

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Dear Sir / Madam,

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The market for unregulated Buy Now Pay Later (BNPL) products has seen recent rapid growth, with the value of transactions using BNPL more than tripling in 2020<sup>1</sup>. While BNPL products can be helpful in smoothing expenditure over time and providing short-term interest-free credit to finance goods and services, the Consumer Panel is concerned about existing and potential consumer harm arising from BNPL's widespread use. A recent Parliamentary debate<sup>2</sup> on BNPL highlights the urgent need for regulation of this market. We believe this calls for swift action by government now, combined with a mechanism for rapidly extending the legislation if new risks emerge.

Users of BNPL are a diverse group, some of whom may be in vulnerable circumstances and may lack a full understanding of the consequences of entering into BNPL agreements. Digital marketing has already been identified as a source of potential harm in this market<sup>3</sup> and the Panel's own research into high-cost credit has shed light on the fact that digital advertising in financial services already targets vulnerable consumers<sup>4</sup>, many of whom are also likely to be targeted with BNPL products. Overall, competition and innovation in the BNPL market should not come at the expense of consumer protections.

Consumers should have a consistent set of protections, regardless of what credit product they are using. The Panel therefore believes consumers – as well as small businesses offering BNPL on their platforms – will benefit from BNPL being brought within the regulatory perimeter. Regulating BNPL means that the new Consumer Duty<sup>5</sup> would apply to BNPL firms, increasing the likelihood that consumers active in this market will understand what they are signing up for and get products that represent fair value.

In bringing BNPL firms into the regulatory perimeter, it must be made clear to consumers what being regulated means in the context of BNPL, as well as which credit products remain outside the perimeter. This is particularly important given the potential

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<sup>1</sup> <https://www.ft.com/content/ddb2e207-2450-4ca8-bad0-871290d80ea7>.

<sup>2</sup> <https://www.theyworkforyou.com/whall/?id=2021-11-23a.30.1>

<sup>3</sup> <https://www.asa.org.uk/rulings/klarna-bank-ab-a20-1081031-klarna-bank-ab.html>

<sup>4</sup> [https://www.fs-cp.org.uk/sites/default/files/fscp\\_final\\_digital\\_advertising\\_discussion\\_paper\\_20200630.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf).

<sup>5</sup> <https://www.fca.org.uk/news/press-releases/fca-proposes-stronger-protection-consumers-financial-markets>.

for confusion where unregulated products are sold by regulated firms. In addition, HM Treasury should ensure that bringing BNPL into the perimeter does not jeopardise the provision of certain short-term interest-free loans that consumers depend on to finance essential costs, such as insurance premiums and purchases of white goods.

The Panel broadly agrees with HM Treasury's analysis in chapter 2 and its proposals for proportionate regulation set out in chapter 3, although we recognise that much of the development of regulatory requirements that will apply to BNPL firms will lie with the FCA. HM Treasury will need to ensure it fully understands the markets for both BNPL and other forms of short-term interest-free credit in order to define the scope of firms to be newly brought within the regulatory perimeter. Given the fast pace of innovation in and evolution of BNPL products, however, regulation of BNPL will have to be reviewed frequently once implemented and sufficient flexibility should be built into the legislation to permit the FCA to respond quickly to emerging harms while still enabling innovation. [As we have noted elsewhere](#), we believe this requires the regulatory perimeter to be much more agile and responsive to enable the regulator to act more swiftly to prevent consumer harm using the full range of its powers. This should particularly be the case where there is evidence of firms deliberately positioning products outside the perimeter of regulation or using loopholes to avoid being caught by regulation.

Answers to specific questions are in Annex A.

