

## **FCA Consultation**

### **CP25/23 Deferred Payment Credit (unregulated Buy Now Pay Later): Proposed approach to regulation**

#### **Submission by the Financial inclusion and Markets Centre (FIMC)**

#### **About The Financial Inclusion and Markets Centre**

The Financial Inclusion and Markets Centre is a dedicated unit of the Financial Inclusion Centre which focuses on financial services policy and regulation, financial market reform, and evaluating the economic, environmental, and social utility of finance. The new unit also covers work evaluating the impact of developments at the intersection of finance and technology including AI.<sup>1</sup>

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<sup>1</sup> [About | The Financial Inclusion Centre](#)

## Introduction

We are pleased to submit a response to such an important consultation. For further information, please contact Mick McAteer [mick.mcateer@inclusioncentre.org.uk](mailto:mick.mcateer@inclusioncentre.org.uk)

## Summary of our submission

- Buy now, pay later (BNPL),<sup>2</sup> sold well and used well by consumers, can be useful and enhance consumer welfare. But, as the FCA rightly highlights, a significantly higher proportion of BNPL users display characteristics of vulnerability compared to the general population and the sector also has high levels of arrears.<sup>3</sup> This is a particular issue for frequent BNPL users. There is also evidence of BNPL-facilitated overconsumption causing significant post-purchase regret amongst consumers.<sup>4</sup>
- The evidence of harm and risks in the market (the vulnerability of users, the levels of arrears and financial distress, and the fact that key BNPL lenders are not used to operating in a properly regulated market) warrants a very robust approach to regulation. A robust regime will not deter consumers who can afford to use it from selecting this option if it genuinely offers the better alternative. A robust regime may well slow down the process of accessing BNPL across the market and cause consumers to reflect before making a purchase. If this addresses negative behaviours such as overconsumption and impulse buying, even amongst consumers who can afford BNPL at a given point in time, then this would surely be a positive outcome. This would also create positive environmental impacts.
- Some may argue that, as people who live in the most deprived areas of the UK are more likely to be BNPL users, this is an inclusion-positive product. However, genuine financial inclusion and economically and socially useful financial innovation is not just about people having access to a product or numbers using a product. True inclusion and innovation enhances overall consumer welfare for excluded, marginalised, or vulnerable consumers. That cannot be said about large numbers of BNPL borrowers. The fact that BNPL is heavily used in areas of greatest deprivation is more likely a reflection of financial distress and firms exploiting those opportunities than a sign of the market enhancing consumer welfare or providing a social good.
- The FCA has identified and articulated several key factors that cause harm in this market including misaligned incentives and the ability of firms to exploit behavioural biases due to the nature of BNPL. The supporting research published with CP25/23 is very helpful for understanding the market. We are very supportive of much of the FCA's proposed approach particularly in relation to creditworthiness and affordability. This should address key causes of detriment in the market. But, more needs to be done to address the root causes of harm.
- The proposals on information disclosure could benefit *some* consumers. However, we are concerned at the amount of discretion the FCA intends to allow firms on how information is disclosed pre and post arrangement. If information solutions are to have a meaningful impact on

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<sup>2</sup> We appreciate why the FCA uses the term Deferred Payment Credit (DPC). We continue to refer to BNPL as this is the commonly used term.

<sup>3</sup> For example, according to the FCA's Financial Lives 30% of adults with low financial resilience were BNPL users compared to 20% of adults generally. Analysis of CRA data found that BNPL users were twice as likely to exhibit measures of financial distress (including being in arrears) compared to non-users. For details see p68 of CP25/23.

<sup>4</sup> According to UK research, over a third (35%) of BNPL users say they often make impulse purchases they later regret, compared to just 17% of non-users. [Consumers lack awareness of the costs of BNPL, says the LSB - LSB](#) Research from the USA found that more than half (57%) of users say they have regretted making a purchase through BNPL as the item was too expensive. [Buy Now, Pay Later Statistics and User Habits | C+R](#)

consumer behaviours, standardisation would be beneficial to enable effective comparison and promoting a level playing field for competition across the market.

