

FC5297/FC5298/FC5299/FC5308

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Category: [Flight Crew \(Commercial\)](#)

Report Title Commander's Discretion

Initial Report

CHIRP has received a number of reports in recent months regarding pressure to use Commander's Discretion (CD); allegations of scheduled flight hours and turnaround times being manipulated to induce crews to embark on outbound flights such that the real-world result was that return flights required the use of CD; requests to retrospectively submit CD reports where the system discovers that some crew members had exceeded FTL; and overly-robust engagements with management and Duty Pilots when captains have declined to use CD.

The nature of such reports make them largely impossible to disidentify when approaching the associated companies because they contain specific flight details, and many reporters have declined to agree to *CHIRP* doing so directly anyway for fear of negative consequences. On the other hand, most reporters have given permission for *CHIRP* to contact the CAA generically about these incidents and the CAA have conducted increased oversight of the companies involved to review their rostering and FTL management processes.

The CAA have concluded that awareness of the reasons and intent behind CD and its use is patchy, and that company processes to ensure sufficient stakeholder knowledge and thus appropriate CD utilisation are not as effective as they might be. A positive outcome was the recently published CAA [Open Letter](#) *"in response to feedback via various safety forums that the use of Commander's Discretion ('CD') is being inconsistently interpreted by industry stakeholders, leading to inappropriate application (or the perception of inappropriate application) of CD". This is tangible evidence that the Regulator is aware of the increased use of CD and has engaged with companies to highlight that its use should only be in exceptional circumstances and for unforeseen situations.*

Comment

The use of CD is not unsafe in itself provided that a proper assessment of crew capabilities is made, but increasing numbers of CD reports are perhaps indicative of mounting pressures on crews from rostering and scheduling stresses caused by the system not operating as efficiently as it should. Ultimately it is the Captain's responsibility as to whether CD is used, but all crew have a responsibility to make the Captain aware if they might exceed FTL and therefore require the use of CD (on the assumption that they are fit to continue to operate). But sometimes training in FTL is

rudimentary (Cabin Crew may only get a single presentation during their training) and so levels of understanding might not be high for some. CHIRP thinks that company training about FTL in some airlines could be more extensive to ensure that all crew members are fully aware of FTL regulations and what CD means. There also needs to be robust processes in place to inform the Captain whether or not crew members might be approaching FTL limits. One would hope that company systems would not roster beyond FTL requirements, that manipulation of flight times was not a reality, and that systems were robust enough to identify when crew members might be approaching FTL limits in real time and warn them and their captains accordingly.

With regard to habitual use of CD, the CAA open letter is clear in its statements about the interpretation of 'Unforeseen Circumstances' as below:

CAA interpretation of 'Unforeseen Circumstances' (ORO.FTL.205(f))

Unforeseen circumstances are events on the day of operation that could not reasonably have been predicted and accommodated when the flight duty period was planned, such as adverse weather, equipment malfunction or air traffic delay. These events may result in necessary on-the-day operational adjustments that the operator could reasonably present to the operating Commander on or after report time. This is very similar to the ICAO definition.

There should be no expectation that Commanders should, or will, agree to extend the maximum planned flight duty period (as defined in the operator's approved FTL scheme and CD Policy) for events that occur before the crew report for the affected FDP. The Commander must have access to the latest information, including the ability to determine crew condition, to exercise their judgement. This can only practically be assured at report time or during the FDP. Notwithstanding this, operators are expected to have a delay policy that is effective in protecting crew where possible from extended duties when delays are known about in sufficient time.

A crew member cannot commit to an extended maximum duty day (using the operators' CD policy) prior to the Commander's report.

The operational consequences of the Commander considering it inappropriate to extend the crew duty period after report, including the possibility of a night-stop down-route, has to be accepted and no commercial pressure can be applied at any stage.

CHIRP is heartened to see that at the end of their note on CD the CAA says that: "The CAA intends to review existing FTL regulation/amc/gm over the next 24 months as part of its continuous review programme, which will include those areas pertinent to CD". We look forward to the outcome of their FTL review given the increasing number of fatigue reports that we've been receiving in the last few months during the post-COVID recovery of aviation.