Yours faithfully,

Wanda Goldwag  
Chair, Financial Services Consumer Panel

## **Annex A – answers to specific consultation questions**

### **SCOPE**

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

The Consumer Panel agrees with HM Treasury’s assessment of the BNPL model described in paragraphs 2.9-2.11. However, the rapid pace of innovation means this model will likely continue to change over time (see answers to Questions 5 and 9). Evidence from the BNPL market in Australia<sup>6</sup> suggests business models are rapidly evolving – ranging from the model described by HM Treasury, to “virtual cards” that can be used by consumers at merchants, to BNPL used for business-to-business payments. HM Treasury and FCA regulation should have in-built flexibility (see answer to Question 11) so that it does not quickly become out of date. This is important to avoid a situation in which very similar products have different regulatory status.

However, the Panel disagrees with HM Treasury’s conclusion in paragraph 2.14 that there is limited evidence of consumer harm materialising in the market for BNPL. The consumer harm associated with BNPL is well-evidenced and without swift and decisive legislation and regulation this harm will increase as the market rapidly expands and evolves. The Panel elaborates more on its position on this issue in Question 3 below.

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

In the answer to Question 3, we outline key research to inform HM Treasury’s understanding of consumer harm in the BNPL market. Even though the BNPL market is relatively new, there is already credible evidence of consumer harm from several data sources. Because the market is still immature and evolving, we will not yet have seen the full extent, or every type, of harm.

The Panel is also aware that BNPL is a concern beyond the UK – the EU Commission has recently issued a legislative proposal to address this, and both ASIC and the Consumer Financial Protection Bureau have respectively issued warnings in Australia and the US. Analysis of regulatory frameworks in the UK, US, Australia and Europe<sup>7</sup> suggests there has thus far been currently little regulatory intervention in BNPL markets, despite the ubiquity of BNPL. HM Treasury and UK regulators, while working with their global counterparts to share information and lessons learned, could be at the forefront of regulating the BNPL sector.

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

Yes. The Panel is concerned about evidence of consumer over-indebtedness linked to the use of BNPL, particularly among those with existing debt and/or in vulnerable circumstances. Research also suggests that many users of BNPL do not have an adequate understanding of the credit agreements they are entering into. BNPL-driven debt in the UK is estimated to total over £4bn, with online shoppers “bombarded” with

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<sup>6</sup> <https://www.rba.gov.au/publications/bulletin/2021/mar/pdf/developments-in-the-buy-now-pay-later-market.pdf>.

<sup>7</sup> See <https://thepaypers.com/expert-opinion/buy-now-pay-later-series-ii-regulations-and-risks--1249259> and <https://www.rba.gov.au/publications/bulletin/2021/mar/pdf/developments-in-the-buy-now-pay-later-market.pdf>

BNPL offers at retailers' online checkouts<sup>8</sup>. Evidence of growing BNPL-driven debt is also manifesting across firms specialising in credit counselling and debt management. For example, figures recently published by the Financial Wellness Group<sup>9</sup> indicate that the number of customers with BNPL debts on a debt solution provided by the Group has increased by 49% over the last eight months. Over the same period, the average value of those BNPL debts has risen by 15% (from £341.70 in March to £391.75 now). Digital marketing practices could exacerbate consumer harm in the BNPL market.

We would like to draw attention to the following:

- **Consumers using BNPL are often in vulnerable circumstances:** Which? research<sup>10</sup> (based on a nationally representative sample of over 15,000 adults) found that BNPL users are a diverse group and often have characteristics that contribute to consumer vulnerability. Experiencing a life event (such as moving house, getting married or being made redundant) increased the likelihood that someone will have used BNPL by 35%; missing a repayment on a credit arrangement or household bill increased these odds by 38%. BNPL users are also more likely to believe they lack access to other forms of credit, and to report attitudes that suggest they may be more vulnerable to impulsive and unaffordable borrowing. Among younger users of BNPL, other research shows that social influencers play a part in their decision to shop now and pay later<sup>11</sup>.
- **Issues with affordability, debt collection and digital marketing:** Citizens Advice research<sup>12</sup> (based on a nationally representative survey of 10,000 UK adults) highlights that 1 in 3 BNPL users have missed a payment or made a late payment in the last year and 1 in 10 have been chased by debt collectors as a result. Despite this, information at point of sale is limited: across the top 100 UK retailers, none of the checkouts warned people they could be referred to debt collectors and only 8 warned shoppers upfront they were taking out a credit agreement. Earlier research<sup>13</sup> by Citizens Advice suggests the current customer journey lacks the information, affordability checks and care necessary to stop people falling into debt. The lack of friction in the BNPL user experience allows people to enter a BNPL agreement easily without fully understanding what it is: the same research found that 2 in 5 people who used BNPL did so without realising.
- **Detriment to consumers with mental health problems:** Based on a survey of over 2,000 adults that was weighted to be nationally representative, the Money and Mental Health Policy Institute found<sup>14</sup> that people with mental health problems are twice as likely to have fallen behind on payments for products bought using credit from a retailer (16% compared to 7% for people without mental health problems). A further quarter of people with mental health problems report that they have bought something on impulse that they didn't really need

