

Research Briefing

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P&O Ferries: Employment law issues

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Summary

P&O Ferries Ltd (P&O) made 786 of its seafarers redundant, without prior consultation, on 17 March 2022. The [company announced](#) it plans to move to a new operating model using third-party agency workers to crew its ships.

Redundancy

Employees have a statutory right to redundancy pay under the [Employment Rights Act 1996](#), as well as having a contractual or common law right to adequate notice of dismissal. [P&O have said](#) they are paying those made redundant more than the statutorily required redundancy pay, as well as up to 13 weeks salary in lieu of notice.

[Some legal commentators have suggested](#) that P&O's actions have not met the legal definition of redundancy. Where employees have been told they are being made redundant but there is not a genuine redundancy situation, it could instead constitute unfair dismissal under [Part 10 of the Employment Rights Act 1996](#).

However, the ability of P&O seafarers to bring unfair dismissal claims may be limited by the fact that the 1996 Act only extends protection from unfair dismissal to seafarers if their vessel is registered in Great Britain.

Consultation

Under [section 188 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#), where an employer proposes to dismiss as redundant 20 or more employees at one establishment within 90 days or fewer, they must consult with employee representatives before the redundancies.

[P&O have accepted](#) that they were required to consult with employee representatives but chose not to do so. Instead, [they have offered](#) to pay a further 13 weeks salary to each employee to compensate for the absence of a consultation period, equivalent to the maximum award a tribunal could grant for a failure to consult ahead of redundancies.

Notification of authorities

Usually, under [section 193 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#), employers proposing to dismiss 100 or more

employees as redundant within 90 days must notify the Secretary of State, in writing, 45 days in advance. Failure to comply is a criminal offence.

[Changes made in 2018](#), however, mean that for seafarers on vessels registered overseas, the duty to notify the Secretary of State is transformed into a duty to notify the overseas authorities of the state where the vessel is registered. There has been [some legal debate](#) as to whether the criminal offence also applies to a failure to comply with this altered duty.

On 1 April the [Insolvency Service announced](#) they have initiated criminal and civil investigations into P&O Ferries over their handling of the redundancies.

Minimum Wage

The National Minimum Wage (NMW) currently applies to workers on offshore sites in the UK's territorial waters or on its continental shelf, all seafarers on vessels serving UK domestic routes, as well as seafarers on UK registered vessels, in both UK and non-UK waters, as long as they are ordinarily resident in the UK. The NMW does not currently apply to seafarers on vessels serving international routes.

The [CEO of P&O Ferries has said](#) that workers on UK domestic routes will continue to receive NMW, while some seafarers under their new agency crewing model will be paid £5.15 an hour. This is compared with the UK National Living Wage (for those aged 23 and over) of £9.50.

The [Government has announced](#) plans for new legislation to allow ports to refuse access to ferries that do not pay their crew the NMW.

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Introduction

P&O Ferries Ltd (P&O) made 786 of its seafarers redundant with immediate effect on 17 March 2022. This was done without prior consultation of the workforce, who were informed via a pre-recorded video call of their dismissal.¹ The company announced it plans to move to a new operating model using third-party agency workers to crew its ships.

This decision and the way it was handled generated considerable attention, leading to protests by trade unions including the initial refusal of some

¹ [“Outrage and no ferries after mass P&O sackings”](#), BBC [online], 18 March 2022 (accessed on 12 April 2022)

dismissed seafarers to disembark their vessels.² The move also drew widespread condemnation from Government ministers, MPs and peers from all parties. Several overlapping issues of employment law were raised in Parliament and in the media during this period.

Over the following two weeks, over 40 related written questions were tabled in Parliament. An Opposition Day debate was held in the House of Commons on P&O Ferries and Employment Rights on 21 March.³ P&O ferries was the main subject of questions from the Leader of the Opposition, as well as other MPs, at Prime Minister's Questions on 23 March. A joint oral evidence session of the Commons Transport Committee and the Business, Energy and Industrial Strategy Committee was held on 24 March with witnesses including legal experts, representatives of P&O and their owner DP World (a company registered in the United Arab Emirates), trade unions and Government ministers.⁴

On 1 April 2022, the Insolvency Service (an executive agency sponsored by the Department for Business, Energy and Industrial Strategy) confirmed it was opening a civil and criminal investigation into P&O Ferries for its handling of the redundancies.⁵

This briefing explains the main areas of employment law concerned and how they relate to this story.

