

CIVIL AVIATION AUTHORITY
Secretary and Legal Adviser's Office



FOR PUBLICATION

CIVIL AVIATION AUTHORITY
MINUTES OF 427TH BOARD MEETING HELD ON WEDNESDAY
20 JANUARY 2010 AT 9.30 AM

Present:

Dame Deirdre Hutton
Chair

Mr A Haines
Chief Executive

Dr C Bell

Dr H Bush

Captain Whitefield

Mr R T R Jackson
(From Item II onwards)

Miss C Jesnick

Mr R P Mountford
(From Item II onwards)

Mr M Swan

Mr D Gray

Mr R J Britton
Secretary & Legal Adviser

In Attendance:

Mr P Kelleher
Head of Airworthiness Division, SRG

Mr M Smethers
Director European & International Strategy

Ms A Craker
Head of Strategy and Transformation

Mrs N Hastings
Head of Human Resources

Ms S Youngman
Acting Head of Corporate Communications

Mr S Baker
Minute Taker

Apologies for absence were received from AVM Anderson and Captain R M Jones.

I NATS Price Control Review Presentation by ERG.

1. Mr Jackson and Mr Mountford, being Trustees of CAAPS, having declared an interest absented themselves from the meeting for this item.
2. Dr Bush gave a presentation to the Board on the NERL CP3 price control consultation document. Dr Bush explained that ERG would be issuing the consultation document in February. The document would set out the CAA's "minded to" proposals on structure and scope and would deal with a number of major strategic issues, including financial gearing risks, the significant rise in NERL pension costs, General Aviation and pressures on NATS' capex and opex. The document would also consider a possible environment/efficiency measure for CP3 (which the users wanted although it was not clear how a simple measure could work) and the possible reduction of CP3 from 5 to 4 years to synchronise it with SES II. The document would seek to address the continuing robustness of NERL's financial arrangements, in particular, the risks of higher gearing which might arise on a sale of the company rather than relying on the statutory special administration regime. The consultation would also look at whether GA should pay any new charges in response to representations from airlines. Dr Bush said that media interest in the consultation was likely to be limited. Dr Bush asked the Board for its views on the regulatory policy proposals and risks of the process going forward.
3. The Board agreed with the proposals as set out in the presentation. The consultation document should emphasise that this is a rigorous and comprehensive process and would

need to handle the pension issue particularly carefully as well as managing expectations for both capex and opex. A further report will be made to the Board in April.

Action: Dr Bush

II Minutes of Board Meeting held on 16 December 2009.

4. The Minutes of the Board meeting held on 16 December 2009 were approved and signed.

III Chair's Opening Remarks.

5. The Chair congratulated Mr Mountford on his recent appointment as Chairman of the Dover Port Authority. Dame Deirdre formally advised the Board that Gretchen Burrett, currently Director of Safety at NATS, would be starting in post as the new GDSR on 1 April. She will be attending the March Board. Finally, the Chair asked the Board to note that AVM Anderson would be retiring from the CAA Board and would be replaced on the CAA Board by AVM North, currently Air Officer Commanding No. 22 (Training) Group.

IV Health and Safety Strategy – Doc 2010/2 By Mr Swan.

6. Mr Swan noted that the catalyst for the Paper had been the internal audit of Health and Safety which had identified a number of areas where action was required to enable the CAA to revise its health and safety strategy in accordance with best practice. The Paper set out four key strategic themes which would lead to an improved health and safety strategy. Appendix 1 contained a summary of the key Health and Safety Strategy Recommendations and Mr Swan sought the Board's approval of those. A benchmarking exercise was being carried out to compare the CAA's strategy with that of other organisations. Quarterly reports to the Board would be a key tool in enabling the Board to comply with its obligations as regards Health and Safety, in particular the Recommendations at paragraph 3.3.4 and 3.4.3 of the Paper. The Paper also recommended the formal appointment of a Health and Safety Director to the Board and that the CMC take ownership of the internal audit action plan on behalf of the Board to ensure that all operational actions were completed and reported on in accordance with the Strategic Health and Safety Plan. *(Secretary's Note: Mr Swan was appointed Health and Safety Director in October 2009.)*

