

Consumer Remediation Guidance for Businesses

Response to submissions on the draft guidance

Date of publication: 28 August 2023

Confidential material in this report has been removed. Its location in the document is denoted by [].

Associated documents

Publication date	Title
1 October 2013	Enforcement Response Guidelines
18 August 2022	Draft consumer remediation guidance for businesses

Index of submissions

Submission date	Title	Referred to in this document as
<i>Submissions</i>		
15 September 2022	Anonymous 1	Anon 1
1 March 2023	Anonymous 2	Anon 2
26 September 2022	Ben Hamlin – Submission on draft consumer remediation guidance	Ben Hamlin
22 September 2022	BNZ – Submission on draft consumer remediation guidance	BNZ
22 September 2022	Consumer NZ – Submission on draft consumer remediation guidance	Consumer NZ
29 September 2022	Financial Services Complaints Ltd – Submission on draft consumer remediation guidance	FSCL
22 September 2022	Financial Services Federation – Submission on draft consumer remediation guidance	FSF
22 September 2022	FinCap – Submission on draft consumer remediation guidance	FinCap
22 September 2022	Firstgas Group – Submission on draft consumer remediation guidance	Firstgas
27 September 2022	Horizon Networks – Submission on draft consumer remediation guidance	Horizon
28 September 2022	Industrial and Commercial Bank of China NZ – Submission on draft consumer remediation guidance	ICBC
22 September 2022	Insurance Council of New Zealand – Submission on draft consumer remediation guidance	ICNZ
22 September 2022	KPMG – Submission on draft consumer remediation guidance	KPMG
September 2022	Marketing Association – Submission on draft consumer remediation guidance	Marketing Association
August 2022	Mosaic Financial Services Infrastructure – Submission on draft consumer remediation guidance	Mosaic
22 September 2022	New Zealand Bankers Association – Submission on draft consumer remediation guidance	NZBA
27 September 2022	NZ Post – Submission on draft consumer remediation guidance	NZ Post

Introduction

Preliminary statement

1. All abbreviations and terms used in this document are either defined in, or have the same meaning as, our *Consumer Remediation Guidance for Businesses* (referred to in this document as the 'guidance').¹

Purpose of this paper

2. This response to submissions document is to be published alongside the guidance. The guidance is intended to assist businesses that have identified conduct or omissions that may have led to a likely breach of one of the laws the Commission enforces and intend to take steps to address the issue and, where appropriate, offer remediation (whether compensation or non-monetary measures) to affected consumers.
3. This paper sets out our responses to points raised in submissions and cross-submissions on our draft guidance, published on 18 August 2022.² Stakeholder submissions and cross-submissions on the draft guidance assisted us to develop, in a transparent way, our views of how a structured and consumer focused remediation process operates in New Zealand.
4. We are not seeking submissions on this paper. However, we expect that the responses provided here to arguments raised in submissions and cross-submissions on the draft guidance will assist stakeholders in understanding the Commission's position on certain topics.
5. Readers should bear in mind the following factors:
 - 5.1 We have not attempted to respond to every point made in submissions. Instead, this document intends to provide a summary of our views on the main substantive points raised by stakeholders.
 - 5.2 To the extent relevant, we have provided cross-references to paragraphs of the guidance where our views on particular points have been expressed.
 - 5.3 Many of the comments made by submitters on our draft guidance requested further detail, examples, and guidance on other selected matters. The guidance is intended to be a framework of high-level principles of general application to all businesses operating within the legislation the Commission enforces. Given this, we did not consider it appropriate to address specific circumstances or provide further qualitative or quantitative guidance.

¹ <https://comcom.govt.nz/business/business-consultations/consumer-remediation-guidance-for-businesses>.

² [Commerce Commission "\[DRAFT\] Consumer remediation guidance for businesses – consultation on draft" \(18 August 2022\)](#), herein after 'draft guidance'.

6. We thank stakeholders for their submissions and engagement in the process of developing our guidance.

Response to submissions

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
1	Application	KPMG		<p>KPMG argued that the guidance should be applicable for all remediations regardless of whether it was proactively initiated or not.</p> <p><i>“The Commission should consider clarifying this statement so the guidance clearly applies to all remediations.”</i></p>	No change	[Disagree.] The high-level principles contained in the guidance are applicable to proactive remediations. More specific guidance may be given as a result of an investigation by the Commission or settlement, although that more specific guidance will be based on the principles outlined in the guidance.
2	Application	ICBC	2	ICBC sought clarification about whether the guidance is relevant to all reporting entities supervised by the Commerce Commission, or only for lenders governed by the CCCFA.	Changed	[Agree.] We have added text to paragraph 2 and footnote 1 to confirm that the guidance is applicable to businesses who have identified conduct or omissions that may have led to a likely breach of one of the laws the Commission enforces (i.e., not just for lenders governed by the CCCFA).
3	Application	Horizon	2, 3	<p>Horizon notes that the guidance provides some background on the purpose of the guidance but is silent on when remediation should apply and what business should consider helping decide if remediation is necessary.</p> <p>Horizon recommends that the Commission includes a guidance section to help businesses assess when non-compliance is significant enough to have caused harm to consumers.</p>	Changed	[Somewhat agree.] The guidance is intended to apply to a business that has already reached the decision to proactively remediate customers. We anticipate that the guidance would be used where a business has identified conduct or omissions that may have led to a likely breach of one of the laws the Commission enforces and intends to take steps to address the issue and where appropriate offer remediation to affected customers. We have added an explanation to this effect in the purpose and scope section of the guidance, but do not otherwise propose to provide guidance as to when non-

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				Horizon also recommends that the Commission provide a guidance section to help businesses assess what type of remediation is appropriate in a given circumstance.		compliance is significant enough to have caused harm to consumers or what type of remediation is appropriate for a given circumstance. The scope of the guidance is to assist businesses once they have chosen to proceed with remediation.
4	Scope	KPMG	14	<i>"The Commission should be clear about what is a principle and what is guidance"</i>	Changed	[Agree.] We have added a table of principles to delineate between the principles and the related guidance more clearly.
5	Scope	KPMG	6	<i>"The Commission includes in a footnote (2, on page 1 under 'Scope') the expectation to take all reasonable steps to ensure that the 'likely breach' ceases...we think the guidance should not be a footnote but be defined as a principle."</i>	Changed	[Somewhat agree.] We acknowledge this is a vital part of any remediation, to ensure no further harm is caused. We had added the previous footnote 2 into the main body of the introduction at paragraph 6 of the guidance.
6	Scope	Mosaic		<i>"More examples used throughout the guidance would improve businesses understanding of the Commissions expectations."</i>	No change	[Disagree.] The guidance is intended to be high-level generalised guidance. We have not given prescriptive examples given the range of industries to which the guidance applies.
7	Scope	Horizon	19.15	Horizon notes that suppliers, such as EDBs or producers do not have visibility or engagement with end consumers. Horizon recommends that the Commerce Commission update the guidance to recognise that remediation may be passed to retailers who have the ability to engage with consumers and address the harm the non-compliance caused.	Changed	[Agree.] We acknowledge that not every business undertaking remediation will have direct access to the end consumer. In such circumstances, a business may work with an intermediary to communicate with and remediate consumers. We have added reference to this to paragraph 19.15 of the updated guidance.
8	Scope	KPMG		KPMG submits that the Commission should consider arranging the guidance under a	No change	[Disagree.] A more prescriptive approach as to the generally expected steps of a remediation falls

