

95. On reading the witness statements for the individuals with whom the claimant communicated, Mr Scadeng said he obtained a consistent view that the claimant was not being entirely honest in his reasons for refusing to exercise discretion and exercising the subsequent change. Mr Scadeng said he had no reason to believe those parties were not telling the truth.

96. Mr Scadeng said that he formed the view that a pilot of the claimant's experience could not have formed the view that the flight was planned illegally, and that it would not be legal to exercise the Commander's discretion in those circumstances.

97. At the time Mr Scadeng was making his decision in the disciplinary proceedings, the CAA had not given a view on whether the planning of the flight in question was legal. Mr Scadeng was confident that it would stand up to scrutiny. Mr Scadeng understood that the claimant claimed that his understanding of the legality was that he could not exercise discretion. In the circumstances, Mr Scadeng said he understood that this was the claimant's argument but he was not sure that the claimant was being truthful.

98. Mr Scadeng said he had spoken to Mr Thorington about the Goa incident raised in the claimant's pack. Mr Thorington told him that the initial discussion with the CAA had supported the view of the claimant but, subsequently, Mr Thorington was told that he was correct. Mr Scadeng was not aware of the CAA going back to the claimant and telling him that Mr Thorington was right after all. Mr Scadeng accepted that he was aware that there was an issue about when discretion could properly be exercised.

99. When asked why he had reached the conclusion that the claimant was not genuine in his belief about the legalities, Mr Scadeng said that, even if the claimant had a belief prior to operating, it was inconsistent with what happened on the flight: the claimant asserted he could not exercise discretion but, a short time later, his view dramatically changed so that he could now exercise discretion. Mr Scadeng said "I believe this was driven by him realising the consequences [the diversion] would cause to others. He changed his attention to the following day". Mr Scadeng formed an impression from Mr Thorington that the claimant was making a protest.

100. Mr Scadeng said he had asked whether the flight had been planned appropriately prior to 6th May and was given assurances that it had. He did not see the information as to how this had been arrived at. He assumed that if there was more information he would be given it, but he did not ask for further information.

101. In answer to a question from the claimant as to how Mr Scadeng could possibly conclude that the claimant was dishonest in stating he was fatigued, Mr Scadeng replied that, on the evidence, he formed the opinion regarding the claimant's behaviour in the week that there was a serious concern that the claimant was seeking to punish the company for the series of duties that he thought unreasonable. He said that the claimant's experience would lead him to believe that the claimant would know it was legal. Mr Scadeng said "Had you elected to be too tired to continue into discretion and diverted the airline, that would be a choice you made. You would have been out of hours for duty on the 7th. Had you said you would not work tomorrow due to fatigue. Had you made no mention in the call about