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<sup>8</sup> See <https://www.theguardian.com/money/2021/oct/26/uk-shoppers-4bn-debt-buy-now-pay-later-deals> and <https://www.theguardian.com/money/2021/oct/26/uk-shoppers-4bn-debt-buy-now-pay-later-deals> as examples.

<sup>9</sup> <https://www.credit-connect.co.uk/news/fourfold-increase-in-customers-seeking-buy-now-pay-later-debt-advice/>

<sup>10</sup> <https://www.which.co.uk/policy/money/7601/buynowpaylater>.

<sup>11</sup> <https://www.money.co.uk/credit-cards/bnpl-stress>

<sup>12</sup> [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20report%20\(FINAL\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20report%20(FINAL).pdf).

<sup>13</sup> <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/debt-and-money-policy-research/buy-nowpay-later/>

<sup>14</sup> <https://www.moneyandmentalhealth.org/point-of-sale-credit/>

because they could pay later (compared to 14% for those without mental health problems). BNPL has the potential to exacerbate these issues significantly.

The Panel is also aware of evidence from other sectors – for example, payday lending and general insurance– of providers exploiting consumer biases in similar ways, leading to consumer harm (for example, through the design of the online interface, the speed and lack of friction at the point of sale, ‘sludge’ practices such as long and incomprehensible terms and conditions, hard-to-find information about making a complaint or getting redress etc). Some providers of BNPL are offering chatbots to merchants which are tied into the credit offering to encourage sales and limit abandoned baskets.

Rather than wait for further evidence of consumer harm as the market expands and evolves, HM Treasury should act decisively to stop the known harms increasing and new risks crystallising.

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

As highlighted in the answer to Question 3, there is evidence to suggest that consumer harm is already occurring in the BNPL market. The Panel’s specific concerns include:

- The vulnerability of consumers using BNPL (see Which? research above);
- The lack of consumer understanding of BNPL products and the consequences of missed repayments for their credit files and overall levels of indebtedness (see Citizens Advice research above);
- Consumer over-indebtedness arising from the use of BNPL, including among consumers with mental health issues who face particular challenges in keeping up with repayments (see Citizens Advice and Money and Mental Health Policy Institute research). Though BNPL is often used to finance lower-value transactions, multiple lower-value transactions can be unaffordable and result in problem debt, especially where a consumer has other additional debts
- Digital marketing practices that pressure consumers into using BNPL, as well as the lack of friction in the user experience of BNPL.
- Propensity of BNPL lenders to sell and place customers with debt collectors and to sell debts off their balance sheets. Bringing BNPL generally within FCA’s remit also means that the conduct of collectors and purchasers becomes regulated in the management of these debts.

In addition to these issues, the lack of credit reporting of BNPL loans to consumers’ credit files means lenders and other creditors do not have a clear picture of the financial situation of users of BNPL and consumers who *do* meet the payment terms on time do not benefit from the potential uplift to their credit files. Finally, we are concerned that the ubiquity of BNPL may be leading to a familiarity bias whereby consumers do not fully appreciate the risks of using BNPL products but nonetheless use them.

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

Yes. However the Panel would encourage HM Treasury to revisit the assumption stated in paragraph 2.17 that providers of short-term interest-free credit have relationships with relatively few merchants.

