

The Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

Attn: [REDACTED]

Our ref: [REDACTED]

Email: [REDACTED]@richardbuxton.co.uk

5 March 2018

Dear Sirs

Gatwick Route 4 – next steps

We have had sight of a copy of a letter dated 9 February 2018 from [REDACTED] at the CAA to [REDACTED] at Gatwick Airport Limited ("GAL"). We understand this letter to be setting out the CAA's views as to what they see are the next steps to be taken by GAL in light of the quashing of the decision dated 7 April 2017 of the CAA confirming the Modified Route 4 RNAV and conventional SIDs.

Our clients, Plane Justice Limited, were only made aware of this letter by some of their supporters who were sent links to it by the CAA in response to their queries. Given our client's interest in this matter, we ask that all correspondence relating to the Route 4 SIDS be copied to our firm or else the existence of new correspondence be made known to us directly.

Having read the letter, we understand the CAA's position to be as follows:

- The Modified Route 4 RNAV SIDs will remain in the same location as has been flown since 26 May 2016;
- GAL is to carry out a review of the Route 4 conventional SIDs, as has been envisaged since 14 August 2013;
- In the meantime, GAL is to submit designs showing the track over ground of the Route 4 conventional SIDs as flown prior to 7 April 2017 (i.e. those which were flown before GAL's corrections for magnetic drift called for by the CAA in its 7 April 2017 decision), with any necessary modifications made to avoid obstacles which may have emerged since that date;
- The review to be carried out by GAL will weigh "various discordant factors" in order to come to a conclusion as to the new (described as "corrected") location of the conventional SIDs, which may result in a shift of the easterly leg of the SIDs from their position in the period before GAL's corrections for magnetic drift;
- This review is to take place through the airspace change process as set out in CAP 1616 and in accordance with the Air Navigation Guidance

2017. This will therefore include consultation with stakeholders, including the public, on any proposed new designs;

- Once GAL has proposed "corrected" conventional SIDS, the CAA will consider whether the RNAV design (which remains the Modified Route 4 RNAV SIDS) has achieved, to an acceptable standard, its original stated aim, which was to replicate the conventional SIDs. If it does not, the RNAV SIDs will be de-notified.

We would be grateful if it could be confirmed by the CAA that this is a correct interpretation of the letter. If not, please could you explain what the correct interpretation is.

Yours faithfully

Handwritten signature of Richard Buxton in black ink.

Richard Buxton Environmental & Public Law

cc. GAL (Attn. [REDACTED])

From: [REDACTED]
Sent: 27 April 2018 09:34
To: [REDACTED]@richardbuxton.co.uk
Subject: RE: Route 4, Gatwick

Categories: Egress Switch: Unprotected

[REDACTED]

Apologies for the delay in our response.

With respect to your letter of 5 March 2018, all correspondence relating to Route 4 is published on the relevant ACP page. I understand our letter of 21 February 2018 addressed the remainder of your query, though I would note your interpretation appears broadly correct.

As regards your letter of 15 March 2018, CAP1616 affords all stakeholders the opportunity to engage with the Airspace Change Process at an early stage, an opportunity that was not mandated under CAP725. CAP1616 was introduced on 2 January 2018 and consequently there is no longer a case to be made for the CAA to meet with individual stakeholders on specific proposals. I would recommend that your client inform Gatwick Airport that they desire to be a part of any future ACPs brought under CAP1616. The CAA will also keep its website updated with respect to the development of any proposal. In relation to Gatwick Route 4, recent correspondence between Gatwick Airport and the CAA is published at <http://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Reviews/Changes-to-Gatwick-departures-2013/>

The CAA is also of the view that it is the public interest that elected representatives such as Members of Parliament are appraised of the nature of the airspace change process and proposals that may have the potential to affect their constituents. In this way, elected representatives can meaningfully respond to queries from their constituents.

However, if you or your client have any general queries about the airspace change process, how it works or how they can be involved, the CAA would of course be happy to provide guidance of a general nature.

Kind regards,

[REDACTED]

[REDACTED]
Office of the General Counsel
Civil Aviation Authority



Tel: [REDACTED]

Follow us on Twitter: @UK_CAA

Please consider the environment. Think before printing this email.

[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@richardbuxton.co.uk]
Sent: 15 March 2018 16:13

To: [REDACTED]@caa.co.uk>

Subject: Route 4, Gatwick

[REDACTED]

Please see attached letter.

Kind regards

[REDACTED]

--

[REDACTED]

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16 April 2019

Dear Sirs

Gatwick Route 4 SIDS

As the CAA will be aware, the judicial review claim brought by our clients, Plane Justice Limited, was concluded by way of a consent order quashing the decision to confirm the implemented modified RNAV 1 SIDs and to approve for implementation the corrected conventional SIDs for departure Route 4 from Gatwick. The consent order was sealed by the Court on 7 February 2018, over 14 months ago.

As set out in that order, the CAA agreed that the process of approving the modified RNAV 1 SIDs for Route 4 was flawed – and therefore unlawful, because it did not take into account the value of preserving the existing patterns of traffic and of leaving the route in its 2012 location (ie the track which was being flown in 2012).

The original aim of the 2012 ACP process in relation to Route 4 was to create RNAV 1 SID(s) that replicated to an acceptable standard the nominal track of the conventional SIDs existing at the start of the ACP in 2012. Self-evidently as matters currently stand, the ACP failed in achieving that aim, as the modified RNAV 1 SIDs required planes to fly in a new location that did not replicate the nominal track of the conventional SIDs existing in 2012. It cannot have been otherwise as the CAA agreed that the modified RNAV 1 SIDs did not take into account where planes were flying in 2012.

Since the consent order was sealed, the CAA and Gatwick have exchanged correspondence regarding the steps required to bring the 2012 ACP to a lawful conclusion. The CAA by letter dated 9 February 2018 invited Gatwick to produce designs for the conventional SIDs which replicate the route flown by planes on 6 April 2017 (ie before the impugned decision), having taken into account obstacle data accumulated since that date.

In response in May 2018 Gatwick proposed revised conventional SIDs intended to replicate the route flown on 6 April 2017 (and which should also reasonably represent the route flown in 2012 at the start of the ACP process, given the absence of substantial changes to those SIDs in the intervening period). Meanwhile the current conventional SIDs (which were 'corrected' to match the modified RNAV 1 SIDs pursuant to the quashed Contested Decision) are still published more than a year after the making of the Consent Order. We

would contend there has been unreasonable delay to this point in time in sanctioning the revised conventional SIDs in substitution for the 'corrected' conventional SIDs impugned by the terms of the Consent Order.

We now understand these revised conventional SIDs have been finally approved by the CAA, and are due for publication/implementation later this year, to coincide with de-notification of the present conventional SIDs.

In its February 2018 letter, the CAA appeared to envisage at that time that Gatwick should carry out some further 'review' of the conventional SIDs, which was originally proposed in August 2013, and that once that was complete, the CAA should consider whether the RNAV 1 SIDs had met the original objective.

We consider that this approach was misconceived. There is no requirement to await the outcome of a review of the conventional SIDs to decide whether the RNAV 1 SIDs meet the original objective of replicating the track of the conventional SIDs existing in 2012. We note in connection to this Gatwick's concerns expressed in the second bullet on page 2 of their reply letter of 23 March 2018.

Meanwhile, in relation to the existing RNAV 1 SIDs, precisely nothing has happened since the sealing of the consent order. Our clients continue to be plagued with excessive, highly intrusive levels of noise from departing aircraft, as set out in the witness statements filed with their claim in judicial review. The CAA should be well aware of the levels of noise suffered by our clients and other residents who continue to be overflowed by planes departing Gatwick using the modified RNAV 1 SIDs for Route 4.

Upon publication of the pre-7 April 2017 conventional SIDs they will allow planes to fly a route which reasonably replicates the nominal track of the conventional SIDs existing at the start of the 2012 ACP. We can see no reason therefore why the CAA cannot now form a view, if it were not already sufficiently obvious, that the modified RNAV 1 SIDs have not achieved the original stated aim of the 2012 ACP, as they require planes to fly a different route from those conventional SIDs.

We consider the only lawful action now open to the CAA is to de-notify the modified and temporary RNAV 1 SIDs and thereby bring the 2012 ACP to a lawful conclusion in relation to Route 4.

Our client's aviation consultants, Cyrrus, have stated in a report (see attached letter to our client dated 14 January 2019) that there is no practical reason why planes cannot return to flying coded overlays of the conventional SIDs¹. And given there will now be an inevitable interregnum between receipt of this letter and the implementation date of the revised conventional SIDs and de-notification of the present conventional SIDs and temporary RNAV 1 SIDs within the AIRAC cycles, this will afford reasonable time for transition which could also be supported if deemed necessary by publication of an AIC as our client has been advised by Cyrrus.

In light of the time elapsed since the conclusion of our client's claim in judicial review, we request a response by the CAA, confirming within 14 days of the date of this letter, that it will decide forthwith whether the current RNAV 1 SIDs meet the original objective of replicating to an acceptable standard the track of the conventional SIDs existing in 2012.

Should the CAA refuse to do so, we request that full reasons be given in light of the points raised in the letter above and the accompanying expert report by Cyrrus. Depending on the

¹ We also understand that Heathrow is implementing a similar use of coded overlays for transition from conventional SIDs to RNAV.

decision taken by the CAA and the reasons given accordingly, our client reserves the right to bring a claim in judicial review of that decision.

Yours faithfully

Richard Buxton Solicitors

Richard Buxton Solicitors
Environmental, Planning and Public Law

cc. Gatwick Airport Limited (attn [REDACTED])



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Our Ref: [REDACTED]
Your Ref:
Date: 14 January 2019

Dear Sirs,

The purpose of this report is to consider comments made by Gatwick Airport Limited (GAL) at NATMAG at their 10 May 2018 meeting, to the effect that it would not be feasible from a practical standpoint to return to flying a conventional procedure for Route 4 by the use of coded overlays.

Comment on NATMAG Minutes

Several extracts from the minutes of the May 2018 NATMAG meeting are presented in the tables below followed by comment about their veracity. Each extract is identified by the agenda item and paragraph number.

Item 5, Paragraph 2, Lines 23-26. *"it would not be possible to quantify how that change [i.e. to conventional procedure] might be manifested, i.e. there would no way of predicting the flight paths aircraft might now take because it is likely that airlines would use RNAV-1 overlays of the conventional SID rather than fly the conventional route itself."*

RNAV overlays have been in use since before the turn of the century (circa 30 years plus in one form or another) and the technology is well understood. London Heathrow publishes only conventional SIDs and their airlines (some of which operate at Gatwick) manage to adhere to the conventional route using overlays. Similarly, most major UK international airports currently publish mostly conventional SIDs (e.g. Glasgow, Edinburgh, Manchester, London Luton, London Stansted, London City). It is well understood that the airlines are using 'RNAV overlays' at each of these airports and all seem to manage the resulting distribution of traffic satisfactorily.

