



INTERIM PROJECT REPORT:

SCOTSS Environmental Claims Project 2021-22 Material Information - Peat Declarations on Garden Compost

Author: William Paul

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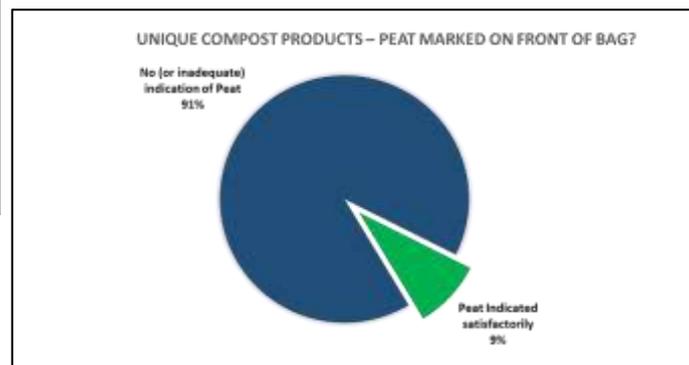
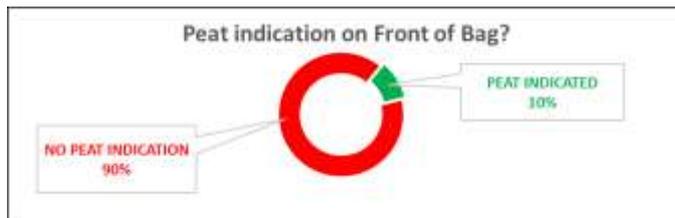
Executive Summary and Recommendations

The SCOTSS Fair Trading Group committed to one environmental themed project in 2021-22. The theme was chosen to tie-in with the new CMA guidance on misleading environmental claims and secondly COP26. The project team selected the product **GARDEN COMPOST** and specifically the commercial practices involved in declaring the presence of **PEAT** in relevant garden compost products. The choice of project was partly influenced by horticulture industry research which suggested most consumers don't know if peat is included in garden composts offered for sale. The project team set out to find out the situation in retailers, linking in with authorities across Scotland.

The main information gathering survey was carried out at garden centres and DIY stores throughout Scotland between 13 September - 1 October 2021. A Google Form was created to gather the data, automatically populating a project spreadsheet for analysis. Primarily the focus was on what information on the presence of peat was provided by manufacturers of compost and in particular what information about peat was made available (or not made available) on the **front** of relevant compost products.

Key Data:

Officers examined 310 garden compost products across Scotland. 19 of those products were discounted, leaving 291 valid products. Of the 291 valid products, 261 (90%) failed to mention the presence of peat on the front of the compost bag. The 291 garden composts included duplicate products. These were extracted, leaving 78 unique peat-based composts. Of those 78, only 7 of them satisfactorily mentioned the presence of peat on the front of the bag. Thus 71 or 91% of the composts found on sale across Scotland in this survey failed to mention peat as an ingredient on the front of the bag.



Key Conclusions:

The project team conclude that the misleading omissions provisions of the CPRs should be applied to the commercial practice of labelling and selling garden compost products containing peat. The failure to properly indicate that certain composts contain peat is likely to be a key reason for the Royal Horticulture Society's 2021 finding that more than half of gardeners don't know what is in shop-bought garden compost. Consumers should have the material information they need to make informed transactional decisions.

Key Recommendations:

It is recommended that an information and guidance note for Trading Standards staff is produced by the project team highlighting the findings of the survey and cross-referencing with the new CMA environmental claims guidance. The planned guidance material could be used by authorities to conduct enforcement activities, including writing to manufactures, primary authorities, local retailers, and major distributors.

It is recommended that Highland Council as the project lead authority coordinate the communicate the findings of this report to the relevant primary and national authorities, including the Scottish Government's policy lead on peat issues. These actions could be coordinated by the project lead officer and perhaps continue from the end of the main period of the project into 2022.

It is recommended that the findings of this report should be publicised via a press release and shared on social media.

Main Report

Background

The SCOTSS Fair Trading Group committed to one project in 2021-22. The selected project was inspired by two key environmental initiatives; (1) a CMA consultation introducing draft guidance on misleading environmental claims. www.gov.uk/cma-cases/misleading-environmental-claims and (2) the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow held in November 2021 (ukcop26.org). The project initiation document was issued on 9 September 2021, just ahead of the release of the final CMA environmental claims guidance on 20 September 2021 (*CMA Guidance*).

Given the wide range of environmental claims covered by the CMA guidance and with a wish to focus on climate change issues (ukcop26.org/cop26-goals), the project team selected the product **GARDEN COMPOST** and specifically the commercial practices involved in declaring the presence of **PEAT** in relevant garden compost products.

