

# FINANCIAL SERVICES DISPUTES - DEVELOPMENTS OF NOTE

## WHAT DO YOU NEED TO KNOW? #6

*In this edition we look at recent cases concerning the pursuit of Payment Protection Insurance related litigation and the “Quincecare duty”. We also consider the current position in relation to the ability of financial institutions to pursue mortgage possession actions in view of recent updates from the Judiciary and the FCA.*

### RECENT CASE LAW

Recent decisions which have been particularly noteworthy include:

1. In *Stanford International Bank Limited (in Liquidation) v HSBC Bank PLC* [31 July 2020], the High Court considered HSBC’s application to strike out aspects of SIB’s claim. HSBC had operated a number of accounts for SIB and an allegation followed that HSBC “*failed in breach of its duty under Barclays Bank plc v Quincecare Ltd... (“the Quincecare duty”) to take sufficient care to see that the monies that were being paid out from accounts under its control were being properly paid out*”. It was argued that whilst payments out of SIB’s accounts: “*may have caused a diminution in assets available to SIB of £118m... it equally discharged £118m of SIB’s liabilities. So, on a net asset basis, SIB was no worse off and, being no worse off, it has no claim for damages.*” This argument was not accepted by the Court. As at 1 August 2008, SIB had the equivalent of c£80m in its HSBC accounts. Nugee J provided: “*Had SIB had the £80m, it would have had that money available for the liquidators to pursue such claims as they thought they could usefully pursue and for distribution to its creditors. The assumed and alleged beaches by HSBC have deprived it of that opportunity and that seems to me to be a real loss. To describe the position as one in which it is in exactly the same financial position as it would have been in on 1 August 2008 does seem to me, as Mr Fenwick suggested, contrary to one’s instinctive and common sense reaction to the facts.*” A separate application to strike out an allegation of dishonest assistance was allowed.

A full copy of the decision can be found by clicking [here](#).

2. On 20 July 2020, Her Honour Judge Belcher handed down judgment in the case of *Taylor v GE Money Consumer Lending Limited* (on appeal from a District Judge’s decision). In this case, the Claimant complained of an alleged mis-sold PPI policy and she claimed “*repayment of all sums paid in respect of PPI*”. However, before proceedings had been issued, the Claimant had already accepted a redress payment offered by GE and had signed a document which provided: “*I have read and accept the offer of redress on the terms set out in the offer letter... By signing below I agree my acceptance of this redress is in full and final settlement of any claim or complaint against GE Money Home Lending Limited concerning Payment Protection Insurance...*”. Concluding her judgment, HHJ Belcher provided: “*I agree with the District Judge that this claim was compromised by the Redress Letter, the CAF and payment of the offer sum once accepted*”. The Claimant’s appeal was therefore dismissed, dealing a blow to Claims Management Firms seeking to pursue further PPI claims against lenders.

3. In *Hamblin and another v World First Ltd* [23 June 2020], the High Court considered the Defendant's summary judgment application. The Claimants had invested £140,000 in "a sophisticated investment fraud". It was alleged "that the second defendant [Moorwand NL Ltd] was the corporate vehicle by which the fraud was carried into effect by individuals unknown. The first defendant [World First] is a payment services provider that is in effect a provider of current banking account facilities". World First had opened an account in the name of Moorwand on the application of a "Mr Anthony Carter". Mr Carter was a real person, but his identity had been stolen by the individuals behind the fraud. The Court provided that "the Claimants are at least realistically arguably entitled to bring representative proceedings. Such proceedings may be brought by a beneficiary where a trustee commits a breach of trust"... or in other exceptional circumstances ...".

The Claimants had transferred their investment funds to an account operated by World First. They argued Moorwand had claims against World First on the following bases: (i) a claim for damages for breach of statutory duty under the Money Laundering Regulations; (ii) a claim for breach of Regulation 61 of the Payment Services Regulations 2009; (iii) a breach of mandate claim since "(i) no authority to pay out from the account could have been obtained by [World First] since [Moorwand] had no directors at any material time and / or (ii) because payment out was not authorised by Mr Carter since Mr Carter's identity had been stolen by the fraudsters, and he was neither asked to or gave authority for the payment out from the second defendant's account with the first defendant"; and/or (iv) World First owed a duty of care to Moorwand to use reasonable care and skill.

The Court struck out the claim based on the Money Laundering Regulations, providing: "The 2017 Regulations exist for the protection of the financial system as a whole, and for the benefit of the public as a whole in consequence, and contains within it a comprehensive suite of both criminal and civil remedies that are available for use by the relevant regulators. There is nothing within it that suggests an intention to create a private law cause of action outside the scope of the suite of remedies expressly set out in the Regulations". The Court refused to strike out the remainder of claim, with the Judge finding: "I consider that [Moorwand] has a realistically arguable claim against [World First] either for repayment under the Payment Regulations or for breach of mandate or for breach of the Quincecare duty."

## MORTGAGE POSSESSION PROCEEDINGS

- Lenders' ability to pursue mortgage possession proceedings has been restricted during the COVID-19 pandemic by both FCA guidance and a stay of possession proceedings imposed by amendments to the Civil Procedure Rules. The FCA guidance has been updated and the government imposed stay has expired:
  - On 16 September 2020, the FCA published Finalised Guidance on "[Mortgages and Coronavirus](#)". The guidance can be found [here](#) and a summary of our analysis of the Finalised Guidance can be found [here](#).
  - The FCA's current guidance provides that "Firms should not commence or continue repossession proceedings against customers before 31 October 2020, given the unprecedented uncertainty and upheaval they face, and Government advice on social distancing and self-isolation." The most recent guidance does not purport to extend this restriction, instead it states: "The June guidance provides that firms should not commence or continue repossession proceedings against customers until 31 October. After this date firms may do so in accordance with MCOB 13 and applicable pre-action protocols." Accordingly, it appears that firms can resume the progression of possession proceedings after 31 October 2020 though: (i) it is clear that the FCA expects firms to continue to support those affected by COVID-19; (ii) the FCA provides that firms should not seek or enforce a warrant of possession if the subject property is in an area subject to a "[local or more widespread lockdown](#)" or the borrower or a member of their household is required to self-isolate.
  - In addition, the Court service has provided an update on the progression of possession proceedings in Courts. This can be found [here](#). Courts will start to deal with possession proceedings from 21 September and the Court envisages significant challenges. The

Master of the Rolls has commented: “*The stay of possession proceedings comes to an end on 20 September 2020. The legal system faces a combination of (a) accrued demand from the stay, (b) the possible increase in demand caused by economic consequences of the pandemic and (c) reduced physical court capacity because of social distancing. The challenge, and its scale, does not have a precedent.*”

- At the date of writing, it is clear that Coronavirus cases are increasing rapidly and more restrictions are being enforced. The possibility of further updates from both judiciary and the FCA should not therefore be ruled out.

## OTHER AG BRIEFINGS

Other articles include:

- Furlough Fraud – HMRC’s Statement of Intent – click [here](#).
- Tenant Insolvency – the Landlord’s position – click [here](#).
- Corporate Crime & Investigations Update – click [here](#).
- Asset Finance and Leasing Update – click [here](#).
- Data and Privacy News – click [here](#).



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