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British Airway's ("BA") Response to CAP3238

Economic regulation of Heathrow Airport ("Heathrow"): Draft decision on the regulatory treatment of early costs of capacity expansion at Heathrow airport

We welcome the opportunity to respond to the CAA's draft decision on the regulatory treatment of early costs of capacity expansion at Heathrow ("the Draft Decision").

BA remains firmly opposed to the CAA's proposal to permit Heathrow Airport Limited ("HAL") to recover early costs of £320 million over 2025–26 (in 2024 prices) prior to the grant of any Development Consent Order ("DCO"). Likewise, BA remains opposed to the proposal to allow other promoters to recover their early costs, even those that are deemed by the CAA to have credible and mature expansion proposals. Early costs should remain at the promoter's commercial risk until a DCO is secured to ensure they are incentivised to undertake preliminary expansion activities in a prudent and efficient manner, and to progress a scheme capable of delivering net positive benefits for consumers.

As set out in BA's previous consultation responses, the CAA's rationale for allowing early cost recovery pre-DCO is fundamentally unsound and rests on flawed, outdated, and sponsor-commissioned analysis. It continues to give precedence to speed of delivery and adherence to the Government's preferred timetable rather than the CAA's statutory duties to act in the interests of consumers, ensure efficient costs, and promote competition. In doing so, the CAA risks repeating the well-documented mistakes of HS2, where decisions based on schedule and driven by political pressure to maintain momentum have led to serious cost overruns and delays.

The Draft Decision materially understates both the significance of the proposed approach and the potential long-term consequences arising from the prefunding of investment in expansion at Heathrow. 2025-2026 costs represent the initial phase of a substantially larger programme of works that will determine both the strategic direction and overall cost envelope of Heathrow's expansion. Early expansion activities, particularly land and property acquisition, design development, and engineering feasibility work, will progressively define the scope, configuration, and delivery model of the eventual scheme.

Consumer-funded expenditure of this kind undertaken without adequate governance and regulatory control gives rise to several interrelated risks: first, that Heathrow expansion proceeds on the basis of a cost envelope fundamentally incompatible with affordability and a credible positive consumer benefits case; second, that early design and procurement decisions prematurely foreclose alternative third-party delivery models before they have been properly assessed; and third, that HAL's informational advantage derived from consumer-funded preliminary works further entrenches its position as the sole credible delivery vehicle, irrespective of the outcome of the CAA's ongoing review of Heathrow's future regulatory model.

These risks are compounded by serious deficiencies in both the CAA's reasoning and consultation process, and the proposed regulatory framework itself, which remains wholly inadequate and unfit for purpose in circumstances involving any form of consumer prefunding of substantial early expansion costs.

BA continues to support Heathrow expansion where it is in the interests of consumers and the UK; however, the benefits could disappear if expansion is pursued without adequate governance and regulatory control from the outset.

In responding to this Draft Decision, stakeholders are placed in an invidious position because the early costs in question have already, in large part, been spent. It is therefore inherently more challenging to ensure that any costs recovered from this period are necessary, efficiently incurred, and non-duplicative. BA therefore urges the CAA to avoid a repetition of this flawed approach, and to put in place arrangements now for early costs from 2027 onwards, which should be based on ex-ante approval by default and a proper, independent assessment of the costs and benefits of expansion.

The CAA asserts that its Draft Decision does not establish a precedent for the regulatory treatment of future expenditure (from 2027 onwards). BA agrees that it cannot, and must not, do so, particularly given the fundamental deficiencies in the CAA's reasoning, the insufficiency of its proposed consumer protection mechanisms, and the fact that the present decision relates, in substantial part, to expenditure that has already been incurred.

Any future decisions relating to early expansion costs from 2027 onwards will concern prospective expenditure and materially more significant stages of preliminary activity, including land acquisition and enabling works. In those circumstances, robust regulatory arrangements can, and must, be established in advance to ensure effective ex ante scrutiny, appropriate cost control and accountability, competition through the option of third-party delivery, and the proper protection of consumers' interests.

If, notwithstanding the sustained opposition from the majority of consultees, the CAA proceeds with permitting early cost recovery for 2025–2026 and future early expansion expenditure, it is essential that a fundamentally different and more robust regulatory framework is applied. BA set out proposals for an alternative, and in our view materially better, framework in our response to CAP3201, and we expand on those proposals in this response. Unlike the Draft Decision, BA's proposed framework would help to ensure that the future development of Heathrow expansion delivers positive net benefits for consumers and safeguards consumer interests, while maintaining appropriate incentives for promoters to commit the resources necessary to advance capacity expansion.

We trust that the CAA will give paramount weight to the interests of consumers, competition and the integrity of the regulatory framework at Heathrow as it finalises its policy. We would be happy to discuss any aspect of our response or provide further data and analysis if helpful.

Thank you for your attention to our submission.

Yours sincerely,

Gavin Molloy
Director of Infrastructure, British Airways

British Airway's Response to CAP3238

1. Introduction

1.1. This response is structured as follows:

- **Section 2: Executive Summary**.
- **Section 3: BA's primary position** – Allowing early cost recovery before a DCO is granted is wrong in principle and the proposals ought to be withdrawn.
- **Section 4: Issues with the CAA's overall approach** – The CAA's rationale for allowing early cost recovery remains inherently flawed and must not be carried forward.
- **Section 5: Specific concerns with the Draft Decision** – The CAA's proposed approach and guardrails do not constitute meaningful consumer protection.
- **Section 6: BA's recommendations** – If the CAA proceeds with allowing pre-DCO recovery, BA's proposed alternative framework offers materially better consumer protection.
- **Section 7: Serious deficiencies in the CAA's consultation process and reasoning** – The Draft Decision is rendered unsound by serious deficiencies and has been advanced through a process that falls short of the requirements for lawful consultation.

1.2. This response is deliberately targeted and does not address every point raised in the Draft Decision. It should be read together with BA's previous consultation responses and ongoing engagement with the CAA. BA stands by its previous submissions on early cost recovery and expects the CAA to engage with and act on these submissions, as required under its statutory obligations.

1.3. BA's decision not to comment on any particular point raised in CAP3238 should not be misinterpreted as tacit acceptance or endorsement.

2. Executive Summary

2.1. The CAA's characterisation of the proposed CAP3238 decision misleadingly understates both the scale and significance of the costs under consideration, together with the broader regulatory, consumer and long-term market implications arising from their proposed recovery.

2.2. The proposed recovery of £320 million of costs — which, once inflation and the allowed cost of capital over the period of depreciation through the RAB are taken into account, will in practice be substantially higher — materially exceeds the level of expenditure incurred by comparable airport promoters (such as Gatwick) at an equivalent stage of expansion schemes. This already provides a clear indication that costs are not being incurred efficiently.

2.3. This is in addition to over £500 million of expansion-related expenditure already incurred by HAL prior to 2020 and that continues to be paid for by consumers via the inclusion in the RAB, in respect of which it remains unclear:

(a) what tangible outputs or enduring consumer benefits were delivered; or

(b) the extent to which those earlier works have been utilised effectively to mitigate or reduce the costs and impacts associated with the current expansion proposals.

2.4. HAL has yet to provide any sufficiently detailed costings, budgets, or clear articulation of the objectives, success criteria, and deliverables expected from early expansion costs that consumers are being asked to underwrite to support the Government's expansion timetable.

2.5. The CAA is therefore proposing to permit the recommencement of consumer prefunding of early expansion expenditure at Heathrow in circumstances where there remains no transparent or credible definition of, or effective limit upon, either the anticipated cost envelope for the preliminary works specifically or the wider Heathrow expansion project more generally.

2.6. In this context, the CAA seeks, erroneously and without sufficient evidential basis, to justify an inherently weak and limited regulatory framework for allowing recovery of HAL's 2025–26 expenditure on the grounds that, absent regulatory certainty regarding cost recovery, HAL may slow or pause its planning activities. The CAA asserts that this could lead to delays, jeopardising delivery within the Government's preferred timetable for expansion (irrespective of the practical deliverability of that timetable) and deferring the realisation of the purported consumer benefits said to arise from Heathrow expansion. This line of reasoning is fundamentally flawed, detrimental to consumers' interests, and subject to a number of significant limitations:

- A decision directed towards supporting adherence to a Government preferred timetable (irrespective of the realism or deliverability of that timetable) is not equivalent to the CAA discharging its statutory duty to act in the interests of consumers.
- The CAA's reliance on purported schedule risk as justification for its proposed regulatory treatment of early expansion costs is unsupported by the conduct of HAL or other promoters.
- The CAA's reasoning creates the risk of a structural "hold-out" incentive for HAL to seek to leverage regulatory pressure linked to the Government's preferred delivery timetables to secure future decisions related to expansion that may be detrimental to consumers' long-term interests.

2.7. Expansion also continues to be treated as presumptively in consumers' interests, based on an inadequate assessment of the benefits, without any independent CAA assessment and quantification of the benefits case, or the guardrails that are required around the regulatory treatment of early expansion costs to secure that the overall project cost envelope ensures expansion is in the interests of consumers.

2.8. Although much of the early expansion expenditure covered by this decision has already been incurred, it represents only the initial phase of a substantially larger programme of works that will determine both the strategic direction and overall cost envelope of Heathrow's expansion.

2.9. Early expansion activities – particularly land and property acquisition, design development, and engineering feasibility work – will progressively define the scope, configuration, and delivery model of the eventual scheme. Consumer-funded expenditure that proceeds without adequate governance creates a series of compounding risks that:

(a) Heathrow expansion is developed on the basis of an overall cost envelope that is fundamentally misaligned and incompatible with what would be affordable and capable of supporting a credible positive consumer benefits case for capacity expansion at the airport;

(b) design and procurement decisions foreclose alternative (third-party) delivery approaches before those alternatives have been properly assessed; and

(c) the informational advantage HAL accumulates through consumer-funded early expansion work entrenches its position as the sole credible deliverer, regardless of what the CAA's ongoing review of the regulatory model and ambition for alternative (third-party) delivery at Heathrow might conclude.

2.10. The regulatory framework that has been proposed by the CAA for 2025–26 expenditure is wholly inadequate and unfit for purpose to address these challenges:

- Ex-post review is intrinsically limited. By the time such review is undertaken, evidential constraints make it difficult to reconstruct the basis for individual spending decisions.

- It fails to provide the degree of scrutiny, accountability, and regulatory control necessary to ensure that early expansion expenditure is incurred efficiently, appropriately justified, and directed towards the effective development of Heathrow expansion under the delivery model that best serves consumers' interests.
- The approach reflects a materially weaker governance and regulatory framework than that applied by the CAA to HAL's wider investment programme at Heathrow Airport for H7 and proposed for H8, notwithstanding current projections indicating that HAL's pre-DCO early expansion expenditure could potentially amount to as much as £9 billion.

2.11. These issues are the consequence of serious deficiencies in both the CAA's consultation process, assessment and underlying reasoning for its proposed decision, together with the apparent prioritisation of adherence to the Government's preferred delivery timetable above all other considerations, including the CAA's statutory obligation to protect the long-term interests of consumers at Heathrow.

2.12. While the CAA asserts that its Draft Decision (in respect of 2025–2026 early costs) does not establish a precedent for the regulatory treatment of future expenditure (from 2027 onwards), for the reasons above, and our detailed response that is set out below, it cannot, and must not, be permitted to do so. However, given the CAA's reasoning in relation to the treatment of 2025–26 costs, and the apparent prioritisation of accelerating the expansion timetable above all other objectives and duties, BA remains highly concerned that the CAA will simply seek to carry forward the same weak and flawed regulatory approach that has been adopted for 2025–26 expenditure into the treatment of future early expansion costs.

2.13. BA's primary position remains that the CAA should withdraw its Draft Decision and reconsider the regulatory treatment of early expansion costs on the basis of an at-risk delivery model, with any cost recovery contingent upon DCO approval. However, without conceding that position, if the CAA nonetheless proceeds with consumer prefunding of early expansion expenditure, the associated governance, scrutiny, and regulatory safeguards must be materially strengthened, particularly in relation to future prospective expenditure and the significant phases of preliminary works from 2027 onwards, including land acquisition and enabling works.

2.14. In this consultation response, we set out an alternative and, in BA's view, materially better framework to that proposed in the CAA's Draft Decision. In particular, BA proposes that:

(a) Any regulatory treatment of early costs must remain fully capable of alignment with the conclusions of the CAA Regulatory Models Review, the latest consultation (CAP3251) for which was recently published on the 15 May ("CAA Review")[1]; and

(b) Early expansion costs must be governed by a robust, transparent, CAA-led regulatory process, with ex-ante approval constituting the default mechanism for early cost recovery going forwards.

