



Sent: 25 June 2021 17:13

Subject: RE: CMA/Client Earth intro

Dear [✂] [REDACTED]

Thank you again (and to your team) for your time on the call earlier this week. I hope it was useful, I certainly got a valuable introduction to the CMA's consumer work.

As discussed on our call, I attach a briefing note on how we see the implications of the net zero transition for consumer law. Apologies for its length, I thought that more references may be useful, drawing on the way you covered other areas in your literature review.

Generally (and following our greenwashing action and analysis) our view is that the net zero transition is a key consumer issue. This is essentially because consumers and businesses are both aware of it and centrally involved in it. I do appreciate that there will be deadlines and resource constraints on your side and also that this topic is a pretty new one owing to the rapid development in law and policy in the last year or two. However, I'd suggest that it deserves its own chapter in the CMA's literature review, which can feed into a few amendments to the draft guidance to build on the strong material already in there. Hopefully the briefing note provides some prioritised areas and material for that and I should be able to justify some time spent on further discussion and work on those steps, if that would be helpful to you and your team.

I'd also be keen to understand how best and when we can support the CMA's enforcement work. For example, I'm not sure if this would be best done by reporting specific claims (and if so what your timing is here), or by supporting your compliance review in some way.

On the fish sustainability issue, I am speaking to my colleagues in this area and will come back to you.

Anyway, I look forward to any questions or thoughts on the note. If suits, we could look to schedule a further call to discuss this and how we might feed in to the enforcement stage of your project.

I hope you have a good weekend!

Kind regards



[Redacted signature block]



Briefing Note - CMA

Misleading claims and net zero transition

Contents

Context: What is the Net Zero transition?	2
Evidence base: consumer awareness, understanding and preferences	7
Principles for integrating net zero transition into consumer protection.....	9
Worked examples: applying the context of the net zero transition to assessments of misleading marketing	13

Context: What is the Net Zero transition?

As discussed in the ClientEarth/CMA call on 23 June 2021, we submit that a key issue to be reflected in the draft guidance on environmental claims and accompanying literature review, in addition to the focus on the marketer's *overall* environmental impact, is the net zero transition. In other words, how the marketer's business, products and environmental impact are set to change through the net zero transition.

The principle reflects the fact that environmental claims are not just about greater or lesser impact. In today's context businesses make environmental claims to consumers against the key background of a transition – a moving process of systemic changes on a set pathway – which has already begun and is significantly accelerating. We set out some 'worked examples' applying this principle in assessing whether marketing statements are misleading in the last section of this briefing note.

The IPCC describes reaching net zero as requiring “*rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial system*” necessary to limit global warming to 1.5C, requiring net zero emissions globally by 2050.¹ The IPCC also observes that “[t]he rates of system changes associated with limiting global warming to 1.5°C with no or limited overshoot have occurred in the past within specific sectors, technologies and spatial contexts, but there is no documented historic precedent for their scale”.²

The International Energy Agency stated in its April 2021 net zero roadmap: “*There has been a rapid increase in the number of governments making pledges to reduce GHG emissions to net zero (Figure 1.2). In the Paris Agreement, countries agreed to “achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second-half of the century”. The Intergovernmental Panel on Climate Change (IPCC) Special Report on Global Warming of 1.5 °C highlighted the importance of reaching net-zero CO2 emissions globally by mid-century or sooner to avoid the worst impacts of climate change (IPCC, 2018). Net-zero emissions pledges have been announced by national governments, subnational jurisdictions, coalitions and a large number of corporate entities*”.³

A transition to net zero greenhouse gas emissions by 2050 is set in UK law, with the Government following the recommendation of the Climate Change Committee's 6th Carbon Budget.⁴ The government is now legally committed to delivering these targets.

Under UK law, the Committee on Climate Change (CCC) issues five-yearly UK carbon budgets, setting a 'cap' for the UK's territorial emissions for the relevant five-year period. Each Carbon Budget is set 12 years beforehand. The UK met the 1st and 2nd budgets, and is on track to meet the 3rd budget (running from 2018-2023). The UK is not presently on track to meet the 4th or 5th budgets (2023-2038 and 2038-2033), indicating that greater policy, business and public change is needed.

¹ Summary for Policymakers — Global Warming of 1.5 °C (ipcc.ch)

² Summary for Policymakers — Global Warming of 1.5 °C (ipcc.ch)

³ Page 32, <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>

⁴ <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035#:~:text=change%20and%20energy-UK%20enshrines%20new%20target%20in%20law,emissions%20by%2078%25%20by%202035&text=The%20UK's%20sixth%20Carbon%20Budget,to%20net%20zero%20by%202050.>

In June 2019, the UK increased its overall climate change target in law from 80% reduction compared to 1990 levels by 2050, to 100% (i.e. net zero). This development comprises the key shift in the policy context to the CMA's work, and to consumer and public awareness. The CCC issued the 6th carbon budget⁵ in December 2020 – this is the first budget to be aligned with the net zero aim, and its 78% reduction by 2035 effectively brings the previous 2050 target forward by 15 years.⁶

The UK's targets address territorial emissions (i.e. emissions produced within the territorial bounds of UK), in line with the methodology agreed under the Paris Agreement. However, to implement emissions reductions at the global level, the CCC also advises action on so-called 'consumption emissions' (emissions caused during the production of goods and services consumed in the UK, irrespective of where in the world those emissions occurred). The UK's consumption emissions are 50% larger than its territorial emissions. The CCC provides a breakdown of consumption emissions and advises that policy addresses these emissions: *"We conclude that the UK can and should aim to reduce its overseas consumption footprint as part of its contribution to reducing global emissions. A growing fraction of the UK's consumption emissions footprint is now being covered by Net Zero commitments around the world and there are several levers available to the UK to help tackle its consumption emissions footprint to support its domestic efforts"*.⁷

How does the net zero transition relate to the public and consumers? Many of the key changes required by the target of net zero by 2050 are about goods and services purchased by consumers. As an indicative summary of these key transition changes and the timing for reaching them, the next two pages reproduce:

- The UK Climate Change Committee's (CCC) table of key actions to meet the 6th Carbon Budget (i.e. to align with net zero by 2050).⁸
- The International Energy Agency's April 2021 Net Zero Roadmap chart of 'key milestones' in the pathway to net zero.⁹

