

Title: Introducing fee charges for appeals in the Immigration & Asylum Chamber of the First-tier Tribunal Lead department or agency: Her Majesty's Courts & Tribunals Service (HMCTS) Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: TS004
	Date: April 2011
	Stage: Final proposal
	Source of intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Her Majesty's Courts and Tribunals Service (HMCTS) is publicly funded to deal with a set number of appeals per year to the First-tier Tribunal Immigration and Asylum Chamber against UK Border Agency (UKBA) decisions. No user fee is charged at present, which in economic terms causes an inflated level of demand for immigration/asylum appeals as users are not exposed to any of the costs that HMCTS incurs in providing this service.

The Government has decided that maintaining full public funding is no longer sustainable because the present cost of this subsidy imposes an excessive burden on taxpayers.

What are the policy objectives and the intended effects?

In line with Government policy generally, the objective is for users of the Tribunal's service, who can afford to pay, to contribute towards the cost of providing this service while ensuring that access to justice is maintained through an appropriate exemptions regime.

The intended effect of introducing fees for appellants who can afford to pay is to reduce the taxpayer subsidy and to ensure that the overall funding and operation of the Tribunal is sustainable.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 - Do nothing. Charge no fee and continue to fund the Tribunal through general taxation and a partial subsidy from visa fees.

Option 1 - Initial fees of £65 for appeals in the First-tier Tribunal where the appellant consents to determination of their appeal without a hearing ("paper appeal") and £125 for those appeals where the appellant does not consent ("oral appeal") (which is equivalent to a cost recovery rate net of exemptions of around 17%). Appellant will be able to decide between an oral or paper appeal. A fee of around £250 for appeals to the Upper Tribunal.

Option 2 - Initial fees at 25% of full cost recovery net of exemptions (fee rates would therefore differ by appeal type) in the First-tier Tribunal and around £250 for an appeal to the Upper Tribunal.

Final Proposal – After having fully considered the consultation responses, to establish in 2011/12 a fee of £80 per appellant for paper appeals and £140 per appellant for oral appeals in the First-tier (equivalent to a cost recovery rate net of exemptions of around 20%), but without any fee in the Upper Tribunal.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** October 2014

What is the basis for this review? PIR **If applicable, set sunset clause date:** N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that:(a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy; and (b) the benefits justify the cost.

Signed by the responsible Minister:



Date: 27th June 2011

Description:

At the time the appellant submits an appeal to the Tribunal they are, unless an exemption applies, liable to pay a fee. If the fee is paid; the Lord Chancellor is satisfied it will be paid or should (in asylum and humanitarian protection cases) be deferred; or an exemption applies or is applied for, the Lord Chancellor will issue a certificate of fee satisfaction and the appeal continues on clearance of funds; asylum appeals continue regardless. If no fee is received or no exemption identified, then the appellant is advised of the fee due. The appeal is processed on clearance of funds or exemption identified. There is a fee of £80 for a paper appeal and £140 for an oral appeal from October 2011 onwards. An immigration judge decides if UKBA should pay costs to successful appellants up to the value of the fee paid.

Price Base Year 2011/12	PV Base Year 2011/12	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 18.8*	High: 67.7**	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low**	N/A	12.6	103.9
High*	N/A	13.2	108.7
Best Estimate	1.5	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

Fees paid by appellants of £9-13m p.a. for First-tier Tribunal appeals, offset by £2-3m p.a. of cost awards against UKBA (at judicial discretion); where individuals choose to re-apply for Family Visit Visas instead of appealing, they pay £1m p.a. Set-up cost to HMCTS of approx £1.5m plus running costs of £0.4m p.a. for the new fee collection system; debt recovery of unpaid fees of around £50k p.a. to process. UKBA pays £2-3m p.a. in cost awards to successful appellants and of around £2m p.a. in possible Family Visit Visa re-applications.

Other key non-monetised costs by 'main affected groups'

HMCTS will initially pay any cost awards to appellants and then recoup this money from UKBA. This means that HMCTS will bear the associated cash flow risk and admin expenses, which have yet to be quantified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low*	N/A	15.7	127.5
High**	N/A	21.2	171.6
Best Estimate	0.0	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

HMCTS gains £15-20m p.a. from the income provided by fee-paying appellants, including successful debt recovery, and from the operational savings due to lower demand plus any user switching behaviour. UKBA gains additional fee income of £1m per year from any re-applications for Family Visit Visas as a result of appellants' switching behaviour where this occurs.

Other key non-monetised benefits by 'main affected groups'

A reduction in the "deadweight loss to society" caused by a reduction in the amount of UK taxpayer subsidy. UKBA no longer has to deal with dual lodgement of appeals.

* Scenario 1 (see page 4) ** Scenario 4 (see page 5)

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<p>It is unknown how prospective appellants will respond to fee-charging. A number of assumptions have therefore been made to produce illustrative estimates of fee income and operational savings that could arise. If the actual response is significantly different to these assumptions, then the estimated impacts may be significantly higher or lower than the projections in this Impact Assessment.</p> <p>The Home Office is implementing significant changes to the UK's immigration regime in 2011, which may affect the volume of appeals in future years and thus the costs and benefits of this proposal.</p> <p>The MoJ is considering changes to Legal Aid eligibility that could, if taken forward, change the costs and benefits of this proposal.</p> <p>The future success rate of appeals is unknown in which a cost award is made against UKBA.</p>		

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			October 2011		
Which organisation(s) will enforce the policy?			HMCTS		
What is the annual change in enforcement cost (£m)?			£50k p.a. approx		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	Yes	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded in 2011, once the Equality Act comes into force. Statutory equality duties of the Equality Act apply to Great Britain only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

Evidence Base (for summary sheets) – Notes

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal – Consultation Paper CP10/10
2	Introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal – Consultation Response Paper CP10/10
3	Tribunals, Courts and Enforcement Act 2007

Evidence Base

Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits - 2011/12 £m

<i>Scenario 1 – low price response, no switching</i>	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Transition costs	1.5									
Annual recurring cost	6.6	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
Total annual costs	8.1	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
Transition benefits										
Annual recurring benefits	7.9	15.7	15.7	15.7	15.7	15.7	15.7	15.7	15.7	15.7
Total annual benefits	7.9	15.7	15.7	15.7	15.7	15.7	15.7	15.7	15.7	15.7

<i>Scenario 2 – high price response, no switching</i>	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Transition costs	1.5									
Annual recurring cost	6.2	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4
Total annual costs	7.7	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4
Transition benefits										
Annual recurring benefits	8.9	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8
Total annual benefits	8.9	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8	17.8

<i>Scenario 3 – low price response, switching</i>	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Transition costs	1.5									
Annual recurring cost	8.0	13.5	13.5	13.5	13.5	13.5	13.5	13.5	13.5	13.5
Total annual costs	9.5	13.5	13.5	13.5	13.5	13.5	13.5	13.5	13.5	13.5
Transition benefits										
Annual recurring benefits	14.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1
Total annual benefits	14.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1

<i>Scenario 4 – high price response, switching</i>	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Transition costs	1.5									
Annual recurring cost	6.3	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6
Total annual costs	7.8	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6	12.6
Transition benefits										
Annual recurring benefits	10.6	21.2	21.2	21.2	21.2	21.2	21.2	21.2	21.2	21.2
Total annual benefits	10.6	21.2	21.2	21.2	21.2	21.2	21.2	21.2	21.2	21.2

Evidence Base

1. Introduction and Background

1.1 At present individuals who are citizens of countries in the European Economic Area (EEA)² or of Switzerland have a legal right to enter, reside, study and/or work in the United Kingdom without a visa.³ Citizens of all other countries are legally required either to obtain the relevant permission or to claim asylum if they are fleeing persecution in their home countries. The decision to grant/refuse the permission or asylum is made by the UK Border Agency (UKBA), which is an executive agency of the Home Office.

1.2 Since 15 February 2010, if citizens of these other countries outside the EEA and Switzerland are refused an application for asylum, leave to come to the UK or to vary the terms of their current leave to remain, they can bring an appeal to the First-tier Tribunal Immigration and Asylum Chamber (FTIAC). If a party to the appeal believes that there has been an error of law in the decision of the First-tier Tribunal, they can apply for permission to appeal to the Upper Tribunal Immigration and Asylum Chamber (UTIAC) from the First-tier Tribunal and, if unsuccessful, directly to the Upper Tribunal itself.

1.3 The administration of both Chambers was provided by the Tribunals Service – Immigration and Asylum (TSIA), which became part of Her Majesty’s Courts and Tribunals Service (HMCTS) upon the latter’s creation on 1 April 2011. Appellants are not currently charged for using the Tribunal, which is largely funded by the taxpayer and partly by UKBA visa application fees.

