Buy Now Pay Later regulation consultation
Fair4All Finance response

January 2022

Introduction

Fair4All Finance is supportive of proposals to regulate the Buy Now Pay Later (BNPL) market. In the last few years, the use of BNPL has increased rapidly, with more than a quarter of the population now using the product. This explosion of growth of this unregulated product has created real risks for consumers.

There is clear evidence of harm in the market. Many customers don't recognise that BNPL is a debt that can come with significant risks. Frictionless consumer journeys encourage people to take out more credit than they want or can afford. And crucially, failure to conduct proper creditworthiness checks means that there is widespread unaffordable lending by BNPL lenders, potentially pushing millions into financial difficulty. Some evidence suggests as many as 2 in 5 BNPL users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product.

But BNPL has also increased access to zero interest credit for millions of people. It's a popular product that customers value for its low cost and ease of use. Among the financially excluded customers that Fair4All Finance serves, there is some evidence that people with thin or damaged credit files are making use of BNPL to access credit that they can't get elsewhere, allowing them to spread the cost of goods.

We welcome the move to bring BNPL broadly into line with existing consumer credit regulation, to ensure that consumers are properly protected from the harm in the current market. We also support the government's aim to regulate in a way that is proportionate, where possible avoiding putting costs into the product lifecycle, so that wider access to credit is maintained where this is consistent with consumer protection.

As set out in our response, to get the regulation right we want to see:

- **Tackling unaffordable lending** – there needs be a higher standard of creditworthiness assessment across the BNPL market, with an emphasis on affordability so that customers are not pushed into financial difficulty and problem debt. The government should work to increase levels of credit reporting in a proportionate way, so that BNPL agreements are visible to other lenders so they can accurately make their own creditworthiness checks

- **Customer journeys that help people make the right choice** - promotions should improve customer understanding about BNPL, making clear that it a form of debt that comes with risks attached. Customer journeys should add positive friction so that people don't use BNPL without meaning to or without understanding its full implications
- **Better and more consistent treatment for customers in financial difficulty** – FCA rules around forbearance should apply to BNPL providers, and the industry should develop a code of conduct to ensure that customers can expect supportive and consistent treatment across providers. When things go wrong, customers should have access to similar protections as for other forms of credit, including the right to redress through the Financial Ombudsman Service

We also want the government to ensure that it has made a proper assessment of how BNPL is used by people from marginalised or financially excluded groups, who may find BNPL easier to access than other forms of credit, so that regulation is brought in in a way that preserves any identified benefits.

Overall, we strongly welcome this consultation and urge the government and the FCA to bring in regulation as quickly as possible. With financial pressures from the pandemic and with the growing cost of living crisis, it is critical that consumers are protected from the risks of unaffordable debt posed by this unregulated market.

About Fair4All Finance

Fair4All Finance is a not for profit organisation founded in early 2019 to improve the financial wellbeing of people in vulnerable circumstances by increasing access to fair, affordable and appropriate financial products and services. We have three main priority areas:

- Expanding provision of affordable credit through a scaled community finance sector
- Partnering with banks and financial services providers to support the delivery of products and services for customers in vulnerable circumstances
- New product and market development – developing and scaling products and services to address market gaps

You can find our full strategy here.

Our response

BNPL: business model and evidence of consumer detriment

Question 1: Do you agree with our analysis of the business models that underpin the BNPL market?

Question 2: Do you have information to provide government with a more granular and up-to-date understanding of the BNPL market?

Question 3: Do you have further analysis or evidence of consumer detriment in the BNPL market?

Question 4: Do you have analysis that would support us in identifying which specific elements of the BNPL business model pose particular risks?

The BNPL market has had an explosion in popularity. Equifax estimate that 15m people, over a quarter of the UK adult population, are regularly using BNPL, and 2.6 million more people are now using BNPL than at the start of the year[1]. The popularity is likely due to a number of reasons:

- Attractive and frictionless customer journeys, partly driven by the lack of regulation
- Low costs compared to other credit products
- The appeal of spreading and delaying payments, tapping into present and optimism biases of customers, as well as the clarity of repayment schedules
- Lack of recognition among consumers that BNPL is a credit product, along with haziness about the consequences of non-payment
- The demise and retreat of credit cards and overdrafts for those in persistent debt and users of unarranged overdrafts
- The disappearance of other forms of high-cost credit used by lower income households such as rent to own, home credit and payday loans
- The pandemic, which increased demand for online shopping where BNPL is widely in use

Our assessment of the BNPL market aims to balance the benefits that the product has for some customers with the clear risks and harm that others are experiencing from BNPL.

