

Response to HM Treasury's Consultation on BNPL Draft Legislation

Research Report 2025

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As leading UK researchers specialise in BNPL at Swansea University and the University of Gloucestershire, we collectively have produced a report in response to HM Treasury's consultation on the Draft Legislation "Regulation of Buy-Now, Pay-Later" (published on 17 October 2024). This report provides valuable insights into the broader implications of the proposed regulatory changes for both consumers and markets. We outline three significant concerns and offer detailed responses to each of the 13 questions posed by HM Treasury.

Keywords

Buy-now-pay-later (BNPL), regulation, legislation, UK, United Kingdom, response, consultation

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To whom it may concern,

We are responding to HM Treasury’s consultation on the Draft Legislation “*Regulation of Buy-Now, Pay-Later*”, published on 17 October 2024. As leading UK researchers in BNPL from Swansea University and the University of Gloucestershire, with extensive expertise in consumer behaviour and financial decision-making, we welcome the government’s commitment and efforts to establish a framework that protects consumers while supporting innovation in financial technology services.

Our expertise

Our research team has extensively engaged with stakeholders in the BNPL network (see Annex 1 for numbered details referred to here). This includes consumers (e.g. 1, 2, 3), not-for-profit organizations (4), research funding bodies (5), market analysts (6), academics (7), learned societies (8), and mainstream press (9) to shape opinions and practices. This ongoing engagement has given us a broad understanding of the benefits and risks of BNPL use and repayment to consumers. Given our experience, we are well-equipped to provide quantitative and qualitative insights on the proposed BNPL regulation. However, we are also conscious that we are not lawyers or legal experts, which also frames our comments’ nature and focus.

General observations

We commend HM Treasury for recognizing the rapid growth of the BNPL sector and the potential risks it poses to consumer financial well-being, particularly among vulnerable populations. The draft legislation addresses several critical areas, such as transparency, affordability checks, and dispute resolution. However, further considerations are necessary to ensure that regulation is effective, proportionate, and future-proof.

We contend there are three significant concerns:

- First, the draft legislation understandably treats BNPL as a financial product. However, our research demonstrates that BNPL is equally a consumption platform through which users shop. The proposed legislation does not address this vital aspect of the BNPL offer. Whilst it cannot be incorporated within the draft, it must be considered through other legislative means to respond to the potential dangers of algorithmic marketing inherent in unchecked online choice architecture.
- Second, and logically from the position of contract and tort, the draft legislation is agreement-centric. A new BNPL contract is constituted anew with each transaction. We argue that this agreement-centric lens limits consumer protections, as it does not acknowledge cumulative BNPL spending and its persistence. Therefore, we advocate for a more holistic treatment, recognizing that consumers frequently enter multiple agreements concurrently. This pattern affects shopping behaviour, budgetary management and repayment behaviour. Only by accounting for this will appropriate protections be created.
- Third, we appreciate the need to apply demographic markers to identify vulnerable cohorts and the provisions for those with protected characteristics. However, this approach does not account for borrowers’ psychosocial characteristics, such as materialism, impulsiveness or the extent of their financial literacy and skills. We advocate for a broader consideration of vulnerabilities based on such factors. Our research shows that these elements influence BNPL use and repayment behaviours more than demographic markers. These psychosocial characteristics and financial literacy also significantly affect BNPL borrowers’ financial and general well-being.

Given these concerns, we offer our evidence-based responses below.

Detailed comments and recommendations

Question1: Do you have any comments on the proposed approach and/or drafting disapplying provisions on pre-contractual information (sections 55 and 55C)?

We agree with the proposed intention to maximize consumer understanding of BNPL products. We also concur that an information disclosure regime based on the FCA Handbook appears suitable.

How information is accessed

However, whilst existing CONC and FCA Principles should apply (2.28), as previously noted by stakeholders, one main concern that persists is *how* to engage consumers through an easy-to-comprehend or user-friendly process. This is especially true since many electronic devices, such as mobile phones, have small screens. Additionally, ensuring that the consumer experience is as positive and straightforward as possible is paramount, particularly given that many consumers use BNPL for relatively low-priced items. As the draft legislation indicates, technical information can be challenging to consumers, especially those who are vulnerable. We further comment that consumers with limited or modest financial literacy may be disadvantaged.

