



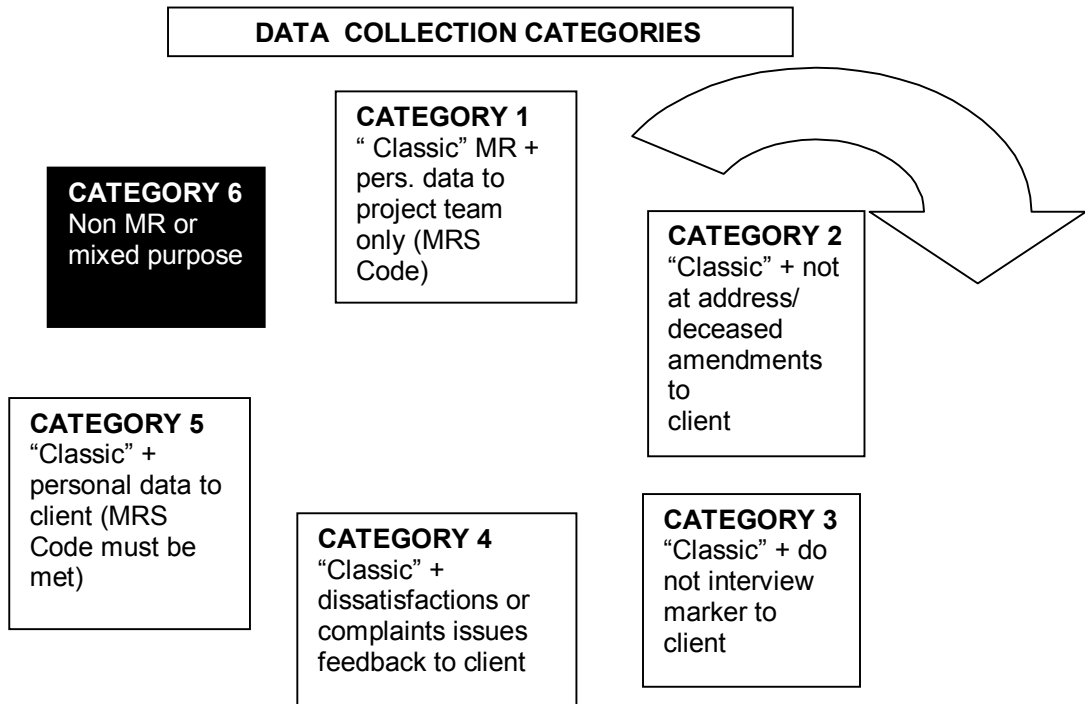
Draft guidelines for collecting data for
mixed or non-market research
purposes
September 2003

The Professional Standards Committee has an on-going agenda to develop and update a broad range of guidelines. To ensure the guidelines are both practical and comprehensive, feedback from the industry is essential.

The consultation period on this document is now over. The points raised are currently being considered by the working party and the final version will be available shortly.

INTRODUCTION

In 2001, the MRS published definitive detailed guidance and advice for members on the impact of the Data Protection Act 1998 when conducting confidential market research projects (**'The Data Protection Act 1998 and Market Research: Guidance for MRS Members'**) and how this relates to the Code of Conduct. This contains a new structure for classifying data collection projects, comprising six categories, the distinction being the extent to which disclosure of personal data is permissible, and the types of data that can be disclosed:



The first five categories

These cover different types of feedback to clients that are permissible within the definition of confidential survey research. These include specific situations where information on identified individuals can be part of the feedback process – providing adequate safeguards are in place to prevent this data being used for further purposes. The definitions covering Category 1-5 are fully explained in the full MRS guidance on data protection mentioned above.

The sixth category

When the data protection guidelines were compiled, the opportunity was also taken for the first time to address the growing demand from members for advice and guidance about the use of personal data collected through surveys for purposes other than that described as confidential market research. Within the data protection guidelines, these are defined as **Category 6** projects – covering situations where data collected in projects will be used at a personal respondent level. That is, the data is 'attributed' to the specific individuals interviewed in the survey. Whilst the data protection guidelines provide a basic outline of the conditions covering these types of projects, the MRS recognized that the issues raised were sufficiently complex to require a separate guideline dedicated to Category 6 projects.