2.15. In its final decision, the CAA should make clear that this represents the intended direction of travel and commit to establishing such a framework prior to the commencement of 2027, to ensure effective regulatory oversight and the proper protection of consumers' interests.

[1] CAA, May 2026, Heathrow capacity expansion – consultation on a shortlist of regulatory models, CAP 325. As discussed below, in practice, this means that the governance framework established for early costs (including approval criteria, output definitions, cost standards, and reporting obligations) should be designed on a model-agnostic basis: that is, structured so as to be compatible with the full range of regulatory models under consideration in CAP3195 and the recently published CAP3251 shortlist of regulatory models, including third-party delivery structures, without requiring those arrangements to be unwound or renegotiated when the review concludes.

3. BA's primary position – allowing early cost recovery before a DCO is granted is wrong in principle and the proposals ought to be withdrawn.

3.1. BA's position, as set out in its previous submissions, remains unchanged: early costs incurred by HAL or any other promoter in connection with capacity expansion at Heathrow should remain at the promoter's commercial risk until a DCO has been secured.

3.2. This approach would ensure robust and disciplined incentives for HAL to undertake preliminary expansion activities in a prudent and efficient manner, and to progress a scheme capable of delivering net positive benefits for consumers. Under such a framework, failure to do so would place the recovery of upfront investment in preliminary works at increasing risk, particularly where escalation in the cost envelope undermines the project's benefits case and raises the prospect of cancellation.

3.3. The CAA's Draft Decision does not substantively engage with the specific mechanism proposed by BA, or its merits, under which efficiently incurred costs would remain eligible for RAB recovery following consent, with financing costs preserved. This approach would address any perceived mobilisation barrier without transferring speculative development risk to consumers prior to consent being obtained.

3.4. In particular, the fact that a substantial proportion of 2025–2026 expenditure has already been incurred or committed does not relieve the CAA of its obligation to put in place a materially different and more robust regulatory framework for the treatment of early costs from 2027 onwards. On the contrary, the flawed approach the CAA has taken to 2025–2026 costs – including the absence of ex-ante scrutiny, defined outputs, or binding expenditure controls – reinforces the urgency of establishing a proper ex-ante framework in sufficient time to govern the next phase of expenditure. The CAA must not allow the pattern of retrospective accommodation that characterises the current Draft Decision to become the default regulatory approach.

3.5. For the reasons set out in the sections that follow, the CAA's rationale for permitting pre-funding of such costs, and the risks inherent in maintaining a framework consistent with its proposed 2025–2026 approach, become increasingly untenable as the scale of early expansion costs increases, and as the implications of HAL's pre-construction activities and decisions become more material.

4. Issues with the CAA's overall approach – The CAA's rationale for allowing early cost recovery remains inherently flawed and must not be carried forward.

4.1. The CAA's rationale for the approach proposed in its Draft Decision is fundamentally flawed. BA has serious concerns about the Draft Decision in its own right: even in respect of the £320 million (2024 prices) of 2025–2026 expenditure under consideration, the CAA's approach and proposed consumer protections are insufficient, as we set out in Section 5 below.

4.2. There also continue to be serious deficiencies with the CAA's consultation process and reasoning, as we set out in section in Section 7 below. But the potential implications of the Draft Decision extend well beyond this initial phase of expenditure.

4.3. The expenditure covered by the Draft Decision, although already largely incurred, represents only the first phase of a substantially larger pre-construction programme that will help to shape both the strategic direction and the overall cost envelope of Heathrow's expansion. As set out in our cover letter, the approach and dynamic for early cost recovery will be critical to the scope and ultimate cost of capacity expansion.

4.4. However, HAL has yet to provide any sufficiently detailed costings or budgets, or clear articulation of the objectives, success criteria, and deliverables expected from early expansion costs that consumers are being asked to underwrite to support the expansion timetable. The CAA is therefore proposing to permit the recommencement of consumer prefunding of early expansion expenditure at Heathrow in circumstances where there remains no transparent or credible definition of, or effective limit upon, either the anticipated cost envelope for pre-DCO works, or Heathrow expansion more generally. This does not establish an effective framework for supporting efficient and cost-disciplined delivery of the expansion project from the outset.

4.5. The CAA asserts that the current Draft Decision does not set a precedent for the treatment of future early costs from 2027 onwards. BA agrees that it cannot and must not do so, for two reasons.

4.6. First, the Draft Decision relates to costs that have already been incurred or committed. It is, in substance, a retrospective determination. Any decision on early costs for 2027 onwards will, by contrast, involve genuinely prospective expenditure where proper ex-ante scrutiny is both feasible and necessary. The two decisions are therefore fundamentally different in character, and the regulatory approach appropriate to each must reflect that distinction.

4.7. Second, even if the CAA's approach to 2025–2026 costs were appropriate in the specific circumstances of this phase (which, for the avoidance of doubt, BA does not accept), the underlying rationale for that approach is flawed and would be wholly unsuitable as a basis for future decisions. Specifically, the CAA's justification for its proposed approach:

A. continues to prioritise delivery speed over effective expansion planning and cost control, treating adherence to the Government's preferred timetable (irrespective of its deliverability) as synonymous with acting in consumers' interests – a rationale that, if carried forward to 2027 and beyond, would signal a broader regulatory willingness to permit recovery of substantially larger early expansion costs under a framework characterised by fundamental deficiencies and insufficient consumer protection;

B. expansion has been treated as presumptively in consumers' interests, based on an inadequate assessment of the benefits of expansion; and

C. the proposed framework for early cost recovery risks foreclosing third-party delivery models and more flexible delivery options.

4.8. Proceeding in this way would be wholly inconsistent with the CAA's duty to act in the interests of consumers, ensure efficient costs, and promote competition. Importantly, the CAA is not under any duty to ensure expansion is delivered in accordance with the Government's preferred timetable, and if doing so would require the CAA to make decisions which run counter to its statutory duties, as an independent regulator the CAA must prioritise compliance with its duties.

4.9. Prioritising short-term expedience over the pursuit of regulation that will secure the long-term interests of consumers cannot be consistent with the CAA's duties, and any decision made otherwise by the CAA would be wrong in law.

4.10. We discuss each of these issues in turn.

B The CAA continues to prioritise delivery speed over effective expansion planning and cost control, treating adherence to the Government's preferred timetable (irrespective of its deliverability) as synonymous with acting in consumers' interests.

4.11. This constitutes a flawed basis for establishing expectations as to the regulatory treatment of early expansion costs, placing undue emphasis on delivery speed at the expense of appropriate control and consumer protection, and implicitly treating speed itself as the primary determinant of consumer value.

4.12. The subsections below set out the principal reasons for this, building on BA's prior submissions to the CAA on this matter.[2] Those submissions are not repeated in full here, but remain applicable to the CAA's Draft Decision, insofar as it relies on asserted impacts on schedule risk.

The CAA's reliance on schedule risk to justify its proposed regulatory treatment of early expansion costs is not supported by the actions of airport promotors.

4.13. The CAA states that without regulatory certainty on cost recovery, HAL could slow its planning work, leading to delays to the timetable and to the delivery of potential consumer benefits. This claim is not substantiated. The CAA has not produced evidence that HAL would in fact slow down, has not assessed by how much, and has not considered whether any such slowdown would be material to the overall programme outcome relative to the risks created by guaranteed recovery.

4.14. The behavioural record of HAL and other promoters also directly contradicts the CAA's premise.

4.15. By July 2025, before any consultation had been published and before any regulatory position existed, HAL had already incurred approximately £10 million in expansion-related expenditure.[3] HAL's own July 2025 correspondence to the CAA explicitly stated that it did not consider a detailed review and consultation necessary at that stage and sought only assurance in principle, not formal regulatory certainty, as the basis for continued mobilisation.[4] The CAA then required a proper consultation process; HAL continued spending throughout it. This is not the conduct of a promoter that requires guaranteed cost recovery to proceed. Not least because the Draft Decision relates, in substantial part, to expenditure that has already been incurred.

4.16. The contrast with other promoters reinforces the point. Arora assembled a credible, fully costed alternative expansion scheme over a decade entirely at its own commercial risk, with no regulatory cost recovery mechanism of any kind.[5] Gatwick developed, consulted on and submitted a £2.2 billion DCO application for its Northern Runway project, privately financed and without any mechanism to pass pre-consent planning costs through to passengers, and obtained consent in September 2025.[6]

4.17. The CAA is the economic regulator for Gatwick and did not consider a pre-consent recovery guarantee necessary there. It has not explained why Heathrow expansion should be treated differently.

The CAA's justification for its proposed approach based on the risk of schedule delay is inconsistent in its reasoning.

4.18. The CAA's justification for its proposed approach to early costs based on the risk of schedule delay is also internally inconsistent:

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[2] See pages 11-12 of BA's response to CAP3149, and sections 4.3-4 of BA's response to CAP3201.

[3] Baker, R. (2025) 'Letter to Selina Chadha, Group Director Consumers and Markets, Civil Aviation Authority, regarding early costs for expanding Heathrow', 17 July 2025. Available at: https://www.caa.co.uk/media/fmoevono/250717-early-costs-heathrow-letter.pdf

[4] Ibid.

[5] The Arora Group (2025) 'The Arora Group finalises landmark Heathrow Airport expansion proposal', 31 July 2025. Available at: https://www.thearoragroup.com/news/the-arora-group-finalises-landmark-heathrow-airport-expansion-proposal

[6] The DCO application was submitted on 6 July 2023 and accepted for examination on 3 August 2023. Consent was granted on 21 September 2025. The £2.2 billion project cost and private financing basis are as stated in Gatwick Airport Limited's published project documentation: Gatwick Airport Limited (2025) 'Northern Runway Plans'. Available at: https://www.gatwickairport.com/company/future-plans/northern-runway.html

Department for Transport (2025) 'Gatwick Airport Northern Runway development consent decision announced', 21 September 2025. Available at: https://www.gov.uk/government/news/gatwick-airport-northern-runway-development-consent-decision-announced

- On the one hand, the CAA asserts that, absent early cost recovery, there is a "*significant risk that a promoter could slow or pause work, leading to potential delays to expansion*".[7]
- On the other hand, it states that ex-ante scrutiny of 2025–2026 early costs is not feasible because "*most of the early costs we expect HAL to incur in 2025 and 2026 will have already been incurred or will be committed by the time of our final decision*".[8]

4.19. These propositions are mutually incompatible. If the relevant costs have already been incurred or irrevocably committed, there is no realistic prospect of HAL slowing or pausing the relevant work in response to a decision on cost recovery. Therefore, any decision by the CAA to allow recovery of 2025-2026 expenditure on this basis is fundamentally flawed and results in speculative, pre-consent development risk being inappropriately transferred onto today's passengers, without justification and in a manner incompatible with the CAA's primary statutory duty to further the interests of consumers.

4.20. In particular, the CAA's stated objective is to mitigate the risk of delay. Given that the relevant expenditure has in substantial part already been incurred, any such risk can only logically arise in respect of HAL's future investment decisions (i.e., expenditure incurred from 2027 onwards). On this basis, the Draft Decision cannot achieve its stated objective, as the CAA has repeatedly (and, in our view, correctly) confirmed that its approach to 2025-2026 expenditure does not set any precedent for the treatment of future early costs.[9]

4.21. If the CAA nevertheless proceeds with the Draft Decision, it cannot and must not set any precedent for expenditure incurred from 2027 onwards for the reasons set out at paragraphs 4.6 to 4.8 above, particularly given the scale, significance, and long-term implications of the expenditure to which this regulatory framework would apply.

Delivering to the Government's preferred timetable (irrespective of its deliverability) is not the same as acting in consumers' interests.

4.22. The CAA continues to improperly give precedence to the Government's preferred timetable rather than its statutory duties. It treats speed and adherence to that timetable as proxies for consumer interests, such that any deviation from that timetable is characterised as consumer detriment, and early cost recovery is advanced as the mechanism for mitigating that perceived harm.

4.23. This conflation of timeliness with consumer interest is misconceived, and runs counter to the Government's clear position that "*rigorous and effective cost control will be essential to the scheme's success both in minimising any impact on airline charges and costs to passengers*".[10]

4.24. Timeliness is not, in itself, a measure of consumer benefit, particularly in the context of aviation. Aviation demand is structurally exposed to shocks that make decade-long forecasts inherently unreliable. The period before 2020 provides the most direct illustration. At that stage, the regulatory framework treated expansion as an urgent consumer-interest priority and HAL was mobilised on that basis. The pandemic fundamentally altered the demand picture, the cost environment, and the political context in ways that no regulatory analysis from 2018 could have anticipated.