7. In discussion, Mr Mountford raised the question of stress and depression. Mr Swan said that a paper on stress management would be brought to the CMC in February for consideration. Mr Whitefield noted that it was common practice in other Boards on which he

had sat for the first agenda item to be a Health and Safety update report. The Board confirmed that it was essential that it take the lead on Health and Safety and agreed with the findings and recommendations of the Paper. The Board agreed that there should be a quarterly, formal review of Health and Safety performance, a biennial internal audit and a fast track process for reporting serious accidents to the Chief Executive, Health and Safety Director and the Board.

Action: Mr Swan

V Group Business Plans.

8. In introducing the Plans Mr Haines said that they had been prepared in parallel with the Business Review. An incremental approach had therefore been adopted for the present. A mid-year review would probably be required. With the exception of DAP's Plan all the Plans had been approved by the relevant Policy Committee.

ERG – Doc 2010/4 by Dr Bush.

9. Dr Bush presented the draft ERG Business Plan for 2010/11 – 2014/15 outlining the activities ERG was committed to undertake over the five year period and noted that a first draft had been presented to the ERPC in October last year. The Plan had been produced in accordance with the latest Business Planning guidelines. Dr Bush said that the period covered by the Plan would be a challenging one for ERG and it was becoming increasingly apparent that they would probably have to recruit a small number of specialist staff to handle additional workloads arising from the coincidence of such matters as the Review of Economic Regulation, the airport price control reviews, possible new environmental duties and additional regulation emerging from SES II. Dr Bush noted that there was a continuing shift in the Group's work from domestic issues to European issues.

10. The Board approved the draft Business Plan, recognising the significant uncertainties underlying it.

CPG – Doc 2010/5 by Mr Jackson.

11. Presenting the CPG Business Plan for the period 2010/11- 2014/15 to the Board, Mr Jackson said that one of the key themes of the Plan was the uncertainty of the domestic legal framework for consumer protection and the increasing focus on European consumer protection legislation. Although the Group's consumer protection role was increasing, there could be some manpower savings from the current IT project. CPG was well placed to meet the demands likely to be placed on it over the Plan period. Mr Mountford asked the Board to note that the Group would be reviewing the decision making process for the revocation of

ATOLs and this needed to be built into the Plan. The review would recommend training for Board Members involved in such decisions as well as CPG officials. Mr Jackson said that the Group was also looking at what tasks could be contracted out, such as administration tasks whilst retaining sufficient internal expertise for policy matters.

12. The Board approved the Plan.

SRG – Doc 2010/6 by Mr Kelleher.

13. Mr Kelleher asked the Board to note that there were two caveats to the SRG Business Plan for the period 2010/11 – 2014/15: first, the work currently being carried out by SRG with the Business Review team, particularly the review of safety strategy, which could impact on how the Group operated in future; secondly, the Plan had been produced without any input from the newly appointed Group Director. Consequently, Mr Kelleher said a mid-year review of the Plan would be required.

14. The Board approved the paper and endorsed the recommendation for a mid-year review. The Board noted that a number of matters would need to be factored into the revised Plan later in the year, including the co-ordination of work involving EASA and the European Commission by other CAA departments, the issue of transparency and the Haddon–Cave report on the Nimrod accident which had been published after the current draft Plan had been written.

DAP – Doc 2010/7 by Mr Swan.

15. Mr Swan asked the Board to note that this was an Interim Business Plan which will be revised following completion of the Strategic Business Review. In the light of the current financial climate and to meet the 10% efficiency savings required by the Board in 2009, a significant cost cutting programme had been undertaken by the Directorate and the 10% efficiency target set by the Board had been met.