- More fundamentally, information solutions aimed at improving demand side (consumer) behaviours and, in turn, influencing corporate behaviours is not a particularly effective mechanism for protecting consumers, promoting effective competition, or producing the desired outcomes. Supply side and direct product interventions are more effective as the payday lending reforms showed. The BNPL and payday lending markets share very similar characteristics. Lessons should be learned from the payday lending reforms.
- We think the FCA has not fully addressed the harm evident in the BNPL market caused by the inherent product design and associated business models. BNPL is a form of embedded finance which is expressly designed to remove the barriers to selling consumer credit and aims at 'smoothing the customer journey'. BNPL enables firms to exploit consumers' behavioural and psychological biases and can encourage detrimental behaviours such as impulse buying and overconsumption. To put it another way, the source of the harm is designed into the very nature of the product. The experience of the payday lending sector shows us that making it easy for people to borrow was one of the root causes of so much harm in that market. So, rather than aiming for a 'smooth customer journey', if anything, the FCA should be aiming to inject more friction and clear break points into the sales process than the measures proposed in CP25/23 are likely to achieve. In other words, to be effective, the FCA should set out to basically disrupt the current BNPL product format and business models of firms.
- As the FCA points out, even with the FCA's proposals, BNPL will retain a competitive advantage. So, injecting friction and break points into the BNPL sales process will also help promote a level competition playing field between BNPL and other forms of lending.
- Similarly, we are sceptical that enhanced information disclosure will do much to protect vulnerable consumers against detriment caused by high late payment fees. Capping fees would be more effective. As we saw with payday lending, a combination of tougher conduct of business rules and price caps were very successful at dealing with the harm caused in that market.
- Robust conduct of business standards and supervision, and firms knowing they run a high risk of facing enforcement and sanctions, and being liable for redress, do positively influence firms' behaviours. This is evidenced by the welcome improvement in conduct of business in several key retail financial markets. Therefore, much will depend on how the new BNPL regime is supervised and enforced.
- The FCA yet again in a consultation paper says it wants to rely heavily on the Consumer Duty. As outlined above, BNPL is associated with financial vulnerability, high levels of arrears, overconsumption, and post purchase regret. There is a real opportunity here for the FCA to use the Consumer Duty as intended. But, we have yet to see meaningful detail on how the FCA will supervise and enforce the Duty in this market. We urge the FCA to publish details on it intends to use the Consumer Duty to address the evident risks and harms in the BNPL sector. The scale and source of harm in this market means the Consumer Duty would need to be used in conjunction with prescriptive creditworthiness and affordability rules.
- The inherent risks with BNPL, the vulnerability of the target market, and the fact that BNPL lenders do not have experience of regulated lending, would also suggest that the FCA should apply a tougher approach to authorising BNPL lenders and setting fitness and propriety standards for BNPL boards and senior managers. Care will need to be taken that the Temporary Permissions

Regime is robust enough to prevent BNPL lenders from exploiting consumers in the run up to full regulation.

- The FCA should also take the opportunity to require BNPL lenders (and other lenders) to address the issue of satisfying county court judgments (CCJs). According to Registry Trust Ltd (RTL) there are 5.4 million judgments currently outstanding.<sup>5</sup> Yet, only 12% of those are marked as 'satisfied'.<sup>6</sup> For a CCJ to be marked as satisfied the debt has to be settled and the defendant has to send proof of payment to the courts. We urge the FCA and other regulators to introduce rules (or even guidance) requiring creditor firms to inform the courts that a debt has been settled. This very small change could have a significantly beneficial effect on consumers financial well-being. The Woolard Review recommended that the FCA consider such a rule as far back as 2021.
- It is unfortunate that the Government has decided that regulation will apply to only third party providers. This leaves a significant gap in consumer protection in this market. A number of major retailers offer their own BNPL or BNPL type product.<sup>7</sup> Moreover, what would happen if a tech platform giant such as Amazon decided to only offer its own BNPL product rather than through third parties as is the case now? We could end up with two tier consumer protection and competitive distortions. We would urge the FCA to pressure the Government to reconsider this decision.
- We think the FCA underestimates the contribution robust regulation of BNPL could make to addressing sustainability-related harms. The overconsumption and impulse buying enabled by BNPL not only directly harms consumers it creates externality costs. The FCA's own analysis shows that 51% of BNPL transactions are in the clothes, fashion, and footwear sector. The sector is a significant contributor to environmental harm<sup>8</sup> and there is compelling evidence of exploitation of workers in supply chains.<sup>9</sup> While the share of spending on fashion-related purchases has fallen, the total transaction value across the DPC market continues to rise, including within fashion, indicating overall market growth.<sup>10</sup>
- It is disappointing to see the FCA frame regulation as a burden in yet another publication. Regulation is not a burden. It is the social licence firms require to operate in a market. Sometimes that licence has to be robust given the nature of the product and the tendency of suppliers of that product to cause consumer harm. Consumer credit is one such market and the way BNPL, as a form of embedded finance, is sold creates particular risks.

