



# MRS Guide: Observers – legal and ethcial responsibilities

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## Introduction

These Guidelines interpret the MRS Code of Conduct (2019) and provide additional best practice advice. Unless otherwise stated, Guidelines are not binding.

Research is founded upon the willing co-operation of the public and of business organisations. It relies on the confidence of those involved that it is conducted honestly, objectively, without unwelcome intrusion and without harm to participants. Its purpose is to collect and analyse information and not to create sales or to influence the opinions of anyone participating.

Every participant must be assured that research projects are carried out in strict accordance with the Code of Conduct and that their rights of privacy are respected. Rules from the Code of Conduct applicable in each section of this document are stated in the shaded boxes. These rules are binding on MRS members and MRS Company Partners and breaches may result in disciplinary action. The guidance that follows the rules provides interpretation and additional best practice. Members and Company Partners are reminded that this document is designed to complement the MRS Code of Conduct and should not be consulted in isolation.

As specified in the Code, it is the responsibility of the member to keep abreast of any legislation which could affect data collection among children to ensure that all those involved in a project are aware of and agree to abide by the MRS Code of Conduct.

This material is provided for information only. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to specific issues.

## **The Principles of the MRS Code of Conduct**

1. Ensure that their professional activities can be understood in a transparent manner.
2. Be straightforward and honest in all professional and business relationships.
3. Be transparent as to the subject and purpose of data collection.
4. Ensure that their professional activities are not used to unfairly influence views and opinions of participants.
5. Respect the confidentiality of information collected in their professional activities.
6. Respect the rights and well-being of all individuals.
7. Ensure that individuals are not harmed or adversely affected by their professional activities.
8. Balance the needs of individuals, clients, and their professional activities.
9. Exercise independent professional judgement in the design, conduct and reporting of their professional activities.
10. Ensure that their professional activities are conducted by persons with appropriate training, qualifications and experience.
11. Protect the reputation and integrity of the profession.
12. Take responsibility for promoting and reinforcing the principles and rules of the MRS Code of Conduct.

## **Definitions from the MRS Code of Conduct:**

### **Anonymisation:**

Anonymisation is the process of removing, obscuring, aggregating or altering identifiers to prevent identification, using reasonable means, of the individuals to whom the data originally related.

### **Client:**

A client includes any individual, organisation, department or division, including any belonging to the same organisation as an MRS Member, which is responsible for commissioning or applying the results from a project.

### **Data Collection Process:**

A data collection process is any process used to obtain information from or about participants. It includes, but is not limited to, analytics tools, algorithms, interviews, as well as passive data collection.

### **Participant:**

A participant is any individual or organisation from or about whom data is collected.

## **Definitions from the General Data Protection Regulation used in the MRS Code of Conduct**

### **Consent:**

Consent means any freely given, specific, informed and unambiguous indication of a participant's wishes by a statement or by a clear affirmative action, which signifies agreement to the processing of their personal data.

### **Personal Data Processing:**

Processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

## 1. Types of Observation

### Rules

39. If Members have agreed with clients that observers are to be present, (either in person or remotely) during a data collection exercise with participants, Members must inform all observers about their legal and ethical responsibilities.

Comment: See MRS Guide to Observers – Legal & Ethical Responsibilities

40. Members must clarify with participants the capacity in which observers are present; clients must be presented as such, even if they are also practitioners and/or Members of MRS.

41. There are some situations where observers could adversely affect participants' interests and/or wellbeing, and in such instances, Members must:

- a) ensure that participants are told at an appropriate stage the identity of any observer who might be present during an exercise.
- b) where observers may know participants, ensure that participants are informed before the start of the data collection that they are being observed, with a warning that the observers may include clients and/or other stakeholders who already know them and given a chance to withdraw.

Comment: The issue of anonymity and recognition is a particular problem in business to-business and employee projects where sample universes are smaller and as such greater care should be taken for such projects.

There is a wide variety of ways of observing data being collected and these have been reduced to the following five broad categories or modes. Each of the following five modes of observation involves different obligations. Please identify which observation category / mode applies to your query and go straight to that sector of the Guidelines.

