StepChange Debt Charity

StepChange response to FCA consultation on regulation of deferred payment credit (BNPL)

September 2025

Introduction

StepChange Debt Charity is a specialist not-for-profit provider of debt advice and debt solutions supporting people across the UK. In 2024, over 660,000 people contacted StepChange seeking debt advice or guidance with their problem debt and over 170,000 people completed full debt advice through our online and telephone service.

We welcome this consultation on regulation of deferred payment credit (DPC, which we refer to throughout as BNPL in keeping with public convention except where quoting specific rules or guidance).

BNPL is useful to many consumers: it offers an accessible form of income smoothing for retail expenses, with fixed repayments on a clear schedule over a short timeframe and is interest-free. However, BNPL grew rapidly outside the regulated space and StepChange has highlighted that users of BNPL are significantly more likely to be experiencing problem debt or otherwise be in financially vulnerable circumstances, and the charity's advice clients, who are more likely to be over-indebted, have reported mixed experiences with BNPL.[1] Concerns have been raised by the wider consumer sector about unaffordable lending, low consumer understanding of BNPL as a form of credit, product placement and low friction design that encourages consumers to spend more than they mean to, and inconsistent support for borrowers in difficulty.[2]

The FCA's research into BNPL indicates a mixed picture. Research in 2023 indicated BNPL is not substitutive of other forms of credit and is associated, particularly among frequent users, with a higher likelihood of exhibiting indicators of problem debt such as regularly missing payments, using high cost credit and accessing debt advice.[3] More recent FCA research published alongside this consultation using transaction data between 2017 and 2023 finds that BNPL does not have any significant effects on indebtedness at an aggregate or sub-group level (although the research notes the results at a subgroup level, which probes impacts on those in more financially vulnerable circumstances, are less secure).[4]

These two research briefings are not necessarily in conflict: BNPL is most commonly used for comparatively small loans, with no charge to the customer, repaid through a

[1] StepChange (2024) *Response to HM Treasury consultation on regulation of interest-free BNPL* and StepChange (2022) *Falling behind to keep up: the credit safety net and problem debt*
[2] Citizens Advice (2021) *Buy Now… Pain Later?*; Which? (2023) *Buy Now Pay Later: Understanding and Addressing the Risks to Consumers*
[3] Financial Conduct Authority (2023) *Research Note: Deferred Payment Credit: findings from the Financial Lives Survey*
[4] Financial Conduct Authority (2025) *Occasional Paper 69: Distress deferred? The impact of buy-now-pay-later credit on consumer indebtedness and arrears*

fixed and relatively quick repayment schedule. These are characteristics associated with less risk of repayment difficulty. The FCA's evidence indicates the main potential consumer harms from BNPL are from late fees and reduced wellbeing caused by repayment difficulty. The evidence suggests BNPL can cause users harm through repayment distress and late fees not because BNPL lending has made their financial position significantly worse, but because their bad financial position means they could not afford to repay BNPL.

Effective BNPL regulation is important. Many BNPL users look similar to the users of subprime credit products. Historically, such customers have been vulnerable to the emergence of lender practices that exploit consumer vulnerability and it can be argued there are signs of this in the high incidence of late fees in the BNPL market. Regulation should promote a thriving and responsible BNPL market, ensure risks of poor outcomes for financially vulnerable customers of BNPL are addressed and prevent the market evolving in a direction that poses increases risks of poor outcomes for customers.

We are broadly supportive of the FCA's proposed approach to regulation but highlight concerns about potential ambiguities in the application of creditworthiness and affordability rules to BNPL and the FCA's proposed approach to post-contractual information, where we believe it must achieve a better balance between flexibility to tailor communications to the needs of customers and the prescriptive safeguards essential to protect the rights and interests of customers in financial difficulty.

Finally, we would like to see the FCA go further to develop its expectations of firms whose products, like BNPL, pose higher risks of exploiting behavioural bias to the detriment of consumers. The Consumer Duty has introduced new rules that require firms to avoid causing foreseeable harm including through exploiting consumer behavioural bias or vulnerability. Those rules and guidance need articulating in a form that sets reasonably clear expectations for firms and we do not think that is yet the case.

