

Money and Mental Health's submission to HM Treasury's consultation on the regulation of buy now, pay later

Introduction

The Money and Mental Health Policy Institute is a research charity, established by Martin Lewis to break the link between financial difficulty and mental health problems. We aim to be a world-class centre of expertise developing practical policy solutions, working in partnership with those providing services, those who shape them, and those using them, to find out what really works. Everything we do is rooted in our Research Community, a group of thousands of people with personal experience of mental health problems. For clarity and to avoid repetition, at times we respond to groups of questions from the consultation document with a single answer.

Summary

- Money and Mental Health is pleased that the government has committed to regulate BNPL products. While they can be a helpful way for customers to smooth their consumption, our research suggests that the ways in which BNPL products are currently promoted, presented and managed can contribute to financial difficulty.
- People with mental health problems appear to be particularly at risk of worse outcomes when using BNPL products. In a large poll in summer 2021, 14% of people with a mental health problem told us they had fallen behind on a BNPL payment in the previous year, significantly higher than the proportion among people without mental health problems (3%).
- The interactions between symptoms of mental health problems and the design of BNPL products appear to be driving these worse outcomes. Three in ten (29%) respondents with mental health problems say that during a period of poor mental health, they often or always spend more than usual due to difficulties controlling their spending.
- While such spending can occur with most forms of credit, the low-friction, low-upfront-cost model that BNPL is based on can be especially problematic for people experiencing such symptoms. In polling in 2020, we found that four in ten (43%) users agreed that the option to pay later encouraged them to spend more than they could afford, while more than half (56%) agreed that these services make it too easy to get into debt.
- People with mental health problems also told us how they were often unclear about what exactly they were signing up for when taking out a BNPL product. Others mentioned that it was challenging to keep track of when payments were due and how much was owed. Among people with mental health problems, one in three (32%) who had fallen behind on a BNPL payment said it was because of “difficulties managing money”.
- We recognise the challenge HM Treasury faces in drawing the boundaries of BNPL legislation, as well as the potential drawbacks of the approaches set out in the consultation document. Taking all the evidence together, we believe that a broader approach to regulating these products is preferable, accompanied by further research and monitoring of the impact on other forms of interest-free credit.

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

Our research, through engagement with both BNPL providers and consumers, leads us to similar conclusions as the consultation document. We would emphasise, however, as paragraphs 2.6 and 2.10 acknowledge, that this is a market that has grown rapidly in recent years, with change already evident over that short period. While new regulation will influence future developments in this market, there is no intrinsic reason why some of the hallmarks of BNPL agreements to date - such as purchases being of relatively low value - will persist. A legislative approach which treats the current business models as fixed therefore risks taking too narrow a view of BNPL, as we discuss in more detail in response to Questions 11-13.

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

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

Money and Mental Health's research on BNPL has focused on the experiences of people with mental health problems. Through polling, including a poll of 5,000 UK working-age adults with mental health problems, and 1,000 without, conducted in June-July 2021¹ and a 2020 poll on online shopping², we have also gained an insight into the wider use and detriment that can come with BNPL products. We found that:

- One in four adults (25%) have used a BNPL service, rising to three in ten (31%) among people who have experienced a mental health problem.³
- 14% of people with a mental health problem said they been behind on a BNPL payment⁴ in the previous 12 months, compared to 3% of those without mental health problems.
- Of the 14% of people with a mental health problem who had missed a payment, 7% had missed one payment, 4% had missed two payments and 2% had missed three or more payments.
- Among all those who had missed a BNPL payment, when asked for the reasons why they had missed a payment, "difficulties managing money" was the most commonly cited issue, at 32%.
- People with mental health problems who had fallen behind on BNPL payments in the previous year were also more likely to say they struggled to save regularly (66%), often need to borrow money or use credit to pay for everyday outgoings (68%) and thinking about their financial situation makes them nervous (69%) than the wider population with mental health problems (46%, 26% and 55% respectively).