Consumers' financial literacy overestimation and confusion

Our 2023 quantitative data (sample of circa 500 BNPL consumers) demonstrates that these consumers tend to have a high estimation of their *subjective* financial knowledge, resulting in feelings of financial well-being through perceived future financial security that boosts general well-being. Conversely and simultaneously, consumers demonstrate low *objective* financial knowledge that heightens their current money stress, negatively impacting their overall well-being. However, these perceptions are subordinate, which results in overly optimistic assessments of financial knowledge and a propensity to continue using BNPL.

Issues stemming from how pre-contractual information is accessed or consumers misjudging their financial literacy can result in confusion or misunderstanding. This does not align with the government's intention for this legislation. Thus, we recommend that, while developing a modernized disclosure regime, it is equally essential to ensure a positive consumer experience and engagement with such a provision, necessitating detailed consideration of the technical means to access information and consumers' processing of such material.

Consumers' frictionless preference

It is also important to note that many younger consumers (2022 and 2023 data sets, sample size circa 1,000) engage with BNPL because they perceive it to be 'less formal' and simpler to access (i.e. having higher transaction convenience) than regulated credit products. Therefore, disrupting such positions may limit use, which, whilst favourable for some, will induce others to find alternative means to access funds. Some of these will be higher risk and more likely detrimental to consumer financial and general well-being.

Terms and conditions

We also have concerns regarding the potential complexities of information, such as terms of contract, and reservations over how thoroughly consumers engage with such material.

In the 2022 qualitative projective data (sample circa 500), we observed a phenomenon termed *decoupling*, particularly in those consumers with favourable BNPL use attitudes (58% of 247).

Decoupling is the mental distance between purchase (perceived consumption benefits) and payment (perceived financial cost). This distance leads many with decoupled perceptions to view BNPL as a 'savings' mechanism. To break such associations, terms of contract need to plainly and prominently underscore that BNPL is a form of credit. The intent is to reintroduce the 'pain of paying' to generate friction. However, the problems outlined about how information is accessed create a significant stumbling block. Additionally, inadequate consideration or a lack of attention is likely to occur for those with limited financial literacy or who are financially vulnerable. We urge the pursuit of a reasonable balance between information provision, consumer engagement and consumer education.

Question 2: Do you have any comments on the proposed approach and/or drafting disapplying provisions on the form and content of agreements (sections 60, 61 and 61A)?

We agree with the government's draft intention that information provision regarding credit agreements and statements must be suitable for the nature of BNPL and its consumers. Therefore, disapplying the CCA provisions set out in sections 2.31 to 2.42 is appropriate and in consumers' interests.

Consistency between BNPL product variants

Our 2022 and 2023 quantitative data (circa 1,000 BNPL users) evidence that BNPL is perceived to have high payment transparency (relative salience). However, the variance in providers' BNPL products and associated payment cycle differences (e.g. pay in 3, pay in 30 days, etc.) creates the capacity to confuse BNPL users when engaging with different BNPL product variants and providers. Therefore, FCA rulebook changes must be drafted to account for current and potential BNPL product variants to ensure consistency in *communication* of the form and content of agreements.

Additionally, the data demonstrates that BNPL consumers perceive funds attained in this manner as 'their own future money' (through the notion of psychological ownership of borrowed money). Hence, FCA rulebook changes need to ensure that the nature of BNPL as a credit agreement is foregrounded to consumers.

Therefore, while there is the view "to the FCA making use of its powers to set appropriate rules for BNPL," including adding provisions to CONC, a set of core consumer information requirements is needed to provide agreement form and content consistency for BNPL consumers across product variants.

Question 3: Do you have any comments on the proposed approach and/or drafting disapplying provisions on ongoing information requirements (sections 77, 77A and 77B)?

It is appropriate for the FCA to use its powers to set rules to specify ongoing information requirements. However, the focus of such rules is likely to rest on the individualized nature of BNPL agreements, each contract constituting the site of legislation. Therefore, the emphasis will be on the specific details of that agreement and the information surrounding it. For many consumers, this does not capture the extent of their cumulative BNPL debt. BNPL is often used for multiple transactions, and treating each as a separate agreement belies the root of much concern, which rests on a consumer's aggregated BNPL credit load at a given time and over time. These issues are unpacked below.

