

# *P&O Ferries – where do things stand a month on?*

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A month ago, P&O Ferries recalled its ferries to port to be met by security staff. It then dismissed 800 of its employees with immediate effect and without first consulting their unions, as part of a strategy to slash its labour costs by moving to a new model using international agency workers earning far below the UK's minimum wage. Its employees who were on board at the time received this news in person. Its others received it on Zoom.

A public outcry ensued. Within hours, Members of Parliament of all parties were joining trade unions to protest on docksides. Within days, Parliament convened an urgent hearing to investigate the events and what the Government proposed to do about them. Within weeks, the Government asserted that it would stop employers ever doing the same again. This article cuts through the rhetoric and examines the last month's events' actual legacy.

## *The position of former employees of P&O Ferries*

As the Chief Executive of P&O Ferries admitted to Parliament, its approach was, in effect, to buy its employees out of their rights. These included rights to notice, not to be unfairly dismissed and to an award of 90 days' pay for P&O Ferries not consulting their trade unions.

It is now [reported](#) that all employees bar one have accepted generous settlement offers ranging from £15,000 to over £170,000. However, that final employee has now filed claims against P&O Ferries and its Chief Executive, including for race discrimination, as they didn't dismiss employees on Dutch and French contracts. Whilst an Employment Tribunal may exceptionally award exemplary damages, an award of the £76 million being claimed is nevertheless extremely unlikely and any decision will probably be years away.

## *The position of P&O Ferries*

P&O Ferries was required to notify the competent authorities of its vessels' flag states of its proposals weeks before its first dismissals would take effect. It is reported that it only made such notifications immediately before making dismissals with immediate effect.

As such, P&O Ferries and its officers may have committed criminal offences. However, the relevant offence is to fail to "to give notice to the [UK] Secretary of State". It is silent on a failure to notify the competent authorities of a vessel's flag state if that is not the UK (as applicable to P&O Ferries). The matter is nonetheless now being investigated by the UK's Insolvency Service and P&O Ferries and its officers face unlimited fines if ever convicted.

Finally, in remarkable testimony to Parliament, the Chief Executive of P&O Ferries not only admitted that P&O Ferries knowingly broke its legal obligation to consult with trade unions but that it would do the same again. He is therefore under investigation to be disqualified as a company director for unfit behaviour, albeit of a company that is currently prohibited from sailing its vessels due to safety concerns over its new agency workers' competence to operate them.

## *The position of the Government*

Ministers at all levels of the Government have promised firm action. For example, Prime Minister Boris Johnson has condemned the “scandalous way” that P&O Ferries acted and promised to “defend the rights of British workers”.

However, the Minister for labour market regulation has since defended the UK's “flexible labour market” that has resulted from, among other things, the Government blocking efforts to stop the practice of “fire and rehire” to lower employees' terms and conditions. This perhaps explains its relatively weak actual response to the actions of P&O Ferries. It is also perhaps unsurprising given that the Secretary of State leading the Government's response himself [called in 2013](#) for “crazy” employment laws restricting businesses from dismissing employees to be replaced with “a way of saying to people ‘thank you very much, it hasn't worked out but here's a decent package for you to move on from this role’”.

In terms of steps that the Government has now taken, it has committed to introduce a new statutory Code of Practice detailing how employers must hold fair, transparent and meaningful consultations on proposed changes to employment terms. Whilst a claim cannot be made over an employer breaching such a code, an Employment Tribunal may take such conduct into account when considering other claims, such as for unfair dismissal, and increase compensation by up to 25%.

Secondly, the Government has committed to legislate to stop the viability of the new agency model being adopted by P&O Ferries. However, it will legislate by way of amending the Harbours Act 1964 instead of the UK's minimum wage legislation, limiting the impact of its reforms. This approach also reflects the Government recognising the limits of its powers despite Brexit, given the international maritime conventions to which it is party and that it will require agreements with EU member states to regulate the minimum wage on ferries travelling to or from them.

Finally, the Government has committed to a range of other actions, including increased enforcement of existing rules by HMRC, the UK's tax authority, and reforming tax disincentives from vessels being flagged in the UK.

Overall, the Government's package of proposals appears to fall far short of its rhetoric to protect British workers from a repeat of the actions of P&O Ferries. It notably doesn't propose any far more radical courses of action, such as to criminalise an employer's proactive choice not to consult in the event of collective redundancies or to provide Employment Tribunals with an interim power to reinstate employees dismissed in such circumstances.

As such, it seems likely that the trade unions' response will remain calls of “shame on you” being directed not only at P&O Ferries but at the Government and its supporters too, [despite them thinking that they're on the side of the workers](#).

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