The Ongoing Risks and Challenges of APP fraud and the *Quincecare* duty

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Abstract

The article explores the Quincecare case-law emerging after Philipp v Barclays Bank [2023] focusing on: (i) the ways in which claimants are attempting to circumvent the limits on the Quincecare duty; (ii) the steps that should be taken to comply with the duty; and (iii) alternative grounds for claims. It concludes with practical guidance on preparing for anticipated developments.

Introduction

Authorised Push Payment (**APP**) fraud figures remain high, with recent research showing around 200,000 reported cases and losses reaching over £300 million annually.[1] This type of crime is notoriously difficult for banks to tackle because the victim seemingly consents to the transaction by giving payment instructions albeit under false pretenses. Claims cost the banking sector millions in compliance and legal costs and remain one of the highest priority risk areas for retail banks. Two developments that have altered the legal landscape in relation to APP fraud are important. First, the introduction of a mandatory reimbursement scheme (the Scheme), which allows many victims of APP fraud to claim losses from the sending bank that processed the outbound payment.[2] Secondly, the Supreme Court decision in *Philipp v Barclays Bank Plc*[3], which has limited the common law duties that banks owe customers in relation to losses flowing from fraudulent payment instructions that are not covered by the Scheme. This article will focus on the case law illustrating: (i) the ways in which claimants are attempting to circumvent the limits on the *Quincecare* duty; (ii) the steps that should be taken to comply with the duty; and (iii) alternative grounds for claims.

Summary

The starting point is that the bank's general duty of care is to execute customer payment instructions with reasonable skill and care. The *Quincecare* duty arises where an agent acts on behalf of the customer to give instructions. In that scenario, to ensure reasonable skill and care is exercised, the bank must not execute the instructions when on inquiry of fraud. In such instances, the bank must conduct further enquiries to ensure that the agent has the requisite authority. The *Quincecare* duty is owed only to the bank's customer, and not to any third party beneficiaries of the customer's accounts. This was confirmed in *RBS v JP SPC 4*[4], where beneficiaries of the account used to perpetrate the fraud, which had no relationship with the bank that executed the fraudulent instructions, could not make a claim against the bank. Nonetheless, two cases demonstrate ways in which the limits on the duty may be avoided:

- A derivative claim on behalf of a company used to conduct the fraud (*Hamblin v Moorwand Ltd & RND Global Ltd*[5]). In this case, the customers of the bank that sent the payment to the company account made a claim against the recipient bank holding the company account that processed the fraudulent payments.
- A constructive trust claim (*Hamblin v World First Ltd and Moorwand NL Ltd*[6]). In a judgment arising from the same fraud but with a different bank and transactions, the customers of the

[1] UK Finance, "Annual Fraud Report 2025" (UK Finance, 2025), UK Finance, *https://www.ukfinance.org.uk/system/files/2025-05/UK%20Finance%20Annual%20Fraud%20report%202025.pdf* at pp.15-16.

[2] For further details on developments in relation to the Scheme, see Piers Reynolds, Laura Feldman, "Tackling authorized push payment (APP) fraud: a challenging and evolving payments environment" (2025) *Journal of Financial Services* 1, edn 24.

[3] *Philipp v Barclays Bank UK Plc* [2023] UKSC 25; [2023] P.N.L.R. 29.

[4] *RBS v JP SPC 4* [2022] UKPC 18; [2022] P.N.L.R. 22.

[5] *Hamblin v Moorwand Ltd & RND Global Ltd* [2025] EWHC 817 (Ch).

[6] *Hamblin v World First Ltd and Moorwand NL Ltd* [2020] EWHC 2383 (Comm)

bank that sent the payment to a company account used to facilitate the fraud claimed that the company was a constructive trustee for the funds received into the account with the receiving bank, which the company held on trust for them as beneficiaries. They claimed this entitled them to bring representative proceedings, as beneficiaries of the trust, against the recipient bank.

If grounds for the *Quincecare* duty can be established between the relevant parties, the claimant will need to show a breach of duty to claim from the bank. Specifically, it will need to be shown that the bank was on inquiry of fraud and that it failed to take sufficient steps to prevent the fraudulent transactions. As we explore further below, certain factors are relevant to whether the bank's processing of the transactions breached the *Quincecare* duty; including: (i) discrepancies with account opening documents and/or documents used to instruct payments; (ii) requests for large payments that are inconsistent with the account history; (iii) use of the account that is inconsistent with its purpose; (iv) the bank suspects fraud but fails to act on those suspicions; (v) a lack of rationale for transactions; (vi) failing to complete regulatory checks that support failings to identify fraud; (vii) payment of large sums from the account within a short period of time; and (viii) a motive for misuse of the account by the agent.

The court may also allow a claim on alternative legal grounds in cases of APP fraud:

- A retrieval duty on the customer's bank sending the funds (the Sending Bank). In *Philipp v Barclays*, the court held that it was arguable that there is a retrieval duty on the Sending Bank, but to date no cases have seen the issue considered beyond a summary determination. The courts have thus far dismissed claims attempting to impose a retrieval duty on the bank that receives the funds from the Sending Bank (the Receiving Bank).
- An unjust enrichment claim against the Receiving Bank, although this claim has only been upheld on summary determination so it remains relatively immaterial.
- A dishonest assistance claim against the Sending Bank, although this claim has again only been upheld in the context of summary determination.

We explore the above in this article and conclude with suggestions on the approach that banks should take in light of the case law.

