

Prospect ATCOs' Branch response to CAP 1511

*'Strategic outcomes for the economic regulation of
NERL 2020-2024: Discussion document'*



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Overview

Prospect represents almost 2000 ATCOs and 1000 air traffic systems specialists within the UK air traffic management system. This submission is made by our Air Traffic Control Officers' Branch (ATCOs' Branch) - a key stakeholder in UK ATM and on matters relating to UK and EU regulatory issues. The Branch has a strong working relationship with NATS, particularly with regards to the NERL licence and economic regulation.

We have prepared this paper on the assumption that the regulatory framework will not be affected by Brexit. However, we should place on record Prospect's policy position: while we want the UK to remain part of the SES project and to submit to EASA regulations, we believe that responsibility for the economic regulation of UK civil aviation should return to the UK. As such, we expect NERL to be exempt from RP3. We anticipate that the UK government would have a performance scheme of some sort and this submission will be relevant to the design of any such scheme.

The Branch took a keen interest in RP2, was involved in consultations at the time, and provided an in-depth assessment of the strengths and challenges of the economic plan. Many of the challenges detailed within our position paper have come to fruition, most significantly the staffing difficulties that NERL is currently facing - especially in Terminal Control which provides the approach functions for London's five airports. The staffing challenges were largely a consequence of the voluntary redundancy process, a response to the NERL regulatory settlement which required NERL to reduce prices by circa 21% over the course of the reference period.

There continues to be pressure from airspace users to cut costs. The CAA seems to be particularly sensitive to this pressure – as evidenced in CAP1511. However, given that the AEA's own figures are that ATM accounts for just 5.8% of airlines' total costs, the pursuit of even significant cuts in ATM costs will put safety and service delivery at risk for a marginal gain in ticket prices (or more likely, profits). The Branch understands the desire for the customer in a commercial world to put pressure on the service provider to cut costs, however there needs to be an understanding of the effects this is having in the long-term. Following extensive customer consultation, the RP2 settlement was broadly accepted as a means to deliver significant cost saving for users, in exchange for a slightly less optimal performance with delay. This 'accord' is conveniently forgotten now by the airspace users. For the remainder of RP2 and moving forward into RP3 Prospect expects the CAA and NERL to be more assertive in highlighting the price-service level contract. Going forward, RP3 needs to focus on value for money, or total economic value, rather than cost. Resilience and agility in the face of, for example, traffic growth above forecast, comes at a price.

It is incumbent upon the CAA to note that in 2016, the Branch came the closest to industrial action in over 20 years. The reasons for this are of course manifold, however the pressures NERL faces in reducing its cost base under pressure from the airlines and the performance scheme was an important contextual factor, compounded by a tightening labour market – itself a consequence of the regulator's decisions in NERL and elsewhere.

Prospect would also draw attention to CAP1551, Investigation under section 34 of the Transport Act 2000: Project Oberon. Multiple times throughout the document reference is made to the industrial relations climate within NERL, and this is cited as a possible risk that should have been foreseen (5.27). Whilst the document is in relation to a specific complaint with respect to NERL, we maintain that the CAA had an incumbent role in setting expectations on some of the issues that led to this climate, through its comments and regulatory approach to pension cost pass through, pay, and the employee share scheme. Indeed, this less favourable industrial relations climate *was* foreseen, by the NATS Trade Union Side and communicated as a risk to the CAA in the NTUS response to the RP2 Performance Plan Consultation Document 4th April 2014 para 3 page 12 where we state:

If staff are to bear the brunt of a cut in operating costs then this will potentially lead to industrial unrest which may manifest itself not just with industrial action but also non-co-operation, reduced flexibility and greater levels of absence.

The members of Prospect's ATCOs' Branch are experts, working within the ATM system each day and the people who are most keenly aware of the operational impacts of economic regulation. We urge the CAA to give greater weight to our input in RP3 than it did in RP2. As a key stakeholder in UK ATM, the Branch also feels that, under the regulatory requirements in the NERL licence, there is an imbalance in the requirements for consultation. Staff were consulted at a late stage in RP2 and it is possible earlier input may have provided a higher degree of rigour in some of the decisions. The Branch proposes that a modification is made to the NERL licence placing requirements on NATS to consult with its staff. This would also be consistent with existing European FAB legislation.

The Branch calls on the CAA to be more flexible in its approach to RP3 on two levels. Firstly, flexibility to take account of changes such as unforeseen traffic increases. This will allow NERL greater opportunity to react and the agility to achieve its objectives in more dynamic ways. At the time of writing, a significant unknown that must be factored-in to RP3 is the development and regulation of commercial drones; this could have an impact on airspace design and it will certainly have an impact on complexity. Secondly, the CAA should be more flexible when it comes to the areas it wishes to target for RP3. For example, in particular relation to cost efficiency, the CAA must consider the interdependencies between other areas such as the quality of service provision. The CAA might consider other ways to achieve targets that on initial appearances might be difficult to balance if not mutually exclusive. Related to these two points: the CAA should focus on outputs and avoid detailed examination of inputs. NATS is a business and, once committed to outputs, it should be allowed to manage the delivery of those outputs.

