

Transport Committee

Oral evidence: [Air traffic control disruption](#), HC 1849

Wednesday 18 October 2023

Ordered by the House of Commons to be published on 18 October 2023.

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Members present: Iain Stewart (Chair); Jack Brereton; Paul Howell; Grahame Morris; Gavin Newlands; Greg Smith.

Questions 91–104

Witnesses

[IV](#): Rob Bishton, Chief Executive Designate, CAA.



Examination of witness

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Witness: Rob Bishton.

Q91 **Chair:** Could you please give your name and position, for the purposes of our record?

Rob Bishton: Good morning, Chair and members of the Committee. My name is Rob Bishton. I am currently joint CEO of the Civil Aviation Authority, taking over as sole CEO on 21 October. Thank you very much for the invite today, which gives me the opportunity to offer our input and perhaps share some of our perspectives on the events of 28 August and our immediate response on behalf of consumers, and subsequently to set out our approach to commissioning the independent review.

Q92 **Chair:** Thank you. You have been present through the session this morning and will have heard some of the issues and concerns that have been expressed. Initially, could you set out what your independent review is going to consider and the next steps from that?

Rob Bishton: In terms of the events of the day, the most important thing that we had to consider was assessing the safety decisions made by NATS. I became aware of the event roughly at 10 minutes past 11 on the morning of 28 August. I was quickly able to assemble a team. They were directed by me to go and find out as much information as they could about what was, at the time, a rising tide event. It quickly became very evident that it was a significant event. We stood up our crisis protocol, our silver command, within the hour. I have to acknowledge that both the NATS team at senior level and their operational and technical teams made themselves available to CAA colleagues. We were able to establish very quickly that the decisions taken maintained the safety performance of the system.

We very quickly then turned our focus to the consumer impacts, which were mounting. Following that and the days that followed, I acknowledge that the airline response, as described by a previous panel member, was admirable. It certainly was swift. By the Wednesday, largely speaking, most of the disruption had been contained. There were some residual disruption issues that followed. Clearly, there were a number of very alarming stories from those travelling, particularly on holidays and business travel.

The premise behind the review was to note the considerable impacts to consumers and the financial consequences to the airlines and indeed the airports. It seemed a very logical step for us to take, as the regulator, to commission an independent review, which we did by announcement on 6 September. We published the terms of reference on 6 October. Having exchanged with representative trade bodies, the Airport Operators Association and Airlines UK, and obviously with input from NATS itself, we



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formulated what we thought was a comprehensive set of terms of reference that would indeed look to deal with two outcomes. One was to explain the event in detail and make sure we got a full dataset for all of the impacts to consumers and all the financial consequences. The second was to look at the broader questions that have been raised following that about NATS's resilience, investment and performance incentives.

Q93 Chair: Can you set out what your anticipated timescale for this review will be? Are we talking a small number of months or a much longer period? You do a report, but what is the next step? Is it down to Government to decide what next steps are required?

Rob Bishton: On 4 September we wrote to the Secretary of State for Transport, assuring him and the Aviation Minister that the performance of NATS during the incident and subsequently maintained the safe performance of the system. On 6 September, we committed to announcing the review. Originally, we hoped to publish the terms of reference by the end of September, but due to the need to make sure that we carefully considered input from various stakeholders, we published them on 6 October.

I gave an indicative timeline that the review would conclude, with recommendations, in January. It is indicative because with a review of this nature and given the impact on consumers and all of the things we have to consider—some of which you have had set out in front of you today—we need to make sure that the independently chaired panel has the necessary time and resources made available to do a thorough piece of work and conclude with recommendations that help the system improve moving forwards. First of all, the report will be made available to the CAA board and then, subsequently, the Secretary of State for Transport before being published.

Q94 Chair: I appreciate that what happens next will depend on what you find, but do you think you have, within your current powers, a sufficient range of enforcement options, whether that is to NATS or to airlines?

Rob Bishton: In relation to the NATS regulated business, NERL, under the Transport Act 2000, there is a risk allocation mechanism whereby the CAA can assess average delay, peak delay and delay impact scoring, including environmental performance and efficiency requirements. We can levy penalties on NATS. We did so in 2016 to the tune of £420,000 and latterly in 2018 to the tune of £240,000. We have powers that incentivise NATS to maintain high performance of service. Clearly, under the NATS licence, as you correctly heard from the chief executive of NATS, their primary obligation is safety.

Q95 Chair: You said you have levied fines in the region of a few hundred thousand pounds. We have heard that the cost to the airlines runs into many millions for each airline, certainly the bigger ones. NATS pays dividends running into the millions. Is being able to levy a fine of a few hundred thousand pounds anywhere near appropriate?



Rob Bishton: The reason for the risk allocation and the way it is set up as a mechanism is thought through in this context. Consequential increases to the NATS cost base will ultimately be passed through the system to the airlines and users, so we have to consider carefully how that system is configured to make sure that it is in the best interests of the users and, ultimately, airline passengers.

