



## Authorised Push Payment Fraud and Quincecare – (In)adequate Consumer Protection?

15 March 2022

The Court of Appeal has delivered a significant judgment in *Philipp v Barclays Bank UK Plc* [2022] EWCA Civ 318. The judgment arose in the context of a customer's claim against her bank for failing to stop her transferring substantial sums of money to a fraudster. The payments are said to be in breach of the bank's Quincecare duty, under which a bank must make inquiries and refrain from processing a payment instruction if there are reasonable grounds to believe it is an attempt to misappropriate the customer's funds.

Authorised push payment fraud or "APP" is an established and fast-growing issue for customers and banks. Recent figures quoted by the Payment Systems Regulator show that over £350 million was stolen using APP in the first six months of 2021, exceeding card fraud. Every year thousands of individuals and businesses fall victim to APP scams, whereby they are deceived into sending money to an account controlled by a fraudster posing as a genuine payee.

In *Philipp*, the customer and her husband lost a very significant portion of their personal savings when they were targeted by APP fraud in March 2018. Mrs Philipp was deceived into making two international payments totalling £700,000 from her account, believing that she was transferring the money to assist an investigation by the FCA and the NCA. The payments were properly and lawfully authorised by Mrs Philipp. This is significant as the Quincecare duty had only previously been applied where there were doubts over the motives of a signatory acting on behalf of a corporate customer, so that the instruction itself was fraudulent.

In a unanimous decision, the Court of Appeal found that the Quincecare duty does not depend on whether the bank is instructed by an agent of the customer. In principle the duty could arise where a customer instructs the bank themselves to make the payment and where the customer is the victim of authorised push payment fraud.

The Court of Appeal emphasised the public policy considerations which underpin the duty and the central role played by banks in combatting fraud: "...to combat fraud, banks with the relevant reasonable grounds for belief should not sit back and do nothing". Significantly, the Court held that the issue of whether the duty arose on the facts here should not be determined by way of summary judgment, but should instead be resolved at trial. In so doing the Court of Appeal set aside the High Court's earlier decision granting summary judgment in favour of the bank.

The judgment will be welcomed by potential claimants. Subsequent developments in these proceedings will be closely observed by the banking industry, which may consider the direction of travel problematic, particularly in light of the speed with which transactions are executed through the BACS and Faster Payment systems. We will consider the full scope of the duty in more detail together

with the adequacy of existing mechanisms to compensate victims of APP fraud and further opportunities for law reform in subsequent articles.

A copy of the Court of Appeal's judgment in Philipp v Barclays Bank UK Plc [2022] EWCA Civ 318 can be found here: <https://www.bailii.org/ew/cases/EWCA/Civ/2022/318.html>.

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If you would like to discuss any aspect of this case please contact Paul Dorrans or Jasmin Ash-Briggs of the Dispute Resolution Team.

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