

WOOLARD REVIEW – CONCLUSIONS AND IMPACT ON REGULATION IN THE UK "BUY-NOW-PAY-LATER" INDUSTRY.

BACKGROUND

In Q4 2020, the Financial Conduct Authority in the United Kingdom (the "FCA") instructed Christopher Woolard (former interim Chief Executive of the FCA) to carry out a review into the unsecured consumer credit market, with a particular focus on the "buy-now-pay-later" ("BNPL") market (the "Woolard Review"). Currently, the majority of BNPL lending is carried out on an unregulated basis in reliance on an exemption under Art. 60F(2) of the FSMA (Regulated Activities) Order 2001 (the "RAO"), on the basis that (i) the agreements are borrower-lender-supplier agreements for fixed-sum credit; (ii) the number of payments made by borrowers is less than 12; (iii) those payments are made within a period of 12 months or less; and (iv) the credit is provided without interest or other charges. Accordingly, a number of the major BNPL providers in the UK are not regulated by the FCA, as their lending falls within this RAO exemption.

This has attracted recent media and political attention – the financial commentator Martin Lewis has repeatedly called for regulation in this area due to potential customer detriment, and the opposition party in the United Kingdom recently attempted to amend the Financial Services Bill to include a requirement for the government to introduce new legislation to bring BNPL within scope of existing regulation within three months of the bill being published (this proposed amendment did not, however, receive sufficient support in parliament in the relevant vote held earlier this month to pass).

Key points from the Woolard Review Report

The Woolard Review Report was published on 2 February 2021 (available [here](#)), and contained 26 recommendations in total, covering the following areas:

- The report recommended that BNPL lending should "urgently" be brought within scope of existing regulations. The report does not go into detail about whether BNPL firms should be authorised as full-scope or limited permission consumer credit firm and did not specify whether the relevant retailers who use currently unregulated BNPL firms would also need to be authorised as credit brokers. However, the report noted that *".....once the necessary powers are obtained the FCA will need to develop a proportionate regulatory framework including addressing how credit information should work within this market. In defining the regulatory framework for BNPL, the FCA and the Treasury should take care not to*

Key issues

- Woolard review recommended that BNPL lending be brought within scope of consumer credit regulation in the UK "urgently".
- Employer Salary Advance Schemes will remain unregulated but subject to close monitoring by the FCA.
- Timing and scope of new BNPL regulations currently unclear, however we would expect the FCA to consult with firms during the course of 2021.
- Other recommendations relating to funding for debt advice services, consistency of forbearance measures across consumer credit industry and additional consideration for how existing consumer credit regulation can become more "outcome" focussed.
- The FCA may use the report for a broader review of consumer credit regulation and consideration of whether this remains fit for purpose for the full life cycle of consumer credit products and services.

include other non-financial organisations that rely on the current exemption, including healthcare services and sport clubs."

Similarly, the relevant areas of focus for the regulation are not directly specified – however, the report addressed a number of key areas for customer detriment, including administration of late fees, referral to debt collection agencies, potential impact on credit scores through reports to credit reference agencies, lack of effective affordability assessments and the high risk of repeat borrowing from customers.

- The review also considered Employer Salary Advance Schemes ("**ESAS**") – however, the conclusion in the report was that – at this time – it is not necessary to bring ESAS in-scope of the consumer credit regulatory framework but noted that the FCA should continue to monitor this industry for the potential for consumer detriment.
- The report contained broader conclusions relating to the unsecured consumer credit industry, advising that measures should be introduced in the following areas:
 - **Debt advice** – the report noted that the provision of debt advice is critical to a sustainable market in the long term, particularly in the context of COVID-19. The report highlighted that funding should be provided on a long term basis to services that provide free debt advice to consumers. Funding should also be in place to help the poorest customers to pay fees when applying for debt relief orders.
 - **Alternatives to high-cost credit** – the report noted the importance for sustainable alternatives to high-cost credit for consumers and urged the government to reform the existing regulation for credit unions and community development finance institutions, as well as providing incentives for mainstream lenders to operate in this space to offer sustainable lending opportunities to consumers.
 - **Forbearance** – Woolard recommended that the FCA examine how forbearance measures are implemented by firms (particularly in respect of payment deferrals granted in respect of the FCA COVID-19 rules), and that greater transparency and consistency across regulated firms was needed in respect of what customers are offered. It was also noted that COVID-19 payment holidays are currently "masked" from credit reference agencies and urged further FCA studies on the market to examine whether this was the best approach for customers on a long term basis.
 - **"Outcomes" focussed regulation** – the report recommended a clean look by the FCA at all consumer credit legislation to ensure that this was providing the intended outcomes for customers, based on the real-world use of the relevant products and services. Repeat lending to certain consumers was identified as a key risk and something that the FCA may look into combatting further. Whilst the current regulation adequately addressed the initial affordability assessments carried out by firms, Woolard indicated that regulation should address the risks posed by consumer credit lending throughout the life cycle of a product – for example, the risk of multiple credit cards which – when granted individually - would satisfy firms' affordability assessments, but collectively left consumers at risk of persistent debt.

- The report also notes that the Government is planning to introduce a "breathing space" scheme (which will come into force on 4 May 2021, granting a 60 day protection from lender action for all consumers – please see [here](#)), and a Statutory Debt Repayment Plan (currently under consideration) which would enable any individual in problematic debt to enter into a formal agreement with their creditors to repay all of their debts over a manageable time period. Under these proposals, lenders would be legally required to enter into such arrangements where requested.

Timing for implementation of recommendations

The review recommends that the FCA appoint an accountable executive to implement both the "urgent" BNPL reform, and more general consumer credit lending issues as below, and to set out a public timeline for reforms and further studies, the progress of which should be reviewed on an annual basis. Given the media attention on the BNPL aspect of this review, we would expect the FCA to move quickly on these recommendations and for consultations for new regulation to be issued during the course of 2021.

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