The challenge of multiple separable BNPL agreements with one or more providers

Based on our detailed ethnographic fieldwork with BNPL users in 2023 and 2024 (sample of 46), what

is paramount are transparent and unified mechanisms to enable consumers to see current real-time balances across *all* their agreements with *one BNPL provider*, repayment reminders, and clear calls to action for circumstances where there are financial difficulties. In this respect, there needs to be a balance between communication formats: push (reminders sent) and pull (mechanisms to check balances) to ensure push communications do not themselves become a stress point for consumers.

Additionally, no current system enables consumers to check their BNPL balance/repayments *across different BNPL providers*, which can further challenge their budgetary management. This issue is of particular concern when vulnerable consumers simultaneously pursue multiple agreements. In one dramatic and extreme statement, one of our participants suggested this precipitated 'a debt spiral' that could spur suicide. However, the feeling of 'being trapped' and struggling to understand and navigate the multiple BNPL agreements that might be transacted concurrently was apparent in around a third of BNPL users.

Such behaviours and the resulting concerns offer a rich ground for aggregating BNPL agreements. The first BNPL aggregators have started to appear. As such services appear more frequently, consideration of how these players operate and target consumers struggling with repayments is needed. Whilst not directly addressed in the current consultation, this has significant implications for consumers' financial and general well-being.

Question 4: Do you have any comments on the proposed approach and/or drafting disapplying provisions on varying agreements (section 82)?

The intent to disapply section 82 is appropriate given the contextual differences associated with BNPL products.

However, additions must be made to the FCA Handbook to cover BNPL contracts that vary according to mutual agreement. All our consumer research, particularly the qualitative data, illustrates unevenness in BNPL providers' communications and approaches to agreement changes, such as movement to a repayment plan. Some BNPL providers have supportive and straightforward arrangements, valued by the consumers who engage with them, whilst others have opaque and complex systems that generate additional anxiety. The latter creates detrimental outcomes for consumers' financial and general well-being.

Question 5: Do you have any comments on the proposed approach and/or drafting disapplying provisions requiring prescribed information on early repayment (sections 97 and 97A)?

We agree with the draft regulation that such information is essential for consumers to make informed financial decisions, but applying current provisions would not serve this purpose. However, we welcome the continued ability to repay agreements early.

Our 2023 and 2024 ethnographic research demonstrated that many consumers appreciated the opportunity to repay early, as it bolstered their sense of budgetary control.

Given the issues highlighted above in response to Question 2 (Q2), BNPL providers must operate similar early repayment mechanisms and display information in a standardized manner. This

suggestion responds to consumers' use of multiple BNPL providers. A consistent approach would reinforce to BNPL users the potentiality of early repayment.

Question 6: Do you have any comments on the proposed approach and/or drafting disapplying provisions relating to arrears, default and termination (sections 76, 86B, 86E, 87, 97 and 103)?

Broadly, we welcome the intention to disapply the provisions and encourage the FCA to consider how it might apply its existing rulebook, particularly CONC and Consumer Duty.

From the 2022 and 2023 ethnographic data, it is evident that consumers' engagement with BNPL and information regarding arrears, defaults, and terminations is primarily managed electronically through the BNPL providers' account and agreement applications. Provisions supporting this pattern should be encouraged, and standardized sector specifications would provide consumers with clear, timely, and useful information. Such messaging could be considered 'push' communications.

There also needs to be dedicated consumer service channels, encompassing AI chatbot facilities and in-person (both text and verbal) communication. Our data suggests that consumers welcome the ability to seek information (pull). Doing so through varied media, including AI chatbots and in-person communication, offers channels that foster non-judgemental opportunities and can support the minimization of social anxiety and perceived stigmatization.

Question 7: Do the amendments to section 129 and section 86 sufficiently retain the effect of these provisions for BNPL agreements?

We welcome an amendment to the CCA that enables consumers of newly regulated BNPL agreements to apply for a Time Order in broadly the same circumstances. While we recognize that it is unlikely that many consumers would seek such orders, the capacity to do so is a prudent supplementary safeguard.

Additionally, whilst BNPL consumers would not receive a NOSIA (2.53), it is appropriate that courts will be able to make a Time Order where the newly developed FCA rule set around arrears has been triggered. This raises the issue of what an appropriate rule set would specify to identify consumers in financial difficulty and who have BNPL arrears.

