

**CIVIL AVIATION AUTHORITY**  
Secretary and Legal Adviser's Office



**FOR PUBLICATION**

**CIVIL AVIATION AUTHORITY**  
**MINUTES OF 428<sup>th</sup> BOARD MEETING HELD ON WEDNESDAY**  
**17<sup>th</sup> FEBRUARY 2010 AT 09.30 AM**

**Present:**

**Dame Deirdre Hutton**  
**Chair**

**Mr A Haines**  
**Chief Executive**

**AVM Anderson**

**Dr C Bell**

**Dr H Bush**

**Mr R T R Jackson**

**Miss C Jesnick**

**Mr R P Mountford**

**Mr M Swan**

**Mr M Medicott**

**Capt R O Whitefield**

**Mr R J Britton**  
**Secretary & Legal Adviser**

<b>In Attendance:</b>
<b>Mr P Kelleher</b> Head of Airworthiness Division, SRG
<b>Mr M Smethers</b> Director European & International Strategy
<b>Ms A Craker</b> Head of Strategy and Transformation
<b>Ms S Youngman</b> Acting Head of Corporate Communications
<b>Mr S Page</b> Egon-Zehnder
<b>Mrs N Hastings</b> Head of Human Resources
<b>Mr S Baker</b> Minute Taker
<b>Apologies for absence were received from Capt R M Jones, acting GDSR, and Mr D Gray.</b>
The Chair welcomed Mr Medicott to his first meeting of the Board.
<b>I Minutes of Board Meeting held on 20 January 2010.</b>
1. The Minutes of the Board meeting held on 20 January 2010 were approved and signed subject to amendments to paragraphs 38 and 39 (inserting a short explanation as to the paragraphs in the relevant paper cross-referenced).
<b>II Chairman's Opening Remarks.</b>
2. The Chair reported that she had made visits to Edinburgh Airport and to the CAA's regional office in Stirling. She had also met the Scottish Transport Minister and they had discussed the collapse of Globespan. She had also joined the Chief Executive in many of the meetings detailed in his report.

### III ASSI Audit Report – Doc 2010/20 by Captain Jones.

3. Mr Kelleher presented the paper and asked the Board to note that he had an interest as a Director of ASSI. Mr Kelleher informed the Board that the CAA was required by the Directions from the Secretary of State to carry out an annual audit of the Company. The 2009 audit was the first audit of the Company as a fully operational unit since it had been established in 2003. Mr Kelleher noted that the Company had developed an action plan to address the specific technical issues raised during the audit. Indeed, before the audit was carried out, the CEO of the Company had identified a number of issues raised in the audit report following her appointment last year. Planning for the 2010 audit would begin next month. Mr Kelleher asked the Board to endorse the report before it was sent to the Secretary of State.

4. The Chair asked Capt Whitefield if he had any comments as Chairman of the ASSI Board. Capt Whitefield said that the Board of the Company had reviewed the report and had noted in particular its criticisms of the governance of the Company's regional office in the BVI which was of particular concern. Capt Whitefield explained that the Company had moved its regional office from Antigua to the BVI, since when there had been two hurricanes affecting the area and this together with the difficult working conditions generally had affected the operation of the office. The Board of the Company had requested CAA Internal Audit to visit the office in the BVI to look at its governance. The Board of the Company would be reviewing the action plan in April. The CAA Board noted the audit report and, in view of the nature of the findings, wished to be kept informed of progress. It was agreed that the action plan would come to the CAA Board, probably in May.

**Action: Capt Whitefield**

5. Mr Mountford asked whether a review of the CAA risk register was required and also whether the CAA was fully insured in respect of the office. Mr Britton agreed to check the latter.

**Action: Mr Britton**

Mr Haines noted that the Company was reliant on the DfT for its income and that when the Company had been established, it had been thought it would have only a short life before its objectives were fulfilled and the Company could be wound down. Mr Haines asked how the Company would respond if its budget came under pressure from the DfT. Capt Whitefield explained that this was dealt with in the Company's Business Plan and that the Company could now charge for its services under the Directions which were amended for this purpose

in 2008. The Chair said that she thought it sensible that the Department were fully aware of the context in which the audit report was set out and that this should be incorporated into the covering letter sent to the Secretary of State. A full report on the Company should be presented to the Board later in the year.