1.4 The table below shows that the total number of immigration/asylum appeals submitted and the Tribunal’s total annual expenditures have both declined since 2008/09.

Year	Appeals (000s)	Expenditure (£m nominal)
2006/07	139.1	116
2007/08	172.1	117
2008/09	188.7	118
2009/10	159.8	115
2010/11*	140.4	108

* Forecast

1.5 Prior to 15 February 2010 challenges to Immigration Judge Decisions were made by making an application to review the decision. This process took place within the single tier of the predecessor Asylum & Immigration Tribunal (AIT). The review process determined if there might have been an error of law and a review hearing would determine this. If the application for review was refused the appellant could then ‘opt in’ directly to the High Court and ask it to review the potential error of law. While applications to the AIT did not attract a fee, the High Court charged a fee of £400 for the statutory review unless the appellant was exempt or successfully applied for remittal.

1.6 Parliament has already approved the principle of introducing user fees to any tribunal. Section 42 of the Tribunals, Courts and Enforcement Act 2007 empowers the Government, subject to enacting the necessary secondary legislation, to prescribe fees in respect of “anything dealt with” the First-tier and/or Upper Tribunals.

1.7 The rationale for recovering a proportion of the Tribunal’s costs from users is set out in section 3 of this Impact Assessment. Essentially, the policy goal is to decrease the burden on taxpayers caused by offering the Tribunal’s services free of charge, thereby also reducing the associated economic inefficiency, and to ensure the provision of immigration/asylum appeals is financially sustainable. Under the proposals it should be noted that a significant taxpayer subsidy toward the administration of appeals

² The EEA comprises the 27 member states of the European Union plus Norway, Iceland and Liechtenstein.

³ The only exception is currently for citizens of Bulgaria and Romania who are working in the UK (<http://www.ukba.homeoffice.gov.uk/eucitizens/bulgarianandromaniannationals/>). The Worker Register Scheme – which applied to citizens of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia or Slovenia working for a British employer – expires at the end of April 2011.

will remain alongside a contribution by UKBA through a proportion of the visa application fee relating to the appeal process.

2. Scope of the Impact Assessment

Scope of the proposal

2.1 The proposal in this IA relates primarily to the amount of fee that would be charged from October 2011 onward. The impact of fee-charging has been modelled as a fixed fee of £80 per appellant for a paper appeals and £140 per appellant for oral appeals.

2.2 It is proposed that fees will be introduced for appeals to the FTTIAC in 2011/12. These fees will apply to the following areas of FTTIAC business:

- i. **Family Visit Visa (FVV).** Appeals against decisions not to allow temporary visits to the UK.
- ii. **Managed Migration – Settlement.** Appeals by people who are already in the UK and seeking to stay permanently.
- iii. **Managed Migration – Non Settlement.** Appeals by people who are already in the UK and seeking to stay longer than they are already allowed to.
- iv. **Entry Clearance Officer (ECO) – Non settlement.** All non-FVV overseas, non-settlement entry clearance applications do not now attract a full right of appeal. They are dealt with by the points based system and appeals can only be brought on residual grounds (that is, on specific Human Rights or Racial Discrimination grounds).
- v. **Entry Clearance Officer (ECO) – Settlement.** These appeals are most commonly against the refusal of a settlement application for a person to reside permanently in the UK.
- vi. **Asylum Appeals.** Appeals against asylum decisions, including those that raise Human Rights grounds.
- vii. **European applications.** Applications from EEA nationals and their family members for documentation to demonstrate their right of residence, for an EEA family permit, or under transitional work schemes for workers from EU Accession states.⁴

2.3 An appeal that is being made against actions by the State with regard to the following does not fall within the scope of these proposals:

- Section 5(1) of the Immigration Act 1971 – a decision to make a deportation order.
- Section 76 of the Nationality, Immigration and Asylum Act 2002 – revocation of indefinite leave to enter or remain in the UK.
- Section 2A of the Immigration Act 1971 – deprivation of right of abode.
- Section 40 of the British Nationality Act 1981 – deprivation of citizenship.
- Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 – a decision to remove an EEA national or the family member of such a national.
- Paragraphs 8,9,10,10A or 12(2) of Schedule 2 to the 1971 Act - a decision that an illegal entrant, any family or seaman and aircrew is or are to be removed from the United Kingdom by way of directions.
- Section 10(1) of the Immigration and Asylum Act 1999 – removal of certain persons unlawfully in the United Kingdom.
- Section 47 of the Immigration, Asylum and Nationality Act 2006 – removal of persons with statutorily extended leave.

Exemptions

2.4 We will exempt those appellants in receipt of Asylum Support Funding under the Immigration and Asylum Act 1999.

2.5 We will exempt asylum appellants who are detained under the UK Border Agency's Detention Fast Track process will not pay a user fee.⁵

⁴ <http://www.ukba.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/>

⁵ The Fast Track Process is explained here:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/>

2.6 Legal Aid is currently available to appellants both in the UK and abroad.⁶ Appellants will be exempt and no fee will be payable by the appellant on proof that they are in receipt of Legal Aid.

2.7 A fee would not be payable where the appellant is under 18 years old and is provided with services by a local authority under Section 17 of the Children Act 1989.

2.8 A fee would not be payable with regard to any Convention into which the UK had entered that provides that no fee is required to be paid in respect of any proceedings.

2.9 We also intend to introduce a discretionary power for the Lord Chancellor to be able to reduce, remit or defer the payment of a fee in exceptional circumstances that justify doing so.

Refunds

2.10 If the Tribunal allows an appeal there will be provision for an Immigration Judge to award costs against UKBA up to the value of the fee paid. The policy intention is that this will be where it is deemed that the original decision was incorrectly based on the evidence available to the original decision maker at the time. It is proposed that the Tribunal will issue the cost awards and then recoup this sum monthly in arrears from UKBA. There will be a refund process for when a fee is paid in error.

2.11 On written request within 6 months of a fee being paid, a refund may be paid where:

- a balance is refundable as consent to determine the appeal without a hearing was not given but no hearing took place;
- a fee has been paid where not due because an exemption ought to have been applied; or
- a fee has been paid but, had the Lord Chancellor been aware of the circumstances at the time, he would have reduced or remitted the fee.

Linked Appeals

2.12 Where more than one member of a family makes an appeal, or more than one appeal relies on the same evidence, the standard approach is that the cases are linked and dealt with at one hearing. UKBA has confirmed that a separate application fee is paid for each individual covered by the visa application and that separate Notice of Decisions confirming the outcome of the application should be served on all in order to comply with the 2003 Notices Regulations. These require UKBA to give written notice to a person of any decision that can be appealed. While these cases are heard together, a separate appeal will be raised for each separate Notice of Decision and, other than the joint hearing, the cost of the administering the appeal is the same at all stages.

2.13 The proposal therefore assumes that an appeal will be received for each separate Notice of Decision that has been issued by UKBA and, as we are seeking a contribution from users to the administration of the appeal, a fee will be charged for each separate appeal, even if the cases are linked and dealt with at the same hearing.

Asylum Appeals

2.14 While our policy is that users who can afford to pay should make a contribution towards the Tribunal's cost of administering their appeals, we recognise that those making asylum and humanitarian protection appeals face different circumstances to those making immigration appeals. The Lord Chancellor will be able to defer payment of a fee in such cases and issue a certificate of fee satisfaction and the appeal will continue even if payment is not made. Liability to pay the fee will however remain.

Upper Tribunal Appeals

2.15 Since the creation of the Upper Tribunal in early 2010, the appellant can no longer apply to the Tribunal for a reconsideration of their case. They must first apply to the First-tier Tribunal for Permission to Appeal (FPA) to the Upper Tribunal. If this is refused, they can then apply for permission to appeal

⁶ Further detail about Legal Aid entitlement can be found at <http://www.legalservices.gov.uk> for England and Wales, <http://www.slab.org.uk> in Scotland and for Northern Ireland <http://www.nilsc.org.uk>.

directly to the Upper Tribunal (UTPA) itself. If permission is granted at either stage, an Upper Tribunal hearing will take place. No user fee is charged in the Upper Tribunal at present.

2.16 On considering responses to the consultation, our final proposal is that a separate fee will not be charged for applications for permission to appeal to the Upper Tribunal and any subsequent hearing.

Single Lodgement

2.17 Our proposal for the fee collection process is that all appeal forms will be sent directly to HMCTS in the UK. This is a significant departure from the current process of dual lodgement in the First-tier Tribunal where an appellant can send their appeal through an overseas post (e.g. an Embassy or High Commission) or directly to the Tribunal in the UK.