The Quincecare duty

Before assessing the aftermath of *Philipp v Barclays*, *it* is necessary to explain the overarching general duty that banks owe to customers. Banks have a duty to comply with a customer's instructions and, in so doing, to act with reasonable skill and care. The *Quincecare* duty is simply an application of the general duty of care owed by a bank "to interpret, ascertain and act in accordance with its customer's instructions".[7] In that, when an agent makes a payment request, the bank should verify that the instructions are not given fraudulently.[8] An agency relationship arises where the authorising entity (the principal) delegates authority to a third party (the agent) to act on its behalf. In the banking context, the agency relationship places additional obligations on the bank because it needs to consider whether the agent has authority to act for the principal. If the bank executes instructions when on inquiry of fraud by the agent and without adequate checks, and the instruction proves to have been given without the customer's authority, the bank will be in breach of the *Quincecare duty*.[9] *Philipp v Barclays* confirms the *Quincecare* duty applies where a Sending Bank has reasonable grounds to believe an agent's request for payment is an attempt to defraud the customer. Generally, as a person cannot steal from his or herself in the standard scenario of an individual giving instructions, as with APP fraud, the court has held that the *Quincecare* duty will not arise.[10] The at-risk accounts are therefore those where there is an agency relationship. Established examples of agency relationships are:

- a company and its directors;
- states and its representatives (e.g. politicians and officials); and
- under the mandate for a joint account, where either account holder had power to bind the other.

The limitation on the duty to agency relationships reflects that a bank is generally entitled to assume that its

[7] Lord Leggatt JSC at [97] in *Philipp v Barclays*.

[8] *Philipp v Barclays* at [90]. Lord Leggatt JSC explained: "[t]he agent will still in general have apparent authority to do so by virtue of the customer's representation to the bank that the agent is authorised to give payment instructions on its behalf. But not if there are circumstances suggestive of dishonesty apparent to the bank which would cause a reasonable banker before executing an instruction to make inquiries to verify the agent's authority. In such circumstances the bank's duty to exercise reasonable skill and care in and about executing the customer's instructions requires the bank to make inquiries to ascertain whether the instruction given is one actually authorised by the customer. If the bank executes the payment instruction without making such inquiries, the bank will therefore be acting in breach of duty. Furthermore, the instruction will not bind the customer, as the dishonest agent will lack apparent as well as actual authority to give it on behalf of the customer".

[9] *Philipp v Barclays at* [97]. Lord Leggatt JSC opined: "[w]here 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".

[10] *Singularis Holdings Ltd (in liquidation) v Daiwa Capital Markets Europe Ltd* [2019] UKSC 50; [2020] B.C.C. 89 at [37].

customer's instructions are given honestly.[11] The duty to investigate further also only arises in the context of an agency relationship where the validity or content of the customer's instruction is unclear or leaves the bank with a choice about how to carry out the instruction. Where the bank receives a valid payment order which is clear and leaves no room for interpretation or choice about what is required in order to carry out the order, the bank's duty is simply to execute the order by making the requisite payment.[12] This shows that showing the bank is on inquiry and has breached the duty is a high standard (see further below).

Despite the constraints imposed on the *Quincecare* duty by the Supreme Court, recent cases demonstrate that claimants are relying on the duty as a basis for claims to broaden the applicable agency relationships outside of the established scenarios.

The Extended Quincecare duty

Recent cases where claimants have attempted to extend the *Quincecare* duty to scenarios beyond a claim against a Sending Bank based on an accepted agency relationship fall into three broad categories:

- a claim based on a novel tortious duty of care;
- a derivative claim on behalf of a company where the company is used to perpetrate fraud; and
- a beneficiary claim based on a constructive trust arising from fraud where a company used to perpetrate the fraud is deemed a constructive trustee.

Tort claim

In *RBS v JP SPC 4*, the Privy Council dismissed a claim attempting to use tort law to extend the *Quincecare* duty. The case arose when litigation financing funds (the Funds) operated an investment scheme using the account of a company (SIOM) to hold the invested funds. Investors subscribed for certain classes of shares in the Master Fund, which were transferred from the Funds' account to SIOM's account held at RBS. The relationship between the parties was therefore as follows:

- The Funds' account held with its bank to receive the subscription amounts.
- The Funds' bank sent the subscription amounts to the SIOM company account held with RBS. RBS' customer was SIOM, not the Funds.

The subscription amounts ought to have been used by SIOM to invest in litigation funding (the Investment). SIOM was owned by the two individuals, the fraudsters, who had conceived of the investment. The individuals fraudulently transferred significant sums to third party companies in which they had undisclosed interests. RBS became concerned with the use of the account and designated it high-risk, but no steps were taken to freeze the account.

The Funds alleged that RBS was subject to a duty of care to the Funds by virtue of its alleged knowledge of the investors' interest in the SIOM account. Its position was that where a Receiving Bank knew, or ought to have known, that there was a real possibility that the unidentified beneficial owners of an account were being defrauded, the Receiving Bank was obliged not to honour instructions in relation to the fraudster's account until such time as it had made reasonable enquiries and satisfied itself as to the propriety of the conduct of those accounts. The Funds were therefore looking to augment the *Quincecare* duty to an obligation owed by the Receiving Bank to third party beneficiaries of the account. RBS applied to strike out the claim.

