

CMA guidance on environmental claims on goods and services

CMA response to the consultation

© Crown copyright 2021

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Contents

	<i>Page</i>
1. Introduction	2
2. Response to consultation questions	7
3. List of respondents.....	28

1. Introduction

- 1.1 This document summarises the main comments made by stakeholders to the Competition and Markets Authority's (CMA) consultation on draft consumer law guidance on environmental claims on goods and services.¹
- 1.2 It also sets out the CMA's response to these comments and, where relevant, the corresponding changes it has made to the final guidance. The final version of the guidance is available on the CMA website.²
- 1.3 Alongside the guidance, the CMA is publishing a video for businesses and short guide, all of which you can find on our green claims code website.³

Background

Call for information

- 1.4 In November 2020, the CMA launched a project to gain a better understanding of issues relating to misleading environmental claims, also called 'greenwashing'.⁴
- 1.5 We asked consumers, businesses and stakeholders to tell us about their experiences. We were interested in what factors influence consumer purchasing decisions, and what might help consumers make more informed choices in future. We were also interested in how businesses ensure compliance with UK consumer protection law, and in what additional support could be provided to improve compliance.

Draft guidance

- 1.6 Having considered the responses to this call for information, the CMA decided to consult on new guidance for businesses. The intention was that the guidance would:
 - help businesses which were inadvertently getting things wrong to comply with consumer protection law; and

¹ www.gov.uk/cma-cases/misleading-environmental-claims

² <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims>

³ <https://greenclaims.campaign.gov.uk/>

⁴ www.gov.uk/cma-cases/misleading-environmental-claims

- give businesses the confidence to share information about products and services which were better for the environment.
- 1.7 By preventing misleading claims we hope to reduce the harm to consumers and competitors and increase trust in environmental claims. By giving environmentally conscious businesses greater support to make legitimate claims, we hope that consumers will be able to make better choices. This should, among other things, support the transition to a low carbon economy in line with UK and international targets and help fair-dealing businesses prosper.

Consultation on draft guidance

- 1.8 Between 21 May and 16 July 2021, we carried out a public consultation on the draft guidance. This was published on the CMA website, and subsequently publicised both to, and by, a range of stakeholders, including consumer groups, businesses, academics and third sector organisations.
- 1.9 Alongside the consultation, we also published a literature review, which examined the role of environmental claims and greenwashing in consumer decision-making.
- 1.10 During the consultation period we held two stakeholder roundtables in conjunction with the British Retail Consortium. These were attended by around 130 stakeholders representing small, medium and large businesses. Those businesses operate across a range of sectors including food and drink, household products, fashion, energy and agriculture. The roundtables were also attended by other interested stakeholders including representatives of UK and devolved government departments, economic regulators, charities and UK universities.
- 1.11 In addition to the roundtables, we also had bilateral meetings with a range of trade associations, businesses and third sector organisations.
- 1.12 We received 95 formal written responses to the public consultation. Respondents who agreed to be named are listed in the Appendix. We would like to thank all respondents for their constructive engagement in this consultation.

Actions following consultation

- 1.13 We have carefully considered all the responses to our consultation. We are publishing the responses alongside this consultation response, except where respondents have requested that these remain confidential.

- 1.14 We have carefully considered all the responses, but we do not in this document address every point made in them. Instead, we focus on what appear to us to be the main themes which emerged during the consultation, and a summary of these is set out in section 2. We also explain whether, and if so how, we have amended the guidance to reflect any of the comments received.
- 1.15 We are now publishing our final guidance. We may, of course, review the guidance from time to time, to ensure that it remains current and relevant to businesses.

Next steps

Compliance campaign

- 1.16 The main purpose of the guidance is to help businesses understand and comply with their existing obligations under consumer law.
- 1.17 We recognise that it may take some time for businesses to familiarise themselves with the guidance. Some businesses will have to make changes in order to comply with the law, for example, by redesigning packaging or marketing campaigns.
- 1.18 With this in mind, until the end of 2021, we will be running a compliance campaign, to ensure that businesses within the scope of the guidance are aware of its contents.
- 1.19 This compliance campaign will include ongoing engagement with businesses producing and selling goods and services, relevant trade associations, advertising and public relations agencies, and others.
- 1.20 To help stakeholders understand our key principles, we are creating a new 'Green Claims Code' website,⁵ featuring a short video and short guide to the principles, to help businesses quickly and easily consider what changes they might need to make to their marketing materials, practices and packaging.

⁵ <https://greenclaims.campaign.gov.uk/>

Compliance review and enforcement

- 1.21 We will be carrying out a compliance review, commencing in early 2022, to assess compliance with consumer protection law in relation to making environmental claims.
- 1.22 As part of the review, we will analyse information from a range of sources, including from stakeholders such as consumers, businesses and third sector organisations, as well as reviewing businesses' websites, products and marketing materials.
- 1.23 Should infringements be identified, the CMA or another consumer enforcement body⁶ may decide to take action, including before the compliance review has concluded. This does not mean that enforcement action must, or will, be taken in every case and decisions will be subject to the CMA's prioritisation principles.
- 1.24 We will also be continuing to work on greenwashing issues over the coming months. Where there is evidence of breaches of consumer protection law we may take appropriate action, even before beginning our formal compliance review.
- 1.25 The Advertising Standards Authority (ASA) continues to play a leading role in ensuring that advertising complies with consumer protection law. Trading Standards Services and sectoral regulators also have a key role to play in taking appropriate enforcement action. We will continue to work closely with those enforcement partners to ensure a joined-up approach to tackling greenwashing.