Why Peat?

Garden compost products are used by consumers to sow seeds, raise new plants and for containers to grow mature flowers and vegetables. Retailers sell a range of composts for different applications. Most retailers include a range of **peat-free composts** sold alongside other composts. Consequently, if a compost is not marked peat-free, what does it contain?

Advice issued by the Royal Horticultural Society (RHS) states that: *“Peat bogs are also an important carbon sink: destroying them to make garden compost contributes to climate change... When shopping for compost, gardeners should always look for bags with a ‘peat-free’ label, the RHS said. ‘If the bag doesn’t say peat-free then it most likely isn’t.’”*

In March 2021, the RHS conducted a survey of gardeners looking at their shopping habits and attitudes to environmental issues compared with similar research carried out in 2013.

The 2021 RHS survey reported that:

- More than half of gardeners (57%) admit to not knowing what is in their shop-bought potting compost
- More than half (53%) of the 2,000 gardeners surveyed reported buying five or more 50 litre bags of potting compost in the last year compared with just 8% of respondents buying in this quantity in 2013.
- Issues of sustainability are now front of mind for many, with four in every five (82%) saying they were concerned about the environment compared with just three in ten (30%) in 2013

Reference: www.rhs.org.uk/press/releases/Half-of-gardeners-unaware-of-what's-in-their-shop

Peat = Material Information?

The key consumer protection message from the 2021 RHS survey was that whilst most consumers surveyed appear to becoming more environmentally aware, most don't know what is in their shop-bought compost. This raises the question, if consumers are increasingly interested in environmental issues and gardening is perceived as a positive thing to do for all sorts of reasons, why do purchasers of composts not know whether their purchase contains peat?

The Consumer Protection from Unfair Trading Regulations 2008 (as amended) (CPRs) defines material information as *'the information which the average consumer needs, according to the context, to take an informed transactional decision'*. The project team proposed that the misleading omissions provisions of the CPRs should be considered as applying to the commercial practice of labelling and selling garden compost products containing peat.

Potential Misleading Omission

Research conducted by the project team concluded that there are no relevant sector-specific statutory provisions dictating how or whether peat is declared in garden compost. In other words, compost producers are under no specific statutory obligation to indicate that peat is used in any garden compost mix. Thus, despite Westminster and Scottish Government plans to ban peat in retail sales of garden compost, currently none of the proposed statutory measures are in place.

We have a situation where there are plans to introduce specific regulatory measures take place completely banning peat sales. However, there is a legislative gap. In the meantime, increasingly environmentally aware consumers are arguably not being provided with the information they need to make informed transactional decisions. It is suggested that if a consumer recognised that a compost product contained peat, they may factor that information into their eventual buying decision. We are not suggesting they wouldn't or shouldn't buy the peat-based compost, but they arguably have a right to know that a relevant product does contain peat.

The CMA guidance states, *"Businesses making environmental claims may be subject to legal requirements from different sources, including sector or product-specific requirements ... and requirements from general laws that apply to all businesses in order to protect consumers (and competing businesses) or the environment ... Businesses must comply with their obligations from both sources (and any other)."* The lack of **established means**¹ to make peat presence declarations compulsory leads to a situation where the provisions of the Consumer Protection from Unfair Trading Regulations 2008 can be considered and if appropriate, applied to the relevant commercial practices.

Another consideration is the level playing field argument. Peat-free composts are generally more expensive than peat-based products, but they are marked PEAT-FREE. Cheaper PEAT-BASED products are going to have a market advantage, especially if consumers cannot easily differentiate between the two product types and importantly, they don't have all the information they need to make a fully informed transactional decision. Arguably this places the peat-free producers at a disadvantage. The project team propose that if products containing peat had to state: 'CONTAINS PEAT' as opposed to 'PEAT-FREE', consumers would likely be better placed to make informed decisions over which type to buy.

¹ [CPRs Regulation 19\(4\)](#)

Being Upfront about Peat

It was observed from pre-survey research (as set out in the initiation document) that some manufacturers do indicate the presence and sometimes the approximate percentage of peat on the rear of a bag. It is arguable that such an indication would satisfy any material information requirements. However, the project team observed that compost products were often large heavy bags and quite difficult to turn over to scrutinise any markings on the rear of the bag. Given the obvious difficulties of manoeuvring heavy bags to read details about product contents, the team proposed that if the only indication about peat was in the 'small print' on the rear of the product, this was potentially inadequate. The project would therefore concentrate on potential 'misleading omissions' in relation to peat declarations on the front of bags of compost.

Retailer Compost Survey

The project team set out to establish clearer information on how composts are sold in garden centres and DIY stores across Scotland. In particular, the team wanted to establish how composts containing peat were marked.

