Investigations, Compliance and Defence

Systems and controls failings lead to criminal charges for UK NatWest Bank

By: Paul Feldberg, Lucy Blake, and Matthew Worby

NatWest pleaded guilty on Thursday 7 October 2021 to criminal charges brought by the UK financial services regulator, the Financial Conduct Authority (the "**FCA**"). The FCA had charged NatWest with failing to properly monitor certain accounts and apply appropriate customer due diligence measures under the UK Money Laundering Regulations 2007 (the "**Regulations**"). The bank admitted to breaching the regulations in relation to a gold dealership who deposited £365 million ($495 million) in cash into a NatWest account between 2011 and 2016, despite having a predicted turnover of around £15 million. NatWest will be sentenced in December and faces a significant fine. Whilst the FCA has often imposed civil penalties for breaches of the Regulations, this marks the FCA's first criminal prosecution under the Regulations which were introduced fourteen years ago. The case will likely be of interest to banks and regulated entities but also to other unregulated companies concerned about the growing focus of the UK authorities on criminalising compliance failures.

A person, including a corporate body, is guilty of an offence under the Regulations if they fail to comply with various customer due diligence provisions designed to prevent money laundering. Notably, the prosecution does not have to prove that any actual money laundering took place – the offence instead relies merely on compliance failings (similar to the "books and records" offence in the US Foreign Corrupt Practices Act 1977). This is also a strict liability offence with no requirement for the prosecution to show a guilty mind, although a defence of taking "reasonable steps" and exercising "due diligence to avoid committing the offence" is available. Where the offence is committed by a corporate body, individuals who are "officers" (including directors, managers and chief executives) may also be personally liable if they "consented" or "connived" or if the offence could be attributed to any neglect on their part. Penalties for individuals include not only a potentially unlimited fine but also a jail term of up to two years. No charges have yet been brought against any individuals, but it serves as a reminder of the possibility for officers of companies to be individually prosecuted for compliance failings – regardless of whether any substantive money laundering took place.

NatWest has pleaded guilty so no trial will take place, meaning that few details are likely to emerge about precisely what the bank did or did not do (although the judge may make some illuminating remarks at the sentencing hearing in December). It will be particularly interesting to try to understand why the FCA chose to pursue this case criminally rather than civilly, although we suspect the failures were so egregious that the FCA had little choice. Certainly the FCA has been warning for some time of its intention to make use of its criminal powers. Mark Steward, the FCA's Executive Director of Enforcement and Market Oversight, gave a speech in 2019 in which he made clear that the FCA intended to bring criminal prosecutions "*in egregious circumstances… to enliven the jurisdiction… to ensure it is not a white elephant*". Despite this, in September 2020, a Freedom of Information request revealed that the FCA had abandoned over half of its criminal money laundering investigations. The NatWest prosecution will therefore be something of a showcase for the regulator to indicate to banks and other regulated entities that the FCA means business. However, without further details, it remains unclear what will tip the balance for criminal, as opposed to civil, action.

The UK Law Commission is currently consulting on whether to reform corporate criminal liability, including by introducing additional "failure to prevent offences" for economic crimes including fraud and money laundering. Some have argued that a separate "failure to prevent" money laundering offence is

redundant given the existence of the criminal offences under the Regulations (and, at last, the FCA's use of them), although there are concerns that this would leave unregulated businesses outside the scope of prosecution. Either way, it seems there is increasing interest from UK law-makers in bringing about a systemic shift in the way businesses prevent wrongdoing by criminalising compliance failures. This serves as further evidence that compliance is a business-critical matter for all companies – regulated or not – and should be high on their boards' agendas.

Contact Us

Paul Feldberg

pfeldberg@jenner.com | Download V-Card

Lucy Blake

lblake@jenner.com | Download V-Card

Matthew Worby

mworby@jenner.com | Download V-Card

Meet Our Team

Practice Leaders

Anthony S. Barkow
Co-Chair
abarkow@jenner.com
Download V-Card

David Bitkower
Co-Chair
dbitkower@jenner.com
Download V-Card

Christine Braamskamp
Co-Chair
cbraamskamp@jenner.com
Download V-Card

Brandon D. Fox
Co-Chair
bfox@jenner.com
Download V-Card

Erin R. Schrantz
Co-Chair
eschrantz@jenner.com
Download V-Card