

MRS Regulations for Administering Incentives and Free Prize Draws

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MRS is the world's largest association for people and organisations that provide or use market, social and opinion research, business intelligence and customer insight.



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Introduction

These regulations update a guidance note issued by MRS in May 2015. Following the enactment of the Gambling Act 2005 the law in this area, though practically unchanged, has been significantly clarified. The Act's provisions came in to force in October 2007 and was amended in 2017.

As specified in the *MRS Code of Conduct*, it is the responsibility of researchers to keep abreast of any legislation which could affect their activities and to ensure that all those involved in projects are aware of and agree to abide by the *MRS Code of Conduct*.

These regulations are binding on all MRS Members and MRS Company Partners. In cases where additional legal requirements apply the most stringent set of rules must be applied. The most applicable rules from the MRS Code of Conduct are included (in bold) in this document.

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 2023:

MRS Members shall:

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

Free Prize Draw:

A draw where prizes are allocated by chance, with no payment to enter.

Free Prize Draw Organiser:

The organisation identified to the participant as responsible for the administration of the free prize draw.

Definitions from the MRS Code of Conduct

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.

Incentive:

An incentive is any gift, payment or other consideration offered to participants to encourage participation in a project.

Member:

A Member is an individual who has been admitted to membership of MRS in one of the categories set out the MRS Articles of Association.

Note on Definition: For the purposes of applying this Code, organisations/departments/teams that have signed the MRS Company Partner Service Quality Commitment that applies throughout organisations/departments/teams shall be treated as Members.

Participant:

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

Permission:

Permission in the context of the MRS Code is a participant giving their permission to take part in a data collection exercise.

Research:

Research is the collection, use, or analysis of information about individuals or organisations intended to establish facts, acquire knowledge or reach conclusions. It uses techniques of the applied social, behavioural and data sciences, statistical principles and theory, to generate insights and support decision-making by providers of goods and services, governments, non-profit organisations and the general public.

The MRS Code of Conduct

The following rules of the Code are applicable to the administration of incentives and free prize draws:

- 1. Members must ensure that their professional activities conform to the national and international legislation relevant to a given project, including the UK data protection legislation. Members must ensure that they adhere to all relevant legal and ethical requirements when conducting their professional activities.**

Comment: See Data Protection & Research: Guidance for MRS Members and Company Partners

- 2. Members must ensure that when undertaking direct marketing activities, they adhere to all relevant specific legal and ethical requirements which apply to direct marketing practice.**

Comment: The following practices fall within the scope of direct marketing:

a) The offering of client goods or services, or vouchers to purchase client goods or services as an incentive, reward or expression of thanks;

b) The use of promotional language in describing clients in invitations or introductions to projects;

c) The offering of materials to participants which promote clients or their products and services. This includes referring participants to a client website at the conclusion of a project.

Members may provide information about a client's products or services where it is necessary to avoid adversely affecting a participant. For example, where a sensitive subject has been discussed, Members may provide information on relevant help lines operated by a client. This could include wellbeing information and advice to assist with financial difficulties.

Comment: The information provided on the client's products or services as noted above must not double up as marketing/promotional communications See also Information Commissioner's Office (ICO) Direct Marketing Guidance and Direct Marketing Association (DMA) Code

- 3. Members must ensure that all of their professional activities, whatever the purpose, are conducted in a transparent manner and that their activities promote compliance with privacy ethics and data protection rules.**
- 6. Members must act honestly in their professional activities.**
- 8. Members must not act in a way which might bring discredit on the profession, MRS or its Members.**
- 9. Members must take all reasonable precautions to ensure that participants are not harmed or adversely affected by their professional activities and ensure that there are measures in place to guard against potential harm.**
- 25. Members must ensure that client goods or services, or vouchers to purchase client goods or services, are not used as incentives for projects conducted for research purposes. Members undertaking projects for other purposes, such as direct marketing, may use client goods or services as incentives.**
- 26. Where incentives are offered, for whatever purpose, Members must ensure that Participants are clearly informed:**
 - a) who will administer the incentive;**
 - b) what the incentive will be;**
 - c) when the participant will receive the incentive; and**
 - d) whether any conditions are attached e.g. completion of a specific task or passing of quality control checks.**

Comment: Incentives that require participants to spend money to be redeemed, e.g. money-off vouchers, are not permitted.
- 32. Members must ensure that participants are not misled when being asked to participate in a project.**
- 43. Members must ensure that re-contact with a participant is carried out only if the participant's permission has been obtained during the initial data collection. The only exception to this is re-contact for quality control purposes.**

Comment: Any re-contact question should be agreed at the design stage with the client to cover any planned or possible consequential projects.

