

Consumer Finance Policy Team
Financial Conduct Authority
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To the Consumer Finance Policy Team

CP25/23: Deferred Payment Credit (unregulated Buy Now Pay Later): proposed approach to regulation

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two-thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies that provide financial services – primarily savings and loan facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers, they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loan facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and/or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the

interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with over 215 credit unions active in Great Britain today with more than 1.5 million members and £2.7 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Consultation Response

Buy Now Pay Later (BNPL) products can provide vital credit lines if managed correctly and sensibly. BNPL services are designed to be easy and frictionless, and whilst this is important for ease of use, it has been at the expense of affordability and financial well-being. Convenience and ease of use are often prioritised compared to whether the consumer is able to afford the product. BNPL is often linked to unsustainable consumption of goods and services through unaffordable credit borrowing.

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

We do not see that the proposed rules will have a material impact on groups with protected characteristics.

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

ABCUL broadly agrees that the proposed rules for providing information are appropriate before consumers enter DPC agreements. We have some concerns regarding DPC agreements that are given orally, although many are provided with key product information verbally before entering into a DPC agreement. This can be a significant volume of information to take in and make a rational and informed decision. Only once someone has agreed to the DPC agreement will they then be provided with the key product information

and the additional product information. This poses a risk to vulnerable consumers who have to enter into the agreement first before being provided the information in a different medium.

ABCUL strongly supports the FCA's proposals for all non-distance firms to provide customers with key product information and additional product information before entering into an agreement. We welcome the 'proactivity' in which customers should be given key product information.

We agree that infographics have the potential to increase customer engagement and to convey information, but ABCUL urges that a standardised presentation of pre-agreement information should be implemented to ensure consistency across DPC firms.

ABCUL agrees with the proposed 'key product information' put forward. We believe that the key product information is appropriate in providing customers with the necessary information before entering a DPC agreement.

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?

ABCUL notes that the Duty is an integral aspect in ensuring DPC lenders adhere to good practice. ABCUL supports the proposals under the Duty to ensure DPC firms 'make effective, timely and properly informed decisions'. We do have concerns that the Duty can be open to interpretation and that the FCA will have to monitor and review DPC's implementation of the Duty.

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

ABCUL would encourage the FCA to make it a requirement for all DPCs to provide payment reminders to consumers or a summary of upcoming payments due during the term of the agreement. This could be through several mediums, including email, post, SMS, etc, but not reliant on one medium alone. ABCUL would also encourage major DPC lenders not to solely

rely on their apps to convey key information during DPC agreements. Other avenues of notification should be utilised in unlikely events of app maintenance, cyber-attack or other unforeseen circumstances.

Proposals to 'want' DPC lenders to consider their target market and think about the specific nature of their products when communicating with borrowers during the course of an agreement should be scrutinised further by the FCA to ensure that clarity is in place for DPC. DPC lenders' business models should be seen as secondary to protecting and ensuring the financial resilience and health of consumers.

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

ABCUL strongly supports the proposals for firms to give borrowers in or approaching arrears or default sufficient support. We also support that DPCs provide forbearance and engage with consumers at the earliest opportunity to provide them with signposting to money and debt advice.

ABCUL welcomes the incorporation of DPC lenders into the regulatory requirements regarding information to borrowers who have missed repayments.

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

ABCUL supports the proposed requirement for a DPC firm to communicate to consumers as soon as possible if they fail to make a contractual payment under their DPC agreement. While there are no specific requirements regarding the method or medium a firm should use for these communications, communications to borrowers must be clear and easily accessible. Firms should consider using multiple forms of communication, such as SMS, in-app notifications, and physical letters, when appropriate. As stated in our response to question 5, the communication should be supportive and encourage the customer to engage with the DPC and also signpost to any advice charities.

ABCUL broadly supports the content of the communication about missed repayments.

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?

ABCUL notes that reliance on the Duty may not deliver policy objectives, as this can be open to interpretation, and acknowledges that CONC 7 does not contain specific requirements for firms to send information at certain trigger points. Therefore, we support the FCA's proposal for rules that ensure a standardised approach across the DPC market, especially where consumers are facing financial difficulty.

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

ABCUL strongly supports the application of the FCA's current creditworthiness rules and guidance to DPC lending. In section 3.83, you mention that DPC lenders have varied approaches to assessing affordability, with minimal assessments suggesting a lack of consideration for customer financial well-being and awareness. We welcome the FCA's proposals to subject DPC lending to the creditworthiness rules outlined in CONC 5.2A. ABCUL believes that adhering to existing creditworthiness rules and guidelines is essential for promoting the sustainable use of credit.