We are astonished that safety is not included in any meaningful discussion point, when it should be the first priority. CAP 1511 notes the CAA's duties under the Transport Act (of which safety is the first) and then ignores it. We accept that safety is probably seen as a 'given', but the danger is that complacency will permeate through, and proposals for RP3 will not be subject to proper risk assessment. Service quality is not all about delay, but delay is one of NERL's mechanisms for managing safety risks where its resilience is compromised. This is recognised in CAP 1551 (para 1.6)

Outcome 1 – Effective accountability mechanisms

The Branch agrees that there is a requirement for the airspace in the southeast of England to be modernised and improved in order to increase capacity and efficiency of flight. The Branch welcomes the statement made in 2.4 in particular, noting the significant investment that will be required in order to achieve the modernisation to this airspace. This should be balanced against any pressures set out in Outcome 2.

The Branch welcomes the concepts set out in 2.7 where increased consultation will form part of any new process, however as mentioned in the *Overview*, the Branch feels that it and its members, as key stakeholders in the ATM system with a significant and varied depth of knowledge of the processes that will be affected by any amendments or additions to NERL regulation, must also be consulted as a matter of course. This will ensure that more integrity is added to the entire process.

In terms of accountability mechanisms, in our view, measures should be output-based. Mechanisms need to be designed carefully so that they do not distort priorities or incentivise the wrong behaviours. We believe that one factor in the pressures NERL is experiencing in Operations at the moment is the requirement to divert resources into projects. This, in turn, has created a vicious circle, as more trainees are required to plug the holes and that requires operational controllers to be diverted to training.

Outcome 2 - Efficient prices

The Branch supports a level of price efficiency, within the context of a socially responsible performance scheme, and our members have been key in ensuring that NERL meets its cost efficiency targets for RP2. However, judgments about NERL's unit rate must be made with caution. We would have liked to see a caveat around the complexity of the airspace and the service provided in paragraph 2.14. The Branch does not believe there is much more 'give' in terms of cost reduction from an operational perspective, certainly not where quality of service delivery and delay are to be improved and mitigated respectively. As such, it is crucial that interdependencies are properly considered between the value of further cost reductions and continued improvement in quality of service proposed in outcome 3. The CAA must fully explore the consequences of continued pressure on outcome 2 and the effect this might have on outcome 3.

We accept that the regulator has to examine costs in a monopoly provider like NATS. However, this should be a 'felt fair'/value for money analysis, not a line-by-line audit which questions resource decisions made quite legitimately by the business. Where costs are subject to analysis, it is crucial that sensible benchmarks are used. Benchmarking of NERL's staff costs was very poor in RP2 with the IDS report being of low quality. There is no need to benchmark internationally (arguably very difficult, given different taxation and pensions arrangements, not to mention volatile exchange rates). In any event, the labour market for ATCOs has since matured and the active and tight market for tower controllers has seen pay rates increase in the last couple of years. As a general comment, ANSPs are struggling to recruit the numbers and quality of trainees they require.

As explored in 2.15-2.17, the Branch agrees that CAPEX should be transparent and fully consulted. Targets must be achievable, and NATS held to account. As always, a clear benefit to the airspace user should be articulated. Options between price and service resilience trade-offs are all very good in theory but when it comes to reality they are worth nothing. The airspace users' approach is so aggressive that there may be a breaking point to be reached where continued cost reduction and continued improvement of the quality of service provision no longer function and one of them cedes. It also seems to be forgotten by the airspace users the agreement to off-set the balance between the two during RP2 where the customers' first position was always cost reduction, to the detriment of a true improvement in service provision. Therefore, the regulator or NERL need to make a much stronger counter-representation to the airspace user community, or NERL is not incentivised to do better, and only penalised if the option favoured by the airspace user community is not achieved.

From 2.24 onwards, the document explores the details surrounding the defined benefit scheme for NERL employees. The Branch wishes to highlight its concern regarding the tone of the paper where it discusses pension financeability, namely of the DB scheme. The Branch will resolutely defend any perceived attack to the DB scheme. Additionally, it is a key element of the terms and conditions that are afforded the employees of the company and any attempt to alter an element of these will produce a strong reaction from the Branch in order to defend its members. Prospect seeks an early assurance that there will be no change in the CAA's attitude to pension cost pass-through for RP3.

Prospect continues to act responsibly in protecting what is a key covenant from privatisation, protected in both national and EU law. Staff have twice engaged in altering the scheme - including its closure to new entrants - to support NATS' future viability, all within the realms of the legal protections put in place. Furthermore, risks are being mitigated through a dwindling membership reducing liabilities and increasing actuarial certainty.

Finally, as referenced in 2.20, the London Terminal Manoeuvring Area is extremely complicated and works incredibly efficiently in its current construct with flexible staff across multiple sectors. The Branch supports the current approach.

Outcome 3 – Continued improvement in service quality

Prospect ATCOs' Branch will always encourage an improvement of service quality, especially with regards to safety. The Branch also encourages the approach in 2.35 where service quality might be measured by a 'broad strategic approach', and not simply delay, for example.

