

Citizens Advice Response to HM Treasury Consultation 'Regulation of Buy-Now-Pay-Later'

Introduction and summary of response

At Citizens Advice, we offer free, independent, and confidential advice and information to anyone who needs it. In 2021 we helped 1.47 million people who came to us with a problem, including 283,000 people with problems related to debt, nearly 208,000 with problems related to financial services, and 100,000 with problems with consumer goods and services.

Growth and development of BNPL

We welcome the opportunity to respond to these proposals on Buy Now Pay Later (BNPL) regulation. BNPL is now a significant segment of the consumer credit market, with transactions worth £2.7 billion last year.¹ In a very short space of time, BNPL has become a standard payment option for retail purchases, particularly those made online. Around 5 million people in the UK used a BNPL product in 2020 with this number expected to grow,² and for some people it has become their default option for purchases. 1 in 10 people who use BNPL now say that they *always* use it when it's available.³

The image of Buy Now Pay Later as primarily a feature for clothes has never been fully accurate - in early 2021 we found it was used more frequently for electronics, and only a slightly smaller proportion of people used it for white goods compared with clothes.⁴ But as the market has boomed, it's increasingly normalised as a standard way to manage your money. Already, BNPL shopping apps can now be used regardless of retailers, and products like Klarna Card can be used offline as well as digitally.⁵

¹ The Woolard Review (<https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>)

² The Woolard Review

³ Nationally representative polling of 10,000 UK adults conducted by Opinium on behalf of Citizens Advice in January - February 2021. BNPL users refers to the 2,700 respondents who said they had used BNPL in the previous 12 months

⁴ 33% of BNPL users have purchased electronics, while 29% of BNPL users have used it to purchase clothes compared to 24% who have used BNPL to purchase white goods

⁵ Klarna, [Category: Klarna Card | Klarna UK](#)

Indicating the wider direction of travel, the US version of Microsoft's newest browser offered a BNPL extension as standard.⁶

Amid rising living costs, we're seeing delayed payments marketed as a way to make ends meet. One brand offers "Tesco Now. Pay Later".⁷ Another tells customers to "[n]ever worry about doing your food shopping with the helping hand of credit", highlighting "absolutely no credit checks" as part of their offer.⁸

While splitting and delaying payments will undoubtedly work for some people in some contexts, our research into the design and use of BNPL highlights the widespread risk in this rapidly expanding market.^{9,10} Of people who had used BNPL in the previous year, 39% had used it without realising and 42% didn't fully understand what they were signing up for. 1 in 10 of those who've used BNPL ended up chased by debt collectors - just over half of whom have subsequently turned to another form of borrowing to pay off their debt, such as a credit card or loan.¹¹ 2 in 5 users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product. Ultimately, a quarter of those who use Buy Now Pay Later go on to say they regret doing so. As the market continues to expand, there is a risk that these existing issues will be felt more widely.

Risks, characteristics and context of BNPL

We welcome the consultation and many of its proposals - in particular its focus on robust affordability checks and recognising the lack of friction as part of BNPL's slippery design.

However, we do not share the government's assessment that BNPL is a low-risk product. Despite the fact that individual agreements may be lower in value and no interest is charged, BNPL comes with its own specific set of risks that sets it apart from other forms of spending.

⁶ Microsoft, [Introducing Buy now, pay later in Microsoft Edge](#)

⁷ Zilch, <https://www.payzilch.com/tesco/>

⁸ Flava, [Never worry about doing your food shopping with flava buy now pay later](#)

⁹ Citizens Advice, [Buy Now...Pain Later?](#), 2021

¹⁰ Citizens Advice, [Buy now, pay later: what happens if you can't pay later? - Citizens Advice](#), 2021

¹¹ Nationally representative polling of 2,003 UK adults who had used BNPL in the previous 12 months conducted by Opinium on behalf of Citizens Advice in June-July 2021. 54% of people who have been chased by debt collectors because of a BNPL debt turned to at least one other form of borrowing to pay their BNPL debt

There are two particularly important features of BNPL that we want to emphasise in relation to risk and consumer detriment.

First, **BNPL is predominantly promoted at the point of purchase** and is embedded in slick retail customer journeys to maximise sales and spending. The BNPL business model is based on receiving revenue from merchant fees, which are paid on the basis that BNPL drives additional sales. Retailers and BNPL providers alike have very strong incentives to influence the decisions consumers make in order to maximise consumer spending. In practice, this results in slippery design which encourages people to spend more than they can afford.

One of the ways this manifests itself is in the way product information is treated. Frequently, users have to go through extra steps, such as opening a separate tab or scrolling through lengthy terms and conditions, in order to access vital information. We examined 74 online checkouts as part of a mystery shopping exercise.¹² Only 8 checkouts warned shoppers they were taking out a credit agreement outside of the small print or terms and conditions, while the remaining 66 put this information in the small print or terms and conditions. None of these checkouts warned people of the risk of being referred to debt collection if they missed payments.

The high proportion of people who use BNPL by accident, or without realising what they're signing up for, shows the impact of this design.

Second, BNPL is designed for **repeat spending across multiple agreements**, rather than one-off purchases. The BNPL business model depends on consumers using BNPL in this way, and our evidence suggests that many do. The average BNPL user is paying for 2 products at once, repaying £63 a month across all their agreements and using at least 2 different BNPL providers over the course of a year.¹³

The facility to aggregate spending creates a number of risks. It can be challenging for consumers to keep track of multiple agreements with different payment schedules and instalment amounts, particularly where a consumer is using more than one provider. This is reflected in the fact that 3 in 10 BNPL users have been charged a fee they weren't expecting, often due to problems setting up a payment. In the last year, BNPL users

¹² Mystery shopping conducted by Citizens Advice in June-July 2021. 38 retailers offered payment using BNPL, with 22 offering more than two BNPL options, meaning there were a total of 74 BNPL checkouts

¹³ Citizens Advice, [Buy Now...Pain Later?](#), 2021

were charged a total of £39 million in late fees.¹⁴ Unexpectedly finding that a number of instalments are due within a short period of time can lead to BNPL users missing other payments. Our research found 2 in 5 BNPL users had been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product. This is even more pronounced for people with protected characteristics such as people of colour, disabled people, and transgender people - for whom the proportion unable to afford essentials because of BNPL payments increases to 53%, 58%, and 91% of BNPL users from these groups respectively.¹⁵

The risks of indebtedness are also subject to wider **pressures on household budgets**, for instance as energy prices rise and inflation exceeds 5%.¹⁶ Our recent research finds that 3.2 million households will not be able to afford essentials this winter, and a further 380,000 households will be left with just £50 a month after basic living costs.¹⁷ Looking ahead to April 2022, a further hike in energy prices will intensify this. In the face of financial pressures, people may turn to BNPL as an option to help them smooth cash flow and spread the cost of purchases. But given the tight margins for many people between being able to make ends meet or not, there must be strong protections in place for customers facing financial difficulty, along with robust affordability checks to safeguard against customers taking on more credit than they can afford.