Again, consideration of the agreement-centric nature of the intended regulation is required to appreciate potential difficulties. Arrears have two core dimensions: amount and persistence. The individualized structure of BNPL agreements means that possible issues with cumulative arrears across multiple contracts may be overlooked. Tracking the persistence of arrears across agreements may also be more challenging, as is construing what constitutes persistence within shorter repayment cycles. This difficulty is exacerbated by the potential for consumers to have multiple contracts with more than one BNPL provider. Hence, drafting rules identifying what constitutes *when* (persistence) consumers fall behind with *repayments* (amount) is problematic.

The consequential amendment in case of a debtor's death is appropriate.

Question 8: Are stakeholders aware of any further consequential amendments that may arise from the disapplication of CCA information requirements?

Sanctions

Our view is that the scope of the sanctions noted that would fall away is disproportionate to the scope of a single BNPL agreement. However, we also appreciate that by aggregating multiple BNPL contracts this would constitute a more sizable amount. Therefore, we sympathize with stakeholders who contend that "these provisions are important to provide a strong deterrent against breaches". That said, we do not believe that this warrants the reintroduction of the sanctions, but instead, we use this as another example of the difficulties in legislating for the financial issues that may arise from consumers' cumulative BNPL debts. This lack is something to consider in future FCA rules.

Voluntary compliance

We applaud those BNPL providers who voluntarily provided information under the CCA's information requirements. We also note that the FCA will determine whether using CCA documents will be consistent with its rules. However, given the ease with which consumers can contract with multiple BNPL providers, consistency in the information format is paramount. As such, while the FCA will be in a position to judge the compliance of the information provided, it will be unhelpful for the formation of consumer perception and decision-making if such details are presented differently.

Small agreements

We support the plan to "substitute a new section 17(1)(a) into the CCA which specifies that newly regulated agreements which do not exceed £50 are not small agreements." Removing the £50 threshold offers consistency. We welcome the standardized treatment of all BNPL agreements, irrespective of their value, as it reduces confusion.

Question 9: Do you have any comments on the proposed legislative approach to DMRs, credit broking and the Financial Promotions Order?

DMRs

We welcome the clarification of the DMR regulations proposed regarding retailers not needing to actively monitor BNPL firms' compliance with FCA rules on distance marketing.

Credit broking

The government's intention ("... merchants which offer newly regulated agreements as a payment option ... should not be brought into credit broking", p27) is positive, and we believe the concern is valid ("regulating these merchants would impose significant costs ...", p27).

Financial Promotions Order

We also agree that unauthorized merchants should be required to obtain approval to promote BNPL agreements from an authorized person with financial promotions permissions unless an exemption applies.

While we appreciate that it is outside the current legislative focus, we urge acknowledgement that BNPL is a shopping platform for future legislative considerations. Our 2022 quantitative research (circa 500 BNPL users) shows that consumers' behavioural consumption habits are shaped by their interactions with BNPL applications. Once such a habit is established, it is hard to break. Therefore,

the 'online choice architecture' of BNPL must be considered. The need for such attention is amplified as BNPL both nudges choice *and* provides the financial means to act.

Question 10: Do you have comments on the proposed legislation that seeks to implement the TPR?

The provision that seeks to implement the TPR is appropriate concerning its staging and timescales. There is suitable regard for provisions prohibiting possible loopholes allowing new lenders to offer BNPL agreements after the Initial Commencement Date. It is also gratifying that there is a sensible time limit for the duration of retained temporary permission.

Question 11: What do you expect the impacts 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?

Section 75 of the Consumer Credit Act

As consumer researchers, we are delighted to see the proposed application of section 75 of the CCA. This action will afford the same statutory rights to BNPL users. However, since most BNPL transactions are below £100, most BNPL transactions will not be covered. This situation continues to leave BNPL users unprotected. We acknowledge that BNPL lenders could voluntarily provide equivalent protections. This piecemeal treat is, however, likely to add complexity and breed consumer confusion, which, as detailed above, is already high.

Responsible lending

Again, the proposals in this respect are commendable and will support consumer protection. The chief issue we want to raise again centres on the agreement-centric nature of the current regulation. There is an underlying assumption that credit agreements are substantive and persistent. These attributes make the enactment of creditworthiness assessment of prospective borrowers easier, as they are infrequent and less likely to be concurrent, thus assisting in the timely marshalling of information (including for CRAs). Within the BNPL context, this is not necessarily the case, and some BNPL users may enter multiple agreements in a short timeframe [loan stacking] (either with the same lender or multiple providers). If each agreement necessitates a reasonable assessment of creditworthiness, this imposes a considerable load on BNPL providers and may act as a consumer stressor.

