

P&O Ferries

A line in the sand

Executive summary

The P&O Ferries scandal shows the need for government to step in and act as the operator of last resort in the ferry industry.

As an island nation, ferry operators play a vital role in facilitating trade and prosperity in the UK, connecting Britain to business across the world. When these services breakdown, we risk supply chain disruption, shortages of essential goods and passengers left stranded.

P&O Ferries have contravened UK employment law, failing to provide any notice that redundancies were being considered. And by not consulting with the recognised trade unions: Nautilus International and RMT.

Ferries need a high level of competence and care in their operation. Without these, the consequences can be tragic. P&O Ferries have replaced skilled and experienced crew with low-paid, inexperienced workers unfamiliar with the ferries they are manning, at significant risk to passenger safety.

P&O Ferries' reliance on recruiting agency workers well below the minimum wage in order to operate demonstrates it is not a viable or sustainable financial operation.

This is a watershed moment for the UK shipping industry and for workers' rights in Britain. Ministers must be prepared to step in to run services if a 'fit and proper' operator cannot be found quickly to replace P&O Ferries.

Key issues of concern

- P&O Ferries have likely breached UK employment law:
 - Failed to provide adequate notice to the Secretary of State or appropriate authorities in the UK.
 - Failed to consult with recognised trade unions.
- P&O Ferries may not be able to operate safely given the loss of so many skilled and experienced personnel.
- P&O Ferries services are severely disrupted, causing alarming backlogs in freight delivery leading to supply shortages.

TUC recommendations for action

1. P&O Ferries must reinstate all 800 staff and enter discussion with their trade unions.

If they fail to do this:

2. Government must be ready to run ferry services as the operator of last resort, if a 'fit and proper' operator cannot be found.

The government should also take action to:

3. Remove DP World's licence to operate in the UK and they must be expelled from all free ports
4. Remove DP World from its Transport Advisory Group – and any other government advisory groups.
5. Bring forward an employment bill to ban exploitative working practices and increase penalties for breaking employment law.

Background

On Thursday 17 March 2022, employers at P&O Ferries informed their 800 of their UK based staff that they were being sacked effective immediately. They informed workers via a pre-recorded video message, giving employees thirty minutes notice. Private security, armed with handcuffs, then boarded the ships to escort workers off. P&O Ferries parent company, DP world, informed the government about their plans on the eve of the sacking, Wednesday 16 March 2022. Ministers failed to inform unions representing affected workers.

Operator of last resort

Maritime unions and the TUC are calling for the government to step in as an operator of last resort. The ferry industry is vital to the economy of the UK, playing a vital role facilitating trade and prosperity in the UK. Our ferry infrastructure ensures people and goods can move between ports all around the country. We risk massive disruption of food and medicine supplies as well as passengers left stranded if ferry services cannot operate.

P&O Ferries have claimed that their action was necessary to safeguard financial viability of the business. A business that relies on paying its workforce considerably less than the minimum wage is not a viable business model.

In rail, the operator of last resort option provides stability to a key part of the UK's economic infrastructure. Department for Transport (DfT) has stepped in to take over rail services that are not viable. In 2018 Virgin Trains East Coast lost the East Coast Mainline

Service. The DfT's operator, London North Eastern Rail (LNER) took over the service. The DfT run the line between 2004 and 2016 and the line won 60 industry awards. It also returned millions of pounds to the exchequer.

The maritime sector is larger than other comparable industries in the UK, including rail and Aerospace.¹ The sector needs the same level of stability as our rail system, with government prepared to step in if a fit and proper operator cannot be found to replace P&O Ferries. This would ensure passengers aren't left stranded and that vital supply lines remain open.

Routes of economic importance

The routes P&O Ferries operate on are of significant economic importance to the UK, connecting Britain to business across the world.

