Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: BuyNowPayLater@hmtreasury.gov.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to the Consultation on Draft Legislation – Regulation of Buy-Now, Pay-Later

The Financial Services Consumer Panel (the Panel) has keenly anticipatedthe regulation of Buy-Now, Pay-Later (BNPL) and it supports the legislation being brought forward to reduce potential harm to consumers. The Panel has long argued that all forms of credit should be subject to thesame or similar regulation and this legislation goes some way towards this objective. The quick turnaround of six weeks is also welcomed for thisconsultation, given that the proposal has not changed since the previous draft and previously raised serious objections have been satisfied. We support that the new regulatory regime for BNPL lenders starts immediately once Temporary Permission Regime (TPR) is granted.

The Panel is an independent body. We represent the interests of individual and small business consumers in the development of policy andregulation of financial services in the UK. Our focus is predominately on the work of the FCA, but we are responding to this consultation paper as the proposed change broadens the scope of the FCA's work and it affords increased protection for consumers who make use of credit.

BNPL Communications

In terms of the overall proposal, we can agree that the nature of BNPL purchases which largely take place via mobile phones, means that CCA requirements for lenders to send lengthy legalistic letters and notices by post may not be a good outcome for consumers. However, there is one exception to this stance and that is where theconsumer is informed of a default or termination. The seriousness of this communication for consumers means that firms should ensure that communication is by both phone and in writing.

Although consumers make most BNPL transactions by phone, the users of this product tend to be from lower socio-economic groups, where we are aware that access to mobile data and internet services can sometimes be challenging. Moreover, if a borrower is seriously behind in payments, they may also be data constrained. Evidence from OFCOM[1] suggests 11% of lower-income households and 10% of the most financially vulnerable do not have internet access. For these reasons we believe that critical information, such as default notifications, should always be sent by letter in addition to digital communications to help ensure further harm does not occur to borrowers due to them not being aware of the state of their accounts.

Small Agreements

We agree with the decision to apply equal treatment to all BNPL loans, regardless of amount (i.e. under £50). This is particularly pertinent to younger BNPL consumers who tend to use these products for everyday expenses.

Future Proofing the Regulation

The Panel is of the view that the Treasury should ensure that theFCA strengthens replacement regulatory rules in two areas wherewe believe market evolution in the BNPL market could lead to consumer detriment. These are the Variation of Agreements (section 82) and Early repayment (Section 97 and 97A) provisions of the Consumer Credit Act 1974.

The proposal is to strike these sections and replace them with FCA rules either as in CONC or enhanced for BNPL. Whilst we support this, we believe that the wording in these areas may need strengthening.

These are important factors for consumers as they need to know before embarking on a BNPL contract whether the lender has the right to vary the terms and whether penalties are due if they repayearly. This information should be communicated in clear terms setting out the constraints and notice periods.

Even if lenders are not doing either of these now in their credit agreements, this may change in the future, particularly if lenderbusiness models become more fragile due to regulatory costs or declining demand. The FCA's own research[2] indicated that 19% of BNPL borrowers

[1] Digital divide narrowed by pandemic, but around 1.5m homes remain offline - Ofcom
[2] Research Note: Deferred Payment Credit

are unaware of the fees charged by their providers.

In developing its modernised disclosure regime, the Panel would expect the FCA to conduct consumer testing to ensure the rules are fit for purpose and consider appropriately prescriptive rules for providers.

Risk of merchants becoming BNPL Lenders

The proposal argues that there is no significant evidence of merchants offering their own BNPL agreements. Again, this may bethe case now but as intimated earlier - markets can change. The proposed legislation will add some friction to the BNPL customer journey and merchants could set up their own provisions to reduce that impact resulting in a more seamless transaction and potentially more risk for consumers. There is even the possibility of BNPL merchant store cards - the technology already exists and so once again in terms of making the regulations future proof, it would be good if further thought is given to these developments.

We also do not agree that the argument that merchants have a strong incentive to ensure affordability to avoid bad debts holds, asit could be argued that BNPL lenders also have this incentive and still as we know, problems do arise. As argued in our previous response to HMT on this issue, the Panel believes that if there is a greater move towards merchants providing their own BNPL loans and usurping the role of the BNPL lender, then they too should be regulated to protect consumers. It could be confusing for consumers at the point of payment to understand which BNPL payment methods give them the greatest consumer protection.

For these reasons, we are pleased to see that the government is committed to monitoring closely and keeping under review developments in the merchant provided credit sector (including the possibility of large tech or e-commerce platforms offering their own BNPL-type arrangements at scale, rather than through a third-party lender). We would expect the government to take swift action in response to potential harm for consumers in this sector.

Consumer Credit Files

Much as we support the addition of BNPL information to consumer credit files, the Treasury must satisfy itself that the existing Credit Reference Agencies are geared up to updating consumer data on a weekly or bi-weekly basis, as is the nature of most BNPL agreements. The CRAs should also satisfy themselves that they understand enough about how a consumer's performance on BNPLloans impact their overall credit worthiness. We do not believe thatenough time has passed for these organisations to have modelled this successfully and therefore we urge caution in how this data is used.

Research by Experian[3] found that regular BNPL use is associated with higher financial stress, yet 50% of BNPL users believe their BNPL transactions do not impact their credit score, reflecting a potential gap in understanding and credit reporting accuracy. There would be a need to ensure that consumers become fully aware ofthe changes in this market and how it impacts them.

Protected Characteristics

In our last response, we acknowledged that by bringing BNPL products into the FCA's regulatory umbrella, there could be a disproportionate impact on some customers with shared protected characteristics. At the time, we argued that on balance we felt that it was more important to ensure that BNPL borrowers did not become saddled with unmanageable debts – this is particularly pertinent towards vulnerable consumers. However, The FCA's research note[4] based on data from the *Financial Lives Survey* indicates that individuals from ethnic minority backgrounds are more likely to use BNPL, with one in three ethnic minority households using BNPL to manage finances compared to one in fivein the broader population. Given these findings, maintaining BNPL access for these consumers is essential, while balancing responsiblelending practices.

Insurance

The legislation as drafted seeks to exclude insurance policy credit arrangements. We would question whether this is right given the extraordinary interest charges levied (rates up to 40% according to Which[5]) on those that cannot pay the whole premium at once. Additionally, the steep increases in car insurance premiums recently documented when combined with high interest rates could lead to financial difficulties, where these charges are being passed on. There is also some evidence that consumers are not always offered support if they experience financial difficulties as outlined in the FCA's insurance industry CEO letter[6]. The Treasury should use this opportunity to help insurance consumers in a balanced way that does not reduce access but increases protection.

Conclusion

Bringing BNPL under FCA regulation will improve consumer outcomes

[3] experian-making-bnpl-payments-visible-july-2022.pdf
[4] Research Note: Deferred Payment Credit
[5] Rise in customers borrowing to pay for insurance - Which? News
[6] Financial watchdog warns insurers to protect customers' wellbeing during cost of living squeeze | FCA

byenforcing Consumer Duty standards, including fair pricing and clear communication. Forbearance rules will apply, and borrowers will have access to the Financial Ombudsman if a complaint arises.

Overall, we believe that the regulation of BNPL loans will bring benefits toconsumers, particularly if this proportionate approach is applied, wherebyaccess is ensured for those that need it, where it is affordable. The Panel looks forward to engaging with the FCA further on this matter in terms ofits own consultation and as these changes are implemented and embedded.

Yours sincerely,

Helen Charlton
Chair of the Financial Services Consumer Panel