The following guidelines apply to all types of relevant projects, whether respondents are members of the general public, participants in a 'business to business' survey or employees.

The following should also be read in the context of the overall data protection guidelines.

1. DEFINING CATEGORY 6 PROJECTS

The strict definition is as follows:

'any project where some or all of the data will be used at a personal level for purposes in addition to or instead of those defined in the 1998 Act as confidential ('classic') market research'.

Examples include:

- Data from a survey measuring propensity to purchase passed by the agency to the client for enhancing a customer database for use in targeting direct marketing campaigns
- Customer profile data from a survey being used to enhance the information on a database
- Data from a customer satisfaction survey being used to identify specific individuals visiting a branch of a bank on a specific occasion to use in staff training (also see the definition for Category 4 where disclosure with the permission of the customer is allowed for resolving a specific complaint)
- A survey where the data is primarily de-personalised for reporting purposes, but details of individual respondents expressing interest in having details of a new or existing product are passed to the client for use as sales leads
- Video-tapes from group discussions passed to the client to use for sales training purposes.

Categories 1-5 cover projects where survey data is used to build propensity models, as an input to a geodemographic classification or to create an enhanced but anonymised database by merging survey data with customer data – ***provided that the individuals interviewed in the survey cannot be identified.*** If identification is possible, then data used for these purposes ***must*** be collected as a Category 6 project.

2. CATEGORY 6 PROJECTS AND THE MRS CODE OF CONDUCT

As the Code of Conduct applies to confidential survey research, then Category 6 projects, as such, cannot be covered by this Code.

Therefore the main objective of this guideline is to ensure then when members carry out projects where data will be used for other purposes, they do not contravene the Code. However, the basic ethical principles upon which the Code is based remain equally valid for all projects that involve interviewing individuals– in particular, Rules A.12, A.13(c,e,g) and A.14. These Rules define the boundaries between confidential research and collecting personal data in surveys that are then used for other purposes. The points covered within these three key Rules are:

- What constitutes a confidential survey research project;
- The types of activities which lie outside the scope of confidential survey research;

- The procedures that must be followed to ensure these other activities are differentiated from confidential survey research.

Members who fail to meet the requirements described in these Rules when undertaking Category 6 projects could be subject to disciplinary procedures, and, by having gained consent from respondents to their data being collected for one specific purpose (ie research) and then using it for another will have also broken the law in terms of the Second Principle of the Data Protection Act 1998.

However, from an ethical perspective the principles within other parts of the MRS Code still apply to Category 6 projects – in particular:

- General Responsibilities (A.2; A.3)
- Working Practices (A.6)
- ICC/ESOMAR Code (B1- B29).

The main requirement overall is to ensure that there is no ambiguity when respondents consent to take part in a survey – that is, they are not confused about the way(s) in which their data will be used. Therefore, it remains vitally important that confidential survey research is clearly differentiated from other uses of personal data.

3. CATEGORY 6 PROJECTS AND THE DATA PROTECTION ACT 1998

Whilst Category 6 projects project are outside the definition of confidential market research which underpins the MRS Code of Conduct, they are still subject to the Data Protection Act 1998.

The current legislation does not prevent those covered by the MRS Code of Conduct from undertaking projects where the data will be used for purposes in addition to or other than confidential survey research, providing that:

- Such purposes are legal;
- The purpose(s) for which the personal data will be used have been clearly described to each respondent;
- Each respondent has given their consent to the data being used for the purpose(s) described;
- Respondents have been given the opportunity to prevent their personal data from being used for any purpose to which they object ('opt-out');
- The data is not subsequently used for any further purpose without gaining the permission of the individual.

In most respects, the contents of the MRS guidelines “***The Data Protection Act 1998 and Market Research: Guidance for MRS Members***” apply to Category 6 projects as they describe how the principles within this Act should be applied by members working on surveys.

