

# Draft guidance on environmental claims on goods and services

Helping businesses comply with their  
consumer protection law obligations

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## Contents

1. Summary .....	2
2. Introduction .....	4
The CMA's mission and powers.....	4
What are environmental claims, and when are they misleading? .....	4
What does this guidance cover? .....	5
Who is this guidance for?.....	6
What does consumer protection law require businesses to do? .....	6
Relationship with other regulation and guidance.....	7
What do businesses need to do? .....	8
What happens if businesses do not comply with consumer protection law? .....	9
3. Principles .....	10
a) Claims must be truthful and accurate.....	10
b) Claims should be clear and unambiguous .....	18
c) Claims should not omit or hide important information .....	20
d) Comparisons should be fair and meaningful.....	26
e) In making the claim you should consider the full life cycle of the product. ....	28
f) Claims should be substantiated .....	31
4. Applying the principles – types of claims and material information .....	34
Appendix – Legal framework.....	38
Key legal issues .....	38
Consumer protection law .....	38
What rules apply? .....	38
What do the rules apply to? .....	39
Who do the rules apply to? .....	40
3) General legal rules.....	40
What do the rules say? .....	40
Business-to-business marketing .....	44
Misleading advertising .....	45
Comparative advertising .....	45
The CMA's powers and the powers of the Court .....	46

# 1. Summary

- 1.1 Consumers are increasingly demanding products and services which minimise harm to, or have a positive effect on, the environment. As a result, there has been a proliferation of products, services and businesses which claim to meet that demand.
- 1.2 Consumer protection law does not prevent businesses from making environmental claims about their products and services, provided they comply with the law. It provides a framework for businesses to make environmental claims that help consumers make informed choices. Consumer protection law therefore gives consumers important protection in relation to environmental claims.
- 1.3 In protecting consumers from misleading environmental claims, consumer protection law also protects businesses from unfair competition. It creates a level playing field for those businesses whose products genuinely represent a better choice for the environment and who can make truthful environmental claims. In addition, there is separate legislation which directly protects businesses from misleading marketing.
- 1.4 In doing this, the law also has the effect of encouraging businesses to invest in the environmental performance of their products. It enables businesses to communicate these genuine efforts to consumers transparently and to reap the commercial benefits.
- 1.5 The purpose of this guidance is to help businesses understand and comply with their existing obligations under consumer protection law when making environmental claims. We hope it will give confidence to those businesses whose products are genuinely 'green' to provide consumers with the information they need to make informed decisions.
- 1.6 The guidance sets out principles which are designed to help businesses comply with the law. It explains each of these principles. It gives examples of how each of them applies and more detailed case studies where multiple principles apply. The guidance also sets out the legal framework on which these principles are based.

1.7 The principles are:

- claims must be truthful and accurate
- claims must be clear and unambiguous
- claims must not omit or hide important relevant information
- comparisons must be fair and meaningful
- claims must consider the full life cycle of the product
- claims must be substantiated

## 2. Introduction

### The CMA's mission and powers

- 2.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority. The CMA's objective is to make markets work well for consumers, businesses and the broader economy.
- 2.2 The CMA has powers to tackle practices and market conditions that harm consumers and hinder their decision making. The CMA uses its consumer protection law powers to protect consumers from unfair business practices and unfair contract terms (for which it has the lead role). The CMA can go to court to enforce consumer protection law. The CMA also has power to protect businesses from misleading marketing by other businesses.
- 2.3 As part of its role, the CMA produces guidance for businesses to clarify their consumer protection law obligations and promote compliance.
- 2.4 The purpose of this guidance is to help businesses understand and comply with their existing obligations under consumer protection law when making environmental claims.

### What are environmental claims, and when are they misleading?

- 2.5 Environmental claims are claims which suggest that a product, service, brand or business is better for the environment. They include claims that suggest or create the impression that a product or a service:
  - has a positive environmental impact or no impact on the environment;
  - is less damaging to the environment than a previous version of the same good or service; or
  - is less damaging to the environment than competing goods or services.
- 2.6 Environmental claims may concern the impact on the environment in general or on specific environmental aspects such as the air, water or soil.
- 2.7 Environmental claims can be explicit or implicit. They can appear in advertisements, marketing material, branding, on packaging or in other information provided to consumers. All aspects of a claim may be relevant, such as:
  - the meaning of any terms used;

- the qualifications and explanations of what is said;
- the evidence that supports those claims;
- the information that is not included or hidden;
- the colours, pictures and logos used; and
- the overall presentation.

2.8 Environmental claims are genuine when they properly describe the impact of the product, service, brand or business, and do not hide or misrepresent crucial information.

2.9 Misleading environmental claims occur where a business makes claims about its products, services, brands or its operations as a whole, or omits or hides information, to give the impression they are less harmful or more beneficial to the environment than they really are.

2.10 The principal focus of this guidance is environmental claims that businesses make to promote their goods, services or brands. However, the points made are also relevant to the wider category of sustainability claims.<sup>1</sup> Businesses should also have regard to this guidance when making sustainability claims.

## **What does this guidance cover?**

2.11 This guidance is based on the CMA's views on the law relating to unfair commercial practices. It applies to all commercial practices, which can include various dimensions of a trader's behaviour, including but not limited to how it markets its products, services or brand. This includes advertisements, product labelling and packaging or other accompanying information, and even product names.

2.12 The CMA has identified a series of practical principles which we think businesses should apply to help them comply with the law. If businesses follow these principles they are, in the CMA's view, less likely to mislead consumers and less likely to fall foul of the law.

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<sup>1</sup> By 'sustainability claims', we mean claims which suggest that a product is made, a service delivered or a business run in accordance with principles of sustainability, sustainable consumption or sustainable development. This could include claims relating to the environment and climate change, biodiversity, animal welfare, workers' welfare or corporate social responsibility.

- 2.13 While it is designed to help businesses, this guidance is not legal advice. Responsibility for complying with the law remains with businesses themselves.
- 2.14 Neither is this guidance, or the principles in it, a substitute for the law itself. They do not replace the role of the courts, which is to provide the definitive interpretation of consumer protection law based on the facts of each case.
- 2.15 The principles and guidance are not exhaustive. They cover areas the CMA considers most likely to be relevant and more likely to be of concern to us, but they do not cover every situation in which an infringement may occur.
- 2.16 Where a business does not follow the principles, it is more likely to attract the CMA's attention. Whether a claim breaks the law will depend on the circumstances, including the effects on the decisions consumers are likely to make as a result.

### **Who is this guidance for?**

- 2.17 This guidance is for all businesses who make environmental claims. These claims may be made by manufacturers, wholesalers and retailers. The claims may be made about goods or services, or particular components or aspects of them. They may also be made about a brand or business as a whole.
- 2.18 If the claims are ultimately aimed at consumers, this guidance will apply, even if the claims are made by a manufacturer who does not have direct contact with a consumer. Retailers should therefore assure themselves that any claims made by manufacturers are accurate and not misleading.
- 2.19 This guidance also applies (to a more limited extent) to businesses marketing to other businesses.

### **What does consumer protection law require businesses to do?**

- 2.20 Consumer protection law ensures that consumers can make informed choices about the products and services they buy. It does not require businesses to offer green products or services to consumers, nor set specific rules on environmental claims.
- 2.21 Consumer protection law covers what businesses say, and how they present it, and what they don't say, about the environmental impacts or credentials of their goods, services, brands and activities. The CMA's view is that, in practice, it means businesses must ensure that their environmental claims:
  - (a) are truthful and accurate;

- (b) are clear and unambiguous;
- (c) do not omit or hide important information;
- (d) compare goods or services in a fair and meaningful way;
- (e) consider the full life cycle of the product;
- (f) are substantiated.

2.22 These principles are explained in Chapter 3 below. A fuller summary of the relevant consumer protection law is in the Appendix.

## **Relationship with other regulation and guidance**

2.23 Businesses making environmental claims may be subject to legal requirements from different sources, including:

- (a) sector- or product-specific requirements (rules that apply specifically to certain areas of economic activity or particular products and services); and
- (b) requirements from general laws that apply to all businesses in order to protect consumers (and competing businesses) or the environment.

Businesses must comply with their obligations from both sources (and any other).

2.24 Sector- or product-specific requirements may require that specified information is provided to consumers in a specified way. For example, energy labelling requirements apply to certain household appliances.

2.25 Where a business is subject to these kinds of requirements, general consumer and environmental protection laws will usually apply to supplement them. They will generally impose additional obligations.