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				<p>remediation framework that outlines generally expected steps. It comments that this should include steps on how businesses can initiate remediation.</p> <p>KPMG further states that the remediation framework should sit within an overarching risk framework. KPMG recommends that the Commission consider adding guidance on how businesses can document and integrate their remediation framework into their existing frameworks.</p>		<p>outside the scope of this current high-level guidance.</p> <p>We have not made any further changes as it is not for the Commission to dictate how the remediation framework is to sit in a business' existing framework.</p>
9	Scope	Mosaic	17.1.8	<p>Mosaic comment that the guidance is heavily focussed on compensation. It submits that it would be good to see more detail on refunds, corrections (providing information or undertaking actions to remedy error) and (the rarer cases of) recovery.</p> <p>Mosaic stated that <i>"it is important to be clear about the terminology used and other actions required for remediation such as corrective disclosure or the undertaking actions to correct the error. This should include the acknowledgement that sometimes multiple types may be required concurrently."</i></p>	Changed	<p>[Agree.] We acknowledge that there may be different ways in which a business may remediate, including a number of non-monetary measures. We agree that different methods of remediation may be required concurrently.</p> <p>We have expanded our reference to compensation at paragraph 17.1.8 to acknowledge that it may not always be monetary.</p> <p>We have also added reference to the concept of utu. In the context of remediation, utu focusses on the need to put right a harm or transgression, and can include a cost that is incurred, or a burden that is borne, in order to remedy the harm or transgression. It is a means of restoration of those who are aggrieved, through action that provides recompense or otherwise reciprocates or balances the harm caused.</p>

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						Our view is that this acknowledges that restoration may not always be achieved through monetary compensation, and that a business should focus on restoration through the means that will best put things right.
10	Scope	Mosaic	2	Mosaic submits that <i>“the guidance refers to ‘breach’ or ‘likely breach’ throughout. A breach will only be confirmed by a court or regulator. It would be useful to use the word ‘issue’ or similar.”</i>	Changed	<p>[Somewhat agree.] While we agree that only a court can ultimately determine whether a breach of the law has occurred, the guidance assumes that businesses have themselves assessed that an issue they have identified has likely led to a breach of the law. The guidance is therefore phrased as any identified issues being a “likely breach” – we have referred to this at footnote 1.</p> <p>A business may also choose to remediate when it has identified an issue that may or may not reach the threshold of a likely breach, where, for example, a business has failed to deliver customer expectations. We have referred to this at paragraph 2 of the final guidance.</p>
11	Scope	NZBA	2	NZBA notes that the principles state that the guidance may be used by businesses “where they have identified an issue which gives rise to a likely breach of one of the laws that the Commission enforces”. It notes that for businesses in the financial sector remediation may also be a response to a failure to deliver customer expectations (which may not necessarily be in response to a breach of law).	Changed	[Agree.] See our response in row #10 above.

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12	How businesses may approach remediation	KPMG	8	<p>KPMG suggests that the Commission define the different consumer harm categories that need to be considered with a wide range of examples.</p> <p>KPMG also suggests that <i>“the Commission should consider adding support to explain how a business can determine how to apply the “put right” principle by providing examples of determining an appropriate remediation approach.”</i></p>	No change	[Disagree.] See our response in row #6 above.
13	How businesses may approach remediation	NZBA	8	<p>NZBA suggests that <i>“the Guidance explicitly acknowledge that it will not always be appropriate to put customers into the position they would have been in as per the ASIC remediation guidelines or where putting the customer into the position they would have been in provides limited benefit...the Guidance should also acknowledge that it is not always appropriate to put customers into the position they would have been in if this causes harm.”</i></p>	Changed	[Agree.] We have amended paragraph 8 (previously paragraph 7). While the default aim of remediation should be to ‘put right’ any harm that has been caused, the Commission acknowledges that there are instances where that is not appropriate or possible.
14	How businesses may approach remediation	FSF	9	<p>FSF queries whether more emphasis could be given to proportionality, and whether some examples could result in entities being aware of what level of scaling up and down is appropriate for their nature.</p>	Changed	[Somewhat agree.] We have amended the reference to proportionality and provided an example at paragraph 9. Given this is intended to be high-level and generalised advice, we have not provided more prescriptive examples.

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15	How businesses may approach remediation	NZBA	9	NZBA welcomed the recognition that scalability is appropriate but considered that further detail is needed. NZBA states that <i>“the current draft guidance does not specify the factors that a business should consider when deciding whether and how to apply the principles. Businesses should be able to adopt a more streamlined and proportionate process for simple, low value, smaller remediations.”</i>	Changed	[Somewhat agree.] See response in row #14 above.
16	How businesses may approach remediation	KPMG	9	<i>“[KPMG agrees] that there is “no one size fits all” approach, but the guidance should state its intention if the principles are expected to be a minimum set of requirements that can be scaled up to suit the circumstances.”</i>	Changed	[Somewhat agree.] See response in row #14 above.
17	Principle 1: consumer focussed approach	ICBC	15.2	ICBC suggests that paragraph 9.2 should require the communication methods, information, and language with consumer be tailored to the needs of a particular group of consumers.	Changed	[Agree.] We have amended paragraph 15.2 (previously paragraph 9.2), requiring that the communication be tailored to the language needs of the consumer.
18	Principle 1: consumer focussed approach	Firstgas	15.3	Firstgas submits that the word “any” in paragraph 9.3 (now paragraph 15.3) requiring a business to show commitment to remediate <i>any</i> loss or detriment suffered can lead to different interpretations and that it should therefore be avoided. Firstgas submits that a reader may think the Commission intends either that 100% of loss should be remediated or that there should be remediation for a loss (if any).	No change	[Disagree.] In our view, this sentence asks a business to show commitment to remediating loss or detriment where loss or detriment has arisen (i.e., where any loss or damage has arisen). The statement is not intended to ask the business to commit to remediating the full loss or detriment in every circumstance.

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				Firstgas supports the guidance being non-specific about the extent of remediation.		
19	Principle 1: consumer focussed approach	ICNZ	15.3	<p>ICNZ submits that paragraph 9.3 (now paragraph 15.3) would benefit from some explanation as to what ‘detriment’ would look like in these circumstances. As the principle also refers to ‘loss’ and ‘harm’ ICNZ queries whether the reference to ‘detriment’ is needed.</p> <p>ICNZ also submits that “[<i>Paragraph</i>] 9.6 should be redrafted...We do not believe that principle 9.6 should apply to every instance of uncertainty, as this is a highly subjective measure, and should instead contain a threshold.”</p>	Changed	<p>[Somewhat agree.] ‘Detriment’ in the guidance is intended to refer to a disadvantage suffered by consumers. This may look different depending on the circumstances of the business and industry. Given the general nature of the guidance, we do not propose to include a more detailed explanation of what detriment may look like.</p> <p>We have removed the former paragraph 9.6. The Commission considers that the use of beneficial assumptions in Principle 3 (paragraph 17.1.3) adequately addresses the former content of what was paragraph 9.6.</p>
20	Principle 1: consumer focussed approach	Mosaic	15	Mosaic notes the reference to “being objective, unbiased and fair to consumers” but points out the difficulty for businesses to demonstrate being objective and unbiased given the inherent conflict of interest by the business. Mosaic submits that the concept of “fairness” on its own, acknowledging its subjectivity, is sufficient.	No change	[Disagree.] While we understand the existence of the conflict of interest between the business and consumer, we nonetheless affirm that objectivity should be the lens through which a business aims to remediate consumers. It may do so by ensuring a strong governance and implementing, for example, a consumer advocate within that framework.
21	Principle 2: comprehensive, timely, fair and transparent	KPMG	16.1.1	KPMG refer to paragraph 16.1.1 (previously paragraph 10.1.1) and submit that “‘well-scoped’ should also include a clear definition of what the likely breach is and what has caused it.”	No change	[Somewhat agree.] While we agree that data is an important part of the scoping phase of remediation, we do not propose to add reference to the likely cause of the breach here. Paragraph 10.1.1 (now paragraph 16.1.1) focuses on the harm caused to consumers, while the root cause of the likely breach is mentioned at 16.1.4.