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<sup>5</sup> Registry Trust Ltd [Stats](#)

<sup>6</sup> [From Data to Change — What We Learned from Listening to People Talk About CCJ Satisfactions](#)

<sup>7</sup> For example, Frasers Group, Next, and Argos.

<sup>8</sup> [Fast Fashion and Its Environmental Impact in 2025 | Earth.Org](#)

<sup>9</sup> [Beneath the Seams: The Human Toll of Fast Fashion - Earth Day](#)

<sup>10</sup> For details, see CP25/23 p65.

## Response to specific questions

### Question 1: Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?

We think the proposed rules as currently designed are unlikely to have a negative impact on groups with protected characteristics. But, given that groups with protected characteristics and financially vulnerable consumers generally are more likely to experience harm with consumer credit particularly with embedded finance, we would argue that if the FCA adopted a more interventionist approach suited to the potential risks created by BNPL selling practices, then this could result in a material improvement in the consumer wellbeing of those groups.

### Question 2: Do you agree that our proposed rules for provision of information before entering a DPC agreement are appropriate?

The FCA's proposals for the types of information that should and could be disclosed to consumers are helpful. But, we do not think these will be sufficient to deliver the necessary level of consumer protection or promote effective competition between this particular form of lending and other forms of lending. Moreover, we also think the FCA is allowing firms too much discretion as to what, how, and when information is presented to borrowers.

The FCA says in para 3.9: 'We do not propose to replicate these [provision of information] CCA provisions. Instead, our proposals seek to deliver a proportionate regime that is tailored to DPC.' We would challenge this approach. As the FCA recognises, even when it is regulated, BNPL could have a competitive advantage over other forms of borrowing. Therefore, we do not understand the logic of not replicating the effect of the CCA information provisions in the rules. The FCA should seek to level the competition playing field by introducing rules which have the same effect as the CCA provisions which other lenders must abide by.

To level the playing field and help introduce an element of friction into the journey, we argue that the information in paras 3.32 and 3.34 **should** be proactively given to potential borrowers. Moreover, despite the limitations of information disclosure as a tool for making markets work, some consumers will make effective use of information to compare different types of loans. For this to work, requires standardisation of form and content.

Therefore, we disagree with the FCA's proposal in para 3.33 to **not** make rules on form and content. The FCA should mandate how the key elements of BNPL are disclosed to consumers particularly around the risks and consumer rights. Details on withdrawal or cancellation rights, early repayment rights, the right to refer a complaint to the Financial Ombudsman, consumer rights, and lenders' policies on missed payments including on the use of county court judgments (CCJs) should be prominently displayed.

Specifically, on the rate of interest, allowing BNPL lenders to prominently state that the interest rate is 0% runs the risk of giving BNPL a halo effect by implying this is cost-free borrowing. While technically this may be 0% for the loan element of a transaction, this does not come at zero cost for borrowers. BNPL lenders take a cut from what the retailer sells to the consumer. This must affect the retailers' margins which in turn must be factored into the cost of the goods sold. Therefore, we

argue that a clear warning should be included to the effect that even if the borrowing may appear to 0% interest, it is not 'free'.