**Action: Capt Whitefield**

6. The Board endorsed the report and agreed to its presentation to the Secretary of State as required by the Civil Aviation Authority (Overseas Territories) Directions 2003.

#### **IV Hampton Report Response – Doc 2010/21 by Miss Jesnick.**

7. Miss Jesnick said that although the Hampton Implementation Review had given the CAA a favourable report, it had identified six key issues which the review team believed the CAA needed to address to meet the Hampton criteria more fully. These issues were set out in the paper along with the proposed actions and timescales. Two of the six issues – transparency and enforcement – were being co-ordinated with the Better Regulation Executive. The Board was asked to note and approve the proposed CAA response to the Hampton Implementation Review set out in the Annex to the paper and to approve its publication on the CAA website.

8. In discussion, Dr Bell asked whether efficiency targets should be included, where appropriate. Miss Jesnick replied that further work was required in this area before any targets could be published.

9. The Board approved the proposed response and its publication on the CAA website and requested an update in six months' time.

**Action: Miss Jesnick**

#### **V Governance Arrangements for Future Price Control Reviews – Doc 2010/22 by Dr Bush.**

10. Dr Bush asked the Board to note that the paper set out the background for the price control reviews at the three main London Airports and for NATS (En Route) plc and described the current governance arrangements which applied to those reviews. Dr Bush noted that currently the Board's decision making powers in relation to those reviews were delegated by the Board to a panel consisting of Dr Bush and two or three other Members of the Board. The Pilling recommendation was that key decisions should be made by the Board as a whole on the basis of documents summarising the important issues and arguments although Dr Bush said the Pilling Review presented little evidence to support this

view. Dr Bush said the model proposed by Pilling was based on the Whitehall model of short briefing summaries prepared for Ministers for the purposes of decision making. There were, however, risks in such an approach. Moreover the nature and rigid timescales of the price control review process including the requirement for oral hearings made it unsuitable, in his view, for a decision by the Board as a whole.

11. Dr Bush said the paper proposed a number of criteria for assessing alternative governance arrangements (including models adapted by other economic regulators). The Board was asked to consider whether there was a case for reforming the current arrangements, and if there was, whether the criteria set out in the paper were appropriate for evaluating alternative arrangements, or whether, as an overall approach, the Board was content that a panel of the Board should continue to be vested with responsibility for making decisions on price control matters.

12. In discussion, the Board noted the potential legal risks in the Pilling recommendation, in particular summarising highly technical and detailed evidence for the Board. The Board further noted that it was responsible for the decision and if the decision was taken in principle by a panel, the Board must be comfortable with that decision. There was concern that some Board Members might be effectively disenfranchised if the decision was taken by the panel and that Board Members had no real say when the panel's decision was presented to it for approval. However, the Board recognised that the panel had to work to very tight timescales and analyse large amounts of technical information which may not be suited to the Board as a whole. Nevertheless, it should be possible to provide for reviews by non-executive Members at key stages in the process outwith the confines of formal Board meetings. Whether it was appropriate for non-executive Members to participate in price cap panels was also a matter for consideration. Given that the Board was responsible for the panel's decision and the current uncertainties in relation to the future legal framework for price control reviews, the Board considered that further work needed to be carried out on the various options and a further paper should be presented to the Board at a future date.

**Action: Dr Bush**

**VI ConDoc Key Issues – Doc 2010/23 by Mr Haines.**

13. Mr Haines explained that the paper highlighted three issues with the DfT consultation document “Regulating Air Transport” which were considered to be significant and proposed the position which the CAA should adopt on each issue. The issues all involved the environmental section of the consultation. These were the provision of guidance by the DfT to the CAA in relation to the discharge of its future duties on the environment, whether the principles of the proposed environmental objectives should apply to the CAA’s economic regulation of air traffic services and the repeal (recommended by the Pilling Review) of Section 5 of the Civil Aviation Act 1982. Mr Haines asked the Board to consider the proposed CAA positions on these issues and to endorse them.

