

P&O Ferries mass sackings – one year on

**How P&O Ferries broke the law, what
ministers promised to do and how
they failed to deliver.**

P&O FERRIES: ONE YEAR ON

P&O Ferries failings	Government action
Didn't consult workers or reps	NONE
Didn't notify the authorities	NONE
Directors kept jobs despite poor behaviour	NONE
Exploited loopholes in the minimum wage	PARTIAL
Breached safety rules	NONE
Sacked workers unfairly	NONE

tuc.org.uk

On 17 March 2022, P&O Ferries sacked 786 workers without notice. A video message told them: "I am sorry to inform you that your employment is terminated with immediate effect . . . your final day of employment is today".¹

In addition to the shameful way that P&O Ferries treated its workforce, there were four flagrant breaches of law by P&O Ferries which have gone unpunished:

- The duty to consult when making collective redundancies
- Unfair dismissal of workers
- Failure to notify the relevant government authorities
- Breach of Director duties

Furthermore, P&O Ferries exploited loopholes in the minimum wage legislation to pay replacement agency worker crew as little as £5.15 per hour. And they failed to comply with international health and safety standards, jeopardising the safety of seafarers, passengers and the maritime industry as a whole.

If P&O Ferries had complied with the law, alternative proposals could have been negotiated with unions, which might have saved jobs.

P&O Ferries has still not been punished for its disgraceful and unlawful attacks on 786 directly employed seafarers.

Ministers talked tough and promised repercussions for P&O Ferries.

On 30th March, Grant Shapps MP, Secretary of State for Transport at the time, said the government would *"send a clear message to the maritime industry that we will not allow this to happen again. That where new laws are needed, we will create them. Where legal loopholes are cynically exploited, we will close them. And where employment rights are too weak, we will strengthen them"*.²

He failed to deliver on any of those promises.

On 24th March, Paul Scully MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, suggested that P&O would face sanctions available under existing laws:³ *"I think the bigger hole that will actually stop them from doing it is when they realise that the criminal sanctions kick in with unlimited fines. That is what will stop them from doing it"*.

These sanctions failed to materialise. The government did not rigorously pursue P&O or change the law to prevent future conduct similar to P&O's actions.

¹ Georgiadis P. (17 March 2022). "How P&O's ruthless decision brought chaos to Britain's ports", *Financial Times*.

² Sillars, J. (30 March 2022). "P&O scandal: Ports reject Grant Shapps plan to police ferry firms' minimum wages", Sky News.

³ Scully, P. (March 2022). *Oral evidence: P&O Ferries, HC 1231*, Transport Committee & Business, Energy and Industrial Strategy Committee, House of Commons.

The government has delivered next to nothing.

Furthermore, despite Grant Shapps pledging to review⁴ all its government contracts since March 2022, DP World is in line to benefit from many deals including several with the Ministry of Defence, and from involvement in the Solent and Thames Freeport sites.

The government is rewarding P&O Ferries for their law breaking.

Below we set out the multiple breaches of employment law by P&O Ferries.

The duty to consult when making collective redundancies

P&O Ferries had a duty to consult with union representatives about the proposed sackings.

An employer has a legal duty to consult recognised trade unions where it is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. The employer must consult with the union representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.⁵

This is a key legal duty. It provides trade union representatives with some legal leverage in the consultation process, given the legal duties to consult in good faith with a view to reaching an agreement. Consultation processes enable unions to negotiate alternative proposals and protect jobs. Unions have much experience bringing alternative proposals to the table that save jobs and avoid compulsory redundancies.

P&O Ferries arrogantly chose not to consult with the recognised trade unions, RMT and Nautilus International, as "given the fundamental nature of change, no union could accept it".⁶ It not only ignored but severed the statutory provision enabling unions to develop alternative proposals to mass redundancies. And it dismissed the vast evidence showing that unions bring viable proposals in redundancy situations that reduce job losses.

The financial penalty for breaching this consultative duty is a payment equivalent to a maximum of 90 days' pay for the workers affected. This level of sanction is clearly inadequate as P&O Ferries was able to price in its non-compliance, and proceed in the knowledge that it would not face further punitive financial sanctions.

