

Draft guidance on environmental claims on goods and services

Helping businesses comply with their
consumer protection law obligations

Consultation document

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1. Introduction

About the CMA

- 1.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority.¹ Its objective is to make markets work well for consumers, businesses and the broader economy.
- 1.2 The CMA has a range of consumer protection law powers to tackle practices and market conditions that present challenges for consumers and hinder their decision making. These include powers to protect consumers from unfair contract terms (for which it has the lead role) and unfair business practices.
- 1.3 The CMA shares these enforcement powers with other bodies, such as Trading Standards Services and sectoral regulators. The CMA also shares certain consumer functions with other agencies, such as the Advertising Standards Authority.
- 1.4 As part of its role, the CMA from time to time produces guidance for businesses to clarify their legal obligations and promote compliance with consumer protection law.
- 1.5 In recent years, the CMA has produced guidance on the applicability of consumer protection law in a range of specific sectors, for example, online hotel booking and care homes. The CMA has also produced guidance on commercial practices which operate across sectors, for example, on online reviews and endorsements.

What is the CMA's interest in the environment?

- 1.6 Concerns about climate change are having a significant and wide-ranging impact on the UK economy, changing market dynamics and consumer behaviour. The UK is working towards being climate neutral by 2050² and clean growth is crucial to achieving this goal.
- 1.7 In its Annual Plan for 2020 to 2021, the CMA committed to supporting the transition to a low carbon economy. Among other things, the CMA undertook to:

¹ It was established in April 2014 and took over many of the functions previously performed by the Office of Fair Trading (OFT) and the Competition Commission.

² The Scottish Government has [committed](#) to be climate-neutral by 2040.

- further our knowledge of the interaction between competition and consumer protection law and achieving the transition to a low carbon economy.
- support businesses in adapting to climate change while ensuring that markets remain competitive.
- improve our understanding of ‘green’ claims made by sellers to consumers and, where appropriate, we will make use of our powers to correct false or misleading statements that affect consumers.

1.8 In November 2020, the CMA launched its investigation into misleading environmental claims.³ This project delivers specifically on our annual plan commitment to develop a better understanding of misleading green claims. It contributes to furthering our knowledge of the interaction between consumer protection law and sustainable consumption. It is also intended to help create a level playing field for those businesses which are genuinely delivering goods and services which minimise harm to, or have positive benefits for, the environment and the transition to a low carbon economy.

Why do environmental claims matter?

1.9 According to some estimates, the UK market for sustainable products in 2019 was worth £41 billion.⁴ During the coronavirus (Covid-19) pandemic, there was a further marked shift in consumer behaviour towards more sustainable consumption practices, for example, reducing energy consumption at home or buying fewer single use plastic products.⁵

1.10 As set out in the literature review⁶ which accompanies this consultation document, more than half of UK consumers take environmental considerations into account in their life and are increasingly seeking to shop sustainably. According to the studies, a large share of UK consumers considers the environment to be an important factor in their purchasing decisions in the future.

1.11 Given the size of the market and the growth in demand, there are obvious incentives for businesses to deliver sustainable products. There is also an

³ <https://www.gov.uk/cma-cases/misleading-environmental-claims>

⁴ *Twenty Years of Ethical Consumerism*, Ethical Consumer Markets Report 2020 (Ethical Consumer, 2019) ⁵ *Ethical Consumerism in a Pandemic*, Ethical Consumer Markets Report 2020 (Ethical Consumer, 2020)

⁶ [Literature review](#)

incentive for less scrupulous businesses to appear to deliver such products, investing in 'greenwashing' rather than in sustainable development.

- 1.12 Businesses who choose to invest in greenwashing instead of the development of more environmentally sustainable goods and service are harming consumers, by preventing them from making genuinely sustainable choices. They are also harming the businesses who are innovating or reinventing their products, services and business practices to help tackle the climate crisis.

What have we found so far?

- 1.13 Since launching the investigation in November 2020, we have focused on gathering information to help us understand the issues surrounding making environmental claims and misleading environmental claims.

