

## CMA Draft guidance on environmental claims on goods and services - response

As the UK's only evidence based on pack recycling label, OPRL welcomes the CMA guidance on environmental claims. Our research, What Consumers Want (OPRL 2020) showed that 19 in 20 of us say that safeguarding our planet is our most important concern, but that we need help in turning good intentions into the right actions. When it comes to recycling, 4 in 5 look to packaging for information on what to do and nearly one quarter check for eco-claims on packaging. Therefore, it is vital that the information on packaging is clear, consistent, evidence based and accurate. OPRL have over 12 years of experience as the UK's only evidence-based recycling label leading to unrivalled levels of consumer trust and highlighted as an exemplar by UNEP/Consumers International. Our response to this consultation focuses on our expertise in packaging labelling.

### 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#### **3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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We believe that the draft guidance covers some of the important consumer protection law issues relating to making environmental claims; however, the Packaging Essential Requirements Regulations (currently under review) and the issues of third party verification, standards, labels and trust marks would benefit from greater consideration and reinforcement. For example, biodegradable and compostable materials are specifically mentioned in the draft guidance and there are a number of relevant standards and certifications that should be highlighted. The only standard which is currently able to certify the compostability of an item of packaging, its suitability for organic recycling and its compliance with end of waste status as a compost, is the BSEN13432:2000. For home composting there is no similar EU/UK standard but results from tests undertaken according to TÜV Austria's 'OK Compost Home' certification scheme criteria or TÜV Rheinland's (DIN CERTCO) home compostable certification schemes are widely used.

There are a number of more general standards that should be considered in this guidance, most relevantly the ISO 14020 series of labels in particular 'ISO 14020 Environmental labels and declarations — General principles', 'ISO14021:2016 Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)' and 'BS EN ISO 14024:2018 Environmental labels and declarations. Type I environmental labelling - principles and procedures'. Alignment with these standards should be a minimum requirement and those making claims using those requirements should be willing to subject themselves to being audited against those requirements.

The guidance refers to sector or product specific laws. OPRL believes that this should be expanded to include national and sector best practice, guidance and standards to ensure that there is a level playing field for all businesses operating in the same area. Even where a business does not invest in accreditation to a standard or membership of a trade body with associated codes of conduct and standards, it is important that they can demonstrate the equivalent standards as those that do and this will reduce the opportunities for confusion and deliberate or accidental misinterpretation of claims by businesses.

Packaging Essential Requirements Regulations consider that the design for all recovery routes is increasingly important in marrying disposed packaging from domestic and commercial waste streams with the collection and sorting infrastructure. Well-designed packaging which is easily recoverable or reused, minimises environmental impacts and usually saves costs. A series of standards in relation to packaging were published by the European Committee for Standardisation (CEN). These provide framework methodologies for considering reduction, reuse, recyclability and recovery. Compliant packaging enjoys freedom of movement across the EU. The Standards provide a methodology that can also help inform decisions on packaging design, for example around material specification, maximising recyclability and recovery, minimising component parts, reducing wasted space and optimising pack size.



THE ON-PACK RECYCLING LABEL

[Guidance on the Packaging Essential Requirements](#) contains details on recommendations. To comply with the standards updated in 2015, users must work through a methodology to ensure that their decisions on the specification for a particular piece of packaging takes account of often conflicting social, environmental and economic factors, identifying a solution right for the product, distribution system and how it will eventually be stored/used. It is important to document the answers to provide evidence for compliance and this should be considered in the guidance.

The use of standards, approved labels, trust marks and accreditation should assist consumers in understanding the validity of a claim. Consumers use information on packaging to make rapid decisions regarding environmental claims – whether they are recyclable, ‘plastic free’ or something else, the majority are unlikely to read in detail or investigate further for example by using a website, and so the message needs to be clear and consistent. In addition, space on packaging is highly valued and limited and so detail is unlikely to be provided at the level required, so a standard, label or trust mark is the only way to quickly and effectively communicate to consumers.

### **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?**

Consumers are increasingly demanding products and services which minimise harm to, or have a positive effect on, the environment. As a result, there has been a proliferation of products, services and businesses which claim to meet that demand. Although the majority of these products and associated claims are on a B2C basis, they can be instigated on a B2B basis that is then passed down the supply chain to the consumer by businesses that have no internal expertise in sustainability so rely on supplier information. In addition, under the UK Government’s Resources & Waste Strategy the ambition is that the same materials will be recycled from homes and businesses, so suppliers may use the same packaging for both markets and claims need to be accurate for both.

In order for environmental claims to be properly regulated they need to be subject to effective scrutiny and evidence from the first point of the claim, otherwise there is a risk that a claim made by a B2B supplier will pass on unchallenged to the consumer. Therefore it is important that claims made on a B2B basis are subject to the same amount of rigour as those made on a B2C basis. The Packaging (Essential Requirements) Regulations focus on business and any guidance should reinforce the requirements in the regulations.

