

21. The claimant had a conversation with Peter Lloyd. The claimant told Peter Lloyd that he would not operate into discretion. There was a conversation about diverting the plane rather than going into discretion. Peter Lloyd told the claimant that, if he was going to divert, then preferably it would be into another UK Airport, London Gatwick. We find that Peter Lloyd did not tell the claimant that another crew was available to take over or complete the duty if the plan diverted. However, we accept that the claimant believed that the respondent would supply such a crew to avoid the inconvenience and potential cost if passengers and the plane were not brought back to Manchester Airport. The claimant discussed the matter with the First Officer Phil Lawrence, the other pilot on the flight. They agreed to take off as scheduled on the understanding that, if the flight could not be completed within the maximum FDP, then they could divert to another airport on return.

22. It is agreed that everyone "busted a gut" to get the flights completed within the maximum FDP. The first leg was done at maximum speed, turnaround times were reduced as much as possible, maximum speed was used on the second leg. At Antalya, the turnaround time was as quick as possible but there was then some delay due to changes in runway. On the last leg from Antalya to Manchester, they flew at maximum speed. Direct routes were negotiated. However, the flight management computer showed that the plane would not be on chocks until fifteen to twenty minutes over the maximum legal FDP.

23. Around 40 minutes after takeoff from Antalya, the claimant contacted Gareth Harvey by high frequency radio and asked which airport he should divert to. Peter Lloyd heard Gareth Harvey's side of the conversation but not what the claimant said. Gareth Harvey told the claimant there was no additional crew to fly the plane back to Manchester if he diverted to an alternative UK airport. Gareth Harvey told the claimant that they could divert to Birmingham but they would need to organise coaches to transport the passengers and crew back to Manchester. The claimant said he would phone back after consulting with his co-pilot. The claimant spoke again to Gareth Harvey. The claimant said he would operate the discretion required to fly directly back to Manchester. The claimant asked Gareth Harvey to inform crewing that he would not be available for duty the following day and said he would contact crewing when he landed by phone. It is common ground that the claimant did not say in the calls over the radio that he was fatigued or was experiencing the onset of fatigue. The plane was on chocks at Manchester Airport at 19.45, fifteen minutes after maximum FDP.

24. After completing his post flight duties, the claimant rang the respondent's crewing department from his car at approximately 20.30. He was immediately put through to Andrew Thorington, the respondent's Duty Pilot. The claimant alleged that the duty had been manipulated to fit into the allowed FDP. He said that, on receipt of the duty period, he had identified it as a fatiguing set of duties and had informed crewing of this. He said he had informed crewing the day before the flight that he would not be operating into discretion and said that he felt, on the day, he had been forced into exercising his discretion because there was insufficient crew to mount a rescue flight. He said that, as a result of the duties, he had formed the view that he would not be fit to fly the assigned duty the next afternoon. Mr Thorington