But of course it's important to regulate BNPL not just for the current shape of the market, but what it looks set to become. Given the rapid growth and diversification of the sector, **future-proofing** is a key consideration for regulation of BNPL - both in terms of new models, and the extension of the market into more products. New forms of unregulated credit that differ from BNPL in details of their model, but share the same essential characteristics and create the same fundamental risks, should not be able to emerge easily by bypassing regulatory frameworks. We welcome the consultation's focus on identifying the key characteristics of BNPL, so that the scope of regulation can be drawn around those features that drive risk and detriment.

Priorities for regulation

Behavioural economics has helped regulators and government understand how to regulate markets over recent years. For instance, by using a greater understanding of

¹⁴ Citizens Advice, [Buy Now...Pain Later?](#), 2021

¹⁵ Citizens Advice, [Buy Now...Pain Later?](#), 2021

¹⁶ Bank of England, [Monetary Policy Report - November 2021](#)

¹⁷ Citizens Advice, [Three million families facing crisis as cost of living crunch bites](#), 2021

how firms exploit consumer inertia across a range of markets to take action on the loyalty penalty. Many of the risks associated with using BNPL products derive from manipulation of behavioural biases, and regulation must reflect this.

1. User-tested solutions to baked-in problems with product design

Much of the detriment we see currently is directly linked to product design and features of the BNPL customer journey. Nudges, incentives and the absence of healthy friction encourage spending and make it more difficult for consumers to make informed decisions, resulting in widespread misunderstanding, surprise and regret. To address these baked-in issues, the approach to BNPL regulation should draw on rigorous user-testing to understand what information consumers need, how people engage with information in the context of BNPL, and where smooth design needs to be balanced with healthy friction. A theoretical assessment of what consumers need is not adequate. Regulation must be based on what works in practice, and clearly focused on specific positive consumer outcomes.

2. Information provision

One of the key problems we've identified concerns information about BNPL agreements. Unlike regulated lenders, BNPL providers do not have to provide prescribed information in a standard format. In practice, the information provided varies significantly. Often it is insufficiently prominent, and may rely on consumers reading through a large volume of small print or clicking through to a separate screen. Regulation should ensure that key pieces of consumer information are relayed to consumers appropriately and effectively, bringing BNPL into line with other types of consumer credit. This particularly includes information about how to make a payment and the consequences of missing payments.

3. Affordability

Regulated lenders are required to carry out creditworthiness assessments prior to lending. While some BNPL lenders carry out pre-lending checks, practice varies and there are no firm requirements, which can also lead to BNPL debts flying under the radar. Too often, the result is people taking out agreements they struggle to afford and then facing extra costs and added anxiety as a result of falling behind. 1 in 4 people who have used BNPL regret doing so, most commonly because they have spent more than they can afford or planned to spend. Some are missing payments on bills or going without essentials in order

to keep up with BNPL payments. Regulation must ensure a base level of consistency across the BNPL industry to tackle these poor consumer outcomes.

4. Consistent treatment for people facing financial difficulties

People who fall into financial difficulties when they use BNPL products should be able to expect the same fair and consistent treatment as they would with any other credit product. Regulation must ensure that the same forbearance requirements are applied to BNPL lenders as they are with other regulated forms of credit.

The remainder of our response sets out our reflections on what considerations should be part of the scope of regulation, and provides further evidence for the Treasury on how to ensure regulation is proportionate to BNPL providers while also resolving the embedded problems which we have identified as driving harm.

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Responses to individual questions

1. Do you agree with our analysis of the business models that underpin the BNPL market?

We broadly agree with the analysis of BNPL business models set out in the consultation. This analysis establishes a useful set of characteristics that can be used to distinguish BNPL from other types of unregulated credit, in order for regulation to be extended to BNPL in a targeted, proportionate way.

We would also emphasise that BNPL is usually **embedded in slick customer journeys** that lack friction and use a range of techniques to maximise spending. Informed by a wealth of data and sophisticated understanding of consumer behaviour, 'nudge' and 'sludge' techniques are widely used to influence consumer decision-making. Nudges encourage people to slip into spending money and entering agreements - including unintentionally - while sludge keeps people in this position using features which obscure information or make it harder to access. Some of these techniques may be transparent to informed consumers. Others are more subtle and may not be consciously registered by consumers at all. In either case, widespread difficulty in making BNPL repayments - and levels of consumer regret - suggests the super-slick design is often not in the consumer's best interest. We explore and evidence this point further in answer to the next question, where we set out some findings from our consumer research.

The fact that BNPL allows consumers to easily **aggregate credit** is another particularly significant characteristic. As we note in more detail below, it is common for BNPL users to have a number of agreements simultaneously, either with a single provider or several. Such usage is encouraged by BNPL providers and is a core feature of the BNPL business model. This tends to increase the amounts consumers owe, and with it their exposure to risk. Regulation must take this into account and consider the risks that follow from repeat use across multiple agreements.

As the consultation notes, the BNPL market has grown very rapidly in recent years. There are signs that **BNPL is diversifying** beyond current markets and business models. Reflecting this, regulation must aim to anticipate future developments so that new forms of unregulated BNPL are not readily able to emerge. We anticipate that in the future some retailers may begin offering BNPL directly to consumers without the

involvement of a third party lender. The potential incentives for retailers to do this include cost-savings and the ability to exert more control over the customer journey. Other potential developments include greater use of BNPL for in-store purchases and for larger-value purchases such as electronics and white goods, as well as for essential items and day-to-day living expenses.

