

Buy Now Pay Later offers – feedback on CP18/43 and final rules

Policy Statement

PS19/17

June 2019

This relates to

Consultation Paper 18/43
which is available on our website at
www.fca.org.uk/publications

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Contents by sector

This table sets out which chapters are particularly relevant for each sector. This is where you will find the most relevant chapter(s) for your firm.

Sector	Chapter
Any firms that offer credit products that incorporate a 'Buy Now Pay Later' feature, including those offering catalogue credit, store cards and point of sale finance	2

1 Summary

1.1 In December 2018, we consulted in [CP18/43](#) on a package of remedies relating to Buy Now Pay Later (BNPL) offers, including:

- three proposed disclosure remedies, designed to improve the information consumers receive about these offers
- a proposal to prevent firms charging backdated interest on money that the consumer has repaid during the BNPL offer period

1.2 In this Policy Statement (PS) we summarise the feedback we received, and set out our response to it. We are going ahead with our proposals, subject to some small technical changes to the definition of BNPL credit. We are also extending the implementation period for the backdating interest remedy, so that firms have enough time to implement this significant change properly.

Who this affects

1.3 This document should be read by firms involved in offering BNPL deals, including retailers and lenders.

1.4 This document will be of interest to consumers who use BNPL deals, those who might consider using them in future, and consumer groups. It sets out how firms will need to provide clearer information to consumers because of our new rules.

The wider context of this policy statement

1.5 Consumer credit is a key part of the economy and largely works well for consumers, as it enables them to buy goods and services and spread repayments over time. Most borrowers repay without difficulty and without financial distress. But some consumers can suffer harm from choosing and using unsuitable types of credit, or using the credit products they have in unsuitable ways.

1.6 We have been tackling issues in the high-cost credit markets since we began regulating consumer credit in 2014, including in relation to the rent-to-own market, payday loans, home-collected credit, catalogue credit, store cards and overdrafts.

Our consultation

1.7 In May 2018, we published a consultation paper ([CP18/12](#)) on high-cost credit, which included proposed rules and guidance relating to catalogue credit and store cards, including some proposals in relation to BNPL offers.

1.8 We also said in [CP18/12](#) that we would take a broader look at the use of BNPL offers in the wider credit market, and assess whether further measures were appropriate.

1.9 In December 2018 we published [CP18/43](#), in which we confirmed our BNPL measures in relation to catalogue credit and store cards. We also published further BNPL measures for consultation. This involved:

- proposals to extend 2 of the rules we made for catalogue credit and store cards across to other providers of BNPL deals, as well as new guidance that would apply to all firms
- a proposed new rule to prevent firms charging backdated interest on money that has been repaid by the consumer during the BNPL offer period

How it links to our objectives

1.10 Our package of BNPL measures supports our objective of achieving an appropriate degree of protection for consumers, by addressing the harm we have identified in the BNPL market.

What we are changing

1.11 BNPL offers are credit offers with a product feature that gives the consumer a promotional period, typically up to 12 months, during which they are not generally required to make repayments. It is usually the case that if the consumer repays the entire amount within this period, no interest is charged. However, if the consumer does not repay the entire amount within this period, then interest will usually be charged on the original credit amount or the unpaid part of that amount from the date of purchase.

1.12 Different types of firms offer a BNPL product feature as part of their credit offers. These include catalogue credit, store cards, and retailers that offer finance at the point of sale (which can be in store or online).

1.13 Our changes are designed to reduce the harm experienced by consumers that buy products using BNPL credit offers, caused by unclear information and the practice of backdating interest on amounts that have been repaid during the BNPL offer period.

1.14 Our changes should improve the information consumers receive about BNPL offers, at the point of sale and during the life of the contract. They will also stop firms from charging backdated interest on partial repayments consumers have made during the BNPL offer period.

Outcome we are seeking

1.15 The combination of the product being simpler (because interest charging will be simpler) and clearer information for consumers should help consumers make more informed decisions and use the product better. We want to see more consumers repaying in full during the BNPL offer period, and others repaying more of their debt during the BNPL offer period. This means they will incur less interest, and repay their debt more quickly.

- 1.16** We want firms to provide better information to consumers about BNPL offers. The information should be more balanced and appropriately reflect the risks as well as the benefits of the product. We want consumers to be better able to understand the implications of not repaying the full balance by the end of the offer period.
- 1.17** We want firms to give prompts to consumers, to remind them the offer period is about to end. This should make it more likely that consumers repay the credit before they incur interest.
- 1.18** We also want consumers to get full credit for partial repayments they make during the BNPL offer period, rather than being charged interest on these sums if they do not repay the full balance by the end of the offer period.

Measuring success

- 1.19** We will monitor the market, and gather and assess information from firms, to identify any changes in the BNPL market, such as:
- whether the quality of information provided to consumers is improving
 - the impact of the changes on consumers' repayment patterns
 - whether firms are altering the structure or pricing of these products
 - whether there is evidence of firms withdrawing from the market

Summary of feedback and our response

- 1.20** We received 13 responses to CP18/43, from consumer groups and industry respondents. There was broad support for the 3 disclosure measures, from both consumer groups and industry respondents, including the proposed implementation period of 3 months. We will go ahead as planned with the disclosure measures and the 3-month implementation period.