16. The Board approved the Business Plan, recognising that it would require alignment in due course with the outcomes of the Business Review project.

17. Following the presentation of the Plans the Chair noted that a number of themes had emerged, including the shift of emphasis from national to EU legislation, the impact of the Strategic Business Review and the need for efficiency measures. Mr Gray asked if best practice was followed for Impact Assessments. Miss Jesnick replied that SRG had consulted the Better Regulation Executive six months previously and had made improvements in this area. The Chair asked why SRG did not, like other government departments, use Cost of Life metrics in its Impact Assessments. Mr Kelleher replied that SRG had looked at Cost of Life metrics but in the majority of cases SRG was implementing rules made by EASA in which it

had no discretion and therefore these metrics were not of assistance.

VI Chief Executive's Report – Doc 2010/8 by Mr Haines.

18. Mr Haines noted that the CAA's financial results for the nine months to 31 December 2009 were looking healthier than had been expected, with an operating profit for the year to date of £4.709 million as compared to a budgeted loss of £4 million. The consultation on the main Aviation Bill had been published on 10 December and the Consultation Document had been circulated internally for consideration. A Paper on the significant issues would be presented to the February Board.

Action: Mr Haines

Mr Haines noted that the central issue was whether or not there would be a stand-alone RER Bill or a single consolidated Bill. On appointments, Mr Haines was pleased to note that Ms Youngman had recently joined the CAA on a part-time, temporary basis following Clare Brown's departure. Anne-Marie Hopcroft had started a six month secondment as Business Manager to the Chair and CEO's office to provide private secretary support and managing the PA support. Mr Haines reported that the Transport Minister, Paul Clark, would be joining the February Board for a discussion.

VII Directors' Reports:

ERG – Doc 2010/9 by Dr Bush.

19. Dr Bush presented highlights from his Report which included the ongoing, intensive work on the drafting of the Implementing Rules for the SES II Performance Scheme for ANS. A number of key issues remained to be resolved, in particular cost risk sharing within the Performance Scheme. The Competition Appeal Tribunal had published its judgment on BAA's appeal against the Competition Commission's decision on the market investigation of BAA's airports on 21 December 2009. The appeal had been successful on the ground of apparent bias on the part of the CC's panel. The consequences of the judgment were not yet clear. In relation to the consultation protocol at Heathrow, uncertainties remained as to what was meant by "equitable treatment" of airlines, and there was uncertainty about the status of the remedy following the CAT's decision.

20. The Board noted the Report.

CPG – Doc 2010/10 by Mr Jackson.

21. Mr Jackson said that the review of the XL claims handling would go to the CMC in February before external consultation took place. Mr Jackson noted that E-Clear had gone

into administration. Mr Jackson referred the Board to Appendix A of his report in relation to the ECJ's Sturgeon judgment extending compensation rights to delay. Mr Jackson noted that a recent case brought in Germany under the DBC Regulations had been stayed on appeal to the German Federal Court on the grounds that the ECJ judgment was inconsistent with the German Constitution. This was in some ways helpful and it was hoped would lead to the German authorities taking a leading role in discussions with the European Commission to get the Regulations changed. The Chair requested that the Board be kept informed of developments.

22. The Board noted the Report.

SRG – Doc 2010/11 by Mr Kelleher.

23. Mr Kelleher updated the Board on the Halon contamination incident. A meeting had been held on 14 January with the FAA, EASA and Transport Canada and it was decided that a more aggressive line must be taken internationally in relation to the contamination of Halon fire extinguishers. SRG had been requested by ICAO to draft a State Letter on the matters which SRG had agreed to do. EASA was also looking at the issue of manufacturer accreditation as suggested by SRG.

24. The Board noted the Report.

DAP – Doc 2010/12 presented by Mr Swan.