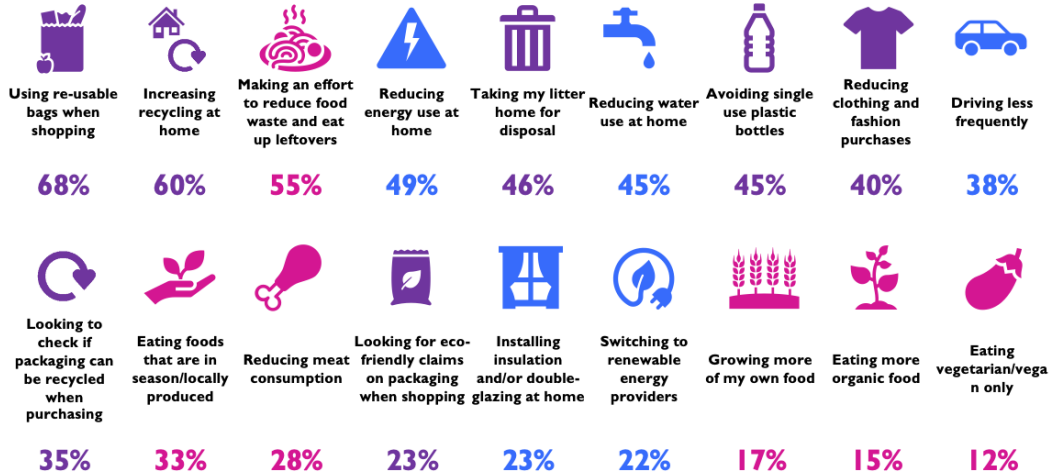
In addition the guidance needs to cover all private, public, and civil society organisations, including non-governmental organisations. Consumers need to be able to trust environmental claims whatever the source.

### **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?**

All users of packaging across all sectors and areas of the supply chain should understand the environmental impact of the packaging, including the messaging they are sending to their customers and the end consumer. Many businesses attempting to appeal to environmentally conscious consumers have, through ignorance, erroneously moved into eg bio-based and/or compostable packaging believing it to be beneficial when it may, in fact, have a larger footprint than the materials it replaces, especially if it contaminates recycling streams leading to rejection or down-grading of the recycled product. Excluding some sectors could lead to packaging which fails to meet the required standards being channelled into the exempted sectors.

In addition, consumers are adopting an ever-increasing range of pro-environmental behaviours, with marked differences between demographics (age, geography). It is not possible to predict how pro-environmental consumer trends will develop in future and even ‘green services’ may involve some packaging eg refill services. In order both to future-proof the guidance and avoid misinterpretation of any exemptions it should be all encompassing.

## WHICH OF THESE THINGS ARE YOU DOING TO REDUCE YOUR IMPACT ON THE ENVIRONMENT?



Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

## Which of these things are you doing to reduce your impact on the environment?

Significant difference

	Top over-indexers	18-34 year olds		Top over-indexers	35-54 year olds		Top over-indexers	55+ year olds
	Eating more organic food	+6pp		Avoiding single use plastic bottles	+3pp		Taking my litter home for disposal	+17pp
	Donating to environmental charities	+4pp		Eating vegetarian/vegan only	+2pp		Using re-usable bags when shopping	+16pp
	Offsetting my energy use and/or travel carbon emissions	+3pp		Reducing energy use at home	+1pp		Making an effort to reduce food waste and eat up leftovers	+13pp
	Eating vegetarian/vegan only	+3pp		Looking to check if packaging can be recycled when purchasing	+1pp		Driving less frequently	+12pp
	Switching to a more environmentally friendly vehicle	+2pp		Donating to environmental charities	+1pp		Increasing recycling at home	+11pp

Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

## 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.**

The principles are businesses must ensure that their environmental claims: (a) are truthful and accurate; (b) are clear and unambiguous; (c) do not omit or hide important information; (d) compare goods or services in a fair and meaningful way; (e) consider the full life cycle of the product; (f) are substantiated.

OPRL labels comply with the six principles and we agree that these should be complied with by all businesses making environmental claims. In addition, it is important that claims can be audited against agreed accreditations, labels and standards. Businesses should not be able to escape the obligations implied by the principles by making "half claims" such as 'technically recyclable', 'recyclable where facilities exist', 'recycle ready' as in practice these are

