

Response to the FCA consultation on guidance on the Anti-Greenwashing rule

Closing date: Friday 26 January 2024

By email to: gc23-3@fca.org.uk

About Us

1. Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020,ⁱ we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use or receive products or services.
2. Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:
 - to enhance understanding and awareness of consumer issues by strengthening the evidence base
 - to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
 - to enable the active participation of consumers in a fairer economy by improving access to information and support.
3. Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.
4. We work across the private, public and third sectors and have a particular focus on three consumer challenges: affordability, climate change mitigation and adaptation, and consumers in vulnerable circumstances.
5. Consumer Scotland welcomes the opportunity to respond to this consultation on the Financial Conduct Authority (FCA) guidance on the Anti-Greenwashing rule.

Summary

6. We welcome the guidance and its aim to help firms who make sustainability claims about products and services to have a better understanding of FCA expectations under the anti-greenwashing rule and other existing, associated requirements.
7. We welcome the desire to protect consumers from greenwashing, supporting them to make informed decisions that are aligned with their sustainability preferences.
8. In line with the consumer principle of providing information, it is important that consumers are provided with clear and accurate information about any sustainability claims to allow them to assess the climate impacts of the products and services they are purchasing.
9. We welcome the consistency of approach between this guidance and the Competition and Market Authority (CMA) guidance on environmental claimsⁱⁱ, which is designed to help firms understand and comply with their existing obligations under consumer protection law.

Background

10. Many consumers are increasingly concerned about the environmental impact of the products and services that they buy and are seeking to purchase products and services which minimise harm to, or have a positive effect on, the environment.ⁱⁱⁱ
11. Recently published research commissioned by Consumer Scotland found that 77% of people in Scotland are concerned about climate change; however, only 34% agreed they know what to do to help Scotland reach net zero, with 33% disagreeing and a further 34% saying they were unsure^{iv}. Respondents to the survey cited a lack of information as one of the barriers to positive change.
12. The research found that almost half (45%) of respondents agreed that their current purchasing decisions are influenced by concerns for the environment, with around a quarter (27%) disagreeing with the statement.^v. In addition to this, 61% of respondents said they will consider the environmental impact of purchases they will make in the future.^{vi} This suggests that there is a strong starting point for consumers considering the environment when making purchasing decisions but that there is also scope to improve the extent to which consumers in Scotland take environmental concerns for the environment into account. Although these responses do not specifically relate to finance, they provide some insight into the weight that consumers put on environmental concerns when making purchasing decisions.

13. Consumers' lack of knowledge about sustainable products and energy efficiency technologies has resulted in considerable detriment, and can lead to reticence to 'go green'. For example, Trading Standards Scotland estimates that last year, consumers across Scotland lost a total of over £80,000 through misleading claims for the sale of green energy goods including insulation, boilers, solar panels, heating systems and double glazing.^{vii}
14. Making sure that consumers are able to navigate and trust green claims will be a key part of supporting them to make the sustainable purchasing decisions that are required as part of the transition to net zero.
15. In order for the transition to net zero to be a success, action is needed by all sectors to support consumers to make sustainable purchasing decisions. There is strong evidence to suggest that environmental issues are important to consumers, the Financial Lives Survey^{viii} found that 74% of adults agreed that environmental issues are really important to them.
16. This guidance will introduce a rule into the FCA handbook which allows the FCA to challenge firms and, if appropriate, take further action if it is considered that they are making misleading claims about their products or services. This guidance will apply to all FCA-authorized firms who make sustainability-related claims about their products and services. It forms part of a wider range of measures being taken forward through the FCA's Sustainability Disclosure Requirements (SDR) and investment labels Regime.
17. The guidance sets out a number of requirements which are looked at in more detail below. The guidance states that claims must be:
 - Correct and capable of being substantiated
 - Clear and presented in a way that can be understood
 - Complete – they should not omit or hide important information and should consider the full life cycle of the product or service
 - Fair and meaningful in relation to any comparisons to other products or services.

Claims should be correct and capable of being substantiated

18. In line with the consumer principle of providing information, consumers should be presented with clear and accurate information to help them make informed

decisions about the products and services they are purchasing. Research published by Consumer Scotland has found that a lack of reliable information is making it difficult for consumers to fully understand the issues and as a result make informed choices.^{ix} Providing transparent information supports consumers to make informed purchasing decisions and to assess the climate impact of these decisions accurately.

