



Guidance Note on the MRS Code of Conduct 2023 – complying with regulatory obligations under the Code (co-operation with investigations and Non-Disclosure Agreements)

Introduction

The MRS Code of Conduct 2023 (the “**Code**”) clarifies the obligation on Members and Accredited Company Partners to ensure that they do not in any way restrict their ability to comply with their regulatory obligations under the Code, including co-operating with MRS investigations.

The Code currently provides that Members and Accredited Company Partners should not restrict their ability to comply with MRS’ regulatory requirements – this extends to signing up to contractual terms with third parties which could hamper their ability to fulfil their regulatory obligations under the Code.

MRS has produced this Guidance Note to help Members and Accredited Company Partners comply with these obligations, specifically in relation to the entering into of Non-Disclosure Agreements (“**NDA**s”).

Scope

This Guidance Note focuses on the requirement as it relates to Members and Company Partners entering into contracts with third parties and, in particular, NDAs.

This Guidance Note is not legal advice, and you should not rely on it as such. You should seek legal advice as required.

This Guidance Note should be used in conjunction with the MRS Code of Conduct and Guidelines.

Context

MRS is the UK professional body for research, insight and analytics. We are also the regulator for practitioners of market, social and opinion research, business intelligence, market analysis, customer insight and consultancy. As the regulator we promote the highest professional standards throughout the sector via the MRS Code of Conduct.

Part of our regulatory role requires us to investigate complaints about MRS Members and Accredited Company Partners. We seek their co-operation in our complaints processes to ensure our investigations are fair and robust.

In some cases, we will need to consider the outputs/reports that the Member/Accredited Company Partner has produced in relation to specific projects that they have undertaken for clients (where this is relevant to the investigation). We will only request information where we consider it is reasonably required for the purposes of our investigations and will treat this information as confidential.

Failure to provide this information could severely inhibit MRS' ability properly to investigate matters, to the detriment of the complainant and/or the MRS Member and/or Accredited Company Partner. If MRS is inhibited from carrying out its regulatory role in this way, this is likely to have an impact on the public's confidence in the profession more widely.

Interpretation of Requirements

When requirements use the word "must" these are mandatory requirements which Members and Accredited Company Partners are obliged to follow.

The requirements which use the phrase "should" describe how the mandatory requirements can be implemented and denotes a recommended practice.

"May" or "can" refer to the ability to do something, the possibility of something, as well as granting permission.

Regulatory obligations under the Code

The introduction to the revised Code includes the following requirement:

Members and Accredited Company Partners must ensure that they do not in any way restrict their ability to comply with the requirements of, and their obligations under, this Code, including co-operating with MRS in any investigations. Members and Company Partners should be particularly mindful of this requirement when entering into contracts, including Non-Disclosure Agreements, with third parties.

The Code goes on to state:

Failure to comply with the spirit of this provision may inhibit, and/or prejudice, an investigation to the detriment of the complainant and/or the MRS Member and/or Company Partner and such failure may be considered to bring discredit on the profession, MRS or its members, in breach of Rule 8 of this Code of Conduct.

Rule 8 of the Code states as follows:

Members must not act in a way which might bring discredit on the profession, MRS or its Members.

We understand that our Members and Accredited Company Partners may enter into commercial agreements with clients, suppliers, third parties and participants that may contain confidentiality and non-disclosure provisions, and that this is a normal part of commercial relationships.

We also understand that there are commercial limitations in accordance with which our Members and Accredited Company Partners will often need to operate – that is why we state that Members and Company Partners *should* be particularly mindful of this requirement when entering into contracts, including Non-Disclosure Agreements, with third parties, rather than “*must*”.

However, MRS expects its Members and Accredited Company Partners to be mindful of their regulatory obligations under the Code when negotiating the terms of such agreements to strike an appropriate balance between commercial necessity and regulatory compliance.

When considering whether an MRS Member/Accredited Company Partner has complied with the spirit of this provision of the Code, MRS will take into account all the relevant circumstances.

Key considerations when entering into contracts with third parties

Contracts will often contain specific confidentiality or non-disclosure clauses. These will usually:

- provide a definition of confidential information;
- contain restrictions that limit the receiving party’s disclosure of confidential information to third parties, and which limit the receiving party’s use of confidential information;
- limit the duration of the confidentiality obligations;
- make provisions for the return and destruction of confidentiality obligations; and
- contain carve-out clauses that restrict the application of the confidentiality undertakings and allow for disclosure in certain circumstances. These carve-outs seek to serve two principal purposes:
 - (1) to ensure that the non-disclosure undertakings do not apply to information which is genuinely not confidential (for example, information which is already in the public domain); and
 - (2) to allow the disclosure of information to third parties where there is a legitimate legal need to do so (for example to comply with a requirement of a court or regulator) (so called “mandatory disclosures”).

The wording of these carve-outs is important to the ability of MRS Members and Accredited Company Partners to disclose information to MRS where this is required under its regulatory obligations.

The standard wording of mandatory carve-out clauses might not be wide enough to enable you to disclose the confidential information of clients (such as research reports) to the MRS for the purposes of investigations without being in breach of the contractual terms.

Therefore, we expect Members/Accredited Company Partners to consider what further action they can take to make sure they are not restricting their ability to comply with their regulatory obligations, for example seeking to include in contracts with third parties an express carve-out to provide information to MRS for the purposes of any investigation. Members/Accredited Company Partners may wish to seek legal advice on the terms of any contract into which they propose to enter.

Checklist:

- It should be clear in any contract that contains provisions relating to confidential information what disclosures can and cannot be made, and to whom any permitted disclosures may be made.
- Carve-outs for mandatory disclosures should ideally be wide enough to enable Members/Accredited Company Partners to disclose their clients' confidential information to MRS where this is required for regulatory purposes.
- Where Members/Accredited Company Partners contract on their own terms, they should review your template contracts/ standard terms and conditions carefully (seeking legal advice where appropriate) to ensure the confidentiality provisions would not prohibit the sharing of third-party information with MRS where this is required for regulatory purposes.
- Where Members/Accredited Company Partners are seeking to enter into contracts with third parties on terms that have been drawn up by the third parties, Members/Accredited Company Partners should scrutinise the confidentiality clauses, especially the mandatory carve-out provisions, very carefully. Where these are not drawn wide enough to enable the disclosure of third-party confidential information to MRS where this is required for regulatory purposes, Member/Accredited Company Partners should seek to negotiate amendments to these where possible (seeking legal advice where appropriate).

As stated above, MRS will only request information where it is reasonably required for its investigations. Where such information may contain confidential third-party information, it may be possible for redactions to be made to remove commercially sensitive and other confidential information before disclosure. MRS will work with Members/Accredited Company Partners to establish what information is required to assist with its investigations and how this can best be provided.

DISCLAIMER

This guidance is not legal advice, and you should not rely on it as such. You should seek legal advice as required.