

## The complaint

Mr T complains that Wirecard Card Solutions Limited blocked his Pockit account and withheld the funds. He also says the transactions on the account weren't carried out by him. He'd like the funds returned to him.

The Pockit account is a pre-paid payment card administered by Wirecard Card Solutions Limited.

## What happened

Mr T had a Pockit account, which he used to receive his DWP benefit payments. In total three benefit payments were received over three days between 18 May 2020 and 20 May 2020. There were only four payments out of the account, three to a merchant and one ATM withdrawal. This left £214.98 in the account.

In May 2020 Pockit blocked Mr T's account and asked him to provide proof of entitlement to the benefit funds paid in. He responded with some documents to explain he had recently been in a very difficult situation where he'd been kept against his will and forced to hand over his payment details – and provided evidence from the police supporting his story. He said he had been trying to reach Pockit but couldn't get in touch.

Pockit reviewed Mr T's documents but weren't satisfied with them. They didn't review the payments that left the account. They continued to restrict the account.

Mr T raised a complaint, but Pockit responded to say they did not do anything wrong. They said the terms of the account allowed them to restrict it at any time while a review is carried out. And it's not possible to provide a timeframe for a review to be completed.

Unhappy with this answer Mr T referred the complaint to our service. In September 2021, before it was looked at by one of our investigators, Pockit closed the account and returned the £214.98 to the DWP.

On review our investigator felt the complaint should be upheld. He accepted that Pockit have a right to review accounts, as part of their legal and regulatory obligations. However, he hadn't seen anything from Pockit to justify why Mr T's account had been placed under review. On that basis he couldn't conclude this decision had been fair. He accepted this would have been inconvenient for Mr T during a particularly difficult period. He suggested Pockit refund the remaining money in the account, including 8% simple interest per annum from the date of the block to the date of settlement. He also suggested Pockit pay Mr T £200 compensation.

Mr T agreed to this. Pockit asked for the case to be decided by an ombudsman but provided some further information for the investigator to review. The investigator asked further information about the disputed transactions – and why no review was carried out. Pockit responded to say there were no dispute criteria, and if the perpetrators were known to Mr T he should contact the police and take them to court.

As no agreement could be reached, the complaint was been passed to me to decide. Having reviewed the evidence I issued a provisional decision which said:

*Pockit have provided our service with limited information around Mr T's complaint. So, where the evidence is unclear, or simply unavailable, I've had to base my decision on what I think is more likely than not to have happened.*

#### *Account blocks and closure*

*It's right to say that Pockit, as a regulated financial business, have certain legal and regulatory obligations when providing accounts to their customers. And these obligations can mean they need to know more about where money they hold has come from. In this case, it's not inherently unfair that Pockit asked Mr T for further information about the benefits he was receiving. The terms of his account permit them to do this, and to block the account while they do.*

*Pockit felt that Mr T hadn't provided enough information to show that he was entitled to the funds paid in. But I've reviewed the same information, which explains what benefit payments he will be receiving, and how much. These match the payments he received. I've seen nothing to suggest there were any other parties contacting Pockit with their own concerns. Pockit haven't been able to justify why they continued to block access to these funds after this point. So, I'm satisfied that Mr T has shown his entitlement to the funds.*

*The review took over a year before Pockit took the decision to close the account and return the remaining funds, which is considerably longer than I'd expect them to take. They haven't offered any explanation of why this took so long to complete – and I don't consider this to be treating Mr T fairly or reasonably. I can understand why he would be frustrated and upset by this.*

*I've also considered that Pockit returned the remaining funds to the DWP when they closed the account – although I've seen nothing to suggest the DWP asked for or expected them to be returned. The terms of the account say that funds paid in by "mistake" may be returned. But Pockit haven't shown that the original payments in were a mistake, or in error. The terms also say that upon closure of the account they "reserve the right to return any funds held in your account either back to the senders of the payments or to the Account Holder...".*

*In this case I haven't seen anything from Pockit to explain why the fairer option was to return the funds to source, rather than to Mr T directly. It's also clear they didn't give him any information about how to reclaim these funds with the DWP and considering the time that's passed this seems unlikely now. On that basis, I think it reasonable that Pockit return these funds to him.*

#### *The transactions*

*Mr T has said that he didn't make the transactions on the account himself. He says they came about after he was kidnapped and threatened in to giving over his payment details. He's supplied information from a police investigation to confirm that this is the case. He's been consistent since first reporting this to Pockit, and I accept what he says is largely true.*

*Pockit have commented that there are no dispute criteria for this, and Mr T could pursue the perpetrators through court. This may well be true, but this doesn't extinguish any of Pockit's responsibilities under the Payment Services Regulations 2017 (PSRs) and as a Payment Services Provider (PSP) – particularly those covering unauthorised payment transactions.*

*In general, payments a consumer has agreed to are considered “authorised” payments, and those done without their consent are considered “unauthorised”. And generally, consumers are liable for authorised payments, and PSPs are liable for unauthorised transactions. Although there are also caveats.*