⁵ <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁶ LSE Explainer

⁷ See pages 344-347, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

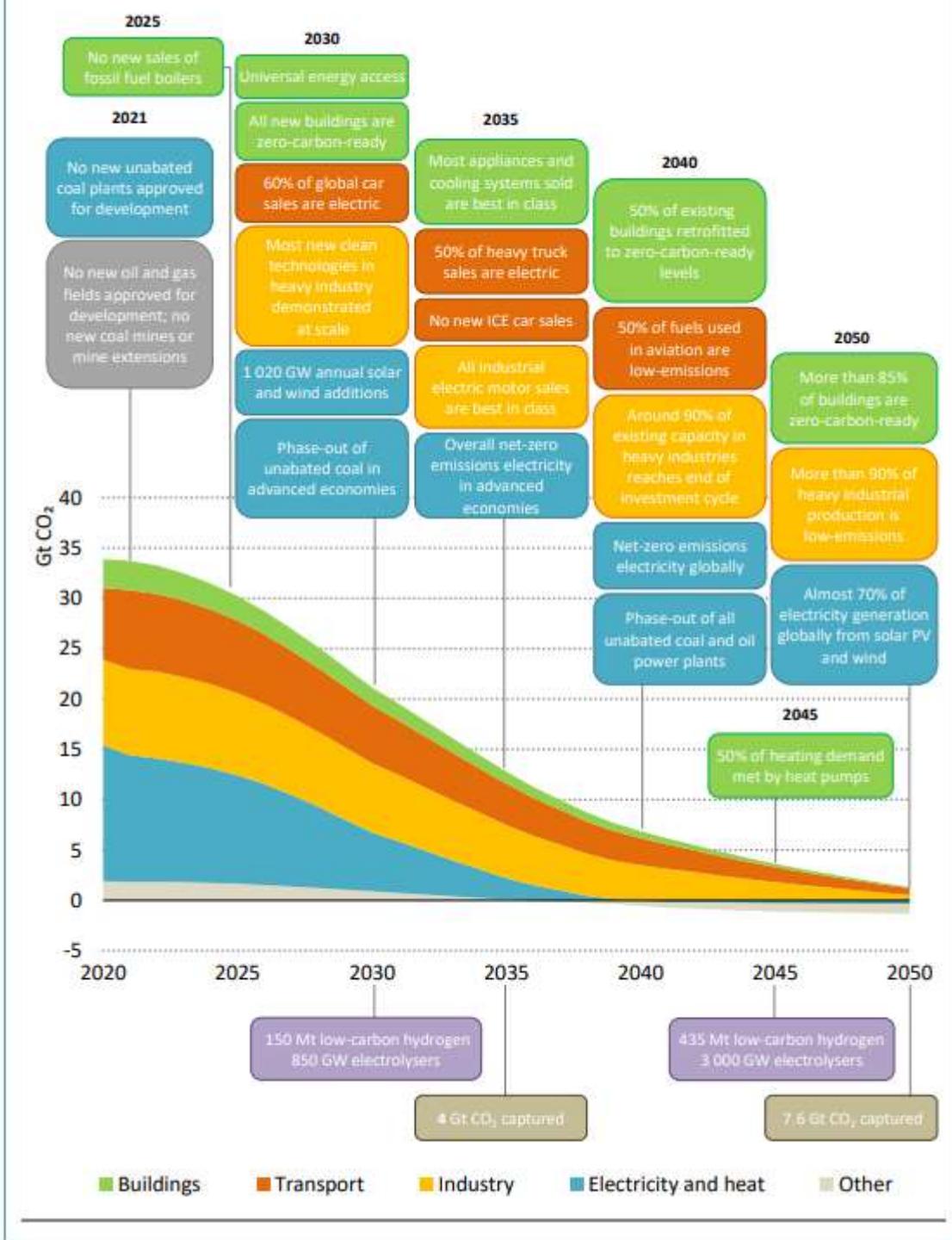
⁸ Page 27, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁹ Page 20, <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>

		2019	2025	2030	2035	2050	Trend
UK greenhouse gas emissions	UK greenhouse gas emissions (MtCO ₂ e)	522	445	316	191	0	
	UK greenhouse gas emissions per person (tCO ₂ e/capita)	7.8	6.5	4.5	2.7	0	
Demand reduction	Weekly meat consumption (g) (includes fresh and processed meat)	960	880	770	730	630	
	Weekly dairy consumption (g)	2,020	1,840	1,620	1,620	1,620	
	Plane-km per person	11,700	11,000	11,000	11,400	13,700	
	Car-km per driver	12,900	12,600	12,400	12,200	11,700	
	Remaining waste per person, after prevention & recycling (kg)	490	400	310	280	300	
Efficiency	Carbon-Intensity of a new HGV (gCO ₂ /km)	680	580	420	20	0	
	Increase in longevity of electronics	0%	30%	80%	120%	120%	
Electrification, hydrogen and carbon capture and storage	Carbon intensity of UK electricity (gCO ₂ e/kWhe)	220	125	45	10	2	
	Offshore wind (GWe)	10	25	40	50	95	
	Share of BEVs in new car sales	2%	48%	97%	100%	100%	
	Heat pump installations (thousand per year)	26	415	1,070	1,430	1,480	
	Manufacturing energy use from electricity or hydrogen	27%	27%	37%	52%	76%	
	Low-carbon hydrogen (TWh)	<1	1	30	105	225	
	CCS in manufacturing (MtCO ₂)	0	0.2	2	5	8	
	CCS in rest of the economy (MtCO ₂)	0	0.1	20	48	96	
Land	UK woodland area	13%	14%	14%	15%	18%	
	Energy crops (kha)	10	23	115	266	720	
	Peat area restored	25%	36%	47%	58%	79%	
	Land-based carbon sinks (MtCO ₂)	18	18	20	23	39	
Removals	Greenhouse gas removals (MtCO ₂)	0	<1	5	23	58	

Key: BEV is battery electric vehicle, CCS is carbon capture and storage.

Key milestones in the pathway to net zero



Why does this matter for consumers' decision-making? In short, because consumer decision-making is (particularly going forward in the UK) a key part of transition, as the UK CCC states in the below excerpt.

