



**JCWI response to BIA's consultation
on the Points-Based System Charges
November 2007**

The Joint Council for the Welfare of Immigrants is an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, JCWI actively lobbies and campaigns for changes in law and practice and its mission is to eliminate discrimination in this sphere.

1. Introduction

We welcome the opportunity to respond to this consultation. We appreciate that a well-resourced and efficiently run managed migration system has a role to play in supporting the UK's economy and winning support for non-EEA migration.

However, as BIA will understand from our previous responses on the creation of the Points Based System and the consultation on immigration and nationality visa fees (available at www.jcwi.org.uk), we have continuing concerns about the way both the immigration fees system and PBS are evolving in respect of equalities, human rights and an immigration policy which is supportive of achieving global economic justice.

Specifically in respect of the immigration fees, we are concerned that

- In as little as four years we have gone from a system which charged no fees for some applications, or only administrative costs for others, to a flexible charging policy.
- While described as "flexible", the policy largely assumes that fees should be set at levels that recover more than the normal administrative costs of considering applications so that those who benefit directly from migration should be seen to pay for the system (Foreword to A Response to the Consultation on a New Charging regime for Immigration and Nationality Fees Home Office/Foreign and Commonwealth Office, March 2007)
- The marketisation of immigration services in this way runs the risk of sending messages which conflict with other policy considerations, for example around equalities, integration and citizenship within the UK, and international development.

- Migrants from the global south and black and minority ethnic migrant communities will bear these fee costs disproportionately despite the fact that these groups are already tax payers; are bringing education and skills they and their sending countries have paid for; may face structural discrimination in the labour market; and desperately need to remit money home to poor sending countries because of global economic injustice
- And we do not see the case has been made that some stakeholders such as migrants should pay more directly for the immigration system given that we have a system of general taxation which should provide a mechanism for redistributing the economic costs and benefits derived from migration progressively and fairly.

2. JCWI response to proposals 1-9

i) BIA Proposals 1-3

Proposal 1: We expect to set fees for applications under each of the Tier 1 categories at levels that will continue to recover more than the normal administrative costs of considering the application.

Proposal 2: We similarly expect to set fees for applications for entry clearance or leave to remain under Tier 2 above normal cost recovery levels.

Proposal 3: We expect that fees for applications under Tiers 4 and 5 should be set at or below cost recovery levels

JCWI's response:

Given these proposals 1-3 all concern the proposals for the entry clearance fees we consider them together:

Tiers Four and Five:

It is very positive that BIA proposal 3 is that fees for these applications for Tiers Four and Five (students, youth mobility and temporary workers such as au pairs) should be at, or below, cost recovery levels as this will help ensure the opportunity for study and cultural exchange in the UK is open to more people from the non-EEA area, including from the global south.

Tiers One and Two

We understand that proposals to set entry clearance costs for Tiers One and Two at above the normal cost recovery levels may reflect

- Existing practice for the comparable categories such as the existing HSMP

- and in respect of Tier Two, that in some cases it is the employer, rather than the migrant who pays the entry clearance, as well as the work permit, application fee.

Our concerns would be as follows

Tier one/ HSMP

- The Home Office's own customer research shows that more than half of HSMP applicants already view the programme as comparatively expensive with a third claiming that it delivers fairly poor value for money (Managed Migration Pricing Research, Report of Findings JN150446, 19 March 2007)
- As HSMP envisages permanent settlement, and ECHR Article 8 is thus a relevant consideration, it would be sensible to take into account the fact that HSMP applicants will also bear the burden of both the entry clearance fees of family members and their settlement and naturalisation fees at a later date.
- Prior to the 2006 programme criteria changes large number of applicants to the HSMP scheme were from global south countries i.e. India, Pakistan, and Bangladesh, which need migrant remittances and legal migration routes.
- We are already concerned that these changes to the HSMP criteria may exclude many suitable candidates from such global south countries from obtaining entry clearance in the future; and that any significant increase in the fee is likely to prove an additional barrier.