According to the 2024 Financial Lives Survey, 13.1 million adults have low financial resilience, while 26.4 million exhibit at least one characteristic of vulnerability. DPC lending has grown from £0.06bn in 2017 to over £13bn in 2024. These statistics, particularly the higher proportion of DPC users displaying these vulnerabilities, highlight the urgent need for a systemic shift toward the greater availability of affordable credit. A coordinated effort across various sectors is necessary to enhance financial resilience.

Additionally, this data suggests that Buy Now Pay Later (BNPL) schemes are filling gaps in the unmet need for credit. However, they often rely on unsustainable business practices, and this credit may be significantly less affordable than that offered by trusted organisations like credit unions, which adopt a more holistic approach to credit provision and affordability. ABCUL agrees with the FCA's position on utilising innovative tools and automation in assessing creditworthiness. We urge that these tools be implemented to ensure fair, transparent, and sustainable outcomes in credit provision. There are significant risks associated with using AI to assess creditworthiness if not properly managed. DPC lenders must establish policies to mitigate financial bias through necessary human oversight. Although this issue extends beyond the DPC lending sector, it still requires careful evaluation and scrutiny to ensure the long-term sustainability of AI in creditworthiness and other financial assessments. ABCUL further agrees that automated processes designed by DPC lenders should not only focus on credit risk, but also on affordability risk.

ABCUL welcomes the FCA's upcoming consultation on the proposed remedy to introduce mandatory reporting requirements for all FSMA-regulated data contributors to designated CRAs, which should provide more accurate, consistent and comprehensive credit information. This would also help to deliver improved consumer outcomes through more effective credit risk and affordability assessments. Furthermore, more comprehensive credit information will assist lenders, like credit unions, with a more informed view of consumers' financial circumstances. Also, by requiring mandatory reporting for DPC's it will help in enhancing financial inclusion, as it will reduce the incidence of 'thin files'.

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?

ABCUL notes that while the FCA's approach to creditworthiness may unintentionally limit access for DPC customers who can afford it, we believe that the benefits of implementing a rigorous creditworthiness process are much more important for ensuring affordability and promoting financial well-being. ABCUL advocates for a balance between comprehensive creditworthiness assessments and maintaining financial access to DPC for customers who are

genuinely able to afford it. We support the proposal to establish proportionate and flexible rules, rather than overly prescriptive ones, all while adhering to the Duty and CONC rules, as this could provide an effective compromise.

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?

A mixture of both Consumer Duty and creditworthiness rules in CONC 5.2A could provide the most appropriate outcomes.

ABCUL notes that the Duty to avoid causing foreseeable harm will be integral in areas such as repeat lending. A mixture of the Duty and creditworthiness rules could ensure that irresponsible lending, such as repeat lending to customers who cannot afford it, is avoided as much as possible.

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)?

ABCUL agrees with the FCA's proposals to apply creditworthiness rules to DPC agreements of any value. Customers using BNPL products for low-value purchases suggest a more systemic issue with financial well-being and resilience. We agree that consumers could take out multiple loans of £50 or less, leading to higher aggregate balances and financial harm as a result.

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

ABCUL agrees with your proposals to implement high-level standards and all other relevant provisions of the Handbook, including PRIN, COND, GEN, SYSC, SM&CR, as well as proposals for DPC lenders to be subject to the Supervision Manual and the Enforcement Guide. ABCUL

notes that applying all other relevant Handbook provisions will align DPC lenders with the wider sector and ensure a robust regulatory environment.

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

ABCUL agrees mostly with the overall approach to regulatory reporting. ABCUL welcomes the FCA's proposals to apply existing regulatory reporting requirements to fully authorised DPC lender and their regulated DPC activities. Having DPCs subject to this requirement will allow the FCA better oversight of the sector and spot any potential systemic risks quickly. However, we would view that where a newly authorised DPC firm can handle the initial burden, then this should be allowed; where a DPC lender cannot realistically manage the initial regulatory reporting burden, then an initial tailored approach should be permitted.

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?

ABCUL agrees that DPC should be subject to PSD returns, where it is not already. ABCUL supports the collection of transaction-level data to ensure that DPC lenders with significant outstanding consumer credit balances or new consumer credit advances are regulated more effectively. Regular data collection is important, as it is the third most commonly used credit product. ABCUL welcomes the FCA's aim to better understand the sector, more efficiently target supervisory and policy efforts, and determine whether poor outcomes stem from inadequate product features. This will help ensure that DPC lenders are effectively regulated.