2.26 This document does not provide guidance on the other laws, rules or guidance that may be relevant to making environmental claims. Businesses should consider whether they are subject to any sector- or product-specific requirements and ensure they comply with them, as well as their obligations under general consumer protection law.

2.27 Failing to comply with sector- or product-specific requirements may also be relevant to a finding that consumer protection law has been infringed. Further information about how consumer protection law and sector- or product-specific provisions work together can be found in the Appendix.

- 2.28 The CMA shares consumer protection law enforcement powers with other bodies, such as Trading Standards Services and sectoral regulators. Where appropriate, the CMA may work with other enforcement or regulatory bodies in relation to environmental claims.
- 2.29 The CMA also shares certain consumer protection functions with the Advertising Standards Authority (ASA).
- 2.30 The ASA is the UK's independent advertising regulator and an established means for enforcing the Consumer Protection from Unfair Trading Regulations 2008. It administers the requirements for advertising in the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing and the UK Codes of Broadcast Advertising (the CAP and BCAP Codes). This means that if the CMA were to identify a consumer protection law issue relating to advertising, it could refer this to the ASA to consider, as an alternative to taking enforcement action of its own. The principles in this guidance are intended to be consistent with the requirements of the CAP and BCAP Codes.

## **What do businesses need to do?**

- 2.31 Businesses making, or considering making, environmental claims need to:
- comply with any sector- or product-specific laws that apply to them or their products and services
  - read this guidance and ensure that they are complying with their consumer protection law obligations
  - consider carefully whether they need to make changes to their practices
  - make any changes necessary to comply with the law, such as:
    - stopping making false or deceptive statements
    - amending claims to ensure they are compliant
    - ensuring they have the evidence to substantiate claims
    - ensuring they give consumers the information they need to make informed choices
- 2.32 If in doubt about what it needs to do, a business should seek its own independent legal advice on the interpretation and application of consumer protection law. Businesses can also speak to their Trading Standards Service for advice, for example as part of a primary authority relationship.

## **What happens if businesses do not comply with consumer protection law?**

- 2.33 If a business does not comply with consumer protection law, the CMA and other bodies, such as Trading Standards Services, can bring court proceedings. In some cases, businesses may be required to pay redress to any consumers harmed by the breach of consumer protection law. The ASA could also take action against misleading advertisements that contravene the CAP and BCAP Codes.
- 2.34 Businesses may also face legal action from consumers, who can bring legal proceedings in response to a business's conduct or seek redress in the courts for certain breaches of consumer protection law.

### 3. Principles

- 3.1 The principles set out below are designed to give businesses greater clarity about how the CMA thinks the law translates into practice and what this means for businesses making environmental claims.
- 3.2 The principles are primarily focused on issues that arise in the context of misleading acts and omissions. It is important that consumers are given the information they need to make informed decisions. This means that what they are told needs to be truthful and accurate. It must not mislead through the way it is presented and important information must not be omitted or hidden.
- 3.3 The principles work together. In some places they overlap. More than one, perhaps all of them, may apply to a particular claim. Businesses should take all of the principles into account. Environmental claims are less likely to mislead consumers where businesses follow all the principles that apply.

#### a) Claims must be truthful and accurate

- 3.4 For consumers to make informed choices about what they buy, environmental claims must be truthful and accurate. Claims must not mislead consumers by giving them an inaccurate impression, even if those claims are factually correct. They must only give consumers the impression that a product, process, brand or advertiser is as green and sustainable as it really is.

#### ***What this means is:***

- 3.5 Businesses must live up to the environmental claims they make about products, services, brands and activities.
- 3.6 Most obviously, claims must contain correct information and must be true. They must not state or imply things that are factually incorrect or untrue. Nor should they overstate or exaggerate the sustainability or positive environmental impact of a product, service, brand or business.<sup>2</sup>
- 3.7 For example, businesses must not claim, or otherwise give the impression, that a product is 'recyclable' if it is not, or if only parts of it are and others are not, preventing recycling.
- 3.8 If a claim uses terms which have specific or widely assumed meanings, the product, service, brand or business should justify their use. Claiming a

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<sup>2</sup> See also principle (f) on substantiation.

product is organic, for instance, is liable to fall short of consumers' expectations unless it consists almost entirely of organic components.<sup>3</sup>

- 3.9 Broader, more general or absolute claims are more likely to be inaccurate and to mislead. Terms like 'green', 'sustainable' or 'eco-friendly,' especially if used without explanation, are likely to be seen as suggesting that a product, process, brand or business as a whole has a positive environmental impact, or at least no adverse impact. Unless a business can prove that, it risks falling short of its legal obligations.
- 3.10 Where claims are only true if certain conditions or caveats apply, those conditions or caveats should be clearly stated. They should be close enough to the claim to be easily seen by the consumer. The conditions or caveats should not contradict the claim.
- 3.11 Claims can also be misleading if what they say is factually correct or true, but the impression they give consumers about the environmental impact, cost or benefit of a product, process, brand or business is deceptive. This can be a result of the overall presentation of the claim, including the wording, logos and imagery used, as well as anything that is missed out.
- 3.12 Claims must not suggest that products, processes, brands or businesses provide environmental benefits which are, in fact, standard features. Claims based on complying with ordinary legal requirements, for example, or on not using components or processes not typically used anyway, may be true. However, they are also likely to mislead consumers into thinking the product, process, brand or business is better than others, or than the norm, when it is not.
- 3.13 Claims may be able to focus on specific aspects of a product's, brand's or business's environmental impact. For example, truthful and accurate claims about part of a product or process.
- 3.14 Claims that focus on specific aspects of a product's, brand's or business's environmental impact, must make that clear.<sup>4</sup> They should explain, or otherwise make clear, what is being claimed and what it relates to.

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<sup>3</sup> See Example 1, below.

<sup>4</sup> As to how and where, see paragraph 3.10 above. The points made there are also likely to apply where businesses make claims focusing on specific aspects of an environmental impact.

- 3.15 If not, consumers are likely to be misled into thinking the claim relates to the whole product, process, brand or business, or to a range of the business's products, and that they are greener and more sustainable than they really are.
- 3.16 While claims that are more specific may be less likely to mislead, that will not always mean they are acceptable. For example, a specific claim relating to part of a product that only draws attention to a minor sustainability benefit could still mislead consumers even if it is true, if:
- there are also significant negative impacts from that product, or
  - that benefit comes at a significant environmental cost (for example, a product or its components could accurately be described as organic but a huge amount of water is used in its production).
- 3.17 Similarly, businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects.
- 3.18 The visual presentation of a claim – the images, logos, packaging and colours used – are an important part of the overall presentation. The same is true for the labels or certification that are often used to support environmental claims.

#### **Example 1**

A shampoo is packaged within a bamboo container labelled in green font as 'recyclable'. However, within this outer shell there is a plastic container. That is not apparent to the consumer when purchasing and would only be discovered by them afterwards when they use the product. Without very clear messaging to the consumer on the bamboo container that the product contains a significant proportion of plastic, consumers are liable to assume that the packaging is environmentally friendly and recyclable. The overall presentation of the product therefore risks being misleading. In addition, not only does the consumer have no way of knowing before purchasing that the product contains a significant proportion of plastic, but the way that the plastic and bamboo components have been combined may make the product very difficult to recycle in most circumstances.

- 3.19 Businesses should consider carefully whether the visual symbols they use create a misleading effect. There should be a direct and verifiable link between these symbols and the meaning consumers are likely to draw from them.

***Before making a claim, you should ask yourself:***

*Is the claim true?*

3.20 The most obvious question a business should ask itself is whether its claims are factually correct. That will not always be enough, if the claim would nonetheless deceive consumers, but it is an essential starting point. Claiming a product contains recycled content when it does not, for example, is always liable to mislead consumers. The same goes for any claim that is simply untrue.

*Do I live up to the claims I am making?*

3.21 Businesses may be tempted to use broad, general terms - like 'green' or 'eco-friendly' - in their environmental claims. One concern with them is that their meaning can be unclear.<sup>5</sup>

3.22 Such claims also risk misleading consumers by creating a much more favourable impression of a product's, process's, brand's or business's environmental credentials than is justified. That, of course, may be the attraction for a business to use them.

3.23 Businesses contemplating making these kinds of broad and absolute claims should consider whether they have clear evidence that their products, processes, brands and activities have a positive environmental impact (or no negative one). Without it, such claims are much more likely to mislead consumers.