This consultation highlights a number of ways in which BNPL firms exploit consumer behavioural bias, such as benefit framing (emphasising benefits and downplaying risks) and anchoring (the strategic ordering and placement of information to encourage sign-up). We are pleased the FCA has highlighted these concerns, but in the consultation proposals we see no clear steps by the FCA to ensure firms seek to design out practices that exploit behavioural bias and consumer vulnerability or ensure those practices do not lead to poor outcomes.

Since the majority of engagement with financial services is now through digital devices, applying relevant Consumer Duty obligations effectively and consistently is vital. We would like to see the FCA undertake work to better understand firms' response to this element of the Consumer Duty, for example addressing key consumer outcome questions like whether firms are effectively bringing behavioural design to bear not only on maximising commercially beneficial customer engagement but on

engaging customers approaching or in financial difficulty, and develop a framework to set an expectation that firms should actively design out harmful behavioural bias wherever possible.

Response to consultation questions

Question 1: Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?

We are unclear why the FCA has concluded that the proposals do not materially impact any of the groups with protected characteristics under the Equality Act 2010 (2.46).

HM Treasury has produced equalities impact assessments to support its consultations on regulation of BNPL and the supporting statutory instrument, noting how BNPL is more likely to be used by some groups with protected characteristic and surfacing impacts that regulation decisions may have on those groups. HM Treasury has drawn on the FCA's own research indicating those who identify as belonging to an ethnic minority or with other protected characteristics such as having a disability are more likely to use BNPL.

Wider research finds that people who identify as belonging to a minoritised group are at greater risk of experiencing discrimination in financial services and less likely to have positive experiences when they seek help.[5] The way that the FCA regulates financial services including BNPL has an important impact on preventing discrimination and preventing worse experiences of support.

We consider it likely that the FCA's proposed regulatory regime for BNPL will help prevent poor outcomes and mitigate any negative impacts of BNPL among those with protected characteristics. Considering why some protected groups tend to use BNPL more and are more exposed to harm and poor outcomes can help the FCA design effective rules and its wider approach to regulating BNPL.

Question 2: Do you agree that our proposed rules for provision of information before entering a DPC agreement are appropriate?

We broadly agree with the FCA's proposed approach of prescribing key product information to be provided before a customer enters into an BNPL agreement while providing firms with flexibility about how to provide that information. We agree relying on CONC 4.2 alone would be insufficient since it was intended to operate alongside specific prescribed CCA information requirements.

[5] Fair4All Finance (2023) *Levelling the Playing Field: Building inclusive access to financial services for people from minority ethnic groups*

We would like to see the list of key information extended to include the availability of support if customers are struggling with repayments. The FCA's evidence shows that a signficantly minority of BNPL customers are struggling financially, with one in four users in arrears on a bill, and they are more than than twice as likely as all UK adults to show signs of financial distress (CBA figure 12).

Wider evidence from the Financial Lives survey also shows that awareness that support is available from lenders and free debt advice is mixed, the willingness to act on that awaressness where it exists except as a last resort is limited, and that a third of customers believe incorrectly that seeking advice itself will have a negative impact on their credit record.[6] Across these areas, understanding and willingness to act tends to be lower among consumers with lower incomes, or with characteristics of vulnerability, that are over-represented in the BNPL market—in other words, these customers face higher barriers to help unless these factors are effectivelty offset. StepChange evidence also shows that when customers are not aware help is available, or are worried about the consequences of seeking help, they are more likely to take harmful coping actions that make their situation worse, and to experience longer and more harmful financial difficulties journeys.[7]

It makes far more sense to communicate to customers up front about the availability of support and not-for-profit advice than it does to wait until they are in difficulty. The FCA CONC 7 rules articulate the importance of, and encourage, early intervention to support borrowers in financial difficulty. While it is essential to signpost and wherever possible refer borrowers in difficulty to support, it is too late for early intervention to do so after customers have already missed repayments, and most non-bank lenders have few other ways of identifying pre-arrears difficulty.

We also note that clause (f)(ii) of 4.2A.5R (1) references 'the risk of an impaired credit rating and its possible effect on the customers future access to, or cost of, credit'. Without balancing information about the availability of advice and support, this puts an undue emphasis on negative consequences of non-payment likely to drive fear and drive harmful coping behaviours.

