

# Obtaining and managing consent to process personal data

## Important information about using consent

DWP does not usually rely on consent as our lawful basis to process personal data. You must ensure that you are clear why consent is [the appropriate lawful basis](#) to use in this process. Just because something is optional for the customer/claimant **does not** mean that DWP is relying on consent as our lawful basis to process the personal data. In most circumstances, DWP processes personal data for its official functions (the 'public task' basis), and our authority to process data is derived from those official functions rather than from the consent of individuals and participants.

Consent means giving people genuine ongoing choice and control over how you use their data. If this cannot be done, an [alternative lawful basis](#) to process the information must be identified.

For consent to be valid, it **must** be:

- freely given
- specific
- fully informed
- a clear affirmative and unambiguous act agreeing to the processing of personal data

The burden of proof as to whether the data subject has consented will always lie with DWP where we are the data controller.

## Rules

### Specific and fully informed

Use clear and accessible language, and ensure the consent explains everything that will happen with the information in the process covered by the consent. It cannot be vague or sweeping. There is no such thing as 'evolving' consent so you may need to seek fresh consent if your purpose or activities change. If people don't understand what is happening, or they have not been asked about everything, their consent cannot be "fully informed", and is likely to be considered invalid.

### Unambiguous

Consent must be unambiguous. The data subject must make a clear, active indication that they consent to this use of their personal data. This could be ticking the necessary boxes on a form (clerical or web-based), or saying "yes" to the relevant questions in an interview. Just giving people the option to say no, or uncheck a box on a form, is not sufficient. Opt out consents should not be used. You also cannot infer consent by silence or inactivity, so you can't say things like "If we don't hear from you, we will assume you consent".

### Separate from other agreements

The consent to process information must not be bundled up with other agreements - it must be separate. For example, asking in a single question whether the data subject agrees to participate in a scheme **and** for the sharing of data required for this is unlikely to be considered valid consent.

### Freely given

This is especially difficult for public authorities because of the inherent power imbalance between a government department and an individual. Even when people do have a genuine choice, they may think or worry that they do not. As a minimum, ensure that consent is not used where there is any element of mandation or compulsion, or where sanctions may be applied if the data subject does not consent, and make it very clear that this is the case to everyone who is asked for consent.

Wherever possible, consent can only be used where it is not a prerequisite for the provision of a service such as where there are other ways for the data subject to access the same or a similar service without having to consent to the data processing. For example, consent may be legitimate where DWP needs it to be able to make a referral to a third party service if the claimant has the option of accessing similar services directly themselves.

### Keep a record of consent

The onus of proof will always be on DWP to demonstrate that we have obtained valid consent if this is ever questioned. This might be the data subject's written consent on a clerical form, a record of the data subject having clicked "yes" in a digital service, audio recordings of telephone calls, or simply a note of a conversation with the data subject (although such a note would have to be quite specific to withstand any challenge).

### Process to withdraw consent

Consent must be as easy to withdraw as to give. It is important that data subjects are told how they can withdraw their consent, and that it is easy to do. Also, there must be a process in place to act on this – consider what will need to be done if consent is withdrawn, how the processing of data can be stopped, and any other actions that may need to be taken. For example, if you have shared the personal data with a third party, how will you prevent the third party from continuing to process the data if someone withdraws their consent?

### Data controllers

A consent form must specifically mention all of the data controllers involved to be valid. Note that for DWP, individual parts of the Department (for example, child maintenance, Jobcentre Plus, HR) are **not** data controllers, so consent forms must mention DWP. When a consent form involves other organisations, always check who the data controller is. Public authorities often collaborate to provide a service, but the service itself is not a data controller. For example, often local Improving Access to Psychological Therapy (IAPT) initiatives will be partnerships between local authorities and health trusts. The LAs and trusts are the data controllers, not the IAPT service.

## Tips

Give yes and no options – research suggests this results in more participation than just having a blank "yes" box to tick.

Most things DWP does have some kind of information leaflet to explain it to people – consider including a section in that to explain what will happen with personal data. This can make the consent form shorter and more likely to encourage positive responses

If some things are optional, and some aren't, explain this clearly.

Process to withdraw – Think through the implications of consent being withdrawn at various stages of the process. What will need to be done to prevent further processing?

Be clear about what parts of the process are really consent-based. Make sure the consent form reflects this and doesn't suggest or imply that the data subject has a choice about things if they do not.

## Example consent template

You can download an [example consent template](#)  that shows you what good practice looks like when obtaining consent.

Before you put a consent process in place for your service you **must** ensure you have read and understand all the guidance about using consent as a lawful basis for processing personal data.

## Where can I find more information?

- [Lawful bases for processing personal data in DWP](#)
- [Using consent as the lawful basis for processing personal data in DWP](#)
- [Information Commissioner's Office guidance on consent](#)