

**CIVIL AVIATION AUTHORITY  
MINUTES OF THE 481<sup>st</sup> BOARD MEETING HELD ON  
WEDNESDAY, 21 JANUARY 2015,  
EARHART ROOM, CAA HOUSE, LONDON**

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**Present:**

<b>Dame Deirdre Hutton</b>	<b>Chair</b>
<b>Mr Andrew Haines</b>	
<b>Miss Chris Jesnick</b>	
<b>Mr Peter Drissell</b>	
<b>Mr David Gray</b>	
<b>Mr Michael Medlicott</b>	
<b>Mr Iain Osborne</b>	
<b>AVM Edward Stringer</b>	
<b>Mr Mark Swan</b>	
<b>Mr Richard Jackson</b>	
<b>Mr Graham Ward</b>	
<b>Mr David King</b>	
<b>Mr Richard Stephenson</b>	
<b>Mrs Kate Staples</b>	<b>Secretary &amp; General Counsel</b>

**In Attendance:**

<b>Mr Peter Gardiner</b>	
<b>Mr Stephen Baker</b>	<b>Minute taker</b>
<b>Mr Ian Russell</b>	<b>Minute taker</b>
<b>Mr Jonathan Sharratt</b>	<b>For item V</b>
<b>Mr Dan Edwards</b>	<b>For item V</b>
<b>Mr William Webster</b>	<b>For items VI and VII</b>
<b>Ms Beryl Brown</b>	<b>For items VI and VII</b>
<b>Ms Semina Khan</b>	<b>For items VI and VII</b>

**Mr Peter Kirk**

**For item XI**

**Mr Peter Fiddy**

**For item XI**

## **I Apologies**

1. No apologies were received. The chair welcomed Mr Stephenson to his first Board meeting as the new director of communications.

## **II Previous Minutes and Matters Arising**

2. The minutes of the December Board meeting were approved subject to a number of editorial corrections.
3. There were no matters arising.

## **III Chair's Update – by Dame Deirdre Hutton**

4. The Chair reported on her activities during the previous 30 days.
5. The Chair reported on her meeting with Sir Robert Walmsley, the Chair of the NATS enquiry panel. The panel had held two initial meetings and one visit to Swanwick.
6. The Chair reported on her visit to the offices of Inmarsat along with Mr Haines and Mr Swan. The discussion had been wide ranging, with a particular focus on future technologies for civil aviation. Examples included the potential for streaming information live from black boxes and the remote recovery of aircraft during incidents. AVM Stringer noted that there was technology on military aircraft that had not been introduced to civil aircraft such as auto-recovery, although it had been considered but rejected in the past. The risk to safe operation due to pilots having information overload with future technology was also discussed. The Board requested that this be included as an issue in the upcoming automation paper.

**Action: Mr Swan**

7. The Chair reported on her meeting with Lucy Chadwick, the Director General of International, Security and Environment Group of the DfT. The Chair noted the need to maintain a strong working relationship with the Department as it continued to operate in a resource-constrained environment.

## **IV. Chief Executive's Report - Doc 2015-001 by Andrew Haines**

8. Mr Haines drew the Board's attention to the AAIB investigation in to the Sumburgh helicopter accident. Police Scotland had requested access to the helicopter cockpit voice and flight data recorders, which were held by the AAIB, in order better to understand the pilots' airmanship. The AAIB had refused to release this, citing concerns that such release would materially prejudice its ability to investigate accidents in future and might lead pilots to erase such data and was in any event precluded by the EU Regulation on the Investigation and Prevention of Accidents and Incidents in Air Navigation. The Crown Office and Procurator Fiscal Service (COPFS) had therefore applied to court for a release order in respect of the data and the CAA had been requested by the COPFS to provide it with limited assistance for its court application, in the form of a witness statement dealing with a number of discrete technical matters and asking for comment on the likely impact on pilot behaviour if the data were released to COPFS. This assistance had been agreed by Mr Haines with Mrs Staples and Mr Swan and reflected what was considered by them to be an appropriate response to the request, in terms of assisting a police investigation rather than seeking to influence a particular outcome.
9. Mr Haines reported that a consultation would be held at the end of January on a redundancy programme in the Shared Services Centre. If implemented, the proposals would see a headcount reduction this year and a further reduction next year as the creation of the SSC has generated opportunities for managerial rationalisation.
10. Board members were pleased to see the strong approach being taken to ensure that performance management had to be completed on the LMS system in order for an employee to receive any due pay increase.