Taking into account these factors, it makes sense to use pre-contractucal information to help make customers aware of support should they encounter difficulty to encourage them to seek help. The multi-stage approach to providing information employed by BNPL firms means firms are well-placed to deliver this information with minimal disruption to their post-regulation approach. We note relevant language is readily available in CONC 7.3.7AG and suggest adding language along the following lines to the list of key information in 4.2A.5R(1):

[6] Financial Conduct Authority (2025) *Financial Lives 2024 survey: Forbearance & debt advice – Selected findings*

[7] StepChange (2022) *Mixed messages: Why communications to people in financial difficulty need to offer a clearer, better route to help*

> *the availability of forbearance and free and impartial money guidance and debt advice if a customer experiences, or reasonably expects to experience, payment difficulties;*

Finally, BNPL is currently an extremely low-friction product by design. The FCA highlights that low friction BNPL customer journeys can have negative impacts on customers, for example highlighting evidence that impulse buying using BNPL products can lead to harm (3.92 / CBA 63). The benefits of convenience must be weighed carefully against consumer protection objectives. This requires balance and the FCA should create more clarity about its expectations.

At present, too many people are not aware of important features of BNPL such as late fees and regret purchases. The FCA should set a clearer expectation that it will expect improvements in these areas. This will drive a proportionate evolution of BNPL firms' approach. If there is no change (or a worsening of these indicators) the FCA will know it needs to take further action. We would therefore welcome more clarity on the outcomes the FCA expects to monitor to understand if firms are addressing the issues it has highlighted and would like to see the FCA commit to periodic post-implementation progress reports on key indicators.

Question 3: Do you think that reliance on the Duty could deliver our policy objectives for information provided before an agreement instead? If so, how?

No, we agree with the FCA's analysis that reliance on the Consumer Duty could not give firms sufficient clarity on what key information they should provide to customers.

Question 4: Do you agree that our proposed guidance for provision of information to customers during a DPC agreement is appropriate?

We broadly agree with the FCA's proposed approach.

We note the proposed new rules 6.7.42-43G allude to BNPL firms' consumer understanding and support obligations under the Consumer Duty without further framing or commentary on their purpose in this consultation or the rulebook itself.

We recognise that elsewhere in the handbook, the FCA takes a similar approach to emphasise the application of certain rules and guidance. However, as a general comment, it looks sub-optimal to add a rule to the handbook without articulating in this consultation or elsewhere its specific purpose. We would welcome clarification as to the intent of this new guidance.

We would reiterate here we consider the FCA should be taking a more curated approach to implementing the Consumer Duty rules, particularly those that have introduced novel elements to the handbook. From a consumer perspective, it looks a poor application of the Consumer Duty where the FCA is not clear about the potential issue or problem it is seeking to address, how it proposes to address that issue or

problem, and what outcomes it is seeking to achieve (and therefore that might be monitored by firms, the FCA or others).

Question 5: Do you agree that our proposed new rules on providing information to DPC borrowers who have missed a repayment are appropriate?

We do not agree with the FCA's proposed approach of applying CONC 7 alongside new rules requiring BNPL firms to provide information to customers who have missed repayments.

We first of all note the FCA states in the consultation document that it wants firms to provide information about sources of free debt advice to customers that have missed repayments (3.64). The FCA also stated that it wants firms to provide information to customers that miss repayments at the right time in a standardised form (our underlining), recognising this is important where customers are more likely to be in financial difficulty (3.66). We do not consider that the rules as drafted will deliver those objectives.

More generally, communications with customers in arrears must take into account the importance of timely action and the escalating consequences of inaction. The context around borrowers in difficulty also matters: they are more likely to be stressed, confused and worried about consequences. Those experiencing long-term debt problems are often experiencing mental and physical health problems and may be affected by wider problems with relationships and work.

Not all of the problems with firms' approach to engagement and information have come about because of overly rigid CCA requirements. In fact, while the CCA 'NOSIA' regulations prescribe some wording, they do not prescribe much of the content of notices. Firms have often chosen to take approaches that are ineffective, for example being perceived by customers as threatening, by choice rather than necessity as part of a bias towards pressuring customers to repay rather than seeking to engage them with support.

