Response by TISA to the consultation on the Regulation of Buy Now, Pay Later

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **Governance, Conduct and Culture, Consumer Duty**, **MiFID II, CASS, ESG/RSI, Operational Resilience, Financial Crime Prevention** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.

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Introduction and Summary of Recommendations

TISA welcomes the opportunity to respond to HM Treasury's consultation on the Regulation of Buy Now, Pay Later.

TISA's Financial Education Council (FEC) is a coalition of financial services firms that works collaboratively to ensure that everyone receives a high-quality and effective financial education in order to promote good financial habits early on in life, and beyond.

The FEC has been active in urging the Government to do more to improve financial education and financial literacy levels in the UK. We are aware that many young people are still entering the world of work not being prepared for the money-related realities that lie ahead. This can lead to debt problems, affect their mental health and also find them suffering in the workplace.

TISA also supports the Centre for Financial Capability (TCFC), a charity formed by the backers of KickStart Money, an award-winning coalition of financial services firms founded in response to ground-breaking research by the Money and Pensions Service that showed money habits are formed from the ages of 3-7. The TCFC's mission to ensure every child in the UK develops the skills and behaviours necessary to navigate critical financial decisions in their life and the TCFC has a long-term commitment to financial education and research – starting from primary school.

The TCFC has conducted research on Buy Now, Pay Later (BNPL) with polling suggesting that many users of BNPL are entering into agreements on an uniformed basis, with no suitability checks being performed and often find themselves missing payments impacting their credit score and mental health. In light of this research, we support the Government's proposal to regulate BNPL and urge HM Treasury and the FCA to complete their policy work expediently, to ensure consumers are protected and able to make informed decisions as quickly as possible.

We would be happy to discuss these recommendations and any other aspects of our consultation response and look forward to HM Treasury and the FCA progressing this policy matter.

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Question Responses

Question 1: Do you have any comments on the proposed approach and/or drafting disapplying provisions on pre-contractual information (sections 55 and 55C)?

We acknowledge the approach taken by the Government and would like to take the opportunity to encourage the FCA to have regard to The Centre for Financial Capability's (TCFC's) research findings that Around a fifth of Buy Now, Pay Later (BNPL) users are unclear what the late payment fees would be if they missed a repayment (21%) and unclear about the impact on their credit score if they missed a repayment (21%). It is vital that this information is made clear to consumers before the enter into a BNPL arrangement. We urge the FCA to include requirements that enable these pre-contractual disclosures to ensure that consumers are able to make informed financial decisions.

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

We support the Government's decision to retain its proposed approach to apply the Financial Promotions Order to BNPL financial promotions. In the consultation paper, HMT notes that they received feedback from BNPL firms highlighting that BNPL providers may be unable to provide third-party approvers for their financial promotions only emphasises the need for regulation in this space. Given any regulated firm may provide such a service, should they wish to do so, and BNPL firms also have the option to become regulated for this activity too, this seems like an unlikely outcome.

It may be plausible that BNPL firms are unable to find third party approvers that are willing to approve their financial promotions because of the content of the financial promotions. However, if firms are unable to comply with financial promotion regulations – such as providing advertising that is fair, and clear and not misleading – then they should not be permitted to advertise. Regulating BNPL will create a level playing field, with baseline standards that all providers will need to abide by, ensuring minimum levels of consumer protection. If firms are unable to give provide these minimum levels of consumer protection, it would seem right that they should exit the market.

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

We would urge HMT and the FCA to complete their policy work expediently, so that 'Regulation Day' happens as soon as possible. As the TCFC's research has found, Christmas is a key pinch point for many families, where there is a greater reliance on BNPL. TCFC's research found that during the Christmas period last year (2023), 30% of respondents felt anxious about money, budgeting and debt – nearly 1 in 3. Nearly a fifth (17%) have used or intend to use Buy Now, Pay Later services to pay for additional costs at Christmas, and over a quarter (28%) used or intend to use the services because they were unable to pay for full costs at the time. This highlights the real urgency of this work, to ensure that potentially financially vulnerable individuals receive the support that they need when they need it most. We will continue to support HMT and the FCA to bring this new regulatory regime to fruition.

We also recommend that HMT and the FCA monitor the BNPL market in the run up to 'Regulation Day' to observe any changes in BNPL market behaviours, including transaction and advertising volumes.

