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ORIGINAL RESEARCH

Dietitians' and nutritionists' knowledge and views on aspects of health claims regulation in the UK: Do we inadvertently shoot the messenger?

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Abstract

Article 12(c) of the Nutrition and Health Claims Regulation (NHCR) prohibits authorised health claims in consumer-facing commercial communications which make reference to the recommendations of individual doctors or health professionals. However, this has been controversial amongst dietitians and nutritionists who work in commercial settings. Given the lack of empirical data, a survey was conducted amongst UK-based nutrition professionals to assess their knowledge of, and attitudes to, Article 12(c). The findings revealed confusion about the scope of the regulation and how it applies to working practices, with a considerable proportion of respondents being unable to recognise examples of commercial communications or health claims, indicating a need for additional training. There was also a broad interpretation of what nutrition professionals could, and could not, say about a hypothetical food product. This paper explores current guidance in Great Britain and debates the proportionality and fairness of Article 12(c), which, at present, does not regulate authorised health claims made by influencers or celebrities in commercial communications to consumers. It could be argued that consumers are better protected by the articulation of health claims by nutrition professionals who are guided by codes of practice rather than by unqualified, unregulated individuals. Hence, it is essential to level the regulatory playing field either by revising the NHCR to amend Article 12(c) or by updating the guidance to apply an interpretation of the Article's intention which enables a broader role for nutrition professionals in commercial communications. Such action would also be consistent with the UK's better regulation agenda to ensure evidence-based, proportionate regulation for industry.

KEYWORDS
EU EXIT, health claim, health professional, regulation

INTRODUCTION

In the context of foods, nutrition claims are defined as "any claim which states, suggests or implies that a food has particular beneficial nutritional properties" due to the presence, absence or specific proportion of energy, nutrients or other dietary substances in a food (European Commission [EC], 2007).

In addition, health claims are defined as "any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health" (EC, 2007). For a review, see Ashwell et al. (2022). Health claims fall into three categories:

1. Function claims (e.g., "vitamin D supports normal immune function");
2. Reduction of disease risk claims (e.g., "vitamin D helps to reduce the risk of falling associated with postural instability and muscle weakness. Falling is a risk factor for bone fractures among men and women 60 years of age and older");

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3. Health claims referring to children's development (e.g., “vitamin D contributes to the normal function of the immune system in children”).

Conditions of use accompany nutrition and health claims and specify the situations in which the claim is permitted, for example, that the food must be a ‘source’ of the nutrient mentioned or have a particular statement on the food label (Ashwell et al., 2022).

Health claims may help consumers to make choices about which food products are most appropriate for their nutrition and health needs and can be used by manufacturers to differentiate their products from others on the market or to communicate evidence-based health benefits. However, health claims can be misleading when they are not supported by high-quality evidence, are worded in a way that fails to reflect the science or are placed on foods that contain inadequate amounts of the active ingredient or nutrient (Ashwell et al., 2022; Buttriss, 2015). This is why health claims on foods are regulated—primarily to protect the consumer.

Prior to January 1st 2020, health claims were regulated at the EU level by the Nutrition and Health Claims Regulation (NHCR) (EC, 2007), with the EC retaining the powers for authorising claims, while scientific opinions on the evidence were provided by the European Food Safety Authority (EFSA). This model ensures that risk assessment (e.g., by EFSA) is kept separate from risk management (e.g., by the EC). Since EU EXIT, the NHCR has been adopted as law in Great Britain (GB). Claims made in Northern Ireland were still regulated under EU law, but this is expected to change following the adoption of the Windsor Framework, with food products destined for sale only within the UK being regulated under the GB model of the NHCR (HM Government, 2023).

A new committee, the UK Nutrition and Health Claims Committee (UKNHCC), has assumed responsibility for the risk assessment of the scientific evidence in support of proposed new claims. A GB nutrition and health claims register has been created, which incorporates all claims previously authorised by the EC plus any future claims authorised in GB (Department of Health & Social Care [DHSC], 2022). Risk management powers at present, such as authorising new health claims, their specific wording and conditions of use, now rest with the Secretary of State in England, and Ministers in Scotland and Wales (DHSC, 2022). However, the UK Secretary of State is permitted to legislate for the whole of GB, where devolved administrations in Scotland and Wales agree. This is to enable regional divergence where appropriate while taking into account the impact on consumer safety and confidence, and the functioning of the UK internal market. The lead department for health claims in GB is the DHSC.