Partial repayments remedy

- 1.21** Consumer groups supported our proposal to prevent firms from charging backdated interest on amounts that have been repaid during the offer period. They suggested we should go further and ban firms from charging backdated interest at all, including on amounts that are unpaid at the end of the offer period.
- 1.22** Industry respondents strongly opposed this proposed measure and the proposed implementation period of 3 months from the date the rules are published. We carefully considered the arguments made and conclude that we should go ahead with the measure as consulted on. However, we have extended the implementation period by 2 months to give firms sufficient time to make the necessary changes.

Equality and diversity considerations

- 1.23** We published an Equality Impact Assessment (EIA) in CP18/43. In the light of respondents' feedback, we have considered the equality and diversity issues that may arise from the rules and guidance we are making in this PS. We cover this further in Chapter 2. Overall, we do not consider that these measures result in direct discrimination for any of the groups with protected characteristics under the Equality Act 2010.

Next steps

- 1.24** If your firm is affected you need to comply with:
- the disclosure rules and guidance by 12 September 2019
 - the rule preventing backdated interest from being charged on repaid amounts by 12 November 2019
- 1.25** We will monitor the market to assess whether our new rules and guidance are leading to improved consumer outcomes. If we see evidence of consumer harm from, for example, changes to pricing that are designed to recover revenue from the consumers we are seeking to protect with our rules and guidance, we will take further action.

2 Feedback to CP18/43 and our response

- 2.1** In this chapter, we summarise the main feedback we received to each of the questions we asked in CP18/43. We also set out our response to the feedback received and how we will proceed.
- 2.2** Overall, we will go ahead with the measures we proposed in CP18/43, subject to some minor amendments to the draft rules to clarify our intent, and a change to the implementation date for the partial repayment rule that we had proposed.

The BNPL market

- 2.3** In CP18/43 we described our view of the BNPL market, including a description of the product and the types of firms that offer BNPL. We asked:

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

- 2.4** Ten of the 13 respondents commented on our description of the BNPL market, including that:
- The proposed definition of 'BNPL credit' would not include all the products we intended, and conversely that there was a risk it would unintentionally include other types of products. Some commented that we had not explicitly stated that BNPL products offer a payment holiday feature.
 - Our references to 'promotional periods' led to concern that there was a risk that we were confusing the product with pure interest-free products (which are different to BNPL, which has a conditional interest-free period, that depends on the consumer repaying the balance by the end of the offer period).
 - The tone of the description was negative. Industry respondents pointed out that many consumers use BNPL offers in a way that does not incur interest, and benefit from the product.
 - Our description did not recognise the differences between fixed sum and running account products.
 - Some respondents queried the interaction of our proposed partial repayment rule with existing consumer credit legislation, particularly sections 95 and 96 of the Consumer Credit Act, and the supporting 2004 Early Settlement Regulations.

Our response

We have reviewed our proposed definition of BNPL credit. We have made some amendments to the definition to reflect our policy intent.

We did not mention the payment holiday aspect of a BNPL offer in the definition of BNPL credit because it is not the focus of our concerns. Our concerns relate to the conditional nature of the interest-related aspect of the offer and whether consumers understand it, particularly given

the elapsed time (up to 12 months) before the trigger point is arrived at which determines whether interest is charged or not.

A pure payment holiday product, that incurs interest throughout the payment holiday, was not the focus of our concerns. This is because the conditional aspect of a BNPL arrangement, that drives whether interest is charged or not, does not exist in a pure payment holiday product. The differential treatment of partially repaid amounts, with the ensuing complexity and lack of clarity for consumers, also does not exist in a pure payment holiday product.

We did not intend the definition of BNPL credit to capture all forms of promotional interest-free periods, or low interest periods. For example, the normal interest-free period on a catalogue or store card credit product, which applies if a customer pays off their balance in full, would not be caught by our final definition.

We acknowledge that BNPL works for many consumers, who do not incur interest, and find it a useful way of deferring payment and helping them to manage their budgets. We also acknowledge that incurring interest is not inherently harmful, as it is an inherent feature of a credit product.

Our concerns relate to the complexity of the product caused by the differential treatment of partial and full repayments, the impact we think this has on the ability of consumers to understand it (ie the complex nature of the method by which interest is triggered or not), and the impact this has on incentives for consumers to repay their debt during the BNPL offer period.

We are aware of the differences between fixed sum and running account products. We are satisfied that our proposals are compatible with existing consumer credit legislation, including requirements relating to partial early settlement.

BNPL – disclosure measures

Adequate explanations

2.5 In CP18/43 we proposed to extend the rule (CONC 4.2.15R (8)), that had been made in relation to catalogue credit and store card providers, to all firms offering BNPL. The rule requires firms to disclose to their customers the method by which they will be charged interest if they fail to repay within the BNPL offer period. We asked:

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

2.6 Of the 13 respondents, 12 agreed with the proposal, and the other did not express a view. Five respondents made further comments, including that:

- The remedy may be less useful to vulnerable consumers, because they are generally less responsive to information that is disclosed to them.
- It is important that the information is written in clear language that is capable of being understood by consumers.
- There should be a prescribed format for the information disclosures, and that communications should be customised or personalised, eg including the actual date of the credit agreement.
- Firms may exploit consumer behavioural biases, so these products should be explicitly marketed as credit products rather than BNPL products.
- Firms should provide worked examples of the amount of credit to be repaid.
- The draft rule refers to interest being applied without account being taken of repayments made during the offer period, and asking for us to explain whether this will be amended if we ban backdating of interest.
- Some products may not end up as BNPL/credit products, eg where there is a grace period, during which goods can be returned, or the cost can be paid in a small number of instalments. We were asked whether the adequate explanation should be given at the point of sale (even though BNPL/credit is a possibility, but not definite), or at some intermediary stage before the product transitions into a BNPL product.