**V Risk Case Study: Capacity Constrained Environment - Doc 2015-002 – by Ian Osborne and Peter Drissell**

11. Mr Drissell noted that a number of helpful guiding principles had emerged from the Board discussion on its risk attitudes, at the previous Board meeting, as summarised in the paper. He invited Mr Sharratt to present the paper. Mr Sharratt guided Board members through the initial set of guiding principles, and a further case study for discussion. Mr Sharratt requested the Board to confirm if it was content the guiding principles on Board risk attitudes, as drawn up,

were sound and accurately reflected the Board's discussion and views. These principles, if agreed, would be used to inform the next CAA Strategic Plan, as well as for colleagues to use when drafting papers for the Board.

12. The Board asked for a legal view on the CAA taking into account both future as well as present consumers, as referred to in principle 2 – *We will take account of both present and future consumers in addressing risk*. Mrs Staples explained that this was consistent with CAA's statutory functions – specifically section 69 of the Civil Aviation Act 2012 and section 4 of the 1982 Act. The duties and functions placed on the CAA under the latter Act, in relation to airlines and air transport services and the giving of advice to the Secretary of State on these matters, were continuing duties which implied taking account not just of present but of future consumer demand too. If the CAA were to take too narrow a view on the definition of a consumer, restricting it to present consumers, it would constrain CAA future actions and policy making and prevent CAA from fulfilling its obligations as a regulator. The Board noted that Ofgem also defined consumers as meaning both current and future consumers and agreed this was consistent with the CAA's statutory remit. The Board agreed that in making policy a sensible regulator would take into account both.
13. The Board discussed the use of the words 'directly from aviation' in principle 2 – *We will seek to protect the UK consumer and the public only from harm arising directly from aviation related activities*. The Board agreed the rationale for this wording was insufficiently clear. What was meant was that the CAA should address safety, as opposed to nuisance issues and that there were some risks arising from aviation that CAA could not be responsible for, e.g. the impact on privacy from drones. The Board agreed it would be clearer to draw out what CAA would not do under this principle.

**Action: Mr Drissell**

14. On principle 3 – *We will be clear at all times about the risks for which we are accountable and only seek to be accountable for risks that we can materially control* - the Board agreed that there was insufficient account taken of the international nature of civil aviation and requested that the recognition of CAA's international co-operation work with EASA and ICAO should be reflected more clearly.

15. The Board discussed principle 4 – *We will seek to influence the management of risks for which we are not accountable but which materially impact on aviation consumers*. It noted that CAA would not take action in relation to activity with no material safety or security risk and the wording of the explanatory text needed some adjustment to reflect this. The Board considered that it was not clear how the elaboration of the principle would work in relation to the protection of the environment because whilst it was important from a wider, societal perspective, it was not a direct statutory duty or priority for the CAA. This would prevent the CAA from being able to make resourcing decisions and was reinforced by the point that the wider the CAA set its ambitions, the harder it would be to make resourcing decisions.
16. The Board also requested that the balance of trade-offs between consumers and the public that the CAA was often faced with should be better drawn out. The CAA could not necessarily protect all consumers as seen in balancing safe aircraft operations with environmental impacts when undertaking airspace change, and some consumers might feel they did not benefit from the exercise of a regulatory function. Likewise the principles could more clearly distinguish between what it was essential for the CAA to do and what was desirable but not essential.
17. The narrative on reputational risk needed to be made clearer, to reflect the intention that the CAA should only take account of reputational risks that inhibited its ability to regulate effectively.
18. The Board were pleased with the draft principles. After a final, revised cut of the principles had been drawn up and circulated to the Board, taking into account the Board's comments, they should start to be integrated and used in Board papers.