2.18 By only receiving the appeal (and taking payments) in the UK we hope to remove some of the practical problems encountered previously when fees were charged for Family Visit Visa appeals, primarily with linking payments to appeal, waiting for payment to clear, having identical appeals lodged in different places leading to unnecessary duplication (and potentially double charging) and having different systems for dealing with appeals and payments from appellants both in the UK and overseas.

Main Affected Groups

2.19 The principal groups impacted by the final proposal are set out below.

- **Appellants:** the introduction of a user fee would primarily impact appellants across eight different categories both for oral and paper appeals. Fees for Family Visit Visas were introduced in 2000 and subsequently reduced and then abolished in 2002. Research published by the Home Office⁷ in 2003 did not find conclusive evidence that these fees were a significant deterrent to legitimate FVV appeals. However, it is accepted that some individuals may currently choose to appeal because it is free, but would not do so if a fee is payable. In particular, one alternative to an appeal may be that users may choose to re-apply for a visa.
- **Taxpayers:** the subsidy provided by UK taxpayers would be reduced compared to the status quo.
- **HMCTS:** the proposals will require the implementation of a fee charging and collection process, which will have consequences for the scale and nature of the work conducted by the Tribunal (now part of HMCTS).
- **UKBA:** the proposed move from dual to single lodgement will disallow visa appeals being made through UKBA offices. Appeals will instead be required to be lodged with the Tribunal directly in the UK. UKBA may experience an increase in applications for Family Visit Visas because the proposed appeal fees are greater than the visa application fee, so appellants may decide to re-apply rather than to appeal. UKBA, as respondent, will also be subject to any cost orders up to the value of the fee paid in some cases.
- **Business, Universities, Charities and Non-Profit Organisations:** Currently there are organisations that choose to financially assist appellants who do not qualify for legal aid with their appeals, although we have no evidence that this practice is common. There is a potential impact on these organisations should they choose to extend this financial assistance to cover the cost of the appeal fee as well, but it must be emphasised that there would be no requirement to do so.
- **Legal Services Commission:** Following considering of the consultation responses, there will not now be an impact on this organisation because appellants who are eligible for UK legal aid will be exempt from paying appeal fees to the Tribunal.

3. Rationale for Government Intervention

3.1 At present, users who bring an appeal do not contribute toward the costs imposed on the Tribunal, so the demand for appeals from an economic perspective is inflated. The Government considers that the absence of any fee-charging is no longer sustainable and that it is now appropriate that those users who can afford to pay should make a contribution toward the cost of the service that the Tribunal provides to them.

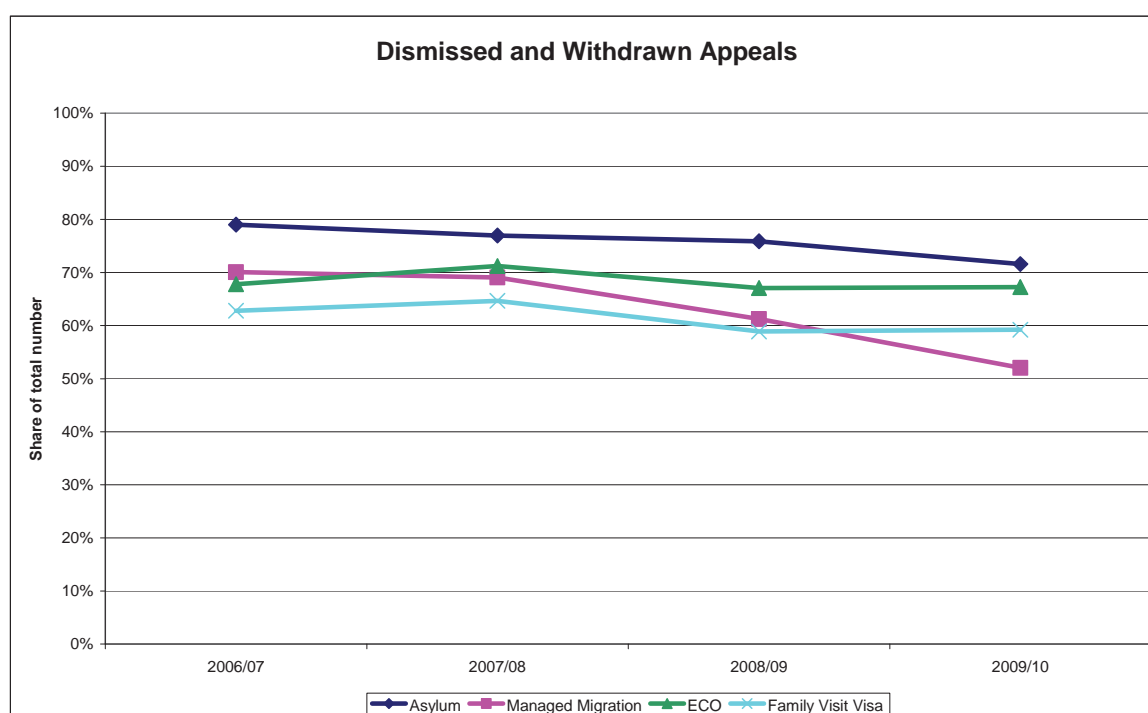
⁷ "Family visitor appeals: an evaluation of the decision to appeal and disparities in success rates by appeal type", Home Office Online Report 26/03 (<http://rds.homeoffice.gov.uk/rds/pdfs2/rdsolr2603.pdf>).

3.2 We plan to introduce fee charges in line with existing Government policy that users of a service should contribute to the cost of providing that service.⁸ Parliament has already approved the principle of introducing user fees for FTTIAC and UTIAC appeals – Section 42 of the Tribunals, Courts and Enforcement Act 2007 allows the Government to charge for “anything dealt with” by either the First-tier or the Upper Tribunals. Enacting the necessary secondary legislation would therefore remove some of the funding burden from the UK taxpayer.

Economic rationale

3.3 The conventional economic approach to government intervention is to improve efficiency or equity. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g., lack of competition which penalises consumers) or if there are strong enough failures in existing government interventions (e.g., waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of fairness (e.g. to reallocate goods and services to more deserving groups in society).

3.4 In this case, intervention is justified on economic efficiency grounds. Currently, HMCTS receives an annual contribution to its costs from UKBA (from visa application fees) and the remainder is subsidised by taxpayers. The absence of fees means that the service is “over-consumed” because FTTIAC and UTIAC users are not exposed to any of the costs that the Tribunal incurs as a result of the appeal. A possible indicator of this “over-consumption” is the failure rate of appeals, which represented a majority in each of the four main appeal types (i.e., asylum, Managed Migration, Entry Clearance Officer and Family Visit Visa) disposed of in recent years.⁹



3.5 Compared to the economically efficient outcome¹⁰ that would otherwise prevail if users were charged the full cost of the service, this “over-consumption” of the Tribunal results in a ‘deadweight loss’ to UK society because the cost of the subsidy outweighs the extra benefit received by users and the supplier. By reducing the extent of taxpayer subsidy through charging a fixed user fee, this economic ‘deadweight loss’ would be reduced and UK society as a whole would therefore be better off than under the status quo.

⁸ Paragraph 6.1.1, “Managing Public Money”, HM Treasury, 2010 (http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm)

⁹ Note that the denominator of these percentages refers to the total number of “promulgations” (i.e., decisions) by appeal type in each year, whereas the totals in the paragraph 1.4 table refer to the number of appeal receipts by year.

¹⁰ Economic (or “allocative”) efficiency in the market for a good/service occurs when the overall benefit to society (i.e., consumers, producers and other relevant parties) is maximised. In the absence of externalities, this takes place when the price of the good is set equal to its marginal cost of production.

3.6 Introducing fees would have distributional effects. It is considered that the gains to the UK taxpayer in the form of reduced subsidy would outweigh the impacts on the Tribunal and its users, not least because the proposed system of exemptions and remissions would protect access to justice for appellants.

4. Cost Benefit Analysis

4.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals and organisations in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of the final option are compared to the 'do nothing' option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). But there are important aspects that cannot readily be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity, either positive or negative.

4.2 It is likely that some of the fees for appeals will be paid by people living outside of the UK. As such they would have no negative impact on UK society and would usually be excluded from the Impact Assessment process. However, we believe that – although appellants may be resident abroad – fees are sometimes paid by friends or relatives in the UK. We have no information on the scale of these payments. Therefore we have not excluded any fee payments from the costs of the final option.

4.3 We cannot predict how appellants will respond to the introduction of fee-charging. We have assumed that those appellants who are exempt from paying will not respond to the new fee and so they will appeal with the same probability as at present. For those appellants who will pay the fee, we assume that some of these appellants will decide not to appeal, but we cannot predict the size of this effect.