BNPL's slick design and the ability to aggregate credit are fundamental characteristics of BNPL and are, in our view, particularly important to defining the scope of regulation.

Regulation must be developed around core criteria such as these, limiting the potential for new unregulated products with similar risks to emerge in future. It is particularly important to get this right given that the retail credit sector is currently so dynamic and fast-growing.

2. Do you have information to provide government with a more granular and up-to-date understanding of the BNPL market?

In 2020, the BNPL industry nearly quadrupled in size to nearly £2.7 billion of transactions compared to 2019.¹⁸ Citizens Advice research suggests that 1 in 4 UK adults used BNPL over the same period.¹⁹ Individual transactions are low - typically in the range of £65-£75²⁰ - but the BNPL business model is based on the expectation that a significant proportion of consumers will make multiple purchases and continue to use BNPL over a period of time. Our research indicates that the average BNPL user is:

- Paying for 2 products at once
- Repaying £63 a month across all their agreements
- Using at least 2 different BNPL providers over the course of a year, with 1 in 10 people using 4-5 lenders²¹

BNPL is still a relatively new part of the consumer landscape and continues to develop rapidly. One potential development is greater use of BNPL for larger-value items. BNPL users in our research reported that they were most likely to use BNPL to purchase electronics, followed by clothing and white goods, indicating that a shift to higher-value items may already be well established. We also see evidence of consumers using BNPL to pay for essential items and help meet day-to-day living expenses - a worrying trend,

¹⁸ Woolard Review

¹⁹ Citizens Advice, [Buy Now...Pain Later?](#), 2021

²⁰ Woolard Review

²¹ Citizens Advice, [Buy Now...Pain Later?](#), 2021

especially in the context of current cost-of-living pressures. The view that BNPL is a relatively low-risk product is, we think, difficult to maintain in the face of developments such as these.

Why are people using BNPL?

BNPL is an attractive consumer product which many people use simply as a way to split and delay payments. For others, the fact that BNPL is so readily available, promoted by retailers and easy to use actively encourages them to use it ahead of alternatives. Although using BNPL is a positive experience for many, this is by no means universally true. In the last year, 1 in 4 people regretted taking out a BNPL product.

It is important to acknowledge the **external factors that influence consumer behaviour** in retail environments where BNPL is encountered. Retailers and BNPL providers use a range of techniques to nudge consumers towards spending, some of which carry significant risks of consumer harm. At online checkouts, BNPL may be presented as a default payment option and may even be pre-selected for future use. Reflecting this, our research has found that in the last year 39% of people who took out a BNPL agreement did so without realising. Even where consumers do deliberately choose BNPL as an option, they are not necessarily provided with clear information about the credit agreement they are entering into or the consequences of non-payment - as outlined in more detail below - and 42% told us they didn't know what they were signing up for. By comparison, promotional information on instalment cost (versus full price) is usually prominent, and in some cases BNPL comes with retailer discounts. Given the above, we would question whether it is helpful to speak, as the proposals do, in terms of consumers 'choosing' or 'deciding' to enter BNPL agreements.

Regulation needs to ensure people have the **time and the information to make an informed choice**. Given the heightened risk in online shopping of an accidental or impulsive decision, regulation must balance the speed and smoothness of online shopping with adequate consumer safeguards. Reflecting the way BNPL is typically used - multiple, repeat use - regulation also needs to be sensitive to potential risks such as difficulty keeping track of instalments and overall borrowing, over-commitment, over-indebtedness and financial difficulty.

3. Do you have further analysis or evidence of consumer detriment in the BNPL market?

In our research we have identified widespread consumer harm in the BNPL market. Whilst many people use BNPL without experiencing negative consequences, the customer journey often lacks the necessary care, information and affordability checks. As a result, some consumers are at risk of using BNPL with **limited awareness and understanding** of the product and its implications.

Liz's story:*

Liz decided to buy some plant seedlings online worth £23. She tried to pay for her items and nothing happened, so she assumed the transaction was void. Liz then received an email saying that she'd signed up for a buy now pay later service. She didn't understand how she did this, or who the company was. The BNPL provider began demanding money from Liz and threatened to send debt collectors. Liz tried to explain the situation, but the company became hostile. She couldn't sleep and was worried about her health.

**All names changed to protect anonymity*

Situations like Liz's can be traced back to the **design of online checkouts**. BNPL is often given a prominent position on screen and may even be pre-selected as the default payment option. The fact that BNPL is a credit product may not be clearly stated, and terms and conditions may not be displayed unless you actively choose to view them. Earlier this year we conducted mystery shopping looking at 74 online checkouts featuring BNPL.

- Only 8 checkouts warned shoppers upfront they were taking out a credit agreement. The remaining 66 put this information in the small print or terms and conditions.
- None of the 74 checkouts we examined warned consumers that debt collectors may be used in the event of missed payments. This was only flagged separately in terms and conditions, if at all.

Although BNPL is often seen as relatively low-risk, our research demonstrates that in fact, **many BNPL users experience problems making payments**. In the last year:

- 2 in 5 BNPL users have struggled to make a payment

- 1 in 3 BNPL users have missed a payment or made a late payment
- 1 in 10 BNPL users have been chased by debt collectors

Once again, poor consumer outcomes can be traced back to **the way information is presented** in the BNPL customer journey. Where a payment-splitting facility is offered, the text and graphics at BNPL checkouts often focus attention on the cost of instalments rather than the total amount repayable. Many lenders display a timeline of due dates for repayments, which serves to further emphasise the instalment cost. Behavioural insights research has shown that people are already likely to overestimate their ability to make repayments, and focus on present rather than future payments.²² Presenting payment information like this risks giving consumers a false sense of how much they're spending, and how much they can afford. Special offers such as exclusive discount codes may also be used to encourage people to use a particular BNPL provider rather than an alternative payment method. In our research, 1 in 6 BNPL users told us that their main reason for using BNPL had been because a promotional offer made the item they were purchasing cheaper than if they had used other payment methods.

