FG17/4: Summary of feedback received

April 2017

Consultation title	The fair treatment of mortgage customers in payment shortfall: impact of automatic capitalisations
Date of consultation	19 October 2016 – 18 January 2017
Summary of feedback received	We received 39 responses to our guidance consultation paper from a wide range of respondents, including firms, consumers, consumer representatives, public bodies, and trade associations on behalf of their members. Respondents were broadly supportive of our approach to delivering a proportionate, practical and fair framework for remediating affected mortgage customers. While respondents where supportive of most of the framework, we have received some differing views on a number of areas and as a result we have, where applicable, provided our view on those points. The main areas of difference relate to: the £10 threshold level (question 3); Possession cases and cases where a possession order has been awarded but not exercised (question 5); and The Credit Record Agencies (CRA) update proposals (question 6). We have addressed all the key issues which are within scope of the consultation, and have referred to the finalised guidance (FG) for any changes made. The key changes to the draft guidance relate to: removal of the June 2017 deadline for notifying affected customers; widening the scope of corrections to customer CRA records; and asking firms to provide customers with details of free debt advice services in their communications. Some respondents felt that the guidance would benefit from further clarity in specific areas; for example on which mortgage products are in scope. In this section we summarise the key feedback received from the consultation process and our response. We address the questions in the order provided in the guidance consultation paper.

Response to feedback received	**Q1: Do you have any comments on the remediation framework and/or 'how to' guide?** ***Mortgages in scope*** **Summary of feedback:** A number of respondents asked for clarity on whether certain mortgage products were within the scope of the guidance. Some respondents argued that interest-only mortgages should be treated as out of scope as long as they don't seek to recover the payment shortfall (commonly known as mortgage arrears) through a recalculated contractual monthly instalment (CMI). One respondent queried whether lifetime mortgages, specifically hybrid products, are in scope. This type of product allows a lifetime mortgage customer to choose to stop making interest payments by exercising an option to convert the product to interest roll up. **Our response:** As stated in paragraph 2.12 of the finalised guidance (FG), customers in scope are those who had a payment shortfall on a regulated mortgage or home purchase plan to which MCOB 13 applied, where firms automatically included the payment shortfall balance in calculating the CMI during the review period. This includes closed mortgage accounts, and second-charge mortgages where the automatic calculation occurred after 21 March 2016, but will not include buy-to-let mortgages. Where the above criteria apply to an interest-only mortgage, it would be in scope of the guidance. On the reference to lifetime mortgages, only firms who automatically include payment shortfall balances in their CMI calculations are in scope. For an amount to form part of a payment shortfall, as defined in our Handbook Glossary, it must remain unpaid in breach of the terms of the regulated mortgage contract. Firms will wish to consider their own contracts. For example if the terms of a lifetime mortgage provide that, if and when a scheduled payment of interest is missed, the mortgage converts automatically to interest roll-up, so that the missed payment is not immediately due, then the amount of the missed payment might remain unpaid in accordance with, and not in breach of, those terms. ***Formal capitalisations and capitalisation of fees, charges, and interest*** **Summary of feedback:** One respondent asked whether the capitalisation of mortgage fees, charges, and interest was within scope for remediation. Another respondent asked whether formal capitalisations were in scope for remediation. **Our response:** As stated in paragraph 2.12 of the FG, customers are only in scope where firms have automatically included the mortgage payment shortfall balance in calculating the CMI.

The Glossary definition of a payment shortfall and MCOB 2.1.1AG make clear that only missed periodic payments of capital or interest, and no other amounts, form part of a payment shortfall.

Capitalisations which have been done in line with the FCA's rules and Principles, including MCOB 13.3.4AR(1)(d), are not in scope for remediation.

Sold mortgage books

Summary of feedback: Some respondents asked who was responsible for the remediation of mortgage customers whose mortgages have been sold or transferred to a third party since June 2010. Some respondents asked what the requirements were on previous mortgage book owners to share information to support remediation activity.

Our response: For sold or transferred mortgage accounts the responsibility for remediation depends on the terms and conditions of the contract of sale. We expect firms to cooperate as far as possible to support remediation activity. We expect firms to inform the FCA in accordance with Principle 11, if historical data is inaccessible or unavailable.