<b>Observer Mode</b>	<b>Description</b>	<b>Section detail</b>	<b>Key Issues</b>
<b>VISIBLE LIVE</b>	Observer present & visible at moment of 'data event'* e.g. sitting in on individual interview or group.	<b>C</b>	
<b>NOT VISIBLE LIVE</b>	Observer present but not visible at moment of data event e.g. at viewing facility or at telephone interview.	<b>D</b>	<b>NB</b> Viewing via a monitor triggers specific extra guidance. <b>See Section E</b>
<b>REMOTE (OR INDIRECT) LIVE</b>	Observer not present but viewing or listening to data event (e.g. group) as it happens e.g. by video relay / streaming, online discussion board or on phone.	<b>E</b>	<b>NB</b> Decision over disclosure of client's name.
<b>ONLINE DELAYED</b>	Observer viewing or listening to data event (e.g. group) after it has happened via temporary online access (e.g. streamed).	<b>F</b>	<b>NB</b> Data storage and transmission security.
<b>OFFLINE DELAYED</b>	Observer viewing or listening to data event (e.g. group) after it has happened via observer-held copy of the event e.g. DVD or electronic file.	<b>G</b>	<b>NB</b> Data storage security.

\* The term “data event” is used to cover the whole range of data collection methods from face-to-face interviews, to telephone interviews, to online forums and panels, to ethnographic videos and so on.



## A. Visible Live Observation

The core elements of this observation mode are that:

- observers are physically present and visible
- at research data events such as group discussions, individual interviews, ASTs (accompanied shopping trips), ethnographic sessions and participant generating videos/vox pops.

When this sort of observation takes place the key legal, ethical and practical points are as follows:

1. The key aim for Members is to ensure that observers fit into the background and avoid any reactions that might influence participants' behaviour or remarks.
2. Members should remind observers that they will only be given the participants' first names and any characteristics that are relevant to the project.
  - a. Members must ensure that researchers, recruiters and viewing facility staff do not give any participant personal details (e.g. full names, addresses, telephone numbers) to observers unless express permission is obtained from participants.
  - b. Members must ensure that observers are requested not to make notes of participants' personal details – other than their first name.
  - c. Members must ensure that observers are requested not to make their own electronic recordings of live data events.
  - d. Members must ensure that observers are requested not to take away any participant-generated materials unless the latter are anonymised and/or the participant has given their express permission.
  - e. Members must remind observers not to disclose, after the observed session, the identity of individual participants.
3. In the interests of transparency, confidentiality and participant well-being:
  - a. Members should remind observers that participants will be told, in advance of the exercise, if the session is to be recorded and/or observed.
  - b. Members must ensure that participants are told of the capacity in which observers are present e.g. "client", "advertising agency" etc.

- c. In situations where observation could adversely affect participants' interests and /or wellbeing, Members must ensure that participants are told at an appropriate stage the identity of any observer who might be present during an exercise.
  - d. Where observers may know participants, Members must ensure that participants are informed before the start of the data collection that they are to be observed, with a warning that the observers may include people who already know them – especially with small sample universes such as in Business to Business research and Employee research.
  - e. Where observers know, or are likely to know, participants, Members must ensure that observers are introduced before the data collection begins and participants are given a chance to withdraw.
4. Members must ensure that observers are reminded of the importance of treating participants with respect at all times.
5. Members must ensure that Clients understand that offering client products, client gift cards / tokens or client information, that have no direct relevance to the research exercise, is not acceptable for the purposes of research. This can only be undertaken for projects that are being carried out for non-research purposes e.g. having a promotional purpose or as a direct marketing project. For incentives guidance see the separate MRS document; Regulations for administering incentives and free prize draws.

## **B. Not Visible Live Observation**

The core elements of this Observation mode are that:

- observers are physically present but not visible to participants
- typically, at viewing facilities for groups or for individual interviews.

When this sort of Observation takes place the key legal, ethical and practical points are as follows:

1. Members should ensure that observers are asked, when watching behind a two-way mirror, to avoid doing anything that will distract the participants.
  - a. Two-way mirrors are not all 100% soundproof: conversations should be kept to a minimum; talk should be in low voices; loud exclamations or laughter should be avoided; and electronic devices should be in silent mode.
  - b. Bright lights emanating from the viewing room can distract participants: minimise light from electronic devices; room lights should be kept low or off; and observers should be quiet if entering or leaving a room during a session.
2. Members should remind observers that they will only be given the participants' first names and any characteristics that are relevant to the project
  - a. Members must ensure that researchers, recruiters and viewing facility staff do not give any participant personal details (e.g. full names, addresses, telephone numbers) to observers unless express permission is obtained from participants.
  - b. Members must ensure that observers are requested not to make notes of participants' personal details – other than their first name.
  - c. Members must ensure that observers are requested not to make their own electronic recordings of live data events.
  - d. Members must ensure that observers are requested not to take away any participant-generated materials unless the latter are anonymised and/ or the participant has given their express permission.
  - e. Members must remind observers not to disclose, after the observed session, the identity of individual participants.
3. In the interests of transparency, confidentiality and participant well-being:
  - a. Members should remind observers that participants will be told, in advance of the exercise, if a session is to be recorded and/or observed.