It is worth emphasising that the scope of the NHCR is limited to ‘commercial communications’ aimed at the final consumer. This means that food product advertising, advertorials, in-store marketing and labelling, as well as social media accounts and websites operated by food businesses or trade bodies, are covered by the regulation. Non-commercial communications to consumers, such as those from government, public bodies, charities or professional associations, are not in scope; neither are business-to-business communications, such as manufacturers' brochures aimed at retailers, press releases written for the media (as long as they are not placed on a public website) and communications from food businesses to professionals.

The major aspect of the original NHCR which remains controversial is Article 12(c) and this is the subject of this paper. Article 12(c) states: “The following health claims shall not be allowed: (c) claims which make reference to recommendations of individual doctors or health professionals” (EC, 2007). It is understood that this prohibition was put in place due to: “concerns that, in commercial communications, the added weight of perceived professional expertise might unduly influence consumers and the objective of the Regulation is that consumers should not be misled in any way” (DHSC, 2021). No evidence was published by the EC at the time to support this view, and the additional layer of regulation for health professionals appears incongruous given that all health claims used in commercial communications to final consumers must be authorised. It remains unclear whether this prohibition relates to health professionals making non-authorised health claims based on their own interpretation of the scientific evidence (a reasonable constraint), or communicating authorised health claims (i.e. those which have already received a positive opinion following independent evaluation by EFSA/UKNHCC). If the latter interpretation is correct, Article 12(c) would represent an additional layer of regulation on top of the existing requirement for health claims to be independently assessed and authorised and to adhere to specific wording and conditions of use. The Article also singles out health professionals for special restrictions since current GB guidance (DHSC, 2021) states that the activities of celebrities are not in scope.

Concerns have been raised by dietitians and nutritionists who work with industry about the proportionality, fairness and workability of Article 12(c). A British Dietetic Association (BDA) workshop (Du Cane, 2012) highlighted the constraints imposed by the regulation on dietitians, particularly freelancers operating in commercial settings, and called for the BDA to work with government departments to ensure that: “the regulations do not prevent dietitians from making and communicating legitimate health claims” (Du Cane, 2012). An additional difficulty, beyond the questions of fairness and proportionality, is that Article 12(c) can be interpreted in several ways and, as case law is lacking, the actual meaning in practice remains unclear. Anecdotal

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evidence suggests that dietitians and nutritionists regularly working with industry interpret Article 12(c) to mean that they should not overtly recommend a food product in commercial communications by referring to its health claim, for example: "Product X as recommended by nutritionist Y for function Z". Others take the view that they are not permitted to refer to any health claims portrayed in commercial communications. This could mean in practice being unable to write about the benefits of fibre when contributing to a brochure funded by a breakfast cereal company. However, empirical evidence on how UK dietitians and nutritionists view, interpret and use health claims is lacking, hence the justification for the current paper.

GREAT BRITAIN GUIDANCE ON ARTICLE 12(C)

Current guidance in GB is provided by the DHSC (DHSC, 2021) and is similar to that published prior to EU EXIT. Regarding Article 12(c), the GB guidance (section 4.5) states:

"Article 12(c) of the Regulation prohibits a *very specific type of health claim* e.g., Dr X recommends Brand Y calcium food supplement because calcium is needed for healthy bones' in an advertisement for that supplement". This seems very clear and suggests that the use of the word 'recommend' is problematic, which links back to the original NHCR wording. While it is acknowledged that the NHCR does not define 'recommendation', the DHSC guidance accepts the Oxford Dictionaries online definition as 'a suggestion or proposal as to the best course of action, especially one put forward by an authoritative body' (DHSC, 2021).

However, the guidance goes on to say that health professionals *could* be permitted to recommend a branded product if the recommendation and authorised health claim were separated in presentation and would not be read together by the consumer. The guidance then gives two examples of prohibited health claims:

1. 'Dr X recommends Brand Y calcium food supplement' in an advertisement, that includes health claims, for that supplement;
2. 'Dr X says calcium is needed for strong bones' in an advertisement including the product name of that food supplement (DHSC, 2021).

