

Summary of “Regulating Buy Now, Pay Later” event 22 March 2022, Zoom

Opening remarks

Adam Afriyie MP

- As new business models driven by financial technology come to market, we have to ensure that the UK’s regulatory environment is appropriate.
- We must make sure that FinTech businesses bring proper benefits for citizens and consumers.
- The main questions for today are: how does Buy Now, Pay Later (BNPL) actually work? What can we do to help consumers and provide a safety net for those who need it?

Legal and regulatory context

James Black, Partner, [Hogan Lovells](#)

- The laws relating to consumer credit have evolved slowly. The Consumer Credit Act (CCA), which is the relevant legislation in this area, was introduced in 1974. Piecemeal reforms and changes to the Act have left a patchwork where modern, innovative practices like BNPL do not fit very well.
- The definition of BNPL from a legal perspective is a model that is currently exempt from regulation under the CCA. At the moment, BNPL providers do not need to be licenced and the lending itself is not regulated. That does mean from a consumer point of view, using BNPL is very different to when you apply for a credit card or a mortgage - it is a much smoother experience.
- The CCA exemption applies for lending when the loan is less than 12 months, with no more than 12 instalments, and no interest applying. This form of lending was traditionally seen as low-risk.
- It is only in the last 3-4 years that BNPL, making use of this exemption, has really taken off as a product.

- Concerns were raised in the [Woolard Review](#) about use of BNPL. Chris Woolard said it was imperative that BNPL be regulated, due to the risks to consumers associated with BNPL usage. He did say BNPL should be regulated in a proportionate way. He also identified that the CCA exemption is broad, and actually allows things to happen that should remain exempt, e.g. annual gym membership.
- HM Treasury's consultation paper, which came out last October, shows a desire to take a proportionate approach. HMT is carefully defining the scope of BNPL regulation, focusing only on products with greatest risk of detriment, and within that carefully calibrate the controls, so only the most harmful aspects of these products. In other words, there is a clear aim not to "throw the baby out with the bathwater".
- The challenge is that the tools in the CCA to regulate lending are quite blunt. In my view, sanctions for minor technical breaches are arguably disproportionate and will not produce the right outcomes.
- HMT's consultation on the approach to regulating BNPL closed in early January 2022. We can expect another consultation to come on the specific rules to regulate BNPL. There may also be a need to make changes to primary legislation, i.e. the CCA.

A brief history of Buy Now, Pay Later (BNPL) products and providers

Luke Seaman, UK Head of Public Affairs, [Klarna](#)

- Klarna was established in 2005 in Sweden. It started operating in the UK in 2015.
- It has two main products:
 - Pay in 30 days, where at a digital checkout you select a Klarna payment option, you receive your product as normal and have 30 days to settle. This helps consumers to try products and make returns if necessary. The service is interest and fee free.
 - Pay in 3, where at a digital checkout you select a Klarna payment option, you receive your product as normal and you pay in three instalments - on the day of purchase, 30 days after and 60 days after. The main usage by consumers is to allow them to buy a more expensive or higher quality product. It also allows consumers to spread the cost of a necessary purchase over a couple of months rather than in one big lump sum.

Gary Rohloff, CEO and Co-Founder, [Laybuy](#)

- Laybuy's model is based on the "layaway" concept. To be clear, it has absolutely no resemblance whatsoever to Wonga or other "payday loan" companies. The product has

no interest attached to it, and no fees, unless there are late payments. Laybuy conducts affordability checks and ensures customers can't get into a debt spiral as accounts are frozen if they miss payments.

- It works by allowing customers to spread payments over six weekly instalments. So you pay 1/6th of the purchase price at the point of sale, then 1/6th more each week for the subsequent five weeks.
- It helps those who don't want a credit card by giving them an option that is interest free, and fee free so long as payments are made on time.

Iana Vidal, Director of Public Policy and Regulatory Affairs, [Clearpay](#)

- Clearpay is a pay in four product, where the customer pays 25% upfront, then the rest is paid over the course of the next six weeks. It is free for the customer unless there are late payments, and is an alternative to credit cards.
- Like other BNPL models, Clearpay makes its money from charging a small fee per transaction to the merchants offering the Clearpay service to consumers.
- BNPL has become more popular with consumers over the past few years, as more people have started shopping online more regularly. At the same time, it has become a more mainstream product. It is not just for young people. The average age of a Clearpay user is now 35 and is going up.
- Clearpay is now available as an in-store payment option.

Julian Grenell, Director of Regulatory Affairs, [Zip](#)

- Zip offers a similar product to those described above. It is an interest-free, pay in four instalment product - 25% of the purchase price is paid straight away, then the three others over fortnight.
- BNPL has been around a little longer in Australia and New Zealand (Zip is an Australian company) and has seen growth in these markets driven by the popularity of the products.

