

CMA - Draft guidance on environmental claims on goods and services consultation

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 60 organisations to use their strong joint voice for the protection of nature. Our members campaign to conserve, enhance and access our landscapes, animals, plants, habitats, rivers and seas. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline. This response is supported by the following Link member organisations:

- British Mountaineering Council
- ClientEarth
- Environmental Investigation Agency
- Friends of the Earth England
- Keep Britain Tidy
- Marine Conservation Society
- Whale and Dolphin Conservation
- WWF-UK

Executive Summary

The Resources and Waste Group at Wildlife and Countryside Link (Link) have a particular interest in the sustainable use of materials as part of a circular economy, minimising the impact of waste arising from resource use. There continues to be significant public interest in the impacts of plastic pollution, and this presents an opportunity for businesses to market their products in such a way that capitalises on the anti-plastic sentiment.

However, in turn, this has led to a proliferation of ambiguous and unsubstantiated claims relating to the superior “sustainability” of products and especially packaging. Without a significant turnaround in resource consumption trends and a shift towards circular and zero-waste economies, the twin ecological crises of climate breakdown and the biodiversity emergency cannot be addressed. This situation is not helped by the continued single-use packaging approach which dominates business models and the shift away from plastic into alternative materials is accompanied by a suite of other issues (unintended consequences).

Whilst plastic pollution is a huge concern, we must acknowledge the environmental impacts of all materials. The impacts of all materials need to be factored into any claims; without this transparency, consumers are left confused by the choices presented to them. In line with the waste hierarchy, the building blocks of a circular economy must be reduction then reuse, followed by recycling. Rather than substituting conventional fossil-fuel based plastics with alternative materials (including those that degrade), we urge the Government to focus on plastic prevention, reuse and refillable solutions.

Plastic alternatives and labelling are confusing citizens and businesses, with misleading and unsubstantiated claims about green credentials. There are grounds to fear that this could lead to an increase in incorrect disposal choices being made which could contaminate existing recycling streams, and potentially lead to an increase in incineration and littering. The UK currently lacks clear guidance on the use of claims relating to materials, which results in the marketing of products with misleading sustainability claims, in some cases due to businesses having access to insufficient information or due to misrepresentation in the business selling process.

In our response, we welcome the proposed action by the CMA and seek to highlight some of the key areas where the draft guidance could be strengthened and clarified. It is increasingly important that both businesses and consumers can trust information related to products since the potential consequences of misinformation could lead to serious consequences.

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?

We very much welcome the draft guidance to address the growing problem of misleading environmental claims or “greenwashing”. As consumers have become increasingly aware of the potentially negative environmental and social impacts of the products they buy, businesses have responded by increasing their communication to highlight any positive environmental aspects of their products. However, up to now, there has been minimal if any monitoring on the nature of those claims and this has led to an unacceptable level of claims which are, at best, factual but without context and, at worst, blatantly misleading.

While we welcome the draft guidance, it would be helpful to have a list of the CMA’s understanding of the definition of common environmental claims as a central place where the technical criteria are stored that consumers can refer to. This could also include examples to illustrate different types of environmental claims. The following terms in particular are likely to require improved guidance:

- Bio-based
- Bio-derived
- Bio-sourced
- Plant-based
- From renewable sources
- Biodegradable
- Compostable
- Degradable
- Eco-degradable
- Oxo-degradable
- Plastic-free

These terms lead to consumer confusion over terminology. There is a lack of guidelines for the information required to support use of these terms e.g. sourcing credentials and how they should be disposed of at end of life, a lack of clarity as to which standard(s) are most relevant to support these claims, and a lack of evidence to support common assumption from consumers that these options are more “sustainable”. In addition, use of these terms is proven to encourage littering as consumers believe items will “disappear” in nature.¹

We would suggest that certain ambiguous and unnecessary terms (e.g. 'degradable') are eliminated in order to avoid the inevitable greenwash that could stem from this, only allowing a restricted pool of terms.² For instance:

- the term “compostable” should in actual fact be “industrially compostable”, and should only be used if the product is certified to a recognised standard (like EN13432)
- the removal of potentially misleading terms like “biodegradable” and “degradable”. Understanding that respectively this means a plastic that when it breaks down it is to basic elemental components (water, biomass and gas) with the aid of microorganisms or if it breaks down to smaller (monomeric) subunits and loses its original properties. These terms could cause significant confusion and subsequently incorrect and environmentally unsound disposal and treatment practices.
- exclude vague or misleading terms such as ‘plastic free’ to indicate bio-based content.