Considering the positives, millions of people now have access to a no interest credit option which is cheaper than credit cards and overdrafts. This benefits customers who would not otherwise be able to afford essential purchases upfront but can afford to spread the cost over several instalments.

There is also evidence that suggests that people with thin credit files, such as recent migrants, or people with damaged credit files due to previous debt problems, value BNPL as way to access credit that is denied to them elsewhere[2].

However, it is clear that the current BNPL business model does not have the appropriate protections in place, and we disagree that there is limited evidence of consumer detriment in this market.

Citizens Advice estimate that 2 in 5 people who used BNPL in the last year have done so without realising. 41% of users have struggled to make a repayment. And most concerningly 2 in 5 users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product[3].

With 15 million people using BNPL, this means that millions could be experiencing financial difficulty or problem debt because of BNPL.

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[1] Equifax Use of Buy Now Pay Later hits all-time high, as shoppers look to spread the cost of Black Friday and festive period
[2] Which? (2021) Buy now pay later: Understanding and addressing the risks to consumers
[3] Citizens Advice (2021) Buy Now.. Pain Later?

We see the key elements of risk to customers from the business model as:

- **Unaffordable lending** – poor creditworthiness assessments are leading to unaffordable lending, where customers may already be overindebted and using BNPL may push them further into problem debt
- **Credit information market failure** - without proper credit reporting on BNPL, people can take on too much debt while remaining invisible to other lenders, meaning that other parts of the credit market are not able to function properly and to conduct affordability and creditworthiness checks with confidence
- **Promotions and customer journeys that encourage overspending** – frictionless customer journeys, including presenting BNPL as a default option or equivalent to paying upfront, can make it too easy for people to use BNPL when it's not the right option for them. It's particularly worrying that 41% of customers have used BNPL without realising. BNPL also employs aspirational advertising and behavioural biases to increase customer borrowing, which alongside the lack of affordability checks creates a perfect storm of customer detriment
- **Unclear messaging and uncertainty around risks** – the product is not presented as a debt and people are unclear about the risks involved. If things do go wrong for customers, they are often not aware of late fees and the potential for debt collectors to contact them. Over a third of BNPL users do not fully understand the consequences of missing repayments, and more than half are unaware that BNPL providers don't have to carry out robust affordability checks[4].

We agree with the analysis of the business models that underpin the BNPL market. It is worth remembering that for BNPL providers, it is merchants who are the customers, and BNPL is designed to "improve" the shopping experience leading to higher conversions. The major players in the market secure their returns via merchant fees. An analysis by the equity research house Redburn featured in the Financial Times dissected the typical 4% fee structure as follows, which emphasises the fine margins BNPL operate on:

Costs to BNPL	BNPL Income	BNPL expenditure	BNPL P/L
Price charged to merchant	4%		
Interchange fee		(1.3%)	
Network Fee		(0.6%)	
Issuer processers		(0.1%)	
Credit Costs		(1.2%)	
Funding		(0.5%)	
Profit margin			0.3%

(Source: Redburn quoted in FT, October 2021[5])

[4] Barclays (2021) Barclays reveals pitfalls of unregulated BNPL agreements for Christmas shoppers, with two in five users unclear what they're signing up to
[5] Financial Times Is "buy now pay later" a viable business model?

The report identified that the main players in the UK have made losses in each of the past three years (see table below) with some commentators speculating that they will need to sell the BNPL businesses to those who can utilize cross selling functions into the users, or provide additional services themselves and not be solely reliant on the merchant income identified above.