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22	Principle 2: comprehensive, timely, fair and transparent	Anon 1	16.1.3	Anonymous referred to paragraph 10.1.3 (now paragraph 16.1.3) and submitted that <i>“the Draft Guidance should expressly say that businesses need to review “available records” and make it clear that the Commission is not requiring businesses to keep records longer than necessary or required by law.”</i>	Changed	[Agree.] The Commission acknowledges that a business may not retain certain information indefinitely given its need to balance its legal obligations to retain records with its legal obligations under the Privacy Act 2020. We have added reference to “available” records at paragraph 16.1.3 (previously paragraph 10.1.3) as suggested and added footnote 5 with more detail.
23	Principle 2: comprehensive, timely, fair and transparent	ICBC	16.1.3	In relation to paragraph 10.1.3, ICBC states that <i>“it is hard for some business [sic] to review records when the consumers exited the business relationship more than 7 years.”</i>	Changed	[Agree.] See response in row #22 above.
24	Principle 2: comprehensive, timely, fair and transparent	NZBA	16	<p>NZBA states that the requirement to review records back to when a business reasonably suspects that the first loss or detriment occurred is not consistent with legislation on retention of records and limitation.</p> <p>NZBA submits that steps taken in the context of carrying out a root cause analysis should be proportionate, with a view to ensuring that customer harm is managed in a way that is appropriate for the individual situation.</p> <p>NZBA further submits that a business should initiate a remediation process <i>“as soon as reasonably practicable”</i> after the business becomes aware of an issue.</p>	Changed	<p>[Somewhat agree.] See response in row #22 above in relation to the retention of records.</p> <p>We do not propose to amend paragraph 16.1.4 (previously 10.1.4) as it is important that the full extent of the likely breach and root cause is identified. This is critical to understand the extent of remediation required and to prevent the issue from affecting further consumers.</p> <p>We have added the wording suggested by the NZBA in relation to starting the remediation process as soon as reasonably practicable after the business becomes aware of an issue. We have not added guidance as to the prioritisation of different remediations if there are multiple occurring at one time. There are many factors that may play a part in such a scenario, and it is ultimately at the business’</p>

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				NZBA also submits that if there are multiple remediations occurring at one time, a business may prioritise those according to size, scale, and number of customers affected among other factors it considers relevant.		discretion based on the circumstances of each likely breach.
25	Principle 2: comprehensive, timely, fair and transparent	Anon 2	16.1.3	By reference to paragraph 10.1.3 of the draft guidance (now paragraph 16.1.3), anonymous submits that there is some tension between the Commission's expectations about how businesses should scope a remediation and a business's legal obligations in relation to retaining information. Anonymous states that <i>"it would be useful if the guidelines could explicitly acknowledge this tension and provide guidance about how the Commission will take that into account in assessing the sufficiency of a remediation and applying its enforcement criteria."</i>	Changed	[Agree.] See response in row #22 above.
26	Principle 2: comprehensive, timely, fair and transparent	KPMG	16.1.4, 16.2.1	Referring to paragraph 10.1.4 of the draft guidance (now paragraph 16.1.4), KPMG requests that the Commission consider adding guidance on how businesses can approach the fixes to address the root causes of the remediation. KPMG also submits, in relation to paragraph 10.2.1 of the draft guidance (now paragraph 16.2.1), that the	No change	[Disagree.] Providing further guidance as to how a business may approach or address the root cause is beyond the intended scope of the guidance. See response in row #6 above. There is no "one size fits all" approach to remediation. Initiation steps may vary depending on, for example, the nature of the likely breach, the size of the business, and the number of customers affected, among other factors.

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				Commission “ <i>should clarify the initiation processes required to demonstrate that remediation has been initiated in a timely manner. This would benefit from having examples of general remediation initiation steps.</i> ”		We have not amended paragraph 16.1.4 (previously paragraph 10.1.4) or paragraph 16.2.1 (previously paragraph 10.2.1).
27	Principle 2: comprehensive, timely, fair and transparent	KPMG	16.2.2	KPMG refers to paragraph 10.2.2 of the draft guidance (now paragraph 16.2.2) and submits that the Commission should clarify what might be an “appropriate timeframe” or provide examples to help businesses meet the Commission’s timeliness principle.	Changed	[Somewhat agree.] We have listed some factors that may influence the appropriate timeframe to paragraph 16.2.2 (previously paragraph 10.2.2), such as the size and complexity of the exercise, the availability of information, the size of the business, the number of affected customers, and the type of harm suffered by those customers. These are listed as examples only and are not exhaustive.
28	Principle 2: comprehensive, timely, fair and transparent	NZBA	16.2.3	NZBA submits that it is not clear what 10.2.3 of the draft guidance (now paragraph 16.2.3) means and that if the Commission means that the remediation should be appropriately prioritised and resourced, then NZBA suggests that it is framed in this way.	Changed	[Agree.] We have updated the guidance at paragraph 16.2.3 (previously paragraph 10.2.3) to reflect NZBA’s submission.
29	Principle 2: comprehensive, timely, fair and transparent	NZBA	16.3	NZBA submits that “ <i>it is not clear what ‘individual circumstances’ is intended to consider</i> ” and that the obligation to consider individual circumstances beyond a certain point has the potential to create inequity and may unnecessarily slow remediation down.	Changed	[Agree.] We have removed the reference to ‘individual’ circumstances of consumers at paragraph 16.3 (previously paragraph 10.3), focussing instead on the circumstances of consumers in general, and have provided some parameters for businesses to consider.
30	Principle 2: comprehensive,	ICNZ	16.3.1	ICNZ requests greater clarity in paragraph 10.3.1 of the draft guidance (now	Changed	[Agree.] See response in row #29 above.

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	timely, fair and transparent			paragraph 16.3.1) as to what customer needs are being referred to.		
31	Principle 2: comprehensive, timely, fair and transparent	Mosaic	16.3.2	Mosaic expressed concern at <i>“the broad statement in paragraph 10.3.2, around the necessity of customers participating in the process to assess their individual circumstances... the business is already obliged under paragraph 10.3.1 to consider consumer’s individual circumstances.”</i>	Changed	[Somewhat agree.] We have amended paragraph 16.3.2 (previously paragraph 10.3.2) to read “where necessary and appropriate” and removed the reference to the “individual” circumstances of the consumer. Businesses are encouraged to consider the circumstances of consumers at paragraph 16.3.1 (previously 10.3.1), where appropriate are encouraged to consult with consumers as part of this process.
32	Principle 2: comprehensive, timely, fair and transparent	NZBA	16.3.2	NZBA <i>“support[s] the inclusion of “where appropriate,” if the Commission considers this clause necessary, and assume that in larger remediations a business could properly decide this is not appropriate.”</i>	Changed	[Somewhat agree.] See response in row #31 above.
33	Principle 2: comprehensive, timely, fair and transparent	ICNZ	16.3.2	ICNZ submits that it is unclear in what circumstances it would be helpful for consumers to be part of the process and how that would be managed in situations where there are numerous impacted consumers.	Changed	[Somewhat agree.] See response in row #31 above. Given this is high-level guidance, the Commission does not propose to prescribe the circumstances in which a business should consult consumers, or how to manage such a process.
34	Principle 2: comprehensive, timely, fair and transparent	NZ Post	16.3.5	NZ Post seeks further clarification on the statement at paragraph 10.3.5 of the draft guidance that organisations should not take a legalistic approach to limit consumer entitlements, as <i>“this could potentially impact the length of time that businesses are expected to hold information on customer transactions and might be in</i>	Changed	[Agree.] We have amended this point (now paragraph 16.3.5) to clarify that a business may wish to consider whether taking a strict approach to consumers’ legal rights in order to limit consumer entitlements to remediation is appropriate, but that it is not mandatory. We have provided some further guidance on this point at footnote 8.

