

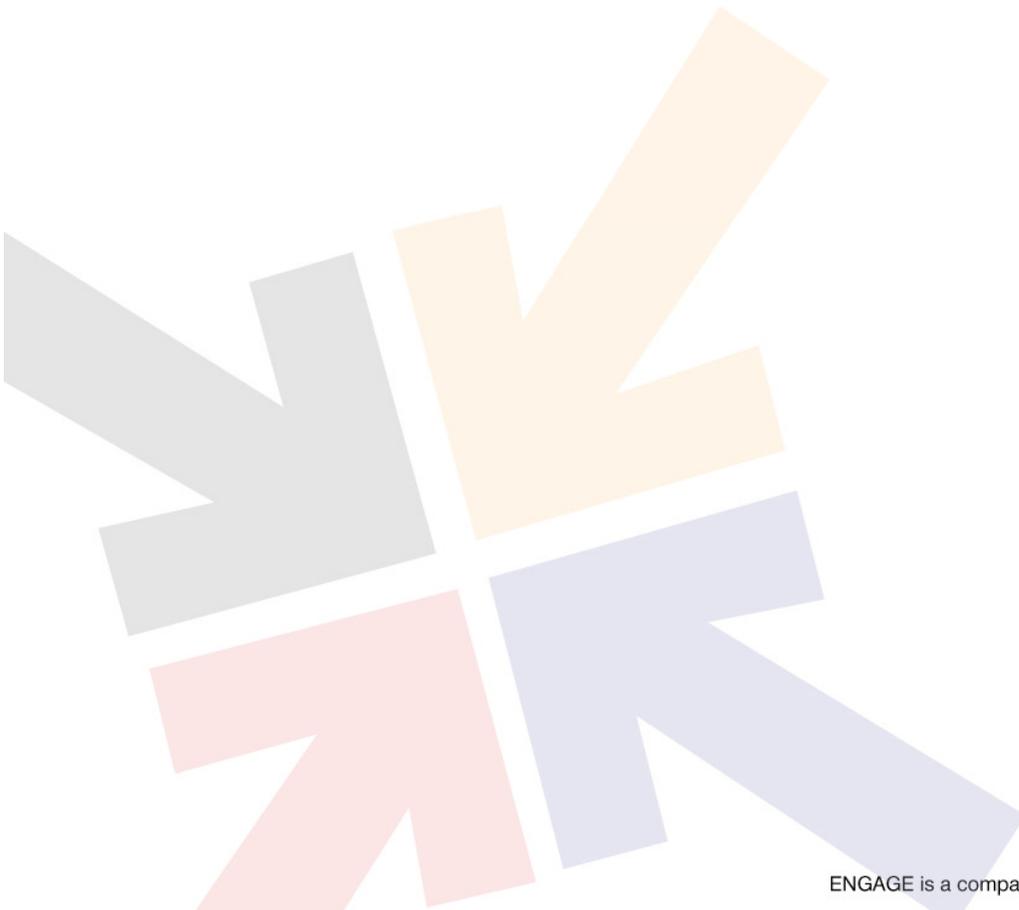
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ENGAGE consultation response

Code of practice for the acceptable use of
advanced imaging technology (security
scanners) in an aviation security environment

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a) Privacy

Question 1: Do you agree with this approach? If not, what changes to the code of practice do you propose?

The Interim Code, while protecting the anonymity of an individual selected for screening through various measures introduced to maintain an observable distance between reviewer and screener is still substandard and does not address fundamental concerns over the creation of body images and the problems these pose for the individual's right to privacy under Article 8 of the European Convention.

The Interim Code and the introduction of airport scanners giving individuals no alternative but to pass through the screening process or be denied entry into secure zones permitting air travel wholly ignores the considerations of Muslim passengers on the creation of body images and religious views on these.

The Charter of Fundamental rights preserves the rights to human dignity (Article 1), respect for private life (Article 7), freedom of thought, conscience and religion (Article 10) and protection against discrimination (Article 21).

The extension of airport scanners to airports across the UK over the course of the year, we believe, interferes with these fundamental rights, in particular the rights to privacy, non-discrimination and freedom of religion.

