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By email: cp18-43@fca.org.uk

Dear Alison,

CP18/43 High-cost Credit Review Feedback on CP18/12 with final rules and guidance and consultation on Buy Now Pay Later offers

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's consultation on Buy Now Pay Later (BNPL) offers. While the consultation brings forward proposals that on paper better protect consumers who use these products, we remain concerned about the likely effectiveness of information disclosure remedies given what we know about firms' profitable exploitation of consumer behavioural biases.

For this reason, the FCA's supervisory approach is crucial to making sure these proposals bring real consumer benefits. We encourage the FCA to closely monitor the impact of its proposals, for example including:

- Whether there is a reduction in the approximately 50% of BNPL customers who did not pay back their loan during the promotional period;
- Whether lenders are assessing affordability properly at the outset, given the potential sharp rise in debt once borrowers fall outside the BNPL offer period; and
- Whether there are any waterbed effects of the new rules. For example, there may be a risk that firms start offering additional promotional incentives, which has been an issue with store cards.¹

Q1: Do you have any comments on our description of the BNPL market?

No. We support the FCA's approach to make regulation of BNPL offers consistent across credit products.

Q2: Do you agree with our proposal to extend the rule on adequate explanations to all firms that offer BNPL deals?

We agree with this proposal. The structure of these deals means that, if consumers do not pay what they owe in the offer period, their debt can quickly grow. Adequate explanations on BNPL should provide clear and simple information on the following points:

¹ <https://www.fla.org.uk/business-information/documents/fla-lending-code-2017/>

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- Interest is backdated on the remaining amount to the time when the borrowing was first taken out. Ideally this communication should be customised to give the date of the credit agreement.
- This presumably means an interest charge is applied to the account as soon as the BNPL offer ends. Ideally this message would be customised to give the amount of the interest charge that is applied.
- The interest charge is (presumably) compounded over time i.e. the customer will be charged interest on this interest (as well as the capital).² Ideally lenders should provide a worked example of this cost based on the actual amount borrowed and the interest rate.

Where applicable, firms should also be required to show prominently their structured repayment options to assist consumers to understand how much they can afford to borrow and how to repay what they owe within the BNPL offer period.

Q3: Do you agree with our proposal to extend the rule on prompts to all firms that offer BNPL deals?

We support this proposal which is significant step forward from the current unsatisfactory situation where lenders do not have to provide any prompts. We remain concerned that lenders may provide prompts too late in the day to be useful for consumers (and indeed firms have a strong financial incentive to do so), which would undermine the rule's effectiveness. If the FCA's supervisory work finds this is happening, it should take swift action.

Q4: Do you agree with our proposal for new guidance on communications and financial promotions, applicable to all firms that offer BNPL deals?

Yes, we agree with this proposal to create consistency across BNPL offers at whatever point in time they are made to consumers.

Q5: Do you agree with our proposal for a new rule that firms offering BNPL must not backdate interest on the amount of the principal that is repaid within the offer period?

Yes, we agree with this proposal that fits squarely with the consumer protection principle of treating customers fairly. However, we would like to see the FCA go further and not allow backdated interest in cases where the BNPL deal is sold using terms like "interest free for x weeks" because we believe this advertising is not fair, clear and not misleading.

Given the cost to the consumer of backdated interest even on the remaining balance at the end of a BNPL offer, it is imperative that lenders conduct proper affordability checks before they lend³, to make sure that borrowers are able to repay affordably if (as currently happens in 50% of cases) they do not repay what they owe in the BNPL offer period.

Q6: Do you agree with our proposal that the rules will come into force three months after publication?

Yes, we agree with this proposal and urge prompt publication of the new rules in June 2019.

Q7: Do you agree with our proposal that the partial repayment rule should apply to purchases made after the date that the rule comes into effect, including where those purchases relate to an existing contractual agreement?

Yes.

² <https://debtcamel.co.uk/buy-now-pay-later/>

³ <https://www.fca.org.uk/publication/policy/ps18-19.pdf>

Q8: Do you agree with our cost benefit analysis?

Yes.

Q9: Do you agree with our initial assessments of the impacts of our BNPL proposals on protected groups? Are there any others we should consider?

Yes. As we raised in our response to CP18/12⁴ we are still of the view that the FCA should extend its Equality Impact Assessment so that it assesses how proposed remedies are likely to work for target groups, given the profiles of those target groups and the mechanics of lending.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel

⁴ https://www.fs-cp.org.uk/sites/default/files/fscp_response_cp_18-12_hcc.docx_.pdf