



Data Protection Consent Policy

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Summary

What is this policy about?

This policy outlines Conwy County Borough Council's approach to using consent as a lawful condition for processing personal data.

Who is this policy for?

The policy applies to all staff, contractors, agency workers and elected members.

How does Conwy County Borough Council check this Policy is followed?

All staff and elected members must complete a mandatory online module on information management to evidence that they understand data protection legislation. Data Protection is part of the contractual terms with contractors and agency workers.

Who can you contact if you have questions about this policy?

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1. Introduction

Data protection legislation requires that personal data shall be processed lawfully, fairly and in a transparent manner. There are 6 conditions that can be used for processing personal data lawfully. This policy relates to just one of those conditions, - that the data subject gives their consent. The policy also covers the implications that occur when choosing the consent condition. The new Data Protection Legislation sets a higher standard for consent than previous legislation, and defines it as

“any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to them.”

The council needs to carefully consider whether consent is the most appropriate legal basis for processing personal data. Consent is just one lawful basis for processing **and should only be used where no other lawful basis is appropriate**. Public authorities, employers and other organisations in a position of power over individuals should avoid relying on consent unless they can confidently demonstrate it is **freely given** – using the definition above.

2. Aims of the Policy

This policy sets out in what circumstances the Council should be relying on consent as the legal basis for processing personal and sensitive personal data.

3. Scope

In accordance with the new Data Protection Legislation, the consent of the data subject may in certain circumstances be required for the processing of their personal data.

4. Definitions

Data Subject	An identifiable living person that the data relates to.
Consent	Obtaining the data subjects permission to process their personal data for the stated purpose. (Consent should only be used where no other lawful basis is appropriate).
Personal data	<p>Information relating to identifiable individuals, such as clients, customers, job applicants, current and former employees, current and former elected members, agency, contract and other staff, clients, suppliers and marketing contacts.</p> <p><i>Personal data we gather may include: individuals' contact details, educational background, financial and pay details, details of certificates and diplomas, education and skills, marital status, nationality, job title, and CV. (This list is not exhaustive)</i></p>
Special categories	<p>Special categories data includes an individual's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership (or non-membership), physical or mental health or condition, criminal offences, or related proceedings.</p> <p><i>Any use of special categories data should be strictly controlled in accordance with this policy. Special categories also includes biometrics, DNA, facial and fingerprint recognition.</i></p>
Data Controller and Data Processor	<p>The data controller is the person (or business) who determines the purposes for which, and the way in which, personal data is processed.</p> <p>By contrast, a data processor is anyone who processes personal data on behalf of the data controller (excluding the data controller's own employees)</p>

5. The lawful basis for processing personal data with consent

Personal Data

Consent is just one lawful basis for processing personal data, there are five other basis that the Council could possibly rely on. You should always choose the lawful basis that most closely reflects the true nature of the Council's relationship with the individual and the purpose for processing.

Data Protection Legislation states: processing shall be lawful only if and to the extent that at least one of the following applies:-

(a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose. **(Consent should only be used where no other lawful basis is appropriate.**

(b) Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.

(c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).

(d) Vital interests: the processing is necessary to protect someone's life.

(e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.

(f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This does not apply to public authorities processing data to perform official tasks.)

Seek advice if/when considering (f) above, this is not a condition that would normally be available to CCBC.

Special Categories Data

Similarly, explicit consent is one way to legitimise processing special category personal data, but not the only way. There are nine other conditions for processing. The alternative conditions for processing special category data are generally more restrictive and tailored to specific situations.

- a) **Explicit consent of the data subject**, unless reliance on consent is prohibited by EU or Member State law.
- b) Necessary for the **carrying out of obligations** under employment, social security or social protection law, or a collective agreement.
- c) Necessary **to protect the vital interests** of a data subject who is physically or legally incapable of giving consent – this is the equivalent of the wording in the DPA.

- d) Processing carried out in the course of its **legitimate activities with appropriate safeguards** by a not-for-profit body with a political, philosophical, religious or trade union aim provided the processing relates only to members or former members (or those who have regular contact with it in connection with those purposes) and provided there is no disclosure to a third party without consent.
- e) **Data manifestly made public** by the data subject.
- f) Necessary for the **establishment, exercise or defence of legal claims** or where courts are acting in their judicial capacity.
- g) Necessary for reasons of **substantial public interest** on the basis of Union or Member State law which is proportionate to the aim pursued and which contains appropriate safeguarding measures – this means that Member States can extend the circumstances where sensitive data can be processed in the public interest.
- h) Necessary for the purposes of **preventative or occupational medicine**, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional.
- i) Necessary for **reasons of public interest in the area of public health**, such as protecting against serious cross-border threats to health or ensuring high standards of healthcare and of medicinal products or medical devices
- j) Necessary for **archiving purposes in the public interest, or scientific and historical research** purposes or statistical purposes.

Consent is **not** appropriate if:

- The Council will still process the personal data without consent.
- The processing involves the performance of a contract, which includes the provision of a service.
- There is an imbalance of power between the Council and the data subject. For example, those who rely on our services, might feel they have no choice but to agree.