Moreover, embedded credit products like BNPL are designed to help retailers make higher volumes of sales, and can encourage consumers to purchase more than originally planned and to impulse buy. Prominent financial health warnings should be included to the effect that borrowers should be aware that this type of embedded borrowing facility is intended to encourage them to spend more.

As explained elsewhere, effective consumer protection and good outcomes will depend on the FCA injecting friction and break points into the process. Improving the types of information alone is unlikely to act as an effective friction mechanism in an embedded finance environment. Consumers who are susceptible to behaviours such as impulse buying are likely to just override disclosure messages and warnings.

The FCA refers to research on an intervention which incorporates a disclosure box, changing the terminology, and removing the 'Express Checkout' option (see para 219/220). This intervention was found to reduce the number opting to pay using BNPL by nine percent. Interventions such as this have not been fully tested yet. So, we understand that the FCA could not require firms to use this particular format. However, we recommend that the FCA should introduce rules to prohibit firms from using 'express checkout' type facilities and require firms to incorporate techniques explicitly aimed at getting borrowers to stop and think before selecting BNPL.

Additional friction mechanisms and actual break points, expressly designed to slow down the buying and borrowing process, could support further numbers of borrowers potentially at risk. Combined with robust creditworthiness and affordability checks this could result in a significant reduction in suboptimal BNPL usage. Moreover, given the relationship between BNPL and the growth in 'try now, pay later' (TNPL) shopping, this could also help address environmentally damaging consumption patterns, see below.

**Question 3: Do you think that reliance on the Duty could deliver our policy objectives for information provided before an agreement instead? If so, how?**

No. We agree that BNPL lenders should be required to test the impact of communications on consumer behaviours. But, as outlined above, we are of the view that the FCA should not risk allowing lenders much discretion on how information should be disclosed and presented to potential borrowers.

The FCA should mandate the form and content of information provided before an agreement is made. The FCA's own very good research has highlighted the potential harms with BNPL lending. The FCA has also very helpfully highlighted that it observed market practices that are likely to be effective at reducing risks. If that is the case, then the regulator ought to require firms to use specific approaches shown to have a positive impact.

The FCA should make it clear that it will expect lenders to produce independently verified evidence that it has tested communications with target markets pre and post an agreement.

**Question 4: Do you agree that our proposed guidance for provision of information to customers during a DPC agreement is appropriate?**

No. We are surprised at the FCA's approach to information provision before and during an agreement. We do not think it is enough for the regulator to say that it wants firms to 'consider' how they can give their customers information or make it available to them. The FCA should make it clear to firms that assessment of provision of information during an agreement will form a critical part of the FCA's supervision and monitoring regime.

There is far too much reliance on 'encouraging firms to use their own judgement'. Firms should be required to use tech based messages to send repayment reminders. While much can be done to ensure firms treat people fairly if in arrears, it is surely preferable if these are prevented in the first place. *Ex ante* interventions are preferable to *ex post* interventions aimed at clearing up after market failures.

**Question 5: Do you agree that our proposed new rules on providing information to DPC borrowers who have missed a repayment are appropriate?**

**Question 6: Do you agree that our proposed new rules requiring firms to give notice before taking certain actions are appropriate?**

**Question 7: Do you think that reliance on the Duty could deliver our policy objectives for our proposed new rules on firms' communications to DPC customers who have missed a repayment or where a firm intends to take certain actions instead?**

Yes, we support the comprehensive approach proposed by the FCA. Relying on the Consumer Duty is unlikely to be effective enough. New rules on providing information to BNPL borrowers who have missed a repayment and requiring firms to give notice before taking certain actions will be needed.

With regards to the right to apply for a time order under section 129 CCA, a firm should be **required** to inform the borrower up front and draw attention to the benefits of a time order as part of the Consumer Duty Support outcome.

See below the points about enforcing the Consumer Duty in the BNPL market.