*Am I using terms that are likely to have a generally understood meaning by consumers, and does my product, service, brand or business merit using them?*

3.24 Some terms may have developed a meaning that is generally understood by consumers. That meaning may have developed out of specific rules that apply to particular products but have come to be applied in other contexts too. A term like 'organic' is one example. Businesses should consider whether the same applies to other specific terms they use.

**Example 2:**

A loaf of bread is labelled as 'Organic Sourdough'. Sector-specific rules mean food products must be made from at least 95% organic ingredients to be labelled as organic. A claim would be misleading if that threshold is not met.

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<sup>5</sup> See Principle (b).

While the sector-specific rules are limited to food products, this does not mean other products can be labelled as organic where they have a limited number of organic components. Those sector-specific rules are likely to feed into consumers' broader understanding of what a term like organic means generally and to shape their expectations in other contexts.

Consumers are likely to understand the term to mean that a product labelled as organic has a very high level of organic components. A claim a product is organic where it falls short of this level is likely to be misleading.

Claiming a pair of jeans are 'organic', for example, when only 35% of their material is from organic cotton is almost certainly misleading. The generally understood meaning of 'organic' is that virtually the entirety of the product meets that description.

A business wishing to claim only a certain amount of their produce is organic must make sure their claims are specific enough to make this clear. For example, claiming 'these jeans are manufactured from 35% organic cotton' and clearly listing the other materials they contain is less likely to mislead.

*Is the claim only true and accurate under certain conditions or with caveats, and are these clear?*

- 3.25 Some claims may only be true if certain conditions are met or with some qualification or caveats applied. As long as it complies with other relevant principles too, a business may be able to make these kinds of claims lawfully.
- 3.26 However, the conditions, qualification and caveats must be clear and prominent enough for consumers to see and understand them. If not, they are more likely to regard the claim as unqualified and unconditionally true, which would be inaccurate.
- 3.27 Even with any necessary qualifications or caveats, a claim can still be problematic, though. A claim which is contradicted by a qualification or caveat is still liable to mislead and is unlikely to be acceptable.
- 3.28 Businesses need to consider:
- whether their claims are conditional and qualified;
  - that they have made this clear; and
  - that the claim, as a whole, is accurate.

**Example 3:**

A disposable cup is marked as 'compostable'. No further information is provided. The cup will not compost in a home compost bin. An industrial composter is required, so consumers can only compost the cup if their local authority collects food and compostable waste for industrial composting. The claim is likely to be misleading as it does not specify the circumstances under which the product is compostable and the action the consumer needs to take.

*Is what I say liable to deceive consumers, even if it is literally true or factually correct?*

- 3.29 Consumer protection law is not just concerned with claims that are factually correct or true, so neither are the principles in this guidance document. Claims can also mislead where their contents are factually correct, but the impression they give consumers about the environmental impact, cost or benefit of a product, process, brand or business is deceptive. The overall presentation of the claim, including its wording, logos and imagery, is important.

**Example 4:**

A yoghurt previously packaged in a blue pot is now promoted with a large green leaf covering the front of the pot, together with the words 'reduced plastic packaging'. In fact, the amount of plastic has only been reduced by 5% by removing the lid that previously sat on top of the foil seal.

To do that, the manufacturer moved its production facilities, adding significantly to the distance the yoghurt travels, so there is little if any overall reduction in environmental impact. Although the claim is true, the way it is presented is likely to give the impression that there has been a bigger reduction and the product is better for the environment than is really the case.

*Am I claiming environmental benefits that are required by law or that consumers would expect from a product or service anyway?*

- 3.30 Businesses should not claim an environmental virtue out of something which is a necessity or just an ordinary feature or consequence of products, processes, brands or businesses of the type concerned.
- 3.31 These could be claims based on compliance with ordinary legal requirements that apply to all similar products. They could also be claims based on not using processes or components that are not typically used anyway. The problem with these claims is that, while they may be true, they are likely to give the impression that what is being advertised is special, compared to other products or to what is normally available, when it isn't.

3.32 For example, a company selling toiletries online presents a range of products with a green banner across the corner of the image stating, 'save our seas – these are micro bead free'. This is likely to be misleading as it suggests a benefit in comparison to other products, when in fact micro beads are banned in the UK and should not be in any products.

*Am I telling the whole story, or does the claim only relate to one part of my product or business?*

3.33 It is not necessarily a problem for businesses to make claims that focus only on one aspect of a product, process, brand or business. In some cases, more focused claims may be more accurate than broad, general or absolute ones. However, they can also raise concerns.

3.34 If a claim fails to make clear what aspect of a product or business it relates to, it is liable to mislead. Even where that is clear, claims which ignore significant negative environmental impacts in order to focus on minor benefits or small parts of a business's activities are still at risk of misleading consumers.

3.35 What the average consumer knows about a product, process or business, and the way they are likely to view claims and make decisions, can be important. In some cases, consumers are likely to have limited knowledge about a product or business. They are more likely to be misled by narrowly focused claims. In other cases, consumers' general knowledge may be greater and the risk of them being misled lower.

3.36 For example, a claim that an electric vehicle produces zero emissions is liable to mislead consumers, but a claim it produces zero emissions 'when driving' may not. Consumers are more likely to understand that the claim is limited to particular circumstances (driving the vehicle) and that producing and generating power to charge it may produce emissions. In that case, they may still be able to make an informed choice about whether to buy the car.

*Does my claim give an overall impression that the environmental benefits are greater (or the harms more limited) than is really the case?*

3.37 The overall impression created by a claim must match the environmental impact of what is being marketed. Businesses should consider how a consumer is likely to interpret what they are told and what they are shown, and whether this matches the product's, service's or brand's environmental credentials.

3.38 Product names and branding are key elements. So, too, are any logos, labels or indications of certification. Businesses must consider whether they

give a misleading impression of the product's, brand's or business's impact on the environment.

- 3.39 For example, these sorts of symbols will often suggest that a product or business meets certain standards or has some form of accreditation that reflects its environmental impact. It is important that a business which uses such symbols meets the necessary standards and is authorised to use them.
- 3.40 Symbols, trust or quality marks awarded by independent third parties on the basis of a formal assessment against objective criteria are less likely to be misleading. Self-assessed and self-declared marks or symbols are more likely to raise concerns. They risk suggesting that a product, service, brand or business meets particular standards and is endorsed or independently certified as doing so.
- 3.41 Claims are also less likely to be misleading where they contain information about the business's right to use the symbols and about how consumers can verify that and what it means.

**Example 5:**

A selection of properties on an accommodation booking site carry a green leaf symbol with the words 'Trusted eco holiday provider'. No further information about the symbol is provided.

Using the symbol in this way risks being misleading. There are a range of possible environmental impacts linked to holiday accommodation. It may, for instance, be constructed from particular materials or have heating systems that minimise emissions, or the business may participate in a carbon offsetting scheme.

Consumers are less likely to be misled if:

- a) the accommodation provider is part of an independent certification scheme which offers accreditation for meeting objective standards linked to those sorts of issues; and
- b) they are given information that enables them to verify this.

Consumers are more likely to be misled if there is no such independent scheme and the use of the symbol is an attempt to suggest the business meets particular recognised standards, when it does not do so.

## **b) Claims should be clear and unambiguous**

3.42 Claims should be worded in a way which is transparent and straightforward so consumers can easily understand them. They should not be presented in ways that are liable to confuse consumers or to give the impression that a product, service, brand or business is better for the environment than it is.

### ***What this means is***

3.43 The terms used in a claim, and the meaning they convey to consumers, should be clear. The meaning consumers are likely to take from a claim and the environmental credentials and impacts of the product, service, brand or business should match.

3.44 Vague and/or general statements of environmental benefit are more likely to be misleading. At best, they can have a number of meanings that can confuse consumers and make it difficult for them to make informed decisions. At worst, they can give the impression a product, service, brand or business is better for the environment than is really the case. They can also be difficult to substantiate.<sup>6</sup>

3.45 Businesses are increasingly recognising the importance of improving the environmental effects of their products, services and practices. However, claims about future goals should only be used for marketing purposes if the business has a clear and verifiable strategy to deliver them. Claims about a business's environmental ambitions must be in proportion to its actual efforts. They are less likely to be misleading when they are based on specific, shorter term and measurable commitments the business is actively working towards.

### ***Before making a claim, you should ask yourself:***

#### *Is the meaning of the terms used clear to consumers?*

3.46 The meaning of all terms used in marketing must be clear to consumers. Claims should be easy to understand.

3.47 Businesses should use words and phrases in line with their ordinary meaning and the way consumers are likely to understand them. Scientific or technical language should be avoided unless it is easily understood by the average consumer. Where terms are commonly defined and understood (for example,

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<sup>6</sup> See Principles (a) and (e) in particular.

in international standards or via specific regulation), it may be helpful to use them.

