

Notice of Undertaking

PayPal (Europe) S.à.r.l. et Cie, S.C.A.

Summary

PayPal (Europe) S.à.r.l. et Cie, S.C.A. (referred to as “PayPal” or “the firm”) has made changes to its unregulated Buy Now, Pay Later (BNPL) contract (referred to as the “Pay in 3 Plan”) and has given the Financial Conduct Authority (the FCA) an undertaking under the Consumer Rights Act 2015. This is in relation to two terms:

- Cancellation of online purchases within the 14-day cancellation period set out in the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 (the 14-day cooling-off period).
- Continuous payment authority (CPA) terms.

We summarise our concerns and the voluntary action the firm has taken below.

Why did we have concerns?

Cancellation of online purchases within the 14-day cooling-off period: as drafted, the term did not require PayPal to automatically end the Pay in 3 Plan when the consumer exercised their right to cancel their purchase contract with the retailer, for example by returning all the goods in their online order. We were concerned that this meant some consumers may have continued paying instalments until PayPal had received the refund from the retailer.

CPA terms: a CPA is created when a consumer gives a firm their debit or credit card number and authorises that firm to regularly take money from their account. We were concerned that the terms in the Pay in 3 Plan that dealt with payment methods did not clearly state that a CPA was created. In addition, we were concerned that the terms did not clearly explain the ways in which the CPA could be modified or cancelled by consumers.

Both of these types of terms, among others, were identified in our [statement](#) of 14 February 2022, published to drive changes in consumer contracts for BNPL products.

What has the firm done?

PayPal has:

- agreed to amend the term relating to cancellation within the 14-day cooling-off period to make its drafting fairer;
- agreed to amend the term relating to CPAs to make it clearer;
- agreed to use these new terms from **3 July 2023**;
- told us it has not relied on the previous terms in an unfair way in practice and agreed not to rely on these terms in its existing contracts with consumers;

- confirmed that consumers who missed payments or whose Pay in 3 Plans were not automatically terminated did not incur additional costs as the firm does not charge any fees or interest;
- agreed that it and PayPal UK Ltd will not use these terms (or similar terms with the same effect) in its future contracts with consumers;
- fully co-operated with us in resolving our concerns.

What does this mean for consumers?

These changes mean the terms are clear:

- That the Pay in 3 Plan will end automatically when consumers cancel an online purchase within the 14-day cooling-off period, and no further payments should be taken;
- On what a CPA is, that a CPA is created when a consumer enters into the Pay in 3 Plan, and how they can modify or cancel their CPA, including by contacting their bank or building society.

Based on the information provided by the firm, we did not see evidence of harm from how PayPal applied these terms in practice.

Undertaking from PayPal (Europe) S.à.r.l. et Cie, S.C.A. to the Financial Conduct Authority

PayPal (Europe) S.à.r.l. et Cie, S.C.A. (referred to throughout as "PayPal" or "the firm") undertakes under the Consumer Rights Act 2015 (the CRA) to:

- not rely on 2 terms, detailed below, in its existing unregulated Buy Now, Pay Later (BNPL) contracts with consumers (referred to throughout as its "Pay in 3 Plan");
- not use these terms (or similar terms with the same effect) in its future contracts with consumers; and
- make changes to its Pay in 3 Plan contract as referred to below.

Applying the CRA

Under section 62(4) of the CRA, a term is unfair if: "...contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."

Section 68(1) of the CRA states that firms are required to "ensure that a written term of a consumer contract ... is transparent." Under section 64(3) of the CRA, a term is transparent if "... it is expressed in plain and intelligible language and it is legible."

PayPal Pay in 3 Plan

PayPal has made changes to 2 of the terms in its Pay in 3 Plan as follows:

Cancellation of online purchases within the 14-day cooling-off period

Term 4.1 stated: *"If you have the ability to withdraw from your purchase contract, for example by returning the goods to the merchant, in most cases the merchant will credit any applicable funds back to your Pay in 3 Plan. This amount will be used to satisfy any Loan Amount outstanding."*

We considered the fairness of term 4.1 in light of the CRA and relevant case law.

We were concerned that term 4.1 was likely to be considered unfair under the CRA.

In our [statement](#)¹, we state that firms should ensure that their contracts take into account Regulation 38(1) of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs). In our view, as drafted, this term caused a significant imbalance to the detriment of consumers because it derogated from the position under national law in absence of the term. This was because it appeared that a consumer's Pay in 3 Plan was not automatically terminated when a consumer exercised their right to cancel the contract with the retailer within the 14-day cancellation period set out in the CCRs (the 14-day cooling off period). This meant that consumers, who, for example, returned all the goods forming an order purchased online, may have been required to continue paying instalments until PayPal had received the refund from the retailer.

¹ <https://www.fca.org.uk/news/statements/fca-drives-changes-buy-now-pay-later-bnpl-firms-contract-terms>

In our view, the significant imbalance was contrary to the requirement of good faith as the firm could not reasonably assume a consumer would agree to such a term in individual negotiations. This is because the consumer was put in a disadvantageous position by the term not reflecting the requirements of the CCRs. As drafted, the term was weighted in favour of the firm's commercial interests at the expense of the interests of consumers: for example, the loan was not considered settled until the retailer credited the funds, something outside of the consumer's control.

The firm agreed to amend term 4.1 and introduce new terms to ensure that the requirements of the CCRs are accurately reflected, and to provide consumers with clear information about the refund process. In addition, it confirmed that consumers who missed payments or whose Pay in 3 Plans were not automatically terminated did not incur additional costs as the firm does not charge any fees or interest.

Continuous payment authority (CPA) terms

Term 5.2 stated: *"Each repayment will be automatically debited from your chosen Repayment Method (as may be updated from time to time) on the dates set out in the Repayment Plan."*

We considered the transparency of term 5.2 in light of the CRA and relevant case law.

In our view, term 5.2 was likely to lack sufficient transparency because it did not explicitly state that the payments referred to would be taken under a CPA. The term also did not include information about how the CPA works and how it could be cancelled, including that consumers can cancel it by contacting their bank or building society. We also noted that, while the term stated that a repayment method can be updated, it did not specify who was able to do this and how. We were concerned that this could lead to payments being declined for reasons outside of the consumer's control, for example because it was not clear they needed to update their repayment method themselves.

The firm agreed to amend term 5.2 to make it clear that a CPA is created, and to state the ways in which the CPA can be modified or cancelled by consumers.

Other information

The firm has been fully cooperative in providing this undertaking.

Undertaking agreed on 18 October 2023 and published on 31 October 2023.

PayPal UK Ltd also reviewed and agreed to the contents of this undertaking prior to it being agreed with the firm.

Legal information

As a regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as not being fair or transparent under Part 2 of the Consumer Rights Act 2015 (the CRA). We review contract terms that we come across in our supervision of firms and those referred to us by consumers, enforcement bodies and consumer organisations. This has led to PayPal's undertaking to replace the terms that we consider are likely to be unfair or likely to lack sufficient transparency.

The FCA has a duty under Schedule 3 of the CRA to notify the Competition and Markets Authority (the CMA) of the undertakings we receive. We publish the undertakings on our

website, naming the firm, specifying the term(s) identified, and referring to the part of the CRA that relates to the fairness and transparency of the term(s).

Even if firms have not given an undertaking or been subject to a court decision, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other regulators to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term. As such, we cannot approve terms as being definitively fair and transparent for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us by a firm to revise a term, this means that, on the evidence available at that time, we consider the term to be improved enough that further regulatory action is not required.