- b. Members must ensure that participants are told of the capacity in which observers are present e.g. “client”, “advertising agency” etc.
  - c. In situations where observation could adversely affect participants’ interests and /or wellbeing, Members must ensure that participants are told at an appropriate stage the identity of any observer, including their name, their role/capacity and their organisation, who might be present during an exercise.
  - d. Where observers may know participants, Members must ensure that participants are informed before the start of the data collection that they are to be observed, with a warning that the observers may include people who already know them – especially with small sample universes such as in Business to Business research and Employee research.
  - e. Where observers know, or are likely to know, participants, Members must ensure that observers are named before the data collection begins and participants are given a chance to withdraw.
4. Members should remind observers of the importance of treating participants with respect at all times and:
  - a. Refrain from saying anything that they would not say if the participant was in the same room.
  - b. Follow the advice of the viewing facility staff on minimising any contact between observers and the participants when in the viewing facility.
5. NB If a live research session is observed at the session venue but via a monitor, there is specific guidance in these situations. This is because any form of electronic transmission, or recording, is categorised, by the Data Protection Act 2018, as ‘processing’ the data (see section E on Remote (or Indirect) Live Observation).
6. Members must ensure that Clients understand that offering client products, client gift cards / tokens or client information, that have no direct relevance to the research exercise, is not acceptable for the purposes of research. This can only be undertaken for projects that are being carried out for non-research purposes e.g. having a promotional purpose or as a direct marketing project. For incentives guidance see the separate MRS document; Regulations for administering incentives and free prize draws.

### C. Remote (or Indirect) Live Observation

The core elements of these Observation modes are:

- **'Remote live'** observation typically means that observers are watching or listening in real time from somewhere other than the location in which the data collection is taking place e.g. client offices or a hotel but observing it as it happens.
- **'Indirect live'** observation typically means that observation is happening at the location in which the data collection is taking place but viewed via electronic transmission (a monitor in another room) and not through a two-way mirror (see D5).
- The data in question can be visual or just audio information e.g. group discussions, individual interviews, ethnography, online discussions forums / boards, typically via video relay / streaming or telephone.
- [This excludes Quality Monitoring in call centres where the interviewer is aware that this may take place, as permitted in the Telecommunications (Lawful Business Practices) Interception of Communications Regulations 2000.]

The Information Commissioner's Office (ICO) – the UK national data protection regulator – has confirmed that 'live non-anonymised video-streaming', with or without recording, is data processing and consequently it is subject to data protection legislation; namely the Data Protection Act 2018.

The main difference between this type of observation and the 'Visible Live' and 'Not Visible Live' categories is **a legal obligation**, in principle, **to disclose the name of the client** prior to 'transmission' starting.

1. Data protection legislation requires an individual's fully informed consent prior to the processing of their sensitive personal data for research purposes. It is the Members' responsibility to ensure that participants in projects are fully informed before any remote live (or indirect) observation takes place.
2. Participants can only give this fully informed consent if they know who will have access to their data. Consequently, the Member must ensure that the name of the client company is revealed prior to live non-anonymised video-streaming (with or without recording) of fieldwork to the observing client company and client staff.

3. If revealing a client's identity would be detrimental to a project, and is unlikely to be detrimental to participants, client company identities can be withheld until the end of a data collection exercise. However, Members must ensure in particular that participants are aware:
  - a. That client observation will take place, how it will take place and who will observe (i.e. what sorts of personnel), in what countries they will be observed, and that participant consent must be given for these circumstances
  - b. Of their right to withdraw their consent (at any stage)
  - c. How and who to contact should they have any questions or concerns. This should be a Member that has responsibility for a project.
  
5. In exceptional circumstances, the client company identity can be withheld indefinitely where this is necessary for the viability of the project, such as the need to avoid disguised promotion in pharmaceutical research. However, all of the conditions in 3 above must still be satisfied.
  
