

Complaints by third parties about the relationship between the CAA and NATS

1. Paragraphs 2 to 4 below are summaries of submissions by the three complainants, Brymon Airways, Norwich Airport and the Joint Airports Committee of Local Authorities (JACOLA). These were put to the CAA whose response to the complaints is reproduced at paragraphs 5 to 26. We then allowed the complainants short comments on the CAA's response and these are set out at paragraphs 27 to 29.

2. Brymon Airways drew our attention to its decision on 17 December 1987 to suspend its London City/Paris services until NATS services were restored to a satisfactory standard for a public transport operation. Brymon Airways told us that on 18 December 1987 the CAA suspended all London City/Paris air services pending inquiry. The CAA set up an inquiry to determine, among other things, whether Brymon was competent 'to secure the safe operation of' these services, and 'to consider in particular the basis for the professional opinion' of Brymon's flight operations manager, who had advised his Chairman that, as NATS was unable to provide its promised lower airspace radar service, residual air navigation had fallen below standards required for scheduled air transport. There was no inquiry to investigate the failure of NATS to provide air traffic services in accordance with its own earlier written specification which had led Brymon to start services on 26 October 1987 rather than wait an expected six months for controlled airspace routeings. A month later the CAA nominated three approved London City/Paris routeings, all navigationally superior to NATS' initially specified routing. Passenger services resumed on 20 January 1988, virtually in controlled airspace throughout.

3. The Managing Director of Norwich Airport complained to us about the conflicts of interest when the regulator was also the competitor. Norwich Airport had wished to provide a radar service to helicopters of member companies of the United Kingdom Offshore Operators Association operating from East Anglia to installations in the North Sea. NATS had agreed that there was an urgent problem but the CAA through NATS had not been prepared to let Norwich provide the service.

4. JACOLA told us that some airports had put the provision of air traffic services out to tender to test the CAA against the market, and had found the NATS bids to be reduced because of the presence in the market of other bodies willing to tender. Some airports found it difficult to accept an alternative tender because of the CAA's ownership of ATC equipment and the possibility that equipment might be withdrawn if the CAA were not awarded the contract. Airports were worried that in the case of any fresh negotiations about contracts other pressures might be applied.

THE CAA'S RESPONSE TO THESE COMPLAINTS

Brymon and the London City/Paris routeing

5. The CAA told us that its inquiry into the complaint in December 1987 examined all aspects of the London City/Paris routeing, including the level of service provided by NATS. The following paragraphs set out the CAA's views of the facts and supply background to the inquiry.

The facts

6. At a 1983 Planning Inquiry into the London City airport proposal, NATS made clear in its evidence that access to the London Terminal Control Area (LTMA) would not be available for that airport's traffic until the 1990s, when the major reorganisation planned for the LTMA (ie the development of the CCF) would start to take effect. It was emphasised, inter alia, that access to the

LTMA on the basis of a formal route structure could not be accomplished without adverse effect on the Heathrow and Gatwick runway capacities, and indeed at the planning inquiry the BAA only withdrew its objections to London City on the clear understanding that London City flights would not produce these adverse affects.

7. Discussions with the potential London City operators took place during 1986/87, prior to the start of operations. The routeings and procedures were based on their acceptance, albeit reluctantly, that services could not be introduced into the (then) existing LTMA airspace. When operations commenced, radar cover was provided within 20 miles of London City by a NATS unit known as Thames radar (located at Heathrow). Beyond 20 miles, flights on the London City/Paris route were to use an advisory service from Gatwick, and it was this part of the flight which prompted the operators' concerns. The advisory 'lower airspace radar service', or LARS as it is generally known, is a facility provided by a number of aerodrome units in the United Kingdom (NATS and non-NATS, civil and military): pilots understand that it is a low priority service provided from resources available only after primary control responsibilities have been met. Brymon was thus aware of the constraints on the service which would be provided outside controlled airspace.

8. The route agreed between NATS and the operators (Brymon and Eurocity Express) thus specified LARS beyond the range of Thames Radar. During the first two months of operation the nature of the service experienced by Brymon did not meet its desires. It had been stated in the proposed procedures for flights on this route (which were sent to the operators in May 1987) that 'outside regulated airspace a radar advisory service or radar information service will be provided as agreed between the controller and the pilot'. On the basis of this statement Brymon managers may therefore have believed that NATS 'promised' a guarantee of advice from the LARS service. The guarantee in fact related to the particular flight and not to the service overall. The standard operating procedure for flights outside controlled airspace is that a 'contract' is routinely established between controller and pilot for each individual flight, so that both parties are aware whether any type of service is being provided and if so the rules which are consequently being applied.