**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?**

No.

**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?**

The Panel generally agrees that the risk of consumer harm is lower in the short-term interest-free credit market compared to BNPL.

However, the consultation appears to be underpinned by an assessment that short-term interest-free credit bears little risk to consumers on the basis that such business has attracted limited scrutiny or concern from stakeholders (paragraph 2.20). This is not a sound evidence base on which to deem more longstanding forms of short-term interest-free credit less risky. We need a system that protects consumers from harm pre-emptively, in which legislators and regulators respond effectively to early warning signs of harm rather than waiting until the harm is considered big enough for them to act, by which point consumers have experienced significant detriment.

We would also like to challenge the assumption described in paragraph 2.19 that pressure-selling only arises in person. Digital methods of promotion can be considered pressure-selling too and, as mentioned earlier, some BNPL firms already adopt technology (such as chatbots) to promote merchants' products to consumers and encourage the completion of online transactions.

**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?**

The Panel does not have further information to provide on this point. We generally agree with HM Treasury's analyses in paragraphs 2.17 and 2.23, which together highlight the elements of the short-term interest-free credit business that could make it less harmful to consumers than BNPL. These include: the fact that products financed by such credit are usually expensive, making their purchase less frequent; and the lack of an ongoing relationship between the consumer and credit provider (in most cases), creating more friction in taking out the 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?**

As highlighted in the answer to Question 5, it is challenging to draw a neat distinction between BNPL and short-term interest-free credit. Evidently BNPL can take different shapes. In the case of Australia referenced earlier, there is evidence of banks and lenders offering BNPL-type features on credit cards – while these are regulated, such products show the scope for rapid innovation in this space.

It is possible, therefore, that not all forms of short-term interest-free credit will fall neatly into either category defined by HM Treasury in its consultation.

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

The Panel agrees with HM Treasury's assessment of the drivers of risk for consumers using BNPL outlined in paragraph 2.23. As noted in the answer to Question 4, the Panel has identified other risk factors including the lack of consumer understanding of BNPL products, digital marketing encouraging the use of BNPL, online shopping, especially

when accompanied by chatbots creating a false sense of urgency, and risks to more vulnerable consumers. Given the speed of innovation of BNPL products, further research is needed to fully understand the range and extent of consumer harm in the market. But this should be done in parallel with drawing up detailed regulatory rules later in the process, in line with FCA's obligations around proportionality and cost benefit analysis. Legislation should be constructed so it heads off harm and risk and need not wait for such research.

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

As noted in the answer to Question 1, the Panel believes further research is needed to fully understand the BNPL market and ensure future HM Treasury and FCA regulation of BNPL does not quickly become out of date. The distinction between BNPL and short-term interest-free credit is not clear-cut and, given the rapid pace of innovation, may become less clear over time. To mitigate this, HM Treasury and the FCA may want to consider introducing review clauses in their respective rules to ensure future regulation of BNPL is reviewed often and regularly once implemented. This should particularly be the case where there is evidence of firms deliberately positioning products outside the perimeter of regulation or using loopholes to avoid being caught by regulation.

The Panel also encourages HM Treasury to ensure interest-free credit agreements used to finance instalments of insurance premiums, referenced in paragraph 2.31, are not jeopardised by future BNPL regulations. This would help avoid detriment to consumers who depend on such financing for certain critical products (e.g. travel or life insurance).

**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?**

The Panel is in favour of defining a BNPL agreement as an interest-free credit agreement where there is a third-party lender involved in the transaction. This is preferable to the definition of BNPL as an agreement where there is a pre-existing, overarching relationship between the lender and consumer (see answer to Question 13).

This broad definition of BNPL has the potential to bring many short-term interest-free credit providers in-scope, as many third-party lenders already provide both BNPL and other forms of short-term interest-free credit. This would have significant impact on newly regulated firms which would need to begin undertaking creditworthiness and affordability assessments for customers opting for BNPL payment. This could lead to certain consumers being excluded from BNPL credit to finance more expensive but essential white goods (e.g. washing machines, fridges, etc). However, this may be a reasonable consumer outcome if it protects against over-indebtedness.