Ongoing engagement with government, regulators and international partners

- 1.26 Throughout the course of our work on environmental claims, we have been working closely with the Department for Environment, Food and Rural Affairs (Defra), the Department for Business, Energy and Industrial Strategy (BEIS), the devolved administrations and sectoral regulators.
- 1.27 As our work on environmental claims proceeds, we will continue to engage with government and sectoral regulators to ensure that businesses are not

⁶ This includes Trading Standards Services, the Financial Conduct Authority (FCA), the Civil Aviation Authority, the Utilities Regulator for Northern Ireland, the Office of Communications (Ofcom), the Department for the Economy in Northern Ireland, the Water Services Regulation Authority (Ofwat), the Gas and Electricity Markets Authority (Ofgem), the Information Commissioner, the Office of Road and Rail (ORR) and Which?

subject to inconsistent obligations, and that consumers receive the information they need to make informed decisions.

- 1.28 In particular, we will share with the relevant government departments the feedback we have received on matters where further regulation may be helpful.
- 1.29 Among other things, this will include working closely with CMA colleagues in responding to the recent request for advice from the Secretary of State for Business, Energy and Industrial Strategy. That request is about how current competition and legal frameworks impact on the delivery of the UK's Net Zero and sustainability goals, whether any changes to those frameworks would help and how the UK can better use the powers available under competition and consumer protection laws to achieve those goals.⁷
- 1.30 In addition, we will continue to engage on sector-specific issues, including, for example, working with BEIS on the recently launched call for evidence on the greenwashing of energy tariffs.⁸
- 1.31 Misleading environmental claims are a global issue. The CMA will also therefore continue to work with our partners in the International Consumer Protection and Enforcement Network (ICPEN) to contribute to the development of a consistent approach to green claims and greenwashing around the world. In addition, we are engaging with the Organisation for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) to capitalise on the work that is going on around the world to protect consumers from misleading environmental claims.

⁷ The letter from the Secretary of State can be found on www.gov.uk: [Reforming competition and consumer policy](#).

⁸ Further information about the call for evidence can be found on www.gov.uk: [Designing a framework for transparency of carbon content in energy products: call for evidence](#).

2. Response to consultation questions

- 2.1 The CMA's consultation on its draft guidance on environmental claims on goods and services invited responses to the questions shown in bold below.
- 2.2 We have carefully considered all the responses received and the representations made to the CMA as part of the consultation.
- 2.3 The CMA's response to the main issues highlighted is included after each question.
- 2.4 It is also worth noting that a number of consultation responses included points relevant to several of the questions asked. To avoid undue repetition, we have not repeated every point under every question. Instead, we have described the point under the question to which we think it most closely relates. This is in addition to considering it more generally for all aspects of the guidance.

Questions on scope

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?⁹

- 2.5 Most respondents agreed that the guidance covers all the important consumer law issues relating to the making of environmental claims.
- 2.6 Some respondents asked for alignment with other guidance - for example, Defra's guidance on making an environmental claim for your product, the ASA's Advertising Codes and the Waste and Resources Action Programme's (WRAP) guidance on compostable plastic and polymer choices. Many respondents also indicated that it would be helpful to have a single set of guidance.
- 2.7 Some respondents in different sectors asked us to refer to, or align our guidance with, various international standards and/or sector specific rules and regulations.
- 2.8 A small number of respondents asked the CMA to define commonly used terms like 'sustainability,' 'recyclability,' 'eco-friendly,' and 'biodegradable'. Several respondents supported the idea of having a list of 'banned' claims.

⁹ Consultation document, paragraph 3.1.

CMA response

- 2.9 The CMA is working closely with the ASA and other organisations to ensure consistency between our guidance and their published documents. We are pleased to note that the ASA considers that our document and theirs work together. Defra are removing sections of their guidance that duplicate content in the CMA guidance and are replacing with a reference and link to our document.
- 2.10 We do not make detailed comments on sector-specific legislation, nor amendments to the guidance to cover it. General consumer protection law applies to businesses across sectors (in addition to sector- and product-specific regulation which applies in different ways in different areas). As a result, our view is that guidance on the general principles of consumer protection law is most useful to more businesses.
- 2.11 The guidance is therefore intended to help businesses comply with their obligations under general consumer protection law in relation to green claims. It is not intended to go into detail on sector- or product-specific regulations. It is not a one stop-shop for businesses in specific sectors on how to comply with all their legal obligations. Given the breadth of those obligations and the various purposes for which they exist, as well as the role of specialist regulators and guidance, we do not consider that to be a feasible exercise for the CMA.
- 2.12 Nonetheless, the CMA recognises the importance of other standards and regulations. International and British standards and regulations may indeed be helpful in specific cases to determine what does, or does not, amount to misleading environmental claims. When investigating businesses subject to sector-specific regulation, or who are signatories to UK or international standards, we will consider carefully the interaction between generally applicable consumer law and these other rules and standards.
- 2.13 The CMA sees the value of having a common set of definitions for terms commonly used in environmental claims. We note that the Green Taxonomy Advisory Group is currently working on such a taxonomy for financial products. We do not currently have the power under consumer protection law to establish common definitions. Nor do we have the power to ban specific claims outright. We will draw the views regarding common definitions to the attention of government and sector regulators, where appropriate.