**Question 8: Do you agree that applying our current creditworthiness rules and guidance to DPC lending is appropriate?**

Yes, we agree that the current creditworthiness rules and guidance provides an appropriate framework for BNPL lending. We agree that the regime should apply to small agreements of £50 or less.

To reiterate, embedded finance enables firms to use big data/tech/AI to exploit behavioural biases to speed up the borrowing process and to encourage impulse buying. The goal should be to mandate the supply side to improve lending standards and inject friction into the sales process to address these problems, not to 'smooth the consumer journey'.



Of course, much depends on how this framework is applied, the interpretation of what is 'proportionate' and 'reasonable' in the context of BNPL lending, and the governance and culture of BNPL lenders.

As the FCA has highlighted, there is a risk that BNPL lenders could be at a competitive advantage with regards to information disclosure. It will be critical, therefore, that BNPL lenders do not also acquire a competitive advantage through being able to interpret creditworthiness rules and guidance more lightly than more established competitors. In other words, potential borrowers should have the right to expect that, regardless of which form of borrowing they choose, they can be confident of dealing with lenders that will behave responsibly.

This relates to the governance and culture of BNPL lenders. The FCA will be better placed to know, but we have concerns about the degree to which BNPL lenders have the right governance structures and cultures in place to lend responsibly under a properly regulated lending regime. The FCA has already uncovered evidence of egregious practices in this market. Unlike more established competitors BNPL firms just do not have the experience of lending in a statutory regulatory regime which expects responsible lending.

Moreover, with regards to proportionality and reasonableness, the FCA rightly highlights the fact that a higher proportion of BNPL users display characteristics of vulnerability compared to the general population. This is a particular issue for frequent BNPL users (para 3.82). The sector also has high levels of arrears (para 3.85).<sup>11</sup> BNPL-facilitated consumption can cause post-purchase regret.<sup>12</sup>

In this context, it would surely not be appropriate to allow BNPL firms to use their own judgement to determine what is a proportionate approach to assessing affordability and creditworthiness. Given the risks, a proportionate approach to BNPL lending would be for the FCA to require BNPL lenders to take a more stringent approach to assessing creditworthiness/affordability in the target markets than other types of lender.

The inherent risks with BNPL, and the fact that BNPL lenders do not have experience of regulated lending, would also suggest that the FCA should apply a tougher approach to authorising BNPL lenders and governance structures including the fitness and propriety of BNPL boards and senior managers. Care will need to be taken that the Temporary Permissions Regime is robust enough to prevent BNPL lenders from exploiting consumers in the run up to full regulation.

**Question 9: Do you have any views on the extent to which our approach to creditworthiness might inadvertently restrict access to DPC for customers who could afford it?**

BNPL, sold well and used well by consumers, can be useful and enhance consumer welfare. But, as outlined above in the summary and the response to Q8, BNPL is associated with significant consumer detriment such as high levels of arrears, overconsumption, and impulse buying.

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<sup>11</sup> For example, according to the FCA's Financial Lives 30% of adults with low financial resilience were BNPL users compared to 20% of adults generally. Analysis of CRA data found that BNPL users were twice as likely to exhibit measures of financial distress (including being in arrears) compared to non-users. For details see p68 of CP25/23.

<sup>12</sup> According to UK research, over a third (35%) of BNPL users say they often make impulse purchases they later regret, compared to just 17% of non-users. [Consumers lack awareness of the costs of BNPL, says the LSB](#) - LSB Research from the USA found that that more than half (57%) of users say they have regretted making a purchase through BNPL as the item was too expensive. [Buy Now, Pay Later Statistics and User Habits](#) | C+R



Some may argue that, as people who live in the most deprived areas of the UK are more likely to be BNPL users, this is an inclusion-positive product. However, it is important to remember that genuine financial inclusion and economically and socially useful financial innovation is not just about people having access to a product or numbers using a product. It is whether the product enhances overall consumer welfare for excluded, marginalised, or vulnerable consumers. That cannot be said for large numbers of BNPL borrowers. The fact that people living in areas of greatest deprivation are more likely to use BNPL is likely to be a reflection of financial distress and firms exploiting those opportunities rather than a sign of the market enhancing consumer welfare and providing a social good.