44. Members must ensure that any re-contact matches the assurances given to participants at the time that permission was gained e.g. when re-contact was to occur, the purpose and by whom.

49. Members must ensure that the anonymity of participants is preserved unless participants have given their informed consent for their details to

Comment: This includes digital, audio or visual footage or photographs of identifiable participants which is classed as personal data. be revealed or for attributable comments to be passed on.

53. Members must ensure that identifiable participant details are not passed on to a third party without the prior consent of the participant.

Comment: Data processors are not third parties. Data controllers may change data processors without the consent of data subjects, e.g., the owner of a panel may change platform providers without seeking the agreement of panel members, although the panel members must be notified.

Regulations for Administering Incentives

1. Members must ensure that where incentives are used to encourage participation in projects, incentives are proportionate and do not constitute, or are not perceived to constitute, a bribe.
2. Where incentives are offered to encourage participation in projects, members must ensure that participants are clearly informed:
 - Who will administer the incentive
 - What the incentive will be
 - When participants will receive the incentive, and
 - Whether conditions are attached e.g. completion of a specific task, passing quality control
3. Members must ensure that incentives are not offered that require the participant to spend any money. Participants must not be offered price discounts as incentives because claiming the incentive would involve the participant paying the balance after discount. However, the offer of monetary vouchers is permissible if it does not necessitate expenditure on the part of participants.
4. Further to rules 2 and 25 of the Code, members must ensure that client goods or services, or vouchers to purchase client goods or services, are not used as incentives or provided as gifts to participants for research projects, nor may they be used as prizes in free prize draws for research purposes.
5. Members must ensure that participants are not promised as part of a research project that they will receive gifts of the client's goods or of client branded material at the end of an interview. Such gifts are unrelated to the research purpose and amount to direct marketing or promotion.
6. The administration and fulfilment of incentives must not be used by members or clients as a means of collecting participants personal details for use for other purposes. Where a member offers participants incentives to participate in a client's study, the member or (or their sub-contractor) should administer the collection of participant's details and the delivery of any incentives promised to them.
7. Members must ensure that where incentives are offered by an organisation's in-house research department or unit, personal details of all participants eligible for

the incentive remain confidential and not accessible to anyone in the organisation outside the research department or unit.

8. Reasonable safeguards should be put in place to ensure that redemptions are being done by legitimate research participants. Checks and reporting should be in place to review redemption activity for unusual patterns such as a high volume of redemptions from a single account or other suspicious activity.
9. Members must ensure that incentives are suitable and acceptable for the participants in any project.
10. Members must ensure that the rights and responsibilities of themselves, clients and sub-contractors regarding the administration and payment of incentives are governed by a written contract.

11. Free Prize Draws and the law

In the UK, **free draws** are, and remain under the Gambling Act 2005, free of statutory regulatory control. Such competitions and draws will continue to be able to be organised commercially for private benefit and profit. This contrasts with **public lotteries** which remain the preserve of good causes and must, unless they qualify in one of the 'exempt' categories, continue either to be licensed by the Gambling Commission, if above a certain size, or to be registered with a local authority.

The 2005 Act defines the basic elements of a lottery as follows:

- persons are required to pay to participate;
- one or more prizes are allocated to the participants in the scheme; and
- prizes are allocated wholly by chance.

This definition thus codifies in legislation the longstanding convention established by case law that a lottery consists of three elements, that is payment, prize and chance, all of which have to be present. Thus any scheme which falls within this definition needs to operate within the statutory provisions relating to lotteries if it is to be organised lawfully.

'Free entry'

An arrangement is a lottery only if the participants are required to pay to enter. Thus, free draws always have been and will remain exempt from statutory control. Schedule 2 to the 2005 Act gives details of what is to be treated as amounting to 'payment to enter' for the purposes of distinguishing free draws from lotteries.