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?

ABCUL strongly supports the FCA's proposal to collect regular, predictable transaction-level data from DPC firms. This will allow the FCA to have a better understanding and overview of the sector. It will enable the FCA to potentially flag poor outcomes linked to specific products

or firms. The information collated will also allow the FCA to provide the Government with a detailed report when the legislation is required to be reviewed in 5 years. While we understand there may be a regulatory burden placed on some DPC's given the size and scale of the sector, we do not think this requirement is overly burdensome, as many DPC lenders already have existing reporting requirements as part of their Part 4A permissions.

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?

ABCUL has no comments.

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

ABCUL supports the proposal to apply the rules outlined in DISP Chapter 1 to DPC complaints. They advocate that DPC lenders should adhere to the complaint handling rules specified in DISP 1.

Furthermore, ABCUL asserts that the complaint reporting rules in DISP 1.10 should also apply to firms within the Temporary Permissions Regime (TPR). However, ABCUL acknowledges that the timeline of the TPR may not make it feasible for DPC lenders to report complaints to the regulator twice a year under DISP 1.10. Therefore, additional efforts may be necessary to ensure that there is no gap in complaint reporting.

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.**

ABCUL partly agrees with the FCA's proposals to extend the Financial Ombudsman's Compulsory Jurisdiction to DPC activities. However, we do have concerns around DPC agreements made before Regulation Day and strongly urge that DPC lenders that this applies should join the Voluntary Jurisdiction to ensure fair and reasonable treatment of complaints pre- and post- Regulation Day.

ABCUL disagrees with the Financial Ombudsman's proposals to exclude pre-regulation DPC activities from the VJ. If there has been a clear lack of good standards or behaviour before the introduction of regulation, then this should fall within the FOS's responsibility.

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?

ABCUL disagrees with the FCA's proposal to suspend the complaints reporting rules for complaints arising from DPC activities for firms in the TPR until they are fully authorised. Although we do understand that any complaints not yet reported during this period will then have to be reported in the firm's first complaints report for these activities. So instead of delaying the submission of these complaints until a later date, it would be more beneficial to report them in the "normal" reporting period. This may also provide the FCA with some additional information on the firm's standards and behaviours, which could influence the decision for authorisation.

Additionally, if a DPC lender decides to withdraw their application, any complaints lodged against them could remain valid. It is crucial to recognise that for DPC firms to qualify for entry into the TPR, they must meet three criteria set by the FCA:

1. They must be carrying out a DPC activity as of the initial commencement date of the Government's legislation.
2. They must have notified the FCA before Regulation Day.
3. They must have paid the relevant registration fee.

These entry barriers to the TPR are relatively low, which may increase the likelihood of complaints being filed against DPC lenders that either have their applications for authorisation refused or choose to withdraw their applications for full authorisation. ABCUL acknowledges that the FCA needs to reduce the burden on firms as they familiarise themselves with the new regime. Any support provided by the FCA should be proportional and effective. However, ABCUL believes that suspending complaint reporting may not be the best way to alleviate this burden. It may be necessary to keep complaints reporting active within the TPR to protect consumers and ensure proper scrutiny of DPC lenders participating in the TPR.

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.

ABCUL agrees with the proposals not to extend FSCS cover to DPC to maintain consistency of approach to other consumer credit activities. If, in the unlikely event, FSCS were to be extended to cover DPC, then other consumer credit products would need to be aligned, and this may cost firms who already contribute to FSCS significantly. Overall, ABCUL welcomes and supports the consistency with which the FCA is proposing.

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

ABCUL welcomes the proposed introduction of a TPR, provided that it brings DPC lenders under regulation as soon as possible. ABCUL supports that applications from firms for full authorisation should be assessed in the usual manner and within the standard statutory timelines. While there is significant stakeholder consensus for the prompt regulation of DPC lenders, it is essential to ensure that the authorisation and permissions process remains thoroughly scrutinised.

The proposed treatment of agreements that were in place before the regulations raises several concerns. It may create a two-tier regulatory system, resulting in different outcomes

for consumers who are using essentially the same products. The proposals for DPC agreements that existed before the regulations continue to be exempt, which could result in further harm for consumers. ABCUL suggests that DPC lenders should treat these agreements as if they were regulated to ensure consistency in the spirit of the new legislation. A limitation on firms' permissions when within the TPR is welcomed, as it is a Temporary Permission Regime.

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.

ABCUL has no comments.

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?

ABCUL has no comments.

Please contact us at advocacy@abc.ul.org if you have any questions about our response to your consultation.

Kind regards,



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