

Credit Services Association

Response to HMT consultation: Regulation of Buy-Now-Pay-Later

1. Background

- 1.1 The Credit Services Association (CSA) is the only national trade association in the UK for organisations active in the debt collection and purchase industry. The CSA, which has a history dating back to 1906, has over 250 member companies which employ almost 11,000 people. The membership also comprises specialist tracing agencies, in-house collection departments of large banks and utility companies and law firms.
- 1.2 The clients of CSA members include major financial institutions (such as banks and building societies), credit grantors, government departments and local authorities, utility companies and mail order businesses.
- 1.3 At any one time, the CSA's members hold up to £20 billion of consumer debt for collection, across more than 20 million accounts. CSA members also hold nearly £4 billion in commercial debts across over 1.5 million commercial accounts.
- 1.4 As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved. Further information on the CSA can be found at: <http://www.csa-uk.com>.
- 1.5 The functions performed by CSA members are vital to the operation of the various sectors in which they operate. Unpaid debts cause damage to lenders / suppliers and to borrowers by adding costs to the system which result in higher prices for credit or goods/services. Serious problems with unpaid debt may also lead to restrictions in the availability of credit, particularly to consumers who may otherwise find it difficult to obtain cost-effective credit and therefore have a detrimental impact on the overall growth of the economy.

2. Feedback

- 2.1 We welcome the government's decision to bring Buy-Now-Pay-Later (BNPL) credit within the remit of FCA regulation.
- 2.2 We were pleased to see acknowledgement in the consultation paper of the importance of reforming the Consumer Credit Act (CCA) and a recognition that the Act contains features that may not be achieving the best possible consumer outcomes for a range of credit products beyond BNPL.
- 2.3 While the government has decided to prioritise regulating BNPL over wider CCA reform, we would nevertheless recommend that CCA reform is driven further up the policy agenda. As the government has acknowledged, it may not be delivering the best possible consumer outcomes, and may place firms in conflict with their responsibilities under the Consumer Duty to deliver good outcomes.
- 2.4 For our sector, particular challenges arise in complying with the arrears, default and termination provisions in the CCA. We are therefore particularly pleased to see the proposed approach being taken in relation to BNPL to disapply these provisions and the recognition of the questionable efficacy of such provisions, as well as the potential complexity of the documents and the impact they could have on the mental health of recipients. We very much

welcome the government's intention to consider provisions on default and arrears more holistically as part of CCA reform.

Complaints

- 2.4 One area of possible concern with bringing BNPL credit within scope of FCA regulation, and consequently the remit of the Financial Ombudsman Service (FOS), is whether the nature of the product could leave firms open to exploitation of the current complaint system.
- 2.5 Under the current complaint system, no matter the outcome of a complaint investigation, the FOS charges firms a case fee of £650 for every single case it considers, bar a handful of exemptions.
- 2.6 As the outcome is not related to the charging of the case fee, the process can be weaponised against firms, especially where the £650 case fee exceeds, for example, an amount that the customer owes to the firm. This creates a scenario where customers or their third-party representatives could use the threat of a case fee to their advantage, placing firms at a disadvantage.
- 2.7 As BNPL credit use has become more widespread, it has tended to be used to fund high-volume purchases of relatively low-value products and services. It is our understanding that each individual purchase is deemed to constitute its own individual credit agreement.
- 2.8 This means there are a large number of BNPL credit agreements, each of which, under the current system, could be subject to an individual complaint about, for example, the lending decision. This could open up BNPL firms to potentially much higher volumes of complaints, especially relating to allegations of irresponsible lending. If each purchase is an individual credit agreement, then every single purchase could potentially be eligible for an individual irresponsible lending complaint with the FOS, and each case would carry an accompanying case fee of £650.
- 2.9 There have recently been steps by the FOS to address exploitation of the case fee. It has recently proposed the introduction of a £250 case fee for professional representatives. However, as this amount is significantly lower than the case fee applicable to firms, the situation remains that the case fee structure is open to exploitation against firms.
- 2.10 In the interest of avoiding burdensome complaint volumes and unreasonable complaint costs on firms, we would recommend that measures are put in place to ensure that an appropriate and proportionate complaints regime is established for BNPL credit. We will be interested to see how the FCA intends to apply the complaint handling rules to firms providing BNPL and to enable customers to refer complaints to the FOS in its consultation.
- 2.11 In response to the FOS' proposals for a professional representative case fee, we have pressed FOS to apply a single case fee across the board, payable by the party in whose favour the FOS finds. If professional representatives faced a similar cost as the firm, it would ensure that only complaints with merit are brought to the FOS, and would discourage exploitation of the case fee system. We believe this would be the simplest route to removing the risk of misuse of the case fee structure.

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