Box 2.2

The role of individuals in achieving the Sixth Carbon Budget

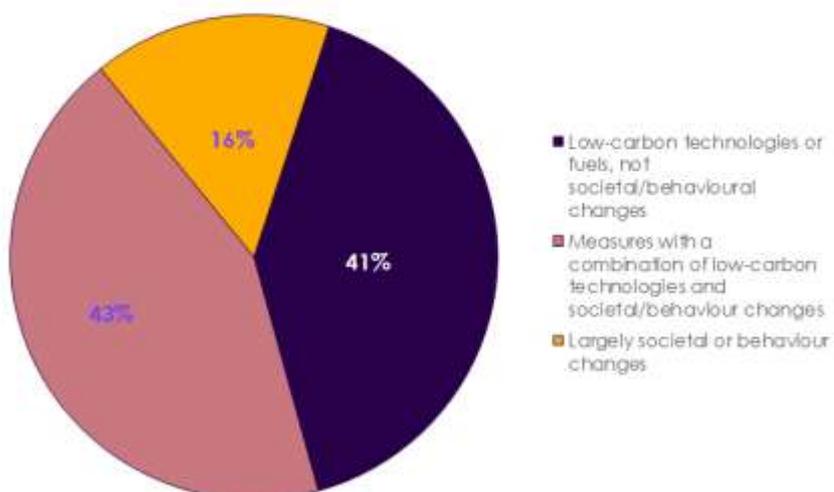
To date, much of the success in reducing UK emissions has been invisible to the public. Government policy has enabled emissions reductions to proceed in a way that has not required mass engagement, by reducing the 'supply' of emissions into the economy. For example, low-carbon power now provides over 50% of the UK's electricity supply, with no change to the service that electricity provides. Reaching Net Zero will require more involvement from people in engaging with the emissions reductions required, and reducing or adapting demand for energy-intensive services:

- Over 40% of the abatement in our scenarios to 2035 involves at least some degree of change from consumers (e.g. driving an electric car, or installing a heat pump instead of a gas boiler) (Figure B2.2).
- Over 15% of the abatement measures in our scenarios require consumer choices – both to reduce demand and improve efficiency. Shifting quickly towards healthier diets, reducing growth in aviation demand and choosing products that last longer and therefore improve resource efficiency are all key. In the Widespread Engagement scenario this is even higher, at 19%.

There are many reasons to think that these changes, and potentially much larger changes, are feasible given suitable policy leadership. Alongside this advice, we have published a note by Committee member Professor Nick Chater on the behavioural principles underpinning this view.³

It will not be possible to get close to meeting a Net Zero target without engaging with people or by pursuing an approach that focuses only on supply-side changes. The recent Climate Assembly - which saw a representative sample of the UK's population deliberate over how to achieve Net Zero - noted the importance of involving people in decision-making, not just persuading them to change, as part of a national conversation on the options available for achieving Net Zero and how these options should be pursued.

Figure B2.2 Role of societal and behavioural changes in the Balanced Net Zero Pathway (2035)



Source: CCC analysis.

Similarly, the IEA Net Zero Roadmap states as follows regarding the consumer elements of the energy-related aspects of transition:

“The wholesale transformation of the energy sector demonstrated in the [IEA’s best projection of a Net Zero pathway – the ‘NZE’] cannot be achieved without the active and willing participation of citizens. It is ultimately people who drive demand for energy-related goods and services, and societal norms and personal choices will play a pivotal role in steering the energy system onto a sustainable path. Just under 40% of emissions reductions in the NZE result from the adoption of low-carbon technologies that require massive policy support and investment but little direct engagement from citizens or consumers, e.g. technologies in electricity generation or steel production. A further 55% of emissions reductions require a mixture of the deployment of low-carbon technologies and the active involvement or engagement of citizens and consumers, e.g. installing a solar water heater or buying an EV. A final 8% of emissions reductions stem from behavioural changes and materials efficiency gains that reduce energy demand, e.g. flying less for business purposes (Figure 2.14). Consumer attitudes can also impact investment decisions by businesses concerned about public image.”

In the UK context, we are lucky to have leading work in this area (transition behavioural change) produced for the CCC. We recommend to review the Executive Summary of the report produced for the UK CCC’s 6th carbon budget entitled ‘Behaviour Change, public engagement and Net Zero’.¹⁰ This report sets out the policy initiatives to encourage the consumer behaviour change necessary for the UK to meet its targets. In doing so, it further illustrates the areas where consumer (transactional) decision-making plays a role in reaching net zero – a guide to the key areas where consumers may be misled regarding the net zero transition by sustainability-related marketing.

How does this affect consumer protection law? We consider that the above context is significant for the application and enforcement of consumer protection law. This is because it indicates what is required to substantiate marketing statements relating to sustainability or climate change. As a simple example, this context affects whether a business is able to substantiate a claim to be sustainable – if it sells a product which is due to be phased out or substantially changed (as many are), then there is (at least) a risk of misleading consumers.

Consumer awareness and preferences regarding the net zero transition are examined further below.

Evidence base: consumer awareness, understanding and preferences

There is an evidence base indicating that (in the CCC’s words) “[t]here is widespread public support for action to tackle climate change, although without enough clarity so far over the steps that are needed to do so.”¹¹

This evidence shows that marketing relating to sustainability, climate change or net zero is increasingly material to consumers.