Tier Two: Entry clearance fees

- In some cases where the employer is a larger company we accept entry clearance costs may not be borne by the migrant. However, equally it is not unusual for migrants wishing to apply to work to pick up the cost not only of entry clearance but also the work permit and/or the legal fees.
- This is often the case of in-country applicants switching from student status where the prospective employer may be interested in recruiting them, but "cannot be bothered" with the work permit procedures. In these cases it is often the prospective migrant employee who will seek and pay for the necessary advice, and facilitate meeting many of the requirements for the work permit in the absence of employer proactivity.
- While the new arrangements may mean that such situations do not arise in the future, it cannot be ruled out that employers will find other ways of passing on the cost of the work permit and legal fees either directly or indirectly to the migrant,
- In any case, to ensure that migrants fully understand the conditions of entry clearance and their rights in the UK, there should be positive incentives to be involved in their own application processes, including by way of affordable fees that recover the administrative cost of the application only.

- While some larger employers may well pick up the cost of entry clearance, as well as the work permit, and will in any case exert substantial control over migrant employees by way of the sponsorship process, it is not in the interest of migrants' rights to deepen a situation where such employers have even more control over their entry clearance processes, and potentially those of family members, because only the employer can afford the visa fees.
- In addition significant increases in Tier Two entry clearance fees may prove a further disincentive to small businesses to recruit migrant labour (please see below)

2 ii) BIA Proposals 4-7

Proposal 4: Relevant organisations and bodies should pay a renewable licence fee if they wish to sponsor migrants to the UK, plus a certificate fee for each certificate of sponsorship issued.

Proposal 5: We want to consider the appropriate cost apportionment between the licence and certificate fees, with one contributing proportionately more in order to keep the other as low as possible to help us achieve that balance.

Proposal 6: We expect the fees paid by licensed sponsors bringing in migrants under Tier 2 to be set above normal cost recovery levels

Proposal 7: We expect that the licence fees for sponsors of migrants coming to the UK under Tiers 4 and 5 will be set at or below normal cost recovery levels.

JCWI response

We consider proposals 4-7 together as they all concern licensing and certification fees.

Tiers Four and Five

It is very positive that proposal 7 suggests certain sponsors falling under Tiers Four and Five such as educational institutions will enjoy below, or normal cost, licensing fees for the reasons we set out above in relation to proposal three. We also appreciate that overall the licensing system is a mechanism which the BIA envisages will contribute to the prevention of illegal working and immigration enforcement, including against employers who may exploit and abuse migrant employees. Our concerns would be as follows:

Responding to labour exploitation

As we commented in our response to the consultation on the prevention of illegal working, (available at www.jcwi.org.uk) we believe illegal working and

labour exploitation are best tackled through the labour protection enforcement mechanisms such as the Gangmasters' Licensing Authority rather than through immigration requirements and enforcement.

Impact on small business

- The cost and bureaucracy of proposals such as licensing and certification may put small businesses at a competitive disadvantage in labour recruitment . A recent Federation of Small Businesses report (Employment Law: Key Facts, October 2007) suggests that already few small employers are able to recruit migrant labour because of the bureaucracy and cost of work permits.
- Of the 8% of the FSB's small employer respondents who had applied for an employee Work Permit, many found the existing fees costly. The Managed Migration Pricing Research (previously cited) also found that acceptance of above cost recovery licensing and certification is really greatest among larger employers i.e. those with over 250 employees.
- We are concerned that as it stands the new licensing and certification system may be a disincentive to small businesses to employ migrant labour because they will not have sufficient resources and expertise to implement these procedures.
- This is particularly the case with non-shortage occupation vacancies as additionally businesses will also need to bear the costs of advertising within the UK and the EEA to ensure that these vacancies could not be filled by a non-EEA national.

Impact on BME small businesses and communities

- This could disadvantage small business in labour recruitment; and in turn settled migrant communities because black and ethnic minority businesses are disproportionately represented among the small business sector and in the most disadvantaged areas of the UK(see Ethnic Minority Business in England, Report on the Annual Small Business Survey 2003, Survey Boost, DTI, also JCWI response to the Government consultation on the Prevention of Illegal Working August 2007 at www.jcwi.org.uk).
- While we do not argue for these businesses to be above the law it needs to be recognised that the new regime will have a particular impact upon them and the economic activity of the areas in which they are present.
- Ethnic minority job candidates may also lose out on job vacancies if small business employers are uncertain about their immigration status and cannot contemplate the costs of these procedures and arrangements.

2 iii) BIA Proposal 8: We should ensure that all the fees are set at levels that do not unduly impact on the competitive position of the UK and the cultural benefits that well-managed migration brings to the country.