How consumers interact with the BNPL model

Question from Yvonne Forvargue MP, Lab, Makerfield

- Voiced a number of concerns about the BNPL model:
 - It is marketed as a payment option rather than a form of credit.
 - It's being used to buy essentials - and by people who are more likely to get into problem debt.
 - There is a lack of credit checks by providers, and BNPL providers don't know how many other BNPL products a particular consumer might be using simultaneously.
 - It is being used for buying food and groceries - BNPL is a product used by people who are desperate.

Iana Vidal

- Although regulation of BNPL doesn't apply yet, there are some very clear standards that firms like Clearpay are adhering to. Clearpay makes it very clear to people that what they are taking out is credit. This covers all of the information that customers need to know, i.e. that it is a form of credit, there are terms and conditions, how much they will pay today and how much they need to pay later, and that if they fail to keep up then fees might apply.
- There is clearly a balance to strike between providing information to consumers that is needed and not overloading them with information. The danger of giving too much information upfront is that consumers don't engage and click without thinking. Clearpay thinks carefully about these things and focuses on giving the right information to customers.

Luke Seaman

- The BNPL industry now makes it clear that these products are a form of credit. The Woolard Review led us to reflect on our practices and ask ourselves: are we being clear enough?
- We are confident that consumers do understand that these products are credit. YouGov research, which showed different checkouts to consumers, including BNPL and credit card options, revealed that the same number of consumers understood that BNPL needs to be paid back in full as with credit cards.
- The upcoming regulation is a chance to do things better in the consumer credit space. How can we expect consumers to read and understand lengthy credit agreements? Six

out of 10 people don't know the interest rate on their credit cards. In this way, traditional credit is failing.

- Conversely, because BNPL providers have been unregulated, they have had the chance to explore and work out the most intuitive ways of presenting information to consumers.
- The question is how we incorporate this into the CCA. There is a real opportunity to use the regulation of BNPL as a test case for how things should work in the wider consumer credit market in the longer term.

Gary Rohloff

- Credit and affordability checks are absolutely paramount. Laybuy has always done this and it must be upheld. There are mixed practices today, different companies have used different approaches - so it's important that the regulation is able to standardise approaches.
- Laybuy cannot be used to buy groceries or for gambling.

Julian Grennell

- The current credit information sharing framework doesn't capture BNPL and high frequency repayment. We are working with credit reference agencies such as Equifax to incorporate BNPL into that space. We are also exploring how to develop a capability with these agencies to see if a consumer is using more than one BNPL provider.

Yvonne Forvargue MP

- Appreciate the points made. A further requirement should be more signposting to debt advice, and better credit affordability checks.

What would a set of good outcomes from regulation look like?

Luke Seaman

- We need to move to more consumer outcomes-focused regulation. We have to move away from prescriptive regulations. A box-ticking approach doesn't work.

- The regulation itself needs to balance accessibility with protection. BNPL is benefiting consumers and merchants by offering competition to credit cards, which are interest bearing products.
- In its consultation, HM Treasury described BNPL usage as low risk, and so regulations need to reflect that level of risk. Average BNPL purchases are £60-£70. If BNPL becomes too tricky to use with too many hoops for consumers to jump through for these kinds of purchases, there is a risk they will revert to using interest-bearing products like credit cards.

Julian Grennell

- We also need a framework to enable proper competition in the credit market.

Gary Rohloff

- We support the recommendations in the Woolard Review. Maintaining the utility of BNPL and finding proportionality in the regulation is crucial. If BNPL is regulated out of the market, consumers will inevitably end up using more expensive forms of credit.

Iana Vidal

- One issue is that younger people, who have not used traditional forms of credit because they are concerned, hidden fees and interest, may not have much of a credit history even though they've been using BNPL responsibly for many years. As a result, we need to look at parts of the credit market that are not innovating fast enough. We want to see positive behaviours rewarded with better credit scores for consumers.

What potential consumer harms could come from using BNPL products?

Charlie Mercer, Head of Economic Policy, [Coadec](#)

[Coadec report on Buy Now, Pay Later](#)

- HM Treasury has said that it has yet to see substantial consumer harms from use of BNPL itself. There may be examples of intuitive harms involving BNPL that are connected to a consumer's use of credit in general - but that's an important distinction to make.
- People buying groceries with a credit card doesn't seem to result in the same criticism as we have seen when we hear about people buying groceries using BNPL.