Company loss before tax ($) 2019-21	**2019**	**2020**	**2021**
Klarna	($115m)	($167m)	($408m)
Affirm	($127m)	($108m)	($379m)
AfterPay	($23m)	($3m)	($123m)

(Source: Redburn in FT)

Looking ahead, BNPL is set to expand into higher value markets. The Woolard Review states that 'BNPL providers are looking to widen their scope from predominantly fashion and accessories, and are starting to partner with higher value retailers, including homewares and household electricals, which could increase average transaction values and therefore outstanding balances'.

This is already a significant part of the market. Citizens Advice found that 33% of BNPL customers used it to buy electronics and 24% used it to buy white goods[6]. Moving into higher value goods has the potential to increase the benefits of BNPL, widening access and reducing costs for essential items, but without proper regulation this will come with greater harms as well, as higher value orders lead to higher levels of problem debt.

It is a worrying trend that BNPL is sometimes used for essential purchases such as food and that over a third of customers expect to spend more on BNPL as the cost of living increases[7]. For customers in particularly difficult circumstances, the future implications of overspending on BNPL could spiral and cause them to experience problem debt.

We believe that the BNPL market cannot continue in its current form. The current business model is predicated on unaffordable lending and promoting overspending. However, we want to see this market continue, in a more responsible way, to widen access to credit. We therefore agree with the government's intention to take a proportionate approach to regulation and avoid adding unnecessary costs into the product chain.

Short-term interest-free credit: business model and evidence of consumer detriment

Question 5: Do you agree with our analysis of the business models that underpin the short-term interest-free credit market?

[6] Citizens Advice (2021) Buy Now.. Pain Later?
[7] Barclays (2021) Barclays reveals pitfalls of unregulated BNPL agreements for Christmas shoppers, with two in five users unclear what they're signing up to

Question 6: Do you have information to provide government with a more granular and up-to-date understanding of the use of short-term interest-free credit?

Question 7: Do you have further analysis or evidence that supports or undermines our understanding that there is limited consumer detriment in the short-term interest-free credit market?

Question 8: Do you have analysis that would support us in identifying which specific elements of the short-term interest-free credit business model serve to protect the consumer from harm?

We don't have analysis or evidence on the short-term interest-free credit market.

Differences between BNPL and other short-term interest-free credit

Question 9: Do you agree with the distinction between BNPL and other forms of short-term interest-free credit that has been drawn in this consultation?

Question 10: Do you have any comments on our analysis of the drivers of risk for consumers in the BNPL market?

We don't have views on the distinctions between BNPL and short-term interest-free credit. See answers above for our analysis of the drivers of risk in the BNPL market.

Drawing distinction between BNPL and other short-term interest-free credit in regulation

Question 11: Do you have any suggestions on how a clear distinction could be drawn between BNPL and short-term interest-free credit?

Question 12: Do you have any comments on the option to draw that distinction by restricting the extension of regulation to interest-free credit agreements where there is a third-party lender involved in the transaction? What impact do you think this would have on short-term interest-free credit providers that would be drawn into regulation?

Question 13: Do you have any comments on the option to draw that distinction by defining a BNPL agreement as one where there is a pre-existing, overarching relationship between the lender and consumer, under which the lender agrees to finance one or more transactions but where any repayments made are toward specific agreements made as part of that relationship?

Question 14: Do you have any views on the need to amend the current exemption for running-account credit, so that it does not allow the unregulated BNPL model to re-emerge?

We don't have views on drawing the distinction between BNPL and short-term interest-free credit.

The application of credit broking regulation

Question 15: Do you agree that in any regulatory intervention merchants that offer BNPL as a payment option should not be subject to FCA regulation as credit brokers?

Question 16: If merchants offering BNPL are exempted from credit broking regulation, do you have any views on other ways to mitigate any potential risks to consumer detriment arising from merchants?

Question 17: Do you have any views on whether such an exemption from credit broking should extend to all merchants, or whether there should be limited exceptions (such as for domestic premises suppliers)?

We agree that requiring all merchants offering BNPL to be regulated as credit brokers would be a significant burden to smaller businesses, especially sole traders and micro-SMEs. Having to seek authorisation to use BNPL could shut off the market for smaller merchants.

As well as unfairly benefitting larger merchants, this could shrink a useful market for consumers. It would also diminish one of the benefits that consumers get from BNPL, which is the security of using a recognisable payment provider to shop from an unknown merchant online.