The Privy Council upheld the strike out application. It found that the Funds could not extend the *Quincecare* duty by relying on a duty of care based on the Receiving Bank's knowledge of the Fund's indirect interest in the accounts. The Privy Council relied on several factors when dismissing this claim, including that: (i) the Receiving Bank did not agree to carry out any task or perform any service for the Funds; (ii) there were no exchanges of communications between the Funds and the Receiving Bank; (iii) the designation of the account as high-risk did not arise from any dealings between the Receiving Bank and the Funds; (iv) RBS' alleged knowledge of the Funds' interest was insufficient to create a duty of care. Knowledge alone is insufficient to establish a duty; further positive steps are required to show an assumption for losses; and (v) banks and other parties who are alleged to be assisting a breach of fiduciary duty in relation to managing company accounts are liable only if they are dishonest (i.e. in dishonest assistance) and not if they are merely negligent. Where the circumstances do not amount to a breach of trust, the court was not willing to allow the claimant to use tort law to extend the limited circumstances in which a claim should arise.

As this was a summary application, the Privy Council did not assess the knowledge of the bank; the question for the court was simply that assuming that the bank knew or ought to have known that the Funds had an interest in the account, could this provide a sufficient basis for a duty to arise. Given that the *Quincecare* duty was not engaged, the Privy Council also did not assess the circumstances in which a bank will be on notice of fraud (i.e. the red flags that could trigger a claim) and the reasonable steps that should be followed to satisfy the *Quincecare* duty in that scenario.

The judgment is a welcome decision that is consistent with the established understanding that there has to be sufficient proximity between private parties to establish a duty of care. As a result, the tort law route for a claim

[11] The deriving case of *Barclays Bank Plc v Quincecare Ltd* [1992] 4 All E.R. 363; [1988] 1 F.T.L.R. 507 assesses this issue; see further below.

[12] *Philipp v Barclays* at [64].

seems unlikely to succeed. Nonetheless, two recent judgments suggest it may be possible to use other legal doctrines to bring a claim against a Receiving Bank in cases of APP fraud.

Derivative claims

A novel derivative claim on behalf of a shell company used to perpetrate APP fraud was brought against the Receiving Bank in *Hamblin v Moorwand Ltd & RND Global Ltd.* Generally, a derivative claim can be brought by representatives of a company on its behalf to enforce the company's legal rights.[13] The court's permission is required to bring the claim. The company is joined as a defendant to ensure it is bound by the judgment and in accordance with procedural rules for bringing a derivative claim. Derivative claims can usually only be brought by shareholders of the company. However, cases have indicated this is not a closed category.[14] Briggs J (as he then was) has observed that a person "with a sufficient interest to sue as the company's representative claimant, for the benefit of all its stakeholders" may bring a derivative claim. However, prior to the *Hamblin v Moorwand Ltd & RND Global Ltd* decision, a derivative claim has never been brought by victims of an APP fraud perpetrated on a company.

The facts of *Hamblin v Moorwand Ltd & RND Global Ltd* arose when the fraudster arranged a payment wallet with Moorwand Ltd in the name of RND Global Ltd. The claimants were fraudulently induced to pay 160,000 into the wallet by the fraudster, which was then dissipated from RND Global Ltd's account. The claimants brought two claims in the County Court:

- a claim on their own behalf against Moorwand Ltd as the Receiving Bank; a derivative claim on behalf of RND Global Ltd against Moorwand Ltd as the Sending Bank.
- RND Global Ltd took no part in the proceedings but was joined as a defendant for the purposes of the derivative action.

The claimants alleged that Moorwand Ltd had breached its mandate and its contractual duties when debiting the company's account based on instructions from an agent that was in fact a fraudster. The County Court dismissed the claimants' claim in their own right. However, the court found that the victims of the APP fraud were entitled to bring a derivative claim on behalf of RND Global Ltd against its bank, Moorwand Ltd, as the Sending Bank. The cases were appealed to the High Court in relation to finding that Moorwand Ltd had not breached the duty but the County Court decision to allow the derivative action was not appealed.

This is significant. Normally victims of APP fraud can only recover under the *Quincecare* duty against their own bank (the Sending Bank). By allowing victims of APP fraud to bring a derivative claim on behalf of the company that holds the account at the Receiving Bank, the court has in effect allowed victims of APP fraud to bring claim not only against the Sending Bank but also the Receiving Bank. Importantly, this was only a County Court decision in relation to the establishment of a duty of care, therefore it remains to be seen whether the High Court would allow such a claim. The decision in *RBS v JP SPC 4* (explored above) suggests that courts above the County Court may be reluctant to allow APP fraud victims to bring derivative claims on behalf of the company that received the fraudulently transferred funds. As we explained, the Privy Council held that the *Quincecare* duty did not extend across to an APP fraud victim with which the Receiving Bank had no contractual relationship, even if the Receiving Bank knew or ought to have known that the APP fraud victim was the beneficial owner of monies in the customer's account. This is in contrast to the *Hamblin v Moorwand Ltd & RND Global Ltd* decision. The Funds in *RBS v JP SPC 4* could have mimicked the *Hamblin* approach and joined SIOM as a party to the claim and brought a derivative claim to avoid the limitations the Privy Council placed on the rights of the Funds.

It should be noted that on appeal, the High Court upheld the claimants' appeal and found that there was a breach of the *Quincecare* duty by Moorwand Ltd. We explore the reasoning behind the decision below whilst noting that this issue is now subject to an appeal to the Court of Appeal.

