

## IS RETRIEVAL DUTY AN EXTENSION OF THE QUINCECARE DUTY?

In this article we review the English court judgment in *CCP Graduate School Ltd v. National Westminster Bank Plc and Santander UK Plc*<sup>1</sup>, the first English judgment on the Quincecare duty owed by banks to customers and non-customers since the seminal Supreme court judgment in *Phillip v. Barclays Bank plc*.<sup>2</sup>

This article continues our tracking of this developing area of the law — our previous analysis can be found in our earlier articles.<sup>3</sup>

### The Quincecare duty

The 2023 UK Supreme Court decision in *Phillip v Barclays Bank* (**Phillip**) found that banks do not owe a Quincecare duty of care to victims of authorised push payment (**APP**) fraud. In that case, the judgment held that the duty arises only where the validity of the customer's instruction is unclear, or the bank is on notice of a potential fraud but that banks do not have a general duty to question their customers' clear and unequivocal instructions.

Central to the Supreme Court's decision in *Phillip* was that it is for regulators, government, and ultimately Parliament to develop the law to protect customers and non-customers from fraudsters, including those victims of APP fraud; not the judiciary.

*CCP Graduate School Limited v National Westminster Bank plc and Santander UK plc* (**CPP**) is the first English court decision following *Phillip*, and deals with an interesting proposition that the bank has a duty to its customers to retrieve misappropriated funds.

### Background

In CPP, the defendants, NatWest and Santander (**the Defendants**), sought the summary dismissal of claims made against them via summary judgment or strike out of the claim.

The claim arose from a series of electronic transfers that the Claimant had made from its account with NatWest to the receiving bank, Santander, which the Claimant argued were as a result of APP fraud.

The Claimant's initial claim was that the Defendants owed it a Quincecare duty of care. However, subsequent to issuing its claim, the Supreme Court published its judgment in *Phillip*, following which, the Claimant sought to amend its claim against the Defendants submitting that there existed a separate legal duty of care to take reasonable steps to recover funds dissipated by APP fraud (**the Retrieval Duty**).

### Judgment

In CPP, the court struck out the Quincecare claim against NatWest (the Claimant's bank from which the payment was made) on the basis that the claim was time-barred (the Claimant brought the claim more than 6 years after the final payment was made to the Santander account) and had no prospect of success in light of *Phillip*.

In respect of the application to amend the claim so as to claim that NatWest owed (and breached) a Retrieval Duty to the Claimant to recover the funds, the court again held that the claim was time-barred and accordingly refused permission to amend the claim. However, the court did consider whether, if the Retrieval Duty claim was not time-

<sup>1</sup> [2024] EWHC 581 (KB)

<sup>2</sup> [2023] UKSC 25

<sup>3</sup> See our articles on the Quincecare duty:

[004146-HFW-English-Commercial-Court-gives-further-clarification-on-the-Quincecare-Duty.pdf](#)

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

[002748-HFW-English-High-Court-Limits-Quincecare-Duty-in-App-Fraud-Cases-Feb-2021.pdf](#)

[001890-HFW-Quincecare-duty-in-the-spotlight-more-trouble-for-banks-March-2020.pdf](#)

barred, it would have permitted the amendments in respect of the Retrieval Duty claim and held that it would have given its permission due to the lack of clarity on what steps NatWest had taken and the timing of those steps.

In relation to Santander (the bank receiving the funds), no *Quincecare* duty arose as the Claimant was not a customer of Santander. In respect of the Claimant's initial claim that Santander had breached the Retrieval Duty, the court concluded that there was an arguable case that Santander did owe the Claimant a Retrieval Duty, notwithstanding that it was not a customer, and that the issue could not be dealt with summarily and required determination at a full hearing. The court therefore dismissed Santander's application, and this claim can advance to a full hearing.

## Conclusion

By enabling the Retrieval Duty against Santander to be progressed, this judgment may be the beginning of a new development in the life of the *Quincecare* duty which could allow claimants to claim against banks for failing to recover funds fraudulently misappropriated. However, as the court was at lengths to emphasise, this was not a full or even a mini trial of the issues, but an interim application for summary dismissal and so a full trial will be required before we know how the court will determine the concept of a Retrieval Duty.

Assuming the case is not settled beforehand, we will report further once the judgment following the full hearing is published.

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