Whatever stipulations are included in the Interim Code there is a strong body of evidence from research into stop and search policies and policing procedures which give good cause for concern that the rights to freedom of religion and non-discrimination will be breached in relation to Muslim passengers.

The religious considerations of the traveling public and their rights to privacy are not catered for in the Interim Code with no effort made to appreciate the respect for freedom of religion.

The Code of Practice acknowledges concerns of groups about undergoing a security scan and claims security officers would be equipped with the necessary skills to address any such concerns. We believe this to be an insufficient guarantee of serious concerns on security scanners interfering with fundamental religious beliefs and the protection of freedom of religion.

The European Commission's communication of the use of airport scanners stipulates the need for health concerns to be addressed in relation to vulnerable groups (pregnant women, babies, children, and people with disabilities) and levels of radiation emitted by the scanners through provision of alternative security checks. The situation would give rise to an uneven application of fundamental rights where human health protection considerations of the Charter of Fundamental Rights (Article 35) would be respected while the right to freedom of religion would be compromised.¹

¹*Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU airports*. (Brussels: COM (2010)/311/4). Pg 18

The EC communication argues that 'Member States' authorization for individual deployment at airports should be based on a thorough assessment of a possible impact on fundamental rights and safeguards available'.

The cases that have come to our attention to date concern two Pakistani women who were refused to board their flight to Islamabad, Pakistan from Manchester airport, on rejecting the scanning process, one on grounds of religion, the other on grounds of health.²

We believe these cases to be precursors to many more instances of the encroachment of airport scanning on the freedom of religion and the rights to privacy and dignity as Muslim passengers refuse the screening process.

The Code of Practice presents security scanners as sine qua non for passengers wishing to fly stating 'if persons do not want to be subject to security scans, then they do not have to fly'.

The proposals place an uneven burden on individuals professing religious beliefs, and others, who for reasons of conscience would choose to decline passing through a security scanner.

- We strongly propose the option of an alternative security check for passengers that decline the airport scanning process consistent with their rights to privacy, human dignity and freedom of religion. Where such alternatives are entertained in relation to vulnerable groups on grounds of risks to health, we believe the right freedom of religion as a right should equally be recognized as a further consideration in provision of alternative security checks.
- The extension of scanning requirements to children raises additional concerns over the rights to child protection. The Code of Practice merely states this to be a matter 'open to debate'. Such a facile consideration of important parental concerns deserves a more robust response in defence of the measure to extend security scanning to children.
- The Code of Practice should consider more seriously the implications of glib responses in relation to the protection of the fundamental right to religious belief and the exercise of this right. To deny people of faith the ability to enjoy air travel as a consequence of objecting to security scans places a greater, discriminatory burden on this group. We believe that such discrimination is counter-productive and the needs of passenger safety and security better addressed through provision of an alternative security check.

Question 2: Do you agree that the safeguards outlined in the interim code of practice address all potential privacy concerns? If not, what else should be included?

² 'Women refuse to go through airport body scanners', BBC News, 3 March 2010. [Online] Available at: <http://news.bbc.co.uk/1/hi/england/manchester/8547416.stm>. Accessed 14 June 2010.

The Interim Code stipulates a procedural protection of privacy but does not deal with more fundamental concerns posed by the creation and review of full body images. See response to Question 1 above.

b) Data protection

Question 3: Do you agree that the safeguards outlined in the interim code of practice satisfactorily address any potential data protection concerns? If not, what else should be included?

The Interim Code makes clear that images are not stored, are automatically deleted once cleared by the reviewer and that there are safeguards against image retrieval and transfer.

There remain concerns on the proper implementation of the Interim Code. Reports recently produced on the use of Information Sharing Agreements by local authorities and groups involved in the Prevent programme³ and the abuse of these agreements to procure sensitive data raises serious questions on whether the production and dissemination of Codes and protocols are sufficient guarantees for data protection.

