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**NO DUTY TO DOUBT: AN ANALYSIS OF PHILIPP V BARCLAYS BANK AND ITS IMPLICATIONS ON THE
BANKER-CUSTOMER RELATIONSHIP**

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NO DUTY TO DOUBT: AN ANALYSIS OF PHILIPP V BARCLAYS BANK AND ITS IMPLICATIONS ON THE BANKER-CUSTOMER RELATIONSHIP

Cynthia Amiri L. E. *

Abstract

The paper explores a pivotal United Kingdom Supreme Court decision, Philipp v Barclays Bank that redefined the legal obligations of banks towards customers in the context of fraud. The Court held that banks do not owe a duty of care to challenge payment instructions made by customers, even when those instructions arise from fraudulent inducement. This ruling narrows the scope of the Quincecare duty, traditionally requiring banks to verify the authenticity of transactions under suspicion of fraud. The implications of this judgment are far-reaching, particularly for vulnerable populations such as the elderly, as it shifts the onus of fraud prevention onto customers. The paper critically analyzes the judgment's impact on the banker-customer relationship and the broader financial landscape.

1.0 INTRODUCTION

The Banker- Customer relationship creates a number of duties upon both the Bank and its customers, the most notable of which is the Bankers' duty to carry out the Customer's mandate.¹ But what happens when the Customer's mandate is to their own detriment? The United Kingdom Supreme Court in *Philipp v*

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¹ E. P Ellinger and Richard Hooley, "Ellinger's Modern Banking Law", *Oxford University Press*, 4th Edition (2006), pp. 117 to 130.

Barclays Bank UK PLC, has resolved this lacuna by holding that a bank does not have a duty of care to halt the carrying out of a customer's instruction even if it is as a result of a fraud perpetrated against them.² There has always existed contention regarding the scope of the Quincecare duty in Banking Law, especially given the innovations and technological advancements within this branch of the law. The Court's decision in the aforementioned case has resolved some of these lingering issues.

This paper discusses the peculiar facts of the case, its journey from the High Courts of England and Wales, through the England and Wales Court of Appeal, and finally to the Supreme Court of the United Kingdom. It goes on to address the central issue in this case as being the banks liability for fraud in carrying out of the customer's mandate and the extent to which the banks liability extends.

Additionally, an examination will be made of Authorised Push Payment Fraud, as well as, the implications of this case to the banking sector. Most importantly an analysis will be made regarding the failure of the banking system to take into the account the elderly, both in this case, as well as, in Ugandan jurisprudence. Finally, recommendations will be made to reduce and consequently bring an end to the rampant fraud carried out on the elderly, as well as, an examination of this decision's compatibility with Uganda's existing consumer protection laws.

2.0 THE NATURE OF THE BANKER-CUSTOMER RELATIONSHIP

A Bank is defined under the Financial Institutions Act Cap. 57 as being any company licensed to carry on financial institution business as its principal business, as specified in Schedule 2 to the Act and, includes all branches and offices of that company in Uganda.³ The Act further provides that financial services include: acceptance of call, demand, savings and time deposits withdrawable by cheque or otherwise, provision of financial and investment

² *Philipp v Barclays Bank UK PLC*, [2023] UKSC 25.

³ Section 2.

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advice, acceptance of savings and fixed deposits, engagement in any other Shari'ah compliant banking business, among others.⁴

The first requirement for the establishment of the Banker-Customer relationship is the presence of a bank account held by the individual. In *Great Western Railway v London and County Banking Co. Ltd*, the issue before the Court was whether Mr. Higgins, who had regularly cashed cheques with the Defendant Bank was a customer of the bank. It was held that, as he had no account with the bank, he was not a customer.⁵ Furthermore, in *Ladbroke v Todd*, it was established that a person becomes a customer of a bank when they present money or a cheque to the bank and, request the opening of an account in their name. Once the bank agrees to accept the funds and opens the account, the individual is entitled to be regarded as a customer.⁶

The banker-customer relationship is of a contractual nature, as was discussed in *Foley v Hill*,⁷ and upheld by the Supreme Court of Uganda in *Esso Petroleum v Uganda Commercial Bank*.⁸ Therefore, once the contractual relationship is established, several duties accrue to both the bank and the customer.

The first duty of the customer is to exercise reasonable care in executing orders so as not to mislead the bank or occasion a forgery.⁹ In *Mobil (U) Ltd v Uganda Commercial Bank*, the High Court held that due to the contractual nature of the banker-customer relationship, a customer when drawing a cheque is bound to take precautions to prevent forgery.¹⁰

Additionally, the customer must inform the bank of any forgeries that they are aware of. In *London Joint Stock Bank Ltd v Mac-Millian & Arthur*, the House of Lords held that the bank was entitled to debit the account because the firm had

⁴ Schedule 2.

⁵ *Great Western Railway v London and County Banking Co. Ltd*, [1901] AC 414.

⁶ *Ladbroke v Todd*, (1914) 30 TLR 433.

⁷ *Foley v Hill*, (1848) 2 HLC 28.

⁸ *Esso Petroleum v Uganda Commercial Bank*, Civil Appeal No.14 of 1992.

⁹ *Joachimson v Swiss Bank Corporation*, (1921) 3 K.B 110.

