



Buy Now Pay Later Offers

FLA Response

1. The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes. In 2018, FLA members provided £137 billion of new finance to UK businesses and households.
2. We welcome the opportunity to comment on the FCA's Consultation Paper (CP18/43) on Buy Now Pay Later (BNPL) offers.

Executive Summary

- Buy Now Pay Later (BNPL) products are a long-established feature of retail shopping (both on-line and in-store), allowing large numbers of consumers to buy essential household goods without incurring interest. They provide real benefits to customers and we look forward to working with the FCA to deliver a framework of protections which is both fair and proportionate.
- We agree that the new rules which have been applied to catalogue and store card lenders on adequate explanations and promotional prompts should be applied to all BNPL providers. This will ensure a consistent approach for consumers. Many of these firms are already providing the additional information, as evidenced in the FCA's research.
- It is disappointing that the FCA did not wait to see how this first phase of informational remedies were working in practice before seeking to apply additional measures. Early feedback has shown that, in some cases, these are having a significant impact on customers repaying in full within the BNPL period.
- We do not agree with the proposals for restricting how interest is charged and believe these could act as a major disincentive for customers to repay - which would run counter to the FCA's overall objective of encouraging early repayment. It could also lead to retailers moving away from providing 'no cost' BNPL products, thereby restricting the availability of interest-free options for consumers at point-of sale.
- A more practical approach would be to apply a daily interest calculation, which incentivises customers to pay 'little and often' to reduce the amount accruing. This would be a fairer approach for both lenders and consumers and result in more effective early repayment strategies for customers.

General remarks

Responses to specific questions

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

The overall tone of the description of the BNPL market is negative and the extensive references to 'harm' are disappointing. BNPL is not a 'harmful' product per se and over half of all BNPL customers use it in a way to help them manage their household budgets and buy goods on credit without incurring interest. These benefits could have been more appropriately reflected in the description.

In the *Findings*, mention is made of the FCA's concern that while some customers benefit from BNPL, others incur higher costs. We agree that customers should receive clear information on how BNPL works, so they can make informed decisions and the new informational remedies will enhance the explanations lenders already provide. However the construct of the BNPL product is that customers will incur interest if payments are not made within the promotional period, despite all the information and prompts provided. The application of interest should not be viewed as automatically 'harmful', and in Question 5 below we comment on an alternative approach to how interest is charged which would benefit both consumers and lenders.

The description also does not recognise that there are some differences between fixed-sum and running-account credit BNPL, for example, the application of Section 95 of the Consumer Credit Act and the Consumer Credit (Early Settlement) Regulations 2004 dealing with rebates of interest where payments are made ahead of time.

We would urge the FCA to also look again at the definition of *BNPL Credit* in the draft rules, to ensure that it incorporates all the activities it is intended to and the risk of unintended consequences is avoided. We would be happy to explore this further with the regulator in light of all the different 'promotional' offers which are currently available and before a final policy decision is taken.

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

We agree that the new rule on adequate explanations should be extended to all firms, to ensure a consistent approach for consumers.

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

We agree that the new rules on prompts should be extended, again to deliver consistency for consumers.

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

We agree with the new guidance on communications and financial promotions.

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?

We do not agree with the proposed approach and believe it will run counter to the outcomes the FCA is trying to achieve, namely encouraging customers to have an early repayment plan so they make the most advantage of the BNPL offer.

While we agree with the proposal to prevent interest being applied in respect of the period *after* the partial repayment is made, we disagree with the proposal to ban the charging of interest in respect of the period *before* the partial repayment is made. Our view is that it is fair and reasonable for a firm to charge for interest accrued during this period. We therefore believe the proposal to ban the charging of interest accrued during this period has impacts beyond addressing the harm which the FCA is aiming to address, and constitutes a punitive measure.

Removing a lender's ability to charge interest on amounts repaid up to the point that the repayment is received also acts as a disincentive as customers gain no benefit whether they make partial repayments on the first day or the last day of the offer period. This could have unintended consequences of changing repayment behaviours in a detrimental way and could lead consumers to a position where more of them roll into interest bearing on the whole balance. The later a customer leaves it, the less chance there is of being able to afford to clear the balance in a single payment. This would also drive the sort of behaviour that the FCA wants to avoid.

A much more effective approach would be to incentivise customers to make repayments at an early stage during the BNPL period, to ensure any plans for repayment are not left until the last moment. A framework which provides for daily interest would be fairer in respect of partial repayments, as it would also encourage customers to repay earlier.

