



Regulation of Buy-Now Pay-Later: consultation

January 2022

About Fair by Design

Fair by Design is dedicated to reshaping essential services, such as energy, credit and insurance, so they don't cost more if you're poor. People in poverty pay more for a range of products including energy, through standard variable tariffs; credit, loans and credit cards with high interest rates; and insurance, through post codes considered higher risk. This is known as the poverty premium.

We collaborate with industry, government, and regulators to design out the poverty premium.

Our Venture Fund provides capital to help grow new and scalable ventures that are innovating to make markets fairer.

The Barrow Cadbury Trust manages our advocacy work, and Ascension Ventures manage the Venture Fund.

Please note that we consent to public disclosure of this response.

For more information about this response please contact Carl Packman:

c.packman@barrowcadbury.org.uk

Our response

Summary of recommendations

- The bnpl sector should be brought within the Financial Conduct Authority's (FCA) regulatory perimeter. This would have a positive impact on the market and consumers within it.
- Proportionate regulation of bnpl would include the application of the FCA's current rules on affordability to bnpl agreements. We want to see bnpl subject to these rules in future.
- As far as possible, bnpl agreements should be reported to a consumer's credit file in real time (or as near to real time as possible). This is to avoid a situation where a person can make several bnpl agreements in a short amount of time without an updated record.
- Customers should be treated to the same high standard of fairness in the bnpl sector as any other consumer credit customer. Firms in the bnpl space should be subject to the same rules and guidance on vulnerability as other consumer credit firms, which will stipulate what are appropriate guidelines for treating customers fairly.

Response

We are grateful to the government in publishing this consultation. There has been a marked increase in interest in this developing sector. Particularly as consumer harm has so often been reported in association with it. Bringing bnpl within the Financial Conduct Authority's (FCA) regulatory perimeter would have a positive impact for a number of reasons: the bnpl sector as a whole would be subject to consistent rules applicable across the consumer credit market, and consumers would be able to enjoy the same rights in relation to that market as a whole, too.

We feel that given that bnpl contracts are interest-free financial products they should be treated like other credit products. Because consumers are using these products as income-smoothing products they should be treated the same as similar products: namely, as a credit product.

Once bnpl firms are brought under the FCA's consumer credit remit, then these interest-free products are more able to be used in a way that is ultimately positive for consumers. Being able to pay for purchases over time can very often be a positive thing. This is especially the case for people with variable monthly incomes.

Up to now, the problem with bnpl contracts is not that they are detrimental contracts in themselves; rather what is needed are affordability rules and real-time information about the number of contracts out at one time. This, we hope, can be rectified.

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

Yes.

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

N/a

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

N/a

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

N/a

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

Yes.

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?

N/a

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?

N/a

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?

N/a

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?

Yes.

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

We agree that part of the risk in consumers taking out bnpl contracts is that they won't have considered things like payment difficulties and other problems. But we want to stress the point that this should not simply be a consumer education point. We want to see appropriate rules put in place to ensure consumers enjoy protections irrespective of the quality of consumer awareness campaigns related to bnpl. One such example being affordability rules where bnpl firms are required to assess whether consumers can afford to take on contracts and the required payments.

One reason why we think affordability rules are so important is because of evidence showing how bnpl can contribute to impaired financial security of consumers. Data from Citizens Advice has shown how 41% of bnpl users have struggled to make a repayment and 26% of those surveyed admitted that they regret using bnpl. We think that by introducing rules common to other consumer credit products, these issues can be reduced.

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

N/a

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?

N/a

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?

N/a

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?

N/a

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?

N/a

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?

N/a

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)?

N/a

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

N/a

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?

N/a

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?

N/a

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

N/a

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

N/a

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?

N/a

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

We agree that proportionate regulation of bnpl would include the application of the FCA's current rules on affordability to bnpl agreements. By doing this, consumers are assessed for their ability to take on debts as a result of taking on a bnpl contract. This is mutually beneficial for consumer and firm.

In future we would like to see a bnpl sector that is strengthened by the same rules as other parts of the consumer credit market. This is one where affordability assessments (and creditworthiness assessments are the norm. This would have a positive effect on those using bnpl firms. This would allow consumers to smooth out payments over a longer period of time with suppliers, avoiding situations where they are penalised for not being able to pay larger sums up front (e.g. through accessing higher interest credit products).

While bnpl is often closely associated with impulse purchases online, clearly there is a broader need for interest-free financial products that help people access services and goods and pay for them over longer periods. There are often very good reasons for why someone may wish to pay using bnpl, for example if they need essential services and goods today but can only afford those services or goods if the cost is spread out. This would make it less likely that consumers access other less affordable financial products, such as expensive high interest credit products. High cost credit usage can be a penalty for not being able to afford essential items up front or being able to access interest-free finance (as many better-off consumers do).

We want to avoid a situation where consumers are penalised for not being able to afford things up front. This penalty often has another name: the poverty premium - where it is more expensive for someone on a low income to afford essential goods and services. At the moment we are worried that the bnpl product is less likely to help consumers to access goods and services they need in ways that suit their income. This could change if the regulatory environment that bnpl exists within changes.

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

The most important requirement is affordability: is this consumer able to afford the debt payments they are incurring through this bnpl contract.

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

Bnpl agreements should be reported to a consumer's credit file in real time (or as near to real time as possible). This is to avoid a situation where a person can take on several bnpl agreements in a short amount of time without an updated record. This would be detrimental to the consumer.

Without access to real-time information, suppliers cannot check what existing live commitments a consumer has. This means the supplier will have only partial access to information about that consumer's actual financial situation.

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

Customers should be treated to the same high standard of fairness in the bnpl sector as any other consumer credit customers. Bnpl firms should be subject to the same rules and guidance on vulnerability as other consumer credit firms.

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

N/a

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

N/a

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?

N/a

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?

N/a

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

N/a

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?

We believe the regulation of bnpl providers would have a positive impact all round. With affordability assessments as standard, consumers can be sure that their rights apply across all consumer credit products, and suppliers can be more certain that their product won't have a negative impact on prospective customers' financial situation.

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

N/a

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

N/a