There are significant risks of a largely un-curated, open-ended approach to rules governing communciations with borrowers in difficulty. While the CCA NOSIA has been criticised, it came about in response to an extensive information gathering exercise that highlighted gaps and failures in the information provided by firms to consumers in difficulty vulnerable to poor outcomes. It is also worth highlighting the FCA's experience of implementing high level persistent credit card debt rules (that require firms to engage with customers at different stages of persistent debt) where the FCA was forced to write to firms clarifying its expectations and specify how letters should be drafted and elements of their content.[8]

[8] FCA Dear CEO letter: Persistent Debt (PD); Your approach to customers who have been in Persistent Debt for 36 months (PD36)

The outcomes at stake in communications with borrowers who have missed payments are serious. DPC regulation is also running ahead of CCA reform where, as responsibility for many information provision are (in likelihood) transferred to the FCA, it will be important to build an evidence base of how customers access and respond to information and what works to inform new rules. In light of these factors, the FCA's approach should be proportionately cautious. We believe the FCA can take a more cautious approach to post-arrears rules in a manner that is not excessively disruptive to the DPC model and leaves flexibility and space for innovation.

In bringing DPC into regulation, HM Treasury disapplied information provisions in the CCA arguing that it would not be practical to apply them, a decision StepChange supported. StepChange has also recognised the case for reforming CCA information provisions to address problems such as inflexible rules prompting excessive communications and blunt language that is, or is often intepreted to be, legalistic and threatening by consumers in difficulty increasing barriers to help.

However, the FCA's proposed approach in the new draft CONC 7.20 rules is too minimalistic, removing almost all prescription in contrast to its more detailed proposals for pre-contractual DPC information. The intention appears to be to prevent prescription that would lead to a reoccurance of problems evident under the CCA such as requirements to send individual notices for every agreement, which might be particularly unhelpful for DPC where loans are often 'stacked'. There is, however, a better balance to strike between prescription and flexibility that ensures essential information is provided effectively to customers in difficulty at the right time without driving clumsy repeat and overly rigid engagement. We would particularly highlight:

- the need for predictable notice periods for customers and advice providers; and
- the importance of well-designed arrears notices and effective signposting to free debt advice.

Addressing these points in turn, the FCA specifies in the draft CONC 7.20 rules that firms should provide notice to customers of missed payments 'as soon as possible after a missed payment has occurred'. Without a minimum period the rule is too vague and can be interpeted in different ways. The equivalent period for a fixed-sum agreement in the CCA is 14 days. Customers should have a guarantee of timely notice of arrears so that they can repay where possible and avoid further action; both customers and advisers should also be able to know with certainty when agreements are in arrears. We would also note that it is unbalanced to allow firms to specify when customers must take action to avoid further consequences but not to specify when firms must take actions to enable to them to do so.

Second, ensuring firms effectively signpost to not-for-profit debt advice is critical. It appears the FCA is relying here on CONC 7.3.7A G, which requires firms to signpost to free and impartial money guidance and debt advice, effectively communicate the benefits and make referrals 'where appropriate'. This is guidance and does not have

the effect of requiring DPC to take these actions because CONC 7 was drafted to operate alongside the CCA, which includes a requirement to send the FCA's arrears information sheet.[9] The present arrears information sheet (updated in 2021) remains a good starting point for communicating about money and debt advice: it has an appropriate empathetic content and tone, provides practical information on help and options available alongside clear manageable steps, and encourages action and discourages inaction including harmful coping steps without using overt or implied threats. There are few risks in signposting to free money and debt advice but the FCA's proposed approach risks a gap opening up between the FCA's expectations, which we share, and firms' approach.

The FCA *has* specified some information in CONC 7.20.1R (2)(b) to be provided in arrears notices, but the wording of the rules risk reinforcing an approach to communicting with borrowers in difficulty that simulataneously exacerbates fear and anxiety and drives harmful coping actions. That is because the rules require firms to draw borrowers' attention to adverse consequences of missed payments while being vague about their responsibility to explain the range of good options available to customers who cannot afford to repay. Communications from firms frequently drive struggling customers to ignore arrears notices or take steps like further unaffordable borrowing that makes their situation worse because they emphasise serious negative consequences and de-emphasise the availability of forbearance, support and free advice. As drafted, firms may argue that they are meeting the requirements of the new CONC 7.20 rules with extremely limited arrears communications, and also argue that they are meeting the requirements of the existing CONC 7 rules on debt advice by providing information at some point. This leaves signficant potential gaps and risks.

It is important that expectations of firms are clear and potentially alarming information that may create fear and push customers away from support is framed and balanced with information that encourages and facilitates engagement with support.

To that end, the FCA should extend the drafting of CONC 7.20:

- to include minimum notice periods (that do not preclude earlier engagement); and
- require firms to signpost to not-for-profit debt advice, make available links to the FCA arrears information sheet and effectively communicate the potential benefits of that advice, drawing on the wording of CONC 7.3.7A G.