25. In respect of the UK/Ireland Functional Airspace Block, Mr Swan noted that the first meeting of the Performance Advisory Group would be held in Dublin at the end of January to focus on the EU mandated NSA plan and subsequent FAB plan in later years. Regarding the Future Airspace Strategy, a written update to the Board would be circulated through the Airspace Co-ordination Group.

26. The Board noted the Report.

European and International Strategy – Doc 2010/13 by Mr Smethers.

27. The Board noted the Report.

VIII Legal Report – Doc 2010/14 by Mr Britton.

28. Mr Britton reported on the French Concorde criminal trial which starts on 2 February in Pontoise. Mr Tony Heath, previously Head of the Design Production and Maintenance Standards Division of SRG (now retired) had been subpoenaed by one of the Defendants, Mr Frantzen formerly of DGAC, as a defence witness and would be attending the trial to give evidence. French lawyers have been instructed to represent him. Mr Britton noted the decision of the Information Commissioner in the case of *DfT v The Information Commissioner*

ex parte Evans, not to contest the appeal. The Information Commissioner had accepted the CAA's evidence that the public interest in protecting the open reporting culture in civil aviation outweighed the public interest in disclosure. The hearing listed for 18 January had therefore been vacated. Mr Britton drew the Board's attention to the addition of Debt Relief Orders to the list of disqualifying matters for Members in paragraph 5(1)(b) of Schedule 1 of the Civil Aviation Act 1982, to come to force in April.

29. The Board noted the Report.

IX Quarterly Report – Doc 2010/15 by Miss Jesnick.

30. Miss Jesnick reported that although the financial results set out in the Report appeared superficially encouraging, a loss was forecast for next year.

31. The Board noted the Report and requested that the essential information in the Report be presented in a succinct format to enable effective scrutiny by Members. A revised template is being produced for the start of the next Financial Year.

X(i) Any Other Business.

CAA International.

32. Miss Jesnick circulated the briefing note requested, providing additional information on the establishment of Ci as a subsidiary company and the benefits that are expected to flow from it, the company's current performance and its overseas offices.

(ii) Agenda Plan Update.

33. February 2010 – Draft Corporate Plan – move to March; ConDoc Key Issues; Draft Change Programme.

May 2010 – NATS Price Control Review.

June 2010 – “Problem Statement” – Output of Phase 1 of Safety Regulation Strategy.

XI CAA Business Review.

Business Review Planning – Doc 2010/16 by Mr Haines and Ms Craker.

34. Mr Haines noted that the Board was being asked to discuss the CAA Ambition and Strategic Objectives, the objectives of the Change Programme and the next steps on the Programme design and mobilisation. In this respect, three papers – on the Strategic Review of Safety Regulation, the proposed approach for the CAA and its consumer role and for its environmental role had been tabled for discussion. A revised draft Indicative Ambition

Statement would also be tabled for discussion which included proposals for the CAA's Strategic Objectives. In order to deliver these objectives a comprehensive change programme to develop the new approaches and policies and new ways of working would need to be designed and costed for the Board's approval. Finally there would be an interactive discussion on the values and behaviours the Board wished to generate as part of the future CAA.

Strategic Review of Safety Regulation – Doc 2010/17 by Mr Kelleher and Mr Dyer.

35. Mr Dyer, Regulatory Oversight Programme Manager SRG, explained that the purpose of the Project Initiation Document (PID) attached to the paper was to outline the proposed Strategic Review of Safety Regulation which would probably take 12 months to complete. The PID focussed on the first phase, which it was hoped would be completed by May 2010 and would deliver a clearly articulated "Problem Statement", should the term be retained, to provide the foundation of the subsequent phase of the review. The PID identified the objectives and scope of the review and outlined the approach to be adopted, costs and resources requirements, deliverables and governance arrangements. The paper would be updated at the end of Phase I to reflect the proposals for the remaining phase of the review. Mr Dyer stressed that key points of the review would be maintaining objectivity and impartiality and to do this a "Pareto" approach would be adopted. Mr Dyer sought comments from, and the Board's agreement to, the PID.

