christians against poverty

CAP

Regulation of Buy-Now Pay-Later: consultation on draft legislation

CAP's official response to HM Treasury's consultation

February 2023

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christians against poverty CAP

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Summary

Christians Against Poverty (CAP) has supported people in debt and poverty since 1996. Only in more recent years has there been an emerging prevalence of Buy Now Pay Later (BNPL) products. BNPL is becoming a popular way of making payments online, and therefore CAP welcomes the Financial Conduct Authority's (FCA) latest consultation, looking at bringing BNPL into its regulatory oversight.

Key points:

- CAP is broadly in agreement with all the FCA's suggestions for areas of exemption, including invoicing, trade credit, employer loans and social housing landlord loans.

- We were pleased to see that BNPL products will be brought into the promotions regulation. However, we would like the FCA to ensure that people are fully informed of the risks of using this product, such as late fees.

- CAP also welcomes the friction added to transactions, having consumers sign pre-contractual agreements, as this provides consumers with more time to think about their decisions.

- Whilst BNPL products are interest-free, CAP would like the FCA to monitor how the market is changing. If consumers become dependent on BNPL to smooth cash flow, when fees or charges are applied, this could lead to harm.

- As this is such a new, emerging marketplace, we would also like to see the FCA continue to monitor firms brought into regulation and ensure that loopholes are not created, causing consumer harm.

Questions

Question 1: Do you have any comments on the proposed approach and/or drafting to bring agreements into regulation that are provided by a third-party lender in article 3(4) of the draft legislation?

CAP welcomes the proposal from the FCA to bring agreements into regulation that are provided by a third-party lender. The proposed exemptions, invoicing and trade credit, is a sensible solution to ensuring the BNPL products that are at most risk of causing harm are included, yet those offering delayed payments, such as school fees, aren't. CAP feels that this is proportionate.

The main concern is whether the regulation creates any loopholes, which firms may identify and try to exploit.

There is also a concern about some of the larger marketplace platforms, such as Amazon or eBay, who may offer BNPL products through their platforms. If these were providing the interest free credit as merchants, would the regulation cover this activity?

Question 5: Do you think it is appropriate for there to be an exemption for interest-free borrower-lender-supplier credit agreements repayable in under 12 months in 12 or fewer instalments, where they are provided by registered social landlords to their tenants to finance the provision of goods and services?

CAP agrees with the approach to exclude social landlords from the regulation. This is an effective way of helping people on low incomes in social housing to access the essentials they need, or make repairs.

With the knowledge that this practice already exists, CAP would like further clarity on the protections that tenants receive from borrowing from their landlords. There is concern that due to the power dynamics at play, tenants may be at risk of harm if they were to fall into arrears with their social landlords.

Question 6: do you have any comments on the proposed drafting which seeks to ensure that agreements that are offered by registered social landlords to their tenants and leaseholders, and where there is a third-party lender involved, will continue to be exempt under A60F(2)?

CAP has no further comments on the proposed drafting.

Question 7: Do you have any comments on the proposed drafting which seeks to ensure that agreements (i) where the borrowers are employees and, (ii) which result from an arrangement between their employer and the lender or supplier, will continue to be exempt under A60F(2)?

CAP has no further comments on the proposed drafting.

Chapter 3
Question 8: Do you have any comments on the proposed legislative approach and/or drafting taken to exempting merchants from credit broking regulation?

CAP is in agreement with the proposed legislative approach towards credit broking. This position is taken on the basis of other regulations, such as the financial promotions regime, being in place to protect consumers from detriment.

Furthermore, CAP would also like clarity over the FCA's proposed plans for how it will regulate BNPL providers who charge late fees upon missed payment. Whilst the credit is still technically 'interest free', late fees add additional costs onto the consumer. If some adopt this approach, such as Klarna which has recently announced it will start to change missed payment fees, consumers should be able to easily identify products with additional charges and choose between BNPL products with the awareness of any fees framework. Any firms that charge should provide customers with a standardised warning label.

Question 10: do you have any comments on the proposed legislative approach and/or drafting which seeks to ensure that unauthorised merchants will be required to have their promotions approved by an authorised person?

CAP welcomes this proposal to ensure any promotions are authorised. Currently, the promotion of BNPL options are overt, persuasive and enticing, particularly to consumers who may be experiencing cashflow problems. It is good to ensure that someone is held accountable, and the onus being placed on the provider to get right seems proportionate.

Any promotion of this product should be clear and easy to understand. Late fees or other fees should be clearly presented, using plain numbers and plain English.

Question 11: do you have any comments on the proposed legislative approach and/or drafting which seeks to disapply the CCA requirements on pre-contractual information for agreements that are brought into regulation?