Finally, it is important that firms, advisers and trusted sources of information are to a reasonable degree using a common approach and language when communicating with customers about arrears and further steps such as default, termination of an agreement or court action. These terms are often likely to be jargon to consumers that are unfamiliar with them, but can be explained in plain English and often become important

[9] Financial Conduct Authority arrears information sheet

in the advice process. Without a degree of consistency, some customers in difficulty will struggle to understand their situation and take action. Many will have more than one debt so differing terminology used by different firms is likely to be confusing, exacerbating the stress of financial difficulty. Customers may also access consumer advice from online and offline sources, social media or through debt advice services but struggle to relate that advice to their situation if they are faced with inconsistent and confusing language.

Our call of the FCA as the Government takes forward reform of CCA information provisions is that it takes a curated approach, in part to address this need for consistency organised coherently around evidenced good practice while providing scope for innovation that benefits consumers. We recognise the challenges of implementing an approach for DPC that precedes wider CCA reform and do not think the FCA should replicate the detailed prescription of the CCA. In the meantime, nevertheless, the FCA should ensure firms have regard for the need to use (and explain) terminology consistently.

Question 6: Do you agree that our proposed new rules requiring firms to give notice before taking certain actions are appropriate?

No, the FCA should specify minimum notice periods for the actions specified in CONC 7.20.3R. The CCA specifies minimum notice periods for these actions and this is an important proction against unexpected (for consumers) actions by lenders that can have serious consequences for borrowers. While we see the benefit of encouraging firms to provide longer notice periods, specifying a minimum does not prevent them from doing so (i.e. '[a firm] must give the borrower reasonable notice of its intention to do so and no less than x days').

We also note the CCA gives customers the right to request information like amounts in arrears and prescribes the period within which firms must provide that information. That can be important for customers that do not have the relevant information (because it was mislaid, for example through being sent to a wrong address, or has been lost) but need specific information about their debts to complete debt advice. No similar provision appears to have been made for DPC.

Question 7: Do you think that reliance on the Duty could deliver our policy objectives for our proposed new rules on firms' communications to DPC customers who have missed a repayment or where a firm intends to take certain actions instead?

No, we agree with the FCA's analysis that relying on the Consumer Duty alone could not ensure consumers who miss repayments get the information they need at the right time in a consistent form, and that this is crucial in circumstances where customers are more likely to be in financial difficulty and at risk of serious consequences as a result of actions they take (or do not take).

Question 8: Do you agree that applying our current creditworthiness rules and guidance to DPC lending is appropriate?

Yes, we agree with the FCA's proposed approach of applying its current creditworthiness rules and guidance. Evidence produced by the FCA and consumer organisations is clear that BNPL is causing preventable consumer harms from the financial and wellbeing impacts of unaffordable lending and late fees. Without the requirement for a proportionate approach to affordability and creditworthiness assessment in line with other forms of regulated credit, BNPL risks extending credit to borrowers who cannot afford to repay and these harms will go unaddressed.

This noted, we have some concern the FCA's approach may be under-estimating the novelty of the creditworthiness and affordability issues raised by BNPL and the suitability of its rules. The consultation highlights that 'some firms decide an internal credit limit for making frequent advances and treat the customer relationship as though they were providing a running account type of facility'. We welcome the FCA's clarification that 'DPC is fixed sum credit and under our rules requires a proportionate creditworthiness assessment before each advance of credit is provided.' (3.97)

However, the FCA also sets out evidence that repeat and concurrent lending is relatively common in BNPL—the FCA's Financial Lives 2024 data shows that 17% of DPC holders used the product 5 to 9 times in the 12 months to May 2024 and 12% used DPC 10 to 24 times. This means 'stacked' BNPL lending, where multiple loans overlap, is likely to be common. While multiple overlapping borrowing is also common in the wider credit market, it is more unusual for single firms to offer multiple overlapping loans (except through running and revolving credit models). This means firms will need to interpret how the rules apply to their model. At present the FCA's rules look poorly specified for this kind of repeat and concurrent lending by individual firms.