[7] CAP3238, paragraph 2.25

[8] CAP3238, paragraph 3.61

[9] CAP3238, paragraphs 1.41, 3.63, 4.26.

[10] Department for Transport and the Rt Hon Heidi Alexander MP, 'Heathrow expansion: selection of a scheme for ANPS review purposes' 25 November 2025, available at https://www.gov.uk/government/speeches/heathrow-expansion-selection-of-a-scheme-for-anps-review-purposes.

4.25. The CAA itself repeatedly acknowledges that there are significant uncertainties around the costs and benefits of expansion.[11] That acknowledgement is incompatible with treating a specific Government timetable as a reliable consumer welfare metric. The CAA cannot say with the degree of confidence its reasoning requires that a scheme developed and consented in the late 2020s will deliver the benefits it projects by the mid-2030s, particularly in a context where it has failed to undertake an independent cost-benefit analysis, and is instead relying on outdated, methodologically flawed, and sponsor-commissioned analysis (see section 4B).

4.26. The CAA has also failed to examine the trade-off between timely delivery and cost-disciplined delivery. Timeliness and consumer benefit are distinct variables that require explicit analysis. A scheme developed under weakened efficiency incentives and premature cost commitments and planning assumptions may ultimately cost consumers more, without necessarily accelerating delivery, than a scheme delivered under sharper commercial discipline or more effective regulatory guardrails and project governance.

4.27. As highlighted in our response to CAP3201 (see paragraphs 4.3.3 and 5.9.4), there is a material risk that the CAA has not adequately taken into account the lessons arising from the *Stewart Review: Major Transport Projects Governance and Assurance Review: The HS2 Experience* (published 18 June 2025) (the "Stewart Review"), including the central finding that major infrastructure projects "*do not go wrong; they start wrong*" (p. 8). The Stewart Review highlights the risk of schedule being prioritised over cost, with pressure from politicians to maintain momentum, fear of project cancellation, and the belief that costs will increase as a result of delay featuring strongly among the reasons given for this flawed prioritisation.

4.28. To combat this risk, the Stewart Review:

i. stresses the importance of effective safeguards and time taken in the planning, development and design phase of major project delivery to mitigate the risk of cost escalation, as has occurred in many recent major UK infrastructure projects; and

ii. concludes that a culture of cost control and affordability must be established and prioritised on any project (p.63) and that this issue "*needs to be tackled head on, and actions taken to address it from the outset of the project. Affordability needs to be the top priority, and we must stop designing and building things we cannot afford*" (p.106).

4.29. By contrast, the CAA's framing – reflected in its proposed approach to the regulatory treatment of early costs – places undue emphasis on delivery speed at the expense of cost control and consumer protection, implicitly treating speed as the primary driver of value.

4.30. In its latest consultation on regulatory models for Heathrow expansion (CAP3251), the CAA repeatedly states that it is "*carrying out further work on affordability as part of its work on early costs*".[12] However, there is no reference to affordability in CAP3238, save in stakeholder responses. The CAA also states that "*the choice of regulatory model will not, in itself, determine the overall economics of a particular scheme for expansion. The overall costs and benefits of a particular scheme will largely be driven by its broad specification and scope.*"[13] In BA's view, this seriously understates the CAA's role. As economic regulator, the CAA has broad powers to set the framework within which expansion is financed and delivered, and has a primary duty to exercise those powers to further the

[11] CAP3238, paragraphs 1.5, 2.4, 2.62; CAP3201, paragraphs 1.11, 2.23, 2.36, 2.39, 2.80, 3.2. We note that the CAA's own commissioned cost adviser (Steer) identifies material uncertainty around total expansion costs: see CAP3238A.

[12] CAP3251, paragraphs 1.22 and 3.53.

[13] CAP3251, paragraphs 1.20 and 3.51.

interests of consumers. The effectiveness of its regulatory framework (particularly in implementing rigorous cost controls from the outset) will be a central determinant of the affordability and viability of expansion.

4.31. The CAA's primary statutory duty is to further the interests of consumers, including as to cost, and to do so having regard to the need to promote economy and efficiency on HAL's part. It is under no duty to ensure expansion is delivered in accordance with the Government's preferred timetable, nor to prioritise delivery speed more generally. While the CAA must have regard to guidance from the Secretary of State, if acting in accordance with such guidance would require the CAA to make decisions which run counter to its statutory duties, as an independent regulator the CAA must prioritise compliance with its duties. In particular, the Transport Secretary's statement in its letter of 20 April 2026, that the CAA will develop regulatory arrangements for Heathrow expansion that "*furthers the interests of consumers and seeks to meet the overall timetable set by Government*"[14], does not place those objectives on an equal footing. Consumer interest is paramount; seeking to meet the Government's timeline is permissible only to the extent consistent with consumer protection. This is particularly relevant in the context of a major capital project like Heathrow expansion, as lessons learnt from HS2, first in the Stewart Review and now also in the Lovegrove Report, due to be published tomorrow, highlight that HS2 went "*disastrously wrong*" precisely because of political pressure to maintain momentum.[15]

4.32. The CAA's overriding obligation is therefore to advance consumer interests, which the Draft Decision summarily fails to do. This failure is particularly acute in light of the material uncertainties that the CAA's own commissioned adviser has identified regarding the deliverability of the programme within the Government's preferred timetable. Steer concludes that both proposals *"present ambitious timelines"* for delivering an operational runway by the Government's 2035 target and identifies a range of risk factors (including the scale of design work remaining, supply chain constraints arising from the concurrent HS2 programme, and uncertainties around land acquisition) that *"may impact feasibility and deliverability within this ambitious timescale"*.[16] Steer notes that HAL has not yet mobilised early delivery planning or property teams, that its programme includes no contingency for DCO delay despite comparable projects significantly exceeding standard timeframes, and that it is possible that the opening of the third runway could happen *"potentially by December 2037"*.[17] These findings materially undermine the CAA's reliance on the 2035 timetable as a basis for its proposed approach: if the claimed consumer benefits cannot be realised within that timetable in any event, the case for accepting the costs and risks of the CAA's framework on grounds of schedule protection is further weakened. The very real risk of delay, and accompanying cost overrun, also reinforces BA's position that a robust, independent, and up-to-date cost-benefit assessment is required, together with appropriate safeguards governing any recovery of early costs.

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[14] CAP3241, Annex A paragraph 1.

[15] Stewart Review, pages 7 and 66; Sir Stephen Lovegrove commenting on his review of HS2 in the Times, ahead of publication on 19 May 2026: "*The role of politics has been repeatedly raised by interviewees and previous reviews. This is an important subject and there is little doubt that all players, certainly at HS2 Ltd and the department, felt under significant pressure from ministers to keep things moving.*" Available at: https://www.thetimes.com/article/2940e887-d8db-4d2e-b20c-2b0aabab8731?shareToken=2c78204af51f1484e98e4643200fa37f

[16] CAP3238A, paragraph 1.9

[17] CAP3238A, paragraphs 4.126, 4.137

The CAA's justification based on risk to schedule creates a structural hold-out risk.

4.33. As previously set out in BA's response to CAP3201 (see paragraph 5.9), the CAA's proposed approach creates a structural hold-out risk that will worsen as the programme progresses.

4.34. Once consumers are committed to funding pre-consent expenditure, the sunk cost problem transfers leverage to HAL in every subsequent regulatory interaction. The CAA cannot credibly revisit scheme scope, resist cost escalation or challenge design choices without implicitly accepting that consumer-funded activity was wasted. That dynamic intensifies with each additional tranche of recovery. BA set out this risk in its response to CAP3201, but it has not been addressed in the CAA's Draft Decision.

4.35. The CAA's position also sends a clear signal to HAL and its shareholders that pace is the primary regulatory concern. This will shape conduct throughout DCO preparation, H8 negotiations and beyond. The supposed "modesty" of these early costs is therefore misleading. £320 million of consumer-funded expenditure, committed without ex-ante scrutiny against defined outputs or success criteria, is itself a material regulatory failure. But the sum is also the first stage of a much larger programme, and the regulatory expectations created by the CAA's approach to this phase risk constraining its freedom of action at every subsequent decision point.

4.36. A robust, transparent, CAA-led framework for funding and governance of early costs is therefore required from the outset. This framework must allow sufficient time for proper ex-ante scrutiny and approval to ensure the scheme is appropriately developed and ultimately delivers net benefits to consumers.

4.37. As noted in our CAP3201 response (see paragraph 5.9.5), "*the approach and dynamic for recovery and regulatory treatment of early costs will help to shape the scope of capacity expansion and the ultimate cost envelope at the airport. It will be critical to the transparency and the traceability of decisions that Heathrow will be making in early scheme development that could have profound (potentially multiple billions of pounds) impacts on the cost envelope of capacity expansion. It is, therefore, critical that the appropriate approach and safeguards are in place from the outset*".

4.38. The CAA's failure to establish an effective regulatory framework for 2025-2026 early costs must not be repeated for early costs incurred from 2027 onwards.

C Expansion has been treated as presumptively in consumers' interests, based on an inadequate assessment of the benefits of expansion.

4.39. The CAA's benefits case for Heathrow's expansion does not provide an adequate evidential foundation for its proposed approach to early cost recovery. In particular:

i. The CAA has not formed an independent, evidence-based view that such recovery would further the interests of consumers. It has commissioned no independent benefits analysis, instead relying on analysis commissioned and funded by HAL, or on high-level extrapolations from Department for Transport and Airports Commission work that is now a decade old and was not designed to address the specific question before the CAA.

ii. The primary quantified benefit relied upon by the CAA is derived from analysis that is both contested and methodologically flawed. The underlying approach conflates claimed benefits with costs that the CAA has failed adequately to account for.

iii. The CAA's own commissioned cost adviser has identified a cost range sufficiently wide to place net consumer welfare in negative territory under plausible scenarios.

iv. In those circumstances, the CAA's reliance on a generalised "plausible scenarios" standard provides no meaningful basis for assessing whether net consumer outcomes remain positive across that range; rather, it risks leaving the central question of net consumer welfare untested.

4.40. While there may be plausible scenarios in which Heathrow's expansion generates net consumer benefits, there are also plausible scenarios in which it does not, especially given the analysis from CAA's own adviser (Steer) regarding realisable cost envelopes.

4.41. In those circumstances, it is not appropriate to proceed on the basis of a generalised assumption of positive consumer outcomes. Expansion cannot be treated as beneficial irrespective of cost, and the proposed approach (which effectively guarantees early cost recovery without defined outputs or a robust assessment of net consumer benefit) is inconsistent with the CAA's statutory duties to further the interests of consumers and promote economy and efficiency.

4.42. The material risk of HS2-style cost escalation must be addressed from the outset of the programme through the CAA's regulatory framework governing pre-construction activity and early cost recovery. To protect consumer interests, that framework should actively seek to shape the programme's scope and cost trajectory, facilitating the identification of credible success criteria against which a positive cost–benefit case can be demonstrably achieved in practice, rather than relying on an inherently optimistic (and optimism-biased) assessment of benefits and the deliverable cost of the project.

4.43. Instead, the CAA has relied on outdated, methodologically flawed, and sponsor-commissioned cost–benefit analysis that does not withstand scrutiny. This has led to a proposed approach to early cost recovery that fails to establish appropriate incentives and safeguards to protect consumers, and which rejects alternative frameworks capable of delivering more effective and robust protections. Accordingly, the CAA's rationale and proposed regulatory approach to early cost recovery cannot, and must not, be permitted to set a precedent for future phases of expenditure or decision-making.

4.44. These issues are considered in further detail below.

The CAA has not formed an independent, evidence-based view that such recovery would further the interests of consumers

4.45. The CAA has undertaken no independent cost–benefit assessment. It relies principally on two bodies of external analysis, neither of which provides an adequate foundation for the current decision.

4.46. The first is the DfT's 2017 appraisal, which is now nearly 10 years old and was primarily an attempt at estimating the societal benefits of expansion rather than the benefits to consumers. The CAA itself acknowledges that *"the relevance of these quantified estimates today may be more limited, given that they were based on modelling produced in 2017 and do not reflect a range of recent developments"*.[18] The DfT is updating its appraisal as part of the ANPS review, but that updated analysis is not yet available and has not been consulted on.