While the first example seems consistent with the NHCR, the second example appears to stray from the initial guidance that Article 12(c) prohibits a very specific type of health claim involving a 'recommendation'. This perception is augmented by the suggestion that using an authorised health claim by a health professional about calcium in a product leaflet referring to a calcium-containing food product could be perceived as a prohibited claim, although it was acknowledged that context and overall presentation would be important. The guidance goes on to state that: "it might be difficult for a health professional to write about the relationship that exists between a food category, a food or one of its constituents and health without contravening the prohibition in Article 12(c)" (DHSC, 2021), but then appears to adopt a different stance elsewhere by stating: "Will individual doctors or health professionals be able to write in a commercial communication about the relationship that exists between a food category, a food or one of its constituents and health? As explained above, the Regulation prohibits a very specific type of health claim. When writing in commercial communications, whether these be product labels, in-store leaflets or advertising copy, care would need to taken (*sic*) to use health claims only from the authorised list of claims …when describing the relationship that exists between a food category, a food or one of its constituents and health" (DHSC, 2021). Taken together, these statements may appear contradictory but could be improved in future updates.

Another definition missing from the original NHCR was for 'health professional' but the official guidance takes the view that this would include: "anyone who is presenting themselves, or is understood by the consumer, as having expertise in the field of health or nutrition" (DHSC, 2021), which would include dietitians and registered nutritionists. However, it could encompass, in theory, academics with a PhD even if they are not health professionals, as well as nutritionists whose qualifications fall out with the sphere of registration by the Association for Nutrition (AfN), such as nutritional therapists. In contrast, the guidance makes it clear that authorised health claims made by celebrities in commercial communications are not in scope unless the celebrity is also a doctor or health professional.

METHODS AND MATERIALS

In view of the lack of empirical data mentioned above, a 14-question, multiple choice online survey (Survey Monkey) was developed in partnership with the BDA during April/May 2022 and advertised in the regular newsletters or specific mailings to members of the following professional groups: BDA freelance dietitians' group, Nutritionists in Industry, SENSE (Self Employed Nutritionists' Support and Enlightenment), AfN registrants. No formal ethical approval was sought as, at the time of the survey, there were no plans to publish the results in an academic journal. The results were to be used to inform debate within nutrition and dietetic professional associations. However, participants' rights were protected in the following ways: the survey was approved and circulated by the professional groups listed above, the authors were not given contact details

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for any individual member, participation was voluntary and anonymous, the Survey Monkey questionnaire and results could only be accessed by BDA staff.

The survey was also advertised on two LinkedIn posts (account of C. Ruxton) and interested dietitians and registered nutritionists based in the United Kingdom were encouraged to make contact to access the questionnaire, most doing this anonymously via a survey link provided by the BDA with a further 10 choosing to mail their responses directly as they were personally known to the authors. Those mailing their surveys were asked if they wished to provide an unattributed case study and four individuals agreed. Additional nine free text comments were received from the anonymous online questionnaires.

Online survey results were analysed automatically by the Survey Monkey application which provided frequencies of answers in relation to the multiple-choice options. The data output was provided to the authors by the BDA and answers to the additional 10 questionnaires were added manually in Excel to create tables and histograms.

TABLE 1 Participant characteristics.

	Number of responses	% Total
Professional qualification		
Registered dietitian	31	30.7
Registered or associate nutritionist	61	60.4
Both a registered dietitian and nutritionist	7	6.9
Student	2	2.0
Duration working with commercial organisations or trade bodies		
<1 year	2	2.0
1–5 years	18	17.8
>5 years	51	50.5
N/A as does not work with commercial organisations or trade bodies	30	29.7
Average proportion of income from commercial organisations		
All	26	25.7
>75%	13	12.9
50%–75%	9	9.0
25%–49%	6	5.9
<25%	17	16.8
N/A as does not work with commercial organisations or trade bodies	30	29.7

RESULTS

Completed surveys were received from 101 participants, of whom the majority (60%) were registered or associate registered nutritionists (Table 1). Despite aiming the questionnaire at freelance and industry-linked groups, almost half of the participants did not currently work with industry (30%) or earned less than 25% of their current income from this sector (17%). In contrast, 39% earned 75% or more of their income from working with industry while the remainder were in the range of 25%–74% income. Of those working with industry, 72% had more than 5 years' experience in this.

Understanding what the Nutrition and Health Claims Regulation regulates

The majority (87%) of participants had heard of the NHCR. Of those who had not, only one registered nutritionist worked with industry but earned less than 25% of their income from this sector. The remainder were students or qualified individuals who did not work with industry.