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				<i>tension with the Privacy Act's IPP 9 storage principle."</i>		
35	Principle 2: comprehensive, timely, fair and transparent	NZBA	16.3.5	NZBA notes that <i>"limitation defences are fixed by statute and common law. If those rights are to be limited, it should be affected under statute. Banks may and often do decide to go beyond limitation periods, but it is appropriate for that to remain within their discretion."</i>	Changed	[Agree.] See response in row #34 above. The Commission's expectation is that despite potential limitation defences, businesses should nonetheless consider remediating customers who were affected in the relevant period as appropriate.
36	Principle 2: comprehensive, timely, fair and transparent	ICNZ	16.3.5	ICNZ expressed concerns around the practicality of applying paragraph 10.3.5 and the uncertainty it creates.	Changed	[Agree.] See response in row #34 above.
37	Principle 2: comprehensive, timely, fair and transparent	Mosaic	16.3.5	Mosaic <i>"proposes more guidance is required on the detail in paragraph 10.3.5 about not taking a legalistic approach to limit consumer entitlements."</i>	Changed	[Agree.] See response in row #34 above.
38	Principle 2: comprehensive, timely, fair and transparent	First Gas	16.3.5	First Gas submits that the phrase "a legalistic approach" does not provide any meaningful clarity about what behaviour may or may not meet the intent of this paragraph. First Gas notes that one of the key tools available for businesses to manage their risk of liability to consumers is insurance, which is strict and legalistic.	Changed	[Agree.] See response in row #34 above.
39	Principle 2: comprehensive, timely, fair and transparent	Mosaic	16.3.7	In relation to the reference to "avenue for consumers to seek independent review" at paragraph 10.3.7 of the draft guidance, Mosaic submits that <i>"most issues can be resolve through the internal complaints</i>	Changed	[Agree.] We have amended the wording in paragraph 16.3.7 (previously paragraph 10.3.7) to clarify that consumers must first go through the business' internal complaints process before seeking independent review by a third party or

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				<p><i>process so customers should be directed there first.</i></p> <p><i>“If the intention is that all businesses governed by this must belong to an external dispute resolution organisation, then Mosaic believes this paragraph lacks the detail needed for them to address this principle.”</i></p>		external dispute resolution body, if necessary and available.
40	Principle 2: comprehensive, timely, fair and transparent	ICNZ	16.3.7	ICNZ submits that paragraph 10.3.7 of the draft guidance should refer to an “external dispute resolution process.”	Changed	[Agree.] We have added a reference to a third party or external dispute resolution body to paragraph 16.3.7 (previously paragraph 10.3.7).
41	Principle 2: comprehensive, timely, fair and transparent	Mosaic	16.4.5, 19.4	Mosaic submits that paragraph 10.4.5 of the draft guidance is repeated in paragraph 13.4.4, and it should be removed and addressed solely in paragraph 13.4.4 which is more comprehensive.	No change	[Disagree.] We have kept both references in paragraphs 16.4.5 (previously paragraph 10.4.5) and 19.4 (previously paragraph 13.4.4) as allowing consumers to self-identify that they have been affected by the likely breach is an important part of both a transparent remediation process and consumer engagement.
42	Principle 2: comprehensive, timely, fair and transparent	Anon 1	16.4.5, 19.4	<p>Anonymous has expressed concern regarding paragraph 10.4.5 of the draft guidance requiring a means for customers to self-identify if they are affected by a business’ remediation actions.</p> <p><i>“This requirement may have unintended consequences...a means for self-identification should only be required where no or minimal customer records exist, as a last resort where there are substantial data</i></p>	Changed	[Somewhat agree.] We have added the words “where appropriate” to paragraphs 16.4.5 (previously paragraph 10.4.5) and 19.4 (previously paragraph 13.4.4) to signify that this element should be used where necessary or appropriate but may not be required in every scenario.

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				<i>issues or where the business believes that public notification will help it identify impacted customers."</i>		
43	Principle 2: comprehensive, timely, fair and transparent	BNZ	16.4.5, 19.4	<p>BNZ states that it does not consider there would be any significant benefit in establishing systems for consumers to self-identify and <i>"and it would likely divert some of the resource BNZ puts into identifying the correct customers."</i></p> <p>BNZ further considers that <i>"it may be challenging and confusing to communicate "en masse" to its customers about a narrow remediation with little benefit or application for most customers."</i></p> <p>BNZ suggests amending paragraphs 10.45 and 13.4.4 to include the wording <i>"where helpful and appropriate to the remediation"</i>.</p>	Changed	[Somewhat agree.] See response in row #42 above. We have similarly amended paragraph 19.4 (previously paragraph 13.4.4).
44	Principle 2: comprehensive, timely, fair and transparent	ICNZ	16.4.5	ICNZ recommended adding the words "Where appropriate," at the start of the first sentence in paragraph 10.4.5 of the draft guidance.	Changed	[Agree.] See response in row #42 above.
45	Principle 2: comprehensive, timely, fair and transparent	NZBA	16.4.5	NZBA submits that paragraph 10.4.5 of the draft guidance will likely lead to confusing communications between businesses and customers, may also lead to customers self-identifying liberally and being disappointed when they are not remediated, and may increase a business' litigation risk. NZBA	Changed	[Somewhat agree.] We consider that allowing customers to self-identify that they have been affected by a likely breach is an important tool in some circumstances, and so while we retain this point we have added "where appropriate" as suggested to paragraph 16.4.5 (previously paragraph 10.4.5).

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				recommended a caveat of “where appropriate” if this paragraph is kept.		
46	Principle 2: comprehensive, timely, fair and transparent	ICNZ	16.4.6	ICNZ states that “ <i>we do not believe that principle 10.4.6 should be so strict as to expect that every remediation process will take on board feedback received. This principle would be more appropriately rewritten as “consider feedback received, as appropriate”.</i> ”	Changed	[Agree.] We have added “where appropriate” as suggested by ICNZ to paragraph 16.4.6 (previously paragraph 10.4.6).
47	Principle 3: calculating compensation	Horizon	17	Horizon submits that it would expect principles that look at how to quantify compensation to ‘put right’ harm caused. Horizon notes that businesses require guidance and principles around how to assess consumer impact and materiality to help calculate what level of compensation may be required.	No change	[Somewhat agree.] The assessment of loss or detriment caused to consumers depends on the industry and nature of the service or product provided by the business. More prescriptive and quantitative guidance is not currently within scope of the guidance.
48	Principle 3: calculating compensation	Mosaic	17.1.6, 19.2.2	Mosaic submits that the principles should include a provision for a concept of de minimis. Mosaic also requests “ <i>more detail or examples in paragraphs 11.11.1, 11.1.2, and 11.1.4.</i> ”	Changed	[Somewhat agree.] We have added reference to a de minimis at paragraphs 17.1.6 and 19.2.2 of the guidance. We have not provided examples, as this is intended to be high-level and generalised guidance. Calculating compensation will necessarily be fact dependent.
49	Principle 3: calculating compensation	NZBA	17.1.6, 19.2.2	NZBA submits that the Commission should consider providing a de minimis threshold below which business can pay directly to a charity.	Changed	[Agree.] See response in row #48 above. We have removed the reference to the suggestion that business consider the circumstances of “individual” consumers, instead focussing on the

