

Deviation expenses for landing sick, injured or deceased people



Richard Stevens
Divisional Claims Director
+44 20 3320 8825
richard.stevens@ctplc.com



Karolos Mavromichalis
Claims Assistant
+44 20 7680 5660
karolos.mavromichalis@ctplc.com

A ship may deviate from a contracted voyage for a number of reasons, one being to land sick, injured or deceased people. Such deviations can sometimes have consequences under the relevant charterparty and bills of lading (if laden). Deviations can also have ramifications in respect of a member's P&I cover.

Overview

A deviation may be justified in circumstances where the charterparty or bill of lading includes a 'liberty' clause. However, these clauses are typically limited in scope and a deviation that is deemed unjustified or unlawful can have unfortunate consequences both under the charterparty and the bills of lading (if the ship is laden).

As for the member's P&I cover, The Standard Club's [rule 3.13.3\(2\)](#) states that liabilities arising out of a deviation from the contractually agreed voyage which may deprive the member of the right to rely on defences or rights of limitation otherwise available will be excluded, unless the managers have agreed that cover may continue unprejudiced.

It is therefore vital that before deviating from the contracted voyage, the member first informs their usual club contact for confirmation that their P&I cover will remain intact. Whilst each deviation will need to be considered based on its own particular facts, as a guiding principle, a minor deviation from the geographically contracted voyage to a nearby port to save life, or to land persons saved at sea, will be permissible from a club cover perspective.

Club cover

The Standard Club's rule 3.4 caters for situations where a member suffers losses through having to divert the ship in a number of specified circumstances. These include deviation:

- a) in order to obtain treatment for injured or sick persons on board (not crew);
- b) for the purpose of saving life at sea; or
- c) for the purpose of landing stowaways or deceased persons.

When it comes to diverting a ship for obtaining treatment for injured or sick crew members, the equivalent to rule 3.4 is set out in rule 3.1.6.

Persons in distress

The Standard Club rules are in line with international legislation, which requires ships to provide support to persons in distress. The [International Convention on Salvage 1989 \(ICS\)](#) obliges masters to render assistance (life salvage) to any person in danger of being lost at sea, unless doing so would seriously endanger the ship or persons thereon. The terms of the ICS are incorporated into English law through the [Merchant Shipping Act 1995](#), which makes a master's failure to render such assistance a criminal offence. English common law has also for a long time recognised deviation, for the purposes of saving life at sea,

Deviation expenses for landing sick, injured or deceased people continued

as a justifiable deviation and thus it will not amount to a breach of contract.

Furthermore, the 1974 *International Convention for the Safety of Life at Sea* (SOLAS), Chapter V, Regulation 33 states that the master is bound to proceed with all speed to the assistance of persons or ships in distress.

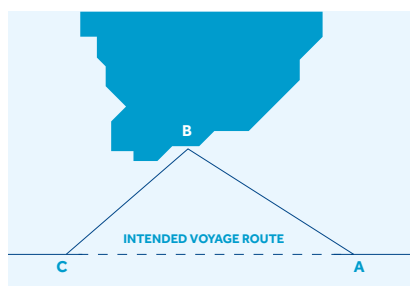
In such situations, deviation is permitted and club cover will not necessarily be prejudiced and may even allow the member to recover the expenses associated with such deviation.

Recoverable expenses

Club cover for deviation will only usually include the *net* expenses incurred during or directly resulting from such deviation. These usually include: bunkers; stores and provisions; wages; additional insurance; agency fees; local pilot and transportation costs; and port charges. However, the club cover provided does not extend to lost hire or freight.

Such costs are calculated *pro rata* and relate to the period until the ship is back on course, in a position no less favourable than if the deviation had not occurred.

The following diagram can illustrate the point:



If we assume that the ship is proceeding according to the above intended voyage from A to C, but has to deviate to unscheduled port B to land a sick, ill or deceased crew member, the member will incur unexpected port costs and other expenses (as identified above) compared to the original intended voyage. Such costs will be covered by the club unless the member took the opportunity to carry out additional business at port B, such as loading/discharging cargo or to buy bunkers. This would also be the case for any deviation under rule 3.4.

The club would also cover the net additional running costs for the time spent travelling from point A to B, as well as from point B to C. However, the distance made good (via the initial intended route directly from point A to C) will be deducted as this would have been incurred in any event.

While the club will cover these additional running costs, it will not pay for any loss of profit or loss of income incurred if, for example, the ship is placed off hire or if freight is withheld. Some charterparty clauses may also allow for deductions from hire to be made due to a diversion to land a sick, injured or deceased crew member. This is of course subject to a member being able to rely on any of the aforementioned liberty clauses or applicable rules permitting deviations to save life at sea, a question to be determined according to the law of the contract of carriage.

Finally, it should be noted that any costs that would have been incurred in any event (e.g. pilotage and port dues at a scheduled port of call from which a crew member is repatriated) are operational expenses and thus for the member's account.

The Standard Club's rule 3.4 states that the club will cover:

'...Port and other charges solely incurred for the purpose of landing stowaways or refugees, or others saved at sea, or landing or securing the necessary treatment for an injured or sick person, other than crew, including the net loss to the member in respect of fuel, insurance, wages, stores and provisions incurred for such purpose...'