CLIENT ALERT

NatWest Fined £264.8m Following Guilty Pleas to Anti-Money Laundering Failures

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Introduction

On 13 December 2021, National Westminster Bank Plc ('NatWest') was sentenced at Southwark Crown Court for three offences contrary to the UK Money Laundering Regulations 2007 (the 'Regulations') to which it had pleaded guilty. This was the first criminal prosecution by the Financial Conduct Authority ('FCA') under the Regulations.

The offences related to failures, between 2012-2016, to comply with requirements to conduct risk-based ongoing monitoring of the business relationship with one of its customers (Fowler Oldfield), including failures to conduct enhanced ongoing monitoring.

NatWest was sentenced to a fine of £264.8m, a confiscation order in the sum of £460,000, and payment of the FCA's costs (£4m).

A separate investigation by West Yorkshire Police has resulted in 11 individuals, who were involved in couriering cash to Fowler Oldfield's premises, pleading guilty to money laundering offences. An additional 13 individuals, including two Fowler Oldfield directors, are awaiting trial at Leeds Crown Court. The trial is due to take place in April 2022.

Summary of background facts

Fowler Oldfield ('Fowler') was a buyer and seller of gold, and first became a customer of NatWest in 2011. Notably, at the time its account was opened, NatWest understood from the account opening documentation that NatWest would not handle any cash for Fowler.

However, from November 2013, there was a significant change in Fowler's business model and it started depositing significant amounts of cash with NatWest (with electronic transfers being made out of the account to major suppliers of precious metals). In total, during the five-year period of the relationship, Fowler deposited approximately £365m with NatWest, of which £264m was in cash, deposited at 50 branches. At the height of the activity on the account, Fowler was depositing up to £1.8m per day.

This change in the business model was flagged on NatWest's Relationship Management Platform by the Relationship Manager. However, the change did not result in a review of the account. In fact, between 2013-2014, Fowler's risk rating on NatWest's systems was reduced (from high to low, and then to medium) due to an incorrect change in the classification of Fowler's business activity. There was therefore a failure to treat Fowler as a high-risk customer for much of the material period.

NatWest's Relationship Management Team, "*despite regular contact with the customer and adequate training by the Bank*" failed adequately to scrutinise Fowler's explanation for the change in activity on the account, or initiate reviews of the relationship following trigger events. NatWest also failed to ensure that Fowler was subject to the correct risk rating.

Several concerns were reported by staff in NatWest's cash centres, which included: (i) such a high volume of cash being deposited that, at times, cash was deposited in large black bin bags in volumes that exceeded the branch's storage capacity and tore because of their weight; (ii) the high volume of Scottish notes, which was unusual for a business so far south of the border; and (iii) the fact that the cash would sometimes carry a "*musty smell, indicative of long storage, rather than business use*".

Another failing was that NatWest's automated transaction monitoring systems erroneously interpreted the cash deposits as cheque deposits and therefore they were subject to less stringent rules applicable to cheque deposits.

In total during the relevant period, staff raised 11 internal money laundering reports, and NatWest's automated transaction monitoring system alerted 10 times. However, the Relationship Manager's explanations, for example his statement that there were "*no AML concerns with activity fully explained and consistent with the account information being provided*" were not challenged. No Suspicious Activity Report was submitted by NatWest concerning Fowler (until 2016, when NatWest was notified of the West Yorkshire Police investigation into Fowler).

In 2014, the National Crime Agency ('NCA') submitted a formal information request of NatWest relating to Fowler arising out of concerns triggered by the Scottish banknotes. Concerns were raised by NatWest about the explanations provided by the Relationship Manager; but these concerns were not recorded on the relevant database, and no event-driven review of the account was triggered.

The failures of NatWest were therefore a combination of matters, including inadequate scrutiny of explanations for changes in account activity or unusual activity, failures in the automated transaction monitoring system, inadequate steps to investigate internal reports made by staff and monitoring systems, failures to conduct periodic reviews of the account, and failures to treat Fowler as a high-risk customer.

NatWest accepted that it had committed offences as follows: (i) failing to comply with the requirement to conduct ongoing monitoring of a business relationship; (ii) failing to comply with the requirement to determine the extent of ongoing monitoring on a risk-sensitive basis and being able to demonstrate that the extent of the monitoring was appropriate; and (iii) failing to apply an enhanced model of ongoing monitoring to its business relationship with Fowler in a situation which presented a higher risk of money laundering.