However, if the government is going to make an exemption around credit broking for BNPL it will be even more important to get the regulation around promotions and product design right. Providers will have to bear the responsibility that the way their product appears on a merchant's page helps the customer make the right decision about borrowing.

The approach outlined in the following section, where the BNPL partner is responsible for approving merchants' financial promotions, could be an effective way to do this.

Advertising and promotions

Question 18: Do you think that the current requirements on BNPL merchants and lenders around advertising and promotion are sufficient?

Question 19: If you think that the requirements need strengthening, would the application of the financial promotions regime be appropriate, or are there any features specific to BNPL products that warrant different requirements?

We don't think the current requirements have been sufficient to properly inform customers about BNPL and prevent harm.

Data from multiple surveys suggests that

- People often don't recognise BNPL as credit – 44% of all users agreed that "BNPL services do not qualify as debt because they don't charge interest[8]
- Providers are not upfront enough about the risks of their product – 36% of users do not fully understand the

[8] Bain & Company (2021) Buy Now, Pay Later in the UK

consequences of missing repayments[9]

- Customer journeys lead people to use BNPL without intending to – 2 in 5 people who have used BNPL in the last year have ended up using it without realising[10]

Promotions across all parts of the customer journey, from advertising to checkout design, need to be offered in a way that allows customers to make informed decisions. This includes making clear that the product is credit and constitutes a financial liability. Providers also need to be more upfront about the risks of their product, being clearer about late fees, what happens if you can't pay and whether debt will be passed on to collectors.

The ASA guidelines have made good progress on some these areas, but the evidence above suggests that they are not enough. For example, requiring links to terms and conditions, which may open in another browser window and be written in dense language that consumers don't absorb, is not an impactful way to reach customers. The customer journey needs to be more integrated between the merchant and the BNPL provider and designed in a way that helps customers make the best choice for them, with the key information upfront.

It is important that there is a requirement that BNPL cannot be the default option at a checkout, which leads to customers taking out credit without realising. Additionally, there should not be financial benefits to choosing BNPL at checkout, such as discount vouchers, as this incentivises customers into taking on credit commitments where it may not be needed, or its implications not understood.

We agree that requiring merchants to have their promotions approved by an authorised person (most likely their BNPL partner) would be a sensible way to ensure that adverts, checkouts, and customer journeys are designed in a way that helps customers make good decisions – without putting the burden of credit broking authorisation on merchants.

In practice, this should be implemented in a way that reduces burdens for merchants and providers and could involve providers sharing pre-approved content for merchants to choose from and use.

Some BNPL providers already offer the full checkout experience to merchants (Klarna Checkout) which puts responsibility for promotion and content with the BNPL provider and is a good solution for smaller merchants. Others offer clear guidance on branding and assets (Clearpay resources) and the addition of financial promotions content into these resource toolkits should be mandatory.

In general, regulation of BNPL promotions should be designed in anticipation of the likely outcomes of the FCA's new Consumer Duty which will be implemented later this year – requiring communications that support and enable consumers to make informed decisions, providing them with the information they need, at the right time, and presented in a way they can understand.

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[9] Barclays (2021) Barclays reveals pitfalls of unregulated BNPL agreements for Christmas shoppers, with two in five users unclear what they're signing up to
[10] Citizens Advice (2021) Buy Now.. Pain Later?

Pre-contractual information

Question 20: Do you agree that the approach to pre-contractual information outlined is consistent with a proportionate approach and the government's objectives for BNPL regulation?

Yes, we agree that a tailored version of FCA rules would be sufficient and proportionate. As above, these rules should focus on providing the key information that they need in a way that is clear for people to understand, particularly given the evidence that customers often take out BNPL without realising.

Form and content of the credit agreement

Question 21: Do you agree with the government's assessment that BNPL agreements are likely to need bespoke form and content requirements?

Question 22: Do you have any views on what form agreements for BNPL should be required take, and what content they should contain?

We agree that bespoke form and content requirements would be beneficial. Provisions in the current regulations that focus on interest rates and total costs of credit are less relevant to this market, for example. Content requirements could focus on areas where we know there are risks in this market, such as lack of understanding over late fees, potential impact on credit scores, or risks involved in taking out multiple products simultaneously.