- 1.14 We have undertaken a range of activities including:

- carrying out a literature review,⁷ which we are publishing alongside this consultation document and our draft guidance.
- gathering information from businesses, consumers and relevant stakeholders through questionnaires.
- meeting with individual stakeholders.
- holding two roundtables, which were attended by more than 130 representatives of business, academia, regulators, other government departments and consumer associations.

- 1.15 A number of key themes have emerged:

- many consumers do not trust, or do not know whether they can trust, environmental claims.
- many consumers are confused by the environmental information provided about goods and services.
- consumers struggle to compare the environmental impact of different products.

⁷ Literature review

- there is a lack of consistency in the use of certain terms when making environmental claims, with ‘compostable’, ‘biodegradable’ and ‘recyclable’ being identified as particularly problematic in this regard.
- businesses who are trying to develop environmentally sustainable goods and services feel there is a lack of a level playing field and that other businesses are not competing fairly.
- many supply chains are complex, with businesses further down the supply chain struggling to get adequate information about the environmental impact of raw materials, components or manufactured goods.

Why are we proposing to introduce guidance?

Is there a problem?

- 1.16 In November 2020, the CMA participated in a ‘web sweep’ by the International Consumer Protection & Enforcement Network (ICPEN), examining environmental claims made by businesses online. The results of the web sweep suggested that more than 40% of the claims made online about the environmental benefits of products or services were potentially misleading.
- 1.17 The CMA’s own findings from the web sweep suggest that the problems seen globally are equally a problem in the UK market. The sorts of problems identified were claims which were vague, gave incomplete information or were apparently unsubstantiated.

Is more guidance necessary?

- 1.18 Before beginning this investigation, the CMA considered carefully whether more guidance was appropriate.
- 1.19 There is already some guidance available on making environmental claims, for example:
- guidance published by the Department for the Environment, Food and Rural Affairs in 2016.⁸

⁸ <https://www.gov.uk/government/publications/make-a-green-claim/make-an-environmental-claim-for-your-product-service-or-organisation>

- the Guidance which accompanies Rule 11 of the CAP code⁹ and Rule 9 of the BCAP code¹⁰ published by the Committee on Advertising Practice.

1.20 We provisionally concluded that we could add value by providing more up-to-date and more comprehensive guidance on complying with consumer protection law when making environmental claims. Specifically, we identified the need for guidance which covers:

- making environmental claims not only before, but during and after a consumer enters into a contract.
- misleading consumers not only through advertising, but also through packaging design and labelling, and even in the naming of products.
- misleading consumers by omission, where businesses fail to provide material information about the environmental impact of goods and services.
- the complete supply chain, including misleading business-to-business marketing, which also causes consumer harm.

1.21 Ultimately, we intend that our guidance would be a more comprehensive explanation of the interaction between consumer protection law and the presentation of the environmental credentials of goods and services. We hope it would provide a set of practical principles that enable businesses to provide all the necessary information in a manner which empowers consumers to make environmentally sustainable choices, supports competition and encourages sustainable growth.

Why not immediate enforcement?

1.22 The CMA is the UK's leading consumer protection enforcement authority. We typically exercise our enforcement powers where we see that there are market-wide, or indeed, cross-market consumer protection problems. The CMA also has a role in producing guidance to assist businesses to comply with the law.

1.23 In the case of environmental claims, we propose to produce guidance for businesses first, before taking any enforcement action. There are two reasons why we have taken this view in favour of guidance at this stage.

