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**Home Office consultation on Fees and charging:
Immigration and visas.**

Response from the Employment Lawyers Association

3 December 2013

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INTRODUCTION

The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law and includes those who represent claimants and respondents in courts and employment tribunals. It is not ELA's role to comment on the political or policy merits or otherwise of proposed legislation, rather it is to make observations from a legal standpoint. Accordingly in this consultation we do not address several questions that either do not raise legal issues or which we regard principally as matters of policy. ELA's Legislative and Policy Committee is made up of both barristers and solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

The Legislative and Policy Committee of ELA set up a sub-committee under the chairmanship of Stephen Levinson of Keystone Law to consider and comment on the consultation paper from the Home Office on Fees and Charging: Immigration & Visas published on 12 November 2013. Its report is set out below. A full list of the members of the sub-committee is annexed to the report.

Our comments are divided according to the question numbers used in consultation paper. Before we address the specific questions however we wish to record our dissatisfaction with the shortness of the consultation period which has caused practical problems. It is stated that this three week period complies with Cabinet guidelines. If that is so the guidelines should be changed. We rely on voluntary work from busy individual practitioners and organising a response in such a short time is immensely difficult. We contribute to many government consultations and unfortunately we have found the required time frame amongst the most impractical we have ever encountered. We have no doubt that many other organisations will have had the same problem and that the inadequacy of available time will have reduced the effectiveness of this consultation.

Executive Summary

- A We have not comment on policy issues but this sub-committee has a general view that reducing the level of any scrutiny of proposed changes to the rules now or in the future has inherent risks and should only be implemented after careful thought.
- B When these proposals are implemented there are some risks that they may work unfairly. We have indicated where these risks arise and we suggest preventative measures be taken.
- C There are inherent risks if the organisation that is taking fees for providing training on how to comply with the rules is the same organisation that is administering the rules.
- D Any increase in fees should only be implemented if it is certain that service standards can be maintained and/or achieved.
- E These proposals are bound to have greater impact on smaller or mid-sized firms.

Question 1

Do we have the right balance between simplicity and the need to differentiate fee levels for different products and services?

- 1 The level of fees and the balance between simplicity and the need to differentiate between applications for the purpose of fees, are in essence policy issues and are therefore not the focus of our response. That having been said it does seem to the members of this sub-committee that, whilst simplicity should be encouraged, this should not be at the expense of fairness. We are concerned that some applicants will experience an uplift in fees solely because of an attempt to provide a narrower range of fees.
- 2 Our experience is that applicants tend only to consider the fee applicable to the application they wish to make and are primarily concerned with the level of the fee to which they are subject, rather than the range of fees in existence for other types of application.
- 3 The new charging provisions in the Immigration Bill mean that, if implemented, the government can change fees at short notice, rather than each financial year as it currently stands. This may create a risk as applicants may be led to pay the wrong fee and have their applications refused/rejected if insufficient notice and lead-time is given of the change. If they are then prevented by law from submitting a fresh application (for example for in-country situations where their visa expired more than 28 days ago), this could have very severe consequences. We trust that steps will be taken to alleviate this risk.

Question 2

What changes, if any, would you introduce to ensure the immigration fee system is both simple to applicants to understand, and flexible enough to cater for different circumstances?

- 5 This is not a matter that raises legal issues. However applicants should be certain of the level of service that they are paying for. Service standards should be clear and easy to understand and refund mechanisms should be put in place if, for example, an applicant pays a premium for a one-day fast track service, but then the application is not actually dealt with in one day (because of systems failures, for example).

Question 3

Do you feel that fees should, in part, be determined by where or when an applicant applies?

- 6 Our view is that in the interests of fairness, applications should cost the same irrespective of where or when an application is made. This is particularly so, when an increasing number of applications are processed in the UK or at regional visa processing hubs.

Question 4

Are there any immigration products where you feel that reductions should be applied, or where an increase would provide a more balanced range of fees?

- 7 We regard the level of fees to be a policy consideration. Nevertheless, we consider that any increase in fees should take into account the impact which this may have on applicants' view as to the reasonableness and value for money of such fees. Higher fees for certain applications may make it more difficult for interested parties, such as employers, to accept that they are getting a sufficient return from the application system. In addition, application fees should not be raised until it is certain that service standards can be met, or applicants refunded or partially refunded if they have paid a premium but not received the service expected (such as the above example and the one-day fast track service).

Question 5

How should the Home Office use the new framework to make the legislative process for fees and charges more responsive to change?

- 8 As a point of principle we would not welcome any proposal which would remove the possibility of scrutiny in relation to the level of fees to be charged. In principle we do not object to there being an ability to react more quickly to changes which would justify or require an increase or reduction in fees but there has to be some level of independent scrutiny, whether this is achieved by Parliamentary debate or oversight by an independent body.
- 9 As indicated above, the ability to change application fees at short notice is concerning as it may lead to applicants paying the wrong fee and leading to their applications being refused/rejected if insufficient notice and lead-time is given of the change. There must be a balance therefore of 'being responsive to change' but also fairness to applicants who may inadvertently be paying the wrong fee as they have not noticed that a new fee has been published between preparing their application and actually submitting it.