In addition, a broad definition of BNPL could also make it easier for the FCA to operationalise the supervision and enforcement of new requirements on in-scope firms, as well as limit the potential for firms to exploit any loopholes to avoid 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?**

Defining a BNPL agreement as one where there is a pre-existing relationship between the lender and consumer would fail to capture any current or future BNPL products used only at point of sale, making the scope potentially too narrow. We also agree with HM Treasury's assessment in paragraph 2.28 that such a definition leaves open the possibility of firms changing their BNPL product in order to avoid regulation. Overall, the broader definition of BNPL may be less vulnerable to attempts by firms to circumvent regulation.

**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?**

To minimise the risk of regulatory arbitrage, we agree there is a need for a carefully designed amendment to the current exemption for running-account credit. In the absence of such an amendment, HM Treasury and/or the FCA would need to review and monitor this exemption to ensure BNPL providers do not alter their business models to avoid regulation.

**PROPORTIONALITY**

**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?**

On balance, yes. The prevalence of BNPL as a payment option means thousands (if not more) merchants offering BNPL would have to be authorised by the FCA as credit brokers, which may not be proportionate or sustainable for the FCA to supervise. However, we believe there will be valuable lessons to inform the government's decision from consumer credit coming into the FCA's purview in 2014, when many non-financial services firms were brought into the credit broking regime. Nonetheless, we believe the majority of risk lies with the lender and applying the financial promotions regimes to BNPL should mitigate the risks arising from merchant credit broking. This should include how financial promotions are designed and experienced at the point of sale.

Finally, in instances where there is a credit broker involved in BNPL agreements, it should be clear to consumers who the credit broker is on each occasion that they enter into an agreement.

**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?**

The Panel believes that so long as newly regulated BNPL providers are compliant with requirements set out by the FCA, and the new Consumer Duty applies, then there should be sufficient protection for consumers, even if merchants are exempted from credit broking regulation. Nonetheless, merchants play a key role in promoting BNPL to consumers on their platforms and HM Treasury should consider how other regulators or government bodies – such as the Advertising Standards Authority (ASA) – can play a role in ensuring merchant content is fair and not misleading.

As highlighted in the answer to Question 15, in instances where a credit broker is involved in a BNPL agreement, it should be clear to consumers who the credit broker is on each occasion that they opt for BNPL.



**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)?**

The Panel agrees it would be appropriate to apply limited exceptions to the exemption from credit broking regulations (including for domestic premises suppliers and, where relevant, their virtual or online equivalent) – with the caveat that HM Treasury must guarantee that it will monitor market developments closely so that such exceptions can be reviewed and amended if necessary.

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

As stated earlier, the Panel is concerned about consumer harm arising from digital marketing of short-term credit products including BNPL. We agree that by bringing BNPL providers within the regulatory perimeter, the financial promotions regime should apply to BNPL firms – though the Panel has commented elsewhere on improvements needed to the regime<sup>15</sup>. However, as highlighted in the answer to Question 16, merchants also have a responsibility when promoting BNPL to consumers on their platforms. We recommend that the FCA works with the ASA to ensure merchants' content is fair, clear and not misleading.

The Panel does not agree with HM Treasury's assessment that lender screening would mitigate poor conduct on behalf of the merchant, as suggested in paragraph 3.20. Once the customer has reached this screening point, they are likely to already be emotionally invested in the purchase and this can be further reinforced e.g. by the use of chatbots to encourage the completion of transactions. Ultimately, if the financial promotion regime applies to BNPL then it will be important that the BNPL lender partner (or other companies in its group) is not allowed to approve its own financial promotions.

**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?**

Yes, the Panel believes the financial promotions regime should apply to BNPL products, however we also believe the financial promotions regime must be strengthened, as noted earlier.