¹⁰ <https://www.theccc.org.uk/publication/behaviour-change-public-engagement-and-net-zero-imperial-college-london/>

¹¹ Page 41, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

- UK Climate Assembly report¹² - the UK's Climate Assembly comprises a 108-person 'jury', a representative cross-section of the UK population, commissioned by Parliament to examine how to achieve net zero transition. The topics it examined included land and air travel, heat and energy use in the home, food and agriculture, consumption and electricity. 92% of the members voted for simpler consumer protection measures on transition, and the final report states "*Assembly members felt strongly about the need for better information to promote informed choice and changes in individual behaviour. They supported 'labelling and information about the carbon emissions caused by different products and services' (92%) and 'product labelling and information campaigns about what can be recycled and why it's important' (92%). They also backed 'advertising bans and restrictions' on high emissions products or sectors (74%).*"¹³ The CCC's plans for net zero transition drew directly on the Assembly's recommendations.¹⁴
- Ipsos Mori 'Perils of Perception' study (Feb/March 2021) – this study evidenced widespread mis-identification of action needed to tackle climate change.¹⁵ In UK, 71% said they understood what action they needed to take, but the majority were wrong on issues including diet, transportation, energy efficiency etc.¹⁶
- Energy Systems Catapult 'Net Zero, A Consumers' Perspective' report (Jan 2020) – this provides further evidence of misunderstandings, particularly regarding the importance of change in home heating and eating. 89% believe climate change is a serious threat, and 77% accept personal responsibility to do something about it. But:
 - 51% thought natural gas boilers didn't cause carbon emissions.¹⁷
 - Behaviour change so far has focused on recycling (86%) and reducing single use plastic (71%). These are visible, publicised activities but not the ones that will have the most significant impact on climate change.
 - Identifies key areas: heating, diet, cars, planes.
 - The report states that a further publication which is 'coming soon' is 'Markets, Policy and Regulation implications', which may be of particular relevance to consumer regulation.
- CCC Study 'Behaviour Change, public engagement and Net Zero' – this report states "*[t]he public want a comprehensive plan that is implemented consistently and want the opportunity to do their bit (Green Alliance, 2019) – more so if they know others are also doing theirs (10:10 Climate Action, 2019). The IPCC reports (with high confidence) that public acceptability of policy to limit global warming depends on the perceived fairness of policy-making and policy consequences (IPCC, 2018).*". The References section lists various sources on public and consumer awareness and interest in transition-related issues. By way of example (and limited to the 'B' and 'C' sections):

¹² <https://www.climateassembly.uk/report/read/final-report.pdf>

¹³ Page 22, <https://www.climateassembly.uk/report/read/final-report.pdf>

¹⁴ See Table 1.2 on page 50 of the CCC's 6th Carbon Budget report, which compares the CCC's scenarios with the Assembly's recommendations.

¹⁵ <https://www.ipsos.com/ipsos-mori/en-uk/ipsos-perils-perception-climate-change>

¹⁶ https://www.ipsos.com/sites/default/files/ct/news/documents/2021-04/Environmental%20Perils%20of%20Perception%202021_0.pdf

¹⁷ <https://es.catapult.org.uk/reports/net-zero-a-consumer-perspective/>

- Buchanan, K., Banks, N., Preston, I., & Russo, R. (2016). *The British public's perception of the UK smart metering initiative: Threats and opportunities*. Energy Policy, 91, 87–97
 - Camilleri, A. R., Larrick, R. P., Hossain, S., & Patino-Echeverri, D. (2019). *Consumers underestimate the emissions associated with food but are aided by labels*. Nature Climate Change, 9(1), 53–58
 - Clarke, C. (2018). *On the road to a green energy - UK consumer willingness and ability to pay for decarbonised heat*.
 - ClientEarth. (2018). *ClientEarth's Climate Snapshot: A survey of UK attitudes towards climate change and its impacts*.
- Nielsen analysis on sustainability – Nielsen's market research report charts how mindsets on sustainability are shifting.¹⁸ Nielsen state that consumers are seeking more specific sustainability offerings in their products, more specific and detailed claims. The May 2019 Nielsen report 'Sustainable Innovation' found that 81% of global research respondents felt strongly that companies should help improve the environment, and concluded that "sustainability sells".¹⁹

Principles for integrating net zero transition into consumer protection

As briefly discussed in the 23 June call, we suggest the following principles can be applied in the CMA's guidance and/or enforcement prioritisation.

This overall approach implements the principle set out in the 2010 DEFRA Guidance that "*the true value of environmental claims and marketing rests on the assurance that the claims are both **credible** to consumers, and reflect a **genuine benefit** to the environment*".²⁰

It is eleven years since the DEFRA Guidance. The Net Zero transition requires a new understanding of what a 'genuine benefit to the environment' is, and is not, as explained above. Public and policy support for the transition also means that the two issues of consumer credibility and genuine benefit to the environment increasingly overlap, also as explained above.²¹ We suggest this has the following implications.

- Assessments of whether marketing is misleading should take into account the (new) context of transition to Net Zero.
- The average consumer can be taken to support consumer action to progress the transition to net zero, and to have a non-expert understanding of what actions/products/businesses affect the transition.

¹⁸ <https://www.nielsen.com/eu/en/insights/article/2019/a-natural-rise-in-sustainability-around-the-world/> and see also 'The sustainability imperative: New insights on consumer expectations' at <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2015-reports/global-sustainability-report-oct-2015.pdf>

¹⁹ <https://www.nielsen.com/wp-content/uploads/sites/3/2019/05/sustainable-innovation-report.pdf>

²⁰ <https://www.ukcpi.org/Assets/custom-docs/publications/pb13453-green-claims-guidance.pdf>

²¹ See also, as an illustration, the Nielsen diagram 'Sustainability Market Sophistication' here: <https://www.nielsen.com/eu/en/insights/article/2019/a-natural-rise-in-sustainability-around-the-world/>

- In simple terms, when sustainability-related marketing suggests to a consumer that a product or company is, or will be 'sustainable' (or similar) but the relevant claim, product or company clearly does not align with the transition to Net Zero, then it risks misleading consumers. An authoritative²² legal opinion to this effect has been published regarding the Australian Consumer Law.²³
- This means that, in order to assess whether statements tend to lead consumers into error, sustainability-related marketing is to be assessed against the scientific and policy context. In practical terms, assessment of substantiation must look beyond a statement's technical accuracy to how it measures against the standard of the net zero transition.
- The relevant evidence base for this assessment is the most up-to-date and best available scientific and policy material on the net zero transition.
 - o One key resource is the output of national/international scientific bodies such as the UK CCC, the IPCC and the UN Environment Programme.
 - o Analysis from respected, independent scientific or policy expert bodies may also be relevant, along with independent, peer-reviewed scientific studies.
 - o Regarding company sustainability marketing, the Climate Action 100+ investor grouping has issued a set of detailed benchmark assessments ranking large listed companies on their progress in the net zero transition, which provides an accessible picture of whether companies are considered by the leading investor bodies and experts to be aligned with Net Zero.²⁴
 - o Notably, Shell's UK website states that it has a target to reach net zero,²⁵ but the Hague District Court of Appeals recently found that Shell's target was not aligned with Net Zero.²⁶ Our summary of the decision can be found [here](#).
- Claims will be apt to mislead consumers (who will expect sustainable/environmentally-friendly companies and products to be aligned with progress to Net Zero) if, for example:
 - o advance a vague (or impressionistic)²⁷ claim of environmental-friendliness whilst not being aligned with progress to Net Zero,

