

Press Release
For immediate use
3 June 2018

GOVERNMENT AGREED TO COVER HEATHROW COSTS

While the government claimed that it was examining all three options for increasing aviation capacity in the South East, and Gatwick and Heathrow Hub continued to expend money on their campaigns, it was negotiating an Indicative Funding & Financial Plan with Heathrow. Will MPs, shortly to be voting on whether or not to approve the project, be aware that by voting for Heathrow expansion, they are voting to bail out Heathrow if it all goes wrong?

On 25th October 2016, Chris Grayling (Sec. of State for Transport) announced that it would “accept the recommendation of the Airports Commission” that extra aviation capacity should be provided through the construction of a third (North-West) Heathrow runway.

Prior to that moment – and since the Airports Commission’s recommendation on 1 July 2015 – the government had publicly maintained that no decision had been taken, and that it would continue to examine all three options (so, including Heathrow Hub’s extended runway and Gatwick).

In February 2017, the government launched its “Draft Airports National Policy Statement”, and on 25th October 2017, the government issued its “Revised Draft Airports National Policy Statement” (the first stage of embarking on Heathrow expansion. **Note 2**).

Reference is made, in the government’s Revised Draft Airports National Policy Statement (para 3.10) to a Memorandum of Understanding between the government and Heathrow.

It is entitled “Heathrow Airport Limited: statement of principles”, and it “sets out the principles on which the Government and HAL intend to proceed” and the basis on which they would co-operate going forward to facilitate “the implementation and development of the Scheme” if by no later than 31 October 2016 the Government concludes that HAL’s Scheme is the “sole preferred scheme”.

However (and despite being subtitled as “Non-binding agreement between Heathrow Airport Limited and the Secretary of State for Transport in relation to the Heathrow north-west runway scheme”) its subparagraph 2.1.6 reserves HAL’s rights to pursue “legal and equitable remedies (including cost recovery” in the event of “an alternative scheme being preferred by the Secretary of State or Government” and/or if Government withdraws its support “for aviation expansion for Heathrow Airport”. Documents seen by the No 3rd Runway Coalition confirm that this clause was not included in the statements agreed with promoters of other schemes being considered.

(please see: <https://www.gov.uk/government/publications/heathrow-airport-limited-statement-of-principles>]

At the heart of this document, is the revelation that an “Indicative Funding and Financial Plan” had been agreed between the government (DfT) and Heathrow, in the event that the government opted for the Northwest Runway third Heathrow runway option.

Documents such as this Memorandum of Understanding, and the “Indicative Funding and Financial Plan” to which it alludes, take time to compute and draw up, and was clearly finalised at some point in the year 2016; so well in advance of the announcement of the government’s decision (25th October 2016), and during the period in which the all three options were – the government claimed – still in contention.

The contents of this agreement, between the Department for Transport and Heathrow, have not been disclosed – either in the NPS or the NPS consultation.

There is the obvious question: to what exactly has the government committed the public purse, in terms of reimbursement of Heathrow, as it pursues its campaign for a third runway?

But there are surely others, relating to the preferential treatment conferred on Heathrow, well in advance of the government's announcement of its decision, and the public consultation that was supposed to give the public the right to influence that decision.

On 8 December 2016, a legal submission was made to the High Court by four local councils (Hillingdon, Richmond, Wandsworth and Windsor and Maidenhead, with Greepeace and Christine Taylor, a Hillingdon resident) seeking a Judicial Review of the government's decision to support the expansion of the airport.

The government's lawyers argued that it should be struck out, as under the Planning Act 2008, it could not be said that a decision had yet been taken in favour of Heathrow's North West runway option.

On 30 January 2017, the Hon. Mr Justice Cranston did indeed strike out the claim – ruling that under the Planning Act 2008, the court had no jurisdiction to hear it, until the Airports National Policy Statement had received parliamentary support and become government policy.

But, in explaining his judgment, he made it clear that the government had been considering all three options (and had not yet arrived at a decision). He stated:

(Para 14). "During 2016 the Department for Transport carried out work on areas the Airports Commission had considered, including preparatory work on the draft NPS, with three versions of content, one for each shortlisted scheme. There were accompanying Appraisals of Sustainability for each of the three schemes."

(Para 15).

"There was then the government's decision announced on 25 October 2016. Following that the government contacted local authorities, including the first four claimants, as to how best to conduct the consultation on the draft NPS when it was published. Work continued on the draft NPS and the accompanying Appraisal of Sustainability. These are expected to be laid before Parliament by the end of January 2017, and at the same time will be opened for consultation"

When presenting the facts, it would seem that the Judge was wholly unaware, that a Statement of Principles (memorandum of understanding) had already been agreed between the Government and Heathrow, signalling that the government had already pre-judged the processes that he was outlining. Let alone that Heathrow had effectively been given a financial advantage (the possibility of re-imbursement) if they were not chosen for expansion.

The Court should have been apprised of the facts known to the Government at the time of this legal submission.

Incidental to their legal action, and in their own, combined evidence to the Airports NPS Public Consultation, these four local authorities (all of whom are members of the No 3rd Runway

Coalition) adduced evidence to suggest that the government had acted unlawfully, by prejudging the issue.