**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?**

The Panel advocates for clear, concise and easy-to-understand disclosure delivered in plain English and presented in a clear, readable way, including when accessed on mobile devices. Giving consumers too much information at once will not help them make an informed decision<sup>16</sup>, nor will information that is too complex to be understood by most people. The FCA should test the effectiveness of disclosures when developing rules and guidance in this area. It should expect firms to do the same when designing disclosures. Costs and charges should be presented clearly to the consumer in pounds and pence wherever appropriate.

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<sup>15</sup> [https://www.fsc.org.uk/sites/default/files/final\\_fsc\\_response\\_to\\_fca\\_dp\\_strengthening\\_fin\\_proms\\_for\\_hri\\_20210702.pdf](https://www.fsc.org.uk/sites/default/files/final_fsc_response_to_fca_dp_strengthening_fin_proms_for_hri_20210702.pdf).

<sup>16</sup> <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>

We agree with HM Treasury's assessment that s55 of the Consumer Credit Act pre-contract disclosure rules do not suit the kind of credit offered by BNPL. FCA rules would be more robust.

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

Yes. In addition, HM Treasury and/or FCA requirements on the form and content of agreements between BNPL providers and consumers should achieve the following outcomes:

- Agreements between BNPL providers and consumers are clear, simple and comprehensible to the average UK reading age and financial literacy level.
- Such agreements are consumer-tested on these criteria prior to their implementation by BNPL providers.

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

Besides meeting the two criteria outlined in the answer to Question 21, the Panel believes the content of BNPL user agreements should capture the following:

- Clear information about the total potential costs of purchasing an item depending on the number of instalments. For example, if the total price of the basket is £50, paying in 3 months may bring the total cost to £50 whereas paying in 6 months may bring the total cost to £80, and so on.
- Clear information about what happens when a customer misses a repayment instalment – including any additional costs and charges and the likely impact on the customer's credit file. i.e. clearly warning consumers that they are taking out credit and that failure to repay the instalments could cause problem debt, trigger a lowering of their credit files and so on.
- Clear information about when and how customers can complain to the Financial Ombudsman Service if they feel they have been treated poorly or unfairly by a BNPL operator. See also answer to Question 32.

Measures to ensure the standardisation of content would also be welcome. Our answer to Question 20 also provides the Panel's view on the principles for adequate disclosure to consumers.

On format, BNPL user agreements are usually very lengthy and therefore unlikely to be read by customers before opting for BNPL payment. To ensure consumers actually read the salient information contained in the agreements, it would be helpful if a short summary of relevant information – including details of late payment charges and other penalties – were presented to consumers upfront at the point of sale in a standardised and comparable form.

**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?**

On balance, we agree that the CCA provisions on improper execution should apply to BNPL agreements, including the consequential sanctions for improper execution, on the basis that standardising content and improving consistency across credit products is to

be welcomed. However, whilst a signature indicates a consumer has been provided with the right information, it does not confirm that they have read or understood the contents of the agreement. Therefore the Panel is unconvinced that applying the CCA requirements on improper execution to BNPL (on its own) would create meaningful friction to the payment process. Consumers may simply tick boxes to obtain their credit.

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

The Panel agrees that creditworthiness assessments are a fundamental part of regulating BNPL. Robust affordability checks will help protect consumers from over-indebtedness and the negative consequences (e.g. costs, credit file impairments and debt collection) that arise from missed repayments. In addition, the process of having to revisit existing financial commitments in order to take out new credit will help consumers keep track of how much they owe, in turn discouraging over-indebted consumers from taking on further debt through BNPL.

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

Key elements of creditworthiness assessments are adequately captured in the FCA's CONC 5.2A rules.

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

All BNPL agreements that a consumer has entered into should be recorded on their credit file. This will allow lenders to see existing credit relationships and benefit those that wish to use BNPL products to improve their credit files. Such credit reporting needs to be punctual, standardised and consistent<sup>17</sup>.