Mix of loans with different regulatory status

Summary of feedback: One respondent noted that some customers have residential mortgage sub-accounts with different regulatory statuses, and asked whether it was our intention that the non-MCOB regulated sub-accounts are excluded. They asked if we had considered the implications of only remediating MCOB regulated loans for customers with a mix of regulatory status loans and how this could be communicated clearly to customers. Another respondent also raised a concern about only remediating MCOB-regulated loans.

Our response: As stated in paragraph 2.12 of the FG, products in scope are mortgages and home purchase plans that were regulated under MCOB when a payment shortfall was included in the CMI recalculation balance.

The remediation framework represents our guidance on one approach firms can use when providing customer remediation. Firms may choose to adopt a different approach, provided it gives fair outcomes to their customers. This could include remediating customers for unregulated mortgage accounts.

Mandatory framework

Summary of feedback: One respondent suggested that our proposed remediation framework should be mandatory for all firms. They were concerned that allowing firms to use their own approaches to remediation could make it difficult for customers to find out whether they had been fairly treated.

Our response: We recognise that there is more than one way to remediate customers. It is for this reason we have not made the remediation framework mandatory for firms, and one of the reasons we have not made it binding on the Financial Ombudsman Service. This makes sure that firms can tailor their remediation to customer needs. Firms will also have the flexibility to align the remediation approach to their processes and systems.

As indicated in paragraph 2.5 of the FG, if we find that firms have failed to pay due regard to the interests of their customers when delivering remediation, we will consider intervening.

Future assurance

Summary of feedback: One respondent stated that the systems, process and policy changes required to move away from long standing methods of calculating monthly payments are significant. They wanted assurance that the approach in our guidance will be acceptable to the FCA in the future and that further changes will not be required. They argued it is important that customers know this is a one off change and future changes will not be required

Our response: Using the framework is not mandatory, but we expect firms to have a remediation approach that gives fair outcomes for customers.

We cannot limit ourselves as a regulator by committing to never changing a rule. However, the Reader's Guide to the Handbook states that if a person acts in accordance with general guidance in circumstances contemplated by that guidance, we will treat that person as having complied with the relevant rules or requirements.

Bankruptcy or similar proceedings

Summary of feedback: One respondent raised the treatment of consumers subject to bankruptcy or similar proceedings.

Our response: Firms should comply with applicable laws when paying redress. This may include, for example, considering whether payment should be made to a trustee in bankruptcy.

Q2: Do you have any comments on the outcomes and/or compensation for affected customers?

Minimum threshold on compensation

Summary of feedback: Some respondents suggested that firms should not have to pay compensation to a customer if the amount due is very small. They were concerned about the costs of processing compensation, and that some customers may be frustrated at receiving negligible amounts.

Our response: Under the framework, compensation for open

accounts is paid directly to the customers' mortgage balance, which should help to minimise processing cost. Even small amounts of compensation will help customers by reducing any remaining payment shortfall balance and reducing the interest paid on the customer's mortgage over the remaining term.

We have updated paragraph 3.32, A.23 (ii) & A.26 of the FG to clarify that firms should take reasonable and proportionate steps to trace and communicate the outcome to closed mortgage account customers.

Fixed compensation

Summary of feedback: One respondent felt that in addition to the provisions in the framework, firms should provide a small fixed amount of compensation as a goodwill gesture for customers who fall below the £10 threshold level for reconstitution.

Our response: While customers who fall under the £10 threshold level will not have their accounts reconstituted, their CMI will still be recalculated, and this recalculation is based on a mortgage balance that does not include any payment shortfall balance and reflects any overpayments they made at the previous, higher level of CMI.

The remediation framework represents our guidance on one approach firms can use to remediate customers. Firms may choose to adopt a different, fair approach. This could include, as a gesture of goodwill, an additional payment of compensation.

Legal considerations

Summary of feedback: One respondent was concerned that our framework may not deliver the same redress that a court would order.

Our response: While we believe that our proposed remediation framework will provide a fair outcome for the majority of affected customers, this will not be the case for every customer. A court considering a customer's individual circumstances could order different remediation. Customers who consider that their firm's remediation may not be appropriate for them will be free to refer a complaint to the Financial Ombudsman Service or the court.

Financial Ombudsman Service

Summary of feedback: One respondent stated that the Financial Ombudsman Service usually expects compensation to be paid to customers in cash, and wondered if this was an exception to that approach.

