



MRS Policy Unit

MRS Response to ICO: Guidance on political campaigning

October 2, 2019

Background: About the Market Research Society (MRS) and the research market

1. The Market Research Society (MRS) is the UK professional body for market, opinion and social research, insight and analytics. MRS is the world's largest research association, representing 5,000 individual members and over 500 accredited Company Partners in over 50 countries and has a diverse membership of individual researchers within agencies, independent consultancies, client-side organisations, the public sector and the academic community.
2. MRS promotes, develops, supports and regulates standards and innovation across market, opinion and social research and data analytics. MRS regulates research ethics and standards via its Code of Conduct. All individual MRS members and Company Partners agree to regulatory compliance of all their professional activities via the MRS Code of Conduct and its associated disciplinary and complaint mechanisms.
3. MRS supports best practice in the research, insight and data sector by setting and enforcing ethical and process standards. The MRS adopted its first self-regulatory Code of Conduct in 1954 and the latest fully revised version of the came into effect on October 1st, 2019. The MRS Code is designed to support those engaged in research, insight and data activities in maintaining professional standards and to reassure the general public that activities undertaken by MRS members and MRS Company Partners are conducted in a professional and ethical manner.
4. The commitment to uphold the MRS Code of Conduct is supported by the MRS Codeline service and a range of specialist guidelines which provide interpretation and practical advice on the application of the MRS Code of Conduct.
5. Opinion polling for research purposes is an activity which a segment of MRS members and Company Partners undertake. When doing so these activities are regulated by the MRS Code of Conduct, including design, questionnaire wording, dissemination and interpretation of results.

Our response

6. MRS welcomes the opportunity to respond to the ICO Guidance on Political Campaigning consultation. Our response will focus on issues most relevant for the research, insight and data sector.
7. We confirm that no parts of the response are confidential and that the information may be attributed to MRS.

Comments on the ICO Guidance on political campaigning

8. We welcome the revision carried out on the ICO Guidance on political campaigning.
9. We highly appreciate and share the considerate opinion about how pre-election polls, properly conducted and imbued with legitimacy, serve an important democratic accountability function. They highlight the additional challenges (outside of methodological issues) that impact on the accuracy of polls and media coverage of polling. In particular this does not only hinge on the design of political opinion polls but also in ensuring that those interpreting the findings of polls, and reporting on them, sufficiently understand the research design and any key limitations.
10. The document not only significantly clarifies the implications of dealing with personal data in the course of political activities with regard to GDPR implications, but also usefully highlights how to achieve compliance with the Data Protection Act 2018 (DPA) and how to manage its exceptions and specifications.
11. The draft guidance correctly identifies the boundaries of political campaigning versus direct marketing and in so doing it helps campaigners and citizens in understanding the difference between the two activities.
12. In addition, the draft also correctly recalls the specificity of 'market research' (see page 74) as laid down in the guidance first edition, as distinct from direct marketing. It would be more accurate however if this section were identified as opinion research rather than market research.
10. MRS also recommends that the ICO expands its guidance further to clarify and specify the scope of activities carried out as public opinion research, those carried out as direct marketing and how they overlap in political campaigning and, in particular, address two of the major misconceptions of political campaigning: *political polling and reporting opinion polls*.

On Opinion research and Opinion Polling

11. *Market research*, which includes 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. Research itself does not seek to change or influence opinions or behaviour however it is acknowledged as an important vehicle that gives people a

voice.¹ Social and opinion research is widely used by central and local government and public bodies, apart from opinion polling, to understand citizens' preferences and behaviours, gauge responses to proposals, measure impact and assist in developing appropriate policies used, for example, in improving educational, healthcare and police services. Political opinion polling i.e. surveys of political public opinion may be conducted for public media publication or for private use. Political opinion polling is one of the more visible faces of the research sector albeit that it accounts for less than 1% of all research undertaken in the UK.

12. *Direct Marketing* includes data collection intended directly to create sales or to influence the opinions of citizens and/or as a means of information gathering for use on future sales, or influence including political activities.
13. This is why the MRS Code and supporting regulations are very clear in distinguishing between using research techniques, such as opinion polling, for research and non-research activities. A 'research purpose' in the polling context, for example, is where opinion polling techniques are being used to systematically collect statistically representative opinions, attitudes and behaviours of the population under study to identify opinion trends. It is not being conducted to influence or change opinions or behaviours.
14. Furthermore, the MRS Code of Conduct states: Rule 4. *Members must never undertake any activities, under the guise of research, which aim to manipulate, mislead or coerce individuals. This applies throughout the research process including proposal, data collection, analysis and reporting. Examples of this activity include:*
 - a. *Sell or market under the guise of research ('sugging')*
 - b. *Fund raise under the guise of research ('frugging')*
 - c. *Lobby for political purposes under the guise of research ('plugging')*
 - d. *Create false media content and commentary, including social media, under the guise of research ('mugging')*

It would be helpful if the ICO guidance could reference other sector Codes and guidance, such as MRS', to demonstrate that other professions and sectors have concerns about political campaigning being disguised as other activities.

15. In addition to this, we would like to bring your attention to the recently published Financial Conduct Authority (FCA) guidance on [Polling and Insider Dealing](#) focusing on how to achieve compliance with the Market Abuse Regulation (MAR). MAR states that inside information is '*information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.*'

¹ 69% participants – sector agreed See Business of evidence report 2016.

16. Where the MAR definition of inside information has been met, disclosing the information, other than where necessary in the normal exercise of employment, a profession or duties, would be an offence. So too would be trading of in-scope instruments on the basis of the information. As noted above, whether or not such information was inside information would need to be judged on a case-by-case basis.
17. We strongly suggest the ICO updates and further specifies the guidance to reflect and include the above-mentioned considerations.

