

The Market Research Society submission in response to the OFT consultation on developing the use of 'established means'

1. About The Market Research Society

With members in more than 70 countries, The Market Research Society (MRS) is the world's largest association serving all those with professional equity in provision or use of market, social and opinion research, and in business intelligence, market analysis, customer insight and consultancy.

MRS has a diverse membership of individuals at all levels of experience and seniority within agencies, consultancies, support services, client-side organisations, the public sector and the academic community.

It also serves MRS Company Partners – agencies, suppliers of support services, buyers and end-users – of all types and scale who are committed throughout their organisations to supporting the core MRS values of professionalism, research excellence and business effectiveness.

In consultation with its individual members and Company Partners, MRS supports best practice by setting and enforcing industry standards. The commitment to uphold the MRS Code of Conduct is supported by the Codeline service and a wide range of specialist guidelines.

MRS contributes significantly to the enhancement of skills and knowledge by offering various qualifications and membership grades, as well as training and professional development resources.

2. Introduction

MRS welcomes the possibility offered by the OFT to respond to the consultation on developing the use of 'established means'.

MRS confirms that the contents of this paper are not confidential and can be attributed to MRS.

MRS has noted the questions outlined in the consultation document and answered those questions that are directly relevant, and used the topics to guide any additional response. de

3. Response to Consultation

General comments

3.1 OFT Draft principles

Q1. Do you agree there is no requirement for a separate set of principles for the BPRs?

MRS supports the OFT assertion that no separate set of principles are required for the BPRs.

Q2. Is the draft set of principles sufficiently clear?

and

Q5. Does the draft set of principles have significant omissions?

and

Q7. Do you have any other suggestions for improvement to the draft set of principles?

MRS supports the adoption of the OFT draft principles and the expansion of the term 'established means' beyond its traditional scope. However, it should also be noted that established means for self-regulation exist across a wide range of sectors and although many do not have an explicit consumer or business protection function they do have a role in preventing or controlling unfair commercial practices. As such, MRS believes that when applying draft principles 2 and 3, OFT should consider referring non-compliance with consumer and business protection regulations to compliance partners in those sectors most appropriate for addressing the issue e.g. research-related complaints against MRS Members of MRS Company Partners should initially be referred to MRS as the regulatory body for the sector.

3.2 The MRS *Code of Conduct* and associated complaint processes

Researchers who are MRS Members and organisations that are MRS Company Partners adhere to the robust and rigorous MRS *Code of Conduct* and its associated compliance frameworks. The MRS *Code of Conduct* is widely recognised and adhered to by all professional market, social and opinion researchers.

While the MRS *Code of Conduct* is not a consumer code and is not eligible for the OFT's Consumer Codes Approval Scheme, it does provide significant protections to the individuals and business by setting out their rights as participants in projects conducted by MRS Members and MRS Company Partners and safeguarding the responsible use of information about them, including preventing its further commercial use in the absence of informed consent.

Compliance with the MRS *Code* is supported by effective complaint handling and advice services, with prompt informal resolution being available in the majority of cases. The existence of these arrangements supports the point in 3.1 that research-related matters should be referred to MRS.

3.3 Research and the Unfair Commercial Practices Directive (UCPD)

MRS is aware of traders using the guise of research as a means of generating sales or fundraising. These methods are known to researchers as **sugging** (selling under the guise of market research) and **frugging** (fund-raising under the guise of market research). Such practices are unethical and contrary to the MRS *Code of Conduct* and the practices of professional researchers

These activities are designed to influence consumers' transactional decisions in relation to products. They are banned in the case of telephone communication by virtue of Regulation 7(4) of the Consumer Protection (Distance Selling) Regulations 2000 (Statutory Instrument 2000 No. 2334). Before the advent of the UCPD there was no similar protection against such practices used in person or in any other form of communication, such as letter, fax, and email.

By sugging or frugging traders use the appearance of conducting research, which is commonly understood not to involve any form of commercial message, to materially distort the economic behaviour with regard to the product of the average consumer to whom it is addressed. Consumers may feel obliged to provide information which is later used for sales leads or be drawn into purchasing a product or making a contribution as a direct result of the positioning of the commercial communication as a research exercise. Therefore MRS believes that these practices fall within the scope of the UCPD.

Additionally, Annex 1, paragraph 22 of the UCPD prohibits:

Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.



The essence of sugging and frugging is that the trader claims or creates the impression that they are not acting for purposes relating to their trade or profession, i.e., they are acting in the capacity of researchers not traders. Therefore MRS believes that sugging and frugging are within the scope of this banned commercial practice which, under the UPCD, is in all circumstances considered unfair.

The majority of organisations that participate in such activities do not belong to reputable business or professional bodies such as MRS. OFT, in accordance with draft principle 5, should take responsibility for unfair commercial practices which fall outside accepted professional and trade codes such as sugging and frugging complaints.

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