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## Consultation Response

### **Which? response to the Financial Ombudsman Service: Interest on compensation awards consultation**

**Submission date: 07/07/2025**

### **Summary**

Which? welcomes the opportunity to respond to this consultation. As the UK's consumer champion, we work hard to ensure that consumers who have experienced harm in the financial services system are well-supported to receive fair, adequate and timely redress. The Financial Ombudsman Service (FOS) provides a vital option for consumers to receive redress and avoid the likely expense and difficulty associated with trying to enforce their rights through the courts<sup>1</sup>.

As we have stated in response<sup>2</sup> to previous consultations, we do see the opportunity for greater efficiency in how the current financial redress regime and legislative framework are executed. However, we want to ensure that any changes to the redress system, and to the FOS, are fair, well-evidenced, in line with the statutory purpose of the FOS scheme, and consider any unintended consequences.

**We do not believe that the information presented in this consultation sufficiently makes the case for changing the current interest award regime, nor does it sufficiently explore and justify the alternative and recommended approaches.**

We believe the four proposed alternatives to alter the interest rate disproportionately prioritise the concerns of industry over the needs of consumers, by delivering a lower, or effectively lower, interest award rate<sup>3</sup> for consumers.

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<sup>1</sup> Section 225(1) Financial Services and Markets Act 2000 provides for a 'scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person'.

<sup>2</sup> Which?, 2025, The FCA and the Financial Ombudsman Service Call for Input - Modernising the Redress System. Accessed at: [\[Link\]](#)

<sup>3</sup> While theoretically the tracker rate proposals could lead to an interest award rate that is higher than 8%, this is unlikely. For example, taking into account historical data, a change to an award of the Base Rate plus 1% would have resulted in a lower rate being applied than the 8% simple interest for more than the last 25 years.

Specifically, we have concerns that:

1. The recommended rate does not take into account the true costs facing consumers of being deprived of their money.
2. Altering the post-determination interest rate is particularly unnecessary and unjustifiable as part of its purpose is to encourage timely compliance<sup>4</sup>.
3. Introducing a system of variable rates may cause confusion and place an unnecessary administrative burden on the FOS.
4. Moving to a rate that is effectively lower than 8% increases the potential for a disproportionate undercompensation for individuals with low financial resilience.

We believe further consideration needs to be given to evidencing the move away from an 8% simple interest rate for pre- and post-determination awards. In addition, if developing a new approach to interest, we think further alternatives than those listed in the consultation paper should be explored. These may include:

- Tying the interest award to the Bank of England base (average) rate plus a higher percentage than 1% (such as 3%) as this would more accurately reflect the cost of being deprived of money for a consumer, while allowing for some moderation for market factors.
- Maintaining the 8% simple interest for post-determination awards (similar to judgment debts) as the purpose of this is also to encourage timely compliance, not to just to compensate for money deprived.
- Ensuring claimants have a clear and simple avenue to receive a higher rate of interest if they can demonstrate that they had to borrow at higher rates while being deprived of their money.

In any event, it would be critical that any new rules only apply to cases lodged with the FOS after an announced implementation date (That is, such as Option B, C or D). It would be a breach of natural justice to apply any new rules to cases that have already been lodged at FOS (such as is articulated in Option A).

## Full response

An effective and accessible system of redress is essential to ensuring that financial services markets support good customer outcomes, by helping to deter poor practices and to help individual consumers on the occasions when things go wrong. As a successful statutory alternative dispute resolution scheme, the Financial Ombudsman Service (FOS) provides a vital option for consumers to avoid the likely expense and difficulty associated with trying to enforce their rights through the courts.

As we have stated in response to previous consultations we do see the opportunity for the FOS to be more efficient in how the current regime and legislative framework are executed that would be of benefit to both industry and to consumers. However, we want to ensure that any changes to the redress system are fair, well-evidenced, and in line with the

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<sup>4</sup> As set out in the consultation paper.

statutory purpose of the FOS scheme. We also want to ensure any unintended consequences of implementing any changes proposed are considered, such as an increase in financial services claims through the courts.