However, the continuing challenge faced by the market research industry within the UK (and Europe) since the advent of data privacy legislation has been to refute charges from the Information Commissioner’s Office (ICO), and predecessor, that all, or various types of market research (e.g. customer satisfaction research), is in fact a form of direct marketing. Whilst the MRS has to date successfully lobbied to ensure that the ICO recognizes that any projects

undertaken under the MRS Code of Conduct meet the criteria for confidential market research, it is vital that there is a clear differentiation between these and Category 6 projects.

Following discussions with the ICO, it was agreed that in order to ensure an effective and consistent level of differentiation could be maintained Category 6 projects needed to meet the same criteria as those applied to personal data used for direct marketing – that is, they would have to conform to the special conditions within the 1998 Act covering direct marketing (as required from EEA member states within the EU Data Protection Directive). For example, the 1998 Act specifically states that data subjects (respondents) have the right to prevent the processing of their data for direct marketing purposes; that they must be told at the commencement of the data collection process (interview) that the data will be passed to a third party for direct marketing purposes; that any requests to opt-out of direct marketing must be honoured.

To achieve this requirement in the absence of a specific MRS Code covering data collected for purposes other than confidential market research, some of the clauses in the UK Direct Marketing Association's Code and data protection guidelines have been incorporated within this guideline.

In addition, none of the exemptions within the 1998 Act covering statistical and research data can be applied to Category 6 projects. These are fully described in Section 2.4 of the MRS data protection guidelines.

The under-lying principles in the legislation of informed consent and transparency must be adhered to - the key issue is that respondents **must not be misled** as to how their personal data will be used.

4. CONDITIONS COVERING CATEGORY 6 PROJECTS

These projects are therefore subject to the following special conditions:

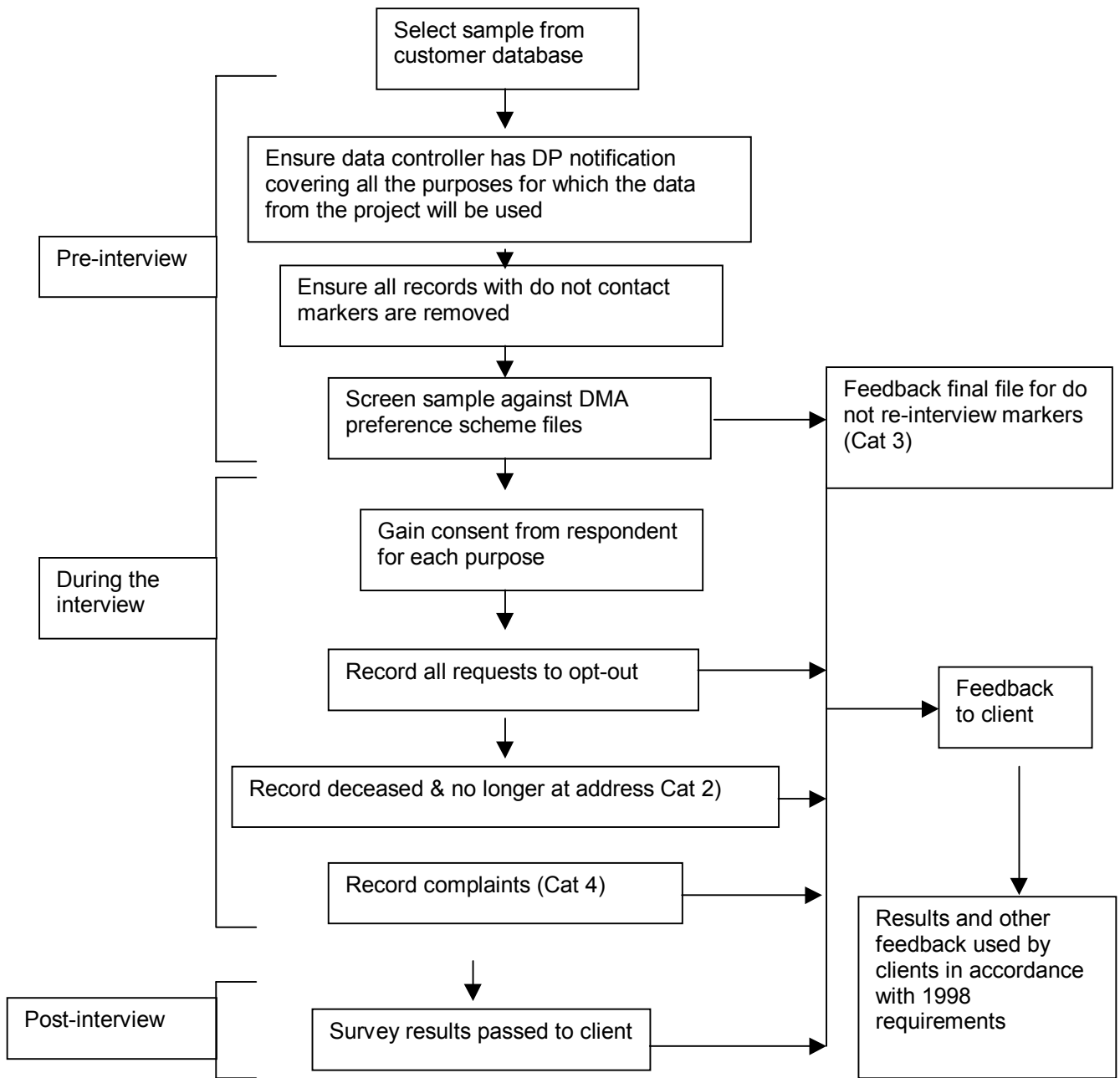
- This category covers all projects where *some or all* of the data will be used at a personal level, that is, Category 6 projects include instances where confidential survey research is one, but not the sole, purpose;
- Confidential market research has only the one purpose, and providing respondents are clearly made aware of this purpose, then their willingness to continue with the interview constitutes their consent to their personal data being used for that purpose. However for Category 6 projects, respondents **must** give their informed consent to **each** purpose that their data will be used for (including confidential market research, if this is one of the purposes for which the data will be used), and, **must** have the opportunity to opt-out of any purposes to which they object (consent cannot be inferred from non response). This may be through the use of an opt-out box in a self completion questionnaire, or by the interviewer recording the respondents wishes;
- Clients **must** be appropriately registered through the Notification process with the Information Commissioner for the purposes for which the personal data from the projects will be used. This also covers registration for any client owned (eg customer database) or third party list which might be used for generating the samples. So, where databases are used as sampling frames for undertaking market research surveys (within any category), then the data controller for these databases **must** have included this specific purpose in their notification;
- When the project questionnaire includes topics defined in the 1998 Act as “sensitive” data, then at least one of the special conditions specified in the Act for processing this type of data **must** be met. Unlike Categories 1-5, projects under Category 6 might require the written

consent, or opt-in to the project by the respondent in order to meet the legislations requirements for “explicit” consent;

- If a file of names & addresses is used for generating the sample (eg customer database), this **must** be screened through the Direct Marketing Association’s preference schemes files covering mail, telephone and fax. Also, any records with “do not contact for marketing/market research purposes” (suppression) markers on a database **must** also be excluded from the sample;
- Data subjects have the absolute right to request copies of the information held about them from the appropriate data controller (owner of the data), and therefore all requirements for subject access specified in the Act **must** be achievable;
- These projects **must not** be positioned as confidential market research. Therefore interviewers **must not** use an MRS IID Card; the MRS Code of Conduct **must not** be mentioned; standard market research “thank you” leaflets **must not** be used; the MRS Freephone service **must not** be mentioned;
- The conditions described in the MRS data protection guidelines for Category 2 (notifying deceased/no longer at the address), Category 3 (setting do not interview markers) and Category 4 (feeding back complaints) apply to Category 6 projects;
- Category 6 projects *can* be conducted using an agencies normal market research brand or company name, but agencies **must** ensure that interviewers comply with the above conditions.

As stated earlier, the overall condition is to ensure that confidential (“classic”) market research is differentiated from other forms of data collection, and, that those participating in data collection projects are not confused about the purpose(s) for collecting the data.