¹ Bond N and D'Arcy C. The state we're in. Money and Mental Health. November 2021.

² Holkar M and Lees C. Convenience at a cost. Money and Mental Health. 2020. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 2-6 October 2020. Data is weighted to be nationally representative.

³ Ibid.

⁴ Respondents were asked if they had "been behind" on a range of payments in the previous 12 months. 705 respondents said they had been behind on BNPL.



Taken together, this paints a picture of a product that is widely used by people with mental health problems. While most have not experienced difficulty with it, there is a significant minority who have missed payments. Our response to Question 4 explores the drivers behind this in more detail.

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

BNPL products can be a helpful way for customers to smooth their consumption. But our research suggests that for many people, particularly those with mental health problems, the ways in which BNPL products are promoted, presented and managed can contribute to financial difficulty.

Common symptoms of mental health problems include low mood and increased impulsivity. This can lead to people spending more than they can afford when unwell; 29% of respondents to a recent poll of 5,000 people with mental health problems said that during a period of poor mental health, they often or always spend more than they usually do due to difficulties controlling their spending. While such spending can occur with most forms of credit, the low-friction, low-upfront-cost model that BNPL is based on can be especially problematic for people experiencing such symptoms.

BNPL can form part of a streamlined purchasing journey on shopping sites, significantly reducing the ‘pain of paying’ and encouraging people to spend more. Our 2020 polling found that four in ten (43%) users agreed that the option to pay later encouraged them to spend more than they could afford,⁵ while more than half (56%) agreed that these services make it too easy to get into debt.⁶ These figures suggest that there may be problems with the affordability of some BNPL lending. Consumers are highly likely to experience harm if they are lent more than they can afford to ‘pay later’.

“It is such an easy option and feels like the purchase doesn’t cost anything but when the payments are due later it’s unaffordable.”

Expert by experience

Some Research Community respondents also highlighted a lack of clarity at the point of sale about what BNPL products entail, which can lead to problems later on. In our 2020 polling, more than one in four (27%) users agreed that they did not understand the service’s terms and conditions.⁷ For any product that entails future commitments, it is essential that customers are clearly informed about key product terms as part of their sales journey.

⁵ Holkar M and Lees C. Convenience at a cost. Money and Mental Health. 2020. Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 2-6 October 2020. Data is weighted to be nationally representative.

⁶ Ibid.

⁷ Ibid.



That this information is provided prominently and clearly is particularly important in protecting customers with mental health problems. In our 2021 polling, one in five (21%) people with mental health problems said that during a period of poor mental health, they often or always took out credit that they otherwise wouldn't have. Some of this is likely to be due to increased costs or spending, but our research suggests a significant portion may be due to impaired decision-making as a result of poor mental health. While the majority of people said their mental health did not affect them when applying for credit, three in ten (31%) said their symptoms meant they struggled to understand a part of the process. Difficulties people experienced included problems weighing the advantages and disadvantages of the product or understanding key terms and conditions like repayment details. This direct effect of mental health problems may raise the odds that people struggle to keep up with repayments of BNPL purchases.

"I was never clear about the buy now pay later process. I found it difficult to keep track of how much I had paid/owed."

Expert by experience

While the size of BNPL transactions and debts is often low, affordability across different types of consumers is a vital consideration. For many customers who struggle to access mainstream credit, a £100 BNPL debt is a considerable commitment. People with mental health problems often face affordability challenges due to significantly lower average incomes. The median gross income of people with common mental health problems like anxiety and depression is £8,400 lower than that of the rest of the population.⁸

Finally, the consultation document makes the point that BNPL products are inherently lower risk than standard credit products because they are interest-free. The level of interest charged is an important factor that can affect the affordability of credit, but it is not the only potential driver of harm and should not be the only consideration when regulating. Consumers are particularly likely to experience harm when using credit if they are lent more than they can afford to repay, if the terms of repayment aren't made clear at the point of sale, if they have difficulty managing repayments or if lenders handle collections poorly. All of these risks exist with BNPL products.