Our response

We welcome the support for the proposal and will go ahead as planned.

We acknowledge that vulnerable consumers may react differently to information disclosure, and expect firms to consider the information needs of all their consumers, including their vulnerable consumers.

We agree that information needs to be clear and comprehensible, although we do not consider it needs to be in a prescribed format or include worked examples. It is more important that firms have the flexibility to be able to tailor their communications for their customers, bearing in mind their knowledge of how their customers react to different forms of disclosure.

These are credit products, and should be marketed as such. Our package of disclosure remedies is intended to enhance the quality of information provided to consumers.

We have not amended the draft rule, CONC 4.2.15R(8), to delete the reference to charges not taking account of 'repayments made during the offer period', as this rule is in principle capable of applying to credit agreements other than BNPL agreements which are subject to the backdating rule.

Our rules already require that the adequate explanation should be provided to the customer before the agreement is made.

Prompts

2.7 In CP18/43 we proposed to extend the rule (CONC 6.7.16A R), that had been made in relation to catalogue credit and store card providers, to all firms offering BNPL. The rule requires firms to provide clear, prominent and timely notice to consumers before the end of a BNPL offer period. We asked:

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

2.8 Of the 13 respondents, 12 agreed with the proposal, and the other did not express a view. Five respondents made further comments, including that:

- The prompt may be made too late to be effective for consumers, particularly vulnerable consumers who would be more likely to need to spread the repayments over more than one payment cycle.
- Our rules should be more prescriptive, both regarding the timing of the prompt, and what we mean by requiring it to be 'prominent'.
- It is important that the prompt is written and presented in a way that the consumer understands.
- We should take swift supervisory action if our monitoring of the market indicates that prompts are being provided too late, or not having the desired impact.

Our response

We welcome the strong support for the proposal and will go ahead as planned.

We agree that the prompts need to be provided to consumers in a timely way. We also agree that the prompt needs to be comprehensible to consumers, and sufficiently prominent.

There is a balance to be struck between making the guidance more detailed or prescriptive in nature, and making sure that it remains sufficiently flexible so that firms can tailor communications for their customer base (given their knowledge of the information needs of their customers). Having reflected on the feedback received, we consider we have struck the right balance.

We will monitor the market and take further action if we see evidence that consumer outcomes are not improving, either in the form of further policy interventions or on a firm-specific basis.

Advertising and other communications

2.9 In CP18/43 we proposed new guidance for all firms offering BNPL. The draft guidance clarified that firms should present BNPL offers in a clear and balanced way, highlighting relevant risks in a prominent manner. This could include the limitations that might apply to promotional or introductory offers, and the circumstances and method by which they apply interest. We asked:

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

2.10 Of the 13 respondents, 12 agreed with the proposal, and the other did not comment. Three respondents made further comments, including that:

- The guidance should be more prescriptive, eg prescribed forms of wording, and where it should appear.
- The guidance should be supported by examples.
- The language should be comprehensible to the average consumer of the product in the target market.

Our response

Given the strong support for this proposal, we will go ahead with the guidance as consulted on.

We agree that the language firms use in their communications needs to be capable of being understood by consumers, and that firms need to consider the financial capability of the consumers in their target market.

We expect firms to do this as part of their general obligations under Principle 7 of our Principles for Businesses, which states that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

There is a balance to be struck between making the guidance more detailed or prescriptive in nature, and making sure that it remains sufficiently flexible so that firms can tailor communications for their customer base (given their knowledge of the information needs of their customers). Having reflected on the feedback received, we consider we have struck the right balance.

Partial repayment

2.11 In CP18/43 we outlined our proposal for a new rule that would prevent firms from charging interest in relation to amounts repaid by the consumer during the BNPL offer period. We asked:

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

2.12 Consumer groups welcomed our proposal. They also suggested we should go further and ban firms from backdating interest at all, including in relation to the balance that remained unpaid at the end of the offer period.

2.13 Industry respondents strongly opposed our proposal. The main points raised are summarised below.

Rationale for the intervention

2.14 Industry respondents argued that they should be allowed to charge backdated interest on repaid amounts, although only up to the point the sum was repaid, and consequently viewed our proposal as unfair and too far-reaching.

Incentives

2.15 It was suggested that not being able to charge backdated interest will remove the incentive for consumers to make repayments throughout the BNPL offer period. It was argued that consumers may decide to make repayments towards the end of the offer period, if they will not be charged interest anyway.

2.16 One firm suggested that it would not be reasonable to ask consumers to repay earlier in the offer period, as the firm would be receiving the financial benefit of such a course of action (early part repayment), rather than the customer.

Potential firm responses

2.17 It was suggested that firms might respond by:

- increasing interest rates or making changes to the structure of the product to recoup any revenue they may lose because of our proposal
- not lending to consumers viewed as poor credit risks, if they cannot do it on the terms they currently do
- withdrawing from the BNPL market, potentially impacting retail sales and the wider economy

Consistency with approach to credit cards

2.18 Some respondents felt our approach is inconsistent with our approach to credit cards. It was argued that credit cards operate in a similar way, having a potential interest-free period that is conditional on the customer meeting certain obligations. Paying off the full credit card balance by a certain date will lead to no interest being charged, whereas a failure to repay the full balance by that date will result in interest being charged from the date of purchase.

2.19 There were concerns that the way the definition of 'BNPL credit' was drafted would mean that short term credit card-like retail finance accounts would be unintentionally impacted.