36. The Board accepted the PID and agreed to the launch of the Programme. However, the document ought to be further refined as the Board considered that the PID did not place enough emphasis on external consultation. The objectives of and reasons for the PID also needed to be clearly articulated, in particular the European and international dimensions of SRG's role and why SRG was undertaking this exercise. The Board agreed that it was proper for the organisation periodically to examine its own role and objectives given the transfer of legislative powers to the EU and noted the consequences where an organisation failed to do so. The Board noted that pinning down the costs of the Project at this stage was difficult but requested a more detailed estimate. Miss Jesnick confirmed that the Finance Advisory Committee had been informed of the Project. The Board also noted that more time than was anticipated might be needed to complete the Project. The Board recognised the importance of developing a proper communication strategy and requested Ms Youngman to work with Mr Dyer to prepare such a strategy for the Project. In addition, the Board requested that Mr Smethers keep EASA properly briefed on the Business Review to ensure that its confidence in SRG was not undermined.

37. The Chair noted that the cost of life issue would well arise. It was also important to balance the external and internal input. The Board agreed that the “Problem Statement” should come back to the Board in June for approval.

Action: Mr Haines

Consumer Regulation: Development of the CAA’s Strategic Objective – Doc 2010/18 presented by Mr Jackson.

38. Mr Jackson noted that the Board had agreed that the CAA needed an overall strategic objective for consumer regulation, spanning competition and consumer roles, and had agreed that the “post bureaucratic” and “market power” regulatory models were the most suitable forms of regulation for the CAA. The proposed Strategic Objective at paragraph 17 of the Paper combined aspects of both approaches and the Board was asked to give its views on that, the regulatory principles set out at paragraph 23 and the main elements of the CAA’s strategy for achieving the Strategic Objectives.

39. The Board commended the team who had produced this work and confirmed its broad support for the proposed Strategic Objective at paragraph 17 with an emphasis on the second alternative formulation in paragraph 20. With regard to the principles at paragraph 23, the Board identified three issues to be picked up – the need to insert a new first principle which would deal with the identification and definition of the problem; to modify the principle on the way we will intervene to say we will “think carefully before intervening”; and provide clarity about what is meant by “consumer benefit”.

40. The Chair said that transparency needed to be a CAA-wide objective. Paragraph 23 needed more clarity in setting out the problems and their possible solutions. Paragraph 24 needed more attention. The Board was content with the strategic objectives set out in paragraph 31. Finally, in relation to the strategy, greater emphasis needed to be placed on engagement as well as research.

CAA and the Environment: Further Development Models for Future Engagement – Doc 2010/19 by Dr Bush and Ms Watson.

41. Dr Bush noted that this paper was a follow-up to Board Paper 2009/124 and presented options for the further development of the Models presented in that Paper, the potential strategic objectives and recommendations as set out in paragraph 14 of the current Paper. The Board was asked to consider these and give a view on the recommendations. Further work would need to be done within a set of assumptions about the various models following the discussion at the recently held environmental symposium. This could include ascertaining from DfT whether they would be prepared to give CAA environmental directions under

Section 6(2)(f) of the 1982 Act or Section 92 of the Transport Act 2000.

42. The Board considered that of the models presented in Annex 2 of the Paper, Models C and D were most appropriate and that the AEWG should pursue a work programme based on the development of these two models, taking into account possible changes in the CAA's current environmental functions and duties. The Board noted that it was likely that Section 5 of the 1982 Act (duty to have regard to environmental factors when licensing aerodromes) would probably not be repealed. Model E, even though unattractive, could then come into play. The precise form of the potential strategic objectives suggested in the paper would need to take account of the nature of any new legislative duty. A possible role for the CAA was as a reliable and independent source of environmental information as it was clear from the recent symposium that there was a potential demand for this.

