

# THE NATIONAL LAW REVIEW

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## Interest Rate Mis-selling - Temporary Relief For Banks

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The interest rate mis-selling scandal took another twist recently when a landmark legal case was dismissed by the **UK High Court**. Had the case been successful it would have challenged the banks' £2.1bn compensation scheme set-up to settle inappropriate interest rate swaps – however the decision only brings temporary relief for the banks.

### Background

A judicial review of Barclays' compensation scheme was brought by Holmcraft (an Isle of Man registered property company) after they were sold an interest rate hedging product by Barclays to shield itself against rising rates, only to suffer disastrous losses when rates subsequently fell.

Holmcraft received £500,000 redress by way of compensation for overpayments it had made as a result of the missold product. However, Holmcraft were refused compensation for the loss they suffered arising from losing several properties allegedly as a consequence of the missold product.

Holmcraft raised concerns that the “independent reviewer” of the claim, KPMG, appeared to have little or no involvement or engagement with Holmcraft and did not appear to have properly fulfilled the role required by the FCA in the review process, resulting in a failure to ensure the redress scheme was fair, under FCA-governed terms.

### Judicial Review Application

While judicial reviews are rare and can only consider decisions made by public authorities, Holmcraft's judicial review application asked the Court to find that KPMG was engaged to carry out a public function and that it had failed to comply with the required standard expected of a public body in fulfilling such a function during its review of Barclays' response to Holmcraft's consequential loss claim.

At the hearing the Court heard all the evidence to decide whether KPMG was engaged in a public function and, if so, whether it met the required standards (and what those standards should be).

### Court Decision

The High Court ruled that KPMG's approach to reviewing compensation awards was not irrational, was not outside of its powers and was not unfair. The Court ruled that KPMG had ‘conducted the redress scheme in a conspicuously scrupulous way’.

The judges found that while KPMG was hired to oversee Barclays' redress scheme at the request of its regulator, it was not carrying out a public role and so could not be the subject of a judicial review.

### Implications

Around 18,000 businesses were sold interest rate hedging products, with banks paying out £2.1bn in redress,

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including £464m to cover consequential losses beyond the money lost within the swap contract.

Had the High Court not dismissed Holmcraft's application, KPMG and Barclays may have been ordered to revisit Holmcraft's compensation offer, opening the floodgates for other unhappy customers to bring similar cases against Barclays and other banks.

A sigh of relief for the banks no doubt.....but only temporarily as indications are that an appeal is already being prepared.

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