²² See its adoption here for example, <https://www.lexology.com/library/detail.aspx?g=3d81edd6-fc37-4966-a575-8c3a54d6cc2a>

²³ The opinion also addresses similar prohibitions on misleading or deceptive conduct in other areas of law. See, in particular, paragraph 38: "*companies making net zero commitments require "reasonable grounds" to support the express and implied representations contained within a net zero commitment. Moreover, reasonable grounds are required at the time of making a net zero commitment. That is, companies wishing to commit to net zero must have a reasonable basis now for believing that they can achieve that commitment.*" And see generally paragraphs 24-48. <https://cpd.org.au/wp-content/uploads/2021/04/Further-Supplementary-Opinion-2021-3.pdf>

²⁴ <https://www.climateaction100.org/progress/net-zero-company-benchmark/>

²⁵ <https://www.shell.co.uk/a-cleaner-energy-future/our-response-to-climate-change/our-climate-target.html#iframe=L3dIYmFwcHMvY2xpbWF0ZV9hbWJpdGlvbI9VS19uZXRfemVybY91cGRhdGUv>

²⁶ See paragraphs 4.4.55 and 4.5.2 of the judgment (English version) at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526_8918_judgment-2.pdf

²⁷ See, for example, this study on the effects of 'executional greenwashing' (i.e. use of images rather than specific prose claims). <https://halshs.archives-ouvertes.fr/halshs-00948933/document>

- they take a selective approach to or omit the product/company's overall climate impact (lifecycle) even if they do so clearly. This is because it is their full lifecycle impact which is relevant to transition.
- they promote a theoretical climate 'solution' or plan which is not practically available or which contradicts best available scientific/policy advice regarding the net zero transition,
- they rely on a comparison which does not reflect the choices to be made in the net zero transition,
- they seek to stretch the meaning of environmental 'terms of art' such as: carbon footprint²⁸, carbon-neutral, recyclable, compostable²⁹, carbon intensity, Paris-aligned, Net Zero.

Below are examples of specific themes and issues we have encountered in our work which can involve, in the context of the Net Zero transition, misleading consumers.

- Corporate brand sustainability messaging - corporate brand marketing (or 'social license' advertising) can mislead, particularly when it is used by sectors whose business models need to transform in order to align with the Net Zero transition. Such advertising must be substantiated with science-based Paris-alignment and the associated emissions reductions targets, and inherent in the reality of a transition is the truth that few high-emitting businesses meet these requirements today.³⁰ The most commonly cited example is the oil and gas sector³¹ given the clear scientific imperative³² to reduce oil and gas production, but such advertising is increasingly found in other sectors key to transition such as: energy utilities, automotive, aviation, retail finance, food and FMCG.
- Net Zero targets and statements – businesses are issuing specific Net Zero 'ambitions' or other statements, and these are listed on company websites as well as appearing in public marketing. The claim to have a Net Zero aligned (or 'Paris-aligned') business must be accurate, set for example against the investor Net Zero Benchmark.³³ If a business is not considered to be aligned with Net Zero, then for marketing purposes, businesses must communicate exactly what their statement covers and what it does not, and must be clear as to what the target means for their overall lifecycle emissions. Failure to do so means that consumers can be misled into believing that a business is on a sustainable path to Net Zero, i.e. that no emissions will attributable to it by 2050 – and preferring its products or services in decision-making accordingly. The same need for transparency to avoid misleading applies if the business' claim to Net Zero or Paris alignment relies on divergence from a significant division of informed or scientific opinion.

²⁸ Which means their overall lifecycle emissions footprint, the emissions from the production, use and end of life of a product or service.

²⁹ Recyclable, reusable, biodegradable, compostable mean that the product in question is practically recyclable/reusable/degradable/compostable with the infrastructure available to the consumers in question. See DEFRA, <https://www.ukcpi.org/Assets/custom-docs/publications/pb13453-green-claims-guidance.pdf>

³⁰ See the Net Zero Company Benchmark <https://www.climateaction100.org/progress/net-zero-company-benchmark/>

³¹ As well as the Shell judgment referred to above, see, for example, the ClientEarth Greenwashing Files, <https://www.clientearth.org/the-greenwashing-files/>

³² See the UN Environment Programme's Production Gap Report 2020, <https://www.unep.org/resources/report/production-gap-2020>

³³ <https://www.climateaction100.org/progress/net-zero-company-benchmark/>

Common examples include the use of optimistic (at best) assumptions about the availability of carbon capture technology or the use of offsets (see below on this).³⁴

- lifecycle emissions – International GHG accounting rules requires the inclusion of emissions from throughout the production and use cycle. According to the CCC: *“Lifecycle emissions of a product are those caused directly and indirectly at each stage of its life, from the extraction of raw materials and manufacturing right through to its use and final re-use, recycling or disposal.”* International and national regulatory approaches increasingly takes³⁵ a ‘lifecycle’ approach to business’ climate impacts. Consumers can be taken to assume that a business is not hiding part of its climate impacts, not least because doing so is incompatible with that business reaching Net Zero in its own operations. The availability today of data on lifecycle emissions and the urgency of meeting Net Zero means that it is difficult to justify any selective claims regarding a specific aspect of the emissions lifecycle. Where companies have access to a lifecycle carbon assessment, omitting this information will often tend to mislead.
- comparative/relative claims – comparative claims of environmental performance (cleaner) must refer to a comparator that is valid in the context of the net zero transition. For example, as discussed on our call, comparing gas to coal is not relevant and can mislead consumers as to the environmental benefit of gas, the production and use of which needs to be rapidly reduced, in the context of transition. The relevant comparison in the context of the need to switch energy production to renewable sources is to renewable energy. The same point would apply to aviation vs train travel, or to petrol/diesel cars vs battery electric vehicles. Regarding overall corporate brand marketing, to avoid misleading consumers, comparative/relative claims must make clear the business’ progress to Net Zero (see above).
- recyclability/reusability/degradability/compostability – a key element of the transition to Net Zero is the ‘circular economy’. The CCC identifies the need to invest in *“[m]oving towards a circular economy by ensuring that product design maximises re-use of materials and minimises waste over the product’s lifetime, leading to lower emissions in industry”*.³⁶ Accordingly, it finds that *“Generating less waste, recycling more and not sending waste that can decay to landfill are the key pillars to reducing landfill emissions”*.³⁷ ClientEarth’s response to the December 2020 CMA consultation covered the problematic use of terms such as “recyclable”, “compostable”, “degradable” and “biodegradable” by companies without sufficient explanation or justification, so we highlight here only that the net zero transition affects consumer understanding of the merits of these claims.