Beneficiaries of a trust

In an earlier 2020 decision as part of the *Hamblin* litigation, *Hamblin v World First Ltd and Moorwand and NL Ltd*, the same claimants commenced the initial stages of a beneficiary claim against a Receiving Bank arising from the same underlying fraud. The claim was based on a constructive trust. This type of trust arises by operation of law as a result of unconscionable conduct. Fraud is an established category of unconscionable conduct where the law can impose a trust.

In this case, the claimants transferred £140,000 into a company account (Moorwand NL Ltd, the second defendant) held with the Receiving Bank (World First Ltd, the first defendant), which the fraudster(s) then dissipated. The claimants brought a claim against Moorwand NL Ltd and World First Ltd. It was alleged that Moorwand NL Ltd was the corporate vehicle by which the fraud was carried into effect by individuals unknown and the company was alleged to be a constructive trustee for the sums paid away. The claimants asserted that they could in turn bring "representative proceedings" against World First Ltd on behalf of Moorwand NL Ltd as beneficiaries of the trust. Beneficiary proceedings are only allowed in "special circumstances". The judgment does not articulate the grounds of the fraud that triggered the trust but presumably it was the fraudulent action of the

[13] *Palmer's Company Law* (London: Sweet & Maxwell) Vol.2, Pt 8, para.8-36.

[14] *Universal Project Management Services Ltd v Fort Gilkicker* [2013] EWHC 348 (Ch); [2013] B.C.C. 365.

unknown individual(s) that caused the claimants to transfer the funds into the company account. It was accepted that there was no fraudulent conduct by World First Ltd. The claimants further alleged that they could rely on various causes of action on behalf of Moorwand NL Ltd against World First Ltd. Primarily, that World First Ltd had acted in breach of the *Quincecare* duty (which was triggered by the agent of Moorwand NL Ltd acting fraudulently) by undertaking instructions when the company had no registered directors (therefore clearly no individuals with authority to give instructions on its behalf). The Sending Bank was not a party to the proceedings, presumably because there was no agency relationship to give rise to the *Quincecare* duty.

World First Ltd applied to strike out the claim. It argued that the policy of the law is to restrict the right of recourse against those in the position of the first defendant and the claimants by only allowing breach of trust claims based on the high standards of dishonest assistance in a breach of trust, or in knowing receipt, and no such claims were raised.

The High Court did not accept the position of World First Ltd, refusing to accede to the attempt to strike out the claim. The court found that Moorwand NL Ltd was arguably a trustee by virtue of a constructive trust arising on the basis of fraud. The judge does not conduct any detailed analysis of the claim; simply opining at [23] that:

> "[t]o be clear, I do not conclude that the claimants' case in this regard is anything other than realistically arguable. It may well fail when the issue can be considered in the greater detail that a trial permits, and against a series of factual findings as opposed to factual assumptions".

The judge went on to conclude that the fraud provided sufficiently special circumstances to allow a beneficiary claim by the claimants. It was also found to be arguable that the *Quincecare* duty arose and was breached. This was because the fraudsters with purported authority for the company could not have given instructions as the company did not have any recorded directors. It appears that World First Ltd did not identify this.

The case suggests another potential route for victims to pursue claims through relying on a constructive trust where a corporate vehicle has been used to perpetuate fraud. Again, this is significant, it shows a claim can be made against the Receiving Bank in cases of APP fraud; however, the case is pre-*Philipp and* pre-*RBS v JP SPC 4*, only contains a cursory analysis of the claim and was settled before proceeding to trial. This leaves questions about the feasibility of this type of claim. It also has to be recalled that the decision was only a summary determination that found the claim was arguable.

The *Hamblin* litigation underscores that company accounts are a high-risk area because of the new potential for third parties to enforce the claim on behalf of any shell company used to perpetrate fraud.

'On inquiry'

Even if the *Quincecare* duty is established, the claimant will still need to show that the bank was on inquiry of the fraud and as a result should not have executed the instructions. In assessing when a bank is on inquiry, *Barclays v Quincecare* explains that:

- the standard is of an ordinary prudent banker;
- everything will depend on the particular facts of each case. Relevant factors include the standing of the corporate customer, the bank's knowledge of the signatory, the amount involved, the need for a prompt transfer, the presence of unusual features, and the scope and means for making reasonable enquiries;
- the claimant will in general be required to show that the fraudulent agent acted in a way that showed "telling indications" of fraud. The court will give "full weight" to the underlying assumption that "trust, not distrust, is the basis of a bank's dealings with its customers".

There have been limited recent cases looking at whether a bank has breached the duty which makes it difficult to complete a thorough analysis. The court's approach to breach also tends to explore issues collectively without pinpointing a particular factor as a tipping point indicating when a breach crystallised. Further, there is limited case law post-*Philipp v Barclays*, which was a crucial juncture in this area as the judgment criticised many of the earlier decisions. Lord Leggatt JSC explained that many of the previous cases followed a flawed analysis when the law "went down the wrong track" and allowed the *Quincecare* duty to arise outside the context of agency relationships. Nonetheless, from the cases that remain good law, it is possible to identify certain factors that will be relevant.

Know your client checks

Failing to complete adequate know your client checks that result in fraud may be grounds for claiming a breach of the *Quincecare* duty. For example, in *Hamblin v Moorwand Ltd & RND Global Ltd*, there were discrepancies with the identity documents used to open the account for receipt of the fraudulently transferred funds. The utility bill used for account opening was inconsistent with the company's representatives. The company documents also contained the incorrect date of birth for the officer of the company that purportedly applied to open the account. Documents used to request payment also contained discrepancies: an invoice used to claim payment referred to the incorrect representatives of the company.