The airlines could be expected to ensure their Commercial Flight Plan Service Providers (CFPSPs) deliver an overlay which represents the conventional track as published in the UK AIP and commensurate with the 'true tracks' held by the Aeronautical Information Service provider.

Item 5, Paragraph 2, Line 27-29. *"RNAV-1 Overlays... are not defined by the airport, nor regulated by the CAA in the same way as an AIP procedure"*

That was and always has been the situation with overlays. This would simply be reverting on one route to a satellite-based technology that has been well used and well understood.

It is also worthy of note that the AD2.22 'Flight Procedures' section of the AIP entry for London Gatwick (EGKK) advises that there are no RNAV procedures published for the emergency runway (Paragraph 10



(v)) and that conventional navigation SIDs will be issued by ATC for Runway 26R/08L. Also, at sub-para (x), it states that conventional SIDs will be used for those aircraft which do not specify a preference for RNAV SID clearance or for when an ATC clearance cannot be issued for the use of the RNAV SIDs.

Item 5, Paragraph 2, Line 27-34. *“Commercial Flight Plan Service Providers (CFPSP) [are not] regulated by the CAA in the same way as a procedure published in the UK Aeronautical Information Publication (AIP)... Due to the way an RNAV-1 overlay is ‘designed’ and flown by the aircraft Flight Management System [FMS], the distribution of traffic may be altered may become more dispersed or may not alter at all.”*

Although not regulated by the UK CAA in the way a procedure published in the AIP is regulated, the CFPSPs are professional and deal routinely with flight safety data all over the world. These companies are bound by the same principles and guidance issued by ICAO for the handling of aeronautical data and are expected to meet industry standards; failure so to do would see their demise.

The FMS in current generation of aircraft is better than those used before 2000 and track adherence has generally improved (as evidenced by the NATMAG minutes). Any poor performers identified from the Noise and Track Keeping (NTK) data could be coaxed to adjust their coding to perform better on the route.

Item 5, Paragraph 2, Line 34. *“It is also possible that the CFPSPs would continue to use the RNAV-1 coding they are currently using (i.e. that which is currently published).”*

If the nominal track of the to-be-published conventional route and the current P-RNAV route at Gatwick are materially different (which they are) then the CFPSPs would be highly unlikely to induce such a gross error in the design of the overlay for the conventional procedure.

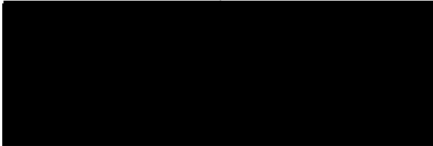
Item 5, Paragraph 2, Lines 35-40. *“To be clear to revert to try to ‘force’ the airlines to fly these RNAV-1 overlays of the conventional route will not result in reversion of flight paths to the original Route 4 track. If a change were made which included a reversion to the previous conventional Route 4 SIDs and, in parallel, the RNAV-1 SIDs were withdrawn in order to ‘force’ the airlines to fly a conventional route Gatwick would lose control of route conformance.”*

Any SID promulgated within the UK AIP is considered to be a “Notified Route”. Gatwick is monitoring performance of aircraft movements and is reporting regularly at NATMAG meetings. Where a conventional SID is published in the AIP, there is no technical reason to presume that aircraft would not fly an overlay of that SID much as they did prior to the introduction of the P-RNAV procedures which commenced in 2013. In fact, given the improvement in FMS, some might fly a replicated route (i.e. an overlay) better. Currently, data is routinely gathered, analysed and collated, so it would be possible to pick out those airlines that fail to conform to the conventional route. Where the data indicates a non-conformance, Gatwick staff could work with the airline representative to adjust the overlay and improve aircraft performance. It might take 4-6 months to get the 'conformance' that Gatwick may wish. But it could be done.



Conclusion

In our considered view we have seen no sustainable argument, whether in these NATMAG minutes or elsewhere which would rule out a return to flying a conventional procedure for Route 4 by the use of RNAV coded overlays.



Cyrrus Limited



Office of the General Counsel

Richard Buxton
19B Victoria St
Cambridge CB1 1JP

by email only: [REDACTED]@richardbuxton.co.uk
cc: [REDACTED]@gatwickairport.com

Your Ref: [REDACTED]

30 April 2019

Dear Sirs

RE: GATWICK ROUTE 4 SIDS

We refer to your letter of 16 April 2019.

The CAA's letter of 9 February 2018, published on 13 February 2018 as CAP1531LETA, sets out how and when the CAA will remake its decision.

You may view the progress of the consequent airspace change proposal on the Airspace Change Portal at: <https://airspacechange.caa.co.uk/>

Yours faithfully

A handwritten signature in black ink that reads 'Office of the General Counsel'.

Office of the General Counsel
Civil Aviation Authority

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Attn. Richard Moriarty, Chief Executive
Kate Staples, General Counsel

Our ref: [REDACTED]
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29 May 2019

FOR YOUR URGENT ATTENTION JUDICIAL REVIEW PRE-ACTION PROTOCOL LETTER

Dear Sirs

CAA DECISION OF 30 APRIL 2019 REFUSING TO DENOTIFY ROUTE 4 RNAV-1 SIDS AT GATWICK AIRPORT

1. This is a letter before action in the judicial review pre-action protocol. As you will be aware from our letter dated 16 April 2019, we are instructed by Plane Justice, a company limited by guarantee, which represents residents of Surrey who are affected detrimentally by noise from airplanes flying Route 4 out of Gatwick Airport.

The Claimant

2. Should it prove necessary to issue a claim, the Claimant will be Plane Justice Limited, 4 Prince Albert Road, London NW1 7SN. Plane Justice was formed in February 2017 to represent residents of villages and towns in Surrey who were affected by significant levels of airplane noise following the adoption of the Modified Route 4 RNAV-1 SID and to coordinate their efforts to resist the adoption of the Route.

The Defendant

3. The proposed Defendant is the Civil Aviation Authority ("**CAA**").

The Decision Challenged

4. The Claimant intends to commence a claim for judicial review of the CAA's decision of 30 April 2019 to refuse to denotify certain modified departure procedures known as the Modified Route 4 RNAV-1 SID for use at Gatwick Airport (the "**Contested Decision**").
5. The background to and legal errors in the Contested Decision are described further below. In short, however, the Claimant intends to rely on a single ground of challenge. The CAA is required by its guidance on airspace change proposals and its specific statements on procedure made during the 2012 ACP to bring the 2012 ACP to an end once its post-implementation review has been completed and it is in a position to know whether the Modified Route 4 RNAV-1 SID succeeded in replicating the track of the conventional SIDs existing in 2012. The CAA is now in possession of that information, which demonstrates that the Modified Route 4 RNAV-1 SID did not succeed. It must therefore bring the 2012 ACP to an end now by deciding to denotify the Modified Route 4 RNAV-1 SID.
6. This letter is structured as follows:
 - (a) We explain the basis upon which the Claimant has standing to bring the intended claim;
 - (b) We summarise the factual background to the intended claim;
 - (c) We explain the ground on which the Claimant intends to challenge the Contested Decision;
 - (d) We explain why the claim is an Aarhus Convention claim and the reciprocal caps on costs liability apply accordingly;
 - (e) We identify the action that the Claimant expects the CAA to take; and
 - (f) We address various administrative and procedural matters.

Standing

7. The Claimant is a company limited by guarantee; its registered place of business is 4 Prince Albert Road, London NW1 7SN and its company registration number is 10632612.
8. The Claimant was formed by [REDACTED] in order to coordinate the efforts by many residents of Surrey villages who have been affected to a significant extent by the adoption of the Modified Route 4 RNAV-1 SID. The purpose for forming a company was to give a focal point and a 'public face' for their campaign against the adoption of the Modified Route 4 RNAV-1 SID.
9. As you will recall, the Claimant successfully challenged the CAA's decision of 7 April 2017 approving the Modified Route 4 RNAV-1 SID and the Modified Route 4 Conventional SID (together, the "**Modified Route 4 SIDs**") (the "**April 2017 Decision**"). The April 2017 decision was quashed by consent order made by Administrative Court lawyer [REDACTED], acting on delegated powers on 6 February 2018 (the "**Quashing Order**"). As explained below, the April 2017 Decision and the Quashing Order form an important part of the background to the Contested Decision.
10. For those reasons, the Claimant considers that it has standing to bring the intended claim for judicial review in the Administrative Court.

Factual background

11. SIDs are procedures that govern the route that aircraft take in the first phase of their climb from take-off. SIDs are proposed by airports such as Gatwick and approved and published by the CAA.
12. Historically, SIDs have been designed by reference to conventional, ground based navigation based on magnetic north ("**Conventional SIDs**"). More recently, satellite based technologies known as Performance-Based Navigation, or PBN have become available. One such technology is known as RNAV-1.
13. Until November 2013, Gatwick operated a series of Conventional SIDs governing various departure routes that had remained unchanged for more than

40 years. The route that is relevant to this claim is known as Route 4. It consists of a westerly take-off followed by a 180 degree turn north and east.

14. In March 2011, Gatwick commenced discussions with the CAA regarding proposals to replace the Conventional SIDs with SIDs based on RNAV-1. The key elements of the process for present purposes were as follows:
 - (a) From July to October 2012, Gatwick ran a consultation on the RNAV-1 SIDs that it was planning to propose.
 - (b) On 30 November 2012, Gatwick formally submitted its airspace change proposal to the CAA (the “**2012 ACP**”).
 - (c) On 14 August 2013, the CAA approved the airspace change proposal (the “**Approval Decision**”), including a particular RNAV-1 SID for Route 4 (the “**2013 Route 4 RNAV-1 SID**”). The Approval Decision stated that the airspace change should be subject to a PIR and “should any RNAV-1 SID be deemed to be of detrimental effect, it should be withdrawn”.¹
 - (d) On 14 November 2013, the 2013 Route 4 RNAV-1 SID was implemented. It continued to be flown until 26 May 2016.
 - (e) In November 2014, the CAA commenced the PIR.
 - (f) On 11 November 2015, the CAA published its report on the PIR (the “**November 2015 Report**”) setting out the conclusions it had reached in the PIR. The CAA concluded, in particular, that the 2013 Route 4 RNAV-1 SID was unacceptable. The CAA required Gatwick to submit a modified RNAV-1 SID for Route 4, and to submit a modified conventional SID for Route 4 as well. At §10.23, it said as follows:

If, and once, the modified design has been implemented and flown for six months the CAA will conduct a further assessment as part of this PIR. At its conclusion, if the CAA is of the view that the RNAV-1 design has not achieved, to an acceptable standard, its original stated aim, then the Route 4 RNAV-1 SID will not be confirmed and will be de-notified by the CAA, i.e. removed from the AIP. That will be the end of the airspace change process commenced by Gatwick’s airspace change request dated 30 November 2012 (as amended 9

¹ Approval Decision Annex A §2.

