

Independent Review of NATS (En Route) Plc's Flight Planning System Failure on 28 August 2023

Call for stakeholder inputs

CAP 2607

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Background

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

The review will examine these issues within the context of the established safety, economic and consumer regulatory and legislative frameworks, including [UK Regulation \(EU\) 2017/373](#), the [Transport Act 2000](#) and [NERL's economic licence](#). It will make observations and recommendations to NATS, the domestic and international aviation system and the CAA.

On 6 October 2023 the CAA published the Terms of Reference for this review and announced Jeff Halliwell as the chair of the independent review.¹ Further information is available on the review's case page.²

We, the review panel, are now seeking views and evidence from interested stakeholders to input into this review.

In particular, we are seeking views and evidence from:

- NATS;
- Airlines (including airline associations and their members);
- Airports (including the Airport Operators Association and their members);
- CAA Consumer Panel;
- Other consumer organisations;
- NATS trade unions; and
- Other key interested stakeholders.

We are particularly keen to develop a good understanding of consumers' experiences of and perspectives on this incident, including by reviewing available consumer research, engaging with consumer representatives, including through roundtables, and commissioning primary consumer research.

In the aftermath of the incident, the NATS CEO initiated an internal Major Incident Investigation. On 4 September 2023, a preliminary report was delivered to the CAA and to DfT.³ This internal investigation is ongoing, and it is expected to conclude later this year. We anticipate that it will inform our own review and we will be further engaging with NATS in due course.

We also propose to engage with other industry participants by offering, for example, airlines and airports the opportunity to participate in roundtables led by airline and airport representatives.

¹ <https://www.caa.co.uk/newsroom/news/regulator-s-independent-review-to-consider-wider-impact-of-nats-technical-issue/>

² <https://www.caa.co.uk/commercial-industry/airspace/air-traffic-management-and-air-navigational-services/air-navigation-services/nats-august-2023-failure-review/>

³ The public version of this report has is available at www.caa.co.uk/cap2582.

The review panel

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

- Jeff Halliwell (Chair of the review panel);
- Sarah Chambers; and
- Phil Cropper.

A short biography of the panel members is available in Appendix 1.

The independent review panel is accountable for determining the final report findings and recommendations. Once completed, the final report will be shared with the CAA Board, and in turn the Secretary of State for Transport and then be published.

The review panel is supported by secretariat provided by the CAA.

Views invited

We are inviting views and evidence on all matters within the scope of the review (as per the TORs) included below. Stakeholders wishing to submit views and written evidence to the panel on the areas in scope of this review should do so by **7 December 2023** by emailing: ATCreview@caa.co.uk.

To discuss any aspect of this call for inputs or this review more widely, please email Robert.Toal@caa.co.uk.

Scope of the review

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

1. **Immediate cause of the incident and preventing the occurrence of a similar incident:** The Panel will review the NATS' preliminary report⁴ and any relevant subsequent reports from NATS to ensure the cause of the incident is understood and appropriate mitigating actions have been implemented. The Panel will consider whether there are aspects of the events that led to this incident – technical, organisational and cultural – that may require further analysis and whether there are further steps that NATS, the CAA and other stakeholders should take to help it prevent the occurrence of similar incidents.
2. **Incident communication and associated stakeholder engagement:** The Panel will consider the NATS Major Incident Plan and whether any changes may be needed to the way communication of a major incident takes place, both internally and to stakeholders. The Panel should consider whether the NATS policies and protocols on event escalation which were in place were adequately designed and worked effectively.
3. **The resources and resilience arrangements available to NATS' regulated business** to respond to system failures and major incidents in the UK's en route air traffic system: The Panel will consider the availability of NATS technical staff and resources from service partners to respond to major incidents (24/7) and whether it

⁴ Public version of this report is available at www.caa.co.uk/CAP2582.

has appropriate resilience arrangements in place to prevent, deal with, and recover from, system failures and similar major incidents.

