



HM Government

Compulsory Purchase Interest Rates

Response Form

Your details

Name	Vicky Fowler, Chair
Name of Organisation (if applicable)	Compulsory Purchase Association (CPA)
Email Address	Vicky.fowler@gowlingwlg.com
Telephone Number	(0)20 7759 6650

Question 1: Do you think that an improved interest rate of 2% above Bank of England base rate could incentivise some claimants to 'game' the process by prolonging negotiations in order to maximise their interest entitlement?

The Board members of the CPA who advise both acquiring authorities and claimants have had no previous experience of "gaming" and have no reason to believe that "gaming" would become an issue at an interest rate of 2% above the Bank of England base rate suggested.

Our experience is that claimants typically just want to get a claim settled and move on from what is seen as a distraction or an inconvenience even by large organisations. CPO compensation is not seen as a windfall but represents monies that a claimant was entitled to at the date possession was taken. A claimant will have been without those monies and may be incurring costs (such as the cost of a bridging loan or professional fees). In the case of large organisations for which payment is less crucial the effect of inflation reducing the value of the compensation sum in real terms remains a relevant consideration. Moreover the fact that interest is calculated simply (as opposed to compound) means that gaming would not be effective at bettering the outcome. Ultimately, the Board's experience is that all claimants, big or small just want to get on with their day to day business.

In any event, were an acquiring authority to suspect "gaming" there is always the option for them to make a reference to the Upper Tribunal (Lands Chamber).

The Board consider that if the change proposed is not made, the greater risk lies in acquiring authorities delaying making outstanding payments, particularly if payments need to be aligned with cash flow. Anecdotally, members of the Board believe this issue to occur in practice at present.

The CPA Board supports, therefore, the proposed interest rate of 2% above the Bank of England base rate previously proposed.

Question 2: If so, how widespread do you think such practice might be and what might the scale of financial impact be for acquiring authorities?

As above we do not believe gaming would be an issue. Were it to be an issue in a small percentage of cases the Acquiring Authority have the option to make a reference to the Upper Tribunal (Lands Chamber).

Question 3: What, if any, measures do you think might help to reduce the risk of – and scope for – gaming of the interest provisions for outstanding compensation? We would be interested in your views on the options outlined in paragraphs 16-18, as well as any other suggestions you might have.

The CPA Board support acquiring authorities being given the option to make advance payments even where no claim for one has been made (i.e. to reduce the amount of outstanding compensation) and to pay money into court where a claimant has refused to accept a payment.

Lack of information can, however, be the reason for not making an advance payment. The option for an Acquiring Authority to make an advance payment even where no claim for an advance payment has been made would, however, limit any risk of gaming.

We do not support the suggestion which provides that interest is not payable on compensation that is offered but not accepted by a claimant as this could open up the need for separate satellite litigation. If an acquiring authority can pay compensation offered but not accepted into court then that should stop interest running on the monies paid into court.

We do not support the potential alternative approach of setting the relevant rate (for the purposes of Section 32 of the Land Compensation Act 1961) by reference to a fixed multiplier. At the moment interest rates are low but if interest rates rise the effect of the multiplier would make interest rates punitive (contrast 7% on the 2% above approach at a 5% Base Rate with 7.5, 10 and 15% on the multiplier approach). Meanwhile at lower rates the resultant interest rate may not be sufficient to entice timely or early payment.

Question 4: Could the policy objective of strongly incentivising timely advance payments be achieved by setting a lower penal rate than 8% above the Bank of England base rate? If so, we would be interested in your views on potential alternative rates.

The CPA Board feel that an interest rate of 4% above base should be sufficient. This is the norm in, for example, construction contracts, section 106 Planning Agreements and Leases as a penalty for late payment at 3-4% above base.

In well organised acquiring authorities there should be little exposure to a penal amount whatever the rate. However, many town centre regenerations are funded for developers who are not set up nor have experience in assessing compensation and making a payment within a very short timescale. A penal rate of 4% will encourage timely payment just as effectively as 8%.

Thank you for your responses.