9. With the benefit of operating experience which had identified particular problem areas, the inquiry team was able to put forward three possible new routeings specifically designed to overcome those problems. It should be stressed that none of the possible options provided continuous access to the LTMA, but the one eventually adopted by both operators overcame much of the concern about priorities in respect of LARS, albeit against a constraint on the number of London City/Paris flights which would be permitted to transit the Gatwick Radar Manoeuvring Area whilst under full radar control. Brymon and Eurocity Express accepted the constraint on numbers and the procedure proved effective.

10. As evidenced by the report, the inquiry did examine all aspects of concern including the NATS role. It should be reiterated that the route finally adopted was limited to existing schedules, whereas, prior to the operating experience which led to the inquiry, discussions between the operators and NATS had been aimed at securing a route completely unconstrained by frequency of flights. Neither before nor after the experience with the service could NATS have been able to give an open-ended commitment for all potential flights to transit the Gatwick Radar Manoeuvring Area.

11. The adopted route remained in force until April 1989 when extensions to controlled airspace, in particular lowering of the base levels, permitted the introduction of a formal route structure (entirely within controlled airspace) for London City operations. These airspace changes were in fact introduced by NATS one year earlier than had previously been anticipated and, it should be noted, against a background of strong criticism of NATS from general aviation bodies.

The background

12. Having set out the facts, it is important to describe the background against which the inquiry took place.

13. The Chairman of the CAA decided to stop all services between London City and Paris. Brymon, Eurocity Express and Mowlems, the airport owners, were informed of this at a meeting he had with them at the CAA on the morning of 18 December 1987. At that meeting Charles Stuart of Brymon welcomed the action the CAA was taking with which he fully agreed. He also indicated that he had already decided the same morning to stop his service if the CAA had not done so. The Chairman had no alternative but to stop the operation once Charles Stuart of Brymon had stated in writing that it was unsafe. This decision was fully supported at the following Board meeting. Eurocity Express and the CAA's own flight inspectors did not agree that the operation was unsafe, although the latter stated during the inquiry that the situation might change in the summer months.

14. In the light of this conflict of views the inquiry team decided that an exhumation of the history of the arrangements should not be the most important part of the inquiry, and focused on ways of 'getting the show on the road' as soon as possible. Members of the inquiry were concerned to some extent that NATS might have made a number of informal statements during the meetings and conversations with the operators that full radar cover would be available more frequently than actually occurred.

15. The two operators and their legal representatives were told by the inquiry of the manner in which the inquiry would proceed at the first session held at CAA House. The inquiry told NATS quite clearly that a new route or routes had to be found, as the original route could not be accepted in view of Charles Stuart's statement, irrespective of any other opinion.

Norwich Airport and the radar service to helicopters in the southern North Sea

16. The CAA informed us that it was fully aware of the disappointment felt by the Norwich Airport operators due to the rejection of their proposal to provide certain services to helicopter operators in the southern North Sea. The proposal was the subject of technical evaluation in 1985 and the basis of the rejection in favour of a NATS option was explained to Norwich at the time but not accepted by it. Some of the helicopter operators were initially hesitant about approving the NATS option but after further explanation gave their unanimous approval. The Norwich proposal was rejected for both technical and financial reasons as briefly summarised by the CAA in the following paragraphs.

Technical reasons

17. Over the years there has been a considerable build-up of off-shore helicopter traffic to oil and gas rigs in the North Sea. NATS' long-term aim has been to seek to provide a comprehensive service, as far as possible, from Sumburgh to 52°N (approximately Felixstowe). In off-shore operations the principal hazard is the conflict between helicopters and high performance military aircraft, a situation which NATS staff have had considerable experience of handling. There are several ATS providers operating in the area. The Norwich proposal, linked to its own commercial needs, would have provided only about half of the required service in the area and added to the already heavy co-ordination requirement and would have required a NATS unit to provide the rest of the service needed.

18. At the time there were also some doubts about the technical aspects of the Norwich proposal, particularly the SSR equipment which was not then developed. The limited VHF cover available was also seen as a possible drawback.