6 Obtaining Consent

To obtain valid and lawful consent it must:-

1. Be freely given; the data subject must have real choice and control over how their data is processed.
2. Be prominent, separate from other terms and conditions, concise and easy for the intended reader to understand
3. Be obvious and require a positive action to opt in.
4. Be reviewed and refreshed in line with the purposes of processing.
5. Be as easy to withdraw as it was to obtain.

Examples of when/where consent might be considered

- a) A local council runs a number of fitness centres. It wants to find out what people think of the facilities in order to decide where to focus improvements. It decides to email a questionnaire to individuals who have fitness memberships to ask them about the facilities.

The decision as to whether or not to take part in the survey is entirely optional, and given the nature of the relationship and the survey there is no real risk of adverse consequences for failing to respond. The council could consider relying on consent to process the responses.

- b) An employer decides to make a recruitment video for its website. It has instructed some professional actors but gives staff the opportunity to volunteer to have a role in the video. The employer makes it clear that there is no requirement for any staff to take part and participation will not be taken into account for performance evaluation purposes.

As participation is optional and there are no adverse consequences to those who do not want to take part the employer could consider consent.

How to obtain and manage consent:

- Make consent prominent, brief but comprehensive and in clear easy to understand language.
- Inform the data subject of the controller's name (i.e. Conwy County Borough Council) and that of any joint controller. Inform them of the purpose for the processing, how the data will be processed and that they have the right to withdraw their consent at any time.
- Give clear instructions on how the individual can withdraw their consent.
- Remember - individuals must actively *opt in*.
- Do not use pre-ticked boxes or opt out boxes.
- Wherever necessary, give granular options to consent separately to different purposes and different types of processing.

Where processing is based on consent, the Council must be able to demonstrate that the data subject has consented to processing their personal data by maintaining records of:-

- Who consented (name and signature if necessary).

- When consent was obtained (date).
- Exactly what they were told at the time.
- When consent was withdrawn

Capacity to consent

If a data subject lacks the capacity to understand the consequences of consenting, a third party with the legal right to make decisions on their behalf (e.g. under a Power of Attorney) can give consent and exercise the data subjects rights.

Children

If you are relying on consent as your lawful basis for processing personal data of a child, only children aged 13 or over are able provide their own consent.

For children under this age consent must be obtained from whoever holds parental responsibility or guardianship for the child.

When relying on consent, we must make sure that the child understands what they are consenting to, and we do not exploit any imbalance in power in the relationship between us

- Children need particular protection when you are collecting and processing their personal data because they may be less aware of the risks involved.
 - If you process children's personal data then you should think about the need to protect them from the outset, and design your systems and processes with this in mind.
 - Compliance with the data protection principles and in particular fairness should be central to all your processing of children's personal data.
 - You need to have a lawful basis for processing a child's personal data. Consent is one possible lawful basis for processing, but it is not the only option. Sometimes using an alternative basis is more appropriate and provides better protection for the child.
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- Children merit specific protection when you use their personal data for marketing purposes or creating personality or user profiles.
 - You should not usually make decisions based solely on automated processing about children if this will have a legal or similarly significant effect on them.
 - You should write clear privacy notices for children so that they are able to understand what will happen to their personal data, and what rights they have.
 - Children have the same rights as adults over their personal data. These include the rights to access their personal data; request rectification; object to processing and have their personal data erased.
 - An individual's right to erasure is particularly relevant if they gave their consent to processing when they were a child.

We must also be mindful that if a parent or guardian gives consent for the child, they have the right to withdraw that consent when they are able to provide consent for themselves.

Withdrawal of consent.

If a data subject enacts their right to withdraw consent, their personal information *which relied on consent* must be deleted subject to retention schedule.

Appendix

Appendix A – Consent Checklist

Asking for consent

- We have checked that consent is the most appropriate lawful basis for processing.
- We have made the request for consent prominent and separate from our terms and conditions.
- We ask people to positively opt in.
- We don't use pre-ticked boxes, or any other consent by default.
- We use clear, plain language that is easy to understand.
- We specify why we want the data and what we're going to do with it.
- We have named CCBC and any third party who will be relying on the consent.
- We tell individuals they can withdraw their consent and how.
- We ensure that the individual can refuse to consent without detriment.
- We don't make consent a precondition of a service.
- If we offer online services directly to children, we only seek consent if we have age-verification and parental consent measures in place.

Recording consent

- We keep a record of when and how we got consent from the individual.
- We keep a record of exactly what they were told at the time.

Managing Consent

- We regularly review consents to check that the relationship, the processing and the purposes have not changed.
- We have processes in place to refresh consent at appropriate intervals, including any parental consent.
- We make it easy for individuals to withdraw their consent at any time, and publicise how to do so.
- We have written procedures in place for when consent is withdrawn.
- We act on withdrawals of consent immediately.
- We don't penalise individuals who wish to withdraw consent.