4.47. The second is Frontier Economics' August 2025 cost–benefit analysis, commissioned and funded by HAL.[19] The CAA identifies material limitations in this analysis, noting that the benefit estimates "*rely heavily on Frontier's estimate of the congestion premium in 2024, which is subject to significant uncertainty,"* and that Frontier *"relied on forecasts of unconstrained demand growth produced by DfT in 2017, which were based on significantly more optimistic assumptions about future economic growth than exist today"*.[20] Critically, the CAA also acknowledges that Frontier *"did not consider the extent to which the construction costs associated with expansion might ultimately be borne by consumers through higher airport charges."*[21] This is precisely the mechanism through which the proposed early

[18] CAP3238, paragraph 2.42

[19] CAP3238, paragraph 2.44

[20] CAP3238, paragraph 2.51

[21] ibid.

cost recovery imposes direct consumer harm, and which the benefits assessment therefore leaves entirely unquantified on the cost side.

4.48. Proceeding on the basis of flawed, outdated, and sponsor-commissioned analysis while leaving the cost side of the consumer welfare equation unaddressed cannot constitute an adequate evidential foundation for the current decision.

The primary benefit estimate is contested and has not been independently verified

4.49. Having identified these material flaws, the CAA nonetheless concludes that *"on balance, current evidence indicates that there is at least a plausible case that scarcity rents are material"*.[22] The CAA's reasoning is therefore not that the evidence is strong; it is that the evidence is weak but not so weak as to be disregarded entirely. This cannot be a sufficient basis for a decision that would impose direct consumer harm, nor does it address the specific and well-evidenced grounds on which the Frontier methodology has been challenged.

4.50. Frontier's approach estimates the scarcity rent using a residual fare regression, treating the unexplained fare premium at Heathrow, after controlling for observable factors, as evidence of rent capture by airlines. Frontier's own 2019 paper acknowledges that this approach exposes the result to omitted variable bias: any relevant cost or product drivers not controlled for will be mechanically absorbed into the Heathrow coefficient.[23]

4.51. IAG's March 2026 submission to the CAA tests the Frontier hypothesis against five independent empirical measures: airline profitability (absolute margins for BA and Virgin Atlantic); cross-hub profitability comparisons (against carriers at less constrained airports such as Iberia at Madrid and Aer Lingus at Dublin); cost benchmarking; seat factors; and like-for-like fare comparisons. It finds no evidence of the purported scarcity rent in any of these measures.[24] The scale of the claimed rent is itself informative: at £3.5 billion per year, a scarcity rent of that magnitude, after tax, would represent over 10% of IATA's estimate of total global airline profits for 2024, generated by an airport accounting for 2% of global departing capacity.[25] A rent of that magnitude cannot hide, and it does not appear in the data.

The measurement approach conflates the claimed benefit with the cost it ignores

4.52. A fundamental issue with Frontier's analysis is that it does not control for airport charges. This is a material omission. Heathrow's airport charges are substantially higher than those at Gatwick, Stansted and Luton, and it is well established that airlines pass airport charges through to fares. The Competition Commission accepted in 2002 that this pass-through is highly likely at both congested and uncongested airports.[26] Because the charge differential is not controlled for in Frontier's model, it is absorbed into the Heathrow coefficient and attributed to scarcity rent rather than to cost recovery.

4.53. [redacted]

[22] CAP3238, paragraph 1.36

[23] Frontier Economics, Estimating the Congestion Premium at Heathrow, May 2019, pp. 48–49

[24] IAG, Empirical Tests of the Starting Scarcity Rent Hypothesis at Heathrow, March 2026

[25] IAG submission, paragraphs 1.2 and footnote 18, citing IATA Sustainability and Economics, 2025, p. 12

[26] Competition Commission, 2002, Report on Dual Till Proposals for BAA London Airports, Appendix 2.3

[redacted]

4.54. This matters for the consumer welfare assessment in a specific way. Expansion does not eliminate the charge pass-through component of the measured premium; it increases it, because the expanded RAB raises airport charges. Frontier's model credits expansion with eliminating the full measured premium, without deducting the simultaneous charge-driven fare increase that expansion produces.

4.55. The CAA's own 2019 peer review of the Frontier methodology explicitly identified this concern: "*air passengers as a group will need to fund the capital expenditure over its life through aero charges… the relative sizes of these two effects determine whether from a fares point of view passengers stand to gain or lose.*"[28] That was identified as the central empirical question in 2019. In 2026, it remains unanswered, and the CAA has adopted a benefit figure that simply assumes the answer is favourable. Reaching this conclusion without a reasonable basis for doing so is a material error of fact in the CAA's decision-making.

Steer's cost range demonstrates that scenarios of net consumer harm are plausible

4.56. The CAA's own commissioned cost adviser provides concrete examples of the harm scenarios the CAA has not assessed. Steer benchmarks HAL's cost estimate of £33 billion against an independent range of £32.7 billion to £52.4 billion (all figures in 2024 CPI prices). Steer's conclusion is that both HAL's and Heathrow West Limited's cost estimates "*fall at the lower end of the benchmarking range, indicating significant risk that the schemes may not be deliverable within the stated envelopes.*"[29] HAL's estimate also sits at the bottom of Steer benchmark range for the HAL scheme.

4.57. The charge implications of the upper end of Steer's range are substantial. Adding the expansion programme to HAL's RAB at £52.4 billion rather than £33 billion implies approximately £19 billion of additional RAB. The annual charge servicing cost of that increment, comprising return on capital at a WACC consistent with Heathrow's current regulatory settlement and depreciation over the asset life, is significant relative to any plausible scarcity rent reduction per passenger. At a financing cost consistent with past Heathrow price controls, the annual charge impact of the cost uplift alone may be comparable to or exceed Frontier's estimated £3.5 billion scarcity rent benefit – before that figure is even contested.

4.58. Steer also appear to assume in their analysis a contingency and risk management element of the capex envelope in the range of 15%-30%. In practice, there is extensive evidence that projects of the scale and complexity that Heathrow's expansion will entail, require a far higher adjustment for contingency / optimism bias given the known issues such major projects suffer from.

4.59. Analysis by Flyvbjerg and Gardner '*How Big Things Get Done' (2024)* for example report that the mean cost overrun on airport projects – most likely nowhere near the size and complexity of Heathrow's expansion – was 39%. The mean project overrun in the tail was 88% in their database. They also note that cost overrun was calculated not including inflation and baselined as late in the project development cycle as possible, just before the go-ahead (final business case at final investment decision). "*This means that the numbers … are conservative. If inflation had been included*

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[27] IAG submission, Section 9, paras 9.1–9.7 and Figure 3

[28] University of Leed, 2019, CAP1871A Review of research on Scarcity Rents at Heathrow

[29] CAP3238A, paragraph 1.11

and early business cases used as the baseline, cost overrun would be much higher, and sometimes several times higher.[30]

4.60. What is required at this stage, and what the CAA has failed to provide, is a net consumer welfare assessment that maps Steer's cost range against a robust, independently verified estimate of the benefit case, to determine whether net consumer welfare remains positive across plausible cost and benefit scenarios. This is the analysis the CAA should be conducting before committing consumers to fund early expansion activity.

4.61. The CAA has failed to engage with the risk (identified by its own adviser) of cost overrun leading to plausible scenarios of net consumer harm. This is a material failure in the discharge of its duty to consumers, and defies logic given HAL's history of major cost overruns, including a baggage system budgeted at £234 million but delivered for £435 million (86% overspend), and a cargo tunnel budgeted at £44.9 million but delivered for c.£197 million (approximately 339% overspend).[31]

The "plausible scenarios" standard does not engage with these concerns and is not an appropriate standard for regulatory decision-making

4.62. The CAA's stated basis for proceeding is that *"there are plausible scenarios where there would be significant net benefits to consumers*." We agree that such scenarios exist (although we do not accept that they would arise from the elimination of alleged scarcity rents, for the reasons set out at paragraphs 4.49 to 4.52 above).

4.63. Our concern is that, on the CAA's own evidence, scenarios of net consumer harm are equally plausible, and may be made more likely by the regulatory approach the CAA is proposing.

4.64. Due to its failure to undertake an independent cost-benefit analysis ("CBA"), and reliance on outdated, methodologically flawed, and sponsor-commissioned CBA, the CAA risks drawing the wrong conclusion. Regulatory treatment of early costs should be seeking to shape the programme's scope and cost trajectory from the outset, helping to identify the success criteria on which a positive CBA can in practice be delivered, rather than an optimistic – optimism biased – view of the benefits and realisable costs of the project.

4.65. The "plausible scenarios" standard proposed by the CAA is not appropriate for regulatory decision-making, particularly in circumstances where its intervention will result in direct consumer harm.

4.66. The CAA's case for consumer benefit relies almost entirely on the assumed elimination of alleged scarcity rents. On that basis, the CAA's duty to further the interests of consumers as to cost is paramount. However, the Draft Decision will increase airport charges, which will be passed through to consumers. In accordance with the Better Regulation principle of proportionality, the CAA must therefore be satisfied – on a robust evidential basis – that its intervention will deliver consumer benefits that outweigh this direct consumer harm. A reliance on "plausible scenarios" is not sufficient.

4.67. The scale, and even existence, of scarcity rents remains uncertain, such that the CAA has concluded only that "*there is a plausible case that scarcity rents are material*".[32] That is not a sufficient evidential foundation to justify imposing consumer harm. Proceeding on that basis would constitute a failure to appropriately balance consumer benefit against consumer harm, and risks breaching the CAA's primary duty.

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[30] Flyvbjerg and Gardner 'How Big Things Get Done' (2024), Annex A, p. 192

[31] See paragraph 6.8.4 of BA's response to CAP3201 for further detail

[32] CAP3238, paragraph 1.36

D The proposed framework for early cost recovery risks foreclosing third-party delivery models and more flexible delivery options.

4.68. The most consequential risk in the CAA's proposed approach is not the quantum of expenditure for 2025–2026, but what that expenditure does to the structure of future options. Early expansion activities – particularly land and property acquisition, design development, and engineering feasibility work – progressively define the scope, configuration, and delivery model of the eventual scheme. Consumer-funded expenditure that proceeds without adequate governance creates two compounding risks: first, that design and procurement decisions foreclose alternative delivery approaches before those alternatives have been properly assessed; and second, that the informational advantage HAL accumulates through consumer-funded design work entrenches its position as the sole credible deliverer, regardless of what the CAA's ongoing regulatory model review concludes.

4.69. The CAA is currently consulting on whether the existing regulatory model for expansion should be revised or replaced.[33] That review expressly contemplates alternative delivery and financing models. Proceeding in parallel with early cost recovery grounded in the existing model, and without binding obligations on HAL to preserve design transferability and procurement optionality, risks prejudging the outcome of that review in practice, even if not in terms. Arrangements embedded during 2025–2026 early expenditure, including land acquisitions and design assumptions, may constrain or complicate any regulatory reform in ways that are difficult to reverse once incurred.[34]

4.70. The CAA's reasoning on this issue in paragraph 2.24 of the Draft Decision cuts against its own position. The CAA argues that, because the future regulatory regime for expansion has not yet been determined, HAL cannot rely on the prospect of higher future returns, and that guarantees on early cost recovery are therefore needed now. But the same regulatory model uncertainty that the CAA invokes to justify recovery is precisely the reason why consumer-funded commitments should not be embedded at this stage. If the regulatory model review might deliver a fundamentally different framework for expansion, including the potential for third-party delivery or alternative financing structures, then costs incurred and decisions taken under the current framework risk being stranded or incompatible with that outcome, at consumers' expense. For the reasons set out above, the Draft Decision risks doing precisely that.

4.71. The resolution is to ensure that the governance framework for 2027+ early costs is model-agnostic: that the required outputs, scrutiny standards, approval criteria, and consumer protections are calibrated to protect consumers regardless of which regulatory model is ultimately adopted. Governance principles such as ex-ante approval, defined outputs, binding caps, and independent assurance can be structured to preserve optionality and support expansion regardless of whether it is delivered under the existing HAL-regulated model, a third-party structure, or a hybrid arrangement. The CAA has the opportunity to establish those principles now for the next phase of expenditure, without prejudging the model question.

4.72. Accordingly, the CAA's final decision must, at a minimum, make clear and secure that:

- any regulatory treatment of early costs remains fully capable of alignment with the conclusions of the CAA Review;
- HAL is subject to binding obligations to ensure that early expansion activities do not foreclose third-party delivery models or more flexible approaches, including by preserving optionality in

[33] CAP3195, paragraph 1.14

[34] See paragraph 5.10 of BA's response to CAP3201

design and procurement and maintaining compatibility with potential future regulatory reforms; and

- effective provisions are in place to ensure the transferability of land and property acquired by HAL during early expansion to alternative developers, recognising the CAA's own concern that enabling costs (such as land acquisition) may act as a barrier to competition.[35]

4.73. The CAA's Draft Decision acknowledges some of these considerations but treats them as matters for ex-post review. Given that ex-post review cannot undo design lock-in or recover informational asymmetries once established, that is not an adequate response.

