



## ENGLISH HIGH COURT LIMITS QUINCECARE DUTY IN APP FRAUD CASES

In its recent judgment, the English High Court has confirmed that a bank's *Quincecare* duty (i.e. the duty to act with reasonable care and skill when executing a customer's payment instructions) does not extend to authorised push payment ("APP") frauds involving individual customers. The ruling, which reflects the growing judicial trend in APP frauds, and on which we have previously written<sup>1</sup>, has important ramifications for individual and corporate customers alike.

<sup>1</sup> <https://www.hfw.com/downloads/001890-HFW-Quincecare-duty-in-the-spotlight-more-trouble-for-banks-March-2020.pdf>

## Background facts

In *Phillips v Barclays Bank UK Plc [2021]*<sup>2</sup>, which concerned a summary judgment application made by the defendant bank, the claimant alleged that the bank owed a duty of care to protect her from the consequences of APP fraud. However, the bank argued that the *Quincecare* duty did not extend to a duty to protect the claimant from the consequences of her own actions. As the claimant's payment instructions were valid and not fraudulently given (i.e. authorised), the bank held that it should not "be made an insurer of last resort for fraud perpetrated against customers".

## What did the High Court decide?

The High Court was asked to consider whether the *Quincecare* duty owed by the bank required it to have policies and procedures in place to detect and prevent APP fraud, or otherwise to assist in the recovery of money transferred as a result of it. The High Court answered in the negative and granted the bank's application for summary judgment, primarily for three reasons:

**1 The bank is not a gatekeeper** - if the bank owed a duty to its customers to detect and prevent APP fraud (or otherwise assist in the recovery of monies lost as a result), the *Quincecare* duty would be elevated to a status above a bank's primary duty to act on a customer's instructions. This would necessarily undermine the effectiveness of customer instructions and impose an onerous obligation on the bank to second-guess genuine payment instructions.

**2 Not practical to extend the duty** – the High Court held that if the *Quincecare* duty was to be extended, as proposed by the claimant, this would have to be by reference to some form of industry-recognised rules, under which the bank could identify the particular circumstances in which it should not act (or make further enquiries before acting) upon a customer's payment instructions. Such rules and safeguards are currently non-existent at industry-level (save for the APP Voluntary Code, for which see below).

**3 The *Quincecare* duty applies to corporate customers and unincorporated associations only** - pointing to the decision in *Singularis*<sup>3</sup>, the High Court observed that the Supreme Court "said nothing about a bank protecting an individual customer (and her monies) from her own intentional decision." The *Quincecare* duty is limited to circumstances where an agent of the bank's corporate customer (or unincorporated association customer, as the case may be) misappropriates the customer's monies. Therefore, where an individual customer makes a genuine payment as a result of deceit, any later action to rescind the payment and reclaim the monies from the fraudster will not support a related claim against the bank.

## Comments

This will no doubt be a disappointing decision for individual customers, particularly in light of the increasing number of APP fraud cases. However, individual customers may instead

seek relief via the APP Voluntary Code<sup>4</sup> under which a number of banks have agreed to reimburse victims of APP fraud (subject to certain conditions being met).

For most banks however, this decision will be welcome clarification that the scope of the *Quincecare* duty extends only to corporate clients.

The judgment provides for an application for permission to appeal (with a deadline to file on 10 February 2021). HFW will continue to monitor the case over the coming months and provide further updates as necessary.

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<sup>2</sup> *Phillips v Barclays Bank UK Plc [2021]* EWHC 10 (Comm)

<sup>3</sup> *Singularis Holdings Ltd v Daiwa Capital Markets [2019]* UKSC 50

<sup>4</sup> <https://appcrmsteeringgroup.uk/wp-content/uploads/2019/05/CRM-code-LSB-final-280519.pdf>

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