We think that a robust, proportionate regime will not deter consumers who can afford to use it from selecting this option if it genuinely offers the better alternative. A robust regime may well slow down the process of accessing BNPL across the market and cause consumers generally to think twice before making a purchase. If this addresses impulse buying - even amongst consumers who can afford BNPL at a given point in time - then this would surely be a positive outcome.

**Question 10: Could we achieve appropriate outcomes if we relied substantively on the Duty instead (most notably the obligation to avoid causing foreseeable harm to consumers) rather than the creditworthiness rules in CONC 5.2A?**

No. The scale of the harm in this market and, given that BNPL lenders do not have experience of operating in a properly regulated lending market, we think it would be too risky to rely substantively on the high level approach of the Consumer Duty.

Both approaches, the Duty and prescriptive rules, should be applied as these have different goals. The CONC rules are there to ensure lenders are responsibly assessing creditworthiness and affordability.

But, even if these rules were applied properly, this would not necessarily address other potential harms such as repeat impulse buying or serial repeat or revolving borrowing. As the FCA points out a higher proportion of BNPL users display characteristics of vulnerability. Embedded finance providers such as BNPL lenders are in a good position to use data insights and tech/AI to identify patterns of behaviour which indicate vulnerability and a precursor to harm.

**Question 11: Do you agree with our proposal to apply our creditworthiness rules to DPC agreements of any value, or do you have views as to alternative approaches to small sum lending (including relying on the Duty)?**

Yes, we support the FCA's proposal to apply creditworthiness rules to BNPL agreements of any value.

**Question 12: Do you agree with our proposal for applying high-level standards and all other relevant Handbook provisions to DPC lenders?**

Yes, we agree that all the relevant Handbook provisions should be applied to BNPL lenders.

But, we are concerned that the FCA is intending to *not* apply any of the conduct standards for senior managers and certified staff in the Code of Conduct Sourcebook (COCON) to firms that have a temporary permission. The FCA says that it believes this is a proportionate approach in line with the

Government's legislative intent. In our view, the FCA should be determining its approach to consumer protection - a statutory objective - based on what is the most effective and appropriate interventions, not on what it thinks is in line with government intentions.

Given the nature of the target market and the evidence of harm in the market, it is surely not advisable to allow BNPL firms to operate without these safeguards under the Temporary Permissions Regime. There is a clear risk that some firms will try to use the opportunity to extract maximum value in advance of full regulation.

The FCA has not specified how it intends to use intelligence gathered during the preparation for this consultation process in the forthcoming authorisations process. We hope the regulator will use evidence gathered on the behaviours of individual firms to assess their suitability for authorisation and continued operation.

The issue of how BNPL lenders should treat vulnerable borrowers in arrears or in default is not given much attention in the consultation paper. Obviously, BNPL lenders will be covered by the same framework as other lenders. But, to reiterate, financially vulnerable borrowers are overrepresented in BNPL lending and there are high levels of arrears. This would suggest to us that the FCA should pay specific attention to the treatment of vulnerable BNPL borrowers.

The FCA has not set out in any detail how it intends to supervise this market. We would welcome a clear statement from the FCA warning BNPL lenders that it intends to prioritise this market for investigations into how vulnerable consumers are treated.

The FCA should also consider capping any penalty charges/ late payment fees as product regulation has been shown to be a very effective consumer protection tool.

The FCA should also take the opportunity to require BNPL lenders (and other lenders) to address the issue of satisfying county court judgments (CCJs). According to Registry Trust Ltd (RTL) there are 5.4 million judgments currently outstanding.<sup>13</sup> Yet, only 12% of those are marked as 'satisfied'.<sup>14</sup> For a CCJ to be marked as satisfied the debt has to be settled and the defendant has to send proof of payment to the courts. We argue that the FCA and other regulators should introduce rules (or even guidance) requiring creditor firms to inform the courts that a debt has been settled. This very small change could have a significantly beneficial effect on consumers financial well-being. The Woolard Review recommended that the FCA consider such a rule as far back as 2021.