2 The law on redundancy

2.1 Employment Rights Act 1996

Under the [Employment Rights Act 1996, section 139](#), UK employees with two or more years' continuous service with their employer are generally entitled to statutory redundancy pay if dismissed by reason of redundancy.

Broadly, an employee will be regarded as “dismissed by reason of redundancy” if the dismissal is wholly or mainly attributable to:

- (a) the fact that his employer has ceased or intends to cease—

² As above

³ [HC Deb](#) 21 March 2022, c38

⁴ Transport Committee & Business Energy and Industrial Strategy Committee, Oral evidence session: [P&O Ferries](#), 24 March 2022

⁵ Gov.uk, [Letter from Insolvency Service to Business Secretary on their investigation into P&O Ferries](#), 1 April 2022

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish

2.2 How is redundancy payment calculated?

The Advisory, Conciliation and Arbitration Service (Acas) webpage on Redundancy Pay outlines the current formula for calculating redundancy pay:

If you're aged 17 to 21 you receive half a week's pay for each full year you've worked.

If you're aged 22 to 40 you receive 1 week's pay for each full year you worked from age 22 plus half a week's pay for each full year you worked before that.

If you're aged 41 or over you receive 1.5 weeks' pay for each full year you worked from age 41 plus 1 week's pay for each full year you worked when you were between 22 and 40 and half a week's pay for each year you worked when you were between 17 and 21.⁶

The total formula is capped at 20 years of work and a maximum weekly wage of £544, with a maximum total redundancy pay of £16,320.

P&O were reported to be offering higher than this – two and-a-half weeks' salary for each year of employment – as its baseline redundancy pay offer to staff, as part of a wider compensation package.⁷ This offer was made providing staff signed a settlement agreement, which may involve agreeing to forgo their rights to take future legal action against P&O.⁸

⁶ Acas, "[Your rights during redundancy](#)", 6 April 2022 (accessed on 12 April 2022)

⁷ Allaboutshipping, "[Update from P&O on support for affected employees](#)", 22 March 2022 (accessed 12 April 2022)

⁸ Simpson Millar, "[Employment Lawyers Advise P&O Ferry Workers to Accept Settlement Agreements With Caution](#)", March 2022 (accessed 13 April 2022); Justine Crabtree, "[Why not to follow P&O's Example](#)", Howarths, 31 March 2022 (accessed 13 April 2022)

2.3 Commentary on P&O ferries' redundancy offer

Some legal commentators have suggested that P&O's actions have not met the legal definition of redundancy quoted above. For example, Joseph Lappin, Head of Employment at Stewarts law firm, was reported as saying "he struggled to see how all roles were obviously redundant when P&O has confirmed its intention to immediately replace workers with agency staff."⁹

It was also reported that most dismissed staff were UK residents, while "About 600 people employed by P&O Ferries recruitment divisions in Calais and Rotterdam, on French and Dutch contracts, remain in work."¹⁰ P&O CEO Peter Hebblethwaite clarified this in his letter to the Secretary of State for Business, Energy and Industrial Strategy dated 22 March. He explained that all dismissed seafarers belonged to the Jersey-based subsidiary of P&O, who were not all UK residents, while those working for the two other subsidiaries were not dismissed.¹¹

One dismissed seafarer was reported to be bringing an employment tribunal claim for unfair dismissal, racial discrimination and harassment.¹²

2.4 Unfair dismissal

It would be for employment tribunals or courts to decide if the facts of any case meet the legal definition of redundancy. In cases where employees have been told they are being made redundant but there is not a genuine redundancy situation, it could instead constitute unfair dismissal under [Part 10 of the Employment Rights Act 1996](#).

Compensation for unfair dismissal is usually higher than the minimum requirement for redundancy pay. It is normally considered under two heads: a basic award and a compensatory award. The basic award is calculated in broadly the same way as redundancy pay.