6. Members must take reasonable steps to ensure that video-streaming service providers ensure that data is secure at all times. All parties involved in a video-relay process have Data Protection responsibilities to ensure the correct informed consents are in place (and appropriately recorded), and to safeguard personal data in transmission and storage.
  
6. When involved in a remote or indirect live observation, the core MRS Code requirements must be taken into account on the subject of client disclosure (assuming 'disclosure' is appropriate) - see points 3 & 4 above. The key legal, ethical and practical points are as follows:
  - a. Members should remind observers that participants will be told, in advance of the exercise, if a session is to be recorded and / or observed.
  - b. Members must ensure that participants are also told of the capacity in which observers are present e.g. "client", "advertising agency" etc.
  - c. In situations where observation could adversely affect participants' interests and /or wellbeing, Members must ensure that participants are told at an appropriate stage the identity of any observer, including their name, their role/capacity and their organisation, who might be present during an exercise.
  - d. Where observers may know participants, Members must ensure that participants are informed before the start of the data collection that they are to be observed, with a warning that the observers may include people who already know them –

especially with small sample universes such as in Business to Business research and Employee research.

- e. Where observers know, or are likely to know, participants, Members must ensure that observers are named before the data collection begins and participants are given a chance to withdraw.
7. When involved in remote live, or indirect live, observations the core MRS Code requirements must be taken into account.
- a. Members must ensure that observers treat the information and the participants with respect, in much the same way that they would if they were in the same room.
  - b. Members must ensure that observers are requested not to make notes of participants' personal details – other than their first name.
  - c. Members must ensure that observers are requested not to make their own electronic recordings of live data events.
  - d. Members must remind observers not to disclose, after the observed session, the identity of individual participants.
  - e. Members must ask observers to inform them if any observer recognises participants (e.g. a friend, neighbour or colleague). In these circumstances, the Member must ensure that these observers do not continue to access the event.)

## D. Online Delayed Observation

The core elements of this Observation mode are that:

- observers are listening to and/or viewing a recorded event (e.g. group discussion, individual interview, ethnographic video) that has already happened, and doing so probably via video relay or streaming.
- the act of recording the (non-anonymised) session makes this processed data.
- NB this is online observation where clients or other observers do not hold the data being observed.

There is an important distinction between ‘delayed’ observations based on whether the data is accessed online or offline, specifically regarding data handling and storage issues.

‘Online access’ means that the observed data is not physically or electronically in the possession of the observers (e.g. not via DVD or client intranet) but rather is temporarily made available online to the observers (by the data controller e.g. a research organisation).

The main difference between this type of observation and ‘Visible Live’ and ‘Not Visible Live’ observations is a **legal obligation**, in principle, **to disclose the name of the client** prior to the start of data collection.

Data protection legislation requires an individual’s fully informed consent prior to the processing of their sensitive personal data for research purposes. It is the Members’ responsibility to ensure that participants in projects are fully informed before any recordings are made, that will later become available to ‘Online Delayed’ observers.

In these circumstances the Data Protection Act 2018 triggers certain requirements about client name disclosure, namely:

1. Members must ensure that Client identities have been disclosed, so far as was practicable, prior to recordings of non-anonymised fieldwork being made available to observers via online video-relay.
2. Members should ensure that client identities were revealed at the beginning of the data collection event. However, if revealing a client’s identity could be detrimental to a research project, and was unlikely to be detrimental to participants, client identities could have been withheld until the end of the data collection event.



3. In all cases Members must ensure that participants had been made aware:
  - a. That client observation would take place, how it would take place and who would observe (i.e. what sorts of personnel), in what countries they would be observed, and that participant consent must have been given for these circumstances
  - b. Of their right to withdraw their consent (at any stage):
  - c. How and who to contact should they have any questions or concerns. This should be a Member that has responsibility for a project.
  
4. In circumstances where observers may know participants, Members must ensure that participants had been informed before the start of data collection that future observers may include people who already know them – especially with small sample universes such as in Business to Business research and Employee research. Consent for observation must have been gained on this basis.
  
