



12th May 2023

Dear Committee Members

The Market Research Society Response to the call for written evidence on the Data Protection and Digital Information (No.2) Bill

During the drafting process for the Data Protection & Digital Information (DPDI) Bill, the Market Research Society (MRS) was given the opportunity to contribute to the Secretary of State's Advisory Group's considerations for the DPDI Bill.

We welcomed the opportunity to contribute and appreciate the clarity which the new Bill brings particularly recognising that market, social and opinion research activities can be included within the definition of 'scientific research'. The legal certainty of this, together with the acknowledgement that publicly funded or privately funded commercial or non-commercial activities can be scientific research, is a significant benefit to the UK's research sector.

We do have, however, significant concerns regarding the proposed changes to the Privacy & Electronic Communications Regulations, specifically the inclusion of a new exemption for direct marketing provision used for the purposes of democratic engagement.

MRS has had cause to raise concerns with several political parties about their poor practices, known colloquially within the research sector as 'plugging', which is political lobbying under the guise of research. Whilst we continue to contact political parties from all sides about these bad practices they continue to occur.

Practices such as this bring the research sector into disrepute and by increasing cynicism and decreasing trust undermine the willingness of the population to participate in research more generally. We are already seeing poor practice in consultation processes undermine trust & reduce faith in the validity of these processes. We suggest that in addition to the direct risk to one of the UK's most successful sectors there is an insidious risk to belief in political process as well.

We strongly urge the Committee to remove this proposed exemption, to reduce the likelihood of increased plugging and to protect the UK's market, opinion and social research sector. We represent a great British success story with over 4,000 business employing over 50,000 people generating over £7bn for the UK economy. To protect and support the sector it is essential that those engaged in democratic engagement follow the same direct marketing provisions as all other sectors.

We would welcome discussing further our views on the Bill if this would be beneficial for the Committee's deliberations.

Yours sincerely

A handwritten signature in blue ink that reads 'Jane Frost'.

**Jane Frost, CBE
Chief Executive, MRS**

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12/05/2023 Position Paper

About the Market Research Society

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 and oldest research association, representing 5,000 individual members and over 600 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' expertise as the lead authority on market, opinion and social research is recognised around the globe. MRS provides the policy and standards expertise for the UK plus a number of global associations including EFAMRO the European Research Federation and EPHMRA the international healthcare research association. MRS also has close business ties with other research associations around the world via its participation in the Global Research Business Network (GRBN) plus formal agreements with associations in the US, Australia and Japan.
3. 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. More information about MRS can be found on the MRS website: <https://www.mrs.org.uk/>

About Market, Social and Opinion Research Sector

4. Market, opinion and social 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. It involves systematic study of different spheres of society, politics, and the economy. Market, opinion and social research uses rigorous scientific methods and furthers public interest.
5. Research, insight and analytics stand at the heart of all well-informed commercial, social and political decisions. Insight into what makes a product, business initiative or government policy work is often the hidden – yet defining – factor between success and failure. It is our sector that provides the deeper intelligence needed for our world today.
6. Market, opinion and social research plays a key role in helping businesses and other constituencies better understand consumers, customers and citizens in developing goods and services and is essential for economic efficiency, innovation and progress. Social and opinion research is widely used by public bodies to understand citizens' experiences, attitudes and preferences and measure key performance indicators.

7. Research in of itself does not seek to change or influence opinions or behaviour. Unlike marketing, advertising, or other commercial communications, it does not seek to promote the aims or ideals of those who conduct or commission it. While research is used by marketers to test their products or messages, it is not a sales tool.

The UK Market, Social and Opinion Research Sector

8. There are circa 3,100 active registered businesses in the UK listing market research and opinion polling as their primary activity, and a further 1,700 listing market research and opinion polling as a subsidiary activity.
9. The UK research sector is a great UK success story. The UK is a £7bn¹ market for research and is the second largest research market in the world, second only to the US.
10. The UK research sector is recognised as leading the way in the development of creative and innovative research approaches including maximising the opportunities afforded by the development of new digital technologies. The methodological issues are explored and debated in the academic journal, the International Journal of Market Research (IJMR)².

Purpose of Our Response

11. MRS is responding to His Majesty's Government, Data Protection and Digital Information Bill, which sets out ambitions to create a more pro-growth and pro-innovation data regime whilst maintaining the UK's world-leading data protection standards. We welcome such an innovative piece of legislation in the UK Data landscape, however we are concerned about certain provisions in the Bill, particularly proposed changes which could enable an increase in unethical practices, such as conducting political lobbying under the guise of market research.
12. We invite the Government to consider our recommendations and to work together with MRS and sector going further.