The broader point is that we review five-year rolling price controls for NATS. We are currently on track to publish the NR23 decision, which is provisional to this point. The risk allocation has not been challenged for many years, since it was set out in the Transport Act. Clearly, this event has raised the question again, but we need to give careful consideration to any changes that would be made to that risk allocation. At the moment it is based on NATS-determined costs of 1.25%, so that would roughly put a cap on it of £8 million. On positive performance, it is capped at 0.3% of determined costs, which is around £2 million.

We believe that those are incentives for NATS to perform to high service levels. Indeed, they do not create a situation where there are consequential increases to NATS's cost base, which would ultimately potentially be passed through the system. The review is there to set out clearly how this works, why it works the way it does and, indeed, whether this particular event, notwithstanding the significant impact on thousands of people, is a reason to revisit the way that mechanism works today.

Q96 **Chair:** You heard the discussions earlier that, looking at it through the eyes of the passenger, it is an incredibly complex system for them to know what they are entitled to by way of compensation or recovering costs. As part of this review, or perhaps as a separate piece of work, are you looking at having a fundamentally different scheme, perhaps along the lines of the railway system, the Delay Repay scheme, where the passenger has a simple point of contact to lodge their claim and then it is all worked out behind the scenes? At the moment it seems that the passenger is the one who has to navigate their way around it. Is a much more fundamental rethink part of the work you are looking at?

Rob Bishton: First, when events like this occur, and after we have established that safety is not being in any way compromised, the CAA, and indeed the airlines, quickly pivot towards passenger rights and passenger information. We took action immediately. We had correspondence with the airlines. We updated our website. We made sure that passengers were aware of their rights, using social media. We had over a million views on social media in the two days following the actual event, the bulk of which were on the first day. On making information available to passengers, you heard some of the technology solutions that the airlines have implemented. We certainly welcome that. It makes it much easier and quicker for their customers to understand what their rights are and, hopefully, will minimise disruption. Events like this test the extremes of how the system is set up.



I had conversations with the chief executive of one airline as to the detail of one family's experience in a particular airport. That is the level of detail we got into. They were obviously frustrated that, despite their airline providing vouchers, the airport itself ran out of supplies and there were no local hotels. Those stories are very compelling, which is why we must investigate and get a full picture of exactly what happened.

On the EC261 being retained legislation, what I would say is that aviation is a global system. It was not the simplest journey to implement EC261 when we were members of the EU. We are still part of Europe. I think that passengers understanding their rights across the global, certainly European, aviation system is helpful. Most of our airlines are group airlines, apart from Jet2.com, which is a solely UK-based airline. We have to consider the consistency by which we apply consumer compensation. At the moment, it is EC261—albeit in this case extraordinary circumstances meant that compensation was not payable—but we were very quick to clarify that with the airlines.

Q97 Chair: As part of your review, are you looking at how airlines and airports looked after people with particular mobility needs or some other issue that requires additional support? Is that forming part of your review?

Rob Bishton: Absolutely. Following recovery from covid last year and the experiences of vulnerable passengers in an industry that was dealing with recovery challenges, we were very quick to make sure that we refreshed our consumer strategy. The rights of vulnerable passengers were made a priority in that. We have had a very good response from industry in that regard, and from the airports that largely contract the services on the ground in the airport. It will be a focus of the review when we start to draw together the cases that will help us understand how we can do better moving forward.

Q98 Chair: The Government said that they were looking to give you greater enforcement powers when parliamentary time allows. We all wait with bated breath to see if there are going to be measures in the King's Speech in a few weeks. If you had greater enforcement powers, what would you have done differently in the incident over the summer?

Rob Bishton: In fairness, as I have acknowledged, the airlines' care, assistance and re-routeing response, albeit there were exceptional cases, was good. We saw performance from the airlines beyond their obligations.

In terms of powers on refunds, we can point to where we have pursued them, and indeed through the courts, to outcomes that are in consumers' interests. At the moment we are very much in the space of making sure that we maximise the use of the powers we have today. In the context of this particular event, I would not point to any gap or power that we wish we had had on the day. As I say, it was a rare and very improbable event, with huge impacts for the people who were travelling.



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In fairness to the airlines and the airports, I acknowledge that their response in many respects was what we would expect as the regulator. Often, they went above and beyond, but of course there were cases where they would acknowledge that the system did not work as it was designed to. We must thoroughly investigate and understand that so that we can fix it moving forward.

Q99 Chair: This incident had its unique circumstances, but contrasting it with other major disruptions, of which there are a number of examples over recent years, from Icelandic volcanos to fires in Mediterranean islands, are you looking at how this incident was dealt with in looking after passengers compared to some of the others?