- 3.48 Key words should be defined, unless their meaning is clear and widely understood by consumers. Terms with multiple meanings should also be explained to ensure they are not misinterpreted.
- 3.49 The definitions and explanations should be clear and close to the claim itself. If limits on the time and space available make that impossible, the business should make the information readily available by other means. The claim should make clear how consumers can access that information. In an online claim, for example, it should be made available by a single click through link (and nothing provided via that link should contradict the main claim).

*If vague or general terms have been used, have these been explained?*

- 3.50 General or all-encompassing sustainability claims such as ‘environmentally friendly’, ‘eco’, or ‘sustainable’ don’t provide any real indication of what is meant. If anything, they are likely to create an overall impression that a product has a positive, or no, environmental impact.
- 3.51 If claims like this are made, the product, service, brand or business must live up to the impression that is given.<sup>7</sup> Where a business intends to convey particular meanings or impressions, it should use specific terms or include explanations. It should make clear how the relevant environmental impact has been measured or assessed.
- 3.52 Claims that products are ‘biodegradable’, ‘compostable’ or ‘recyclable’ can also be problematic. Often, they only apply to parts of products or in certain conditions.
- 3.53 If a product will only biodegrade or compost in certain conditions, for example, this should be explained. Otherwise, consumers are liable to assume the claim applies to the typical methods for disposing of the product.
- 3.54 For similar reasons, it must also be clear whether claims about product recyclability relate to the whole product, including its packaging, or part of it. Instructions on how to recycle the product should be provided.

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<sup>7</sup> See also Principle (a).

### **Example 6:**

A product is labelled 'recyclable' without further explanation. The claim doesn't make clear if this relates to the whole product or not, or its packaging. As the claim actually relates solely to the packaging (a minor element of the product), and the remainder is not recyclable, the claim is likely to mislead consumers into thinking that the whole product can be recycled.

*Does the claim relate to the whole product, or part of it?*

- 3.55 The example above highlights the broader question of whether a claim relates to all or part of a product, its packaging, or both.
- 3.56 Claims that relate only to a specific part of a product, service, brand or business risk falling foul of Principle (a) unless they make that clear.<sup>8</sup> Principle (b) is also likely to be relevant. Without explanation, such claims risk confusing consumers and preventing them making informed choices.
- 3.57 Businesses should consider the scope of their claims and make clear what they apply to.

*Is the information you are providing to consumers useful or confusing?*

- 3.58 Businesses should consider whether the information provided is:
- relevant to the claim being made;
  - presented in a clear way that the average consumer is likely to understand.

If not, the claim could give a false impression about the environmental impact of the relevant product, service, brand or business. The information provided should always support the claims being made.

### **c) Claims should not omit or hide important information**

- 3.59 What claims don't say can also influence the decisions consumers make. Claims made by businesses must not omit or hide information that consumers need to make informed choices.
- 3.60 These sorts of omissions can occur where claims focus on saying one thing but not another, or where they say nothing at all. It is vital that businesses pay

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<sup>8</sup> Principle (b) is also likely to be relevant.

close attention to the information on environmental impacts that consumers need to make decisions and reflect that in the claims they make.

***What this means is:***

- 3.61 Consumers are likely to take into account a range of important factors in making decisions about products, brands and businesses. In many cases, those are likely to include the impact on the environment. In a transition to a low-carbon economy, these considerations are likely to become even more important.
- 3.62 For many products, brands and businesses, the impact on the environment will be affected by things like:
- the provenance and sourcing of materials,
  - the production processes and practices employed, and
  - the packaging, transportation, use and disposal of products.
- 3.63 The way these factors influence the decisions consumers make may differ depending on the nature of the products, brands or businesses concerned. In each case, businesses must make sure claims include the information consumers need to make an informed choice.
- 3.64 Consumers can be misled where claims do not say anything about environmental impacts. This can also happen where claims focus on just one aspect of a product, service, brand or business. They can be misleading because of what they do not include or what they hide.<sup>9</sup>
- 3.65 Claims should not just focus on the positive environmental aspects of a product, service, brand or business, where other aspects have a negative impact and consumers could be misled. This is especially so if the benefits claimed only relate to a relatively minor aspect of a product or part of a brand's or a business's products and activities.<sup>10</sup> Cherry-picking information like this is likely to make consumers think a product, service, brand or business as a whole is greener than it really is.
- 3.66 It will be important for businesses to think about the claim they are making and the whole life cycle of the relevant product.<sup>11</sup> Where they are promoting a brand or business, they should consider the impact of all its activities. They

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<sup>9</sup> Even if the claim on its face is true. See also principles (a), (b) and (e).

<sup>10</sup> See also principle (a)

<sup>11</sup> See principle (e).

will also need to think about what consumers are likely to understand about the product, service, brand or business and about the claims that are made.

**Example 7:**

An organic soup is sold in a carton that says, 'Nature's Friend – organic and sustainably farmed.' The claim about the ingredients is true, but the carton is silent about its composition and disposal. In fact, it contains non-recyclable plastic, which has a negative environmental impact and is hard to dispose of other than in a landfill site or incineration. This omission risks misleading consumers in relation to their choices about buying and disposing of the product.

- 3.67 A similar sort of problem can also arise where a business makes important claims about things like carbon neutrality. A claim like this may be made where net emissions of greenhouse gases are zero. That could be because the relevant production processes do not create emissions, or because the business offsets the gases that are produced by investing in CO<sub>2</sub> compensation schemes.
- 3.68 Where businesses do the latter, claims about their carbon neutrality should make that clear. They should provide information about the scheme (which should be based on recognised standards and measurements, capable of objective verification). If not, consumers are liable to be misled into thinking the products or processes themselves generate no emissions.
- 3.69 Where it is necessary to include important qualifying information about a claim, that information should be easily identifiable and clear. It should also be sufficiently close to the main aspects of the claim for consumers to be able to see it easily and take account of it before they make any decision. The less prominent any qualifying information is, and the further away it is from any main claim being made, the more likely the claim will mislead consumers.
- 3.70 Depending on the way a claim is made, there may be some limitations on the amount of information that can be included. That does not give businesses a justification simply to miss out or hide important information about environmental impacts.
- 3.71 A business may only omit information where it is impossible for them to include everything consumers need to know in the form of communication used. To assess whether a business has omitted material information, the measures it takes to provide easily accessible further information elsewhere will be taken into account. Businesses must therefore think about how else

they can provide important information to consumers in good time before they make their decisions and make sure it is readily available.

- 3.72 For example, the medium by which most information about a product is provided (such as the label sewn into clothing, or information provided within a retail store) may constrain how much information can be given to the consumer about the full life cycle of a product. Where environmental claims are being made about the product, thought should be given to how this other potentially material information (like information about the way a component or ingredient is grown, produced, processed, transported etc.) could be disclosed to the consumer by some other means (e.g. by link to information on a website via a QR code).
- 3.73 The kind of information businesses include in claims should be kept under review. Changes to legislation and technological developments, for instance, can affect the composition, production processes, use or disposability of a product. Where a business knows that these changes will occur, it should consider what information consumers need to know about them at the time that the claim is being made. Once these changes have occurred, businesses should review the claims they make to ensure that they are still truthful and accurate and do not omit material information.
- 3.74 Developments in scientific and environmental evidence and understanding are also likely to affect how claims are kept up to date. Businesses should consider whether any new evidence about the environmental impact of products should be reflected in the claims that they are making or planning to make to avoid consumers being misled.
- 3.75 Changes in consumer awareness, expectations and behaviour are also likely to be relevant. As people become more conscious of the environmental impact of what they consume, the information they need to make informed decisions is likely to change.
- 3.76 The attitudes consumers are likely to take to recycling are a good example of this. People are increasingly encouraged to recycle packaging wherever possible and are increasingly interested in doing so. That only makes failing to disclose on packaging whether or not it can be recycled, and where and how (as in Example 6 above), more likely to be misleading by omission.

***Before making claims, you should ask yourself:***

*What environmental impacts does my product, brand, or business have (positive and negative, taking account of its whole life cycle)?*

- 3.77 When thinking about making any sort of environmental claim for your product, for example, you should consider the overall impact of all its components. Cherry-picking beneficial aspects and highlighting those on any packaging or in any advertising for the product risks misleading consumers.
- 3.78 It is important for businesses to think about whether other components or ingredients of products, or other aspects of their business are less beneficial, or even harmful, to the environment. Providing an unbalanced picture of the overall environmental impact is liable to involve misleading omissions.

