

The implications of the recent disruption for the freight and warehousing sectors in Kent

The Dover-Calais crossing has always been of significant strategic importance to the UK economy.

Modern trade practices have only increased its importance. Most modern supply chains are operated on a “just in time” basis which serve to limit expensive storage and warehousing of goods. Whilst previous practices might have meant that businesses would hold more inventory in warehouses to act as a buffer against unexpected issues arising in and disruption to the supply chain that is less the case these days with faster, more technologically driven, leaner supply chains. Most businesses do not have the resources to store stock indefinitely for use in all emergencies to cover all potential contingencies.

Consequently, strikes and industrial action at a port cause severe disruption to businesses and the associated supply chain. A company may potentially lose sales, customers and market share against better organised competitors.

The extensive media attention on what has been a long standing problem for the industry as a result of the severe problems at Calais has led to the Government allocating funding of £250 million into resolving the problem of Operation Stack. A consultation has been launched in order to find two suitable permanent sites for lorry parks to ensure the M20 remains open even where there is disruption to the cross channel link.

The influx of migrants to Europe over the past 12 months (largely from Syria) and greater media coverage on the situation at Calais has also led to a renewed focus and determination at a bilateral and international level on attempting to find a solution to the issue. Increased security measures at Eurotunnel and the port in Calais aimed at

detering migrant activity appear to be having limited effect. The problem is not going to go away and will only be resolved definitively at an international level.

The alternatives for the UK exporter are limited. The problems at Calais might be avoided by;

- diverting cargo to shipment by air (which is costly)
- utilising a more circuitous route, again causing delay, increasing expense and having a detrimental environmental impact.

On the French side of the channel the alternative options to Calais are limited. The infrastructure at other ports would simply not support significantly increased volumes. Freight using the tunnel is in any event limited to Calais. The problem for the French is less acute given their land borders with Germany and Belgium. The position is accordingly not going to change any time soon.

Where lorries queue outside of the more secure port area at Calais when there is significant disruption they will remain targets for those seeking to enter the UK illegally. There may be some drivers or smaller operators who will not be prepared to work that route. It is widely known that last summer a number of high profile continental European carriers avoided work into the UK because of concerns that their vehicles would be stuck in the UK indefinitely.

Contingency planning remains a strategic imperative for all those engaged in the industry.

Those operators who were able to implement well thought through contingency plans last summer were the ones best able

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to mitigate losses and avoid expensive emergency last minute fixes.

Inevitably increased costs for forwarders and hauliers will ultimately be passed back to business. The margins in the industry are too tight for the industry to simply absorb the costs involved.

Many road hauliers and forwarders (and their insurers) will be (and currently are being) targeted by cargo owners, businesses and their insurers who have sustained losses arising from the disruption. This will involve costs and a further diversion of resources to deal with inevitable litigation. Policy disputes as between hauliers / forwarders and insurers are also now progressing. The devil is in the detail and all parties involved in the shipping of goods through Calais should ensure that their contractual liabilities are minimised wherever possible. This includes reviewing contracts, insurance coverage and standard terms and conditions, limiting or excluding liability where possible and ensuring that all employees are aware of what to do when things do go wrong.

Freight operators and drivers working through Calais must constantly review their procedures and security measures to avoid property damage, contamination and total loss claims.

Where immigrants are discovered having entered a vehicle, drivers can be fined up to £2,000 per immigrant. Vehicles may also be impounded which will also cause losses to the operators. It is essential that drivers know what to do in advance, and that there are adequate security measures in place.

The impact of the cross channel disruption last summer on owners and developers of logistics buildings will not be the same across the board and will depend on the

types of products being stored and industry sectors being serviced. Many warehousing and storage facilities are owned and/or operated by forwarders and large shippers as part of their overall services. The capacity in which they contract will accordingly determine their potential liabilities. A warehouse owner solely offering storage facilities may have only very limited exposure to the Dover / Calais disruption. Indeed, a number of warehouse owners have enjoyed a successful period as businesses re-direct non-priority cargo to storage at short notice to avoid the disruption. A forwarder contracting as principal for the whole movement may offer warehousing and storage as part of his overall offering to customers and accordingly may have more overall exposure.

Notwithstanding the desire to limit the costs of storage and modern "just in time" supply chains there is nevertheless ever increasing demand for good quality warehouse space in key strategic locations. That is partly driven by increased online shopping, next or same day delivery and increasing demand for goods from an increasing population. There is a very significant lack of supply and development of suitable warehouse premises in the UK. Commercial industrial development plays second fiddle to residential development at present in the media however the crisis last summer and strain on the UKs logistics capability has focussed greater attention on the importance of the UKs logistics infrastructure and the pressure which it is under. As the issues become more widely discussed this will provide a basis for increased opportunities for investment and development going forward.

Ensuring that there is flexibility in the supply chain is the key to avoiding disruption such as at Dover / Calais. Maintaining a range of

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warehousing / storage / distribution facilities remains the best way to mitigate against disruption. That may include for instance maintaining a presence around the Heathrow hub or setting up temporary “pop up” or more permanent arrangements at facilities at or near continental airports so a decision can be taken as to whether to ship at short notice by air if required. There are clearly costs involved in this. During last summer’s disruption increased demand for air freight increased in some cases by three times normal rates. Putting arrangements in place early prior to disruption occurring mitigates costs and will obviate expensive last minute solutions.

It is unlikely that the disruption at Calais will mean more UK companies will want to seek to build up inventories to ensure stock is available which will of itself necessitate increased warehousing and storage space. The costs involved are prohibitive.

If there is further significant disruption this summer it may be that this will expedite a move to a more port centric approach. DP World’s London Gateway logistics park at London Gateway port is a prime example. This can result in lower costs, a shorter supply chain and consequently less risk of disruption.

Increasing the capacity, quality and size of warehousing remains important. However, given the development of a streamlined “just in time” supply chain investment in technology and IT is of critical importance in ensuring efficient management of that capacity. Visibility of inventory and ability to understand what goods are where are essential in allowing fast decisions to be made allowing disruption to be managed and its effects mitigated. This is particularly important where there is industrial action which may continue indefinitely.

Where supply chains become disrupted, such as in the summer last year, disputes and often costly litigation are common place. Where liability falls in any particular case turns on a proper consideration of the relevant contractual matrix including in particular in what capacity each party is contracting and the service offered (many forwarders offering warehousing facilities may also have obligations as actual carriers and/or as principals responsible for the entire movement).

In whatever capacity they contract, it is essential that the warehouse operator and staff remain on top of the detail. Visibility of stock held through investment in IT, efficient internal procedures and well trained staff are key to this. In a fast moving situation warehouse operators need to be aware that they have very clear duties to owners of cargo (who may not be the party who actually delivers or instructs delivery of the goods to the warehouse). This may arise contractually or where third parties are concerned in bailment (a tort). Caution is required in such circumstances as accepting, releasing and storing goods all attract legal duties on warehouse operators which if not met can expose operators to potential claims.

Further information

If you would like any further information in relation to this information sheet please contact James Cradick, Senior Associate in the Dispute Resolution team at Thomson Snell & Passmore on 01322 422542 or by email at:

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