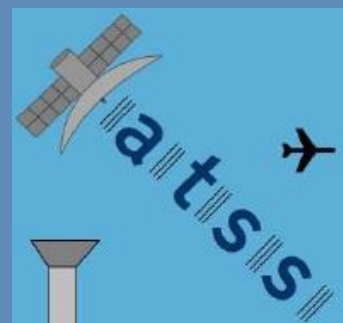


Prospect ATCOs' Branch & ATSS Branch response to CAP 1593

*'Guidance for NERL in preparing its business plan
for Reference Period 3'*



Contents:

<i>Overview</i>	4
<i>Consultation questions</i>	7

Overview

Prospect's Aviation Group represents around 2,500 professionals working in UK ATM from air traffic controllers to engineers. Prospect has been involved in consultations via various stakeholder forums led variously by the CAA and the DfT, including for RP2. As professionals and experts within ATM, we are keen to continue engagement with the CAA for the entire process leading to the implementation of RP3. Prospect both welcomes many of the initiatives that arise from CAP 1593, as well as cautions against some others.

CAP 1593 acknowledges the concern from various stakeholders - including Prospect and NATS - regarding the absence in CAP 1511 of safety as the primary objective for NERL. Prospect believes safety should have pervaded the document as a precursor to the planning for the reference period that is to come, and throughout the reference period itself. We reiterate our position in response to CAP 1593 that, in spite of the CAA's assertion that it expects NERL to develop its business plan with safety in mind as is required under the Transport Act 2000, the CAA must include safety as a key target during RP3.

As CAP 1593 recognises, there is now increased pressure to focus on resilience in the ATM system during RP3. We believe the pressures placed on NERL during RP2 were an important factor in the relationship between ATM staffing levels and the resilience of the system, as demonstrated in CAP 1578: Project Oberon. Prospect wants to see RP3 acknowledge the importance of improved resilience, and system integrity. A continued focus on cost-cutting will have a detrimental effect on both resilience and safety.

Resilience covers a host of concepts in air traffic service provision not limited to staffing, but others including equipment and system redundancies. However, ensuring the proper staffing resources are in place to react to projected traffic growth and, in addition, to cover traffic growth which may be over and above predictions, means allowing NERL the ability to staff the business appropriately without the hindrance of excessive pressures on cost. NERL also needs to be able to have sufficient staff to deliver projects – including the training of operational staff. This cannot be achieved in an extremely 'lean' operation. The CAA must also consider how best to design the incentives system: what outputs does it want to prioritise? We support the suggestion that NERL should own its assumptions and should *'develop meaningful options for airspace users to consider that explore the balance between price and service/resilience trade-offs'* (CAP 1593, para. 3.3). We expect the CAA to subject these options to a 'sanity check', rather than questioning the assumptions and costings in line-by-line detail

The other key tenet of CAP 1593 is the introduction of the two track approach. There are indeed areas of focus that NERL will need to concentrate on in its plan for RP3, not the least of which will be safety, airspace management and resilience. In addition to this, there will also be aspects that may not be immediately visible now, seven years before the end of the upcoming reference period. If NERL is permitted to account for other likely but less certain eventualities, it will introduce some flexibility to what is already a relatively rigid and lengthy period for economic projection. The CAA and NERL will have to take into account any impact that Brexit might have on the service. Some allowance for flexibility will permit NERL to react to any potential negative impact this might have when the two-year period of transition ends

in 2019, before RP3 starts but after details of UK's RP3 submission sent to the European Commission have been agreed.

We should reiterate here that we do not see a compelling argument for the UK to continue to be bound by the EU performance scheme, post Brexit. Economic regulation will be a matter for the UK. At the time of writing, it looks as though RP3 will commence at the same time as a formal transitional period in the UK's relationship with the EU. While we accept the logic for the CAA to follow broadly the same approach in planning for the regulation of NERL during this period, this should not mean signing-up to every point of detail. We would welcome clarity on the CAA's position: does the UK see RP3 being subject to endorsement or agreement by the European Commission?