The calculation of the compensatory award is complex. Broadly, it is an amount awarded by a tribunal that the tribunal considers just and equitable to reflect the employee's loss, including expenses incurred in consequence of the dismissal and loss of earnings. The award is subject to a statutory cap. For dismissals since 29 July 2013 the maximum award is whichever is the

⁹ Stewarts, "[P&O Ferries sacks entire crew - what are the legal implications, and how has the situation developed?](#)", 28 March 2022 (accessed on 12 April 2022)

¹⁰ "[How P&O Ferries broke the law - and what the consequences might be](#)", The Guardian [online], 25 March 2022 (accessed on 12 April 2022)

¹¹ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

¹² "[Ex-P&O Ferries chef sues for unfair dismissal](#)", BBC [online], 6 April 2022 (accessed 12 April 2022)

lower of (a) the statutory cap, currently £88,519; or (b) 52 weeks' actual gross pay at the time of the dismissal.

2.5

Jurisdiction for seafarers

Under sections 199(7) and 199(8) of the Employment Rights Act 1996, workers onboard a ship only have protection from unfair dismissal under Part 10 of the Act if: “the ship’s entry in the register specifies a port in Great Britain as the port to which the vessel is to be treated as belonging.”

As the vessels on which the dismissed P&O seafarers were employed were registered overseas, this may exclude them from the ability to claim unfair dismissal, even if the redundancies were not genuine.

In response to a parliamentary question on this point back in 2016, the Government made clear its limited ability to enforce employment law on non-UK registered vessels, limiting UK seafarers’ rights to claim unfair dismissal to UK registered vessels. Robert Goodwill, then Minister of State for Transport, said:

International maritime law recognises that the legislation of the flag state is normally applied onboard a vessel and therefore the UK Government is unable to insist its legislation (including employment legislation) is applied on non-UK registered vessels.

However rules on redundancy are quite clearly defined in UK legislation and a UK seafarer, working on a UK registered vessel, would be protected by the legislation even where the vessel operates in international waters. If it is believed that this legislation has been circumvented then there is potentially grounds for unfair dismissal and, if necessary, this can be pursued through an employment tribunal.¹³

As Andrew Burns QC (barrister at Devereaux Chambers) explained in oral evidence before the Transport Committee and Business Energy and Industrial Strategy Committee hearing, different aspects of employment law often have different jurisdictional limits, some of which are defined by case law rather than statute:

[...] there is a body of case law about people who are employed in different countries but are based here or have attachment here. Parliament has decided not to legislate specifically to say who is in and who is out of UK employment law, but to leave it to the courts, and the courts have filled that gap by putting together a body of case law to say who is ordinarily working in—actually, “Great Britain” is the language that is used, rather than “United Kingdom”.

The difficulty that comes is that the different provisions of employment law sometimes have different jurisdictional limits. For instance, national minimum wage applies if you are ordinarily working in the United Kingdom. That doesn't

¹³ [PQ 34463 \[on Offshore Industry: Redundancies\]](#), 25 April 2016

apply to territorial waters. It doesn't apply to international waters. But it would apply when you are working in your port, at your base, for instance.¹⁴

2.6 Wrongful dismissal

Separately from the statutory claim of unfair dismissal, wrongful dismissal is a common law claim for breach of contract when an employee is dismissed in a way that breaches their contractual rights. This is generally due to a failure to give adequate notice or paying notice pay.¹⁵ Adequate notice is usually considered to be what is specified in the contract, providing that is at least equal to statutory minimum notice (for employees with at least two years' service; one week for each complete year of service, up to a maximum of 12 weeks). In the absence of a contractually defined notice period, common law provides that reasonable notice should be given, which courts or tribunals could conclude is higher than the statutory minimum in some cases.¹⁶

P&O employees were dismissed without notice. P&O Ferries has stated it is offering employees "Up to 13 weeks' salary in lieu of notice" to compensate for this.¹⁷

3 Requirement to consult on redundancies with workforce

3.1 Law on consultation

Under [section 188 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#), where an employer proposes to dismiss as redundant 20 or more employees at one establishment within 90 days or fewer, the employer must consult appropriate representatives of the employees who may be affected by the dismissals or connected measures.