As stated above, the NHCR regulates nutrition and health claims made in commercial communications to the final consumer. However, this was understood by fewer than a third (27%) of participants, with 50% expressing the incorrect view that the NHCR regulates any nutrition and health claims communicated to consumers, and 18% believing that only food labels and advertising were in the scope of the regulation.

There was also confusion around which channels were included in the definition of 'commercial communications' (Table 2). While most participants correctly selected adverts, food labels and company websites or social media accounts, fewer recognised that trade body communications and newspaper advertorials counted as commercial. A range of participants (8%–38%) wrongly assumed that communications from non-commercial sources (government, charities, journals) were defined in law as commercial.

When asked to review a list of claims and choose those which would be defined in the NHCR as health claims (either authorised or non-authorised), most participants were able to do this but around a fifth also incorrectly selected nutrition claims (e.g. sugar-free, a source of fibre, high in calcium) and a small proportion chose other types of statements found on food products (e.g., 100% fruit juice, contains nuts) (Table 3).

Both specific (e.g., supports normal immune function) and non-specific claims (e.g., good for you) were recognised correctly by the majority of participants as health claims. Non-specific health claims are generic statements that imply benefits for a nutrient or food relating to overall wellbeing and can be made only if displayed alongside an authorised health claim (Buttriss, 2015). In recent years, the terms 'antioxidant' and 'probiotic' have been determined by regulatory bodies to be non-specific health claims when previously they were viewed by some in industry as nutrition claims (International Probiotics Association, 2022). There remains divergence in how to

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TABLE 2 Number of respondents classifying different types of communications channels as 'commercial' under the remit of the nutrition and health claims register ($n = 97$, excluding 4 selecting 'do not know').

Non-commercial communications	Number of responses	Commercial communications	Number of responses
Diet sheets used by healthcare professionals in private practice	19	Food product labels	85
Charity websites and social media accounts	31	Food company websites	92
Government websites and social media accounts	14	Food company adverts	93
Scientific publications in journals or newsletters	8	Food company social media accounts	92
Newspaper articles	38	Trade body websites and social media accounts	56
		Newspaper advertorials	78

Note: Participants could choose as many options as they wished which were provided as a list and not identified as commercial or non-commercial in the questionnaire.

TABLE 3 Which of the following statements would be defined as 'health claims' in the nutrition and health claims register? ($n = 101$).

Claim	Number of responses	Authors' interpretation based on DHSC guidance
High in calcium	21	✗: Nutrition claim
Low in salt	21	✗: Nutrition claim
Supports normal immune function	98	✓: Health claim
Healthy option	74	✓: Non-specific health claim
Sugar-free	21	✗: Nutrition claim
Helps with weight management	89	✓: Health claim
Antioxidant	42	✓: Non-specific health claim
A source of fibre	23	✗: Nutrition claim
100% fruit juice	8	✗: Product description
Good for you	78	✓: Non-specific health claim
Contains nuts	5	✗: Allergy statement
Probiotic	52	✓: Non-specific health claim
None of these	0	
Do not know	1	

Note: Participants could choose as many options as they wished, hence numbers of responses, rather than percentages, are shown.

Abbreviation: DHSC, Department of Health and Social Care.

deal with probiotic claims across the EU, but in GB, they are viewed as non-specific health claims and must be accompanied by an authorised health claim in order to be communicated to consumers (DHSC, 2021). At present, there are no authorised GB health claims for probiotic products that would enable 'probiotic' to be used as a non-specific health claim. In contrast, there are authorised claims for several nutrients, including selenium and vitamin C, that they contribute "to the protection of cells from oxidative stress" (DHSC, 2022) which could enable the additional use of 'antioxidant' (ASA, 2022).

Understanding of Article 12(c)

Awareness of Article 12(c) was low, with most participants either being 'unaware' (35%) or 'aware but unclear of the meaning' (24%). Just 28% were aware of Article 12(c) and had implemented it into their working practices, with the remainder being aware without implementing it. Perhaps unsurprisingly, given the modest levels of awareness, around a third (33%) of participants did not know how to interpret Article 12(c) but there was a majority view that, as healthcare professionals, they could be quoted in commercial communications (see Table 4). However, the detail on what they believed they could say differed widely.

As is shown in Table 4, the most common interpretation chosen (answer E; 27%) was that health professionals could mention nutrition and health claims in commercial communications for food products but not their personal recommendations. This response could be interpreted as being close to the NHCR wording which bans "*claims which make reference to*

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TABLE 4 What is your interpretation of Article 12(c) of the Nutrition and Health Claims Regulation (NHCR)? ($n = 101$).