**Action: Mr Drissell**

19. The Board also asked that the section on risks in the Board paper template be brought to the beginning of the template to better aid staff in addressing risks in papers that are presented to the Board.

**Action: Mr Gardiner**

20. In assessing the effectiveness of the principles it was recommended that the following questions should be asked: Is the work important? Is it achievable? Is there someone else who would be better placed to do it? If not, does the work

need doing? If the principles achieved this then they would be successful, but they should not be used simply to justify doing work. The Board agreed it should review the principles in six months to see if they were working.

21. Mr Sharratt introduced the capacity constrained environment case study and asked three main questions of the Board.
22. Mr Haines noted that the risk of consumer harm arising from capacity constraints was high and currently Government action was limited in addressing this risk. The Board agreed but also considered that in this case study there would be 'winners and losers' arising from any intervention and it was not the CAA's role to determine who they should be: this was a matter for Government. The CAA was uniquely placed to identify these difficult trade-offs and could have a role to help inform Government in its decision making.
23. The Board could see that potential market interventions, which were presented by way of example in the case study, were all legitimate interventions to help to address the risk of harm, but would want to see the CAA active in highlighting to Government the need for action before commencing with any intervention of its own. This would also legitimise the CAA doing policy work using existing powers. A note of caution was also needed because with such interventions there were likely to be benefits but also dis-benefits and the CAA was not well placed to decide between these. The CAA should also not seek to intervene where it had no locus or legitimate interest.

## **VI CAA Competition Powers – Doc 2015-003 by Iain Osborne**

24. Ms Brown gave a presentation to the Board, summarising the different competition powers that the CAA has. She noted that the CAA was a concurrent competition authority – with the Competition Markets Authority – in relation to airport operation services and air navigation services and that the CAA had powers to prohibit anti-competitive agreements and abuses of market power. The differing regulatory powers meant the Board would have varying degrees of involvement and roles in the CAA's competition work. Exercising prioritisation powers in relation to deciding what breaches to investigate and take action against involved difficult questions of judgment and the CAA would publish guidance on how it would exercise these, following Board approval of the same.

25. Mr Osborne noted that competition law was a strong regulatory tool and the use of competition law was one of the most extreme cases of state intervention in a market, so deciding when to act needed careful consideration, particularly as third parties could claim compensation from those subject to intervention if there had been a finding of uncompetitive behaviour. He noted that sometimes other regulatory powers and tools could be more appropriate, such as consumer powers. ExCo would be considering this in due course. The Chair noted that risk principles could be used to decide how the CAA exercised its competition powers.
26. The Board noted the presentation and the clarity it gave on the CAA's competition powers.

## **VII CAA Competition Decision Panel - Doc 2015-004 by Iain Osborne**

27. Mr Webster and Ms Khan explained that the paper proposed that the CAA Board create an independent CAA competition decision panel. The proposed panel would comprise of members of the Ofgem Enforcement Decision Panel and other candidates appointed by the CAA and would be authorised to exercise the CAA's functions in relation to the application and enforcement of the UK and EU competition law prohibitions under CA98 and TFEU and taking enforcement decisions in relation to other matters that raised competition issues. The Panel would report to and consult with the Board on its work and would be required to act in accordance with guidance material issued by the Board.
28. Mr Webster outlined that the benefits of creating the Panel would be threefold: it would provide expertise that the Board was unlikely to have; it would prevent the Board being overburdened with technical competition work and distracted from core oversight of the CAA; and it would split the investigation and decision making functions of the CAA which was necessary to reduce the risk of legal challenge to its decisions. He noted that using such panels was now commonplace across the economically regulated sectors.
29. The Board discussed what was meant by independence from the Board and felt that there was a risk that the current terminology being used could be misinterpreted by different people. It was noted that independence in this context meant independent of the investigation process and that the Board

would not interfere in any decisions by the Panel. However, the Board considered that if it were to be consulted it might still have too much of a role in a decision making process, taking into account its proposed consultation role. Mr Gray confirmed that the Ofgem panel did not consult Board members during the decision making process of their cases.