*What do consumers need to know about environmental impacts to make informed choices about my product, service, brand or business?*

- 3.79 The information that should be disclosed to the consumer will vary from product to product. Consumers' expectations will similarly differ according to their understanding and awareness of the product or sector. For example, consumers are more likely to expect to see recycling information on a product's packaging, but not necessarily on, say, a piece of cutlery or crockery.
- 3.80 Businesses should think about the aspects of their products, brands or activities that have an impact on the environment, from the sourcing and manufacture of products, for example, right through to their disposal. A good rule of thumb would be to assume that consumers are likely to want to know about the overall environmental impact, including how easily a product, and its packaging, can be disposed of or recycled. Claims that include information enabling consumers to make informed decisions about that impact are less likely to involve misleading omissions.
- 3.81 Another good rule of thumb would be to ask whether the information would make consumers think twice about the decisions they make about a product, service, brand or business. If it would, that is a strong indicator that the information should be included in a claim.

*Should I include information about the durability or disposability of a product in any environmental claim?*

- 3.82 The durability or disposability of a product can have a significant effect on its environmental impact. It can be an important consideration for consumers in deciding what they buy.
- 3.83 For example, businesses may be aware that products are due for imminent replacement and have a limited lifespan, or that they are likely to require ongoing maintenance or updating. Those factors can have an economic

impact on consumers. Because they increase levels of consumption, they can also affect a product's impact on the environment.

- 3.84 These are important points businesses should consider when making claims. Ignoring them risks making misleading omissions that harm consumers. Businesses which treat consumers as more aware of the impact on the environment of what they buy, and give them more information about the durability and disposability of products, are less likely to fall foul of the law.

*Do I need to caveat any claims that I am making, or explain them in more detail?*

- 3.85 If any claim you are making needs further explanation (for example, a product can only be recycled under certain circumstances), any caveats or conditions should be disclosed prominently and close to the main claim. The more conditions or caveats are hidden away in small print, where the average consumer is unlikely to see and understand them, the more likely consumers will be misled.

*Where I do not plan to include information in a claim, why not?*

- 3.86 Another way businesses could assess whether they are omitting important information is to think carefully about what they do not plan to include in a claim and why not. They could ask themselves:
- what are all the environmental impacts their product or service, brand and activities have;
  - whether there are good reasons for not including information about those environmental impacts in a claim; and
  - whether, if they do not get the information in a claim, consumers can still make informed choices about what's on offer.
- 3.87 Businesses could also think about whether consumers would be surprised or disappointed to hear the omitted information after they had decided to buy a product. Where businesses deal openly and fairly with consumers, and do not give them subsequent cause for complaint, they are less likely to commit misleading omissions.

*Is there anything I need to tell consumers so they can make informed choices, but that I genuinely cannot fit into my claim?*

- 3.88 If you cannot fit into an environmental claim the information consumers need to make an informed decision, you should consider how else to make it available to them in the easiest and clearest way you can. For example, depending on the product in question, this could be through information on a

website accessed via a link that is clearly signposted, or via a QR code on a product label. The additional information provided should not contradict the main environmental claim which is being made.

#### **d) Comparisons should be fair and meaningful**

3.89 It is important that consumers are not misled by the way comparative claims are made. This is linked to the principle that claims must be truthful and accurate. Comparisons should be based on clear and objective information. They should not benefit one product or brand to the detriment of another if the comparison is inaccurate or false.

##### ***What this means is:***

3.90 Comparisons should enable consumers to make informed choices about competing products and businesses. They should not say or imply, through the use of language or imagery, that one product is, for example, 'greener' or 'environmentally friendlier' or 'more energy efficient' than another, if it is not.

3.91 Comparative claims should compare like with like. That means:

- any products compared should meet the same needs or be intended for the same purpose;
- the comparison should be between important, relevant, verifiable and representative features or aspects of the relevant products; and
- the basis of the comparison, and the way it is presented, should allow consumers to make an informed decision about the relevant merits of one product over another.

3.92 A claim which compares two similar products' recyclable content, CO<sub>2</sub> emissions or organic composition, for instance, should calculate these measurements in the same way for each product. The values used to measure these comparisons, and the way they are presented, should be clear enough for consumers to understand.

3.93 There are different circumstances in which comparisons might be made. For example, a business might want to compare aspects of a new product with those of its previous products, or to compare its products with a competitor's. It does not matter whether it is two (or more) products from the same line or business, or two (or more) different brands, the same rules apply, and the basis for the comparison should be clear and easy for consumers to follow.

3.94 There are also similar rules applicable to comparative advertising made from business-to-business. Such advertising must only compare goods or services meeting the same needs or intended for the same purposes. For more information on the rules applicable to claims made between businesses, see the Appendix.

***Before making a claim, you should ask yourself:***

*Is the claim comparing like with like?*

3.95 The claim must make clear against what or whom the comparison is made. A product should only be compared to another that is similar and used for similar purposes. Businesses can test whether they are doing this by considering whether consumers would be likely to buy the comparator product, instead of theirs, and use it in the same way.

*Is the like for like comparison a fair and representative one?*

3.96 Some claims will compare products with a range of competitors in a market. Claims that appear to make market-wide comparisons, but which are actually based on a limited sample, have the potential to mislead consumers.

**Example 8**

A business makes a general comparative claim that its toothbrush X contains 50% less plastic than other toothbrushes on the market. It bases the comparison on a group of selected products.

The specific comparison between toothbrush X and the selected group may be accurate. However, the claim may still be misleading if the selected products are not representative of the wider range of toothbrushes on the market, and the average plastic content of most toothbrushes is less than in toothbrush X.

*Is the basis of the comparison fair and clear?*

3.97 There are some rules of thumb businesses could follow to make comparative claims less likely to mislead consumers:

- claims should make clear to consumers what is being compared and how the comparison has been made
- the claims are less likely to mislead where they compare important and representative features or aspects of the relevant products

- businesses should make sure products are compared using the same measures
- claims should not omit or hide material information relevant to the comparison
- the comparative claims should be capable of being substantiated by transparent and accurate evidence that consumers can verify for themselves

### **Example 9**

A comparative claim that a clothing range is now 'greener' is unlikely to be fair and meaningful on its own, and risks misleading consumers.

The claim does not make clear the basis for the comparison. Consumers are left facing a range of uncertain possibilities about whether:

- the comparison is with a previous or competing clothing range;
- what is being compared and the basis for any comparison; and
- the measure by which the clothing range is 'greener'.

A claim which states that 'All our X brand of shirts contain 50% more cotton than our Y brand of shirts' and also provides a list of the remaining materials is more likely to involve a fair and meaningful comparison.

### **e) In making the claim you should consider the full life cycle of the product.**

3.98 In considering whether a claim could be misleading, the full life cycle of the product or service, and the whole of a business's activities, may be relevant.

3.99 All aspects of a product's or service's environmental impact over its life cycle, including its supply chain, could be important, including:

- its component parts;
- how and where it is manufactured, produced or carried out;
- its use or performance;
- the disposal of a product, and any waste or by-products;
- the consequences of any environmental benefit claimed; and

- whether the product or service has an overall adverse impact.

**What this means is:**

- 3.100 When considering making environmental claims, businesses should always consider the effect of the total life cycle of a product or service, or of their overall activities, on the accuracy of their claims.
- 3.101 Broad, general claims – for example that a product or business is ‘eco-’ or ‘environmentally friendly’ – suggest they have a positive overall environmental impact (or no negative one). A business making these sorts of claims is at risk of misleading consumers, unless it has done a thorough assessment of a product’s entire life cycle, for example, and the product has this kind of overall impact<sup>12</sup>.
- 3.102 Claims may be based on a specific part of an advertised product’s life cycle, or part of a business’s activities. It should be clear which aspect they refer to. They should not mislead consumers about the total environmental impact.<sup>13</sup> A claim could itself be true, but misleading, if it suggests a product is greener than it is by ignoring some other aspect of its life cycle.
- 3.103 Claims are less likely to mislead where they focus on aspects of a product or business that are most significant in terms of the overall environmental impact. Those that focus only on more minor points are more likely to be problematic.
- 3.104 Claims should also make clear the limits of any life cycle assessment the business has done. Where it has only been able to carry out a limited assessment, it may be possible for the business to make specific claims based on that assessment, but that should be clearly explained. They must not mislead consumers.