Indeed, the guidance should state more clearly the CMA’s understanding of claims such as “plastic free”, which are open to interpretation and often applied to compostable plastics. This is despite the fact that PLA, one of the most common industrially compostable plastics, is classified along with ‘other’ plastics as plastic number 7, under the ASTM International Resin Identification Coding System (RIC) used to identify plastic resins. And while the various “plastic-free” logos³ used on packaging are independently accredited by Control Union, we believe these are being used disingenuously on compostable plastic packaging since, technically, they are still of a polymeric nature. It is also worth noting that these materials also fall within the scope of the plastic packaging tax, due to be introduced in 2022, thereby signalling the Government regards them as plastic.

In relation to packaging recyclability, the On Pack Recycling Labelling scheme (OPRL)⁴ leads the approach on whether packaging is actually recycled or not. Their binary “recycle” and “do not recycle” labels are based on actual local authority collection rates.⁵ Where voluntary or recycling partnership initiatives are in place, we believe evidence should be provided as to the level of material returned and actually recycled in order to give confidence to consumers that these initiatives deliver environmental benefit and not simply PR benefit for the business.

¹ See Appendix A of

https://www.wcl.org.uk/docs/assets/uploads/Misleading_Environmental_Claims_Link_evidence_14.12.2020.pdf

² The ECOS Ideal Claims checklist is an example of a set of qualitative sustainability criteria against which green claims can be assessed. <https://ecostandard.org/wp-content/uploads/2021/07/ECOS-RPa-REPORT-Too-Good-To-Be-True.pdf>

³ [A Plastic Planet - Plastic Free Certification Marks](#)

⁴ <https://www.oprl.org.uk/>

⁵ <https://www.oprl.org.uk/get-involved/what-is-the-scheme/>

Section 2.7 of the draft guidance notes that claims may be implicit in the ‘overall presentation’. It would be helpful to have more specific guidance around ‘implicit’ claims; on what kinds of features the overall presentation would need to have in order to be deemed an environmental claim. For example, there is clearly ambiguity in how the guidance should be interpreted if products are, for example, not making explicit environmental claims but are coloured green and feature plants or other natural imagery. Greater clarity in the guidance will aid understanding and compliance in the long run.

Guidance must apply to packaging as well as other aspects of a product or service which may influence a consumer. For consumers who continue to seek out more sustainable products and services, the plethora of claims is confusing. The level at which they are informed on issues is not as detailed as those in the supply chain, therefore on-pack logos will be one of the ways in which they judge the sustainability credentials of a product. As well as packaging, additional consumer touchpoints for sustainability information are marketing and advertising campaigns, information on company websites, social media and in-store point of sale materials. Misleading claims in any of these areas potentially exploit the inherent trust between brands, retailers and their consumers.

The guidance should also include details of external standards. There is a concern about standards such as ‘marine degradation’ which may not be robust. Third party independent testing is positive (as opposed to firms assessing their own claims) but the quality of those third parties can vary significantly. The CMA must assess whether the standard is fit for the purpose for which the consumer would understand (example with composting standards, the industrial composters don’t run long enough to make it viable).

However, standards themselves need to be fit for purpose. For example, the recently sponsored BSI PAS 9017 Plastics- biodegradation of polyolefins in an open-air terrestrial environment - Specification⁶, was widely opposed by multiple stakeholders for reasons including the lack of transparency as to whether microplastics are created during the biodegradation process as per an oxo-degradable additive.⁷

Claims are valid when they make a specific product unique in the category. But also claims like BPA free could mean alternatives and, potentially equally harmful, additives are being used instead. In these cases, the producer is not necessarily lying but instead not painting the whole picture. We would expect full transparency of ingredients / chemicals in a given product (non-food) or packaging - give the consumer the opportunity to find out more.