30. The Board understood the benefits of delegating decisions in this area and the necessity of separating the investigation role from the decision role but reiterated that the CAA would remain responsible for any decision – including defending it. This meant that as part of the process in setting up the Panel a process would be needed to allow the Board to test the competence of the Panel.
31. Due to the complexity of the process the Board felt that exceptional transparency was needed. The Board recommended that industry should be sounded out on the formation of the Panel.
32. The Board approved in principle the creation of a Competition Decision Panel. The Board asked for a further paper outlining: clear definitions on key terminology such as independence; how the Board would be able to satisfy itself of the Panel's competence to carry out its functions; how the key stages of the process would work, such as the degree of interaction between the Board and the Panel; and the role of the Board in the process. The Board also confirmed that the decision of what was to be referred to the Panel and the Board's involvement would remain open following a review of its operation.

**Action: Mr Osborne**

#### **VIII. Office of General Counsel Annual Review 2014 - Doc 2015-005 by Kate Staples**

33. Mrs Staples presented her annual review of her department and drew the Board's attention to two points in particular. First, there might sometimes, though not often, be cases where there was an imperfect fit between the facts of a particular case and the law but where the CAA should still be confident enough to intervene, by way of regulatory action, as there was no other body able to do so. Secondly, she noted that there was still work to be done to overcome the apparent reticence to take enforcement action or intervene when it was necessary to do so that remained on occasion in the CAA. Mrs Staples

also highlighted a major focus for 2015 would be to further strengthen the quality assurance process in the OGC.

34. The Board welcomed the paper and the work of the OGC, recognising the work that had been undertaken to improve the structure, which had strengthened the office and improved its capacity to enable regulatory enforcement, and thanked Mrs Staples for the work of her team.
35. The Board agreed that the fear of losing or intervening in a hard case should not be a reason for not taking enforcement action; nor seeking perfection when undertaking enforcement decisions. Rather enforcement decisions should be based on outcomes. The Board had noted a positive improvement in the culture of CAA staff and within OGC in relation to enforcement but acknowledged that further work remained to be done in this area. The Board noted that regulation 6 hearings remained a difficult area and noted that more advice from OGC to the hearing panels would be welcome.
36. The Board also noted that at times there could be a tendency to use Just Culture as a reason for not taking enforcement action and the Board remained clear that whilst Just Culture was about not blaming people for honest mistakes, it did not prevent regulatory intervention when negligent actions or omissions had caused harm. Enforcement action was necessary in such circumstances. (A copy of the Just Culture note is attached at Appendix 1.)
37. The Board highlighted that regulators were likely to continue to face new challenges in the future, with those who challenge the way we regulate adapting their approaches e.g. using 'lawfare' to challenge. This highlighted the need for the CAA to be flexible and to be able to identify, respond to and head off issues where possible. Influencing would therefore be important and should be an area of focus in 2015.
38. The Board emphasised that despite striving for more regulatory freedoms and lighter touch regulation – particularly in General Aviation – the industry needed to remember that CAA would prosecute those who broke the law and take strong regulatory action whenever it was appropriate or necessary. This was not incompatible with a desire to help industry.
39. The Board noted and welcomed the development of a CAA Fitness Policy and asked for it to be brought to the Board at an appropriate time in its development.

**Action: Mrs Staples**

**IX. NATS System Failure Enquiry Update - Doc 2015-006 by Andrew Haines**

40. Mr Haines tabled his report, which the Board noted.

**X Safety and Airspace Regulation Group (SARG) Report including verbal update on Virgin and Air Asia incidents – Doc 2015-007 by Mark Swan**

41. Mr Swan summarised to the Board the meeting that he and the Chair had held in Aberdeen with some of the survivors and relatives of the deceased of the Sumburgh offshore helicopter accidents. Another meeting with survivors and relatives would be held in three months time.

