

Consent

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Introduction

Personal information held by DWP is regarded as confidential and DWP have a number of laws and procedures in place to protect it. For instance the Social Security Administration 1992 contains a number of sections that permit data sharing and disclosure, (see [Social Security Admin Act 1992](#)).

The first principle of the Data Protection Act 1998 (DPA) requires that all processing of personal information must be “fair and lawful”. Processing includes holding, obtaining, organising, altering, aligning, recording, retrieving, disclosing or destroying information. DWP have a number of regulations in place which define the kind of personal information we can process. In addition DWP benefit guides state what information we need to collect under statute (law) (see the [Guidance Gateway](#)).

The first thing to establish is whether you are obtaining, using or disclosing the information lawfully. If you cannot find DWP legislation/regulations that allow you to do what you want to do it is likely that you will need to obtain the **consent** of the individual.

The following information provides a brief overview of consent in relation to gathering information and disclosing to third parties.

Consent: A General Overview

For consent to be lawful under the DPA it must be “fully informed and freely given”. In the case of information defined as sensitive in Schedule 3 of the DPA, consent must be explicit. The categories of sensitive information under DPA are:

- health or physical condition
- race/ethnic origin
- sexual orientation
- religious beliefs
- trade union membership
- any offence committed by them or any court proceedings against them.

For consent to be **fully informed and freely given** you need to tell the customer exactly why you need the information, what you are going to do with it and whom you might share it with. We cannot put any conditions on a customer to try and persuade them to consent e.g. “unless you agree to have your details put on LMS we will not help you find a job”.

For consent to be **explicit**, in the case of sensitive information, the customer must be fully aware of the nature and content of the information being processed, in addition to the requirements mentioned in the above paragraph regarding general consent. While obtaining written consent is always the most secure course of action, this is particularly so in the case of explicit consent.

Particular care must be taken in cases where a third party has obtained consent from a DWP customer to request copies of their records containing sensitive data. The Department has been criticised in the past for disclosing sensitive information when the customer had not fully understood what information was held and what would be provided when they gave their consent. Staff should be aware that, in certain situations where consent has been provided, it is Departmental policy to provide copies of information to the customer, not the third party. The customer can then review the information before forwarding it to the third party. See the [Subject Access Request Guide \(SARG\)](#) and the [Working with Representatives Guide](#) for further details.

Obtaining Consent to Record Personal Information

For the majority of its business, DWP does not need to obtain specific written consent to process personal information. Processing includes ‘recording’ information. DWP processes most information under statute, and tells customers why we are collecting the information, what we will do with it and who we might share it with in the [Confidentiality Statement](#).

However, there are some occasions where DWP processes personal information without any legislation.

Forms for consent to record data

The Pension Service has [consent procedures](#) in place to allow DWP staff and certain LA staff to help DWP customers with their claims.

Jobcentre Plus has consent statements for certain New Deals i.e. New Deal for the Disabled. There are also consent statements for recording certain information on the Labour Market system. For instances where personal information is recorded on **LMS**, please see the [LMS User Guide Chapter B – User Responsibilities and Handling Client Data](#), and the [LMS Data Protection Compliance Guide](#), which includes copies of the **DPA1**, **DPA2** and **DPA3** forms.

If you have any queries about the use of the DPA1, DPA2 or DPA3 forms in relation to LMS, please contact the [LMS Project Team](#).

If you require policy advice **only** on the above, please contact Data Sharing and Data Protection Policy.

The Model consent form below tries to help you develop your own form and highlights the information you need to provide. There are also set consent forms and guidance for Jobcentre Plus' [Partnership Agreements](#).

Model Consent Form

We need your consent to record/disclose/share (delete where necessary) certain personal information with (enter name). The information we want to record/disclose/share is (enter the information here). This information will only be used for (enter purposes here e.g. Jobcentre Plus schemes).

Provide information on what the scheme will do e.g. (This scheme will give you advice and support to find a suitable job, and is aimed at improving your chances of finding a job)

If you do agree to take part in any of the schemes, the information that you give may be used for research into how successful the scheme is and what part of the scheme works well. Any details you give us will only be seen by our research team and will only be used for research into this scheme. When we write the research report no person or household will be identified. We will store your information in a secure place and destroy your records after they are no longer required for our research purposes.

To measure whether the schemes are successful or not, we may add what you tell us to details already held by the Department for Work and Pensions. We may also pass this information to other Government Departments, but only anonymous information will be given to them so that you cannot be identified. The other Government Department will only be able to use the information for their research purposes and to help the services that they offer.

