

The complaint

Mr W is unhappy that Modulr FS Limited closed his bank account and registered a CIFAS marker against him. CIFAS is the UK's fraud alert service.

Mr W held a U account – who provided services on behalf of Modulr. For ease I will refer to Modulr throughout this decision.

What happened

Mr W had a U account which he used to receive his work expenses .

On 28 October 2021, a payment of £195 was made into Mr W's account, which Mr W spent. Following this, on 22 November 2021, Modulr were notified by another bank that their customer, who I will refer to as Ms H, had been the victim of a scam and that the £195 payment Mr W had received in October 2021, was fraudulent. Ms H told her bank that she had bought an item from Mr W, waited ten days for delivery, but never received the item. And when she tried to contact Mr W her messages had been blocked.

Modulr contacted Mr W via its in app chat facility and told him that the payment had been recalled by the sending bank. And that it was reviewing his account. Mr W told Modulr that he had sold a watch via his social media account. And that the buyer had notified him via text message that they'd received the watch. Mr W said that the watch was an unwanted gift he'd received. He said he didn't have proof of posting the watch. He also said that he'd dropped his mobile phone in water and had sent it off for repair, which meant he was without a mobile phone between 2 November and 1 December 2021. So, if the buyer had been trying to contact him, he wouldn't have received any messages. Mr W said he'd ended up getting a new phone which meant he changed his mobile number. So, if the buyer had tried to contact him, they wouldn't have been able to do so. Mr W said because he had to change his phone, he also wasn't able to provide the text message he received from the buyer. Mr W maintained he hadn't done anything wrong and that this was simply a buyer/seller dispute.

Following this Modulr closed Mr W's account. It also placed a fraud marker against Mr W's name with CIFAS. And suggested Mr W should contact the buyer to get the fraud claim withdrawn. Mr W found out about the marker in February 2022, via his employer who following a screening check, interviewed him about why the marker had been applied to his name. Mr W told his employer that he'd not done anything wrong and had simply sold a watch, which he did from time to time. He also explained the trouble he'd had with his mobile phone. Mr W says his employer were happy with his explanation and took no further action.

Mr W complained to Modulr and said that the marker had been applied unfairly. He said he hadn't done anything wrong and that the marker should be removed. Modulr said they'd fairly loaded a CIFAS marker against him. And that Mr W needed to contact the buyer of the watch to get the fraud claim removed and confirm that this was a buyer/seller dispute as Mr W claimed. Unhappy with this response Mr W brought his complaint to this service where one of our investigators looked into things.

The investigator asked Mr W some more questions regarding the payment made into his account, his interview with his employer and replacement of his mobile phone. Mr W provided the investigator with the interview notes between him and his employer, which showed they were happy with Mr W's explanation. And his new mobile phone contract which showed Mr W's mobile phone had been received for repair on 9 November 2021 and that he'd got a new mobile phone on 2 December 2021.

Based on the evidence, the investigator said that Modulr hadn't treated Mr W fairly when it recorded a CIFAS marker against him. So, she said it should remove the marker.

Mr W accepted what the investigator had said. He also explained that the marker has meant he had to take out a mortgage at a higher rate, which has cost him more each month. And he's had other credit facilities frozen again due to the marker. Modulr didn't accept what the investigator had said and asked for an ombudsman to review the complaint.

As no agreement could be reached the matter came to me to decide and I issued a provisional decision.

Prior to issuing the provisional decision I asked the investigator to get some more information from Mr W. In particular I asked him to provide the advert that he'd posted on his social media platform advertising the watch for sale, details about the method of posting he used, how he paid for the postage and evidence to show he did this, such as his bank statements. In response, Mr W said he would have sent the watch via Royal Mail and couldn't remember how he paid for the postage. But would look back over his bank statements. He didn't provide any other information.

Having reviewed everything, I said the following in my provisional decision:

Firstly, Modulr are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. Modulr decided to review Mr W's account when the £195 credit received into Mr W's account was reported as fraudulent from another bank. I'm satisfied that they were entitled to carry out that review based on this information, and I'm pleased to see that Mr W volunteered information about the transaction.

Mr W provided what he believes to be sufficient evidence. Mr W explained that he'd sold a watch which he received as a gift from a family member. He said he'd posted the watch to the buyer, and they'd confirmed via text that they'd received it. He has also since supplied our service with evidence that he'd sent his mobile to be repaired and took out a new mobile phone contract, which he says is why the buyer was unable to contact him after the sale. And he hasn't been able to contact the buyer as he has no contact details for them. Mr W also says the problems he had with his mobile phone also means he no longer has the text message to show that the watch was received by the buyer.

When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently. This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Mr W says he has encountered. In order to file such a marker Modulr aren't required to prove beyond reasonable doubt that Mr W is guilty of a fraud or financial crime, but they must show that there are grounds for more than a mere suspicion or concern.

What this means in practice is that Modulr must first be able to show that there was an attempt to put fraudulent funds in Mr W's account or fraudulent funds have entered Mr W's account, whether they are retained or pass through the account. And were either moved on

or retained. Secondly, the bank will need to have strong evidence to show Mr W was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

So, I need to consider whether Modulr have sufficient evidence to meet the standard of proof and load a marker for misuse of facility with CIFAS. Having looked at all the information provided I'm currently satisfied they have.