A daily interest calculation incentivises customers to pay 'little and often' in order to reduce the amount accruing. It also gets the customer into the habit of making repayments and, for those who cannot afford to repay in full in a single payment, will avoid the 'interest shock' at the end of the offer period. The daily interest model is not currently standard across the industry, but it would result in a better and fairer solution for all parties.

We would strongly urge the FCA to support a daily interest calculation, to encourage early repayment and deliver a more proportionate approach more aligned with current consumer credit regulation.

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

We believe that a six month implementation period should be allowed, as several hundred retail firms will need to update the information currently provided at point-of-sale and train thousands of staff accordingly. This could not be achieved within three months.

The backdating interest proposal will require substantial changes to all aspects of the customer lifecycle, including; advertising and financial promotions, adequate explanations and pre-contractual information, agreement terms and conditions, customer communications, and interest calculations. In order to implement these changes, firms will need to initiate extensive change projects which will include:

- Product design, development, and testing
- Complex changes to pre and post contractual IT applications
- Internal staff training
- Retailer training
- Broker oversight controls

Whilst firms can start planning for these changes in the short term, the majority of the work and system changes cannot be made until after the final policy statement is published. The backdating interest proposal in particular would require substantial changes to core systems which would be extremely challenging to implement within three months. It would be even more challenging for firms whose systems are outsourced to third party IT developers, where lead-in time for changes may be contractually determined.

A three month implementation period would result in the rules becoming effective in Q3 2019. We would comment that firms will be preparing for the implementation of the Senior Manager Regime around this time. This would therefore put a strain on non-IT resources within firms which are required for regulatory changes, such as Senior Management, Governance, Learning & Development, Legal, and Compliance.

In addition, a Q3 is a peak trading period for retailers. This would put strain on retail lending firms' ability to train and roll out the new requirements to staff.

We would strongly urge the FCA to consider a six month implementation period.

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?

We agree with this approach. Lenders will need time to update their relevant contractual information (eg, Terms and Conditions) and a six month period would be more appropriate – in line with Q6 above.

Q8: Do you agree with our cost benefit analysis?

We believe important aspects have been missed within the CBA.

The payment behaviour of customers who use BNPL credit falls into one of three categories:

1. Customers who repay in full during the offer period
2. Customers who repay in part during the offer period
3. Customers who do not repay during the offer period

The proposal on backdating interest only benefits those customers who repay in part during the offer period. The CBA has not considered the unintended consequence of firms increasing interest rates as a result of the backdating interest rule. Whilst there would be a cost saving for customers who repay in part during the offer period, there could be an increase in cost to these customers *after* the offer period as a result of higher overall interest rates after the expiry of the offer period. There could also be an increase in cost to customers who do not repay during the offer period.

Some BNPL agreements have an offer period whereby the customer pays no interest or charges if they pay in full and some BNPL agreements have an offer period where the customer pays a lower rate of interest or charges. The CBA has not considered the unintended consequence of firms moving away from 'no cost' offer periods, to 'low cost' offer periods. This could also result in an increase in cost to customers who repay in full during the offer period, and to those who repay in part during the offer period.

The CBA also includes a number of interesting assumptions:

- Paragraph 7 – Reference is made to consumers obtaining 'unsuitable credit' or paying 'too high a price' for the credit. If a customer fails to repay during the BNPL period then interest will be charged, however this should not automatically be seen as 'unsuitable' credit.
- Paragraph 9 – Mention is made of 'customers being better off not having made the purchase'. These are surely judgement calls for the customer based on all their circumstances.
- Paragraph 19 – While the CBA has looked at the costs and benefits of the proposed changes, it has not taken any account of the actual 'impact' of those changes. As noted above, if a proportionate approach is not adopted with regard to how interest is charged, and which would be fair to both lenders and consumers, we believe the availability of BNPL could decline and adversely impact all those customers who currently use it and incur no interest.
- Paragraphs 25 and 26 – 'Significant additional benefits' are referenced which demonstrate the proportionality of the proposals and which outweigh the compliance costs – however these have not been estimated at all. This a major assumption without being based on actual evidence.
- Paragraph 64 – The CBA does not expect large changes 'to the offering of BNPL' but expects that some customers may not have future access. If the FCA implements its proposals on interest charging, we could see retailers move away from offering BNPL. The implementation of a daily interest approach (see Question 5 above) would be more proportionate.
- Paragraph 88 – The span of savings for some of the remedies is extremely wide and needs further explanation. For example, in connection with clear and balanced promotions, this is referenced as being between £0.64m and 6.4m per year.

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?

We have no comments.

March 2019