Our response: The approach adopted in this framework is not a precedent for other customer remediation programme. Where the mortgage account is open, payment of redress should be used to reduce any residual payment shortfall, with any excess being used

to reduce the customer's mortgage balance. This will reduce the interest paid on the customer's mortgage over the remaining term. This approach should reduce the administrative cost on firms to process refunds and speed up the delivery of remediation to customers. Where the mortgage account is closed, compensation will be paid direct to customer, where reasonable and proportionate steps can be taken to trace them.

Compensation circumstances

Summary of feedback: One respondent thought that when considering the amount of compensation due it was important to distinguish situations where the customer had paid the payment shortfall related fees, from those where the fee was added to their mortgage balance. They thought that compensation should only be credited to customers who had actually paid part or all of any incorrectly charged fees, and thus has to forego alternative uses of those funds.

Our response: As discussed in paragraph 3.5(i) of the FG, customer should receive a credit to their mortgage account for incorrectly charged fees and interest, or a cash refund if the account is closed. In circumstances where these amounts have been paid by the customer, they should also receive additional interest of 8% a year (simple).

This interest at 8% a year (simple) is intended to compensate customers who have actually paid incorrect charges for the missed opportunity of using those funds for alternative purposes.

Q3: Do you have any comments on the £10 threshold level?

Threshold level and cumulative increases

Summary of feedback: We received conflicting views on the £10 threshold level. Some respondents were concerned that the £10 threshold level was too low and not proportionate for smaller firms, who may find it harder to bear the cost of delivering remediation, whereas others considered the threshold to be too high.

A number of respondents questioned why were we not using the £1 materiality threshold set out in MCOB 13.3.4AAR.

Some respondents questioned why cumulative CMI increases do not count towards the £10 threshold, and whether this was fair to customers.

Our response: Using our own analysis, and working with the industry working group, we considered a number of different thresholds both higher and lower than £10. We found that below £10 the average amount of redress was unlikely to be proportionate to the additional costs firms would incur to reconstitute these mortgage accounts.

It is important to note that customers whose CMI did not increase by at least £10 as a result of any single recalculation will still have their CMI recalculated, and this recalculation will be based on a mortgage balance that does not include any payment shortfall balance and will reflect any overpayments they made at the previously higher CMI.

Customers can also raise concerns with the firm regarding any consequential loss or distress and inconvenience suffered as a result of the automatic capitalisation.

On the MCOB 13.3.4AAR materiality threshold, the cost of calculating and providing remediation for such small increases is unlikely to be proportionate to any benefit to customers in the vast majority of cases.

We have been informed that making the threshold cumulative could increase the complexity for firms, and would not be practical or proportionate.

If a firm believes the £10 threshold is not appropriate for any reason, it would be for that firm to show that using a different threshold is fair for its customers.

Q4: Do you have any comments on the exclusion of the 'extinguishing' approach under the framework?

Firms should be able to consider both reconstitution and extinguishing

Summary of feedback: A number of respondents suggested that the extinguishing approach should be available to all customers. Other respondents asked whether firms have the discretion to offer the extinguishing approach if it is appropriate and agreed by the customer. Some respondents suggested firms should consider the individual circumstances of the customer to find the best outcome. One respondent recommended that firms should offer guidance on both options and explain the positive and negative impact related to the customer's individual circumstances.

Our response: We agree that the extinguishing approach should be available where appropriate. The framework does not prevent this.

However, it would be disproportionate to ask firms to consider both options for every affected customer, because this would require an individual customer case review each time. This would be very high cost, could cause unnecessary delays in delivering remediation and may result in confusion for customers.

Our case analysis didn't find any circumstance where the extinguishing approach was definitely the most appropriate method of remediation, although we acknowledge it could be in a limited number of cases. For this reason we still consider it appropriate that the framework recommends the reconstitution

approach. However, paragraphs 3.13 – 3.15 of the FG note that extinguishing the payment shortfall is another possible approach.

We have added paragraph 3.18 to the FG to state that firms must deal fairly with customers who have a payment shortfall remaining after their account has been recalculated or reconstituted in accordance with MCOB 13.3, MCOB 2.5A.1R, and Principle 6. If firms apply for a possession order in reliance on a payment shortfall that was previously automatically capitalised, they should make the court aware that the account has been reconstituted, and how the corrected position has been calculated.