Question 6

Do you think customers should only be able to subscribe to a complete package of end-to-end premium services at a single fee, or should customers continue to have the option of paying for individual products and services with separate fees which would have a higher total cost?

- (a) Premium services should be packaged together as a single product;
 - (b) Customers should be able to choose from a range of premium services
 - (c) Both – customers should have the choice of either option
- 10 In our view (c) is the correct approach.
- 11 If customers wish to use premium services as a single product with the benefit of a reduced fee

as the services come as a single product, they should be able to do so.

- 12 Limiting the ability to pay for a single service may prejudice other users of the service. For instance, the example given in the consultation document of a customer requesting the early return of a passport at some point during the application process. There may be valid and often unforeseen reasons why the customer requires the early return of a passport and they may not have the ability to pay for a full premium service package or may not have opted to do so at the start of the process. We can foresee a number of occasions where a customer may be prejudiced by not opting for the premium service at the start of the process if they are unable to purchase a specific premium product at a later stage in the process. We would not wish to see the ability to use such services limited to those who have paid for the premium service as one package.
- 13 We recognise that a single service under this type of scheme may incur a higher fee than if the services were packaged together and attracted a discounted rate.

Question 7

Are there any premium services or business support services that you would like to see. Or that you would use if available (for example, bespoke or mobile services, or one-to-one business support services)? Please set out any differences, if any, between the services you would like to see for small and medium enterprises, and larger businesses.

- 14 We have not identified any specific products which could be offered as a premium service. We agree with the principle, however, of charging lower fees to smaller businesses.

Questions 8, 9 &10.

- 15 We do not address these as they raise policy issues.

Question 11

Should we charge third party organisations that we contract with for the advice and support we provide, to ensure that they comply with our standards?

- (a) Yes
- (b) No
- (c) Don't know

- 16 Our response is that we do not know.
- 17 It is unclear exactly what account management and advice is referred to in this question. Having said that we would make the following comments.
- If this relates to services that are provided to customers by third parties as a requirement for an application e.g. test providers for English Language Tests, we would have thought that their ability to comply with Home Office standards would have been fully tested as part of a preferred supplier process and that any associated costs would have been taken into consideration at that stage. Charging may also lead to less scrutiny of proposed suppliers in favour of increased revenues and we are unclear on how charging a fee can ensure that the supplier will then comply with Home Office standards.
 - Our concern is that by extension, in the future fees could be considered for advice and support lines for both business and individuals. While this does not appear to be within the scope of this consultation, it is our view that this would be unacceptable to users of the service.
 - There are inherent risks (if this is the case) if the organisation that is taking fees for providing training on how to comply with the rules is the same organisation that is administering the rules. This is not an issue that seems to have been addressed in this paper but our concern is that there may be a risk that the perception or indeed the reality becomes that such training is a prerequisite of meeting the requirements of the service.

Question 12

Do you agree that an administration charge should apply to withdrawn or rejected applications on certain circumstances?

- 18 We are not in favour of such a charge.
- 19 We would be concerned that the introduction of an administration fee would have the effect of encouraging the technical rejection of applications - and therefore raising income through the charge - on the grounds that the application contains some flaw, without first giving the applicant the chance to correct that flaw.
- 20 We are aware of examples of applications being challenging on the basis of minor flaws (including minor errors or omissions) or on the basis of a highly technical interpretation of the rules which may be not clear in the law or the published guidance.
- 21 We believe that a pragmatic approach is appropriate and (as is currently the case, certainly in the context of sponsorship applications) that before rejecting an application on such grounds the applicant should be given a reasonable opportunity to correct any such minor flaw or respond to any technical concern which is not clearly set out in the guidelines.

Question 13

If so at what level should this charge be set?

- 22 To the extent any administrative fee is charged, it should be a fair estimate of the actual costs incurred to that point.

Question 14

Do you think that any proposal outlined above could have an impact upon community relations? Please provide comments on why you think this is the case and how this impact may be minimised.

- 23 This is not a question on which we can offer a view.

Question 15

Do you think that any proposals outlined would adversely affect small and/or medium sized businesses? Please provide comments on why you think this is the case and how the impact may be minimised.

- 24 In our view any increase in fees consequent on these proposals are bound to be felt most keenly by smaller and medium sized employers.

3 December 2013

APPENDIX

Members of the Sub-Committee

Stephen Levinson: Keystone Law (Chair)
Kate Gamester: Squire Saunders (UK) LLP
Philip Harman: DWF LLP
Tim Hayes: Bircham Dyson Bell LLP
Sarah Lovell: Shoosmiths LLP