¹⁴ Transport Committee & Business Energy and Industrial Strategy Committee, [P&O Ferries](#), 24 March 2022, Q2

¹⁵ Acas, "[Unfair dismissal](#)", 30 September 2021 (accessed 12 April 2022)

¹⁶ Practical Law, "[Statutory minimum notice period](#)", Glossary [online], Thomson Reuters, 2022 (accessed 19 April 2022) (subscription only)

¹⁷ Allaboutshipping, "[Update from P&O on support for affected employees](#)", 22 March 2022 (accessed 12 April 2022)

If the employer proposes to dismiss 100 or more employees, the consultation must begin at least 45 days before the first dismissal; in other cases the minimum period is 30 days.

3.2 P&O's position

P&O said that for the purposes of section 188, the individual vessels on which employees were serving were each single establishments. On each vessel at least 20 employees were dismissed and on four of them, at least 100 employees dismissed.¹⁸

In his letter to the Secretary of State dated 22 March, P&O CEO Peter Hebblethwaite stated the company had decided not to follow a formal consultation process because reaching an agreement would have been “impossible”:

The option of following a formal consultation process to implement the necessary changes was considered but rejected as we took the view, in good faith, that reaching agreement on the way forward would be impossible and against this background, that the process itself would be highly disruptive, not just for the business but for UK trade and tourism.¹⁹

It was accepted by Peter Hebblethwaite, during his [oral evidence before a joint hearing of the Transport Committee and Business Energy and Industrial Strategy Committee](#) on 24 March, that P&O were required to consult but chose not to do so:

There is absolutely no doubt that we were required to consult with the unions. We chose not to do so... We will compensate everyone in full for that.²⁰

3.3 Compensation for dismissed employees

If there is a failure to fulfil consultation requirements under section 188 of the Act,²¹ the maximum protective award an employment tribunal can grant is 90 days' gross pay to each employee.

P&O has announced it is already offering dismissed employees this amount to compensate for the absence of a consultation period, alongside their basic

¹⁸ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

¹⁹ As above

²⁰ Transport Committee & Business Energy and Industrial Strategy Committee, [P&O Ferries](#), 24 March 2022, Q124

²¹ Trade Union and Labour Relations (Consolidation) Act 1992

redundancy payments, via enhanced compensation packages. The company said:

P&O is paying (subject to settlement agreement):

2.5 weeks' uncapped salary for each year employed rather than the statutory 1 or 1.5 weeks (capped at £544)

Up to 13 weeks' salary in lieu of notice

13 weeks' salary on top of this in absence of consultation period

Some employees are receiving 91 weeks' pay and the chance of new employment

No employee will receive less than £15,000²²

3.4

Commentary related to P&O ferries

In his oral evidence before the joint hearing of the committees, Professor Alan Bogg, Professor of Labour Law, University of Bristol, said the cap on the protective award meant there were occasions where employers might find it financially beneficial to breach employment law where the benefits outweigh their liabilities:

The employer can calculate in advance what its financial liabilities will be, and then it can effectively buy itself out of the rule of law by offering compensation packages that go beyond what the legal remedies would be.²³

Employment law consultant Darren Newman provided similar commentary, adding views on how to prevent employers “doing a P&O”:

UK employment law concentrates on providing some compensation to employees whose rights have been ignored, rather than ensuring that employers comply with the law in the first place. The only real way of preventing employers from occasionally choosing to ‘do a P&O’ is either to provide punitive remedies that are linked to the amount the employer hopes to save by the exercise, or to require major job losses to be cleared in advance by, for example, the Central Arbitration Committee – with any dismissals being deemed to be ineffective until that clearance is given.²⁴

²² Allaboutshipping, “[Update from P&O on support for affected employees](#)”, 22 March 2022 (accessed 12 April 2022)

²³ Transport Committee & Business Energy and Industrial Strategy Committee, [P&O Ferries](#), 24 March 2022, Q5

²⁴ Darren Newman, “[The problem with P&O – when ignoring employment law is ‘worth it’](#)”, A Range of Reasonable Responses, 23 March 2022 (accessed on 12 April 2022)