Improper execution

Question 23: What are your views on applying CCA provisions on improper execution to BNPL agreements? Do you think the consequential sanctions for improper execution should apply to BNPL agreements under any regulatory intervention?

We believe that the best way to reduce the harm that the current BNPL model can cause is to improve practice around promotions, customer journey and affordability assessment. With these protections in place, requiring a signature may not have significant additional benefits for customers. Regulation should reflect the fact that many BNPL transactions involve small amounts (see our response to questions 30 and 31) so putting in this requirement may not be proportionate.

Government should implement provisions on improper execution if it believes they are a vital incentive for lenders to properly inform customers about the product, as outlined in the preceding sections.

Creditworthiness assessments

Question 24: What are your views on the role of creditworthiness assessments as part of a proportionate approach to BNPL regulation?

Question 25: Do you have any views on whether there should be specific requirements for creditworthiness assessments for BNPL agreements?

Question 26: Do you have any views on how BNPL agreements should be reported to consumers' credit files?

Interest-free or not, BNPL is a form of credit and a financial liability. Proper creditworthiness assessments are important to stop customers being overcommitted and falling into financial difficulty. Regulation should raise the standards on affordability checks conducted by BNPL providers and get providers to engage with the credit reporting system so that BNPL loans are not invisible to other lenders.

The current approach to creditworthiness assessments in the market is not working well. The Woolard Review states that 'Most BNPL providers complete a very basic credit assessment, usually through a combination of soft credit searches and previous repayment history. This often focuses on credit risk, rather than affordability. Many providers rely on lending once and seeing if they are repaid as a means of managing their risks, rather than a wider attempt to consider affordability'.

Evidence from Citizens Advice suggests that customers are slipping through the cracks – of BNPL users who missed or made late payments in the last year, 56% had been refused a credit card in the last year and 61% had been refused another BNPL product[11].

Even more concerningly, 2 in 5 BNPL users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product[12], confirming that assessments are failing to stop people taking out harmful, unaffordable credit.

Because most BNPL providers don't engage fully with the credit reporting system, there are risks associated with customers taking out multiple credit agreements while remaining invisible to other lenders.

BNPL providers reporting their agreements on customers' credit files would ensure that other lenders (whether BNPL or not) can see a customer's commitments and make their own creditworthiness assessments accordingly, preventing the customer from overcommitting and falling into financial difficulty or problem debt. For people who are using BNPL and repaying regularly, the use of credit reporting would have the additional benefit of helping to build their credit scores.

However, we think it is important to note that the loose approach to creditworthiness assessments in this market will also have opened up an accessible source of interest-free credit to some people who were previously excluded.

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[11] Citizens Advice (2021) BNPL: what happens if you can't pay later?
[12] Citizens Advice (2021) Buy Now.. Pain Later?

For the customers in vulnerable circumstances we are trying to serve, with thin or damaged credit files, BNPL may have some benefits. For example, for recent migrants to the UK or those who have poor credit scores due to past debt problems, but are now in an improved situation, it can be a way to access affordable credit with a clean slate.

Steps to improve creditworthiness assessments in this market should therefore focus on the customer's current affordability, building a full picture of their income and expenditure and their other ongoing credit commitments. This is vital to stop customers taking on unaffordable debt, especially when they are already overindebted.

We don't want to see regulation leading to a reliance on scouring through past credit history though. We know from our work with the community finance sector that lenders can sustainably make fair creditworthiness assessments based on people's current financial position, without needing to exclude people who have thin or damaged credit files as a rule.

The BNPL market has so far been able to grow rapidly without relying heavily on credit history in its credit risking approach and shouldn't adopt these practices unnecessarily. Current credit risking approaches used by BNPL lenders that allow customers to access small amounts of credit at first and build trust with the provider through reliable repayments may continue to have a place.

As long as it can be done in a safe and responsible way, we want this market to continue to widen access to interest-free credit. Therefore, we agree that regulation should be proportionate and should aim to avoid putting unnecessary costs into the product lifecycle in case this excessively reduces the viability of the market.