³⁴ See also at paragraphs 45-48 on offsets and carbon capture: <https://cpd.org.au/wp-content/uploads/2021/04/Further-Supplementary-Opinion-2021-3.pdf>

³⁵ For example, see the inclusion of relevant Scope 3 emissions in the TCFD framework, which is becoming mandatory in UK law. See further: https://ec.europa.eu/environment/emas/emas_for_you/news/news21_en.htm

³⁶ Page 392, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pthe%20power%20df>

³⁷ Page 187, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pthe%20power%20df>

Worked examples: applying the context of the net zero transition to assessments of misleading marketing

Example – natural gas

On the call, we discussed the example claim that “*natural gas is 50% cleaner-burning than coal*”.

There are similar claims regarding gas being ‘clean’ or ‘lower-carbon’, or a necessary complement to renewables. A variant for example, is “*natural gas is 50% cleaner than coal in electricity generation*”. This is not an abstract example. For example, Equinor uses similar wording on their website at the time of writing.³⁸

Below, we apply the two-stage analysis of overall environmental impact and net zero transition.

- The statement is technically correct. ‘Cleaner’ is vague but perhaps a reasonable descriptor for greenhouse gas emissions.
- What is the overall environmental impact of the product/business? The statement is, however, selective and ignores other material climate impacts from gas value chains. Gas is mostly methane (the chemical compound CH₄). The claim omits the leaked methane emissions from the extraction, storage, processing (for e.g. liquefaction and regasification) and transport of gas – the other parts of the gas supply chain. Methane is a very powerful³⁹ greenhouse gas, and if leakage isn’t kept to low enough levels, the overall climate impact of gas can be *worse* than coal, which is the most carbon-intensive fossil fuel. As well as leaking accidentally, methane is often leaked deliberately to reduce pressure in pipelines and other installations – called venting or flaring. Unfortunately, accurately measuring methane leakage across extraction, production, storage and transport processes is difficult and this is an area of key uncertainty in lifecycle assessments, where industry and technological improvements are needed.⁴⁰ Satellite imagery shows massive methane plumes from oil and gas installations which exceed ground-based measurements used by many companies.⁴¹
- By way of illustration, the complete and accurate version of the claim would be something like:

“If methane leakage over the entire gas production cycle is carefully managed with state of the art systems (satellites, aerial imagery) and there is no deliberate venting or flaring of methane - then gas can produce less emissions across the lifecycle than coal because it emits less CO₂ when burned. This is however less true with LNG, which takes lots of extra power (requiring more fuels) to turn to liquid and back into gas”

³⁸ <https://www.equinor.com/en/what-we-do/natural-gas.html>

³⁹ Methane only lasts about 12 years in the atmosphere compared to hundreds of years for carbon dioxide, but has a much greater ‘warming’ effect tonne for tonne. This means that over a 100-year timeframe, methane’s warming potential is 28 times that of carbon dioxide. See Table 1 in Box 3.2 on p.87 of the IPCC’s AR 5 Synthesis Report; https://ar5-syr.ipcc.ch/ipcc/resources/pdf/IPCC_SynthesisReport.pdf

⁴⁰ Page 150, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁴¹ <https://www.reuters.com/article/us-climatechange-methane-satellites-insi-idUSKBN23W3K4>

- The specificity of the claim may, however, be argued to be clear on its face – depending on the understanding of the average consumer. The business may argue that it has made a specific claim which will not be understood as extending to entire gas value chain.
- What role does gas play in the net zero transition? It is all too clear that net zero transition requires the rapid decline of gas production and use starting immediately, and moreover that this is a key challenge for achieving net zero. According to the IEA, the decline needed is 3% each year to 2030.⁴² The UK CCC says that gas use in homes must be phased out, and gas demand for energy reduced by 70% by 2050.⁴³ The IEA says that sales of gas boilers must fall rapidly over the next 9 years.⁴⁴ The CCC says that new gas boilers will need to be banned from 2033 to meet targets.⁴⁵ However, gas use is currently growing globally, and since 2019 has led the growth in fossil fuel emissions, ahead of oil and coal. At the same time, recent polls show that over half of people in the UK do not understand that gas boilers are a climate problem at all.⁴⁶
- The comparison is also inappropriate for the purposes of the net zero transition, since consumers in the UK, who do not generally rely on coal for heating or electricity, are not facing a choice between coal and gas, but between gas and (renewable) electricity. The choice facing UK consumers is actually between a gas boiler and heat pump or solar panels – both of which are ‘cleaner’ across the lifecycle and at point of use, and takeup of which needs to increase significantly under transition pathways.
- As explained above, UK consumers support transition and will understand this to involve the use of cleaner fuels. We consider that, by comparing the marketing statement to the accessible information on the net zero transition pathway, the risk of consumers being misled is clear.

Example - carbon neutrality / carbon offsets

A further key issue covered on our call is corporate claims regarding carbon neutrality and carbon offsets.

The example claim here would be the claim that a business or product is carbon neutral or carbon offset. Such claims can come with statements suggestive that the offsets provide a means of addressing climate change (or ‘doing your bit’ or similar). Shell Energy currently uses similar marketing.⁴⁷

‘Carbon offsets’ are carbon credit schemes by which businesses fund forest protection, afforestation or clean energy/appliance initiatives. Given this features specifically in the draft guidance, we explain our view of the position in more detail below.

