

Notice of Undertaking

QVC UK

Summary

QVC UK (referred to as “QVC UK” or “the firm”) has made changes to terms relating to its unregulated Buy Now, Pay Later (BNPL) credit agreement named Easy Pay. The terms in relation to Easy Pay can be found in the firm’s Customer Terms and Conditions. QVC UK has given the Financial Conduct Authority (the FCA) an undertaking under the Consumer Rights Act 2015. This is in respect of terms relating to payment methods and the creation of a continuous payment authority (CPA).

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

Why did we have concerns?

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 terms in QVC UK’s Customer Terms and Conditions dealing with payment methods lacked sufficient transparency, as they did not clearly state that a CPA was created when using the “Easy Pay” method of payment. In addition, we were concerned that the terms did not explain with sufficient transparency the ways in which the CPA could be modified or cancelled by consumers.

Terms relating to CPAs, among others, were identified in our [statement](#)¹ of 14 February 2022, published to drive changes in consumer contracts for BNPL products.

What has the firm done?

QVC UK has:

- agreed to amend the terms relating to CPAs to make them clearer;
- agreed to use the new terms from **18 September 2023**;
- told us that it has not relied on the previous terms in an unfair way in practice;
- agreed that it will not use these terms (or similar terms with the same effect) in its future contracts;
- fully co-operated with us in resolving our concerns.

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

What does this mean for consumers?

These changes mean the terms clearly state what a CPA is, that a CPA is created when a consumer makes a purchase using the Easy Pay method of payment, and how they can modify or cancel the 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 QVC UK applied these terms in practice.

Undertaking from QVC UK to the Financial Conduct Authority

QVC UK (hereafter referred to as "QVC UK" or "the firm") undertakes under the Consumer Rights Act 2015 (CRA) to:

- not rely on terms, detailed below, in its existing contracts with consumers relating to its unregulated Buy Now, Pay Later (BNPL) Easy Pay credit agreement (found in its Customer Terms and Conditions);
- not use these terms (or similar terms with the same effect) in its future contracts with consumers; and
- make changes to these terms as referred to below.

Applying the CRA

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."

QVC UK Customer Terms and Conditions

QVC UK has made changes to its Customer Terms and Conditions as follows:

Continuous Payment Authorities (CPAs)

Term 7.5 stated: *"You can add one or more additional credit or debit cards to your account. When you place an order, you specify the card you want to use. If the card you specify is declined when we process your payment (including any future or recurring payments such as Easy Pay, Auto-Delivery, Advanced Order or Waitlist), we will automatically try to charge that payment to one of the other cards on your account. If that card is also declined, we will automatically try to charge the payment to another card on your account, and so on, until we are able to successfully process your payment."*

Term 7.6 of QVC UK's Customer Terms and Conditions stated: *"...If, after you place your Easy Pay order, you change your debit/credit card or if your debit/credit card expires or is no longer valid, you must inform us of this by telephone. Updating your debit/credit card details online only will not be effective to change the card used for subsequent Easy Pay instalments. Any declined Easy Pay payments will result in you losing the right to pay by Easy Pay instalments and all outstanding sums will become due immediately."*

We considered the transparency of terms 7.5 and 7.6 in light of the CRA and relevant case law.

In our view, terms 7.5 and 7.6 were likely to lack sufficient transparency because they did not explicitly state that the payments referred to would be taken under a CPA. The terms 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. If a payment were to be declined, the terms as drafted would allow QVC UK to remove a consumer's ability to pay using the Easy Pay credit agreement, and require them to pay the full amount of a purchase immediately. We were therefore concerned that harm could be caused to consumers where a payment was declined. This was because it had not been made clear to the consumer how

CPAs work in practice and that the firm would be authorised to regularly take money directly from their account.

The firm agreed to amend terms 7.5 and 7.6 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 10 October 2023 and published on 31 October 2023.

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 QVC UK'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.