Robust sanctions are needed to deter employers from behaving in this way. Following the P&O Ferries scandal the TUC called on the government to increase protective awards and sanctions to a level that would ensure employers are deterred from brazenly flouting the law.

⁴ (March 2022). Volume 711, "P&O Ferries and Employment Rights", Hansard.

⁵ S.188 of Trade Union and Labour Relations (Consolidation) Act 1992

⁶ Ibid. 3

The government did nothing.

Unfair dismissal of workers

P&O Ferries employees had the right not to be unfairly dismissed by their employer.⁷

Dismissal for redundancy without notice or consultation means that individuals with more than two years' service will have been unfairly dismissed.

The P&O Ferries employees had a close connection with the UK. As the crew members worked out of Dover, Hull, Liverpool, Cairnryan or Larne it was clear that UK employment rights applied to them. P&O Ferries admitted that it had breached the unfair dismissal protections.⁸

P&O Ferries behaved in this way because there was only a very small likelihood that the workers, or their unions, would be able to obtain an injunction preventing P&O from sacking its workforce.⁹

Since the P&O Ferries sackings, ministers have failed to strengthen unfair dismissal protections. The government has launched a consultation on a draft statutory code of practice that would apply in similar situations. But even when the statutory code is in place an employer would only face a 25 per cent increase in financial sanctions, if it breached the law. The P&O Ferries scandal demonstrates that exploitative employers are willing to factor in the cost of non-compliance with the law and carry on regardless.

The TUC believes the government should have taken the following action to prevent another P&O Ferries style sacking:

- Give all workers unfair dismissal protection from day one in their jobs.
- Where an employer fails to fulfil its consultation duties, dismissals are automatically unfair and workers reinstated.

Failure to notify the government or relevant authorities

P&O Ferries had a duty to notify the Secretary of State, or the appropriate authorities where its vessels were registered, of its intention to make mass redundancies.

Employers proposing to dismiss 100 or more employees as redundant within 90 days must notify the Secretary of State or appropriate authorities, in writing, 45 days in advance.¹⁰

⁷ S.94 of the Employment Rights Act 1996

⁸ BBC News (30 September 2022). "P&O Ferries admits Dover chef's unfair dismissal", *BBC website*. www.bbc.co.uk/news/uk-england-kent-63090372

⁹ Bogg, A. (March 2022). Q7, *Oral evidence: P&O Ferries, HC 1231*, Transport Committee & Business, Energy and Industrial Strategy Committee, House of Commons.

¹⁰ S.193 of Trade Union and Labour Relations (Consolidation) Act 1992

This failure to notify the state meant that the government could play no formal role in working with the company and unions to save jobs.

Failure to comply with this duty is a criminal offence.

P&O Ferries also failed to notify the Cypriot, Bahamian and Bermudan authorities (where the ships were flagged/registered) within the statutory timescale.

There was a suggestion that P&O Ferries hoped to avoid criminal sanctions under 2018 amendments¹¹ to the 1992 Act on the basis that legal sanctions only applied to failure to inform the UK authorities, not those overseas. However, legal expert, Professor Alan Bogg has argued that the criminal offence and fine may still have been applicable to P&O Ferries:

"It is important not to assume too readily that the s. 193A duty (notifying the competent authority in the flag state) is delinked from the s. 194 criminal offence of failing to notify the secretary of state."¹²

The government asked the Insolvency Service to investigate whether any criminal or civil offences had been committed, including under Section 193A of the 1992 Act.

The Insolvency Service conducted a criminal investigation. It concluded that uncertainty around the application of S.285 of the Trade Union and Labour Relations (Consolidation) Act 1992, which states that redundancy notification provisions will not apply in situations where seafarers are at risk from mass redundancy, meant there was only a 50-50 chance of a conviction. Therefore, they decided not to commence criminal proceedings

An Insolvency Service investigation of P&O Ferries for civil offences is ongoing.

