

ESOMAR Arbitration Service

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Background

Over the next few years ESOMAR is likely to be faced with a growing number of queries, complaints and disputes which relate to the technical quality of specific research projects and the ways in which the findings of research are interpreted and used. This issue is not adequately coped with by the present ESOMAR systems of professional advice and regulation.

The existing ESOMAR Codes of Practice (and the main national Codes) deal primarily with the 'ethical' aspects of market and opinion research. Certain provisions of these Codes may help clients and the general public also to assess the likely technical quality of a research survey and the adequacy of its findings for the uses made of these - e.g. by requiring research agencies to provide details of the methodology used, specifying reporting standards, etc. However the Codes do not in themselves set out to define what constitutes 'good' (or at least 'adequate') quality in research.

Guideline documents, and developments such as Interviewer Quality Control Schemes or Model Contracts, can additionally encourage at least minimal standards of good research. Except in cases of blatantly inadequate work, however, they can rarely in practice provide a clear or full answer to disputes about the quality of any particular project.

It is in fact extremely difficult to define 'quality'. Views about what is 'good' or 'adequate' often differ between research practitioners themselves as well as between research agencies, their clients and others interested in research and its findings. The practices and applications of research are too diverse and rapidly-changing for any reasonably precise and comprehensive definition of good quality research to be spelt out (and agreed) in a form which can be easily applied to the wide range of research problems which arise. The definition must also very often depend on the particular research project and the problem under study.

These difficulties are obviously a key reason why professional research bodies have been wary of attempting to lay down general rules about what is 'good' or 'bad' quality in market research. However, research is nowadays so widely used and discussed - and the commercial, political and other actions based on its findings so important - that researchers cannot afford to sit on the sidelines when an argument arises about the technical quality of a survey or the way in which its findings are being interpreted and used. If the profession itself is not prepared to express views on such issues, and where appropriate take some action to remedy abuses, others will do this for us - politicians, the Courts, international bodies such as the EC, etc. Debates about research quality may at the very least undermine confidence and credibility. At worst, they can lead to regulation, control and restrictions from outside the profession.

Arbitration Service

1. This Service can be requested by any of the parties to a possible dispute, but the Service

and the arbitrator suggested must be accepted by all parties before the latter starts work. Arbitration is impossible without such agreement.

2. The Service can be used to resolve disputes relating to the quality of any or all of the following aspects of a research project:

- the briefing and research proposal on which the study was based
- the technical design of the study
- its administration (including the control of any sub-contracting work involved)
- the data collection procedures involved (sampling, questionnaires, the way in which the data were obtained from respondents, field control procedures, etc.)
- data processing procedures (editing and coding, analysis, etc.)
- the reporting, presentation and interpretation of the findings
- the conformity of the project to Code, Guideline and legal requirements.

3. The appraisal and judgement provided by the arbitrator will deal with the adequacy of the work carried out in relation to the original research brief and Contract and to the purposes for which the findings were to be used. The arbitrator will take into account the relative roles and responsibilities of client and agency in the design and other aspects of the work (for example, who was responsible for the choice of methodology).

4. The Service can be either:

- (a) provided for *beforehand* as an agreed option in the initial Contract between the parties to the project, to be used if and when the need arises, or
- (b) supplied at a later stage *after* a dispute has arisen.

5. The ESOMAR Secretariat will maintain a Register of possible arbitrators. This will be based on the recommendations of the Professional Standards Committee. It will be set up in such a way that it can cope with:

- (a) a range of specialist research problems (such as media research, opinion polling, panel research, industrial and business research, specialised methods of data collection, statistical techniques, etc.)
- (b) different languages
- (c) the need for clear independence and impartiality on the part of the arbitrator (who should have no personal interest in, or connection with, the parties in dispute or the subject matter of the research)
- (d) the need for quick action.

6. Potential arbitrators will (with the possible exception of people with highly specialised knowledge and experience e.g. in certain forms of industrial research) be individuals of recognised standing and seniority in the profession with a minimum of about 15 years' experience. Wherever possible they will be people with direct experience of working on, or closely with, ESOMAR Council or Committees or the equivalents in national societies. They will normally have had appropriate experience of international research.