In order to improve the visibility of BNPL transactions in a proportionate way the government should encourage BNPL lenders to report their data to all the CRAs in the Steering Committee on Reciprocity (SCOR). Under the Information Sharing Principles of Reciprocity of SCOR, a BNPL provider can extend their data reporting to multiple CRAs. CRAs take data for free and lenders can share data in the exact same format across CRAs, so there is very little extra effort in sharing to multiple CRAs.

This would give a view of all BNPL loans per consumer at each CRA and allow the BNPL lenders (and other lenders) to make a credit reference check to only one participating CRA, reducing the cost for lenders to perform credit checks. There is no cost to reporting data to the CRAs, but the BNPL provider may incur low additional costs to correct data reported to multiple CRAs.

There is a challenge around the potential for customers to make a large number of low value transactions in quick succession without it being caught by credit referencing. Government should work with the CRAs and the BNPL lenders to consider the feasibility and cost of moving to real time CRA reporting as a way to mitigate this.

FCA rules on creditworthiness are not prescriptive and can be adjusted to reflect the lower cost and risk of the product. There is reference to proportionality based on the circumstances of the case, meaning that creditworthiness assessments for low risk products like a small-value no-interest BNPL loan could be lighter touch.

The FCA should work with the BNPL industry to give clarity on what creditworthiness assessments in this market should look like for different volumes and values of transactions.

Arrears, default and forbearance

Question 27: Do you have any views about how customers in financial difficulty should be treated under BNPL agreements?

We believe more could be done to stop customers falling into financial difficulty in the first place. More comprehensive creditworthiness assessments will reduce unaffordable borrowing that leads to financial difficulty.

Providers should also work to identify signs of risky use and use of multiple providers and consider where they can add positive friction into the customer journey to reduce overspending.

We believe that FCA rules around forbearance should apply to BNPL. As noted in the Woolard Review, there is wide variation in approaches to arrears, defaults and forbearance in this market. Combined with unclear information around promotions this leaves customers unsure about implications and risks of the product. For example, Barclays found 36% of BNPL users do not fully understand the consequences of missing repayments[13].

Requiring BNPL lenders to follow FCA regulations on forbearance will help customers receive fairer treatment and go some way to improving consistency. But FCA rules are not prescriptive and are designed to cover the whole of the consumer credit market, so we believe that there should be an BNPL industry code of conduct to try and reach better and more consistent outcomes for customers.

This should draw on our Affordable Credit Code of Good Practice, which sets out how firms should take an approach to debt recovery that is centred on agreeing an affordable and sustainable repayment plan with the customer. For example, customers should at least have the opportunity to make repayment plans before getting late fees.

Customers in financial difficulty should be treated fairly and provided with appropriate support. We believe best practice could include not charging arrears fees, providing payment holidays on request and avoiding the outsourcing of debt collection. It's also vital that providers do proper signposting and referrals to debt advice for customers who may be struggling.

Payment holidays should be an important part of the new approach. The current model of some BNPL providers means that people are used to being able to skip repayments for these non-priority debts and not have this harm their credit file long-term.

Providers should make payment holidays available to customers who need them, so that people used to the current model don't unknowingly damage their credit history while the market transitions to new regulation.

[13] Barclays (2021) Barclays reveals pitfalls of unregulated BNPL agreements for Christmas shoppers, with two in five users unclear what they're signing up to

CCA requirement on firms for consumers in financial difficulty

Question 28: What are your views on the proportionality of applying CCA provisions on arrears and defaults to BNPL agreements?

This would bring consistency across credit products and ensure customers are informed about stages of forbearance and recovery. It's important that customers are given time to engage with their creditor before any action is taken, and that they are pointed towards sources of support.

In general, we believe that CCA rules around default notices and notices of sums in arrears should be updated. Requirements about when these are sent and prescriptions on form and content means that these notices can send confusing messages to customers who have already engaged with their lender and set up agreed repayment plans.

Government should use this opportunity to review which CCA provisions are counterproductive and where bespoke regulations would be more appropriate.

Section 75

Question 29: Do you agree that under any regulatory intervention for BNPL, section 75 of the CCA should apply to agreements?