We do not believe that there is currently sufficient justification or evidence for changing the current interest award regime. The consultation states that 'The Financial Ombudsman Service has historically considered the 8% interest rate to be fair'. We do not see evidence of the extent of the current impact on firms that justifies the move away from 8% to a rate that is lower, or effectively lower<sup>5</sup>, for consumers. It appears that these proposed changes to the interest award regime have been catalysed by the comments of some firms, rather than the best interests of consumers who have been harmed by the financial system. Without this evidence base, it could appear that the only purpose of this proposed change is to reduce the consequences for firms who do not act appropriately or effectively.

In addition to our broader concerns with the move away from the 8% simple interest award, we have specific concerns with the recommended approach (a 'tracker' rate of Base Rate (average) plus 1%) presented in the consultation paper. We set out these concerns below.

### **Concern 1: The recommended rate does not take account of the true costs facing consumers for being deprived of their money.**

The core purpose of pre- and post-judgment compensation awards is to compensate claimants for the cost of being deprived of their money.<sup>6</sup> However, the interest rate proposed in the consultation, is not an accurate reflection of this cost for consumers. It does not consider relevant factors such as:

- **A consumer's cost of borrowing is typically higher than commercial entities.** The recommended rate seeks to align with the base rate tracker approach at times followed by the commercial courts<sup>7</sup>. Cases in the commercial courts relate to business-to-business relationships and contracts not involving consumers. Therefore, the rate awarded in the commercial courts is intended to reflect the cost of borrowing for commercial entities. However, the average consumer does not have access to borrowing at the same rate as commercial entities. Therefore, this is an inappropriate alignment for the FOS to seek to make.
- **A consumer's cost of borrowing is typically higher if they are borrowing to cover a loss.** The FOS website notes that one of the reasons for the current rate is that people often have to pay a higher rate than the current interest rate

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<sup>5</sup> While theoretically a tracker rate could lead to an interest award rate that is higher than 8%, this is unlikely. For example, taking into account historical data, a change to an award of the Base Rate plus 1% would have resulted in a lower rate being applied than the 8% simple interest for more than the last 25 years. We can therefore reasonably assume that any change to the interest award rate in line with the consultation paper's recommendations will likely lower the interest award rate received by consumers.

<sup>6</sup> Law Commission, 2004, Pre-Judgment Interest on Debts and Damages. Accessed at: [\[Link\]](#)

<sup>7</sup> The practice of the commercial courts varies substantially in relation to the particular case before them.

if they've borrowed money to cover a loss, for example on a credit card.<sup>8</sup> This is particularly true if consumers use high-cost short-term credit facilities to meet their short term obligations. For example, the FCA found that the price of unarranged overdraft facilities regularly exceeded the equivalent of an interest rate of 10% per day.<sup>9</sup>

- **Consumers face an opportunity cost of alternative investment mechanisms.** It cannot be presumed that had an individual not been deprived of their money, they would have kept it in a deposit account. For example, they may have invested it in the exchange market which sees, on average, a higher rate than deposit accounts.<sup>10</sup>
- **Consumers may face an additional financial impact through the accrual of interest on existing debts that cannot be serviced due to a lack of money.** Considering that the average credit card APR in the UK is around 35.61%<sup>11</sup>, there could be a significant financial impact on consumers who cannot service their existing debts due to the financial loss they have experienced. This situation becomes especially egregious if one considers that the upheld complaint and the ongoing debt due by an individual could relate to the same institution.

By proposing a new interest rate that does not adequately reflect the factors above, consumers will not be receiving fair and adequate compensation for being deprived of their money.

## **Concern 2: Altering the post-determination interest rate is particularly unnecessary and unjustifiable as part of its purpose is to encourage timely compliance.**

It is not clear why the proposal looks to move away from an alignment with judgment debts for post-determination awards. As noted in the consultation paper, the purpose of a post-determination interest rate is not only to compensate claimants for being deprived of their money, but also to encourage timely compliance. By likely reducing the interest for post-determination awards, it also reduces the incentive on firms to comply on time. This may lead to an increase in delayed payments to consumers, further exacerbating the harm and financial detriment already experienced by the consumer.

In the courts, the standard interest on post-judgment awards remains similar to the current post-determination award at the FOS. For example:

- The Judgments Act 1838 provides that judgment debts under the courts accrue interest from the date the judgment is entered until the debt is satisfied at 8%. This is the same as the current post-determination interest applied by the FOS.