3.5 Planned reform

Commenting on Government plans to introduce a new statutory code for employers in a Commons statement on P&O on 30 March 2022, Secretary of State for Transport Grant Shapps said this would allow for a potential increase in compensation where consultation over dismissal had not properly occurred. He said:

A new statutory code will allow a court or employment tribunal to take the manner of dismissal into account and, if an employer fails to comply with the code, to impose a 25% uplift to a worker's compensation.²⁵

4 Requirement to notify authorities of dismissals

4.1 Usual law and offence

Under [section 193 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#), employers proposing to dismiss 100 or more employees as redundant within 90 days must notify the Secretary of State, in writing, of the proposal at least 45 days before the first dismissal. In practice this is done through the Insolvency Service's Redundancy Payments Service by completing [Form HR1](#).

Under [section 194\(1\) of the Act](#):

An employer who fails to give notice to the Secretary of State in accordance with section 193 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.²⁶

Starting legal proceedings requires the consent of the Secretary of State or an officer authorised by them.

Section 194(3) also allows for the prosecution of individual directors or managers where they may have personally consented to or been negligent in preventing such a failure.

²⁵ HC Deb 30 March 2022, c840

²⁶ Section 194, Trade Union and Labour Relations (Consolidation) Act 1992

4.2 Difference in law for ships flagged overseas

The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 (the 2018 Regulations) inserted section 193A into the 1992 Act to directly address seafarers. It means that for ships registered overseas, the duty to notify the Secretary of State is transformed into a duty to notify the overseas authorities of the state where the vessel is registered.

Section 193A states that:

(1) Section 193 has effect subject to this section if—

(a) the duty under section 193(1) or 193(2) applies to a proposal to dismiss employees as redundant, and

(b) the employees concerned are members of the crew of a seagoing vessel which is registered at a port outside Great Britain.

(2) The employer shall give the notification required by section 193(1) or (2) to the competent authority of the state where the vessel is registered (instead of to the Secretary of State)²⁷

4.3 Commentary related to P&O Ferries

In his letter to the CEO of P&O Ferries dated 18 March, the Secretary of State referred to section 193 when he mentioned rules that employers must follow, including:

[notifying] the Secretary of State via the Insolvency Service and the Redundancy Payment Service. Failure to meet the notification obligation is a criminal offence and can lead to an unlimited fine.²⁸

In his response letter, the P&O CEO disputed that the section 193 requirement to notify the Secretary of State applied and suggested that only section 193A should apply, saying:

I note your comments with regard to the requirement for notification to the Secretary of State. I do not consider that the various P&O companies involved have committed any offence in this regard. The very clear statutory obligation in the particular circumstances that applied was for each company to notify the competent authority of the state where the vessel is registered. All relevant

²⁷ Section 193A, Trade Union and Labour Relations (Consolidation) Act 1992

²⁸ Gov.uk, [Letter from Business Secretary Kwasi Kwarteng and Labour Markets Minister Paul Scully to CEO of P&O Ferries following the redundancy of staff](#), 18 March 2022

vessels are registered outside of the UK. Notification was made to the relevant authorities on 17 March 2022.²⁹

His letter clarified that the relevant flag states for the eight vessels were Cyprus (four vessels), Bahamas (three vessels) and Bermuda (one vessel).

While section 193A transfers the required notification from the Secretary of State to the “to the competent authority of the state where the vessel is registered”,³⁰ it does not explicitly alter the deadline in section 193 that such notifications be made at least 30 or 45 days prior to the first dismissals. Peter Hebblethwaite’s letter stated that this notification was made “on 17 March 2022”, the same day that the dismissals occurred.³¹

4.4 Possible criminal charges?

Responding to a question from the Leader of the Opposition at Prime Minister’s questions on 23 March, the Prime Minister said:

It looks to me as though, under section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992, the company concerned has broken the law, and we will therefore be taking action.³²

Section 194 explicitly lays out a criminal offence for “an employer who fails to give notice to the Secretary of State in accordance with section 193”. The 2018 Regulations for seafarers did not explicitly amend section 194 to make clear that such an offence would also apply to an employer who fails to give adequate notice to flag states in accordance with section 193A (at least 45 days before dismissal).