Possible interpretations	% responses	Authors' interpretation based on their understanding of NHCR & DHSC guidance
(A) As a healthcare professional, I cannot use health claims in any content aimed at consumers or patients	2	No prohibition on this in the NHCR or GB guidance
(B) As a healthcare professional, I cannot be quoted in any commercial communications	5	No prohibition on this in the NHCR or GB guidance
(C) I can be quoted in commercial communications as a healthcare professional, but cannot refer to any nutrition or health claims	6	No prohibition on healthcare professionals using nutrition claims in commercial communications
(D) I can be quoted in commercial communications as a healthcare professional, but cannot refer to any health claims	21	Consistent with a strict interpretation of GB guidance but appears to go beyond the wording of the NHCR
(E) I can be quoted in commercial communications as a healthcare professional, and refer to relevant nutrition and health claims but I cannot make any personal recommendations about products	27	Could be consistent with the wording of the NHCR but unlikely to be permitted within the GB guidance (see Table 4)
(F) I can be quoted in commercial communications as a healthcare professional, and recommend particular products for their nutritional content but not their health benefit	6	Not prohibited in the NHCR and likely to be permitted within GB guidance depending on the context
(G) I can be quoted in commercial communications as a healthcare professional, and recommend particular products even if they carry a health claim	1	Unlikely to be permitted
Do not know	33	

Note: Participants could choose only one option, hence percentages of responses are shown.
Abbreviation: DHSC, Department for Health and Social Care.

recommendations of individual doctors or health professionals" (EC, 2007). Yet, the same proportion (C + D; 27%) believed they could not refer to nutrition and/or health claims in commercial communications, highlighting confusion in this area and a need for clarity. It is difficult to be sure based on current DHSC guidance for GB whether interpretation D or E is correct as it depends both on legal interpretation, of which there is a lack given the dearth of UK case law and relevant Advertising Standards Authority (ASA) rulings, and context (e.g. product photos, logos or health illustrations accompanying the text).

Considering that there is a specific prohibition in the NHCR relating to healthcare professionals, it is surprising that no organisation has a formal duty to police their activities in commercial communications. When asked for their views on this, 19% of survey participants agreed that no authoritative body was responsible, while a similar proportion did not know (20%). The remaining answers were split between the ASA (20%), professional associations (14%), trading standards (12%) and others (e.g., the DHSC [9%] or the UKNHCC [5%]).

As emphasised in the guidance (DHSC, 2021), it is the responsibility of food businesses to ensure that any external communications about their products comply with the law. The responsibility for enforcing the NHCR in GB sits with Local Authorities, mainly through the work of Trading Standards Officers. In addition, the ASA, a self-regulatory organisation funded by levies from the UK advertising industry, has been given the role of policing the use of nutrition and health claims in adverts and digital media through its contract with Ofcom.

Professional codes of practice published by the BDA (2017a) and Health and Care Professionals Council (HCPC, 2016) currently do not make specific reference to health claims. However, the HCPC code requires that any promotional activities are accurate and unlikely to mislead and that registrants declare conflicts of interest and ensure these do not influence their judgement.

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Only the AfN code refers specifically to health claims and states that registrants should not be included in, or affiliated with, a commercial communication that includes a health claim as this is regarded as product endorsement (AfN, 2021). The AfN code also appears to take a stricter view of Article 12(c) than the NHCR, which refers only to recommendations of healthcare professionals rather than to unattributed health claims within the same communications medium.

When invited to respond to a series of statements about Article 12(c), 63 respondents (75% of these were registered nutritionists) welcomed clearer guidance from their professional bodies and agreed that they did not fully understand what they could, and could not, say in practice. Nineteen also added that being unclear about how to operate within Article 12(c) had caused them to turn down freelance work.

Interpretation of Article 12(c)

The final part of the survey asked respondents to examine a series of statements given by a fictitious registered nutritionist on a fictitious yogurt company's website and select those which would be permitted, in their view, under the NHCR. The DHSC was approached for guidance on the statements but stressed that an official and legal view would need to consider the full context of any commercial communication (e.g., how the claims were presented and the intended audience). Table 5 presents the number of respondents who considered each statement to be permitted (note only one person selected the option that none were legal).

