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A Bank's Duty of Confidentiality: An Expanding Exception, an Enduring Rule

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In this column Ian McDonald of 3VB, examines the enduring yet evolving principle of banking confidentiality established in the landmark case, Tournier v. National Provincial and Union Bank of England [1924] 1 KB 461. He explores the significant expansion of the key exception: disclosure by compulsion of law. It considers whether the "compulsion of law" exception now dominates the daily operation of banking, effectively becoming the new rule, and discusses the interplay with modern regulations like the UK GDPR and the Data Protection Act 2018.

The Court of Appeal's decision in Tournier v. National Provincial and Union Bank of England [1924] 1 KB 461 established a defining principle of banking law: the implied contractual duty of confidentiality owed by bank to customer. Age has not wearied this judgment: over a century on, Tournier remains foundational.

However, the scope of one of the four exceptions to this duty also identified by the Court of Appeal, disclosure that is compelled by law, has broadened dramatically over the last 100 years, eroding the duty in the process. Which begs the question: has this exception now become the rule?

The duty

In Tournier, it was held that a duty of confidentiality was to be implied into the bank-customer contract. Simply put, a bank should not disclose information about a customer without consent. This confidence is not limited to the state of the customer's account. It also covers information derived from it – whether relating to transactions, financial affairs, or other matters discovered during the relationship.

Throughout the myriad changes to banking over the past century, the courts have consistently approved Tournier and treated it as their starting point. Although the case concerned a retail bank and a customer's current account, the duty has been applied to other entities meeting the common law definition of a bank and the courts have indicated a willingness to extend it to wider activities (such as investment banking: CF Partners (UK) LLP v. Barclays Bank plc [2014] EWHC 3049 (Ch)).

Exceptions to the duty

One likely development is that the cost of AI platforms As the Court of Appeal also made clear in Tournier, the duty of confidentiality is not absolute. Rather, it is subject to four exceptions:

- Where the disclosure is compelled by law.
- Where there is a duty to the public to disclose.
- Where the bank's own interests require disclosure.
- Where the customer expressly or impliedly consents to disclosure.

These exceptions, too, have survived the last 100 years remarkably intact. It is fair to say, though, that not only has the first largely eclipsed the others (in particular, the second) – its scope has also widened considerably.

The key exception: disclosure by compulsion of law

Disclosure by compulsion of law takes three main forms.

- Disclosure in civil litigation, as required under the Civil Procedure Rules (CPR). Today, such rules are found in CPR Part 31, governing such disclosure, generally, and CPR Practice Direction 57AD, applicable to Business and Property Courts (BPC) proceedings, specifically. Given that the BPC are home to the (soon to be scrapped) Chancery Division and Commercial Court, these are the rules which banks and their lawyers are most likely to have to grapple with, should disputes arise (see Legal update, Chancery Division to be replaced by new Business and Property Division (June 2026)).

- Compliance with Norwich Pharmacal orders. These have been addressed, in more detail in a previous column (see Article, Norwich Pharmacal order: no jurisdiction). Suffice to say that they require a respondent bank to disclose certain information, often to help identify the wrongdoer(s) and/or enable a claim to be fully pleaded.
- Disclosure under statute. It is here that the biggest transformation since Tournier, and corresponding erosion of its duty of confidentiality, has occurred. If an AI-related charge is presented as a disbursement, much like an e-disclosure platform, then in principle this may be recoverable applying the same principle as to reasonableness and whether this is a genuine expense or part of the conducting solicitor's overheads.

Back in 1924, there were few statutory provisions obliging banks to disclose confidential customer information (the Bankers' Book Evidence Act 1879 being the most prominent example). However, there has been a spate of such legislation in recent years, including as part of anti-terrorism efforts and following the financial crisis.

Indeed, there are now dozens of instruments of relevance on the statute book, such as the Proceeds of Crime Act 2002 (POCA), Criminal Finances Act 2017, and Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).

And some of this legislation not only requires banks to hand over confidential customer information, pursuant to orders or formal requests, but places them under a duty to report such information on their own initiative (see, for instance, section 333A POCA), with serious sanctions for non-compliance.

Other exceptions: disclosure in the bank's own interests and by consent

The expansion of the disclosure by compulsion of law exception stands in contrast to the more circumspect approach taken by the courts to Tournier's third and fourth exceptions.

As to disclosure in the bank's own interests, whilst this will be engaged where a bank claims payment of an overdraft (Tournier) or enforces its rights under a charge (Kaupthing Singer & Friedlander Ltd v. Coombe & Anor [2011] EWHC 3589 (Ch)), attempts to stretch its application, including to justify circulation of confidential customer information within banking groups, on the basis that it is necessary to protect against the risk of default (Primary Group (UK) Ltd v. Royal Bank of Scotland [2014] 2 All ER (Comm) 1121), have been met with scepticism.

Similarly, in terms of customer consent, although express consent is reasonably straightforward, implied consent is anything but. The Court of Appeal has, for example, rejected an argument that the long-established practice of the giving of banker's references gave rise to such consent (Turner v. Royal Bank of Scotland Plc [1999] 2 All ER (Comm) 664).

Has the exception become the rule?

The question therefore arises: more than a century after Tournier, has the disclosure by compulsion of law exception now become the rule?

It is true that, today, the practical significance of this key exception has expanded so substantially that it often dominates the daily operation of banking confidentiality.

Nevertheless, it would be overstating things to say that the exception has replaced the rule:

- The starting point remains the implied contractual duty established in Tournier. Absent one of the exceptions, disclosure of confidential customer information is unlawful. And potential remedies for the customer include contractual damages, which can be significant depending on the nature of the disclosure and the losses suffered.
- The relevant legislation authorises disclosure for defined purposes. POCA, for instance, requires disclosure only where there is knowledge or suspicion of money laundering. It does not permit banks to share confidential customer information generally.
- The UK GDPR and Data Protection Act 2018 have somewhat redressed the balance, imposing additional restrictions on the use of personal data which operate alongside the common law duty of confidentiality.
- The scope of Tournier's other exceptions has not been broadened in the same way. On the contrary, the courts have shown a reluctance to entertain further erosion of the duty of confidentiality without Parliament's intervention.

Conclusion: enduring lessons from Tournier

Over 100 years on, Tournier endures because it strikes a sound balance: customer confidentiality is still the rule; disclosure remains the carefully defined exception.

What does this mean, then, for banks and their lawyers in practice? The following points can be made:

- The disclosure by compulsion of law exception should be relied on cautiously. The precise legal basis invoked should be identified, to ensure that the apparent trigger for disclosure is more than mere informal request.
- Even if this exception does apply, only the exact information required should be provided and the scope the disclosure should be no wider than necessary.
- Relatedly, when giving disclosure, consideration should be given to the use of redactions, or other measures where appropriate, to protect sensitive data the production of which is not required.
- Away from the disclosure by compulsion of law exception, banks and their lawyers should be slow to rely on any argument that the bank's own interests necessitated disclosure, or that the customer impliedly consented. The former exception is unlikely to be available, for example, where the bank is simply looking to improve its own commercial position. And the latter will be narrowly construed by the courts and can be difficult to prove.
- More broadly, thorough records should be maintained, of all requests received; the rationale for any disclosure; the date; and the specific information provided. This will both support the bank's confidentiality obligations and offer protection in the event of any future dispute.