### **Question 13: Do you agree with our overall approach to regulatory reporting? If not, why not?**

Yes, we agree with the FCA's overall approach to regulatory reporting. However, we do not agree with the proposal to apply a lighter touch approach to reporting requirements for BNPL lenders during the period prior to full authorisation, while firms are in the TPR.

As mentioned above, there is a clear risk that some firms will try to use the opportunity to extract maximum value in advance of full regulation. We would have thought that the FCA would want to collect the necessary data to make a full judgment on the fitness and propriety of those running

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<sup>13</sup> Registry Trust Ltd [Stats](#)

<sup>14</sup> [From Data to Change — What We Learned from Listening to People Talk About CCJ Satisfactions](#)

BNPL firms applying for authorisation. If firms want the right to operate in a properly regulated market then it is reasonable to expect them to have the appropriate data in their possession.

**Question 14: Do you agree that DPC should be subject to PSD returns? If not, what alternatives are there to requiring firms to submit PSD returns to meet our intentions?**

Yes.

**Question 15: Do you agree that we should collect regular, predictable transaction level data? If not, why not? And how would you propose mitigating the risks of not collecting regular, predictable transaction-level data?**

Yes.

**Question 16: Are there areas where firms may need longer implementation times? If so, how do you propose to mitigate any risks posed by a delay in firms providing us with data?**

See response to Q13. Firms should not be given longer implementation times. It is reasonable to expect well run firms to have the necessary data to hand.

**Question 17: Do you agree with our proposal to apply our rules in DISP Chapter 1 to DPC complaints?**

Yes, we very much welcome the proposal to apply the Chapter 1 DISP rules to BNPL complaints.

**Question 18: Do you agree with:**

- **The FCA's proposals to extend the Financial Ombudsman's CJ to DPC activities?**

Yes, we very much agree with the proposals to extend the FOS CJ to BNPL activities.

- **The Financial Ombudsman's proposals to exclude pre-regulation DPC activities from the VJ?**

No, we disagree with this proposal. We do not understand the argument set out in para 5.18 to justify this decision. The decision is justified 'Due to the absence of a recognised and commonly followed framework of standards of behaviour prior to the introduction of regulation – particularly in relation to key lending practices..'.  
The BNPL sector itself may well not have developed a suitable framework of standards. However, the FOS could use lending standards in similar sectors as a reference point or indeed use the forthcoming standards that will apply to BNPL under full regulation for assessment under the VJ. Indeed, we would go so far as saying that a firm's decision to not opt for the VJ prior to full regulation should be a warning sign for the FCA when considering whether to authorise that firm.

- **The Financial Ombudsman's proposals to expand the scope of the VJ to cover DPC activities carried on after regulation day from an EEA or Gibraltar establishment?**

Yes, we agree with this proposal. Moreover, we would question why the FCA would allow EEA or Gibraltar firms who do not opt to join the VJ to operate in the UK market.

**Question 19: Do you agree with the FCA's proposals to suspend complaints reporting rules for complaints arising from DPC activities for firms in the TPR until they become fully authorised?**

No, we disagree with this proposal. It is important that the FCA understands firms' behaviours in the run up to full regulation to inform the authorisation process.

**Question 20: Do you agree with our proposal not to extend FSCS cover to DPC activities consistently with the approach to other consumer credit activities? If not, please provide details on why you think DPC should be treated differently.**

Unfortunately, as the FCA states, in general FSCS cover is not available for claims in respect of consumer credit activities. The decision to exclude consumer credit was on the grounds that consumers deposits/investments are not at risk from a lender failing. But, this approach can still leave consumers vulnerable if they are owed redress and a firm fails.

We appreciate that the FCA proposes to exclude BNPL lenders from FSCS cover on the grounds of consistency. However, we would suggest that this is an opportune time for the FCA, outside of this particular consultation process, to develop measures to require lenders (who are not deposit takers) to contribute a proportionate levy to the FSCS.