Some legal commentators have also suggested the law should be read as implying such an offence exists. For example, in a tweet on 23 March, Professor Alan Bogg suggested there is a strong argument that section 193A should be read as being subject to the same penal regime as section 193; because the EU Directive it was based on included a clause that its implementation “shall under no circumstances constitute grounds for a reduction in the general level of protection of persons covered by this Directive”³³, and because otherwise section 193A would effectively set out a statutory duty with no sanction in law for failing to comply:

There is a strong argument that breach of the 2018 provision - now s. 193A TULRCA 1992 - is subject to exactly the same penal regime as the ‘standard’

²⁹ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

³⁰ Section 193A, Trade Union and Labour Relations (Consolidation) Act 1992

³¹ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

³² HC Deb 23 March 2022, c325

³³ Article 6, [OJL 263](#), 8 October 2015

notification duty in s 193. The relevant EU Seafarers Directive contains a non-regression clause in Art 6.

Section 193 ‘has effect’ subject only to the s 193A change in the identity of the “competent authority” for employees of a seagoing vessel registered outside GB. This presumably includes the crime in section 194. Otherwise, the s 193A statutory duty is delinked from any sanction.³⁴

In a letter to the Secretary of State on 1 April, the Inspector General and Chief Executive of the Insolvency Service, the agency as responsible for investigating and enforcing legislation in this area, reported that:

Following its enquiries, I can confirm that the Insolvency Service has initiated both formal criminal and civil investigations into the circumstances surrounding the recent redundancies made by P&O Ferries.³⁵

5 National Minimum Wage

5.1 Current application to Seafarers

The right to the National Minimum Wage (NMW) is set out in the National Minimum Wage Act 1998 (as amended) (NMWA 1998) and the National Minimum Wage (Offshore Employment) Order 1999. The right to be paid the NMW applies to non-seafarers working on offshore sites in the UK’s territorial waters or on [its continental shelf](#), as well as seafarers on UK registered vessels, in both UK and non-UK waters, as long as they are ordinarily resident in the UK.

The National Minimum Wage (Offshore Employment) (Amendment) Order 2020 extended this right to be paid the NMW to seafarers on vessels serving domestic routes, whether the vessels were UK-registered or not and even if the seafarers are not ordinarily resident in the UK. However, the NMW still does not apply to seafarers working on international routes unless their ship is registered in the UK and they are ordinarily resident in the UK.

When the 2020 Order was passed, the National Union of Rail, Maritime and Transport Workers (RMT) welcomed the legislation but noted it would not apply to routes to and from the UK to the European and warned that some operators like P&O Ferries may seek to take advantage of this, saying:

³⁴ Alan Bogg (@thebigbogg). (Twitter). 23 March 2022 [accessed 12 April 2022]. Available from: <https://twitter.com/thebigbogg/status/1506688972625489921>

³⁵ Gov.uk, [Letter from Insolvency Service to Business Secretary on their investigation into P&O Ferries](#), 1 April 2022

We welcome this but it is a small victory in the scheme of things...It will not however affect international routes from UK ports, for example from the UK to the European mainland, where operators have been paying foreign seafarers as little as £2 per hour for years on routes that are now in line for no-strings taxpayer bail outs.

Some operators, like P&O even see Covid-19 as their chance to permanently replace UK Ratings with cheaper crews from thousands of miles away on pay below the minimum wage.³⁶

5.2 National Minimum Wage rates compared with P&O offer

From 1 April 2022, the UK National Living Wage (for those aged 23 and over) is £9.50. The National Minimum Wage for those aged 18-20 is £6.83 and those aged 21-22 is £9.18.³⁷

It was alleged by trade unions that agency workers hired to replace P&O crews were being paid well below the NMW, with one claim that some were being paid £1.81 an hour.³⁸

In his oral evidence before the select committees, P&O CEO Peter Hebblethwaite stated the average hourly rate for the agency workers under the new crewing model would be £5.50. Later in the hearing he added that the lowest hourly rate would be £5.15.³⁹