The FCA is not charging any individuals in connection with its investigation, although it is notable that the Relationship Manager who managed the Fowler account was dismissed by NatWest in 2018 for gross misconduct.

Calculation of financial penalty

The Court noted that "*it is not suggested that there has been any deliberate flouting of the rules or that there was any criminal intent*" and that the offences in question are offences of strict liability. Furthermore, the Court accepted that the offences are "*not offences which relate to a lack of commitment by [NatWest] to the principles underpinning the Regulations*".

Indeed, the Court observed that between 2010-2015, the NatWest Group invested over £700m in financial crime prevention, and that its financial crime and fraud team currently comprises 5,000 members (representing around 8% of NatWest Group's total employees).

There are no specific sentencing guidelines for offences under the Regulations, but the Court followed the sentencing guidelines for substantive money laundering offences committed by corporates. The Court therefore adopted the following approach to the calculation of the penalty:

- The Court considered (which was the approach agreed between the FCA and NatWest) that the "*only sensible way of assessing harm*" is by reference to the funds paid into Fowler's accounts during the indictment period, i.e. £287m. This was by analogy with the substantive money laundering sentencing guideline which indicates that normally the appropriate harm figure is the "*amount laundered*".
- The harm figure was then reduced by 40% to reflect the "*difference between breaches of the Regulations and substantive money laundering*".

- Culpability was assessed as medium, and the Court applied a multiplier of 200% of the harm figure, which produced a figure of £345m.
- The Court then, at the 'step back' stage, uplifted the sentence by 15%, to reflect "*the need for appropriate additional punishment and deterrence…*" The Court wanted to ensure that it "*pass[ed] a sentence which is of sufficient size that it will be felt by management and shareholders of the Bank*…" and noted in particular that "*[a]ll banks operating in the retail banking space have had it clearly flagged to them by the JMLSG that the provision of services to cash-generating businesses is a particular area of risk, and that there is a corresponding need for careful assessment of that risk*".
- That figure was then reduced by one third to reflect the discount for an early guilty plea, to arrive at the penalty of £264.8m.
- It is notable that Defence Counsel for NatWest referred to certain FCA decision notices against other financial institutions in respect of money laundering failures (in which the FCA had imposed lower penalties than the fine imposed on NatWest in this matter) and submitted that the wrongdoing was more serious in those cases than in this case. The Court was not, however, persuaded to move away from the approach of following the criminal sentencing guidelines.

The £460,000 confiscation order reflected the total fees and charges gained by NatWest from its relationship with Fowler. This was notwithstanding the fact that NatWest "*ultimately incurred a small loss from its relationship with Fowler*" because the fees it received were offset by an "*informally extended loan*" which was outstanding when Fowler ceased to trade.

<u>Conclusion</u>

This case reinforces the FCA's continuing focus on effective and risk-based ongoing monitoring as a fundamental component of financial crime prevention programs. Previously, there had been questions as to the FCA's appetite for pursuing criminal prosecutions for breaches of the Money Laundering Regulations, but it now seems clear that in appropriate cases, a prosecution may ensue.

In a letter from the FCA to the House of Commons dated 13 December 2021, the FCA stated that it has a number of ongoing investigations in relation to potential anti-money laundering violations, "*some of which are at a very advanced stage*", and that for each of its cases, a decision is taken whether to proceed by way of regulatory enforcement or criminal prosecution, having regard to all the circumstances, including the severity of the conduct, the speed with which the institution self-identifies mistakes and rectifies its procedures, and whether the evidence supports the higher standard in a criminal case. It is notable that, during the course of the FCA's investigation, NatWest initially declined the FCA's invitation for a voluntary 'interview under caution' and then provided a written statement to the FCA in which it denied breaches of the Regulations.

In terms of possible financial penalties for criminal prosecutions arising out of breaches of the Regulations, in light of this decision, firms should be aware that even though, as was the case here, the offences for which the firm was convicted were not substantive money laundering offences but regulatory offences, the 'harm figure' used to calculate the financial penalty is likely to be assessed in a comparable way to how it would be calculated if the defendant had been convicted of a substantive money laundering offence (albeit then applying a reduction in an attempt to reflect that difference).

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