43. The Chair said that CAA should be ambitious in its approach to the environment and needed to work on both what it could do on the basis of new legislation (Model B) and without new legislation. The Board's focus in terms of likely areas for work is on Models C and D. Key issues were public requirements for data in this area and further stakeholder engagement.

Indicative Statement of Ambition – Presented by Mr Haines and Ms Craker.

44. Mr Haines explained that this was a draft Indicative Ambition Statement for the CAA, as referred to in Board paper 2010/16 (already circulated) and was intended to be regarded as a draft, internal document, for discussion purposes only, until it had been validated and finalised by the Board. The Board was asked to debate the draft statement with a view to agreeing whether or not it captured the CAA ambition in broad terms.

45. Under the heading "We Aim to Be", the Board agreed that the statement needed some re-writing, in particular the CAA could not be a partner to organisations which it regulated, only to other national, European and international bodies which performed regulatory or quasi-regulatory functions. The reference to "evidence-based" should be deleted as too legalistic. The last bullet point should include "information" in addition to "analysis and advice". The Board also preferred a different formulation to "We Aim to Be".

46. Under the title "Strategic Objectives", the Board made the following comments:-

- **For safety regulation**

The CAA could not ensure safety: the objective needed to stress the continuous improvement of UK aviation safety by the civil aviation industry, working with EASA to develop the European regulatory framework and helping to improve safety internationally. The phrase "holding the aviation community to account" should be re-examined.

- **For consumers**

Dr Bush suggested that it was not for the CAA to improve choice for consumers as this was, he considered, a matter for the industry. Miss Jesnick said that it was not clear whether the phrase “future consumers” conveyed clearly enough the future development of aviation infrastructure and this ought to be emphasised more. The term “protecting consumers” was probably right in this context. “Protection” was important where all else fails.

- **On airspace management**

Mr Swan said that the objective had been approved by the Board in June. It could be queried whether a separate airspace management objective was needed as DAP did not “regulate” airspace. It could be subsumed into the safety, consumer and environmental objectives. However, given that airspace management was a significant part of the CAA’s statutory functions and the importance of the emerging Future Airspace Strategy, the Board would consider further whether there should be such an objective.

- **For the environment**

The Board thought a more appropriate formulation would be: “to work where possible for environmental improvements by the aviation industry, through best practice and improving environmental information”. There was a strong ambition to drive environmental improvements provided that this was consistent with CAA’s statutory objectives.

- **Effectiveness**

The Board suggested two changes: substituting “meets” for “exceeds” and adding “user” after “charge payer” so as to include regulatees.

47. The Chair asked Mr Haines to produce two versions of the strategic objectives: one under the headings as used in the Paper and another based on a revised grouping. “Earned Autonomy” was jargon and should be replaced.

48. Under the heading “We will deliver these through”, the chair considered that the title should be changed to “What we will deliver”. An objective understanding of the aviation industry should be included in the list of deliverables. The phrase “dynamics of the sector” ought to be reconsidered. The phrase “tough – but fair – decisions” should be replaced by “fair decisions”, the deliverable “accountability” should also include “and answerability” and “Parliament” should be added to the list under that deliverable.

Towards CAA Values – Presented by Ms Craker.

49. Ms Craker tabled a discussion paper which she explained was a compilation of outputs from discussions about CAA values for the future, taken from focus group discussions on values and behaviours and the Executive Directors' November workshop and which were presented to the Board for discussion. The Board was asked whether there were any other values which ought to be added to the list and which it thought were the four most important. The Board made a number of suggestions as to the former, including: hard-working, productive, receptive, working for a single purpose, proportionate and judgement. Suggestions as to the four most important values were handed in individually by the Board Members.

50. Mr Haines asked the Board to note that the draft change programme would be reviewed at the February Board, and requested comments from the Board on the existing version.

Action: Mr Haines

The next meeting of the Authority will be held at 9.30am on Wednesday 17 February 2010 in Conference Room 1.