Inside the 'wider' or more flexible element of the two track approach, it is important that all stakeholders have learned from the mistakes of RP2 where decreased costs came as an at-the-time requested trade-off for service quality. The two track approach must not be used as a way to produce various options for stakeholders to have a 'pick and mix' plan. The CAA's aim should be for NERL to focus on creating a credible and deliverable plan that will meet the needs of airspace users. The plan should be structured in such a way that – unlike in RP2 – there is a level of agility to respond to an environment that changes. It is impossible to predict what this will look like at the tail-end of the RP: 7 years from now. As a general rule, the less predictable a system is, the more flexibility is required

In terms of including noise in the business plan for RP3, Prospect repeats our position: that there is little or no value in NERL pursuing this goal as a stand-alone actor. Management of aviation noise is not the sole responsibility of NERL and any attempt to work on noise will only expose conflicting interests of airports, local residents, airspace users etc. NERL cannot be asked to arbitrate between these interests, as we have seen with LAMP in RP2. Paragraph 3.3 states that NERL will deliver a balance between value for airspace communities as well as affected communities. The notion of this is practically impossible as it is not for NERL to make a decision on exactly how or when this balance would be achieved.

Paragraph 2.13 states that the CAA expects NERL to explore the possibility of self-incentivisation relating to noise improvements. Notwithstanding Prospect's aversion to incentives in a safety-critical environment, such an endeavour will be almost impossible due to the competing stakeholders involved. It is incumbent upon the CAA itself, in conjunction with the DfT to lead airspace changes and associated noise improvements. An ATM master plan for airspace change in line with the FAS, the need for change as a result of the Heathrow third runway and a plan that supports the achievement of wider RP3 targets etc, must be owned by the CAA in conjunction with the DfT, with the ability for NATS to control or influence the use of airspace.

In terms of opex, there will be an extra demand on NERL for training, projects, and also to support the capex program during RP3. The CAA must allow NERL the ability to achieve the targets set out during RP3, acknowledging the requirement for an increase in staff that these will require.

Prospect would also welcome that the CAA sets out the process for considering an appeal to the eventual performance plan as set out in the Performance Scheme Implementing Regulation.

One final area that has been overlooked in both CAP 1511 and CAP 1593 is the staff. There is no mention of the impact that RP3 will have on the staff who will work to ensure that the targets are achieved, nor of any attempt to maintain the commitment of the staff members working in the operation. The staff of NATS are generally in dismay about the business and operational environment that RP2 created, particularly the enforced staffing cuts and the halt in adequate recruitment and training. The pressures certain areas of the operation are facing are significant. We would wish that the CAA when conducting its review of the NERL business plan with respect to staff opex, understand that an element should be included to make provision for broader employee welfare issues, such as the ability to have the opportunity for flexible working (in line with statutory requirements), secondment opportunities and career progression. Any large-scale pressure on staff working arrangements that result from an attempt to micro-manage through regulation are very likely to result in a whole-hearted rejection of the RP3 plan by staff, and direct representations and every influence will be exerted at the highest levels of government. On a similar note, it is important to highlight the financial burden as well as the burden on operational expertise that regulatory compliance can have: all those consultants have to be paid for!

Consultation questions

1. Do stakeholders consider that a two track approach to NERL's business plan is reasonable?

Yes: it will allow for the flexibility and agility which past experience has shown is necessary. Given the complexity and uncertainty around capex requirements of emerging technologies (e.g. drones) having the ability to provide for unknown circumstances is crucial to NERL being able to meet the demands of industry. However, the flexibility must not be used to repeat the mistakes of RP2 where options are given to the various stakeholders, encouraging them to pick and choose, undermining the integrity of ATM service provision.

2. Do stakeholders have views on the allocation of activities and outputs between the core and wider categories for NERL's business plan?

Prospect's position on the main items on this are included in the initial part of this document.

Additionally, it is implicit that NATS should be expected to continue to enhance capacity to match future traffic growth, further enhancements to environmental efficiency, technical and operational resilience etc. but the resources must be allocated to deliver these outcomes.

The plan for RP3 must recognise the total value to airspace users and passengers that NATS delivers through its leading performance amongst ANSPs, and the focus on RP3 must be to continue to deliver a safe service and excellent performance, not simply focused on cost. One of the lessons of the focus on cost in RP2 is that crude cuts hinder NATS' ability to deliver improvements.

The CAA must also recognise the limitations that exist in the ability to improve 3Di scores whilst delivering greater traffic movements in areas of complex (sub-optimal) airspace.