Moorwand Ltd accepted that they failed to identify errors but contended that this is part of the regulatory process and was not relevant to any proper common law claim. Smith J dismissed this argument; although regulatory failures (for instance: failure to monitor for money laundering) do not equate with breaching the duty, they may be facts that are relevant to the breach of duty. Nonetheless, although regulatory matters may be

relevant, they are not synonymous with the *Quincecare* duty. In *The Federal Republic of Nigeria v JPMorgan Chase Bank, N.A*[15], the bank was held not to have breached the Quincecare duty despite potential questions around the bank's approach to compliance, anti-money laundering (AML) and financial crime controls. Cockerill J explained that there were "plainly high-risk features for the purposes of AML and financial crime and corruption generally" but those were "plainly not enough" to place the bank on inquiry, "consideration for AML best practice ... is not in my judgment a relevant consideration in the context of this Quincecare question" and "JPMC's approach to compliance or AML or generalised fraud risk ... is not relevant for these purposes".

Subjective awareness

Where a bank is aware of the fraud but fails to act, this may be suggestive of a breach of the duty. Concerns with the discrepancies were raised internally in *Hamblin v Moorwand Ltd & RND Global Ltd* but no action was taken to initiate further checks and/or block the transactions. A Moorwand Ltd employee contacted a colleague indicating that no action should be taken until further questions were answered, even stating that one of the documents "looks fake. Can they provide another proof of company address". It appears there was never any reply to that concern. This was significant; the judge noting that the fact that Moorwand Ltd was on inquiry was supported by its own subjective acceptance that the agent purported to be a fraudster. The court held that in these circumstances the bank had not taken sufficient measures to investigate suspicions of fraud and as a result the duty was breached.

A similar approach was adopted in *Singularis*. A bank employee noted suspicions in relation to a payment to a hospital, noting that:

> "[i]t is problematic when they the fraudsters] use a hospital as a front/cover. Practically speaking, since we will be making a transfer to a recipient other than Singularis, please handle this matter extremely carefully by discussing it well with the Compliance and Legal teams".

On the other hand, in *The Federal Republic of Nigeria v JPMorgan Chase Bank, N.A* instructions to pay "Petrol Service", which was an entity that was not referenced in resolution agreements that dictated the use of the funds from the accounts (which only referred to Shell and Eni), and where the Receiving Bank had refused to accept the funds citing "compliance reasons", were insufficient to trigger the duty. The judge noted that the bank had been provided with a reasonable commercial rationale for the transaction that it had been entitled to accept. It should also be noted that *Singularis* needs to be seen on the facts of the case of a very high net worth individual with whom the bank had a long-term relationship; the extent of checks that the court envisaged should be followed may not apply in the standard banking context. This is evident from the judge describing the case as "unusual" and many of the factors cited in previous cases as to why it would be impracticable to impose too heavy a duty on a bank did not apply here as Daiwa was not a bank and was not "administrating hundreds of bank accounts with thousands of payment instructions every week".

Financial circumstances

It may also be relevant whether the bank knows or ought to know of ominous financial circumstances of the agent, which may incentivise them in misusing their position to misappropriate funds. In *Singularis*, Rose J noted that the senior management of Daiwa, the Sending Bank, were aware of the "dire financial straits" of the company's sole shareholder and one of its directors and their wider business following the global financial crisis. The indicators included the freezing of the director's assets by the Saudi authorities and the reports in the press about the withdrawal of their credit facilities. A related group of companies also had to restructure its very substantial debts, which triggered a credit rating downgrading and then withdrawal by Moody's and S&P. Shortly after the freezing of the director's assets, £80 million also appeared in the company account and there was an immediate request to then transfer it to another company within the group controlled by the director. The bank initially refused to make the payment. The court relied on the circumstances surrounding this substantial payment as further evidence of suspicious activity in relation to the account.

Suspicious transactions compared to account history

A recurring aspect of the cases where the *Quincecare* duty is breached is that the fraudulent payment instructions contrast with the transaction history of the customer and may be unrelated to the customer's known use for the account or its business. This was the approach in *Aegis Resources DMCC v Union Bank of India (DIFC) Branch*[16] at [141]—[143].

Although a Dubai case, the judgment follows English Law when reaching the conclusion that the bank had breached its duties. In this case, the Sending Bank had obtained documents at the time of opening the account in relation to the business purpose for the funds (acquiring steel as part of commodities investments) and the fraudulent transactions were based on documents that were unrelated to this purpose (mining operations with no reference to steel). Likewise, in *Hamblin v Moorwand Ltd & RND Global Ltd*, there was an inconsistency between the stated business purpose of the company when opening its account (a marketing consultancy) and the actual conduct of the account (transactions for bitcoin and the purchase of a watch). In addition, there were large amounts dissipated in a short period of time. Similarly, in

[15] *The Federal Republic of Nigeria v JPMorgan Chase Bank, N.A* [2022] EWHC 1447 (Comm).

[16] *Aegis Resources DMCC v Union Bank of India (DIFC) Branch* [2020] DIFC CFI 004.

Singularis, the company's purpose as an investment vehicle was inconsistent with one claim for a very substantial payment of £180 million arising from purported obligations owed to a hospital.

More recently, the ongoing case of *Arena Television Ltd (in liquidation) v Bank of Scotland Plc and Lloyds Bank Plc* is a further illustration of a claim arising from alleged breach of mandate due to processing payment instructions given by the company directors without actual and apparent authority. The judgment should provide further insight into the factors that may place a bank on notice of fraud.

