

Authorised Push Payment Fraud – Where Are We Now & Where Are We Heading?

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CCI

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Contents

- ❑ Introduction to the legal principles.
- ❑ The regulatory regimes.
- ❑ The *Quincecare* duty, especially *Philipps* and *Arena*.
- ❑ Claims against the recipient bank.

Introduction

- Authorised/push v unauthorised/pull payment fraud.
- Distinguish internal fraud.
- Common types of push payment frauds:
 - impersonation fraud;
 - investment fraud;
 - sale fraud;
 - invoice fraud;
 - romance fraud.

Introduction

- Potential defendants:
 - fraudster;
 - paying bank;
 - receiving bank.

Introduction

- Legal distinction between authorised and unauthorised payments at common law:
 - Primacy of the mandate/signing rules + Ts and Cs.
 - An unauthorised payment is void, the bank cannot debit the account: *Tai Hing Cotton Mill v Liu Chong Hing Bank Limited* [1986] AC 80.
 - (Unless eg the customer has facilitated the fraud: *London Joint Stock Bank v Macmillan* [1918] AC 777.)
 - But an authorised payment is valid, even if the customer was mistaken: *Bank of Scotland v Brunswick Developments (1987) Ltd (No 2)* (1999) SC (HL) 53.

Introduction

- Economic justification for the distinction:
 - Limits of the bank's power of oversight and control.
 - Expense and delay.
 - Moral hazard.

Changing the direction of travel of a tanker?

- Rigid banking system
 - Fixed system of banking
 - Despite technological advances, remained relatively unchanged in approach
 - Not reacting quick enough to changes by fraudsters and in particular the rise of APP fraud
 - Recommendations for change in regulation and general approach of financial institutions with regulatory codes

Solution: Maybe

- Contingent Reimbursement Model ('CRM')
 - Response by the Payment Systems Regulator ('PSR') to a 'super-complaint' by 'Which' on APP fraud
 - Objective was a) reduce the occurrence and impact of APP scams and b) give confidence in the system
 - Not reacting quick enough to changes by fraudsters
 - Recommendations for Change

CRM

- Voluntary code in force from May 2019 that provided for:
 - A review of the transaction by the sending bank
 - Reimbursement within 15 days
 - Right to refer any unsatisfactory response to the Financial Ombudsman Service

Half the answer?

- As voluntary, only 12 banks signed up to the CRM code
- Led to the PSR and Bank of England developing a mandatory system under s.72 of the Financial Services and Markets Act 2023 for faster payment transactions and CHAPS payments

What was excluded?

- The mandatory authorised push payment reimbursement scheme does not cover
 - Payments across other systems
 - International payments like the CRM
 - Payments for unlawful purposes
 - Where parties are in a dispute

The new system

- Upon a payment service provider('PSP') being notified by a customer:
 - Sending PSP must notify the receiving PSP within 2 hours of the APP fraud claim
 - Receiving PSP must provide the relevant information within 3 business days
 - Receiving PSP will remit 50% to sending PSP within 5 business days

The Quincecare Duty

- *Barclays Bank Plc v Quincecare Ltd* [1992] 4 All ER 363. A “banker must refrain from executing an order if and for as long as the banker is ‘put on inquiry’”.
- Subsequently the test was expressed as “*gross negligence*”.
- *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2017] EWHC 257 (Ch).
 - “*Glaring*” signs of a fraud. Knowledge of impending insolvency.
 - 25% contributory negligence.

The Quincecare Duty and APP Fraud

- *Philipp v Barclays Bank UK plc* [2023] UKSC 25:
 - Fraudster claimed to be working for FCA/NCA.
 - £700k sent to a “safe account” in the UAE.
 - Philipps directed to mislead the bank and a police officer who visited the Philipps’ house.
- Claim by Philipps and SJ application by the bank.

The Quincecare Duty and APP Fraud

- Judgment of Leggatt JSC at [97-100].
- The *Quincecare* duty is simply an aspect of the bank's obligation to act on customer instructions.
- *“Where a bank is ‘put on inquiry’ in the sense of having reasonable grounds for believing that a payment instruction given by an agent purportedly on behalf of the customer is an attempt to defraud the customer, this duty requires the bank to refrain from executing the instruction without first making inquiries to verify that the instruction has actually been authorised by the customer”.*

The Quincecare Duty and APP Fraud

- Not limited to corporate customers, eg joint accounts. Also lack of mental capacity.
- But does not cover APP fraud where no agent involved.

The Quincecare Duty and APP Fraud

- Does the bank have a duty to try to retrieve money if instructed? *Philipps* at [117-118].
- Can the bank contractually exclude Quincecare liability? *Hamblin v Moorwand* [2025] EWHC 817 (Ch).

The Quincecare Duty and APP Fraud

- *Arena Television v Bank of Scotland* [2025] EWHC 3036 (Comm).
- ABL fraud. Lease financing of largely fictitious equipment.
- Perpetrated by the directors of the claimant companies, Arena and Sentinel, now in liquidation.
- Internal fraud, not APP fraud.
- Losses of over £1 billion.

The Quincecare Duty and APP Fraud

- Liquidators claimed:
 - Breach of mandate/*Quincecare* duty by the banks.
 - Directors lacked actual authority because transactions fraudulent.
 - Directors also lacked ostensible authority because bank on enquiry as to fraud.
 - Claimed for (a) total of fraudulent payments and (b) increase in deficit since 2008.

The Quincecare Duty and APP Fraud

- Banks argued:
 - Directors have actual authority where fraud is not on the company, but by the company.
 - The mandate encompassed fraudulent transactions.
 - Banks could cross-claim in deceit and conspiracy, especially as claimants were one-man companies. The acts of the directors could be attributed to the companies.

The Quincecare Duty and APP Fraud

- Bank and companies both apply for SJ.
- Judgment of Butcher J, 19 November 2025. Held:
 - Arguable that (a) an agent only has actual authority to act honestly and (b) there is no distinction between frauds on and by the principal (c) especially in a company context.
 - These issues should be determined on basis of established facts at trial.

The Quincecare Duty and APP Fraud

- Held:
 - ❑ Not arguable that the terms of the specific mandate granted directors authority to conduct fraudulent transactions.
 - ❑ Not arguable that banks liable for increase in deficit. Not within their scope of duty, which is to prevent unauthorised payments.
 - ❑ Banks' cross-claims in deceit and conspiracy arguable. Arguably the fact that companies were one-man companies is relevant.

Claims Against Recipient Banks

- Four cases to highlight
 - *Royal Bank of Scotland v JP SPC 4* [2023] A.C. 461 in the Privy Council
 - *Larsson v Revolut Ltd* [2024] EWHC 1287 (Ch) before Zacaroli J
 - *Terna Energy Trading v Revolut Ltd* [2024] 2 ALL ER 525 before HHJ Paul Matthews sitting as a High Court Judge
 - *Santander UK Plc v CCP Graduate School Ltd* [2025] EWHC 667 (KB) before Jennifer Eady J

Thank you

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