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**ROYAL COURT**
**(Samedi Division)**

**14th April 2020**

**Before:** **Mr T J Le Cocq Esq, Bailiff**
**and Jurats Ramsden and Austin-Vautier**

**Between** **HM Attorney General**

**And** **Abu Dhabi Commercial Bank PJSC Jersey Branch**

**Crown Advocate W Redgrave for the Attorney General**
**Advocate W Grace for Abu Dhabi Commercial Bank PJSC**

**JUDGMENT**

**BAILIFF:**

1. On 5th February 2020 we imposed a fine in the sum of £475,000 (together with an order for costs in the sum of £25,000) on Abu Dhabi Commercial Bank PJSC ("the Bank") for a single count of a breach of Article 37(4) of the Proceeds of Crime (Jersey) Law 1999 by failing to maintain appropriate and consistent policies and procedures relating to customer due diligence measures and risk assessment and management in order to prevent and detect money laundering as required by Article 11(1)(a) and (f) and Article 11(3)(a) of the Money Laundering (Jersey) Order 2008.

2. At the time that we imposed that sentence we said that we would give our reasons in due course. These are those reasons.

3. The particulars of the offence contained in the single count on the indictment show that between 29th July 2013 and 5th February 2019 during the course of carrying on a financial services business the Bank failed to maintain appropriate and consistent policies and procedures relating to customer due diligence measures and risk assessment and management in respect of bank accounts in the names of two individuals referred to herein as Mr A and Mr B.

4. There is no suggestion that the customers in question are guilty of money laundering or indeed any financial offending. It is to the policies and procedures of the Bank that the charge is directed.

5. Suffice it to say that in the cases of both Mr A and Mr B substantial amounts of cash in the tens of thousands of dollars were withdrawn over a period of years from their bank accounts without any or sufficient scrutiny as to the use to which the money was being put. The total amount of cash withdrawn was in excess of US$1.2 million. The customers in question never came to Jersey and the cash was handed over the counter in branches of Abu Dhabi Commercial Bank PJSC in the UAE. The pattern of withdrawals in both cases changed over a period of time and at no stage did the Bank respond appropriately to those changes by seeking evidence as to the legitimacy of the withdrawals. The situation remained in place for a number of years.

6. The background, although explained to us in great detail by the Crown, does not need to be set out in full in these reasons. Abu Dhabi Commercial Bank is a multi-national bank and is one of the most substantial banks in the Middle East with an overall profit after tax in 2018 of approximately £1 billion with income at around twice that amount. The Bank is the Jersey Branch of the Abu Dhabi Commercial Bank. It does not offer retail banking in Jersey and at the relevant time had between five and nine Jersey based employees. It was not, therefore, in terms of its size, a substantial operation.

7. The main office of Abu Dhabi Commercial Bank deals with relationship management, IT and Treasury Services, the maintenance of customer accounts and the processing of customer transactions. Cash is used much more frequently in the Middle East and in particular the UAE than would be the case in Jersey. There was no limit in effect on the amount of cash that a Jersey customer could withdraw over the counter in the UAE although there was an escalating scale of seniority of branch staff required to sign off on particular transactions as the value increased.

8. There are two means by which the Bank could review transactions and monitor them. They could do so either by manual monitoring or automated transaction monitoring. The manual monitoring involved Branch employees viewing reports sent from the UAE relating to the previous day's transactions. Any transactions above £25,000 which were other than internal transfers were, according to internal policy, supposed to be identified and reviewed for suspicious activity. They should have been compared against the expected activity on a customer's account. If the branch employee thought a transaction required investigation, he was supposed to contact the head office for explanations.

9. In the instant case, there were cash withdrawals that exceeded the threshold sum and some which did not (which were still of some substance).

10. The automated transaction monitoring was done by a system called MANTAS. This system flagged suspicious or unusually large transactions for review. This unit was dealt with in the UAE and those employed by the unit were not required to flag up these alerts to the Bank. They were, however, required to re-assign alerts involving activity taking place in the customers' Jersey accounts to the Bank's compliance team. There is no evidence that this happened in this case. Furthermore, UAE employees could clear the alerts on Jersey transactions without notifying the Bank.

11. The anti-money laundering requirements in Jersey require compliance with the Money Laundering Order. We do not set out in full the terms of Article 11 but in summary the Bank was required to have policies and procedures which led to transactions carrying a risk of money laundering being promptly and effectively identified and scrutinised, and the risk of money laundering being appropriately acted upon. They had to be appropriate policies in the light of the degree of risk of money laundering inherent in the business. They had to be applied consistently.

12. Mr A is a national of a Middle Eastern country and was an existing customer of Abu Dhabi Commercial Bank in the UAE when he opened his account with the Bank. When he opened his account it was expected to involve the payment in of his salary of a certain amount per month and a withdrawal of a proportion of that amount to meet his expenses. That initially happened. However subsequently the account activity changed and included a pattern of money being transferred between onshore and offshore accounts and then withdrawn in cash for no obvious reason. There was a substantial number of cash withdrawals and there was a significant failure on the part of the Bank to adequately investigate these if any investigation took place at all. There was an example of a case in which an employee of the Bank did query a particularly large withdrawal in the sum of US$70,000 in August 2017 but when this was queried with Abu Dhabi Commercial Bank in the UAE there was an unsatisfactory explanation which gave rise to no action.

