



# Project Palamon - Draft Decision (CAP 1943)

Submission by Prospect ATCOs' Branch  
to the UK CAA

**19 October 2020**

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## **Prospect ATCOs' Branch response to Project Palamon - Draft Decision (CAP 1943)**

### **Introduction**

Prospect represents approximately 3000 air traffic controllers, air traffic management specialists and air traffic systems engineers over the entire civil UK air traffic management system. This submission is made by our Air Traffic Control Officers' Branch (ATCOs' Branch) - a key stakeholder in UK ATM.

### **Summary**

We broadly agree with the CAA's provisional findings as set out in CAP 1943. Our consultation response is largely focused on the provisional finding that NERL breached its licence with respect to staffing resources. That said, the CAA has undoubtedly had a significant part to play in this licence breach insofar as the RP2 settlement set the context.

With respect to the other areas that were subject to investigation, we concur with the CAA's findings. We particularly note that, in respect of airspace design, NERL has historically been constrained by government policy (or lack of it), and numerous stakeholders with competing objectives. We hope that the recently formed Airspace Change Organising Group (ACOG) can aid both the UK and NERL in forging ahead with a strategy that is fit for purpose: improving levels of safety, reducing delays and contributing to reduced carbon emissions.

We also agree with the CAA in its assessment of what would have happened had traffic not been markedly reduced due to Covid-19, and that the staffing issues highlighted in the investigation would not have shown marked improvement for some time.

Covid-19 should not be seen as a barrier to implementing a solution. The AD6 airspace modernisation project needs to continue to be progressed, as airspace redesign will be part of the wider solution to ease delays in the area. The current situation should also not be a reason to lift the pressure on resourcing and resilience, particularly given the lead-in times to provide fully qualified controllers. All too often we have seen short term decisions taken which have had significant consequences in subsequent years. The actions taken for RP2 by both NATS and the CAA were causal factors which led to this complaint.

### **The breach**

We agree with the provisional finding in paragraph 35 that NERL has breached its licence as a result of insufficient staff resources.

This has been an issue that the Branch has been consistently concerned about and focused on, with several of our members holding validations on Luton and Stansted expressing their concerns to our Branch representatives surrounding

staffing issues. Our members have been working an over-hours roster<sup>1</sup> for some time which in itself demonstrates that there is not enough staff to service the demand.

There have been many initiatives by the Branch to assist NATS with service provision in the Luton and Stansted approach areas. Measures agreed with NATS which provide a more resilient service to Luton and Stansted (some of which are over and above the standard contract of employment), include:

- Enhanced Voluntary Attendance Agreement (EVAA) – an enhanced overtime arrangement with a greater level of predictability through hard rostering of duties in advance.
- Over-hours roster including incorporating extra training days into the operational roster.
- A flexible evening / early night shift to mitigate sickness and provide continuity of service throughout the night.
- The use of a dispensation from SRATCOH<sup>2</sup> to extend the working time in position of a controller.

These measures, or a combination of them, have been in use over the last three years in order to mitigate the staffing shortages. The over-hours roster has accrued time off in lieu, time which our members are entitled to take within 18 months of accruing, thereby exacerbating the problem.

In addition to those measures listed in CAP 1943 that NERL tabled as solutions to staffing challenges, there was a clear and strong focus that no remedy would be considered 'off the table'. This points to the fact that NERL was all too aware of the ongoing resourcing difficulties.

One notable initiative was the Stansted and Luton Approach Resilience Mode project (ARM). This was instigated to allow controllers who were valid on Luton but not Stansted (and vice versa) to work the approach airspace for the airport they were not qualified on in a limited capacity.

In our view, this was nothing short of a desperate attempt to prevent airspace from closing when there were staff shortages. It is extremely unusual to ask individuals to operate in airspace that they are not properly trained in and qualified for, even with mitigations in place. Indeed, such was the level of concern amongst our members that the Branch raised numerous safety issues, and ultimately made representations directly to the then Director Airspace and Safety Regulation Mark Swan. One example of the worrying aspects of this idea is that ATCOs who had previously failed to reach the required standard in training for Stansted Approach were being considered as suitable to take part in ARM, going against common sense at best, and lacking any justification in our view. As the implementation of the project progressed, following concerns for safety and the fact that operating in this way was so far from beyond the norm, our members refused to train and operate the procedure. For the avoidance of doubt, this was not industrial action by the union, it was independent action

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<sup>1</sup> An over-hours roster is one which is agreed for our members to work a roster pattern that is in excess of their contracted hours for a period of time, in order to alleviate staff shortages.