Following the P&O Ferries scandal, the government has failed to reform the law to ensure that seafarers are included in the protections offered by s.193 and s.193A of the 1992 Act. Neither has it proposed to reform the Insolvency Service's procedures, to make it more likely to take forward cases of public interest.

Breach of director duties

The Companies Act imposes on a director the duty to 'act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole' and, in so doing, to have regard to a range of factors, including:

"...(b) the interests of the company's employees,

¹¹ The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018

¹² Bogg, A. (20 April 2022). *Supplementary evidence, P&O Ferries POF0001*, Transport Committee, and Business, Energy and Industrial Strategy Committee <https://committees.parliament.uk/writtenevidence/107566/html/>

- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct"¹³

No director of a UK company is exempt from directors' duties. By sacking 786 workers without notice, P&O Ferries chief executive Peter Hebblethwaite and the other P&O Ferries directors acted against the interests of their employees; created significant inconvenience for customers; caused damage to local communities; and left the reputation of their company in tatters. They therefore acted against their fiduciary duties.

Compelling grounds for director disqualification – but no action from the Insolvency Service

Under section 8 of the Company Directors Disqualification Act 1986, company directors may be disqualified for conduct that makes them unfit to be concerned in the management of a company. In implementing this, a court must have regard to matters such as: the extent to which the person was responsible for the causes of any material contravention; the nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused; any malfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.

As set out above, the P&O Ferries directors knowingly broke the law and breached their fiduciary duties as directors. Despite these very serious acts of misconduct, no action has been taken against the P&O Ferries directors, who are free to remain company directors indefinitely.

Indeed, Sultan Ahmed bin Sulayem, the chair and chief executive of DP World used an interview in the Financial Times on 29 May 2022 to praise Peter Hebblethwaite for having "done an amazing job".

The TUC believes that the Insolvency Service should have undertaken an urgent and thorough enquiry into all the circumstances surrounding the redundancies made by P&O Ferries, to determine compliance with the law.

The statement made by the Insolvency Service on 19 August 2022¹⁴ that no criminal charges were being pursued, doesn't detail whether it explored all potential legal breaches. The press release suggests that they only investigated the failure to notify the relevant authority of the mass sackings. The government should have made clear that the Insolvency Service used every lever at their disposal to investigate P&O's behaviour

¹³ Section 172 of the Companies Act 2006, www.legislation.gov.uk/ukpga/2006/46/section/172

¹⁴ Insolvency Service (19 August 2022). "P&O Ferries: update from the Insolvency Service (19 August 2022)", The Insolvency Service.

and that the public interest should have been a factor in deciding whether to pursue charges.

P&O Ferries' directors admitted deliberately breaching the law. The TUC believes that the directors breached their fiduciary duties. The Insolvency Service is responsible for the initiation of director disqualification proceedings but despite serious acts of misconduct, no action has been taken against the P&O Ferries directors.

The government has also failed to take action to deter other directors behaving like this in the future. By failing to take action, the government has failed to hold the P&O Ferries directors to account for their role in sacking 786 seafarers.

Health and safety issues arising from the P&O Ferries mass sackings

In a safety critical industry such as shipping, the importance of a competent, well trained, experienced crew cannot be understated. At P&O Ferries there are the additional pressures of extremely tight schedules, with rapid turnarounds in one of the busiest shipping lanes in the world.

Trade unions RMT and Nautilus are concerned that P&O Ferries took a reckless approach to health and safety and failed to comply with international standards on health and safety.

When P&O Ferries sacked their workers and immediately replaced them with agency crew, they failed to consider the health and safety implications and breached their obligations under international health and safety standards.

It is vital that any new crew member joining a ship is aware of their health and safety obligations and their responsibilities under the full range of safety procedures.

There are a number of mandatory instruments which set out the minimum standards expected for training and familiarisation. Due to the extremely short gap between the company sacking its entire seafaring workforce, replacing its crew, and sailings resuming, the unions consider it extremely unlikely that any company could demonstrate compliance with these mandatory requirements.