5. In exceptional circumstances, the client identity can be withheld indefinitely where this is necessary for the viability of the project, such as the need to avoid disguised promotion in pharmaceutical research. However, all of the conditions in 3 and 4 above must still have been satisfied. . [Further guidance about healthcare research can be found at <http://www.bhbia.org.uk/guidelines/legalandethicalguidelines>]
  
6. When involved in delayed online observation, the core MRS Code requirements must be taken into account. The key legal, ethical and practical points are as follows:
  - a) Members must ensure that observers treat the information and the participants with respect, in much the same way that they would if they were in the same room.
  - b) Members must ensure that observers are requested not to make notes of participants' personal details – other than their first name.
  - c) Members must ensure that observers are requested not to make their own electronic recordings of pre-recorded streamed live data events
  - d) Members must remind observers not to disclose, after the observed session, the identity of individual participants.
  - e) Members must ask observers to inform them if any observer recognises participants (e.g. a friend, neighbour or colleague). In these circumstances, the Member must ensure that these observers do not continue to access the event.

Members must take reasonable steps to ensure that the video-streaming service provider ensures that the data is secure at all times. All parties involved in the video-relay process

have Data Protection responsibilities to ensure the correct informed consents are in place (and appropriately recorded) and to safeguard personal data in transmission and storage.

## **E. Offline Delayed Observation**

The core elements of this Observation mode are that:

- observers are listening to and / or viewing a recorded event (e.g. group, individual interview, ethnographic video) that has already happened
- the act of recording the (non-anonymised) session makes this processed data.
- NB This is offline observation where clients or other observers hold the data, e.g. as a local electronic copy or via hard copies such as DVDs

There is an important distinction between such observations based on whether the data is accessed online or offline, specifically regarding data handling and storage issues.

'Offline access' means that the observation data is physically or electronically in the possession of observers (e.g. on removable media such as a DVD or a local copy stored on the client intranet or hard drive) and accessed at will.

The main difference between this type of observation and 'Visible Live' and 'Not Visible Live' observations is a legal obligation, in principle, to disclose the name of the client prior to the start of data collection.

Data protection legislation requires an individual's fully informed consent prior to the processing of their sensitive personal data for research purposes. It is the Members' responsibility to ensure that participants in projects are fully informed before any recordings are made, that will later become available to 'Offline Delayed' observers.

In these circumstances, the Data Protection Act 2018 again triggers certain requirements about client name disclosure, and the relevant requirements namely:

1. Members must ensure that Client identities have been disclosed, as far as was practicable, prior to recordings of non-anonymised fieldwork being transferred to clients.
2. Members should ensure that client identities were revealed at the beginning of the data collection event. However, if revealing a client's identity could have been detrimental to a research project, and was unlikely to be detrimental to participants, the client identity could have been withheld until the end of the data collection event.
3. In all cases Members must ensure that participants had been made aware:

- a. That client observation would take place, how it would take place and who would observe (i.e. what sorts of personnel), in what countries they would be observed, and that participant consent must have been given for these circumstances
  - b. Of their right to withdraw their consent (at any stage)
  - c. How and who to contact should they have any questions or concerns. This should be a Member that has responsibility for a project.
4. In circumstances where observers may well know participants, Members must ensure that participants had been informed before the start of data collection that future observers may include people who already know them – especially with small sample universes such as in Business to Business research and Employee research. Consent for observation must have been gained on this basis.
5. In exceptional circumstances, client identities can be withheld indefinitely where this is necessary for the viability of the project, such as the need to avoid disguised promotion in pharmaceutical research. However, all of the conditions in 3 and 4 above must still have been satisfied.
6. Members must ensure that clients are informed of, and agree to adhere to, the purposes specified to participants at the time they agreed to the recording.
7. Members must take reasonable steps to ensure that personal data is securely stored at all times and that the correct informed consents are in place (and appropriately recorded).
8. Members must take reasonable steps to ensure that clients copy of recordings are securely destroyed once the project comes to an end and recordings are not required for any other purposes.
9. When involved in a delayed offline observation, the core MRS Code requirements must be taken into account. The key legal, ethical and practical points are as follows:
  - a. Members must ensure that observers treat the information and the participants with respect, in much the same way that they would if they were in the same room.
  - b. Members must ensure that observers are requested not to make notes of participants' personal details – other than their first name.

- c. Members must remind observers not to disclose, after the observed session, the identity of individual participants.
- d. Members must ask observers to inform them if any observer recognises participants (e.g. a friend, neighbour or colleague). In these circumstances, the Member must ensure that these observers do not continue to access the event



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