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?

We support the guidance covering both. With the packaging particularly, we are concerned that smaller businesses are being misled by claims on packaging in the same way as consumers.

⁶ <https://standardsdevelopment.bsigroup.com/projects/2020-00490#/section>

⁷ <https://www.politico.eu/article/biodegradable-plastics-polymateria-recycling-pollution-environment/>

On the other hand, businesses, even smaller ones, should bear some responsibility in investigating such claims and their merits - the problems with compostable packaging that looks and behaves like plastic are well-documented online for example. There should be a responsibility on retailers to verify eco claims being made on branded products sold in their stores - often the commercial contact will make the decision whether to stock that brand and claims will not be verified by internal sustainability experts. This re-emphasises the need for a central place where the technical criteria are stored that both smaller businesses and consumers can reference.

Still, for certain sectors, wider Government action is needed to ensure transparency in supply chains. For example, eco claims on textiles can lead to clothes producers being misled by textiles manufacturers and the liability goes back along the supply chain to the original organisation which has used misleading claims to sell the product. We need guidance for smaller businesses who lack resources to investigate claims linked to what they're being sold, such as independently certified claims e.g. organic cotton, chain of custody.

Any claims should be aligned to independently verified standards via recognised organisations e.g. MSC, Fairtrade, Organic. Currently, too many businesses are making claims which are not aligned with independent certifications and this results in logos on packaging which are designed by the business themselves using wording at their discretion.

Furthermore, we consider there to be a significant gap in relation to evidencing climate claims such as "carbon neutral" and "carbon positive / negative". This is an area which requires urgent attention as awareness of the climate crisis increases and consumers are increasingly seeking out products which make a positive contribution to tackling this issue.

Also requiring attention is specific chemical labelling as per our BPA free example above. And claims such as "all natural", and "chemical-free" are without any context. We would suggest that "chemical-free" claims should be banned since this is not technically possible. However, claims relating to synthetic chemicals could be qualified e.g. by stating "free from synthetic chemicals".

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?

Consumer product packaging may require special treatment, as there is a distinct subset of claims made around packaging which are some of the most widely-used, consumer-focussed greenwashing. Distinct guidance analysing the most common types of claims with specific technical guidance on what the company needs to demonstrate to use that terminology would be particularly helpful.

In particular, compostable packaging presents important challenges in communicating the correct method of disposal. With compostables, we support the addition of more information on what exact conditions are needed for it to be composted and how the consumer should dispose of the packaging. A YouGov survey commissioned by MCS in 2018 found that 35% of consumers said if something labelled as compostable was littered, it would cause less harm to the environment than a product not labelled as 'compostable.' While it is not known what percentage of littering happens because of being labelled as compostable, the viewpoint that it causes less harm, indicates that the perceived harm of littering is considerably lowered. However, a compostable product requires specific environmental conditions to degrade and these are unlikely to be found in the way that many products are left in the environment.

'Eco' products which are designed to contain human or animal waste also present a special challenge which may require tailored guidance. For example, the UK throws away nearly 3,000,000,000 disposable nappies a year, costing local authorities over £60 million per annum for disposal, all of which will go through household waste streams which means either incineration or landfill where they can take more than 300 years to break down. In response, a number of single use nappies are now marketed as 'eco', 'sustainable' or 'biodegradable'. However, these terms can be confusing for the public. With the likely destination for a used nappy being incineration or landfill, it can be argued that the fact it biodegrades is largely irrelevant.⁸ However, the use of the term still requires scrutiny to understand any pre-preparation required and the actual real-world conditions under which biodegradation could take place. Claims of "eco" and "sustainability" must also be tested, as while timber and bamboo sources for material in nappies can be FSC certified, toxic chemicals can still be used when extracting pulp and there may be no mention of this in the marketing literature. There are also 'compostable' products such as wet wipes and dog poo bags, which show how products need greater guidance. Dog poo bags should explain that they need to go in the black bin and a QR code could provide more information on commercial composting.

