

Parliamentary Joint Committee on Corporations and Financial Services

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament

Australian Financial Complaints Authority

AFCA QoN10 | AFCA QoN11 | AFCA QoN12

Mr VAN MANEN: How many of those relate to buy-now-pay-later providers? And a related question: you said a lot of the buy-now-pay-later providers, or some of them, don't require up-front credit checks, but I am assuming that if you start to miss payments then they're going to put that on your credit record.

Mr Locke: That's right. Well, very often if you miss payments then you're suspended from using the system. And if you have sums outstanding in defaults then you may get credit listings in respect of that—that's right.

Mr HILL: You said 'may'. Is there a mandatory obligation, or is it just a voluntary thing?

Mr Locke: I'm not in a position to accurately answer that here, but I'm happy to provide follow-up information.

Senator O'NEILL: Yes, perhaps you could take on notice, so we could get some clarity, who does what and when, and on how many occasions that occurs or doesn't occur, and if there's any differentiation—

Mr Locke: We'll certainly provide what we have, but we may not have the information you're seeking.

Mr HILL: You can use Afterpay for cosmetic surgery and all sorts of things, so I've been advised—collagen implants and all sorts of things. I'm not judging people who want to do that; good on 'em. But there is a real issue—and we'll get to it later in the afternoon, I think—about whether that is really a suitable product to be offering into those service sectors. Another example is Uber Eats for people on low incomes. Really? These are not essentials; these are not consumer goods. You might say, 'There's a lumpy up-front cost, but I kind of need a new pair of shoes'—I

get that. But I'm just wondering whether you're seeing, in the data that comes through your end, what I'm hearing from financial counsellors about vulnerable consumers.

Mr Locke: We have a number of industry consultation bodies. We also have a consumer advisory panel, who we meet with quarterly. We hear similar stories from them. I don't think what we're seeing, though, is necessarily—

Mr HILL: You've got a small sample.

Mr Locke: It's a very small sample of what we're seeing. So, whilst we hear the same things, it's not really something at which we are expert enough to talk about. **We'll certainly provide as much information as we have, to assist the committee.**

Dr Smith: That's probably confirmed by the fact that 70 per cent of buy-now pay-later complaints at the moment are resolving at registration and referral—very, very early in our process.

Mr Untersteiner: Just for context—when a complaint comes to our organisation and we think the best outcome is that the consumer complaint be resolved quickly, we pass it back to the financial firm and say: 'We've received a complaint. Can you have a look at it?' In that instance, 70 per cent have been resolved right there—

Mr Locke: That's the stage of the process that Mr van Manen was asking about.

Mr Untersteiner: as an industry average.

Senator O'NEILL: In what way are they being resolved? Are fees being waived? Is there a longer-term payment scheme?

Mr Locke: It's through a variety of mechanisms like that, really, to the satisfaction of the consumer. Very often they'll approach the consumer or make an offer via us. **We'll provide what information we have on that.**

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Answer:

AFCA QoN10 and AFCA QoN11

The following provides a summary of the Buy Now and Pay Later (BNPL) complaints AFCA has received from 1 July 2020 to 30 June 2021. It also provides the number of BNPL complaints closed and the types of outcomes obtained through AFCA.

We note that BNPL providers are not necessarily required to become AFCA members, although subscribers to the AFIA Buy Now Pay Later Code of Practice are required to do so as part of their obligations under the Code. AFCA currently has 11 members that identify as BNPL providers.

BNPL statistics

In the last financial year, AFCA received 767 BNPL complaints, which covered 10 BNPL providers. There has been an increase in the number of complaints received in the past 12 months about BNPL products across most providers. However, this increase does not appear disproportionate in the context of rapid market expansion.

Among the larger BNPL providers, common types of complaints we see involve:

- Complaints about actions taken by BNPL providers to limit access by consumers, including closing or refusing to open accounts and imposing controls on account usage
- Complaints about credit enquiries, possibly reflecting consumer's lack of understanding that a BNPL application may result in a credit check (noting that we also see high levels of complaints about credit enquiries for regulated credit products).