5. Specific concerns with the Draft Decision – The CAA's proposed approach and guardrails do not constitute meaningful consumer protection.

5.1. Alongside our concerns regarding the CAA's underlying rationale for its proposed regulatory treatment of early costs, we continue to have a number of specific and substantive concerns with the proposed regulatory framework itself. In particular:

i. **Ex-post framework**
Ex-post review is intrinsically limited. By the time such review is undertaken, evidential constraints make it difficult to reconstruct the basis for individual spending decisions, and the review becomes ineffective in practice. For a programme of this scale and risk profile, the regulatory framework should instead be grounded in ex-ante approval and oversight, in order to provide effective control, scrutiny, and consumer protection.

ii. **Lack of clarity on cost standard**
The Draft Decision does not clearly define the cost standard to be applied in assessing the recoverability of expenditure, thereby creating uncertainty and weakening regulatory discipline.

iii. **Absence of defined outputs and outcomes**
The Draft Decision does not specify the outputs or outcomes expected from the proposed expenditure. In the absence of clearly defined outcomes and deliverables, the framework fails to impose appropriate commercial discipline or provide a basis against which performance and value for money can be assessed.

iv. **Ineffective expenditure cap**
The proposed cap does not operate as a binding constraint in practice and therefore does not provide the intended incentives for cost control or financial discipline.

v. **Unjustified pre-consent return**
The justification for allowing a full WACC return on pre-consent expenditure is not supported by the underlying risk profile and fails to provide appropriate incentives at this stage of the programme.

vi. **Independence of the assessor**
Any independent assessor must be demonstrably independent, and should be appointed by, and accountable to, the CAA rather than HAL, in order to ensure effective oversight and protection of consumer interests.

vii. **Omission of key elements of the regulatory package from the proposed licence modifications**

[35] CAP3201, paragraph 2.46

All proposals, including the true-up mechanism and efficiency assessment framework, should be captured in the proposed licence modifications to provide transparency and predictability of how the regulatory framework for early expansion costs will operate in practice.

5.2. Without prejudice to our primary position that the CAA should not proceed with permitting early cost recovery, we set out below the reasons why the CAA's proposed framework and associated guardrails do not constitute effective or sufficient protection for consumers and why therefore a far stronger set of arrangements are necessary to protect consumers interests.

5.3. The limitations inherent in the approach adopted for 2025–2026 costs, where expenditure has, in substantial part, already been incurred in the absence of any established regulatory framework and where the approach is therefore necessarily ex-post in nature, must not be repeated. From 2027 onwards, the CAA will have both the opportunity, and in our view the obligation, to establish an appropriate ex-ante framework with sufficient lead time to facilitate meaningful regulatory and stakeholder scrutiny before expenditure is committed. The CAA has indicated it will not address its approach to early costs for 2027 onwards until it has determined the appropriate regulatory model for expansion.[36] For the reasons set out in Section 4.C, that sequencing risks recreating precisely the conditions that have produced the deficiencies in the current framework: governance principles developed under time pressure, with expenditure already committed and the options for ex-ante control foreclosed. The governance principles required to protect consumers are not model-specific and should be established now.

5.4. The subsections below further explain why such an approach is necessary.

Reliance on an ex-post framework remains inherently flawed and will not protect consumers from inefficient and unnecessary costs

5.5. The CAA's proposed approach remains inherently ex-post in nature. Such an approach is fundamentally weak and difficult to apply effectively in practice, for the reasons set out in our response to CAP3201.[37] In particular:

- Ex-post review is intrinsically limited. By the time such review is undertaken, evidential constraints make it difficult to reconstruct the basis for individual spending decisions. HAL will, in practice, retain a material information advantage over the CAA, and the incentive effect of any review is negligible once costs have been incurred and incorporated into the RAB.

- The DIWE standard is ineffective in practice, and the CAA has previously identified that it is not designed for early expansion costs.[38] The "demonstratively, inefficient and wasteful expenditure" (DIWE) standard shifts the burden of proof onto the CAA, sets an unreasonably high evidential threshold and, as the CAA's own previous findings indicate, does not materially influence behaviour or provide meaningful protection for consumers.

- The CAA has itself acknowledged that ex-post review sets a high bar for disallowance whilst offering no incentive to find efficiencies,[39] is challenging to carry out (particularly in the context of land acquisition and enabling costs),[40] makes it difficult to translate concerns into findings,

[36] CAP3238, paragraph 1.41

[37] See paragraphs 6.1–6.6

[38] CAP2265E, paragraph F12

[39] CAP3195, paragraph 264

[40] CAP1996, paragraph 3 and CAP3201, paragraph 2.55

resulting in minimal disallowance even where material issues are identified,[41] and has already been abandoned in favour of ex-ante assessment as of H7, with the CAA stating that ex-post evaluation should only be considered "in extreme cases".[42]

- Regulatory leverage is materially weakened once costs are sunk. Once consumer-funded expenditure has been incurred, the CAA cannot credibly challenge scheme scope, resist cost escalation, or revisit design decisions without implicitly accepting that prior expenditure was inefficient or misdirected.

5.6. Expenditure that has been incurred may not be manifestly inefficient or wasteful in isolation. However, with appropriate ex-ante scrutiny and assessment of alternatives, such expenditure may have been avoided altogether, reduced in scope, or directed in a manner that more effectively aligns resources with the requirements of the expansion programme and the interests of consumers.

5.7. For these, and other related reasons, the central limitation of an ex-post framework is that it is incapable of preventing the most consequential categories of early expenditure – namely those that fix design choices, foreclose alternatives, or materially influence long-term costs. By definition, ex-post review-based frameworks can only assess such decisions after they have been taken and, in many cases, after their effects have become irreversible.

5.8. It is recognised that, given the timing of the Draft Decision and the fact that a substantial proportion of 2025–2026 expenditure has already been incurred, an ex-post approach may now be unavoidable for a significant portion of that expenditure. However, this further underscores the need for the CAA to establish, without delay, a robust and transparent ex-ante regulatory framework for expenditure from 2027 onwards.

5.9. As previously submitted, any allowance for early cost recovery should be conditional on prior CAA approval against clearly defined criteria, including necessity, timing, preservation of optionality, expected outputs and deliverables, and a quantified value case. Such an approach should be grounded in an ex-ante framework, rather than an ex-post model, with enhanced scrutiny applied to categories of expenditure that risk creating lock-in or foreclosing alternative delivery options, including land and property acquisition. This would promote transparency and ensure clear traceability of planning decisions with potentially material implications for the overall cost envelope of capacity expansion.

The Draft Decision does not clearly define the cost standard that will be applied in the CAA's ex-post review of costs

5.10. The Draft Decision does not establish a clear, operationally meaningful cost standard for the ex-post review of HAL's early costs. Without a defined standard, the review cannot provide the CAA's claimed consumer protection.

5.11. The December 2025 Consultation framed the ex-post review around the DIWE standard, while also listing specific grounds for disallowance. The Draft Decision provides less clarity around what standard it will use, with the CAA stating it is "not proposing to apply the DIWE test to early expansion costs in a mechanistic way".[43] However, it does not articulate what standard replaces it, nor does it engage with BA's objections to use of the DIWE framework. Instead, paragraph 3.68 sets out a list of categories of potential disallowance: costs that are not incremental to H7 allowances, were

[41] CAP2665E, paragraphs F59–60

[42] CAP3195, footnote 53

[43] CAP3238, paragraph 3.64

incurred earlier than appropriate, are duplicated, unduly reduce competition, could have been procured more efficiently, involve property purchases where more efficient alternatives existed, or are associated with lobbying.

5.12. These categories are framed as illustrative grounds for disallowance, not as a coherent cost standard with a defined evidential threshold. The Draft Decision does not specify the level of evidence required to disallow costs under each heading, whether the burden of proof lies with the CAA or with HAL, how the individual tests relate to one another, or whether the list is exhaustive. The result is a framework that is indeterminate in scope and unclear in application, creating a material risk that the review becomes a procedural exercise in which HAL provides post-hoc justification for spending decisions already taken, and the CAA lacks the defined standard to challenge those decisions effectively.

5.13. The paragraph 3.68 tests also do not adequately address the central consumer protection question: whether specific expenditure needed to be incurred at this stage, as opposed to being deferred until consent risk is reduced and the scheme is more clearly defined. The tests focus primarily on narrow procurement efficiency ("could have been procured more efficiently"), not on whether the timing, scope, and scale of an activity was justified by reference to scheme maturity, remaining uncertainty, and the availability of less committal alternatives. The Draft Decision does include a test for costs "incurred earlier than appropriate/necessary", but this is not developed or defined. In practice, HAL will be able to justify any expenditure by reference to the Government's timetable, which the CAA itself treats as the primary programme driver, rendering the timing test circular.

5.14. For the ex-post review to function as a meaningful consumer protection mechanism, the CAA must, at a minimum, in its final decision:

- define a clear evidential threshold for disallowance, rather than relying on a list of illustrative categories;
- place the burden of proof on HAL to demonstrate that costs are efficient, necessary, and appropriately timed, rather than requiring the CAA to prove the contrary;
- include a substantive test of necessity and timing that addresses whether expenditure needed to be incurred at this stage, assessed against defined criteria including scheme maturity and the availability of less committal alternatives; and
- specify the standard with sufficient clarity to enable airlines and other stakeholders to scrutinise and challenge HAL's expenditure as part of the review process.

Absence of defined outputs and outcomes

5.15. The Draft Decision provides for £320 million of consumer-funded expenditure without defining what that expenditure is required to produce. There are no specified outputs, no success criteria, and no defined milestones against which the adequacy or value of HAL's early expenditure can be assessed, nor does the CAA propose to include any clawback mechanism, including in the event HAL withdraws from expansion for commercial reasons. The framework funds a process, not an outcome.

5.16. This is a significant departure from the CAA's own approach elsewhere, such as the use of delivery obligations within H7. The CAA states in CAP3149 that this approach is "less suitable for expansion planning costs where it is more difficult to specify outputs and delivery obligations to confirm that the capex has delivered the outputs expected".[44] But the conclusion the CAA has drawn from that difficulty is to dispense with output definition altogether, rather than to develop a proportionate alternative that preserves the link between expenditure and defined deliverables.

5.17. The consequence is that the ex-post review has no benchmark against which to assess whether early expenditure has delivered value for consumers. The paragraph 3.68 tests ask whether costs were efficiently incurred, but not whether the activities those costs funded were the right activities, undertaken at the right time, to achieve defined objectives. Without defined outputs, the distinction between productive expenditure and wasted expenditure is invisible to the framework.

5.18. No commercial investor would accept these terms. In infrastructure development, pre-consent expenditure funded by third parties is invariably subject to defined deliverables, phased drawdown against milestones, and the right to withhold further funding if deliverables are not met. Consumers are being asked to commit capital on terms that no rational provider of risk capital would accept: full exposure to the downside, no intermediate mechanism to assess whether value is being delivered, and no ability to redirect or withdraw funding if the programme is not on track.

5.19. The reopener provision does not address this gap. It is a change-of-circumstances mechanism, triggered only if further evidence shows that the costs and risks of early cost recovery outweigh the benefits to consumers. It is not a performance review, does not assess whether value is being delivered against programme objectives, and provides no mechanism for airlines or consumers to raise concerns about programme direction between reporting periods. A mechanism that can only be triggered by a wholesale reassessment of the framework is not a substitute for structured mid-programme oversight.

5.20. The absence of defined outputs also creates consumer harm beyond the gap in the regulatory framework. Each spending decision on environmental surveys, land acquisition, or design development embeds assumptions about the scope and configuration of the eventual scheme. Without output definitions and intermediate review points, the framework provides no mechanism to ensure that early expenditure preserves, rather than forecloses, the range of possible outcomes for consumers. This is particularly concerning given the fundamental uncertainties that remain about the expansion programme, including the ongoing review of the ANPS and the wide range of cost uncertainty identified by Steer. Expenditure that locks in design choices before these uncertainties are resolved may prove premature or misdirected, and the framework as currently designed cannot identify or prevent this.

5.21. The CAA should, in its final decision, require HAL to define the outputs its early expenditure is expected to produce, and should link the ex-post review to an assessment of whether those outputs have been delivered. This need not replicate the full H7 delivery obligations framework. But some form of output specification is essential if the ex-post review is to function as more than a procedural check on procurement efficiency.