4.4 Due to this lack of knowledge, we have used two different scenarios regarding the possible behavioural response to fee-charging. The "high" response scenario is that every additional £1 in the fee rate at 2011/12 prices leads to a 0.10 percentage point reduction in the total number of appeals per year. This would mean that a £100 fee would lead to 10% decrease in appeal volumes compared to the status quo, other things being equal. We have also used a "low" response scenario that every additional £1 in the fee rate at 2011/12 prices leads to a 0.05 percentage point reduction in the number of appeals. This would mean that a £100 fee would lead to 5% decrease in total appeal volumes per year compared to the status quo, other things being equal.¹¹ These assumptions are critical to our estimates of the potential costs and benefits of the policy.

4.5 Alongside these volume change scenarios, we have two modelled two simultaneous substitution effects in a further scenario. Firstly, as oral appeal fees would be higher than paper appeals, appellants may switch from oral to paper appeals. It is assumed for modelling purposes that 25% of oral appeals switch to paper as a result of the introduction of fees. This acknowledges that the fee rate is one important factor in deciding which appeal route to follow, but other factors are also likely to be important – e.g., the perceived success rate of paper and oral appeals.

4.6 The second substitution effect relates to the fact that the fees apply to appeals, but that there are no rules precluding individuals from submitting a new visa application rather than appealing an existing one. UKBA visa application fees for FVVs of £76 came into force in April 2011, which would be cheaper than the new fees for FVV paper and oral appeals. The analysis assumes for modelling purposes that 25% of FVV appeals would switch to re-applications as a result of the proposed fee rates. Again, this acknowledges that factors other than fees are likely to be important when determining user behaviour. For all other types of appeal the visa fee is likely to be higher than the appeal fee and so we have not included further substitution effects. We have not assumed any substitution to re-application for asylum appellants.

4.7 In addition to these three scenarios (i.e., "high" and "low" price responsiveness, switching behaviour), we have included a fourth scenario where no appellants switch from oral to paper appeals or from appeals to FVV re-applications.

¹¹ In economic terms, this assumption implies that the price elasticity of demand for immigration/asylum appeals increases (in absolute terms) as the fee rate rises. In other words, the demand for appeals becomes relatively more price sensitive the higher is the fee.

4.8 We have assumed that appellants who would not pay any fee will make the same appeal decisions as at present because their behaviour remains unchanged. The assumed proportions of exempt appellants used in the analysis are as follows:

Appeal category	Legal aid exempt	Other exempt	Total exempt
ECO Settlement - Paper	9%	0%	9%
ECO Settlement - Oral	9%	0%	9%
ECO Non Settlement - Paper	9%	0%	9%
ECO Non Settlement - Oral	9%	0%	9%
MM Settlement - Paper	9%	0%	9%
MM Settlement - Oral	9%	0%	9%
MM Non Settlement - Paper	9%	0%	9%
MM Non Settlement - Oral	9%	0%	9%
FVV - Paper	9%	0%	9%
FVV - Oral	9%	0%	9%
Asylum - Paper	14%	58%	72%
Asylum - Oral	14%	64%	78%

These assumptions are based on claims made to the Legal Services Commission and appeal volumes in 2009/10.¹² It is likely these proportions will change each year and so they are subject to uncertainty.

4.9 The MoJ has consulted publicly on whether to remove non-detention immigration cases from legal aid eligibility. If the Government and Parliament decide to proceed with this policy proposal (which would not take effect before October 2012), then there will be a further consultation on amendments to the remissions policy for the Tribunal user fees.

4.10 In modelling the potential impacts of fees in this Impact Assessment, we have used figures that combine the actual costs incurred in 2009/10, uprated to 2011/12 prices using HM Treasury's GDP deflator¹³ forecast, and the predicted numbers of appeals in 2010/11 in order to estimate the potential costs incurred per appeal in the Tribunal.

Appeal category	Estimated unit cost (2011/12£)
ECO Settlement - Paper	536
ECO Settlement - Oral	854
ECO Non Settlement - Paper	357
ECO Non Settlement - Oral	639
MM Settlement - Paper	678
MM Settlement - Oral	1,234
MM Non Settlement - Paper	372
MM Non Settlement - Oral	591
FVV - Paper	335
FVV - Oral	619
Asylum - Paper	1,108
Asylum - Oral	1,303

BASE CASE / OPTION 0 ("Do Nothing")

Description

4.11 At present, the Tribunal's costs are financed by the MoJ from funds provided by the taxpayer and an annual contribution from UKBA. The latter is financed by a portion of visa application fees that amounted to £14m in nominal terms during 2009/10. The status quo is that the funding required to maintain services would have to be found from additional efficiency savings within HMCTS and/or from elsewhere within the MoJ's budget.

¹² "Other exempt" refers to Asylum Support Funding and UKBA's Detention Fast Track process.

¹³ Forecast data consistent with the Autumn Statement of 29 November 2010; and outturn data as of 22 December 2010 (http://www.hm-treasury.gov.uk/data_gdp_fig.htm).

4.12 Currently, the appeals process can be described as one of 'dual lodgement'. Appeals from UK-based appellants are lodged directly with the Tribunal. However, appellants outside the UK can choose to lodge appeals with the Tribunal in the UK or with their local UKBA office, which then begins work on their evidence for the hearing and then forwards the appeal on to the Tribunal in the UK.

4.13 HMCTS's latest forecast is for **140,370 immigration/asylum appeals in 2010/11**, which is used as the baseline for analysing the effect of introducing user fees in 2011/12 and future years.¹⁴

4.14 The costs and benefits of the proposed options are scored against the base case. The base case therefore has no associated costs or benefits, and has a Net Present Value (NPV) of zero. The projected volumes of appeals that the tribunal expects to process (in absence of a fee) are detailed in Annex 3.

Final Policy Proposal

Description

4.15 This final proposal involves the introduction of fees for FTTIAC appeals, as allowed by the Tribunals, Courts and Enforcement Act 2007. The fee rates are £80 per appellant for a paper appeal and £140 per appellant for an oral appeal starting in October 2011; there is no separate fee for appealing to the UTIAC. All appeals, both overseas and in-country, must be lodged with the Tribunal directly in the UK. Liability to pay the fee arises prior to filing or giving notice of appeal.

4.16 Unless an exemption applies a certificate of fee satisfaction will only be issued – and so enabling a notice of appeal to be filed or given when the Lord Chancellor is satisfied that

- a) a fee has been paid; or
- b) a fee will be paid on the basis that an undertaking to pay by BACS or international transfers has been given;
- c) payment should be deferred where the case is an asylum / humanitarian protection case; or
- d) an application for the Lord Chancellor to exercise his discretion to reduce, remit the fee has been made.

Following this the appellant will be required to pay the fee under b) and if, under d) the Lord Chancellor decides not to exercise his discretion in the appellant's favour, the fee will become payable. Asylum and humanitarian protection appeals will always proceed (as by law these cannot be delayed) in anticipation of a fee being paid. Successful appellants may be awarded costs up to the amount of the fee they have paid from UKBA.

Cost of Final Proposal

Transition Costs

Appellants

4.17 Appellants and their advisers will have to spend time familiarising themselves with the new fee system, but this is not expected to be significant given the simple structure that is proposed.

HMCTS

4.18 There would be implementation and administration costs when setting up and running the fee collection system. One of HMCTS's databases, Aria, is being updated to record fee and exemption information and to facilitate the introduction of a fee paying element into the appeal process. A website is being designed that will allow appellants to lodge their appeals and to make payment online. Physical and process adjustments are being made to meet Payment Card Industry Standards to allow payment

¹⁴ In reality, the number of immigration and asylum applications and appeals in future years would vary even in the absence of fee-charging due to: (i) developments in the UK economy compared to those in other countries; (ii) the expected ease and success rate of making an appeal in the UK compared to other countries; and (iii) the frequency and severity of human rights abuses in countries outside the EEA and Switzerland.

where credit and debit card details are provided directly to the Tribunal on appeal forms. Bank accounts and accounting processes are also being set up to allow payment both by card and by bank transfer for those appellants who do not have access to the internet and/or credit and debit card facilities. We estimate this would entail a one-off cost of less than £1.5m at 2011/12 prices.

4.19 It is anticipated that training for staff would cost around £6,100 at 2011/12 prices. It will be focussed and delivered within existing training and development processes and so will be met within the current fixed costs of the Tribunal. Marketing costs are expected to be minimal and further work is being undertaken to identify the most effective and cost effective methods of communication for this change.