¹⁰ *Mobil (U) Ltd v Uganda Commercial Bank*, 1982 HCB 64.

a duty to exercise care when drawing cheques. Since the firm failed to do so, the clerk's ability to alter the cheque was a direct consequence of its negligence.¹¹ In *Greenwood V Martins Bank*, it was stated that mere silence could not amount to a representation; however, as there was a duty on the customer to disclose, his deliberate silence as to the forgery of the cheques amounted to a representation.¹²

The bank also owes several duties to its customers, primarily involving the execution of the customer's payment instructions, the safekeeping and proper management of any securities, as well as, the customer deposits, and maintaining confidentiality regarding the customer's financial affairs.¹³ These obligations are central to the trust-based relationship between a bank and its customer. For instance, the bank must process payments accurately and promptly; ensure that any documents or assets left in its custody are secure; and must not disclose sensitive customer information without proper authorisation or legal obligation. Additionally, there arises a legal duty not to disclose the customer's information without their consent, however, this is duty qualified.¹⁴

The discussion on the banker-customer relationship lays the foundation for examining the facts in *Philipp v Barclays Bank*, as it highlights the mutual duties that arise once this contractual relationship is established. In particular, the case raises critical questions about the extent of a bank's duty to protect its customers, even when they authorise transactions in instances where a fraud has been perpetrated upon them.

¹¹ *London Joint Stock Bank Ltd v Mac-Millan & Arthur*, [1918] AC 777.

¹² *Greenwood V Martins Bank*, [1932] 1 KB 371.

¹³ G.P. Tumwine-Mukubwa, "Essays in African Banking Law and Practice", (2nd Edition, 2009), *Makerere University Printery* pp. 72- 73.

¹⁴ *Tournier v National Provincial and Union Bank of England*, (1924) 1 KB 461.

3.0 THE FACTS OF THE CASE

Mrs. Fiona Philipp (the Respondent) was a long term customer of Barclays Bank (the Appellant), having held an account since she was a student until her retirement. Dr. Philipp, her husband acting on the encouragement of a fraudster under the pseudonym “John Watts” (hereinafter referred to as ‘JW’), from whom he received a phone call transferred his funds from Hong Kong and Shanghai Banking Corporation Ltd (HSBC) and Tilney Financial Services (Tinley) to safe accounts. John Watts stated to Dr. Philipp that there was internal fraud by employees of HSBC Bank to which, he might fall victim.

The couple had been convinced to do carryout these transfers by JW in a series of calls starting in late February 2018 the pretext that they were cooperating with the Financial Conduct Authority (hereinafter referred to as ‘FCA’) and the National Crime Agency (hereinafter referred to as ‘NCA’) to bring fraudsters to justice. Part of the deception involved Dr Philipp telephoning what he thought was the Fraud Department within HSBC Bank Plc and being re-directed to JW.¹⁵

On another occasion JW arranged for another fraudster to telephone Dr and Mrs Philipp from what was depicted as being the NCA’s telephone number as shown on their website. This was done by encouraging Dr Philipp to look up the NCA’s telephone number on the internet. The caller claimed to have worked with JW for 9 years and further stated that he was a senior person in the FCA who could be trusted. As the elderly couple were desperately seeking to secure their retirement savings, they were more vulnerable to falling victim to this well executed fraud.¹⁶

Resultantly, Dr. Philipp transferred £950,000 from his account with Tilney having stated to his financial advisor that he needed to speedily purchase a house. This money was transferred to Mrs. Philipp’s account in Barclays bank,

¹⁵ *Philipp v Barclays Bank* [2022] EWCA Civ 318.

¹⁶ *Ibid.*

of which she was the sole account holder, resultantly making her the only Claimant in the case.

Before the couple carried out their first transfer to the supposed “safe accounts”, they were visited by a police officer who advised them that she believed they were victims of fraud. However, upon the deceit of the fraudster, they declined to offer any information to the police. The first transfer, a sum of £400,000, was consequently made on the 10th of March, 2022. The authorisation was made physically by Mrs. Philipps at a branch of the Defendant bank and confirmation of this payment made through a phone call later in the day. This payment was made to the “Lambi” account on an assurance that Mr. Philipp had carried out previous transactions with the account holder, which was false.

On the 13th of March, Mrs. Philipp authorised the transfer of £300,000 to an account held by Bonito Systems Ltd, in Dubai. The Bank still telephoned her to confirm whether she had authorised the transfer. Thereafter, the Police reached out to the couple, once more, who refused the assistance offered. On 19th March, Mrs. Philips further sought to transfer £250,000, but her account had been blocked pending review. She then called the Bank to request the transaction go through. During this phone call, she answered security questions the most vital being the last four digits of her long card number. The answers were overheard by the fraudsters as they too were on the line. The fraud perpetuated on the couple was finally discovered by the report of two close friends who visited HSBC and Tilney to express their concern that a fraud had been perpetuated on the Respondent and her husband.¹⁷

3.1 THE NATURE OF FRAUD

The nature of the fraud carried out on the Claimant was Authorised Push Payment (APP) fraud. A push payment refers to a transaction in which a bank transfers funds from a customer’s account to a recipient, typically upon the

¹⁷ *Philipp v Barclays Bank*, [2021] EWHC 10 Comm.

customer's instruction.¹⁸ Such a transaction is considered 'authorised' when the customer consents to the transfer. However, in cases of APP fraud, customers are deceived into consenting to the transfer, unknowingly directing funds to an account controlled by a fraudster.¹⁹

In cases of APP fraud, the perpetrator initiates contact with the victim and manipulates them into voluntarily transferring funds to a bank account under the fraudster's control.²⁰ This deception often involves sophisticated impersonation tactics, such as falsely claiming that a legitimate payee has altered their banking details. Alternatively, the victim may be misled into believing that their funds are under imminent threat, typically through assertions that law enforcement, a financial institution, or a regulatory body has recommended transferring the money to a so-called "safe account." Such schemes exploit the victim's trust and sense of urgency, rendering the fraudulent transaction "authorised" but deeply insidious.²¹

At the England and Wales Court of Appeal, Birss LJ referred to APP fraud as "authorised" because according to the bank, the payment is approved by the customer.²² From the bank's perspective, it is treated as a routine payment instruction initiated by the account holder. The term 'authorised' reflects the bank's view that the transaction was properly instructed by the customer, even though it was made under false pretences resulting from deception.²³

¹⁸ Robyn Maher, "A Critical Analysis of Recent Efforts in the United Kingdom to Tackle Authorised Push Payment Scams and the Impact on the Bank-Customer Relationship" (2021) 24 *Trinity College Law Review* pp. 135 <<https://heinonline.org/HOL/P?h=hein.journals/trinclr24&i=142>> [Accessed on 22nd May, 2025].