(please see: <https://www.thetimes.co.uk/edition/news/heathrow-third-runway-inquiry-illegal-because-ministers-are-biased-bfnlmwkc6>)

Yet does not this Memorandum of Understanding appear to offer further, substantive evidence of prejudgment of the issue?

Does not such an agreement with Heathrow, committing the public purse to a raft of financial reimbursements in respect of the Heathrow option - that was neither offered to the competing schemes, nor publicly disclosed - not demonstrate a pre-judgment?

So when was negotiation of this agreement initiated, and why was a comparable set of financial incentives and assurances never discussed with Gatwick?

In January 2018, members of the No 3rd Runway Coalition made a Freedom of Information (FOI) Request, in the following form:

"In the revised aviation NPS published at the end of 2017, there are references made to a 'Statement of Principles'. Within this document is further reference to an "Indicative Funding & Financial Plan". Please provide a copy of this".

On 8 February 2018, the Department of Transport declined the request on the grounds that the 'Indicative Funding & Financial Plan' contained information relating to Heathrow's commercial interests (which "could damage its competitive position, because disclosure would reveal information that would assist its competitors"), and that the information had been provided in confidence (the disclosure of which "could have the effect of constraining private investor confidence").

(Please see:

<https://www.whatdotheyknow.com/request/456629/response/1109599/attach/html/4/180208%20Response%20letter%20F0015661%20Angela%20Baker.pdf.html>).

Further to legal advice - most pertinently the DfT's claim that "commercial sensitivity" trumped the public's "right to know", at a time when the government was now maintaining (through its NPS) that there were no other competitors in the race, an appeal was lodged against the DfT's refusal to disclose, seeking disclosure of the document with redaction of "commercially sensitive" elements.

On 26 March 2018, the DfT declined the appeal, stating *inter alia* that:

1. HAL had "confirmed in this case that the disclosure would be detrimental to its commercial interests because it would reveal information that would assist its competitors"
2. the redactions would have needed to be so extensive that this would have rendered the document meaningless.

(Please see:

https://www.whatdotheyknow.com/request/456629/response/1132541/attach/4/180326%20Response%20letter%20F0015661%20Angela%20Baker%20internal%20review%20response%20final.pdf?cookie_passthrough=1)

Paul McGuinness (Chair of the No 3rd Runway Coalition) said:

"It's now broadly accepted that the process of selecting an option for extra aviation capacity was a charade, that it was only ever about Heathrow. And rigged from the start with the appointment of Sir Howard Davies as Airports Commission chair, at a time when he was still in the employ of one of Heathrow's principal owners. So learning that the government had been conducting preferential negotiations with Heathrow, while pretending to consider other options, barely seems surprising. But the government, absolutely, should have disclosed this to the court, when the matter went before it. And at very least, for the sake of transparency, the government should release the details of its secret agreement with Heathrow now".

ENDS.

Notes

1. **The No 3rd RUNWAY Coalition** represents those leading the fight against a 3rd Runway, incl. Residents Groups from across and beyond London, environmental and aviation organisations, GLA members, councillors and MPs, and Borough Councils (incl. those taking legal action - Hillingdon, Richmond, Wandsworth, Windsor & Maidenhead).

2. Under the 2008 Planning Act, government can enact legislation, so as to make a major infrastructure project national policy. This requires that a National Policy Statement (NPS) is supported by parliamentary majority. In February 2017, the government launched its "Draft Airports National Policy Statement", and on 25th October 2017, the government issued its "Revised Draft Airports National Policy Statement" (the first stage of embarking on Heathrow expansion).

3. Sir Howard Davies

GIC Private Limited is a significant, long term shareholder in Heathrow, with a Non-Executive Director on the Board of Heathrow (Heathrow Airport Holdings Ltd).

<http://www.heathrow.com/company/company-news-and-information/company-information/the-board>

From 2009, Sir Howard was a paid adviser to the Investment Strategy Committee of GIC (formerly known as the Singapore Government Investment Co.), advising them on "new growth opportunities".

From 2011, he was appointed to the International Advisory Board of GIC, a board on which he was still sitting on the day of his appointment as "independent" Chair of the Airports Commission.

Sir Howard only resigned these remunerated roles with GIC, when his appointment to the role as unremunerated Chair of the AC had been confirmed by the government in 2012.

At the time of his appointment to the Airports Commission, GIC owned 17.65% of Heathrow and - like other Heathrow part owners - was engaged in pursuing their shared goal of Heathrow expansion.

Sir Howard Davies did not disclose his roles with GIC in the Airports Commission's Register of Interests.

(His interests with GIC/Heathrow are even mentioned on his Wikipedia page (!):

[https://en.wikipedia.org/wiki/Howard_Davies_\(economist\)](https://en.wikipedia.org/wiki/Howard_Davies_(economist))

4. Heathrow's finances

Also attached - as background information - is a short brief on Heathrow's financial situation, which explains why Heathrow is unlikely to be able to fund the proposed expansion of Heathrow from its own resource; quite possibly a reason why (regardless of its timing), the Memorandum of Understanding (with its Indicative Funding and Financial Plan") was agreed. Lord Deighton is now Chairman of Heathrow - he was a Treasury Minister, with responsibility for Infrastructure projects, until May 2015.