- However, there is a chance that unregulated BNPL will bring risks to consumers. The lack of information sharing or shared liability between BNPL providers is concerning. The inconsistency in the information provided to consumers and how credit checks are carried out is another worry.

James Daley, Managing Director, [Fairer Finance](#) (*consumer group, research agency and consultancy with a mission to create a fairer financial services market*)

- BNPL is clearly popular. It is a convenient method of payment, particularly for people who have irregular incomes. It is cheaper than other alternatives. BNPL's rise has shone a light on how bad the rest of the credit sector is.
- However, BNPL is a bit too easy to use and in many cases people don't know they are taking out credit. It also does not have the Section 75 protection (whereby the credit provider has certain liabilities for products, so consumers can get money back if there's a problem). It is concerning that BNPL providers are willing to let their product be used by people to buy groceries. Surely that is a flag that consumers doing this are facing hardship.
- As things stand, there is not a regulatory level playing field. It's not fair that BNPL is free from regulation. Disclosures are not good enough at the moment.
- We should aim to take the best bits from current regulations and build on this to try to improve the consumer credit sector overall.

How do proposed BNPL regulations play alongside FCA's separate proposals for a new Consumer Duty?

Rachel Waggott, Head of Regulatory Affairs, [Innovate Finance](#)

- The FCA's new Consumer Duty is coming - the FCA has been consulting on this over the past few months. The new Duty will of course apply to BNPL firms. The Duty itself is very outcomes-focused. This presents a difficulty with how it overlays and interacts with the CCA. It is hard to see how the two will work together, since the CCA is highly prospective.
- A practical example of this tension is what happens when vulnerable customers fall into arrears. Let's say I've fallen into arrears but I've secured a payment holiday with my bank. The CCA stipulates that the bank has to send out a "Notice of Sums in Arrears" (NOSIA) which must include certain language. Even though I've secured the payment holiday, I'm still receiving this NOSIA with its very legalistic language. Receiving this is really confusing and can be distressing.

- This illustrates the need for a thorough review of consumer credit regulation. This should be a post-Brexit priority.

Charlie Mercer

- The CCA was passed when Harold Wilson was prime minister and it was still legal for a bank to refuse credit to a woman if she did not have a male guarantor! That is the foundation of what we're discussing.
- The piecemeal updates to the CCA that have come since 1974 have not set up the modern consumer credit industry for success. A good outcome would be wholesale change to the consumer credit market. As part of this, the credit reference agencies need more scrutiny.
- The Treasury approach to BNPL is going to create a bespoke regime just for BNPL providers. Many credit card companies will feel aggrieved about this unlevel playing field and think they are not being fairly treated, hence the need for wider reform.

James Daley

- There is a real opportunity to tear up the disclosure regime. We know that people aren't engaging with terms and conditions and pre-contractual information.
- It is right that we regulate BNPL and bring it closer to the rest of the credit market. But to be clear, this isn't Wonga all over again.
- Credit reference agencies and credit checking needs to be reformed.

Does Open Banking provide a way of sharing data between BNPL providers and also giving consumers aggregate information on their spend/credit across all BNPL and other unsecured credit like credit cards and car loans? Or do we need more to enable better provider and consumer access to information in one place?

Rachel Waggott

- Open data may provide a solution to credit checking and creditworthiness. We have definitely seen progress in how Open Banking can support this. It is also stimulating competition.

Charlie Mercer

- Open Banking is a long-term solution. It allows accurate and real-time assessments and it puts the consumer in control.
- However, we will need to move to Open Finance and the much broader picture of an individual's financial life. Open Banking as it exists today is limited in terms of the data that can be shared, which limits the extent to which it can be a wholesale replacement for current credit scores.

Audience question: Do BNPL firms see themselves as payments companies or consumer credit companies?

Luke Seaman

- Klarna is a Swedish bank with a Swedish banking licence. We are more than BNPL. It's what we're best known for in the UK, but globally, 40% of our business comes from our "pay now" product. We are also one of Europe's largest Open Banking payments providers. So yes, we're a credit provider, but BNPL credit is one tool in a suite of products offered to consumers to solve pain points that exist with shopping online.

Audience question: Are there examples of retailers who only offer BNPL and no other form of payment?

Julian Grennell

- I'm not aware of a merchant who only offers BNPL as a checkout option. I'd be surprised if this was one!

Closing remarks

Adam Jackson

- Thank you to all panellists and to Adam Afriyie MP for chairing this meeting, and thank you to all for joining.

- We are expecting a statement from HM Treasury about next steps for regulating BNPL. There will be further debate throughout 2022. As our BNPL providers have said, do reach out to us at Innovate Finance or the BNPL companies directly if you'd like to ask questions or talk about regulation more generally.