¹⁹ Ibid.

²⁰ David McIlroy and Ruhi Sethi-Smith, "Prospects for bankers' liability for authorised push payment fraud", (March, 2021) *Butterworths Journal of International Banking and Financial Law* pp. 172, <[Article-2-Smith.1-1.pdf](#)> [accessed on 22 May, 2025].

²¹ Ibid.

²² *Philipp v Barclays Bank*, [2022] EWCA Civ 318.

²³ Tim Brentall and Mohammed Hussein, "Authorised push payment (APP) fraud", (May, 2023) *Solicitor's Journal* pp. 63 <<https://heinonline.org/HOL/P?h=hein.journals/solicjo199&i=370>> [Accessed on 22nd May, 2025].

Building on this foundation, the implications of this decision are examined in light of the Quincecare duty established in *Barclays Bank PLC v Quincecare Ltd*.²⁴ In that case, the fraudulent payment instructions were issued by an agent acting on behalf of the customer, and the court held that the bank had a duty to refrain from executing such instructions if there were reasonable grounds to suspect dishonesty. The essence of the Quincecare duty, therefore, lies in the bank's obligation to verify that the instructions genuinely reflect the customer's intent, rather than being the product of the agent's deception. This raises complex questions when applied to APP fraud, where the instructions originate directly from the customer, albeit under fraudulent inducement, challenging the traditional application of the Quincecare principle.

3.2 THE QUINCECARE DUTY

The Quincecare duty refers to financial institutions' duties to safeguard their customers against fraudulent activity on their accounts. The core purpose of this is to achieve an appropriate balance between ensuring adequate protection for customers and avoiding the imposition of unduly onerous obligations on banks. This duty developed from the case of *Barclays Bank PLC V Quincecare Ltd*, the facts of which are discussed hereunder.

In the aforementioned case, Mr. Harry Stiller approached Barclays Bank for a loan of £400,000 to finance the purchase of four chemist shops. The bank agreed to give him the loan provided that it was made to the new company formed by Mr. Stiller (Quincecare Ltd) and that the loan was guaranteed by Unichem (the second defendant and a major supplier of pharmaceutical products throughout the United Kingdom). Without the adequate security provided by Unichem, the loan application would never have been considered. Nevertheless, the bank agreed to provide a medium-term loan of £400,000 to Quincecare for a period of ten years, on condition that a £50,000 cash injection would be made by the Directors of the company.

²⁴ *Barclays Bank PLC v Quincecare Ltd*, [1992] 4 All ER 363.

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Mr. Stiller thereafter formed Quincecare Ltd. While he had no direct shareholding in Quincecare, 40% of the issued shares were held by his two children. Additionally, his wife held 20% of the shares in her own names and the remaining 40% of the shares were held by Mr. Plater and Mr. Elliot who each held 20%. Mr. Stiller was however, the chairman and had effective control of Quincecare Ltd while Mr. Plater and Mr. Elliot were Directors of the company.

On receipt of an acceptable guarantee by the Bank, Mr. Stiller was informed. Thereafter, he gave an oral notice of drawdown of the loan. Nevertheless, the requirement of the £50,000 cash injection by the Directors was re-echoed. Pursuant to this, Mr. Elliot (one of the two Directors of Quincecare) sent a letter to the Bank that was to the effect that capitalization of the company had taken place. Therefore, in the view of the Bank, the last obstacle to the drawdown had been removed.

Mr. Stiller then gave instructions to a law firm, to which he had a substantial connection, to act on his behalf in the purchase of the four chemist shops. The firm was instructed to receive the large sums in a client account, to place it on deposit and transfer the funds to the United States. Mr. Stiller thereafter phoned the Bank to give instructions for the transfer of the sums of money. The Bank insisted that written confirmation of the order be made, to which Mr. Stiller rebutted stating that the order was required to be made immediately. Due to the bank's insistence, a letter confirming the order was delivered to its branch. A discrepancy however arose as to whether the confirmation was received before or after the order was executed. However, it was later resolved that the money was only transferred after written confirmation was received.

The bank effected the transfer and the sums were received by the firm acting on the instructions of Mr. Stiller. The firm thereafter made the transfer to the account which they were instructed to. This account was under the names Thomas Doran. The bank later discovered the fraud following Mr. Stiller's

disappearance and, upon contacting Mr. Elliot (one of the Director's) it became clear that Mr. Stiller had indeed misappropriated the money and absconded.

Barclays bank was able to recover £9,000 from the United States and sued Mr. Stiller for the £344,848 but the judgement was unsatisfied. Due to the insolvency of Quincecare, the bank relying on the guarantee sought payment from Unichem. Due to Unichem's refusal to pay, the bank instituted proceedings against Quincecare and Unichem.

The case established that if a transaction raises doubts to a reasonable banker about its authenticity or benefit to the customer, the bank has a duty to investigate. Failure to do so would amount to negligence. A bank is liable if it knowingly processes a dishonest order, ignores clear signs of dishonesty, or recklessly fails to make reasonable inquiries. The court stated:

“If the bank executes the order knowing it to be dishonestly given, shutting its eyes to the obvious fact of the dishonesty, or acting recklessly in failing to make such inquiries as an honest and reasonable man would make, no problem arises: the bank will plainly be liable. But in real life such a stark situation seldom arises. The critical question is: what lesser state of knowledge on the part of the bank will oblige the bank to make inquiries as to the legitimacy of the order? In judging where the line is to be drawn there are countervailing policy considerations. The law should not impose too burdensome an obligation on bankers, which hampers the effective transacting of business unnecessarily. On the other hand, the law should guard against the facilitation of fraud, and exact a reasonable standard of care in order to combat fraud and to protect bank customers and innocent third parties.”