Question 5: Do you agree with our analysis of the business models that underpin the short-term interest-free credit market?

Question 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?

Question 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?

Question 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?

⁸ Bond N and D'Arcy C. Mind the income gap. Money and Mental Health. 2020.



We regularly survey our Research Community about their financial experiences, both with specific questions on borrowing as well as more open questions, providing them the opportunity to share their experiences. This has often been a valuable insight for our work, helping us to spot products that are a cause for concern before they are identified in national datasets. The kinds of short-term interest-free products set out in the consultation document have not emerged as a notable issue among the Research Community.

This is not to say that there are no problems with such agreements. Many of the challenges that people with mental health problems can face as a consequence of their mental health that are outlined above - lower, less secure incomes, difficulty managing money and increased impulsivity - can all mean these products come with a higher risk. The lack of public evidence on these products should not be taken as an indicator that no problems exist but instead should act as a call for further research and data collection to take place, so that this part of the market is better understood. This should help to ensure that action to regulate BNPL products and providers doesn't come at the expense of these potentially helpful products, but also flag where less-reported difficulties are occurring.

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

Question 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?

Question 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 recognise that drawing a distinction between BNPL and other similar products is a challenging task. Paragraphs 2.27 and 2.28 identify pitfalls of each approach. On balance, our view is that the broader option outlined in the first bullet point of paragraph 2.26 is the better approach. The largest companies in the BNPL market are large and have become highly successful based on this model. Stepping outside of the regulatory perimeter but continuing to operate in a similar way to now - with all the same risk of consumer detriment - therefore seems a genuine possibility. And as the consultation notes, if many of the firms involved in short-term interest-free credit are already registered with the FCA, the impact on them may be not as great as feared.

One shortcoming of this approach is the provision of BNPL agreements by the merchant directly. Amazon has been the most prominent of these but other large players could take a similar tack. This makes the case for some form of credit broking requirements, as we outline in response to Questions 15 and 16.



Regardless of the route taken, ongoing and active monitoring of the impacts will be required to ensure that valuable products are not removed from consumers but also that firms do not alter their business practices by the minimum amount to avoid regulation. The rapid expansion and the size of the firms involved in BNPL leads us to believe that the greater risk lies in the latter. More generally, from a consumer protection perspective, the gap in knowledge on potentially a large market suggests more research is required to better map the landscape. This should be commissioned by HM Treasury and/or the FCA, rather than solely relying on stakeholders to supply evidence of harm.

Question 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?
Question 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?

In recognition of the meaningful differences between BNPL and more traditional credit products, the consultation document's proposals in some cases suggest bespoke arrangements, for instance in Question 21 on credit agreements. Given the risk of detriment that merchants facilitating BNPL purchases are introducing customers to, a bespoke approach with some enhanced requirements appears logical. These requirements could be less demanding and costly than those for credit brokers but would still emphasise to retailers the responsibilities they have to their consumers. A code of conduct could form a proportionate approach. This could be achieved through self-regulation or operated through the CMA or Trading Standards, requiring retailers to, for instance, not offer BNPL as the default product and to ensure the way in which the product is promoted on their websites is not misleading or encouraging of unaffordable spending.

Question 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)?

An exception for domestic premises suppliers strikes us as a sensible step. In making such an exception, however, both communications and enforcement should be clear that pressure can be felt when buying online too. The CMA's work on misleading online practices has highlighted that tactics such as countdown timers and counters displaying the numbers of items left can have a powerful impact on our behaviour. Attempts to create anxiety and an increased sense of scarcity can lead to consumers - particularly those with mental health problems - buying goods they would not otherwise. While this is not unique to BNPL, the low friction and reduced upfront expense that comes with it means these tactics may be particularly effective.

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

Question 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?