Yes, this would give people the same protection they expect from using credit cards and give consumers confidence when buying from unknown suppliers. This protection will become more important as the BNPL market for higher value goods grows.

Small agreements

Question 30: What are your views on amending the scope of the exemptions from elements of the CCA for small agreements to include BNPL agreements under £50.

Question 31: Are you aware of any currently regulated consumer credit products, in particular those which are debtor-creditor-supplier agreements, that are routinely offered with values less than £50?

Many BNPL transactions are under £50 – and for people aged 18-24, the average order value is £41[14]. Excluding small BNPL agreements from the scope of this regulation would leave large parts of the market unregulated. One of the problems in the current market is that people can access credit from multiple sources while remaining invisible, and these credit commitments can stack and be unaffordable. New regulation shouldn't allow this to continue with smaller agreements.

We believe that the regulation should cover all BNPL agreements, to make sure that customers don't build up large

[14] Bain & Company (2021) Buy Now, Pay Later in the UK

amounts of credit without any checks through multiple small transactions over a short time period. This is a particular risk for younger customers for whom BNPL may likely be their first form of borrowing.

Additionally, having a different approach to transactions of greater and lesser than £50 could send mixed messages to consumers and be harder for merchants and providers to implement. There would also be an incentive for merchants and BNPL lenders to find ways to offer more small value agreements.

Key aims of this regulation should be to increase the ability of consumers to make informed decisions about this form of credit and whether it is right for them, and a two tier system could confuse this.

We are not aware of any other consumer credit products routinely offered with values less than £50.

Financial Ombudsman Service and redress

Question 32: Do you agree that under a regulatory intervention for BNPL, consumers should be able to bring a complaint to the FOS?

Yes, we agree that this would encourage proper behaviour by firms and improve accountability. The right to redress is an important principle in the consumer credit market and we believe that BNPL providers should be held to the same standards on affordability as other credit providers.

The FCA and FOS should consider what an upheld complaint for irresponsible lending would look like for a product where there is no interest to be refunded. This could include:

- a repayment plan to be put in place
- refund of any interest charged or late fees in relation to the loan
- what would happen to the received item/balance of the loan. In any scenario where a customer is asked to return items this would have negative financial consequences on the merchant (who is not responsible for affordability assessments) and should therefore be avoided
- ensuring that there are no negative impacts on the customer's credit file in relation to the loan

Equality Impact assessment

Question 33: What impacts do you expect the regulation of BNPL would have on BNPL providers, consumers that use the product, and merchants that offer it as a payment option?

A proportionate and pragmatic approach to regulation should create a safer ecosystem for consumers, merchants and the providers themselves, and costs and operational impacts of implementing the regulation should not be prohibitive.

BNPL providers will carry almost all the upfront costs incurred by the regulation and will be ultimately accountable for the adherence to the regulation, thereby taking on the regulatory risk.

Specific impacts on the BNPL providers include:

- The overhead of managing the regulatory compliance and risk of non-compliance, and the Board members taking on individual responsibility for compliance with the regulation
- The cost of creditworthiness checks, which will require procurement of third party data (eg CRA, Open Banking). The incremental cost per loan will result in lower margins per loan for the provider and/or higher prices charged to the merchant. The breakeven loan value will therefore be increased
- The responsibility to inform customers of data sharing in their terms and conditions

The benefits to the BNPL providers include:

- Better creditworthiness checks resulting in lower default levels
- Effective affordability checks giving providers a degree of protection from claims of misselling
- Reputational and trust benefits of operating in a regulated market

Consumers that use the product will be better protected by the regulation and they should not feel additional cost directly on their BNPL transactions. Specific impacts that they may experience include:

- Additional friction in the consumer journey, due to more responsible promotion of the product and in some cases more rigorous creditworthiness assessments
- Consumers may ultimately bear some of the costs associated with the regulation, for example though price increases of goods as a result of BNPL becoming more expensive to the merchant
- Some consumers with thin credit files who are able to use BNPL today for essential purchases (eg migrants to the UK, recently divorced or bereaved people) may be excluded from access to credit
- Excessive regulation could result in BNPL providers focusing on growth outside of the UK which could remove an important source of interest free credit for some consumers