Ongoing Costs

Appellants

4.20 Some appellants will now have to pay a fee to appeal a decision to refuse their visa. One would expect this number of appeals to be lower under fee-charging than the base case, other things being equal. Appellants will be able to ask that their appeal is determined with or without a hearing. A proportion of appellants will receive an award if their appeals are successful and an immigration judge rules that UKBA must repay the cost of the relevant fee. It is assumed for modelling purposes that this proportion will be 25% of each type of appellant in any year. It is further assumed that 50% of the minority of asylum appellants who would be eligible to pay fail to do so, in which case they would not receive any cost award.

4.21 Given the four aforementioned scenarios and the assumptions in the previous paragraph, appellants collectively would pay some £9-13m in fees to the Tribunal per year and they would receive around £2-3m in cost awards from UKBA annually at 2011/12 prices, as shown in the table below. In addition, individuals who would have appealed, but instead choose to re-apply for FVVs, pay an extra £1m in fees to UKBA in two of the four scenarios.

Scenario number	Total eligible to pay		Fee paid* (£k)		Total paid* (£k)	Costs awarded* (£k)		Total award* (£k)
	Paper	Oral	Paper	Oral		Paper	Oral	
1	40,713	69,589	£3,257	£9,516	£12,773	-£814	-£2,379	-£3,193
2	39,016	64,351	£3,121	£8,800	£11,921	-£780	-£2,200	-£2,980
3	53,557	43,494	£4,250	£5,924	£10,174	-£1,062	-£1,481	-£2,543
4	51,860	38,257	£4,114	£5,208	£9,322	-£1,029	-£1,302	-£2,330

Scenario number	FVV re-applications		Fee paid (£k)		Total paid (£k)	Grand total* (£k)
	Paper	Oral	Paper	Oral		
1	0	0	£0	£0	£0	£9,580
2	0	0	£0	£0	£0	£8,941
3	5,862	7,388	£446	£561	£1,007	£8,637
4	5,862	7,388	£446	£561	£1,007	£7,998

* excluding asylum appellants who fail to pay eligible fee

1: "low" response, no switching; 2: "high" response, no switching;

3: "low" response, switching; 4: "high" response, switching.

4.22 A breakdown of this estimate and the underpinning assumptions are contained in Annex 2. These figures are subject to considerable uncertainty because we cannot predict how appellants will react to fee-charging.

4.23 Appellants whose payments do not clear or are paid after registration would experience delays beyond current timescales because the respondent would not be asked to prepare their evidence until the appeal is valid through exemption or payment of a fee.

4.24 Costs to appellants who may have chosen to lodge with the Overseas Post will be incurred as they now have to pay international postage rates rather than local rates. Some of this will be offset by the ability to lodge online, in which case no postage fee would be paid. Depending on how they choose to pay a fee, there may be additional costs in terms of fees charged by banks or other money transfer businesses.

4.25 For both in and out of country appeals there may be more enquiries to the Tribunal about how to appeal, which would have previously been dealt with at overseas posts, how the fees system works and where payment has not been made at the outset and the appellant seeks to confirm that payment has reached the Tribunal and the appeal will proceed. It is not possible at this stage to quantify the associated postal or telephone costs because we do not know the proportion of users who will pay upfront.

4.26 Some individuals will now decide not to appeal a UKBA refusal because of the fee rate when they would otherwise choose to. These individuals will forego the expected benefit of the appeals process because this is now outweighed by the cost they would otherwise incur in paying the relevant fee. As an approximation, the overall loss in users' economic benefit compared to the status quo is the total fee paid net of any UKBA cost awards – i.e., around £7-10m annually at 2011/12 prices, depending on the scenario.¹⁵

HMCTS

4.27 These costs are likely to involve dealing with an increased volume of customer enquiries (relating to financial aspects of the appeal process) and with the operation of a contract to collect, bank and administer the fee. Current estimates suggest that the operating costs of a fee-charging system would be around £0.4m per annum at 2011/12 prices. This is based on initial discussions with HMCTS's contractor and may change as the fee collection process is finalised and operating costs are confirmed.

4.28 By law, asylum appeals cannot be delayed even if the user fee is not received. It is therefore possible that some appellants who are eligible to pay will incur a debt that HMCTS will have to decide whether to attempt to recover – see paragraphs 5.1-5.3. We expect that around three-quarters of asylum appellants would be exempt from paying fees, so debt recovery would never arise in any of these cases.

4.29 Of the remaining quarter of annual asylum appeals where a fee would be payable, it cannot be predicted what proportion would definitely be pursued for debt recovery. For modelling purposes it is assumed that 50% of asylum appellants who would be eligible to pay a fee fail to do so; and that 50% of this sub-group would then be pursued for debt recovery at an average cost to HMCTS of £80 per case at 2011/12 prices. The exception to debt recovery would be asylum appellants whose appeals are successful and they receive a cost award, the proportion of which is assumed to be 25% per year.

4.30 The table below summarises the annual cost to HMCTS at 2011/12 prices of seeking to recover debts from asylum appellants given the assumptions set out in the previous paragraph and given the four scenarios outlined above.

Scenario number	Total eligible to pay*		25% pursued		Cost (£k)		Total cost (£k)
	Paper	Oral	Paper	Oral	Paper	Oral	
1	2	2,421	1	605	£0	£48	£48
2	2	2,238	1	560	£0	£45	£45
3	653	1,770	163	442	£13	£35	£48
4	653	1,588	163	397	£13	£32	£45

* excluding successful asylum appellants

Note that rounding means calculations are not exact

1: "low" response, no switching; 2: "high" response, no switching;

3: "low" response, switching; 4: "high" response, switching.

4.31 In addition, it has been agreed that HMCTS would pay any judge-ordered cost award to successful appellants and then recoup this sum of money monthly in arrears from UKBA. This means that HMCTS will bear the resulting cash flow risk and expense of administering these cost awards. However, it has not been possible to estimate these financial impacts at this time.

¹⁵ Strictly, the loss in users' economic benefit – known as "consumer surplus" – due to reduced taxpayer subsidy would not exactly equal the total net income gained as a result of fee-charging. This loss in consumer surplus depends on the shape of the underlying demand curve, which is unknown.

UKBA

4.32 UKBA would incur extra costs if some FVV appellants decide to re-apply for a visa instead of appealing because the visa fee would be less than the paper and oral appeal fee. As the respondent, in some appeals UKBA will be required by an Immigration Judge to award costs to successful appellants up to the value of the fee paid. It is assumed that this award would be paid in 25% of each category of immigration/asylum appeals. With respect to asylum appellants who are assumed to fail to pay an eligible fee (50% of this sub-group), no cost award would be made on the grounds that the relevant fee had not originally been paid.

4.33 For modelling purposes it is also assumed that 25% of those eligible to pay an FVV appeal instead choose to re-apply for an FVV each year. It is further assumed that the cost to UKBA of processing each new FVV application is £140 at 2011/12 prices.¹⁶ The assumptions in this paragraph would only apply to those scenarios which take account of possible switching behaviour.

4.34 The table below summarises the annual impact on UKBA costs at 2011/12 prices due to user switching behaviour and/or having to make awards to successful appellants. (One should note that the cost of any FVV re-applications will typically be defrayed by the relevant application fee, though this additional income is a benefit to UKBA which is represented separately later in the Impact Assessment).

Scenario number	Successful appeals*		Costs awarded (£k)		Total award (£k)	FVV re-applications		FVV cost (£k)	Total cost (£k)
	Paper	Oral	Paper	Oral		Paper	Oral		
1	10,178	16,994	£814	£2,379	£3,193	0	0	£0	£3,193
2	9,754	15,715	£780	£2,200	£2,980	0	0	£0	£2,980
3	13,280	10,579	£1,062	£1,481	£2,543	5,862	7,388	£1,855	£4,398
4	12,856	9,300	£1,029	£1,302	£2,330	5,862	7,388	£1,855	£4,185

* excluding asylum appellants who fail to pay eligible fee

1: "low" response, no switching; 2: "high" response, no switching;

3: "low" response, switching; 4: "high" response, switching.

Business, Universities, Charities and Non-Profit Organisations

4.35 Some organisations may choose to pay the additional costs incurred by any appellant to whom they are providing assistance, but there is no requirement to do so. It is therefore assumed for modelling purposes that there is no direct impact on these organisations.

Benefits of Final Proposal

Appellants

4.36 There may be cost reductions for some appellants who do not have to travel to UKBA posts that are some considerable distance away, e.g., travel costs and overnight stay. However, we do not have any information on the scale of these potential reductions.