January 2013) in respect of the Route 4 RNAV-1 SIDs. Gatwick will, of course, be able to submit a further application in respect of the route but this will be subject to a new and separate airspace change proposal submission.

- (g) On 24 March 2016 Gatwick published on its website the Modified Route 4 RNAV-1 SID and notified the same to the CAA.
 - (h) On 23 May 2016, the CAA approved the Modified Route 4 RNAV-1 SID to be flown from 26 May 2016 so that data on its implementation could be gathered and assessed over the period of the following six months. In fact, aircraft have flown the Modified Route 4 RNAV-1 SID ever since that time and continue to do so, consequent upon the April 2017 Decision which rendered the Modified Route 4 RNAV-1 SID permanent, and notwithstanding the Quashing Order.
 - (i) In March 2017 Gatwick submitted the Modified Route 4 Conventional SID.
 - (j) On 7 April 2017 the CAA adopted the April 2017 Decision, approving the Modified Route 4 SIDs.
15. On 29 June 2017, the Claimant filed a claim form seeking judicial review of the April 2017 Decision. The aspect of the April 2017 Decision that gave rise to the claim was the shift in the pattern of aircraft traffic caused by the change from the Original Route 4 SID to the Modified Route 4 SIDs. The Claimant challenged the decision on two grounds:
- (a) First, the Claimant contended that the April 2017 Decision failed to give weight to the importance of maintaining existing flight patterns. In particular, the Claimant contended that the CAA did not identify any legitimate countervailing factors capable of justifying displacing those flight patterns in this case.
 - (b) Second, the Claimant challenged the adequacy of the consultation that had taken place.
16. Although the CAA contested the Claimant's claim in its Summary Grounds of Resistance, after permission was granted, the CAA accepted that the claim was well-founded in its entirety. It therefore consented to the Quashing Order on 7

February 2018, which quashed the April 2017 Decision on both grounds, and to paying the Claimant's costs.

17. Following the Quashing Order, on 9 February 2018, the CAA wrote to Gatwick explaining the CAA's understanding of the effect of the order, and what needed to be done next. The CAA said:

The practical effect of the quashing of the decision is that it is as if the decisions to confirm the published Runway 26 Route 4 SIDs notified in the AIP as permanent and to approve the revised conventional SIDs submitted to the CAA in March 2017 were never made. Consequently, the RNAV route remains in its current location and reverts to its temporary state as it was on 6 April 2017 and the Route 4 conventional SIDs must return to their location as at 6 April 2017 or be denotified.

18. The CAA also explained that the Route 4 Conventional SIDs needed to be redesigned to track over the ground that they flew prior to the April 2017 Decision, but that they needed to be updated to take account of 2017 obstacle data.
19. In addition, the CAA proposed that a further review of the conventional SIDs should take place after the Route 4 Conventional SIDs had been put back in their original position. The CAA then said:

Once the Route 4 conventional SIDs have been corrected, as set out in the CAA's letter of 28 September 2015, the CAA will remake its decision as to whether the RNAV design has achieved, to an acceptable standard, its original stated aim. If it does not, then that RNAV route will not be confirmed and will be de-notified by the CAA, i.e. removed from AIP. That will be the end of the airspace change process commenced by GAL's airspace change request dated 30 November 2012.

20. The Claimant understands that Gatwick has now submitted a revised conventional SID that replicates the Original Route 4 SID, taking into account more recent obstacle data (the "**Revised Route 4 Conventional SID**"). The Claimant also understands that the CAA has now approved the Revised Route 4 Conventional SID, and intends that it be published this year, at the same time as denotifying the Modified Route 4 Conventional SID.
21. By letter dated 16 April 2019, the Claimant's solicitors explained to the CAA that, now that the Revised Route 4 Conventional SID has been approved, the CAA is in a position to bring the 2012 ACP to an end. The Claimant's solicitors therefore invited the CAA to decide within 14 days that the Modified Route 4 RNAV-1 SID

should be withdrawn. Making that decision now would allow the CAA to denotify the Modified Route 4 RNAV-1 SID at the same time as the Modified Route 4 Conventional SID, with the result that all aircraft would fly the Revised Route 4 Conventional SID using 'coded overlays', as proposed in the Claimant's solicitor's letter of 16 April 2019.

22. In the Contested Decision, the CAA declined to make any final decision on the Modified Route 4 RNAV-1 SID at this time. It provided no reasons for this, other than to refer to its letter of 9 February 2018 (referred to at §§17-19above) and a new airspace change proposal in relation to Route 4 RNAV SIDs made by Gatwick that the CAA is presently considering (the "**2018 ACP**"). According to the indicative timelines published on the CAA's website, at time of writing it is envisaged that a formal airspace change proposal for the 2018 ACP will not be submitted until July 2020, with a decision to be made in December 2020, and an AIRAC target date in March 2021.
23. It is not clear to the Claimant what the CAA believes to be the relationship between the 2018 ACP and the further review of the Route 4 Conventional SID that the CAA was envisaging in its letter of 9 February 2018, save that the Contested Decision described the 2018 ACP as being "*consequent*" on the process set out in the 9 February 2018 letter. It is clear, however, that the CAA has decided not to make a final decision on the 2012 ACP for a period that is likely to run for further years rather than weeks or months, in addition to the nearly seven years that have already passed.

Ground of challenge

24. The CAA's power and duty to examine and if appropriate approve modifications to departure routes at Gatwick originates from the Transport Act 2000 (the "**Transport Act**"). Section 70 of that Act requires the CAA to exercise its air navigation functions in the manner it thinks best calculated:
 - (a) to secure the most efficient use of airspace consistent with the safe operation of aircraft and the expeditious flow of air traffic;
 - (b) to satisfy the requirements of operators and owners of all classes of aircraft;

- (c) to take account of the interests of any person (other than an operator of an aircraft) in relation to the use of any particular airspace or the use of airspace generally;
 - (d) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section;
 - (e) to facilitate the integrated operation of air traffic services provided by or on behalf of the armed forces of the Crown and other air traffic services;
 - (f) to take account of the interests of national security; and
 - (g) to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification).
25. At the time of the 2012 ACP, the CAA's guidance on ACPs was set out in CAP 725 (the "**ACP Guidance**"). The ACP Guidance provides for a seven stage process. The April 2017 Decision was the product of the final stage: post-implementation review ("**PIR**"). The ACP Guidance explained at §7.4 that the purpose of a PIR is "*to ensure that the revised arrangements are working as anticipated. If this is determined not to be the case, changes to the arrangements may have to be made*". Although the ACP Guidance did not expressly provide for a deadline by which a final decision need be taken, it is implicit in the guidance, read in light of basic public law principles, that a decision must be taken within a reasonable time.²
26. As set out above, during the 2012 ACP itself, the CAA defined the procedure for the PIR in more detail. In particular, in the November 2015 Report at §10.23, the CAA specifically stated that "[a]t its conclusion, if the CAA is of the view that the RNAV-1 design has not achieved, to an acceptable standard, its original stated aim, then the Route 4 RNAV-1 SID will not be confirmed and will be de-notified by the CAA, i.e. removed from the AIP." The CAA explained that any further changes would then need to be made in "*a new and separate airspace change proposal submission*".

² See, for example, Auburn et al, *Judicial Review: Principles and Procedure*, OUP 2013, §§9.10-9.12.

27. The “*original stated aim*” to which the CAA referred was stated in section 6 of Gatwick’s 2013 proposal in the following terms: “[t]he objective of this proposal is to replicate the current standard instrument departure routes (SIDs) from Gatwick Airport using PRNAV”.
28. The CAA is now able to make that assessment. It knows the patterns of traffic that the Modified Route 4 RNAV-1 SID produces. It also knows the patterns of traffic that prevailed under the Original Route 4 SID. It has also approved the Revised Route 4 Conventional SID, which aircraft will be able to fly as a safe means of returning to the patterns of traffic associated with the Original Route 4 SID once it has been notified later this year. The CAA does not therefore require any further information to bring the 2012 ACP to a conclusion.
29. In those circumstances, it was unlawful for the CAA to refuse to make a final decision on the Modified Route 4 RNAV-1 SID in the Contested Decision.

Aarhus Convention claim

30. Like the Claimant’s challenge to the April 2017 Decision, this is an Aarhus Convention claim as per CPR 45.41(2)(a)(ii), namely a claim in judicial review “*which challenges the legality of any such decision, act or omission and which is within the scope of Article 9(3) of the Aarhus Convention*”.
31. An Aarhus Convention claim must be brought by one or more “*members of the public*”, which is defined by reference to the Aarhus Convention. Article 2(4) of the Aarhus Convention defines ‘the public’ as including “*one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups*”. The Claimant therefore falls within the definition of “*member of the public*” in the context of an Aarhus Convention claim.
32. Should it prove necessary to issue a claim, the Claimant will seek confirmation from the Court that the costs cap as set out in CPR 45.43(2)(b) applies, limiting its liability for adverse costs to £10,000. The Claimant will also seek confirmation that the Defendant’s liability for adverse costs is likewise limited to £35,000 plus VAT.

Relief sought

33. For the reasons given above, the Claimant invites the CAA to take a final decision now to denotify the Modified Route 4 RNAV-1 SID. Should the CAA refuse to do so, the Claimant intends to commence proceedings in the Administrative Court seeking an order:
- (a) directing the CAA to take a decision as to whether the Modified Route 4 RNAV-1 SID has achieved the objective of the 2012 ACP, and if not, to denotify it at the same time as the Revised Route 4 Conventional SID is published and implemented;
 - (b) limiting the Claimant's liability for adverse costs to £10,000 and the Defendant's liability to be subject to a reciprocal cap of £35,000 plus VAT;
 - (c) Costs.

Administrative and procedural matters

34. The address for reply to this letter is as per the letterhead above. The solicitor with responsibility for the claim is [REDACTED]. Counsel instructed is [REDACTED] of Brick Court Chambers.
35. We consider that Gatwick Airport Limited would be an interested party in respect of the intended claim and have copied this letter to it.
36. We ask that you reply to the matters raised above within fourteen days from the date of this letter, i.e. by 12 June 2019.