⁴² Page 58, “There are large reductions in the use of fossil fuels in the NZE. [...] Natural gas use declines to 3 700 bcm in 2030 and 1,750 bcm in 2050 – an annual average decline of just under 3% from 2020 to 2050.” <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroby2050-ARoadmapfortheGlobalEnergySector.pdf>

⁴³ Page 72, “Fossil fuels largely phased out. Demand falls significantly to 2050 for oil (-85%) and natural gas (-70%) as the energy system makes the transition to Net Zero” <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁴⁴ Page 146, “Sales of gas boilers fall by more than 40% from current levels by 2030 and by 90% by 2050.”

⁴⁵ Table 3 on Page 28, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁴⁶ <https://es.catapult.org.uk/reports/net-zero-a-consumer-perspective/>

⁴⁷ “The end result? You can put your feet up knowing that your home energy that we provide is carbon neutral. It’s a simple step in helping us move towards a better energy future.” <https://www.shellenergy.co.uk/energy/carbon-neutral>

- There are problems with offsets which do not extend to all of the emissions for which a business (or product/service) is responsible, where this is not communicated clearly to consumers. There are also issues of ‘additionality’ and ‘permanence’ because it is generally impossible to establish the ‘counterfactual’ and longevity. For example, it cannot be proved that, absent funding for forest protection, deforestation would have occurred. Instead, at best, risk of deforestation can be projected with varying degrees of confidence from previous events. It also is difficult to argue that forests will last for centuries – not least due to climate change itself, which is and will significantly alter ecosystems. On the ‘debit side’ of the offset logic, however, the ‘offset’ emissions are both certain and near-permanent (lasting up to 1000 years in the atmosphere).
- However, as discussed in our call, we see the key consumer issue here as the difference between the purchase of offsets and the emission reductions necessary to reach Net Zero. Net zero requires the phasing out of nearly all sources of GHG emissions. Offsets therefore cannot get the UK, or any business, to Net Zero. This is because businesses need to reduce emissions to reach Net Zero. But this is not widely known, and consumers are likely to understand a claim of carbon neutrality as comprising climate action which addresses emissions, or may confuse carbon neutral with net zero. This is particularly so when marketing of offsets or claims of carbon neutrality is coupled with vague statements that the underlying offsets comprise sufficient progress toward climate goals or are a means of addressing climate change.
- Key materials regarding this are summarised below.
 - In light of the above, there is a widely held expert consensus that offsets cannot be used in place of emissions reductions. For example, the Science-Based Target Initiative states *“The widespread adoption of a practice that leaves a ton of emissions unabated for every ton of emissions abated somewhere else would not be consistent with phasing out nearly all sources of anthropogenic GHG emissions.”*⁴⁸ It says that offsets *“do not replace the need to reduce value chain emissions in line with science”*.⁴⁹ Others confirming this include the Oxford Principles for Net Zero Aligned Carbon Offsetting and the report of the Task Force on Scaling Voluntary Carbon Markets (a high-level initiative led by the UN Special Envoy for Climate Action, Mark Carney, and involving 50 members and experts from c. 120 different institutions).⁵⁰
 - The Task Force also comments that *“There should be clarity on the exact [emissions] reduction pathway the company and the [point of sale] offering are undertaking. This will reinforce the credibility of the use of offsets by companies without confusing or misleading consumers”*⁵¹
 - For its part, the CCC makes clear that *“A net-zero target requires deep reductions in emissions, with any remaining sources offset by removals of CO₂ from the atmosphere (e.g. by afforestation)”*.⁵² The CCC also states that businesses should *“Minimise offsets,*

⁴⁸ Page 24, <https://sciencebasedtargets.org/resources/files/foundations-for-net-zero-full-paper.pdf>

⁴⁹ Page 8, <https://sciencebasedtargets.org/resources/files/foundations-for-net-zero-full-paper.pdf>

⁵⁰ Page 6, <https://www.smithschool.ox.ac.uk/publications/reports/Oxford-Offsetting-Principles-2020.pdf> ; Page 18, https://www.iif.com/Portals/1/Files/TSVCM_Report.pdf

⁵¹ Page 106, https://www.iif.com/Portals/1/Files/TSVCM_Report.pdf

⁵² CCC Net Zero report, page 16 <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>

phase them out, and ensure only permanent emissions removals remain, in line with our recommendations around how the UK should meet its national carbon budgets.”⁵³

- We note that the Dutch ACM adopts this point in its recent draft Sustainability guidance, stating “*The aim is that companies make their production processes more sustainable in order to produce fewer emissions in a structural manner. CO2-compensation as a supplementary instrument can help reduce the impact of emissions that remain, and can serve as a temporary measure during the time it takes to make production processes truly sustainable*”.⁵⁴ The French legislature is moving to ban claims of carbon neutrality products or services altogether.⁵⁵
- Business claims of carbon neutrality, net zero impact or similar and vaguer claims of ‘climate-friendly’ business activities which rely on offsets are therefore apt to mislead.
- There is instead an expert consensus that offsets may be useable to ‘compensate’ for those emissions which are genuinely not feasible to reduce (‘hard to reduce’).⁵⁶ This is limited to applications such as steel or cement where the use of these materials is unavoidable – another example would be unavoidable air travel.

In summary, a more accurate marketing statement regarding the use of offsets (which does not mislead consumers regarding the net zero transition) could therefore run as follows:

We know that our products are responsible for GHG emissions and we want to change this. We have not reached net zero GHG emissions and we aim to reduce almost all of our emissions in the future in line with science (see our science-based climate targets here [link]). We are working on reducing our emissions through [A, B, C].

For those emissions (listed here [link]) associated with our products which are not possible to reduce or avoid at present, we buy ‘carbon credits’ which help to fund [clean cookstove programmes/forest protection/afforestation] elsewhere. The carbon credits are not a substitute for rapidly reducing the use of fossil fuels and other emissions sources to reach net zero. They are instead intended to help to reduce others’ emissions or to protect or increase natural carbon sinks which are hoped to absorb and store carbon dioxide over the long-term (although these benefits are not possible to guarantee).