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?¹⁰

- 2.14 The majority of respondents agreed that covering both business-to-consumer and business-to-business relationships would be beneficial. One of the main reasons cited was that many businesses do not have a direct relationship with consumers and may not understand where they have obligations they must meet.
- 2.15 Some stakeholders said it is important that the guidance considers transparency and consistency across the supply chains for products and services.
- 2.16 Stakeholders also highlighted that depending on the type and size of business, many will lack the time, resources, knowledge, and skills to understand or verify some misleading environmental claims (for example, those made by manufacturers and wholesalers on products sold by retailers). It is for this reason, respondents said, that smaller businesses, like consumers, are at risk of falling victim to false environmental claims and can be exploited in a similar way. Larger businesses selling greater numbers of products also said they were not in a position to verify claims made about all those products by parties further up the supply chain.
- 2.17 Some stakeholders asked for clarification of where the responsibility for claims lies in a case where there are several businesses involved in the development, production and delivery of a product or service.

CMA response

- 2.18 We have amended paragraphs 2.17 to 2.27 of the guidance (where we explain who it is for) to describe in more detail the responsibilities which manufacturers, retailers and other businesses in the supply chain have for environmental claims. However, as is reflected there, our view of the law is that all manufacturers, wholesalers and retailers may be liable for misleading green claims, depending on the individual facts of the case.
- 2.19 We have also set out our hope that businesses will treat other businesses, and particularly small businesses, fairly.

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

¹⁰ Consultation document, paragraph 3.2.

there any sectors which require special treatment either in the draft guidance or separately? If so, which sectors and why?¹¹

- 2.20 Some stakeholders felt that specific guidance was needed in the motoring and aviation sectors. They said the lack of technological progress in the aviation sector in reducing emissions, combined with the fact that consumers are unlikely to have a good understanding of the complexity of issues, may make consumers particularly vulnerable to greenwashing.
- 2.21 Some stakeholders also asked for extra guidance in the energy sector. The consensus among respondents was that further guidance is needed in this sector because energy generators do not usually have a direct relationship with consumers and there is a lot of confusion around terms like ‘green energy’ and ‘green tariffs’ which need defining.
- 2.22 Stakeholders in their responses also stated that packaging needed particular attention as it is where most businesses make their green claims. It is also the area that consumers are most aware of green claims.
- 2.23 Some stakeholders stated that where sectors are subject to specific guidance, this should be taken into consideration. Others stated that the guidance should apply equally to all sectors, and that there is no sector that requires specific attention.

CMA response

- 2.24 We have carefully considered the suggestions made by the stakeholders on the sectors that require specific coverage in the guidance or separately.
- 2.25 After careful consideration, the CMA has concluded, for the reasons in paragraphs 2.10 and 2.11 above, that the scope of the guidance, covering all sectors and setting out principles based on broadly applicable consumer protection law to which businesses generally are subject, is appropriate.
- 2.26 We will not be including more detailed sector-specific aspects to this guidance. As well as being unlikely to be feasible, for the reasons in paragraph 2.11 above, we note that doing so would also risk distorting the focus of the general principles with which, in the CMA’s view, all businesses should comply.
- 2.27 Instead, we consider that sector-specific issues may be better dealt with in specialist organisations, such as sectoral regulators, or by government, where

¹¹ Consultation document, paragraph 3.3.

legislative reform is appropriate. We note that the Civil Aviation Authority is already carrying out work on information on the environmental impact of aviation.¹²

- 2.28 If it becomes necessary to revisit our guidance, to make it consistent with any developments in specialist guidance, we will do so. We would also collaborate with these specialist organisations, where appropriate, to assist in ensuring that the general and sector-specific guidance is aligned.
- 2.29 We recognise that issues surrounding misleading environmental claims are ongoing and the CMA is therefore happy to engage with experts in any given sector with initiatives on which they would like the CMA's input.
- 2.30 Additionally, and as noted elsewhere, we will continue to work with sectoral regulators, where appropriate, to deal with any sector-specific consumer protection issues.

Questions on principles for compliance

The guidance sets out six principles for business compliance with consumer protection law to avoid 'greenwashing'. Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law?¹³

General responses

- 2.31 We received only a small number of general overarching comments on the principles. The majority of comments were on specific principles and these comments are summarised in the following sections.
- 2.32 The majority of respondents supported the six principles. Only a small number of respondents proposed additional principles, though most were too detailed or sector-specific for inclusion in generally applicable cross-sector guidance.
- 2.33 A few respondents highlighted the importance of keeping up to date with changing legal requirements. For example, possible future changes in recycling information requirements.

¹² <https://www.caa.co.uk/Consumers/Environment/Information-on-the-environmental-impact-of-aviation/>

¹³ Consultation document, paragraphs 3.4–3.5.

- 2.34 A number of respondents suggested that more positive examples should be included in the document and that some examples should indicate how a claim could be amended to make it more likely to comply with the law.
- 2.35 The responses also included questions about the status of the CMA's proposed principles. It was noted that some referred to what businesses 'must' do and others to what they 'should' do.

CMA response

- 2.36 The CMA is pleased that the majority of respondents found the principles helpful. We are grateful for the detailed responses which we received in relation to the principles and, in particular, the examples demonstrating application of the principles.
- 2.37 We are, of course, conscious of the need to update the guidance from time to time. We will continue to review it in future and, when appropriate, amend it to ensure it remains up to date. If any changes are substantial, and doing so is appropriate, the CMA would consult on these amendments prior to making them.
- 2.38 We have carefully considered all of our examples. Where possible, we have included positive examples of where businesses are more likely to comply with consumer protection legislation in making environmental claims.
- 2.39 We have also reflected on the status of the principles. That has not changed. They describe what, in the CMA's view, businesses need to do to make their green claims less likely to be misleading and less likely to break the law. To remove any room for doubt, we have amended the wording of the principles to make clear that they describe what we think businesses 'must' do to put themselves in that position.