Although BNPL is typically used for lower sums and does not carry interest, we would challenge the government's view that this necessarily makes it less risky than other credit products. For one thing, these same characteristics make it **appealing to people with low incomes or limited access to credit**. Given the wide availability of BNPL and the limited use of credit checks across the industry, there is a risk that BNPL becomes a last resort for consumers who cannot borrow elsewhere. Notably, in our polling of BNPL users, 29% had been turned down for credit cards.²³ In the last year, BNPL users were charged a total of £39 million in late fees - much of which will have come from people signing up to unaffordable agreements. Our research also finds that these issues aren't felt equally across all groups. People from marginalised groups which are disproportionately likely to have low incomes or limited access to credit are more likely both to use BNPL and encounter problems making payments. While 39% of all users have struggled to make a payment, this rises to 52% of people of colour who have used BNPL, 60% of disabled users and 87% of transgender users.²⁴ Of all BNPL users who missed or made late payments, 56% had been refused a credit card in the last year.²⁵ This evidence makes a strong case for **more robust credit and affordability checks**

²² [The Behavioural Insights Team and Citizens Advice - Applying behavioural insights to regulated markets](#)

²³ Nationally representative polling of 2,003 UK adults who had used BNPL in the previous 12 months conducted by Opinium on behalf of Citizens Advice in June-July 2021

²⁴ Citizens Advice, [Buy Now...Pain Later?](#), 2021

²⁵ Nationally representative polling of 2,003 UK adults who had used BNPL in the previous 12 months conducted by Opinium on behalf of Citizens Advice in June-July 2021

across BNPL as an essential consumer safeguard which creates an appropriate balance between accessibility and affordability.

The knock-on **impacts of missing payments** or **struggling to pay** can be serious:

- 28% of people who missed a payment were charged a late fee, 26% fell behind on another payment and 25% fell behind on a bill.²⁶
- 96% of people contacted by debt collectors as a result of BNPL debt reported at least one negative impact such as having to rely on another form of borrowing to repay the debts, sleepless nights, or ignoring letters or texts in case these were about their debts.²⁷
- 2 in 5 BNPL users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product.
- Of the aforementioned 1 in 4 people who have gone on to regret using BNPL, the most common reasons for this were paying more than expected and spending more than they could afford.²⁸

Some brief **case studies** of people helped by Citizens Advice illustrate the detriment we see arising from use of BNPL. Diana* has serious mental health issues which cause her to compulsively shop. She had £6000 of debts that she was already struggling with. Despite this, she was still able to take out nearly £280 of BNPL agreements across 3 different lenders which she subsequently couldn't manage to repay. Another person who came to Citizens Advice for help was Lauren, who again took out agreements with 3 different lenders which totalled over £1000 to pay for decorating equipment after moving into permanent accommodation. For Lauren, these accumulated agreements meant she was repaying a minimum of £400 every month, and left her relying on her overdraft to make ends meet.

These examples of consumer detriment underline **two lessons for BNPL regulation**.

- Regulation must ensure consumers have clear and adequate information about agreements, and sufficient opportunity to digest that information, before they enter into agreements.
- Regulation must ensure that BNPL providers adopt a more robust and consistent approach to assessing customers' affordability.

²⁶ Citizens Advice, [Buy now, pay later: what happens if you can't pay later? - Citizens Advice](#), 2021

²⁷ Citizens Advice, [Buy now, pay later: what happens if you can't pay later? - Citizens Advice](#), 2021

²⁸ Citizens Advice, [Buy Now...Pain Later?](#), 2021

4. Do you have analysis that would support us in identifying which specific elements of the BNPL business model pose particular risks?

As discussed above, BNPL allows consumers to easily **aggregate credit** and is designed for repeat use across multiple agreements. This can make it difficult for consumers to monitor their spending, keep track of their commitments and manage their payments. Worryingly, 30% of people who've used BNPL don't know how much they're paying back each month across all BNPL products that they've taken out.²⁹ While BNPL is often associated with low-value purchases, we're seeing a shift to higher-value purchases such as electronics and white goods, which may well continue and expand, further increasing the potential risks to consumers.

Secondly, BNPL is characterized by a frictionless customer journey. As we have noted, it is not uncommon for users to sign up for BNPL agreements without being fully aware of the agreement they were taking out or the implications of non-payment. In fact, as many as 39% of people who have used BNPL did so without realising. The underlying risks here stem from the fact that BNPL is **positioned at the point of purchase** and embedded in retail customer journeys that use multiple, often subtle techniques to influence user behaviour and maximise sales and spending. There is, currently, a fundamental mismatch between what people need to make informed and considered decisions and what is provided in the BNPL customer journey.

- 5. Do you agree with our analysis of the business models that underpin the short-term interest-free credit market?**
- 6. Do you have information to provide government with a more granular and up-to-date understanding of the use of short-term interest-free credit?**
- 7. Do you have further analysis or evidence that supports or undermines our understanding that there is limited consumer detriment in the short-term interest-free credit market?**
- 8. Do you have analysis that would support us in identifying which specific elements of the short-term interest-free credit business model serve to protect the consumer from harm?**

²⁹ Nationally representative polling of 2,003 UK adults who had used BNPL in the previous 12 months conducted by Opinium on behalf of Citizens Advice in June-July 2021

9. Do you agree with the distinction between BNPL and other forms of short-term interest-free credit that has been drawn in this consultation?

10. Do you have any comments on our analysis of the drivers of risk for consumers in the BNPL market?

We broadly agree with the analysis of business models in the short-term interest-free credit market set out in the consultation and the distinction it draws between BNPL and short-term interest-free credit. While we agree that there are risks associated with short-term interest-free credit, we have not seen evidence of widespread or significant consumer detriment associated with this type of lending. We agree that the scope of regulation should be drawn so as to focus tightly on BNPL.

As the consultation notes, the BNPL model tends to rely on aggregated credit. The value of each individual agreement may be low but the accumulation of multiple agreements can result in consumers owing significant sums that are difficult to track and monitor. We consider this to be a significant driver of consumer harm. We would also highlight the general smoothness of the BNPL customer journey and the risks that follow from BNPL being embedded in retail environments designed to maximise spending. Given that BNPL is generally intended for repeat use as part of an ongoing relationship, ease of initial signup is a cause for concern. Creditworthiness assessments are often limited and consumers are not always given adequate time, opportunity or information to be able to make an informed decision.

