

Written evidence submitted by PGMBM (AAS0006)

PGMBM welcomes the opportunity to respond to the Transport Committee’s inquiry on ‘Airlines and airports: supporting recovery in the UK aviation sector.’

PGMBM

PGMBM is a global leader in group litigation, formed by a unique partnership between British, Brazilian, and American lawyers passionate about championing justice for the victims of wrongdoing by big corporations. The firm is currently litigating some of the biggest claims in English legal history, including claims arising from the collapse of the Fundão Dam (the largest environmental disaster in the history of Brazil) and several other significant environmental disasters in that country. PGMBM is also at the forefront of UK group consumer claims, representing hundreds of thousands of affected clients throughout the UK and the world against Volkswagen, Daimler (Mercedes Benz), easyJet, Bayer and other major multi-national corporations.

Introduction

We believe that the imposition of Mandatory Hotel Quarantine (“**MHQ**”) on international travellers is discriminatory, unjustifiable and amounts to a breach of Article 5 of the ECHR, and that the extortionate fees associated with MHQ are a discriminatory charge that the Government has no legal authority to create. We bring evidence based on our legal expertise and a thorough review of the relevant legislation surrounding the traffic light system (“**TLS**”). Additionally, we have carried out an extensive primary research in relation to the imposition of MHQ, having heard stories from hundreds of those who have been subjected to MHQ. The relevant issues will be addressed in the following order:

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PART I: The Traffic Light System for International Travel

The UK Government's TLS is a poorly operated, haphazard set of restrictions that is applied arbitrarily, inconsistently, ineffectively, and unnecessarily. The consequences of this system include: suppressing the recovery of the aviation and wider travel/tourism sectors both in the UK and throughout the world post-COVID-19; a deprivation of the human rights of those forced to stay in (and pay for) MHQ; and the emotional impact on UK residents who are unable to visit loved ones overseas.

1. The operation of the Traffic Light System: Mandatory Hotel Quarantine

1a. Conditions

Travellers reported terrible conditions at the quarantine hotels. The food is often reported as being of inadequate quality, unsubstantial and mouldy. Several people have complained that hotel staff failed to wear masks and did not adhere to guests' dietary requirements, often also entirely disregarding their protected religious and ethical beliefs. Hotel rooms themselves are usually unventilated, some are rat infested and the conditions have been

likened to prisons by most of the people we have heard from; some describing them as worse. For example:

“We knew that we would have to quarantine so we tried to be as prepared as we could be – but really it was so traumatic that we are still dealing with it now. There was three adults and one child in a family room – which was so small. Then there was no windows or ventilation. Awful food which meant we had to order in for ten days at a huge cost. No laundry service unless we paid extra and five guards in just one corridor. After two or three days my children just got so listless. I have never seen an 8-year-old just lay about doing nothing -but no air, no food, no light and that happens.

“The staff in the hotel would walk round with their masks around their neck, and some people would just sit back and not say anything. Lots of families were in fear of the staff and didn’t want to do anything that might change their status in the UK. I did not expect to be dehumanised in such a way.”

- **South African traveller**

“We knew that she would have to quarantine when she got back and she weighed that into her decision to go. But what she didn’t anticipate was the conditions. By far the worst was that she was put in a hotel room with tinted glass windows that were not allowed to be opened. There was no ventilation which for a hotel that is meant to be restricting the spread of covid is really quite unbelievable. “

- **NHS doctor travelling from India**

1b. Rules

The rules surrounding MHQ are unnecessarily convoluted. We bring attention particularly to the accessibility and consistency of the MHQ rules.

(i) Accessibility

The rules surrounding the imposition of MHQ are inaccessible. We have heard multiple stories from travellers who were not aware that they had to quarantine in a hotel until they arrived in England. This is particularly inequitable as people entering the country without having booked MHQ are now faced with up to £4,000 fines.