14. The Board agreed that guidance from the DfT on the discharge of any future environmental duty would be highly desirable (recognising that general guidance might be difficult to provide). It also agreed that statutory guidance from the DfT would be required in relation to the application of the environmental objective to the economic regulation of air traffic services, whether in general or specific terms. In relation to the repeal of Section 5, the Board considered that the response to the consultation should comment on the lack of reference to the Pilling recommendation.

**VII Bill Options – Doc 2010/24 by Mr Haines.**

15. Mr Haines asked the Board to note that the paper set out the background to the proposed legislation on the Future Regulation of Air Transport following the consultations conducted by the DfT and the possible options for taking forward the reform of the legal framework. The paper proposed that the CAA keep all options open and the Board was asked to consider the proposed strategy.

16. The Board agreed with the general thrust of the options as presented in the paper.

**VIII Chief Executive’s Report – Doc 2010/25 by Mr Haines.**

17. The Board noted the Report.

**IX Health and Safety Quarterly Report – Doc 2010/26 by Mr Swan.**

18. Noting that this was the first of the quarterly Health and Safety Reports to the Board, Mr Swan asked the Board to indicate whether it was content with the presentation of the report and its content and whether it was satisfied with the suggested key performance

indicators.

19. In discussion, Capt Whitefield said that accidents involving contractors should be included in the statistical analysis and not excluded from it. The Board agreed that this should be the case. Mr Haines commented that the presentation format may change. Mr Medicott asked what the role of the Audit Committee was and Mr Swan explained that it reviewed all Health and Safety Reports every six months.

20. The Board noted the Report.

## **X Directors' Reports:**

### **ERG – Doc 2010/27 by Dr Bush.**

21. Dr Bush presented highlights from his Report. In relation to the BAA market investigation, he noted that the Competition Commission was seeking leave to appeal the CAT's decision. The initial consultation document had been issued on the NERL Price Control Review. Dr Bush noted that the US Department of Justice are minded to grant anti-trust immunity to the BA/AA/Finnair grouping on condition that four pairs of slots are surrendered at Heathrow. It still had to be approved by the European Union competition authorities. Dr Bush reported that his Department had recently received a visit from the new Airport Economic Regulator for India to discuss how ERG regulates airports in the UK.

### **CPG – Doc 2010/28 by Mr Jackson.**

22. Mr Jackson presented highlights from the Report. A meeting had recently been held with the European Commission on the implications of the ECJ Judgment in the Sturgeon case in relation to the scope of Regulation (EC) 261/2004. Several NEBs were very concerned at the Judgment's extended interpretation of the Regulation to include delays over three hours and their ability to handle the consequential increase in complaints which it could cause. The Commission's view was that it expected the NEBs to implement the Judgment and was not prepared to re-draft the Regulations. There was no clear consensus on how to proceed and in the meantime CPG was left with the difficulty of how to enforce the Judgment. Mr Mountford asked the Board to note that he should declare an interest as he represented the LSE as a Trustee on the Board of the Society for the Study of Social Sciences in Madrid which was largely funded by Caja Madrid. In relation to the Globespan failure, Mr Jackson said that Huntswood were being employed as claims handlers. Claims were being pre-assessed before being logged in order to ensure that the process was not delayed and to identify any further information that was required before the claim could be paid.

**SRG – Doc 2010/29 by Captain Jones.**

23. Mr Kelleher presented highlights from the Report. The Board was given an update on the Halon contamination matter. Although a clear action plan had been drawn up by EASA, legal difficulties had halted it being implemented and as a result a new plan was being drafted which should be issued tomorrow. EASA was fully committed to addressing the problem but testing by the FAA was vital to resolve the testing concerns and identify the risks. An update to the Board would be made following the completion of the tests.

**Action: Capt Jones**

Mr Kelleher explained that SRG had considered whether there was alternative expertise available in the UK or in the EU and was satisfied that there was none. This was an EASA responsibility although the CAA retained the option of issuing a unilateral directive under the EASA regulations. SRG expected EASA to issue a final Airworthiness Directive and to mandate a removal scheme.