Embedding of disclosure remedies

2.20 Some suggested we should allow our package of disclosure remedies to embed before we make a product intervention such as this, so that a further assessment can be made about whether the harms that concern us have been adequately addressed.

Consumer credit legislation

- 2.21** It was suggested that the remedy may not be compatible with firms' requirements under the Early Settlement Regulations (2004) and s.95/96 of the Consumer Credit Act.

Terminology

- 2.22** Some respondents felt we should refer to 'deferred' rather than 'backdated' interest. It was argued that the word 'backdated' gives the impression that this is being done retrospectively, which the industry does not view as being the case. Some firms apply interest throughout the offer period, and then rebate it if the consumer repays the entire loan by the end of the offer period.

Our response

Having considered the competing arguments from consumer groups and industry, we have decided to go ahead with this new rule substantially in the form proposed in our consultation.

We do not agree with consumer groups that firms should be banned from charging backdated interest on amounts that have not been repaid by the end of the offer period, provided this has been disclosed to the consumer when the agreement was taken out.

We do not agree with industry respondents that the remedy is disproportionate and that firms should be allowed to charge interest up to the point that any money is repaid. Although we do not have an inherent objection to the general practice of firms charging interest on money that is owed to them, we do have concerns in the specific context of this product, which are outlined below.

Below we have set out our responses to the various issues raised by industry respondents.

Rationale for the intervention

This is currently a complex product. The complexity is caused by the way interest is charged in relation to partial repayments made during the BNPL offer period.

Partial repayments made during the offer period are treated differently, depending on whether the full balance is ultimately cleared at the end of the offer period. This causes confusion for consumers when they are deciding what the best strategy is to repay their balance.

If a consumer knows they will be able to repay the entire balance by the end of the offer period, then the optimal approach is to repay it as late as possible in the offer period. This is because they will not incur interest anyway in that case. However, if they then fail to repay in full, they will ultimately incur more interest than they would have done if they had made repayments sooner.

If a consumer knows they will not be able to repay the entire balance by the end of the offer period, under current pricing the optimal approach is to repay as much of the loan as possible, as soon as possible. This will reduce the interest they incur. However, if they do then manage to clear the balance by the end of the offer period, it could be argued there was no financial benefit in the consumer having repaid sooner than the end of the offer period (although there may be other benefits, such as budget management).

The key point is that the consumer may not always know, at the point they are considering whether to make part repayments during the offer period, whether they will ultimately incur interest. So, the consumer might not be sure what their optimal repayment strategy is, which creates confusion.

In extreme cases, where a consumer has repaid the majority of the balance towards the end of the offer period with the intention of repaying the balance in full, but due to unforeseen circumstances has been unable to fully clear the balance, the current product structure would lead to large interest payments on effectively the entirety of the balance in spite of the majority of the original balance being paid off.

We want to change the structure of the product so that there is consistent treatment of sums repaid in the offer period, regardless of whether the balance is ultimately cleared. This will create a simpler product that is easier to understand.

This will mean that consumers are rewarded for having made part repayments during the offer period, which should encourage them to make such repayments. This should incentivise the repayment of more capital during the offer period, therefore incurring less interest.

This new rule will provide greater clarity for consumers, and a clearer environment in which to make their decisions about how to repay their loan. This will be supported by the improved information that consumers should get because of our other remedies.

Regardless of the enhancements we are proposing in respect of our disclosure remedies, the method of charging interest during the initial BNPL period still involves considerable complexity, which many consumers may not fully understand, so we are going ahead with the new rule.

Incentives

We recognise that the absence of daily interest being charged during the offer period will remove a financial incentive for consumers to repay early in the offer period.

There are also non-financial incentives that we would expect to drive consumer repayment behaviour. Consumers may seek to make part repayments during the offer period as a budgeting mechanism (rather than being solely motivated by a desire to avoid interest charges).

It should be noted that the argument put forward by industry respondents relies on consumers understanding the accrual of daily interest and the backdating method. Although our disclosure remedies are designed to improve consumer understanding of the product, our CBA in CP18/43 made clear that we only expect small shifts in consumer behaviour because of better disclosure. We expect that the primary driver of the benefits of this policy will be the structural change to the product, rather than any secondary behavioural effects

Overall, the fact that consumers will now get full benefit for any part repayments should create a financial incentive for consumers to repay during the offer period. We expect the net effect to be increased incentives to repay during the offer period.

Potential firm responses

We have not seen strong evidence to suggest that firms will withdraw from the market. We would expect, in a properly functioning competitive market, that market forces would lessen significant pricing increases. However, we will monitor the market for any significant changes to product structure and pricing that seek to recover revenue from those consumers we are seeking to protect with this package. If we see evidence of consumer harm from firms' practices, then we will consider whether further interventions are appropriate.

In any case, we do not accept this would have a significant impact on consumer access to credit (because there will often be alternative forms of credit available to consumers, although it would be interest-bearing rather than potentially interest free, as is the case with BNPL deals).

Regarding any potential impact on the wider economy, it is highly unlikely that the underlying products are entirely dependent on sale through BNPL, and as such the impact on the underlying product, and the wider economy, is unlikely to be significant

Consistency with approach to credit cards

There is a distinction between short and long-term credit products. BNPL operates over a longer period than credit cards.

The potential conditional interest-free period on BNPL is generally in the range of 3-12 months. The equivalent potential conditional interest-free period on a credit card is generally a maximum of 2 months.

This gives rise to increased potential for consumer harm in the case of BNPL because there is much longer for interest to accrue. Consumers are also more likely to be affected by behavioural biases for longer term decisions.