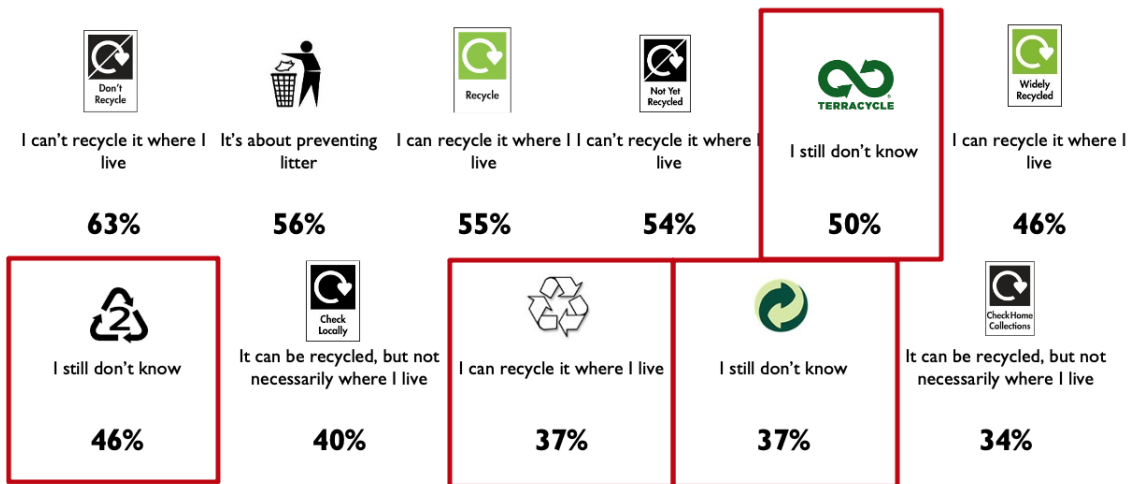
misleading and could be interpreted by consumers as being the same as recyclable.

OPRL labels are supported by a publicly available evidence base to ensure that the basis of determination of recyclability is transparent and subject to stakeholder scrutiny. Where a claim is made, there should be clear indication to the consumer where the supporting evidence is held, or on what basis the claims were verified. For example, a consumer looking at an OPRL label can find and download the [evidence base](#) explaining the criteria from the OPRL website. OPRL ensures that it is aligned with best practice such as that produced by the Confederation of Paper Industries (CPI) and The UK Plastics Pact guidelines on recyclability. Members of OPRL who use the labels are subject to third party audit conducted in a manner consistent with ISO19011:2018 (verified by Lloyds Register) to ensure that they are using the labels in the correct manner. All of these factors help to create and build consumer and business trust in the OPRL label and could be used as exemplars for other systems to demonstrate compliance with the six principles.

**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.**

OPRL would be happy to supply specific examples for case studies of packaging that is recyclable and also that which could be erroneously thought of as recyclable. In particular, a number of labels are often confused by consumers and businesses as indicating recyclability such as resin codes, the Mobius loop and the Green Dot as evidenced by our consumer insight research below. UNEP and Consumers International have undertaken a number of studies in this area and published international guidance with useful case studies included.

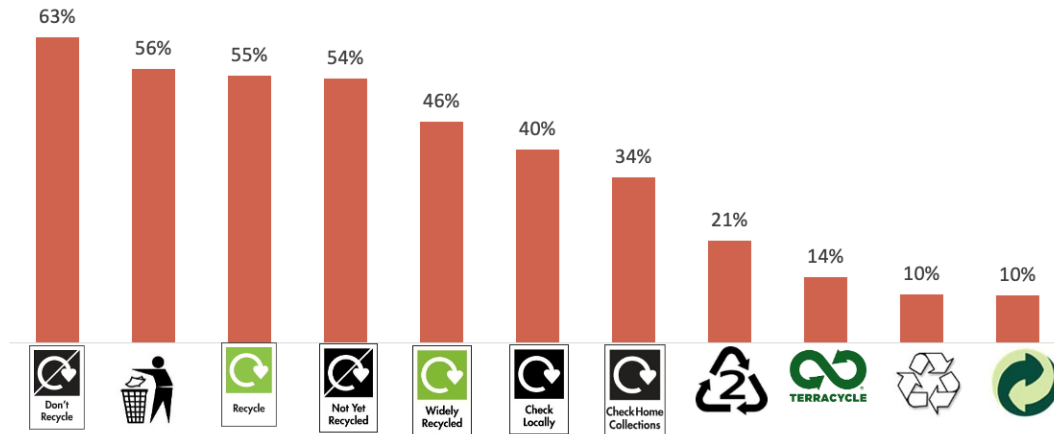
**Most common answers to the question: Which of these [statements] describes what each label means?**



Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

## % giving correct answers to the question: Which of these [statements] describes what each label means?



Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

### 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.**

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

It would be useful to give indications and worked examples of the evidence requirements for certain types of claim. Examples of supporting standards, labels and accreditations would be beneficial as would reference to ISO14021. Alignment with other legal duties such as the Packaging (Essential Requirements) Regulations should be included to reinforce the existing legal responsibilities of business operating in this area.

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

CMA should encourage the development and adoption of environmental trust marks and standards where these are currently lacking. Where existing regulations overlap with the guidance this should be made clear together with potential penalties and enforcement actions.

References:

<https://www.oneplanetnetwork.org/resource/what-consumers-want-7-key-research-insights-engaging-consumers-recycling>

<https://www.oneplanetnetwork.org/resource/guidelines-providing-product-sustainability-information>

<https://www.oneplanetnetwork.org/resource/can-i-recycle-global-mapping-and-assessment-standards-labels-and-claims-plastic-packaging>

<https://ee.ricardo.com/downloads/sustainable-business/auditing-the-on-pack-recycling-label-scheme>