

HM Treasury  
1 Horse Guards Road  
Westminster  
London SW1A 2HQ

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Dear Team

### **Regulation of Buy-Now Pay-Later (BNPL)**

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies who provide financial services – primarily savings and loans facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loans facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and / or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with 250 credit unions active in mainland Great Britain today and have 1.4 million members and £1.95 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

### **Response to consultation**

#### **Scope**

We agree with the Government's approach to the perimeter change overall. We agree that including activities such as invoicing, insurance, sports seasons tickets or memberships is likely to negatively impact these businesses whose main function is not to provide financial services but the underlying goods. Ideally, these areas where a good track record exists would be exempted.

We appreciate that where third parties are involved in these transactions it can be challenging to draw a distinction between short-term interest-free credit and Buy-Now Pay-Later. There is

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however, a larger and more easily discernible difference between a business that offers financing alongside its own good and services and a firm that specialises in providing financial services to the customers of a number of different retailers. As a result, we believe that the government should draw the boundary along the lines of the first option presented in the consultation which includes third-party lenders.

Not only can specialist third-party BNPL firms more efficiently comply with regulations, but they also pose a broader risk to consumers and are incentivised to promote credit over other options which has led to their rapid growth. In addition, the more acute relationship between the payments these BNPL firms receive and their services makes the 'interest-free' category more tenuous, as by distilling away the product's own profit margins the model is more clearly that of a creditor than a supplier. We would agree that the second option considered is too easily avoided.

In terms of credit broking, we are satisfied that on balance an exemption should be introduced for merchants outsourcing their financing options to a regulated third party given the greater protections for consumers bringing BNPL into regulation would provide. As the government notes, merchants would still be subject to the Consumer Protection from Unfair Trading Regulation which addresses the main harm still posed by the merchant of pressure selling and misleading sales tactics.

## **Regulatory Controls**

We agree that all promotions of BNPL agreements should be subject to the financial promotions regime, the current loophole is convoluted and variable regulations of advertising BNPL agreements is undesirable. It makes sense that most merchants would rely on their regulated BNPL partner for approval of the promotions. We agree that consumers should enter into such agreements with their eyes open to the consequences of default and details of this should be available and sufficiently prominent in the precontractual phase of the customer journey. We also agree that the rules should be flexible enough to dispense with irrelevant sections of disclosure information to improve the readability of this information.

We strongly believe that BNPL agreements should be subject to creditworthiness assessments as the main cause of harm in our view is that BNPL agreements can quickly rack up into serious levels of debt through a series of small and individually inconspicuous agreements. Compounding this issue is the inconsistency of credit reporting by BNPL providers which can lead to further affordability issues where other creditors find it more difficult to accurately assess income and expenditure. Whilst our sector relatively reliably identifies these agreements from bank statements, not every creditor does this and bank statements are missing much of the information that would be reported in a credit file.

We agree that regulations around the treatment of consumers in financial difficulty is appropriate and we are alarmed that any of these firms should receive a significant portion of their income from late repayment fees. This clearly provides a perverse incentive and BNPL providers should be subject to regulations in line with the CCA requirements to treat consumers fairly and to reduce any benefit to the BNPL from problematic indebtedness.

We agree that narrowing of section 17 of the Consumer Credit Act would be appropriate to prevent the smurfing of agreements just below the £50 small agreement threshold to bypass certain CCA protections. We are also happy for the benefit of the Financial Ombudsman Service to be extended to consumers of BNPL schemes as the mechanism of dispute resolution, we believe there should be a consumer-friendly way to seek address for the potential poor conduct of BNPL providers.

In summary, we are encouraged by the proposals and wholly support the thrust of the Government's commitment to bring BNPL into the scope of financial services regulation. We would be very happy to discuss this response in more detail should you wish to.

Yours sincerely,

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