We have amended the proposed definition of 'BNPL credit' in the Handbook. This now makes clear that short-term credit card-like retail finance accounts are excluded from the definition.

Embedding of disclosure remedies

We have an objection to the practice of backdating interest on amounts repaid during the offer period, for the reasons outlined above. However good the disclosure environment, we would still want to make this product intervention – it will simplify the product for consumers and ensure consistency in the treatment of repaid sums, regardless of whether consumers understand the product disclosures.

Given our knowledge of how consumers react to disclosure remedies, which is reflected in our CBA assumptions, it is unlikely that any behavioural change by consumers in response to our disclosure remedies would be significant enough on its own to persuade us that further intervention on the backdating of interest was not required.

Consumer credit legislation

We have considered the interaction of the partial repayment proposals with requirements to rebate interest in the event of early repayment of a fixed sum credit agreement. These requirements do not apply to the many BNPL products which operate as running accounts. For those which are fixed sum credit, we are satisfied that the proposals are consistent with these requirements.

Terminology

We use the word 'backdated' because it reflects our view of the way that consumers are likely to understand this practice. At the point during the BNPL offer period when consumers make a partial repayment, they do not know whether they will ultimately incur interest in relation to that amount.

It will depend on whether they are ultimately able to repay their entire balance, in which case they will not incur interest in relation to the part repayment in question. If they are not able to clear the entire balance, they will incur interest (under current arrangements) on the amount of that part repayment (up until the date that they made the part repayment).

So, the consumer may not know whether they are being charged interest on the amount of that part payment until the end of the offer period, at the point when they fail to repay the entire balance - this is the point that determines whether backdated interest will be charged or not.

Implementation

Implementation date

2.23 In CP18/43 we proposed that the new rules would come into force 3 months after publication. We asked:

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

2.24 Nine of the 13 respondents agreed with our proposal. Four industry respondents disagreed with the proposal. Respondents made the following points in relation to the partial repayment proposal:

- It will require substantial changes to core IT systems, because of the change to the way interest is calculated and applied to accounts.
- This would require significant lead time to plan, develop and test. There were concerns that 3 months will not be sufficient time to perform these activities.
- This will require extensive process changes impacting all areas of the product lifecycle, as well as significant staff training.
- Various alternative implementation periods were suggested, ranging from 6 to 12 months from publication of the rules.

Our response

Disclosure measures

The rules for the disclosure measures will come into force on 12 September 2019, 3 months after publication, as planned.

Partial repayment rule

The partial repayment rule will come into force on 12 November 2019, 5 months after publication. This gives firms an additional 2 months to make the changes necessary to comply with the rule.

There is a balance to be struck between making sure that firms have sufficient time to make this change, and bringing in this measure as soon as possible to protect consumers.

This is a significant change. We accept that firms will need longer than 3 months to ensure that the change is done properly, without creating operational resilience risks by putting unacceptable pressure on IT systems. But, we do not accept that firms need the length of time that has been suggested by some industry respondents. While being willing to extend the implementation period, we do want consumers to benefit from this change as soon as is possible.

Our extension will give the industry 5 months, rather than the 3 months originally proposed, to make the necessary changes. We consider this a reasonable response to the concerns raised by industry respondents, that it should give firms sufficient time to make the IT changes required and appropriately test them, to mitigate any risk to operational resilience. Implementing the changes in early November will ensure that the high number of consumers shopping before Christmas will benefit from the new measure.

Application of partial repayment rule to new purchases

2.25 In CP18/43 we proposed that the partial repayment rule would not apply retrospectively to purchases already made. We proposed that it would apply to new

purchases made after the implementation date, including where those purchases are made under a pre-existing contractual agreement. We asked:

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

2.26 Eight respondents agreed with the proposal, and 1 did not comment. Four respondents disagreed with the proposal, making the following points:

- Two consumer groups felt the new rule should be applied to purchases that had been made before the new rule came into effect.
- Two industry respondents felt the new rule should not be applied in relation to purchases made in relation to existing agreements.
- One respondent regarded this as retrospective action, because of the impact on existing contractual agreements.
- One respondent argued it is not reasonable to assume that the revised terms offered to existing customers will be universally attractive to customers, so firms would not be relieved of their duty to give notice to customers, which would require lead time. They also noted that if firms react by increasing interest rates, some customers might find this unacceptable and firms may withdraw from offering the product.

Our response

We welcome the broad support for the proposal, and will go ahead as planned.

We do not consider it would be appropriate to apply the rule retrospectively to purchases that had been made before the rule came into effect. It would be disproportionate to require firms to change the way they charge interest in relation to purchases already made under existing contracts, in advance of the new rule being implemented.

We have noted elsewhere in this PS that we will monitor firms' reactions in response to this proposal, and that we will act if we see evidence of consumer harm.

We continue to believe it is important that all consumers are treated equally from the point the new rule takes effect. Consumers should benefit from the new rule, regardless of whether they are making new purchases under existing or under new contractual arrangements.

Cost benefit analysis (CBA)

2.27 In Annex 2 of CP18/43 we published a CBA of our BNPL proposals in Chapter 4 of that CP. We asked:

Q8: Do you agree with our cost benefit analysis?

2.28 We received several comments on our CBA. Below we summarise the issues raised in relation to the CBA that have not been addressed elsewhere in this chapter.

Unsuitable purchases

2.29 Some respondents were concerned that we were making judgements about whether a purchase is suitable, because the CBA mentions 'customers being better off not having made the purchase'. The point was made that not all purchases are discretionary.

