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CMA139con

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1. Introduction

About the CMA

1.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority.¹ Its objective is to make markets work well for consumers, businesses and the broader economy.

1.2 The CMA has a range of consumer protection law powers to tackle practices and market conditions that present challenges for consumers and hinder their decision making. These include powers to protect consumers from unfair contract terms (for which it has the lead role) and unfair business practices.

1.3 The CMA shares these enforcement powers with other bodies, such as Trading Standards Services and sectoral regulators. The CMA also shares certain consumer functions with other agencies, such as the Advertising Standards Authority.

1.4 As part of its role, the CMA from time to time produces guidance for businesses to clarify their legal obligations and promote compliance with consumer protection law.

1.5 In recent years, the CMA has produced guidance on the applicability of consumer protection law in a range of specific sectors, for example, online hotel booking and care homes. The CMA has also produced guidance on commercial practices which operate across sectors, for example, on online reviews and endorsements.

What is the CMA's interest in the environment?

1.6 Concerns about climate change are having a significant and wide-ranging impact on the UK economy, changing market dynamics and consumer behaviour. The UK is working towards being climate neutral by 2050² and clean growth is crucial to achieving this goal.

1.7 In its Annual Plan for 2020 to 2021, the CMA committed to supporting the transition to a low carbon economy. Among other things, the CMA undertook to:

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

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

consumer protection law and achieving the transition to a low carbon economy.

- support businesses in adapting to climate change while ensuring that markets remain competitive.
- improve our understanding of 'green' claims made by sellers to consumers and, where appropriate, we will make use of our powers to correct false or misleading statements that affect consumers.

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

Why do environmental claims matter?

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

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

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

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

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

⁶ *Literature review*

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

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

What have we found so far?

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

1.14 We have undertaken a range of activities including:

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

1.15 A number of key themes have emerged:

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

⁷ Literature review

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

Why are we proposing to introduce guidance?

Is there a problem?

1.16 In November 2020, the CMA participated in a ‘web sweep’ by the International Consumer Protection & Enforcement Network (ICPEN), examining environmental claims made by businesses online. The results of the web sweep suggested that more than 40% of the claims made online about the environmental benefits of products or services were potentially misleading.

1.17 The CMA’s own findings from the web sweep suggest that the problems seen globally are equally a problem in the UK market. The sorts of problems identified were claims which were vague, gave incomplete information or were apparently unsubstantiated.

Is more guidance necessary?

1.18 Before beginning this investigation, the CMA considered carefully whether more guidance was appropriate.

1.19 There is already some guidance available on making environmental claims, for example:

- guidance published by the Department for the Environment, Food and Rural Affairs in 2016.⁸

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

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

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

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

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

Why not immediate enforcement?

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

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

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

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

1.24 First, we know that many businesses want to do the right thing. In some cases, businesses will inadvertently mislead consumers for example, by giving consumers accurate but incomplete information, which makes their products look ‘greener’. This can happen where businesses are unclear about their obligations under consumer protection law. We hope that this guidance would enable those businesses to comply, without the need for enforcement action by the CMA or other consumer protection enforcement authorities.

1.25 Second, there is anecdotal evidence that some businesses who are delivering more environmentally sustainable goods, services and practices do not feel able to trumpet their successes for fear of being accused of greenwashing (so called ‘greenhushing’).

1.26 Our provisional view therefore is that guidance to business would be the most effective way to improve levels of compliance in environmental claims across consumer markets in the first instance. Following publication of the final guidance, we would intend to run a compliance campaign to raise awareness of the guidance and encourage compliance.

1.27 Undoubtedly, in some cases, businesses will continue to mislead consumers about the environmental credentials of their products. After publishing our guidance, we would also carry out a compliance review, and would not hesitate to take enforcement action where appropriate.

1.28 It also remains the case that, should we find evidence of egregious non compliance, we may consider enforcement action at an earlier stage.

Is guidance enough?

1.29 The CMA hopes that our guidance on compliance with consumer protection law when making environmental claims would assist in addressing these issues.

1.30 However, there are limits to what can be achieved under existing consumer protection law. For example, it does not always require businesses to include environmental information in marketing claims. Nor does it prescribe the provision of specific information that consumers may find helpful in making choices that are good for the environment. Its application also depends on the kinds of decisions consumers are likely to make because of what they are told. There may be a case for refining or streamlining some of the existing laws to reflect specific sustainability objectives.

1.31 We will therefore continue to engage with key government stakeholders, including the Department for the Environment, Food and Rural Affairs (Defra),

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

2. Scope of the proposed guidance

2.1 The draft guidance is intended to apply to all businesses selling goods and services in all sectors of the economy. We recognise that this is very broad and that different considerations will arise in different sectors.