<sup>2</sup> Scheme for the Regulation of Air Traffic Controller's Hours CAP670 Part D,2.

based on the safety accountabilities of ATCO licence-holders. This stance taken by our members was and still is unprecedented.

This project materially distracted from a much more sensible initiative to aid staffing issues in that it hindered the formal 'extension' training of ATCOs, i.e. training those ATCOs who already hold one or more validations from gaining validations in additional airspace. Also, quite simply it is our position that the ARM project pushed the boundaries of acceptable air traffic practice. It is a clear indicator of the consequences of commercial pressure and insufficient staffing resource, and even though we believe the procedure was ultimately authorised, it is our firm unequivocal position that had the project not been stopped by the lack of ATCO buy-in, it would have resulted in various regulatory and licensing breaches.

It is worth noting that the wording (below) on how NERL now has opportunities *to reconsider its approach to staffing*<sup>3</sup> bears a striking resemblance to the approach in Project Oberon.<sup>4</sup>

*[NERL] should also be able to devise and implement a staffing and technology plan that better accommodates for short-term supply issues (such as sickness or industrial action), and longer-term issues (such as churn, validation requirements or retirement) to enable it to avoid a recurrence of the historical difficulties encountered at Stansted and Luton.*

The Branch questions why the CAA has taken this light-touch approach for a second time on the same issue, when having done so previously allowed NERL to ignore the issue and make the problem worse. The CAA should consider requiring NERL to produce a fully auditable and traceable 'workforce plan' for the London Approach Service (LAS).

It is the Branch's firm opinion that these various elements are strong evidence that there weren't enough staff to provide the required, resilient level of service for Luton and Stansted airports. As we expand on below, this situation continues. We therefore agree with the CAA's provisional finding on this matter.

## **The regulatory context**

As for what we have described as commercial pressure, it is impossible to analyse the issues in the LAS in recent years without understanding the wider economic regulatory context. Most of the investigation took place in the years that fell under Reference Period 2 (RP2). These periods have been particularly aggressive in what is a safety-critical industry providing national infrastructure to the country in a way that cannot be compared to monopolistic market utilities.

The years 2013 and 2014 saw the development of NERL's business case in preparation for the economic regulated years 2015-2019, including stakeholder consultation. Considering that the cost-efficiencies NERL was going to be

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<sup>3</sup> CAP 1943 Paragraph 47

<sup>4</sup> [https://publicapps.caa.co.uk/docs/33/20170731\\_Oberon\\_Report\\_NonCon\\_Redacted.pdf](https://publicapps.caa.co.uk/docs/33/20170731_Oberon_Report_NonCon_Redacted.pdf) paragraph 6.12

required to make were so great, in advance of RP2 (in order to take set a lower cost base for the start of that reference period), NERL had already begun a voluntary redundancy (VR) process for over 120 full-time equivalent operational air traffic controllers to leave the business. In its revised business plan (RBP)<sup>5</sup>, NERL stated:

*the scale of the cost savings needed to achieve lower prices in RP2 requires us to take further action now to cut our cost base*

Prospect ATCOs' Branch challenged this at the time as being detrimental to service provision for years to come. Indeed, VR led to a reduction of instructor staff at the NATS College. This paused the output of air traffic control trainees, something which obstructed attempts at resolving the staffing crisis for several years; a staffing crisis created by the VR programme. Now would be a good time to reflect on NATS' recent announcement to cease trainee ATCO output at the College once again, irrespective of the impact Covid-19 is having on travel at the moment.

Notwithstanding the fact that the CAA did not impose on NERL any prescriptive actions to achieve reductions in operational expenditure, the consequences of those cuts were as obvious then as they are in hindsight.

The final plan itself was incredibly ambitious. In the RBP, NERL states that as a result of consultation with stakeholders and more specifically the airspace users, the feedback from them was *to maximise fuel savings and service quality at the lowest price*<sup>7</sup>.

The fine balance that this presented i.e. maintaining the then current level of service at a lower cost was never going to work. In our response<sup>6</sup> to the draft RP2 consultation document in April 2014 (as a grouping of all three trade unions within NATS, the 'NTUS'), we stated:

*With increasing economic pressure on NATS, there is a significant danger that the sensitive equilibrium could be disturbed, which will not permit ongoing business benefits to be realised to all stakeholders.*

The Branch's strength of feeling on this issue has been persistent. In 2017, before the conclusion of Project Oberon was published, the Branch noted the following<sup>7</sup>:

*Many of the challenges detailed within our position paper [in response to RP2 consultation] have come to fruition, most significantly the staffing difficulties that NERL is currently facing - especially in Terminal Control [...]. The staffing challenges were largely a consequence of the voluntary redundancy process, a response to the NERL regulatory settlement which required NERL to reduce prices by circa 21% over the course of the reference period.*

