



# Quincecare duty: Supreme Court refuses to extend bank's duty in APP Fraud.

Chris Louth (Managing Associate)

18<sup>TH</sup> JULY 2023



[www.humphrieskerstetter.com](http://www.humphrieskerstetter.com)

The Supreme Court, in a unanimous Judgment handed down yesterday, refused to extend a bank's Quincecare duty to circumstances arising from an Authorised Push Payment ("APP") fraud.

Lord Leggatt who delivered the leading Judgment concluded that the Court of Appeal had erred in its previous decision which was deemed to be inconsistent with the first principles of banking law.

APP fraud is not an uncommon fraud and despite the Supreme Court's Judgment, one naturally sympathises with the victims of the sophisticated fraud in this case.

## **The payments**

The facts of this case are, by now, largely well known. In short, Dr Phillip was persuaded by a fraudster to transfer sums of £700,000 into a "safe account" in the UAE. He made two payments from his Barclays account, and this was the bulk of life savings. The fraudster was so compelling that Dr Phillip refused to believe the police when they informed him that they suspected that a large-scale fraud was being carried out and despite visits from the police he attempted (unsuccessfully) to transfer further amounts to the "safe account" on the instructions of the fraudster.

An important point to note is that in the two payment instructions to the bank, the customer gave a clear and valid instruction to its bank to make the transfers.

## **Banking law principles**

In principle, the Quincecare duty is relatively straightforward. Following a line of authorities, it has been established that the duty of care owed by a bank to its customers requires a bank not to execute a payment instruction given by an agent of the customer without making inquiries if the bank has reasonable grounds for believing that the instruction is an attempt by the agent to misappropriate the customer's funds. The early line of authorities often involved circumstances where a director of a company misappropriated company funds.

To understand the Quincecare duty it is a useful reminder to revisit a bank's basic duties to a customer. Generally speaking, a bank is not a trustee or fiduciary of money deposited by a customer. Simply they are a debtor. The bank is obliged to repay the customer when it makes a demand, and the bank acts as a customer's agent. Lord Leggatt examined these principles in detail to arrive at his conclusion.

In Lord Leggatt's Judgment, when the principles of agency law are properly applied the legal reasoning for the Quincecare duty becomes clear. He fundamentally disagreed with the Court of Appeal's earlier approach in this case. He regarded the approach as flawed, for two reasons.

## **The Court of Appeal's incorrect approach**

Firstly, the Court of Appeal took the view that the bank's primary duty to execute a valid payment order potentially conflicted with its duty to exercise reasonable skill and care in executing such an order and this conflict may be resolved by the bank being required, in certain circumstances, not to execute an order without making inquiries. This was the wrong approach and on a proper understanding of a bank's duties there can be no conflict. In Lord Leggatt's opinion, where a bank receives a valid payment order which is clear and leaves no room for interpretation or choice, the bank's duty is simply to execute the order by making the requisite payment. The issue of duty of care does not arise.

Secondly, the Court of Appeal resorted to policy considerations as a way to resolve the perceived conflict. This was also wrong. This is a matter for legislators and a duty to combat fraud is not an ordinary incident of the contractual relationship between bank and customer. It is not, in Lord Leggatt's view, the role of the Courts to formulate policy.

Applying the principles of agency, Lord Leggatt concluded that the authority conferred on an agent by a customer of a bank to give payment instructions on the customer's behalf does not include authority to act dishonestly in pursuit of the agent's own interests and in fraud of the customer. This is no doubt uncontroversial.

Lord Leggatt went on to conclude that an agent acting in this way will therefore lack actual authority to give the instruction on behalf of the customer. However, the agent will still have apparent authority given the customer's representation to the bank that the agent is authorised to give payment instructions. The

situation changes where there are circumstances to suggest dishonesty on behalf of the agent which would cause a reasonable banker before executing an instruction to make inquiries to verify the agent's authority. If the bank is on such notice but executes the payment instruction without making inquiries the bank will therefore be in breach of duty.

## Lord Leggatt's conclusion

Lord Leggatt described the Quincecare duty not as some special rule of law but rather an application of the general duty of care owed by a bank.

Having carried out a detailed analysis, Lord Leggatt concluded that the Quincecare principles have no application to a situation where the customer is a victim of APP fraud as, in the circumstances, the validity of the instruction is not in doubt. Provided the instruction was clear and whether given personally or by an agent acting with apparent authority, no inquiries are needed to clarify or verify what the bank must do. To do otherwise, would risk the bank being in breach of duty to execute valid payment orders.

Lord Leggatt also made clear however, that the Quincecare duty applies not only to corporate customers but also to individuals. He was minded to ensure that his Judgment was not to be seen as protecting corporate customers at the expense of individuals.

## Comment

This is likely to be seen as a blow to the redress victims of APP fraud can obtain from their bank. That might be the case but undoubtedly the Supreme Court came to the correct conclusion to not extend the Quincecare duty in these circumstances.

That said, the duty will still apply in the correct circumstances. It will remain a valid cause of action especially in situations where companies have been defrauded by rogue directors. Where payments have been paid away from a company account on a fraudulent basis it should remain a cause of action to investigate. Likewise, the cause of action should be a cause of action to be considered in insolvency situations and where liquidators of a company are seeking to recover amounts from directors who have transferred funds fraudulently. On this basis, Quincecare claims are still likely to arise.

There is a slim glimmer of hope for victims of APP fraud as Lord Leggatt left open the possibility of Dr Phillip's alternative claim that the bank was in breach of duty after the fraud had been discovered in not taking adequate steps to recover the money which had been transferred to the UAE. This is a different question completely and will be the subject of a trial in due course.



### **Chris Louth**

*Managing Associate*

[cl@humphrieskerstetter.com](mailto:cl@humphrieskerstetter.com)

+44 207 438 1121



**Humphries Kerstetter LLP**  
St. Bartholomew House  
92 Fleet Street  
London EC4Y 1DH

Tel: +44 207 632 6900  
[www.humphrieskerstetter.com](http://www.humphrieskerstetter.com)