13. Mr B is a national of a different Middle Eastern country and had been a customer of the main branch since 2012. He was by reason of his nationality classed as of increased risk for the Bank. In fact he suffered health difficulties in January 2015 which had adversely affected his ability to speak but the Bank did not become aware of this until some three years after the event. The activity on his accounts after January 2015 must therefore be seen in the context of the activity of a customer who simply cannot communicate in the way that previously he had. The account activity then changed and substantial amounts of payments out took place, again with no apparent explanation. By way of example, the Bank did not adequately investigate the transfer in to Mr B's cash settlement account of US$200,000 in September of 2018 and failed to prevent the withdrawal of US$220,000 in cash from the same account the following day.

14. We have not set out in any sense the detail of the various transactions and the history of movements on the accounts of Mr A and Mr B. It is clear to us, however, that little if any effective monitoring was carried out by the Bank in either of these matters, unsatisfactory explanations were accepted or not acted upon, and even when certain transactions were being investigated or considered, the Bank permitted further transactions to take place. Both of the accounts in question changed in their mode of operation from the expectation set out when they were set up.

15. There is very little case law in this jurisdiction to which we may look in considering the appropriate sanction in this case.

16. The only case that deals with money laundering is that of AG v Caversham Fiduciary Services Limited, Caversham Trustees Limited and Bell [2005] JRC 165 which involved an introduction to the Defendant companies by an English solicitor in December 2002 of clients with a view to establishing a discretionary trust. No identification or due diligence was carried out for the client in question and indeed his identity was never verified. That notwithstanding, in December 2002 £850,000 was remitted from the solicitor's account to the defendant's account. A mere two days later the money was paid away to four unknown entities with no connection with the requested discretionary trust. This was done on the instructions of the solicitor. This was all done without any identification of the supposed client and with no system in place to ensure that the client would be identified. Indeed in that case he may not have existed. A prosecution was brought under the previous Money Laundering Jersey Order. A total fine of £65,000 was imposed after a guilty plea. The Court approved enforcement guidance from the UK Financial Services Authority which said that:-

> ***"The principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating generally to firms and approved persons the benefits of compliant behaviour."***

17. The other cases referred to by the Crown do not appear to us to be of particular assistance. The Crown did, however, place before us decisions of the Financial Conduct Authority (the successor to the UK Financial Services authority) although it seems to us that the jurisdiction being exercised by the FCA is rather different than the jurisdiction that we are exercising. There is a considerable range in the fines imposed by the FCA for anti-money laundering breaches. In particular the Crown brought three examples to our attention. The first was the case of Canara in 2018 which involved a series of anti-money laundering and sanctions policy failures over a period of a number of years by the UK subsidiary of an Indian bank. The failures had been identified some years before but

had not, so it was found, been adequately remedied with the result that the risk management framework was not thought to be fit for purpose. The systemic failures which were, so the Crown accept, broader and more serious than those of the Bank resulted in a fine of £896,100.

18. In the case of Guaranty Trust Bank which was a branch of a Nigerian bank and Habib Bank which was a Swiss bank but with clients based in high risk jurisdictions, there were fines imposed in 2013 and 2012 respectively for failures in largely the same area of those of the Bank, namely a failure to establish and maintain anti-money laundering systems and controls. In the Guaranty Trust Bank matter the fine that would have been imposed but for an early settlement discount was £750,000 and in the Habib Bank matter a fine of the same order would have been imposed but again for an early settlement discount.

19. We are informed that the FCA applies a series of steps to arrive at an overall figure as a fine which are essentially:-

    (i) Seeking to deprive the firm being sanctioned of any financial benefit;

    (ii) Identifying a figure that represents the seriousness of the breach;

    (iii) Allowing for any aggravating or mitigating factors;

    (iv) An adjustment is made to reflect the importance of deterrence;

    (v) And there is a settlement discount as indicated above.

20. It seems to us that steps (i), (ii), (iii) and (iv) are areas that it is appropriate for us to consider in determining the correct level of financial penalty although, of course, step (v) does not apply when this Court is considering the appropriate level of fine to impose.

21. In the Attorney General's conclusions to us, the only aggravating factor identified is the existence of the fact that the Bank's failings took place notwithstanding the extensive guidance on anti-money laundering and counter-terrorism financing legislation provided by the Jersey Financial Services Commissioner. There are regular public statements and it should have been entirely apparent to any regulated entity in Jersey the importance that is attached to appropriate policies and procedures to counter money-laundering.

22. Furthermore it is apparent that the Bank has not profited from its failings and accordingly step (i) as a factor, although in theory a useful consideration, does not apply in the instant case.

23. The Attorney General also lists the following as mitigating factors:-

    (i) The Bank has pleaded guilty at the earliest opportunity;

    (ii) The Bank has been cooperating with the JFSC in respect of remediation processes since these matters came to light;

    (iii) The Bank intends to close its business down and leave the Island.