Conformity with usual processes

Another factor is where the steps followed by the bank to execute the payment do not conform with its approved process for verifying instructions. In *Aegis*, the typical process was to only execute instructions that were faxed and confirmed on a call, but the fraudulent transactions were processed on the basis of emails (*Aegis* at [140] and [154]). In *Singularis*, the court also noted that two large payments were subject to discussion between management, in-house legal, external legal advisers and compliance functions. However, in contrast, many of the payments of similar magnitude were simply signed off by two individuals without any consultation or discussion with anyone. There was no explanation for the sporadic nature of the checks taken to ensure the payments were legitimate.

These cases illustrate several factors and steps that firms should take when executing customer payment instructions to avoid acting in potential breach of the Quincecare duty.

Other grounds for a claim

Claimants are also using doctrines outside the *Quincecare* duty to claim lost funds from banks. Recent cases have seen the following grounds relied on by claimants:

- a retrieval duty;
- an unjust enrichment claim; and
- a dishonest assistance claim.

Retrieval duty — Sending Bank

As noted above, in *Philipp v Barclays*, the court did not summarily dismiss a claim for a loss of chance of retrieving the funds; the so-called retrieval duty on the Sending Bank. The case has now been settled, and it will be necessary to monitor similar cases alleging the retrieval duty on a Sending Bank to assess how it may apply in practice. Based on the limited information we have on the duty, we can surmise a claimant would have to overcome several hurdles to make a loss of chance claim on this basis. First, that the duty does apply to the Sending Bank. Such an obligation would likely be based on an implied term of contract or tortious duty on the bank to exercise reasonable skill and care to retrieve the funds. In order to establish there is an implied term to retrieve the funds, the relevant test is that the implied term must: (i) be necessary for the efficacy of the contract; (ii) be capable of clear expression; and (iii) not contradict any express terms.[17] It is questionable whether such a term is required for the efficacy of the agreement. Alternatively, the claimant will need to show grounds in tort by establishing a new duty of care based on the same factors explored in *RBS v JP SPC 4*. Given that in *Philipp v Barclays*, it was held to be at least arguable that such a duty may arise on these ground(s), there is certainly a good basis for banks to assume the retrieval duty will apply to Sending Banks in cases of APP fraud. Even if a duty is established, the second hurdle a claimant will face is showing that the duty has been breached, which will necessitate assessing the extent of the measures the Sending Bank should have taken to ensure the funds were recovered. This will likely be heavily fact-specific and will need to be assessed in future cases. In this respect, it should be noted that in *Barclay-Ross v Starling Bank Ltd*[18], a claim has been made against a Sending Bank on the basis of the retrieval duty. An interim judgment in the case found that a retrieval duty on a Sending Bank was arguable on the basis of a loss of chance claim. However, the claim was partially struck out and has since been discontinued. The recent case of *Santander UK Plc v CCP Graduate School Ltd*[19] addressing the retrieval duty on Receiving Banks also provides some insight on the scope of the duty (see further below). Thirdly, if a duty and breach is proven, causation will still need to be assessed. For loss of chance claims, it would be necessary to show a "real and substantial chance" that it would have been possible to recover the funds if the Sending Bank had taken adequate retrieval steps. If established, the damages will also be reduced to reflect the court's assessment of the loss of chance. In addition, the defendant may rely on contributory negligence to claim a further reduction in the damages.

Retrieval duty — Receiving Bank

Although the retrieval duty may apply to the Sending Bank, recent cases suggest that the retrieval duty will not extend to the Receiving Bank; two cases are particularly relevant.

Santander v CCP Graduate School considered the retrieval duty where there was no prior relationship between the customer and the bank. The case arose when CCP Graduate School (CCP) fell victim to APP fraud when it was induced to make payments from its account held with NatWest (the Sending Bank), to a Santander account held in the name of a company used for the purposes of the fraud (the Receiving Bank). The case against NatWest

[17] *Standard Chartered Plc v Guaranty Nominees Ltd* [2024] EWHC 2605 (Comm) at [42] confirming *Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72; [2016] 1 P. & C.R. 13.

[18] *Barclay-Ross v Starling Bank Ltd* [2025] EWHC 2158 (KB).

[19] *Santander UK Plc v CCP Graduate School Ltd* [2025] EWHC 667 (KB).

as the Sending Bank was struck out due to time bar, therefore the judgment does not provide insight into the duties of Sending Banks. The court did, however, assess the Receiving Bank's role.

In the case, shortly after receipt of the funds into the Santander account, the fraudsters initiated a transfer to several accounts held with other banks, including Lloyds Bank, which was not party to the litigation. Lloyds Bank detected the suspicious activity on 21 October 2016. This was after large sums had been paid from the Santander account into an account held at Lloyds, only to be dissipated shortly after receipt. Lloyds contacted Santander on 21 October 2016 to advise of the potential fraud. As soon as Santander was notified by Lloyds, it froze the account. Santander was then contacted by NatWest on 22 October 2016 to advise that it was believed CCP had been the victim of a fraud. Santander then offered indemnities to Lloyds to provide it with comfort that it would indemnify it for losses that may arise from freezing the Lloyds' account on 24 or 25 October 2016. In these circumstances, the High Court found that there could be no *Quincecare*-type duty imposed on Santander as the Receiving Bank and endorsed many of the points made in the *Larsson v Revolut Ltd*[20] case for this conclusion (see further below).[21] Primarily, that was insufficient proximity to give rise to a duty of care; CCP was not a customer of Santander. On the contrary, Santander's only obligation was to comply with the instructions of its customer. Eady J also observed that the duty would be unworkable in practice as placing an overly onerous obligation on receiving banks. Further, the fact that the Payment Systems Regulator had taken steps to regulate the area by introducing the Scheme, which supported the conclusion that placing a duty on Santander was a matter for regulators and the Government, as opposed to the courts.