⁹ [11 Environmental claims - ASA | CAP](#)

¹⁰ [09 Environmental claims - ASA | CAP](#)

- 1.24 First, we know that many businesses want to do the right thing. In some cases, businesses will inadvertently mislead consumers for example, by giving consumers accurate but incomplete information, which makes their products look 'greener'. This can happen where businesses are unclear about their obligations under consumer protection law. We hope that this guidance would enable those businesses to comply, without the need for enforcement action by the CMA or other consumer protection enforcement authorities.
- 1.25 Second, there is anecdotal evidence that some businesses who are delivering more environmentally sustainable goods, services and practices do not feel able to trumpet their successes for fear of being accused of greenwashing (so called 'greenhushing').
- 1.26 Our provisional view therefore is that guidance to business would be the most effective way to improve levels of compliance in environmental claims across consumer markets in the first instance. Following publication of the final guidance, we would intend to run a compliance campaign to raise awareness of the guidance and encourage compliance.
- 1.27 Undoubtedly, in some cases, businesses will continue to mislead consumers about the environmental credentials of their products. After publishing our guidance, we would also carry out a compliance review, and would not hesitate to take enforcement action where appropriate.
- 1.28 It also remains the case that, should we find evidence of egregious non-compliance, we may consider enforcement action at an earlier stage.

Is guidance enough?

- 1.29 The CMA hopes that our guidance on compliance with consumer protection law when making environmental claims would assist in addressing these issues.
- 1.30 However, there are limits to what can be achieved under existing consumer protection law. For example, it does not always require businesses to include environmental information in marketing claims. Nor does it prescribe the provision of specific information that consumers may find helpful in making choices that are good for the environment. Its application also depends on the kinds of decisions consumers are likely to make because of what they are told. There may be a case for refining or streamlining some of the existing laws to reflect specific sustainability objectives.
- 1.31 We will therefore continue to engage with key government stakeholders, including the Department for the Environment, Food and Rural Affairs (Defra),

the Department for Business, Energy and Industrial Strategy (BEIS) and the devolved administrations, where we identify matters which are better addressed through wider policy initiatives or legislation.

2. Scope of the proposed guidance

- 2.1 The draft guidance is intended to apply to all businesses selling goods and services in all sectors of the economy. We recognise that this is very broad and that different considerations will arise in different sectors.
- 2.2 The draft guidance would apply to:
- businesses supplying products and services direct to consumers.
 - manufacturers and wholesalers to the extent that the claims they make about their products have a direct impact on consumers.
 - manufacturers and wholesalers to the extent that the claims they make mislead the businesses to whom they are supplying their products or services.
- 2.3 The draft guidance (and UK consumer protection law more generally) would be relevant to both:
- UK-based businesses; and
 - businesses based outside the UK in so far as they are conducting activities in the UK.
- 2.4 The draft guidance sets out a series of high-level principles to help businesses comply with consumer protection law. It also sets out in more detail what businesses should do to apply those principles. Where businesses apply the principles they would, in the CMA's view, be less likely to mislead consumers and to break the law.
- 2.5 The draft guidance focusses mainly on the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), particularly in relation to practices which are misleading by act or omission or contrary to the requirements of professional diligence. It also reflects requirements in the Business Protection from Misleading Marketing Regulations 2008, where we focus on the rules relating to provision of material information and comparative advertising.
- 2.6 Consumer protection law sets minimum standards that apply to various aspects of the commercial relationship between business and consumers. In some cases, it sits alongside other sector-specific legislation or regulatory obligations, for example, energy efficiency labelling rules for specific categories of products or licence conditions in regulated sectors.

- 2.7 Although this guidance is concerned with the application of consumer protection law, failing to comply with sector-specific legislation or regulatory obligations may be relevant to a finding that consumer protection law has been infringed, and vice versa. Depending on the sector, businesses may need to take additional steps to comply with consumer protection law or may need to do more to comply with sector-specific rules.
- 2.8 The draft guidance would not create new legal requirements. It would not be a substitute for the law itself, and would 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. Ultimately, a business is responsible for ensuring that it is complying with the law. Businesses should therefore seek their own independent legal advice on the interpretation and application of the law.

3. Questions for consideration

Scope

- 3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims? If not, what else should this guidance include and why?
- 3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships. Is it helpful to cover both?
- 3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately? If so, which sectors and why?

Principles for compliance

- 3.4 The guidance sets out six principles for business compliance with consumer protection law to avoid 'greenwashing'.
- 3.5 Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

Case studies

- 3.6 To help businesses engage with the principles, guidance and consumer protection law compliance more generally, we have included a range of case studies. Would further case studies be helpful? If so, please suggest topics for these case studies and, if possible, provide examples of when these issues would arise.