The UK maritime sector facilitates 95 per cent of all UK trade, contributes £46.1 billion to the UK economy annually and supports more than 1.1 million jobs.² The shipping sector alone contributed £6 billion to the economy in 2020, accounting for 19 per cent of the transport industry.³

P&O Ferries carried 2.2 million freight units last year. The disruption to P&O Ferries' services since 17 March has already caused backlogs in freight delivery, leading to supply shortages. John Martin, from the Road Haulage Association, warned the BBC that there were currently "two boat-loads of vehicles" sitting in Cairnryan in Scotland waiting for a ferry to Larne.⁴

Hauliers in Northern Ireland confirmed that the haulage industry is currently running at about 50 per cent capacity due to the disruption to P&O Ferries services. Ports in Northern Ireland supply food to around 10 million people, mostly in the UK. Much of this cargo is now stuck in ports. On Friday 18 March, it was reported that supplies of milk, chicken fillets, sausages and beef as well as some medicines could be affected, with food rotting while they await transportation.⁵

Behaviour of the company jeopardises safety

TUC and our unions in the sector have strong concerns over P&O Ferries' ability to operate safely given the abrupt loss of so many qualified personnel. P&O Ferries have replaced skilled and experienced crews, who have on average 20 years' experience, with

¹ UK Maritime (2019) State of the maritime nation report 2019 | Maritime UK

² MaritimeUK (2019) [State of the maritime nation report 2019 | Maritime UK](#)

³ Office for National Statistics, GDP output approach – low-level aggregates - Office for National Statistics (ons.gov.uk)

⁴ BBC, 'P&O: Backlog of freight building up after ferries suspended', [<https://www.bbc.co.uk/news/uk-northern-ireland-60833438>], March 2022

⁵ CommonsLibrary (2021) [CDP-2021-0147.pdf \(parliament.uk\)](#)

novices. There is an increased risk that P&O Ferries will fail their inspections as a result. This could cause significant delays to the UK's sea freight industry.

Ships that operate under a UK flag need a certificate from the Maritime Coastguard Agency (MCA) to operate from UK ports. P&O Ferries were flagged to other states. As a result, they do not need any MCA issued certificates to operate despite being in UK waters.

The UK register for ships has declined in recent years. In 2020, the UK Ship Register (UKSR) was 38 per cent lower than in 2017. Meanwhile, the overall UK fleet of ships owner, parent owned or managed in the UK is considerably larger than the UKSR, and has remained stable since 2018. The DfT suggest this reflects uncertainty over Brexit and owners acting commercially to register ships with 'open' states⁶, thus avoiding taxes and compliance with employment laws in the UK.⁷

The MCA committed to undertake Port State Control (PSC) inspections after representations from Nautilus and commitments from Grant Shapps, Secretary of State for Transport.

Inspections will focus on operational drills such as the ability of the crews to fight fire, muster passengers in the case of an emergency and evacuate a ship. And they will ensure that personnel have received appropriate training and are familiar with the tasks they are responsible for.

The company must prove that crew have received appropriate familiarisation and training. There are some mandatory instruments to enforce this. They include the International Management Code for the Safe Management of Ships (ISM Code). This was introduced as a direct result of Herald of Free Enterprise disaster.

A Port State Control inspection is the inspection of a foreign flag ship in a national port to verify that the condition of the ship and its equipment follow the requirements of international regulations. And that the ship is manned and operated in compliance with these rules. If the MCA finds that any ship is not in compliance with the rules then they have the power to detain the ship until any deficiency is rectified or, depending on the severity of the deficiency, stipulate a period (e.g., 14 days) in which the company must resolve the deficiency before another inspection. P&O Ferries cannot resume services until these are complete.

⁶ A register that is open only to ships of its own nation is known as a traditional or national register. Registers that are open to foreign-owned ships are known as open registries or 'open' states. Commercial operators may use 'open' state registration to avoid paying taxes or complying with employment regulations such as minimum wage laws in the countries in which they operate.

⁷ CommonsLibrary (2021) [CDP-2021-0147.pdf \(parliament.uk\)](#)

Potential breach of UK employment law

TUC and our unions in the sector believe P&O Ferries' business model is unlawful, unsustainable and disreputable.

Failure to provide adequate notice to the Secretary of State or other relevant authorities

P&O Ferries wrote to the Secretary of State for Business, Energy & Industrial Strategy (BEIS), and claimed that they notified the "relevant authorities" on 17 March 2022.⁸ These authorities were in the countries where the ships were flagged. This suggests P&O breached the requirement to give either 30 or 45 days' notice to the Secretary of State or other relevant authorities depending on the number of redundancies.

Employers have to collectively consult when they want to make 20 or more employees redundant. If they propose 100 or more redundancies the consultation must start at least 45 days before any dismissals. This period is very important. It allows unions to explore alternative arrangements and engage with the employer. If the company does not provide this notice they might have to pay up to 90 days pay to affected employees.

