



MRS Policy Unit

Submission to the PECR 2003 Consultation, Telecoms Policy Team,

Department for Culture, Media & Sport

Response from the Market Research Society (MRS)

The Market Research Society (MRS) welcomes the opportunity given by the Department for Culture, Media & Sport to respond to the proposal to lower the legal threshold for the enforcement of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") for regulations 19-24, to tackle unsolicited direct marketing calls and SMS text messages.

About MRS

MRS is the world's largest association for market, social and opinion research. MRS supports best practice by setting and enforcing industry standards. All MRS Members and Company Partners must adhere to the MRS Code of Conduct, its associated regulations and compliance procedures. The commitment to uphold the MRS Code of Conduct is supported by the Codeline service and a wide range of specialist guidelines.

About the MRS response

In order to respond fully, and to give appropriate perspective to the consultation, MRS has provided some additional clarification on market and social research in the context of nuisance calls, in addition to answering the specific questions raised in the consultation.

MRS confirms that no part of this submission is confidential, and all responses may be attributed to MRS.

1. About the UK market, social and opinion research sector

- According to the 2012 Office for National Statistics' (ONS) Annual Business Survey,¹ the estimated total sales turnover of the UK market research industry is £3.9 billion, generated by c.3,000 enterprises (about half of which are employers, the other half being sole traders).

¹ Office of National Statistics (ONS), (2012) Annual Business Survey. Standard Industrial Classification (SIC) 73.2: Market research and opinion polling: <http://www.ons.gov.uk/ons/rel/abs/annual-business-survey/2012-revised-results/index.html>



- In 2012, MRS with PWC undertook an assessment of the size and impact of the UK research and evidence market, producing the MRS report *The Business of Evidence*². One of the main findings from this report is that the UK 'business of evidence' market employs up to 59,000 people and generates £3billion in annual gross value added (GVA). A third of this activity is undertaken for client and end users outside the UK, making the sector a substantial exporter. The UK market, social and opinion research industry is the second largest in the world, the US being the largest.

2. MRS Response to the consultation questions

Question 1: Do you agree that lowering the legal threshold to remove the need to prove 'substantial damage' or substantial distress', will help improve compliance with PECR?

Research: the current position

- Research in itself does not seek to change or influence opinions or behaviour. Unlike direct marketing, advertising or other commercial communications, research is not a commercial activity, does not contain commercial messages nor does it seek to promote the aims or ideals of those who conduct or commission it.
- Market, social and opinion research is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making.
- Market research plays a key role in helping business to better understand consumers, customers, and to develop appropriate goods and services which are essential for economic efficiency, innovation and progress within the UK economy. Social and opinion research is widely used by government and public bodies to understand citizens' preferences and behaviours, measure impact and assist in developing appropriate policies used, for example, in improving educational, healthcare and police services.
- For market, social and opinion research to have value for government, businesses and the public it must be representative of the views of all UK citizens. Conducting telephone research is one of the most efficient and cost-effective ways of ensuring a representative sample of the UK population, and is widely used in government research

² See www.mrs.org.uk/pdf/The_Business_of_Evidence_Final_08102012.pdf for a copy of the full report.



as a consequence. It is also one of the best methods for researching otherwise hard to reach segments of the UK population, another key target for many public sector research projects.

Research and "nuisance calls"

- Over the last two years MRS has noted a significant level of queries to the MRS Standards Department about calls purporting to be for the purpose of "market research". This is in line with a general increase in complaints about telemarketers according to figures from Ofcom. TPS' complaint figures show that the number of complaints relating to "market research" has increased. Many callers to TPS are referred onward to MRS. Very few of the calls directed to us via TPS relate to genuine market research calls, and none have been connected to breaches of the MRS Code of Conduct. For the most part the calls we receive relate to the use of lifestyle questionnaires, a form of data collection for use in direct marketing. It is frequently the case that we have to refer callers back to TPS, as their calls relate to direct marketing.
- These type of exercises are confusing to the public, as they use a method of data collection traditionally associated with research (a questionnaire) for another purpose which is not clearly or conspicuously identified (direct marketing).
- MRS is also 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. MRS operates a separate Freephone service, which it launched in 2014, to enable members of the public to report these types of misleading sales practices to MRS, in order that MRS can forward complaints to the ICO.
- The research conducted by Ofcom³ clearly demonstrates that market and social research calls are a small percentage of calls defined as 'nuisance calls' and are not the type of calls that cause substantial damage or distress. Based upon the evidence gathered by MRS and TPS it is also clear that many of these calls are in fact 'sugging' and 'frugging' calls, not genuine market research.