In this case, the Bank had made inquiries both by telephone and confirmatory letter. Resultantly, since the Bank had made an inquiry, it was held to be entitled to judgement against Quincecare and Unichem. The Court further stated:

“Mr. Tomlinson had no reason to suspect that Mr. Stiller was about to embark on an audacious fraud. He was entitled to regard the letter of 6 January as an order from Quincecare, and to assume that the £344,840 was being transferred to Quincecare's solicitors. It was argued that the size of the transaction should have put him on his guard. The answer to that in the context of the purchase of the shops this was not an unusual feature and Mr. Tomlinson was entitled to think that a transfer to a

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Quincecare account, controlled by solicitors, was perfectly normal. It was also contended that Mr. Stiller's insistence on the urgency of the transaction should have alerted Mr. Tomlinson. But funds are frequently required urgently, and there was nothing abnormal about a request for a telegraphic transfer of the money as company funds to the company's solicitors."

The test for the Quincecare duty is simply this: Were the circumstances such as to put the bank on inquiry? This imposes a duty of care on banks to refrain from executing a customer's payment instructions where there are reasonable grounds to suspect fraud. It seeks to strike a careful balance between ensuring that banks remain efficient facilitators of commercial transactions and, guarding against the misuse of customer accounts by fraudulent agents or insiders. It compels banks to remain alert to anomalies that might signal fraud while maintaining the practicality and speed necessary in modern banking operations.

This traditional application of the Quincecare duty required Banks to ensure that the payment instructions made by the customer were a true representation of their intention. When applied in contemporary banking, the Quincecare duty is applied by the requirement of proper customer authorisations of payment instructions. The belief being that once a customer adheres to the available security measures put in place, their payment instruction will be an accurate representation of the transaction that they intend to carry out. Nevertheless, this raises questions in regard to new technologies such as mobile and digital banking as well as contactless payment systems.

4.0 PHILIPP V BARCLAYS BANK: FROM THE ENGLAND AND WALES HIGH COURT TO THE SUPREME COURT OF THE UNITED KINGDOM

4.1 ON FIRST INSTANCE AT THE ENGLAND AND WALES HIGH COURT

4.1.1 THE CLAIMANT'S SUBMISSIONS

In the particulars of the claim, it was pleaded that the Quincecare duty required the Bank to refrain from executing Mrs. Philipp's payment instructions if, and for so long as, it had reasonable grounds to suspect that the instructions were

an attempt to misappropriate her funds, thereby placing the Bank on inquiry. Furthermore, it was contended that, in the context of APP fraud, banks ought to adopt measures aimed at identifying customers who may be particularly vulnerable to such fraud. To facilitate detection, it was proposed that institutions consider customer behaviour patterns and employ data analytics.

4.1.2 THE DEFENDANT'S SUBMISSIONS

The Bank contended that the Quincecare duty did not extend to protecting customers from the consequences of their own decisions, particularly where the customer personally authorised the transaction. The bank's duty to exercise reasonable care and skill in executing payment instructions and fulfilling the customer's mandate was acknowledged. However, it argued that this duty is limited to circumstances where the Bank has reasonable grounds to suspect that the instruction is an attempt to misappropriate the customer's funds, such as through fraud by an agent.

The Bank further argued that the Quincecare duty did not extend to protect Mrs. Philipp's from her own actions. Rather, it recognised its duty to act in accordance with reasonable care and skill while carrying out her instructions and carrying out her mandate unless there was reason to believe the transactions were to misappropriate her funds.

4.1.3 ANALYSIS AND CONCLUSIONS OF THE COURT

The Claimant submitted that the Quincecare duty should be extended to require banks to implement measures aimed at preventing APP fraud. Consequently, the central issue before the Court was whether such an obligation fell within the established scope of the Quincecare duty.

The Court rejected this argument, holding that the Bank is not expected to act as a guardian of the commercial wisdom of its customer's decisions. It reaffirmed that the Quincecare duty arises only where a bank is on inquiry, typically in cases involving dishonest agents. The Court further held that the duty did not extend to situations where the customer personally authorises a payment, even

if they are under the influence of fraud. Accordingly, judgment was entered in favour of the Bank, with the court finding it would be unjust to impose liability on the Bank for a fraud directly perpetrated on Mrs. Philipp.²⁸ Following this judgement, Mrs. Philipp appealed the decision at the England and Wales Court of Appeal.

4.2 THE POSITION OF THE ENGLAND AND WALES COURT OF APPEAL

The question on appeal was whether the bank owed Mrs. Philipp a duty of care in these unique circumstances. The Court allowed the appeal and a unanimous judgement entered to the effect that the bank did in fact owe the Appellant a duty of care to halt the carrying out of the suspicious transaction. Lord Justice Birss, LJ Coulson and, The Chancellor agreed that halting the making of a payment instruction to ask questions about it, did not only apply where the instructions were made by an Agent but rather extended to instructions made by the customer on their own. Therefore, the Quincecare duty was extended to encompass scenarios where the customer issued instructions under a fraudulent belief.²⁹ Barclays Bank then appealed this decision at the United Kingdom Supreme Court.