42. Mr Swan provided the Board with an update on the Virgin Atlantic under carriage failure incident at Heathrow airport. The CAA had received very good cooperation from Virgin following the event and CAA was closely monitoring the outcome. The Virgin Airways pilot had performed well in the circumstances.

43. Mr Swan reported that the Air Asia flight recorder had been recovered and was now being analysed by the Indonesian air accidents investigators. SARG was awaiting the outcomes via the AAIB.

44. Mr Swan informed the Board that the CAA had put in place class D restricted airspace around Southend Airport to mitigate recent airprox trends and provide a known air traffic environment in which to manage commercial safely.

45. Mr Swan updated the Board on the implementation by the CAA of the Standardised European Rules of the Air (SERA). The UK was requesting derogations from two of the rules to retain existing conditions that were more suited to UK operations and weather. The UK was cooperating with EASA and other Member States on these matters.

46. The Board commented on the number of recent runway incidents and wondered if this were a cause for concern. Mr Swan remarked that he had not seen an adverse trend occurring in runway run-off incidents or been notified of any underlying issues. Seasonal high wind which was , however, a factor

47. Mrs Staples said she would circulate a note of the Northolt Judicial Review judgement which was due to be delivered shortly.

**Action: Mrs Staples**

## **XI AvSec Bi Monthly Report – Doc 2015-008 by Peter Drissell**

48. Mr Fiddy presented the report.
49. The Board requested a briefing on Security Management Systems (SeMS). Mr Drissell agreed this could be the subject for a PIE and agreed to circulate a guidance note in the meantime. Mr Drissell noted that CAA had issued guidance to industry on SeMS before Christmas. The response from ICAO and EASA had been very positive. The CAA had a three year SeMS roll-out programme, starting from 2015/2016.

### **Action: Mr Drissell**

50. Mr Drissell brought to the Board's attention that over 90% of AvSec staff had now transferred to CAA terms and conditions following the announcement of the CAA pay review. Only those transferring to CAA terms and conditions would be entitled to benefit from the review. This demonstrated that if attractive packages were offered, people would transfer. The Chair commented on how well AvSec staff had integrated into the CAA. Mr Drissell remarked that still being on the 'gsi' system was the remaining inhibitor for full integration. This issue was being addressed.
51. The Board noted the report.

## **XII Finance Report – Doc 2015-009 by Chris Jesnick**

52. Miss Jesnick tabled her report. She stated that a number of matters might affect the current year end forecast. These issues were staff re-organisation costs, lower than budgeted CAAi revenue and delays with elements of the Transformation Programme. Although the forecast had originally been break even this had been revised to a £200-300K loss although some elements of expenditure could fall in to FY2015/16 which would improve the year end results for 2014/15. This would also improve the cash flow.
53. Mr Ward reported on feedback from the Audit Committee in relation to the Transformation Programme. The Committee was discouraged by the lack of progress being made by CGI but was pleased to see improvements instigated by senior management and would recommend further oversight of cost control and benefit realisation. Miss Jesnick said a more detailed cashflow projection for the programme would be provided at the next Board meeting in the Transformation Programme Report.

**Action: Miss Jesnick**

54. The Board noted the report.

**XIII Live issues and monthly reports**

55. MCG *Live Issues* – Doc 2015-010 by Mr Osborne

Mr Osborne reported that he expected to initiate enforcement action shortly following upcoming publication of the Compliance Report on information rights and compensation.

56. CPG *Live Issues* – Doc 2015-011

Mr Jackson was happy to provide a further brief for Board members on Project Luther. This could be a focus for a future PIE discussion.

57. CCD *Live Issues* – Doc 2015-012

The Board noted the report.

**XII Any other Business & Forward Planning**

58. The February PIE meeting has been cancelled.

59. On behalf of the Board the Chair thanked AVM Stringer for his excellent input into the Board and wished him well in his future endeavours. The Chair noted that AVM Stringer had set a high standard for his successor to follow. AVM Stringer thanked the Board and was fully confident that his successor would provide a very good replacement.

**Date and Time of Next Board Meeting: 18 February 2015, at 11.30 in CAA House**