Consumers should be the ultimate beneficiary of any regulation introduced to BNPL. Benefits could include:

- Clearer communication of product features, using common and widely understood terminology, resulting in better informed borrowing decisions
- Fewer accidental or regretted purchases where BNPL has been inappropriately marketed or promoted at checkout
- Less overspending or unaffordable borrowing due to better customer journeys and promotion of the product, as well as better creditworthiness assessments taken with a holistic view of a consumer’s borrowing position
- A higher standard of support for customers in financial difficulty, that is more consistent across different BNPL providers
- An independently managed complaints process giving consumers peace of mind and trust in the market

The proposed regulation appears to limit the impact on merchants, but there will be some impacts by virtue of their role in the ecosystem. Impacts include:

- Potential passing through of cost of the regulation from the BNPL provider in their pricing
- A regulatory requirement to present BNPL products at the point of sale and in marketing using approved wording and in accordance with the regulatory framework. However, the proposed regulations on this mean responsibility for this will lie with the BNPL provider

The benefits for merchants of the regulation include:

- Increased confidence that merchants using a safe and well-regulated product, and that there is clarity of their responsibilities of promoting or offering the product to their customers
- Proportionate regulation could make the UK an attractive market to BNPL providers, giving merchants greater choice and price competition amongst providers

Question 34: What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of regulation of BNPL?

Question 35: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

Citizens Advice's report Buy Now.. Pain Later? includes information on who is using BNPL, suggesting that Black, Indian and Pakistani/Bangladeshi people are more likely to use BNPL than white people, transgender people more likely than cisgender people, and people with disabilities more likely than people without disabilities.

According to the report, people from marginalised communities tend to experience more hardship from using BNPL, being more likely to regret using it, more likely to struggle to make repayments and more likely to miss paying other commitments and bills as a result.

Properly implemented regulation of BNPL should therefore be particularly beneficial to people from these communities. Measures to improve affordability assessments by BNPL providers and improve customer journeys to help people make the right choices will be especially important to improve outcomes for these customers.

Bringing BNPL under FCA regulation also means providers will have to follow the FCA's Vulnerability Guidance and consider how they ensure customers in vulnerable circumstances achieve the same outcomes as other customers, which will have some overlap with protected characteristics.

However, the higher level of BNPL usage among people from marginalised communities may also reflect failures in the mainstream financial services system to serve these customer groups:

- Among people from ethnic minority communities, higher use of BNPL could be a response to financial discrimination or barriers faced accessing other financial services. For example, Black African, Black Caribbean and Bangladeshi groups are 4x, 3.5x and 2.5x more likely to be denied a loan respectively compared to White groups[15]

- Cultural and religious factors may also have an influence. As BNPL is not perceived as credit by many customers, there may be an increase in usage from communities from cultural backgrounds that typically avoid credit. And as BNPL is interest-free, it may be seen as a Sharia-compliant way to access credit and spread the cost of purchases
- For people with disabilities, the ability to use BNPL to order items and pay after 30 days, returning any items that they don't want, may be particularly beneficial. This feature means that people who struggle to physically access retail spaces can try on clothes from their home without having to pay the costs of the items upfront
- People with thin credit files, such as younger people, recent migrants or recently divorced or bereaved people can use BNPL as way to access credit that mainstream lenders won't provide them

While the unregulated BNPL market is clearly causing detriment to consumers, widening access to no-interest credit that allows people to spread the cost of purchases and access essential items upfront may have had significant benefits to some people from financially excluded groups.

We believe it is important that regulation is implemented in a way that seeks to preserve as much access to credit as is consistent with proper consumer protection. As set out in our response to questions 24-26, this is why we believe any regulations around creditworthiness assessments need to emphasise current affordability rather than relying heavily on judgements about past credit history.

A thorough assessment needs to be undertaken to better understand how people from marginalised or financially excluded groups are using BNPL. To determine the potential impact of regulation, the government and the FCA should engage and work with people from marginalised communities who are using BNPL.

This should be done before regulation is implemented that unknowingly impacts those who are already financially vulnerable. If there are benefits identified in the way the current model operates, regulation should be implemented in a way that maintains them.

[15] NatWest Group (2020) Banking on Racial Equality