Claims must be truthful and accurate

- 2.40 Most respondents were supportive of this principle.
- 2.41 One respondent said that the guidance is at times unclear and contradictory in the way it describes businesses' abilities to make claims about specific aspects of their environmental impact. The respondent cited sections of Principle A which refer to specific claims that businesses might make, and sections of Principles C and E which say that businesses should not 'cherry pick' or ignore negative impacts.

- 2.42 One response pointed out that not being able to make claims about particular steps a business is taking to improve its environmental impact would remove the incentive for businesses to make positive changes.
- 2.43 Some respondents had concerns regarding the way Example 1 was worded. The example described the plastic inner of a bamboo container as non-recyclable. Several respondents pointed out that bamboo itself is not recyclable and that the plastic inner may well be made of recyclable material.
- 2.44 Several respondents highlighted the specific legislative requirements for the use of the term 'organic' on food, and the lack of such requirements in other sectors.
- 2.45 Further guidance on the use of symbols, trust or quality marks was requested. In particular, as to the criteria that would make these less likely to mislead, and the steps businesses should take prior to joining an accreditation scheme.

CMA response

- 2.46 We acknowledge that there are difficult judgements for businesses to make. When making any claim there is the potential to mislead consumers. Specific claims need to be carefully considered to ensure they do not create a misleading impression about the wider environmental impact of a business, brand or product.
- 2.47 Businesses can make claims about the work they are doing to improve their environmental impact. However, it is important that these are not overstated or presented in a misleading way. In our view, Principles A and C balance these considerations and are consistent with one another.
- 2.48 We have amended Example 1 to clarify the recyclability of the different materials used in the packaging. An explanation of what would make the claim less likely to mislead has been added.
- 2.49 The guidance has been updated to include reference to the requirements for the use of the term 'organic' for food. It also reflects that generally accepted meanings for terms affect the way consumers interpret claims about other products. If a claim states that a (non-food) product is organic, then it should be made overwhelmingly of organic materials. To illustrate this, Example 2 now focusses on a claim relating to jeans, rather than the previous organic food claim. We have also included a further explanation of how specific standards on organic food may affect consumer understanding of the word in other contexts.

- 2.50 Additional points have been added to the guidance to set out the type of factors that make references to a certification scheme or the use of a logo less likely to mislead.
- 2.51 Other changes have been made within the text and examples to clarify specific points made in the consultation responses. For example, clarifying that micro beads are banned from rinse-off toiletries.

Claims must be clear and unambiguous

- 2.52 There was broad support for greater clarity when making green claims, particularly regarding the use by businesses of vague terms.
- 2.53 One respondent suggested that vague and ambiguous claims - for example, those using words such as 'sustainable', 'ethical', or 'ecofriendly', and claims which solely address compliance with legal requirements (unless an administrative/conformity marking is required) - should be prohibited.
- 2.54 A number of respondents also suggested that the guidance should include definitions of common terms, such as 'biodegradable', 'compostable' and 'plastic-free' and that it should include a list of relevant standards.

CMA response

- 2.55 Vague and ambiguous claims, and those that simply reflect legal requirements, and which mislead consumers are already prohibited by consumer protection law. The final guidance reflects that.
- 2.56 With regard to defining particular terms and including a glossary of these in the guidance, as we note in the 'scope' section above the CMA sees the value of having a common set of definitions for terms commonly used in environmental claims. We note that the Green Taxonomy Advisory Group is currently working on such a taxonomy for financial products. We do not currently have the power under consumer protection law to establish common definitions ourselves. Nor do we have the power to ban specific claims outright.
- 2.57 In addition, while we will have regard to relevant standards and traders' compliance with these when assessing compliance with consumer protection law, we do not consider that this guidance is the appropriate place to set out a list of such standards. We describe in paragraphs 2.10 and 2.11 above the role and purpose of our guidance as advice to help businesses generally to comply with the obligations in consumer protection law that apply across

sectors. We also explain there the reasons why we do not consider a focus on additional sector- and product-specific requirements to be appropriate.

Claims must not omit or hide important relevant information

- 2.58 Several respondents suggested that it would be useful to include more sector-specific examples in the guidance, to help illustrate how the guidance will apply in particular sectors.
- 2.59 There were also many calls for the guidance to refer to relevant ISO standards that could be applied in specific sectors.
- 2.60 A few respondents had concerns about the way that Example 7 (describing an organic soup in a non-recyclable carton) was worded. In their view, it could be potentially unhelpful and confusing to businesses and consumers.
- 2.61 In a similar vein, several respondents were also concerned about the way that we were describing 'net zero' and 'carbon neutral' targets in the draft guidance, suggesting that we change our references or revise the relevant paragraphs of the guidance.
- 2.62 A few respondents also requested that we give more examples of what we mean by 'cherry-picking' by businesses. That is, for example, making claims about some aspects of a product's or service's environmental impact but leaving out other, potentially important aspects.