Ineffective expenditure cap

5.22. BA notes that the CAA has declined HAL's first request to increase the cap on 2025/2026 early costs, retaining it at £320 million (2024 prices). That is welcome, but the Draft Decision notes that the cap is already under pressure again: paragraph 1.25 states that HAL is preparing further detailed bottom-up cost estimates for the remainder of 2026, which it intends to submit shortly and which the CAA has confirmed it will address in its final decision.

[44] CAP3149, paragraph 2.20

5.23. The mechanism by which the "cap" can be exceeded confirms that it does not operate as a binding constraint. Paragraph 3.25 requires HAL to provide "comprehensive evidence in advance", explaining why an increase would be "necessary, efficient and in the interests of consumers," following which the CAA will "consider this information carefully". The evidential threshold is undefined, there is no requirement for independent verification, and there is no structured consultation with airlines before a determination is made.

5.24. There is a serious risk that any increase in the cap can be justified by reference to the same flawed logic presented within the Draft Decision. The CAA's primary justification for early cost recovery is the risk that insufficient regulatory certainty causes schedule delay. That rationale is likely to be invoked by HAL to support any future request to increase the cap, creating a dynamic in which HAL is incentivised to incur escalating costs while retaining the ability to hold-out or withdraw with no clawback mechanism to make consumers whole. A cap that yields to timetable pressure whenever it binds does not impose meaningful cost discipline on HAL.

A full WACC allowance is not justified

5.25. The Draft Decision proposes to remunerate HAL's early costs at 3.30% (pre-tax, RPI-real), described as the bottom of the H7 WACC range.[45] The CAA states that the risk profile of pre-consent expenditure is *"different and lower compared to forward looking capital programmes,"* but its proposed response – using the floor of an equity-inclusive WACC rather than a fundamentally different basis of remuneration – does not follow from that acknowledgment.

5.26. The equity risk premium within the WACC compensates shareholders for the possibility that capital may not be recovered. For standard regulated capital, that risk is real: the regulatory settlement determines whether the investment earns an adequate return. For pre-consent expenditure being funded by consumers through the mechanism the CAA is now proposing, that risk has been removed: recovery is guaranteed subject only to the DIWE test. HAL bears execution risk on how efficiently the money is spent, not capital recovery risk. The appropriate return for expenditure of this character in this specific case is therefore debt-like – compensation for the cost of financing the spend, without an equity risk premium for a risk that consumers are already bearing.

5.27. This argument is specific to the pre-consent period and does not affect the appropriate treatment of capital once a DCO is granted. At that point, early costs assimilated into the RAB should earn the full WACC applicable to the H8 price control. HAL is not permanently disadvantaged: it is compensated for its financing costs during the pre-consent period and made whole on DCO grant. The overall project return is not impaired.

Ineffectual reporting and assurance arrangements

5.28. The reporting and independent assurance arrangements give the CAA visibility of what HAL has spent, but they do not constrain what HAL spends. By the time a quarterly report documents a large land commitment or a design decision that forecloses alternatives, the expenditure is already sunk.

5.29. The independence of the assurance arrangements are also questionable. Although the CAA intends to propose to approve the terms of reference and identity of the independent technical experts, they are commissioned and paid by HAL. In other regulatory contexts where genuinely independent assurance is required, the regulator either appoints the expert directly or acts as the commissioning client. An

[45] CAP3238, paragraph 3.95

expert accountable to the party whose costs they are reviewing cannot provide the same quality of scrutiny as one accountable to the regulator.

5.30. Beyond this structural problem, the Draft Decision does not specify what the assessors are actually meant to look for or how they are expected to go about it. For example, the CAA states that costs will be disallowed where they "reduce potential competition where HAL has not taken appropriate steps to avoid these costs." It is not obvious how an assessor would identify such costs in practice, what evidence would be required, or what HAL would need to demonstrate to satisfy them. Without that specificity, there is nothing to prevent the assessors from deferring to HAL's own account of its decisions.

5.31. The Draft Decision creates a chain of accountability in which HAL reports costs, the independent assessors review them, and the CAA conducts an ex-post review. But none of these actors has a defined standard of what good performance looks like. There are no agreed milestones, no scope definition against which progress can be measured, and no articulation of what a well-managed DCO preparation programme should cost or deliver at each stage. Without these, these guardrails provide little protection to consumers. This structural weakness is compounded by the absence of any formal role for airlines in the oversight process.

5.32. This issue is compounded by the information asymmetry between HAL and the CAA. HAL controls the programme decisions that determine both the quantum and the timing of spend. It knows whether a particular piece of land genuinely needs to be acquired now, whether a design choice preserves optionality or forecloses it, and whether internal resource is truly incremental to H7 activity. Quarterly reporting documents HAL's own framing of those decisions rather than independently verifying the underlying judgements. It is difficult to see how CAA can credibly disallow costs on an ex-post basis through these reporting and assurance arrangements.

There needs to be tangible licence mechanisms to facilitate the transferability of a scheme to a third party

5.33. The CAA should introduce tangible licence mechanisms to ensure that HAL meaningfully engages with third-party deliverers transparently and in good faith, so that consumer-funded design work does not create an information advantage that forecloses competition. If consumers are funding early design, engineering and feasibility work, that expenditure should serve the long-term consumer interest in competitive delivery, not entrench HAL's position as the sole credible deliverer.

5.34. At minimum, this requires a licence condition that any design work undertaken and funded as an early cost is documented, structured and transparent so that it can be transferred and is accessible to alternative bidders (with appropriate confidentiality in place). This is all the more needed considering the speed at which early cost funding is being requested by HAL. In order to deliver a competitive process for expansion, the question on early expansion costs cannot be looked at in isolation or lack those necessary safeguards.

5.35. The CAA has not engaged with this proposal. In paragraphs 4.47–4.49 of the Draft Decision, the CAA acknowledges airlines' concerns about informational asymmetry but responds by pointing to cost recovery parity between promoters – the fact that other credible developers can also recover early costs. That answer addresses a different question. The concern is not whether rivals can fund comparable work in parallel; it is whether consumer-funded design work accumulated by HAL would be accessible to an alternative deliverer if the regulatory model review concludes that a more competitive delivery structure is appropriate. The CAA's proposed licence modifications contain no obligation of this kind. This gap should be addressed in the final decision.

The key elements of the CAA's proposed regulatory package must be captured in the licence modifications

5.36. Finally, as set out in BA's response to CAP3201 (see paragraph 6.11), the CAA's proposal to exclude essential aspects of its proposals, including the ex-post review and true-up mechanism, from the proposed licence modification represents a substantive weakening of consumer protection. By leaving material elements of the regulatory framework outside the licence, the CAA creates significant uncertainty and ambiguity as to both the scope of the framework and the manner in which it is intended to operate in practice. The discussion above regarding the Draft Decision's failure clearly to define the applicable cost standard for the CAA's proposed ex post review of expenditure is a clear and material illustration of those risks.

5.37. Consistent with our CAP3201 response, at a minimum the licence modifications should:

(a) Define the scope and test for the ex-post review;

(b) Specify the mechanics and timing of the true-up (including how disallowed / duplicative costs are removed from the RAB); and

(c) Specify how the cap and any reopener interact with true-up decisions, so consumers are not relying on unenforceable statements of intent.

6. BA's recommendations – If the CAA proceeds with allowing pre-DCO recovery, BA's proposed alternative framework offers materially better consumer protection.

6.1. For the reasons set out above, we remain unequivocally opposed to the recovery of early costs prior to Heathrow obtaining DCO approval. As with our CAP3201 response, our primary recommendation remains that the CAA should withdraw its Draft Decision and reconsider its position on the regulatory treatment of early costs on the basis of a comprehensive and balanced cost–benefit assessment.

6.2. Notwithstanding these concerns, and strictly without prejudice to that position, in the event that the CAA proceeds with its Draft Decision, the guardrails and governance within the CAA's regulatory framework must, at a minimum, be materially strengthened on a prospective basis.

6.3. BA's proposed alternative framework, set out below, offers materially better consumer protection than the CAA's current proposals and must, at a minimum, be applied to early costs from 2027 onwards. For the reasons set out in this section, the CAA's Draft Decision does not adequately protect consumers, and BA's proposals address each of the identified deficiencies in a manner that the CAA's approach does not.

BA's proposed enhanced regulatory framework

6.4. Building on the proposals that we set out in our consultation response to CAP3201,[46] our recommendations for an enhanced regulatory framework for HAL's early costs are as follows:

i. **Alignment with CAA Review.**

Any regulatory treatment of early costs must remain fully capable of alignment with the conclusions of the CAA Review. In practice, this means that the governance framework established for early costs (including approval criteria, output definitions, cost standards, and reporting obligations) should be designed on a model-agnostic basis: that is, structured so as to be compatible with the full range of regulatory models under consideration in CAP3195 and the

[46] See Section 7 of BA's response to CAP3201.

recently published CAP3251 shortlist of regulatory models, including third-party delivery structures, without requiring those arrangements to be unwound or renegotiated when the review concludes. HAL should not be permitted to acquire rights or recover costs in a manner that would give it a structural advantage over alternative deliverers if the CAA Review concludes that a more competitive delivery model is appropriate.

The CAA itself recognises the importance of this objective in the current CAP3251 consultation. In its assessment of potential future approaches to capital governance and incentives, it states that "[f]*urther consideration will need to be given to how this approach will be integrated with arrangements for the oversight of early costs discussed in the draft decision on early costs we published in April 2026."*[47]

ii. **Preservation of delivery optionality and third-party participation.**

Early expansion activities must not foreclose third-party delivery models or more flexible approaches to Heathrow's expansion. HAL must be subject to obligations to preserve optionality in design and procurement, ensuring compatibility with potential future regulatory reforms, including third-party delivery models. Early-stage decisions must be explicitly required to remain flexible, reviewable, and capable of integration with alternative delivery approaches.

As set out in our CAP3201 response, HAL's licence must include provisions to facilitate third-party delivery, including requirements that consumer-funded design work is properly documented, structured, and made accessible (subject to appropriate confidentiality protections) to alternative bidders, thereby preventing the creation of informational asymmetries that could distort competition.

Compliance with these obligations should be subject to ongoing CAA scrutiny at ex-ante approval gateways (see iii. below), with HAL required to demonstrate how alternative delivery models and competitive processes have been considered.

iii. **Ex-ante approval within a CAA-led governance framework.**

Early expansion costs must be governed by a durable, transparent, CAA-led regulatory process, with ex-ante approval constituting the default mechanism for cost recovery. This process should establish defined milestones and gateway decision points at which the CAA determines whether early costs may be approved. Expenditure must be justified by HAL against clearly specified regulatory criteria, including necessity, defined outputs, timing, optionality preserved, and a quantified value case for the outcomes to be delivered. The framework should facilitate stakeholder scrutiny of HAL's underlying assumptions, preliminary work programmes, and evolving cost expectations at each milestone, supported by ongoing cost reporting and monitoring.

Consistent with (i), the process must be designed so as not to prejudice, constrain, or foreclose future regulatory reform options under consideration for Heathrow.

iv. **Defined success criteria and output measures.**

The CAA must adopt clear success criteria and output-based performance measures for each phase of early cost expenditure to promote efficiency and support the effective delivery of capacity expansion. At each approval gateway, the CAA should specify the outputs and deliverables expected from HAL in the subsequent phase.

[47] CAA, May 2026, Heathrow capacity expansion – consultation on a shortlist of regulatory models, CAP 3251, para 4.144

This will ensure that pre-consent expenditure is directed in a manner that supports the development of the expansion scheme to a credible and deliverable cost–benefit case, with pre-construction planning serving to mitigate the risk that optimism bias in the assessment of programme costs and benefits materialises in practice.

v. **Verified non-duplication of expenditure.**

At each approval gateway, HAL must provide a structured mapping of proposed workstreams and outputs against pre-COVID activities, supported by independent assurance and transparency for airlines and other stakeholders to interrogate and validate the analysis.

This requirement will strengthen ex-ante scrutiny and ensure that approved expenditure is demonstrably incremental to allowances and outputs funded prior to COVID-19 and within the H7 price control.

vi. **Binding expenditure caps.**

Expenditure caps for each phase of early costs must be binding to ensure strong commercial discipline and appropriate incentives. This should commence with the proposed cap of £320 million (2024 prices) for 2025–2026.

Expenditure in excess of the cap should not be recoverable from consumers absent a further ex-ante determination by the CAA following public consultation. The evidential burden must rest with HAL to demonstrate that any additional expenditure is necessary, efficient, and in consumers' interests, with a high evidential threshold applied.

We support the CAA's proposed position that any increase in the cap must be justified by clear, prior evidence meeting these criteria.[48] This standard should be consistently applied to all early costs within the ex-ante approval framework described above.

