

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Creative Pension Trust ( <b>the Scheme</b> )
Respondents	Genco Male Emporium Ltd ( <b>the Employer</b> )

## Outcome

1. Mr Y's complaint is upheld and, to put matters right, the Employer shall ensure that all unpaid contributions are paid into the Scheme. The Employer shall ensure that Mr Y is not financially disadvantaged by its maladministration by arranging for any investment loss to be calculated and paid into the Scheme.
2. The Employer shall also pay Mr Y £1,000 for the serious distress and inconvenience caused to him.

## Complaint summary

3. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay these contributions into the Scheme.
4. Mr Y has said that the missing contributions amounted to £3,725.47.

## Background information, including submissions from the parties

5. In April 2018, Mr Y began his employment with the Employer.
6. Between April 2018 and March 2021, the Employer failed to pay pension contributions into the Scheme.
7. On 11 May 2022, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).
8. Mr Y provided copies of the payslips that he held for the period between November 2018 to December 2021 which detailed the pension contributions deducted from his pay and the corresponding Employer contributions. These deductions amounted to £3,725.47. A breakdown of the deductions has been included in the Appendix.
9. On 31 January 2023, TPO asked the Employer for its response to Mr Y's complaint, Using the contact details, for a Mr S, that had been supplied by Mr Y. On the same day, Mr S responded and stated that he is a shareholder of the Employer and not a

director. Mr S stated that the Employer had not traded for the last 12 months and would soon be wound up. TPO responded and asked Mr S to forward the correspondence onto the correct contact.

10. TPO checked the Companies House register which showed that the Employer had an active status and the listed director was a Mr R.
11. On the same day, TPO contacted Mr Y and asked him for an email address for Mr R. Mr Y responded and confirmed that Mr S was the correct contact, as he had purchased the company with Mr R, and “runs” the company because of the fact that Mr R lives in Germany.
12. On 3 February 2023, TPO contacted Mr S again and stated that he is listed as a person with significant control over the company on Companies House. TPO asked Mr S to respond to Mr Y’s complaint or to provide contact details for Mr R. This request was repeated on 14 February 2023. Mr S, on behalf of the Employer, failed to respond by the deadline.
13. Subsequent to that, on 29 March 2023 and 25 April 2023, TPO wrote to the Employer at the Employer’s registered address, as recorded with Companies House. The Employer failed to respond by the deadlines provided.

### **Caseworker’s Opinion**

14. Mr Y’s complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer. The Caseworker’s findings are summarised below:-
  - TPO’s normal approach, in cases such as these, was to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. As the Employer had not responded to the substantive complaint points, the Opinion was based solely on the information provided by Mr Y.
  - There was no reason to doubt the information provided by Mr Y. On the balance of probabilities, contributions had been deducted from Mr Y’s salary, but had not been paid into the Scheme. In addition, the Employer had not paid any of the employer contributions that were due over the same period.
  - As a result of the Employer’s maladministration, Mr Y was not in the financial position he ought to be in.
  - Mr Y had suffered serious distress and inconvenience due to the Employer’s maladministration. An award of £1,000 for non-financial injustice was appropriate in the circumstances.
15. The Employer failed to respond to the Opinion or adhere to the directions.

## Ombudsman's decision

16. Mr Y complained that the Employer, despite deducting contributions from his pay, has failed to pay these contributions into the Scheme.
17. I find that the Employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
18. Mr Y is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. Mr Y's distress and inconvenience was exacerbated by the Employer's failure to try and resolve Mr Y's complaint.

## Directions

19. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr Y £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions; and
  - (iii) forward the Schedule to Mr Y.
20. The Employer shall, within 14 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Mr Y that he agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions to the Scheme;
  - (ii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr Y's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
22. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr Y's units, pay to the Scheme the cost of purchasing any additional units required to make up the shortfall.

CAS-88008-Y9K4

**Dominic Harris**

Pensions Ombudsman  
21 November 2023

**Appendix**

<b>Date</b>	<b>Employer contributions</b>	<b>Employee contributions</b>
November 2018	£32.30	£53.66
December 2018	£23.91	£39.85
January 2019	£0.00	£0.00
February 2019	£28.34	£42.50
March 2019	£26.39	£39.58
April 2019	£27.60	£46.00
May 2019	£22.80	£38.00
June 2019	£27.60	£46.00
July 2019	£49.03	£81.71
August 2019	£28.95	£48.26
September 2019	£36.31	£60.52
October 2019	£37.91	£63.18
November 2019	£20.46	£34.11
December 2019	£50.34	£83.90
January 2020	£28.19	£46.98
February 2020	£43.46	£72.43
March 2020	£30.43	£50.72
April 2020	£68.93	£114.88
May 2020	£64.86	£108.11
June 2020	£48.81	£81.35
July 2020	£55.11	£91.85
August 2020	£54.51	£90.84
September 2020	£52.38	£87.30
October 2020	£31.85	£53.08

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November 2020	£43.67	£72.79
December 2020	£49.72	£82.87
January 2021	£49.30	£82.17
February 2021	£47.86	£79.77
March 2021	£47.86	£79.77