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				While NZBA accepts that there may be events that require consideration about how particular groups of customers have been affected, it submits that the principle that a business considers the circumstances of individual consumers “wherever possible” to set too high a threshold.		circumstances of consumers. We consider that this will allow for the consideration of groups of consumers that may have been affected, without unnecessarily delaying the remediation process.
50	Principle 3: calculating compensation	ICNZ	17.1.6, 19.2.2	ICNZ seeks guidance from the Commission as to whether the Commission has a set level of tolerance for what refunds should and should not be paid.	No change	[Disagree.] Although we have added reference to a de minimis at paragraphs 17.1.6 and 19.2.2 of the guidance, what that amount is may vary depending on the remediation in question. The Commission does not propose to set a de minimis amount.
51	Principle 3: calculating compensation	NZBA	17.1.2	By reference to paragraph 11.1 of the draft guidance (now paragraph 17.1.2), NZBA submits that “ <i>the guidance provides that businesses seek further information from customers “where appropriate” rather than suggesting that occurs in all cases where there is missing information... The guidance should also note that businesses can choose to use beneficial assumptions where information is missing (as above, businesses should not be forced to recreate records that no longer exist).</i> ”	Changed	[Somewhat agree.] As suggested, at paragraph 17.1.2 (paragraph 11.1.2 of the draft guidance) we have clarified that businesses may choose to use beneficial assumptions instead of seeking further information from affected consumers where information is missing.
52	Principle 3: calculating compensation	NZ Post	17.1.3, 17.1.5	NZ Post referred to paragraph 11.1.3 of the draft guidance which references overcompensation rather than under compensation. NZ Post submits that this paragraph would benefit from more guidance around how an organisation may carry out and make such assessment.	Changed	[Somewhat agree.] We have amended paragraph 17.1.3 to clarify that beneficial assumptions err towards inclusion of affected consumers. We have also amended paragraph 17.1.5 (paragraph 11.1.5 of the draft guidance) to provide further guidance. We do not propose to include

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				NZ Post also suggests that in paragraph 11.1.5 of the draft guidance examples are needed and would provide more guidance.		detailed examples, given the high-level and generalised nature of the guidance.
53	Principle 3: calculating compensation	Consumer NZ	17.1.3	Consumer NZ submits that paragraph 11.1.3 of the draft guidance referring to the use of beneficial assumptions would benefit from clarification.	Changed	[Agree.] See response in row #52 above.
54	Principle 3: calculating compensation	KPMG	17.1.3	KPMG outlines its experience with the use of beneficial assumptions in practice. It submits that the Commission should consider if businesses should report beneficial assumptions to the Commission to mitigate the danger of businesses applying beneficial assumptions inappropriately.	No change	[Agree.] As part of an investigation into matters in which a business chose to remediate, we may request records of the business' remediation process and decision making. As part of this, it would be useful for the business to have a record of the beneficial assumptions used, to assist the Commission's understanding.
55	Principle 3: calculating compensation	KPMG	17.1.5	<p>KPMG refers to paragraph 11.1.5 of the draft guidance and submits that the Commission should consider providing guidance on when it would <i>not</i> be appropriate to pay use of monies interest.</p> <p>KPMG further submits that the Commission may also wish to consider whether compensation should consider taxation and suggests that guidance should set clear expectations for businesses around what should be included in compensation.</p>	Changed	<p>[Somewhat agree.] We have provided an example at paragraph 17.1.5 (paragraph 11.1.5 of the draft guidance), whereby the remediating party may consider paying use of monies interest where that party has had the use of the money for an extended period of time or has had the use of a large amount of money from affected parties. These are generalised examples and are not exhaustive. We do not otherwise intend to provide guidance as to when it would not be appropriate to pay use of monies interest given the high-level nature of the guidance.</p> <p>Guidance as to taxation is beyond the scope of the guidance.</p>

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
56	Principle 3: calculating compensation	ICBC	17	ICBC submits that a further principle should be explored for when consumers disagree with the amount of compensation.	No change	[Disagree.] Consumers that disagree with the amount of compensation may first raise their concerns through the business' internal complaints process and then if necessary seek independent review by a third party or dispute resolution body, as outlined at the new paragraph 16.3.7.
57	Principle 3: calculating compensation	ICNZ	16, 17	ICNZ submits that paragraphs 10 and 11 of the draft guidance (now Principle 2 at paragraph 16 and Principle 3 at paragraph 17) suggest that remediation look-back periods are uncapped. ICNZ questions <i>"whether such an approach to compensation is 'fair' to customers as uncapped remediation will increase complexity and timeliness of remediation programmes."</i>	No change	[Disagree.] In general, remediation should relate to the period of the likely breach or harm caused to consumers. The Commission does not propose to impose a blanket cap on remediation periods as there will be many factors that determine the appropriate period that are context dependent.
58	Principle 3: calculating compensation	KPMG	17	By reference to paragraph 11 of the draft guidance (now paragraph 17), KPMG submits that, if the term 'compensation' includes quantifiable consumer financial harm, this is one of the most difficult phases of the remediation process. KPMG states that <i>"to promote fair, equitable and transparent values in calculating compensation, the Commission should consider creating further detailed guidance to support the calculation of refunds; and where common industry issues occur, set out a standard compensation methodology."</i>	Changed	[Somewhat agree.] The guidance is intended to be generalised and high-level guidance. Given the range of industries that the guidance covers, we do not propose to provide detailed guidance for calculating refunds, a compensation methodology, or how to establish consequential loss. We have not added a governance requirement to Principle 3 paragraph 17.1 (paragraph 11.1 of the draft guidance), as Principle 8 ("businesses should ensure that any consumer remediation processes have an appropriate governance structure") is applicable to the entire remediation process, including the calculation of compensation.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				<p>KPMG states that the Commission should consider adding guidance on the investigation required to establish consequential losses experienced by a consumer and demonstrate the Commission's reasonable expectations by providing examples.</p> <p>KPMG also submits that the Commission should consider adding governance requirements to considerations regarding compensation calculations.</p>		
59	Principle 4: communication about the progress and outcome in a clear, concise, timely and effective manner	NZBA	18	NZBA submits that <i>"communicating with customers about the process and outcome of review of a remediation is not always necessary or appropriate. It can be sufficient for relevant customers to be informed only at the conclusion of a remediation."</i> NZBA suggests that this principle is reframed to provide businesses with flexibility of communication.	Changed	[Somewhat agree.] We have added footnote 14 to paragraph 18 to clarify that while a business should always communicate with affected customers about the outcome of the remediation process, the level of communication with consumers about the progress of the remediation may be proportionate to the remediation.
60	Principle 4: communication about the progress and outcome in a clear, concise, timely and effective manner	Marketing Association	18.1.1	Marketing Association would like to see more emphasis to plain English communication and supports an emphasis on specialist training for customer-facing staff.	Changed	[Somewhat agree.] The Commission agrees about the importance of communication tailored to the language needs of the consumer. We have removed the <i>"/or"</i> from paragraph 18.1.1, so that the paragraph now reads <i>"in plain language appropriately tailored to the informational and language needs of the consumer audience"</i> .
61	Principle 4: communication	Ben Hamlin	18.1.1	Mr Hamlin states that communication should be culturally appropriate and should	Changed	[Agree.] See response in row #60 above. We have made a further amendment to paragraph 18.1.1