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

The Panel agrees with HM Treasury's assessment that requirements to regulate how BNPL providers treat customers in financial difficulty should be put in place. FCA regulation would be a good mechanism for this. This has particular urgency given that some BNPL providers specifically target consumers with thin or impaired credit files and subprime borrowers. BNPL operators should also consider the financial difficulty of *new* customers before they enter into an agreement – robust creditworthiness and affordability checks should help firms make this assessment. Given the ongoing challenges posed by COVID-19 pandemic, firms should also abide by the FCA revised guidance on tailored support<sup>18</sup>.

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

The Panel agrees that CCA provisions on arrears and defaults should be applied to BNPL agreements. Notifying consumers of credit events that require action on their behalf, such as sums in arrears, will help them spot difficulties and manage their debt as early

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<sup>17</sup> <https://www.prnewswire.com/news-releases/buy-now-pay-later-five-takeaways-from-the-uk-market-301404172.html>.

<sup>18</sup> <https://www.fca.org.uk/publications/finalised-guidance/finalised-guidance-consumer-credit-and-coronavirus-updated-tailored-support-guidance-firms>.

as possible. However, such notifications should be done in a way that is easy for consumers to engage with and avoid overly long, distressing language. BNPL operators should also clearly signpost resources to consumers to seek help and understand their redress rights.

Finally, BNPL providers should apply the FCA's vulnerable customer guidance and identify best practice in all their communications with consumers (including SMEs).

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

The Panel believes it would be prudent to apply s75 of the CCA to BNPL agreements, particularly in circumstances where the value of a BNPL-facilitated purchase is high. Though BNPL was initially targeted at the fashion and beauty markets to finance lower-cost purchases, BNPL is now offered by luxury goods, home and furniture and other higher-cost merchants and the rapidly evolving nature of BNPL business models means consumers may well begin using BNPL to finance a much broader and higher-value range of purchases in future<sup>19</sup>.

The other benefit of s75 is the liability of the credit provider if the retailer provides sub-standard goods, fails to deliver, or goes bust. It is critical that people transacting with smaller, less well known e-commerce outlets are not left holding a credit liability as well as a faulty or undelivered goods.

**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.**

The Panel agrees with this amendment, as it will ensure protections for the greatest number of people while limiting consumers' confusion about what regulations apply to which short-term interest-free credit products.

**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?**

No, although the Panel expects such products to exist in certain markets, for example in relation to pawnbroking loans where average loans are relatively low in value.

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

The Panel strongly agrees that consumers should be able to complain to the Financial Ombudsman Service about BNPL products. This will likely have significant impact on the Ombudsman's complaint numbers and resourcing to address complaints. However, BNPL is fast becoming a default credit option for many people and as such there must be a mechanism for consumers to receive compensation where necessary.

**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?**

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<sup>19</sup> See <https://www.klarna.com/uk/> as an example.

For consumers, the new protections offered by the regulation of BNPL could yield significant positive impact with greatly reduced risk of over-indebtedness and financial (as well as emotional) distress. Importantly, consumers will also be able to benefit from protections offered by new Consumer Duty that will apply to BNPL operators once within the regulatory perimeter as well, potentially, to improvements in their credit files.

For BNPL operators, regulation will raise standards of consumer care across the market, with a shift in culture and behaviour in line with the new Consumer Duty (as well as other considerations, such as Environmental, Social and Governance factors). BNPL providers have seen significant growth in the last year and the cost of complying with regulation – in line with their obligation to lend responsibly – need not stifle innovation.

Merchants, who may be SMEs, are more likely to be protected against the risk of their customers missing repayments, given the new creditworthiness and affordability checks that BNPL operators will need to undertake.

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

Research<sup>20</sup> from Citizens Advice provides a helpful breakdown of users of BNPL in the UK and notes certain groups are more likely to use BNPL and miss repayments, including BAME users, transgender users and users with disabilities.

Regulating BNPL products has the potential to limit harm among these groups, particularly if BNPL user agreements clearly inform consumers of the risks involved in choosing BNPL over full upfront payment.

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

No comment.

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[https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20Report%20\(FINAL\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20Report%20(FINAL).pdf).