Yours faithfully

Richard Buxton Solicitors

Richard Buxton Solicitors
Environmental Planning & Public law

cc. Gatwick Airport Limited [REDACTED]



Office of the General Counsel

Richard Buxton
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Cambridge CB1 1JP

and by email: [REDACTED]@richardbuxton.co.uk
cc: [REDACTED]@gatwickairport.com

Your Ref: [REDACTED]

12 June 2019

Dear Sirs

**YOUR CLIENT: PLANE JUSTICE LTD
PROPOSED JUDICIAL REVIEW PROCEEDINGS RE: CAA LETTER OF 30 APRIL 2019
REGARDING GATWICK ROUTE 4**

1. This is the Civil Aviation Authority's ("CAA") response to your Judicial Review Pre-Action Protocol letter of 29 May 2019 ("Letter"). The definitions contained in the Letter are adopted throughout this response unless otherwise noted.

THE PROPOSED CLAIMANT

2. No admissions are made as to any noise or its impact on those said to be represented by the proposed claimant, Plane Justice.

BACKGROUND AND CHRONOLOGY

3. Further to the background set out in your letter, the following correspondence is relevant to your clients proposed claim. It is our understanding that all of this correspondence remains in your possession but nevertheless **copies are enclosed**.
4. On 27 November 2017 in the course of the judicial review proceedings referred to in paragraph 15 of the Letter the CAA wrote to the claimant on a without prejudice basis, stating:

[REDACTED]

5. On 28 November 2017 the claimant wrote to the CAA on a without prejudice basis.
6. On 29 November 2017 the CAA replied on a without prejudice basis stating:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. The parties then agreed to the terms of the Quashing Order. On 9 February 2018 the CAA wrote to Gatwick Airport setting out the steps Gatwick Airport was required to take in order to give effect to the Quashing Order. Specifically:
 - a. To return the conventional SID route to its location as it was on 6 April 2017 taking into account current safety data. That route to be given only a temporary status pending conclusion of additional work on the conventional SID.
 - b. The additional work that Gatwick Airport was required to do in order that the CAA may bring the PIR to a close. That included, once temporarily reinstated to its location as at 6 April 2017, the undertaking of a review of the conventional SID route through the CAP1616 process, which includes consultation.

This was to comply with the Quashing Order, and, bearing in mind your client's second ground of challenge, to ensure that local communities were properly consulted in respect of changes to airspace design that could potentially result in a change to aircraft tracks over the ground as provided for under the process.

8. On 12 February 2018, [REDACTED] on behalf of Plane Justice wrote to the CAA requesting a meeting.
9. On 21 February 2018 the CAA wrote to [REDACTED] declining to meet and further stating:

"We wrote to GAL on 9 February 2018 setting out the next steps, and a copy of that letter is available at http://publicapps.caa.co.uk/docs/33/GatwickRoute4_NextSteps_09022018.pdf.

The practical effect of the setting aside of the decision is to return the routes to their location and status as they were on 6 April 2017. This means that, in the short term, aircraft will continue to fly the same departure route as the RNAV route will not change but will revert to a temporary status, pending further work on the conventional route by GAL.

This work will need to be conducted through the revised airspace change process, set out in our publication CAP1616 (www.caa.co.uk/cap1616), including consultation with impacted communities. Once the conventional route has been corrected, we will again decide whether the RNAV design has achieved, to an acceptable standard, its stated aim of replicating the conventional route, and should therefore become permanent."

10. On 5 March 2018 you, on behalf of your client, wrote to the CAA confirming your understanding of the letter of 9 February 2018. In particular that:

"GAL is to carry out a review of the Route 4 conventional SIDs, as has been envisaged since 14 August 2013"

...

“This review is to take place through the airspace change process as set out in CAP 1616 and in accordance with the Air Navigation Guidance 2017. This will therefore include consultation with stakeholders, including the public, on any proposed new designs;

“Once GAL has proposed “corrected” conventional SIDs, the CAA will consider whether the RNAV design (which remains the Modified Route 4 RNAV SIDs) has achieved, to an acceptable standard, its original stated aim, which was to replicate the conventional SIDs. If it does not, the RNAV SIDs will be de-notified.”

11. On 15 March 2018 you wrote to the CAA in regard to the letter of 21 February 2018 (referred to as 22 February 2018) requesting an explanation as to why the CAA refused to meet with your client. No issue was taken by you or your client with the process as it was explicitly said to be understood by you in the letter.
12. On 23 March 2018 Gatwick Airport wrote to the CAA confirming its understanding that it would be required to undertake a full review of the conventional SIDs in accordance with the CAP 1616 Airspace Change Process.
13. On 27 April 2018 the CAA wrote to you confirming that the understanding articulated in the letter of 5 March 2018 was correct.
14. On 19 December 2018 Gatwick Airport submitted a ‘statement of need’ to the CAA in accordance with the CAP1616 process, stating inter alia:

“Gatwick Airport is now undertaking a new airspace change proposal involving a review and if appropriate redesign of the Route 4 SIDs taking into account the relevant aspects of the Consent Order”

15. The CAA approved the temporary return of the conventional SID to its 6 April 2017 location to the UK AIP¹ on 15 March 2019, having completed its safety assessment of the SID, completing the step identified at paragraph 7(a), above.
16. The question of whether the RNAV design has achieved to an acceptable standard its stated aim of replicating the conventional route remains to be addressed. It can only appropriately be addressed once Gatwick Airport completes the review of the conventional SID through the CAP1616 process. The PIR in relation to Route 4 as part of the 2012 ACP is therefore not yet concluded.

THE DETAILS OF THE MATTER BEING CHALLENGED

17. The “decision” purportedly under review is the CAA’s letter of 30 April 2019 which relevantly states, in full:

“The CAA’s letter of 9 February 2018, published on 13 February 2018 as CAP1531LETA, sets out how and when the CAA will remake its decision.”

18. However, in the Letter you characterise the decision as a “refusal” to denotify the RNAV route and to conclude the PIR now. It is your client’s position that, the conventional SIDs having

¹ Aeronautical Information Package. The AIP publishes the airspace design of the UK, including flight procedures, routes and controlled airspace etc.

been approved for publication on 15 March 2019 to temporarily return their location as at 6 April 2017, the PIR “must” be concluded.

19. Your client states that the PIR “must” conclude although there has not yet been the relevant consultation with local communities, as part of the CAP1616 process which has not yet concluded in this case and is required in order to complete the PIR.
20. It will be appreciated that undertaking changes to airspace design may result in changes to the volume of traffic over populated areas that have not been overflowed for a period of years or at all. The CAP1616 gives those individuals a voice through consultation.

RESPONSE TO THE PROPOSED CLAIM

21. We would first note that the CAA’s letter of 30 April 2019 did not make any decision, merely referring your client back to the letter of 9 February 2018 which sets out the manner in which the CAA has determined will fairly bring the matter to a close and in accordance with the terms of the Quashing Order.
22. That your client requested that the CAA remake its decision does not extend the time available for your client to challenge the procedure to bring this matter to a close set out in the CAA’s letter of 9 February 2018.
23. Your client is now well out of time to challenge the decision of 9 February 2018. As set out above, you and your client directly sought out further clarification of the meaning of the letter, well within the period of time available to it to challenge that decision and understood that further process involving consultation with local communities would be required even before the terms of the Quashing Order were agreed.
24. The CAA made its decision of 9 February 2018 such that the conventional SIDs would be reviewed in full consultation and in accordance with the procedures set out in CAP1616.
25. This process is now well underway and Gatwick Airport have relied upon that decision in order to progress its proposal to review the Route 4 SIDs under the CAP1616 process.
26. The CAA required that Gatwick Airport follow the CAP1616 process because the movement of significant volumes air traffic without consultation with the community overflow (as your client proposes) has the potential to cause an environmental impact through noise and emissions and the CAA is required to take those interests into account when making its decision in accordance with the Air Navigation Guidance 2017 and the terms of the Quashing Order.
27. Further as set out in the CAA’s letter of 9 February 2018 a significant volume of traffic has not flown the conventional route since November 2013 and to route air traffic to that area without consultation with communities would be:
 - a. Contrary to the terms of the Quashing Order.
 - b. Contrary to public policy.
 - c. Unfairly prejudicial to Gatwick Airport which has relied upon the decision of 9 February 2018.

28. It is common ground that there is no time limit to the ACP. That is because the time required inevitably depends upon all the circumstances of the case. In this instance, while it is true that the ACP has continued over some time, the circumstances are such that more time is required.
29. The CAA therefore rejects your client's proposed claim in its entirety.

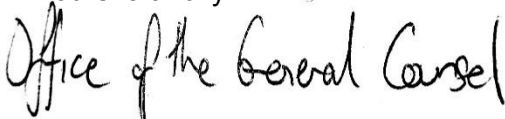
RESPONSE TO REQUESTS FOR INFORMATION

30. The CAA understands the following statement in your letter to be a request for further information:

It is not clear to the Claimant what the CAA believes to be the relationship between the 2018 ACP and the further review of the Route 4 Conventional SID that the CAA was envisaging in its letter of 9 February 2018, save that the Contested Decision described the 2018 ACP as being "consequent" on the process set out in the 9 February 2018 letter.

31. As requested, the CAA has provided your firm's letter of 5 March 2018 and our letter direct to your client of 21 February 2018 which clarifies that the 2018 ACP is a requirement for the finalisation of the PIR process.
32. As part of the 2018 ACP, Gatwick Airport is also taking the opportunity to review the R-NAV route in order to further reduce the impact experienced by local communities of aircraft departing Gatwick Airport.
33. However, the CAA notes that the published assessment meeting minutes (Step 1A of the CAP1616 process of the 2018 ACP) do not properly reflect the Statement of Need submitted by Gatwick Airport. Specifically, they state that the change will "will not consider conventional procedures". This is incorrect. Gatwick Airport is required to review the conventional SIDs in accordance with the CAA's letter of 9 February 2019 and the CAA will shortly write to Gatwick Airport to clarify this.
34. The next step in the CAP1616 process for the 2018 ACP is the development of design principles for the proposed change. The design principles encompass the safety, environmental and operational criteria and the strategic policy objectives that the change sponsor seeks to achieve in developing the airspace change proposal. These design principles will also include those issues addressed in the Quashing Order. An important part of Step 1B of CAP1616 is for the design principles to be drawn up through discussion between the change sponsor and affected stakeholders and we would recommend your client contact Gatwick Airport should they wish to be involved in this process.
35. The CAA also notes that where no delays are experienced the standard timeframe for any Level 1 airspace change proposal under CAP1616 is 110 weeks, and the 2018 ACP timeline accords with this estimate.