The role played by merchants in BNPL is a crucial one. People with mental health problems have told us how BNPL being heavily featured on the landing pages of websites and while browsing goods influences their behaviour. But perhaps the most important influence that a merchant can have on a consumer is how BNPL options are presented at checkout. A number of retailers offer BNPL products as the default at checkout. By making BNPL the default payment option, retailers can significantly influence consumer choices. Default options can have a powerful impact on any consumer but their effect can be particularly strong on people with mental health problems. Common symptoms of mental health problems include reduced concentration and motivation. This can lead people to click through the suggested options quickly without weighing up the pros and cons of the product for them.

Preventing retailers from presenting BNPL as the default option at checkout would align online practice with offline. For customers who particularly value BNPL and low-friction transactions, retailers could allow customers to set BNPL as the default once they have created an account with the retailer and switched on such an option.

Question 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?

The FCA rules appear to provide an adequate level of information for a consumer considering entering a BNPL agreement. Another important piece of information that would be of use is on a consumer's rights with regard to cancellation of the purchase. People with certain mental health problems are at particular risk of spending 'sprees', in which they buy many products, and often more than they can afford in a short period of time. Cancellation and returns processes are often difficult to navigate, but providing clear information before the purchase has been completed on how and when a purchase can be cancelled may be particularly valuable for those experiencing a short period of poor mental health.

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

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

A bespoke approach appears sensible. The agreement provides another chance to outline key information about the product and the consequences of failing to meet the terms of the agreement.

Taking the opportunity provided by developing a new approach for BNPL, an agreement could also provide signposting to organisations who can help those struggling financially and/or with

their mental health. While there is rarely one single factor that drives people to take their own life, there is a strong link between problem debt and suicide; more than 100,000 people in England attempt suicide while in problem debt each year. This means the provision of this information could be life-saving for those who are in financial difficulty.

Question 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 agree with the government's view that applying rules on improper execution to BNPL agreements could be helpful. While not wanting to make purchases needlessly difficult to complete, the lack of friction in BNPL journeys currently means that adding new steps is unlikely to significantly deter a customer who has weighed up the pros and cons of the product and agreement. For those who may not have fully considered whether they can afford the instalments or whether BNPL is the right product for them, introducing an additional step may be of particular value. For people experiencing poor mental health, this is a common challenge, with symptoms like reduced concentration and decision-making ability meaning we make purchases that we might not otherwise. Providing a signature electronically, or some equivalent step, could therefore be particularly useful for customers experiencing poor mental health.

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

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

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

Creditworthiness assessments would offer significant additional protection for customers who might struggle to repay. The introduction of checks should reduce the number of people who are sold goods that they cannot afford, preventing the cycle of missed payments and collections processes that can then follow.

Similarly, having BNPL agreements appear on consumers' credit files would be of benefit in helping people with mental health problems to stay in control of their finances. This would enable potential creditors to have a more rounded view of the person's financial situation and make an informed decision on whether offering credit is appropriate. BNPL agreements should be identified specifically and separately from standard credit agreements.

While further checks would be beneficial, members of our Research Community often underline how disastrous being cut off from lines of credit can be when trying to survive on a low income. While BNPL is often thought of as being used for discretionary spending, food and other essentials are available on a BNPL basis too. Our response to Questions 33-35 return to this issue.

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

Nearly three in ten (28%) BNPL users polled in 2020 agreed that they found it difficult to keep up with repayments,⁹ and some Research Community respondents directly attributed this to symptoms of their mental health problem, such as memory problems or difficulties with organisation.

"<Buy now pay later provider> charges you if you miss a payment which I did because I did not know when payment was due and I forgot all about it."

Expert by experience

Customers experiencing financial difficulty are particularly vulnerable to harm. Half of people in problem debt also have a mental health problem,¹⁰ and if providers respond aggressively or insensitively this can have a devastating impact.¹¹ We found some evidence of BNPL providers handling these critical interactions poorly.

"My experience wasn't good as I used the service during a period of poor mental health then couldn't afford to pay off the amount later on. The company were very unsympathetic towards my mental health problems."