CMA response

- 2.63 We appreciate that it could be helpful to businesses if the guidance were to include a comprehensive set of examples and case studies to cover most sectors. However, as explained above, we consider generally applicable guidance more helpful to more businesses and we are not in a position to include information to cover all relevant rules and regulations across the whole breadth of the UK economy. For those reasons, we have focused on examples based on scenarios that are more likely to have read across into other sectors.
- 2.64 We may consider including (or sharing) more case studies and examples as our understanding of particular sectors increases. For example, through any insights we obtain in investigations or enforcement cases that we undertake in those sectors. We intend the guidance to remain relevant and up to date, so will be looking to ensure that the case studies and examples are refreshed and expanded over the coming years.

- 2.65 We also note that we want the guidance to reflect the law accurately at all times and not to be unnecessarily specific and to risk becoming outdated too quickly. That is another reason for focussing on general principles of broadly applicable consumer protection law rather than specific sectoral standards. Accordingly, we do not include references to sector-specific requirements and standards, such as ISO standards. However, we are happy to explore with industry sectors whether we could usefully signpost businesses to other sources of advice maintained by those with expertise in, or responsibility for, a particular sector.
- 2.66 We have redrafted Example 7 to make it clearer that the misleading element in the scenario is the overall generic claim being made for the product; the claim could easily be understood to refer to the packaging as well as the contents. Similarly, we have also revised how we refer to 'net zero' and 'carbon neutrality' in the guidance, to emphasise that businesses using these terms need to be clear in their messaging to consumers.
- 2.67 We have also included an additional example in the text to try to illustrate more clearly what we mean by businesses 'cherry-picking' information about only certain aspects of a product's or service's environmental impact.

Comparisons must be fair and meaningful

- 2.68 This was another principle about which a number of respondents suggested that some of the examples we used should also indicate how a claim could be amended to make it more likely to comply with the law. Some respondents also recommended more detailed requirements for comparative claims.
- 2.69 One respondent made detailed comments on Example 8 in the guidance. They said that, in describing the claim about '50% less plastic' used in the example, no account was taken of the environmental impact of the product across its life cycle. They noted that the reduction in plastic may have been achieved through substituting a material which has a poorer environmental impact and that the example took no account of whether the useful life of the product had been reduced in any way.
- 2.70 A number of respondents stressed the importance of comparisons being up to date and relevant. Some suggested that the guidance should prescribe how regularly companies will be expected to review comparisons to ensure that they are accurate, relevant and up to date.
- 2.71 One respondent suggested the need to clarify further, by way of an example, the point that comparative claims should not imply that one product is 'greener' than another, if it is not. It was suggested that the example of a

product claiming that it did not contain a particular feature or component was used. The respondent put forward that such a claim would be misleading if it did not explain that the absence of the feature/component was common in the market or if the claim implied that competing products containing the feature/component were inferior or harmful in some way.

- 2.72 A couple of respondents suggested that more clarification was needed on what is meant by 'comparable' products which meet the same needs or are intended for the same purpose. Further clarification was also requested on how far companies would be expected to measure the various environmental impacts of a product.

CMA response

- 2.73 In response to calls for some examples to indicate how a claim could be amended to make it more likely to comply with the law, we have added such an indication to Example 8. We have also amended this example to reflect the life cycle of the relevant product and how this is liable to affect the accuracy of a claim. As highlighted, the six principles work together and in some places overlap. Businesses should take all of them into account. Environmental claims are less likely to mislead consumers where businesses follow all the principles that apply.
- 2.74 In response to calls for comparative information to be up to date and relevant, we have added a new paragraph to reiterate the requirement. We have also included a recommendation that businesses consider the appropriate period of time for which claims can properly be made.
- 2.75 We considered the responses received which touched on more sector specific or detailed examples to illustrate the principle further. For the reasons set out elsewhere (see paragraphs 2.10 and 2.11 in particular), we have concluded that it was appropriate to keep the explanation of the principle at a more general level to capture a wide range of circumstances.
- 2.76 In response to suggestions that more detail is needed on the meaning of comparable products which meet the same needs or be intended for the same purpose, we have added in a further explanation that products should have a sufficient degree of interchangeability. In addition, we have added the definition of 'comparative advertising' from the Business Protection from Misleading Marketing Regulations 2008, which is relevant to the question of comparable products, to the Appendix. We have also clarified what we mean by using the 'same measures' for comparison.

Claims must consider the full life cycle of the product or service

- 2.77 Many respondents said that they felt the requirement to consider the full life cycle of a product or service conflicted with references elsewhere in the guidance to being able to focus on only certain aspects of that product's or service's environmental impact. They asked for a clearer explanation and/or more examples to illustrate where and when a full life cycle analysis was likely to be necessary.
- 2.78 One respondent was particularly concerned that the requirement to carry out a full life cycle analysis on every product went beyond what the law currently requires, and also potentially conflicted with the Code of Non-broadcast Advertising and Promotional Marketing (CAP Code) and Code of Broadcast Advertising (BCAP Code), both administered by the ASA.
- 2.79 A few respondents mentioned other issues and references that could usefully be included in the guidance. For example, including transportation in the list of aspects of a supply chain, and that any life cycle analysis used to evidence a claim should be up to date.