2.2 The draft guidance would apply to:

- businesses supplying products and services direct to consumers.
- manufacturers and wholesalers to the extent that the claims they make about their products have a direct impact on consumers.
- manufacturers and wholesalers to the extent that the claims they make mislead the businesses to whom they are supplying their products or services.

2.3 The draft guidance (and UK consumer protection law more generally) would be relevant to both:

- UK-based businesses; and
- businesses based outside the UK in so far as they are conducting activities in the UK.

2.4 The draft guidance sets out a series of high-level principles to help businesses comply with consumer protection law. It also sets out in more detail what businesses should do to apply those principles. Where businesses apply the principles they would, in the CMA's view, be less likely to mislead consumers and to break the law.

2.5 The draft guidance focusses mainly on the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), particularly in relation to practices which are misleading by act or omission or contrary to the requirements of professional diligence. It also reflects requirements in the Business Protection from Misleading Marketing Regulations 2008, where we focus on the rules relating to provision of material information and comparative advertising.

2.6 Consumer protection law sets minimum standards that apply to various aspects of the commercial relationship between business and consumers. In some cases, it sits alongside other sector-specific legislation or regulatory obligations, for example, energy efficiency labelling rules for specific categories of products or licence conditions in regulated sectors.

2.7 Although this guidance is concerned with the application of consumer protection law, failing to comply with sector-specific legislation or regulatory obligations may be relevant to a finding that consumer protection law has been infringed, and vice versa. Depending on the sector, businesses may need to take additional steps to comply with consumer protection law or may need to do more to comply with sector-specific rules.

2.8 The draft guidance would not create new legal requirements. It would not be a substitute for the law itself, and would not replace the role of the courts, which is to provide the definitive interpretation of consumer protection law based on the facts of each case. Ultimately, a business is responsible for ensuring that it is complying with the law. Businesses should therefore seek their own independent legal advice on the interpretation and application of the law.

3. Questions for consideration

These questions are being answered on behalf of [FibreTrace](#) - an advanced transparency technology business, combining physical and digital traceability with the power of quantification and authentication.

FibreTrace provides brands and retailers with true custody of supply, the ability to quantify and audit fibre, access primary impact data for natural and man-made solutions in real-time.

FibreTrace aims to empower the global textile industry to reduce its impact on the environment.

Scope

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims? If not, what else should this guidance include and why?

The draft guidance does not explicitly cover a brands' responsibility to ensure full transparency and traceability. When complying with ethical, labour and environmental standards/regulations brands must provide irrefutable data backed by scientific evidence and measurement proven by methodologies that are third-party verified.

Through the work of FibreTrace (founded in 2018), we have come to realise that even the most conscious suppliers cannot guarantee complete custody of supply. The textile supply chain is multi-tiered and complex with many players involved in producing a single garment or product, the majority of brands do not know the true provenance of their raw fibre source.

Transparency is absolutely essential in understanding the full supply chain, identifying areas of issue and making changes. Fashion Revolution's most recent Fashion transparency index (2021) revealed only 11% of brands (28 out of 250) are publishing some of their raw-material suppliers (an increase of 4% from 2020). According to this same report, the average transparency rating across 250 brands that were reviewed is 23%, with 47% of brands disclosing their manufacturers and 27% disclosing their facilities.

¹

Whilst government intervention and green guides have become essential in inciting this change, the adoption of traceability solutions like FibreTrace is necessary for implementing radical transparency, backed by irrefutable and trusted data. The draft guidance should do more to acknowledge the opportunity for brands in adopting such technologies to incite more meaningful change.

¹ Fashion Revolution, Transparency Index 2021.

https://issuu.com/fashionrevolution/docs/fashiontransparencyindex_2021

3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships. Is it helpful to cover both?

Yes, transparency is not only for consumers but across a brand's entire supply chain. This is extremely important in enabling and furthering sustainability communication efforts. Full transparency is an industry-wide effort that must occur at every level of the supply chain, from the raw fibre producers to the end customer, through to reuse and recycle. It must be clear in the draft guidance that honest, transparent and data-driven communication across every level of the supply chain is essential for brands in understanding the activities of their entire supply chain.

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately? If so, which sectors and why?

Principles for compliance

3.4 The guidance sets out six principles for business compliance with consumer protection law to avoid 'greenwashing'.

3.5 Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

- Brands must be able to prove provenance of their raw materials and fibres.
- They must communicate transparently with their consumers and share all relevant information concerning provenance, environmental and social claims in an easily accessible way, backed by scientific data and measurement proven by methodologies that are third-party verified.
- Sustainability claims should consider all positive and negative side effects of a product's lifecycle.
- Sustainability claims made at the raw fibre level should consider region-specific data and not global, aggregated data.

