

British Retail Consortium  
2 London Bridge  
London  
SE1 9RA

12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
[www.fca.org.uk](http://www.fca.org.uk)

**Sent via email**

19 August 2022

Dear

## **Background**

I am writing to you to ask you to share the contents of this letter with members that promote Buy Now Pay Later (BNPL) agreements.

The purpose of this letter is to remind lenders and merchants who offer BNPL agreements that they must meet regulatory obligations when promoting those agreements, or risk committing a criminal offence.

## **Regulation of the financial promotions of BNPL agreements**

In the UK, nearly all financial service activities must be authorised by the FCA. A lender or merchant promoting BNPL agreements (known as 'unregulated' or 'exempt' BNPL agreements) do not need to be authorised by the FCA. However, the **financial promotions** of those agreements, do fall within our jurisdiction and **must still comply with certain regulatory requirements**. Section 3 of the Consumer Credit sourcebook in the FCA Handbook ([CONC 3](#)) sets out the regulatory requirements that apply.

Section 21 of the Financial Services and Markets Act 2001 ('FSMA') defines a financial promotion as an invitation or inducement to enter into an agreement. A financial promotion is any form of communication made across any media in the course of business, that invites a consumer to buy a good or service by entering into a BNPL agreement. For example, this includes but is not limited to, posters in shop windows, paid for Google ads and posts on social media.

It is a criminal offence (Section 25, FSMA) for a person in the course of business to communicate a BNPL financial promotion unless:

- i. That person is an FCA-authorised person,
- ii. An FCA-authorised person has approved the content of the communication, or
- iii. A relevant exemption applies.

This offence carries a maximum sentence of two years imprisonment, a fine, or both.

So, to comply, an unauthorised lender promoting BNPL agreements is required to get an **FCA authorised firm to approve the promotion**.

Merchants promoting BNPL agreements to their customers as a way of paying for goods or services should always consider whether they need to get an FCA authorised firm to approve the promotion (taking legal advice if appropriate). It is noted merchants that meet the requirements of Article 15(2) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 would not be in breach where the communication is made to introduce customers to an authorised firm offering BNPL agreements to cover the purchase cost.

When an FCA authorised firm issues or approves a financial promotion of a BNPL agreement, it must comply with the relevant rules in [CONC 3](#) unless an exemption applies ([PERG 8.12.11](#)). This includes a requirement that the financial promotion must be clear, fair and not misleading, including that the financial promotion:

- must be balanced, and, in particular, does not emphasise any potential benefits of entering into an exempt BNPL agreement without also giving a fair and prominent indication of any relevant risks
- must be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received
- must not disguise, omit, diminish or obscure important information, statements or warnings

### **Problems we have found**

We have seen financial promotions on websites and social media, including posts by social media influencers, which may breach our requirements. These promotions emphasise the benefits of BNPL products without fair and prominent indications of any relevant risks to customers, which may include:

- the risk of taking on debt that customers cannot afford to repay
- the consequences of missed payments
- information about when charges become payable

Promotions taking advantage of behavioural biases also hinders effective consumer decision making, and we have observed BNPL promotions that could be encouraging impulse buying.

We are concerned that unauthorised lenders and merchants who promote what is known as exempt/unregulated BNPL agreements through retailers, are not getting their financial promotions approved by an FCA-authorised firm. This may make the promotion illegal, as well as the content of the promotions being not clear or fair and misleading.

As we face the biggest cost of living crisis in many years, consumers are having to make difficult decisions about their finances, so they need to be given the right information at the right time, to make effective, timely and properly informed decisions about the financial decisions they make.

### **Next steps**

We ask you draw this letter to the attention of your members and appreciate your support with managing the messages to them. The promotions for regulated and exempt/unregulated BNPL agreements all need to comply with our financial promotion rules. We will actively monitor the market to assess compliance. If we identify non-compliant financial promotions, we will consider what further criminal and civil enforcement action we may need to take to protect consumers and act against firms and individuals that don't meet our standards. You can find out more about our approach to enforcement on our [website](#).

Thank you for your assistance with this matter. In the meantime, we look forward to attending your roundtable in September.

Yours faithfully

Sheldon Mills  
**Executive Director, Consumers and Competition**  
**Financial Conduct Authority**