11. Do you have any suggestions on how a clear distinction could be drawn between BNPL and short-term interest-free credit?

We recognise that it would be proportionate to draw a distinction between BNPL and short-term interest-free (STIF) credit. As explained in Q4 and Q10, BNPL poses specific risks to consumers because of the way it encourages people to accumulate debt through multiple purchases and the lack of friction built into the customer journey, including crucial elements such as information provision and creditworthiness assessments. Regulation should be drawn around products which display these key risks, which, to our knowledge, are not pronounced in STIF credit products.

We agree that it's vital to draw these distinctions in a way that anticipates potential changes in business models and, so far as possible, precludes the emergence of new unregulated products with similar risks to BNPL. At present, short-term interest-free credit is typically used for single larger purchases, often made in store, while BNPL is associated with multiple purchases made online. Given the continued growth of online retail and acute competition in the retail sector, these distinctions may become increasingly blurred in the future, with more larger purchases being made online and potentially making use of BNPL. As we note below, there is also a scenario in which retailers introduce direct deferred payment credit products without the involvement of a third-party lender.

12. Do you have any comments on the option to draw that distinction by restricting the extension of regulation to interest-free credit agreements where there is a third-party lender involved in the transaction? What impact do you think this would have on short-term interest-free credit providers that would be drawn into regulation?

We recognise that this option has the advantage of drawing a clear regulatory boundary. However, we are concerned that it would leave open the possibility of a new BNPL business model emerging in which retailers offer credit directly to customers, without the involvement of a third-party lender. We think there are a number of plausible incentives for retailers to create a direct lending product. Retailers with significant market power may in future explore bringing lending in-house to achieve cost savings and gain a competitive advantage. Retailers that emphasise excellent customer service as a selling point might introduce direct lending as a way to ensure end-to-end control over the customer experience. If regulation only applied to

agreements where a third-party lender was involved, such a business model would be unregulated and potentially give rise to the kinds of detriment we see in BNPL currently. Amazon's efforts to introduce a version of BNPL into its business model, making use of its market share and brand recognition, suggests a need for caution around this point.

13. Do you have any comments on the option to draw that distinction by defining a BNPL agreement as one where there is a pre-existing, overarching relationship between the lender and consumer, under which the lender agrees to finance one or more transactions but where any repayments made are toward specific agreements made as part of that relationship?

We see a number of advantages to this approach. A key feature of the BNPL business model is that it is designed to facilitate multiple repeat purchases of relatively low-value amounts. This distinguishes it from short-term interest free credit, which is typically offered for higher value 'one-off' purchases and where there is significantly less expectation of an ongoing relationship. Within the BNPL model, providers have strong incentives to create smooth customer journeys with minimal friction, so as to maximise consumer spend. This incentive is the context to many of the key issues we see in this market. These in-built incentives are less pronounced in short-term interest-free credit, due to the larger borrowing typically involved and the significantly lower likelihood of repeat borrowing.

Secondly, this approach would reflect the perception of BNPL which most consumers are likely to have, which is that they have an overarching relationship with a BNPL provider, rather than a number of wholly separate credit agreements. In some instances, a consumer may use BNPL as a one-off occurrence, choosing not to take up the option of repeat use. For this reason, it is important that the distinction be based on the lender's initial agreement to finance one or more transactions, rather than the consumer's later decision to take up that option.

14. Do you have any views on the need to amend the current exemption for running-account credit, so that it does not allow the unregulated BNPL model to re-emerge?

We agree with the proposal to amend A60F(3) to prevent new BNPL products re-emerging in an unregulated format. However, we recognise that there is a case for maintaining the current exemption for charge cards as we have no evidence of

widespread consumer detriment associated with that product. This will need to be reflected in the drafting of revised regulations.

15. Do you agree that in any regulatory intervention merchants that offer BNPL as a payment option should not be subject to FCA regulation as credit brokers?

16. If merchants offering BNPL are exempted from credit broking regulation, do you have any views on other ways to mitigate any potential risks to consumer detriment arising from merchants?

17. Do you have any views on whether such an exemption from credit broking should extend to all merchants, or whether there should be limited exceptions (such as for domestic premises suppliers)?

We agree that requiring individual merchants to be regulated as credit brokers is likely to be disproportionate and would particularly disadvantage smaller retailers. There should be strong incentives for retailers to behave responsibly, but there are practical difficulties involved in effectively monitoring such a large and diverse group of market actors. We think the best way to mitigate consumer risks arising from merchants would be to apply the financial promotions regime to all forms of BNPL, as proposed in the consultation. More generally, we think it's important that information provision in BNPL should be informed by user testing, to ensure that information meets the real-world requirements of BNPL consumers, and that there should be proactive monitoring of clear, tangible outcomes for BNPL consumers (for example - user comprehension of risks, numbers that struggle to repay) to identify and deal with problems in the market.

We agree that an exemption should be made to keep domestic premises suppliers within the scope of credit broking regulation, given the inherent riskiness of credit provided in the home.

18. Do you think that the current requirements on BNPL merchants and lenders around advertising and promotion are sufficient?

19. If you think that the requirements need strengthening, would the application of the financial promotions regime be appropriate, or are there any features specific to BNPL products that warrant different requirements?

We have very significant concerns about the way BNPL is advertised and promoted and how this feeds into slippery design. It must be stressed that many people encounter the concept of BNPL through advertising - in our consumer research 2 in 5 people had heard of BNPL through an advert in the past year.³⁰ Adverts are encountered most commonly on social media platforms such as Instagram, Twitter or TikTok (57% of users recalled seeing social media advertising) followed by television (50%). It's essential that regulation must take care to consider what kind of information is included in adverts and how the ways that this is presented are likely to impact consumer understanding. It should also be noted that young people are much more likely to see BNPL adverts than any other age group and are therefore disproportionately impacted: 60% of people aged 18-34 have seen BNPL adverts compared to 38% of 35-64 year olds and 24% of over 65s.