On report opinion polls

18. MRS member and MRS Company Partners as practitioners have a responsibility towards themselves, their profession and the public. The MRS code of Conduct requires practitioners to exercise independent professional judgement in the design, conduct and reporting of their professional activities and protect the reputation and the integrity of the profession.
19. Practitioners that have pledged to abide by to the MRS Code of Conduct and binding regulations are often confronted with the inaccurate or misleading reporting of their activities. Not least of the challenges lies in how opinion polls are reported by the media.
20. Precisely because media reporting can be dictated by tight deadlines, tight budgets and desire for a story, it is important to provide both practitioners and the public with necessary tools to distinguish between genuine opinion research reporting and political campaigning disguised as research.
21. Accuracy in media coverage of polling does not only hinge on the design of political opinion polls but also in ensuring that those interpreting the findings of polls, and reporting on them, sufficiently understand the research design and any key limitations.
22. In this environment MRS continues to play a role in educating all stakeholders by providing guidance. For example:
- a. [Advice for non-researchers on how to interpret opinion polls](#);
 - b. [Guidelines for Questionnaire Design](#);
 - c. [CIPR MRS RSS Guidelines for using statistics in communications](#).

Final considerations

23. We suggest the guidance to be amended as follows:

1. Contents:

Contents

[...]

Profiling in political campaigning

Political Campaign: opinion polling, market research, direct marketing

~~*Political campaigning—direct marketing*~~

[...]

The chapter Political Campaign: opinion polling, market research, direct marketing:

In more detail

- *Introduction*

Opinion Research and Opinion Polling

- *What is direct marketing?*
- ~~When does market research become direct marketing?~~
- *How does the GDPR's right to object apply?*

[...]

The paragraph on Market Research and Opinion Research:

A political campaign can conduct genuine research to help inform their views and formulate policies, in the same way that professional market research companies do. A 'research purpose' is where information is systematically collected to assess opinions, attitudes and behaviors of the population under study. Opinion research is a study of public opinion obtained by questioning a representative sample of individuals selected from a clearly defined target audience or population. When conducted appropriately, opinion research can add value to the national debate on topics of interest, including voting intentions. Typically, individuals or organisations commission a research organisation to undertake opinion research which are commissioned either for private use or for publication.

An opinion poll is a series of questions contained within a questionnaire. It is important that questions asked as part of opinion polls are credible and fit for the purpose intended. Any questions posed need to be accurate, balanced, and unambiguous and must not lead research participants to a particular point of view.

The direct marketing rules do not apply to genuine market or opinion research as this does not involve the communication of advertising or marketing material. However, communications claiming to be for research that are in reality intended to manipulate, mislead or coerce individuals are not genuine market or opinion research. This applies throughout the research process including proposal, data collection, analysis and reporting. Examples of this activity include: to gain support now or at some point in the future are covered by the direct marketing rules. For example, the following are direct marketing:

- Selling or marketing under the guise of research ('sugging') e.g. a telephone call which seeks an individual's opinions on windows, in order to sell new windows.
- Fund raising under the guise of research ('frugging') e.g. a telephone call which seeks an individual's views on animal cruelty in order to encourage the individual to become a donor to an animal charity. A telephone call which seeks an individual's opinions in order to use that data to identify those people likely to support the political party or referendum campaign at a future date, in order to raise funds for their campaign
- Lobbying for political purposes under the guise of research ('plugging') e.g. a telephone call which seeks an individual's political opinions and then urges support or invites contact with a political party or policy/lobby group, or to provide promotional materials on request

- Creating false media content and commentary, including social media, under the guise of research ('mugging') e.g. an online 'survey' gathering opinions about various topics which is then sold to lobby groups to create false content to target individuals

You should also consider the implications of Polling and **Market Abuse Regulation** as [laid down by the FCA](#) and the [MRS Guidance Note on Polling and Insider Dealing](#).

A key risk in relation to polling data is the risk that the information obtained may amount to inside information. It is therefore important for individuals who compile, disseminate and use such data that they are able to assess whether it meets the definition of inside information set out in MAR and, where it does, the restrictions that apply.

MAR sets out two prohibitions with respect to the handling of inside information: insider dealing and unlawful disclosure of inside information.

If an established polling organisation is due to publish polling results and on publication the results are likely to affect the price of government bonds traded on regulated trading venues and meet the other criteria to be classified as inside information, then it could be an offence under MAR to share that information prior to publication other than where necessary "in the normal exercise of employment, a profession or duties".

Inside information can be received from an external party, created internally through the entity's own action or as a result of the entity combining information from different sources. If individuals mishandle inside information, they can be fined under the civil regime. There is also a criminal insider dealing offence under Part V of the Criminal Justice Act 1993, which can result in imprisonment and unlimited fines.

Inside information can only be disclosed where it is necessary in the normal exercise of an employment, a profession or duties. To disclose inside information in any other circumstances is unlawful under MAR. Therefore, individuals need to think very carefully about whether the information is inside information, and if it is, whether disclosing it is necessary in the normal exercise of their employment, profession or duties. The recipient should be made aware that they are receiving inside information and the related prohibitions.

Reporting opinion polls:

Once fieldwork is complete and any resultant data analysed, it is essential that results from opinion research are reported in an accurate and balanced way, to ensure that any reporting is a true reflection of the opinion polling research results.

For results of an opinion research to have value, they must be representative of a clearly defined target audience or population. Opinion research results should provide contextual information setting out a definition on the target audience, how samples were selected and how opinions were gathered and analysed, as well as the steps taken to ensure the results are representative.

Further information or clarification on this submission please contact Debrah Harding, Managing Director (debrah.harding@mrs.org.uk) and Camilla Ravazzolo, EU Policy Manager (Camilla.ravazzolo@mrs.org.uk).

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