Market, Social and Opinion Research

Clause 2: Meaning of research and statistical purposes

13. We welcome the clarity of clause 2 particularly paragraph 3, which incorporates "scientific research carried out as a commercial activity" into the definition of scientific research. This clarity and legal certainty for the market, social and opinion research community is welcomed and enables research practitioners to benefit from the scientific research exemptions when required.
14. MRS believes however there are further improvements to the Bill which could be made which would result in a significant benefit to the UK's research sector.
15. Survey research is a quantitative method to collect information from participants by using questionnaires, etc. Statistical research is a broader term covering all research methods, which aligns with the intention stated in paragraph 3 lines 25 to 27 and Recital 159 of the UK GDPR.

¹ See Industry size and growth rates: <https://www.mrs.org.uk/resources/industry-size>

² For more information about IJMR: <https://journals.sagepub.com/home/mre>

16. Hence, we recommend that the reference to "statistical surveys" be replaced with "statistical research" (paragraph 6, page 4, line 14).

Section 79 2 (A) ***Cookies for Statistical Purposes***

17. Section 79 (2A) of the Bill permits the use of non-intrusive cookies without consent for 'statistical purposes'. 'Statistical purposes' infers the collection of quantitative data to present the static state or trend of the subject data. However, 'statistical purposes', is a narrow remit. The exemption as drafted only relates to first party use of cookies, and only "for the sole purpose of..." service/site improvement. Secondly, it omits important activities such as audience and ad measurement analytics. For example:

- Audience measurement is an important function for media owners to determine consumption of content and to price advertising space for advertisers. Such metrics are crucial to assess the effectiveness of a media channel.
- For sites that carry advertising, cookies are used to verify the delivery and performance of a digital ad i.e., confirmation that an ad has been served or presented to a user, and whether it has been clicked on. This information is essential to accurately invoice an advertiser for the number of ad impressions in a digital ad campaign. Due to the way the consent mechanisms for GDPR and PECR interact currently, legal guidance requires media owners to seek separate consents for each purpose and consumers can decline these important cookies and render the ads to that user worthless. Put simply, if the advertiser is not given evidence that the user has interacted with the ad, due to the user declining cookies that measure ad performance, the advertiser cannot be invoiced for it and the publisher doesn't get paid.
- *Clause 79, Paragraph 2, subsection (2A) page 101, line 19 after point (b)(ii) insert –*
 - *(iii) for the sole purpose of audience measurement, provided that such measurement is carried out by (i) the provider of the service requested by the end-user, or (ii) an authorised third party, or by third parties jointly on behalf of or jointly with the provider of the service requested by the end-user and provided that for both (i) and (ii), where applicable, the conditions laid down in Articles 26 or 28 of UK GDPR are met.*
- *Clause 79, Paragraph 2(d), page 103, line 41 after point (5)(e) insert as new sub-paragraph (f) –*
 - *(f) to measure or verify the performance of advertising services delivered as part of the operation of the information society service to enable billing for the advertising services.*
- This approach will free consumers from significant numbers of meaningless consent box-ticking and freeing many businesses from bureaucracy.

Clause 83: Direct marketing for the purposes of democratic engagement

18. Overall, we do not support the inclusion of a new exemption for direct marketing provision used for the purposes of democratic engagement. There has been a number of issues with political parties not following the current data protection

requirements (see: the ICO website: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2020/11/uk-political-parties-must-improve-data-protection-practices/>).

19. We are concerned that the option for the Secretary of State to offer such an exemption will result in an increase in poor practice. MRS has rules prohibiting its members from such poor practices referred to colloquially as "plugging" which is political lobbying under the guise of research. For example, a telephone call which seeks an individual's political opinions and then urges support, invites contact, provides promotional material or uses that data to identify those people likely to support the political party or campaigner at a future date, in order to send them marketing material. It is essential that the proposed Bill does not enable poor practices which undermine other professions and their legitimate activities such as those engaged in market, social and opinion research.
20. Our preference would be the removal of clause 83. However, if this is not feasible, we recommend that the ICO's guidance (see: <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/guidance-for-the-use-of-personal-data-in-political-campaigning-1/>), produced in response to the ICO's assessment of political parties' behaviour, is embedded into the Bill to ensure that should the Secretary of State decide to introduce such a regulation, it does so with clear legal and ethical guidance included for those undertaking democratic engagement.

This could be enacted through the following addition:

"Before making regulations under this section, the requirements of any ICO guidance on political campaigning must be endorsed by the Secretary of State to ensure such guidance is adhered to by all those engaged in democratic engagement."

21. Clause 83 also provides an exception to direct marketing if the communication activity is carried out for the purposes of democratic engagement and is not directed to individuals under the age of 14. Whilst the age restriction is consistent with minimum age requirements in Article 8 of the UK GDPR – *Conditions applicable to child's consent in relation to information society services*, Article 8 does state that where the child is below the age of 16 consent is only lawful if it is given or authorised by the person(s) who has parental responsibility of the child. Given the voting age is 18, we would also question whether it really is within the best interests of the child, in these circumstances.

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