4.3 ARRIVAL AT THE UNITED KINGDOM SUPREME COURT

4.3.1 THE RESPONDENT'S SUBMISSIONS

The Respondent submitted that the reasoning in the Quincecare line of cases can be applied where the instruction is given by the customer and not simply by an agent. The Quincecare duty would therefore apply in any circumstance where the bank is put on inquiry as to the fraud.

The second averment was that the payment instruction was not Mrs. Philipp true intention as she assumed her money was going to safe accounts, yet it was moved to accounts controlled by criminals. Additionally, the Claimant's alternative case was that the bank breached its duty after the fraud was

²⁸ *Philipp v Barclays Bank Plc*, [2021] EWHC 10 Comm.

²⁹ *Philipp v Barclays Bank Plc*, [2022] EWCA Civ 318.

discovered in not taking adequate steps to recover the money that had been transferred to the United Arab Emirates.

4.3.2 WHY THE QUINCECARE DUTY DOES NOT APPLY TO INSTANCES OF APP FRAUD

At the Court of Appeal of England and Wales, the Claimant advanced the argument that the reasoning underpinning the Quincecare duty was not confined to situations where the payment instruction emanated from an agent acting on behalf of the customer. Instead, it was contended that the duty could apply with equal vigour to cases in which a customer directly instructs the bank, particularly where the bank has reasonable grounds to suspect that the customer is the victim of fraud.

However, the United Kingdom Supreme Court rejected this submission, characterising the reasoning of the Court of Appeal as fundamentally flawed. The Supreme Court observed that the error lay in attempting to derive a coherent legal duty from a false premise, namely, that a bank owes a duty of care to question or decline to execute an instruction given by a customer who has full capacity and has properly authorised the transaction.

In reflecting the foundational rule governing the banker-customer relationship, the court relied on *Bodenhay v Hoskins* in which it was held that the banker must act on the customer's instructions without inquiry into their underlying motives or transactions. Once account is opened in the customer's name, the banker is bound to honour the cheques the customer issues without probing further. The banker is neither obligated nor entitled to question the reasons behind the account's opening, the source of funds deposited, nor the purpose for which the withdrawals are made.³⁰

³⁰ (1852) 21 LJ Ch 864, 869.

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The first flaw, identified by the Supreme Court in *Philipp v Barclays Bank UK PLC*, was that this line of reasoning created a conflict between two core duties owed by the bank:

- (1) the duty to execute a customer's payment instructions promptly and accurately, and
- (2) the purported duty of care to refrain from executing a transaction if there are suspicions of fraud.

The Court held that these duties are not co-equal. The duty to exercise reasonable skill and care is subordinate to the bank's primary duty to execute the customer's mandate. A bank is not at liberty to second-guess the wisdom of the customer's decisions unless it is presented with evidence that the instruction is not genuinely authorised.

In support of this reasoning, the Court cited the decision in *Asurani Tugu Pratama Indonesia TBK v Citibank*, in which it was stated that the law cannot coherently treat compliance with an authorized instruction as breach of a duty.³¹ To hold otherwise would render the legal framework governing banker-customer relationships incoherent, as it would imply that fulfilling a lawful mandate could simultaneously constitute a tortious breach of duty.

Furthermore, reliance was had on *Lipkin Gorman v Karpnale Ltd*, in which May LJ stated that nothing in the contractual relationship between a bank and its customer imposes a duty on the banker to assess the commercial soundness or prudence of a given transaction.³²

The second flaw addressed was the reliance on policy considerations. In the High Court, Steyn J had invoked the policy rationale found in *Barclays Bank plc v Quincecare Ltd* to suggest that banks ought to play a greater role in preventing fraud and protecting customers. However, the Supreme Court rejected this normative extension. It held that the duty to prevent or detect fraud is not

³¹ *Asurani Tugu Pratama Indonesia TBK v Citibank*, [2023] HKCFA 3.

³² [1989] 1 WLR 1340.

ordinarily implied into the contractual relationship between a bank and its customer, absent specific terms or exceptional circumstances. The Quincecare principle, therefore, is confined to its original context, that is, cases where an agent purports to act on behalf of a customer, and the bank has reason to doubt the genuineness of the authority.

Accordingly, the Supreme Court concluded that it would be inappropriate and doctrinally unsound to expand the Quincecare duty to encompass direct instructions from customers who are victims of APP fraud. Simply put, the law cannot impose on banks the burden of acting as a guardian of the commercial wisdom or susceptibility of their customers, particularly when the instructions are clear, unambiguous, and given with full authority.

4.3.3 ACTUAL AND APPARENT AUTHORITY

The issue of authority was addressed even though it was not a matter of contention in these particular set of facts. Nevertheless, it was reiterated that the duty of an Agent is to act for the Principal. If an Agent acts fraudulently, any loss that results thereunder is liable to the Principal. The Agent's actual authority, however, does not include the authority to act fraudulently.

An Agent who is given authority but acts dishonestly will lack actual authority. Nevertheless, by virtue of the customer's representation they will still have apparent authority to give instructions on the Principal's behalf. In such a circumstance, the bank has a duty to verify the Agent's authority and ensure that the instructions given are authorised by the customer. The duty of care in this circumstance, requires the bank if put on inquiry, not to act without ensuring that the order is indeed a valid order of the customer to transfer the money. A bank that relies unreasonably on an agent's authority despite notice of matters that would have caused a reasonable banker to make inquiries cannot legitimately expect to be immune from liability.

The Quincecare principle was held to be inapplicable in Mrs. Philipp's case because her instructions to the bank were clear and unequivocal. There was no

basis upon which the bank could be said to have been “put on inquiry.” Accordingly, no duty arose to investigate the legitimacy of the transaction. In such circumstances, the bank’s primary duty was to execute the customer’s mandate. Refusing to do so would itself constitute a breach of duty.

