected status
- those with parental responsibility for children receiving support from local authorities under section 17 of the Children Act 1989 (ChA 1989) (or any equivalent legislation in Scotland, Wales or Northern Ireland)
- children who are being housed by a local authority under ChA 1989, s 20 (or any equivalent legislation in Scotland, Wales or Northern Ireland)

Recent statistics show that 47% of FTT asylum appeals were allowed between April and June 2016. Previous figures have been around 30%. This indicates that the quality of Home Office decision-making has not increased and emphasises the importance of access to the tribunals system and appeals. This is especially troubling given that it is making it even harder to appeal those decisions.

Is an increase in fees likely to cause a reduction in the number of appeals being brought to the tribunal?

Given the size of the increase, I think so. Even £490 for a paper appeal is very expensive per appellant.

Do you think there is a possibility of a challenge to the changes, and if so on what basis would that be?

A judicial review could possibly be brought by a group of people who are unable to afford the fees. The consultation process seems to have fallen on deaf ears, so it's not clear how successful a legal challenge would be.

How should immigration practitioners advise their clients in light of the forthcoming changes?

It would certainly behoove people to frontload their application to maximise its prospects of success from the start. The old days of making an application and sorting it out on appeal if anything goes wrong are gone.

The other thing that clients need to be made aware of is the huge waiting times in the tribunals at the moment. I can be dealing with an entry clearance appeal (ie, someone wanting to join family from abroad) tomorrow where the decision was made in June 2015. A client can pay £800 for an appeal, and still wait over a year.

Practitioners should not forget that the provisions for remission of fees are still in place and an application can be made arguing that there are exceptional circumstances.

What happens next?

The increase in fees for immigration tribunal hearings will come into effect on 10 October 2016. The date for introducing fees for permission to appeal and in the UT has yet to be announced.

Interviewed by Duncan Wood.

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