24. Mr Kelleher reported on the Japanese aircraft seats issue.

25. Mr Kelleher was requested to provide the Board with a briefing on public safety zones.

**Action: Capt Jones**

**DAP – Doc 2010/30 by Mr Swan.**

26. On SESAR, Mr Swan said that the SESAR Joint Undertaking had now accepted that more informal arrangements for the provision of regulatory advice, involving wider involvement of regulators, were more appropriate than contractual arrangements with single entities. On the OFCOM consultation on the application of spectrum pricing to the aeronautical sector, robust responses have been made by General Aviation and NATS. DAP continued to respond to requests for technical information without expressing any views on the consultation.

**European and International strategy – Doc 2010/31 by Mr Smethers.**

27. Mr Smethers reported that the Single Sky II project was now moving ahead rapidly. A workshop for NEDs on the project was offered. Mr Smethers referred the Board to his annual report on EASA. Dr Bell asked whether the UK and French adopted a common line in the EASA rule-making groups, and Mr Smethers replied that this was generally the case.

**Audit Committee – Oral Report by Mr Mountford.**

28. Mr Mountford, noting that the Minutes of the Audit Committee had previously been circulated to the Board with the Board Papers, a practise which had ceased some time ago, asked whether the Board would like a short report from the Audit Committee for future Board Meetings. The Chair replied that this would be a good idea and that also the Minutes of the Committee should in future be circulated with the Board papers.

29. Mr Mountford reported that the annual report on the performance of the Committee had been previewed. An agreement had now been reached with the DfT in relation to the Annual Report and Accounts Direction which meant that the risk of consolidation of the ATT accounts with the CAA's was receding. The Annual Report would include a new set of key performance indicators. A new Combined Code on Corporate Governance would be coming into force shortly which would also need to be considered. The Committee would be looking at the way in which priorities in the Report are described and the definition of assurance levels with a view to adopting a more nuanced definition of these.

30. Mr Mountford reported on the tender process for outsourcing the contract for the internal audit. Interviews would be conducted on 5 March.

31. The Board noted the Reports.

**XI Legal Report – Doc 2010/32 by Mr Britton.**

32. Mr Britton reported on the case of *CAA v The Information Commissioner ex parte Kirkaldie* in which the CAA's appeal to the Information Tribunal against the decision of the Information Commissioner had been successful. Mr Britton also reported on the case of *Odujinrin v CAA* and on the Ryanair complaint against Gatwick Airport Limited. In relation to the latter, the Board agreed that Dr Bush and Mr Gray should constitute the panel for hearing the appeal against Gatwick Airport Limited's charging practices under the Airports (Ground Handling) Regulations. A separate panel would be required in due course in relation to Ryanair's transparency complaint under the Airports Act.

33. The Board approved the appointment of Mr Gray to the Audit Committee.

34. The Board approved the ASSI Business Plan for the period 2010/11 to 2014/15 which would now be submitted to the Secretary of State in accordance with paragraph 7 of the CAA (Overseas Territories) Directions 2003.

**Action: Mr Britton**

**XII Finance Report – Ten Months Ended 31 January 2010 – Doc 2010/33 by Miss Jesnick.**

35. Miss Jesnick referred the Board to Appendix I of her Report which she said contained the key figures within the Report. She cautioned that although the figures looked favourable, they reflected a greater than expected contribution from CAA International Limited, successful cost containment and cost cutting as well as the deferment of expenditure on some IT projects rather than strong underlying revenue income. Miss Jesnick reported that the favourable variance for the cash balance was primarily due to the drawdown of the first tranche (£3.9 million) of the £6 million Treasury loan in December for IT projects; the remainder of the loan would be drawn down before the end of the financial year. Miss Jesnick reported that credit control measures were being successful in reducing debtor days. The current year end forecast profit was expected to be in the region of £2.9 million.

36. The Chair asked for comments on the Report. Mr Medlicott asked why two thirds of the capital expenditure was to be spent in the last two months of the financial year. Miss Jesnick replied that this reflected the need to control capital expenditure tightly until the CAA's financial results were firmer and that ideally the expenditure would have been smoothed over the year rather than, as at present, delayed to the end.

**Action: Miss Jesnick**

37. The Board noted the Report.

**XIII(i) Any Other Business.**

38. The Chair noted that this would be AVM Anderson's last meeting as a Member of the CAA as he was being promoted to a new job in the Royal Air Force and she thanked him for his valuable contributions to Board discussions.