The International Management Code for the Safe Management of Ships (ISM Code)

One of the key obligations introduced by the code is the requirement for the company to develop a Safety Management System (SMS) which must include amongst other things, instructions and procedures covering all aspects of the ships operation to ensure safety and protection of the marine environment in compliance with relevant legislation, procedures for reporting accidents and non-conformities and, procedures to prepare for and respond to emergency situations. Some of the key duties in the ISM Code relevant to the P&O Ferries situation include:

- establishing procedures to ensure new personnel are given proper familiarisation with their duties
- identifying potential emergency shipboard situations, establishing programmes of drills and exercises to prepare for emergency actions and, ensuring that the organisation is prepared to react at any time to any hazards, accidents or emergencies involving its ships.

The STCW (Standards of Training, Certification, and Watchkeeping) Convention 1978 (as amended)

The STCW Code sets out standards relating to training and familiarisation. Among employers' key duties are:

- ensuring that all newly employed seafarers are given the opportunity to become familiar with shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties before being assigned to those duties.
- ensuring each seafarer has time to become acquainted with ship-specific equipment, safety and emergency procedures and that a knowledgeable crew member is provided to ensure that each newly employed seafarer receives this information in a language that they understand.

Trade unions have serious doubts as to how a company that replaced its entire crew with no handover would be able to demonstrate compliance with these requirements that could require weeks, if not months, of training.

Fatigue

Fatigue is one of the most pressing issues facing seafarers. Excessive working hours (up to 14 hours per day or 91 hours per week), unnatural shift patterns, fast port turnarounds and long tours of duty are commonplace. Seafarer fatigue can cause long-term physical and mental health issues and longer voyages are more likely to cause problems. The nature of operations at P&O ferries are likely to cause fatigue with vessels sailing around the clock, completing up to 10 crossings a day of the busiest shipping lane in the world and seafarers working 12-hour shifts. Trade unions were shocked to hear reports that the company intended to employ agency workers on working tours of up to 17 weeks. The company's own study highlights the dangers associated with long periods on board.¹⁵

The TUC is concerned that P&O Ferries failed to comply with the full raft of international standards, including the basic risk assessment of its new crewing arrangements.

¹⁵ Smith, A, (2012). "A Survey of Fatigue in P&O Ferries", Centre for Occupational Health and Psychology, Cardiff University.

Following the P&O Ferries scandal, the government has taken no action to strengthen health and safety regulations for the ferry sector which are vital to reducing the safety risk for seafarers, passengers and the maritime industry as a whole.

Exploiting loopholes in minimum wage legislation

P&O Ferries crew was replaced with low-paid agency crew rostered to work on temporary contracts of up to 17 weeks.

P&O Ferries chief executive said that some seafarers under their new agency crewing model would be paid £5.15 an hour.¹⁶ The UK National Living Wage (for those aged 23 and over) is £9.50.

In response to P&O Ferries' brutal enforcement of the low cost crewing model, the government introduced the Seafarers' Wages Bill. The Bill focuses narrowly on enforcing a wage floor equivalent to the UK minimum wage for work carried out in UK territorial waters (12 miles from the coastline). This will apply regardless of seafarers' nationality or the ship's flag. It widens the scope of the minimum wage on international ferry and shipping routes from UK ports which currently has very limited application to seafarers, even those working on UK flagged vessels.

However, there are gaping loopholes in the Bill meaning that employers whose ships don't use UK ports 120 times per year or call at more than one UK port a total of 120 times per year will not fall within scope of the new minimum wage regulations. This will apply to crew on P&O Ferries' services from Dover, Hull and Liverpool but only in UK territorial waters. Bilateral agreements with governments at the other end of these international routes are being pursued by ministers but these are voluntary agreements and progress has only been made with the French Government

There is a clear risk that P&O Ferries' agency crews will continue to be worked for dangerously long periods, for pay far below the rates negotiated with unions that P&O Ferries ripped up when they sacked 786 directly employed UK seafarers.

¹⁶ Brione, P. (April 2022). *P&O Ferries: Employment law issues*, House of Commons Library.