JCWI response

We are pleased that in proposal 8 BIA acknowledges that migration has cultural as well as economic benefits. It would also be helpful if other factors could be acknowledged and taken into account when creating legal migration and settlement routes and pricing them, for example

- the role that migrant remittances play in helping to redress global inequality in the face of the failure of Make Poverty History to deliver on its goals
- the benefits the UK will derive from recruiting the world's most highly skilled individuals
- and the need of migrants to be enjoy their rights under Article 8 ECHR and being able to integrate into the UK through settlement, naturalisation and reunion with their families.

2. iv) BIA Proposal 9: We might cross-subsidise between the people who will actually receive the ID card during the initial years of the programme and those who will not receive a card immediately, but in the meantime benefit from the significant enhanced security that biometric capture brings to the migration system.

JCWI response to Proposal 9

Following clarification provided by the Charging Policy Team to us we understand those *who will not receive a card immediately*, to refer migrants applying to enter via routes not prioritised for the first phase of biometric ID card rollout, but who will in time be required to apply for a biometric ID card. It seems it is planned to include the costs of the biometric ID card programme in the fee charged for all applications where a card will be issued in due course, whether or not the applicant actually receives a card. The CPT argues that the costs of the programme in the initial years of implementation are relatively high compared to the number of people to whom they plan to issue cards, that cross-subsidy will help to keep the impact on fees as low as possible; and that all applicants will benefit from the increased security that biometric capture and checking provides.

We appreciate that such cross-subsidy could benefit some migrants needing to apply for Biometric Immigration Documents during the first stage of the roll-out. We particularly welcome the assurance of the exemption from BIDs charging for refugees for the first ten years given by Lord Bassam at the Lords Report Stage of the UK Borders Bill (Lords Hansard c 216, 9 October 2007). Our concerns are these:

Transparency

In view of the concern expressed about the costs of the national identity project and immigration fees both from within and outside Parliament, cross-subsidy and the roll-up of the BID cost within the application fee will not necessarily be helpful to ensuring transparency about costs, but have the potential to make scrutiny of the specific costs of the national identity project more problematic.

Impact on unsuccessful applicants

The suggestion that migrants who do not succeed in their application should pay the cost of the biometric immigration document is extremely unfair. These individuals have already paid an application fee towards a benefit they have not received. We do not see that the argument is made that such individuals benefit from any “increased security” if they have failed in their application to obtain entry clearance or further leave.

Injustice of making foreign nationals pay to be “guinea pigs” for the national identity register

- BIA should recognise that in compelling non-EEA nationals to pay for BIDS they are effectively making them pay to be guinea pigs for the national identity project, one of the biggest experiments ever in UK public policy.
- According to the Joint Committee on Human Rights roll-out of biometric immigration documents to foreign nationals before UK nationals and priority groups of foreign national may yet breach Articles 8 (Right to private life) and Article 14(discrimination) of the ECHR if BIA fail to justify the roll-out as necessary to immigration control (see JCHR thirteenth report of the session 2006-2007, and the Fifth report 2004–2005).
- There are problems with existing biometric databases. In August 2007 the Independent reported that the DNA database contained no less than 500,000 false or badly spelled entries. We do not yet see any evidence that the Home Office is better placed to assure the integrity of further biometric databases
- There are also concerns that some individuals will suffer data mismatching as a result of outstanding problems with the biometric recording and reading technology for certain groups such as people of African and Afro Caribbean origin, older and disabled people, and manual workers. (as reported in the Independent on Sunday 16 October 2005; and Lords Grand Committee of the UK Borders Bill 5 July 2007 at Lords Hansard GC129)
- If there is any doubt that foreign nationals compelled to register are being viewed as guinea pigs, the Home Office’s own Regulatory Impact Assessment on the UK Borders Act states that the registration of foreign nationals is to be seen as a trial run for ID cards: it will ‘de-risk ID Cards by trialling similar technology and processes’

- It is quite iniquitous to make non-EEA nationals pay for the trial of technologies and systems that still carry risks and are not proven, but if proven will benefit the whole of the UK.
- Therefore we believe that at least during the period to 2009 while foreign nationals are effectively co-operating with trialling the NIR and identity cards to the benefit of UK nationals, not only refugees, but all non-EEA nationals should receive free BIDs.

3. Contact details.

For further information about this briefing please contact Rhian Beynon, Policy and Communications Officer of JCWI at rhian.beynon@jcw.org.uk or on 020 7 608 7305. All JCWI materials referred to can be found at www.jcw.org.uk