2.30 It was also stated that any consumer not purchasing a product will be better off financially, because they have not spent the money. However, they will not have the product, and it was questioned how we are able to form a judgement as to whether a customer is better or worse off (ie whether the customer needs the product or not).

Impact of increased interest rates

2.31 Some respondents felt the CBA had not considered a potential unintended consequence, of firms increasing interest rates in response to this rule.

2.32 They made the point that this proposal will only benefit consumers who repay in part during the BNPL offer period; it will not benefit those who repay in full, or those who do not repay at all.

2.33 It was noted that if interest rates are increased then:

- consumers that partially repay by the end of the offer period could incur greater interest costs (on their outstanding balance after the offer period)
- consumers that have not repaid anything by the end of the offer period will also incur higher interest costs (during and after the end of the offer period)

Market impact

2.34 Some respondents felt the CBA did not take account of what could be the actual impact of the proposal, if firms responded by withdrawing from the BNPL market. Some felt that there are no fully substitutable products for BNPL.

2.35 It was suggested that a contraction in the BNPL market could cause consequential harm to the retail sector and wider economy.

Benefits estimates

2.36 One respondent felt that our reference to significant additional benefits, such as the psychological benefits of a reduction in debt, was not based on actual evidence. It was also noted that the span of some of the benefits figures was wide.

Consumer biases

2.37 One respondent noted that we had assumed that the consumer biases inherent in the Credit Card Market Study will apply equally to the BNPL market, and suggested we did not have evidence to support this.

Industry-wide price restriction

- 2.38** One respondent argued that an industry-wide price restriction of this sort is not the optimal tool to address the identified problem, because there is variability in outcomes across the industry.

Consumers paying more than necessary

- 2.39** One respondent felt that the appropriateness of cost is driven by the cost to the provider of lending, including funding costs/credit risk, and competitive price pressures applied by substitutable forms of credit available to that target market.
- 2.40** It was felt that given the credit risk profile of their target market, alternative forms of credit are likely to be more expensive (for those that incur interest using BNPL) and that anything else will be higher than the 0% interest incurred by those BNPL customers that pay off their loan within the offer period and never incur interest.
- 2.41** It was also argued that customer repayment patterns at some firms suggest that customers understand the product, and that by choosing such products in an informed way, customers are signalling that they consider the cost to be proportionate.

Causal chain/unforeseen interest charges

- 2.42** One respondent agreed that disclosure remedies can target and reduce the level of unforeseen interest charges. However, they argued that the ban on backdating interest will not do that, because it will reduce interest charged across the board, regardless of whether the customer has foreseen the interest or not.
- 2.43** They believe the ban is more likely reduce interest charges that had been foreseen by consumers, and will therefore go beyond its stated purpose. They do not believe we have made a clear case as to why it is necessary to reduce interest that is foreseen by a consumer, so argue that the ban is excessive and unnecessary.

Our response

The feedback we received on our CBA has not given us reason to make changes to it.

We deal with the issues raised below.

Unsuitable purchases

We accept that not all purchases are discretionary. Clearly some purchases will be for essential goods (eg replacing a broken cooker), whereas some purchases may generally be regarded as non-essential. Where the line is drawn between these broad categories is subjective, and we do not suggest where it is drawn in particular cases.

Overall, some purchases will be discretionary, and so the customer could arguably be financially better off if they do not make the purchase

Our estimates of benefits in instances where consumers no longer purchase the product because of our intervention account for the fact that the consumer no longer has the product by netting-off the original

face value of the product. The benefits therefore refer to the saved interest resulting from our intervention as opposed to the total value of the product.

Impact of increased interest rates

It is correct that consumers that will benefit the most from the partial repayment rule are those that repay in part by the end of the offer period.

However, the view that other groups of consumers will suffer more harm than currently, assumes that interest rates will be increased in response to this intervention.

It is true that if rates were increased then those customers that incur interest would pay more interest than they otherwise would. Whether firms respond in that way is at their discretion. We have made clear in this PS that we expect competitive market forces to lessen the risk of firms raising interest rates to recoup revenue they have lost because of our new rule.

Market impact

There are several potential effects arising from our policy, including: firms could stop being profitable and exit the market; firms could reduce access for some consumer groups; and firms could raise interest rates to compensate for losses.

This could result in 2 primary outcomes: lower access or higher prices (or a combination). In both cases, there will often be alternative forms of credit available, which might be higher price or shorter term in nature.

On the economic impact, our CBA did cover the issue of what alternatives consumers might turn to if they don't buy the product using BNPL. There are a range of options. They could purchase from alternative retailers, the same retailer, or in some cases decide not to purchase at all.

It is unlikely that what would have been spent on the BNPL purchase is not spent at all, and therefore there is unlikely to be a significant impact on the sector in terms of demand.

If a firm or firms were to exit the market, there are likely to be some associated losses. However, these losses would not necessarily be significant to the retail sector, because consumers are still likely to purchase products, potentially through alternative forms of credit where possible.

Benefits estimates

While we believe the significant additional unquantified benefits are material, they are not the marginal factor which has resulted in us pursuing this policy. In the absence of those benefits, we still believe the costs of the policy are exceeded by the benefits. We highlighted them in the CBA because they do form part of our qualitative consideration of the benefits of the policy.

As explained in the CBA, the size of our estimates' range is proportional to the degree of uncertainty we feel there is in the behavioural response of consumers to the disclosure remedies. This uncertainty should be contextualised against the fact that even at the upper-bound behavioural response, we expect the impact of disclosure to be limited in scope.

