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Citizens Advice response to the CMA's draft guidance on environmental claims on goods and services

Citizens Advice provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. We are the statutory representative for domestic and small business energy consumers across Great Britain. Citizens Advice operates the consumer service, giving people practical and impartial advice on how to resolve general consumer problems. Citizens Advice also participates in the Consumer Protection Partnership. This collaboration brings together key partners in the consumer landscape to identify, prioritise and coordinate collective action to tackle detriment.

We welcome the opportunity to respond to the CMA's draft guidance on environmental claims on goods and services. The increased focus on sustainability and the transition to Net Zero means growing numbers of consumers are seeking to make a conscious environmental choice in what they buy. In the energy market, we have observed the proportion of consumers choosing a tariff due to it offering green energy more than doubling from 9% in Q1 2019 to 19% in Q1 2021 in our regular consumer perceptions tracking survey.¹ However, as our wider work around the needs of future energy consumers² has revealed, for consumers to feel confident engaging, they require transparency around claims to be able to make an informed choice.

The CMA's draft guidance in this area should help bring welcome practical clarity for businesses to make this information available to consumers. However, we would welcome more information in future on how it is expected to be applied from an enforcement perspective, particularly where sectoral regulators and non-sectoral bodies take divergent approaches.

This document is entirely non-confidential and may be published on your website.

Yours sincerely,

Tom Crisp

¹ Ofgem (2021) [Household Consumer Perceptions of the energy market Q1 2021](#)

² Citizens Advice (2021) [Setting out principles for a future energy market](#)

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Scope

Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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

In terms of general consumer law applicability, the draft guidance covers the key consumer protection law issues, principally the applicability of the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. More widely, it could be helpful for businesses to understand if there is any particular applicability in relation to the environmental claims guidance from the Consumer Rights Act 2015. For example, section 50³ providing that an implied term that anything said about the service will become a binding term if it was taken into account by the consumer when entering into the contract.

An emerging area where specific guidance or further investigation may be needed in future guidance relates to carbon calculations/certifications regardless of sector and on how these can be done in a way that is in accordance with the principles of being accurate, truthful and comparable. These certification schemes are increasingly popular and continuing to proliferate, for example on a product basis from Carbon Trust, on a business level with The Carbon Neutral Protocol, or in the energy market with Uswitch's recently launched Green Accreditation incorporating several certification metrics to arrive at a green tariff typology. We anticipate that the market for schemes and/or tools to calculate or certify carbon intensity (or environmental benefit) will continue to grow. It is vital that the CMA continue to monitor this market as there is a delicate balance between bringing welcome clarity for consumers and risking confusion if measures of carbon intensity or environmental outcomes overlap or aren't broadly consistent.

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 would strongly welcome the explicit recognition that the guidance should extend to business-to-business relationships where applicable.

³ Legislation.gov (2021) [Consumer Rights Act 2015](#)



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Our previous research has illustrated the significant challenges that arise when microbusiness energy customers do not benefit from information or protections⁴ around commission, market coverage, and fees. There is applicable read-across on the need for transparency and microbusinesses being enabled to make informed choices around green products and services. The demand from this group of consumers for green services is significant. Research conducted by the Federation of Small Businesses found 47% of microbusinesses said a renewable tariff offer would encourage them to switch.⁵

However, unless they are a sole trader, microbusinesses fall outside of the definition (“an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession”) of consumer under general consumer protection law. We also note that while the Business Protection from Misleading Marketing Regulations (BPMMRs) do prohibit misleading marketing, a breach does not make business-to-business contracts void and unenforceable, in contrast to the provisions allowing access to redress under The Consumer Protection from Unfair Trading Regulations.

Given these disparities, more broadly, if the CMA considers there are gaps in consumer law for business-to-business transactions as exposed by this work, we would encourage that these be highlighted to the government and suggestions made for improvements.

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?

Taking a sectoral view of where special treatment may be required separately, our view is that there is increasing evidence for the need for such a reformed approach in the energy sector.

This is particularly due to the complexity inherent in the sector, with overlapping subsidies, certification regimes and sectoral rules. The live debate in the sector includes accusations of

⁴ Citizens Advice (2019) [Closing the Protection Gap](#)

⁵ FSB (2020) [Time and Energy](#)



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“greenwashing” over the use of REGOs⁶ to accredit a tariff as green at minimal extra cost, without demonstrable additionality. Consumers can feel they have experienced significant detriment if they switch and then discover a provider is not as green or from the source they expected.



Jared asked his new provider where they get their energy from. The supplier stated that it was biomass energy - using plant material. He feels very misled as on the supplier's website there is a promise of 100% renewable electricity with a picture of wind turbines. Jared feels this is very misleading, but is outside of the cool-off period and can't switch away without a penalty.⁷

This is taken in combination with the fact that the energy sector is at the forefront of decarbonisation, meaning it will be an area of particular consumer interest, and likely often where issues will emerge first. We welcome the inclusion of the energy supply case study in the draft guidance and the explicit guidance of what could constitute misleading practice in these circumstances.

