

Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator ('the regulator') in relation to Dunelm Soft Furnishings Ltd ('Dunelm')

Background

Dunelm had an automatic enrolment staging date of 1 April 2013. They were due to complete registration, indicating that they had fully complied with employer duties, by 31 July 2013. The company did not complete registration by the deadline and was contacted by the regulator. Despite being given a number of opportunities to complete registration or notify the regulator of any outstanding issues, Dunelm did not do so. Consequently a Compliance Notice under Section 35 of the Pensions Act 2008 was served on Dunelm directing them to complete registration.

Registration was subsequently completed by Dunelm on 15th August 2013. Shortly after registration the regulator received further information which led it to be of the view that Dunelm may not have completed their automatic enrolment employer duties. The data provided at registration was also examined and the regulator formed the opinion that there may have been breaches of the Pensions Act 2008.

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The regulator undertook a statutory inspection under Section 74 of the Pensions Act 2004 at the Dunelm head office. During the inspection the regulator's team met with members of Dunelm's payroll and HR teams, as well as specialist advisors. These Dunelm representatives were fully cooperative and highlighted several breaches to the regulator. In summary, the regulator found that Dunelm had:

- failed to enrol members of the four weekly payroll on time. These members were automatically enrolled a month late
- failed to enrol certain members of the monthly payroll on time. These members were automatically enrolled three months late, and
- not paid across to the pension provider a significant level of contributions as a result of the failures above.

It was evident to the regulator that the above issues existed and were known prior to registration, therefore the data submitted in the regulator's registration portal was inaccurate and the declaration indicating compliance with employer duties was wrong. It was also clear that key personnel at an executive level had been unaware of the service of the Compliance Notice directing registration, and the internal governance for ensuring the proper completion of this process had failed.

Dunelm openly explained to the regulator the difficulties they had experienced and the cause of a number of the issues. The contributory factors were:

- the bespoke payroll solution had design flaws resulting in significant delay in achieving compliance and completing registration. The bespoke payroll solution did not fulfil the Dunelm specification, was ineffective for automatic enrolment and the reporting capability was not fully functional
- key members of staff involved in the automatic enrolment project, including the points of contact, had ceased employment with Dunelm at critical points in the automatic enrolment timeline, namely just prior to the staging date and just after registration
- data quality issues were experienced when uploading employee information to the pension provider which prevented active membership of the pension scheme being achieved.

Regulatory action

During and after the statutory inspection, the regulator actively engaged with Dunelm and its third party partners who supplied payroll and pension services. This enabled the regulator to obtain a full understanding of the issues, assist in resolving the difficulties, and ensure that Dunelm became compliant as soon as practicable. Throughout this period Dunelm were open, forthcoming and fully co-operative with the regulator in their endeavour to meet their employer duties.

Due to the significant amount of pension contributions which were outstanding and in order to protect the member benefits, the regulator served an Unpaid Contributions Notice pursuant to section 37 Pensions Act 2008 on Dunelm directing it to pay over the due contributions.

Outcome

Following the regulator's inspection Dunelm paid across approximately £35,000 in contributions for the four weekly payroll. The Unpaid Contributions Notice directed the payment of approximately £83,000 in unpaid contributions, which Dunelm had calculated were due in respect of the monthly payroll employees.

Once the Unpaid Contribution Notice was served, having re-examined their calculations, Dunelm informed the regulator that the actual amount owed in respect of the monthly payroll was approximately £108,000. Dunelm paid these outstanding contributions into the pension scheme.

Following close work between Dunelm, the pension provider and the regulator, Dunelm are now fully compliant with their automatic enrolment duties, and all outstanding contributions due have been paid.

General

The regulator's overall approach is to educate and enable employers to comply with the legislation. In cases where an employer has not understood their duties or has been unable to comply, the regulator will work with them to try and achieve compliance. Therefore an employer who is experiencing challenges in meeting their automatic enrolment duties should contact the regulator to discuss their situation. The regulator is focused on maximising employer compliance and ensuring that workers get the pensions contributions they are entitled to.

However, if an employer has chosen to ignore their duties, the regulator will use its powers where necessary to ensure compliance.

Registration with The Pensions Regulator, and completing a declaration of compliance, is a legal duty. It demands proper corporate governance to ensure accurate and timely completion. In particular:

- Smooth handover and consistency should be maintained in the event of key personnel changes to ensure an employer achieves compliance with their duties on time, and
- Payroll systems should be tested well in advance of the staging date to ensure they are able to fulfil the requirements of automatic enrolment.

The regulator's automatic enrolment compliance and enforcement strategy and policy set out our objectives and regulatory approach and can be viewed at www.tpr.gov.uk/compliance.

This statement must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Trustees and other parties should where appropriate seek legal advice on the facts of their particular case.

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