General and additional issues

- 3.7 Which, if any, aspects of the draft guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section of the draft guidance (and, where appropriate, the issue) each of your comments relate to.
- 3.8 Overall, is the draft guidance sufficiently clear and helpful for the intended audience?

3.9 Are there any other comments that you wish to make on the draft guidance?

4. Consultation process

- 4.1 We are publishing this consultation on the CMA's webpages and sending it to a range of interested parties to seek views on the questions set out in section 3 of this document.
- 4.2 If any stakeholders would find it helpful to meet with the CMA to discuss their consultation responses, the CMA would be happy to do so. However, due to time constraints, please only seek a meeting if you believe that this would bring additional benefits over a written response.

Duration

- 4.3 The consultation will run for a period of 8 weeks from 21 May 2021 to 16 July 2021. Responses should be submitted by email to misleadinggreenclaims@cma.gov.uk by no later than 5pm on 16 July 2021.
- 4.4 Please note that, at the time of publication of this consultation, due to the ongoing Covid-19 situation, we are not able to process any documents or correspondence sent by post or courier to any of our offices.

How to respond

- 4.5 Please respond to as many of the questions as you can and support your answers with any evidence or examples you may have.
- 4.6 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a business, group or organisation (including those representing consumer or business interests). If the latter, please make clear who you are representing and their role. The data use statement below sets out how the CMA may use information provided to it as part of this consultation.

Use of information provided to the CMA

- 4.7 This section sets out how the CMA may use the information provided to it during this consultation.
- 4.8 The information you provide will help to inform the CMA's final guidance on environmental claims.
- 4.9 We may wish to refer to comments received in response to this consultation in future publications. Where appropriate, we may also use the information you provide in the carrying out of the CMA's other functions, for example, in enforcement action using our consumer protection law enforcement powers or we

may share information with another regulator or public authority (such as local authority Trading Standards Services, sectoral regulators or the Advertising Standards Authority).

- 4.10 However, we may only publish or share information in specific and limited circumstances set out in legislation (principally, Part 9 of the Enterprise Act 2002). In particular, prior to any publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable:
- any information relating to the private affairs of an individual which might, in our opinion, significantly harm the individual's interests; or
 - any commercial information relating to a business which, if published or shared, might, in our opinion, significantly harm the legitimate business interests of that business.
- 4.11 If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 4.12 Any personal data you provide to us in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the Data Protection Act 2018.
- 4.13 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 4.14 Any personal data you provide to us will be handled in accordance with our obligations under the Data Protection Act 2018. For more information about how the CMA processes personal data, your rights in relation to that personal data (including how to complain), how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see the 'key information on data protection' section of our case page.
- 4.15 The CMA is also bound by the Freedom of Information Act 2000 (the FoIA). Under the FoIA, where a person makes a request in accordance with the requirements of the FoIA, the CMA may have to disclose whether it holds the information sought. The CMA may also be under a duty to disclose it, unless an exemption applies. If you consider that any information you provide may be exempt from such disclosure you should say so and explain why.
- 4.16 When replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

4.17 Further details of the CMA's approach can be found in the Transparency and Disclosure: Statement of the CMA's Policy and Approach (CMA6).

Compliance with the Cabinet Office Consultation Principles

4.18 This consultation is compliant with the latest Cabinet Office Consultation Principles. The Cabinet Office Consultation Principles criteria can be found at www.gov.uk/government/publications/consultation-principles-guidance.

After the consultation

4.19 We will collate responses to the consultation and publish an anonymised summary of the responses received that fall within the scope of the consultation together with a list of all respondents (save for individuals).

4.20 Subject to our assessment of the responses, we aim to publish the final version of the guidance on environmental claims by the end of September 2021. These documents will be available on our webpages at www.gov.uk/cma and respondents will be notified when they are available.

4.21 Please note that, while we are interested in hearing about consumers' experiences of environmental claims and greenwashing, we are unable to provide advice on individual complaints.