The fact that promotion and advertising can be carried out by retailers as well as by BNPL providers creates some challenges for regulation and supervision, but it is crucial that safeguards apply to both. We agree applying the **financial promotions** regime to all BNPL products, meaning that promotions have to be approved by an authorised person, offers the best practical route to achieving this. The FCA's ability to scrutinise pre-lending screens will also provide a helpful safeguard.

However, we would emphasise, as we have elsewhere, the need for proper user testing to ensure that information genuinely meets consumer needs. The FCA's existing rules include useful guidance (CONC 3.3) but these may need to be updated in light of this. Additionally we would advocate ongoing monitoring of BNPL consumer outcomes to ensure this framework is working effectively and identify areas where further intervention may be needed to prevent consumer harms.

From a practical point of view, we also have concerns about agreements made in store, which cannot be remotely monitored in the same way as those made online. While relying on the financial promotions regime for now, we would urge the FCA to monitor the spread of in-store BNPL and consider whether there bespoke approaches may be required in that market segment.

³⁰ Citizens Advice, [Buy Now...Pain Later?](#), 2021

Questions 20-23: Information provision and consumer understanding

20. Do you agree that the approach to pre-contractual information outlined is consistent with a proportionate approach and the government's objectives for BNPL regulation?

We welcome the government's recognition that BNPL users need better pre-contractual information. Our research indicates that the current level of information provision at this stage is insufficient for consumers to have a good understanding of the nature of the product that they are using, the terms of the agreement they are entering and the consequence of failure to pay.

In relation specifically to pre-contractual information, we recognise that the form and content prescribed by CCA section 55 may not be appropriate in the BNPL context. We would challenge the assumption that BNPL agreements are necessarily lower-risk but we agree that the frequency with which people use BNPL makes it less likely that consumers will engage with lengthy terms and conditions, and that these may not be best optimised for changing ways that people spend online (including on the go and on smaller smartphone screens). Testing will be needed to understand the language and presentation format that is needed to ensure genuine engagement and comprehension, and therefore informed decision making.

We agree that it would be proportionate to rely solely on FCA rules for BNPL pre-contractual information for this and disregard section 55 of the CCA. The content should draw on existing CONC 4.2 and, as a minimum, consumers should be clearly informed that BNPL is a credit product, prompted to consider their overall borrowing and the potential risks of repeat use; and warned about the consequences of inability to repay.

There may be other key details that need to be included alongside these. As we have noted, the general approach to information should be driven by real consumer needs, as identified through robust user testing. This should aim to set clear expectations about what a good level of consumer understanding would look like in practice, and how success in achieving this can be measured. A key aim must be to improve consistency across providers and channels (online, in-app, browser-based and in-store for example).

We welcome steps to ensure consumers see clear and prominent information about the total amount they will be spending, prior to entering agreements. Currently, consumers' attention is often drawn to the size of instalments, rather than the total repayable, which may result in overspending. This is a step in the customer journey where additional healthy friction is particularly needed and likely to be beneficial.

21. Do you agree with the government's assessment that BNPL agreements are likely to need bespoke form and content requirements?

22. Do you have any views on what form agreements for BNPL should be required [to] take, and what content they should contain?

We agree that the form and content of BNPL agreements will need to be bespoke. We would emphasise once again that in our view both the form and the content should be informed by user testing to better understand how BNPL users engage with information and make decisions. While the detail of this can be worked out in the FCA's subsequent consultation, Treasury's initial intervention must create the structure that will result in responsible, consumer-led decision making within the BNPL industry. We would also emphasise the need for sanctions to encourage compliance, in particular that agreements should be unenforceable if information in the prescribed format is not provided.

At the moment, smoothness and friction in the BNPL customer journey typically appear in the wrong places. Friction acts as a barrier to accessing and engaging with information about BNPL agreements, while smoothness encourages consumers to enter agreements without full awareness or understanding. These approaches must be reversed in future. Friction should be built in to ensure consumers have opportunities to pause and consider before taking out an agreement, while smoothness should be used to ensure consumers can easily access and engage with information.

We recognise that the shape and implementation of these agreements will need to be sensitive to the specific ways in which the BNPL market operates. Since BNPL characteristically involves repeat use after setting up an account, regulation must consider what type and level of information needs to be provided repeatedly, whenever users take out credit, in addition to what is required at the initial sign-up stage only. Each agreement may carry different repayment schedules, and we've seen that it's currently possible for users to sign up for agreements without realising, so these safeguards will be critical. A more consistent approach across the industry would bring

significant benefits in itself, as it would make it easier for consumers to anticipate where they might be at risk of late fees, or whether a provider uses debt collection.

The test of whether BNPL regulation is effective will be whether it improves outcomes for BNPL users. To this end, there will need to be clear user-focused metrics such as improved user understanding, reduced incidence of regret and lower rates of arrears and default.

23. What are your views on applying CCA provisions on improper execution to BNPL agreements? Do you think the consequential sanctions for improper execution should apply to BNPL agreements under any regulatory intervention?

We consider this to be a proportionate and appropriate sanction, and would ensure lenders have a strong incentive to supply all the necessary information to consumers.

24. What are your views on the role of creditworthiness assessments as part of a proportionate approach to BNPL regulation?

25. Do you have any views on whether there should be specific requirements for creditworthiness assessments for BNPL agreements?

26. Do you have any views on how BNPL agreements should be reported to consumers' credit files?

We are pleased to see a strong focus on creditworthiness in the proposals. As outlined in Q3, our research has found that unaffordable BNPL agreements have a significant detrimental impact. Fees and charges for late and missed payments add to the amount consumers owe. We have also seen evidence of consumers cutting back on essential spending or falling behind on essential household bills to meet BNPL repayments.

We are aware that some individual BNPL providers conduct their own affordability checks at the signup stage and have facilities in place to pause or limit access to further credit if existing customers miss payments or show other signs of financial difficulty. We understand that some providers conduct hard credit checks before approving new customer accounts. Looking across the industry as a whole, however, we see little sign of consistent approaches or consumer outcomes. Firm standards are needed to prevent

a race to the bottom. Already we see some evidence that BNPL attracts users who have been unable to access other forms of credit where proper creditworthiness assessments are likely to have been carried out. In our research, 37% of people who signed up for a BNPL product in the last 12 months had been rejected for another agreement in the same period.