Obiter Eady J indicated that even if the duty arose, it may not have been breached. As set out above, Santander acted immediately to freeze the account on learning of potential fraud and then offered indemnities to reassure Lloyds Bank to freeze the destination account. The case suggests that acting promptly within hours or days to freeze accounts and offer indemnities to third party banks to freeze destination accounts will likely discharge any duty (if owed) to the victims of APP fraud. The *CCP Graduate School Ltd v NatWest and Santander*[22] claim is currently subject to appeal.

The case of *Larsson* has confirmed that the retrieval duty will not arise even where the Receiving Bank has a prior relationship with the customer. In this case, Mr Larsson (who was an existing customer of Revolut) was induced to transfer funds from a UBS account (the Sending Bank) into five accounts at Revolut controlled by the fraudsters. The funds were then transferred out by the fraudsters. Mr Larsson had no interest in the accounts used by the fraudsters but did hold an account with Revolut. Mr Larsson's claim in tort was put on the basis that there was a duty owed by a Receiving Bank (in this case, Revolut) to a person who causes a payment to be made to an account held at that bank, where the person giving the instruction is also a customer of the Receiving Bank. Acknowledging that the Receiving Bank would, in general, owe no duty to a third party (accepting the Privy Council decision in *RBS v JP SPC 4*), Mr Larsson argued that the position was different where the person making the payment also happened to be a customer of the receiving bank.

The High Court dismissed the argument for a duty of care for the loss in question. Zacaroli J repeated many of the points articulated above in relation to the *RBS v JP SPC 4* case, including that there were not sufficient exchanges/communications between Mr Larsson and Revolut in relation to the fraudulent transaction to reach the tipping point of duty of care.[23] The judge noted the wider policy issues explored by the Supreme Court in *Philipp v Barclays*, which did not support imposing a duty where the Payment Systems Regulator was assessing the appropriate remedy in cases of APP fraud and that it would place an unworkable burden on banks in relation to increased transaction costs and slower payments. The proposed duty was also not a gradual extension to existing categories that generally underlie a new duty of care but a "radical" extension. This case affirms that it is unlikely that the retrieval duty will apply to Receiving Banks.

Unjust enrichment

An alternative basis for a claim in the context of APP fraud that has been considered by the courts is unjust enrichment. A claim for unjust enrichment arises where: (i) the defendant has been enriched; (ii) the enrichment is by the receipt of a benefit gained at the claimant's expense; and (iii) the enrichment occurred in circumstances that the law deems to be unjust. In *Terna v Revolut*[24], a novel action was again brought against Revolut, the Receiving Bank, on this basis. Terna instructed its own bank, UniCredit Serbia, to pay €700,000 to an account with Revolut held by Zdena Fashions Ltd, an English company. Although Revolut initially froze the account, the credit was subsequently released to the account with Zdena Fashions Ltd and

[20] *Larsson v Revolut Ltd* [2024] EWHC 1287 (Ch).

[21] Eady J noted at [44]: "the same analysis applies in the present case. Although *Larsson* concerned an argument founded upon a *Quincecare* type duty, the same points would apply to any attempt to extend an arguable duty of retrieval, as allowed in *Philipp*, to third parties such as CCP".

[22] *CCP Graduate School Ltd v NatWest and Santander* [2024] EWHC 581 (KB).

[23] Zacaroli J opined at [49] that:
"[g]iven the acceptance that no duty of care is owed generally to a third-party payer, I can see no principled reason for imposing a duty simply because P [Larsson] happens also to be a customer of the Bank. Much of the conclusions and reasoning in *SP JPC 4* applies in this case."

[24] *Terna v Revolut* [2024] EWHC 1419 (Comm); [2024] C.L.Y. 1483.

entirely dissipated over several hours. Zdena Fashions Ltd was the fraudulent company in this case. Terna brought no claim against its own bank or against Zdena Fashions Ltd. Instead, Terna claimed that Revolut was liable in unjust enrichment. The enrichment arose, allegedly, from the benefits that the Receiving Bank obtained from holding the funds (currency fees and profit from use of the funds). Revolut denied being enriched, arguing that: (i) the funds that it received were exactly offset by an increased liability to the fraudster; (ii) it received funds as agent for its customers; and (iii) its position was distinguishable from a bank because it was an Electronic Money Institution and the funds were not available for its general use because the Electronic Money Regulations (2011) reg.20 required it to safeguard (via segregation) the credit it received. The court refused to dismiss the claim summarily. The fact that the money in the account had to be safeguarded did not mean that it ceased to be Revolut's own money or that Revolut was not enriched. Revolut could properly profit from holding the money in several ways and Revolut accepted that it profited from the incoming payment by way of currency conversion fees. The court also allowed the claim despite the transfer being indirect, because it was processed by the Sending Bank and a correspondent bank before Revolut received the funds. Revolut has since been granted permission to appeal.