³ Landline Nuisance Calls Panel Wave 2 (May 2014), Ofcom
http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/nuisance-calls-research/Nuisance_calls_W2_report.pdf

Research and the requirements of PECR

- Research is recognised as not being a commercial communication and is excluded from the provisions of PECR which relate to commercial communications. It is essential that whatever changes are made to PECR, the exclusion of research from the commercial communication provisions remains.
- It is also important that whatever changes are implemented, the scope of enforcement and the right to seek damages under the provisions of PECR are clearly and fully communicated, and the expectations of citizens managed appropriately. It must be made clear that only the commercial communications regulated by PECR would be included, to avoid an increase in vexatious claims which fall outside the purview of the Regulations.
- Researchers should continue to be able to contact members of the public by telephone, and not to be subject to more stringent rules, due to the role research plays in supporting democracy, enabling all citizens an equal voice in issues which affect their daily lives.
- MRS is not convinced that lowering the threshold for PECR will necessarily help to improve compliance with PECR. This will not address significant problems such as organisations calling from overseas, which totally disregard the current PECR requirements, nor will it hamper the 'rogue traders' with their illegal and misleading practices that cause so many problems for legitimate researchers. It is not clear from the current proposal how these wider issues are to be addressed.

Self-regulatory provisions

- Current self-regulatory provisions adhered to by responsible and reputable organisations specifically forbid the misrepresentation of sales or marketing as market research. The DMA's Direct Marketing Code of Practice provides in 2.4:

Members must not misrepresent themselves as carrying out research or a survey when the real purpose of the contact is to sell goods or services, or to solicit donations.



- Similarly rule B18 of the MRS Code of Conduct requires researchers to provide a number of items of information at the beginning of interview, including the identity of the organisation making the call, the subject matter of the interview and its purpose (market, social or opinion research).
- MRS believes that for any change to the legislation to be effective and proportionate, as well as cost effective, the change should recognise existing self-regulatory arrangements, and concentrate on those operators that exist outside any regulatory regime.

Consumer protection legislation

- Consumer protection legislation, such as Regulation 7(4) of the Consumer Protection (Distance Selling) Regulations 2000 (Statutory Instrument 2000 No. 2334), provides that:

In the case of a telephone communication, the identity of the supplier and the commercial purpose of the call shall be made clear at the beginning of the conversation with the consumer.

- MRS has also made representations to the Department of Business, Innovation and Skills to clarify its guidance on the EU Directive on Unfair Commercial Practices to make clear that sugging and frugging fall within practices banned by the Directive.
- 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 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 Directive.

Additionally, Annex 1, paragraph 22 of the Directive 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 Directive, is in all circumstances considered unfair.

- MRS believes that there would be more overall benefit for consumers if the requirements of PECR and the Consumer Protection (Distance Selling) Regulations 2000 were more closely aligned, and used to protect consumers.

Question 2. Do you agree with the Government's preferred option (option 3) of removing the need to prove substantial damage or substantial distress and allowing ICO the greatest scope to consider which companies can be issued with a CMP? Please provide your reasoning.

- MRS believes that the lowering of the threshold could only be effective if wider steps were taken to address the more significant problems that cause the vast majority of nuisance calls: the rogue traders and the callers from overseas.

Question 3. Are there any other costs or benefits associated with any of these options that you feel need to be considered before any final decision is taken?

Costs for research without telephone research

- For market, social and opinion research to have value for government, businesses and the public it must be representative of the views of all UK citizens. Conducting telephone research is one of the most efficient and cost-effective ways of ensuring a representative sample of the UK population, and is widely used in government research as a consequence. It is also one of the best methods for researching otherwise hard to reach segments of the UK population, another key target for many public sector research projects.
- Telephone interviewing (by landline and mobile) is used for about 15% of market, social and opinion research projects in the UK. It is used extensively in social research, to interview otherwise hard to reach groups and wherever a high quality or random sample is required. It is imperative that this mode of communication remains open to research and that it is not abused or subject to misuse. Activities such as sugging and frugging continue to impact on the cost effectiveness of telephone research, as response rates suffer due to confusion caused by rogue traders.
- MRS undertook a review with some MRS Company Partners that conduct telephone research and it has been estimated that for a standard research project there would



be up to a 20% increase in costs if such research projects had to be completed using other available random sampling research methodologies (essentially face-to-face research) which would be required to obtain representative views of the UK population.

- This would substantially increase the cost of research at great cost to the buyers of research: the public and private sector. It is therefore essential that whatever changes are made or considered to PECR, this status of research, as a non-commercial communication, is retained and research is not made subject to more stringent provisions.

Other alternatives

- MRS preference in terms of amendments to PECR would be to strengthen the regulation to protect consumers from misleading commercial practices and protect the telephone network as a channel for research. Our proposal would be to explicitly prohibit selling under the guise of research and any other activities masquerading as telephone market, social or opinion research (such as fund raising). Additionally, MRS proposes that PECR state that all telephone market, social and opinion research should be conducted in accordance with the MRS Code of Conduct. We have discussed this potential solution with the TPS, who have been supportive of this approach.
- Such an approach would enable Ofcom, TPS and the ICO to gather research and data about nuisance calls which would more accurately identify the purpose of 'nuisance calls', as the evidence indicates that many calls identified as "market research" are in fact for the purposes of direct marketing.

This submission is made by Debrah Harding, Chief Operating Officer of the MRS on behalf of the Market Research Society.

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