It appears that P&O Ferries priced in the potential cost of such an award in its offer to dismissed seafarers. P&O Ferries' press statement suggests it is offering 13 weeks' salary as part of its offer to seafarers instead of meeting its obligations.⁹

Government should review the protective cap awarded in cases such as this. They should ensure there is proper financial deterrent from such behaviour. They should also extend collective consultation rights should to all workers, not just employees. They should extend the period of consultation, notices of dismissal should not be allowed until the process is complete.

UK employment law prevents companies making workers redundant when their roles are still viable and necessary, simply to reduce costs. The fact that P&O Ferries are recruiting new staff to fill these vacancies demonstrates they have breached this law.

⁸ Independent P&O Ferries boss says firm did nothing wrong with shock sackings, as £36m payout package revealed', [<https://www.independent.co.uk/news/uk/politics/kwasi-kwarteng-p-o-ferries-mps-government-beis-b2041821.html>], March 2022

⁹ Allaboutshipping.co.uk, 'Update from P&O on support for affected employees', [<https://allaboutshipping.co.uk/2022/03/22/update-from-po-on-support-for-affected-employees/>], March 2022

Exploitation of gaps in national minimum wage laws

On Monday 21 March, the RMT union, announced that P&O Ferries have replaced many workers with seafarers from India at a rate of as little as £1.80 an hour.¹⁰ Despite some modest improvements to minimum wage laws in October 2020, it is still possible to employ seafarers on less than minimum wage.

The recent changes extended minimum wage entitlement to all seafarers working between UK ports and in the UK offshore energy sector. P&O are exploiting the fact that it can still be legal to pay seafarers below the minimum wage if they work on an international route from a UK port.

The minimum wage only applies for work done outside the UK and its waters if seafarers 'ordinarily work' in the UK.

- Seafarers on UK flagged ships are treated as ordinarily working in the UK if they are ordinarily resident in the UK or at least some of their employment is in the UK.
- Seafarers on non-UK flagged ships might also count as 'ordinarily work(ing)' in the UK. But only if they show a strong enough connection to the UK.

BEIS guidance¹¹ states:

"It is necessary to consider the circumstances of the employment to ascertain whether the seafarer has a sufficiently strong connection to the UK. Criteria considered when deciding whether someone ordinarily works in the UK might include:

- where the seafarer's tour of duty begins and ends
- where the seafarer is subject to income tax and National Insurance Contributions
- the currency that the seafarer is paid in."

Taxpayers' money funding a disreputable company

P&O Ferries have broken legal and ethical norms and contravened UK employment law.

P&O Ferries claimed that their actions were necessary to secure the long-term future viability of the business. But P&O Ferries' owner, DP World, have made record revenue and profits throughout the pandemic. They turned over \$10.8bn in revenue and \$1.2bn

¹⁰ BBC, 'New P&O crew on less than £2 an hour, union claims', [<https://www.bbc.co.uk/news/business-60821266#:~:text=Indian%20agency%20workers%20hired%20to,those%20who%20have%20been%20sacked%22.>], March 2022

¹¹ BEIS Minimum Wage Guidance, updated Feb 2022, <https://www.gov.uk/guidance/minimum-wage-seafarers-and-other-people-working-at-sea>

in profit last year – a 33 per cent increase in profit compared with the previous year.¹² The company has paid out \$376.1 million in dividends to shareholders over the past two years alone.

UK taxpayers are footing the bill. During the pandemic, DP World received millions of pounds of taxpayers' money in Covid-19 related financial relief.¹³ DP World are also expected to receive at least £50 million of UK taxpayer support as part of the government's Freeport programme. The company will also benefit from generous tax breaks permitted under the scheme.

DfT have written to P&O Ferries to state that it will review all contracts the government has with both P&O Ferries and DP World. We understand that this includes at least £50m of support associated with DP World's involvement in the Freeport schemes.¹⁴

The UK government must make it clear that neither P&O Ferries nor their parent company DP World will receive any public money until the workers have been reinstated.

¹² ITF, 'P&O ferries' sackings show a shocking disregard by DP World for workers' rights and its own standards', [<https://www.itfglobal.org/en/news/po-ferries-sackings-show-shocking-disregard-dp-world-workers-rights-and-its-own-standards>], March 2022

¹³ *Ibid*

¹⁴ See Guardian (21st March 2022) 'P&O Ferries owner to benefit from at least £50m of UK freeport scheme' at <https://www.theguardian.com/business/2022/mar/21/po-ferries-owner-to-benefit-from-at-least-50m-of-uk-freeport-scheme>