The main information gathering survey was carried out at garden centres and DIY stores throughout Scotland between 13 September - 1 October 2021. A Google Form was created to gather the data, automatically populating a project spreadsheet for analysis. Officers completing survey forms would receive an automatic copy of their submissions, which could then be forwarded to the project lead with any photographic attachments.

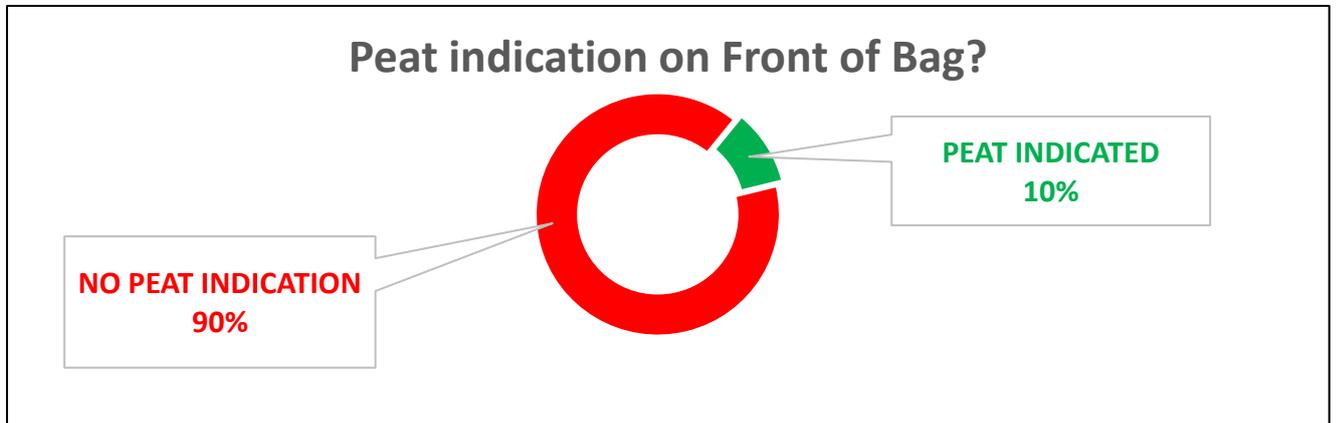
Eleven authorities participated in the survey, examining 310 compost products.

AUTHORITY	COMPOST PRODUCTS EXAMINED
Aberdeen City Council	17
Aberdeenshire Council	10
Angus Council	83
Dundee City Council	54
East Dunbartonshire Council	7
Glasgow City Council	4
North Ayrshire Council	4
Perth and Kinross Council	17
Renfrewshire Council	45
The Highland Council	59
The Moray Council	10
TOTAL	310

The products examined were scrutinised and 19 products were found to be out-of-scope, leaving 291 valid bags. The out-of-scope products did not contain peat and included products such as garden manure and lawn improvement materials. Of the 291 surveyed compost products containing

peat, 30 did mention peat on the front of the bag. However, only 16 of the 30 bags (53%) examined were deemed by officers to have a suitable declaration of peat on the front of the bag. Accordingly, 47% (14) of the composts marked peat on the front of the bag were deemed to be unsatisfactory.

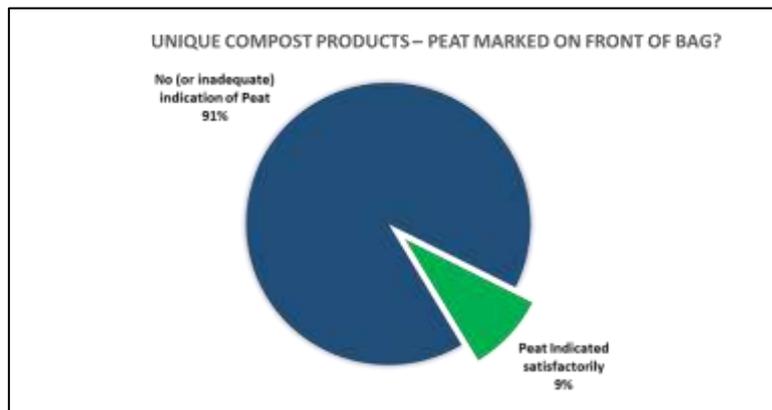
Consequently, 261 (90%) of the 291 compost products containing peat examined by officers were **not** marked with any sort of peat presence indicator on the front of the bag.



These figures reflect the range of composts sold across Scotland. A small number of products appear to dominate the marketplace. For instance, the following two products represented approximately 20% of the composts surveyed. Neither have an indication that they contain peat on the front of the bag despite that they both contain over 50% peat.