**Example 10:**

A business makes the claim that an improved product has a ‘lower carbon impact’. This is based on the carbon emissions generated during production dropping by a third. However, in the small print, the business states ‘excluding transportation’. The business has excluded this from their assessment as an external company has been used to transport the goods. Overall, the largest proportion of the product’s carbon impact comes from transportation. So, over

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<sup>12</sup> See Principles (a) and (b).

<sup>13</sup> See Principles (a) and (c).

the product life cycle, emissions have only decreased slightly and the claim is liable to mislead consumers.

***Before making a claim, you should ask yourself:***

*Does the claim reflect the whole product life cycle?*

3.105 When assessing an environmental claim, the product's environmental impact over its whole life cycle may be relevant. Claims that reflect the whole cycle, or the most significant elements of the product's environmental impact, are less likely to be misleading. Claims can mislead where they reflect only part of the life cycle. If they only relate to part of the life cycle, claims should make clear which part. For example, if the claim specifically relates to manufacture, transportation, use or disposal of a product. There is a risk, though, that the overall effect could be misleading and businesses must ensure this is not the case (see below).

*By making a claim about one element of the product's life cycle, does the claim mislead the consumer about other aspects?*

3.106 If a business makes a claim highlighting just one of several impacts a product has on the environment, that could be misleading. For example, making a claim that the product is made using less water may lead the consumer to believe it is better for the environment overall, where it does not refer to other aspects of production that have a negative impact.

3.107 Businesses should consider:

- which aspects of the product life cycle a claim relates to or reflects, and which aspects it does not;
- whether the focus of the claim is on the aspects of a product or business that have the most significant environmental impact;
- if any limitations of the claim are clear; and
- whether, the consumer is given a misleading impression of the overall impact on the environment.

*Do I have to disclose the full life cycle of a product in all instances where an environmental claim is made?*

3.108 Whether the full life cycle of a product is information the average consumer needs to make an informed choice will depend upon the product in question. It is likely that, in the coming years, consumers will demand more and clearer

information about the provenance, processing and disposal of products and services as public awareness of environmental issues grows. Claims that include information about the full life cycle of a product, or reflect that whole cycle, are less likely to mislead people and more likely to help them make informed choices that are better for the environment.

**Example 11:**

A shampoo bar named 'eco shampoo' is packaged in a cardboard box with green rainforest imagery and inner non-recyclable plastic film. The 'eco' claim is based on the product being more compact and using less plastic packaging than traditional shampoo. However, some of the raw materials come from the Amazon rainforest and have been shipped via freight to Europe, where the bar has been manufactured in a large factory. The final product has then been shipped to the UK for final packaging. The claim 'eco shampoo' is misleading as it creates the overall impression that the product has a positive or no negative environmental impact, despite the adverse effects of major elements of the product life cycle.

**f) Claims should be substantiated**

3.109 Most environmental claims are likely to be objective or factual claims that can be tested against scientific or other evidence. Given the requirement that claims must be truthful and accurate, businesses should have evidence to support them.

***What this means is:***

3.110 Some advertising claims can be purely subjective or hyperbole. In those cases, consumers may recognise them as such or treat them as advertising 'puff' that they do not take literally. Consumers are unlikely to expect those claims to be based on particular evidence.

3.111 The claims businesses commonly make about environmental impacts are likely to be different. They are likely to relate to ascertainable matters that can be assessed against the scientific or other evidence.

3.112 Businesses should therefore be able to back up their claims. They should hold robust, credible and up to date evidence that supports them. Where they compare their products or activities to one or more competitor's, that evidence should cover all of them.

3.113 When investigating potentially misleading claims, the CMA or other enforcers can seek evidence from businesses to support their claim(s). If enforcement action ends up before the courts, the courts can require a business to provide

evidence of the accuracy of claims. If a business does not provide it, or it is inadequate, the court may consider the claim inaccurate.

- 3.114 Environmental claims which are made with no regard to whether the business actually knows there is evidence to support them are also likely to be problematic, even if they turn out to be true. The nature of most environmental claims means consumers are likely to expect them to be based on supporting evidence. Where they are not, businesses are likely to have fallen below the standards of diligence and care consumers are entitled to expect of them.

***Before making a claim, you should ask yourself:***

*Is the claim you are making subjective or objective?*

- 3.115 Most environmental claims are likely to be about things that can be measured against the evidence. They are likely to be objective or factual claims, or based on underlying facts, that are capable of substantiation. That is likely to apply even to claims that products, for example, are the 'cleanest,' 'safest' or 'best' for the environment. Those are matters which can be tested against a range of measures for which evidence can be gathered.

*Do you have appropriate evidence to support your claim?*

- 3.116 When thinking about making, or making, a green claim, businesses should think carefully about whether they have appropriate evidence to support it. What is required will depend on the circumstances and may vary depending on the nature of the product and the claim being made. In general, the evidence should be robust, credible and up to date. It may come from published research, for example, or studies a business has commissioned or conducted. The more independent and widely supported the evidence, the more likely it will be to support a claim.

**Example 12:**

A cleaning company claiming to be the 'UK's most sustainable cleaning solution' states on its website that it uses natural, non-toxic, biodegradable cleaning products, as well as carrying out a variety of environmentally-friendly practices, including using refillable bottles and reducing product waste.

The claim that the cleaning company is the 'UK's most sustainable cleaning solution' is an absolute claim that requires robust substantiation to prove that the company's practices are more environmentally friendly than any other cleaning company's service on the market. The company should hold evidence relating to its products and services and others across the market, on a range of relevant and objective measures, which demonstrate that point.

*Is the evidence based on accepted science or understanding or is it contested or unproven?*

3.117 Where a claim is not based on accepted scientific or other evidence it is likely to be more difficult to substantiate. Claims based on material that departs significantly from accepted scientific understanding or methodology, or for which there is conflicting evidence, are more likely to be misleading.

*Has the evidence been subject to independent scrutiny?*

3.118 Being able to demonstrate that the evidence for a claim has been subjected to independent scrutiny, particularly where it is complex or controversial, may help ensure that it is robust.

*Is the evidence up-to-date?*

3.119 It is also important to keep claims under review and it may be necessary to revisit them, and the evidence that supports them, over time. Keeping evidence up to date is likely to be particularly important where claims are maintained for longer periods or in areas where scientific understanding or consumers' expectations are developing quickly.

*Is evidence available to or from others in your supply chain?*

3.120 Businesses, including manufacturers and those further up the supply chain, that engage in commercial practices connected with the sale or supply of products to consumers, are responsible for the impact of those practices.

3.121 Where one business manufactures or supplies products to another, whether for resale or incorporation into other products, both businesses may be liable for claims and may have to substantiate them. Businesses should make sure they can do so. That may mean ensuring they obtain evidence from others in the supply chain.

*Is the evidence publicly available and can consumers verify the claims?*

3.122 Claims are less likely to mislead where the supporting evidence is publicly available and it is clear where and how consumers can verify the claims. This will help those who are interested in understanding a claim in more detail. Where a claim makes specific reference to the evidence that supports it, for example, to a study or survey, this should be publicly available in a way that is easily accessible to consumers.<sup>14</sup>

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<sup>14</sup> See Principle (c).

## 4. Applying the principles – types of claims and material information

- 4.1 The principles set out above are designed to assist businesses in making environmental claims which are more likely to comply with the requirements of consumer protection law.
- 4.2 In reality, it is likely that more than one principle will apply when making any environmental claim. In some cases, all the principles might apply.
- 4.3 This chapter sets out a number of case studies which are intended to illustrate how different principles can apply to the same claim or set of claims.

### Case study 1: Restaurant example

A restaurant providing a takeaway service has recently updated its branding with the slogan 'working to reduce waste'.

This is based on the fact that it has switched takeaway food containers from plastic to paper as well as pledging to cut food waste by 50% by the end of the year. The paper packaging shows a commonly recognised symbol for recycling.

The company provides a QR code on the takeaway containers given to customers which provides detailed information explaining how the paper used in the packaging meets a specific environmental standard. This includes how the paper has been sourced.

However, at the time of the claim, UK law prohibited companies from supplying certain single-use plastic takeaway containers and/or implements.<sup>15</sup> Focusing marketing on switching from plastic to paper containers may lead a consumer to believe that this is not standard practice and that the restaurant is providing an environmental benefit over a competitor. This is contrary to Principles (a) and (d).

It also turns out that the other materials used in the lining of the containers means the container cannot be recycled in the current UK recycling infrastructure. This is contrary to Principle (a).

