The complaint

Mr W complains that Modulr FS Limited returned his funds to source and he'd like the money refunded.

What happened

Mr W had an account with one of Modulr's agents. For ease I'll refer to Modulr throughout the decision.

On 28 December 2023 Mr W received a payment into his account. Modulr restricted Mr W's account and asked him for proof of funds including an explanation for why he received the money.

Mr W advised Modulr that he received the funds as part of a cryptocurrency sale. Modulr weren't satisfied with the evidence Mr W provided, or his explanation for why he received the funds – they advised Mr W trading cryptocurrency is a breach of their Acceptable Use Policy (AUP). AUP 1.2 states "we do not provide our services to businesses or support transactions that involve (i) bitcoin or other cryptocurrencies". So, they decided to close Mr W's account, and returned £1,800 to source.

Mr W wasn't happy with Modulr's decision so brought his complaint to our service. One of our Investigators looked into his complaint. But, on reviewing everything they felt Modulr had acted fairly in returning his funds to source.

Mr W didn't agree. In summary he said he doesn't believe Modulr's actions are compliant with the Consumer Duty or other relevant laws.

As Mr W didn't agree the case was passed to me to decide.

On picking up Mr W's complaint I requested further information from both parties, including further evidence from Modulr on why they returned Mr W's funds to source and extra proof of entitlement from Mr W.

Mr W responded with further proof of funds including conversations between him and the buyer, and other cryptocurrency trades he'd carried out.

Modulr responded but didn't provide any new evidence for me to consider.

On reviewing Mr W's complaint I reached a different conclusion to our Investigator. I thought Modulr acted fairly in closing his account, but not in returning Mr W's funds to source. I recommended that Modulr pay Mr W £1,800 plus 8% interest from 30 December 2023 to the date of return.

Mr W accepted my outcome. But, Modulr didn't. They provided further evidence to explain why the documents Mr W submitted weren't accepted. And why, they've acted fairly in returning Mr W's funds to source.

As Modulr didn't agree I've reconsidered my conclusions below.

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 my provisional decision I said:

DISP 3.5.9R(2) states that an ombudsman may accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where the ombudsman considers it appropriate.

Modulr made its submission in confidence. Our rules permit this; it's then for me to decide whether it's fair to rely on evidence that only one party has seen. It's not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it.

Here, the information (and its source) is sensitive and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether Modulr has treated Mr W fairly. So I'm persuaded I should take it into account when deciding the outcome of the complaint.

I understand that Modulr carried out a review on Mr W's account activity when he received £1,800 on 28 December 2023. I can't say Modulr's actions in carrying out a review were unfair – Modulr have extensive legal and regulatory obligations which they need to comply with. I'm satisfied that in asking Mr W for evidence of the source of his funds, and identification documents they also acted fairly. In response, Mr W provided a bank statement from a bank I'll call B, a copy of his passport and a screenshot showing the cryptocurrency trade.

Good industry practice states that prior to returning any funds to source a business would be expected to investigate and check whether their customer can provide proof of funds. Modulr have done this, but on reviewing everything they've provided to our service I've not seen sufficient evidence to show why the documents Mr W provided *weren't* accepted. I also note that Modulr haven't received any notification that the funds Mr W received *were* fraudulent – instead they've decided to return the funds to source solely based on the review they completed.

For Modulr to fairly return Mr W's funds to source they also need to show which account term they've relied on. I've asked Modulr about this, but I didn't receive a clear response. Having looked at the account terms I haven't seen a term which Modulr could rely on to fairly return Mr W's funds to source in these circumstances. I've also considered the relevant legislation including the Payment Service Regulations 2017 which say that a business has an obligation to process the payments its customer authorises it to make. And in this case, Mr W didn't authorise Modulr to return these funds to source.

I've reviewed the information Mr W provided Modulr, and more recently our service. This includes screenshots of the cryptocurrency trade, conversations between Mr W and the buyer including where the £1,800 should be sent to and previously successful trades Mr W has carried out. I find this evidence very persuasive, and having reviewed it I'm satisfied that Mr W has provided sufficient evidence to show he's *entitled* to the funds.

For the reasons I've outlined above I'm planning to direct Modulr to pay £1,800 to Mr W plus 8% interest for the time Mr W's been without the funds.

Mr W hasn't provided our service with any further evidence to show the impact caused to him from the return of the funds so I'm not planning to ask for any additional distress or inconvenience.

Modulr's response to my provisional decision

Modulr responded to my provisional decision by providing further detail on why they didn't accept the documents Mr W provided, and why they returned his funds to source. However, having reviewed the evidence they've provided, in confidence, it doesn't change the conclusions I reached in my Provisional Decision. If Modulr had concerns over the documents Mr W supplied I'd have expected them to reach out to him and carry out further customer due diligence instead of making the decision to return Mr W's funds to source.

Modulr have still failed to identify the term they relied on to return Mr W's funds to source, or provide any notification they received from a third party to indicate the funds Mr W received were fraudulent. For these reasons I can't fairly conclude Modulr's actions were in line with best practice or the relevant regulations. And for this reason I won't be changing the conclusions I reached in my Provisional decision.

Modulr have argued that they'll only be able to return Mr W's funds to a UK bank account. I appreciate that Modulr may only carry out transactions within the UK, however for the reasons I've concluded above I can't say Modulr's actions in depriving Mr W of access to his funds were fair. This means I'd expect Modulr to return them to him – and if Mr W only has access to a non-UK bank account I'd expect Modulr to send the funds to this location.

Putting things right

I'm satisfied Modulr should repay Mr W's funds plus 8% annual interest from 30 December 2023 to the date they are repaid. I say this as Mr W has been unfairly deprived of access to his funds since 30 December 2023.

My final decision

My final decision is I uphold Mr W's complaint and direct Modulr FS Limited to:

- Pay Mr W £1,800 plus 8% annual interest from 30 December 2023 to the date of repayment

If Modulr FS Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W **a** tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 December 2024.

Jeff Burch
Ombudsman