We do not agree with the CAA's position on paragraph 2.6 with respect to the London Approach service. Setting targets at this level would be detrimental to the operation of the network as a whole and could introduce unwarranted tensions between the London Approach service and the en route elements. This would also lead to a greater risk of fragmentation in the network as undoubtedly representations made by individual airports or airlines on measures taken on specific approach services would influence day to day operational decision making. This would be disadvantageous for the greater network. The London TMA is amongst the most complex airspace in the world, and the service delivered is second to none. This is done as our members are able to operate the airspace without fear or favour to any particular airport and by doing so this allows for the most efficient operation across the whole of the London TMA. We provide the travelling public with the best service possible, irrespective of airline or airport that they choose to use. With respect to which airports are included in the approach service we view this as a regulatory decision, not one for NERL.

Furthermore, the CAA should make an allowance for increased opex in the London Approach service in order that NERL may comply with the following recommendations in CAP 1578:

- *The CAA recommends that NERL enhances its systems and processes so that it is better able to forecast potential shortfalls in supply at a more granular level (e.g. down to the Approach service at specific airports), and to conduct a more rigorous sensitivity analysis based upon risks and issues that can impact the service. Such risks and issues, for example, could be increased short-notice sickness, a lack of take up of voluntary overtime, and variations in expected traffic growth etc.*
- *Given the sensitivity of the resilience of certain parts of the operation, in particular the London Approach Service, to the availability and flexibility of operational staff with certain skills / validations, the CAA recommends that NERL enhances its systems and processes for contingency planning to ensure that explicit consideration is given to this factor in determining the optimal level of operational staffing surplus to provide a resilient service.*

In Prospect's view, we firmly hold the CAA to account for the issues that gave rise to the above recommendations in its regulatory approach for RP2, and if it has identified shortcomings because of this, it is duty bound to afford NERL the resources to correct this.

3. Are there any further views from stakeholders on extending the scope of the incentives on NERL to put greater emphasis on resilience and noise?

Prospect's position is that the scope on incentives does not need to be extended on either resilience or noise. The incentives should be calibrated to outcomes that are within NATS' control.

Noise is a complex political issue which NERL cannot be wholly, or even largely responsible for. Whilst NATS has a level of capability and expertise in airspace design, it must be recognised that there will be competing and perhaps conflicting demands in this regard. Although it is appropriate for the potential impact of noise on local communities to be considered as part of any airspace change approval process, it is equally important that this does not get in the way of delivering badly needed capacity with more environmentally sound and fuel-efficient routings. Given the lengthy timescales that such airspace changes can take we do not believe that it is appropriate to apply incentives on this element during the reference period. Therefore within the sphere of much needed airspace change, noise quite rightly should be taken into account, and appropriate consultation carried out, however the DfT and CAA need to take a lead in determining airspaces as part of national infrastructure.

4. Is the broad approach to the draft business plan guidance on costs reasonable and is there additional third party assurance that NERL could reasonably provide to help demonstrate its forecasts of costs are efficient?

Generally, the approach is reasonable in that NERL can evidence the costs of its business plan.

As previously stated, safety must continue to be a key objective within ATM and not merely implied. Additionally, some of the CAA guidance is unnecessary and risks repeating misguided attempts to micro-manage.

Prospect does not accept that it is solely NERL's place to balance the plan between airspace users and affected communities, rather this should be a partnership between all stakeholders set against a strategic plan set out by government. Prospect is also of the firm opinion that options between price and service resilience trade-offs are not required. The RP2 experience has shown that little value was actually placed on this by the airspace user community who seem to have conveniently forgotten the settlement agreed following the presentation of options. NERL should present a balanced plan with service levels broadly in line with those today, focusing on safety and increased resilience, both operationally and technically. Rather than being cost focused - which RP2 proved to be flawed - a total value approach should be pursued.

5. Should the business plan set out information to facilitate the ex-post efficiency reviews of RP2 capex (which could include the disallowance of inefficient expenditure from NERL's RAB) or would these reviews be best carried out by a separate process?

The CAA should consider whether or not it wishes to pursue this, however some guidance as to what would be determined as efficient (or not) is necessary.

6. Is the above draft business plan guidance on transparency of NERL's capital programmes and projects fit for purpose or could it be further improved?