**Question 21: Do you agree with our proposals for the TPR?**

Yes, we agree with the overall TPR structure proposed by the FCA. But, we very much disagree with the proposal not to apply the COCON standards and reporting requirements during the TPR process - see Q12 and Q13, above.

**Question 22: Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons and provide any evidence you can.**

**Question 23: Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?**

Yes, we agree with the overall structure and assumptions set out in the CBA. We think the FCA has identified and articulated very well several key factors that cause harm including misaligned incentives and the ability of firms to exploit behavioural biases due to the embedded nature of BNPL.

We appreciate that it is very difficult to quantify the potential benefits. But, we do agree that regulation should deliver net benefits by reducing fees, improving consumer wellbeing, more sustainable consumption patterns, less impulse buying, and promoting more responsible lending. There may well be a reduction in access and usage of BNPL lending. However, as with the regulation of payday lending, that reduction in usage is likely to produce net benefits for consumers. We believe that regulation will particularly benefit vulnerable and lower income consumers.

We are of the view that the FCA is more likely to deliver benefits articulated in the CBA by adopting more robust interventions than currently proposed.

We are concerned that the FCA is relying far too much on classical economic and competition theory to explain market failure and information solutions to address these behavioural biases and promote effective competition.

There are indeed information asymmetry and behavioural bias problems in this market, as is the case with most financial services. But, effective regulation not only has to identify the causes of harm, it needs to use the most effective interventions to achieve the right outcomes.

Information solutions aimed at addressing information asymmetries do not have a positive track record in protecting consumers, or promoting effective competition in financial services. Of course, some consumers will benefit from information solutions as is the case with most markets. But, retail financial services are not demand led, they are supply side driven. Consumers exercise little influence over supply side behaviours and aggregate market behaviours.

Importantly, information solutions are not effective at addressing supply side behaviours, business models, and intrinsic product design features which are the primary causes of harm in markets. It is difficult to envisage a set of information solutions that would be effective enough to cause enough consumers to change their behaviours to such a degree that this would drive significant improvements in the BNPL market.

We would suggest that the FCA has not fully captured the harm in this market caused by intrinsic product design and associated business models. BNPL is a form of embedded finance which is expressly designed to remove the barriers to selling consumer credit to consumers and aims at 'smoothing the customer journey'. To put it another way, the source of the harm is designed into the very nature of the product.

The FCA's very welcome proposals on creditworthiness and affordability will have some impact. Moreover, the proposals on information disclosure will benefit some consumers. But, effectively addressing the harms caused by BNPL will require interventions that inject friction and breaks into the sales process. In other words, to be effective, regulatory interventions would have to disrupt the basic product design and business model.

We think the FCA underestimates the contribution robust regulation of BNPL could make to addressing sustainability related harms. The overconsumption and impulse buying enabled by BNPL not only directly harms consumers, it creates externality costs.

Research by AFM, the Dutch Authority for Financial Markets, suggests that around 40% by value and number of orders made using BNPL are returned.<sup>15</sup> This is higher than the 18% figure quoted by the FCA.

The FCA's own analysis shows that 51% of BNPL transactions are in the clothes, fashion, and footwear sector. The sector is a significant contributor to environmental harm<sup>16</sup> and there is compelling evidence of exploitation of workers in supply chains.<sup>17</sup> While the share of spending on

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<sup>15</sup> [Action needed to stop minors from using Buy Now, Pay Later](#)

<sup>16</sup> [Fast Fashion and Its Environmental Impact in 2025 | Earth.Org](#)

<sup>17</sup> [Beneath the Seams: The Human Toll of Fast Fashion - Earth Day](#)

fashion-related purchases has fallen, the total transaction value across the DPC market continues to rise, including within fashion, indicating overall market growth.<sup>18</sup>

So, we think it is reasonable to expect that with more robust interventions the number of transactions could be significantly reduced with associated sustainability benefits.

This marks the end of our submission.

**Financial Inclusion and Markets Centre (FIMC)**  
**September 2025**

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<sup>18</sup> For details, see CP25/23 p65.