For draws connected to research and data collection projects there will only be one method of entry. Here, "free" will include any method of communication (post, telephone or other) at a "normal rate". "Normal rate" is defined as "a rate which does not reflect the opportunity to enter a lottery" (paragraph 5(2)(a) of Schedule 2). It includes "ordinary first-class or second-class post (without special arrangements for delivery" (paragraph 5(2)(b)). There can be no premium over what it would normally cost to use the particular method of communication. Any competition which fails that test involves 'payment to enter' and will be a lottery if the other two elements (chance and prizes) are also present.

Other sources of guidance

Other bodies, such as the Direct Marketing Association, the Committee of Advertising Practice Codes of Advertising and Sales Promotion and the Consumers Association all, in varying degrees, have guidelines on the subject of free prize draws.

These regulations have been drawn from the guidelines of the above-mentioned bodies where individual best practice aspects are appropriate to researchers using free prize draws for incentives purposes. The contributions of these bodies and their guidelines are gratefully acknowledged.

Even though, apart from the guidelines of these three bodies, there is no specific legislation governing free prize draws, there are common law principles such as transparency, equity and fairness that clearly must be incorporated into the administration of free prize draws by researchers who organise them as an incentive for participation, especially as these common law principles are implicit in the *MRS Code of Conduct*.

Regulations for Administering Free Prize Draws

The following regulations must be read in conjunction with the regulations for administering incentives.

1. Participants must not be required to do anything other than agree to complete their contact details in a research or data collection exercise, or return a questionnaire either complete or incomplete, to be eligible for entry to a free prize draw.

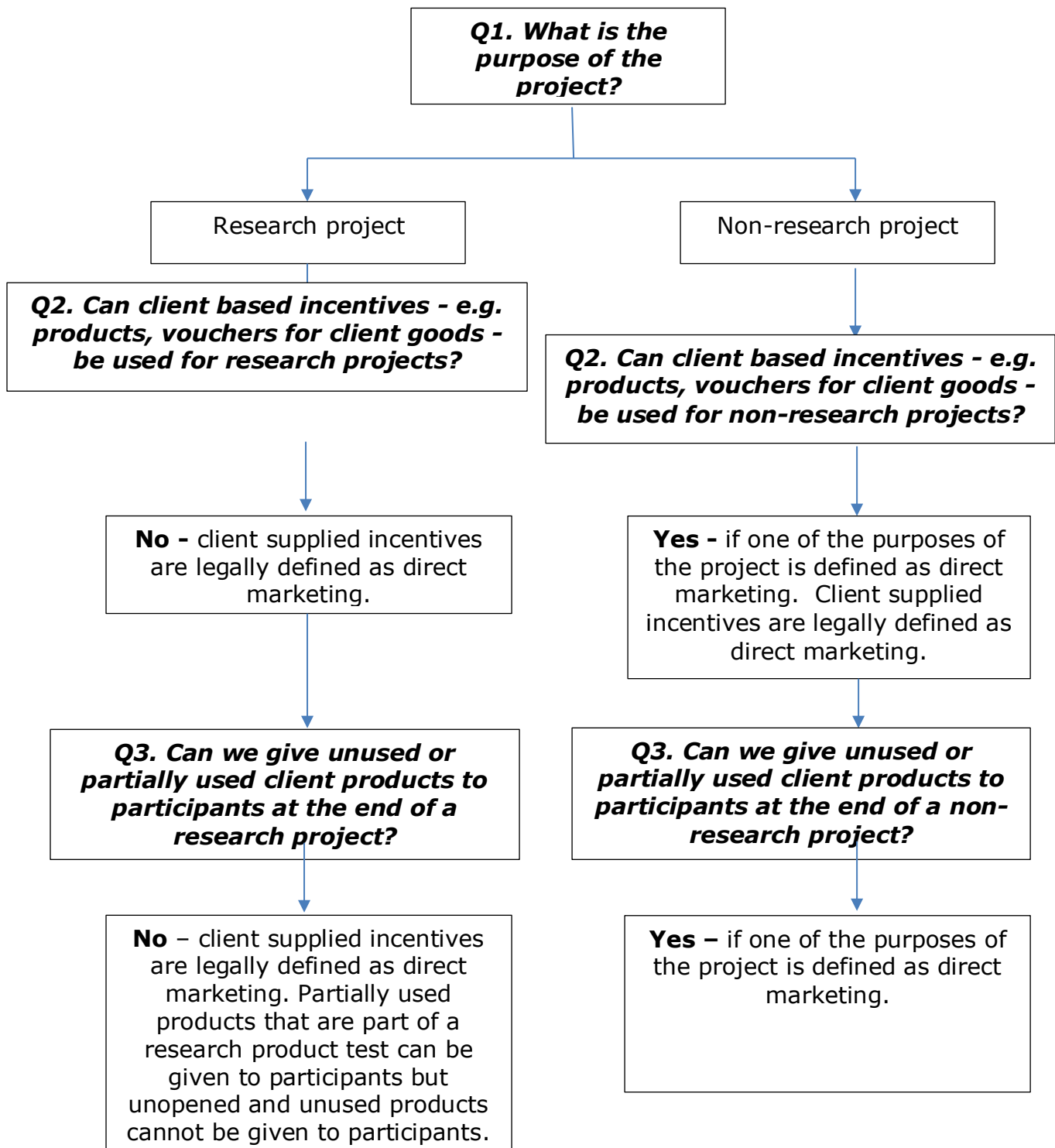
Comment: Requiring a participant to provide data by fully completing an activity, such as an interview or questionnaire, must not be a condition of entry into a free prize draw. In some circumstances, especially where a disproportionate amount of data is supplied by the individual or the data is to be sold to third parties, this may be considered as a participant "transferring money's worth". In such cases it would be viewed in the same way as a requirement to pay to participate and the arrangement would become a lottery under the Gambling Act 2005 subject to statutory control.