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<sup>8</sup> FOS, 2024, Understanding Compensation. Accessed at: [\[Link\]](#).

<sup>9</sup> FCA, 2018, High-Cost Credit Review: Overdrafts consultation paper and policy statement. Accessed at: [\[Link\]](#)

<sup>10</sup> Average annualised returns of money invested in the FTSE 100 over the last 5 years were 11.6%. Source: [\[Link\]](#)

<sup>11</sup> Finder, 2025, What is the average credit card APR in the UK?. Accessed at: [\[Link\]](#)

- The Late Payment of Commercial Debts (Interest) Act 1998 makes provisions for simple interest at a rate of 8% over the current base rate for business to business transactions.<sup>12</sup> This is higher than the current post-determination interest applied by the FOS.

### **Concern 3: Introducing a system of variable rates may cause confusion and create unnecessary administrative burden.**

The current simple interest process minimises the burden on the FOS, as well as claimants, advisers and firms, to calculate and apply interest awards. Given interest awards typically represent a small proportion of total awards<sup>13</sup>, it may not make sense, particularly in the context of the ongoing work to ensure the FOS's effectiveness and efficiency, to increase the administrative burden on the FOS. Introducing a system of variable rates should therefore only be done if the benefit of such a change can be shown to outweigh the associated increase in burden it will bring.

In addition, an assessment of the potential impact on the courts of a change in the interest award will be needed before any change is made. This is because such a change may increase the chances that consumers will decide to pursue a court-based challenge, as they will have more certainty around the amount of their award if they win, and may be more likely to get higher awards.

### **Concern 4: Moving to a rate that is effectively lower than 8% increases the potential for disproportionate under-compensation for individuals with low financial resilience.**

As outlined in the consultation paper, there is a risk that if a 'tracker' option is pursued, and it results in a consistently lower rate being applied to upheld complaints, this could result in those customers with higher financial vulnerability (i.e. low financial resilience) being at greater risk of under-compensation.

Individuals with lower levels of financial resilience already typically experience higher costs of being deprived of their money. This is because they are more likely to rely on high-cost credit to meet their short term obligations. This was demonstrated in a national YouGov poll, where StepChange found that one in four holders of a subprime credit card were behind on one or more essential bills, such as rent or council tax, when they applied.<sup>14</sup> Therefore, an effectively lower interest award is more likely to under-compensate them for the true cost of being deprived of their money.

## **Recommendations**

We believe further consideration needs to be given to evidencing the move away from an 8% simple interest rate for pre- and post-determination awards. We would like to see a clear articulation of the benefits and costs of moving away from the current approach to consumers, firms, the FOS and other relevant actors in the financial redress system.

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<sup>12</sup> Gov.uk, 2025, Late commercial payments: charging interest and debt recovery. Accessed at: [\[Link\]](#)

<sup>13</sup> As outlined in the consultation paper.

<sup>14</sup> Which?, 2019, Could 'bad credit' credit cards be more expensive than a payday loan?. Accessed at: [\[Link\]](#)

If developing a new approach to interest, we think further alternatives than those listed in the consultation paper should be explored and consulted on. These may include:

- **Tying the interest award to the base rate plus a higher percentage than 1% (such as 3%).** This rate would more accurately reflect a consumer's true cost of being deprived of money, while still allowing for some moderation for market factors.
- **Maintaining the 8% simple interest for post-determination awards (similar to judgment debts).** Given part of the purpose of post-determination awards is to encourage timely compliance, not to just to compensate for money deprived, it is reasonable to maintain a rate that aligns with the rates on judgment debts in the courts.
- **Ensuring claimants have a clear and simple avenue to receive a higher rate of interest, if appropriate.** This would be appropriate if, for example, an individual had to borrow at higher rates while being deprived of their money than the general interest award rate. However, additional consideration would need to be given to how to establish a system like this without placing a disproportionate burden of proof on the consumer, particularly consumers experiencing vulnerability.

In any event, **it would be critical that any new rules only apply to cases lodged with the FOS after an announced implementation date** (That is, such as Option B, C or D). It would be a breach of natural justice to apply any new rules to cases that have already been lodged at FOS (such as is articulated in Option A).

## About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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