

British Polling Council

Rt. Hon. Nicky Morgan MP,
Chair,
Treasury Committee,
House of Commons,
Committee Office,
London SW1A 0AA

9 October 2018

Dear Mrs Morgan,

Thank you for your letter of 27 September in which you raised a number of concerns about the private polling, including exit polling, that was conducted by polling companies on behalf of various financial institutions during the EU referendum. In particular, you suggested that it would be desirable for the British Polling Council (BPC) to introduce new rules regarding such polling. Following your letter, the Council has consulted its members and this letter reflects the results of that consultation.

It would probably be helpful if I were first of all to outline what the British Polling Council does and how its work and regulation relates to that of the wider market research industry.

The British Polling Council (BPC) is a voluntary organisation of which, in practice, all companies in the UK that undertake high profile political polling are members. Its primary purpose is to enforce standards of transparency amongst its members in respect of published surveys of public opinion. Full details of what is required of members are to be found on the Council's website at <http://www.britishpollingcouncil.org/objects-and-rules/>, and, in particular, at paras 2.1-2.5. In enforcing those rules, the Council aims to enable anyone who wishes to do so to come to an informed judgement about the merits of any particular piece of polling – or indeed of polling in general. Not least of the reasons for doing so is that evidence from opinion polls is often cited in political and policy debates, and it is clearly important that participants and commentators in those debates are able to assess the quality and merits of that evidence. The Council's rules not only apply to polls that were originally intended for publication, but also to those that may have entered the public domain as a result, for example, of leaking or quotation in public by the commissioning organisation. However, the transparency requirements do not apply to private polls that remain private.

Meanwhile, given the concern about the level of accuracy of the polls at the last two elections and the EU referendum, the Council has also taken on responsibility for promoting the collective health of opinion polling by holding inquiries and seminars into how published polls are conducted, most notably by sponsoring the independent inquiry into the performance of the polls in the 2015 election chaired by Prof. Patrick Sturgis of Southampton University. In particular, a public seminar on the conduct of published polls in the EU referendum was held at the Royal Statistical Society on 31 October 2016.

The Council does not, however, regulate the way in which individual polls are conducted. Such regulation is, however, undertaken by another voluntary organisation, the Market Research Society (MRS), as part of its remit for upholding professional standards in the wider market research industry, of which opinion polling is a relatively small if particularly visible part. All member companies of the BPC undertake market research for a wide range of private sector, public sector and third sector organisations and most, albeit not all, professionals working in BPC member companies are individual members of the MRS. Full details of the code of conduct to which MRS members are expected to adhere are to be found at https://www.mrs.org.uk/standards/code_of_conduct. Perhaps the easiest way of explaining the distinction is that complaints about the failure of an organisation to publish full details of the wording of a question on a poll are dealt with by the BPC, while complaints about the wording itself are addressed by the MRS. This distinction was explained in evidence to the recent House of Lords Select Committee on Political Polling and Digital Media, in the wake of which the BPC and the MRS agreed, where necessary, to refer complainants to whichever of them is appropriate.

In your letter, you suggest that in future BPC members should be required:

1. to 'inform prospective respondents to polls that the information that they supply may be used to help private clients make money'
2. to 'disclose, when publishing or discussing published polls, whether they have conducted similar work for private clients'
3. to 'disclose whether published polls have been conducted free of charge, or at a discount to the usual fee such work would attract'

The first of these refers to how polls are conducted, and thus falls within the remit of the MRS rather than the BPC. It effectively touches on the question of the information with which respondents should be furnished in order that they can give 'informed consent' to participate in a piece of research, an issue which is addressed at para. 18 of the MRS's code of conduct. We would, however, note that more or less all market research that is executed for commercial companies is undertaken in the expectation that it will help the commissioning organisation to improve its market share and thereby increase the profits that it makes for its shareholders. Indeed, even a published poll might be commissioned by a newspaper in the belief that doing so will help boost its sales. In short, private polling conducted on behalf of financial institutions is far from being unique so far as the motivation of its commissioners are concerned. Consequently, if followed through, your suggestion would appear to have implications for much more than private political polling.

At present the Council requires that its members always to release the name of a client that has commissioned a published poll. Your second suggestion, however, implies that it should also require its members to break the confidentiality of any clients it may have had in respect of private polling on the same subject matter. Here it should be noted that, unless revelation is necessary to avoid misleading reporting of the results of a particular research exercise, in fact the MRS's code of conduct at present imposes an obligation upon its members not to 'disclose the identity of clients...without the client's permission, unless there is a legal obligation to do so.' Thus, the Council is already requiring a greater degree

of transparency in respect of published polls than is currently the norm in the wider market research industry. Meanwhile, it should be borne in mind that any BPC rule along the lines that you propose would have to apply to all private clients, and that probably the most common commissioners of private political polling are the political parties together with the UK government. In truth, against this backdrop we are doubtful that the Council would be able to enforce any rule along the lines that you propose.