24. Taking together the principles and factors involved and reflecting the seriousness of the offending, which the Crown ties to the total sum withdrawn in cash over the period by both customer A and customer B of just under £1 million, the Crown suggested a starting point fine of £900,000 from which it applied a one third discount for a guilty plea and moved for a financial penalty of £600,000.

25. Counsel for the Bank made certain points by way of mitigation. Firstly with regard to the offence it is emphasised that the Bank pleaded guilty quickly and it was not on the evidence an inevitable plea and therefore worthy of a full discount. We agree. It seems to us that the Bank is entitled to a full allowance for a guilty plea. It has so far as we understand it been nothing but cooperative with the investigating authorities and the JFSC since these matters came to light.

26. It was also put to us that this was a policies and procedures offence and not an offence of money laundering. Policies and procedures existed and were applied but they fell short at some points during what was a lengthy indictment period. This was not to be treated as a systemic breach. It related to only two customers.

27. We accept that this is, as said by the defence, a "*policies and procedures*" offence. That does not in our view mean that it is not serious. The importance of having effective consistent policies and procedures to combat money-laundering cannot be overstated. It should be obvious that if a financial institution does not have those procedures, the fact that it is not as a direct result assisting the laundering of money is a matter more of luck than judgment. The absence of such effective procedures means that money can and inevitably at some point will, be laundered through the financial system. That will be injurious to this Island's reputation as a finance centre with proper

and effective standards of financial conduct and probity and would injuriously affect the finance industry, and hence the Island as a whole.

28. We are conscious of the fact that understanding in connection with anti-money laundering is developing and emphasis is being placed not only on the existence of processes and procedures to combat it but their effective employment and, where absent, appropriate remedial action and if necessary a prosecution and penalty. We accept in this case that there were policies and procedures in place and they did from time to time in connection with customer A and customer B give rise to queries. That they were inadequate and inconsistently applied and therefore to a substantial effect ineffective, is equally clear and indeed is implicit in the Bank's guilty plea.

29. It is also urged upon us that the amounts involved were relatively modest compared to money flows in the finance industry. We accept that but although we do not suggest the amounts concerned can be an aggravating factor in this case, the fact is that when considering a want of policies and procedures, the amount of money involved was also a matter rather more of luck than judgment and does not appear to us to be a mitigating factor.

30. Although the Bank has been before the Court before, this was on an unrelated matter and we do not take it for our purposes as being other than a first offender.

31. Defence counsel say that matters came to attention as a result of the filing of a suspicious activity report and therefore the Bank effectively "*self-reported*". We accept that the filing of a SAR was the genesis of the investigation which has led to the current indictment. We do not think that that necessarily equates with reporting a criminal offence and of course the filing of a suspicious activity report is as much for the protection of the financial institution as otherwise.

32. We accept that the Bank has taken remedial activity and that the effect of this prosecution on its reputation will be to an extent something of a punishment in itself.

33. We do not, however, although the defence urges us to the contrary, take the view that the Bank's decision to leave Jersey (which it was emphasised had nothing to do with the current prosecution) can amount in any way to mitigation. We accept that the size of the Bank in Jersey is modest with a small number of staff and the overall profit is not, accordingly, substantial.

**Discussion**

34. In our judgment it is important for the penalty in this case to represent the seriousness of failing to maintain adequate anti-money laundering policies and procedures and to apply them consistently. We are alive to the fact that times have moved on since the financial penalty imposed by the Court in the first case of its type in Caversham. These things militate in favour of a significant financial penalty to provide both an appropriate punishment and deterrence.

35. We also, of course, pay significant regard to the matters of mitigation to which we have made reference above and to which we might add that we accept the Bank's contrition expressed in letters submitted to the Court and through its counsel. It is important that the Bank has engaged in remedial activity and gave the fullest possible cooperation. This does not appear to us to be necessarily a failing that applied to all of the Bank's customers as the Crown has put its case to us on the basis of the failures with regard to customer A and customer B only. In our judgment, although a significant financial penalty needs to be imposed, the Crown's starting point, which appears to be somewhat arbitrarily tied to the general level of financial activity (through we do not say that this cannot in appropriate cases provide a useful reference point in considering the penalty) seems to us to be a little too high. We think that the appropriate figure is one of £800,000. From that sum we deduct a full third which leaves £533,333. We make a further deduction to allow for the other items of mitigation identified above resulting in the Court's penalty in the sum of £475,000.

36. We believe that this fine reflects appropriately the seriousness of the offending and gives the appropriate signal to the financial services industry of the seriousness with which the Court approaches matters of this nature. It also takes into account the financial substance of the Bank and, as we have said, has made what we view to be due allowance for the appropriate aggravating and mitigating factors.

37. The Crown also sought an order for £25,000 as a contribution to its costs. We see no reason in a matter such as this why it would not be appropriate to order costs. There has clearly been a very lengthy financial investigation and the Bank did not oppose the order for costs sought.

38. Hence we made the orders set out in the first paragraph above and gave the Bank 21 days to arrange for payment.