Q5: Do you have any comments on the proposed approach to possession cases and cases where a possession order has been awarded but not exercised?

Possession triggers

Summary of feedback: Some respondents were concerned that the framework did not accurately reflect the triggers firms use in their possession processes. One respondent argued that the decision to pursue possession is not just dependent on the number of months in payment shortfall. The key factor for that respondent was whether the customer can demonstrate the ability and a willingness to pay the payment shortfall. The respondent also argued that it would be very hard to prove categorically that the outcome for the customer would have been different if the mortgage account history had been represented on the reconstituted position. They also stressed that possession is a multi-staged and multi-faceted process, including a number of judicial stages.

The respondent recommended that in carrying out the individual case assessments, firms should consider whether possession resulted in an overall fair outcome for the customer, notwithstanding the fact that the possession process might not have been started when it was, if the payment shortfall balance had been recorded correctly.

Our response: The trigger discussed in paragraph A.14(i) of the FG is only one example of a possession trigger for firms. As reflected in paragraph 3.20 of the FG, firms will need to consider whether under the reconstituted view of the mortgage account – in other words, what they know now – the customer would have triggered the firm's possession processes. The firm should make this assessment on the basis of its arrears management policies applicable at the time, which may include details relating to payment behaviour, months in payment shortfall or any other relevant criteria.

Possession Proceedings

Summary of feedback: One respondent suggested that the remediation framework should include a provision requiring firms, where a mortgage account subject to a possession action before a

court is reconstituted, to inform the court of the outcome of this reconstitution before continuing with possession action.

A different respondent argued that in cases where a possession order had been awarded but not exercised, firms should assess whether possession remains the appropriate outcome for the customer.

Another respondent argued that where, under the reconstituted view of the mortgage account the customer would not have triggered the firm's possession processes, the possession order should be set aside in all cases, with court fees and any other costs being refunded to the customer.

Several respondents stated that where the customer makes a successful application to the court to set aside a possession order, the firm should pay all costs on behalf of the customer.

Our response: We expect firms to make fair and accurate representations to the court if looking to enforce a possession order. We have updated paragraph 3.18 of the FG to state that if firms apply for a possession order following reconstitution of a previous automatic capitalisation(s), they should make the court aware that the account has been reconstituted, and how the corrected position has been calculated.

Paragraph A.19 of the FG states that based on a reconstituted view of the mortgage account, where firms establish that they would not or may not have proceeded to obtain a possession order, firms should consider applying to the court to have the possession order set aside. We agree that in these instances firms should also consider a refund of all associated costs that were inappropriately incurred by the customer, we have added this point to the FG in paragraph 3.23(i) and A.19(i).

Suspended Possession Orders

Summary of feedback: One respondent argued that applying to a court to have a suspended possession order set aside could lead to a substantial delay in the possession process, but with the same outcome (possession) in most cases. They argued that this delay has the potential to increase costs for the customer and could result in further customer detriment.

They proposed that firms should review suspended possession orders obtained in relation to affected customers prior to enforcement, to see if possession will result in a fair outcome for the customer. Where the outcome would not be fair, the lender should consider appropriate alternatives. Where a court has determined that an outright possession order should be made, this should be enforceable without any further assessment; on the basis that the court will only make such an order where it considers the customer has no realistic prospect of servicing the mortgage.

Our response: As stated in paragraph 3.23 and A.19 of the FG, there are two options for firms to consider where a possession order has been granted but not enforced, and where under the reconstituted view of the mortgage account, the customer would not have triggered the firm's possession processes. Firms should consider: (1) applying to the court to have the possession order set aside and refunding any associated fees that should not have been incurred by the customer; or (2) flagging the case to ensure that if firms apply to enforce a PO the court is made that the account has been reconstituted, and how the corrected position has been calculated.

Firms will ultimately need to ensure that their actions are fair to the customer.

Possession commencement clarification

Summary of feedback: A number of respondents asked us to clarify the point at which the possession process starts.

Our response: The point at which the possession process starts is a matter for the firm, as processes may differ from firm to firm.

Possession compensation

Summary of feedback: One respondent suggested that we set out a framework to help mortgage firms decide appropriate compensation for cases where possession would not have been appropriate under the reconstituted view of the account. Another respondent argued that in addition to the factors highlighted in the draft guidance, customers should be compensated for the stress and anxiety caused by unwarranted possession proceedings.