We also believe that the guidance should provide more tailored information to sectors which may not have previously been viewed as making environmental claims; these may present unique challenges for regulators which should be addressed in guidance. Holidays for example are sometimes marketed as having eco-friendly accommodation and more work is needed to develop a standard which all holiday providers have to meet. Claims of "plastic free holidays"⁹ or claims in holiday lets that "all cleaning products are chemical-free" are hard to verify and independent guidelines should be considered.

In general, we would again highlight the need to clearly identify the most commonly-used misleading claims, giving best practice and examples of independent certifications and references to leading organisations such as the Carbon Trust, B-Corp or NGOs.

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

⁸ <https://bpiworld.org/page-190439>

⁹ For example see <https://www.responsibletravel.com/holidays/plastic-free/travel-guide/top-single-use-plastic-free-holidays>

- claims must be truthful and accurate
- claims must be clear and unambiguous
- claims must not omit or hide important relevant information
- comparisons must be fair and meaningful
- claims must consider the full life cycle of the product
- claims must be substantiated

All these principles must be met (where applicable) e.g. 'truthful and accurate' supported by 'clear and unambiguous' principles.

We are also concerned about the guidance's reliance on the concept of the 'average consumer'. While we accept that this term has precedence for CMA guidance, it is difficult to apply to misleading claims for products where consumers may not all share the same understanding of environmental claims. For example, data from a YouGov survey, commissioned by MCS in 2018 showed that 38% of consumers understood that if a product was labelled as compostable, that it would break down causing no harm to the marine environment. In this example, the average consumer does not therefore believe that the product is harmless for the marine environment, yet a significant minority potentially believe that it could be thrown into nature without negative consequences. There is a risk that this product would meet the compliance principles, and be judged as not misleading, given the understanding of the 'average' consumer.

In addition, consumer engagement will vary from sector to sector and depending on when/how the product/service is consumed; the 'average' consumer will likely be much more engaged with claims about an eco holiday for example than with claims on a coffee cup purchased on a busy commute. For these reasons, more information should be provided about how the concept of the average consumer is applied to each sector.

It is important for the CMA to understand which claims currently influence consumer purchase decisions and tackle those areas first. There are certain products, e.g. compostable coffee cups, where we believe that a small amount of misunderstanding can cause a large amount of damage. With its limited resources, the CMA should focus on delivering the greatest environmental benefit from its actions. This is particularly relevant in the context of growing climate claims; misleading claims could undermine the UK's net zero ambition and allow businesses to embark on activities which don't genuinely contribute to reducing their emissions e.g. offsetting or claims that flights are carbon neutral.

The life cycle assessment should take into account the typical disposal route that is available, rather than the optimum (and potentially preferred disposal route). For example, a product such as a coffee cup labelled as compostable bought in a city centre is unlikely to be composted because of the lack of separate collection facilities. Even if the product was taken home to be disposed of, most home collection (via "caddy waste bins") are for anaerobic digestion and therefore highly unlikely to accept compostable products. Therefore any environmental claims are likely to be negated for any typical consumer.

In terms of the principle ‘comparisons must be fair and meaningful’ we are concerned about alternatives to plastic and polystyrene food packaging. These alternatives described as ‘eco-friendly’ often include paper, card or moulded fibre products (e.g. begasse, ‘compostable’ clamshells). Some replacements, in order to maintain a suitably water or greaseproof material, treat the packaging with a chemical from the PFAS group (per and poly fluorinated alkyl substances). Therefore, plastic packaging that won’t degrade in the environment is being replaced with packaging coated in chemicals that won’t degrade in the environment instead. Consumers should be made aware of this, and the use of chemicals must be integral to any life cycle assessment, because of their potential environmental impact.

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.

We support the principles and believe they are the right approach, however more work is needed to minimise the ability to interpret and adapt principles to suit a specific business need. As noted throughout this response, ambiguities in the guidance could allow the worst offenders to continue with misleading claims.

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

Further case studies would be helpful to demonstrate examples across all the different sectors. We would welcome updates to the case studies with actual market examples which the CMA may have picked-up and how the CMA has remedied the situation.