The FCA seems to signal one answer in noting that 'Successive lending of small amounts might not require as full an assessment as the original advance of credit.' (3.97) But this does not tell firms how to respond for amounts that are not small, or how to treat cumulative balances that are not small. The FCA seems to be relying entirely on firms' judgement here. This risks ambiguity that leads to unaffordable lending. From a problem debt perspective, identifying where affordable lending transitions into unaffordable lending is critical and the failure to do means unsecured credit remains a significant driver of harmful problem debt journeys. The scale of BNPL lending means that it will be an important influence on many consumers' credit journeys.

We do not wish to see excessively stringent expectations unnecessarily restrict access for potential BNPL borrowers who can afford to repay. However, at some point successive lending increases risks of unaffordability. The FCA's reluctance to reduce ambiguity in important aspects of its creditworthiness and affordability rules has been one driver of signficant consumer harm and subsequent FOS redress in recent years.

While some of the risks of unaffordable BNPL lending look low because the amounts involved tend to be comparably small compared to typical fixed-sum loans, these amounts are relative to customers' incomes and the upper end of BNPL lending involves signficant amounts (with the CBA indicating around 20% of loans are for more than £100). Where BNPL interacts in novel ways with the FCA's rules, the regulator should set reasonably clear expectations and avoid an excessively unclear approach that risks poor outcomes for customers.

Question 9: Do you have any views on the extent to which our approach to creditworthiness might inadvertently restrict access to DPC for customers who could afford it?

We do not think the application of the FCA's rules is likely to result in a disproportionate reduction in lending to customers who can afford to repay. Given the volume of loans provided by the 'big three' firms and their use of digital platforms, it seems likely those firms will be well-placed to use repayment data and wider consumer outcomes data to develop proportionate and effective creditworthiness assessment models.

We note the FCA's CBA drawing on industry and CRA data estimates 18% of BNPL transactions between 2017 and 2024 would have failed a creditworthiness assessment (table 2) assuming customers with a recent CCJ or missed payment would fail a creditworthiness assessment. However, lenders can and do respond to a recent CCJ or missed payment by making further checks rather than automatically rejecting a loan application. Lenders may also use other approaches to assess creditworthiness while complying with the FCA's rules. So in practice we would expect a smaller proportion of customers to be declined, and the vast majority of those who are declined to experience better outcomes as a result.

Question 10: Could we achieve appropriate outcomes if we relied substantively on the Duty instead (most notably the obligation to avoid causing foreseeable harm to consumers) rather than the creditworthiness rules in CONC 5.2A?

No, we strongly disagree that the FCA could achieve appropriate outcomes by relying on the Consumer Duty. The FCA's evidence shows BNPL customers are more likely than average to have characteristics of financial and other vulnerability, and these customers are particularly exposed to harm from unaffordable lending. Proportionate creditworthiness checks are vital in addressing harm to BNPL customers from unaffordable loans and late fees.

The FCA's creditworthiness rules are an essential framework and safeguard for customers in vulnerable situations provide confidence to firms as to the FCA's expectations. Recent significant redress events such as those affecting subprime credit card firms (which serves a market with some of the same characteristics as the BNPL market) show the hazards of insufficient clarity of expectations around

creditworthiness assessments, and of failing to enforce those expectations sufficiently effectively. Not only would disapplying creditworthiness rules expose consumers to harm, it would also create a high risk of subsequent FOS redress affecting the industry.

Question 11: Do you agree with our proposal to apply our creditworthiness rules to DPC agreements of any value, or do you have views as to alternative approaches to small sum lending (including relying on the Duty)?

We agree with the FCA's proposed approach of applying its creditworthiness rules to agreements of any value including those for sums below £50, and note that the Government, regulator and industry appear to be aligned on this approach.

The FCA notes 'just over half of DPC agreements involve advances below this amount [£50]' (3.100) and, separately, that frequent and concurrent lending is relatively common. As such, the regulatory framework would not be effective in protecting consumers against harms from unaffordable lending if loans below £50 were excluded.

We also note the Government stated its commitment to the consistency of treatment for agreements above and below £50 in its consultation on BNPL regulation draft legislation and that there was 'near universal' support for that position with the exception of one industry respondent.[10]

Question 12: Do you agree with our proposal for applying high-level standards and all other relevant Handbook provisions to DPC lenders?

Yes, we agree with the FCA's proposal to apply its high level standards.

In this consultation, the FCA highlights examples of BNPL firms exploiting consumer behavioural bias including benefit framing and anchoring (3.22 and elsewhere), and how a combination of low-friction and inadequate information can lead to information asymmetries and make it difficult for consumers to make informed decision, exposing them to harm (for exmaple, CBA 62).