Yours faithfully



Office of the General Counsel
Civil Aviation Authority

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Attn. Richard Moriarty, Chief Executive
Kate Staples, General Counsel

Our ref: [REDACTED]
Email: [REDACTED]@richardbuxton.co.uk

18 June 2019

Dear Sirs

**RE: PRE-ACTION CORRESPONDENCE - CAA DECISION OF 30 APRIL 2019
REFUSING TO DENOTIFY ROUTE 4 RNAV-1 SIDS AT GATWICK AIRPORT**

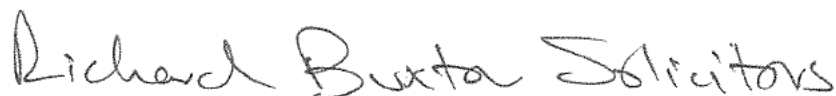
We are in receipt of your letter of 12 June 2019 and enclosures. However we note that both the letter and enclosures include without prejudice communications.

As you will be aware, privilege in relation to without prejudice communications is joint and it is inappropriate to include without prejudice material in an open letter of this nature, in particular as it will be necessary to include your pre-action response in the Court bundle if a claim is lodged in relation to the above.

In our view, paragraphs 4-6 can be removed without affecting the content of the letter. Please can you therefore provide a revised copy of your letter and enclosures without any without prejudice material?

Given the need to act promptly in judicial review claims, we request that you provide the revision requested by no later than Friday, 21 June 2019 at 5pm.

Yours faithfully



Richard Buxton Solicitors
Environmental Planning & Public law



Office of the General Counsel

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by email only: [REDACTED]@richardbuxton.co.uk

Your Ref: [REDACTED]

27 June 2019

Dear Sirs

RE: GATWICK ROUTE 4 SIDS

We refer to your letters of 18 and 25 June 2019.

Your client has made a number of representations regarding its understanding of the process decided by the CAA to bring the airspace change process to a close.

As set out in the CAA's letter of 12 June 2019 it is the CAA's view that these representations are inconsistent with previous written correspondence and it was therefore necessary to bring these letters to your attention.

The CAA is content to waive privilege in those documents as they go directly to a matter in issue. If your client is not prepared to similarly do so, we suggest that appropriate redactions are made to the letter before inclusion in the Court bundle. In our view, that would extend only to the italicised text at paragraphs 4 and 6.

As stated in our letter of 21 June 2019, the CAA will not take a point of promptness in relation to the two-week delay that would be caused by acceding to the CAA's request to delay filing until 9 July 2019.

Yours faithfully

Office of the General Counsel
Office of the General Counsel
Civil Aviation Authority



Office of the General Counsel

Richard Buxton
19B Victoria St
Cambridge CB1 1JP

by email only: [REDACTED]@richardbuxton.co.uk

Your Ref: [REDACTED]

5 July 2019

Dear Sirs

RE: GATWICK ROUTE 4 SIDS

We refer to previous correspondence.

Please find **enclosed** letter from Gatwick Airport dated 3 July 2019.

As you will see from the content of the letter, Gatwick Airport are refusing to review the conventional Route 4 SIDs through the CAP1616 process in accordance with our letter of 9 February 2018.

Consequently, following the notification of the conventional SIDs to their location as at 6 April 2017 the CAA will take a decision as to whether the Modified Route 4 RNAV-1 SID has achieved the objective of the 2012 ACP.

As this reflects the relief sought in your letter of 29 May 2019, we presume your client will not commence judicial review proceedings. Please confirm that this is the case.

Yours faithfully

Office of the General Counsel
Office of the General Counsel
Civil Aviation Authority

██████████
████████████████████
Civil Aviation Authority
CAA House
45-59 Kingsway
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WC2B 6TE

3 July 2019

Dear ██████████

Airspace Change Proposal – ‘Route 4’ SIDs at Gatwick Airport (ACP-2018-86)

I refer to your letter dated 14 June 2019 in which you confirmed the instruction that Gatwick Airport Ltd (GAL) undertake a review of the conventional Route 4 Standard Instrument Departures (SIDs) in accordance with the original airspace change process relating to the implementation of RNAV-1 SIDs at Gatwick Airport initiated in November 2012. Your letter states that you will not permit the Airspace Change Proposal (ACP) initiated in 2018 in respect of the Route 4 SIDs (CAA reference: ACP-2018-86) to progress through the Stage 1 Gateway of the airspace change process without appropriate design principles considering the conventional SIDs.

In response to your letter and as outlined in my note of 23 March 2018 we have concerns regarding the initiation of an ACP, focussing on the Route 4 conventional SIDs, at the same time as the current ACP as we expect this would give rise to confusion amongst those stakeholders with whom we would be required to consult. I am also cognisant that, despite our best intentions, we run the risk of ‘consultation fatigue and overload’ on the part of those same stakeholders. This is all the more pertinent given that we would have to consult as part of the ACP for a set of SIDs that would never, in reality, be flown.

In my note I mentioned that in order to reduce the risk of confusion amongst local stakeholders our intention, if a review of the conventional SIDs in accordance with the CAP 1616 Airspace Change Process is unavoidable, that the Route 4 RNAV SIDs ACP (Ref: ACP-2018-86) and the proposed review of the conventional SIDs should be conducted separately.

Having given this matter due consideration, we are concerned that the link established in your letter between the ACP initiated in November 2012 and the current Route 4 ACP (Ref: ACP-2018-86) increases risk to the successful and timely completion of the current ACP. At the very least, if we were to belatedly include a review of the conventional Route 4 SIDs, as instructed, as part of our current Route 4 ACP (ref: ACP-2018-86) then we believe it would be prudent to repeat Stage 1B of the process adding significant delay to an already challenging timescale thus potentially exposing both our organisations to understandable frustration from our local communities who are looking to us for a swift resolution to this matter.

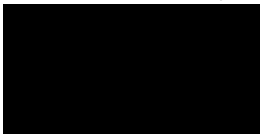
Given the significant risks we believe that the course of action you have instructed us to undertake would introduce into the current Route 4 ACP (Ref: ACP2018-86), I can confirm that on behalf of GAL we have decided not to review the conventional SIDs as requested. We expect

that this decision will allow the CAA to respond to the Judicial Review Pre-action Protocol served on behalf of Plane Justice and to draw to a close the 2012 ACP in relation to the introduction of R-NAV1 SIDs at Gatwick Airport. We anticipate that following a CAA decision we will be required to denotify the current temporary Route 4 RNAV SIDs leaving airlines to fly their own coded overlays. We await your response and decision in this regard.

It remains our expectation that this course of action will de-couple entirely the 2012 implementation of RNAV-1 SIDs at Gatwick Airport from the 2018 Route 4 ACP (Ref: ACP-2018-86) notwithstanding the relevant factors identified under the terms of the consent order which should be taken into account as cited in the ACP-2018-86 Statement of Need. I would be grateful if you would confirm this is the case.

If you wish to meet to discuss the contents of this letter then please contact me directly.

Yours sincerely,

A large black rectangular redaction box covering the signature area.A small black rectangular redaction box covering a line of text.A long black rectangular redaction box covering a line of text.

Gatwick Airport Ltd

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Attn. [REDACTED]

Our ref: [REDACTED]

Email: [REDACTED]@richardbuxton.co.uk

11 July 2019

Dear Sirs

Re CAA decision of 30 April 2019 refusing to denotify Route 4 RNAV-1 SIDs

Thank you for your letter of 5 July 2019 and for providing us with a copy of the letter from Gatwick dated 3 July 2019 to which your letter refers.

Our clients are pleased that the CAA has abandoned its plan to interject a review of conventional Route 4 SIDs into or alongside the 2018 Route 4 RNAV-1 SIDs ACP and to rely on that interjection in order to postpone still further the resolution of the 2012 ACP. Our clients wholly agree with the views expressed by Gatwick in their letter as to the problems with this proposal – it is unfortunate that although Gatwick made these views clear in their letter dated 23 March 2018, it has taken an additional year for the CAA to accept their position. It should not be forgot that this is an additional year of residents suffering unwarranted and highly disruptive levels of aircraft noise in their homes, for no apparent benefit to anyone and against the advice from the proposer of the ACPs.

Clearly, our clients have an interest in the next steps to be taken by the CAA in a clear and timely fashion. It is disappointing that your letter does not set out a definitive process and timetable for making the decision the CAA now accepts must be made, i.e. whether the Modified Route 4 RNAV-1 SIDs have or have not achieved the original aim of the 2012 ACP. We propose the following:

1. The CAA will decide whether the Modified Route 4 RNAV-1 SIDs have achieved or have not achieved the objective of the 2012 ACP. The objective is as stated in Gatwick's January 2013 proposal, namely to replicate using PRNAV the conventional SIDs from Gatwick Airport comprising Route 4 which were current at the time of that proposal.
2. The decision will be taken within 14 days after the AIRAC effective date of the Revised Route 4 Conventional SIDs; presuming that the decision is that the objective has not been achieved, then the Modified Route 4 RNAV-1 SIDs will be denotified at the earliest possible date thereafter and within 90 days at the utmost of the above AIRAC effective date.



3. In order to ensure this timetable is adhered to, the CAA will not take, nor direct or encourage others to take any action which would halt or delay the publication and implementation of the now settled Revised Route 4 Conventional SIDs, including any review or correction of the Revised Route 4 Conventional SIDs, other than for genuine concerns about safety.

On point 2 above, if the CAA considers that a longer period of time is needed between the AIRAC effective date of the revised conventional SIDs and the decision then please advise with full reasons.

Upon agreement to the above, our clients will agree not to commence judicial review proceedings as set out in their letter before action dated 29 May 2019. The option will remain open to them, however, to bring a claim in judicial review of any future decision the CAA may make if it is not made in a lawful and rational manner, including if it departs from the course of action now proposed.

Please let us have your agreement to the above (including any views as to the 14 days envisaged at point 2 above) no later than 7 days from the date of this letter, failing which we will proceed to file the proposed claim in judicial review and seek relief in similar terms to those proposed above.

Yours faithfully



Richard Buxton Solicitors
Environmental, Planning & Public Law

cc. [REDACTED] (Gatwick Airport Limited)



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Your Ref: [REDACTED]

16 July 2019

Dear Sirs

RE: GATWICK ROUTE 4 SIDS

We refer to your letter of 11 July 2019.