Consumer biases

We still believe it is reasonable to assume that the general points we made about behavioural biases in the CBA (eg present bias, overconfidence, framing/anchoring effects) will apply across products, including BNPL.

We did not state that the consumer biases are more pronounced for BNPL, simply that we would expect to see them in a similar way to what we see in relation to other products.

Industry-wide price restriction

Inevitably, there are variable experiences and outcomes across the industry. However, regardless of the outcomes at any individual firm or across the industry, we regard this practice as harmful (for the reasons stated elsewhere in this PS). The fact that a smaller number of customers are negatively affected in some firms compared to others, does not make the practice acceptable in those firms.

Consumers paying more than necessary

The focus of our statements about consumers paying more interest than necessary, were on those consumers that do incur interest. We were comparing what they currently pay to what it would cost them if they used the product in a more beneficial way. If they understood the product, and reacted in the optimal way, they would repay the debt sooner, so far as they are able, and incur less (or no) interest.

We do not agree with the suggestion that consumers necessarily consider the cost to be proportionate, simply by having chosen it. This relies on too many assumptions, including about the extent to which consumers understand the product, and the extent to which they understand what other options might be available to them. For example, repayment of the balance within the offer period does not necessarily imply that customers understand the accrual of interest outside of the offer period.

Causal chain/unforeseen interest charges

The partial repayment remedy is part of a package. Clearly the disclosure remedies in the package are aimed at reducing the extent to which consumers do not foresee interest charges. However, the partial repayment remedy is not aimed solely at reducing 'unforeseen' interest, it is targeted at reducing an intrinsic harm (as described elsewhere in this PS).

Equality Impact Assessment (EIA)

2.44 CP18/43 contained an EIA relating to our BNPL proposals that were set out in Chapter 4 of that paper. Our initial assessment was that our proposals did not result in direct discrimination for any groups with protected characteristics. We asked:

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

2.45 Nine respondents did not comment on this question. Four respondents did comment, 3 of whom expressed support for the EIA. Those that commented raised the following points:

- That the EIA should be extended to assess how proposed remedies are likely to work for target groups.
- One respondent drew our attention to the specific needs of people with mental health issues.
- One respondent noted that we had not explicitly mentioned the impacts on BAME groups.

Our response

We do not consider there to be any evidence that would alter or contradict the view we reached in our initial assessment. Our CBA has confirmed a net benefit to consumers because of the measures we are introducing.

We will take account of any equality and diversity implications as part of monitoring the impact of our proposals on the BNPL market.

We do not believe that our measures will have any specific impact in relation to BAME groups. We consider that our proposals will have a positive impact on all consumers, including groups with protected characteristics.

We have updated our assessment to take account of the information supplied about the specific interests of people with mental health issues. As noted elsewhere in this PS, we expect firms to take account of the information needs of all customers when designing and providing disclosure information. We also note that our partial repayment remedy will benefit all consumers that partially repay their balance by the end of the BNPL offer period, and does not rely on changes in consumer behaviour in response to our remedies.

Annex 1

List of non-confidential respondents

British Retail Consortium

C McCarthy

Christians Against Poverty

Citizens Advice

Citizens Advice Scotland

Consumer Panel

Finance & Leasing Association

Money Advice Trust

StepChange

The Law Society of Scotland

The Money Charity

Annex 2

Abbreviations used in this paper

BNPL	Buy Now Pay Later
CBA	Cost Benefit Analysis
CCA	Consumer Credit Act 1974
CONC	Consumer Credit Sourcebook
CP	Consultation Paper
EIA	Equality Impact Assessment
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act
PS	Policy Statement

Implication of EU withdrawal

We consulted in the CP on the basis that EU law would continue to apply when the rules come into force under a transitional period arising under a withdrawal agreement. We are making the rules on the same basis.

In the event of the UK leaving the EU without a withdrawal agreement, our approach seeks to ensure that our rules capture the same firms and activities as originally proposed. If there is not an implementation period and the passporting regime falls away when the UK leaves the EU, EEA firms who currently passport into the UK and wish to continue operating in the UK will be subject to the temporary permissions regime or the financial services contracts regime** (which covers supervised run-off firms and contractual run-off firms).

In that scenario, we expect to make provision to ensure that firms that would have been within scope of our rules before EU withdrawal will still be subject to them after EU withdrawal. We may need to update our rules to secure this effect, or issue guidance or other clarifications about their scope. We would not expect to re-consult on that change.

* The government has introduced a temporary permissions regime to allow EEA firms which previously passported into the UK to continue operating. If the UK leaves the EU and is not subject to EU law, such firms should notify the FCA (before the UK withdraws from the EU – the precise details about notification are on the FCA website www.fca.org.uk/brexit/temporary-permissions-regime.) that they wish to obtain a temporary permission under the new temporary permissions regime.

** The government has introduced a Financial Services Contracts Regime to enable EEA former passporting firms who do not enter the temporary permissions regime to wind down their UK business in an orderly fashion. EEA firms which have not obtained temporary permission and which would require UK permission would be subject to the Financial Services Contracts Regime.

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Appendix 1

Made rules (legal instrument)

BUY NOW PAY LATER INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on:
- (1) 12 September 2019 for Annex A and Part 1 of Annex B; and
 - (2) 12 November 2019 for Part 2 of Annex B.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Buy Now Pay Later Instrument 2019.