He explained that on international routes where the UK NMW doesn't apply, P&O Ferries are paying above the International Transport Workers' Federation (ITF) minimum wages. He also added that where P&O are governed by the UK NMW, they are paying it:

On the international routes that are governed by ITF standards, we are paying above ITF minimum wages. On our domestic route, which I think was referred to earlier—Larne-Cairnryan, where we are governed by the national minimum wage—of course we are paying the national minimum wage.⁴⁰

The ITF recommends globally that no seafarer be paid below the International Labour Organisation (ILO) level. As of 1 July 2022, the ILO recommended basic minimum wage for an “able seaman” should be 648 US Dollars (about £500)

³⁶ RMT, “[RMT welcomes publication of legislation to extend seafarers minimum wage](#)”, 7 May 2020

³⁷ Gov.uk [National Minimum Wage and National Living Wage rates](#) (accessed 12 April 2022)

³⁸ “[New P&O crew on less than £2 an hour, union claims](#)”, BBC [online], 22 March 2022 (accessed 12 April 2022)

³⁹ Transport Committee & Business Energy and Industrial Strategy Committee, [P&O Ferries](#), 24 March 2022, Q131 & Q145

⁴⁰ Transport Committee & Business Energy and Industrial Strategy Committee, [P&O Ferries](#), 24 March 2022, Q131

per calendar month.⁴¹ For a worker on a 36-hour working week, this would be equivalent to £3.21 an hour.

5.3 Planned reform

On 30 March 2022, the Secretary of State for Transport, Grant Shapps, announced the Government intended to give British ports new powers to refuse access to regular ferry services that do not pay their crew the national minimum wage. He confirmed this would be achieved through primary legislation to amend the Harbours Act 1964.⁴²

He said the Government wanted to bring the legislation forward “as quickly as possible” but because the Government needed to get the legislation right and had a statutory duty to consult the sector on changes, it would “not be possible overnight”.

He also announced that he was in discussion with his counterparts in France, Denmark, the Netherlands, Ireland and Germany and “will now work quickly with my counterparts to explore the creation of minimum wage corridors between our nations.”⁴³

6 Transfer protections

6.1 TUPE Regulations and unfair dismissal

The Transfer of Undertakings (Protection of Employment) Regulations 2006 offers protection to employees when they are transferred to a new employer. In particular, it provides protection from dismissal or negative changes to their contracts as a result of a transfer.

These regulations most often apply when parts of a business are bought, sold or otherwise transferred between one employer and another. However, they can also apply to a change to service provision, such as outsourcing all or part of an organisation’s activities, where:

⁴¹ Subcommittee on Wages of Seafarers of the Joint Maritime Commission, “[Final Report: Updating of the minimum monthly basic pay or wage figure for able seafarers: Maritime Labour Convention, 2006, as amended, Guideline B2.2.4 – Minimum monthly basic pay or wage figure for able seafarers](#)”, International Labour Organisation, April 2021

⁴² [HC Deb 30 March 2022 cc841-842](#)

⁴³ As above

activities cease to be carried out by a person (“a client”) on his own behalf and are carried out instead by another person on the client’s behalf (“a contractor”)⁴⁴

subject to the conditions that, immediately before the service provision change:

(i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;

(ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration;⁴⁵

When such a protected transfer takes place, an employee of the transferer being dismissed for the sole or principal reason of the transfer will usually be treated as automatically unfairly dismissed for the purposes of the Employment Rights Act 1996.⁴⁶

However, see section 2.5 above for a discussion on the jurisdiction limits of unfair dismissal protections for seafarers.

6.2 Commentary related to P&O ferries

Some legal commentators have raised TUPE as a possible consideration for those dismissed by P&O ferries.