The CAA has agreed to the relief sought in your client's pre-action protocol letter of 29 May 2019 insofar as it can do so without fettering its discretion. It is therefore our view that to now file a judicial review claim would be an abuse of the court's process. Should your client file a claim at this stage, the CAA will seek to have the claim struck out and seek its costs of doing so.

We would also note that given the timetable you propose, the earliest possible effective date of any changes to the AIP would be AIRAC 13 on 5 December 2019. The CAA does not presently foresee any reason it will not be in a position to make a decision in sufficient time to meet that AIRAC cycle if changes are necessary, but cannot commit to any specific timeline.

Yours faithfully

Office of the General Counsel
Office of the General Counsel
Civil Aviation Authority

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Kate Staples, General Counsel

Our ref: [REDACTED]
Email: [REDACTED]@richardbuxton.co.uk

22 July 2019



Dear Sirs

RE: GATWICK ROUTE 4 SIDS

We write further to your letter of 16 July 2019 in relation to the above and enclose a letter from our clients.

We can confirm that our clients will not bring Judicial Review proceedings in relation to the grounds set out in our pre-action letter of 29 May 2019. However, as you will expect, our clients fully reserve their rights to bring proceedings in respect of any later CAA decisions, and in particular should the CAA either fail to take a timely decision as to whether the Modified Route 4 RNAV-1 SID has achieved the objective of the 2012 ACP, or take such decision in an unlawful or irrational manner.

Yours faithfully

Richard Buxton Solicitors

Richard Buxton Solicitors
Environmental, Planning & Public law

cc. [REDACTED] (Gatwick Airport Limited)
[REDACTED] (Department for Transport)



www.planejustice.org

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CAA House
45-59 Kingsway
London WC2B 6TE

Attn. [REDACTED]

19 July 2019

Dear Sirs,

RE: Gatwick Route 4

Thank you for your letter of 16 July to our Solicitors Richard Buxton. Almost simultaneously we received by post the enclosed 11 July letter from the Department for Transport (DfT), in reply to ours of 14 June also enclosed.

In our 14 June letter, we stressed at its conclusion what we saw as the importance of building trust, and the reply from the DfT has changed the situation for us.

As a consequence of the DfT's letter, we will take on trust that the last paragraph of the CAA's 16 July letter, coupled with the last paragraph of the DfT's letter and Gatwick's letter of 3 July, provide sufficient assurance that the CAA will now take the requisite decision and that, in effect, the requested assurances set out in numbered paragraphs 1 to 3 of our Solicitors' letter of 11 July will be fulfilled.

We sincerely trust that we are now seeing the lawful and just conclusion of the 2012 ACP with reversion of Route 4 to the Revised Route 4 Conventional SIDs by the end of this year.

Yours faithfully,

[REDACTED]
[REDACTED]
[REDACTED]
For and on behalf of **Plane Justice Ltd**

cc Department for Transport
Gatwick Airport Ltd



Department
for Transport

Department for Transport
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Tel: 0300 330 3000

Web Site: www.gov.uk/dft

Our Ref: [REDACTED]
Your Ref:

DATE 11/07/2019

[REDACTED]
Plane Justice Ltd
4 Prince Albert Road
London
NW1 7SN

Dear [REDACTED]

Airspace modernisation, compensation and Route 4.

Thank you for your letter dated 14th June 2019 to the Aviation Minister. I am replying as a member of the Aviation Policy Division at the Department for Transport.

As you will be aware, the UK aviation industry has expanded enormously since the 1950s and 1960s when much of our current airspace design was established. An update to this design is long overdue and will bring benefits for both industry and communities. With the demand for aviation having grown significantly since 2010 and forecast to continue to increase up to 2050, modernisation is necessary.

You may know through your engagement with the FASI-South programme, that airspace changes are particularly complex in the south of England where modernisation poses unique challenges due to the high level of interaction between airports' flight paths. However, modernisation will help facilitate the use of new technologies which can deliver benefits such as more direct routes, faster climbs, and reduced need for holding stacks. This will mean that the aviation sector can grow safely, customers will not experience the delays otherwise predicted, and the environmental impact of aviation can be more easily addressed.

Communities play a central role in the CAA's CAP1616 airspace change process. This seven-step change process must be followed by all sponsors of airspace change and gives communities more opportunity to comment on, engage with and influence airspace changes, as you have done in submitting your design principle suggestions on the FASI-South programme. All airspace change proposals are considered on a case-by-case basis. If an airspace change proposal does not meet the CAA's regulatory requirements it will not be approved.

We believe it is important to ensure that our noise compensation and regulation policies are strengthened in light of the anticipated impacts of airspace modernisation and in recognition of community concerns, with any weaknesses addressed. This move towards a stronger noise policy framework was consulted on as part of the Aviation Strategy Green paper, and I note you have discussed some of these proposals in your consultation response. We appreciate your feedback and alongside the other responses it will help to inform our Aviation Strategy White paper which is due to be published later this year.

Regarding your comments on compensation, the Government recognises that current policy on compensation does mean that there are instances where people will be newly overflowed, or experience increased overflight as a result of an airspace change, but would not be eligible for statutory compensation or assistance with noise insulation. Therefore, as one of the proposed noise compensation policies in the Aviation Strategy, we have proposed to introduce new eligibility criteria for noise insulation schemes for airspace changes which result in significantly increased overflight. The proposed new criteria would apply to households which experience an increase of 3dB LAeq and which leaves them in the 54dB LAeq 16hr contour or above. This policy would benefit households who are newly overflowed and those which experience increased overflight. As mentioned, over the coming months we will be considering all options on the Government's compensation policy, including whether this proposed policy is the most appropriate way to compensate households that experience increased overflight as a result of airspace changes.

In your letter you also mentioned Route 4. As you may know, there have been some important developments on this issue in recent days. The Civil Aviation Authority (CAA) has agreed that Gatwick Airport does not need to include the provision of a new conventional departure flightpath in its ongoing CAP1616 airspace change process for Route 4. This means that the CAA will be able to conclude its post implementation review of Route 4 soon after the implementation in September of the revised conventional procedure. Gatwick appreciates that the likely outcome of the review will be the need to denotify the RNAV procedure for Route 4 which would require the airlines to fly coded overlays. Gatwick considers that this approach will enable it to make quicker progress on its CAP1616 process for the Route 4 airspace change proposal. The relevant correspondence can be found under step 1a on the CAA's airspace change portal at:

<https://airspacechange.caa.co.uk/PublicProposalArea?pID=111>

Yours sincerely





[REDACTED]@planejustice.org

Tel: [REDACTED]

www.planejustice.org

BY POST & EMAIL

[REDACTED]
House of Lords
London
SW1A 0PW

[REDACTED]@parliament.uk

14 June 2019

Airspace modernisation & other matters

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We were interested to hear you quoted recently in relation to the airspace modernisation programme:

"Like our road and rail infrastructure on the ground, we need to keep our infrastructure in the sky up to date to keep people moving."

The analogy between ground and air infrastructure is well taken and a well-used one, but you will be well aware that there is one unwarrantable difference: If a new highway is built adjacent to housing then substantial compensation can be payable, whilst the current legal interpretation is that no such compensation is available where this happens in the air.

Compensation

Keeping air infrastructure up to date as you suggest must therefore include modernising the antediluvian compensation rules that apply in the air, by aligning them with those for ground transport, if changing airspace entails overflying new communities.

And whilst offering improved grants for double glazing or community projects may be very welcome measures for those who were historically overflowed as part of a policy of minimising aircraft noise impact, such compensation is frankly derisory to communities

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who might find themselves newly overflowed. As with roads, compensation for such communities must include as a minimum loss of amenity and diminution in property value as applies under the Land Compensation Act.

The situation on the ground

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This all changed with the alterations wrought to airspace in the last ten years, and the industry and its regulators were singularly ill-prepared for the public backlash that was unleashed. Seemingly, and amazingly, they appear to have blithely assumed they could make these changes with no real consequences and that the public would remain supine as they had for decades. They had little insight, let alone metrics fit for purpose, to appreciate the tyrannies inflicted upon newly overflowed communities or communities facing concentrated flight paths, far less how properly to engage and interact with us, the great unwashed.

That was unforgivably negligent, and by far the greatest share of the responsibility for the damage that has been done lies with those in the position of oversight, who failed to inject an ethical dimension into what seemed to us a headlong commercial rush.

FASI

That ethical dimension remains sorely needed, as the government now contemplates ‘airspace modernisation’ in the shape of the FASI programme. We have engaged with the component of the FASI programme known as FASI-South, and as part of that engagement produced a paper – Ethical Principles for Airspace Design – which we would like to share with you.

This sets out the ethical principle of pre-knowledge (Section B), which underpins a great deal of our thinking on the management of airspace and airspace change (please also see Section D, which sets out certain principles we see as flowing from this ethical precept).

As we say in the paper, one of the greatest shocks for us after departure Route 4 was moved in 2016, was the realisation that for some of the decision makers engaged in airspace change, this direction of thinking seemed far from self-evident.

To these decision makers as it seemed to us, there were really only ‘populations’, to be calculated and weighed in the balance, and if perhaps e.g. a population of 5,000 could be replaced by a population of 2,000 by shifting a route, then that might be considered “a good result”, and the fact the 5,000 population had always been overflowed while the 2,000 population had not, didn’t seem to matter very much. *We also have very serious reservations that the current WebTAG tools the DfT appear to set much store by, may harbour this same amoral approach that shocked us so much back in 2016.*

Government policy principle

This lack of ethical dimension as we saw it was all the more surprising, because an overarching Government policy principle of longstanding is “**to limit and, where**

possible, reduce the number of people in the UK significantly affected by adverse impacts from aircraft noise”

We have sometimes heard it said this principle is open to widely varying interpretation, but for us its meaning was evident from the first time of reading:-

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In adopting an ethical approach based on pre-knowledge, a number of principles flow which are set out in section D of our paper. For present purposes I’ll pick out just the first two of these:-

1. **New overflight**: Airspace planners’ and decision makers’ first concern should be to do everything in their power to avoid overflying new communities, whether large or small, unless or until it becomes unavoidable after all other feasible avenues have been explored. In any case where new overflight becomes utterly unavoidable, compensation must be payable for loss of amenity, health impacts and any diminution of property value (on the same basis as applies to the construction of new terrestrial highways under the Land Compensation Act) ¹.
2. **Relative population sizes**: The fact an already overflowed community is large or small should not weigh in the balance – an already overflowed community of 10,000 has ‘bought into’ the overflight just as much as an already overflowed community of 1,000.

