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FCA Adds Bite To AML Regime With 1st Criminal Charges

By **Richard Crump**

Law360, London (March 16, 2021, 6:01 PM GMT) -- The Financial Conduct Authority launched the first prosecution of a U.K. bank for failing to comply with anti-money laundering rules on Tuesday in a watershed case that will send tremors through London's financial institutions.

The charges against NatWest "set an important precedent" that show the City watchdog is not afraid to pursue big names, a legal expert has said. (iStock)

Charging NatWest over its handling of funds from a customer incorporated in Britain allows the FCA to fire a warning shot showing that it intends to make good on its pledge to use its criminal enforcement powers under the country's AML regime.

The **charges against NatWest**, a subsidiary of state-backed NatWest Group, formerly Royal Bank of Scotland, "set an important precedent" that show the City watchdog is not afraid to pursue big players in the financial industry, Corker Binning LLP's Claire Cross said. The move "will cause shockwaves across the financial community."

It is the first criminal prosecution the FCA has brought under British 2017 reforms to the domestic Money Laundering Regulations.

But it has not come without warning. The watchdog's head of enforcement, Mark Steward, has cautioned that the FCA will prosecute where it finds strong evidence of "egregiously poor systems and controls" and what looks like actual money laundering.

Steward said in 2019 that he suspected that criminal cases would be "exceptional" compared with civil or regulatory enforcement. But he also said he did not want the authority's powers of prosecution to be a "white elephant."

Cohen & Gresser LLP's Tim Harris said the prosecution "crystallizes the criminal risk for firms.

"Up until now the criminal aspects of the money laundering regime, at least for firms, have been somewhat theoretical. For a U.K. retail bank to be prosecuted is a watershed moment and shows the FCA coming good on its goal to give teeth to the regime," Harris added.

The charges mark an escalation in the FCA's approach to money laundering, which had focused on the use of civil regulatory sanctions against financial institutions: the regulator fined Standard Chartered £102 million ($142 million) in 2019 for shortcomings in its AML systems and controls.

The watchdog alleged on Tuesday that NatWest's systems and controls failed to detect that increasingly large cash deposits were paid into a single client's accounts with the bank between 2011 and 2016, ultimately amounting to £365 million in deposits, including £264 million in cash.

If convicted, the bank faces an unlimited fine and questions whether it can renew its regulatory banking authorizations and bid for public contracts, Jonathan Fisher QC at Bright Line Law said.

"In terms of enforcement, initiating a criminal prosecution against a leading bank is like pressing the nuclear button," Fisher said. "It is one thing for a bank to be fined for anti-money laundering failures, it is another thing for a bank to be criminally charged. In terms of reputation it is potentially very damaging."

NatWest has been under investigation by the FCA since July 2017 and has been cooperating with the probe, which raises questions about why the watchdog decided criminal rather than civil charges were necessary.

"Up until today the general consensus was that a criminal case would be unlikely to be forthcoming," Cross said. "This was partly due to the fact that the FCA had shut the majority of its criminal based investigations in this area and partly due to the amount of time that had passed since the original announcement."

NatWest said it takes its responsibility to prevent money laundering by third parties seriously and has invested in its financial crime systems and controls.

Attorneys think it is unlikely the bank would suffer the "extreme" consequence of losing its license, because taxpayers still own 62% of the company following the government's decision to bail out RBS during the financial crisis. It will be for the courts to set the fine, rather than the FCA, if NatWest is convicted.

"Unlike in earlier civil resolutions to money laundering allegations, assuming the bank pleads or is found guilty, it will be subject to the criminal sentencing guidelines applied by the court," said Harris. "The starting point for a fine will be the amount of money laundered and go up from there as a multiple based on, among other things, the seriousness of the control deficiencies."

It is also noteworthy that no individuals are being charged. However, the FCA could take regulatory action under the Senior Managers and Certification Regime, which holds top company officials liable for wrongdoing committed by their employees.

"While no individuals have been charged, given the period of the alleged offending overlaps with the coming into force of the senior managers regime, there could be implications for the senior manager responsible for oversight of the banks money laundering systems and controls," Harris said.

Other companies facing FCA probes should take note, particularly as the case involves historical allegations that date back 10 years.

"Other financial institutions will be sitting less comfortably today if their anti-money laundering procedures are not totally compliant with the requirements of the regulations," Fisher said.

The FCA had come under scrutiny for failing to prosecute any regulated financial institutions or their directors or employees for money laundering failures. It emerged in September that it had scrapped **seven of the 14 investigations** that it had launched into money laundering.

However, money laundering is increasingly at the top of the FCA's agenda.

The scale of the problem was laid bare in September by a cache of leaked documents that revealed Britain's role as a laundromat for the world's kleptocrats and called into question the effectiveness of law enforcement in rooting out dirty money.

"There has been a tendency to pull up short of issuing criminal prosecutions against corporates," Harvey Knight of Withers LLP said. "Authorities tend to go right up to the edge and find a way to compromise it. This is definitely not the usual playbook.

"I suspect this has do with encouraging others by getting a nice big household name and making a public example," he added.

--Additional reporting by Christopher Crosby. Editing by Ed Harris.