CMA response

- 2.80 In response to the concerns about lack of clarity on when and where businesses need to take account of a product's or service's full life cycle when making claims, we have added a more detailed explanation as to what we consider is required under this principle.
- 2.81 We have tried to make it clear that businesses should always be aware of the full life cycle of a product or service, and the impact on the environment that individual aspects of that product or service might have.
- 2.82 The CMA is not suggesting that information about a product's or service's whole life cycle must be included in every environmental claim, nor that businesses are necessarily precluded from making claims that focus on one aspect of their environmental impact. However, businesses will need to think about the whole life cycle in order to determine whether (i) what they say about their green credentials and impacts is misleading; or (ii) they are omitting information about harmful environmental impacts which undermine the claim they wish to make.
- 2.83 Additionally, in our view, over time businesses are likely to need to include in their claims more information concerning the life cycle of products and services. Consumers are likely to become increasingly engaged and demanding in terms of the information about environmental impacts they would expect to see to enable them to make informed decisions. In this

regard, businesses should view our guidance as forward-looking. One of its aims is to encourage businesses to start thinking about this issue to ensure that they do not breach consumer protection law in the future.

- 2.84 We note that both the CAP and BCAP codes state that 'Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle'.¹⁴ Our guidance is in line with this requirement and does not impose different or conflicting obligations upon businesses. We have been, and continue to be, in close communication with the ASA throughout the production of this guidance to ensure that such inconsistencies or conflicts do not arise.
- 2.85 We have also made further amendments to the draft guidance to reflect the points made about transportation and that life cycle analyses need to be up to date.

Claims must be substantiated

- 2.86 Overall, there was strong support for the requirement that claims should be substantiated.
- 2.87 Comments were primarily focused on the quality of the evidence required to substantiate a claim adequately, including that it must be up to date and independently verified, and that where claims cannot be substantiated then they should not be made.
- 2.88 It was also suggested that evidence used to support a claim should reflect what might be expected in normal or real world conditions rather than in laboratory conditions that are unlikely to be replicated in practice.

CMA response

- 2.89 We consider that these points are already covered in the draft guidance. In particular, paragraphs 3.125 and 3.130 explain that a business should hold robust, credible and up-to-date evidence to support the claims they make.
- 2.90 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. Keeping evidence up to date is likely to be particularly important where claims are maintained for longer periods or in

¹⁴ ASA, BCAP Code, Rule 9.5; CAP Code, Rule 11.4.

areas where scientific understanding or consumers' expectations are developing quickly. The guidance makes those points clear.

- 2.91 With regard to the evidence being used to substantiate a claim reflecting results that are generally or practically achievable – that is to say that the results are ones that are normally achievable in 'real world' conditions - we agree with the submissions made to us. In particular, if a claim is based on evidence relating to conditions that are unlikely to be replicated in the normal day-to-day use of a product or the provision of a service, or only replicated in very specific circumstances, then it could be misleading. We have amended Principle F to make this explicit.

Questions on case studies

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.¹⁵

- 2.92 A wide range of comments were received in relation to the case studies and the examples included throughout the document. A number of respondents welcomed the inclusion of the examples and case studies, with one stating 'the case studies are very helpful and illustrate the issues well'.
- 2.93 Some suggested that visual presentations such as product mock-ups may be useful.
- 2.94 A list of suggestions regarding sectors, product and claim types was submitted. These included the suggestion that examples should be based on real life cases.
- 2.95 One respondent commented that the case studies and examples do not refer to all the misleading aspects of the relevant environmental claims. They contended that this could lead to the impression that any misleading practices not referred to are acceptable.

CMA response

- 2.96 Although visual representations will form part of the CMA's related compliance campaign for illustrative purposes, they are not included within the guidance

¹⁵ Consultation document, paragraph 3.6.

document. We are not designing advertising or marketing claims nor endorsing particular forms of claim.

- 2.97 Where appropriate, we have used points made in the responses to update the examples and case studies in the guidance. Some suggestions related to points we had already made within the guidance, so these have been amended to ensure they are clear.
- 2.98 The broadly applicable, principle-based nature of the guidance means that it has not been possible to incorporate every point made in the responses. We have sought, as much as possible, to base our examples and case studies on real cases and examples. However, we have sometimes adapted the scenarios, in order to make these as useful, to as wide a range of businesses, as possible.
- 2.99 Some responses and suggested amendments were highly sector or product-specific and some were technical. We note again that the guidance is not designed to act as an exhaustive guide for specific businesses, but as guidance on generally applicable laws and principles. It cannot be assumed that practices not specifically mentioned in the guidance do not mislead.

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.¹⁶

- 2.100 The majority of respondents who made comments under this heading focused on the six principles set out in the guidance (and their application through the examples and case studies). Those comments have been summarised and addressed in paragraphs 2.31 - 2.91 above.
- 2.101 A number of respondents made points or sought clarification on issues which are relevant to the guidance as a whole, or which they said had not been addressed in the guidance.

Retailers' responsibilities

- 2.102 A number of retailers, particularly in the supermarket sector, raised a concern about the extent to which they could be held liable for a misleading environmental claim when selling a product manufactured by someone else and bearing a claim made by that other party.

¹⁶ Consultation document, paragraph 3.7.

2.103 This concern was for two reasons:

- Large retailers may carry tens of thousands of products and there are practical difficulties in checking that the claims made on every single product are factually correct.
- Some manufacturers/brands are unwilling to share information that could substantiate claims, usually because it contains commercially sensitive information about products where the retailers may also be competitors to the manufacturers/brands.

2.104 Some respondents suggested that they should be able to take at face value the statements made by large, global manufactures, focusing their attention on less well-known, smaller, local brands. Some suggested that retailers should be treated similarly to marketplaces in this regard.

CMA response

2.105 The guidance does not create new obligations for retailers (or other parties), nor can it remove or change the obligations which are already contained in consumer protection legislation. The submissions made by retailers described above do not reflect the CMA's view of the existing law and the obligations it places on retailers.