*In this case Mr T is alleging that the payments were unauthorised, and the evidence he’s provided from the police does strongly suggest this is the case. It doesn’t appear Pockit have carried out any investigation into these payments or been able to provide any information to our service on how they were authorised. This is despite Mr T making it very clear in phone calls and messages he had with them, that he didn’t make these transactions. I consider that Pockit have had abundant time to investigate these transactions and have chosen not to do so. So, I feel satisfied that I can consider them as part of Mr T’s complaint.*

*The three payments out to the clothing merchant, I believe were likely carried out online – this is based on the fact they seem to have gone through a third-party payment processor, and from the information given by Pockit there were originally in USD. As they were made online, and not physically present with the merchant, they can be considered “Distance Contracts”. Section 77 of the PSRs explains that a payer is not liable for any losses in respect to unauthorised payments in relation to a distance contract. I’m satisfied that Mr T didn’t authorise these payments, so as per the PSRs these should be refunded to him.*

*The last transaction was an ATM withdrawal – which will have required the physical card and PIN to carry out. The PSRs say that a PSP can hold a consumer liable if they have intentionally not met their obligations to keep their security details safe. In this case Mr T has admitted he gave out his PIN – albeit under significant duress.*

*But I also note that the day before the ATM withdrawal Mr T had emailed Pockit to say that he had been beaten, kidnapped and robbed – and was on his way to the custody care unit. These emails make it clear that that the card should be blocked. I can also see he received an acknowledgement email. I’m satisfied Mr T had notified Pockit of loss of the payment instrument – as per Section 72 of the PSRs – and as such should not be held liable for any losses after this point.*

#### *Customer service*

*As I’ve noted above, I accept this was a particularly stressful and upsetting time for Mr T. And the response from Pockit was significantly below what I’d expect to see. From the outset Mr T was open about what had happened to him, and how he’d been attacked and beaten. But the responses from Pockit are almost completely devoid of any sympathy.*

*For example, the agent continually requests information from Mr T about the DWP payments with short deadlines, without acknowledging Mr T had recently been the victim of a serious crime. The agent then goes on to question why Mr T was spending so much on clothes, when he’d already explained he didn’t make the transactions in question. The agent ignores Mr T repeatedly. I can see why Mr T would be upset by the help given, and the nature of the questions.*

*There is also no attempt made to investigate the transactions Mr T is disputing, or to consider any of the evidence he submits. Overall, I’m minded that Pockit treated Mr T very unreasonably, and will have significantly increased the distress and inconvenience faced by him after being the victim of a violent crime. On that basis I’m satisfied they should pay him a considerable amount of compensation.*

I was minded that to resolve the situation Pockit should:

- Refund Mr T the £214.98 in the account when it was blocked – plus 8% simple interest per annum from the date of the block until the date of settlement.
- Refund Mr T the unauthorised transactions totaling £995.60 – plus 8% simple interest per annum from the date of the transactions to the date of settlement.
- Pay Mr T £500 compensation for the distress caused by their poor customer service

Mr T responded to accept the provisional decision. Pockit did not provide a response. It falls on me now to issue my final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In the absence of any new information to consider, I remain satisfied with the findings in the provisional decision.

It was reasonable for Pockit to block Mr T's account while they investigated his entitlement to the funds paid in – this is in line with their legal and regulatory requirements, and their own terms. But I'm satisfied Mr T has provided enough information to show his entitlement to the funds.

I haven't seen anything to persuade me Pockit were reasonable in returning the funds to source – this doesn't seem to be in line with their terms, and there doesn't seem to be any genuine dispute over the ownership of these funds. I also haven't seen anything to explain why it was reasonable for Pockit to take over a year to carry out their review.

Turning to the transactions that Mr T is disputing – I've received no further information from Pockit about this. So, I remain satisfied that these were unauthorised transactions as per the PSRs. The transactions that are likely distance contracts should be refunded under Section 77 of the PSRs. I also remain satisfied Mr T had provided notification of the loss of his payment instrument as per Section 72 of the PSRs, so shouldn't be held liable for the ATM withdrawal after this point.

Mr T has commented that he may have hoped for more compensation, so I've revisited my thoughts on the customer service. I remain satisfied that Pockit didn't respond to Mr T's situation with sympathy or due care. This will have been a particularly stressful and difficult time for him, and I accept Pockit's actions will have made things worse. But I also am minded that a lot of the distress will have been outside of Pockit's control – such as the kidnapping. That said the way Pockit have handled his account has clearly been inappropriate, and as such I'm still minded £500 is a fair reflection of the impact of their actions on him.

### **Putting things right**

To resolve this complaint the following steps should be taken:

- Refund Mr T the £214.98 in the account when it was blocked – and add 8% simple interest per annum from the date of the block to the date of settlement.
- Refund Mr T the unauthorised payments totaling £995.60 – and add 8% simple interest per annum from the date of the transactions to the date of settlement.
- Pay Mr T £500 compensation for the distress and inconvenience caused for the poor customer service he received.

For the interest awards, it may be required by HM Revenue & Customer to deduct income tax from that interest. If this is the case Mr T should be given a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customer if appropriate.

### **My final decision**

My final decision is that I uphold this complaint, and direct Wirecard Card Solutions Limited to settle it as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 April 2023.

Thom Bennett  
**Ombudsman**