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
	about the progress and outcome in a clear, concise, timely and effective manner			have regard to the language needs and preferences of the consumer.		(previously paragraph 12.1.1) encouraging businesses to consider translation of communication, where necessary or appropriate.
62	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	Ben Hamlin	19	Mr Hamlin submits that the discussion in paragraph 13 of the draft guidance (now paragraph 19, Principle 5) “presumes that communication will occur 1:1 direct communication based on known contact details” but that “this is not how these businesses would approach the task if they were seeking to sell something to these consumers. Nor would a class action seeking members, or seeking to distribute funds, approach the task in this way”.	No change	[Agree.] While we acknowledge that not all businesses will have direct contact with consumers, we consider that paragraph 19 is general enough to allow for a variety of circumstances. For example, a business’ communication plan that aims to reach as many affected consumers as possible may be to use a retailer as an intermediary or communicate by advertisement or publishing information on their website.
63	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	Mosaic	19.1.2	Mosaic submits that the reference in paragraph 19.1.2 to engaging with consumers through a range of channels (including SMS and social media) and other methods may create some privacy concerns. It suggests that this paragraph be constrained to ways in which the consumer has consented to be contacted.	Changed	[Somewhat agree.] We have removed the reference to ‘social media’ and have added “appropriate” to paragraph 19.1.2, so that businesses are encouraged to use all <i>appropriate</i> available contact information and contact methods.
64	Principle 5: businesses should make all reasonable efforts to engage	NZBA	19.1.2	NZBA submits that tailoring and using multi-channelled communication is unrealistic and should be reframed to provide flexibility in approach. If the high-level principle is that businesses should aim to reach as many customers as possible,	Changed	[Somewhat agree.] See response in row #63 above.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
	with affected consumers			businesses should be able to determine the appropriate way to do that taking into account the nature and scale of the remediation. NZBA also comment on the risks associated with certain methods of communication such as SMS.		
65	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	ICBC	19.1.2	ICBC supports the addition of principles that allow businesses to avoid potential privacy breaches when contacting consumers using all available contact methods.	Changed	[Somewhat agree.] See response in row #63 above. We do not propose to otherwise add additional principles.
66	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	BNZ	19.1.2	BNZ considers that there is a real risk that sending remediation messages via suggested methods (such as SMS or social media) would be confused with scam messages. BNZ suggests the following redraft: <i>"Using all available appropriate contact information and contact methods..."</i>	Changed	[Somewhat agree.] See response in row #63 above.
67	Principle 5: businesses should make all reasonable efforts to engage	ICNZ	19.1.2	ICNZ questions how appropriate it is for businesses to use social media to track down customers, as indicate that this may risk impeding on an individual's right to privacy.	Changed	[Agree.] See response in row #63 above.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
	with affected consumers					
68	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	Horizon	19.2.2	<p>Horizon submits that the guidance should recognise that it is common for less than 100% of affected consumers to be able to be identified. By the time non-compliance is identified, and remediation quantified, it is likely that a small proportion of consumers will have left the country and not be contactable or traceable.</p> <p>Horizon further submits that the guidance should extend to how businesses without a relationship with the consumer can provide effective remediation.</p>	Changed	<p>[Somewhat agree.] We have expanded this principle (Principle 5 at paragraph 19.2.2) to include a <i>de minimis</i> threshold under which the cost of tracing and contacting disengaged consumers may be disproportionate to the amount of compensation owed. We acknowledge that some consumers may not be able to be traced but consider that this scenario is covered at paragraph 19.3.</p> <p>We acknowledge that not all businesses will have a direct relationship to the consumer. In this scenario, we would envisage that the business uses alternate means to identify consumers, such as that outlined in the updated paragraph 19.4.</p>
69	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	KPMG	19.2.2	KPMG notes that the “minimum value threshold” in paragraph 13.3.2 of the draft guidance (now paragraph 19.2.2) refers to a <i>de minimis</i> principle. KPMG submit that the Commission should consider clearly setting out an acceptable <i>de minimis</i> .	Changed	[Agree.] We have changed the reference to a “ <i>de minimis</i> ” amount at paragraph 19.2.2 and cross referenced to paragraph 17.1.6 to ensure consistency across the approach. See response in row #48 above.
70	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	FinCap	19.2.2, 19.3.2	FinCap supports the guidance in paragraph 13.3.2 and 13.4.2 of the draft guidance (now paragraphs 19.2.2 and 19.3.2) but recommended a more targeted response by guiding traders to unconditionally direct these funds to a charity or community organisation working toward the	Changed	[Somewhat agree.] Where we have suggested that businesses consider paying remediation that is under a <i>de minimis</i> amount to a charity or community organisation at paragraph 19.2.2, we have clarified that the charity or community organisation should not be associated with the business and should be related to addressing the

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				preservation or resolving of harm from unfair actions by traders.		harm of the type experienced by consumers as a result of the likely breach.
71	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	Anon 1	19.4	Anonymous considers that paragraph 13.4.4 of the draft guidance could be misconstrued as requiring organisations to maintain their own register of impacted customers and unclaimed monies, that is searchable by customers.	Changed	[Agree.] We have caveated the paragraph mentioned (now paragraph 19.4) with “where appropriate”. The suggestion of a webpage was provided as an example and is not intended to be mandatory.
72	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	ICNZ	19.4	In relation to principle 13.4.4 of the draft guidance, ICNZ believes that further clarification is required about the expectations for maintaining a webpage outlining remediation activity. ICNZ also submits that the principle requiring businesses to provide a means to self-identify should be amended to include the words “where appropriate” at the start of the first sentence as self-identification may not be possible for all remediations.	Changed	[Somewhat agree.] See our response in row #71 above. Given the high-level and generalised nature of the guidance, the Commission does not propose to provide prescriptive detail about the example of maintaining a webpage.
73	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	NZBA	19.4	NZBA submits that the recommendation to maintain a webpage at paragraph 13.4.4 of the draft guidance (now paragraph 19.4) may be problematic. Simplifying (often quite complex) remediations and classes of affected customers for a webpage could lead to a number of false positives which may put pressure on call centres.	Changed	[Somewhat agree.] See our response in row #71 above.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
74	Principle 5: businesses should make all reasonable efforts to engage with affected consumers	BNZ	16.4.5, 19.4	<p>BNZ understands why the Commission considers it important that businesses have a means by which consumers can self-identify if they believe they have been impacted by an event and are entitled to remediation, as it ensures customers are not unduly impacted by poor quality data or systems. However, BNZ submits that this is not their experience as they have set up a dedicated remediation Centre of Excellence.</p> <p>BNZ therefore submits that they do not consider there would be any significant benefit in establishing systems for consumers to self-identify and consider that it may be challenging and confusing to communicate "en masse" to its customers about a narrow remediation with little benefit or application for most customers.</p> <p>BNZ suggests the adding the words "<i>where helpful and appropriate to the remediation</i>" ahead of paragraphs 10.45 and 13.4.4 of the draft guidance.</p>	Changed	[Somewhat agree.] We have amended paragraph 19.4 (previously paragraph 13.4.4) and paragraph 16.4.5 (previously paragraph 10.4.5) to read "where appropriate". The Commission notes that the guidance is applicable to a range of businesses in different industries, and not all will have a pre-existing remediation framework or robust systems.
75	Principle 6: communicate the outcome to consumers in a way that is clear and transparent	NZBA	20.1.1	NZBA expressed concern that the requirement in paragraph 14.1 of the draft guidance (paragraph 20) will attract litigation risk. NZBA submits that businesses should be able to explain the position balancing their obligations not to mislead customers with their own litigation	Changed	[Somewhat agree.] We have amended Principle 6, paragraph 20.1.1 (paragraph 14.1.1 of the draft guidance) – instead of suggesting that a business explain the likely breach and how the issue has affected the consumer, it is suggested that a business explains generally the reason why the remediation is being offered.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				<p>risk. Any communications of the outcome of a review should also remain customer-focused and refrain from being too legalistic.</p> <p>NZBA also considers that the financial sector dispute resolution schemes already provide clear guidance on when and how this information should be available to customers.</p>		<p>NZBA has confirmed that it refers to the NZ Banking Ombudsman Scheme guidance on responding to a complaint. However, remediation will not always be initiated due to a complaint and not all remediations will be undertaken by banks. It is important that the guidance sets out the Commission's expectations applicable to all businesses that have identified a likely breach of one of the laws the Commission enforces (including but not limited to the Credit Contracts and Consumer Finance Act 2003).</p>
76	Principle 6: communicate the outcome to consumers in a way that is clear and transparent	FSCL	20	<p>Paragraph 14.1.4 refers to the consumer having access to an external dispute resolution process 'in most cases.' FSCL submits that the wording could be changed to avoid any situation where a business could look to decide which customers should be given the dispute resolution scheme's details. In the financial services sector, access to the dispute resolution scheme and provision of information about the dispute resolution scheme should happen in every case where a customer has raised a complaint/expression of dissatisfaction.</p>	Changed	<p>[Agree.] We agree that in the financial services sector, a business should comply with its obligations to provide the details of a dispute resolution service. We have removed the paragraph as this principle is covered in paragraph 16.3.7 (previously paragraph 10.4.5).</p>
77	Principle 6: communicate the outcome to consumers in a	Anon 1	20	<p>Anonymous agrees that businesses should communicate the outcome of remediation work in a clear and transparent way but submits that communications do not need to include references to external dispute</p>	No change	<p>[Somewhat agree.] The guidance is applicable to businesses who have identified a likely breach of any of the laws the Commission enforces. Not all of these businesses are required to be part of an external dispute resolution scheme. To the extent</p>

