# Buy now pay later: consultation on draft legislation Fair4All Finance response

April 2023

## Summary

We support the government's proposals to bring buy now pay later products into regulation. As set out in our response to the initial consultation, there is clear evidence that unregulated BNPL is causing financial difficulty and encouraging people to get into unaffordable debt.

We therefore welcome the temporary permissions regime as a way to bring BNPL into regulation as soon as possible.

We are supportive of the level of regulatory controls placed on BNPL, which we believe are proportionate. However, we believe that disapplying CCA pre-contractual information requirements and accompanying unenforceability sanctions would remove an important consumer protection, which the government should look to reapply through its reforms of the CCA.

Regarding the scope of regulation, we believe there is a risk that limiting this to third party lenders could see merchants bring the unregulated BNPL model 'in house' in order to increase spending by consumers. We would therefore like to see this future proofed so that regulation can respond in an agile way to changes in the 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

## Regulatory controls

We believe the proposed level of regulatory controls that will apply to BNPL broadly strike the right balance between consumer protection and maintaining access.

As set out in our response to the government's initial consultation, there is clear evidence that BNPL is contributing to financially difficulty, and disproportionately impacts customers in vulnerable circumstances.

And analysis of our segmentation shows that there is greater of use of BNPL among customers in financially vulnerable circumstances than in the wider population, with 23% using it compared to 15% in a nationally representative sample.

However, we recognise that with proper regulations around promotions, creditworthiness assessments and consumer protection in place, BNPL can be a less risky form of lending, due to the lack of interest and generally lower amounts concerned. We have also seen qualitative evidence that some customers are benefitting from increased access to a flexible and low cost credit product that BNPL can provide.

We therefore think the government's proportionate approach to regulatory controls is the right one and broadly agree with these proposals, including

- Exempting merchants from credit broking regulation (except for domestic premises suppliers), but ensuring BNPL is covered by the financial promotions regime, and requiring unauthorised merchants to have their promotions approved by an authorised person
- Disapplying small agreements provisions for BNPL, which would have otherwise left a significant proportion of BNPL unregulated
- Regarding controls not covered in this legislation, we agree with the government's position that there should a tailored application of FCA rules around creditworthiness assessments, sections 75 of the CCA should apply, and consumers should have access to the FOS for BNPL agreements.

We also agree with the government's view that pre-contractual requirements under the CCA are disproportionate for BNPL. As set out in the government's paper on reform of the CCA, there are broader issues with these requirements, which can obscure key information for customers. However, we believe that unenforceability sanctions provide an important and immediate consumer protection that is additional to FSMA rights and protections, and are an incentive for financial services providers to lend responsibly.

Ideally we would like see a streamlined approach to pre-contractual information that prioritises key information to consumers, while maintaining unenforceability for breaches of these information requirements. Therefore the government should look to reapply unenforceability sanctions to updated pre-contractual information requirements for BNPL products through its wider CCA reforms. Alternatively, pre-contractual CCA requirements could be maintained for BNPL for now and reviewed as part of the CCA reforms.

## Scope

We recognise that there are established uses of the A60F(2) exemption by merchants that the government does not want to interfere with, such as monthly gym memberships and domestic heating oil suppliers.

However, we believe there is a risk that larger merchants could bring the BNPL model in house to take advantage of the lack of regulation.

As set out in our response to the government's initial consultation, the BNPL business model has been predicated on encouraging overspending. The product has been free to customers because the extra sales mean merchants are willing to pay for it.

There is evidence that BNPL models are changing. Klarna, one of the largest providers, has joined others in charging late fees. A survey from the Centre for Financial Capability and Savanta found that growing numbers of people have been charged late fees for BNPL.

As creditworthiness assessments and controls around promotion are brought in, it may be harder to drive the extra 'conversions' that make BNPL attractive and cost effective for retailers.

The government has seen little substantiated evidence of detriment in the current merchant provided credit market. However, it is important to future proof the regulation against new developments in this market. The government's anti-avoidance measures will prevent merchants and lenders evading regulation, but won't prevent merchants bringing the model completely in house.

Merchants may find this an attractive way to continue to boost sales by promoting interest free credit without having to conduct creditworthiness assessments.

Given the speed at which this market has developed and the time it takes to implement new legislation, we would like to see the scope of regulation drawn in a way that would capture these agreements – or drafted in a way that allows the government to rapidly amend the scope as needed.