The claim to reduce food waste by the end of the year is an aspirational claim with no clear, overall strategy in place setting out how the goal will be achieved. In

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<sup>15</sup> This is a hypothetical example. At the time of writing, only the supply of single-use plastic straws and drink stirrers was prohibited in the UK.

addition, the restaurant company has gathered no data to assess whether it is on target to meet this goal. This is contrary to Principle (b).

While the restaurant company provides certified evidence to support that the paper used in their packaging has been sourced responsibly, focusing on this element gives the impression that the packaging's overall impact is environmentally friendly. It overlooks the full life cycle. Consumers are liable to believe the packaging can in fact be recycled, when in practice it cannot. This is contrary to Principles (a) and (e).

### **Case Study 2: Product example**

A business makes a claim that a new version of its product is now '50% more environmentally friendly'. This is based on the fact that one of the materials that goes into the product is now sourced from fully recycled, and recyclable, material.

However, the same production process is still followed, which uses significant amounts of energy, and some of the other materials used in the product are not recyclable and require specialist disposal.

Such a claim could mislead consumers about the environmental performance of the product for a number of reasons.

First, the claim suggests it refers to the overall environmental performance of the product, when in fact it only refers to a specific element and does not mention that other aspects of the product have a negative environmental impact. This is contrary to Principles (a), (b), (c) and (e).

Second, the language used in the claim is very vague. There is no explanation of what 'environmentally friendly' means. This is contrary to Principles (a), (b), (e) and (f).

Third, it is not clear what the business is comparing the performance of their product to. It could be with an earlier product of the business's own or another business's product. Nor is it clear how well the product, or that with which it is being compared, performs in absolute terms.

For example, if the increase in the amount of recycled material used in the product is from 5% to 7.5%, but many other similar products generally contain a significantly higher percentage of recycled material, this is also likely to be misleading. The relative performance of the product would still be significantly worse than its competitors. This is contrary to Principle (d).

Finally, the business will need to be able to substantiate the claim. Failure to do so would be contrary to Principle (f). While it may have evidence to show the specific increase in the amount of recycled material used in the product, it will be more

difficult to substantiate the more general claim that the product is '50% more environmentally friendly', given the other aspects of the product.

### **Case study 3: Energy**

A company supplying consumers with electricity makes claims in advertisements, such as billboards, with the headline:

***'Go 100% green with us – you'll save money and the planet with the UK's cheapest and greenest energy supplier'***

This appears above a graphic which shows an image of the sun shining on a green leaf motif. Underneath is, '[company name]: the eco-friendly energy provider. To switch, call xxxxxxxxxx or go to www.xxxxxxxx.co.uk.' The advert contains nothing else.

The claims are broad and absolute. They engage Principles (a), (b), (c) and (e). Even without the imagery, but all the more so with it, they are likely to be understood by consumers as claims that:

- if they choose the company, 100% of the amount of energy they use comes from renewable sources;
- the company offers cheaper comparable tariffs than all UK suppliers across the market generally; and
- the company has the most positive overall environmental impact of all UK energy suppliers.

Claims about 'saving the planet' and being an 'eco-friendly' energy provider are likely to suggest that choosing this company will have a positive overall effect on the global climate system (or at least no negative one).

Each of these points may be truthful and accurate. The company is, however, likely to need to provide a high level of substantiating evidence, in line with Principle (f) that matches the breadth of the claims.

In particular, evidence that:

- it buys 100% of the energy it supplies from renewable sources or holds renewable energy certificates that show that amount of energy has been generated by such sources (in line with Principle (a));
- taking account of the whole life cycle of its operation, choosing the company has a positive effect on the global climate system (or no negative one), and

that the company has the most positive environmental impact of all UK suppliers (in line with Principles (d) and (e)); and

- it is the cheapest amongst all suppliers of comparable tariffs (in line with Principle (d)).

In practice, it is unlikely an energy supplier would be able to substantiate all these claims. Claims about going 100% green, saving the planet and being eco-friendly are most likely to be problematic (based on Principles (a) and (b)). There are a number of steps the company might take so that the claims are less likely to be misleading.

The company could make the claims less exaggerated and more specific (to comply with Principles (a) and (b)). For example, a claim limited to 'going greener' may be less problematic, though it may still raise concerns that it is too ambiguous and its meaning unclear. It can be made less misleading by explaining what is meant by this phrase. For instance, an explanation of the steps the company takes to buy or invest in renewable energy, or what it does to off-set its carbon footprint. This explanation should be provided in the advertisement (or, only if space does not permit, by including a clear indication of the way consumers can obtain it (such as a link to a website)).

Even these qualifications are unlikely to help, though, if choosing the company would not mean consumers 'go greener.' That kind of comparative claim is likely to be taken to mean that the average consumer would reduce their carbon footprint, and have less adverse impact on the environment, if they switch. At the very least, the company would need evidence showing that its energy supply has less harmful impact than average, and than most other suppliers'. It should give consumers information about the source of the comparison that enables them to verify the claim.

The company should also consider how appropriate it is to include a green leaf motif in its claims (based on Principles (a) and (b)). That sort of imagery is liable to reinforce positive environmental impression that the company may find difficult to sustain.

In fact, the company in this case only buys a small proportion of its energy from renewable sources, and less than most other suppliers. It takes no other steps to invest in renewable energy generation or to off-set the environmental impact of its operation. It has not even taken steps to increase the overall amount of renewable energy that would be supplied were consumers to choose it. It has just re-organised its tariffs so that some of them are said to comprise 100% renewable energy at the expense of others. Even more focused claims about 'going greener' are likely to be misleading in these circumstances.

## Appendix – Legal framework

### Key legal issues

1. The law reflects the key principle that consumers should be able to make informed choices about the products and services they buy.
2. It covers what businesses do say, and how they present it, and what they don't say.
3. Businesses should not make claims about products and services, or omit or hide information, to give the impression they are more environmentally friendly than they really are.
4. That includes claims that suggest or create the impression that a product or a service:
  - has a positive environmental impact or no impact on the environment; or
  - is less damaging to the environment than competing goods or services.

### Consumer protection law

#### *What rules apply?*

5. The rules a business must comply with when making environmental or green claims are likely to come from two main sources:
  - sector or product specific requirements (rules that apply specifically to certain areas of economic activity or particular types of products); and
  - requirements that come from the general laws that apply to all businesses in order to protect consumers (and competing businesses).
6. The latter includes general consumer protection law like the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs are the main focus of this Appendix.<sup>16</sup>
7. Businesses must consider:

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<sup>16</sup> Businesses may also be subject to other general laws, like those on environmental protection.

- any sector or product specific requirements that apply (and comply with them); and
  - the rules that come from the general law which apply to supplement sector or product specific requirements (and traders must also comply with these rules).
8. For example, in relation to certain electrical goods, businesses must:
- comply with labelling requirements that mean consumers must be given specific information about the goods' energy performance; and
  - in relation to other information they give consumers – like claims they make in advertising or other commercial communications – they have to comply with requirements that come from general consumer protection law like the CPRs.

***What do the rules apply to?***

9. Sector and product specific rules will apply to particular products and services defined in those rules.
10. The rules that come from the general consumer protection law (the CPRs) apply to any product - the thing that is being promoted or offered for sale. It includes goods, and the packaging they come in, and services.
11. Those general rules apply to commercial practices.
12. These practices include any acts, omissions, courses of conduct, representations or commercial communications by a trader (a business), which are directly connected with the promotion, sale or supply of a product to consumers (any individual acting for purposes wholly or mainly outside their business).
13. The practices can occur before, during or after a transaction takes place (or would take place).
14. The general rules therefore cover claims made in, and information omitted from, advertising and marketing material for products that are available to consumers.
15. Those rules also cover, for example, claims made on the products themselves or their packaging.

### ***Who do the rules apply to?***

16. Sector and product specific rules will usually define the business which has to comply with those rules. They may be a manufacturer, a retailer or another party in the supply chain.
17. The general rules apply to whoever is the trader (business) in relation to a commercial practice. That may be the same party as has to comply with the sector and product specific rules but may not.
18. The trader (business) must be a person or entity acting for purposes relating to their business. Often, they will be the retailer of a product, but they may be the manufacturer or another party in the supply chain. It will depend on which party is undertaking the commercial practice in relation to consumers.
19. The process of advertising and supplying products to consumers may therefore involve commercial practices by a number of traders.
20. Wherever there is an environmental or green claim in relation to a product offered to consumers in a commercial transaction, there will be a commercial practice which must comply with the law. There will be one or more traders (businesses) who may be liable for it.
21. For example, a manufacturer may make packaging for products sold by a retailer to consumers. The packaging may include claims about its composition and recyclability that affect consumers' decisions about what they buy. The manufacturer and the retailer may be liable for the claims.
22. All the traders (businesses) involved will need to make sure the law is complied with. They will need to comply with their obligations and make appropriate provisions in their wholesale and supply arrangements.

