

ethikos Volume 33, Number 11. November 01, 2019 Changing Codes of Conduct

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In the first few days of October, the Market Research Society (MRS) and the National Association for College Admission Counseling (NACAC) both decided to change their codes of ethics, but for two very different reasons.

The driver for change at the MRS seems to be the emergence of data management as a critical component of how organizations operate. The United Kingdom—where MRS is based—adopted the Data Protection Act 2018 to comply with the European Union General Data Protection Regulation (GDPR), and MRS states on their website^[1] (<http://bit.ly/2MmZlqF>) that “This edition of the Code of Conduct ... has been revised to encompass the requirements of the UK’s Data Protection Act 2018 and to include a broader selection of data collection processes.”

As a research society for “all those who need, generate, or interpret the evidence for making good business and policy decision,” the MRS felt the pressure of a changing business landscape and decided a change was in order. Data management, including privacy and protection, has become a cornerstone of how the EU and UK do business. The GDPR and Data Protection Act are widely considered to be the gold standard for data management regulations in the world. Several other countries have adopted similar standards, including Japan, South Africa, Brazil, the state of California, and possibly even the federal government of the United States. The revised MRS Code of Conduct pulls definitions directly from the GDPR, including definitions for consent, data subject, and personal data processing.

“MRS has successfully regulated the sector since the first Code was launched 55 years ago in 1954,” said Jane Frost, chief executive of MRS. “With this update we recognise the dramatic speed of change in research – as well as data analytics and society – and remain committed to promoting the highest ethical standards across the sector, not just in the UK, but globally.”^[2] (<http://bit.ly/2VtyJZ5>)

The new version of the Code (<http://bit.ly/2Moaw2b>)^[3] includes guidance, FAQs, as well as clear passages on disciplinary measures for members who violate the Code or are deemed guilty of unprofessional conduct.

A different kind of pressure

The National Association for College Admission Counseling voted to strip certain provisions from its Code following an antitrust investigation from the U.S. Department of Justice (DOJ). Specifically, the association removed provisions prohibiting incentives and poaching that the DOJ considered to be anticompetitive. Indeed, the DOJ Antitrust Division clearly states its policy regarding no-poaching that:

“The Division protects labor markets and employees by actively investigating and challenging unlawful no-poach and wage-fixing agreements between employers. When companies agree not to hire or recruit one another’s employees, they are agreeing not to compete for those employees’ labor. Robbing employees of labor market competition deprives them of job opportunities, information, and the ability to use competing offers to

negotiate better terms of employment. Under the antitrust laws, the same rules apply when employers compete for talent in labor markets as when they compete to sell goods and services.”^[4]

On September 28, delegates to the NACAC voted 211 to 3 to strip the provisions from their Code of Ethics and Professional Practice,^[5] including passages such as:

- “Once students have committed themselves to a college, other colleges must respect that choice and cease recruiting them.”
- “Colleges must not offer incentives exclusive to students applying or admitted under an early decision application plan;” and
- “Colleges will not knowingly recruit or offer enrollment incentives to students who are already enrolled, registered, have declared their intent, or submitted contractual deposits to other institutions.”

These provisions constitute, in the eyes of the DOJ, clear anti-competitive practices that inhibit students’ abilities to freely choose and colleges’ ability to freely compete in the market.

“In NACAC’s case – most of the provisions they are deleting clearly were designed to limit competition among members,” said Gerry Zack, CEO of the Society for Corporate Compliance and Ethics. “Just like any other business, until someone has entered into a binding contract, competitors are free to recruit them away. Seems like they could still address the use of unethical practices in recruiting students who have committed to another university, rather than ‘respect that choice and cease recruiting them.’”^[6]

Remaining flexible in the face of change

The big takeaway from these two cases is that companies must continually assess the environment and test whether their policies and procedures address the changing risk landscape. No policy should be static, and no procedure should be set in stone.

“Compliance-savvy companies need be vigilant and flexible in evaluating their risks, which can change based on current developments or regulators’ priorities,” said Donna Boehme, founder and principal, Compliance Strategists LLC. “The worst and weakest code of conduct or compliance program is one that the company’s leaders view as ‘done’! Even the Federal Sentencing Guidelines themselves expressly expect companies to do ongoing risk assessment and evaluation of their programs,” she added. “[This includes] capturing changing risks in their industries or business operations.”^[7]

¹ Market Research Society (MRS) website, Code of Conduct, <http://bit.ly/2MmZlqF>

² Katie McQuater, “New MRS Code of Conduct Launched,” *ResearchLive News*, October 10, 2019. <https://bit.ly/2ppFPlk>

³ MRS, Code of Conduct pdf, October 2019. <http://bit.ly/2Moaw2b>

⁴ Department of Justice Antitrust Division, “No-Poach Approach,” Division Update Spring 2019. <https://bit.ly/2VLveon>

⁵ National Association for College Admission Counseling, NACAC’s Code of Ethics and Professional Practice, Approved by the 2018 Assembly. <https://bit.ly/2MIKRSe>

⁶ Per email from Gerry Zack to author.

⁷ Per email from Donna Boehme to author.

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