

16 July 2021

FDF Response to the CMA Consultation on Draft Consumer Protection Law Guidance on Environmental Claims

This [consultation](#) submission is made by the Food and Drink Federation (FDF), the trade association for food and drink manufacturing. Food and drink is the largest manufacturing sector in the UK (accounting for almost 20 per cent of the total manufacturing sector), turning over more than £105 billion per annum; resulting in Gross Value Added (GVA) over £28 billion and employing over 430,000 people across every region and nation of the UK.

Scope

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 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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?

Due to it being a broad cross-sector document, the FDF agrees that, in general, the draft guidance does cover all the important consumer protection law issues relating to the making of environmental claims. It is suggested that paragraph 6 of the 'Appendix - Legal framework' should provide an exhaustive list of all consumer protection legislation applicable to the environmental claims in scope of the guidance, and that the CMA would be best placed to develop this.

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 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships.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?

The FDF membership supports that the scope of this guidance should also apply to business-to-business (B2B) relationships. In order to develop and maintain reliable consumer information, it is therefore important that B2B information is consistent, substantiated and not misleading across the entire supply chain. Further detail in the guidance on B2B responsibilities would be welcomed. In particular with regard to packaging suppliers and obligations for them to provide businesses with necessary information to make relevant assessments and to provide information aligned to this guidance in terms of claims substantiation. This should mitigate any misinformation, generalisations or exaggerations made within B2B supply chains.

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 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services.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

It is acknowledged that there are already a few food-specific examples provided within the draft guidance, however we believe that more detail and signposting links should be added for the food industry related information. This is due to the recent increase in consumer awareness of the relationship between food and the environment and demand for environmental food information.

The FDF also believes there is merit for separate food industry guidance and, in coordination with the CMA, this should be taken forward jointly by the relevant UK food authorities across the UK, which have shared food information responsibilities (i.e. Department for Environment, Food and Rural Affairs (Defra), the Food Standards Agency (FSA) and Food Standards Scotland (FSS)).

Principles for compliance

- 4. 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.**

In general, the FDF agrees that six principles for business compliance with consumer protection law to avoid 'greenwashing' are appropriate and fair. This is due to such principles being based on key aspects already enshrined in food law (e.g. The Food Safety Act 1990 with its EU retained law: Regulation (EC) No. 178/2002 and The Food Information Regulations 2014 with its EU retained law: Regulation (EU) No. 1169/2011).

Case studies

- 5. 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.**

The FDF believes there is merit for the following areas to be considered for additional case studies:

- Sufficient level of substantiation needed for 'biodegradable', 'environmentally friendly' and 'sustainable' claims, as this could hopefully help create more of a level playing field with these claims.
- 'Recyclable' as a claim regarding a products packaging, as opposed to the content of recyclable material in the packaging (e.g. contains 50% recyclable plastic in relation to the packaging).
- If/where a partial product lifecycle assessment could be suitable to be represented. The guidance's frequent references to ensuring the whole product and its lifecycle is suitably represented is supported, however it can be difficult to achieve. It is important for manufacturers to be able to communicate meaningful investments in sustainability that are being made, and progress achieved toward long-term sustainability goals, even if some work remains to be done to address other sustainability issues in a product or package's supply chain. Some businesses will not make these investments if they cannot communicate them, undermining long-term goals to reduce the environmental footprint of the industry. As such, we request that guidance be provided that enables communication about incremental progress.
- Additional positive case study examples which show instances where businesses have successfully promoted environmental claims correctly, these would be particularly useful in instances of comparison claims.

General and additional issues

6. 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.

The FDF has identified the following aspects which could benefit from further clarification or explanation within the draft guidance, and where possibly worked examples/case studies could be developed:

- 'Sustainable', 'biodegradable' and 'recyclable' claims – it is generally agreed that these are 'problematic' however the guidance does not give enough detail on how businesses should clarify/substantiate such statements.
- 'Sustainability claims' – given the widespread usage of 'sustainability claims', which are also mentioned in the guidance, it would be very helpful if the guidance included references to the definitions referred to in footnote 1 (i.e. 'principles of sustainability', 'sustainable consumption' and 'sustainable development') within paragraph 2.10.
- Factual information/messaging - another aspect that should be considered within the guidance is how businesses can convey messages about their efforts in improving their environmental credentials by providing factual information (e.g. packaging containing X% less plastic).
- Local authority responsibility for collection/processing infrastructure related to recycling – the guidance should acknowledge that it is not industry's responsibility to ensure the infrastructure is in place to enable consumers to deal with such products/packaging. The government (both national and local) needs to address this aspect, which would in turn bring clarity for such claims.
- Composting standards and claims – the guidance could provide more clarification on home composting as compared to industrially composting (Standard EN 13432) and how this should be communicated on product labels. This is particularly of relevance due to there being no standard for home composting/home compostable.
- References to which standards/evidence should be used for substantiation – it is fully supported that the overall sentiment of the guidance is that claims must be 'substantiated', with 'objective criteria', 'true' and 'based on recognised standards and measurements', however many claims do not have clear agreed definitions or evidence pathways. For example, 'recyclable' lacks definition, and carbon neutrality/footprinting can be achieved through different bodies with currently no standardised claim. With the support from other UK authorities, could the CMA consider adding a list of acceptable standards, measurements and definitions throughout the guidance to support substantiation.
- Further clarity on to what extent omission of information is considered to mislead – the principle to not 'cherry-pick' positive environmental aspects is fully supported by the FDF. There is however some concern regarding the possible interpretation and extrapolation of the following phrase within the guidance: 'Consumers can be misled where claims do not say anything about environmental impacts'. Within food legislation, environmental claims are considered voluntary food information and it is important that this guidance is not to be interpreted as making such information defacto mandatory.
- Clearer wording needed to highlight organic legislation for food – within the context of food, the several references to 'organic' claims and 'sector-specific rules' in the guidance do not