HMCTS

4.37 Operating costs are made up of fixed costs (buildings, etc.) and variable costs (fee paid judiciary, etc.). In the short term only the variable cost element can be saved when the volume of appeals decreases, compared to the status quo. The Tribunal's operating cost savings are based on the estimate that approximately 65% of the cost of processing each appeal can be avoided if it is not submitted. In the scenario where some appellants switch from oral to paper hearings, however, to be conservative it is assumed that 65% of the cost of each fewer oral appeal is avoided and that 100% of the cost of each additional paper appeal is incurred.¹⁷

¹⁶ This approximate unit cost of £140 to process a Family Visit Visa in 2011/12 has been confirmed by UKBA.

¹⁷ Strictly, a proportion of the Tribunal's operating savings is a loss of "producer surplus", which is analogous to the firm's profit. The standard approach is to quantify this reduction in producer surplus and then to represent the loss as a cost to society. However, we do not do so here because the Tribunal is not a privately owned firm; all of the cost saving is represented as a gain.

4.38 HMCTS will benefit from the receipt of fee income and from operational savings due to a reduced volume of appeals compared to the status quo. HMCTS would also benefit from successful debt recovery in the case of asylum appellants who are eligible to pay a fee, but fail to do so and are unsuccessful in their appeals. It was assumed for modelling purposes that 50% of asylum appellants who are eligible to pay fail to do so and that 50% of this sub-group would then be pursued for debt recovery annually. It is further assumed that in both the “high” and “low” scenarios that half of these debt recovery cases result in complete payment of the relevant fee.

4.39 Given the assumptions in the previous paragraph and the four scenarios set out above, it is estimated that the total annual benefit to HMCTS from the additional fee income (including successful debt recovery) and operating cost savings would be in the region of £15-20m per annum at 2011/12 prices. These figures are subject to considerable uncertainty.

Scenario number	Fee income* (£k)		Change in cost** (£k)		Debt recovery (£k)		Total gain** (£k)
	Paper	Oral	Paper	Oral	Paper	Oral	
1	£3,257	£9,516	-£393	-£2,518	£0	£42	£15,727
2	£3,121	£8,800	-£785	-£5,036	£0	£39	£17,782
3	£4,250	£5,924	£6,601	-£14,486	£7	£31	£18,097
4	£4,114	£5,208	£6,208	-£17,005	£7	£28	£20,152

* excluding debt recovery asylum cases

** Negative change in cost is a gain

1: "low" response, no switching; 2: "high" response, no switching;

3: "low" response, switching; 4: "high" response, switching.

4.40 The final proposal will introduce a single-lodgement process for all appeals, whereby both in country and out of country appeals will be lodged only with the Tribunal in the UK. Given this process is simpler than the current dual lodgement system, this should be more straightforward to administer in relation to accounting for fees. By halting non-asylum appeals at the registration stage until payment has cleared, or an exemption proved, the Tribunal will achieve maximum income as cases that are out of time or potentially invalid must still go through the registration process and go before a judge, for which the Tribunal incurs a cost.

UKBA

4.41 UKBA will no longer have to deal with lodgement of appeals from the outset. This is likely to reduce the number of initial queries they currently deal with and transfers the cost of returning original documents to the Tribunal.

4.42 The following table sets the additional the additional annual income at 2011/12 prices that UKBA would receive under each of the four scenarios as a result of further applications for Family Visit Visas, which would cost £76 each.

Scenario number	FVV re-applications		Fee income (£k)		Income total (£k)
	Paper	Oral	Paper	Oral	
1	0	0	£0	£0	£0
2	0	0	£0	£0	£0
3	5,862	7,388	£446	£561	£1,007
4	5,862	7,388	£446	£561	£1,007

1: "low" response, no switching; 2: "high" response, no switching;

3: "low" response, switching; 4: "high" response, switching.

Wider Benefits

4.43 Subsidising the provision of any service means that it is “over-consumed” since users do not meet its full costs. Economic theory shows that this outcome results in a ‘deadweight loss’ to UK society because the cost of the taxpayer subsidy outweighs the additional benefit to users and suppliers. By reducing the extent of subsidisation, the deadweight loss would therefore decline and UK society as a whole would be better off.

4.44 Quantifying the economic deadweight loss to society caused by a reduction in subsidisation is very difficult because it depends on the underlying demand and supply curves for immigration/asylum appeals, which are unknown. Consequently, an estimate has not been attempted.

4.45 The final proposal means that the UK taxpayer is unambiguously better off in paying a lower subsidy compared to the status quo, which would amount to around £7-10m less per year (i.e., total fee income net of cost awards). This taxpayer gain is subsumed in the next table as an element of the HMCTS net benefit.¹⁸

Net Impact of Final Proposal

4.46 Based on the assumptions and scenarios set out above, the quantifiable annual net impact on the UK of the final proposal would approximately lie between £3-9m at 2011/12 prices, as shown in the following table.

Scenario number	Appellants (£m)	HMCTS* (£m)	UKBA (£m)	Total net benefit (£m)
1	-9.6	15.7	-3.2	2.9
2	-8.9	17.7	-3.0	5.8
3	-8.6	18.0	-3.4	6.0
4	-8.0	20.1	-3.2	8.9

* Includes gain to taxpayers; set-up costs excluded

1: "low" response, no switching; 2: "high" response, no switching;
3: "low" response, switching; 4: "high" response, switching.

4.47 Given the scheduled commencement date of October 2011, the time profile of quantified costs and benefits of the final policy proposal is equivalent to an estimated Net Present Value (NPV) of around £19-68m for the ten year period up to 2020/21. Given the uncertainty around a number of variables, the actual NPV may in reality lie outside this range.

4.48 A detailed breakdown of the annual net impact of the final proposal on HMCTS is provided in Annex 2 for each of the four scenarios.

Risks and Assumptions

4.49 The costs and benefits are dependent on a series of assumptions regarding the price responsiveness of appellants to the fee rate. These assumptions are detailed above. A notable risk is that the behavioural response of Tribunal users may be different from the assumptions in this Impact Assessment, in which case the costs and benefits could be significantly higher or lower.

4.50 To calculate the indicative operational savings it has been estimated that 65% of the unit cost of each appeal could be saved if the appeal is not made as a result of lower demand. This proportion is intended to reflect the variable cost element of processing an appeal. Therefore, when the volume of appeals decreases, in the short term only the variable costs can be saved. It is likely that not all of these savings will be realised immediately due to pre-fee appeals that remain in the system both within the Tribunal and UKBA as part of the existing dual lodgement system.

4.51 We have assumed that legal aid is available for eligible appellants. We have assumed that 9% of non-asylum appellants will receive legal aid and therefore will not pay the fee. For paper asylum appeals we have assumed that 72% (comprising of 58% who receive asylum support and are exempt and an additional 14% who receive legal aid). For oral asylum appeals we have assumed that 78% will not pay the fee (58% in receipt of asylum support, 14% in receipt of legal aid and an additional 6% exempt because they are on the fast track). These numbers are estimates based on claims for legal aid in one year and it is likely that these proportions will vary over time.

4.52 Although the MoJ has consulted on legal aid reform, the Government and Parliament have yet to decide whether to remove non-detention immigration from the scope of legal aid provision.

¹⁸ In strict cost-benefit analysis terms, the introduction of immigration/asylum appeal fee-charging involves an annual transfer payment from appellants to UK taxpayers. This is because the former group's fee income replaces the latter group's subsidy.

Consequently, it is assumed for modelling purposes that the current regime will continue. If legal aid eligibility for non-detention immigration appeals is removed in future, then there will be a further consultation on a revised remissions process for fees.

4.53 It was assumed that 25% of appellants would be successful and receive a costs award from UKBA. In any given year the actual percentage may be higher or lower than this figure.

4.54 The discretionary power for the Lord Chancellor to exempt appellants from paying fees in exceptional or compelling circumstances has not been included in the estimates.

4.55 On 6 April 2011 an annual limit of 20,700 visas for non-EEA workers came into force.¹⁹ There is no material interaction between this limit and the number of immigration/asylum appeals for the following reasons:

- The limit only applies to applications from abroad made under Tier 1 (highly skilled workers²⁰) and Tier 2 (skilled workers²¹) of the UK's Points Based System. Such applications do not attract a right of appeal, apart from on residual grounds, so the impact on appeal volumes would be negligible. Dependents of such migrants have a right of appeal, but they do not apply under the Points Based System and so are not affected by the immigration limit.
- Refused applicants can still appeal on residual grounds – i.e., human rights or race relations – but these will be limited instances. In addition, any successful appeal will not lead to entry clearance being granted under Tiers 1 or 2, so this group of individuals are not affected by the immigration limit. The alternative for persons refused overseas in these categories is to request an admin review of their case, which is free of charge.

