

## A Costly Miscalculation: Nvayo's Regulatory Battle and the Price of Resistance

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The recent case of e-money firm Nvayo entering special administration offers a stark lesson: regulatory compliance is not a battle to be won through attrition, but a necessary responsibility. Whilst Nvayo focused its energies on challenging the FCA's supervisory notices, even taking the case to the High Court, that time and resource could have been better spent addressing the very compliance failings that triggered the regulatory intervention in the first place.

Nvayo's predicament started in August 2023, when the regulator told the firm not to carry out any further e-money services without its consent, due to serious concerns with the firm's anti-money laundering (AML) compliance. The firm's ultimate beneficial owner (UBO), Christopher Scanlon, had also been arrested a few months earlier at Miami airport. The firm's attempts to overturn the FCA's restrictions over the next eighteen months, arguing detrimental impacts on customers and business, fell on deaf ears. The Upper Tribunal (UT) rightly prioritised the protection of the wider public from financial crime risks.

The crux of the matter lies in Nvayo's alleged AML deficiencies. The FCA's review, which revealed inadequate client files and a lack of fundamental due diligence, painted a troubling picture. Whilst Nvayo had introduced and deployed compliance tools the UT's findings suggested a fundamental failure by the firm to understand and implement effective oversight.

Instead of engaging in a protracted legal battle, Nvayo could have proactively addressed the FCA's concerns from the beginning. A robust remediation plan, demonstrating a commitment to rectifying AML shortcomings, might have yielded a more favourable outcome for the payments firm.

There are a number of ways Nvayo could have channelled its resources and appeased the regulator, including:

- Comprehensive AML Remediation: Employing independent experts to thoroughly review and revamp its AML systems and controls.
- Enhanced Due Diligence: Implementing rigorous customer verification and risk assessment procedures.
- Transparency and Cooperation: Demonstrating a willingness to work collaboratively with the FCA to address its concerns.
- UBO Resolution: Prioritising the clear and rapid resolution of the UBO issue, and clearly and transparently addressing the banks concerns.

Such actions would have demonstrated a genuine commitment to compliance, potentially mitigating the severity of the FCA's restrictions. Furthermore, it could have potentially prevented the banks from closing customer accounts, which was a large contributing factor in the UTs decision.



Beyond the firm's own actions, the Nvayo case underscores the critical importance of carefully selecting advisors. The outcome suggests that Nvayo's legal and compliance advisors didn't accurately assess the strength of the FCA's case and the likelihood of success in challenging the restrictions, and encouraged a confrontational approach when conciliation would have been more prudent.

It is entirely possible that Nvayo was advised to challenge the FCA's actions on the basis of perceived procedural errors or a belief that the regulator's concerns were overstated. However, the UT's judgment suggests that the FCA's concerns were well-founded and that a focus on remediation would have been a more effective course of action.

The UT's decision highlights the importance of proactive compliance. Fighting the regulator, whilst a legal right, can be a costly and ultimately futile exercise if the underlying issues remain unresolved. The energy and resources spent on legal battles could be far more effectively deployed in building a robust compliance framework. That framework must be built with the correct advisors guiding the process, and with full and effective oversight once in place.

In the highly regulated world of e-money and payment services, trust and integrity are paramount. Nvayo's case serves as a stark reminder to firms that regulatory compliance is not a burden, but a fundamental requirement for existence. By prioritising remediation over resistance, and by choosing advisors wisely, firms can not only mitigate regulatory risks but also build a stronger, more sustainable business.