

HERBERT SMITH FREEHILLS SUCCESSFULLY DEFENDS KPMG AGAINST A JUDICIAL REVIEW BROUGHT IN CONNECTION WITH ITS ROLE AS AN INDEPENDENT REVIEWER

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News

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In 2012, the FCA had found evidence of widespread mis-selling of IRHPs to small businesses by large banks. Barclays had entered into a voluntary agreement with the (now) FCA to conduct a review and redress exercise.

As part of its agreement with the FCA, Barclays agreed to appoint KPMG as an independent reviewer. Amongst other things, KPMG's role was to consider whether the redress offers Barclays proposed for each customer were "appropriate, fair and reasonable" (AFR) and Barclays undertook not to offer any redress unless KPMG considered it AFR. KPMG also had a reporting role to the FCA as it had been appointed as a skilled person under s.166 of the Financial Services and Markets Act 2000.

The Claimant, Holmcroft Properties Limited, was a Barclays customer that had participated in the review exercise. It had been offered basic redress for the IRHPs it had been mis-sold but Barclays had rejected its claim for consequential loss, a decision confirmed as AFR by KPMG.

The Claimant subsequently applied for judicial review of KPMG's view that the redress offers were AFR. In dismissing the Claimant's claim, the Court held that:

- KPMG is not amenable to judicial review in its role as an independent reviewer in connection with Barclays' past business review exercise;
- Even if KPMG were amenable, the extent of any public law duties it owed would have to be consistent with the contractual arrangements in place between it and Barclays and would therefore be narrow; and
- On the facts, there had been no unfairness to the Claimant and could be no breach by KPMG of any public law duties.

The Herbert Smith Freehills team acting on this matter for KPMG was led by Partner Andrew Lidbetter, Senior Associate Jasveer Randhawa, and Associates James Wood and Sarah Smith. Counsel instructed for KPMG were Javan Herberg QC and Hanif Mussa of Blackstone Chambers.

Andrew Lidbetter commented:

"We are delighted to have been able to assist KPMG LLP with this judicial review which confirms that KPMG has not been carrying out a public function. It is also pleasing because the Court found that the review had been conducted in a "conspicuously scrupulous" way and that there was "clear evidence" that KPMG had carried out its task appropriately."

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