Our response: In paragraph A.15 of the FG, we set out some of the factors that firms should consider in determining appropriate compensation for customers who have been identified as unfairly possessed. These are the cost of moving, alternate housing costs – for example where the cost of renting is higher than CMI – the cost of missing out on equity appreciation, legal costs, estate agency fees, and any other costs associated with possession and sale. In response to the consultation feedback we have now added distress and inconvenience to this list (A15 (vi)). This does not mean that distress and inconvenience cannot be considered in non-possession cases.

Possessions on hold until June 2018

Summary of feedback: One respondent argued that firms should put possessions on hold, and should not apply charges to affected accounts, until the remediation deadline of June 2018.

Our response: It may not be in the best interest of a customer to postpone possession proceedings. However, firms will need to consider how to present the payment shortfall balance fairly to

the court when pursuing a possession before the remediation process has been completed.

Customer giving up

Summary of feedback: One respondent was concerned that the proposed remediation framework did not address the possibility that a customer might have 'given up'. Whereby a customer may have been able to afford the higher CMI payment – which included repayment of the payment shortfall over the remaining term – but due to being asked to pay the payment shortfall as well, made no payments to either the CMI or payment shortfall.

Our response: From the sample of customers' mortgage accounts – 54 cases, from two firms – that we reviewed, it was difficult to identify such instances. We did not see any evidence to suggest that the automatic capitalisation event was the cause of the payment shortfall; it appeared more often due to life events such as unemployment or ill health.

As stated in paragraph 3.27 of the FG, affected customers are entitled to request an individual mortgage account review from their mortgage firm, at which time they can also notify the firm of any relevant personal or extenuating circumstances.

Legal considerations

Summary of feedback: One respondent questioned if it would be more appropriate to settle disputes about possession orders through a complaint to the Financial Ombudsman Service for example, rather than through court. They argued that dealing with a court application would be stressful for the customer on top of the stress of having been taken to court in the first place.

Our response: The framework does not affect a customer's right to make a complaint to their firm, and to refer any complaint to the Financial Ombudsman Service if not satisfied with the outcome.

Questioning Court's Judgement

Summary of feedback: One respondent argued that applying to the court to have suspended possession orders set aside, or giving fresh evidence to the court about the reconstituted position on the account would appear to be questioning the court's judgement.

Our response: As stated in paragraph 3.21 of the FG, the framework is not designed to bring the court's judgment into question, but to challenge the firm's decision to take possession action when it did, and whether the information provided to the court during the possession proceedings was fairly presented.

Q6: Do you have any comments on the CRA update proposals?

Smaller amendments

Summary of feedback: A number of respondents disagreed with our proposal that firms shouldn't need to update customers' credit records for smaller amendments, arguing that firms should correct all credit records fully. Some respondents noted that inaccuracies in recorded 'months in payment shortfall' on customer credit files can adversely impact customers' ability to attain credit. Other respondents noted that customers care strongly about their credit reports being inaccurate, even if the inaccuracy is small. Some respondents suggested that our proposed approach might involve a breach of the fourth data protection principle under the Data Protection Act 1998 (DPA), which requires personal data to be accurate and, where necessary, kept up to date.

However, other respondents argued that updating credit records for smaller amendments would have little or no benefit to customers, and highlighted that the burden on credit reference agencies (CRA) of undertaking a mass update should not be underestimated. Some respondents argued that firms only use relatively recent credit histories when making lending decisions with one respondent suggesting that firms only be required to update records going back three years. One respondent proposed that firms should update a credit file only where it currently shows the borrower in payment shortfall when it should show they are up to date.

Finally, one respondent highlighted that in some instances, our proposed reconstitution approach could result in a worsening of customers' payment shortfall positions because of the way that firms calculate number of months in payment shortfall.

Our response: From the feedback we received, we recognise that even small changes to CRA records may have an impact on customers, and that firms have responsibilities for data accuracy under the DPA.

We have therefore updated paragraph 3.24, Annex 1 & A.25 of the FG to make it clear that in all instances where reconstitution shows a different payment shortfall history, firms should update customers' CRA records to reflect the revised position. Firms will need to consider how their approach to correcting customer credit records treats customers fairly, and complies with the DPA and other relevant legislation.