A major programme of modernisation of NATS' system is required with many of its current operational systems being well beyond their originally designed operating life. We believe that it is essential that NATS can continue this modernisation of its systems in order to provide for future capacity, resilience and operational efficiency. We recognise the requirement for adequate governance over the capex programme, but such governance requirements must also be proportionate. This must be a holistic assessment of 'benefit' (ie total value) rather than viewing projects or programmes through the narrow/short-term prism of 'what's in it for customers'.

7. Is there stakeholder support for the continuation of the FFF? If so, do the current governance arrangements remain appropriate for RP3? Should we give further business plan guidance to NERL on the FFF arrangements?

We believe that the plan as a whole needs to enable NERL to be responsive to a changing landscape during the reference period. Rather than continuing with the FFF we would advocate a return to an element of contingency to be made available within the opex and capex allowance as appropriate. Given that the nature of ATM provision has a degree of uncertainty, NERL must be afforded room to be able to react. Experience in RP2 has clearly demonstrated that forecast plans have to be readily adaptable and the facility to enable this should be embedded as part of the core plan.

8. Should we provide further business plan guidance on expenditure governance arrangements and/or incentives?

As per question 3, Prospect's position is that the scope on incentives does not need to be extended. However, any incentives should be symmetrical, and reflect that NERL should be able to earn the same in bonus as it might incur as penalty. Any increased risk through larger incentive proposals should be properly reflected in the cost of capital allowance.

Generally speaking, Prospect welcomes the ability for NERL to 'own' its own assumptions and thus any overly interventionist approach by the CAA in relation to expenditure governance guidance in order to influence NERL's internal processes has the risk of reducing NERL's agility and undermining NERL's ability to meet its objectives.

9. Is the draft guidance set out above on pensions reasonable and can it be improved?

We are concerned at the approach taken here, and in particular as it includes inaccurate statements regarding 'incentives' to forego rights.

The DB pension scheme is a legacy scheme that is a key benefit to our members who remain within it. The various protections (e.g. Trust of a Promise) were put in place at the time of privatisation and form part of a covenant that was agreed between the UK government, NATS and its staff. Over the years since privatisation both NATS and its staff have examined and taken significant measures to ensure the scheme remains sustainable and as healthy as possible. These measures have included closing the scheme to new members. More recently, there have been Memorandums of Understanding limiting the growth of pensionable earnings. Prospect believes that this demonstrates careful and reasonable stewardship of the DB scheme.

Prospect fully expects the existing pass-through arrangements to continue. In our view, all reasonable efforts have been made to mitigate the costs of the scheme. As the CAA notes, and as per consultation responses in RP2 the level of confidence that the trustees have in the regulatory framework is crucial to future funding arrangements and should this confidence be reduced then increased costs could result.

Prospect also draws the regulator's attention to the significant number of DB scheme members who have elected either to leave the scheme or to cease being active members of the scheme over last two years in response to recent governmental initiatives. This will have de-risked the scheme quite significantly.

Prospect does not see the requirement for NERL to outline how any future surplus could be shared with the airspace users. In fact, we believe setting expectations in this way is highly irresponsible and sets unrealistic expectations. Previous experiences where NATS benefited from a pension holiday only exacerbated the deficit problem, and until such time that the scheme returns to surplus, and there is reasonable long-term confidence from the trustees that it will remain so, then action to reduce any surplus should not be taken. In any event, there is an extremely small likelihood that this situation will arise during the period of RP3. And, even if it did, there will be even smaller probability that any surplus-reduction programme would have to be agreed in that time.

10. Is the draft business plan guidance on the cost of capital, regulatory depreciation and financeability appropriate?

No comment.

11. How should we best include airports in the scope of the Customer Consultation mandate?

We are concerned by the approach that the CAA is adopting in this area. The customer consultation process between NATS and the airlines has not been wholly satisfactory but has matured. In our view, there remain conflicts of interest between the major airlines' position as shareholders via the Airline Group and their role as airspace users. Nevertheless, it may not be appropriate to include airports in this process and we have concerns that doing so will simply make it more difficult to reach a consensus in this forum. The contribution from the airport community should be focused on ensuring their role in the network is understood; how they, working with the airspace users can add value to the plan with a co-ordinated approach; and how any stand-alone initiatives airports may have do not damage NERL's ability to provide a balanced service. Furthermore, the competitive airport market places NERL in a difficult position when competing airports behave in ways which compromise the greater efficiency of the UK ATM system.