4. **Broader considerations around investment and infrastructure of NATS' regulated business:** The Panel will consider whether there are any wider lessons from the incident for NATS, the CAA as the regulator, or other parties, regarding the level and nature of previous and planned infrastructure investment by NATS as well as the procedures and approach NATS adopts as part of its infrastructure deployment.
5. **NATS performance and incentives:** The Panel will consider comparable evidence about how well NATS performs against its peers and whether there are any lessons from this incident that should inform the framework for setting of NATS performance targets in the future, and the level of financial consequences faced by NATS not meeting target service levels, noting the need for any incentive scheme to avoid unintended consequences and take into account NATS' responsibilities to provide safe and efficient air traffic services.
6. **Consumer impact:** The immediate impact of the incident led to significant cancellations and delays that affected customers for several days because of the displacement of aircraft and crews and non-availability of alternative flights at the time of year. The Panel will set out an explanation of the generalised impacts of the incident on airlines, airports and consumers, particularly in relation to delays and cancellations and other issues that occurred together with any lessons to be learned.
7. **Aviation system response:** The Panel will assess how the aviation system – including airlines and airports - met their passenger rights obligations and consider the extent to which the sector performed well against its obligations as well as areas for improvement that might lead to better passenger outcomes in the future. This should include airlines and airports response to the incident, their communication with affected passengers, timeliness of re-routing and re-booking of passengers, availability of additional capacity, the level of costs passengers were expected to “pay and reclaim” and management of vulnerable passengers. The Panel will also consider whether there are further steps that could be taken by airlines, airports and by the CAA (in respect of its guidance) that could allow greater flexibility and better consumer outcomes, ensuring that affected passengers reach their intended destinations in a reasonably timely manner.
8. **Airline and airport costs of providing care, assistance, and re-routing to consumers:** the Panel will set out how the current UK framework allocates responsibility for these risks and associated costs between different parties and how this allocation works in other comparable states and industries. This will ultimately help inform Government on whether and how it wishes to consider the wider UK policy and legislative framework on these matters.

Particular areas of stakeholder input

As noted above, we welcome views and evidence on all matters within the scope of this review. We are aware that some stakeholders will have views that go beyond the scope of this review, such as those that are connected with ATC performance outside NATS' regulated business

or are unconnected to the 28 August systems failure, or even aspects that depend on future legislative change. Those points should more helpfully be addressed to other relevant fora.

Broadly, **points 1, 3 and 4** of the scope above are areas where we expect significant input from NATS. Assisted by the technical resources of the CAA, these are areas where we will request and review information from NATS, as well as carefully consider the outputs of its ongoing internal investigation. In addition to the questions we will be putting to NATS, we have already received input volunteered by some airlines on questions that NATS should answer, and we would welcome further suggested questions and broad views from other industry participants. It would be helpful for airlines and airports to consolidate questions through their respective trade associations (to avoid duplication and help us focus and track), but we will carefully consider all contributions.

We would welcome views and feedback from airlines, airports, and any other relevant stakeholder group on **point 2** of the scope above – incident communication and associated stakeholder engagement. We also expect further information from NATS on the other relevant areas of the TORs.

On **point 5**, as part of NATS' economic regulation arrangements, the CAA sets service quality targets and incentives on NATS. These arrangements have recently been reviewed as part of the regular review cycle for the NR23 period (2023-2027).⁵ The financial incentives are focused on incentivising NATS to improve its performance rather than covering all of the financial consequences for airlines and passengers that can arise from "NATS-attributable ATFM delays".⁶ We would welcome views from interested stakeholders on whether and how NATS service quality incentives should be reformed in the future and what lessons (if any) can be learned from the 28 August systems failure.

On **point 6**, we noted that the information provided in the NATS preliminary report focused on ATFM delay minutes rather than on wider impacts felt by consumers and industry participants. This drew some criticism from some stakeholders who felt that a focus solely on ATFM delay minutes failed to adequately reflect the disruption they experienced. This review will make use of a more comprehensive set of statistics now available to explain the impacts of the incident. However, we also welcome stakeholders' own assessment of the impact of the incident on their customers, so we are better able to report a comprehensive picture.

On **point 7**, it is worth noting that this event was clearly one that was due to NATS' systems failure. However, consumer experiences would have depended on how the wider aviation system responded. We are therefore keen to receive contributions from airports and airlines, including factual and statistical evidence of the outcomes experienced by their passengers. We also welcome views on whether there are further steps that could be taken that could allow greater flexibility and better consumer outcomes, therefore ensuring that affected passengers reach their intended destinations in a reasonably timely manner.

