HMT Consultation – Regulation of Buy Now Pay Later
Summary of Barclays Response

Barclays welcomes the Government's intention to bring the currently unregulated BNPL market into the regulatory perimeter. We believe this can help mitigate many of the challenges and sources of customer detriment identified by the Woolard Review, for example: the lack of customer understanding; the lack of appropriate affordability assessments; the lack of consistent support for customers in financial difficulty, and the lack of reporting to credit referencing agencies (CRAs). However, while we agree with the headline objective, we have views on the Government's proposed approach, including on the scope of credit agreements that should be brought into the perimeter, and on the regulatory controls that those credit agreements should ultimately be subject to.

Scope

Barclays disagrees with Government's proposed approach to draw the regulatory perimeter so that BNPL is brought into regulation, but that so called short-term, interest-free (STIF) credit remains outside regulation. Given the increasingly blurred lines between the two product sets, the similar risks posed by both, and the potential implications from not regulating STIF credit (i.e. risk that BNPL providers adapt their business models to emulate STIF credit and therefore avoid regulation), it is our strong view that Government should seek to regulate STIF credit in the same manner as BNPL.

We note that Government states it does not intend to regulate credit provided directly by a merchant. It is Barclays view that all consumer lending should be brought into regulation, and be subject to the same rules, to ensure consumers are treated fairly and appropriately protected. If there is a strong case for BNPL and STIF credit involving third party finance providers to be regulated, in order to mitigate the risks involved, it is our view that a similarly strong case exists for credit provided directly by a merchant. The risk to consumers is created primarily by the nature of the consumer credit product they are offered, rather than the entity providing it – indeed unregulated merchants providing finance directly could present greater risk to consumers than third party finance providers, given the potential conflicts of interest that exist.

The BNPL and STIF credit markets are growing rapidly, with new and existing players innovating and evolving their products and business models. Looking forward, it is also likely that merchants will seek to provide instalment credit directly to consumers. It is important therefore, that Government's regulatory framework is appropriately designed to capture all relevant interest-free credit agreements under today's business models, and any potential models that may emerge in future, regardless of whether they involve third party lenders, or are provided directly by merchants.

Regulatory Controls

The consultation states that Government intends to take a 'proportionate' approach to regulating BNPL, in which BNPL lending would not always be subject to the same regulatory requirements as other regulated consumer credit products. Barclays strongly disagrees with this proposed approach which we believe would create a consumer credit market with a 'two-track' regulatory framework: existing regulated consumer credit agreements subject to CCA and FCA rules; and BNPL agreements subject to a 'lighter' regime.

Part of the rationale cited for this approach is the assertion that BNPL is lower risk than other consumer credit as it is non-interest bearing. Barclays would firmly challenge this assumption. As identified by the Woolard review, and discussed further in this response, BNPL lending has the potential to pose significant risks both to consumers and to the wider financial system. For example: the lack of friction in customer journeys, combined with the lack of customer understanding of products, and the lack of affordability assessments may lead a customer to take on more debt than they can comfortably afford to repay; the lack of CRA reporting may lead to other firms extending further credit to the customer, exacerbating the problem; and insufficient support for customers in financial difficulty may see customers debts being swiftly passed to third party debt collectors before appropriate support measures have been exhausted. It is critical therefore that BNPL is subject to the same full regulatory framework, designed to appropriately protect consumers, that applies for other consumer credit products. This is in line with the principle of 'same activity, same risk, same rules'.

There are also suggestions that the full regulatory framework may not be appropriate for BNPL, as certain requirements may be cumbersome, outdated and not well suited for digital customer journeys. While we appreciate these concerns, we consider that they are equally valid and applicable for all consumer credit products, and not exclusive to BNPL credit. Rather than introducing a new modern, bespoke framework specifically for the BNPL sector, Government should undertake a broader review of the consumer credit regulatory framework, covering all consumer credit products, to ensure it appropriately meets the needs and mitigates the risks posed by today's market. We would also note the Woolard review similarly called for reform to enable more appropriate and tailored requirements in digital channels across the consumer credit product set.

Ultimately, we believe Government should avoid creating a 'two-track' consumer credit regulatory framework with BNPL subject to a 'light' regime. To ensure a level playing field between providers, and to ensure consumers receive a consistent experience and protection across different products, Government should first seek to bring BNPL into the regulatory perimeter subject to the same full regime as other consumer credit products. Government should then subsequently seek to review that framework to modernise its requirements across all products.

Finally, we note that HMT's consultation and analysis has focussed on the risks and regulation of BNPL from a credit perspective. We believe a similar analysis is required from payments acceptance perspective, assessing whether the Payment Services Regulations (PSRs) should also apply to the BNPL model.