The consequences of placing BNPL products under FCA regulation, and keeping it separate from the Consumer Credit Act is that individual protections are lost. This means where any person has an issue with their provider, they would have to use the Financial Ombudsman Service (FOS). Any action needing to be taken would come from the FCA's regulations of businesses, rather than individual cases.

There are both benefits and drawbacks of this approach. Sitting within the FCA remit allows for flexibility and tailoring, however it lessens individual protections. Please see Christians Against Poverty's consultation response on the Consumer Credit Act reform for more detail.

Question 13: do you consider that this proposed approach will give firms sufficient flexibility to provide information in accordance with CCA pre-contractual requirements rather than the tailored regime for agreements that will be brought into regulation?

CAP is in agreement with the proposed approach to give firms sufficient flexibility to provide information in accordance with the CCA pre-contractual requirements. In particular, CAP welcomes the calls for firms to ensure any communication is clear, not mis-leading and complies with the FCA's rules.

CAP would like to see the FCA publish its plans to audit firms, reviewing the communications strategies and ensuring that it conforms with FCA rules and is simple and easy to understand. CAP would also like the FCA to compare outcomes from both firms who are adhering to CCA pre-contractual requirements, due to already offering other credit products, vs those who have created new information. CAP would also like the FCA to provide examples of best practice, for shared learning and good outcomes.

Question 14: do you have any comments on the proposed legislation which seeks to disapply the small agreements provisions for agreements that will be brought into regulation?

CAP agrees with the proposed legislation which seeks to disapply the small agreement provisions. It is good to include agreements of all size into the same legislation for ease and simplicity, as well as fair treatment.

Chapter 4

Question 15: do you have any comments on the proposed legislation that seeks to implement the TPR?

The Temporary Permissions Regime is welcome.

Chapter 5

Question 16: do you think that the requirements for the content of agreements set out in the Consumer Credit (Agreements) Regulations 2010 are proportionate to apply to agreements that will be brought into regulation?

We welcome the friction added to transactions, as this provides consumers with more time to think about their decisions. It also ensures that consumers are equipped with the necessary information in order to make an informed decision.

The agreements should be clear and accessible to all, especially considering the statistics quotes revealing that some groups of consumers with protected characteristics, such as ethnic minorities, are more likely to fall behind on their BNPL products. The form and content of the agreement need to be adaptable to people's needs and CAP would recommend the FCA including those with Lived Experience to ensure that the agreements do give consumers the information they need to make decisions.

Chapter 6

Question 17: What do you expect the impact to be of this proposed legislation on providers of agreements that will be brought into regulation, consumers that use them and merchants that offer them as a payment option?

It is expected that the impact of this proposed legislation on consumers will be beneficial, providing more protection, particularly to those in vulnerable circumstances. As with any firm working in financial services, culture is highly important and CAP would like to see the FCA encouraging new firms to be cultivating a culture which prioritises consumers in vulnerable circumstances, and those who are more susceptible to harm.

A further concern CAP has identified is whether firms will be required to conduct any affordability assessments, and if so, to what level? There is a risk that someone could take out a number of BNPL agreements over a relatively short period of time, and CAP would like to know whether this behaviour would be identifiable by firms?

Another risk is that the proposed legislation is not specific enough to ensure consumer understanding and protect consumer outcomes. For example, when a

consumer reaches a familiar purchase screen on a large marketplace platform, will they quickly click through by habit? Legislation would need to ensure there is enough friction to allow consumers time to consider the benefits and disadvantages of the products offered to them. There also need to be easy ways for consumers to identify which BNPL products are free, which charge fees, and which charge interest. It is unrealistic to expect all consumers to read through the detailed terms and conditions for each of the products on offer to find this information everytime they make a purchase. If large marketplaces and BNPL firms do not display the key terms of agreements prominently in a standardised way, many consumers will miss important information, leading to poor consumer outcomes.

Question 18: Do you agree with the provisional assessment that, on balance, the government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?

CAP agrees with the provisional assessment, which tries to mitigate the negative impact on those with protected characteristics. When BNPL is used sensibly and responsibly, CAP welcomes the product and its approach to smoothing cash flow for consumers. There is risk it could be overused, relied upon and/or misused and could lead to consumer detriment if firms charge late fees, if consumers don't understand the product or lose track of what's owed. There is a further risk that these firms start charging interest, and if consumers have become reliant upon the BNPL market it could see consumers put at risk of harm.

About Christians Against Poverty (CAP)

With a vision to see transformed lives, thriving churches and an end to UK poverty, Christians Against Poverty (CAP UK) is a national charity that equips local churches to deliver a range of services.

CAP Debt Help provides holistic support for families and individuals facing problem debt with a free face-to-face service – tackling both the financial conundrum and the wider emotional impact. CAP tackles the causes and consequences of UK poverty through free community groups, also run through local churches.

All CAP's services are free of charge and available to everyone, regardless of age, gender, faith and background. To find out more, visit capuk.org.

Requests for further information

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