

destination (based on the assessment of crew condition) or diverting; if he decided to divert we would recommend either LGW or BHX based on availability of ground support for passengers”.

33. Mr Thorington wrote “ultimately Mike, when told there was no plan in place to crew the flight in the event of diversion, decided to continue to destination. During this HF conversation he informed Gareth that, in doing so, he would not be operating the next day’s flight as he would be operating into discretion onto this flight. I was present during this conversation and asked crewing not to take him off the flight as I felt that it was inappropriate to do this at the time”.

34. Mr Thorington then wrote about the telephone conversation he had with the claimant later that evening. He wrote that the discussion covered the following areas:-

- “1. He alleged that the duty had been manipulated to fit into the allowed FDP;
2. He informed me that he had asked crewing why it had not been rostered with a “heavy crew” (his words) and that he believed lack of pilots had driven this decision
3. He informed me that on receipt of this duty period he had identified it as a fatiguing set of duties and had informed crewing of this. He had informed crewing the day before the flight in question that he would not be operating into discretion and felt that on the day he had been forced into exercising his discretion because there was insufficient crew to mount a rescue flight;
4. He told me that he considered this phone call still to be on duty time;
5. He stated that as a result of the duties he had just performed he was not fit to fly the assigned duty the next afternoon, especially as he had now had a “hour and a half” drive to home and back. Subsequently he changed this to “hour and a quarter” and that “this is my choice”.

34. Mr Thorington said he had questioned whether it was reasonable to make a judgment of fitness to fly that night when the check in the next day was not until lunchtime on the next day. Mr Thorington said he made it clear that, if a crew member was not fit to fly, the correct course of action was not to fly but it seemed premature to make the decision so early and they agreed that the claimant would go home, get a full night’s sleep and then consider his fitness the next morning. Mr Thorington recorded that they had had discussion about the appropriate use of Commander’s discretion. The claimant made it clear that he believed the company had behaved inappropriately with the scheduling and conduct of the flight. Mr Thorington said that he had discussed with Phil Parker obtaining a FRMS analysis of Mike’s duties; he had also discussed with the Chief Pilot the appropriateness of reviewing the scheduling of the previous day’s duty i.e. planning assumptions. He had also asked for a brief summary from ops/crewing staff for the discussion with Mike and plans put in place to support the schedule. Mr Thorington wrote that the claimant had contacted crewing later in the morning to inform them that he was not fit to operate. Mr Thorington concluded “throughout this period my impression was