2.106 Our view is that the retailer – as a seller of products to the consumer – has a responsibility to ensure that the consumer is not misled. Where the retailer effectively repeats claims made by a manufacturer or wholesaler in order to promote its sale of a product to consumers, it too has obligations in relation to those claims. This is akin to the obligations on a retailer to deal directly with a consumer to whom it has sold faulty goods, even where the source of the fault is the manufacturer.

2.107 We also note that, under normal circumstances, retailers are in a much better position than consumers to demand information about, and assess the veracity of, environmental claims made by others further up the supply chain. If they wish to benefit from those claims to promote what they are selling, they should verify them or they risk liability in respect of them.

2.108 Retailers are also different from marketplaces, which typically offer a platform through which retailers can sell to consumers, without the marketplace always being involved directly in the sales process. It is not the case, however, that marketplaces will never bear the responsibility for misleading the consumer. Liability can arise where the marketplace:

- does not have adequate systems in place to detect and prevent the sale of non-compliant products on its site, or
- promotes itself specifically as a marketplace for environmentally friendly goods or services, which the average consumer would assume implied a degree of vetting or curation of the goods or service for sale on the platform.

2.109 Although the CMA's position on retailers has not changed as a result of the consultation, we have expanded the explanation of retailer and marketplace liability in the introduction to the guidance. We have also explained some of the factors which we will consider when deciding which party or parties (manufacturer, wholesaler, retailer) would be the appropriate subject of any enforcement action.

Enforcement roles and responsibilities

2.110 In the draft guidance, the CMA indicated that, in the event it identified a misleading environmental claim in print or broadcast advertising, it could pass a complaint to the ASA. Several respondents indicated that they would appreciate further clarity over the division in responsibility between the CMA and the ASA.

2.111 A number of other respondents also sought clarification on the role of sector regulators.

CMA response

2.112 The CMA shares its consumer protection enforcement powers with a number of sectoral regulators (for example, Ofgem and the Financial Conduct Authority) and with local Trading Standards Services. The ASA is also an established means of enforcing the principles of consumer protection law.

2.113 While we share consumer protection responsibilities with these other bodies, there is not necessarily a clear, statutory delineation of those responsibilities. It is often the case that more than one authority could take action to investigate a potential breach of consumer protection law. For example, an energy company which is suspected of making misleading environmental claims could face action by Ofgem or Trading Standards Services in the area where the business has its headquarters, or by the CMA. If the misleading claim is made in an advertisement, it could also face action by the ASA.

2.114 The CMA therefore works closely with concurrent enforcers and with the ASA. We meet with them regularly to discuss common priorities. We have

conversations with the appropriate bodies if we are considering taking action that they would also have power to take.

- 2.115 In order to assist businesses which may be unfamiliar with the UK's consumer landscape, we have now included an additional explanation in Section 1 of the guidance.

Business-to-business marketing

- 2.116 All respondents who commented on the issue supported the idea that the guidance should cover business-to-business marketing. They emphasised the importance of this, particularly from the perspective of small businesses. Small businesses may be less able to assess the validity of environmental claims. They are likely to have less market power to challenge wholesalers or manufacturers, particularly where they are dependent on those suppliers for materials or stock.
- 2.117 Some responses indicated that it would be helpful to clarify in the guidance the relationship between business-to-business and business-to-consumer marketing.

CMA response

- 2.118 The CMA is pleased that respondents recognise the importance of business-to-business marketing in relation to green claims.
- 2.119 Businesses which want to reduce or minimise their environmental impact make purchasing decisions based on that information. If businesses are misled about the environmental credentials of a product or service that they are purchasing, this can lead to harm to the business and to consumers.
- 2.120 For example, there may be reputational damage if a business is using or selling a product which it has been led to believe is more environmentally friendly than it is. Consumers may also pay higher prices, because a business has chosen to buy a more expensive product on the basis of its purported environmental credentials.
- 2.121 The law in relation to business-to-business marketing is different in some respects to that for business-to-consumer transactions. Throughout the guidance, we have identified the areas where there are specific requirements in relation to the business-to-business marketing of environmental claims.
- 2.122 We would urge businesses to treat other businesses, and in particular, small businesses, fairly. We believe that businesses should not differentiate between businesses and consumers, for example, in relation to the

misleading omission of information. We have included some additional text in paragraph 2.26 to make this clear.

Overall, is the draft guidance sufficiently clear and helpful for the intended audience?¹⁷

2.123 The vast majority of respondents felt that the guidance was clear and helpful for the intended audience.

2.124 A small number of respondents felt that the guidance was too long and detailed.

CMA response

2.125 We are pleased that most respondents found the guidance clear and helpful. We are conscious that the guidance applies to a range of businesses, from very large ones with well-resourced compliance teams to micro-businesses which may have a limited understanding of consumer protection law.

2.126 As noted in paragraph 1.3, as well as publishing the final guidance, we have also published a video and a short reference guide.¹⁸ We hope all these will mean that every business can easily understand the requirements of the law and what they must do in order to be less likely to break it.

2.127 In the coming months, we will be speaking to businesses of all different types, at every available opportunity. We would particularly encourage trade associations, local enterprise partnerships, Chambers of Commerce, conference organisers and others to get in touch with us, if they think they would be interested in the CMA coming to talk to them, their members or the wider business community about complying with consumer law on environmental claims.