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
	way that is clear and transparent			resolution processes. Anonymous submits that organisations are already required to be a member of an approved external dispute resolution scheme and are required to disclose this to customers on its website and at various stages of the customer journey, as is the case under the FMCA.		that it applies to financial service providers, it is a reiteration of existing obligations and is consistent with businesses' requirements under the Credit Contracts and Consumer Finance Act 2003. In any event, we have removed the paragraph as this principle is covered in paragraph 16.3.7 (previously paragraph 10.4.5).
78	Principle 7: businesses should provide remediation in a way that is convenient and accessible and takes into account the needs of consumers	Mosaic	21.1.2	Mosaic submits that <i>"in relation to the reference to cheques in paragraphs 15.1.2, domestic cheques ceased to be issued and accepted by New Zealand banks on 31 August 2021."</i> <i>"It would be helpful, particularly to smaller businesses, to provide examples or more explanation of what the Commission considers "secure methods" for consumers to provide updated bank account details."</i>	Changed	[Somewhat agree.] We have amended the reference to cheques in paragraph 21.1.2 (paragraph 15.1.2 of the draft guidance). We do not propose to provide examples of a secure method for customers to provide updated bank account details, as the method used is at the discretion of the business. This is consistent with the high-level nature of the guidance.
79	Principle 7: businesses should provide remediation in a way that is convenient and accessible and takes into account the needs of consumers	Consumer NZ	21.1.1	Consumer NZ submits that <i>"it would be preferable for businesses to offer consumers the choice of credit or refund because the consumer may have no use for a credit or may not wish to continue to deal with the business. Also, under the Consumer Guarantees Act, the consumer is sometimes entitled to insist on a refund."</i>	Changed	[Somewhat agree.] We have added footnote 17 to paragraph 21.1.1 (paragraph 15.1.1 of the draft guidance) to emphasise that businesses should comply with any relevant legislation when considering whether to offer a credit or refund (i.e., so that they are compliant with the Consumer Guarantees Act if relevant).
80	Principle 7: businesses should	ICBC	21.1	ICBC notes that the guidance is proposed to apply for any business, not only for lenders	No change	[Somewhat agree.] Our reference to convenient and accessible at paragraph 21.1 (paragraph 15.1 of

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
	provide remediation in a way that is convenient and accessible and takes into account the needs of consumers			who are governed by the Credit Contracts and Consumer Finance Act 2003. ICBC submits that the reference to the provision of remediation in a 'convenient' and 'accessible' way only refers to a "credit" or "refund", but that it should also include tangible products.		the draft guidance) refers to monetary compensation. In our view, monetary compensation will most often be provided either by way of credit or refund. We have otherwise amended the guidance by adding paragraph 21.1.4 to acknowledge that compensation may take other forms.
81	Principle 8: governance	Mosaic	22	Mosaic agrees it is important to have appropriate governance and assurance over remediation activities. <i>"It may assist, particularly smaller businesses, to make clear that existing governance structures may be able to be utilised for these purposes."</i>	Changed	[Agree.] As suggested, we have added footnote 18 at paragraph 22 to explain that existing governance structures may be used.
82	Principle 8: governance	KPMG	22.1.1	KPMG suggests that the Commission <i>"consider if a role of a "customer advocate" should be included in the guidance to ensure the consumers' interests are at the heart of the remediation process."</i>	Changed	[Somewhat agree.] We have added a suggestion that businesses may consider including a customer advocate within the governance structure. This is provided as a suggestion in footnote 19 at paragraph 22.1.1 and is not intended to be mandatory.
83	Principle 8: governance	Marketing Association	16	The Marketing Association submits that <i>"it is important that consumers can feel that an impartial process is followed."</i> It suggests that the guidance needs to emphasise that the principles of	No change	[Agree.] We agree that it is important for consumers to feel an impartial process has been followed but consider that the principles of transparent justice are covered by Principle 2 requiring a transparent and fair process (including by reference to provision of an avenue for

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
				transparent justice are best served by appointing an independent overseer.		consumers to seek independent review) and Principle 8 by requiring an appropriate governance structure and reference to independent assurance.
84	Principle 8: governance	NZBA	22.1.4	Regarding 16.1.4 of the draft guidance (now paragraph 22.1.4), NZBA has some concerns about the suggestion for the need to publicly report on remediations. Businesses should have the flexibility to assess the best approach for identifying and communicating with customers.	Changed	[Somewhat agree.] We recognise the need for businesses to have flexibility in the approach to communicating with customers. However, in our experience public reporting is an important tool which assists consumers to know that they may be entitled to remediation if they have otherwise not been able to be contacted. This factor is one we have invited businesses to consider and is not mandatory. We have nonetheless expanded on this point by adding footnote 20 to paragraph 22.1.4.
85	Principle 8: governance	Mosaic	22.1.4	Mosaic has expressed concern with the wide scope of the statements in the guidance regarding the public reporting of remediations. Mosaic submits that <i>“remediation activities may also overlap with engagement with regulators and/or court processes. Businesses may risk inadvertently interfering with these processes by providing public information.”</i>	Changed	[Agree.] See our response in row #84 above. We emphasise that public reporting is a factor for businesses to consider and is not mandatory.
86	Principle 8: governance	ICNZ	22.1.4	ICNZ questions whether there is any benefit to consumers in public reporting on the progress of remediation processes. ICNZ submits that clear and direct communication to affected consumers would be the most reliable way to ensure that important information is communicated.	Changed	[Disagree.] See our response in row #84 above.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
87	Independent assurance	ICBC	23	ICBC seeks further clarification to the guidelines on when independent assurance must be engaged and what criteria needs to be met to perform the role of independent assurance.	Changed	[Agree.] While we have not provided more detailed guidance, we have expanded on this point at paragraph 23 to indicate that typically independent assurance would take place by way of an audit at the end of a remediation process.
88	Independent assurance	KPMG	23	KPMG submits that the Commission should consider including guidance as to when independent assurance is necessary, and the scope and standard of the review should be stated to ensure consistency of the assurance provided by the independent assurance.	Changed	[Somewhat agree.] See our response in row #87 above.
89	Principle 9: record keeping	KPMG	24.1.5	<p>KPMG submits that the Commission should clarify to what extent documentation is required to be filed and retained.</p> <p>KPMG also submits that the rationale behind key decisions made during remediation should be required to be recorded: <i>“without the rationale recorded, decisions made will be void of context or explanation of why it was appropriate.”</i></p>	No change	<p>[Somewhat agree.] The extent to which a business retains records of its remediation process is ultimately at the business’ discretion. We note that the Commission may request these records as part of an investigation into matters in which a business chose to remediate.</p> <p>We agree that businesses should record the rationale behind key decisions but consider that paragraph 24.1.5 adequately captures the need to record the reasons for decisions made as part of the remediation process.</p>
90	Principle 9: record keeping	ICBC	24	ICBC seeks further clarification on the period for record retention.	Changed	[Agree.] There is no set period for which a business must retain the records relating to the remediation. As part of an investigation into matters in which a business chose to remediate, the Commission may request records of the business’ remediation process and decision making. It would be useful to have these records on hand for this purpose.