The case shows that where the Receiving Bank obtains a benefit from the fraudulent transaction (for example, fees charged or use by the bank of the funds to earn interest), the victim of the fraud may be able to bring an unjust enrichment claim. However, there are conflicting decisions in this area, particularly in relation to whether an enrichment can arise in this and similar circumstances. The decision was also only a summary determination, and the court emphasised that the claimant would also need to satisfy the requirements of "unjustness" and overcome any possible defenses (e.g. change of position), which could only be determined at trial. It also may be that the damages are nominal because damages in cases of unjust enrichment are generally based on the benefit received and the Receiving Bank only receives limited profit for processing transactions.

Dishonest assistance

For cases of particularly egregious failings by a bank in preventing the dissipation of fraudulently transferred funds, there may be grounds for a claim in dishonest assistance in breach of trust brought alongside or in addition to a breach of the *Quincecare* duty. However, this would be unchartered territory. The general requirements of liability for dishonest assistance are: (i) there is a trust; (ii) there is a breach of trust by the trustee of that trust; (iii) the defendant induces or assists that breach of trust; and (iv) the defendant does so dishonestly. Showing dishonesty will be particularly difficult for a claimant. There are a few recent instances where this has been explored by the courts in the context of APP fraud and all have been unsuccessful.

In *Singularis*, the claimant was the liquidator of an insolvent company that had been misused by its sole shareholder and one of its directors to transfer payments from the company account to the director. The liquidators argued that the Sending Bank that held the company account should be held liable for assisting in the dishonest actions of the company's controlling shareholder and director. The dishonest assistance claim appears to have been brought primarily because of the benefits in terms of remedies for a trust law claim, including the creation of proprietary interest and the right to trace funds. At first instance, it was held that the employees of the bank, Daiwa, had not acted dishonestly in processing the fraudulent payments, and therefore the claim for dishonest assistance was dismissed.

To prove dishonesty, it is necessary to show that the defendant's knowledge of the transaction rendered his participation in the breach of trust as contrary to normally acceptable standards of honest conduct. The failures of Daiwa were not sufficiently culpable to reach the level dishonesty for the following reasons: (i) the main employee managing the account did not question documents due to poor instructions on appropriate document checks he ought to have completed and his limited experience, as opposed to not asking questions deliberately; (ii) the employee had worked with the representative of the client for several years without problems and was entitled to assume that he was honest and reputable based on that experience; (iii) the failure to question was considered as naive as opposed to turning a blind eye and "to be naive is not the same as to be dishonest"; (iv) the employee had no possible motive for acting dishonestly in this situation. Although a motive is not required, it can support grounds for dishonesty where clearly present; and (iv) the employee did attempt to involve others in the approval process for certain payments. Nonetheless, as explored above, a *Quincecare* claim against the bank did succeed due to failings to identify and prevent the fraud.

A dishonest assistance claim will be even more difficult when made against the Receiving Bank. Nonetheless, it may not be possible to dismiss such a claim summarily, as also evident from *Larsson*. The claimant in this case additionally pursued a dishonest assistance claim against Revolut as the Receiving Bank. The trust in this case is alleged to have been based on a constructive trust (i.e. arising by operation of law) created by fraud. Revolut, it was argued, by accepting the payments and allowing the onward transfer, assisted in the breach the trust. In particular, by failing to act on "red flags", Revolut allegedly turned a blind eye to the fraud. On a summary basis, the High Court was unable to dismiss the claim. The case has since settled, therefore there is no further insight on this point. However, given the difficulties bringing a dishonest assistance claim against a Sending Bank, it seems even less likely such a claim would succeed against a Receiving Bank.

Next steps

The recent case law in relation to APP fraud following *Philipp v Barclays* is emerging but it is possible to draw some tentative conclusions. The Supreme Court decision has made it clear that the *Quincecare* duty will apply to a Sending Bank to its customer when an agent acts on the customer's behalf. In a similar vein, *RBS v JP SPC 4* has confirmed that tort law cannot provide a basis for a claim by a bank to third party beneficiaries of the accounts used to facilitate fraudulent transactions. However, derivative and beneficiary claims may be used to extend the *Quincecare* duty in certain circumstances. A potential additional or alternative ground for a claim against the Sending Bank is the retrieval duty but such an obligation is unlikely to apply to the Receiving Bank. Further grounds for claims include unjust enrichment and dishonest assistance but to date such actions have not been successfully pursued beyond a summary determination.

Giving the uncertainty around the current legal landscape, firms should monitor the ongoing case law for further insight into the duties that apply to banks in cases of APP fraud. They should also consider information sharing to prevent fraud and to provide useful evidence of attempts to address fraud if a case proceeds to trial. There have been efforts to facilitate voluntary information sharing by financial services firms under the Criminal Finances Act 2017 and Economic Crime and Corporate Transparency Act 2023, which now provides for wider grounds to share information both within and outside the regulated sector. Given the ongoing uncertainty around the scope of banks' duties in cases of APP fraud, banks may be inclined to err on the side of caution and, where there is doubt, freeze accounts and attempt to retrieve funds where necessary, even where this creates friction in the payment system.

In this regard, the case law is clear: *Harvey v Santander UK Plc*[25] confirms that there are only limited circumstances in which a bank will be liable for freezing an account when there are suspicions of fraud. In this case, the customer brought a breach of contract claim against its bank for freezing an account due to suspected fraud and a mandatory injunction to remove the account freeze. The application was dismissed. The judgment follows a string of decisions that show that banks should not be reluctant to freeze accounts where there are genuine concerns in relation to fraud.

[25] *Harvey v Santander UK Plc* [2023] EWHC 2947 (KB).

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