19. In this context, we note the increasing role of online purchasing and associated risks of misinformation. According to the Scottish Household Survey 2021, the percentage of adults in Scotland using the internet either personally or professionally increased from 92% in 2020 to 95% in 2021.^x 86% of internet users cited buying goods and services as a reason they go online.
20. Consumer Scotland welcomes any measures that can be taken to address these issues and to increase transparency, enhance compliance with regulations, and promote consumer confidence. A literature review of consumer vulnerability recently published by Consumer Scotland notes that, while the availability of e-commerce and other digital transactions now offer consumers a wider range of choices in potentially global markets, a lack of digital skills or access can result in sub-optimal outcomes for consumers^{xi}. Digital technology can be the source of new power imbalances between consumers and traders, and it has been argued that in digital markets most, if not all, consumers are potentially vulnerable^{xii}. Providing clear and transparent information relating to environmental claims is one element in supporting consumers, including those with vulnerabilities, to make informed purchasing decisions.
21. In line with the consumer principle of providing information, Consumer Scotland supports the proposed requirement for claims to be factually correct and for firms not to state or imply features of a product that are not true, overstate or exaggerate the sustainability, or positive social or environmental impact of a product or service. We also welcome the call for firms to regularly review any claims and evidence that supports them to ensure that the current evidence base still supports the claims that they are making.
22. We welcome the consistent approach taken between this guidance and the CMA's Green Claims Code which sets out that green claims must be truthful and accurate, that businesses must live up to the claims they make about their products, services, brands and activities and that green claims must be substantiated, with businesses being required to be able to back up claims with robust, credible and up to date evidence.^{xiii}

Claims should be clear and presented in a way that can be understood

23. There is evidence to suggest that consumers value clear and accurate information relating to sustainability practices of businesses, with research carried out for Deloitte finding that more than half of consumers surveyed stated that the commitment of businesses to climate change and sustainability can influence their level of trust in them.^{xiv}
24. The use of environmentally themed terminology and claims has been found to lead to potential misunderstanding in general advertising contexts. For example, terms such as 'carbon neutral' and 'net zero', were more familiar to consumers than others, but there is a lack of consensus as to their meanings and confusion about the differences between the terms.^{xv}
25. Research into environmental claims in advertising has found that while consumers feel that these environmental claims seem like a good idea in theory, the extent and variety of claims has limited their usefulness in practice, resulting in calls for rationalisation and standardisation of terms, greater clarity in terms used or investment in public education and policing of terms used.^{xvi}
26. In line with the consumer principle of providing information, claims should provide information that is clear and that is placed as prominently as possible, as there is evidence to suggest that consumers do not frequently engage with qualifying text in advertisements.^{xvii}
27. Consumer Scotland supports the position taken in the guidance; that is that claims firms make should be transparent and straightforward and that the meanings of all terms must be generally understood by the intended audience. We welcome the acknowledgement that technical language may be difficult to understand and the need for any technical terms to be explained unless their meaning is clear and widely understood. We also welcome the requirement for firms to consider the overall impression that can be created through the visual presentation of a claim, such as the impact of the use of images, logos and colours.
28. We note that this is consistent with the CMA's Green Claims Code requirements that green claims must be clear and unambiguous, and that the meaning that a consumer is likely to take from a product's messaging and the credentials of that product should match.^{xviii}

Claims should be complete

29. Consumer Scotland supports the proposal that claims should convey a representative picture of the product or service, including a requirement to be clear where claims are only true if certain conditions or caveats apply. It is important for claims to be presented in a balanced way and to acknowledge both positive and negative aspects of a product or service, considering the whole life cycle.
30. We welcome the call for firms to consider the whole life cycle of a product or service, considering which elements of the life cycle are most likely to be of interest in a decision-making process and ensuring that where a claim only applies to one part of the life cycle that this is made clear. We note that this is consistent with the requirements of the CMA's Green Claims Code statements which states that green claims must not hide or omit important information and must consider the full life cycle of the product.^{xix}
31. There is evidence of low levels of consumer trust in the financial services sector, with the Financial Conduct Authority Financial Lives 2022 survey finding that only 36% of respondents thought that most financial firms are honest and transparent in the way that they treat them. Reasons given for this low level of trust included firms using jargon which can make people feel 'stupid' or fears that the industry is deliberately trying to obscure things to make profits.^{xx} This highlights the importance of providing consumers with information they can trust, and which is reliable and complete.
32. Research on environmental claims in general advertising has found that while the use of these claims had little impact on purchase, they could have a favourable impact on brand reputation.^{xxi}
33. We are supportive of the ASA's conclusions relating to the use of carbon neutral and net zero claims used in advertising, in particular the call for claims to be as few, as straightforward and as consistent as possible.^{xxii}
34. We welcome the introduction of the 'anti-greenwashing rule' into the FCA Handbook as this will help to ensure that sustainability-related claims are fair, clear and not misleading, and are consistent with the sustainability characteristics of the product or service.

