

this case and the present instance should be assimilated to suggest that, as Dan himself have the instruction, Quincecare duty does not extend to put Busy Bank on inquiry.

Finally, Dan does not have a right to countermand and revoke the transaction. As the transfer is a payment instrument under PSR Reg 2, it will apply here. However, Reg 67 (3) only entitles the payer to revoke a credit transfer before the instruction was received by the bank. Therefore, as the bank has already received and executed the instruction, Dan cannot rely on the PSR to revoke the payment and return the funds.

b. Dan wants to track his spending and understand what he spends his monthly salary on. He downloads the “all in one place” app but Busy bank refuses to give permission to access Dan’s accounts to avoid breaching the duty of confidentiality. Dan is very Disappointed.

Dan can sue Busy Bank for breach of the implied contractual duty to honour customer’s mandate, asserted in *Sierra Leone Telecomms v Barclays Bank*, by refusing to share his banking information on his request. While this case concerned an instruction for a transaction, an instruction to share information with a third party is likely to be similar in that it constitutes part of the mandate given by the customer to the bank to process their personal and financial details.

However, Busy Bank can object that their duty to honour mandate is excluded here because it would contradict their duty of confidentiality. Indeed, under *Parry Jones v Law Society*, a bank-customer relationship enjoys an implied contractual duty of confidentiality. Per *Tournier v National Provincial Bank*, this duty extends to all information obtained by the bank during the banking relations. Thus, the information about Dan’s accounts is clearly protected by confidentiality.

However, this duty is subject to a number of limitations in *Tournier*. Most relevantly, confidentiality is restricted where the customer has given an implied or express consent to the disclosure. On the facts, Dan has clearly given consent to disclosing his account information by requesting it. Therefore, the bank is not bound by confidentiality and is not justified in refusing to honour the customer’s mandate by sharing the information with the app.

c. Dan decides not to think too much about spending and buys a £10,000 holiday package. He pays £200 with his credit card but the holiday company goes insolvent and Busy Bank refuses to refund the cost of the

- The POCA encompasses any act as criminal activity (T.Walsh) and imposes specific reporting obligations on regulated persons such as bankers, accountants and lawyers (S330 POCA)
- S330 imposes an express duty on bankers, as regulated persons, to report any actual knowledge, or suspicion, or in circumstances where that person has reasonable grounds for knowing or suspecting, that someone
- This heavily reduces the bank's duty of confidentiality by changing the Tournier duty from a reactive duty, where it is justified to disclose on inquest from an authority, to an 'proactive' duty where it must be forthcoming
- This is bolstered by the characterisation of S330 'suspicion'. It is not necessary for a suspicion to be a reasonably held one, 12 it is sufficient that it is a genuinely held one. It must be, at the very least, more than merely "fanciful"
- Other AML regimes have similarly affected banks,
 - the police have powers to obtain information for the purposes of a criminal investigation. (Police and Criminal Evidence Act 1984, s 9.)
 - The Director of the Serious Fraud Office can require information to be produced where there is a suspected offence that appears to involve a serious or complex fraud. (Criminal Justice Act 1987, s 2.)
- TECHNOLOGICAL DEVELOPMENTS
 - The original Tournier duty of confidence was to merely withhold information of the customer from the public, however the advance of technology has led banks to act in a way where they must also record and hold memory of this information for future law enforcement
 - Walsh notes that the creation of electronic funds systems have caused greater accessibility to banking, and hence more customer records than ever before and a greater exposure of data to third parties
 - Therefore regulations such as the Money Laundering Regulations has required banks to retain information for a 5 year period
 - This increases the duty of confidence to be a much higher burden on banks who now require new tech to fulfil the Tournier duty
 - This is especially considering banks also share with internet service providers, under the Data Protection Act 1998, they must inform customers when personal information is processed on it
 - This leads to banks having to also take step to safeguard their
 - Level of maintenance is a lot higher
- PUBLIC INTEREST EXPANDED
 - Sunderland v Barclays
 - Banks own interest, has expanded
 - Can argue that this duty has expanded

example of HSBC being prosecuted by regulators for money laundering in US and being fined for like (Wild, Stockton, Bureau of Investigative Journalism 2021)

How to fix this?