Case studies could also demonstrate how the CMA intends to eliminate misleading claims and follow-up when they identify non-compliance. This would ensure that those making environmental claims are fully aware of the consequences of misleading consumers.

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.

We would like to see the guidelines include a list of banned claims which are seen by the consumer as providing ‘green’ claims but do not have any specific standards to support them e.g. eco-friendly, nature, sustainable and green. The guidelines should also specify for particular words, e.g. biodegradable, what is required for a company to utilise this term and be compliant.

More guidance needs to be given with regards to logos. Logos can be more impactful than words and therefore it's particularly important to ensure guidance is clear around this aspect. Any logos used should not give a false impression of the product, e.g. the ‘green dot’ symbol is

commonly mistaken by consumers as a symbol of recyclability, whereas it represents payment into an Extended Producer Responsibility system in Europe.

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

Yes, however it lacks clarity on the consequences of non-compliance.

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

Independent standards

- Claims should be linked to independent standards and where they don't exist for certain aspects e.g. chemicals, business should provide consumers access to how they're supporting that claim; via a QR code for example. There has been no central coordination on what logos such as 'BPA free' should look like so they differ from brand to brand. There should be regulated design standards for consistency.
- In addition, for some industries where the certification is provided by private companies or by their trade organisation, it is in their interest to provide a 'standard' that can be met by the majority rather than the minority. This can result in further confusion for consumers. We highlight one particular example for wet wipes- EDANA the trade organisation for non-woven and related industry has a standard for 'flushable' wet wipes. However, this was found by the UK water industry to be insufficient for UK sewers and therefore they launched the 'Fine to Flush' standard in January 2019 to ensure products labelled as 'flushable' did not cause blockages or other issues in the UK sewers. We considered the EDANA standard not appropriate in the UK, however this standard was still being quoted by retailers Wilko, ASDA and Superdrug for their own brand wet wipes as being sufficient to claim flushability by a survey published by Marine Conservation Society in February 2021. Having read the new draft guidance, we do not think in its current state it would combat this specific example of consumers being misled; as there is a standard in place, albeit not appropriate for the conditions. Therefore, we would like the guidance to be amended to ensure that standards which are quoted are themselves fit for purpose and not misleading in themselves or their application. In our given example, the EDANA standard wouldn't be considered appropriate for wet wipes sold in the UK because they would be disposed of into UK sewers, and therefore would need to pass the "Fine to Flush" standard instead. This should be dealt with under the new CMA guidance.

Updated guidance

- The guidance should be regularly updated as new themes emerge. Companies often respond very quickly to consumer pressure on the environment, such as the backlash against plastics following Blue Planet 2 in 2017, and it is essential that guidance remains relevant.
- The United Nations Environment Programme in collaboration with NGO Consumers International produced a global assessment of standards, labels and claims on plastic

packaging called, 'Can I recycle this?' last year.¹⁰ This report contains very useful guidance on good practice and several clear recommendations.

Disposal

- Guidance should more explicitly address products which fail to offer safe advice on disposal. One of the key areas of concern is that information provided for 'green claims' doesn't just encourage purchasing habits/preferential buying but that it changes consumer behaviour because they believe the product can be disposed of in this way. We would highlight two examples of particular note: compostable dog poo bags and wet wipes. Both of these products would typically contain faecal matter and therefore the potential to carry harmful bacteria. It would therefore not be recommended that they would be home composted (particularly if the compost was to be used for growing of fruit/vegetables to be consumed). A label of compostable can lead to a consumer to think its suitable for home composting. Data from a YouGov survey, commissioned by MCS in 2018 has shown that 60% of consumers understood that if the product was labelled as compostable, it meant that it could be composted at home. It is important that consumers are getting the correct information on how to dispose of this product correctly, since it is noted by Recyclenow that dog faeces and soiled tissue should never be added to a home compost bin. This information is not given on the packets and if available at all, is not immediately obvious when looking at a website of such products.

¹⁰ <https://www.consumersinternational.org/media/352255/canirecyclethis-finalreport.pdf>