I say this for the following reasons:

- I've seen evidence from Modulr that another bank notified them that the payment paid into Mr W's account on 28 October 2021 was fraudulent. And that Mr W spent these funds*
- Mr W has explained that the watch he sold was a gift from a family member, that he'd owned for about eighteen months prior to selling it. I haven't seen any evidence of the watch itself, or how Mr W came to own it. I note too Mr W has said he sold the watch for a price lower than its value, but again I've not seen any evidence of this, such as a valuation or an invoice, which is a normal occurrence in a sale of goods.*
- Mr W explained he sold the watch after advertising it on a social media platform. We've asked Mr W to provide copies of how the sale came about – such as an advert, and any messages he had with the buyer on the platform. Mr W has explained that he damaged his mobile phone so can't provide any contact he had with the buyer. Given Mr W said he sold the watch via a social media platform I'd expect him still to be able to access his posts even if he has changed his phone. But he hasn't done so. I think this would be information Mr W ought to be able to provide.*
- Mr W says he used Royal Mail to post the watch to the buyer. But he hasn't been able to provide any evidence to support this such as a receipt, how he paid for postage such as a bank statement. I find it surprising that a watch sold for £195 wouldn't at least be sent via recorded delivery and that Mr W can't provide any evidence that he sent the watch to the buyer. The person who paid Mr W for the watch says it hadn't been received. So, I can't say that Mr W was as a result entitled to this money.*
- Modulr made Mr W aware that the payment had been recalled in November 2021. I've also not seen any evidence that Mr W attempted to reach out to the buyer via his social media platform to resolve things at the time. If as Mr W suggests this is a buyer seller dispute, he hasn't shown he has resolved it, or attempted to resolve it which would have been a reasonable action to take.*
- I haven't seen enough evidence that the sale, dispatch or delivery of the watch took place*

In summary, when I weigh everything up, I'm not persuaded by Mr W's version of events, and I haven't seen enough evidence that the sale of a watch legitimately took place. For the reasons, I've explained, I'm currently minded that Modulr had grounds to believe that Mr W had received fraudulent funds which he spent. So, I think it was fair for Modulr to register the CIFAS marker and I won't be asking them to remove it.

Modulr didn't respond to my provisional decision. Mr W did. In summary he said:

- He doesn't agree that the evidence was sufficient to show that he acted dishonestly or deliberately committed fraud for Modulr to record a CIFAS marker against him*

- He is being asked to provide evidence from some time ago that would involve him trawling through bank statements, when there is a high likelihood that he paid for postage with cash
- He is not disputing that there may have been something wrong with the watch. But he is disputing that he took payment and didn't send the watch to the buyer
- He has provided evidence from the time that shows he wouldn't have been able to communicate with the buyer due to problems with his phone
- Modulr didn't follow process and didn't ask him for evidence until six months later
- He hasn't done anything wrong and is being punished for an unfortunate set of circumstances

Now both sides have had an opportunity to comment I can go ahead and 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 response to the provisional decision, Mr W has highlighted a number of concerns, which I'll now address below.

Mr W says Modulr didn't have enough evidence to record a marker and didn't carry out a proper investigation at the time. He's said he is the victim of an unfortunate set of circumstances – which was caused by him having to change his mobile phone. He's also said that due to the time that has now passed he no longer has any record of posting the watch.

Modulr made Mr W aware that the payment for the watch had been recalled in November 2021. I appreciate that Mr W feels Modulr didn't allow him the opportunity to provide the evidence to show that he was entitled to the funds paid into his account. And I can see that he told Modulr that he didn't have any proof of postage and had problems with his mobile phone. But he has now had the opportunity to provide evidence to support his explanation.

Even if I accept Mr W's explanation that changing mobile phones meant the buyer was unable to contact him, and he now thinks he may well have paid for postage by cash he still hasn't been able to provide any evidence that he actually sold a watch and sent it to the buyer. Given Mr W said he sold the watch via a social media platform I'd expect him to still be able to access his posts even if he has changed his phone. But he hasn't done so. I think this would be information Mr W ought to be able to provide. And I find it unusual that he hasn't been able to do so now or at the time when he spoke to Modulr about the transaction.

I note too that in response to the provisional decision, Mr W has said that he doesn't dispute that there may have been something wrong with the watch he says he sold. But I've not seen any evidence that Mr W attempted to reach out to the buyer via his social media platform to resolve things at the time. If as Mr W suggests this is a buyer seller dispute, he hasn't shown he has resolved it, or attempted to resolve it which I think would have been a reasonable action to take – especially if Mr W says he sent the watch. But there is no evidence of that, so I'm afraid I'm not convinced that this is a buyer seller dispute as Mr W has suggested.

Modulr has a report of fraud against Mr W. Mr W has now had the full opportunity to provide evidence about the transaction subject of that report – even if he felt Modulr didn't allow him

to. It is his responsibility to account for the money that was paid into his account, and he has been unable to provide evidence that supports his explanation.

Having reviewed Mr W's account of events and the evidence Modulr provided, I'm satisfied that Modulr had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken account the following reasons:

- Mr W received fraudulent funds into his account
- He was in control of who had the benefit of this money
- Modulr had grounds to believe Mr W had used fraudulently obtained funds based on the evidence it had

Overall, when I weigh everything up, I'm not persuaded by Mr W's version of events, and I haven't seen enough evidence that the sale of a watch legitimately took place. I appreciate that Mr W will be disappointed by my decision, but whilst I take on board Mr W's comments, I see no reason to depart from my provisional findings. I remain of the view that this complaint should not be upheld for the reasons set out in my provisional decision, which are repeated above and form part of this decision.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 November 2023.

Sharon Kerrison
Ombudsman