Browne Jacobson

Pitfalls for retailers to avoid when offering access to 'buy now, pay later' products

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With experts predicting that corporate failures in the retail sector will rise by as much as 71% in 2023, and the reported loss of over 15,000 retail sector jobs in the first two months alone, we're reminded of the harsh trading conditions facing a sector being squeezed on all sides.

Reduced consumer confidence

The cost of living crisis continues to impact consumer confidence by putting a squeeze on spending that a sector, already significantly impacted by three lockdowns, is struggling to counteract. For some consumers, this means a reduction in the amount they are willing to spend, while others are looking at how they can adapt their spending habits to make their money go as far as possible. This may mean moderate changes in the type and volume of products purchased, exploring the benefits of the resale market or changing the way in which they pay for goods.

Customer spending habits

A rise in the use of interest-free 'buy now, pay later' (BNPL) credit products across all age ranges in the UK is just one indication of how consumers are looking to meet these challenges.

According to the Financial Times, the demand for buy now, pay later arrangements has soared among all age groups in the UK. 54% of 18- to 24-year-olds anticipate taking a loan to meet some of their financial commitments over the next 12 months (a rise of 6%).

A more revealing barometer of how the cost of living crisis is biting across generations is the surge in the use of BNPL schemes by older people. With the propensity to use consumer credit generally considered to decline with age, the recent findings that almost **a fifth** of over 65-year-olds have used BNPL products or intend to do so in the next 12 months, compared to less than 10% last year, is staggering. This suggests that not all consumers will curb their spending habits; they would rather change the way they pay for certain goods such as clothes, furniture, white goods and luxury items. This is one way to make their income stretch to cover those spiralling day to day costs that cannot be paid for in this way such as food bills, utilities and petrol.

Easing the burden of bills

In October 2022 it was reported by Sky News that the Financial Conduct Authority estimated almost six in 10 adults were finding bills to be a "heavy burden" or "somewhat of a burden" and one in four adults were in financial difficulty or could find themselves in such difficulty if they suffered a financial shock.

BNPL products provide an obvious short-term solution to many who find themselves in this position. A survey by debt charity StepChange found that 30% of its respondents utilised such schemes because they were not able to pay the full amount at the time. However, BNPL schemes are not risk-free for those using them (who may face charges for late or missed payments) or for the retailers offering them (who risk regulatory intervention).

Regulating BNPL schemes

While currently unregulated in the UK, it is unlikely BNPL schemes will remain so for long. On 20 June 2022, the government announced plans to improve protection for consumers using BNPL schemes including a requirement for lenders to be approved by the Financial Conduct Authority ("**FCA**") as well as requiring them to undertake affordability checks and ensure advertisements are fair, clear and not misleading. On 14 February 2023, HM Treasury published its second consultation on BNPL, with stakeholder responses due on 11 April 2023.

For those in the retail sector it is worth noting that current proposals exempt merchants from the regulated activity of credit broking in circumstances where BNPL credit from a third-party lender is offered as a payment option. This means that most merchants will not be required to become authorised in their own right or to enter into an Appointed Representative agreement with their partner lender(s) to continue offering BNPL as a means of payment.

Existing protection for consumers

While regulation in this space is getting ever closer, until such time as it becomes law, the FCA remains unafraid to use its existing powers to ensure consumers are protected when using BNPL schemes in ways such as:

- using the existing rules as to the fairness and transparency set out in the Consumer Rights Act, forcing lenders to make changes to their terms and conditions where necessary;
- forcing the withdrawal of certain firms' marketing material in the financial promotions space (since the marketing of BNPL products is required to comply with financial promotions rules, even though the products themselves are unregulated);
- using "Dear CEO" letters to reminding the BNPL sector of its obligations with regard to financial promotions;
- proactively monitoring the area to assess ongoing compliance;
- taking steps to ensure BNPL lenders are taking into account customers affected by the rising cost of living; and
- continuing to monitor the market for consumer detriment to take action where required, under its existing powers.

Supporting alternative payment methods

For retailers looking to tap into a consumer's willingness to explore alternative payment methods, there are several things to consider, including: the reputability of the providers they wish to partner with; the ethical implications of encouraging consumer borrowing (and whether this could have a negative impact on the retailer); and that any credit product offered is fully compliant with current and future financial regulations.

Retailers who are introducing their customers to sources of finance, including BNPL, or considering doing so in the future, may want to reflect on the following:

- What are your current arrangements? How are you satisfied that your current lender partners are providing an appropriate standard of service to your customers?
- How could your arrangements be impacted by future regulatory changes?
- Do your current promotions satisfy the financial promotions rules? Have they been approved by an authorised person, even in the case of BNPL? Is there an appropriate sign off process with the authorised firm?
- What impact could the new regulations have for your lender partners? Will they need to become authorised? How prepared are they? Are you starting to have these conversations with them? What have they shared?
- Do your future plans mean you'll ramp up your lender partners or might regulation mean you focus on fewer relationships? Could you provide the lending yourself?

A proactive response

Should you receive correspondence from the FCA alleging non-compliance with the financial promotions rules or any other regulatory requirement, it's important to respond quickly to avoid regulatory intervention. For assistance, please contact Cat Driscoll or Helen Simm.

Key contacts

Cat Driscoll

Partner

Cat.Driscoll@Brownejacobson.com

+44 (0)330 045 2771

Helen Simm

Partner

Helen.Simm@brownejacobson.com

+44 (0)330 045 2652

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