If you wish to volunteer to take part please sign below. If you would like to know more information please ask for (filled in locally)

You are free to stop taking part at any time. Whether you use this scheme or not will not affect any of the benefits you may be entitled to.

I (enter full name) have had details of the scheme explained to me.

I authorise DWP/Jobcentre Plus to use the personal details I have provided for the scheme

I authorise DWP/Jobcentre Plus to use the personal details I have provided for the research and monitoring of the scheme. I also understand that if any information is given to any other organisation for these purposes that I will not be identified.

*Delete if necessary

Signed Date

Name (print)

Disclosing Personal Information to a Third Party

Obtaining Consent to Disclose Personal Information

Staff should be aware of the following when making a decision on whether they can disclose information following a request. For DPOs handling a Subject Access Request from a third party, please see the [SARG](#).

Format

Written consent is the recommended option. It is the most secure course of action, particularly where explicit consent regarding sensitive data is required. However, there are some business processes where obtaining written consent does not appear to be practical. Please contact [Data Sharing and Data Protection Policy](#) for advice if you have concerns.

Timescales

All staff should be made aware that when DWP intends to rely on a previously given consent, it is important that we are confident that the consent is still valid. This is because consent can be withdrawn. Depending on how it is worded, consent, and in particular implicit consent, may only cover a particular stage in the administration of a customer's benefit; for example from date of claim to the first payment.

Fresh consent must be sought once the business covered by the consent has been completed. In order to ensure that consent remains valid, it is generally advised that **in any case** where consent is over 2 years old; action should be taken to confirm that it still reflects the customer's wishes.

Please see the [Agents Appointees Attorneys and Deputies Guide](#) for advice on **enduring consent** (enduring Power of Attorney).

Wording

Consent to ask is not the same as consent to disclose. For example, a consent form stating “Council X has my permission to ask DWP for my rates of benefit” is consent for the council to approach the Department. It is NOT consent for DWP to disclose. This is perhaps a subtle difference, but staff should be aware of this as it does not compel the Department to disclose the requested personal information. In these circumstances, staff can challenge or refuse to accept the consent form if they are not satisfied that appropriate consent has been granted. An opportunity should be given for the consent form to be amended and resubmitted, if appropriate.

Implicit consent

Implicit consent is more immediate, and in cases where implicit consent is being considered, it is reasonable to expect that the discussion between the customer and the adviser, during which this implicit consent was deemed to be given, will have taken place in the last few days. Where there has been further contact between the customer and the adviser on a particular issue at a later stage, implicit consent should be considered afresh.

There are certain situations where implicit consent can be accepted.

Members of Parliament (MPs) and other elected representatives – for full guidance, see [Requests from MPs/other elected representatives](#)

Representatives (e.g. CABs) – for full guidance, see the [Working with Representatives Guide](#)

Representatives

Please see the [Working with Representatives Guide](#) and the [Agents Appointees Attorneys and Deputies Guide](#) for full guidance on when information can be disclosed to customer representatives.

Solicitors

Solicitors regularly approach DWP with requests for copies of all information held about a defendant or claimant in personal injury compensation cases, accompanied by a signed consent form from the individual.

It is DWP policy to only accept consent forms which meet DWP standards. As sensitive medical information is often held by the Department in relation to certain benefits, customers must be provided with the opportunity to view the information held about them before it is passed to a solicitor. DWP’s approved consent form alerts customers to the fact that we may hold sensitive information about them and gives them the option to view it first. They can then make an informed decision about what they share with the solicitor.

See the [Subject Access Request Guide](#) for further guidance, including a copy of an approved consent form and requests from solicitors for specific information.

Consent Not Required to Disclose Personal Information

DWP does not need to rely on consent of the individual to disclose information where any of the following apply:

- **[Court Orders](#)** – where a court orders DWP to disclose information, we do not need to obtain the customer's consent to disclose.
- **Legal Gateways** – there are several pieces of [legislation](#) which mean DWP does not need to obtain the customers' consent to disclose.
- **Public interest** – where it is in the best interests of the public, disclosure can be made without the customers' consent, e.g [Vulnerable Persons](#).

Where there is a legal gateway or public interest circumstances which recur, there may be a **memorandum of understanding** between DWP and the other organisation concerned (e.g. [MOU between the Police and DWP](#)) and other [data sharing](#) agreements.

If you have any queries please contact [Data Sharing and Data Protection Policy](#).