2. Members must ensure that clients are aware that participants who win free prize draws have the right to remain anonymous. Names or identifying participant details can only be passed to clients with the express permission of participants, whose permission is entirely voluntary. Such permission must not be linked to or be a condition of entry to a free prize draw. This would apply in cases where clients might wish to publish winners.
3. If winning participants decline to be identified and/or have their details passed back to clients to administer a prize from a free prize draw, it is the responsibility of the member to ensure that prizes are correctly allocated to winners.
4. Members must ensure that participants who fail to complete an activity linked to entry into a free prize draw (e.g. completion of a questionnaire) are not disqualified from entering a prize draw.
5. Members must ensure all relevant information is clearly communicated to participants before participating. This includes:
 - a. the closing date for receipt of entry;
 - b. the nature of the prizes;
 - c. if a cash alternative can be substituted for any prize;
 - d. how and when winners will be notified of results; and
 - e. how and when winners and results will be announced

6. Members must not change the terms and conditions for a free prize draw once the draw is open to participants; the only exception to this would be circumstances outside the reasonable control of the draw organisers.
7. Members must not extend the closing date for entry unless the draw organisers can show that unforeseen factors apply and that existing participants will not be disadvantaged in any way.
8. Members must not withhold prizes unless participants have clearly not met criteria set out in the rules.
9. A poor response or an inferior quality of entries is not an acceptable basis for extending the duration of a free prize draw or withholding prizes unless members have announced their intention to do so at the outset.
10. Unless otherwise stated in advance, members must ensure that prize winners receive their prizes within six weeks after the draw has been held.
11. Members must ensure that winners in a free prize draw are selected in accordance with the laws of chance and, unless winners are selected by a computer process that produces verifiably random results, by an independent person, or under the supervision of an independent person. The process by which winners are selected must involve a clear audit trail and an independent draw. (This process does not have to be made public but can be explained to individual participants when specifically requested.)
12. Members must not mislead participants – members must clearly distinguish between a prize and a gift. Gifts offered to all or most participants must not be described as prizes. If free prize draw organisers offer a gift to all or most entrants in addition to giving prizes to those who win, particular care is needed to avoid confusing the two.
13. Members must not mislead participants about the likelihood of winning a prize. Neither should the participant's chances of winning a prize be overstated.
14. Members must not misrepresent the value of prizes offered in a free prize draw.
15. Where the eligibility for prizes is dependent on the promptness of the participant's response, members must ensure that all entry deadlines and the consequences of failing to meet them are clearly stated.

16. Members must communicate in a manner that is clear and readily understandable by participants.
17. Members must ensure that all material terms of a free prize draw are stated accurately and correctly.
18. Members must ensure that free prize draws are not subject to unreasonable conditions for winning a prize.

Decision Flowchart for the Selection of Products and Services used for Incentives and/or Free Prize Draws





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