- The POCA should be reformed. The suspicion requirement for primary offences should be clarified and may be given an objective standard (suspicion on reasonable grounds). Plus, the all crimes approach should be amended: authorised disclosure is only needed in relation to serious crimes while the reasonable excuse defence in s 328 (2)(b) is extended to cover not reporting the offence in relation to minor crimes. (**Anti Money Laundering: the SARs Regime by the Law Commission pages 73 and 84**) thus, the ambit of primary offences and instances where SAR is needed to protect the bank from liability will be limited to allow the banks to concentrate on more high-quality reports covering more substantial crimes and save time for themselves and the law enforcement by cutting on unnecessary defensive reports.
- Suggest that there need to be accessible tools for conducting CDD to shift the costs of compliance from the financial sector. The costs of CDD in the financial service sector can be reduced by creating comprehensive registers of beneficial ownership that track foreign corporate vehicles and trusts. Note that the UK has a **People with Significant Control register** for UK companies. Comparative analysis with 6th European Directive and their initiative to create a single central register and keep track of ownership in foreign companies. This reveals that international cooperation is key to combating the attempts to hide money laundering behind corporate veil in various jurisdictions. This also will reduce the costs of finding the relevant information because you have one register to consult. Therefore, this reform would reduce the costs of CDD so that banks are more willing to carry it out.

Problem Question - CCA and PSR 2017

Bank A issued Dan a debit card and a credit card. Dan also has an online account with Bank A.

1) Dan goes on holiday and leaves his credit card at home on the kitchen table. His roommate sees the card and uses it to buy products on Amazon. Dan is not very happy and demands a refund from Bank A.

2) Not knowing that the credit card has already been used by his roommate, Dan asks him to read him the card details over the phone and he buys a flight back home with the card. The airline, unfortunately, goes insolvent and Dan cannot go back home.

- Dan might argue that the Bank had a duty of care and had a voluntary assumption of responsibility. In Hedley Byrne the bank's negligent reference that incurred substantial losses resulted in a duty of care to the enquirer
 - This principle applies to negligent provision of services (Henderson v Merritt)
 - Additionally, In Thomas v Triodos (Thomas v Triodos), a bank was held liable for mis-selling an interest rate derivative to its customers, despite it being a nonadvised transaction. The High Court, considering the spectrum of duties of care that banks owe to their customers when selling financial products, held that in certain circumstances banks owe customers a higher duty than simply not misleading or misstating information – even if the relationship is not advisory
 - However in Thomas, the bank has voluntarily signed up for a banking Business Banking Code (BBC) and had advertised its subscription to the claimant customers. -
 - Therefore in this situation if Bank A has done the same then it will be liable for negligent provision of services in its duty of care
 - This would make the bank liable for damages for negligent misstatement
- Dan could also argue that Bank A incurred a fiduciary duty depending on Bank A's advertising and representation
 - In Woods v Martin Salmon J imposed a breach of fiduciary duty because the bank had agreed to be a financial adviser, leaflets claimed the bank was an expert, and the branch manager failed to disclose conflicts of interests that the investment was to the benefit of the bank
 - This is however unlikely as the facts do not state any information was provided and therefore the bank is not in breach of fiduciary duty

6) Dan lost the debit card. Since he is not using the card very often, he only realises that he lost it after several months. He wants to notify Bank A but cannot get through to customer service. He sends an email to Bank A and gets a reply that it is too late to ask for a refund.

PSR 2017 applies,

- Reg 72, payment user must notify the payment service provider on becoming aware of the loss of the payment instrument.
- To retain the right to refund - notify without undue delay and no later than 13 months after the payment (reg 74(1)). As long as his call and email has been less than 13 months since unauthorised payments, Dan has the right to refund
- Applying the PSR 2017, Bank A bears prima facie responsibility for any unauthorised use of the payment card and is obliged to refund the amount and recredit the cardholder's account (reg 76).
 - Note where PSR and CCA clash the CCA will prevail Reg 64 -