The three statements with overt product recommendations (#1–3) were generally viewed by respondents as not permitted, although in the view of the authors, there is nothing in the NHCR which prevents healthcare professionals from recommending products for their nutritional content, rather than for health benefits. Other statements focusing on authorised nutrition and/or health claims were more likely to be viewed by participants as legal, but this was not clear-cut when considering DHSC guidance. While statements containing specific (calcium and bone health) and non-specific (part of a healthy diet) health claims seemed unlikely to be permitted according to the interpretation of the DHSC guidance, other statements were considered borderline and depended on the context and whether 'part of a balanced diet'—a sensible, commonly used phrase of healthcare professionals—was considered to be a non-specific health claim by officials.

A surprising finding was that no statement could be definitively classified as legal based on the DHSC guidance for GB and there was considerable room for interpretation, making it potentially challenging for dietitians and nutritionists to manage their industry work. Even a general statement about the branded yogurt being part of a healthy diet (#3) or a non-branded statement of the fact that yogurt is a source of calcium and supports bone health (#7) was likely to be viewed as illegal based on our interpretation of current GB guidance. The element of subjectivity required to assess statements made by healthcare professionals in commercial communications, and the absence of UK case law, could lead to a non-level playing field since each local authority has its own Trading Standards officers who could, theoretically, take a different nuanced view.

Overall, the results suggest widespread confusion about Article 12(c), as well as specific aspects of the NHCR generally, leading to the potential for dietitians and nutritionists to contravene current regulations or risk reputational damage to the profession.

DISCUSSION: CONSIDERATIONS FOR THE FUTURE

Dietitians and registered nutritionists work across the food and drink industry, as employees, freelance consultants and business owners, not just as health workers in the public sector (e.g., in the NHS or local authorities). Their training and expertise contribute to many different areas of the food chain, from research and new product development to marketing and communications, which makes them appropriate 'messengers' to convey scientific evidence about authorised health claims. It could be argued that ensuring that the food industry continues to employ the skills of these individuals helps safeguard consumers, particularly since dietitians and registered nutritionists are members of professional bodies and are accountable if their ethics or work practices fall short of expectations. If society values this work, it seems incongruous to limit nutrition professionals' communication of authorised health claims in commercial settings, leaving the field open to unqualified individuals, many of whom have considerable influence over consumers' purchasing decisions and are not generally held to account by professional bodies. In a recent Position Paper, the Academy of Nutrition Sciences (ANS) recommended dialogue with relevant UK government departments to help health professionals gain a clearer interpretation of Article 12(c) (Ashwell et al., 2022; Stanner et al., 2022).

Three options are proposed to continue protecting consumers while supporting dietitians and nutritionists to develop their work and influence across the food landscape:

Option 1: Amend the Nutrition and Health Claims Regulation to remove Article 12(c)

There has been a drive in the United Kingdom to ensure that regulation, including such incorporated into

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TABLE 5 Which of these statements is legally permitted? ($n = 101$).

Examples of statements provided in questionnaire	Statement construct	No. respondents considering statement to be legal	Authors' interpretation based on DHSC guidance
#1 Mary Jones says: "I recommend Tillydale yogurt because it's a source of calcium and supports normal bone health"	Brand recommendation + permitted nutrition claim + authorised health claim	7	Not permitted due to inclusion of health claim 'normal bone health'
#2 Mary Jones says: "I recommend Tillydale yogurt because it provides a source of calcium"	Brand recommendation + permitted nutrition claim	18	Could be permitted subject to interpretation of the DHSC Guidance but depends on exact context in which they are used
#3 Mary Jones says: "I recommend Tillydale yogurt as part of a healthy diet"	Brand recommendation + non-specific health claim	18	Not permitted due to inclusion of non-specific health claim 'healthy diet'
#4 Mary Jones says: "Tillydale yogurt is a source of calcium and supports normal bone health"	Brand mention + permitted nutrition claim + authorised health claim	28	Not permitted due to inclusion of health claim 'normal bone health'
#5 Mary Jones says: "Tillydale yogurt is a source of calcium and can be eaten as part of a balanced diet"	Brand mention + permitted nutrition claim + non-specific health claim	44	Could be permitted subject to interpretation of the DHSC Guidance but depends on exact context in which they are used. Also depends on 'balanced diet' not being considered a general health claim
#6 Mary Jones says: "Tillydale yogurt can be eaten as part of a balanced diet"	Brand mention + non-specific health claim	52	Could be permitted subject to interpretation of the DHSC Guidance but depends on exact context in which they are used. Also depends on 'balanced diet' not being considered a general health claim
#7 Mary Jones says: "Yogurt is a source of calcium and supports normal bone health"	Permitted nutrition claim + authorised health claim	44	Not permitted due to inclusion of health claim 'normal bone health'
#8 Mary Jones says: "Yogurt is a source of calcium and can be eaten as part of a balanced diet"	Permitted nutrition claim + non-specific health claim	58	Could be permitted subject to interpretation of the DHSC Guidance but depends on exact context in which they are used. Also depends on 'balanced diet' not being considered a general health claim