Top 5 issues in BNPL complaints

Issue	No.	%
Service quality	107	14%
Unauthorised transactions	85	11%
Credit enquiry	76	10%
Incorrect fees/ costs	49	6%
FF failure to respond to request for hardship assistance	39	5%

Complaints closed in the period

AFCA closed 748 BNPL complaints, the majority (76%) of which closed at the earlier stage in the AFCA process (registration and referral). This is the stage when AFCA refers matters back to the financial firm for a final opportunity at resolution with the complainant. High resolution rates at this stage may reflect the relative low value of the amounts involved.

The remaining complaints were for the most part resolved at investigation with only 1% (10 BNPL complaints) progressing to a final decision. 8 of the 10 BNPL complaints finalised with a decision were found in favour of the financial firm.

We note the Committee's question around the types of outcomes provided at the earlier stages in our process. Most of the BNPL complaints resolved at registration were resolved by the financial firm in direct communication with the complainant. Therefore, we have limited information on the types of outcomes that were achieved at that stage of the process. Although, experience tells us that outcomes include both monetary and non-monetary outcomes, such as apologies, waiver of fees and charges, repayment plans among others.

AFCA QoN12

The potential impact of BNPL accounts on a consumer's credit report varies depending on the business model of the BNPL provider and the consumer's account conduct.

Some BNPL providers carry out a credit check before allowing a customer to open an account, which may result in a credit enquiry appearing on the customer's credit report. A credit check involves obtaining a copy of a consumer's credit report from a credit reporting bureau, which will usually show recent credit inquiries, defaults, repayment history information and a credit score. For example, BNPL providers who subscribe to the voluntary AFIA Code of Practice for Buy Now Pay Later Providers (BNPL Code) commit to undertaking credit checks or equivalent enquiries in certain circumstances, to help assess whether the product offered is suitable for the consumer.

BNPL providers are not required to provide repayment history information or default information to credit reporting bureaus (CRBs). However, under their account terms and conditions, some BNPL providers reserve the right to provide information (such as late payments and payment defaults) to CRBs. Whether and in what circumstances BNPLs provide information to CRBs may vary. For example, BNPL providers who subscribe to the BNPL Code undertake not to list a default on a customer's credit report while they are considering a request for financial hardship assistance.

The use of BNPL products may also have an indirect impact on a consumer's credit report, for example if taking on BNPL obligations leads them to be unable to meet their other repayment obligations.

ASIC recently prepared a report in November 2020 (ASIC REP 672 – Buy now pay later: An industry update) which analysed the impact of recent regulatory developments, including the design and distribution obligations, product intervention power, and the voluntary AFIA code, on outcomes for consumers. This report also

examined the incidences of default, the causes of default and other impacts on consumers.

AFCA has limited data about the number of complaints which relate to credit reporting issues arising from BNPL products, because most complaints against BNPL providers are resolved at an early stage of our process, as noted above. We therefore have limited information about the precise subject matter of these complaints, including whether they relate to credit reporting. However, our complaint data shows that approximately 10% of complaints against BNPL providers relate to credit enquiries.

Data note:

We note the following limitations and qualifications in relation to our BNPL complaint data:

- the rapid growth and evolution of the BNPL industry necessarily imposes constraints on the utility of comparative data.
- this is exacerbated by changes in the structures through which BNPL services are provided.
- Where both BNPL and regulated credit products are provided through the same entity it can be difficult to separately identify BNPL complaints.
- During 2020, AFCA introduced a separate complaint classification to identify BNPL complaints – however, this classification is applied based on information provided by the complainant at the early stages of the complaint process and therefore is not always accurate. For this reason, we have provided data based on AFCA members whose products comprise solely or predominantly BNPL.