(ii) Consistency

The rules for when people must attend MHQ are materially inconsistent. Several people have highlighted to PGMBM that the current TLS allows travellers from 'green' countries to mingle in airports with travellers from 'red' countries for hours before boarding flights to one of four airports in England. At the UK border, travellers from green-list countries may leave the UK airports without any period of isolation.

Simultaneously, those travelling from 'green' countries, but who have a changeover in any 'red-list' country must quarantine for 10 days in hotels with poor ventilation, nutrition, and less time outside than the government's own recommended daily exercise allowance and than prisoners in custody in the UK are entitled to. The imposition of MHQ on those who have transited through a 'red-list' country is done so on the basis that those people may have mingled with others travelling from 'red-list' countries.¹

1c. Exemptions

The rules exempting travellers from MHQ and home isolation are convoluted, inaccessible and administered poorly and inconsistently.

(i) Compassionate and medical

The Government accepts that some people may be exempt from staying in MHQ. However, those exemptions are administered poorly and the basis for compassionate and medical exemptions from MHQ are not transparent, offering no reliable protection for people in extremely vulnerable positions, for example:

A son approached PGMBM regarding medical exemption from MHQ for his mother, who suffers with dementia and PTSD (Post Traumatic Stress Disorder): his mother had been stuck in the United Arab Emirates over lockdown with another one of her sons, which severely exacerbated her conditions as the environment was unfamiliar to her. Her son in the UK desperately wanted to bring her back to her London bungalow, which is much better equipped to accommodate her, but the only way she could return was to stay in an even less familiar MHQ. Her son contacted us as they had unsuccessfully applied to the Department of Health and Social care for an exemption.

A heavily pregnant woman was refused compassionate leave to attend a vital 34-week scan while in MHQ, leading to the death of her baby. The woman informed hotel staff on several occasions that she needed medical attention after falling twice in her bathroom. Her conditions worsened and she was eventually taken to hospital, but her baby had already died by the time she was assessed. Her husband was also detained in MHQ while his wife faced the trauma of stillbirth alone.

(ii) Employment

The Government has provided guidance on which employment statuses exempt travellers from some or all conditions of travel, though they are applied on a seemingly arbitrary basis.

A fully-vaccinated pilot, who flew to the UK from Qatar for work purposes and tested negative three times over 11 days, approached PGMBM as he was not granted compassionate leave despite his father-in-law having committed suicide on day 2 of his stay. Only the day before his arrival in the UK, three pilot-colleagues of his returned to the UK on the same flight. Two of the pilots were forced to stay in quarantine hotels, but one was exempt for employment purposes.

1d. The 'Red list'

Countries' status on the 'Red List' appears to be a discriminatory exercise. The lack of transparent criteria for countries to be on the 'Red List' allows for no checks and balances on the Government's decisions, which is troubling given that those decisions have an immense, real-world impact on the economies of other countries, most of which are in the global south and share long-lasting historical, cultural, and economic ties with the UK that the Government should seek to protect.

2. The effectiveness of the Traffic Light System

The desired effect of imposing MHQ is *"to protect people and save lives"* and *"minimise travel across international borders and reduce the risk of COVID-19 transmission."*² In some cases, the imposition of MHQ has not only failed to

protect people from COVID-19 but has in fact introduced it and other serious medical concerns to vulnerable people.

Cases like Ozgur's have, unfortunately, been frequently reported to PGMBM:

"My wife was travelling back to see family in Turkey because they had not met our daughter, and she hadn't seen them for 3 years... we also applied for medical exemption because my wife was 30 weeks pregnant.

"It is an automated service but when I emailed I had no response. I tried three times before I was sent the questionnaire. By this time it was almost time for my wife to go to Turkey.... to this day I have heard nothing and my wife has now been back in the country for three weeks.

"They were put in a hotel near Heathrow and it was filthy. She was crying all day long. She saw a rat in her room and kept being served bacon and sausages even though she told them she didn't eat pork.

"I ended up cooking food at home to take to her, and I also bought a rat trap from B&Q to give her peace of mind because the hotel did nothing.