The marketplace is dominated by one manufacturer based in the UK. Of the 291 products in scope, 193 were manufactured by that producer. The second most available products (51) were manufactured by another UK producer. There were an additional 47 products manufactured by 11 other producers.

Once duplicate surveyed products were removed, this left 78 unique peat-based compost products. 14 of those 78 products mentioned peat on the front of the bag but 7 of those 14 were not deemed adequate. Thus 64 out of those 78 unique products (82%) did not mention peat on the front of the bag. Adding the inadequately marked (7) to the unmarked bags (64) meant that 71 out of 78 (91%) of the compost surveyed across Scotland did not indicate that they contained peat.



What should compost manufacturers do?

Manufacturers who make composts that contain peat should take steps to ensure their packaging is designed to provide sufficient information on the presence of PEAT in a clear and appropriate way. The CMA guidance provides information on 'Misleading omissions', i.e., what traders (businesses) don't say in their commercial practices. Moreover, given there are no product-specific rule on the marking of peat-based composts, undoubtedly CPRs principles have a more important role.

As the CMA make clear, *"in order to assess whether key items of information have been omitted, all features and circumstances of a given commercial practice, including the limitations of the medium used to communicate, should be taken into account"*.

Relevant factors that should be taken into account might include:

- Compost bags can be heavy and difficult to manoeuvre
- It is standard practice to find large compost bags stacked on pallets front-face upwards, again making access to any information on the rear of the bag more difficult

There are unlikely to be limitations on the labelling of the front of bags, so this consideration has less of a role to play.

An omission will be misleading if the average consumer would be likely to make a different decision about the product than they otherwise would if the material information had been included. A misleading omission does not have to cause consumers to make decisions that they otherwise would not. It is enough if the omission is likely to have that effect.

Environmental issues are increasingly important to consumers. Therefore, an omission of the presence of peat on the front of a bag of compost is likely to be capable of influencing an average consumer's behaviour in relation to bag of peat-based compost. If a business makes claims that are false or misleading, such claims are liable to be unlawful.

Other considerations

The project team conclude that the presence of peat in garden compost is material information and should be properly indicated on the front of bags of compost, not just on the rear of packaging, especially given the heavy and bulky nature of these products.

This leads to the issue of how manufacturers should go about making this peat declaration. It would clearly be undesirable from an environmental perspective if consumers were to view any such declaration as a positive or beneficial feature and this will have to be handled with care by the manufacturer.

The CMA guidance ([page 27](#)) states:

Before making claims, you should ask yourself:

What environmental impacts does my product, service, process, brand, or business have (positive and negative, taking account of its whole life cycle)?

3.83 When thinking about making any sort of environmental claim for your product, for example, you should consider the overall impact of all its components. Cherry-picking beneficial aspects and highlighting those on any packaging or in any advertising for the product risks misleading consumers, particularly if other aspects cause a greater or significant negative impact on the environment.

3.84 It is important for businesses to think about whether other components or ingredients of products and services, or other aspects of their business, are less beneficial, or even harmful, to the environment. Providing an unbalanced picture of the overall environmental impact is liable to involve misleading omissions.

www.gov.uk/government/publications/green-claims-code-making-environmental-claims

This leads to the issue of how manufactures should go about making this peat declaration. It would clearly be undesirable from an environmental perspective if consumers were to view any such declaration in a positive manner.

Simply saying a compost product 'CONTAINS PEAT' may not be sufficient. Ultimately it will be the responsibility of the manufacturer to formulate a declaration that satisfies these complex issues. Any advice issued by Trading Standards Officers should emphasise this point and refer to the CMA guidance highlighted above

Evaluation

It is recommended that an information and guidance note for TS staff is produced by the project team highlighting the findings of the survey and cross-referencing with the new CMA environmental claims guidance. Authorities could use this guidance in their dealing with relevant businesses and stakeholders.

It is recommended that Highland Council as the project lead authority coordinate the communicate the findings of this report to the relevant primary and national authorities, including the Scottish Government's policy lead on peat issues.

The findings of this report should be publicised and shared on social media.

1. Produce SCOTSS press release advising of the new document and giving outline of project outcomes for release before/during COP26.
2. The planned guidance material could be used by authorities to conduct enforcement activities, including writing to manufactures, primary authorities, local retailers, and major distributors. These actions could be coordinated by the project lead officer and perhaps continue from the end of the main period of the project into 2022.

Conclusions

The project emphasised the need to further consider environmental projects and initiatives going forward. The OFT car guide that later became the SCOTSS car guide was a catalyst for a great deal of work in the car sector. The CMA misleading environmental claims guidance should be seen in a similar vein and used to stimulate further work on this vitally important issue.

Acknowledgements

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