The FG imposes no incremental cost for CRA record corrections, as these costs come from complying with the DPA.

Q7: Do you have any comments on the exclusion of consequential loss and distress and inconvenience from the framework?

Included in framework

Summary of feedback: A number of respondents commented that the framework should include provisions for giving compensation to customers who have suffered consequential loss or distress and inconvenience. Some respondents noted that affected customers may have been forced to take on higher-cost debt from alternate sources or forego other important expenditure. Some respondents asked for consequential loss to be investigated proactively by firms.

One respondent queried how customers will be alerted to the possibility of claiming for consequential loss. They also argued that there needed to be an easy and clear mechanism in place for claims of consequential loss to be made.

Our response: Consequential losses, distress and inconvenience will depend on an individual customer's circumstances and would require significant investigation in each case. We therefore believe it is unlikely to be proportionate or practical for firms to proactively consider consequential loss or distress and inconvenience in every case.

We have updated paragraphs 3.27 to 3.28 of the FG to state that firms' communications should inform the customer that they can ask the firm to consider a claim for consequential loss or distress and inconvenience, or to review any other aspect of the remediation provided if they do not believe it compensates them correctly for their losses. If customers are not satisfied with the outcome, they are entitled to refer their complaint to the Financial Ombudsman Service.

Paragraph 3.31 of the FG also suggests that firms should communicate examples of the additional costs that customers may have incurred. The list is not exhaustive.

We have added paragraph 3.25 to the FG to make it clear that the framework does not prevent firms considering compensation for consequential loss or distress and inconvenience as part of their approach to remediation.

Q8: Do you have any comments on customers' rights to complain?

Financial Ombudsman Service

Summary of feedback: One respondent was concerned that the Financial Ombudsman Service may not agree with our remediation proposals. Another respondent was concerned that there may be scenarios where the remediation provided by the firm could be reduced or removed as a result of a complaint to the

Financial Ombudsman Service.

Our response: While we believe that the remediation framework provides a fair outcome for the majority of affected customers, this will not be the case for everyone. We have therefore not made the FG binding on the Financial Ombudsman Service, who will consider any complaints that firms and customers are unable to resolve themselves. The Financial Ombudsman Service aims to resolve complaints in a way that is fair and reasonable for each individual case.

Clear communication

Summary of feedback: A number of respondents recommended that our framework should require firms to communicate the right to complain clearly and prominently.

Our response: As stated in paragraphs 3.27 to 3.28 of the FG, firms should make clear to customers that if they do not feel the firm's remediation delivers a fair outcome, they are entitled to request an individual mortgage account review and refer their complaint to the Financial Ombudsman Service if they are not satisfied with the outcome.

Complaint handling time limits

Summary of feedback: One respondent queried what the time limits were for firms handling customer complaints.

Our response: The rules firms need to follow when dealing with customer complaints are set out in the Dispute Resolution: Complaints (DISP) chapter of our Handbook. As stated in DISP 1.6, the firm must – by the end of eight weeks after its receipt of the complaint – send the complainant a final response or explain why the firm is not in a position to make a final response and indicate when it expects to be able to.

Rejecting a firm's remediation

Summary of feedback: One respondent was concerned with paragraph 3.26 (iv) of the draft guidance, which stated that firms should inform customers that they are entitled to reject the firm's remediation, and instead make an individual complaint to the firm and, if not satisfied with the outcome, to the Financial Ombudsman Service.

They were concerned that this does not give customers the opportunity to accept the firm's remediation but also make an additional claim for consequential loss or distress and inconvenience.

The respondent was concerned that a large number of customers would reject the remediation from firms, because they wanted to submit a claim for consequential loss or distress and inconvenience. This could lead to a high volume of complaints to

firms and the Financial Ombudsman Service. They suggested that the framework should allow customers to accept the remediation provided while at the same time making a claim for consequential loss or distress and inconvenience.

Our response: We have made changes to paragraph 3.27 of the FG to make it clear that customers have the right to accept the firm's remediation while also making the firm aware of any consequential loss and/or distress and inconvenience they have incurred.

Q9: Do you have any other comments on the overall approach to remediation?

Monitoring of Remediation Action

Summary of feedback: Some respondents asked how we will monitor firms' remediation activity.

