

Consumer Communiqué No 3

POLICE INVOLVEMENT IN DISPUTES

An issue which often arises in relation to disputes involving fraud such as forgery is a financial service provider's (FSP's) reluctance to proceed when the fraud has not been reported to the police or the police have not completed their investigation. The fraud can involve a forged signature on a document or an unauthorised transaction by a third party and raises the issue of whether the FSP was entitled to process the transaction.

Allegations of fraud are typically made in relation to cheque or card transactions.

Problems may arise in two situations

- When the consumer does not wish to report the matter to the police
- When the matter has been reported but the police investigation is taking an inordinate length of time to complete.

The consumer's dispute against the FSP is not about the forger but about whether the FSP acted in accordance with the law and good industry practice. The consumer has a separate and distinct cause of action against the FSP notwithstanding the activities of the forger.

In practice, a consumer's refusal to complain to the police is relevant to the investigation.

The Ombudsman will look at that refusal to determine whether

- The consumer's reasons for not complaining about the forger to the police are reasonable and acceptable
- The refusal to complain implies that there is some relationship between the consumer and the forger
- The consumer was so aware of the forger's act that he or she can be said to have implicitly authorised the transaction which is the subject of the complaint.
- The consumer has ratified the actions of the forger
- The customer and the forger were so closely involved in the transaction that it is not possible to dispel concerns there was collusion leading to the loss.

The possible outcome of police involvement is that the police decide to institute proceedings against the consumer. Once a criminal charge has been made against the consumer, the FCDRS will close its file on the basis that a court is the appropriate forum to determine the consumer's involvement in any conspiracy. In the event that those charges are dismissed, the file may be reopened at the request of the consumer.

This office has found a significant number of disputes often lead to family members being involved. This can be difficult for the consumer who has suffered the loss but does not take away from the need to report the matter to the police if the consumer wants to be reimbursed by the FSP as a result of the dispute. The FSP is then able to try to recover the funds.

These circumstances are more common in relation to unauthorised transactions on cards where the PIN is used. Such disputes are particularly unpleasant because of the family relationship but should be considered in ensuring the security of cards and access methods such as Personal Identification Numbers(PIN).