

Terms of Reference for the Independent Review of NATS (En Route) Plc's flight planning sub-system failure on 28th August 2023

CAP 2594

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Enquiries regarding the content of this publication should be addressed to: ATCreview@caa.co.uk

The latest version of this document is available in electronic format at: www.caa.co.uk/CAP2594

Background

Following a failure on 28th August of the flight planning system operated by NATS (NATS (En Route) Plc), the CAA announced¹ it would commission an independent review into the technical issues that occurred on the day and how the aviation system as a whole subsequently managed the consequences on consumers of those technical issues. The review will consider the immediate cause of the failure, steps taken to prevent reoccurrence and NATS' communication with stakeholders during the incident, as well as considering broader matters relating to resilience of NATS' regulated business, the impact on consumers, and the wider aviation system responses.

The review will examine these issues within the context of the established regulatory and legislative framework and will make observations and recommendations to NATS, the domestic and international aviation system and the CAA. It will not directly inform decisions on the NR23 price control review that will apply to NATS' economically regulated business,² which the CAA expects to publish ahead of the outcome of this review. Nonetheless, if the review's recommendations indicate that we should consider making changes to NATS' price control arrangements we will take appropriate steps and, if necessary, propose changes following the established statutory process.

Review Panel

The CAA Board will appoint three independent panel members to steer the review and who between them will have a broad understanding of governance, consumer and economic issues along with the operation of air traffic management systems:

- a chair external to the CAA and independent of relevant aviation stakeholders; and
- two other panel members.

Accountability: The Independent Review Panel will be accountable for determining the final report findings and recommendations. Once completed, the final report will be shared with the CAA Board, and in turn the Secretary of State for Transport and then be published.

The Review Panel will be supported by secretariat provided by the CAA.

¹ On 06/09/2023, <https://www.caa.co.uk/newsroom/news/regulator-to-launch-independent-review-of-nats-technical-failure/>

² The CAA periodically sets prices and service quality targets on NATS (En Route) Plc through price control reviews. The review for the period January 2023 to December 2027, known as the NR23 review, began in December 2020, and the CAA expects to publish its final decisions.

Scope of the review

This review will consider available evidence and, as appropriate, make observations and recommendations on the following areas:

- 1. Immediate cause of the incident and preventing the occurrence of a similar incident:** The Panel will review the NATS' preliminary report³ and any relevant subsequent reports from NATS to ensure the cause of the incident is understood and appropriate mitigating actions have been implemented. The Panel will consider whether there are aspects of the events that led to this incident – technical, organisational and cultural – that may require further analysis and whether there are further steps that NATS, the CAA and other stakeholders should take to help it prevent the occurrence of similar incidents.
- 2. Incident communication and associated stakeholder engagement:** The Panel will consider the NATS Major Incident Plan and whether any changes may be needed to the way communication of a major incident takes place, both internally and to stakeholders. The Panel should consider whether the NATS policies and protocols on event escalation which were in place were adequately designed and worked effectively.
- 3. The resources and resilience arrangements available to NATS' regulated business to respond to system failures and major incidents in the UK's en route air traffic system:** The Panel will consider the availability of NATS technical staff and resources from service partners to respond to major incidents (24/7) and whether it has appropriate resilience arrangements in place to prevent, deal with, and recover from, system failures and similar major incidents.
- 4. Broader considerations around investment and infrastructure of NATS' regulated business:** The Panel will consider whether there are any wider lessons from the incident for NATS, the CAA as the regulator, or other parties, regarding the level and nature of previous and planned infrastructure investment by NATS as well as the procedures and approach NATS adopts as part of its infrastructure deployment.
- 5. NATS performance and incentives:** The Panel will consider comparable evidence about how well NATS performs against its peers and whether there are any lessons from this incident that should inform the framework for setting of NATS performance targets in the future, and the level of financial consequences faced by NATS not meeting target service levels, noting the need for any incentive scheme to avoid unintended consequences and take into account NATS' responsibilities to provide safe and efficient air traffic services.

³ Public version of this report is available at www.caa.co.uk/CAP2582.

6. **Consumer impact:** The immediate impact of the incident led to significant cancellations and delays that affected customers for several days because of the displacement of aircraft and crews and non-availability of alternative flights at the time of year. The Panel will set out an explanation of the generalised impacts of the incident on airlines, airports and consumers, particularly in relation to delays and cancellations and other issues that occurred together with any lessons to be learned.
7. **Aviation system response:** The Panel will assess how the aviation system – including airlines and airports - met their passenger rights obligations and consider the extent to which the sector performed well against its obligations as well as areas for improvement that might lead to better passenger outcomes in the future. This should include airlines and airports response to the incident, their communication with affected passengers, timeliness of re-routeing and re-booking of passengers, availability of additional capacity, the level of costs passengers were expected to “pay and reclaim” and management of vulnerable passengers. The Panel will also consider whether there are further steps that could be taken by airlines, airports and by the CAA (in respect of its guidance) that could allow greater flexibility and better consumer outcomes, ensuring that affected passengers reach their intended destinations in a reasonably timely manner.
8. **Airline and airport costs of providing care, assistance, and re-routeing to consumers:** the Panel will set out how the current UK framework allocates responsibility for these risks and associated costs between different parties and how this allocation works in other comparable states and industries. This will ultimately help inform Government on whether and how it wishes to consider the wider UK policy and legislative framework on these matters.

The review should conclude with a report to the CAA, identifying potential future actions for NATS, the CAA and airline stakeholders against the eight areas identified. As part of its conclusions the review may make recommendations for further analysis or work on particular issues by these parties. Following the review, the CAA will consider its findings and any further steps (such as enforcement action) that may be required. Any changes to the wider UK legislative and top level policy framework will be a matter for Government to consider following the conclusion of the review.

Ways of working

- Secretariat will be provided by the CAA.
- The Panel will provide steer to CAA teams on tasks they consider should be completed as part of fulfilling these terms of reference. The responsibility for prioritisation, resourcing, and planning will remain with CAA.
- The Panel will convene engagement mechanisms with relevant and interested industry stakeholders.
- The Panel will provide updates to the CAA leadership and Board, and the DfT as appropriate, at suitable intervals, to be agreed. This may include written and verbal briefings.

Indicative timeline

The Panel will be asked to provide its initial report, including proposed further next steps in January 2024. The detailed timeline for completion of the review will be agreed between the Panel and the CAA.