The Children’s Society response to the consultation on Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal

January 2011

Introduction

1. The Children’s Society is a leading national charity, driven by the belief that every child deserves a good childhood. We provide vital help and understanding for those forgotten children who face the greatest danger, discrimination or disadvantage in their daily lives; children who are unable to find the support they need anywhere else. Our network of projects helps over 50,000 children and their families each year. Through our pioneering research and influential campaigning, we defend, safeguard and protect the childhood of all children.

2. The Children’s Society has been working with refugee, asylum-seeking and migrant children for over a decade and our practice base stretches across England, including centres in Manchester, Newcastle, Birmingham, Sheffield, Leeds, Oxford and London. Of the more than 50,000 children we work with each year, refugees and asylum seekers are one of the groups of children that we prioritise, providing support, advice and help to access services. Currently around two-thirds of the refugee children we work with are unaccompanied, with the remainder arriving with family or guardians.

Key messages

3. From our experience in working with vulnerable asylum seeking and migrant children, our main concerns around the introduction of fees for immigration and asylum appeals relate to the following areas:

- Children seeking asylum including victims of trafficking
- Vulnerable groups that will slip through the net
- Equal access to justice through paper and oral hearings
- Incentives to improve the quality of the UK Border Agency’s decision-making
All children should be exempt

4. We are concerned that all children are not exempt for the proposed fees considering that they generally have no means of income and those caught up in the asylum system are particularly vulnerable arriving in the UK unaccompanied, some victims of trafficking and exploitation. It is not clear from the proposals whether they will be exempt from payments as they do not receive section 95 support but are not always able to access legal representation funded through legal aid for a variety of reasons.

5. We believe that children should be exempt from these fees altogether to ensure that they are not prevented from accessing justice and that they have every opportunity to have their claims fairly considered.

Exemptions miss out on key vulnerable groups

6. The Children’s Society welcomes the proposal that appellants who qualify for legal aid and are in receipt of asylum support will be exempt from paying the fees, however, we are concerned that many very vulnerable groups will still be missed out. We have already highlighted our concern for unaccompanied children but we also fear that other vulnerable children and families will slip through the net and be unable to access justice given the additional financial burden.

7. For example, Asylum Support refers only to section 95 support, however, those whose asylum claims have been rejected will be supported under section 4 which is not be covered despite their vulnerability. In our work with destitute families we find that, for example, pregnant mothers who give birth after being refused asylum are provided with very basic support under section 4 because they are considered by the UKBA as single adults and are not entitled to continued section 95 support that families receive. This means that they may be left destitute for several months while the section 4 application is processed but even then this amount is barely enough to live on and support a baby.

8. Similarly non-EU migrants with No Recourse to Public Funds are not exempted, because they are not eligible for asylum support, but they are not eligible for benefits or allowed to work in many cases, and again are very unlikely to be able to get the money together to pay for an appeal.
Equal access to justice

9. We believe that charging different prices for an oral or a paper hearing may lead to inequality in access to justice and a two-tier system. Many vulnerable children and families will only be able to afford a paper hearing. If they are not able to find representation funded through legal aid, which is in our experience increasingly the case, it raises serious concerns about whether applicants can present their cases as effectively in writing as in person given that some of the most marginalised children and families will not have an effective grasp of written English, may be illiterate or have communication difficulties. Their access to justice should not be compromised as a result.

Incentives for better decision-making by UKBA

10. We believe that appellants should not be penalised for the UK Border Agency’s poor decision making, particularly given that their appeals often concern matters of life and death. A number pieces of research have found that the quality of decision-making in asylum cases in the UK can be compromised by time limits, varying quality in asylum interviewing practice, selective use of country of origin information or other evidence, and lack of accountability for decision making.¹

11. Problems with first instance decision-making are clearly evidenced by the fact that 28% of appeals of the UKBA’s decisions on asylum cases which were heard by the Asylum and Immigration Tribunal in 2009 were successful.² For some nationalities such as Somalia, Eritrea and Zimbabwe, this rate is around 44% and remains consistently high year on year. For every person who successfully overturns a poor decision, many more are falling through the net due to a lack of quality legal advice and appeal fees may make this process even more unfair.

12. It is essential that children in particular are not compromised by the poor quality of decision-making and are wrongly rejected in their claim for protection.

More information

13. For more information on this response or The Children’s Society’s work, please contact Policy Adviser, Ilona Pinter on ilona.pinter@childrenssociety.org.uk or 020 7841 4509.