However, we repeat here our major concern: little or no effort has been made to understand the interdependency between outcome 3 and outcome 2. As RP2 has demonstrated, when strong focus is applied to cost reduction and service delivery improvement at the same time – one will have to give, particularly in the face of unforeseen events. There needs to be a more in-depth understanding of how and where these two elements can continue to be regulated, and where trade-offs, if any, might occur. During the consultation for RP2, the airspace users were informed that a reduction in cost would mean a reduction in service quality. Although this was accepted at the time, Prospect now finds itself in the position where we must defend our members from additional external pressure (e.g. A4E) due in most

part to this apparent acceptance in the reduction of service quality which has demonstrated itself most clearly through delays to the airlines. The Branch would urge the CAA to take note of lessons to be learned from the RP2 process and ensure the necessary defence of the agreements made by all parties during the current reference period and the one to come is repeated to the airspace users.

The Branch supports in theory the concept in 2.41 where in the pursuit of more efficient flight, that NERL would be allowed to take into account other factors, including noise, to help make the decision. NERL, however, is not the only body responsible for decisions when it comes to flight efficiency and so a broader understanding of how external influences would affect NERL's ability to achieve success in this field would need to be understood.

The Branch encourages system resilience stated in 2.43, and hopes the CAA will take into consideration the additional costs that increased resilience will require, be they to provide for procedures, staffing or equipment.

In general, the Branch does not support the concept of incentives in a safety-led field such as ATM. There is always a risk that significant financial incentives might encourage wrong behaviours in order to achieve them, to the detriment to safety or other essential cultures embedded in the system. Additionally, in 2.46, the Branch does support the introduction of technology where it enhances the role of the ATCO and once again, especially safety of the system, but not where it will replace skilled, professional work.

The Branch would also propose an elasticity approach to targets would could be flexible should an unforeseen situation occur. This flexibility could be linked to existing targets allowing them to be 'reset' in extraordinary circumstances. For example, delay targets could be pegged or linked to percentage increases or decreases of actual traffic when outside of the thresholds allowed for in the performance scheme regulation.

Conclusion:

To conclude this response to CAP1511, we summarise our key points in answering the four questions that accompanied the consultation.

- 1. Are the proposed three strategic outcomes the right ones to guide our future regulation of NERL in the period 2020-2024?*

Safety should be the first strategic outcome.

Further the Branch believes that there needs to be a better understanding of the interdependencies between the proposed strategic outcomes, especially between outcomes 2 and 3. A continued and fierce drive to cut costs against a backdrop of improved service delivery will lead to a trade-off perhaps not desired by the regulator or the airspace users and almost certainly not desired by the public. This trade-off has been seen in NERL's performance in 2016 where the combination of materially rising traffic levels and lower operational resilience through staff reductions and the

industrial relations climate led to higher levels of delay. This risk to service quality arising from the cost efficiency targets will remain throughout the reference period.

2. *Is there additional context or background information we should consider in developing our approach to the strategic outcomes?*

Where the CAA refers to stakeholder consultation throughout the document and specifically with regards to outcome 1, the Branch would like to see consultation between NERL and Prospect made a formal requirement. This relationship has already been established and maintained, but acknowledgement from the regulator of the value of the expertise the union and its members bring to the planning, development and execution of reference periods is vital to its success.

A Total Economic Value approach should be adopted, where the entire system and its value is viewed rather than simply the unit cost per flight. Such an approach would benefit the airspace users and the travelling public more and represent the true value of NERL's service delivery.

3. *Have we captured the right issues within each of these strategic outcomes?*

Effective accountability mechanisms:

The Branch agrees that there is a need for an overhaul of the airspace in the southeast of England but the CAA must remember that NERL operates in an environment with many conflicting influences and that any advance in airspace redesign is subject to these and thus not always under NERL's control. The undoubted challenge of integrating (or separating) large-scale commercial drone operations will arise during the RP3 period and must be factored-in to the CAA's strategy for NERL.

Efficient prices:

The Branch welcomes:

- More transparency with regards to CAPEX
- A certain level of price efficiency but not to the detriment of safety, investment, staff Ts&Cs etc.

The Branch cautions:

- Any attack to the terms and conditions of the DB scheme
- A lack of thorough understanding between efficient pricing and improved service quality

Continued improvement in service quality:

As stated before, this outcome must be balanced against the apparent fierce need for outcome 2. ATM is already seeing the downside of the imbalance between these two during this current reference period and lessons must be learned if they are not to be continued or even exacerbated during RP3.

The Branch welcomes the understanding that other external factors such as noise influence the pursuit of economic flight. Additionally, the Branch welcomes an

improvement in system resilience but there is a need to understand the cost that this will impose on NERL.

Finally, the Branch does not support financial incentives in a safety-driven field such as ATM. Such an approach has the potential to harbour bad behaviours which could affect the quality of service provision to the airspace users and at worst, the overall safety of the system. In lieu of these, the Branch proposes an elasticity approach to targets allowing them to move up or down during unforeseen circumstances.

4. *Is our timetable appropriate?*

The Branch is content with the timetable.

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UK AIR TRAFFIC CONTROLLERS

YOUR SAFETY - OUR PROFESSION

