

has a background in planning. It is not suggested that she has any medical qualifications. Jane Marsden produced two charts: one based on actual sleep as reported on the crew fatigue report and the other based on the situation if more sleep had been achieved on the night of 6<sup>th</sup>, i.e. seven hours awakening at 7.45 instead of 5.45. In her accompanying email, Jane Marsden explained that the thick black lines are duty times and in the yellow zone means alertness will be reduced; anything below the dotted black line they would expect counter measures would be needed to improve the level of alertness. She wrote "for all night duties/return from long haul sectors the working line dips below this dotted line due to the time of day so we cannot avoid operating duties in the zone due to the nature of the programme that we operate". She also wrote "whilst the duties on Sunday and Monday are early reports and he would be getting up in the window of circadian low, I believe that he was planned sufficient rest periods to enable him to manage his rest effectively for this sequence of duties".

64. On 25<sup>th</sup> June 2014, Andy Thorington sent an email to Jo Burke returning the notes of the meeting with him with amendments. He commented that his perception was that the claimant's intent was he would not be operating the next day. Mr Thorington said he did not think the claimant intended to consider discretion at the beginning of duty and was not likely to have completed the subsequent duty once it seemed likely discretion would be required to complete the planned duty. He wrote that, in the event of a diversion, the claimant would have been out of hours for any duty the next day and, if he did exercise discretion, he would then not be fit to fly the subsequent day. He concluded "ultimately pilots have a responsibility to ensure that if they are "fatigued" then they must not operate and we must be careful not to suggest otherwise. How we tell if such a decision is made for the correct reasons is always going to be a tough call ...".

65. On 16<sup>th</sup> July 2014, Jo Burke sent an email to the claimant saying that she had completed her investigation and it needed to be taken further. It would be sent to another manager who would be in touch via letter with a date, time and location of the meeting. The investigation report was not sent at this time. At the investigatory meeting, Jo Burke had assured the claimant that, if the matter went further, it would be to somebody independent who had not been involved; it would not be anyone he had meetings with. However, it was decided that Roger Scadeng should deal with the disciplinary hearing, although he had had some, albeit limited, involvement with the matter. Ms Burke discussed with HR who should deal with the disciplinary hearing. She said they intended that Tim Cheal, head of training and a qualified pilot, should deal with this. However, because he was to be on leave for 3 weeks, they passed it to Roger Scadeng. Ms Burke said there was no other qualified pilot who could do the disciplinary. Ms Burke was unable to recall when Mr Cheal was to be on leave. In the event, as described below, the disciplinary hearing did not take place on the original scheduled date, but on 6 October. Mr Scadeng gave evidence that he had started preparing for the disciplinary hearing when it was postponed and he decided, with the advice of HR, that he should continue to deal with it.

66. Mr Scadeng stated in his witness statement that he was in a position to conduct the disciplinary hearing since he had no involvement at the time of events. We do not consider this statement to be entirely accurate. It is clear that Mr Scadeng had some discussions with Mr Thorington on 6 and 7 May 2014 and was aware, in general