4.3.4 THE CUSTOMER’S INTENTION

The Supreme Court offered a nuanced perspective on the second averment. It held that fraud does not negate a person's intention, as intention is fundamentally a state of mind. Rather than nullifying the transaction, fraud gives the defrauded individual a right to rescind it and to seek restitution from the fraudster. However, the existence of fraud does not render the payment instruction invalid, nor does it give rise to a claim against the bank for merely executing an instruction that was properly authorised by the customer.

4.3.5 THE LIMIT OF A BANK’S DUTY TO EXECUTE VALID PAYMENT INSTRUCTIONS AND THE PECULIAR FACTS OF THE CASE

The bank has a duty to carry out a customer’s payment instructions except where it would be carrying out an illegal act. Where a bank receives reliable information such as from the police suggesting that a customer’s payment instruction has (unknown to the customer) been procured by fraud, the bank must first inquire from the customer whether they wish to continue with the payment before executing it.

Mrs. Philipp argued that the bank ought to have been put on inquiry due to several red flags: the unusually large and unprecedented deposits into her current account, the significant sums she instructed to be transferred, the fact that the payments were directed to foreign bank accounts, and the absence of any prior dealings with the recipient companies. However, the bank took precautionary steps on both occasions. This was through contacting Mrs. Philipp to confirm that the instructions had indeed been authorized by her.

Moreover, once suspicions of fraud arose, the bank took proactive measures by blocking the account, despite her repeated requests to have it unblocked. These actions demonstrated that the bank exercised reasonable care and diligence within the scope of its duty, and ultimately supported the court's finding that it had not breached its fiduciary duty.

4.3.6 RECALL OF THE PAYMENTS

The Claimant's fall-back argument was that the bank had breached its duty by failing to take timely steps to recall the payments after the fraud had been discovered. Notably, the bank only attempted to initiate recall procedures on 31st May 2018, by which point it was already too late to recover the funds. The bank, in its defence, contended that it had no authority to reverse the earlier transactions, as doing so would have contravened the original, authorised payment instructions. While the bank's eventual efforts to recall the funds suggest that such remedial steps were, in principle, available, the practical likelihood of recovering any of the funds, even if action had been taken earlier, was extremely low.

Nevertheless, the Supreme Court held that this line of argument should not have been summarily dismissed. The Court acknowledged that although the prospects of successful recovery were minimal, the issue raised important questions about the scope of a bank's obligations upon discovering fraud, particularly where those obligations might arise after the execution of a mandate. The Judges of the Supreme Court however, stated that this aspect of the claim warranted closer examination at trial rather than being excluded at a preliminary stage.

5.0 IMPLICATIONS OF THE JUDGEMENT

The onus of vigilance has now shifted more heavily onto customers, who must exercise heightened diligence in safeguarding themselves against fraudulent schemes. This judicial repositioning carries significant implications for vulnerable populations, most notably the elderly, such as the claimant in the present case. The Supreme Court's decision signals a broader doctrinal retreat

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from protective paternalism in banking law,³³ effectively narrowing the scope of financial institution liability in instances of APP fraud.

The result being that customers are now required to be all the more vigilant in how their bank accounts are handled especially in regard to the transactions being initiated. It reduces the once common place laxity that existed among customers that could be attributed to the confidence that the customers had in regard to the bank's liability for their financial loss. However, the major impact of this judgement is that it places the liability for a customer's instruction on them, effectively requiring customers to be hyper vigilant when carrying out financial transactions.

The group most impacted by this decision are the elderly, who often face cognitive decline, diminished digital literacy, and social isolation. This makes them particularly susceptible to APP fraud, as they may be more easily deceived by fraudsters posing as legitimate actors. The decision in *Philipp v Barclays Bank* effectively limits the bank's obligation to intervene in such transactions, even when they appear suspicious, as long as the customer has authorised the payment. For elderly customers, this creates a significant gap in protection, as the legal duty to prevent fraud does not extend to cases where the customer has been manipulated into acting against their own interests. Consequently, the ruling places a heavier burden on elderly individuals to detect and prevent fraud themselves, despite their heightened vulnerability.

However, contemporary jurisprudence, both within Uganda and across common law jurisdictions, reveals a troubling lacuna in the banking sector's institutional response to such vulnerabilities. Despite policy rhetoric around financial inclusion and consumer protection, banks frequently fail to operationalise age-

³³ Paternalism is a system under which an authority undertakes to supply needs or regulate conduct of those under its control in matters affecting them as individuals as well as in their relations to authority and to each other <[PATERNALISM Definition & Meaning - Merriam-Webster](#)> [Accessed on 22nd May, 2025]. In the context of this commentary, it simply means that the Courts will not require banks to protect customers from the consequences of their own authorised instructions.

sensitive safeguards for older customers who are acutely exposed to manipulation.

The case of *Aida Atiku v Centenary Rural Development Bank*, further underscores this. In that case, an elderly woman with visual impairment was defrauded of her pension totalling 56 million Uganda Shillings through unauthorised withdrawals made via the “Centemobile” banking service, a banking service which unbeknownst to her, she had signed up for. The Court held that the Bank was not liable for the fraud because, despite the Plaintiff’s lack of awareness, she had validly consented to the service. Consequently, the Bank’s obligation to act on her authorised instructions remained intact, highlighting the limits of the bank’s duty to protect customers from fraud in the absence of suspicious or unauthorized mandates.³⁴

It is indisputable that elderly individuals are particularly vulnerable to financial fraud, especially in the context of modern banking systems. This vulnerability stems not only from age-related cognitive decline which can impair memory, decision-making, and the ability to detect red flags. But also, the elderly have a greater likelihood of reliance on third parties for managing financial affairs. In many cases, elderly individuals, unable to recall passwords or navigate increasingly complex digital interfaces, delegate access to caregivers or family members. While this delegation may be done in good faith, it significantly increases the risk of financial exploitation, particularly when safeguards are insufficient or when undue influence or coercion is exerted.