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<sup>5</sup> <https://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294974198>

<sup>6</sup> <https://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294974167>

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[https://www.caa.co.uk/uploadedFiles/CAA/Content/Standard\\_Content/Commercial\\_industry/Airspace/Air\\_traffic\\_control/Files/Prospect\\_RP3outcomes.pdf](https://www.caa.co.uk/uploadedFiles/CAA/Content/Standard_Content/Commercial_industry/Airspace/Air_traffic_control/Files/Prospect_RP3outcomes.pdf)

Similarly, Palamon acknowledges the following:

*In the Oberon investigation, we found that delays in the LAS increased in 2016 as a result of a lower resilience within the staffing of that service. Put simply, there were too few operational staff available to provide normal resilience levels. We identified that this was caused by a number of events which occurred in combination: NERL made significant cuts to its operational staffing in the run up to the RP2 regulatory period*

Given all this evidence, it is frankly surprising the complete lack of self-reflection of any kind, or closer analysis on the part of the CAA as to its hand in the affair that culminated in both Projects Oberon and Palamon. Instead we see little more than fleeting references to the wider issues during RP2. In summary of the provisional recommendations for Palamon, all focus and attention is on NERL. In relation to staffing, there is no development on the subject of 'historical difficulties'.<sup>8</sup>

After reviewing Palamon, it seems that the CAA has washed its hands of the problem and chosen to distance itself from the consequences of the actions it set in motion nearly ten years ago.

Following years of lobbying stakeholders including the CAA to take into account the impact of harsh financial pressures on this national infrastructure, the Branch feels that it is now time for the CAA to respond to the question of the impact of the economic regulatory regime. Recent announcements on ATCO training should not go unremarked.

The Branch encourages further reflection on this as the RP3 settlement goes through a process of redesign in the coming months. There is a real opportunity to acknowledge the interdependencies of cost efficiency and service quality. In paragraph 54, the CAA considers continuous and open reporting by NERL as part of the remedy. The CAA may wish to bring this idea together with the RP3 redesign process, but only where it comes with real engagement with the historical lessons from the experience of NERL's economic regulation.

The Branch welcomes the proposals made in paragraph 49 where stakeholders are encouraged to share data and information more readily to overcome such issues. The CAA should consider making this more formal and linking it into anything it might propose in relation to paragraph 54.

## **Ongoing issues**

It is clear that the only reason that staffing for Luton and Stansted is now able to meet demand is the current Covid-19 crisis. Although this brings with it a set of very difficult circumstances this must not be allowed to distract from the fundamental issue in which NERL has been found in provisional breach of licence. It will be all too easy to make short term choices on staffing levels,

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<sup>8</sup> Paragraph 47

including training, through the prism of Covid-19. As we have seen in past downturns, this always leads to staffing shortages when traffic recovers. This has already started to happen with 122 student ATCOs who are being made redundant. This is effectively stopping the training supply line, one of the fundamental causal factors that led to the CAA's finding in CAP 1934. It should also be noted that even under the reduced traffic levels we currently experience, we understand that there have already been staffing issues on Stansted and Luton Approach in the last 2/3 months through "standard" sickness i.e. not Covid-19 related.

## **Conclusion and future issues**

In summary we concur with the CAA's findings in CAP1943. We also urge the CAA to review its own role in setting the context for those findings, learning the lessons for future regulatory periods.

Whilst we note the CAA's decision not to take enforcement action due to the current crisis, we would suggest stipulating recommendations as it did in Project Oberon.

These recommendations should include that NERL:

- improves its management processes and actions to really understand the past, current and future challenges surrounding staffing in all areas of its operations.
- revisits its somewhat strange decision to make redundant 122 student ATCOs currently at its college, given costs have already been accrued and will be passed on to the customers. The benefits of such costs are highly uncertain.
- makes suitable provisions to ensure there is not an adverse reaction to the Covid-19 crisis on the issue of staffing, requiring NERL to ensure resilience for the future and eventual recovery.

We also recommend that the CAA:

- goes further than the recommendation in paragraph 47, insisting that NERL produces a 'workforce plan' with a granular level of detail on how it intends to staff its way out of the current problem.
- reflects on the recommendations in paragraphs 49 and 54, perhaps even linking this to the previous bullet point.
- reviews its own economic decision making and in particular the impact it has on NERL staffing whilst in the future providing sufficient funding to ensure NERL can continue to meet its current and future staffing requirements, learning the lessons from previous downturns.