4.56 We have not included any costs or benefits to wider UK society of changes in the annual volume of immigration in this impact assessment. Compared to the status quo, we expect that fee-charging will lead to fewer appeals and that (as some of these appeals may otherwise have been successful) this may reduce the number of people coming to visit, live, work or study in the UK from outside the EEA and Switzerland in any given year. We consider that, to the extent that this effect exists, it is very small relative to total immigration volumes from all sources in the world and can therefore be ignored.

5. Enforcement and Implementation

5.1 A fees order will confirm that, without either the payment, the supporting evidence for exemption, or in exceptional circumstances at the Lord Chancellor's discretion, an appeal will not proceed beyond the appropriate point. Asylum appeals will continue to be processed in order to meet the UK's Human Rights and Convention obligations to the overall asylum process.

5.2 Debt recovery will fall within the scope of the current processes for fee collection by HMCTS and will use the existing provisions for the prevention of fraud that are built into those processes. It is difficult to anticipate the total additional costs associated with enforcement and the effect that return of funds as a result of fraud-related activities may have on the benefits. We will be liaising with HMCTS Corporate Governance and other Government departments to implement systems to efficiently deal with fraud related activities and minimise their effects.

5.3 HMCTS intends to pursue debts caused by the failure to pay fees for immigration and asylum appeals tribunals. Three letters will be issued requesting payment and, if no payment is received, the relevant finance team will then make a decision as to whether the debt is pursued through the courts or must be written off. This process will follow the principles derived from the Government's Enforcement Concordat, which requires:

- the action to be proportional to the quantity of debt to be recovered;
- the approach will be consistent; and
- actions to be transparent.

¹⁹ The limit is divided into 12 monthly allocations and any unused allocations roll forward into the following month. (<http://www.homeoffice.gov.uk/media-centre/press-releases/visa-reforms>).

²⁰ <http://ukba.homeoffice.gov.uk/workingintheuk/tier1/>

²¹ <http://ukba.homeoffice.gov.uk/workingintheuk/tier2/>

5.4 The key success criteria for the project generally are that an appropriate fee charging mechanism is introduced to time and to budget, which delivers the benefits identified without adding any unnecessary or unexpected burden on either the Tribunal, or its customers, clients, or stakeholders.

6. Specific Impact Tests

Equalities Impact Test

6.1 An Equalities Impact Assessment has been prepared and is included as Annex 3 to the Impact Assessment.

Competition Assessment

6.2 The main sectors affected by the proposed policy are solicitors and individuals. We have considered the four key questions set out in the Office of Fair Trading Impact Assessment guidance for policy makers (August 2007) and assess that the proposed policy would have no disproportionate impact on solicitors or individuals. The conclusion is therefore that there are no anticipated impacts on competition, and hence that a full competition assessment is not required.

Small Firms

6.3 Assessment of the potential impact of additional capacity on small firms has relied on the Department for Business, Innovation and Skill's Small Firms Impact Assessment Guidance (January 2009). Based on the latest advice there is a potential for small business and Universities to be affected by the introduction of fees should they choose to pay the fee on the appellant's behalf. But as our final proposal does not impose a new requirement on small businesses and Universities, paying an appellant's costs remains a matter of choice for individual firms.

6.4 After discussion with the Legal Services Commission we do not believe there will be a significant increase in legal aid applications.

Greenhouse Gas Assessment

6.5 The proposals are unlikely to have any significant impact on greenhouses gases. It is possible that fewer appellants will decide to travel for oral appeals after the introduction of a fee and this could possibly reduce travel related emission. However, if there is any impact, we expect it to be minimal. Therefore, we have not quantified this impact.

Wider Environmental Impacts

6.6 We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

Justice System Impacts

6.7 The proposal will impact HMCTS, primarily in the area of enforcement (see sections 4 and 5 above). Legal aid will not be affected because those immigration/asylum appellants who are entitled to legal aid will not be charged a fee to use the FTIAC or UTIAC.

Human Rights

6.8 We believe that our Human Rights obligations are met by the proposed fee rates and exemptions policy, along with the existing ability for the appellant to apply for legal aid. We have kept these under review as our policy is developed in light of consultation responses and developments on legal aid policy and this final option and consultation response addresses the issues raised.

Health Impact Assessment

6.9 We have identified no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health: a significant impact on any lifestyle related variables or that it will place a significant demand on any of the following health and social care services.

6.10 On this basis we do not believe a full health impact assessment is required.

Rural proofing

6.11 The proposals are not expected to have any significant rural impacts.

Sustainable Development

6.12 The primary impact on sustainable development is that those who use the service and can afford to pay will make a contribution towards the costs of administering their appeal, thereby reducing public spending and the benefit this will bring to the economy. Any potential impact on communities and equality groups will continue to be monitored through our Equality Impact Assessment and Post Implementation Review processes.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The HMCTS will review immigration and asylum appeal fee rates to evaluate the impact of the introduction of a fee in this jurisdiction, and to compare against the behaviour predicted by our economic model. We will seek, wherever practicable, to align any proposals for improvements to the scheme with future reviews of fee levels. Any changes to fee levels will be made through legislation.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review will seek to:

- Ensure that those who use the appeals system, and can afford to pay, do pay a fee as a contribution to the cost of administering their appeal;
- Ensure that the policy does not constitute a bar to access to justice;
- Ensure that the fee charging process is simple to understand and to administer;
- Examine impacts of equality groups;
- Verify the amount of fee income raised against the models presented in the Impact Assessment and quantify any operational savings.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Evaluation of management information and financial accounting data to assess impacts of the introduction of fees on user groups and their behaviour at the tribunals. This will also be consistent with the HMCTS' annual business planning and performance management process. Where possible we will also seek to conduct research among users and stakeholders. We will also seek to develop a robust forecasting mechanism to inform future fee reviews.

Any changes to the Legal Aid provision for Immigration & Asylum appeals arising from the MoJ's consultation that closed on 11 February 2011 will cause HMCTS to bring forward the timetable to review the existing exemptions policy to ensure that it is fit for purpose in the light of any legal aid changes.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The impact of changes brought about by the introduction of fees will be measured against a baseline of 2010/11 appeals volumes. Any future fee level increases will use the previous year's data as the baseline for comparison.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The Tribunals will maintain service to users on reduced Treasury funding, using fee income to balance their budget, without restricting access to justice or disproportionately affecting equality groups and providing users with a service that meets HMCTS service standards.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Use management information and financial accounting data to assess impacts of the introduction of fees on the Tribunal user groups and user behaviour. Examine impact of changes in process on service to users and work with UKBA to identify impacts on UKBA. Where possible we will also seek to conduct research among users and stakeholders.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2 – HMCTS annual income and operational savings under different assumptions

(Figures in this annex are rounded to the nearest whole number and may not sum due to that rounding)

Scenario 1: Each additional £1 of fee causes the number of appeals fall by 0.05 percentage points. No switching from oral to paper appeals and no substitution to re-apply for a visa. 50% of asylum appellants eligible to pay a fee fail to do so.

2011/12 prices

<i>Appeal Type</i>	<i>Appeal Fee</i>	<i>Base case number of appeals</i>	<i>Number of exempt appeals</i>	<i>Number of appeals eligible for fee</i>	<i>Total number of appeals</i>	<i>Change relative to base case</i>	<i>Revenue*</i>	<i>Change in costs** due to lower volumes</i>	<i>Successful debt recovery</i>	<i>Cost of debt recovery</i>	<i>Total annual net benefit to HMCTS</i>
ECO Settlement Paper	£80	1,053	90	925	1,015	-4%	£73,988	-£13,424	-	-	£87,412
ECO Settlement Oral	£140	8,864	756	7,540	8,297	-6%	£1,055,628	-£315,085	-	-	£1,370,713
ECO Non Settlement Paper	£80	13,735	1,172	12,060	13,232	-4%	£964,840	-£116,705	-	-	£1,081,545
ECO Non Settlement Oral	£140	7,042	601	5,990	6,591	-6%	£838,614	-£187,423	-	-	£1,026,037
MM Settlement Paper	£80	771	66	677	742	-4%	£54,136	-£12,438	-	-	£66,574
MM Settlement Oral	£140	9,114	778	7,753	8,530	-6%	£1,085,387	-£468,310	-	-	£1,553,696
MM Non Settlement Paper	£80	5,166	441	4,536	4,977	-4%	£362,885	-£45,712	-	-	£408,597
MM Non Settlement Oral	£140	20,686	1,765	17,596	19,361	-6%	£2,463,469	-£508,703	-	-	£2,972,172
FVV Paper	£80	25,637	2,187	22,512	24,699	-4%	£1,800,929	-£204,302	-	-	£2,005,232
FVV Oral	£140	32,307	2,757	27,482	30,238	-6%	£3,847,471	-£832,873	-	-	£4,680,344
Asylum Paper	£80	11	8	3	11	-1%	£116	-£87	£22	£44	£182
Asylum Oral	£140	15,985	12,515	3,227	15,742	-2%	£225,922	-£205,806	£42,360	£48,412	£425,676
TOTAL		140,370	23,135	110,301	133,436	-5%	£12,773,384	-£2,910,868	£42,382	£48,455	£15,678,179

* excluding 50% of asylum appellants who fail to pay eligible fee

** Negative change in cost is a benefit

Scenario 2: Each additional £1 of fee causes the number of appeals fall by 0.10 percentage points. No switching from oral to paper appeals and no substitution to re-apply for a visa. 50% of asylum appellants eligible to pay a fee fail to do so.