Case studies

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

Recent research from Ag Econ for Good Earth Cotton*, highlights some key communication barriers when communicating environmental data at the raw fibre level, to consumers.

It is commonly reported by NGOs, new articles, etc. that 2,700 litres of water is used for one cotton t-shirt however, this is not accurate nor informed by a reliable source.

A lot of public data on raw fibre, for e.g cotton, is typically aggregated global data and has not taken into account region-specific data. It is unlikely that a consumer will be aware that agricultural footprints/areas and soil carbon levels are likely to change by season and that the context in which fibres are grown will affect their overall environmental score. For example, Good Earth Cotton has managed to improve their water efficiency by 235% and use 20% less water for average t-shirt (468.3 L/ 227g Tshirt) based on the Cotton Inc. Study² of the amount of water used to grow high quality cotton (base grade) is 34% lower than US irrigated cotton and 40% lower than Indian irrigated cotton. What is more, agricultural systems are a highly complex interaction of natural and human processes, and vary depending on weather, geography and management (for e.g. US cotton is 60% rain-fed whilst Indian cotton is 96% rainfed).

Research from the thinkstep (2017) Life cycle Assessment of Cotton Fiber and Fabric Life Cycle, funded by Cotton Inc (U.S)³, also asserts that cotton growing contributes the smallest proportion of GHG emissions across the value chain.

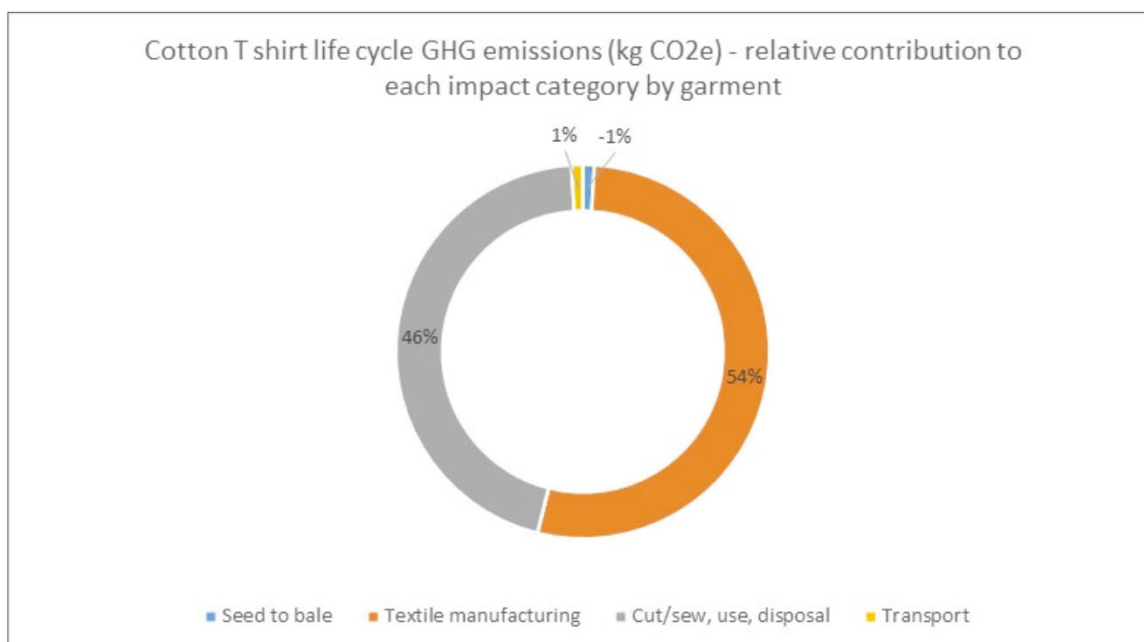


Figure 1: Cotton t shirt life cycle emissions. Source: thinkstep (2017) LCA Update of Cotton Fiber and Fabric Life Cycle Inventory p 104

² Ag Econ, May 2021. Good Earth Cotton - environmental credentials. Analysis using data from 'Keytah' operations. Pg. 21, Footnote 43.

³ Ag Econ, May 2021. Good Earth Cotton - environmental credentials. Analysis using data from 'Keytah' operations. Pg. 9, Footnote 13.

The figure above indicates that the textile manufacturing and consumer use phases dominate most of the impact for a cotton t-shirt.