Note: (1) Participants could choose as many options as they wished, hence numbers of responses, rather than percentages, are shown. One respondent selected the option that none of the statements was legally permitted; (2) 'DHSC Guidance' relates to published guidance (DHSC, 2021) plus informal guidance provided to the authors by email.

Abbreviation: DHSC, Department for Health and Social Care.

GB law post-EU EXIT, is evidence based, consistent and proportionate (HM Government, 2022). More recently, a bill has been introduced to repeal or assimilate retained EU law by the end of 2023 (Retained EU Law [Revocation and Reform], Bill, 2022). At the time of writing, it had progressed to the House of Lords. It could be argued that since the consumer is already protected by independent assessment of all health claims, and the authorisation, wording and conditions of use being approved by the government, then it is disproportionate to single out claims articulated by healthcare professionals for additional restrictions. There is no evidence, to the knowledge of the authors, that healthcare professionals have more influence over consumers' food purchasing decisions than celebrities or influencers, although surveys suggest that GPs and dietitians are more trusted for their diet advice than other groups in society (BDA, 2017b). Neither has it been evidenced that the influence of healthcare professionals, by using authorised health claims in commercial communications, could mislead or harm the consumer, considering that only authorised health claims can be used.

Amending the NHCR to remove Article 12(c) would enable dietitians and nutritionists to be regulated in

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the same way as everyone else, hence improving the consistency and fairness of the NHCR. If concerns remain about overt personal recommendations for food and supplemental products, this could be dealt with by strengthening professional codes of practice, although this would still restrict the ability of food business owners to promote their own brands if they are also perceived as being health professionals. The AfN standards already require that registrants "do not recommend a particular product or brand without making clear that alternative products may be available", which could be adopted for other codes of practice.

Option 2: Amend the Nutrition and Health Claims Regulation to extend the scope of Article 12(c)

There was a view amongst more than half of survey respondents that influencers and celebrities should be included in the restriction imposed by Article 12(c) and several people commented on the non-level playing field with one respondent remarking: "It's frustrating other unscrupulous 'professionals/therapists/celebrities' do and say what they want, often without repercussions which doesn't seem right at all". While these individuals still must use authorised health claims and cannot 'say what they want', nevertheless they have more latitude in their use of health claims than health professionals. A downside to this approach is that a revised NHCR would have to legally define 'celebrity' and 'influencer' which may be problematic.

A joint statement by the AfN and BDA (2021) appears to call for a blanket ban of authorised health claims in promotions and advertisements by indicating support for: "any moves to strengthen the regulation and the enforcement of rules that would prohibit the use of a health claim linked to a promotion or advertising". It remains unclear what would be the health protection rationale for prohibiting commercial promotion of authorised health claims that have already passed the hurdle of independent scientific and political scrutiny. Hence, this option is unlikely to reduce the regulatory burden of dietitians and nutritionists who work with industry, while there would seem to be limited benefit to consumers.

Option 3: Revise the Department of Health and Social Care guidance on the Nutrition and Health Claims Regulation

In the survey, a third of respondents supported improving the clarity and consistency of guidance. There is scope to ensure that the guidance better reflects the actual NHCR wording prohibiting 'recommendations of' health professionals. This would enable dietitians and nutritionists to write/speak about authorised health claims in commercial communications and, in the cases of business owners, be able to market and advertise their own products—currently prohibited if they happen to be a dietitian or nutritionist and wish to be recognised as such in social media or advertising. Overt recommendations to buy specific products could remain banned. It would be very much welcomed if DHSC would consult with healthcare professionals currently working within the industry landscape, perhaps via the BDA Freelance Dietitians Group, the Nutritionists in Industry group and SENSE, to collate case studies and create unambiguous, practical, proportionate guidance.