2011/12 prices

<i>Appeal Type</i>	<i>Appeal Fee</i>	<i>Base case number of appeals</i>	<i>Number of exempt appeals</i>	<i>Number of appeals eligible for fee</i>	<i>Total number of appeals</i>	<i>Change relative to base case</i>	<i>Revenue*</i>	<i>Change in costs** due to lower volumes</i>	<i>Successful debt recovery</i>	<i>Cost of debt recovery</i>	<i>Total annual net benefit to HMCTS</i>
ECO Settlement Paper	£80	1,053	90	886	976	-7%	£70,905	-£26,848	-	-	£97,753
ECO Settlement Oral	£140	8,864	756	6,973	7,729	-13%	£976,172	-£630,170	-	-	£1,606,342
ECO Non Settlement Paper	£80	13,735	1,172	11,558	12,730	-7%	£924,638	-£233,410	-	-	£1,158,048
ECO Non Settlement Oral	£140	7,042	601	5,539	6,140	-13%	£775,493	-£374,846	-	-	£1,150,339
MM Settlement Paper	£80	771	66	649	714	-7%	£51,880	-£24,875	-	-	£76,756
MM Settlement Oral	£140	9,114	778	7,169	7,947	-13%	£1,003,691	-£936,619	-	-	£1,940,310
MM Non Settlement Paper	£80	5,166	441	4,347	4,788	-7%	£347,764	-£91,424	-	-	£439,188
MM Non Settlement Oral	£140	20,686	1,765	16,272	18,037	-13%	£2,278,046	-£1,017,407	-	-	£3,295,453
FVV Paper	£80	25,637	2,187	21,574	23,761	-7%	£1,725,891	-£408,605	-	-	£2,134,495
FVV Oral	£140	32,307	2,757	25,413	28,170	-13%	£3,557,876	-£1,665,746	-	-	£5,223,622
Asylum Paper	£80	11	8	3	11	-2%	£111	-£174	£21	£42	£265
Asylum Oral	£140	15,985	12,515	2,985	15,499	-3%	£208,917	-£411,611	£39,172	£44,768	£614,933
TOTAL		140,370	23,135	103,367	126,502	-10%	£11,921,385	-£5,821,737	£39,193	£44,810	£17,737,505

* excluding 50% of asylum appellants who fail to pay eligible fee

** Negative change in cost is a benefit

Scenario 3: Each additional £1 of fee causes the number of appeals fall by 0.05 percentage points. 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of FVV appellants who pay the fee decide to re-apply for the visa instead of appealing. 50% of asylum appellants eligible to pay a fee fail to do so.

2011/12 prices

<i>Appeal Type</i>	<i>Appeal Fee</i>	<i>Base case number of appeals</i>	<i>Number of exempt appeals</i>	<i>Number of appeals eligible for fee</i>	<i>Total number of appeals</i>	<i>Change relative to base case</i>	<i>Revenue*</i>	<i>Change in costs** due to lower volumes</i>	<i>Successful debt recovery</i>	<i>Cost of debt recovery</i>	<i>Total annual net benefit to HMCTS</i>
ECO Settlement Paper	£80	1,053	90	2,952	3,042	189%	£236,143	£1,072,603	-	-	-£836,460
ECO Settlement Oral	£140	8,864	756	5,513	6,270	-29%	£771,857	-£1,440,389	-	-	£2,212,246
ECO Non Settlement Paper	£80	13,735	1,172	13,671	14,843	8%	£1,093,659	£458,471	-	-	£635,188
ECO Non Settlement Oral	£140	7,042	601	4,380	4,981	-29%	£613,180	-£856,792	-	-	£1,469,972
MM Settlement Paper	£80	771	66	2,761	2,827	267%	£220,862	£1,401,536	-	-	-£1,180,674
MM Settlement Oral	£140	9,114	778	5,669	6,446	-29%	£793,616	-£2,140,844	-	-	£2,934,460
MM Non Settlement Paper	£80	5,166	441	9,266	9,707	88%	£741,298	£1,713,878	-	-	-£972,581
MM Non Settlement Oral	£140	20,686	1,765	12,866	14,631	-29%	£1,801,246	-£2,325,501	-	-	£4,126,747
FVV Paper	£80	25,637	2,187	24,037	26,224	2%	£1,922,947	£993,701	-	-	£929,246
FVV Oral	£140	32,307	2,757	12,707	15,463	-52%	£1,778,938	-£6,781,965	-	-	£8,560,904
Asylum Paper	£80	11	8	871	878	8025%	£34,820	£960,799	£6,529	£13,058	-£932,507
Asylum Oral	£140	15,985	12,515	2,360	14,875	-7%	£165,190	-£940,826	£30,973	£35,398	£1,101,592
Total		140,370	23,135	97,051	120,186	-14%	£10,173,756	-£7,885,331	£37,502	£48,455	£18,048,133

* excluding 50% of asylum appellants who fail to pay eligible fee

** Negative change in cost is a benefit

Scenario 4: Each additional £1 of fee causes the number of appeals fall by 0.10 percentage points. 25% of appellants who will pay the fee switch from oral to paper appeals and 25% of FVV appellants who pay the fee decide to re-apply for the visa instead of appealing. 50% of asylum appellants eligible to pay a fee fail to do so.

2011/12 prices

<i>Appeal Type</i>	<i>Appeal Fee</i>	<i>Base case number of appeals</i>	<i>Number of exempt appeals</i>	<i>Number of appeals eligible for fee</i>	<i>Total number of appeals</i>	<i>Change relative to base case</i>	<i>Revenue*</i>	<i>Change in costs** due to lower volumes</i>	<i>Successful debt recovery</i>	<i>Cost of debt recovery</i>	<i>Total annual net benefit to HMCTS</i>
ECO Settlement Paper	£80	1,053	90	2,913	3,003	185%	£233,060	£1,059,179	-	-	-£826,119
ECO Settlement Oral	£140	8,864	756	4,946	5,702	-36%	£692,401	-£1,755,474	-	-	£2,447,875
ECO Non Settlement Paper	£80	13,735	1,172	13,168	14,340	4%	£1,053,457	£341,766	-	-	£711,692
ECO Non Settlement Oral	£140	7,042	601	3,929	4,530	-36%	£550,059	-£1,044,215	-	-	£1,594,274
MM Settlement Paper	£80	771	66	2,733	2,798	263%	£218,606	£1,389,098	-	-	-£1,170,492
MM Settlement Oral	£140	9,114	778	5,085	5,863	-36%	£711,920	-£2,609,154	-	-	£3,321,074
MM Non Settlement Paper	£80	5,166	441	9,077	9,518	84%	£726,178	£1,668,167	-	-	-£941,989
MM Non Settlement Oral	£140	20,686	1,765	11,542	13,307	-36%	£1,615,824	-£2,834,205	-	-	£4,450,028
FVV Paper	£80	25,637	2,187	23,099	25,286	-1%	£1,847,908	£789,398	-	-	£1,058,509
FVV Oral	£140	32,307	2,757	10,638	13,395	-59%	£1,489,344	-£7,614,838	-	-	£9,104,182
Asylum Paper	£80	11	8	870	878	8024%	£34,815	£960,711	£6,528	£13,056	-£932,424
Asylum Oral	£140	15,985	12,515	2,117	14,632	-8%	£148,185	-£1,146,632	£27,785	£31,754	£1,290,848
Total		140,370	23,135	90,117	113,252	-19%	£9,321,757	-£10,796,199	£34,313	£44,810	£20,107,459

* excluding 50% of asylum appellants who fail to pay eligible fee

** Negative change in cost is a benefit

ANNEX 3 – EQUALITY IMPACT ASSESSMENT (EIA)

The EIA was published alongside the Government's official response to the consultation and can be found at:

<http://www.justice.gov.uk/consultations/consultations-CP10-10.htm>