7. The procedure for using the Service will be as follows:

- (1) any request for its use will be made to the Secretariat, who will refer this to the Chairman of the Professional Standards Committee (or if he is not available, to the Vice-Chairman);
- (2) the Chairman will if necessary then ask for further information about the issues involved before consulting other members of the Committee;

(3) after such consultation (normally by telephone or fax) the Chairman will provide the names of 2-3 possible arbitrators drawn from the Register (a 'first choice' plus one or more alternatives), having checked that the individuals suggested are available if required. These names will be forwarded to the parties requesting arbitration. The Chairman will inform the President of ESOMAR of the case and of the action being taken;

(4) it will then be up to the parties in dispute

(a) to agree which arbitrator to use

(b) to agree with the arbitrator selected the nature of the issues to be studied, the kind of judgement required, and the fee to be paid to the arbitrator;

(5) access to the Service will be free to members of ESOMAR, but there will be a charge made to non-members for such access. This charge will be set by Council, and amended from time to time as appropriate, on the recommendation of the Professional Standards Committee.

ESOMAR will *not* be responsible for setting arbitrators' fees: these will usually consist of a daily rate plus out-of-pocket expenses, and will be negotiated directly between the parties to the dispute and the arbitrator.

8. The Service will be concerned with questions of research *quality* and the professional competence of the work carried out. Problems which relate primarily to *Contractual* issues, such as payment disputes, are normally issues for lawyers and the Courts.

9. ESOMAR itself will not automatically be responsible for the views and judgements made by an arbitrator. These will be the responsibility of the individual concerned. However, it will be possible for ESOMAR officially to endorse the arbitrator's judgement whenever it seems appropriate to do so. This will often be desirable on issues of wider public interest and concern, e.g. media research or public opinion surveys. Such an endorsement will be by Council on the recommendation of the Professional Standards Committee.

10. As with issues arising under the International Code of Marketing and Social Research Practice, the ESOMAR Arbitration Service will be concerned mainly with *international* disputes, or with cases where for any reason local (national) arbitration proves impracticable. Cases arising *within* a country should, where possible, be dealt with at national level.

The introduction of the Service will be discussed with the ICC and the latter's full backing will be sought, as in the case of other ESOMAR regulatory activities. Any other relevant international bodies will be fully informed and encouraged to contact ESOMAR about any problems relating to the quality of international research.

Other Linked Services

1. Arbitration as such is relevant only to situations where a dispute exists and where all parties have agreed to accept arbitration. Certain cases which are likely to arise do not fall into this category.

2. The *first* such 'other' category is where there is a complaint, falling outside the provisions of the International Code, by one party to a survey where the other party *does not agree to arbitration*. In such cases the only redress of the complainant would normally be by legal action of some kind. One way in which ESOMAR might help in such cases is by providing the names of possible 'experts' who could make informed and objective appraisals of the issues

involved for use by the complainant. Such 'experts' are in general likely to be the same types of individual as will figure on the Register of potential arbitrators. (The procedure for using such a service would be broadly similar to that set out in 1.7, except that the agreement of the second party to the dispute would not be needed).

3. The *second* 'other' category is the case where there is no dispute between the immediate parties involved in the research (client and agency) but where the publication/use of the findings - e.g. by a political lobby or pressure group - leads to accusations of bias, inaccuracy or incompetence in the way the study was carried out or the findings were used. Such cases fall under the heading of '*public interest*', and may get considerable publicity and provoke criticism of research generally. Cases of this kind have already been referred to ESOMAR, and can be extremely important to the profession.

Unless some aspect of the case clearly contravenes an Article of the ESOMAR Codes (rarely the situation where the argument relates to, for example, the questionnaire design) ESOMAR has in the past usually been unable to take any clearcut action: as a result research may lose the public debate 'by default'. However, if ESOMAR establishes a Register of Arbitrators this could also be used as a Panel from which to appoint an ad hoc working party of 2-3 'wise men' to investigate such a case and submit a report to Council for possible adoption and publication. This would express the considered judgement on the case by the leading international professional body.

Any action of this kind would be initiated by Council in consultation with the Professional Standards Committee.

4. A *third*, relatively minor, 'other' category is likely to be less contentious since it falls more under the heading of '*advice*'. It consists of situations where an organisation is seeking a 'second opinion' on some aspect of research, for example:

- (a) a client wanting a second opinion on a research proposal he has received (particularly in a case where the findings of the research are to be published).
- (b) the recipient of a research report (who may not be the original client) who wants an expert opinion on its validity, applications and limitations.

Most such requests for help will (and should) be made directly to individual 'experts' by the organisation concerned. Occasionally, however - particularly in the case of research which has been, or is to be, widely published - the organisation may want advice on whom to contact or to be seen to have consulted the main professional body in the field. It would again be possible to consider using the Register as a potential panel of experts to deal with such requests.

5. As in the case of actual arbitration, any such ESOMAR activity on these 'other' categories should be concentrated on specifically international cases or - with 'public interest' issues - on cases which have clear international implications.

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