### **3) General legal rules**

#### ***What do the rules say?***

23. Sector and product specific rules will usually set out specific requirements relating to the information businesses must give consumers (in relation to particular defined products and services).
24. The general rules under consumer protection law contain three different types of provisions that are most relevant to environmental and green claims:
  - they contain a list of specific banned practices, some of which are likely to affect environmental and green claims;

- they prohibit misleading acts and misleading omissions; and
- they contain a general prohibition on unfair practices.

### *Banned practices*

25. A trader (business) that, in any commercial practice like an advertisement, engages in any of the specific banned practices will be breaking the law.
26. The specific banned practices most likely to be relevant to environmental and green claims are:
- claiming falsely to be a signatory to a code of conduct;
  - displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;
  - claiming that a code of conduct has an endorsement from a public or other body which it does not have; and
  - claiming that a trader (business), its commercial practices or a product has been approved, endorsed or authorised by a public or private body when they have not (or making such a claim without complying with the terms of the approval, endorsement or authorisation).

### *Misleading actions*

27. The prohibitions on misleading actions cover what traders (businesses) say in their commercial practices like their advertising and marketing material.

### *False claims*

28. An environmental or green claim will be misleading if it contains false information and is untruthful in relation to certain important matters and, as a result, the average consumer would be likely to make a different decision about the product than they otherwise would (a 'transactional decision' – see below).
29. The important matters about which false and untruthful claims must not be made include:
- the nature of the product;
  - the product's main characteristics, including the benefits it provides; the risks that come with it; what it is made of and the way it is made; where it

has come from; how it is to be used; the effects of using it and the results of tests and checks that have been carried out on it;

- the extent of any commitments the trader makes;
- any statements or symbols relating to sponsorship or approval of the trader or the product;
- the need for a service, part, replacement or repair of the product; and
- the trader's qualifications, status, approvals, affiliations or connections and its awards and distinctions.

#### *True but deceptive claims*

30. A commercial practice can also be misleading even where the claims made in it about the important matters described above are factually correct. If average consumers would, nonetheless, be deceived or are likely to be deceived, and likely to take different decisions as a result, claims can still be misleading.
31. This kind of misleading practice can occur where, for example, individual facts included in a claim are literally true but, because of the overall presentation of the claim or because of what is missed out, the average consumer is likely to form a false impression of the product.

#### *Confusing practices*

32. Misleading actions can also occur in marketing practices, such as comparative advertising, which create confusion with a competitor's products, trademarks, trade names or other distinguishing marks.
33. Where they cause, or are likely to cause, an average consumer to make a different decision, such practices will also be misleading.

#### *False commitments*

34. A trader's commercial practices can also be misleading where it has signed up to a code of conduct and fails to live up to commitments in that code.
35. These kinds of codes often contain firm commitments, rather than mere aspirations, compliance with which is capable of being checked and verified. If so, traders (businesses) who indicate in their commercial practices, like their marketing material, that they have signed up to the code have additional obligations.

36. If the trader (business) fails to comply with those sorts of commitments, its commercial practice will be misleading if it causes, or is likely to cause, an average consumer to take a different decision than they otherwise would.

#### *Misleading omissions*

37. The prohibitions on misleading omissions cover what traders (businesses) don't say in their commercial practices.
38. Consumers need to be given the material information about the product or service in question (and in a clear and timely way). Material information means the information consumers need to make informed decisions about products ('transactional decisions' – again see below).
39. In order to assess whether key items of information have been omitted, all features and circumstances of a given commercial practice, including the limitations of the medium used to communicate, should be taken into account.
40. An omission will be misleading if the average consumer would be likely to make a different decision about the product than they otherwise would if the material information had been included.

#### *The transactional decision*

41. Misleading acts and misleading omissions can influence a whole range of decisions consumers make, from decisions to pursue an interest in a product, or to visit a shop or website through to buying a product, as well as decisions consumers make afterwards (for example, to exercise rights in relation to a product or to return it).
42. Those decisions can also include choosing to deal with one trader, or pursue an interest in one product, over another.
43. A misleading action or a misleading omission does not have to cause consumers to make decisions that they otherwise would not. It is enough if the action is likely to have that effect.
44. Environmental and green claims are increasingly important to consumers. They are also an increasingly common feature of traders' commercial practices.
45. Given those points, and the whole range of transactional decisions the law treats as relevant, the CMA's view is that any claims a trader (business) makes about the sorts of matters above should be treated as capable of influencing an average consumer's behaviour in relation to a product. If a

business makes claims that are false or misleading, such claims are liable to be unlawful.

### *General prohibition on unfair practices*

46. The general prohibition on unfair practices functions as a catch-all so that unfair practices not caught by the rules dealing with misleading or specific banned practices<sup>17</sup> are still capable of being an offence.
47. There are two tests to be satisfied. The first is concerned with the business's conduct itself and whether this contravenes the required standard of professional diligence.
48. The second test is concerned with the actual or likely effect the practice has on the average consumer's economic behaviour.
49. The general prohibition future proofs the law on unfair commercial practices, as emerging unfair practices can be assessed under these standards even if not specifically provided for under the other rules. This is important as consumer expectations develop.
50. The expectations of an average consumer from an environmental perspective are liable to increase as environmental concerns grow. As a result, the environmental practices and standards expected of businesses may also become more important to a consumer's economic behaviour and come under more scrutiny.
51. It is important to note that the standards of professional diligence in a particular sector are the objective standards consumers are entitled to expect, even if practices that fall below this standard are common in the sector.
52. Professional codes which are sector-specific can be important guides to inform the standards expected of traders (businesses) in a sector.

### **Business-to-business marketing<sup>18</sup>**

53. The rules for business-to-business marketing apply to those advertising products to businesses.

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<sup>17</sup> Or other provisions in the CPRs dealing with aggressive practices.

<sup>18</sup> These rules come from the Business Protection from Misleading Marketing Regulations 2008.

54. They also apply to those who are responsible for formulating and monitoring codes of conduct.

### ***Misleading advertising***

55. Under the rules for business-to-business marketing, misleading advertising is prohibited.
56. Advertising is misleading if it:
- deceives or is likely to deceive the businesses to whom it is addressed or whom it reaches and, because of its deceptive nature, is likely to affect their economic behaviour; or
  - for those reasons injures or is likely to injure a competitor.
57. Relevant factors include any information that is given concerning:
- the characteristics of the goods/services (for example, these include nature, composition, specification and origin of a product);
  - the price;
  - the conditions of supply;
  - the nature, attributes and rights of the advertiser (for example, these include its identity, qualifications and awards and distinctions).

### ***Comparative advertising***

58. In addition to the ban on misleading advertising, comparative advertising to businesses is only permitted in certain circumstances.
59. For comparative advertising to be lawful, it must meet a set of requirements including that it:
- compares goods or services meeting the same needs or intended for the same purposes;
  - objectively compares one or more material, relevant, verifiable and representative features of those goods and services;
  - is not misleading to other businesses under the business-to-business rules (as described above);

- is not a misleading action or omission under the rules for consumer protection;
  - does not cause confusion with a competitor's product, or between the trademarks, trade names, other distinguishing marks or products of the advertiser and those of a competitor.
60. If the conditions permitting comparative advertising are not met, the comparative advertising is prohibited even if it does not deceive anyone or alter economic behaviour.
61. A code owner (businesses and bodies responsible for codes of conduct or monitoring compliance with such codes) may not include in their code of conduct promote any misleading advertising or comparative advertising.

### ***The CMA's powers and the powers of the Court***

62. The CMA may deal with infringements of consumer protection law using a number of different measures. This includes taking civil action and also criminal enforcement.
63. The CMA or another enforcement body may seek an enforcement order from a court against businesses who breach the rules governing consumer protection. The CMA can also accept an undertaking from a trader to stop breaches of consumer protection law.
64. Enforcement orders and undertakings can also include 'enhanced consumer measures', which require businesses to take additional steps to protect consumers. This can include requirements to pay redress to those who have been harmed by the failure to comply with consumer protection law and measures to ensure that similar breaches do not occur in future.
65. In order to ascertain whether the rules governing consumer protection have been breached, a court, the CMA or another enforcement body, may require the business to produce evidence to substantiate its claims.