

## **Banks' Quincecare Duty in APP Fraud Cases Potentially Extended**

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In March the Court of Appeal overturned an earlier High Court judgment and held that the application of Quincecare duty does not depend on the fact that the bank is instructed by an agent of the customer of the bank. In principle, the Quincecare duty could now arise where a non-corporate customer falls victim to an “authorised push payment” (APP) fraud.

APP fraud happens when fraudsters deceive someone to make a payment under false pretences to a bank account held by the fraudster. Importantly in the context of the Quincecare duty, in APP fraud cases it is the bank's customer that has instructed the payment, having been duped. This type of fraud has been on the increase in recent years.

The Quincecare duty requires banks to show reasonable care and skill in executing customer orders. This means that the banks must refrain from executing a payment order if they are “put on enquiry”, having had reasonable grounds to suspect that the order is an attempt to misappropriate funds. The Quincecare duty has been the subject of increasing judicial consideration as novel forms of fraud proliferate. The duty had originally been considered a negative duty not to execute a particular payment instruction, following the decision in *JP Morgan Chase Bank NA v Federal Republic of Nigeria* [2019]. The measures a bank should take will depend on the circumstances, and the bank may in some circumstances be required to undertake active steps to verify payment instructions.

In the most recent case the customer sought to hold her bank accountable for two payments totalling £700,000 she had made having been deceived by a third party in the UAE, who she thought was legitimate. The bank maintained that its Quincecare duty did not extend to a duty to protect her against the consequences of her own decisions to instruct payments having fallen victim to an APP fraud. The High Court agreed, and struck out the customer's claim.

The Court of Appeal allowed an appeal against that strike out and reinstated the claim. In doing so, it decided that it was at least reasonably arguable that the Quincecare duty could apply in such a case. The question of whether it does in fact apply will now fall to be decided at trial in the High Court, taking into account the Court of Appeal's ruling. But in the meantime this decision will force financial institutions to assess carefully whether they have effective systems to detect and prevent APP fraud,

in the knowledge that they are at heightened risk of being liable to customer claims.

If you would like to read the full judgment [please click here.](#)

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