Comparisons should be fair and meaningful

35. The CMA defines environmental claims as claims which suggest that a product, service, process, brand or business is better for the environment^{xxiii}, including claims that suggest or create the impression that a product or service has a positive environmental impact or no impact on the environment, is less damaging to the environment than a previous version of the same good or service or is less damaging than competing goods or services.
36. In light of the above, we support the requirement that any claims comparing a product or service either to a previous version of the product or service, or to the product or service of a competitor, must be fair and meaningful, enabling the audience to make informed choices about the products or services. We note that this is consistent with the CMA Green Claims Code requirement that green claims must only make fair and meaningful comparisons^{xxiv}.

FCA Consumer Duty

37. We welcome the request for firms to consider the proposed guidance alongside their existing obligations under the Consumer Duty in order to assist them to deliver good outcomes for retail customers, including ensuring that consumers get the right information, at the right time and in a way that they can understand in order to help them to make informed decisions.
38. We welcome the need for firms that are subject to the Consumer Duty to test their communications where appropriate, ensuring that they can be understood and allowing consumers to make informed decisions and ensuring that firms' have all the necessary information to understand and monitor consumer outcomes.

Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?

39. Consumer Scotland believes that the guidance does clarify the anti-greenwashing rule. The guidance will support firms that make sustainability claims about products and services to have a better understanding of the FCA's expectations under the anti-greenwashing rule and other existing, associated requirements. In addition to this the proposed guidance will provide protection for consumers from greenwashing, supporting and enabling them to make informed decisions that are aligned with their sustainability preferences.

Q2 Do you have any comments on the proposed guidance including the examples given?

40. Consumer Scotland welcomes the inclusion of the examples given. Having clear and practical examples of how sustainability claims should comply with each of the requirements will ensure that firms understand the FCA expectations under the anti-greenwashing rule. Having relevant examples makes the guidance clearer and more understandable for a range of audiences.

ⁱ [Consumer Scotland Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

ⁱⁱⁱ [Environmental claims on goods and services \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

ⁱⁱⁱ [CMA \(2021\) Making environmental claims on goods and services. Available at: https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services](https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services)

^{iv} ^{iv} [Consumer Scotland \(2023\) Consumers and the transition to net zero. Available at: https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf](https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf)

^v ^v [Consumer Scotland \(2023\) Consumers and the transition to net zero. Available at: https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf](https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf)

^{vi} ^{vi} [Consumer Scotland \(2023\) Consumers and the transition to net zero. Available at: https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf](https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf)

^{vii} <https://www.tsscot.co.uk/priority-areas/energy-marketing-scams/>

^{viii} [Financial Lives 2022: Key findings from the FCA's Financial Lives May 2022 survey](#)

^{ix} [Consumer Scotland \(2023\) Consumers and the transition to net zero. Available at: https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf](https://consumer.scot/media/vzig1umd/consumers-and-the-transition-to-net-zero.pdf)

^x [Scottish Household Survey 2021 Telephone Survey – key findings \(www.gov.scot\)](https://www.gov.scot)

^{xi} <https://consumer.scot/media/tiqattu5/literature-review-on-consumer-vulnerability.pdf>

^{xii} Helberger, N., Sax, M., Strycharz, J. and Micklitz, H.W. (2021). 'Choice architectures in the digital economy: Towards a new understanding of digital vulnerability'. *Journal of Consumer Policy*, pp. 1-26.

^{xiii} [Green Claims Code – Check your environmental claims are genuine](#)

^{xiv} [Sustainable Consumer 2023 - Sustainable Consumption | Deloitte UK](#)

^{xv} [ASA \(2023\) Environmental Claims in Advertising. Available at: https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf](https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf)

^{xvi} [ASA \(2023\) Environmental Claims in Advertising. Available at: https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf](https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf)

^{xvii} [ASA \(2023\) Environmental Claims in Advertising. Available at: https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf](https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf)

^{xviii} [Green Claims Code – Check your environmental claims are genuine](#)

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^{xx} [Financial Lives 2022: Key findings from the FCA's Financial Lives May 2022 survey](#)

^{xxi} [ASA \(2023\) Environmental Claims in Advertising. Available at: https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf](https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf)

^{xxii} [ASA \(2023\) Environmental Claims in Advertising. Available at: https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf](https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf)

^{xxiii} [Making environmental claims on goods and services - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

^{xxiv} [Green Claims Code – Check your environmental claims are genuine](#)