Are there any other comments that you wish to make on the draft guidance?¹⁹

Innovation

2.128 A number of respondents raised concerns that, if businesses were (or felt) unable to make environmental claims, the incentive for innovating in this area

¹⁷ Consultation document, paragraph 3.8.

¹⁸ <https://greenclaims.campaign.gov.uk/>

¹⁹ Consultation document, paragraph 3.9.

would be diminished. Others noted that, in some cases, changes to improve environmental impacts will be incremental.

CMA response

- 2.129 The CMA recognises the concerns regarding innovation. Indeed, in almost every sector we examine, there are concerns that intervention will lead to a reduction in innovation.
- 2.130 Nothing in this guidance prevents businesses from innovating, both in the development of their products and in how they share information about their environmental impact.
- 2.131 One of our aims in writing this guidance is to give businesses the confidence to tell consumers about the changes they are making.
- 2.132 However, our other aims are to ensure that consumers are not harmed, and that there is a level playing field for businesses. It remains the case that, when communicating any innovations in their products and services, businesses must take care not to mislead consumers.

Northern Ireland

- 2.133 A small number of respondents noted that the guidance should provide advice on the requirements of both UK and EU consumer protection law, to ensure that it is relevant to Northern Ireland businesses.

CMA response

- 2.134 The CMA's intention is that this guidance should apply to businesses across the UK, and to businesses selling to customers in the UK.
- 2.135 At present, UK and EU consumer protection law as it applies to misleading environment claims remains aligned. In the event that this changes, we will review the guidance to ensure that it remains relevant and useful to businesses in Northern Ireland.

Consumer education

- 2.136 Several stakeholders highlighted a lack of public understanding of key terms, such as: 'Net Zero', 'carbon-neutral', 'sustainable', 'carbon footprint' and 'zero waste'. This lack of understanding can also make it difficult for businesses to communicate messages to consumers.

CMA response

- 2.137 The CMA plans to issue some consumer tips on avoiding greenwashing later in the autumn. However, it is clear that wider consumer education is required to ensure not only that consumers understand greenwashing, but also that they understand key terms relating to the environment, climate change, and the race for net zero.
- 2.138 The CMA will continue to work with our partners in the Consumer Protection Partnership to consider how we can best contribute to the effort to improve consumer understanding of these issues.

A note on the energy case study

- 2.139 Case study 3 focuses on the sale and supply of electricity. The CMA worked with Ofgem to develop this case study. The CMA also engaged with BEIS in advance of its recently launched call for information on transparency of carbon content in energy products.²⁰
- 2.140 For the time being, the rules regarding the marketing of energy products remain the same. If the BEIS call for evidence eventually results in changes to these rules, the CMA may update the case study or remove it from the guidance, as appropriate.

²⁰ Further information about the call for evidence can be found on [www.gov.uk: Designing a framework for transparency of carbon content in energy products: call for evidence](https://www.gov.uk/guidance/designing-a-framework-for-transparency-of-carbon-content-in-energy-products-call-for-evidence).

3. List of respondents

Stakeholders that submitted a written response to the consultation and who consented to being named:

Advertising Association
Adfree Cities
Alupro
Advertising Standards Authority
ASDA
The Vending & Automated Retail Association (AVA)
Bio-based and Biodegradable Industries Association (BBIA)
Benders Paper Cups
Bidfood Catering Supplies
Bidfood Foodservice Group
British Plastics Federation (BPF)
British Retail Consortium (BRC)
British Glass
Carbon Trust
Celebration Packaging Ltd
Centrica
Changing Markets Foundation
Citizens Advice
ClientEarth
Compare Ethics
Confederation of Paper Industries (CPI)
Co-op
Consumer and Public Interest Network (CPIN)
Cosmetics Toiletry and Perfumery Association (CTPA)
Cromwell Polythene
Chartered Trading Standards Institute (CTSI)
Dairy UK
Danone UKI
Data & Marketing Association (DMA)
Dart Products Europe
Ecosurety
EDF
eGreen International Limited
Essity
Euro Packaging UK Ltd
Fairtrade Foundation
Food and Drink Federation (FDF)
Fibre Trace

Foodservice Packaging Association (FPA)
Gafbros LTD
Good Energy
Global Organic Textile Standard (GOTS)
Go-Pak
Highland Council Trading Standards
Industry Council for Packaging and the Environment (INCPEN)
Influence Map
James Cropper PLC
Lifescape Project
Marks and Spencer
Metal Packaging Manufacturers Association
The International Natural and Organic Cosmetic Association (NATRUE)
Nestle
New Weather Institute
No7 Beauty Company
Not1Bean
Oatly UK
Ombudsman Services
On-Pack recycling Label (OPRL)
OVO Energy
Pactiv Evergreen
Papercraft Ltd
Policy Hub
Possible
Regalzone
The Association for Renewable Energy and Clean Technology
Reckitt
RECOUP
Royal Mail
Royal Society of Chemistry
SC Johnson
The Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
Scottish Water
Scottish Power
Social Market Foundation
Society of Motor Manufacturers and Traders (SMMT)
Sovereign Partners Ltd
Stanstead Airport Watch
techUK
Textile Recycling Association
The Nappy Alliance
The Packaging Federation

Transformers Foundation
Trading Standards Wales
Two Sides
UK Cleaning Products Industry Association (UKCPI)
Ukie
Wildlife and Countryside Link
Which?
WRAP
Zalando
Zero Waste Scotland

Individuals who submitted a written response to the consultation and who consented to being named:

Professor Iain Black
Mark Durston

In addition, responses were received from two business who did not wish to be named.