This should start with the cap of £320m (2024 prices) of expenditure CAA has proposed for 2025-26. Costs incurred above the cap should not be recoverable form consumers unless the CAA makes a fresh ex-ante determination following public consultation. The burden of proof should lie with HAL to demonstrate that the additional costs are necessary and efficient, with a high bar applied for any increase to the cap once it has been established ex-ante.

vii. **Strengthened ex-post review mechanism.**

If, contrary to our position, the CAA adopts an ex-post approach for any element of early expansion costs (as may be unavoidable for a substantial portion of 2025–2026 expenditure), the applicable tests must be materially strengthened.

As set out in our CAP3201 response, ex-post review must assess the purpose and timing of expenditure, in addition to efficiency. This aligns with the principles underpinning recommendations (ii)–(iv). Cost recovery tests must be intrinsically linked to ongoing regulatory scrutiny (whether ex-ante or ex-post) to ensure that HAL's decisions regarding the scope and timing of preliminary works are in consumers' interests, retain flexibility for alternative scheme designs and delivery models and can support deliverable expansion within an appropriate cost envelope.

[48] CAP3238, paragraph 3.47

While the Draft Decision signals elements of this approach,[49] the proposed tests remain high-level and unspecified, and risk being ineffective in practice. The ex-post review framework would be materially strengthened if its scope, methodology, and true-up mechanisms were codified within HAL's licence conditions.

viii. **Debt-like remuneration pre-consent.**

While the CAA has recognised that early costs should attract a lower rate of return than the prevailing allowed WACC,[50] this does not, in itself, provide sufficient discipline or incentives prior to DCO consent (see Section 5 above).

Any permitted return should be debt-like in nature, rather than based on a full WACC, with any equity-style uplift contingent upon the achievement of clearly defined delivery milestones and outputs. This approach is consistent with established regulatory practice for large, separable expansion programmes across other regulated infrastructure sectors and would more robustly link any pre-funding model for Heathrow's expansion to defined delivery criteria, thereby supporting the achievement of the scheme's intended outcomes and development objectives.

ix. **Independent assessor arrangements.**

Any independent assessor must be appointed by, and accountable to, the CAA (rather than HAL) to ensure genuine independence and appropriate consumer protection. Such an arrangement would support the milestone-based, ex-ante approval framework outlined in recommendation (ii).

If the CAA proceeds with an interim appointment by HAL, it must, at a minimum, impose robust safeguards to ensure independence. For example, consistent with Ofwat's approach to Price Control Deliverables in PR24, the assessor should owe a duty of care to the CAA and potentially other relevant stakeholders, in addition to HAL.[51]

x. **Clawback mechanism**

The CAA should introduce a clawback mechanism for consumer-funded early costs from 2027 onwards, structured as a contingent repayment obligation triggered if HAL withdraws from expansion or fails to obtain DCO by a specified long-stop date. The obligation should reduce proportionately as defined construction milestones are met, and be calculated net of any demonstrable residual value retained by HAL. The CAA was explicit that its decision not to include clawback for 2025–26 was specific to that phase, on the grounds that costs were already largely incurred;[52] that reasoning does not apply to future expenditure. Comparable contingent repayment structures operate in other regulated infrastructure regimes and there is no principled objection to their application here.

xi. **Reporting and monitoring**

We support the cost reporting and monitoring arrangements proposed in the Draft Decision and recognise their importance as a foundational element of an effective assurance framework for early-stage expansion expenditure. However, such arrangements will only be fully effective if

[49] CAP3238, paragraph 3.68

[50] CAP3238, paragraph 3.95

[51] See Ofwat, January 2025, 'Expenditure allowances – Assurance requirements for delivery of enhancement schemes appendix', which states that water companies "*should make sure that their contracts with third-party assurers facilitate the creation of an actionable duty of care owed by the assurer to Ofwat.*" p. 6

[52] CAP3238, paragraph 3.14

embedded within a robust ex-ante regulatory governance framework, rather than the predominantly ex-post approach that has been proposed for 2025–2026 expenditure.

This further underscores that the treatment of costs for 2025–2026 must not establish a precedent for future regulatory policy. A more rigorous, ex-ante framework is required for the treatment of all subsequent early costs.

The advantages of BA's proposed approach

6.5. We recognise that certain stakeholders, including HAL, may contend that the proposed framework is overly prescriptive, unduly burdensome, and liable to slow delivery and defer the realisation of project benefits. We do not accept that characterisation. On the contrary, the level of scrutiny and preparatory effort required for a programme of the scale and complexity of Heathrow's expansion is both necessary and proportionate.

6.6. Such an approach will reduce uncertainty, preserve flexibility to accommodate alternative delivery models, and support the development of the scheme within a cost envelope consistent with a robust and positive cost–benefit case.

6.7. Taken together, these proposals constitute a materially superior alternative to the CAA's Draft Decision. The robust, transparent, CAA-led regulatory process proposed above offers a number of material advantages over the CAA's current approach, including that:

- It will ensure that expansion is underpinned by rigorously scrutinised early-stage design and scoping decisions, thereby supporting optimisation of whole-life project costs.
- More developed pre-construction work will improve the reliability of cost estimates and benefit forecasts, reducing optimism bias and enabling more robust investment decisions, particularly where early costs are consumer-funded.
- Requiring HAL to undertake comprehensive pre-construction activities, subject to CAA and stakeholder scrutiny, will facilitate the early identification and mitigation of key risks, thereby improving downstream schedule certainty.
- The proposed guardrails will preserve flexibility and optionality in respect of alternative regulatory and delivery models for Heathrow, which may ultimately prove necessary.
- A highly scrutinised, ex-ante approval process will reduce ambiguity in scope and specifications, thereby limiting the need for costly changes and rework at later stages of the programme.
- In contrast to the CAA's more fragmented, ex-post framework, the proposed approach will provide greater certainty to HAL and other stakeholders by anchoring cost recovery in ex-ante regulatory decisions and oversight.
- The framework will promote stronger regulatory and stakeholder alignment. Early and structured engagement between HAL, the CAA, airlines, and other stakeholders will assist in resolving issues, refining requirements, and avoiding subsequent redesign or delay arising from approvals processes, that may put the schedule of the project at risk.
- Accordingly, BA's proposed framework will better support efficient and effective delivery of Heathrow's expansion, by ensuring that pre-consent activities are undertaken to an appropriate standard and with sufficient rigour and scrutiny.

Summary

6.8. For the reasons set out above, BA's proposed alternative framework for the ongoing treatment of early expansion costs offers materially better consumer protection than the CAA's current proposals and must, at a minimum, be applied to early costs from 2027 onwards. The CAA's Draft Decision does not adequately protect consumers, and BA's proposals address each of the identified deficiencies in a manner that the CAA's approach does not.

6.9. The table below summarises:

i. the CAA’s current guardrails;

ii. BA’s proposed guardrails; and

iii. why BA’s proposals are materially better than the CAA’s proposals.

6.10. In its final decision, the CAA should make clear that BA’s proposal represents the intended direction of travel and commit to establishing such a framework prior to the commencement of 2027, to ensure effective regulatory oversight and the proper protection of consumers' interests. As we have set out above, it is particularly important that the regulatory framework for early expansion costs is structured so as to be compatible and capable of integration with the full range of regulatory models under consideration in CAP3195 and the recently published CAP3251 shortlist of regulatory models, including third-party delivery structures.

Table 1 – Comparison of CAA proposals, BA proposals and why BA's proposals are materially better

CAA proposals	BA proposals	Why BA's proposals are materially better
Scope of early costs to be recovered. The CAA has proposed that early expansion costs can include land, property and enabling works, amongst other costs.	**i-ii. Alignment with CAA Review and preservation of delivery optionality and third-party participation.** Land, property and enabling works should only form part of early expansion costs to be recovered prior to DCO where strong regulatory guardrails are in place to ensure that HAL's early expansion activities do not foreclose third-party delivery models or more flexible approaches to expansion. HAL should be subject to obligations to preserve optionality in design, procurement, land and property acquisition[53], to ensure compatibility with potential future regulatory reforms, including third-party delivery models for Heathrow's expansion. HAL's licence must include provisions to facilitate third-party delivery, including requirements that consumer-funded design work is properly documented, structured, and made accessible (subject to appropriate confidentiality protections).	The proposed guardrails will help to preserve flexibility and optionality in respect of alternative regulatory and delivery models for Heathrow, which may ultimately prove necessary to secure cost effective expansion. The proposals will help address the risk that HAL's early expansion activities distort competition and entrench HAL's position as the sole credible deliverer, regardless of what the CAA's ongoing review of the regulatory model and ambition for alternative (third-party) delivery at Heathrow might conclude.
Ex post review-based assessment. The CAA proposes to assess the efficiency of HAL's early expansion expenditure through an ex-post review examining both the way costs were incurred and the activities to which that expenditure relates.	**iii. Ex-ante approval within a CAA-led governance framework.** Early expansion costs governed by a durable, transparent, CAA-led regulatory process, with ex-ante approval constituting the default mechanism for cost recovery.	Addresses the inherent limitations with an ex-post review-based cost assessment framework – see paragraphs 5.5 to 5.9 above. A CAA-led ex-ante approval framework will:

[53] Including provisions for the transferability of land and property to third-parties.

CAA proposals	BA proposals	Why BA's proposals are materially better
Such review would be based on the DIWE test but would not apply that test in a "mechanistic" way. The ex-post review, together with the potential threat of cost disallowance, is intended to provide the principal test and regulatory guardrail for determining whether costs have been incurred efficiently. This includes if actions or decisions arising from early expansion costs have unduly reduced the scope for future competition where HAL has not taken appropriate steps to avoid or mitigate such outcomes.[54]	Expenditure must be justified by HAL against clearly specified regulatory criteria, including necessity, defined outputs, timing, optionality preserved, and a quantified value case for the outcomes to be delivered. The framework should facilitate, through defined milestones and decision gateways, meaningful stakeholder scrutiny of HAL's underlying assumptions, preliminary work programmes, and evolving cost expectations at each stage of the process, supported by ongoing cost reporting, transparency, and monitoring arrangements. **iv. Defined success criteria and outputs.** The CAA should apply clear success criteria and output-based performance measures for each phase of early cost expenditure to promote efficiency and support the effective delivery of capacity expansion. At each approval gateway, the CAA should specify the outputs and deliverables expected from HAL in the subsequent phase and how its activities support third-party delivery. **v. Verified non-duplication of expenditure.** At each approval gateway, HAL must provide a structured mapping of proposed workstreams and outputs against pre-COVID activities, supported by	• Allow more effective regulatory scrutiny of HAL's proposed expenditure against defined regulatory criteria. • Provide stronger regulatory guardrails that early expansion expenditure is consistent with wider objectives for Heathrow's expansion. • Promote stronger regulatory and stakeholder alignment with ex-ante governance and approval prior to activities and costs being taken forward and incurred. • Provide greater certainty and predictability to HAL and other stakeholders by anchoring cost recovery in ex-ante regulatory decisions and oversight. • Allow greater definition of outputs and deliverables from each phase of early expansion activities and expenditure, including that the activities do not foreclose alternative delivery models and retain optimality and flexibility. • Facilitate the early identification and mitigation of key risks, thereby improving downstream schedule certainty

[54] The Draft Decision further states that disallowance may apply to costs which: are not incremental to the allowances established as part of the H7 price control and/or have been inappropriately allocated to expansion activities; were incurred earlier than was appropriate or necessary; duplicate costs already funded through the H7 price control, or incurred by potential promoters or through activities undertaken prior to the COVID-19 pandemic; could have been procured more efficiently; relate to property acquisitions where more efficient alternative approaches were available; or are associated with lobbying activities and/or are not directly related to the preparation of a planning application for expansion.