By order of the Board
30 May 2019

Annex A

Amendments to the Glossary of definitions

This Annex comes into force on 12 September 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- BNPL agreement* a regulated credit agreement (whether an agreement for running-account credit or fixed-sum credit) which is a *borrower-lender-supplier agreement*:
- (1) to finance the acquisition of *goods*, or *goods* and services, from:
 - (a) the *lender*; or
 - (b) a supplier that is in a limited network of suppliers under a direct commercial agreement with the *lender*,

and where the *credit* cannot be used for any other purpose, including an agreement for a store card but excluding an agreement for a credit card; and
 - (2) the terms of which have or may have the effect that some, or all, of the *credit* advanced under the agreement meets the definition of *BNPL credit*.
- BNPL credit* *credit* in relation to which provision is made that:
- (1)
 - (a) no, or reduced, interest or charges are payable by the *borrower* in respect of an initial period of 56 days or more (“the promotional period”) if the *borrower* repays all or a specified part of the *credit* advanced on or before a certain date; and
 - (b) in the event that the *borrower* does not make payment in accordance with the provision in (a), interest or charges are payable, or are payable at a higher rate, in respect of all or part of the promotional period; or
 - (2) the *borrower* will be entitled to a refund or rebate in relation to all or part of the interest or charges payable by the *borrower* in respect of an initial period of 56 days or more if the *borrower* repays all or a specified part of the *credit* advanced on or before a certain date.
- BNPL payment condition* a provision in a *BNPL agreement* that has the effect described in (1)(a) or (2) of the definition of *BNPL credit*.

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 12 September 2019

3 Financial promotions and communications with customers

...

3.3 The clear fair and not misleading rule and general requirements

...

3.3.11 G ...

“Buy now pay later” or similar offers

3.3.11A G (1) *Firms are reminded that the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), as well as Principle 7 and CONC 3.3.1R, apply to communications and financial promotions in relation to BNPL agreements, including communications with borrowers under existing agreements.*

(2) *A communication or financial promotion in relation to a BNPL agreement is likely to be misleading by omission if it:*

(a) *refers to a zero percentage or low interest, introductory or other promotional offer available under a BNPL agreement;*

(b) *does so in a way that is likely to influence a customer’s decision about whether to enter into a BNPL agreement or whether and how to make use of credit available under an existing BNPL agreement; and*

(c) *does not also include in a fair and prominent manner material information about relevant risks.*

(3) *A firm should also consider whether other communications or financial promotions in connection with BNPL agreements could be misleading by omission if those communications or financial promotions do not also include in a fair and prominent manner material information about relevant risks.*

(4) *Relevant risks relating to BNPL credit include the limitations that apply to any zero percentage or low interest, introductory or other*

promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. The average consumer is likely to need information about these matters to make an informed decision about whether to enter into a BNPL agreement, or whether and how to make use of credit available under an existing BNPL agreement.

- (5) The information that a communication or financial promotion about a BNPL agreement is required to include to avoid a misleading effect, and how that information should be presented, will depend on the context of the communication or financial promotion, including its medium and any other information that the firm has provided to the recipient.

...

4 Pre-contractual requirements

...

4.2 Pre-contract disclosure and adequate explanations

...

Adequate explanations in relation to particular regulated credit agreements

- 4.2.15 R The following information must be provided by the lender or a credit broker as part of, and in addition to that provided under, the adequate explanation required by CONC 4.2.5R, where applicable, in the specified cases:

- (1) for credit token agreements:

...

- (e) except in relation to retail revolving credit and BNPL agreements, the limitations on any zero percentage or low interest or other introductory offer; and

...

...

- (8) for retail revolving credit and BNPL agreements, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If,

for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from the date of the purchase of the *goods* or services or on the total purchase price of the *goods* or services without account being taken of *repayments* made during the offer period, this must be included in the adequate explanation.

...

...

6 Post contractual requirements

...

6.7 Post contract: business practices

...

6.7.16 R ...

“Buy now pay later” or similar offers

6.7.16A R (1) This *rule* applies only to *retail revolving credit agreements* and *BNPL agreements* to which Part 6 of the *Payment Services Regulations* does not apply.

...

Part 2: Comes into force on 12 November 2019

6 Post contractual requirements

...

6.7 Post contract: business practices

...

Partial repayments under “Buy now pay later” or similar offers

6.7.16B R (1) This *rule* applies where:

(a) *BNPL credit* has been advanced to a *customer* under a *BNPL agreement*; and

(b) the *customer* makes a repayment:

- (i) of part of the *BNPL credit*;
- (ii) on or before the date provided for in the *BNPL payment condition* that applies to that *BNPL credit*.

(2) The *BNPL agreement* must have the effect that, in respect of so much of the *BNPL credit* as has been repaid, the *customer* is liable to pay no more than the *customer* would have been liable to pay if the *BNPL credit* had been repaid in full on or before the date provided for in the *BNPL payment condition*.

TP 8 Other transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
<u>2</u>	<u>CONC 6.7.16B</u>	<u>R</u>	<u>A firm need not comply with CONC 6.7.16BR in respect of drawdowns of credit made on or before 12 June 2019.</u>	<u>From 12 November 2019</u>	<u>12 November 2019</u>
<u>3</u>	<u>CONC 6.7.16B</u>	<u>G</u>	<u>The effect of TP 2 is that where an agreement allows for multiple drawdowns, a firm must comply with CONC 6.7.16BR in respect of drawdowns of credit made after 12 June 2019, but need not do so for drawdowns made on or before this date.</u>	<u>From 12 November 2019</u>	<u>12 November 2019</u>