emphasise enough that these 'rules' are based on stringent food legislation and that it is a highly regulated claim, supported by a legislative framework for food production. The organic example referenced in the second bullet point of paragraph 3.16 should be removed. This is because it concerningly infers that organic production is a 'minor sustainability benefit', and that a legally compliant product making a substantiated 'organic' claim could be deemed misleading, even though it would meet the robust regulatory framework for organic production and labelling, which is not the case. Additionally, the guidance places too much focus on 'organic' as a simple example of an environmental claim. This is not technically accurate as it has many attributes and is the specific condition and process a product has undergone. For example, organic meat will have been subjected to fewer veterinary medicines, which is broader than only environmental attributes.

- Related claims with environmental connotations – consideration should be given to the guidance possibly referencing related claims, which may be perceived by some consumers, due to associated impacts, as also communicating environmental information.
- Carbon labelling data assessments – there is currently no industry-wide methodology, and so transparency and comparability between products are key issues. Across the farm to fork supply chain, stakeholders, including FDF, are working with WRAP to develop solutions starting with an aligned approach to principles on scope 3 accounting and engaging with suppliers. Depending on the timing of publication of the CMA work, it would be helpful if reference could be made to this.

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

The FDF agrees that overall the draft guidance is sufficiently clear and helpful for the intended broad cross-sector audience. It is a useful starting point resource that sets out a framework for environmental claims. Due to the complexities faced by the food industry, additional food-specific detail/explanations would be welcomed within this document. Then as a next step a food-specific guidance document jointly developed by relevant UK food authorities, would be well-received in the near future.

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

The FDF would draw CMA's attention to the lack of signposting links to further relevant information within the draft guidance. This would help companies continue their research and knowledge building outside the confines of this single guidance document. The types of further information could include: guidance from other organisations, relevant standards, certification bodies, third party schemes and international examples (e.g. EU Product Environmental Footprint – PEF/PEFCRs). The FDF has assembled the following non-exhaustive list of further relevant resources/links to consider for inclusion within the guidance:

- ASA: <https://www.asa.org.uk/advice-online/environmental-claims-general.html>
- BSI standards: <https://shop.bsigroup.com/Browse-By-Subject/Environmental-Management-and-Sustainability/Sustainability/>
<https://www.bsigroup.com/en-GB/iso-14001-environmental-management/>
BS EN ISO 14021: <https://shop.bsigroup.com/ProductDetail?pid=00000000030302829>
- Schemes: <https://www.carbontrust.com/>
- International: https://ec.europa.eu/environment/eussd/smgp/ef_pilots.htm
- Defra: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976912/standards-biobased-biodegradable-compostable-plastics.pdf
- WRAP: <https://wrap.org.uk/taking-action/food-drink/actions/reducing-greenhouse-gas-emissions>

Annex - The UK Food and Drink Manufacturing Industry

The Food and Drink Federation (FDF) is the voice of the UK food and drink manufacturing industry, the largest manufacturing sector in the country. Our industry has a turnover of more than £105billion, which is almost 20 per cent of total UK manufacturing, and Gross Value Added (GVA) of more than £28billion. Food and drink manufacturers directly employ over 430,000 people across every region and nation of the UK. Exports of food and drink make an increasingly important contribution to the economy, exceeding £23billion in 2019, and going to over 220 countries worldwide. The UK's 7,400 food and drink manufacturers sit at the heart of a food and drink supply chain which is worth more than £120billion to the economy and employs 4.3 million people.

The following Associations actively work with the Food and Drink Federation:

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| ABIM | Association of Bakery Ingredient Manufacturers |
| BCA | British Coffee Association |
| BCUK | Breakfast Cereals UK |
| BOBMA | British Oats and Barley Millers Association |
| BSIA | British Starch Industry Association |
| BSNA | British Specialist Nutrition Association |
| CIMA | Cereal Ingredient Manufacturers' Association |
| EMMA | European Malt Product Manufacturers' Association |
| FCPPA | Frozen and Chilled Potato Processors Association |
| FOB | Federation of Bakers |
| GFIA | Gluten Free Industry Association |
| PPA | Potato Processors Association |
| SA | Salt Association |
| SNACMA | Snack, Nut and Crisp Manufacturers' Association |
| SSA | Seasoning and Spice Association |
| UKAPY | UK Association of Producers of Yeast |
| UKTIA | United Kingdom Tea & Infusions Association |

FDF also delivers specialist sector groups for members:

Biscuit, Cake, Chocolate and Confectionery Group (BCCC)
Frozen Food Group
Ice Cream Committee
Meat Group
Organic Group
Seafood Industry Alliance