Again, the individualized nature of BNPL agreements creates potential issues for the practical application of CONC 2.10. The possible variety of BNPL agreements a borrower might hold across different providers with variable amounts makes detecting consumer behaviour patterns more challenging. This position will make the detection of unexpected or out-of-character decisions more challenging.

These issues will need to be considered by the FCA when it decides how rules on creditworthiness should be applied to newly regulated BNPL agreements.

Credit reporting

We welcome the FCA proposal to mandate data sharing with designated CRAs for regulated firms as outlined in its Credit Information Market Study.

Financial Ombudsman Service

It is crucial that BNPL users can escalate complaints to the FSO, and this is a supportive safeguard. However, consideration needs to be given to the implications for the BNPL lenders and the FSO itself. Again, when considering complaints, focusing on individual agreements could make the outcomes for BNPL prohibitively expensive. Additionally, this approach would strain the FSO, as a consumer may have multiple simultaneous agreements with one BNPL provider and complain about all these contracts. Therefore, there will need to be careful consideration of how existing FSO approaches can be applied to all stakeholders – including itself – to ensure effective and efficient operations.

Impact Assessment

The data sets we have generated over 2022, 2023 and 2024 offer detailed consumer insights on the antecedents to BNPL use, repayment and well-being. In particular, they offer insight into valued BNPL attributes and the factors that influence these. We have set out our responses where we believe our data offers specific insight into the proposed provisions and their impact. We would happily share anonymized data sets to evidence this response's contentions.

Question 12: 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?

We welcome the proposal's intention to adhere to the Public Sector Equality Duty (PSED) and believe that the proposals will, in spirit, maintain the positive equalities impact of the products. However, the specifics of the rules developed, and their implementation will determine if the intended position transpires.

Based on three years of survey data from over 2,000 BNPL users, our findings highlight the importance of examining the intersectionality of various protected characteristics and the specific profiles of BNPL users.

For example, many borrowers are female and young. Across our three studies, 62.0% were female, with a mean age of 31.12 across the total sample, and 22.9% were non-white. Many of these younger consumers, notably the female respondents, did not want to engage with traditional credit and did not feel confident accessing such financial services. From the additional qualitative data we generated, many female users gained a greater sense of financial and budgetary control using BNPL.

Again, whilst we appreciate the requirement to account for protected characteristics, we would also note that what constitutes consumer vulnerability in the BNPL sector needs to be broadened out. As stated in the opening of this response, accounting for borrowers' psychosocial characteristics, such as materialism, impulsiveness and self-control, or the extent of their financial literacy and skills would offer a more rounded view. For example, there were very low scores for objective financial knowledge concerning BNPL, with a score of 0.22 [on a scale of 0-2, where 2 is high], compared to a score of 2.44 [on a scale of 0-4, where 4 is high] for general financial knowledge. Additionally, many respondents had very high scores for materialism. The total sample average is 3.52 on a scale of 1 [low] to 5 [high], demonstrating that BNPL users are generally materialistic. This characteristic also strongly relates to our concerns about online choice architecture. As do our respondents' high scores for impulsiveness, which averaged to 3.8.

When we examine the responses from those with high scores for materialism, this accounts for an astonishing 71.6% of the total sample across all three studies. There is a highly significant correlation

between materialism and BNPL use; the higher the level of materialism, the higher the BNPL use frequency. Over a third of total respondents (35.9%) earn between £15,000 to £29,999 annually, demonstrating that the core of these BNPL users remains below the UK average 2024 annual salary of £37,430. This evidences that BNPL use remains high among those who earn less, and these consumers continue to have materialistic proclivities, perpetuating a fertile market for BNPL.

Question 13: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?

As stated above, we would happily share anonymized data sets that capture sex, age and ethnicity.

Conclusion

In conclusion, the draft legislation represents an important step towards safeguarding consumers in the BNPL market. Further refinement of the proposals is needed to ensure this regulation can strike an effective balance between consumer protection and enabling innovation. Attention then needs to turn to the online choice architecture of many BNPL applications and the interplay of this with its financial service attributes to ensure holistic consumer safeguards.

We appreciate the opportunity to contribute to this consultation and would happily discuss our feedback or provide additional evidence if required. Please do not hesitate to contact us.

Yours sincerely,



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Annex 1: Cited literature

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