We would also like to take the opportunity to note our support for the Government's policy proposal that there should be no substantive threshold to the regime. As noted, BNPL is frequently used for agreements that are below £50 and consistent consumer protections should be guaranteed across all BNPL agreements.

Question 11: What do you expect the impacts to be of this proposed legislation on: providers of agreements that will be brought into regulation, consumers that use them and merchants that offer them as a payment option?

Currently, there is no duty for BNPL providers to run background and affordability assessment checks on their users. This allows people to get into further debt, as they could rack up multiple bills from separate late payments to the schemes. Following the introduction of the regime, we would expect customers with existing problem debt to be refused BNPL services. Whilst this will lead to a reduction in take up of BNPL, it will lead to a better consumer outcome, as it will stop consumers buying things that they cannot afford and that can worsen their financial position and credit score, often leading to a downward spiral. Instead, we should see BNPL being used by consumers who can genuinely afford this option and can reap the benefits of spreading their costs. We would also expect to see fairer, better controls and processes in terms of referrals to debt advisors and debt collectors.

Question 12: Do you agree with the provisional assessment that, on balance, the government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?

BNPL schemes are a form of short-term financing that allow consumers to pay for their shopping over a period of weekly or monthly instalments, rather than the full amount upfront. Although the BNPL initiatives are generally interest free, the providers charge for any missed payments and customers might be tempted to spend more than they can afford. If payments are late or missed, this affects a person's credit score.

The BNPL sector in the UK is currently unregulated, meaning that there is no duty for the providers to run background and affordability assessment checks on the users. This allows people to get into further debt, as they could rack up multiple bills from separate late payments to the schemes. Clearpay charges 25% of the original purchase price, which is required to be paid at once and if this is missed, it will use a debt collection agency to recover amounts.

Research by the TCFC has revealed that around a third of consumers have used Buy Now, Pay Later services, despite the risks of late payment fees, low credit scores and debt collectors. Around a quarter of those who have used the services have been charged late payment fees, which rises to a third of 18-34-year-olds. Customers are often not fully aware of the high hidden charges and risks, meaning that consumers often make uniformed decisions leading to poor consumer outcomes and financial distress. Shockingly, around a quarter of BNPL users have missed one or more repayments, and of those, over a quarter had been contacted by debt collection agencies.

All of this substantiates the decision to regulate BNPL. The more substantive provisions of this regime will be determined in upcoming FCA consultations. It will be imperative that the requirements set through these consultations are made with due consideration to the FCA's Equality Duty. We would also recommend that the impacts of the policy are reviewed, to ensure that the approach taken has mitigated negative impacts on those sharing particular protected characteristics whilst retaining the positive equalities impacts of BNPL products.

Question 13: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?

The TCFC's polling reveals that:

- During the Christmas period last year (2023), 30% of respondents felt anxious about money, budgeting and debt – nearly 1 in 3. When asked how anxious they felt about money, budgeting and debt during the Christmas period in 2022, 20% of respondents responded that they felt anxious – 1 in 5.
- A third (33%) of UK adults have used Buy Now, Pay Later services in the past. This rises to 40% of 18-34-year-olds.
- A quarter (25%) of those who used or intend to use Buy Now, Pay Later services do so because of the current increase in the cost of living and inflation. For those aged 65+, this number rises to 30%.
- Nearly a fifth (17%) have used or intend to use Buy Now, Pay Later services to pay for additional costs at Christmas, and over a quarter (28%) used or intend to use the services because they were unable to pay for full costs at the time.
- Around a fifth of Buy Now, Pay Later users are unclear what the late payment fees would be if they missed a repayment (21%) and unclear about the impact on their credit score if they missed a repayment (21%).
- Around a quarter (22%) of those who have used Buy Now, Pay Later services have been charged late payment fees. This rises to 32% of 18-34-year-olds.
- Around a quarter of those who have used Buy Now, Pay Later services have missed one or more repayments in the last 6 months when using the services. This rises to 34% of 18-34-year-olds.
- Of those who have missed repayments in the last 6 months, around two thirds have missed payments twice or more. Over a quarter of those who missed repayments had a decreased credit score (29%) as a result, or had been contacted by a debt collection agency (27%).

MaPS also collects data on the UK's debt landscape which may provide a useful source of information when determining impacts on persons sharing protected characteristics.