Our response: As stated in paragraph 2.5 of the FG, as part of our ongoing regulatory supervision, we will monitor the work firms carry out to determine whether customers have suffered harm as a result, and if so to remediate appropriately. If we find that firms have failed to consider the interests of their customers and treat them fairly, we will consider taking appropriate action.

Q10: Do you have any views on the proposed customer communications?

Signposting free debt advice

Summary of feedback: A number of respondents stressed that firms' customer communications should include details of free debt advice services, particularly those who have had their homes repossessed.

Our response: This is a complex issue affecting customers who may be in financial difficulties, we therefore agree it is important that customers have access to free debt advice.

We have added paragraph 3.30 of the FG which states that firms should provide customers with details of free debt advice services. We will brief some of these providers on the issue.

Clear Communication

Summary of feedback: We received a number of responses stressing that customer communication needed to be easy to understand, with a clear explanation of what has happened, and how redress has been calculated. Some respondents highlighted the communication needs of vulnerable customers.

Some respondents requested that we provide guidance on prescribed text or a framework for customer communications, with one respondent arguing that all communication should be in

a standard format using wording approved by the Plain English Society or similar.

Our response: As stated in paragraph 3.29 of the FG, we expect firms to comply with Principle 7 when communicating with customers. We also suggest that firms' remediation communications should clearly describe the impact of automatically capitalising payment shortfall balances, what has happened and steps the firm has taken to put it right.

We have not produced prescribed text for firms, because firms are in a better position to communicate directly with their customers regarding their remediation approach, using their own branding.

Repossessed customers

Summary of feedback: One respondent questioned whether we expect firms to contact repossessed customers to inform them there had been a review on their account, even if the decision remained the same.

Our response: We have updated paragraph A.17 of the guidance to clarify that firms should take reasonable and proportionate steps to contact repossessed customers who have had their mortgage account individually reviewed. Traced customers will be aware of the review and have the opportunity to consider the outcome and, if not satisfied, raise any concerns with the firm.

Prescriptive wording

Summary of feedback: One respondent recommended that paragraph 3.26 of the draft guidance should be amended to ensure that it supports and confirms the statement in paragraph 3.24 that 'The framework does not anticipate that firms will consider compensation for consequential loss and/or distress and inconvenience'.

They also recommended that the guidance should be less prescriptive for the wording that firms can use in communications to affected customers, outlining additional costs that they may incur.

Our response: We have made changes to paragraph 3.25 of the FG to make it clear that while firms are not required to proactively investigate consequential loss, they must consider all claims made by customers.

We believe our FG provides appropriate flexibility to make sure that firms understand our guidance, and customers are provided with enough information, while also allowing firms to use their own wording.

Q11: Do you have any comments or suggestions on the proposal for all customers to be notified by 30 June 2017?

Summary of feedback: A number of respondents were concerned that notifying all affected customers by 30 June 2017 could lead to customer confusion and dissatisfaction. They argued it could result in a large number of customer queries which firms would not be able to address. Some respondents were also concerned that the 30 June 2017 deadline will be challenging for firms to reach, particularly as this will be not long after the FG is published. A number of respondents suggested that firms should be expected to contact customers once, after they have determined what the outcome is for each customer and before the June 2018 remediation programme conclusion deadline.

Our response: We have made changes to paragraph 2.13 & 3.33 of the FG. Firms will not need to notify all customers by 30 June 2017.

However, we expect all remediation programmes to be concluded by 30 June 2018. Firms must treat any affected customers fairly if they are currently in payment shortfall or enter payment shortfall before remediation activity and related systems changes have been completed. Firms should also consider how they prioritise the delivery of remediation to customers.

Population for communication

Summary of feedback: A number of respondents asked whether firms needed to communicate with affected customers who were not having their accounts reconstituted.

Our response: The guidance states firms should communicate with all customers with open accounts, even those who fall below the £10 threshold. For details on what should be included in the communications, please refer to paragraphs 3.29 to 3.32 of the FG.

As illustrated in Annex 1 of the FG no communication action is proposed for customers who fall below the £10 threshold and whose mortgage account is closed.

We have updated paragraph A.17 of the guidance to clarify that firms should take reasonable and proportionate steps to contact customers who have had their possession case reviewed. Firms should do this even if no remediation is due. This will make the customer aware of the review and give them the opportunity to consider the outcome and, if not satisfied, raise concerns with the firm.