However, the implementation of additional protections must be carefully reconciled with the elderly’s right to privacy and autonomy. Measures that are too intrusive may feel patronising or even disempowering, potentially eroding the trust elderly persons have in financial institutions. Furthermore, cognitive decline can also manifest as resistance to change, making older adults less likely

³⁴ *Aida Atiku v Centenary Rural Development Bank*, Civil Suit No. 0754 of 2020.

to adopt new, supposedly “elder-sensitive” banking solutions, particularly if these solutions are not designed with dignity and intuitive simplicity in mind.

Thus, while the need for tailored protections is urgent, it is equally critical that these interventions be developed with a nuanced understanding of the lived experiences of the elderly. Striking the right balance involves designing banking systems that are both secure and respectful while preserving privacy and independence. This requires a shift from a one-size-fits-all model to one that is anticipatory, inclusive, and human-centred.

In light of these risks, many financial institutions have introduced technological safeguards aimed at preventing fraud, ranging from multi-factor authentication to biometric verification and AI-driven transaction monitoring. While these innovations enhance overall security, they often unintentionally create new barriers for older adults.³⁵ Complex security protocols, frequent password changes, and unfamiliar digital interfaces can overwhelm individuals experiencing cognitive decline or reduced digital literacy. Ironically, in attempting to shield elderly clients from external threats, these systems may compel them to rely more heavily on others, whether family members, caregivers, or acquaintances, for basic banking functions.³⁶

In line with efforts to promote financial inclusion for the elderly in digital banking, a study conducted in Japan revealed that older adults value social interaction and a sense of reassurance as key factors influencing their preference for traditional banking. They noted that online banking and digital platforms fail to offer the same level of comfort and personal connection.³⁷

³⁵ Katherine Grace and Sierra Smucker: “Protecting the Elderly from Financial Exploitation” (2021), RAND Blog <<https://www.rand.org/pubs/commentary/2021/10/protecting-the-elderly-from-financial-exploitation.html>> [Accessed 20th May 2025].

³⁶ Ibid.

³⁷ Ineke Schuurman, Leen Sevens, Victoria Yaneva & John O’Flaherty, “Improving Social Inclusion using NLP: Tools, Methods and Resources” (2018) *LREC Workshop* pp. 11 <[book_of_proceedings.pdf](#)> [Accessed on 22nd May, 2025].

Building on these insights, it becomes clear that any initiative aimed at integrating elderly individuals into the digital financial ecosystem must go beyond mere access and convenience. It must also address the emotional and psychological dimensions of banking such as, trust, familiarity, and interpersonal assurance. The Japanese study highlights a critical gap: digital banking platforms often neglect the human element that traditional banking offers, which many older adults rely on not just for transactions, but for confidence and peace of mind. Therefore, financial inclusion for the elderly cannot be achieved through technology alone; it requires a holistic approach that humanizes the digital experience. With this in mind, the following recommendations seek to strike a balance between these interests, therefore, ensuring that efforts to modernize banking systems do not leave behind those who need them most.

6.0 RECOMMENDATIONS

Banks must take deliberate steps to develop financial services tailored specifically to the elderly, just as they have historically created banking products for infants and young savers. To date, however, the financial sector has largely overlooked the elderly, whose inclusion in broader society remains an ongoing challenge, particularly in the regard to financial access and autonomy.³⁸

This neglect is not merely an oversight; it is a systemic failure that carries serious consequences. In Uganda, the socio-cultural perception that sickness, disability, and cognitive decline are natural and inevitable aspects of old age has fostered a dangerous complacency. This view normalises the marginalisation of elderly individuals, subtly justifying their exclusion from fully participating in economic life.

It obscures the urgent need for adaptive financial systems and protections, and worse, allows structural vulnerabilities, such as fraud, coercion, and economic

³⁸ Msweli, N.T & Mawela, T: “Financial Inclusion of the Elderly: Exploring the Role of Mobile Banking Adoption” (2021) <<https://repository.up.ac.za/handle/2263/81347>> [Accessed on 21st May, 2025].

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dependence to thrive unchecked. As people age and accumulate wealth, this reality must be met with equal foresight and institutional responsibility. Anything less not only fails the elderly but, weakens the social fabric as a whole.

According to the 2016 Uganda Demographic and Health Survey (UDHS), approximately one out of five older persons have severe disability.³⁹ Additionally, the world's population is steadily aging with increase in life-expectancy accompanied with falling fertility rates. By 2050, the number of people aged 60 years and above is projected to be over 2 billion and make up over 21% of the global population.⁴⁰ Therefore, a solution to this impending reality needs to be found expediently through the passing and implementing of legislation.

Banks should put in place systems to allow the elderly choose a trusted person with whom to run their accounts. This however needs to be reconciled with the data protection and privacy laws. Often, elderly people choose a relative or person close to them to assist in the running of their accounts. By including this third party into the banking contract and, permitting them to act together with the elderly persons in their transactions, it will be known who exactly is responsible in case a financial crime is committed in regard to the elderly person's bank account.

Accounts of the elderly should be monitored more closely than any other types of accounts. In *Phillips v Barclays Bank PLC*, allusions were made to the fact that Mrs. Phillips account had a history of relatively humble transactions since her student and professional life. Therefore, for large deposits of that nature to be made into her account, the Bank ought to have reasonably be put on notice. This notice need not have necessarily been of fraud but to the very, least signalled money laundering or any another financial crime. If the transactions by elderly account holders are managed in such a laissez-faire manner, the

³⁹ Ministry of Gender, Labour and Social Development: The State of Older Persons in Uganda, Situational Analysis Report. (2020) < <http://tinyurl.com/29x2edt6> > [Accessed 20th May, 2025].