In light of these problems and risks, we would like the FCA to more clearly set expectations with regard to Consumer Duty guidance on firms' responsibilty to not exploit, and take due account of, behavioural bias and consumer vulnerability (highlighted in PRIN 2A.1.9G PRIN 2A.2.3 G PRIN 2A.2.10 G PRIN 2A.2.20 G PRIN 2A.2.25 G). For example, PRIN 2A.2.10 G highlights that avoiding causing foreseeable harm to retail customers includes 'ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by retail customers'.

We would also like to highlight the need for more clarity around fair value and late fees. The consultation highlights that late fees are a significant source of income for BNPL firms. Applying creditworthiness rules will, in part, address harm from late fees to

[10] HM Treasury (2024) *Regulation of Buy-Now, Pay Later: Consultation on Draft Legislation*

consumers that cannot afford loans. The FCA also notes that it will expect firms to apply the Consumer Duty price and value outcome, including consideration of late fees, and Chapter 7 of CONC that requires late fees to reflect firms' reasonable costs.

At present, it appears two of the 'big three' firms charge £5 or £6 late fees capped at £24 per loan and the third does not charge late fees on its BNPL product. In the wider credit market, late fees are as low as £3 at some challenger banks but typically £12, a historically longstanding fee even as firms' real costs must have reduced signficantly from digitisation. It does not seem credible that all of these fees reflect firms' real costs and while we welcome the FCA's clear approach to BNPL, this is an issue that requires greater clarity around the FCA's expectations to ensure late fees meet their purpose of compensating firms for costs incurred, not acting as a source of additional profit.

Question 13: Do you agree with our overall approach to regulatory reporting? If not, why not?

Yes, we agree with the FCA's overall approach to regulatory reporting.

Question 14: Do you agree that DPC should be subject to PSD returns? If not, what alternatives are there to requiring firms to submit PSD returns to meet our intentions?

Yes, we agree that BNPL firms should be subject tp PSD returns and believe that this is important to support the FCA's delivery of its consumer protection and wider objectives.

Question 15: Do you agree that we should collect regular, predictable transaction level data? If not, why not? And how would you propose mitigating the risks of not collecting regular, predictable transaction-level data?

Yes, we agree that the FCA should collect transaction level data from BNPL firms and believe that this is important to support the FCA's delivery of its consumer protection and wider objectives.

Question 16: Are there areas where firms may need longer implementation times? If so, how do you propose to mitigate any risks posed by a delay in firms providing us with data?

We have no comment at this time.

Question 17: Do you agree with our proposal to apply our rules in DISP Chapter 1 to DPC complaints?

Yes, we agree with the FCA's proposals to apply DISP to BNPL complaints and note that this is essential to deliver the Government's commitment to bring BNPL within the financial services regulatory framework including the complaints regime.

Question 18: Do you agree with:

- **The FCA's proposals to extend the Financial Ombudsman's CJ to DPC activities?**

- **The Financial Ombudsman's proposals to exclude pre-regulation DPC activities from the VJ?; and**
- **The Financial Ombudsman's proposals to expand the scope of the VJ to cover DPC activities carried on after regulation day from an EEA or Gibraltar establishment?**

If you disagree with the proposals, please provide details in your response.

Yes, we agree with the FCA's proposals to extend FOS' compulsory jurisdiction to BNPL and note that this is essential to deliver the Government's commitment to bring BNPL within the financial services regulatory framework including the complaints regime.

We also agree with the FCA's proposals to extend FOS' voluntary jurisdiction to BNPL activities carried on after regulation day from an EEA or Gibraltar establishment noting that the FCA does not expect that jurisdiction to apply to the current market participants.

Question 19: Do you agree with the FCA's proposals to suspend complaints reporting rules for complaints arising from DPC activities for firms in the TPR until they become fully authorised?

We have not comment at this time.

Question 20: Do you agree with our proposal not to extend FSCS cover to DPC activities consistently with the approach to other consumer credit activities? If not, please provide details on why you think DPC should be treated differently.

We have no comment at this time.

Question 21: Do you agree with our proposals for the TPR?

We have no comment at this time.

Question 22: Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons and provide any evidence you can.

We have no comment at this time.

Question 23: Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?

We have no comment at this time.

StepChange Debt Charity