

HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

29<sup>th</sup> November 2024

**Response to HM Treasury’s “Regulation of Buy-Now, Pay-Later Enhancing the Special Resolution Regime Consultation on Draft Legislation”**

To whom it may concern,

We welcome the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the primary trade association representing credit unions in England, Scotland and Wales, with around two thirds of credit unions in 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 over 230 credit unions active in Great Britain today with more than 1.5 million members and £2.7 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

## **Response to Consultation**

The credit union sector welcomes the opportunity to respond to the Governments proposals on unregulated buy-now pay-later (BNPL) products.

We strongly support the need for regulation of the BNPL sector. Credit unions are seeing the detrimental impact that BNPL firms can have on individuals, particularly those who are vulnerable.

### **Question 1: Do you have any comments on the proposal to disapply a number of provisions from the CCA requirements including pre-contractual information, agreement content, form content, and ongoing information?**

ABCUL agree with the proposal that BNPL firms should be subject to FCA supervision and comply with certain CCA provisions. We are concerned that lenders offering currently exempt BNPL agreements could choose if they wish to continue to provide the CCA's information requirements rather than the governments proposed BNPL, if determined by the FCA as consistent with the rules. In the consultation paper the government clearly state that CCA information being provided to BNPL consumers can be "complex and difficult for consumers to engage with, and that some of the information is of little relevance to BNPL agreements". We agree that the information that is required to be communicated to CCA consumers is not fit for purpose when it comes to shorter term lending like BNPL, however we would strongly urge the government to ensure that BNPL firms must have specific and simplified communications issued to consumers as part of their regulatory requirements. To simply remove any requirements for BNPL firms to not provide some form of pre-contractual information sheet, agreement content or ongoing information would be detrimental to the consumers and it also goes against the Principle 7 of Consumer Duty – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading. By disapplying a number of the provisions from the CCA it undermines the Duty. If it is decided that the FCA are able to utilise their powers to apply

more appropriate disclosure requirements than this would need to be visible in the form of a new sourcebook.

**Question 2: Are you aware of any further consequential amendments that may arise from the disapplication of CCA information requirements?**

We fear that the disapplication of the CCA information requirements dilutes the protections and safeguard for BNPL consumers. By applying the CCA rules to BNPL firms it sets a level of expectation that firms need to meet in order to provide a regulated product. By making and exemption for BNPL firms it sets a precedence for other regulated providers. Also without knowing the standard that the FCA will propose if the disapplication of applied it make it had to give a fully objective response. We understand the BNPL products are described in the paper as “generally simple products that might not require the same extent of information as secured loans or credit products with more features or complex ramifications in case of breach”. From engaging with our member credit union these “simple products” are actually causing the most damage to consumers with many not understanding the obligations they have committed too, and from some a significant volume of BNPL being taking out in close succession leaving them financially vulnerable. Regardless of what channel the individual has applied for a BNPL product, online or on a mobile device, consumers must be informed of the agreement and continued information relating to the agreement they have entered into. This is why we strongly urge that the BNPL must provide a simplified version of the documents to consumers which are agreed by the FCA in order to protect customers. Simply disapplying information to due to the constraints of possible information channels is not enough.

**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)?**

We understand the governments rationale for proposing that Section 77A on providing annual statements may be deemed as unsuitable for lenders, however this information being provided may actually be of benefit to consumers. By providing this statement it may alert consumers who are overcommitted to the extent of their commitments and allow

them to seek financial advice and support. We do not support BNPL firms being exempt from this requirement.

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

We understand the governments rational as to why they have disappplied requirements under section 82, given the lending is short term.

**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)? Do you have any comments on the proposed temporary permissions regime?**

We understand the governments rational as to why they have disappplied requirements under sections 97 and 97A, given the lending is short term.

**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)?**

We oppose the disapplication of sections 86B, 86E and 87 strongly. BNPL firms may offer short term lending to which these provisions are deemed to be classes as “practically unsuited” due to the products being taken out and managed online. In today’s world the majority of people manage their financial obligations online, this does not then exclude the other financial providers from their obligations to provide this information to consumers under CCA. We feel that given other finance providers manage to facilitate these requirements and have made developments to their infrastructure to allow notices to be distributed then BNPL companies should also be help to the same requirements. There is also the argument for those consumers who are vulnerable or not as confident utilising technology for them to receive these notices in order to make them aware of any arrears or defaults.

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

We support the proposal to ensure BNPL lenders would be subject to section 86.

As stated in our response to question 7 we do not support the disapplication of sections 68B, 86E and 87. So do not support the proposal to disapply section 129 (Time Orders). The proposal for the FCA to implement rules on how lenders should engage with consumers in financial difficulty would have to clearly state the consumers rights to accessing a Time Order or the equivalent that is then created. Under the current CCA legislation other lenders have had to modify their approach with consumers as the legislation has been amended over time. The proposals to create a new set of rules to solely fit the BNPL firms seem a drain of the FCA's already stretched resources.

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

We are not aware of any other consequential amendments that may arise from the proposed disapplication of CCA information requirements.

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

We understand that currently under the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005 (the Financial Promotions Order) that BNPL firms would not be subject to section 21 without the legislation being amended. We would call for this to be on the government's roadmap for future legislative change to bring BNPL lenders into line with the requirement to have financial promotions approved by an authorised person.

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

We support the temporary permissions regime process.

**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?**

ABCUL fully support the additional regulatory elements that will apply to BNPL firms particularly the creditworthiness and affordability assessments, credit reporting and being within scope of the FOS. ABCUL has been listening to our members feedback on the impact of not being able to see BNPL firms on credit reports, the hidden debts for many, which has made lending decisions harder for credit unions and also missed opportunities to help support and provide financial education to their members. ABCUL are concerned at the time delay of these changes being able to come into effect, if approved, and that quicker regulation needs to be implemented.

Please get in touch at [advocacy@abc.ul.org](mailto:advocacy@abc.ul.org) should you wish to discuss our response.

Yours faithfully,



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