Rob Bishton: Yes. Often the benefit of having learnings from previous disruption events is that every disruption event and every major impact cultivates an approach to improved resilience. Those events themselves have enabled the aviation system to learn, respond and reconfigure. In some ways you could say that played into the ability of the airlines, despite the significant impacts of 28 August, largely to have the situation rectified by the Wednesday, at the end of the day. Within 48 to 72 hours, they had largely rectified the situation and applied care, assistance, re-routeing and refunding to a large number of people.

Clearly, for those who were impacted, that does not detract in any way from the fact that, at best, their experiences were poor and they had disruption, and, at worst, they had their travel plans completely ruined. I think the ability of the industry and the system to respond to those previous events has enabled lots of those learnings to play out in practice. I must admit my personal surprise in many respects that they were able to resolve the bulk of the issues on the Wednesday. I thought that potentially, with the impacts on 28 August, it was going to be a much longer running issue than it was. We need to give due acknowledgment to the learnings from those previous events. It proves that the aviation system does not waste the opportunity to recognise, understand, learn and improve.

Q100 Paul Howell: I have a follow-up from previous sessions. What is your opinion about what has been said about the whole training protocol for putting in air traffic controllers and the fact that it takes so long and we do not allow military-trained people to get through the system? We cannot import people. Do you have a view on where things could, or should, change?

Rob Bishton: The first thing to acknowledge with air traffic control and skill and competency is that it is a global issue. We have seen it being discussed, and there are impacts, in various parts of the world. We know that there are shortages. We know that the training is quite involved.

In the case of Gatwick, where it is currently manifested, it is important to recognise that that is a commercial service between Gatwick Airport Ltd



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and NATS. Indeed, there is a long history as to why things have ended up in the place that they have. We—

Q101 **Paul Howell:** Sorry to interrupt. I am not worried about the specifics. It is more the concept of not using suitably trained people from overseas and bringing them in, at least 80% of the way through the training or something, to restart them for the UK, or not using military-type people. It just means there is a bigger pot to fish in to get air traffic controllers.

Rob Bishton: Unlike with engineers and pilots, in the way that air traffic control licensing and therefore the standards and curriculum are set, there has been no global, harmonised approach. It is not just a consequence of EU exit. It is not just a consequence of not having bilateral agreements in place. It is a consequence of how the aviation system has approached this particular licensing issue for a long time.

Largely speaking, there isn't the harmonisation that we have had with other licensed professionals. That is partly what we are managing. What was referred to in the previous panel at Gatwick has brought to bear a greater scrutiny. The CAA has convened parties to come together to look at the problem and make sure that there is resilience in the system. As a belt and braces approach, we are now looking more broadly at air traffic service provision across the UK to make sure that there is nothing else that will potentially present itself as we get into increased volumes at Easter and summer 2024. It is not easy to solve these things in the short term, but it is a consequence of there not being the same globalised harmonisation that we have had with other licensed professionals.

Paul Howell: You took the "anything else" question away from me, Chair, so I am finished.

Q102 **Chair:** To clarify, is work on air traffic control resilience more generally part of the review or a separate strand of work that you are doing?

Rob Bishton: We have three tracks at the moment. We have the independent review, which is commissioned to look at, effectively, the incident and the broader questions that have now come from that incident. That is reflected in the terms of reference of the independent review.

We have the NR23 pricing decision, which will be published at the end of October, and which takes account of the NATS losses and applying the mechanism from covid. Then, through our convening powers, we have a piece of work looking specifically at Gatwick and the air traffic service resilience that they are working on for 2024. As an adjunct to that piece, we are taking a belt and braces approach, as I said, and looking at air traffic service provision more broadly in the UK to make sure that there are no other issues that will show themselves next year.

Q103 **Chair:** When do you hope to conclude that piece of work?



Rob Bishton: That piece of work will be ongoing in terms of air traffic service provision until March next year. We will be convening both Gatwick and NATS from their commercial services arm to make sure that the plans that we are discussing are put in place to ensure resilience from Easter next year.

Q104 **Chair:** Thank you. I appreciate that you are constrained in what you can say while the work is ongoing, so my last question is this. From what you have heard through the session this morning, is there any other point that you would like to express an opinion on at this point?

Rob Bishton: We have to be mindful of the impact on those travelling. As I said, due to the scale of it, we probably personally either know somebody who was impacted or know somebody that knows somebody who was impacted. When things happen at that scale, we need to take stock, as I think all parties are doing.

I acknowledge that I believe NATS has been very open and transparent to date, certainly with us as a regulator. I thank them for that. The airlines' response during the incident was, in many cases, above and beyond even what we would expect as a regulator, and I acknowledge that.

There are some broader questions now which the review will seek to set out, critically to explain why the system works the way it does. If you take a broader view, and if we were to introduce change, we are definitely required to understand the consequences of any change, particularly ultimately to the end user and the airline customers in cost.

Chair: We await your conclusions with bated breath. I am sure it is a subject we will return to when you have them. For now, I thank you very much indeed for your time this morning.