"We thought about her coming home via an Amber country but that would have meant a 10 day stay there and with her being pregnant we thought it would be better for her to at least be near home.

"On day three they both tested positive for covid. They had no symptoms and a negative test when they left Turkey so they must have caught it in the hotel. My wife, Esin, is still not recovered. She has been really poorly with it.

"They were allowed home after ten days – but I then caught Covid from them. So we have all had it. If she had come home to quarantine, chances are none of us would have got it.

"It's awful. It makes no sense."

2a. Vaccinations

The success of the vaccine rollout in the UK is not reflected consistently in the TLS legislation. It is acknowledged that vaccinations may exempt some travellers from isolation, but not those staying in MHQ:

On 19 July 2021, The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No.6) Regulations 2021 came into force. These amendments introduced exemptions to the mandatory self-isolation requirements for certain individuals and children who have been fully vaccinated in the UK or under the UK vaccine roll-out overseas and who are returning from an 'amber-List' country.

The Transport Secretary Grant Shapps explained the rationale in a statement to Parliament on 8 July 2021:³

"... we are now, thanks to our brilliant vaccination programme, in a position where we can start to think about how we live with coronavirus, while returning life to a sense of normality."

On 2 August 2021, this exemption was extended to include those who have been fully vaccinated in the EU and in the United States of America with vaccines approved by the European Medicines Agency and the Food and Drug Administration, respectively.⁴

This change to the travel restrictions accompanies numerous other changes to COVID-19 regulations and guidance to ease restrictions for children and fully vaccinated adults, including:

- a. During July 2021, exemptions were put into place to allow various groups of fully vaccinated workers, including NHS workers and those in the food supply sector, to undertake daily testing rather than self-isolating if they come into contact with someone who has tested positive for COVID-19.
- b. From 16 August 2021, fully vaccinated people, people who have a medical reason for not being vaccinated and children will not have to comply with self-isolation regulations if they have come into close contact with a person who has tested positive for COVID-19.⁵ The Health Secretary Sajid Javid explained to Parliament that this *"risk-based approach"* was introduced to *"recognise the huge benefits that the vaccines provide both to people who get the jab and their loved ones."*⁶ Government guidance also states that these changes were made to *"ensure young people can make the most of their education as restrictions continue to ease."*⁷

Aside from a narrow exemption allowing Premier League footballers to travel to red-list countries such as Brazil and Argentina to compete in World Cup

football qualifying matches if they are fully vaccinated later this month, the UK Government has not introduced exemptions from MHQ for fully vaccinated travellers from red-list countries. This is despite the Government's recognition of the effectiveness of available vaccines for Amber-List travellers. The lack of transparency for the decision making behind these disparate interpretations of the effectiveness of COVID-19 vaccinations must be addressed by the Government, especially given Article 5 of the ECHR is almost certainly engaged.

The Government's justification of the 10-day detention period must be reconsidered. The justification holds travellers detained despite repeatedly testing negative for COVID-19, being vaccinated against COVID-19, presenting no symptoms of COVID-19, and returning from red-list countries where the risk of contracting COVID-19 is far lower than in the UK. To this end, no other European country (including Ireland, with whom we share a land border and Common Travel Area) imposes MHQ on arrivals from overseas, even if they are unvaccinated. The UK Government's policy of detaining vaccinated travellers from 54 red-list countries therefore merits a thorough reevaluation.

For the purposes of this committee, even if Article 5 of the ECHR is not breached by the imposition of MHQ in the UK, the policy is a prohibitively expensive deterrent which discourages foreign travel and hinders the recovery of the aviation industry. The Government must consider a uniform approach to its recognition of vaccine effectiveness in its legislation, as is the case in every other European nation.

PART II: The cost of international travel

While the Government has recently introduced some measures to mitigate the costs of MHQ, they do not go far enough. Charging for MHQ is inherently illegal, discriminatory, and extortionate.