Expert by experience

This suggests that some BNPL providers are not taking sufficient steps to treat their vulnerable customers fairly. Applying the FCA rules outlined in the consultation would be a helpful step. Ultimately, for a customer who is struggling and being chased for a payment, it does not matter on what precise terms the arrangement was taken out, but how it is managed and the impact it has on their mental health. We would therefore argue for minimal deviations from the FCA rules on more typical credit arrangements.

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

As noted in response to the previous question, a person who has fallen into arrears will face many if not all of the same challenges whether the agreement was on a BNPL basis or standard credit. Taking a similar approach therefore seems proportionate and fair. Particular CCA requirements, such as sending customers the FCA's Information Sheets which offer signposting, can provide vital routes to support.

While beyond the scope of this consultation, the language the CCA prescribes can be at times jargonistic and unhelpful. We were delighted when HM Treasury made changes to make the

⁹ Money and Mental Health analysis of Opinium online survey of 2,000 people, carried out 2-6 October 2020. Data is weighted to be nationally representative.

¹⁰ Holkar M. Debt and mental health: a statistical update. Money and Mental Health Policy Institute. 2019.

¹¹ Holkar M and Bond N. A silent killer. Money and Mental Health Policy Institute. 2018.

wording of these prescribed messages more helpful and the formatting less threatening. But the case for a wider revisiting of prescribed language, much of which hasn't been updated since the 1970s, remains.

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

We agree section 75 should apply to BNPL agreements.

Question 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.

We agree with the proposal to include BNPL agreements under £50.

Question 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?

No.

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

We would welcome consumers being able to complain to the FOS about BNPL. This would offer an important route to redress and further standardise expectations of BNPL providers in terms of their treatment of customers, and help people who have suffered detriment to get redress.

Our welcome comes with two caveats. Firstly, waiting times for cases to be investigated by FOS are unacceptably long. In recognition of both the existing wait-times and the large scale of the BNPL market, additional funding for FOS is required if the proposed change is to have practical benefits for consumers within a reasonable timeframe.

Secondly, people with mental health problems can often struggle to make complaints. Avoidance is a common coping mechanism for people experiencing anxiety and the prospect of a long, complex process can seem daunting or impossible for people who are experiencing low motivation as a result of their mental health. This means that many people with mental health problems miss out on redress and support that they are potentially due.

"No point, the energy it takes to report it is too much. If you are struggling with everyday life, you certainly don't have the energy to start thinking rationally to start making a complaint to anyone."

Expert by experience

Symptoms of mental health problems can make the process of making a complaint more difficult too. Navigating websites and forms, knowing what information to provide, remembering details about the product and speaking to strangers on the telephone can all be harder for those of us with a mental health problem.

“Constant mental tiredness means becoming easily confused and unable to process, interpret or relate information clearly and concisely. So reporting scams is also difficult, if not impossible.”
Expert by experience

Ensuring the complaint process is made as straightforward and supportive as possible, from beginning a complaint through to the end of matter, should mean that more people with mental health problems who feel that they have been mistreated can seek redress, but also that that process doesn't add to distress already caused.

Question 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?

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

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

As set out in our responses above, we believe that regulation of BNPL products would have mostly positive impacts for people with mental health problems. As noted in response to Questions 24-26, however, there is a risk that if credit checks are introduced, people with severe financial difficulty may have reduced access to BNPL. This could lead to people going without essentials. Because people with mental health problems are more likely to experience financial hardship, this issue is of particular concern from an Equality Act perspective.

These concerns shouldn't prevent the government from taking action on BNPL - unfettered access to unregulated credit is not a sustainable solution - but they should prompt further action. There is a clear need for affordable credit options for people with poor credit ratings or who can't afford existing credit options. The government's pilot of no-interest loans could fill an important gap in the market for these consumers. Given the added financial pressures caused by the pandemic, rapidly completing the pilot and offering it more widely could help to reduce the detriment done to consumers in this category.