We have also updated paragraph 3.32, A.23 (ii) & A.26 of the FG to clarify that firms should take reasonable and proportionate steps to trace and communicate the outcome – including any CRA record changes – to closed mortgage account customers.

Q12: Do you have any comments or suggestions on the proposal for remediation to have concluded within 12 months of the date affected customers are notified?

Challenging Deadline and Flexibility

Summary of feedback: Some respondents were concerned that the June 2018 deadline for concluding remediation would be challenging for some firms, for example those with multiple systems or purchased books. One respondent also highlighted the timing challenges some firms may face in concluding CRA record corrections. A number of other respondents however agreed that the deadline was appropriate. One respondent argued that the deadline should be June 2018 for all customers, rather than 12 months from initial contact – June 2017 in the draft guidance – and another suggested that June 2018 should be a target rather than a deadline for remediation.

Our response: We consider the June 2018 deadline provides firms with adequate time to provide affected customers with remediation. Moving the deadline backwards would be unfair to affected customers who are due compensation. If a firm believes that they may be unable to meet the deadline, they should engage in discussions with their FCA supervisor or the Firm Contact Centre. We have made changes to paragraph 2.13 and 3.33 of the FG to clarify that we expect firms' remediation to be concluded by 30 June 2018.

Deadline for system fixes

Summary of feedback: One respondent noted the June 2018 deadline for the conclusion of remediation, but asked if we had a deadline for firms implementing changes to systems required to prevent automatic capitalisation occurring in the future.

Our response: Firms will need to implement system changes to make sure that the practice of automatic capitalisation of payment shortfalls stops as soon as possible. We understand that a number of firms have chosen to align these system changes with their delivery of remediation to customers. If firms have concerns about the length of time it will take they should discuss these with their FCA supervisor or the Firm Contact Centre.

Update practicalities

Summary of feedback: Some respondents suggested that firms need to take a staggered approach to correcting customer credit files. This is to ensure that corrections are submitted by firms in a manner that CRA can manage. Some respondents noted that in order for firms to be able to provide the information required for corrections, there was a need for a strict scheduling of updates across all CRA.

Our response: It is for firms and CRA to find the best approach to updating customer credit records and meeting DPA

requirements.

Q13: Do you have any comments on the costs to implement the framework?

There were no responses to this question.

Q14: Do you have any views on whether the costs to remediate customers, either using the framework or another approach, might be disproportionate to the remediation likely to be delivered?

Tracing Costs

Summary of feedback: A number of respondents suggested that firms should be able to take a proportionate approach to tracing customers with closed accounts that takes into consideration the amount of compensation due. One respondent suggested an industry approach to tracing, to give consistency across firms.

Our response: We have made changes to paragraph 3.32, A.23 (ii) & A.26 of the FG to clarify that firms will need to take reasonable and proportionate steps to trace and communicate the outcome to closed mortgage account customers.

Small Firms

Summary of feedback: One respondent argued that the overall costs of remediating customers, in terms of resource and time, will be significant and could be disproportionately high for smaller firms.

Our response: The framework seeks to deliver remediation in a way that is proportionate and practical, while giving fair outcomes to customers. The cost of delivering remediation to customers may vary from firm to firm, however, it is important to remember that firms need to make sure they treat their customers fairly.

Q15: Do you have any comments on any equality and diversity issues you believe may arise from our proposals?

One respondent said it was very important that the proposed remediation framework recognised that people can be temporarily vulnerable, and will need a tailored service. They argued that we, along with firms, should make sure that vulnerable customers are guided through the remediation process.

Our response: As stated in paragraph 3.28 of the FG, we expect firms to comply with Principle 7 during their communications with customers. A firm must consider the information needs of its clients, which includes taking any customer vulnerabilities into account, and communicate information to them in a way which is clear, fair and not misleading. We have added paragraph 3.30 to the FG which states that firms should provide customers with details of free debt advice services, which may also make sure

	that vulnerable customers are guided through the remediation process.
Changes made to the guidance as a result of feedback received	We have considered the feedback and have made some relatively minor changes and clarification to the guidance as indicated above.
Other changes made	We have made a minor amendment to the definition of 'additional payment' in the definitions section of the guidance (page 2), to align with the way that term is used in the body of the guidance.

You can access the full text of the guidance consulted on here