However, we recognise that sectoral rules are outside the scope of this specific guidance initiative and separate workstreams led by BEIS referenced in the Energy White Paper should ensure consumers are provided with more transparent and accurate information on carbon content when they are choosing their energy services and products.

Given the overlap in different functions between different organisations, for example in energy: BEIS potentially introducing carbon intensity rules, Ofgem administering existing REGO rules, the ASA taking a view on green advertising claims⁸ and the CMA taking an overarching guidance approach to environmental claims, part of any sectoral guidance could be to clarify the CMA's view of its role in the sector and how the wider guidance intersects with Ofgem and BEIS policy. This clarity on remits could benefit both consumers and businesses.

⁶ The Renewable Energy Guarantees of Origin (REGO) scheme provides transparency to consumers about the proportion of electricity that suppliers source from renewable generation. In GB and NI the scheme is administered by Ofgem E-Serve

⁷ Consumer service case study

⁸ ASA (2021) [Ensuring your environmental claims are more than just hot air](#)



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Principles for compliance

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

We agree that the principles and their underlying definitions are the right ones under existing consumer protection laws. Particularly welcome is the clarity that features should not be branded as environmentally beneficial if they are standard features, claims about future plans only being valid if there is a verifiable strategy to deliver them and the inclusion of the consideration of the whole lifecycle of a product rather than just benefits at the point of sale.

While implicit in several of the principles, there could be a benefit in specifying a principle relating to the issue of the timeline when a claim is made, for example that if a product of service had an environmental benefit, but due to a process or practical change this has altered, this constitutes a change that it is incumbent on the provider to make consumers aware of. Where data is provided (e.g carbon emissions per kg) there should be clear information about the time period that the analysis was completed.

As an overarching principle, we recommend that the CMA consider how it can be made clear to consumers which organisation which organisation or entity is making the claim and who is ultimately liable. In our response⁹ to the Office for Product Safety Standards' Product Safety Review we highlighted how many people initially struggle to identify who is responsible in situations where something goes wrong, and the inherent complexity of whether a manufacturer or trader would ultimately be liable. While in this guidance, it is clear that the trader is the entity ultimately responsible, from a consumer perspective, there may still be potential for confusion.

⁹ Citizens Advice (2021) [Citizens Advice response to the Office for Product Safety Standards' Product Safety Review call for evidence](#)

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Case studies

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

The examples and case studies illustrated in the guidance cover a diverse range of circumstances and give practical examples of where certain actions would contravene the principles both from a goods and services perspective.

One area that could be illustrative of the issues over a longer timescale would be installation and operation of new energy products and services, and the implications of “greener” claims being changeable over time. For example, the installation of new heat technology could have as a key selling point that it is “greener”, or more environmentally beneficial than alternatives, when that determination could be difficult to calculate - in accordance with the principles - over the full life cycle of a new technology, from installation, through consumption (including debates over the input fuel, such as green or blue hydrogen¹⁰, or the carbon impact of biomass) to disposal.

This would be particularly helpful to illustrate the principle of comparisons being fair and meaningful where comparison is particularly complex. We would also add that where markets are complex and fast-moving, there would be value in a periodic review of the case studies after final publication of the guidance at an appropriate frequency to ensure they were still complete and applicable, or whether further examples would be beneficial.

¹⁰ Citizens Advice (2020) [Hydrogen for Homes](#)



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General and additional issues

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.

In terms of aspects of the guidance that may merit further expansion, while the business-facing guidance is comprehensive, it would be helpful to have further information for enforcement agencies about how breaches of the guidance and consumer law may be pursued.

This is particularly the case given how the CMA shares consumer protection law enforcement powers with other bodies, such as Trading Standards Services and sectoral regulators. Ofgem (and other enforcers) do not yet have the powers proposed in the Modernising Consumer Markets Green Paper to impose fines for a breach of consumer law. Moreover, a recent search of Ofgem's public investigations database revealed only two matters related to general consumer protection law, the most recent in 2011¹¹, with the regulator seen as more willing to act within its own licensing and enforcement powers.

In summary, while the draft guidance is clear, there must also be clarity for those enforcing the guidelines and the consumer protection laws underlying them that once the guidance has been issued and if breaches continue, they can take action on the basis of the guidance, particularly in a sectoral context, and for that action to be meaningful.

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

Overall - while not approaching the guidance from a business perspective - in our view the guidance is clear, with the inclusion of worked examples, case studies and key terms all offering practical best practice.

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

There are no further comments we would like to make on the draft guidance.

¹¹ Penningtons Manches Cooper (2020) [Regulation of Third Party Intermediaries in the Energy Sector](#)

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