The Interim Code also stipulates a monitoring procedure to gather data on the age, gender, race, ethnicity and religion/belief of individuals selected for screening. We believe the procedure to be cosmetic given widespread reports on the disproportionate effects of all such procedures on BME communities.⁴ The Equality and Human Rights Commission have already stated their concerns on the strong probability of intended and unintended discriminatory effects of airport scanners on BME communities.⁵

The Fundamental Rights Agency (FRA) of the EU has also raised concerns over data protection and rights to privacy. The EC's communication mentions Privacy Enhancing Technologies (PETs) and Automatic Threat Recognition (ATR) software,⁶ to obviate concerns over data protection presented by security scanners and advancing the quality of data protection through introduction of more rigorous techniques.

- We would welcome further information on government responses to data protection concerns raised by the FRA and information of incorporation of PETs and ATR software
- We would welcome further information on how data monitoring will feed into any reviews of the use of airport scanners, in particular, on Equality Impact Assessments.

³ 'Government anti-terrorism strategy 'spies' on innocent,' The Guardian, 16 October 2009.

⁴ '70% rise in number of black and Asian people stopped and searched,' The Guardian, 17 June 2010.

⁵ ECHR letter to Lord Andrew Adonis, 12 February 2010. [Online] Available at: http://www.equalityhumanrights.com/uploaded_files/2010_02_16_letter_from_trevor_phillips_re_full_body_scanning_at_heathrow_and_manchester_airports.pdf. Accessed on 14 June 2010.

⁶ 'Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU airports'. (Brussels: COM (2010)/311/4). Pg 12

- We would welcome further information on timelines under consideration on production of reports based on data monitoring of screened passengers.

c) Health and safety

Question 4: Do you agree that the safeguards outlined in the interim code of practice and HPA assessment satisfactorily address any potential health and safety concerns? If not, what further analysis would you wish the Government to undertake?

The Interim Code provides details of the negligible level of exposure to ionizing radiation presented by airport scanners but does not address measures to be undertaken to regulate and review the level of risk over time.

Leaving local airport authorities to oversee local risk assessments and their compliance with health and safety regulations opens the possibility of unpredictability and inconsistency in ionizing radiation dosage and risk to passengers. The Interim Code allows for local rules to be agreed upon, ambient radiation dosage and effective dose applied to a passenger to be assessed by qualified persons and reinforced by agreed local rules. We believe this process will result in differing levels of risk across the UK.

- We would welcome further details on harmonisation of procedures across the UK with risk levels and ambient dosage assessed by the Department of Health. This is particularly important in consideration of new technologies being advanced in the area of security scanners and the possibility of differing technologies being introduced at later stages.

d) Equipment approval

Question 5: Do you agree that requiring airport operators to discuss with the DFT all prospective use of security scanners as outlined in the interim code of practice satisfactorily addresses the requirement for all equipment to undergo a suitable approval process? If not, what else should be included?

See response to Q4 and the need for harmonization of technologies to incorporate the Department of Health. Such is necessary for security scan technologies to be additionally assessed for radiation risks to screeners.

e) Training

Question 6: Do you agree that requiring security officers operating security scanners to hold government security clearance and to have received training delivered in accordance with a DfT mandated security scanning training module before deployment satisfactorily addresses the issues of vetting and training? If not, what else should be included?

What provisions are to be made in the training of security officers operating scanners to ensure gender parity and sufficient availability of same sex operators to meet passenger

requests, consistent with measures to provide passengers with same sex reviewers should they request them?

f) Communication

Question 7: Do you agree that the requirements for keeping passengers informed outlined in the interim code of practice are sufficient? If not, what else should be included? And what additional means of communication do you suggest the Government or the travel industry should put into place?

The Code of Practice on communicating the use of airport scanners does not adequately offer any explanation on why alternative security checks will not be provided.

The communication strategy should be tailored to address the particular concerns of groups affected disproportionately by the use of security scanners at airports to address any concerns.

The communications strategy should also include information on the voluntary data monitoring of passengers selected for screening to ensure information is gathered for analysis of any ethnic, racial, religious or gender discrimination.

The Interim Code stipulates that this information will be provided in 'a number of languages'. We raise the issue of whether this does not contradict the current government's scaling back on the translation of documents in multiple languages? Which languages will be chosen for the display of this information and on what basis?

g) Selection criteria

Question 8: Do you agree that selection criteria defined in the interim code of practice provide an appropriate safeguard to ensure that passengers are selected for screening on a non-discriminatory basis? If not, how do you suggest passengers should be selected?