12. What steps should NERL take to reflect the views of wider stakeholders, such as passengers and overflown communities, in the development of its business plan?

Passengers' interests are served by ensuring that NATS delivers sufficient capacity to meet the needs of the airline customers safely and efficiently and with minimal delays,. This is aligned with the expectation of the airlines and therefore NATS should not be exposed to the additional burden and cost of wider engagement.

We question the relevance of consulting overflowed communities in relation to the RP3 business plan; this goes beyond what is reasonable to ask of NERL as an ANSP with no ability to unilaterally enact airspace design or single-handedly improve noise pollution.

13. Should the customer consultation process follow the same broad approach as RP2, with a requirement for a structured engagement programme, customer consultation working group and an independent/joint chair?

Whilst we remain of the view that there are conflicts of interest which exist in the process as used in RP2, we recognise the need for a structured engagement process with airspace users. We would however challenge the length and complexity of the process, given that it takes significant resource, and generates costs of its own. Experience from RP2 tends to suggest that the whim of airspace users changes frequently and that the CAA allows NERL considerable freedom and discretion in incorporating any feedback received in to the revised business plan in due course. Prospect would like to take this opportunity to request of the CAA that it considers our involvement in the consultation process as observers.

14. What topics should the customer consultation programme address and what improvements can be made compared to the process for RP2?

We have acute reservations over the value of this process. During RP2 the airline customers pressed NATS to focus on cost-reduction given the challenging (post financial crisis) context at that time, with a proposition that there was a trade off on the level of capacity/delay that would result. As we move through RP2 with a dramatically different economic environment the airline customers appear to have reneged on agreement to such 'trade-offs' thereby placing unacceptable pressures on our members. Any such customer consultation programme must, as a minimum, address these concerns before any attempt is made to consult on programmes for RP3. There must be clear guidance set out as to the expectation of Airspace user behaviour and that any feedback from the process that is incorporated in to the revised business plan is understood to be, and agreed by the airspace user community. Any future reneging on commitments made by them should afford NERL flexibility to disregard their original inputs. We should also mention here that recent airline behaviour – seeking to blame ANSPs and ATC staff for delays and cancellations – has damaged the relationship and it will take some effort to rebuild trust and goodwill

15. Are there alternative model(s) of customer consultation that might be followed for RP3 – bearing in mind the constraints created by needing to align the timetable for customer consultation with the SES Performance Scheme and associated milestones.

Prospect would advocate a 'lighter' process for RP3, with fewer formal sessions. Whilst it is reasonable to provide a level of consultation, this can be overly onerous, and incurs significant cost and effort that NATS has to provide. The outcome of the consultation in RP2 resulted in a revised business plan which the airspace user community seemed to disown anyway, so the

value moving forward consulting with a group that is fickle, inconsistent and unable to keep to accords made is questionable.

16. What views do stakeholders have on the proposed CAA consultancy activities as discussed above and set out in Appendix D – in particular the nature of the proposed studies, their objectives, scope and deliverables?

One of the main themes from CAP 1593 appears to be a less prescriptive approach than that which has been applied in the past. Prospect welcomes the ability for NERL to own the assumptions that will underlie its initial business plan and agrees that intervention by the CAA at this stage should be unnecessary, allowing NERL the flexibility to focus on the items it sees as most critical during RP3.

Conversely, in Annex D, the CAA sets out a list of consultancy studies it will undertake in support of its customer consultation and its review of the NERL business plan. It is hoped that such consultancy studies do not undermine the work commissioned by NERL which should stand up to the scrutiny required by the CAA, the stakeholders and the customer in the presentation of its business plan. We do not see the value in the proposed staff opex consultancy study – in part because we do not believe that the CAA should be setting cost efficiency targets to this level of granularity. But we also suggest that it is too difficult to derive meaningful figures, particularly in the absence of agreement on the appropriate benchmarks: the quality of the research done for RP2 was poor. What we do know is that the labour market for ATC staff has developed during RP2, and it is currently very ‘tight’. The regulator would be better considering what NERL’s role should be – as the largest provider – in sustaining the supply of labour to the industry. We would argue that there should be such a role for the national infrastructure provider; and that it is a role which has to be recognised and rewarded.