⁴⁰ UNFPA and HelpAge International (2012).

immediate outcome is that the elderly will indeed be victims of fraud and other financial crimes. Therefore, banks ought to be keener in their management of accounts and the execution of instructions in relation to the elderly.

The Bank should inquire into any disabilities of the elderly prior to the formation of accounts as this may affect the running of these accounts. The UDHS study found that one out of five elderly persons has a disability resulting from age.⁴¹ In the Aida Atiku case, the Plaintiff had been afflicted by a cataract which resulted into a significant sight impairment and, as a result, had her daughter help her fill the savings account opening form.

Arguably, this would be a high duty to impose on the Banks, but nevertheless it should be viewed more as a preventive measure that will lead to an overall improvement in the banking sector. More so, it would be simple to carry out by including a medical examination in certain circumstances as a pre-requisite to the formation of an account (just as a National Identification Card is required before one can open an account). This could be decentralised and easily carried out at a branch level.

Positively shaping the elderly's perceptions of digital banking is a critical step toward enhancing both their financial inclusion and protection. An Internet Survey carried out by Oxford Identified that 46% of the elderly participants strongly agreed they do not use the technology as they are scared they might 'break something' and 68% suggested it was easier to cope without using technology.⁴² This shows that the elderly are negatively biased against digital banking, however, by educating them and affirming them of their abilities to carryout transactions using digital platforms, fraud can be prevented. This is because these platforms offer higher security measures against financial crimes.

⁴¹ Supra.

⁴² L. Georgiva, "Sustainable Operability: Digital Inclusion and The Elderly: The Case of Online Banking" (2018) <http://lrec-conf.org/workshops/lrec2018/W14/pdf/book_of_proceedings.pdf#page=15> [Accessed on 20th May, 2025].

The application of Article 32 of the Constitution of the Republic of Uganda, would drive financial inclusion for the elderly. This article is to the effect that the state shall take affirmative action in favour of groups marginalized on the basis of age, for the purposes of redressing imbalances which exist against them.⁴³ Furthermore, this article mandates the Parliament to make relevant laws to ensure that it is given full effect.⁴⁴ The elderly who are often excluded from the design and implementation of modern financial systems, clearly fall within this category. The marginalization they face is not only economic but also structural, as current digital banking frameworks fail to accommodate their unique cognitive and physical needs.

By invoking this constitutional provision, the call for financial inclusion of the elderly is elevated from a policy preference to a constitutional imperative. It empowers stakeholders (both governmental and private) to move towards tangible, human rights-based interventions that protect and empower the elderly in Uganda's evolving financial landscape.

Most banking contracts are of a standard form. This means that once the customer appends their signature, even without particularly knowing its contents, they are bound to the contents of the contract.⁴⁵ Therefore, before customers sign the contract, they should be given guidance as to its terms and the particular services to be provided as a result of it. This will prevent fraud of the nature in the Aida Atiku case that was through a digital banking service that the Plaintiff was not aware she had signed up for.

Furthermore, guidance on the available banking services should be given to the customer at the point of opening an account. In line with this, the Bank of

⁴³ Article 32 (1): Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

⁴⁴ Article 32(2): Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

⁴⁵ *L' Estrange v Gracoub Ltd* [1934] 3 KB 394.

Uganda Consumer Protection Guidelines provide for fairness in the relationship between a financial service provider and a consumer.⁴⁶ They also state that before a consumer chooses a product, the financial service provider ought to clearly explain to them the range of services offered and the key features of the services.⁴⁷ Additionally, financial service providers have to ensure that any service recommended to the consumer must be suitable for them.⁴⁸

7.0 CONCLUSION

Philipp v Barclays Bank has provided much-needed clarity on the scope of the Quincecare duty by firmly establishing that a bank's duty of care does not extend to preventing payment instructions made directly by customers, even where such instructions are influenced by fraud. As a persuasive authority from a common law jurisdiction, this decision is applicable in Uganda.⁵⁰

It also signals a need for Uganda's legal system to re-evaluate its protective mechanisms in light of emerging financial risks. In the context of the growing pattern of financial exploitation targeting the elderly, mere reliance on judicial precedent is insufficient. The most effective and forward-looking approach lies in rigorously enforcing existing financial regulations while simultaneously enacting specific legislation that recognises and responds to the vulnerabilities of elderly persons.

The implementation of elderly-friendly financial services can promote financial inclusion of the elderly. This can be done through simplified user interfaces such as voice-assisted navigation and large text icons. Further, banks can provide specific banking products to the elderly, for example, GTBank Uganda has designed the GTBank Seniors Account for senior citizens who are 60 years and above to enable them easily carryout their banking transactions. Equity Bank similarly provides a Pensioner's account.

⁴⁶ Guideline 6(1).

⁴⁷ Guideline 6(2).

⁴⁸ Guideline 6(3).

⁵⁰ Section 14 of the Judicature Act Cap. 16.

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In the United States of America (U.S.A), the American Association of Retired Persons (AARP) was formed to empower people to choose how they live as they age. In line with this, once an individual attains AARP membership status, they are given a wide variety of banking services catered specifically to the elderly. So far, partnerships have been formed with Barclays Bank in order to provide elderly friendly banking technology, among others. Using this as a success story, financial inclusion of the elderly can be advocated for by civil society groups in Uganda as has been done by the AARP in the U.S.A.

Lastly, the launching of awareness campaigns can reduce the number of fraud incidents occurring among the elderly. This can be done through radio, newspaper, television and billboards to ensure that they are aware of the high rates of fraud and the common methods through which they are carried out. This is because, protecting the elderly in financial spaces is not just a matter of policy, rather, it is a constitutional imperative. The time to act is now, before silence becomes complicity.

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