Row #	Overall theme	Submitter	Para of guidance	Main submission arguments	Guidance changed from draft guidance	Response
						However, the Commission acknowledges that a business may not retain certain information indefinitely, due to the need to balance its legal obligations to retain records with its legal obligations under the Privacy Act 2020 (specifically, Privacy Principle 9). These considerations must be balanced by the business.
91	The Commission's approach to remediation	Ben Hamlin	3	Mr Hamlin submits that <i>"at [21]-[23] of the draft guidance there appears to be an assumption that all consumer remediation settlement is occurring before an enforcement decision. However it is entirely possible – and appropriate – for a settlement to occur later. Where a firm has been found liable, it may nevertheless engage with the Commission before a sentencing/remedy hearing and agree to undertake remediation at that time."</i>	Changed	[Agree.] We have amended paragraph 3 to explain that the guidance relates to proactive remediation that is undertaken by a business and that more generally these principles are ones to which the Commission is likely to have regard in any discussion with parties contemplating a remediation process – irrespective of the timing of that remediation process.
92	The Commission's approach to remediation	NZBA	28	NZBA submits that it would be useful for the Commission to indicate whether and in what circumstances it is likely to require information about how businesses have conducted a remediation.	Changed	[Agree.] We have added paragraph 28 to explain that as part of an investigation into matters in which a business has chosen to remediate, the Commission may request records of the business' remediation process and decision making.
93	Tikanga Māori	Ben Hamlin	10-13, 15.6	Mr Hamlin comments that some of the concepts of Tikanga Māori may be relevant to consumer remediation, particularly where there is an ongoing relationship between the customer and business that requires repair, or where consumers may	Changed	[Agree.] We agree that Tikanga Māori may be relevant and have incorporated into the guidance the Māori concept of utu. We have added paragraphs 10 to 13, as well as an enhanced reference in paragraph 15.6. In the context of remediation, a reference to "restoring balance" has

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				have suffered non-financial harms. Mr Hamlin recommended that the Commission consider what lessons can be drawn from Tikanga Māori. Even if no change is required to the principles, it may be that business should also be encouraged to consider Tikanga Māori when designing their remediation process.		also been included as part of the title of the revised final guidance. We recognise that the concept of utu is most closely linked to transgressions of Māori customary law, and that the conduct or omissions that might give rise to consumer remediation contemplated by the guidance are instead likely breaches of statute. However, we consider that this should not be a reason to not draw attention to the similarities in the concepts and hope to encourage businesses to focus on restoring balance when remediating.
94	Vulnerable consumers	KPMG	16.3.1, 17.1.1	KPMG submits that the guidance currently makes no reference to consumers in vulnerable circumstances. KPMG states that vulnerable consumers require additional care, and appropriate specific guidance should be included.	Changed	[Agree.] We agree that it is important for businesses to consider the needs of vulnerable consumers and have added reference to vulnerable consumers at paragraph 16.3.1 and 17.1.1.
95	Collaboration with CoFR	KPMG		KPMG submits that regulatory guidelines and the frameworks produced by members of the Council of Financial Regulators ('CoFR') should be aligned.	Changed	[Agree.] We confirm that as part of the process in drafting the guidance we consulted with the Financial Markets Authority (FMA). We have also added reference to the CoFR Consumer Vulnerability Framework to the definition of vulnerable consumers.
96	Collaboration with CoFR	Mosaic		Mosaic submits that it is beneficial to ensure alignment across CoFR so any future guidance from CoFR members share similar principles or one set of remediation principles can be issued by CoFR.	No change	[Agree.] See our response in row #95.

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97	Collaboration with CoFR	Anon 1		<p>Anonymous submits that the guidance should address how entities regulated by the Commission and the FMA should approach remediation where issues have the potential to be within the remit of multiple regulators.</p> <p>Anonymous states that similar issues may arise with the new Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 (“CoFI”) where entities licensed under CoFI will have to establish appropriate customer remediation processes to comply with the fair conduct principle.</p>	No change	<p>[Agree.] Where issues arise that may be within the remit of multiple regulators, we encourage businesses to identify and follow any remediation guidance issued by those regulators and where any inconsistencies appear, contact the Commission or relevant regulator for assistance or further guidance.</p>
98	Collaboration with CoFR	ICNZ		<p>ICNZ would like to understand the proposed application of the guidance in respect of insurance products. ICNZ notes the Memorandum of Understanding between the FMA and the Commission under which the FMA has the primary regulatory and enforcement responsibility for fair dealing in relation to financial products and financial services. ICNZ mention that the FMA has indicated that they will be issuing remediation principles for the industries they regulate.</p> <p>ICNZ expressed concern regarding the difficulties that can arise when two regulators issue guidance or principles on the same matter.</p>	No change	<p>[Somewhat agree.] See our response in row #95.</p>

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				ICNZ asks for clarity as to whether the proposed guidance applies to insurance and that if the Commission and the FMA are intending for their guidance or principles to apply to insurance that they work together to ensure consistency.		
99	Collaboration with CoFR	NZBA		NZBA welcomes clarification of whether the Commission has consulted with the FMA on the guidance, and whether the guidance has been endorsed by the FMA.	No change	[Agree.] See our response in row #95.
100	Commission's enforcement response	Horizon		<p>Horizon notes that the Enforcement Response Guidelines explicitly exclude enforcement under Part 4 of the Commerce Act and that as a result, it remains unclear what the Commerce Commission's framework is for enforcing Part 4 of the Commerce Act.</p> <p>Horizon recommends that in conjunction with the creation of this guideline, an enforcement guideline for Part 4 of the Commerce Act is issued.</p>	No change	[Disagree.] While the Commission's enforcement response to Part 4 of the Commerce Act is not within scope of this remediation guidance, the Commission notes that it is currently refreshing the Enforcement Response Guidelines and expect to publish a document alongside the updated Enforcement Response Guidelines that explains in more detail the Commission's enforcement approach in the context of breaches of Part 4 of the Commerce Act.
101	Commission's enforcement response	NZBA		NZBA states that it would be useful for the guidance to explicitly address how compliance with the guidance interacts with the Commission's enforcement criteria.	No change	[Somewhat agree.] We agree that it is important for businesses to understand the interplay between this remediation guidance and the Enforcement Response Guidelines. We are currently in the process of revisiting our Enforcement Response Guidelines and intend to refer to the guidance in any updated Enforcement Guidelines.

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102	Settlement Deeds	Consumer NZ		<p>Consumer NZ expressed concern about the use of settlement deeds in the remediation process.</p> <p>Consumer NZ recommended the guidance includes provisions about the use of settlement deeds to ensure they are used appropriately.</p>	Changed	[Agree.] We have addressed this at paragraph 16.3.3.
103	Language used	Mosaic		Mosaic submits that <i>“the guidance refers to ‘breach’ or ‘likely breach’ throughout. A breach will only be confirmed by a court or regulator. It would be useful to use the word ‘issue’ or similar.”</i>	Changed	<p>[Somewhat agree.] While we agree that only a court can ultimately determine whether a breach of the law has occurred, the guidance assumes that businesses have themselves assessed that an issue they have identified has likely led to a breach of the law. The guidance is therefore phrased as any identified issues being a “likely breach” – we have referred to this at footnote 1.</p> <p>A business may also choose to remediate when it has identified an issue that may or may not reach the threshold of a likely breach, but that is at the discretion of the business.</p>
104	Legislation	NZBA		NZBA submits that where the guidance covers matters that are contained in legislation (for example, record keeping and limitation periods), less prescription is appropriate as firms will already be complying with legislation.	No change	[Somewhat agree.] To the extent that the guidance covers matters contained in legislation, any inconsistencies are to be resolved in favour of legislation.