The full process for a typical Category 6 project is shown below:



5. PROJECTS AND THE DIRECT MARKETING ASSOCIATION

It is therefore important that those undertaking Category 6 projects are also familiar with the **Direct Marketing Association (DMA) Code of Conduct** and the DMA data protection guidelines (A Guide to the Data Protection Act 1998 for Direct Marketers). Whilst the DMA Code is only binding on DMA members, the Information Commissioner would view the contents as best practice for any organization processing data for direct marketing purposes. The DMA Code specifically states:

Para. 3.10: Members must not misrepresent themselves as carrying out research or a survey when the real purpose of the contact is to sell goods and services

Para. 3.11¹: If members are collecting personal information for the purposes of research or a survey and also intends to use this information for other uses, such as making offers to respondents, they should make these other purposes conspicuously clear.

In addition, **Section 5** (of the DMA Code) **Use of Data** contains the detailed rules covering the use of data for direct marketing purposes, including requirements to provide feedback to data controllers where data is found to be inaccurate or out of date, and, to apply suppression markers and screen against preference scheme files.

The DMA Code also covers “lifestyle surveys” and the need to identify sponsoring organizations:

Para 4.9 Lifestyle surveys sponsored questions: When members are collecting personal information on behalf of a third party by means of sponsored questions in a lifestyle questionnaire or similar, the name(s) of the sponsor(s) must be disclosed at the time of collection.

In terms of conducting projects that interview employees, the DMA Code contains the following test which identifies if an interview with an employee processes data covered by the 1998 Act:

Para 4.16 Business Lists:A simple test is whether, if the job holder changes, the data (other than the job holder’s name) will change in any way. If they will, the Data Protection Act is likely to apply.

Finally, in **Para 5.39**, the DMA point out to members that in addition to the definition of sensitive data within the 1998 Act, personal financial information *might* be considered to be sensitive data by the data subject.

6. OTHER RELEVANT LEGISLATION

The European Parliament has also recently passed (July 2002) a further directive, ‘Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector’ which is likely to affect all types of data collection through these media. The UK parliament will therefore introduce legislation covering this directive by the 31st October 2003 and the MRS will advise members about the impact of this on Category 6 projects as and when necessary.

7. CONTRACTS

The 1998 Act requires organizations to ensure that any contracts that cover the use of personal data must explicitly reflect the terms of the legislation. This, for example, applies to data owners (clients) contracting with agencies; agencies contracting with sub-contractors (such as interviewers) etc. Wherever possible, it is good practice to ensure that the key points in this guideline, especially the conditions listed in this guideline, are incorporated into contracts between agencies and clients.

¹ This provision is **not sufficient** to meet the conditions for an MRS member conducting a Category 6 project.

8. MARKET RESEARCH PROCESSES

A full description of how the 1998 Act effects market research processes is contained within 'Market Research Processes and the Data Protection Act (DPA) 1998', published by the MRS & BMRA (see the MRS & BMRA web-sites www.mrs.org.uk and www.bmra.org.uk).

(MRS CAT6 GUIDE PRM 20-09-02).

9. EXAMPLES OF CATEGORY 6 PROJECTS

In all the following examples the projects must not be positioned as market research and permissions from the respondents must be sought for the specific uses.

Customer Research where:

- Data collected is attributable
- Designed to:
 - address issues/complaints
 - help with staff training
 - improve customer/organisation relations

Other considerations:

Not positioned as market research

If interview sessions are taped – respondent told at beginning

Customer Research where:

- Data collected is attributable to the member of staff the respondent was questioned about – maybe an account manager or advisor
- Data is used to help train individuals
(Please note data may be linked to performance ratings within the organisation, in turn linked to pay and career progression so internal staff must be aware of this. This use of data is not encouraged by the MRS).

Recorded Data Collected (i.e. in group discussions) is also used for non-research purposes:

- Training for client side staff
- For use in new business pitches
- To be posted on an organisation's web-site/intranet
- For use in conference presentations
- For use in PR campaigns

Contact Data Collected is also used for non-research purposes:

- One question at the end – asking if can send any further information on products/services/organisation.

Even though there is only one question at the end of a genuine market research survey, this changes the project. It must not be positioned as market research. Permissions to pass details on for that specific purpose must be sought.