The selection criteria as it appears in the Interim Code is a lofty ideal and deflects from what has been extensively documented by way of 'ethnic profiling' in 'stop and search' and policing methods. While neither is intended to result in ethnic discrimination, the facts remain that ethnic minorities and Muslims have been disproportionately targeted by such procedures.⁷

According to the FRA's Data in Focus report on Muslims and their 'Encounters with Law Enforcement, Customs and Border Control':

⁷ *European Union Minorities and Discrimination Survey Data in Focus Report 2: Muslims* (2009). (European Union Agency for Fundamental Rights). pg 3 [Online] Available at: <http://fra.europa.eu/eu-midis> Accessed 14 June 2010, and *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (2009). (New York: Open Society Institute, Justice Initiative).

'On average 1 in 4 Muslim respondents were stopped by the police in the previous 12 months, and 40% of these believed that this was specifically because of their immigrant or minority status.

'Those who were stopped by the police experienced on average 3 such stops over a 12 month period.

'On average 37% of Muslim respondents stopped by customs or border control in the previous 12 months believed that this was specifically because of their immigrant or minority background. In comparison, 19% of non-Muslim minority respondents surveyed in EU-MIDIS considered this to be the case.'

We have no confidence that the selection criteria, while expressly stating that 'passengers must not be selected on the basis of personal characteristics (ie on the basis that may constitute discrimination such as gender, age, race or ethnic origin)', will not result in definitive and substantive discrimination.

- We would be interested to learn of interim results from the data monitoring surveys taken from passengers selected for screening at London Heathrow and Manchester airports to assess early outcomes and indications of possible levels of discrimination in selection.

We have noted the concerns raised by the Equality and Human Rights Commission on the selection criteria proposed in the Interim Code and we reiterate those concerns here. Particularly concerns raised on the potential for arbitrariness in selection and non-compliance with extant anti-discrimination and equality obligations.

We would further state that as with stop and search and policing methods that are discriminatory, and perceived to be discriminatory, being counter-productive so will selection criteria that does not provide necessary safeguards against discrimination in the use of airport scanners prove to be counter-productive and affect ethnic minorities' trust in institutions.

We believe providing alternative security checks will go some way to mitigating the perceived discriminatory effects of selection criteria by offering individuals a security check more consistent with their religious beliefs. The overriding concern with security is principal but to supplement selection criteria that is highly likely to be discriminatory in practice with a security check that is objectionable to passengers is to add insult to injury.

- We believe security needs can be met through a more sensitive approach to conscientious objections raised by Muslims to body images produced by scanners through the option of an alternative security check.

h) Protocols

Question 9: Do you agree that the guidance provided in the Protocol section of the interim code of practice is satisfactory? If not, what else should be included?

Question 10: Are there any other issues that you would like to see the final code of practice consider? If so, what and why?

The lack of transparency, due to security concerns, on selection criteria that will inform the protocols raises concerns similar to those stated above (Q8).

The ECHR has already stated in its submission that some criteria regarding 'religious dress, destination, nationality and national origin'⁸ would very likely result in unlawful direct and indirect discrimination. We reiterate those concerns here and refer to the findings of the EU-MIDIS survey on Muslims and the Open Society Institute's Justice Initiative report cited earlier on the detrimental and discriminatory effects of 'profiling'.

- We would welcome further clarity on the selection criteria that will be included in the protocols and any equality impact assessment carried out on these and their compliance with equalities legislation.
- We would further welcome information of any monitoring process in place to document and analyse the impact of the selection criteria included in the protocols.
- We believe that invasive airport security is no substitute for strong intelligence and the final code of practice and the protocols must emphasise the centrality of strong, reliable and credible intelligence in the implementation of protocols relating to airport security.

⁸ ECHR letter to Lord Andrew Adonis, 12 February 2010. [Online] Available at: http://www.equalityhumanrights.com/uploaded_files/2010_02_16_letter_from_trevor_phillips_re_full_body_scanning_at_heathrow_and_manchester_airports.pdf. Accessed on 14 June 2010.