

The Rt Hon Lord Andrew Adonis
Secretary of State for Transport
Department of Transport
Great Minster House
76 Marsham Street
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12 February 2010

Dear Andrew,

Full body Scanning at Heathrow and Manchester Airports

Thank you for your letter of 2 February 2010 in response to my letter to the Home Secretary of 15 January 2010. In which I outlined the Equality and Human Rights Commission's concerns about the implications of the proposed introduction of full body scanning equipment at UK airports. I made clear that the Commission recognises the significant threat posed by terrorist activities, in particular in relation to air transport, and the need for the government to take urgent and effective steps to protect the travelling public.

However, in light of the Government's decision to introduce body scanning at Heathrow and Manchester Airports on 1 February 2010 and its intended roll-out to all UK airports by the end of this year, I must repeat the Commission's concerns about the need to ensure that counter terrorism policies are justifiable under the law and work to enhance, not damage community relations, while reiterating our recognition of the acute safety and security issues at stake.

The Commission is particularly concerned by the apparent absence of safeguards to ensure the body scanning system is operated in a lawful, fair and non-discriminatory manner. The Commission also has serious doubts that the decision to roll this system out in all UK airports complies with the law or properly assesses the impact it may have. I hope that by setting out the Commission's view at this early stage we can ensure these concerns are addressed.

We are yet to see sufficient evidence that this decision complies with the general or specific equality duties under the Race Relations Act 1976, the Sex Discrimination Act 1975 or the Disability Discrimination Act 1995. These duties require a Secretary of State, in the performance of his or her functions, to give "due regard" to both the elimination of unlawful discrimination and the promotion of equality of opportunity and good relations between members of different racial groups.

Without careful and formal consideration of the equality implications of this decision, for example through a full equality impact assessment, there is a serious risk that a measure introduced to protect the travelling public will have unintended discriminatory consequences. If these risks had been considered, and steps taken to guard against them, then the Commission believes that an Interim Code of the sort we now have would not have been introduced.

The Commission is also concerned about the implications of the introduction of body scanners for the right to privacy under in Article 8 of the European Convention on Human Rights. While we acknowledge that there is a legitimate aim for this invasion of privacy, which at the present time we are inclined to accept is proportionate, we remain seriously concerned whether the intrusion is in accordance with the law.

The Government has not made public the selection criteria for body scanning, for national security reasons, which the Commission understands. However, we consider that it is very likely that some criteria, for example, religious dress, destination, nationality or national origin, would also have an unlawful directly or indirectly discriminatory effect. There is also not a proper monitoring mechanism to ensure that this is non-discriminatory in practice. As things stand, there is too little

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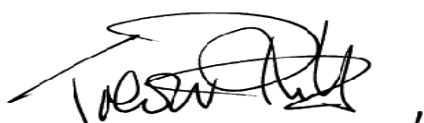
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transparency and too much scope for arbitrariness and wrongful discrimination for the Interim Code to be capable of complying with the law.

The Commission considers that greater openness on the part of Government is vital to demonstrate fully how it is intending to comply with the law, specifically within the framework of its equalities and human rights duties, and to ensure appropriate accountability and transparency in the roll-out of the use of body scanners to UK airports.

I attach a more detailed account of the Commission's legal and policy concerns and would be happy to meet with you to discuss these further, with a view to securing an informed solution to ensure that measures put in place to protect the travelling public are in compliance with equalities and human rights law.

Yours sincerely



Trevor Phillips
Chair

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