Design principles

Also leading on from this ethical thinking framework, we have made several design principle suggestions in the context of the FASI-South programme, which are as follows:-

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- e) RNAV1 technology should be used in all cases rather than RNP, because the latter tends to concentrate flight paths more than RNAV1.

Gatwick departure Route 4

It is ironic that the 2012 Airspace Change Proposal (ACP) at Gatwick which included Route 4, set out with an objective - to replicate historical flight paths -which aligned with the ethical principles we have outlined above. *It is a tragedy that must be put right, that this objective became corrupted in the airspace change processes that ensued.*

It is now 3 years and counting from the current RNAV1 Route 4 going live, and some 16 months since the conclusion of the judicial review (JR) in February 2018 which saw the CAA concede our case on all grounds, and in particular that (to quote from the High Court Consent Order): “it ought to have taken the value of preserving the existing patterns of traffic and the value of leaving the route in its 2012 location into account and given weight to that”

The 2012 ACP should have been brought to a lawful conclusion in the post implementation review in 2015, with the de-notification of the first RNAV1 Route 4 and reversion to flying coded overlays of the existing conventional route.

Instead our communities were treated to an invidious sleight of hand or a negligent misapprehension of the historical position of Route 4 (depending on which version of events you believe), which saw a radically different route design deemed a ‘modification’ and which led to the first JR.

Yet despite all this and the admissions in the JR, all we have experienced from the CAA since February 2018 is obfuscation and unreasonable delay. After they dismissed our letter about the unreasonable delay in April this year with a superficial 2-sentence response, we were left with no option but to send a formal legal letter to the CAA to which we are awaiting their reply.

We didn’t want this, but the communities we support look at the situation well over a year from the JR and ask the increasingly angry question - ‘why’? And I’m afraid the thought of the wait until 2021, for whatever may be the outcome

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Trust

Moreover, this has now become a matter of trust, and I believe there is untold community goodwill to be won, or lost.

It may also have consequences in the longer term, as we approach further changes to airspace in the South East which are necessary we are told due to predicted growth in air traffic.

Whatever the truth of those predictions and the necessity for change may be (especially in light of the Government's very recent commitment to reduce greenhouse gas emissions to net zero by 2050), such changes may become very problematic to implement without a good measure of co-operation and goodwill from communities affected.

How the CAA now chooses to belatedly respond to our call for it to conclude the 2012 ACP, may set the tone for relations between communities and the aviation industry for some time to come.

If you would like to discuss any aspect of this letter I would be very happy to meet.

Yours sincerely,



For **Plane Justice**





www.planejustice.org

Office of the General Counsel
The Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

Attn. [REDACTED]

19 July 2019

Dear Sirs,

RE: Gatwick Route 4

Thank you for your letter of 16 July to our Solicitors Richard Buxton. Almost simultaneously we received by post the enclosed 11 July letter from the Department for Transport (DfT), in reply to ours of 14 June also enclosed.

In our 14 June letter, we stressed at its conclusion what we saw as the importance of building trust, and the reply from the DfT has changed the situation for us.

As a consequence of the DfT's letter, we will take on trust that the last paragraph of the CAA's 16 July letter, coupled with the last paragraph of the DfT's letter and Gatwick's letter of 3 July, provide sufficient assurance that the CAA will now take the requisite decision and that, in effect, the requested assurances set out in numbered paragraphs 1 to 3 of our Solicitors' letter of 11 July will be fulfilled.

We sincerely trust that we are now seeing the lawful and just conclusion of the 2012 ACP with reversion of Route 4 to the Revised Route 4 Conventional SIDs by the end of this year.

Yours faithfully,

[REDACTED]

For and on behalf of **Plane Justice Ltd**

cc Department for Transport

Gatwick Airport Ltd



Department
for Transport

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR
Tel: 0300 330 3000

Web Site: www.gov.uk/dft

Our Ref: [REDACTED]
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Plane Justice Ltd
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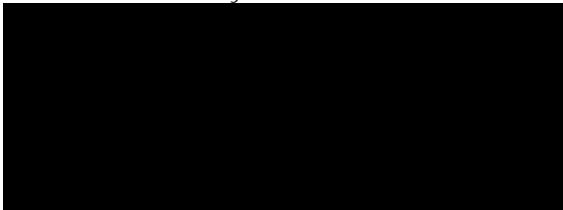
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For **Plane Justice**

@planejustice.org



Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

Also by email: [REDACTED]

Our Ref: [REDACTED]

17 September 2019

Dear Sirs,

Gatwick Airport – Route 4

We act for Plane Wrong. Plane Wrong is an unincorporated association which represents people who have been adversely affected by the changes to Route 4 from Gatwick Airport Limited made in 2013.

Plane Wrong's members are concerned that the CAA may be about to make a decision which, if made, would disadvantage them including by overlooking their right to be consulted on that decision. This would be unfair and unlawful, particularly since, by contrast, the members of the group "Plane Justice" appear to have been informed about and engaged in decisions affecting our client's members and other members of the public.

The background to this situation and our client's concerns is complicated and we therefore set out the relevant facts below. Our understanding is derived from a review of your website and information published separately by Plane Justice. We seek your confirmation of the relevant facts.

History

On 30 November 2012, Gatwick Airport Limited ("GAL") submitted an Airspace Change Proposal ("ACP") to implement Precision Area Navigation ("P-RNAV") Standard Instrument Departure routes ("SIDs"). The ACP had the following stated aim:

"The proposal is to implement P-RNAV replications of all SID routes from Gatwick Airport's main runway (Runway 26L/08R), for use in parallel with existing conventional navigation based SIDs. This will enable a managed transition from the conventional to P-RNAV SID structure.

The improved track-keeping ability of P-RNAV will result in less dispersal of flights across the NPR swathes. Thus the noise impact of the over-flying aircraft will affect less people. However those who are directly beneath the flight path will experience a greater number of over-flights."

The CAA approved the airspace change on 14 August 2013 subject, amongst other things, to (i) the completion of a Post-Implementation Review ("PIR"), (ii) GAL instigating a review of the existing conventional SID and submitting the conventional SID designs to the CAA for approval,¹ and (iii) the following condition which required GAL to have regard to the Air Navigation Guidance 2014² and stressed the need to ensure that there was a match between the SID and the Noise Preferential Route ("the NPR"):

5. GAL is [sic] comply with a DfT conditional requirement in respect of Route 4 NPR as follows:

'On 25 June 2013, the Department for Transport issued a consultation on its proposed new guidance from the Secretary of State to the CAA on its environmental objectives. The approval on Route 4 is therefore given subject to the condition that the airspace change relating to Route 4 will take into account the new guidance from the Secretary of State when this is issued, and in particular ensure that there is an appropriate match between the Standard Instrument Procedure and the Noise Preferential Route. GAL will need therefore to review and assess whether Route 4 meets the parameters of Noise Preferential Routes as defined within the new guidance and consult within a 12 month period, commencing from the publication date of the new guidance to the CAA on its environmental objectives (which is expected to be before the end of 2013), on any changes necessary to ensure that Route 4 does meet the parameters of Noise Preferential Routes as defined within the new guidance.'

On 28 September 2015, the CAA wrote to GAL to inform GAL that it had completed the PIR of, *inter alia*, the Route 4 P-RNAV SID and concluded that it had not achieved the stated aim of replicating the conventional SID. The CAA did, however, state that the design could be modified to meet the stated aim:

Route 4: *The stated aim of introducing an RNAV SID design the effect of which was to result in actual aircraft tracks that replicate the nominal track of the existing conventional SID has not been achieved to an acceptable standard. It is considered that replication to an acceptable standard may be capable of being achieved. Therefore, GAL is required to modify its design to achieve the stated aim set out above. The CAA will provide you with the technical recommendations in relation to this route under separate cover. The CAA requires GAL's modified design to be submitted to it as soon as possible but no later than 20 November 2015.*

Once the modified design has been implemented and operated for six months the CAA will conduct a further assessment as part of the PIR. At its conclusion, if the CAA is of the view that the RNAV design has not achieved, to an acceptable standard, its original stated aim, then that RNAV SID route will not be confirmed and will be de-notified by the CAA, i.e. removed from AIP. That

¹ Whilst this was a condition of the 2012 ACP, it is also a freestanding regulatory requirement as set out in CAP 785.

² The Air Navigation Guidance 2014 has now been withdrawn and replaced by the Air Navigation Guidance 2017 which came into force on 24 October 2017.

will be the end of the airspace change process commenced by GAL's airspace change request dated 30 November 2012 (as amended 9 January 2013) in respect of the Route 4 SID. GAL will, of course, be free to submit a further application in respect of the route. In the period from now until the implementation of the modified design the published RNAV SIDs for this route will remain notified in the AIP.

On 1 October 2015, the CAA provided GAL with detailed recommendations of how it could modify its P-RNAV SID design to meet the stated aim. The main problem was that the P-RNAV was flying too far to the north and outside of the NPR swathe. In addition, the CAA informed GAL that its PIR conclusions³ would include requirements and recommendations relating to review and modification of the conventional SIDs.

On 10 October 2015, following GAL's failure to review the conventional SIDs in accordance with CAP 785 and the CAA's decision of 14 August 2013, the CAA wrote to GAL to require it to urgently review the Route 4 conventional SIDs and submit a revised design to the CAA within 3 months taking into account the following requirements:

GAL is required to review and assess the procedure design criteria, obstacles data, altitude and speed restriction, magnetic variations data, noise abatement and airspace containment requirements and any other operational requirements and the outcome incorporated into the design to ensure the IFP continues to be fit for purpose, and submit a revised design to SARG IFP, within 3 months

During the review of the conventional SIDs it is recommended that GAL consider speed constraints (as required) be applied to the SIDs. This is to overcome the fact that the only speed constraint on the conventional SIDs is a maximum 250 KIAS below FL100. In CAA's view this will ensure better track adherence especially before, during and after any turns.

Any changes to the RNAV 1 SIDs proposed in the modified RNAV SID designs submitted to CAA in respect of the requirement in CAA's letter dated 28 September 2015 should be based on the revised conventional SID for replication purposes.

The SID validation requirements and note regarding CAA liaison with the Approved Procedure Designer engaged by GAL also apply to the CAA's conventional SID requirements

On 10 May 2016, GAL submitted a re-design for the Route 4 P-RNAV SID but not for the Route 4 conventional SID.⁴ The CAA therefore wrote to GAL on 23 May 2016 to remind it of its regulatory requirements:

³ The CAA's PIR report was published on 11 November 2015.

⁴ See <https://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Reviews/Changes-to-Gatwick-departures-2013/> under the Tab entitled "10 May 2016 – All Departure routes (Conventional [sic] SIDs), Routes 2 and 5, Route 4".

