

## Templars Estates v. National Westminster Bank: UK Court Stays Claim to Facilitate Use of Financial Ombudsman Service

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The claimants in *Templars Estates v. National Westminster Bank* (10 June 2016) had issued court proceedings against two banks alleging negligence in relation to advice given about interest rate hedging swaps. The trial was unlikely to be listed until sometime in 2018. They sought a stay of proceedings in order to apply to the *Financial Ombudsman Service* (“FOS”) to deal with the matter more swiftly.

The banks refused to agree to the stay and argued that the matter had been delayed for long enough and it would prejudice them and their employees to grant a stay of potentially up to a year.

The court decided that the previous delay had not been the claimants’ fault. To refuse the claimants a stay of proceedings would be prejudicial to them, particularly where the banks had more resources than the claimants. The FOS represented a more informal and economical process for resolving customer disputes. There was no evidence that the banks would be prejudiced by the stay, as the matter was unlikely to be heard until 2018 in any case. The banks’ witnesses were unlikely to be prejudiced; for example, there were no elderly witnesses involved.

One legitimate concern of the banks was that if the claimants succeeded in front of the FOS, they might still proceed with the litigation. The claimants agreed that if they obtained an award from the FOS they would not return and continue the court proceedings. It was on the basis of this undertaking that the stay was granted.

### Trend towards Alternative Dispute Resolution continues

This is yet another case that shows the court favouring parties’ use of alternative dispute resolution (“ADR”) procedures and mechanisms as proportionate methods of dealing with cases that would otherwise be heard by the courts. It also follows the trend of recent case law, where the court is now going so far as to punish parties if they unreasonably refuse to attempt ADR (see, for example, the *Laporte* case (19 February 2015), where the court penalised a successful defendant for failing to engage in ADR). With this, and moves such as a Civil Justice Council working group calling for Online Dispute Resolution, the courts continue to look for innovative ways of resolving disputes outside of the traditional litigation process.

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