A view was expressed in the survey comments by three participants that dietitians and nutritionists were exhibiting professional greed by promoting products with health claims. It is worth highlighting that the NHCR does not prohibit healthcare professionals from recommending or promoting foods in commercial settings for non-health reasons (e.g., by referring to their liking or personal use of specific products or brands). Also, since dietitians and nutritionists now work in many different spheres other than in the public sector, it seems purist to restrict their employment opportunities. It could be argued that the most important factors are whether nutrition professionals working in industry make conflicts of interest clear to the consumer and ensure that any foods promoted are generally considered to be part of a healthy diet (i.e., no promotion/recommendation of confectionery, sugar-sweetened beverages or alcohol). Again, this could be addressed by clearer codes of practice.

Another aspect highlighted by the survey was a poor understanding of various aspects of the NHCR amongst some dietitians and nutritionists indicating a need for additional training which was also a conclusion of the position paper of the ANS (Ashwell et al., 2022). A large proportion of our survey respondents were unclear about the types of communications classified as commercial versus non-commercial, and the differences between health and nutrition claims. This could hinder nutrition professionals from properly communicating nutrition and health claims to consumers and increase their risk of non-compliance with the regulation (Box 1).

CONCLUSIONS

The survey has provided much-needed evidence on how dietitians and nutritionists view the NHCR, especially Article 12(c). Considerable confusion exists about the scope of this regulation and how it applies to working practices, indicating that, as a minimum, additional training is required. The risk of divergent interpretation of the practical application of Article 12(c), combined with unclear, occasionally inconsistent guidance and a lack of UK case law, could place nutrition professionals who work with the food industry

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BOX 1 Case studies

Food brand owner

"I am a dietitian looking to start my own food brand but, unlike other food business owners, I would be unable to use authorised health claims about my own products due to the restraints of Article 12(c). An influencer with their own food brand would be able to comment on their website and promotional literature about the evidence-based health benefits of their products but I am not. I find it illogical and restrictive that dietitians are treated differently from people who are less qualified but who could be equally or more influential in the eyes of the public".

Freelancer

"As a dietitian who works with commercial companies and cares about compliance, it is difficult to help the companies I work with understand the regulations when influencers and other people in the nutrition space, for example, nutritional therapists, don't have to follow the same guidelines. I often use the sentence 'I would love to work with you, but I am very restricted in what I can and can't say and so you may be better working with someone unregulated'. Typically, brands are still happy to work with me because they want to remain compliant but unfortunately, this leaves the market open to being exploited by unqualified individuals in the nutrition space and limits the opportunities for credible and qualified healthcare professionals".

Company nutritionist

"As healthcare professionals working in the private or commercial sector, we should be able to support evidenced-based commercial communication and to help the public distinguish fad claims from those based on credible nutrition and thoroughly reviewed. If health claims have been authorised through a rigorous independent review process, and are allowed on websites and packaging, healthcare practitioners should be able to refer to them in commercial communications as legitimate health claims. The BDA and AfN should support healthcare professionals working in the private sector to communicate the right messages because if they don't there are plenty of non-regulated individuals (influencers/celebrities/self-proclaimed nutrition experts) who will fill the void and say the wrong things".

at legal or reputational risk. Rather than being deemed a potential risk to consumers, as implied by the legal restriction in Article 12(c), healthcare professionals may, in fact, be safer communicators of authorised health claims than those to whom the restrictions do not apply, such as influencers or celebrities, since healthcare professionals are regulated and guided by codes of practice. Hence, it is essential to level the regulatory playing field. Amending the NHCR to remove the burden of Article 12(c) on healthcare professionals or updating GB guidance to apply a narrower interpretation of the wording of Article 12(c) could ensure that dietitians and nutritionists are free to work as trusted messengers across the food chain, including within commercial settings. Such an action would be consistent with the UK's better regulation agenda which strives for evidence-based, proportionate regulation for industry.

CONFLICT OF INTEREST STATEMENT

Dr Carrie Ruxton is a freelance dietitian providing ad hoc consultancy services to a broad range of UK and EU food businesses and trade bodies. She serves as a Trustee of the Nutrition Society and is a member of the BDA and Guild of Health Writers. Dr Ashwell is a Director of Ashwell Associates, a nutrition science consultancy that provides ad hoc services to a broad range of food businesses. She serves as a Trustee of the ANS. This paper provides the personal opinions and interpretations of the two authors and does not represent the view of any organisation with which they are associated.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

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