1. Cost of Mandatory Hotel Quarantine

3a. Legal status

Charging for MHQ is illegal under the obligations arising from the UK's status as a member of the World Trade Organisation. The imposition of charges under the Travel Regulations was made outside of the general power to "permit or

prohibit” the levying of charges for actions under sections 45B and 45C of the Public Health (Control of Disease) Act 1984. The empowering provision must be read subject to the International Health Regulations 2005 (“IHR 2005”), an international instrument binding on all World Health Organization Member States. Article 40 of the IHR 2005 expressly prohibits charges for quarantine.

3b. Discrimination

The uniform application of the same charge to all people staying in MHQ without means testing is discriminatory. Countries on the UK’s Red List are invariably in the global south, hence red-list travellers often come from areas of deprivation. A traveller from South Africa who had to stay in MHQ informed us that:

“People in the hotel weren’t holiday makers who could afford this. The majority were immigrants who had no other choice than to travel. They were people who had been separated from their families for long periods, or who had travelled for a family funeral. They were genuinely trying to return home to where they work.

“They aren’t rich people – they are poor. The system is all wrong and I feel strongly that it is discriminatory towards people of colour or a certain race.

3c. Extortion

MHQ currently costs £2285 per adult, equivalent to over 250 hours’ worth of work for a 25-year-old on the national living wage. The only alternatives to MHQ, for those who must return to the UK, are the threat of a £10,000 fine or up to 10 years’ imprisonment.

One of the people who’ve contacted PGMBM are facing over £25,000 worth of fines between her and her partner, despite their being told by police that they were allowed to quarantine at home due to their 2- and 7-year-old children living there. This mother travelled straight home to her children despite threats of arrest from the MHQ staff, after arriving in the UK over a month later than she had expected due to the restrictions. She had been refused compassionate leave from MHQ.

Police attended her home the following day and fined her and her partner £1000 each but advised she could stay at home with her children provided she complied with the mandatory tests. Despite evidence of having her having

taken negative COVID-19 tests, police came 5 days later at 11pm to impose a £10,000 fine on each of them and to take her and her partner back to MHQ, away from her children, in a 2-and-a-half-hour taxi. This woman is unemployed and has no means of paying for these fines.

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Endnotes

¹ Department for Transport, Department of Health and Social Care, “*Transiting through red-list countries*”, “Red, Amber, green lists: check the rules for travel to England from abroad” (7 May 2021). Available from: <https://www.gov.uk/guidance/red-amber-and-green-list-rules-for-entering-england#transiting-through-amber-or-red-list-countries-on-your-way-to-england>

² Department of Health and Social Care “Government confirms mandatory hotel quarantine to be introduced from 15 February” (5 Feb 2021). Available from: <https://www.gov.uk/government/news/government-confirms-mandatory-hotel-quarantine-to-be-introduced-from-15-february>

³ Department of Transport and The Rt Hon Grant Shapps MP, “Oral statement to Parliament International travel from amber list countries and territories” (8 July 2021). Available from: <https://www.gov.uk/government/speeches/international-travel-from-amber-list-countries-and-territories>

⁴ Department for Transport and Department of Health and Social Care, “UK travel update: government waives quarantine for arrivals fully vaccinated from Europe and USA while also confirming international cruise restart” (28 July 2021). Available from: <https://www.gov.uk/government/news/uk-travel-update-government-waives-quarantine-for-arrivals-fully-vaccinated-from-europe-and-usa-while-also-confirming-international-cruise-restart>.

⁵ As set out in The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021.

⁶ The Guardian, “Double-jabbed contacts won’t need to self-isolate from 16 August, says Javid” (6 July 2021). Available from: <https://www.theguardian.com/world/2021/jul/06/double-vaccinated-contacts-no-longer-need-to-self-isolate-from-16-august-says-sajid-javid>.

⁷ Department of Health and Social Care and The Rt Hon Sajid Javid MP, “Self-isolation to be eased for fully vaccinated adults in step 4” (6 July 2021). Available from: <https://www.gov.uk/government/news/self-isolation-to-be-eased-for-fully-vaccinated-adults-in-step-4>.