Without accurate and reliable data, it is potentially harmful for brands to communicate environmental data to their consumers that are based on aggregated data and therefore, inaccurately represent the impact of a particular fibre choice. It is important that brands have access to scientifically-backed data so that they can truthfully communicate the environmental impact of their raw fibres, and identify to their consumers what a “preferred” fibre actually is.

Brands must also be able to communicate these efforts in a consumer-friendly manner.

*All the information above is cited from an internal 2021 report made for Good Earth Cotton. For more information, please reach out to

[✂] 

General and additional issues

3.7 Which, if any, aspects of the draft guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section of the draft guidance (and, where appropriate, the issue) each of your comments relate to.

See below.

3.108 Whether the full life cycle of a product is information the average consumer needs to make an informed choice will depend upon the product in question. It is likely that, in the coming years, consumers will demand more and clearer information about the provenance, processing and disposal of products and services as public awareness of environmental issues grows. **It is also assumed that consumers will want to know more about the entire journey of a product, from raw fibre to the end garment and understand its social and environmental impact.**

Claims that include information about the full life cycle of a product, or reflect that whole cycle, are less likely to mislead people and more likely to help them make informed choices that are better for the environment.

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

We believe more emphasis on the importance of complete transparency and traceability with more science-based or measured guidance as to how brands can ensure that they are meeting the draft guidance to the best of their ability. There are

multiple traceability solutions that provide communication of the journey of a product however with multi-faceted fashion supply chains, transparency of that journey is imperative. Brands must understand that honest and factual information sharing requires collaborating with others and adopting said technologies into their supply chain as a critical step forward.

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

We believe that the draft guidance should explicitly state its expectation from brands when it comes to transparency and providing complete custody over their entire supply chain. When making sustainability claims brands need to ensure they are accurate, current and are able to be substantiated.

Without radical transparency and traceability, it becomes incredibly difficult for brands to prove the true provenance and environmental or social impacts of their raw fibres with 100% certainty.

Consultation process

4.1 We are publishing this consultation on the CMA's webpages and sending it to a range of interested parties to seek views on the questions set out in section 3 of this document.

4.2 If any stakeholders would find it helpful to meet with the CMA to discuss their consultation responses, the CMA would be happy to do so. However, due to time constraints, please only seek a meeting if you believe that this would bring additional benefits over a written response.

Duration

4.3 The consultation will run for a period of 8 weeks from 21 May 2021 to 16 July 2021. Responses should be submitted by email to misleadinggreenclaims@cma.gov.uk by no later than 5pm on 16 July 2021.

4.4 Please note that, at the time of publication of this consultation, due to the ongoing Covid-19 situation, we are not able to process any documents or correspondence sent by post or courier to any of our offices.

How to respond

4.5 Please respond to as many of the questions as you can and support your answers with any evidence or examples you may have.

4.6 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a business, group or organisation (including those representing consumer or business interests). If the latter, please make clear who you are representing and their role. The data use statement below sets out how the CMA may use information provided to it as part of this consultation.

Use of information provided to the CMA

4.7 This section sets out how the CMA may use the information provided to it during this consultation.

4.8 The information you provide will help to inform the CMA's final guidance on environmental claims.

4.9

We may wish to refer to comments received in response to this consultation in future publications. Where appropriate, we may also use the information you provide in the carrying out of the CMA's other functions, for example, in enforcement action using our consumer protection law enforcement powers or we

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

4.10 However, we may only publish or share information in specific and limited circumstances set out in legislation (principally, Part 9 of the Enterprise Act 2002). In particular, prior to any publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable:

- any information relating to the private affairs of an individual which might, in our opinion, significantly harm the individual's interests; or
- any commercial information relating to a business which, if published or shared, might, in our opinion, significantly harm the legitimate business interests of that business.

4.11 If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.

4.12 Any personal data you provide to us in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the Data Protection Act 2018.

4.13 'Personal data' is information which relates to a living individual who may be identifiable from it.

4.14 Any personal data you provide to us will be handled in accordance with our obligations under the Data Protection Act 2018. For more information about how the CMA processes personal data, your rights in relation to that personal data (including how to complain), how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see the 'key information on data protection' section of our case page.

4.15 The CMA is also bound by the Freedom of Information Act 2000 (the FoIA). Under the FoIA, where a person makes a request in accordance with the requirements of the FoIA, the CMA may have to disclose whether it holds the information sought. The CMA may also be under a duty to disclose it, unless an exemption applies. If you consider that any information you

provide may be exempt from such disclosure you should say so and explain why.

4.16 When replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

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

Compliance with the Cabinet Office Consultation Principles

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

After the consultation

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

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

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