Your third suggestion would appear to reflect the concern you express earlier in your letter that the 'business model' of the industry is one whereby market sensitive public polls may be cross-subsidised by the revenues from polls for private clients and that, as a result, there could 'exist a perverse incentive for polling companies to provide misleading or inaccurate information to the media, while providing high-quality analysis on the true state of public information to private clients'. The implication of this remark appears to be that during the EU referendum polling companies may have deliberately released inaccurate published polls at less than cost price because this enabled them to extract a higher fee from their private clients. Casting doubt as it does on the professional integrity of the industry, it is a suggestion that we feel either needs to be substantiated or withdrawn. It also appears to assume that polling companies have little regard for the public opprobrium that can rapidly fall upon them as a result of their published polls being seen to be wrong – an opprobrium that might well put at risk their chances of being commissioned to undertake such polls in future.

In any event, it appears that the description of the 'business model' of the industry in your letter may rest on a misconception. No member of the BPC only undertakes opinion polling. As indicated above, all members of the BPC undertake market research for private sector clients and many undertake social research for the public and third sectors too. Thus, any polling that might be undertaken by a member out of its own resources (perhaps as a way of generating publicity) is not necessarily 'cross-subsidised' by private polling. Rather it will be funded out of the surplus created by all of its research activity, most of which will have little to do with opinion polling of any kind. Meanwhile, irrespective of how the polling is funded, we would suggest that the Council's extensive rules on transparency are already a very substantial safeguard against any attempt deliberately to 'provide misleading or inaccurate information' to the media, and there seems little reason to anticipate that that safeguard would be enhanced by requiring publication of the financial details of the contractual relationship between a polling company and its client.

You also express in your letter a concern about the ability of private clients to commission polls of how people have voted before any such information can legally be published, and thereby gain a 'trading advantage'.

Firstly, let me assure that BPC members are well aware that it is illegal to publish any information about how people have actually voted before 10pm on polling day. Not least of the reasons for this is that the implications of this stipulation extend well beyond any polling that may be conducted on election or referendum day itself. It also means that information about the vote choice of those who have already voted by post cannot be published as part of the detailed tabulations of any polls of voting intention conducted in the run-up to polling day. This stipulation therefore potentially affects all BPC members, irrespective of whether

they are polling on election day itself, and the Council is vigilant in ensuring that they are compliant.

What, however, is not clear to the Council at this juncture is that conducting an exit poll or similar exercise and making information therefrom available to one or more commissioning hedge funds during polling day falls into a different category from the exit poll that has been conducted at recent general elections on behalf of all three main broadcasting organisations in the UK, the legal status of which has not been challenged to date. True, the latter is eventually published, while those polls that are reported to have been conducted on the occasion of the EU referendum have not been, but as we understand it this has no relevance to the law in question.

Equally seemingly irrelevant to the current legal status of any such exercise is the purpose for which the information is being acquired, so long, of course, as that purpose itself is legal. Hedge funds are currently allowed to 'bet' on future movements in the markets. If, however, it is felt to be undesirable for a hedge fund to commission polls of how people will vote or have voted because they might acquire an undesirable 'trading advantage' in undertaking their market activity, then perhaps it is their ability to commission such polls that needs to be regulated. Of course, it might have to be borne in mind that such regulation might also debar other financial institutions that are trying to mitigate risk, such as banks, from commissioning polling too. In any event, this is an issue on which the Council does not have a view.

We do, however, have one other observation. In the continuing debate about whether the publication of opinion polls should be banned for some period before polling day, the Council has repeatedly pointed out that one of the risks of such a ban is that it potentially creates an 'insider market' in polling information. The ban on the publication of information on how people have voted on polling day is the one and only ban currently in place in the UK. The Council fully respects and understands the reason for this particular ban, but as the Bloomberg report of 27 June suggests, even that limited ban can help create a market in private polling that might not otherwise exist. It is, perhaps, a useful reminder of the potential downsides that come with attempts to limit the publication of polling information.

I hope that this letter is helpful. The Council will be more than willing to assist your select committee by providing formal written evidence should it decide that it wishes to hold an inquiry into the lessons that might be learnt from the operation of the markets at the time of the EU referendum. Equally, we will be happy to participate in any discussions that the Financial Conduct Authority might wish to initiate. We are always mindful of the need to learn from past experience and to ensure that our rules remain effective and relevant. In the meantime, given that this correspondence is already in the public domain, please note that the Council proposes to publish this letter on its website tomorrow, 10 October.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Curtice". The letters are cursive and somewhat stylized.

Professor Sir John Curtice
President