CAA requirements regarding Route 4 RNAV1 SID (see letters dated 28 September 2015 and 1 October 2015)

Gatwick has now submitted a re-design for Route 4 that the CAA has determined meets international design requirements and our requirements referenced in my letters mentioned above.

As set out in those letters and the CAA decision letter dated 14 August 2013, overtime, magnetic variation has caused a shift northwards of the nominal track of the conventional SID with a consequential change in aircraft tracks.

Our letter dated 10 October 2015 acknowledged that the conventional SID had not been reviewed (in part to deal with the magnetic variation) in line with the UK's international treaty obligations known as ICAO (International Civil Aviation Organisation) requirements and that this work needed to be carried out before the re-design work that was required as a result of the CAA's post implementation review of the RNAV SIDs. We have agreed that the re-designed route 4 should be implemented from 26 May 2016 and monitored for 6 months

...

CAA requirements regarding the Conventional SIDs (see letter dated 10 October 2015)

The requirement to submit reviewed conventional SIDs to take into account magnetic variation in accordance with ICAO requirements set out in our letter dated 10 October 2015 was due in January 2016 for Route 4 ... Whilst we understand the reason why the conventional SID review work has been delayed to give priority to the RNAV SID redesign work, if the conventional SIDs are to be retained once the RNAV review work has been completed, the conventional SID work must be completed as a matter of urgency following completion of the RNAV review work.

On 15 November 2016, GAL submitted a review design for the Route 4 conventional SID which did not comply with regulatory requirements. Gatwick submitted a further revision to the review design for the Route 4 conventional SID on 13 December 2016.⁵

The CAA then approved the review design of the Route 4 conventional SID and the Route 4 P-RNAV SID on 7 April 2017 in decision document CAP1531. That decision was subject to a claim for judicial review brought by Plane Justice Ltd. On 7 February 2018, the CAA's decision of 7 April 2017 was quashed by consent for the following reasons:

4. ... (1) magnetic drift was not the predominant factor causing displacement of Route 4 from the NPR; (2) the Defendant accepts that it ought to have taken the value of preserving the existing patterns of traffic and the value of leaving the route in its 2012 location into account and given weight to that; (3) the consultation was deficient.

⁵ See <https://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Reviews/Changes-to-Gatwick-departures-2013/> under the Tab entitled "22 December 2016 – Route 2, Route 4 and Route 5".

Despite concluding that the public consultation on this ACP, including the review of the conventional SIDs, was "deficient" (which in this context means it was unlawful) no further public consultation has been undertaken. It follows that no decision may be taken until after full and fair public consultation.

On 9 February 2018, the CAA wrote to GAL to set out the reasons why it had consented to judgment and the quashing of its decision of 7 April 2017 and to explain how it would redetermine that decision. In respect of the conventional SID, the CAA reiterated that Gatwick would still have to conduct a review in accordance with regulatory requirements:

In any event, Gatwick Airport must still undertake the requirement set out in the CAA's letter of 14 August 2013 to undertake a full review of the conventional SIDs as it is now clear that:

- traffic has not flown the track over ground of the 2012 Route 4 Conventional SIDs in significant volumes since 14 November 2013;*
- the review process will involve the weighing of various discordant factors in order to come to a conclusion on the corrected location of the Route 4 conventional SIDs; and*
- the correction of the Route 4 conventional SIDs may result in the movement of the easterly leg of those SIDs Gatwick Airport may only conduct this full review through the airspace change process as set out in CAP1616 and in accordance with the Air Navigation Guidance 2017.*

Once the Route 4 conventional SIDs have been corrected, as set out in the CAA's letter of 28 September 2015, the CAA will remake its decision as to whether the RNAV design has achieved, to an acceptable standard, its original stated aim. If it does not, then that RNAV route will not be confirmed and will be de-notified by the CAA, i.e. removed from AIP. That will be the end of the airspace change process commenced by GAL's airspace change request dated 30 November 2012.

It was clear, therefore, that the CAA took the view that a review of the conventional SID was still necessary whether or not the P-RNAV SID was implemented.

On 23 March 2018 GAL wrote to the CAA to say that it expected to de-notify the Route 4 conventional SID, provided that this had no impact on the continued flying of the Route 4 P-RNAV SIDs, saying that very few if any departing flights would use that route. Further, GAL stated that their understanding of the requirement to review the Route 4 conventional SIDs was based only on the original ACP from 2012, rather than the regulatory requirements of CAP 785 which implement ICAO requirements. That understanding is clearly misconceived. GAL also requested that the CAA provide it with the historical data showing actual changes to traffic flying over Route 4 over time. This historical data was provided to GAL in a letter dated 10 May 2018 and showed that the flights using the Route 4 SID had not been restricted to the NPR swathe as they should have been. This is an example of the information that should be included in a consultation.

The CAA's website states that on 30 April 2018, GAL submitted a Statement of Need (DAP1916) version 2 to the CAA to confirm re-notification requirements of Route 4 conventional SIDs. We understand:

1. GAL was undertaking a safety review to allow the revision of the conventional SIDs to their position as flown on 6 April 2017.⁶
2. The CAA gave Gatwick feedback on this safety review in December 2018, following which the safety review was amended and resubmitted in January 2019.
3. On 16 April 2019, Plane Justice's solicitors, Richard Buxton Solicitors, wrote to the CAA to complain about the amount of time that had been taken to assess this information.
4. From a post on Plane Justice's website⁷ that on or around 7 June 2019, the CAA approved the safety review of the Route 4 conventional SID submitted by GAL.

We are not aware that any of these documents have been published. There has been no consultation and our clients have not even been informed (despite our clients' previous correspondence with you). On the other hand, Plane Justice have been consulted or involved in the decision making process.

On 11 December 2018, GAL submitted an ACP to the CAA which sought to redesign the Route 4 P-RNAV SIDs to SUNAV. This ACP was not accompanied by a review of the Route 4 conventional SIDs. It was confirmed in the assessment meeting on 24 January 2019 that this ACP would not consider the conventional SIDs.

On 14 June 2019, some 5 months later, the CAA wrote to GAL to require it to undertake a review of the Route 4 conventional SIDs as part of that process. That letter did not specifically refer to the separate regulatory requirement for a 5-year review, but it did refer back to the 9 February 2018 letter which had made that requirement clear.

On 3 July 2019, GAL responded to inform the CAA that it would not be undertaking a review of the conventional SIDs as requested. In addition, GAL stated that it anticipated that following a CAA decision on the 2012 ACP it would "*be required to denotify the current temporary Route 4 RNAV SIDs leaving airlines to fly their own coded overlays.*" GAL referred to its letter of 23 March 2018 to justify its position. It is therefore clear that GAL's proposed action was based on a misunderstanding of its regulatory requirements.

On 5 July 2019, the CAA wrote to GAL to inform them that a review of the conventional SIDs would not be required in the 2018 ACP:

Noting the lengthy history of Route 4 airspace change, the CAA considers that it would have been in the interest of the public for Gatwick Airport to have undertaken the CAP 1616 process such that local communities would be consulted in any potential movement of traffic that your decision may cause.

⁶ See <https://www.gatwickairport.com/contentassets/9369a8daf0184aef8da617893d9b318e/route-4-briefing-update.pdf>

⁷ <http://www.planejustice.org/2019/06/07/route-4-in-conventional-navigation-mode-set-to-return-to-its-historical-position/>

However, noting that the CAA cannot compel Gatwick Airport to undertake an airspace change, ... the CAA will have no option other than [sic] take a decision as to whether the Modified Route 4 RNAV-1 SID has achieved the objective of the 2012 ACT following the notification of the conventional SID to its location as at 6 April 2017.

The CAA will then not require the conventional SID to be included in the 2018 ACP and the ACP could proceed to the next Gateway as proposed.

Whether or not the CAA can compel GAL to undertake an airspace change, GAL is still required to undertake a 5-yearly review of the Route 4 conventional SID. It is plain from the correspondence that the CAA did not consider that the safety review, submitted in January 2019, constituted a full review of the Route 4 conventional SID for the purposes of CAP 785.

It follows that a lawful full review of Route 4 conventional SID remains to be carried out and that no final decision should be made until that has happened.

Our client's members are concerned that a post on Plane Justice's website⁸ dated 21 August 2019 says that the CAA has "agreed to take a decision" that the 2012 ACP should be refused and the temporary Route 4 P-RNAV SIDs should be denotified. There has been no public consultation on this "decision", yet the CAA has engaged in "lengthy correspondence" with Plane Justice about it. We have seen no statement by the CAA to this effect.

On 6 August 2019, our client's members wrote to the CAA to ask a number of questions concerning the process following the quashing of the 7 April 2017 decision. Our clients queried whether GAL had undertaken a review of the conventional SID as required and if so, why that process had been undertaken without undergoing a consultation.

The CAA responded on 15 August 2019 to say that GAL had refused to review the conventional SID and that all information about the process had been published on the CAA's website. Again, the CAA overlooked the regulatory requirement to review the conventional SID on a 5-yearly basis. Furthermore, none of the correspondence that the CAA has had with Plane Justice has been published, despite the CAA's claim that all information is published. Not all members of the public are represented by Plane Justice and many who are not have different interests. It may be that the correspondence is of no relevance, but if so please let us know. Otherwise please provide and publish copies.

On 22 August 2019, our client's members raised follow up questions to which the CAA responded on 3 September 2019. In its replies the CAA stated that the Route 4 conventional SID which was to become effective on 12 September 2019 had been reviewed to ensure it is still fit for purpose.

Since the only review we know of is the safety review, we believe that a regulatory review has not been undertaken.

⁸ <http://www.planejustice.org/2019/08/21/gatwick-route-4-set-to-return-to-historical-position-by-end-of-2019/>

Requests

In light of the above, we request:

1. That you confirm the accuracy of the background set out above, or say where there are disagreements;
2. That the CAA will exercise its regulatory oversight to require a full review of the conventional SID and that the review will include full and fair public consultation and consideration of the fact that any SID must appropriately match the NPR. That would of course mean that no group or residents has greater access to the review or decision-making than any other.
3. That meanwhile there will be no decision about the route.
4. In addition, please provide copies of:
 - a. All documents and correspondence relating to the safety review of the Route 4 conventional SID.
 - b. All correspondence between the CAA and Plane Justice, or their legal advisers.

Please reply within 21 days, unless the CAA has already made a decision in which case please give us the date and form of this decision and notify us within 7 days.

Please acknowledge safe receipt.

Yours faithfully,



Harrison Grant