Financial reasons

19. As already noted, the Norwich proposals would only have provided a 'half service' for about 10,000 round trips per annum compared with a full service, based on user predictions at the time, of about 19,000 round trips. On the basis of the Norwich costings, and adding the additional costs necessary to enable NATS to provide the full service required, the cost per round trip was estimated at £40 compared with the NATS proposal at £30 per round trip. The conclusion was therefore that

NATS could provide a more comprehensive service to users at a lower price than the Norwich proposal. The post audit of the project to provide the new service shows that the price did in fact exceed the £30 estimate, largely due to the amount of traffic falling considerably short of the users' predictions.

NATS as regulator versus provider

20. NATS managers were fully aware that accusations of unfair competition might be levelled against it and the matter was put to the CAA Board, which fully endorsed the NATS proposal as better serving the needs of users.

JACOLA and airport tenders

21. The CAA told us that it was undoubtedly true that the impact of competitive tendering in 1984 caused NATS to re-examine its airport business, and that this led to lower costs of the service it supplied. This benefit was in fact felt by all airports, not just those using competitive tenders, as NATS was able to improve its efficiency and adjust manning levels across all NATS airports.

22. The suggestion that some airports had found it difficult to accept alternative tenders because of the CAA's ownership of ATC equipment was not borne out by the facts. During the tendering process the airports in question made it perfectly clear that this was a concern; it was therefore a requirement of bidding that any equipment provided in connection with aerodrome control should be handed over to them on termination of the contract, so as to protect their future airport operations. NATS had no difficulty in accepting this arrangement and tendered for the running costs separately from the capital equipment costs.

23. All aerodrome equipment purchased for the 'contract' airports was the subject of full consultations, and no commitments were made by the CAA until the airport operator agreed the purchase. There could be no question of NATS installing equipment other than to meet the mutually agreed needs of the airport. Airport owners were indeed entirely free to purchase equipment direct from manufacturers if they wished.

24. Furthermore, the CAA Board would not provide funds for investment at airports unless they were assured that NATS either had a contract that covered the economic life of the investment or that it had a written undertaking to take over the equipment at suitable valuation on termination of contract.

25. In short the JACOLA comment was unfounded. It was impossible to respond meaningfully to vague assertions that 'other pressures might be applied'.

Background supplied by the CAA

26. Competitive tendering for the supply of airport traffic services is addressed in Chapter 7 of the 1983 MMC report on the CAA. This chapter makes reference to NATS' failure (obviously prior to 1983) to retain contracts at Bournemouth and Liverpool airports. Since then NATS has competed successfully at Manchester and Cardiff airports (both contracts are for seven years commencing in 1986). Belfast has extended its contract for a further 21 years to run from 1986 to 2007. Birmingham initiated discussions with NATS on an extension to its contract for ten years from April 1990, and an

announcement is imminent. The facts therefore indicate that these airport customers are satisfied and wish to retain NATS' services.

FURTHER COMMENTS BY THE COMPLAINANTS

27. Brymon Airways said that its view that a regulator should not be a partial supplier of the industry it regulated rested on three main principles:

- it was illogical, and commercially inequitable;
- it was prejudicial to safety; and
- it reduced a business to the pace of public administration, with no sense of customer or of market drive.

Its experience in 1987/88 illustrated some aspects of each of these principles.

28. Norwich Airport told us that its aim had been to show that it was not in the public interest for the 'regulator' to be the competitor. In Norwich's case the competition was unfairly stifled. Whilst Norwich was blind to the regulator's plans, Norwich's were fully exposed to him and, as the CAA's response indicated, the regulator argued both cases to helicopter users in Norwich's absence. Despite the stifling of Norwich's proposal, its very existence stung the regulator to find his own rapid solution to a long-standing problem. Thus helicopter users gained some benefit from even a first hint of competition. Finally, the regulator's role in promoting safety included the provision of help, advice and instruction. The regulator had a vital role to fulfil which should not be undermined by competing with those subject to its authority.

29. JACOLA told us that its submission was based on actual experience by member airports. The CAA response suggested that while prices might not have been fair in 1984 they were today. This might be true but it did not invalidate the criticism. The CAA's statements at paragraphs 23 and 24 were not disputed but the Joint Committee could not accept that the ownership of equipment was not a problem. Firms tendering for contracts in competition with NATS were required to include an allowance for the purchase and installation of ATC equipment because existing equipment was owned by NATS. In addition controllers had to be validated within the specific airport environment on the specific airport equipment. Both the time to re-equip and the time to train controllers could have involved short-term closure of an airport or the curtailment of services and JACOLA was informed that some airports did have major equipment problems as a result of contract changes.