We think that the FCA's existing CONC 5.A rules should be the starting point for creditworthiness assessments for BNPL, as they are for existing regulated credit products. However, there may be a case to develop specific guidance for BNPL to take account of product and market characteristics.

- Creditworthiness assessments should be carried out when a customer initially signs up to a BNPL provider. Subject to user testing and feasibility, we think a 'hard' credit check or some other rigorous assessment would be appropriate at this stage and should be explored further.
- However, BNPL often involves multiple agreements and repeat use. This raises questions about how providers ensure that credit remains manageable for users who borrow repeatedly or whose borrowing significantly increases. Proportionality is an important consideration here, but given the scope for consumer detriment we think creditworthiness assessments for repeat borrowing have a role to play.
- Given the speed and smoothness of online retail, it is quite possible for BNPL users to borrow through several different BNPL providers over a short period of time. This potentially makes it difficult for providers to see and assess the customer's full level of BNPL borrowing, and/or their existing spending commitments. Specific solutions may be needed to ensure that BNPL providers have good quality, real-time information about customers' commitments, including in particular those to other BNPL providers.
- A proportion of BNPL users (including those from younger age groups) are likely to have relatively thin credit reference files which may be of limited use to providers unless supplemented by additional information.
- We anticipate that open banking data may have a role to play in BNPL creditworthiness assessments for the above reasons. However, given the potential risks to consumers, and the need to test whether or not it delivers the right outcomes for them, this needs careful consideration.

We anticipate that creditworthiness assessments will be explored in more detail during subsequent consultation by the FCA.

As we are not engaged in lending and do not use credit referencing information to make lending decisions, we have limited insight into what practical arrangements may be needed to ensure BNPL is properly reflected in consumers' credit reference files. We would encourage HMT to engage directly with credit reference agencies to identify options, seeking input from stakeholders at a later stage when detailed proposals are available.

27. Do you have any views about how customers in financial difficulty should be treated under BNPL agreements?

We support the proposal to apply requirements relating to treatment of customers in financial difficulty to BNPL providers. Given the evidence of widespread detriment we have presented elsewhere, safeguards of this kind are particularly important. As the consultation document notes, some providers already have hardship policies and treatment paths in place. This is not a substitute for clear, consistent standards across the BNPL industry. Consistency is important for many reasons, not least the fact that consumers often use more than one BNPL provider at once. Consumers should be able to expect comparable levels of support from different providers when they fall into hardship.

In our view, BNPL providers should be held to the same standards as other consumer credit firms and that the FCA's existing rules should apply in full. We are not aware of any specific reasons why these rules should be adapted for BNPL providers. Fair treatment for customers in financial difficulty is of central importance for consumer protection, so any adaptations would need to be justified by extremely strong and robust evidence. In the absence of this, the existing rules should apply.

28. What are your views on the proportionality of applying CCA provisions on arrears and defaults to BNPL agreements?

29. Do you agree that under any regulatory intervention for BNPL, section 75 of the CCA should apply to agreements?

We agree that BNPL products should be brought under CCA provisions on arrears and defaults (Q28). Consumers should enjoy consistent statutory protections when using BNPL as they would with other forms of credit. As we have noted elsewhere, in the current model, consumers are not necessarily given clear information about the credit agreement they are entering or the implications of non-payment. While other proposals

stand to address this, the fact that consumers often have low awareness of the implications of missing payments, and may not even be aware that they have taken out a BNPL credit product, underlines the importance of clear and consistent information relating to arrears and default.

In relation to Q29, we agree that section 75 should be applied to BNPL agreements. BNPL has developed as an alternative to credit cards and occupies a similar space. Like credit cards, while BNPL can be used for a wide range of purposes it is particularly associated with the purchase of retail products. Section 75 helps give consumers the necessary confidence to shop online and provides a helpful means of redress if things go wrong. The application of Section 75 will, in addition, create a more level playing field between BNPL and credit cards.

30. What are your views on amending the scope of the exemptions from elements of the CCA for small agreements to include BNPL agreements under £50

31. Are you aware of any currently-regulated consumer credit products, in particular those which are debtor-creditor-supplier agreements, that are routinely offered with values less than £50?

We strongly agree that BNPL agreements under £50 should not be treated as partially exempt small agreements for CCA purposes. Were this to happen it would affect a significant proportion of BNPL agreements, undermine efforts to regulate the BNPL sector as a whole, and would likely result in consumer confusion.

- 1) A significant proportion of BNPL agreements would be affected. BNPL is used for a wide range of products with different values, including new lenders specifically offering BNPL for food. Nearly 1 in 3 people who have purchased clothes using BNPL typically spend less than £50 on a purchase.³¹
- 2) Efforts to regulate the sector as a whole would be undermined. The exemptions for small agreements include pre-contractual information and creditworthiness assessments, which are critically important elements of consumer protection. If these are not required for agreements below £50, it would open up space for less responsible lenders to exploit this specific section of the market.

³¹ Nationally representative polling of 10,000 UK adults conducted by Opinium on behalf of Citizens Advice in January - February 2021.

- 3) It would introduce unhelpful inconsistencies. Consumers should be able to expect the same levels of information provision and consumer protection across the BNPL market. Exclusions for agreements under £50 risk creating confusion and uncertainty among consumers.

32. Do you agree that under a regulatory intervention for BNPL, consumers should be able to bring a complaint to the FOS?

We agree that regulation of BNPL should ensure that consumers are able to bring a complaint to the FOS. This is an important step to make sure that BNPL users have parity with other forms of credit and receive a consistent level of support when they face problems.

Section 4: Equality Impact Assessment

33. What impacts do you expect the regulation of BNPL would have on BNPL providers, consumers that use the product, and merchants that offer it as a payment option?

We welcome many of the proposed applications of FCA and CCA rules in regulating the BNPL industry. Comprehensive and proportionate regulation which focuses on ensuring people understand and are proactively signing up for BNPL agreements which they can afford should result in lower numbers of people getting into financial difficulties as a result of using BNPL, and significantly lower rates of regret.

