

The Market Research Society (MRS) Submission

Consultation on implementing the EU Directive on Unfair Commercial Practices and Amending Existing Consumer Legislation

Preamble

With members in more than 70 countries, MRS is the world's largest association representing providers and users of market, social, and opinion research, and business intelligence.

MRS serves both individuals and organisations who identify with its core values of professionalism, excellence, and effectiveness.

It has a diverse membership of individual researchers within agencies, independent consultancies, client-side organisations, the public sector and the academic community – at all levels of seniority and in all job functions.

MRS Company Partners include agencies, suppliers, and buyers of all types and sizes who are committed throughout their organisations to supporting the core MRS values.

All individual members and Company Partners agree to self-regulatory compliance with the MRS Code of Conduct. Extensive advice to support this commitment is provided by MRS through its Codeline service and by publication of a wide range of specialist guidelines on best practice.

MRS offers various qualifications and membership grades, as well as training and professional development resources to support them. It is the official awarding body in the UK for professional qualifications in market research.

MRS is a major supplier of publications and information services, conferences and seminars, and many other meeting and networking opportunities for researchers.

MRS is “the voice of the profession” in its media relations and public affairs activities on behalf of professional research practitioners, and aims to achieve the most favourable climate of opinion and legislative environment for research.

Introduction

MRS welcomes the possibility offered by DTI to respond to the consultation on the implementing the EU Directive on Unfair Commercial Practices and Amending Existing Consumer Legislation.

MRS confirms that the contents of this paper can be attributed to MRS but requests that the Appendix to this paper be kept confidential.

Response to Consultation Questions

MRS would like to respond Question 10, posed in Chapter 6 of the consultation document:

Do you have any comments on the Government's analysis relating to the Annex of banned practices? Are there any issues you would like to see clarified in the Guidance?

As a professional body representing research practitioners, MRS has become 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.

These practices are designed to influence consumers' transactional decisions in relation to products. Currently 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). However there is no similar protection against such practices used in person or in any other form of communication, such as letter, fax, and email.

MRS considers this position to be anomalous and requests that the DTI make clear within its proposed Guidance 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 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 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.

In the consultation document the Government's analysis describes this prohibition as having the same intent as the existing offence in the Business Advertisements (Disclosure) Order 1977. While this may well be true, MRS considers this to be an overly narrow reading of this prohibition.

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.

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