Noele McClelland, partner at Thorntons Law, commented:

While undoubtedly we don’t know the full story of what P&O have done, if they are effectively outsourcing these roles to a contractor then there is a strong argument that the employees who have been told they redundant should have had their employment transferred to whoever P & O are bringing in under rules known as TUPE.⁴⁷

Stephen Moore, partner at Ashfords, also mentioned TUPE when commenting on this case, saying: “Whether or not the company should have transferred the employees under TUPE to the incoming agency is a consideration.”⁴⁸

P&O CEO Peter Hebblethwaite wrote in his letter to the Secretary of State dated 22 March that:

⁴⁴ Section 3(1)(b), The Transfer of Undertakings (Protection of Employment) Regulations 2006,

⁴⁵ Section 3(3)(a), The Transfer of Undertakings (Protection of Employment) Regulations 2006,

⁴⁶ Section 4.34, IDS Employment Law Handbook, volume 11 (Transfer of Undertakings), 2020

⁴⁷ Noele McClelland, “[P&O backlash after 800 staff fired without notice](#)”, Thorntons [online], 18 March 2022 (accessed 12 April 2022)

⁴⁸ Adam McCulloch, “[TUC: redundancies by P&O Ferries ‘must be a turning point for UK workers’ rights](#)”, Personnel Today [online] (accessed 12 April 2022)

Consideration was also given to engaging all current seafarers through a third party crew provider. However, this would not have addressed the fundamental challenges of cost, flexibility and utilisation in the current crewing arrangements.⁴⁹

7 ‘Fire and rehire’

7.1 Background debate

Some MPs and media commentators have discussed this case in the context of ‘fire and rehire’.⁵⁰

The practice of fire and rehire (also called dismissal and re-engagement) occurs when an employer dismisses an employee and offers to rehire them on new terms. The new terms are usually more favourable toward the employer. This tactic is typically used when it has not been possible for the employer to vary the terms of the contract by agreement.

Labour MP Barry Gardiner introduced a Private Members’ Bill in 2021, the Employment and Trade Union Rights (Dismissal and Re-engagement) Bill, which would have restricted the practice of dismissal and reengagement. The Bill did not progress beyond second reading.

The House of Commons Library briefing on [Fire and rehire practices](#) provides more details on this topic.

7.2 Commentary related to P&O ferries

Discussions around fire and rehire have been raised in parliamentary debate on P&O ferries but do not appear to be directly applicable, as P&O has not attempted to directly rehire the dismissed staff under new terms. As Parliamentary Under-Secretary of State for Small Business, Consumers and Labour Markets, Paul Scully, commented, these dismissals “were not a case of fire and rehire - just fire.”⁵¹

⁴⁹ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

⁵⁰ See, for example: “[Unions criticise plans to tackle fire and rehire in wake of P&O sackings](#)”, BBC [online], 29 March 2022 (accessed 13 April 2022)

⁵¹ Gov.uk, [New statutory code to prevent unscrupulous employers using fire and rehire tactics](#)

Professor Alan Bogg put it slightly differently referring to it as “fire and rehire on steroids”:

There is no question—this isn’t a fire and rehire situation, but this is fire and rehire on steroids. These are things that are on the same spectrum of contractual deregulation.⁵²

Peter Hebblethwaite in his letter to the Secretary of State dated 22 March explains that:

Senior officers have been offered employment by International Ferry Management Limited (“IFM”) on P&O ferries’ vessels. IFM are the new crew provider engaged by P&O Ferries to crew the vessels⁵³

While this is a case of rehiring some of the senior officers, as they are being rehired by a new company rather than by their original employer, this would not be a case of fire and rehire in the sense of the term as is most often used.

7.3 Planned reform

On 29 March 2022, Labour Markets Minister Paul Scully announced plans for a new Statutory Code of Practice on fire and rehire, aiming to set down in law certain expectations of behaviour when companies seek to change employees’ terms and conditions, with increased compensation for workers if those expectations are not met.⁵⁴

8 Further reading

[Key employment rights](#), House of Commons Library, 23 November 2018

[Employment status](#), House of Commons Library, 28 March 2018

[Fire and rehire practices](#), House of Commons Library, 26 April 2021

[Minimum wage: cracks in the floor](#), House of Commons Library, 22 February 2018

⁵² Transport Committee & Business Energy and Industrial Strategy Committee, P&O Ferries, 24 March 2022, Q7

⁵³ Gov.uk, [Letter from P&O Ferries to Business Secretary Kwasi Kwarteng](#), 22 March 2022

⁵⁴ Gov.uk [New statutory code to prevent unscrupulous employers using fire and rehire tactics](#) (accessed 12 April)

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