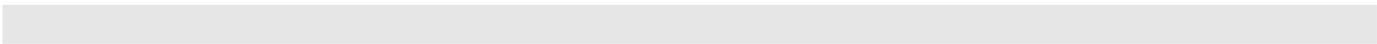
⁵³ CCC Box 9.1 on page 393 <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

⁵⁴ Page 14, [Sustainability agreements \(acm.nl\)](https://www.acm.nl)

⁵⁵ The draft bill is the "Projet de loi n° 602, portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets" (i.e. Bill No. 602 on combating climate change and strengthening resilience to its impacts). It was adopted by the French National Assembly on May 4th but still has to be examined by the Senate (scheduled on June 14th). The reference is to Article 4 bis C, which modifies Article L. 229-62 of the Environmental Code by adding the quoted provision. The text of the bill is here: https://www.assemblee-nationale.fr/dyn/15/textes/l15t0602_texte-adopte-seance

⁵⁶ Pages 7-8, <https://sciencebasedtargets.org/resources/files/foundations-for-net-zero-full-paper.pdf>; Page 6, <https://www.smithschool.ox.ac.uk/publications/reports/Oxford-Offsetting-Principles-2020.pdf>

Nothing in this document constitutes legal advice and nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. The contents of this document are for general information purposes only. Action should not be taken on the basis of this document alone. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy and ClientEarth does not accept any responsibility for any decisions made in reliance on this document.



Brussels Beijing Berlin London Warsaw Madrid Los Angeles Luxembourg

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.



Sustainable Seafood Coalition: Explainer

In 2011, ClientEarth helped found the Sustainable Seafood Coalition (SSC): a progressive partnership of businesses selling seafood in the UK with a commitment to responsible sourcing.

The SSC brings together leading retailers, suppliers and food service outlets from around the country. Together, the SSC is striving towards the shared vision that all UK-sold fish and seafood comes from sustainable sources.

Since its founding, the SSC has grown to include 45 seafood businesses – many of them direct competitors. Through its Codes of Conduct, the SSC has led the industry in best practices for sustainability. And, as we look ahead, the Coalition will continue to develop new tools and strengthen partnerships in the UK and around the world.

How was the SSC formed?

The SSC was formed after ClientEarth lawyers noticed the lack of legislation defining voluntary environmental claims made about seafood by businesses.

Existing applicable EU legislation, the Fish Labelling Regulations (2003), only require fish products to be labelled with the species name, its approximate catch area, and whether it was caught or farmed in fresh or sea water. It has few controls over the use of terms such as 'sustainable' or 'responsible'. This means the terms can be used in ways that are misleading, or unverified.

In 2013, the EU passed a new regulation that 'environmental information' be provided on a voluntary basis, provided that it is 'clear and unambiguous'. However, the law does not specify parameters for consistency related to this information.

So, in the absence of legal mechanisms to ensure clear and consistent labelling, ClientEarth developed the SSC as a platform to instigate industry-led voluntary commitments.

Beginning with a handful of members, the Coalition spent three years collaborating to write two voluntary Codes of Conduct: the Labelling Code and the Sourcing Code. Launched in 2014, these Codes form the guiding principles of the Coalition, while ClientEarth continues to advise and coordinate the group as SSC Secretariat.

What do the Codes of Conduct entail?

The SSC Codes of Conduct create a level playing field, as they are based on a shared agreement for what 'sustainability' and 'responsibility' mean in relation to seafood.

Responsible sourcing, per the SSC Code, includes measures such as conducting annual risk assessments, ensuring public transparency, maintaining traceability measures, and taking action to make fisheries or farms more sustainable.

To ensure clear and consistent labelling, SSC members commit to using environmental claims in accordance with minimum criteria. This includes that the terms 'sustainable' or 'responsible' not be used in isolation, but specified, such as 'responsibly farmed' or 'sustainably sourced'.

Along with this, using the words 'responsible' and 'sustainable' comes with some guidelines. For a member to make sustainability claims, the source fishery must be consistent with principles of key international standards and codes of conduct. An independently audited chain of custody must also



be in place to trace the fish to its source. For a member to make a responsibility claim, they must be aligned with the SSC Sourcing Code.

All SSC members make a commitment to align their sourcing and labelling practices with the Codes of Conduct within a year of joining the Coalition. This means ensuring that all own-brand products are sourced and labelled in line with agreed minimum standards.

While the SSC is not a certification body, nor does it have formal auditing processes, its Codes remain instrumental in harmonising responsible sourcing in the industry – filling the gaps where the law does not go far enough.

How has the SSC impacted the industry?

The commitments made by SSC members to align their sourcing and labelling standards has led to evidenced progress in the industry.

In 2017, an independent sustainability consultant found that consistent labelling had increased by 15% since the SSC was founded in 2011. Of 80 products assessed, the report found:

- 97% of voluntary environmental claims from SSC members used language in line with the SSC Labelling Code.
- 97% of products from SSC members met the transparency, traceability and risk assessment requirements of the SSC Sourcing Code.
- 14% of environmental claims made by non-SSC member businesses did not align with SSC labelling best practices, compared to only 3% of SSC members.

Multiple businesses in the industry have also reported that SSC Codes have become informal standards by which non-member UK industry stakeholders measure their own sourcing and labelling practices.

This industry success has also translated globally. ClientEarth is regularly approached by emerging initiatives all over the world for advice on replicating its model. For example, the Hong Kong Sustainable Seafood Coalition was able to establish itself in the market three times faster than the initial UK platform by using the SSC Codes of Conduct as a model.

To help increase international collaboration, ClientEarth convenes the Dialogue for Pre-Competitive Collaboration Platforms. This group brings similar global initiatives to share best practices opportunities for progress.

What has the SSC been working on recently?

The SSC continues to adapt and improve its model.

From 2018-2019, ClientEarth worked alongside SSC members to help build more up-to-date risk assessment templates for sourcing wild and farmed seafood. These templates can be used to help members identify relevant environmental metrics for their seafood sources. This has helped businesses find areas for improvement within their own sourcing practices.

In addition to these new tools, in 2019, UK retailers launched a global initiative to apply pressure to reform management of the North East Atlantic Mackerel stock. This was prompted by the commitment within SSC Codes to improve problematic areas within supply chains.



As it looks to the future, the SSC looks forward to more businesses joining the Coalition, and will continue working to strengthen and improve best practices to ensure sustainability in the seafood industry becomes the norm in the UK.