CAA proposals	BA proposals	Why BA's proposals are materially better
	independent assurance and transparency for airlines and other stakeholders to interrogate and validate the analysis. **viii. Strengthened ex-post review mechanism** Cost recovery tests must be intrinsically linked to ongoing regulatory scrutiny (whether ex-ante or ex-post) to ensure that HAL's decisions regarding the scope and timing of preliminary works are in consumers' interests, retain flexibility for alternative scheme designs and delivery models and can support deliverable expansion within an appropriate cost envelope.	
CAP on early costs incurred. Flexible cap with any increase to the cap required to be justified by clear, prior evidence that higher expenditure is necessary efficient and demonstratively in consumers interests.	**vi. Binding expenditure caps.** Expenditure caps for each phase of early costs must be binding to ensure strong commercial discipline and appropriate incentives. Expenditure in excess of the cap should not be recoverable from consumers absent a further ex-ante determination by the CAA following public consultation. The evidential burden must rest with HAL to demonstrate that any additional expenditure is necessary, efficient, and in consumers' interests, with a high evidential threshold applied.	Stronger regulatory guardrails and protections for consumers. This would help to mitigate the risk of hold-out behaviour by HAL, given that the burden of proof would rest with HAL to demonstrate that any expenditure exceeding the cap is necessary, efficient, and justified.
WACC based allowed return on early costs A WACC at the bottom of the range used by the CAA to inform the H7 price control Final Decision.	**vii. Debt-like return** Any permitted return should be debt-like in nature, rather than based on a full WACC, with any equity-style uplift contingent upon the achievement of clearly defined delivery milestones and outputs.	Stronger and more disciplined incentives on HAL to progress expansion, with the allowed return more consistent with the relatively unique financial characteristics and risk profile of early expansion expenditure.

CAA proposals	BA proposals	Why BA's proposals are materially better
HAL appointment of an independent cost expert. HAL appointed independent assessor.	**ix. CAA appointment of an independent cost expert.** Any independent assessor must be appointed by, and accountable to, the CAA (rather than HAL) to ensure genuine independence and appropriate consumer protection for the cost assessment.	Stronger regulatory guardrails and protections for consumers. Reduces the risk of bias, or the perception of bias, in the conclusions reached by the independent assessor.
Reopener provisions. Reopener that will allow the CAA to revisit the cap on early costs incurred by HAL in the event of a material change in circumstances.	**x. Reopener and clawback provisions.** The CAA should introduce a clawback mechanism for consumer-funded early costs from 2027 onwards, structured as a contingent repayment obligation triggered if HAL withdraws from expansion or fails to obtain DCO by a specified long-stop date. The obligation should reduce proportionately as defined milestones are met, and be calculated net of any demonstrable residual value retained by HAL.	Stronger regulatory guardrails for consumers, so that a reopener would not be relying on unenforceable statements of intent by the CAA.
Ongoing cost reporting. Ongoing reporting of early costs against HAL's approved programme and forecast to provide transparency and an early warning mechanism should early expansion costs deviate materially from expectations.	**xi. Reporting and monitoring** BA support the cost reporting and monitoring arrangements proposed in the Draft Decision and recognise their importance as a foundational element of an effective assurance framework for early-stage expansion expenditure. However, such arrangements will only be fully effective if embedded within a robust ex-ante regulatory governance framework, rather than the predominantly ex-post approach.	Such an arrangement would support the milestone-based, ex-ante approval framework.

7. Serious deficiencies in the CAA's consultation process and reasoning – The Draft Decision is rendered unsound by serious deficiencies and has been advanced through a process that falls short of the requirements for lawful consultation.

7.1. As set out in BA's response to CAP3201,[55] there continue to be serious deficiencies in the CAA's consultation process and reasoning which render the Draft Decision unsound. The key deficiencies are summarised in the subsections that follow.

i. **Failure to undertake independent cost-benefit assessment and reliance on outdated, methodologically flawed, and sponsor-commissioned analysis**

The CAA has failed to carry out its own cost-benefit assessment, even though it acknowledges "significant uncertainties" around expansion costs and benefits.[56] The CAA instead relies on HAL-sponsored analysis, and DfT/ITS analysis which is now close to a decade old and which the CAA itself acknowledges has limited relevance today as it does not reflect a range of recent developments.[57]

In reliance on this flawed evidence, the CAA has reached various conclusions without a reasonable basis, most notably in its conclusion that there are plausible scenarios of consumer benefit, based almost exclusively on assumed fare reductions resulting from the elimination of alleged scarcity rents which are in practice unobserved.

The CAA's repeated admission that it will "*continue to evaluate*" the analysis implicitly concedes that its assessment is incomplete, meaning the Draft Decision rests on an unstable, speculative evidential basis.[58]

The CAA has also stated that it will take account of new evidence in its final decision, including updated DfT cost-benefit analysis, a review of scarcity rents, and further submissions from HAL.[59] This appears to be an attempt by the CAA to correct its error after the fact, and comes too late. The effect is that its final decision will be based on key analysis which stakeholders have had no opportunity to be consulted upon. This runs contrary to the requirements for lawful consultation, and in particular Gunning principle 2, which states that consultees must be provided with sufficient information to enable an effective response.

ii. **Failure to consider alternatives or take account of relevant considerations**

The CAA has noted disagreement from stakeholders but not addressed their reasoning or alternatives, and key stakeholder concerns have been effectively ignored. For example:

(a) The CAA's reasoning lacks assessment of the long-term impacts and compounding of the £320m or any discussion of the potential for entrenching structural hold-out risk for future decision-making.

(b) The CAA's Option 4 (do not allow the recovery of early costs), which received substantial stakeholder support including from BA, is treated as resolved against in the Draft Decision

[55] See paragraph 4.9.1

[56] CAP3238, paragraph 2.62

[57] CAP3238, paragraph 2.42

[58] CAP3238, paragraphs 1.37, 2.70, 3.23

[59] CAP3238, paragraphs 1.31, 1.37, 2.66, 2.74, 2.89

without any engagement with the arguments made in its favour or any explanation of why the alternatives to guaranteed pre-consent recovery were judged inadequate.

(c) The CAA has failed to address BA's proposed mechanism; namely, the post-DCO confirmation approach, under which efficient costs become eligible for RAB entry on consent with commercial bridging in the interim. This would preserve the recovery incentive without transferring development risk to consumers.

(d) The CAA has failed to address BA's concerns regarding the application of a DIWE framework to the proposed ex-post review,[60] instead addressing only HAL's concerns on this issue.[61] As a result, the intended application of DIWE is now less clear, as explained at paragraph 5.11 to 5.12 above.

(e) The CAA has failed to ask whether HAL's current scheme and its associated cost trajectory is the right starting point, notwithstanding that phased or simpler scheme design could bring forward consumer benefits without requiring the same pre-consent investment profile.

iii. **Improperly gives precedence to the Government's timetable rather than its statutory duties**

The CAA has consistently prioritised speed of delivery of expansion and adherence to the Government's preferred timetable over its statutory duties to further the interests of consumers and promote competition. It has erroneously sought to justify this by suggesting that adherence to the Government's preferred timetable is synonymous with acting in the interests of consumers, repeatedly asserting that any delay to expansion would result in the loss of consumer benefits.[62] However, that proposition is not credible for the reasons set out in section 4 of this response.

The CAA's primary statutory duty is to further the interests of consumers, including as to cost, and to do so having regard to the need to promote economy and efficiency on HAL's part. It is under no duty to ensure expansion is delivered in accordance with the Government's preferred timetable, nor to prioritise delivery speed more generally. While the CAA must have regard to guidance from the Secretary of State the CAA must not subordinate its statutory duties to suit the Government's policy agenda. Any decision taken on that basis would be wrong in law.

This error is particularly significant in the context of early costs, where lessons learnt from HS2 highlight the risk of early decisions driven by schedule. Reviews of HS2 identify political pressure to maintain momentum as a central driver of the significant cost overruns and delays to that project.[63] It is therefore clear that pursuing speed of delivery is not a reliable proxy for consumer interest, and prioritising speed at the expense of cost discipline and proper project planning undermines efficiency and erodes consumer benefits.

iv. **The CAA's reasoning is internally inconsistent**

The CAA asserts that early cost recovery is required to mitigate the risk that HAL will slow down or pause expansion planning, while also maintaining that its decision will not set any precedent for the treatment of future expenditure. However, the CAA acknowledges that the 2025-2026

[60] See paragraph 6.4 of BA's response to CAP3201

[61] CAP3238, paras 3.53 and 3.64

[62] CAP3238, paragraphs 1.4, 1.38, 2.4, 2.5, 2.25, 2.72, 3.19

[63] Stewart Review, pages 7 and 66; Sir Stephen Lovegrove commenting on his review of HS2 in the Times, ahead of publication on 19 May 2026: "*The role of politics has been repeatedly raised by interviewees and previous reviews. This is an important subject and there is little doubt that all players, certainly at HS2 Ltd and the department, felt under significant pressure from ministers to keep things moving.*" Available at: https://www.thetimes.com/article/2940e887-d8db-4d2e-b20c-2b0aabab8731?shareToken=2c78204af51f1484e98e4643200fa37f

expenditure has, in substantial part, already been incurred. Any behavioural effect could therefore arise only in respect of future expenditure – yet it is precisely in relation to that expenditure that the CAA states no precedent is created.

As BA has set out in this response, if the CAA proceeds with the Draft Decision, it cannot and must not set any precedent for expenditure incurred from 2027 onwards for the reasons set out at paragraphs 4.6 to 4.8 above.

v. **"Plausible scenarios" is the wrong test for CAA decision-making, particularly for an intervention which will cause direct consumer harm**

The CAA proposes to allow early cost recovery on the basis of "plausible scenarios where there are significant benefits to consumers (in particular benefits deriving from reductions in possible scarcity rents)."[64] "Plausible scenarios" is not an appropriate evidential standard for making decisions of this significance, particularly where the intervention will increase airport charges that will be passed through to consumers, causing direct consumer harm.

In such circumstances, in accordance with the Better Regulation principle of proportionality, the CAA must be satisfied – on a robust evidential basis – that its intervention will deliver consumer benefits that outweigh this direct consumer harm. A reliance on "plausible scenarios" is not sufficient, particularly where the accompanying reopener mechanism cannot disallow costs that have already been incurred, and where the CAA acknowledges that the relevant costs have already been incurred or committed.

The CAA has confirmed that it is "*likely to need much greater certainty about the overall benefits case for capacity expansion*" before making allowances for expenditure incurred from 2027 onwards, where costs are forecast by HAL to increase significantly.[65] Statements of this nature imply the existence of a de facto materiality threshold below which early cost recovery may be granted without proper inquiry.

This position is incompatible with the CAA's statutory duties to protect consumers and promote economy and efficiency, and treats recovery as acceptable because £320 million is "relatively modest" compared to the projected total costs of expansion. This is a false comparison. Costs must be justified on their own merits and assessed in light of cumulative upward pressure on airport charges (including HAL's H8 proposals).

vi. **Speed of consultation process suggests predetermination**

As previously noted in BA's response to CAP3201 (para 4.9.1(a)), the speed of the consultation process reinforces concerns that consultation feedback was not properly considered and that this process has served principally to ratify a predetermined view rather than to evaluate evidence with an open mind, contrary to established principles for proper consultation.

In particular, the CAA issued its minded-to position on 25 September 2025, only 15 days after the consultation closed. This timeframe is plainly inconsistent with proper consideration of stakeholders' detailed submissions. Unsurprisingly, the minded-to position substantially replicated the CAA's original preferred approach. This sequencing gives rise to a clear and legitimate concern of predetermination, and is inconsistent with Gunning principles 1 and 4,

[64] CAP3238, paragraph 1.38

[65] CAP3201, paragraph 2.57

which require decision-makers to consult with an open mind, and to conscientiously consider and take account of responses in their decision-making.

BA is not alone in this view. Other consultees raised similar concerns in response to CAP3201:

(a) Virgin Atlantic stated that the timing of the minded-to position "strongly indicates a degree of predetermination", concluding that "these deficiencies in process, reasoning and stakeholder engagement weakens the legitimacy of the current proposals and seriously undermines confidence in the process";[66] and

(b) IAG stated that "the CAA's process for early costs was undertaken with haste, with key positions determined quickly, raising concerns of a predetermined outcome."[67]

While a decision-maker may consult on the basis of a provisional or even firmly held view, they must be prepared to keep an open mind and be willing to change their view if the evidence and submissions tendered are properly persuasive.[68] In circumstances where (i) the majority of respondents strongly object to the CAA's proposals, and have raised serious and substantive concerns (and put forward materially better alternatives) which the CAA has failed to address; and (ii) the CAA has progressed the consultation process without allowing sufficient time to credibly evaluate those objections, concerns or alternatives, the CAA's approach gives rise to a clear appearance of predetermination and falls short of the requirements for lawful consultation.

vii. **Lack of clarity on key implementation mechanisms**

The CAA has failed to set out essential aspects of its proposals. Key measures, including the true-up and the DIWE mechanism, are absent from the draft licence modifications, leaving stakeholders unable to assess how the proposals would function in practice.

[66] See paragraph 17 of its response

[67] See paragraph 22 of its response

[68] R. (on the application of British Academy of Songwriters, Composers and Authors) v Secretary of State for Business, Innovation and Skills [2015] EWHC 1723 (Admin) at [277].