



THE UK SUPREME COURT'S DECISION ON THE QUINCECARE DUTY IS GOOD NEWS FOR BANKS, BUT THEY MAY NOT BE COMPLETELY IN THE CLEAR JUST YET

In this article we provide a review and analysis of the recent UK Supreme Court decision¹ in *Philipp v Barclays Bank*, which has upheld the appeal by Barclays Bank (the Bank) and overturned the Court of Appeal's judgment, finding that the Quincecare duty did not apply to individuals who are victims of authorised push payment (APP) fraud.

1. *Philipp v Barclays Bank UK plc* [2023] UKSC 25 (12 July 2023)

“The Supreme Court commented that any change to the law around APP fraud and banking regulation would be a question for the government and not the judiciary.”

What is the Quincecare duty?

The Quincecare duty dates back over 20 years² and was first established in the judgment in *Barclays Bank plc v Quincecare Ltd*² where the Commercial Court held that the relationship between a bank and its customer was that of an agent and principal with the result that fiduciary duties were owed to customers.

Of relevance to this case is the finding that the banks owed a duty of “*reasonable skill and care*” when executing the customer’s instructions, and that this would be breached in a number of ways including if the bank carried out the customer’s instructions when it had reasonable grounds for believing that fraud was involved.

Background

We set out the background to this matter in our March 2022 article³, and so will only summarise the details here.

In 2018, Philipp and her husband were instructed by fraudsters posing as representatives of the Financial Conduct Authority (FCA) and the National Crime Agency (NCA) to move their money in order to protect it from fraud. Philipp moved GBP 700,000 from a savings account with the Bank she had with her husband by way of two transfers to

bank accounts held in the United Arab Emirates (the Transfers).

Philipp alleged that no safeguarding questions, nor scam warnings, were asked or given at the time of the Transfers, which point the Bank contested. Philipp sued the Bank alleging it owed her a duty of care:

- in tort;
- implied into the contract with the Bank; and/or
- by statute under s13 of the Supply of Goods and Services Act 1982.

The High Court summarily dismissed the claim, finding that there was no causation as:

1. the Bank did not owe a Quincecare duty to Philipp, which it held only applied where instructions were given by an agent or third party, and did not extend to individual customers; and
2. even if the Bank did owe a Quincecare duty, Philipp was so deceived by the fraudsters that she would not have believed the Bank had it intervened.

On Appeal to the Court of Appeal

Philipp appealed to the Court of Appeal, who held in her favour, and set-aside the summary judgment dismissing the claim.

The Court of Appeal found that the line of reasoning in the authorities:

- was not dependent on whether the instruction was being given by an agent of the customer;
- was not confined to the circumstances of those cases; and
- could properly be applied on a wider basis.

The Court of Appeal was persuaded that, in principle, the duty of care could arise in cases such as this where the customer was the victim of APP fraud, and therefore the matter should be determined by a full trial and not by way of a summary procedure.

Supreme Court decision

The Bank obtained leave to appeal to the Supreme Court, who overturned the Court of Appeal’s decision and re-instated the High Court’s summary judgment in favour of the Bank.

The key points from the Supreme Court judgment are that:

1. under the Quincecare duty, a bank has a general duty of care to “*interpret, ascertain and act in accordance with its customer’s instructions*” and not to question the wisdom of the instructions, or to make inquiries

2. [1992] 4 All E.R. 363

3. [003892-HFW-Quincecare-and-Philip-v-Barclays-March-2022.pdf](#)



of its customer; maintaining the first principle of banking⁴;

2. the duty is varied and banks are required to make inquiries where the instructions are via a third party and the bank has reasonable grounds for believing that the instructions are an attempt to defraud the customer
3. the duty will not apply to victims of an APP fraud where, as in this case, the instructions are clear and either given by the customer direct or by an authorised agent, in which case the bank is not required to carry out inquiries and an attempt by the bank to do so may amount to a breach of its duty; and
4. the Bank had a right to decline to follow the instruction if it considered it connected to a fraud, but that this did not impose a duty not to do so.

The Supreme Court commented that any change to the law around APP fraud and banking regulation would be a question for the government and not the judiciary. In fact, the government has acted and introduced the Financial Services and Markets Act 2023, which was given Royal Assent on 29 June 2023 and is due to enter into law in 2024. The Act provides for a mandatory

reimbursement scheme, but it does not however extend to international payments, and therefore would not have applied to this case.

The Supreme Court also ruled that Philipp is able to pursue an alternative claim based on the Bank's alleged failure to act promptly to try to recall the payments after the fraud was identified.

Comment

The Supreme Court placed emphasis on the contractual relationship between Philipp and the Bank, under which the primary obligation was for the Bank to follow its customer's instruction.

As mentioned, the Supreme Court granted Philipp permission to pursue her claim that the Bank did not act sufficiently promptly to recall the payments, which may mean that the Bank is liable - and also that in similar circumstances banks will need to be alive to the issue and act swiftly to recover the funds.

The judgment will be welcomed by the banks. However, it does still place a burden on banks to act as the first level of protection in relation to APP frauds.

We anticipate that questions surrounding the Quincecare duty will continue to arise and expect

further cases to come before the English courts. We will report on further developments on this case and more generally in due course.

For further information please contact:



ANDREW WILLIAMS

Partner, London

T +44 (0)20 7264 8364

E andrew.williams@hfw.com



NICOLA GARE

Knowledge Counsel (Dispute Resolution), London

T +44 (0)20 7264 8158

E nicola.gare@hfw.com

4. *Bodenham v Hoskins* (1852) 21 LJ Ch 864

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