We agree that it would be proportionate to apply FCA rules to pre-contractual information. Establishing clear guidelines for BNPL providers will support merchants to provide the right kind of information, in an engaging way, at checkouts. For example, by explicitly explaining that BNPL is a credit product that comes with certain risks. The increased accountability introduced by these guidelines would also act as further protection for consumers as the BNPL market continues to evolve and grow.

Effective regulation will also enable BNPL providers to reduce the likelihood of offering unaffordable agreements. The current approach to this is inconsistent, with some BNPL providers providing hard credit checks whereas others run soft checks. Last year BNPL users were charged a total of £39 million in late fees which indicates that current affordability checks are not always effective. Establishing a consistent and effective approach to regulation in this area would support providers by minimising the risk of offering unaffordable agreements, whilst also reducing the impact this has on users.

Regulation should also empower BNPL providers to tackle affordability issues in a more joined-up way. As we have explored in earlier sections, a core BNPL feature of repeat spending across multiple agreements, including with different BNPL providers, further complicates issues around affordability by making it difficult to keep track of aggregate debts and repayments. Innovative solutions which promote the necessary information-sharing required to tackle this will enable BNPL providers to work together to identify and protect users experiencing, or at risk of, financial difficulty.

We have so far outlined the impact that regulation around information provision and affordability will have on merchants, providers and users. In addition to this, another

area we see regulation having a key impact is around the treatment of BNPL users in financial difficulty. 1 in 10 BNPL users have been chased by debt collectors in the past year. As a result, 46% of these people had sleepless nights and 54% of them turned to another form of borrowing to pay off their debt, such as a credit card or loan.

The treatment of BNPL users who fall into financial difficulty is inconsistent and leads to the type of harm we've described. The outcomes for BNPL users in financial difficulty would be improved if they were subject to the same fair and consistent treatment as they would with any other credit product, and if BNPL providers were subject to the same forbearance requirements as other regulated creditors.

Finally, slippery product design is a key driver of detriment for BNPL users. 2 in 5 people who've used BNPL in the past year have done so without realising, and over 3 in 5 have seen it as the default payment method at some point. Rigorous user-testing of solutions is required to ensure that the design of BNPL products contains helpful friction in the right places. This could involve better prompting for users to engage with the terms of an agreement before entering it, for example. This means users would be better placed to make a considered and informed decision when entering a BNPL agreement - therefore reducing the risk of entering one that's not right for them.

34. What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of regulation of BNPL?

35. Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

As we have demonstrated in previous sections, regulation needs to protect BNPL users from entering into unaffordable agreements. A user is better placed to enter an affordable agreement where they are provided with clear information at point of purchase and when the BNPL provider carries out effective affordability checks. When this doesn't happen, people are more likely to enter into agreements they cannot afford. 2 in 5 BNPL users have been unable to pay for essentials such as food, rent or bills because they were making payments for a BNPL product. And those who are unable to make BNPL payments could be chased by debt collectors, as 1 in 10 users in the past year have been.

Lower income households are left at greater risk by lack of regulation in this area. For those on a low income, the margins between being able to make a payment or not are

much narrower. As our recent cost of living research has shown, 3.2 million households won't be able to afford essentials this winter, and a further 380,000 households will be left with just £50 a month after basic living costs. For people on tight budgets such as those, trying to make BNPL payments is a delicate balancing act. An unexpected expenditure such as a new washing machine, or a change in circumstance such as a reduction in hours at work, can mean that a user cannot make BNPL payments they owe. Likewise, one unexpected BNPL payment, late fee, or debt collection fee can be enough to push someone into financial crisis.

This means that **the detriment experienced by BNPL users isn't shared equally** - some groups are more at risk of harm from unaffordable agreements than others. Systemic oppression and inequality affects people's finances and impacts how much they can afford to spend. Marginalised groups with certain protected characteristics are over-represented in low income households, leaving them disproportionately hit by a lack of protections around BNPL affordability.

Our evidence shows that those from marginalised groups are more likely to struggle making a BNPL payment.³² 41% of BNPL users say they've struggled to make a BNPL payment in the past 12 months. But this rises to:

- 52% of people of colour who use BNPL
- 60% of disabled users
- 87% of transgender users

Some groups are also more likely to have regretted using BNPL to pay for something. While 26% of BNPL users have regretted using it, this rises to:

- 31% of black users
- 34% of users claiming benefits
- 39% of disabled users
- 63% of transgender users

For almost all of these groups, the most common reason for this regret was that the amount they ended up paying in the end was more than they'd expected. Information about payments and the consequences of being unable to make them should be made clearer to those entering a BNPL agreement, and checkouts should be designed in a

³² Citizens Advice, [Buy Now...Pain Later?](#), 2021

way which adds useful friction to the process by prompting users to take the time to think through their decision. Addressing this in regulation would have an even greater impact on those groups with protected characteristics who we can see are disproportionately affected by unaffordable agreements.

Ultimately, problems don't stop at missing payments or regretting purchases. Entering an unaffordable agreement can have a knock-on effect on people's wider financial situations. The following percentage of users in debt or with another repayment have gone without paying for another debt because of a BNPL fee or repayment:

- 73% of people of colour who use BNPL
- 76% of disabled users
- 93% of transgender users

Even more concerning is the proportion of those with protected characteristics who have been unable to afford essentials like bills and rent because they were making BNPL repayments. This includes:

- 53% of people of colour who use BNPL
- 58% of disabled users
- 91% of transgender users

While providing clear information at sign up can help people to enter affordable agreements, regulation must ensure that BNPL providers are conducting robust affordability checks alongside this. Otherwise, users in financial hardship will be left with escalating debts and unable to cover essential costs.

People with protected characteristics face disproportionate levels of harm from using BNPL, which means that effective wider reform and regulation would have the biggest impact on these groups by ensuring those at particular risk of harm are adequately protected. This will create a more equitable consumer experience. In particular, improving regulation around affordability will likely have a significant impact on marginalised groups. Solutions should be user-tested to mitigate any disproportionately negative impact on those with protected characteristics. As we have explained in earlier sections, this user-testing should be looking to explore what type of friction consumers need and want in order to make an empowered choice based on knowing what BNPL is and how an agreement will work.