

UK ports and coronavirus

The British Ports Association Port Futures programme is a series of papers considering emerging and innovative trends in the port sector. This article is part of a forthcoming wider piece of work from Hill Dickinson and the British Ports Association examining the potential impacts of pandemics on ports.

UK ports play a critical role in facilitating international trade. The industry is committed to maintaining the flow of goods and passengers and working with port health authorities to minimise risks around coronavirus. Port health authorities are responsible for developing health controls at seaports and airports in the UK and they are tasked with preventing the introduction of dangerous epidemic diseases through shipping activity without creating unnecessary disruptions to world trade.

The British Ports Association has warned that local authorities must have the resources necessary to devise and execute emergency plans should the situation escalate. With vessels and passengers facing restrictions and even quarantine as the shipping industry addresses the global coronavirus outbreak, the British Ports Association asked legal directors Tony McDonach and Colin Lavelle, of Hill Dickinson's marine team, about some of the possible implications for UK ports.

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The threats to the UK ports industry from the novel coronavirus are not immediate but they are nevertheless real. The number of reported cases in the UK is low (nine at the time of writing) but growing. So what do we know so far?

It is now known the virus is waterborne rather than airborne. It requires the transmission of water droplets from an infected person in order to infect others. The primary causes of transfer are thought to be coughing or touch, so isolating patients should slow the progress of the disease. However, unlike SARS or Ebola, which were contagious only when symptoms appeared, there is a concern that coronavirus victims may be infectious even before symptoms manifest themselves.

The possibility of 'super-spreaders' is a concern. This follows the case of the UK businessman thought to have contracted the condition in Singapore who then flew to the UK (infecting others in the pub in Brighton) and then to France, infecting more people in a ski-chalet in the Alps, all the while remaining ostensibly symptom free.

The nature of international shipping, with ships travelling from East Asia to Europe, ships' crew coming from all over the world and the boom in cruise shipping, with passengers flying to the UK to board ships at UK ports and then being highly concentrated on board, mean that the possibility of a serious outbreak in a UK port cannot be ruled out. It also seems that the biggest threat is likely to come from the sea rather than the land.

Quarantine

Current UK government advice identifies mainland China, Thailand, Japan, Republic of Korea, Hong Kong, Taiwan, Singapore, Malaysia and Macau as places of special concern for the virus. These areas have been identified because of the volume of air travel from affected areas and number of reported cases. All are on standard shipping routes.

The severe restrictions imposed by the Chinese state have set a strong precedent. It would be a brave state or business that did not take the strongest possible action to restrict the disease. From 10 February in the UK, individuals may now be forcibly quarantined where there is reason to believe they may have the condition.

What then for UK ports?

The case of the “DIAMOND PRINCESS”, quarantined at anchorage off the port of Yokohama, gives an indication of what might happen. Yokohama is doubtless grateful that the cases were discovered prior to the ship’s arrival.

The discovery of cases, or an outbreak, on board a ship berthed at a UK port, might lead to that ship being quarantined. The berth would then be out of action for the duration of the quarantine with the inevitable loss of income from other ships. While the relevant shipowner would theoretically be responsible to the port for the services being utilised and provided, and/or the government may provide some support, there is nevertheless a risk of significant commercial loss being suffered by the port depending on the relevant terms agreed between the port and the shipowner, and the nature of any government support.

Whatever the case, and given the nature of such an incident, it will be important for ports to act quickly, liaise closely with the authorities and limit potential areas of loss. In this regard, as with cases of ship arrest, for example, it is possible for ports to apply to move vessels to alternative or lay-by berths where available. Further, and in cases where vessels are laid up for extended periods of time, it is worth remembering the port’s requirements to restore the relevant berth to serviceable condition by means of dredging, etcetera.

The extent to which any recovery can ultimately be made or reimbursed will be influenced largely by the relevant terms on which such berth(s) and services are provided and should be reviewed.

While it is difficult to see how the virus might lead to the total quarantine of a large port, where an infected ship might be isolated away from other ships, that is in the context of the current rates of infection. A significant outbreak, increase in the rates of infection or the rate of fatalities, might change public attitudes. Even with the current incidence of the virus, smaller ports with fewer berths and less working space are likely to be worse affected than those with room for manoeuvre.

Unsafe port

A port with a quarantined ship or ships alongside is at risk of being designated an unsafe port. Under a charterparty, charterers are under an obligation to nominate a safe port, and the shipowners must go there unless there is an unacceptable risk, including whether the port is known to be unsafe. The risk of contagion to the crew may render a port unsafe.

The taking of proper precautions and protective measures can ensure that there is no risk of infection to crew and that the port remains ‘safe’ for the purpose of charterparties. Measures taken during both the MERS and Ebola outbreaks, meant that numerous ports remained open despite being affected by the outbreak. However, there is likely to be a cost to such precautions.

As above, it would need a significant increase in the scale of the outbreak before large ports are likely to be deemed ‘unsafe’. However, the position might be different where the port is smaller or the berth being offered is adjacent to one housing a quarantined ship.

Force majeure

UK ports routinely include a force majeure clause in their standard terms and conditions. These commonly provide that the port will not be liable where compliance with the contract is not possible due to any event, circumstance or incident that is beyond their control.

Typical examples of such 'events' include: strikes; shortage of labour; and the actions of competent authorities. Hence, strikes by stevedores concerned about the possibility of infection may count (subject to the reasonableness of those concerns). Similarly, if the workforce was struck down by the virus, or told to stay at home because of it, that might also be a force majeure event.

The quarantining of the port, or part thereof, by the authorities is likely to count as a force majeure incident.

If the ports themselves declare the port closed in whole or in part, then their proactivity may not be rewarded. Their decision may be challenged by their contractual counterparts and, if they are deemed to have jumped the gun, they may be liable in damages. Close liaison with the authorities is advisable therefore, and, if the authorities take the lead on closing the port or part of it down, so much the better.

Accordingly, the ports may avoid liability to their customers but what of their loss of revenue?

Business interruption and increased cost of working insurance

These insurances are routinely available from ports and terminal insurers. They may not be offered as part of the standard package of insurances but are often added to port covers for an additional premium. Subject to the terms, they may fill the income gap between what the port might have earned in the ordinary course of events and what it has earned following closure, shutdown etcetera. They are usually limited to a number of days or months.

Care needs to be taken with the terms of such covers. From the point of view of the port, they should be as wide as possible. An insurance against closure of the port by the competent authority will obviously respond if the authorities shut the whole port, but not necessarily for the loss of revenue if part of the port is out of action or if the workforce are struck down or simply refuse to work out of fear of infection.

In summary, UK ports should be checking their terms and conditions to ensure their force majeure provisions will apply, their insurances to ensure they have the correct business interruption cover, and they should be liaising with the relevant governmental department so that whatever they choose to do is backed by the authorities.



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