⁵ See CAA NR23 Final Decision ([CAP 2597](#)). Given that the timing of the incident occurred at a late stage of the NR23 review, the CAA completed the NR23 review and made its Final Decision in a timely manner. Nonetheless, the CAA noted that the independent review may raise issues that suggest it would be appropriate to make changes to the framework for the economic regulation for NATS. If that is the case, the CAA said it would consider these issues and, if appropriate and necessary, would consult on changes to NATS' licence and price control incentives ahead of the NR28 review (i.e. for the regulatory period from and beyond 2028).

⁶ NATS-attributable ATFM delays are delays due to flow restrictions imposed by NATS that arise because of factors that are deemed to be within NATS' control (such as staffing, engineering or capacity ATFM delays, but not, for example, weather delays).

However, on the aviation system response, we consider that it is extremely important to better understand the experiences of affected passengers. While it would be impossible for us to consider the individual experiences of the many passengers impacted, we are intending to:

- Commission primary consumer research of passengers affected by this incident. On this, we strongly encourage the airlines to collaborate with the review by working with an independent market research organisation appointed by the Panel to reach a representative sample of passengers affected.
- Engage with consumer representative organisations, such as the CAA consumer panel, Which?, and others, particularly those consumer organisations that are best able to provide perspectives from vulnerable passengers.

On **point 8**, we would welcome views from all interested stakeholders on how best to balance the need to create effective service quality incentives and whether to require NATS to provide greater levels of redress to airspace users, airport operators, and/or to consumers⁷, following service failures, with the possible unintended consequences (e.g. on safety, balance of risks and effects on charges/cost of capital) of strengthening and/or modifying NATS' service quality arrangements, or even more radically altering the balance of risks envisaged by the regulatory regime. We are particularly interested in proposals that could be progressed in the context of the current legislative framework.⁸ However, we also acknowledge that stakeholders may have wider views, which will be a matter for government to consider in the future.

Confidentiality and disclosure

We expect to publish the responses we receive on our website. Any material that is regarded as confidential should be clearly marked as such, with an explanation of why the information is confidential, and included in a separate annex. The CAA has powers and duties with respect to the disclosure of information, including under the Freedom of Information Act 2000 and it may be necessary to disclose information consistent with these requirements.

⁷ Likely through airspace users, as NATS does not have the means to reach all affected consumers.

⁸ Such as UK Regulation (EU) 261/2004 and the Transport Act 2000.

Appendix 1: Review panel's short biographies

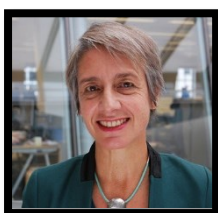
Jeffrey Halliwell



Jeff's executive experience is in Chief Executive Officer roles with consumer-facing businesses such as Fox's Biscuits/Northern Foods, First Milk and Bernard Matthews. His background is in international marketing and commercial roles with blue-chip businesses such as Mars and Colgate. He also ran a private equity backed tech business.

Jeff now has a varied chair and non-executive portfolio across private, public, and third sector organisations, particularly supporting organisations with a social purpose. Among other previous roles, he has been Chair of Cafedirect plc and Airport Coordination Ltd, and a non-executive director of Working Links Ltd and Natures Menu pet food. He has served as a trustee of Shaw Trust and Homestart Leicester, and as a non-executive director in a number of NHS organisations. He is a former Chair of watchdog Transport Focus and of the Customer Challenge Board in respect of Heathrow Airport Ltd.. He is currently Chair of the Coal Authority, Deputy Chair of the Sea Fish Industry Authority, and a non-executive director of Widgit, a small educational software company.

Sarah Chambers



Sarah is an expert in regulation, consumer and competition policy and advocacy, with experience as Chief Executive of the postal services regulator and wide-ranging experience as a senior civil servant.

She currently chairs the Legal Services Consumer Panel and is an Electoral Commissioner. She is also a member of the Determinations Panel of the Pensions Regulator, the Consumer Expert Panel of the Office of Rail & Road, and the Judicial Appointments Commission, and has a number of other advisory and trustee roles. She is a former member of the CAA Consumer Panel and of the Competition & Markets Authority Panel.

Phil Cropper



Phil completed twenty years in operational ATC with NATS before joining the UK CAA in January 2000 as an ATS Inspector. In July 2003 he was appointed to the post of AAA (Airspace, Air Traffic Management & Aerodromes) Northern Regional Manager, the post he left in January 2019. After some project work for CAAi in the role of Senior ATM adviser, Phil is now semi-retired.

Phil has a degree in aeronautical engineering from the University of Manchester.