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2 July 2025

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Dear FOS,

Financial Services Consumer Panel response to the Financial Ombudsman Service (FOS) Consultation on Interest on compensation awards

The Panel welcomes the opportunity to respond to the Financial Ombudsman Service (FOS) consultation on interest on compensation awards. Any change to the current approach risks causing significant financial harm to consumers and so deserves careful consideration.

While we recognise the importance of regularly reviewing current practice to ensure it is still fit for purpose, we note the consultation paper does not set out any evidence that demonstrates the current approach of using a fixed interest rate at 8% needs changing. While some stakeholders consider it to be excessive, this in itself is not a satisfactory reason to adopt a new approach. Similarly, other than suggestions from some stakeholders, there does not appear to be an evidentiary base for changing how the interest rate is applied.

We note that in the UK courts system, particularly in the small claims court, the general rule is claimants can seek interest at 8% on any amounts owed to them.¹ More generally, we note that where redress is appropriate, FOS aims to put the consumer back in the position they would have been in but for the issue in question. To the extent consumers have had to borrow additional funds pending receipt of the redress owed, it is likely that the cost of such credit will exceed the compensation provided by the proposed new interest rate. This is particularly the case

¹¹ <https://www.gov.uk/make-court-claim-for-money/work-out-interest>

where such funds are secured through credit cards, short-term loans or other higher-cost credit solutions.² For some consumers, their only option will be to access such products.

The Panel understands the FOS considers that its approach to date has been fair. The current approach was implemented for specific reasons, as indicated in the consultation paper, including that it helped to deliver consistency, clarity and fair outcomes for consumers, particularly when determining the exact loss is difficult. There is no discussion in the paper regarding why the policy considerations that led to the current approach no longer apply.

In the absence of any clear evidence to suggest a fundamental change to the current FOS approach is necessary, we believe there is no rational basis for FOS to change, especially in circumstances where this would (by the FOS' own admission) be likely to lead to less fair outcomes for consumers. Of particular concern, is the risk that any reduction in the rate is likely to particularly impact financially vulnerable consumers (a point expressly recognised in the consultation paper).

Further, the Panel notes introducing the proposed change may have wider, unintended impacts. It is widely accepted that access to effective redress if things go wrong is important for consumer confidence when engaging with new products and providers. Introducing a change which inhibits the FOS from being able to fully address consumer harm (especially where it is not clear any change is needed) therefore risks damaging consumer confidence in the FOS as well as in financial markets more generally.

Accordingly, and based on the information presented, the Panel recommends the FOS adopt option A (no change).

We set out below some further, more specific comments, on the points raised in the consultation paper:

- **Pre-determination interest:** in reaching a final position, the FOS should not overlook the importance of having an interest element in the award. Not only does this help to ensure complainants can be properly compensated, it can also have a disciplining effect on firms in terms of how quickly they progress consumer complaints and engage with the FOS process.³ In contrast, we do not consider the existence of

² However, even for personal loans, our understanding is that current interest rates typically range from about 6-15%, indicating that the current FOS rate of 8% continues to be appropriate.

³ Either because for any individual dispute, the interest element could be material, or because when looking at the disputes handled by a firm in aggregate, the interest element could be significant. Any

an interest element encourages consumers to complain in the first place or provides any incentive to them to try and delay the resolution of their complaint. As the FOS itself notes in the consultation paper “[i]n most awards, the interest component is relatively minor”. Further, it is important to recognise the application of this interest element is discretionary and so the FOS is already able to take account of any particular circumstances relevant to an individual case (and, for example, apply a lower rate or no interest at all).

- **Post-determination interest:** we note this is a completely avoidable element for firms and only applies where the firm has failed to pay an amount due to consumers following a final adjudication on time. As such, there should be no real concern about the applicable interest element having a penal element (i.e. a rate above the prevailing or average market rate). We note the same interest rate of 8% is applied in the court system for the non-payment of judgment debt. Accordingly, there seems to be no objective basis for making a change to this element.
- **Tracker rates:** For completeness we agree with the FOS’ observation that a tracker rate is likely to be more complicated for firms to implement (and so, we think, carrying with it an additional cost for firms). It will also be less predictable for firms. We also agree that a prevailing rate tracker would not be appropriate on the basis it does not reflect market conditions during the relevant period and therefore would not reflect the aim of putting a harmed consumer in the position they would have been in but for the issue in question.
- **Implementation:** if, contrary to the Panel’s recommendations, the FOS decides to change its current approach, then of the options provided, we consider Option B (applying the new rate only to cases submitted to the Financial Ombudsman Service after a specific implementation date) would be preferable. This would appear to be the least complex option provided, which has an attraction from both a consumer messaging and a cost to firms perspective.

However, we would encourage the FOS to consider whether there may be another, better, option and that is applying the new rate only to complaints made to a firm after a specific implementation date. We consider this may have an advantage over Option B in that it may help to prevent anomalous results such as consumers in the same situation and suffering the same loss but with different firms being treated

decrease in the standard applicable interest rate implemented by FOS could, therefore, lead to slower complaint handling by firms. This would not be in the consumer interest.

differently (due to the different time taken by firms to complete the claim handling process). It would also remove any incentive a firm might have under Option B to delay responding to a consumer complaint so that a complaint can only be taken to FOS after the implementation date.

If FOS were to proceed with Option B then we consider it is important to set an implementation date which allows for complaints currently with firms to reach a final response and then allows any consumers who wish to do so the time to then lodge their complaint with the FOS.

- **Exceptions to a firm's obligation to apply interest:** the Panel considers that it will be very rare, if at all, that it may be appropriate for the FOS to exercise its discretion to ask a firm not to apply interest. For example, we can see that it may be something the FOS may consider where a consumer's behaviour has been wholly unreasonable/deliberately obstructive throughout the complaints process and this has caused significant delay to the resolution of the case. For the avoidance of doubt, we would not consider it appropriate for interest to be waived because a consumer did not lodge their complaint, did not respond to the firm and/or did not respond to the FOS as soon as they were able to do so.

Yours sincerely,

Chris Pond

Chair of the Financial Services Consumer Panel