**(ii) Agenda Plan Update.**

March 2010 – Air Transport White Paper to be removed from future agendas and the CAAi Business Plan and Budget 2010/11 to be deferred to April.

April 2010 – add IT Update and Board Risk workshop.

May 2010 – add NATS Price Control Review.

**XIV Visit by Minister for Aviation, Paul Clark MP.**

39. The Board welcomed the Minister for Aviation, Paul Clark MP for a discussion on current aviation issues.

**XV Business Review:****Next steps – Taking the Work Forward – Doc 2010/34 by Mr Haines and Ms Craker.**

40. Mr Haines reported that the Executive Work Group had met in the second week of February. The Group had been led by an independent facilitator and had discussed the feedback from the internal focus groups as well as the findings from the external perception survey which had been presented to the Work Group by Ms Youngman. There had been a robust exchange of views in the Work Group which Mr Haines said had been challenging for all concerned, but nevertheless constructive. The Work Group had identified a number of work streams: clarity of vision, confidence in leadership, dealing with the prevailing culture, developing change capability, developing people management abilities, internal communications and external credibility. Dr Bush said that a narrative for the work was important in order to balance perceived strengths against perceived criticisms, the purpose of the evaluation and drawing out the desired outputs.

41. Mr Haines gave an update on the draft Ambition Statement. The Board's views were sought on the draft objectives for the change programme and on the draft indicative Statement of Ambition, a revised draft of which was circulated at the Board. Dr Bell said that a milestone for the first year would be desirable. This was agreed by the Board. The Chair requested the Board to consider the draft Statement of Ambition and comment on the same to Mr Haines.

**Consumer Strategy – Doc 2010/35 by Mr Jackson.**

42. Mr Jackson asked the Board to note the Consumer Research Proposal on improving passengers' ability to make informed decisions which had attached to it a draft invitation to tender: specification of the consumer research. Mr Jackson noted the work would be funded by the DfT. The Board was requested to provide Mr Jackson with any feedback on the proposal after the meeting.

43. Mr Jackson presented the paper on Consumer Regulation: Identifying Processes to give effect to the CAA's Strategic Objective. He noted that the paper provided an update of the high level strategy, developed in the January Board paper for achieving the CAA's strategic consumer objective in relation to understanding consumers' experiences and preferences through research and establishing how to analyse airport competition, and also

proposed a draft plan to develop a set of appropriate internal procedures. The latter would be critical to the success of the research project and Mr Jackson asked for comments from the Board on the paper.

44. Dr Bell said that the paper was a significant step forward, although she thought further work might be required on horizon scanning and prioritisation criteria. Mr Mountford said that he was content with the proposed process, but queried whether in the longer term a plan would be needed to develop in-house expertise. Mr Jackson agreed that there was a need for such in-house expertise but in the longer term consumer advocacy would be the responsibility of Passenger Focus. Miss Jesnick asked whether the project required contingency funding if a new administration did not wish to fund the research programme. Mr Jackson replied that in this event they would fall back on the AUC and there were other external bodies which could be utilised. In response to Mr Medicott, Mr Jackson said that although the industry had carried out extensive research, it tended to be developed for its own purposes rather than passengers'.

45. The Board approved the proposed approach to the survey, but considered that the prioritisation criteria needed further refinement.

**Engagement Strategy – CAA Perception Survey – Doc 2010/36 by Ms Youngman.**

46. Miss Youngman presented the findings of the CAA Engagement Strategy which she explained had involved 28 anonymous telephone interviews with key stakeholders. She explained that there were a wide range of views reflecting the width of regulatory activities and relationships conducted by the CAA.

47. The Chair asked the Board to consider the questions referred to at paragraph 2.5 of the paper. The Board agreed that reputation was important and that the CAA should aim to be respected as an organisation through its expertise, the quality of its decision making and the fairness and transparency of its decisions. Inevitably, however, regulation did involve some risk of unpopularity and where perceptions differed from expectations, these had to be taken on board if they were relevant. With regard to which of the criticisms counted and whether and by how much the perceptions differed from the desired reputation, the Chair noted that these questions would have to be resolved once the Ambition Statement had been agreed.

48. The Board noted the Papers.

**The next meeting of the Authority will be on Wednesday 17 March 2010 at 10.00am in  
Conference Room 1, CAA House**