

The Telegraph

Rate swap compensation to face a landmark challenge in the courts

Holmcroft Properties wins permission to bring a judicial review against the redress scheme run by Barclays and reviewed by KPMG



Holmcroft's arguments against the compensation scheme will be heard by a senior judge Photo: Alamy



By [Marion Dakers](#), Financial Services Editor

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The high street banks' £1.8bn scheme to compensate victims of mis-sold interest rate swaps is facing a legal challenge, after a judge on Friday allowed a nursing home operator to bring a full judicial review of the scheme.

In a case that could open the floodgates for other firms unhappy with their compensation from the banks, Mr Justice Parker agreed that KPMG, which is the independent reviewer of Barclays' redress programme, could potentially be considered a public body and therefore the subject of a judicial review.

"It's clear from everything we've heard today that this is a matter of very considerable public interest," said Mr Justice Parker, who did not rule on the merits of each side's arguments.

The Financial Conduct Authority required nine banks to nominate reviewers for their compensation schemes in 2012, and so far more than 11,000 companies have been paid £1.8bn in redress for interest rate swaps that were billed as protection against rising rates, but led to catastrophic losses for some firms when rates fell.

[The Telegraph campaigned for justice](#) for small businesses that were sold these complex products without a full explanation of the potentially dire consequences if interest rates moved.

Lawyers for Holmcraft Properties argued that because banks including Barclays set up compensation programmes at the behest of the Financial Conduct Authority, KPMG as the reviewer had a public law duty "woven into the fabric" of its task.

Barclays, KPMG and the FCA all challenged the application at the Royal Courts of Justice, claiming that the relationship between the bank and the accountancy group was a matter of contract, with no wider public law duty to act fairly.

A date for the full judicial review has not yet been set. This type of hearing can order a public body to reconsider a decision if it was irrational, outside of its powers, or unfair.

"In terms of the implications, this should certainly lead to banks and independent reviewers prioritising fairness. From the perspective of our client, it means that we now have the opportunity to argue a case for appropriate compensation that is commensurate to his loss," said James Oldnall, the partner at Mishcon de Reya who represents Holmcraft.

The FCA and KPMG declined to comment, while Barclays was not available for comment.

Holmcroft Properties was originally awarded about £500,000 under Barclays' compensation scheme, but was not paid for other losses that contributed to the loss of properties after the cost of paying its obligations under its swap ballooned.

About one in three customers were excluded from the redress programme because they bought swaps worth more than £10m, or their business made more than £6.5m in yearly revenues or fit other criteria, as they were deemed to be sophisticated enough to understand the product they bought.

[Politicians on the Treasury Select Committee](#) recently criticised the compensation scheme for delays and exclusions that have left hundreds of businesses dissatisfied.

“Firms feel that they have been doubly let down: first by mis-selling and now by the redress process. They may have a point. The Committee remains seriously concerned about the scheme's effectiveness and lack of transparency,” said Andrew Tyrie, who chaired the committee.

The Bully Banks lobby group attempted to apply for a judicial review directly against the FCA earlier this year, but its claim was rejected by the courts.