

MERTHYR TYDFIL COUNTY **BOROUGH COUNCIL**

CONSENT POLICY

**(Including Consent and Withdrawal of
Consent Forms)**

Information Governance Team



Cyngor Bwrdeistref Sirol
MERTHYR TUDFUL
MERTHYR TYDFIL
County Borough Council

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1. Introduction

The purpose of this policy is to set out Merthyr Tydfil County Borough Council's (the Council's) approach to obtaining consent and the way in which the principles of consent will be put into place across the organisation. It has been created in accordance with the requirements of the Data Protection Legislation including the EU General Data Protection Regulations (GDPR), and the Information Commissioner's Code of Practice's on data protection compliance.

This policy outlines how the Council will manage a corporate response to obtaining consent and the process for managing the withdrawal of consent where required. This policy aims to outline the standards expected to be abided by each member of staff that provides a service that requires consent.

The Council has appointed a Data Protection Officer in Accordance with Section 4 Article 37 of the GDPR who is responsible for implementing and updating this policy.

2. Objective

The objective of this policy is to provide guidance to employees on the acceptable methods of obtaining consent.

This policy is intended to minimise the risk of processing individual's personal information in a manner which they do not approve of. It provides practical advice on how members of staff should collect, record and store consent in accordance with the Data Protection Legislation. This Policy sets out what individuals can expect from the Council when we collect consent.

This policy has been developed to manage the way in which service areas collect consent as a legal basis for processing personal information.

This policy should be used and read in conjunction with the Data Protection Policies and Procedures.

3. Scope

This policy covers the collection of explicit consent for Council services relying upon consent as a legal basis for processing personal information. It applies to all employees (including all employees, workers, volunteers and any third party contractors) of the Council.

4. Policy Statement

The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the law and take necessary and proportionate action in these types of matters. In that regard, the Data Protection Officer, is duly authorised by the Council to

keep this policy up to date and to amend, delete, add or substitute relevant provisions, as necessary.

5. Policy Principles

Where possible members of staff must be satisfied that a client understands and consents to the services intended to be provided or investigation that will take place.

The member of staff must ensure that they have provided the client with sufficient information and explained how the Council intends to use their data before the client makes their decision to consent.

Where a client is accompanied by a carer, advocate or other support person the member of staff will ensure that:

They understand the services being offered to the client;

Involve them appropriately in making decisions about the clients required services;

Give opportunities for them to represent the views of the client.

All employees and Managers will ensure that where consent is necessary, the forms contained within this document will be completed and recorded within the consent register held within the Information Governance Team.

Each service area is responsible for undertaking annual audits to determine that consent is always sought and recorded in-line with this policy.

6. Consent Mechanisms

There are two forms of consent, implied consent and expressed consent. Implied consent assumes that the client requires a service from the Council without making any form of affirmative action, their silence demonstrates acceptance to the service. Expressed consent is permission for something that is given specifically from the client.

In order to comply with the requirements of the Data Protection Legislation the consent required from clients must be recorded in a permanent form, freely given and unambiguous.

Expressed consent will be the default option for all employees that use consent as their legal basis for processing personal information. The Consent Form provided in appendix 1 must be used to record expressed consent.

7. Obtaining Consent

Consent must be obtained prior to the processing of any personal information and prior to the services being offered.

The service area must ensure that the client is competent to provide consent prior to the processing of any personal information and prior to the services being offered.

Consent will include the provision of all information relevant to the services.

The scope of authority provided by the client will not be exceeded unless in an emergency or required by law.

The Council acknowledges the right of the client to refuse consent, delay the consent, seek further information, limit consent or ask for assistance from a carer, advocate or other support person.

Employees will use a Consent Form where the processing carries a degree of risk (processing special category data) or for other reasons that they consider it appropriate to do so (e.g. malicious clients).

No alterations will be made to a Consent Form once it has been signed by the client.

Employees will ensure that consent is freely given and not provided under duress (e.g. pressure from a carer, advocate or other family members present).

8. Consent for Children Under 16

Individuals aged 16 or more are presumed to be competent to give consent for themselves, unless the opposite is demonstrated.

If a child under the age of 16 has sufficient understanding and intelligence to enable them to fully understand the services being offered then they will be competent to give consent for themselves.

Young people aged 16 and 17, and legally competent younger children may therefore sign a Consent Form for themselves, they may like a parent to countersign as well.

For children under 16, who have not be classed as competent, will require someone with parental responsibility to provide consent on the child's behalf by signing accordingly on the Consent Form.

9. Withdrawal of Consent

The Council acknowledges a client's right to withdraw consent, delay consent, limit the scope of their consent or ask for assistance from a carer, advocate or other support person.

The client or the parent, guardian, carer, advocate or other support person has the right to withdraw consent at any time.

The Withdrawal of Consent Form will be completed and documented within the service areas systems and within the Information Governance Team Consent Register.

The service area responsible for carrying out the service will make sure that all issues around withdrawal of consent has been fully explained to the client to enable them to fully understand what may happen if the service is withdrawn.

The scope of the authority provided by the client will not be exceeded unless required by law.

No alteration will be made to the Withdrawal of Consent Form once it has been signed by the client.

10. Consent and Withdrawal of Consent Register

The Information Governance Team is responsible for maintaining a corporate register of all processing activities which rely upon consent as a legal basis for processing personal information. All employees that use consent as a mechanism for processing personal information must ensure that their clients have signed the Consent Forms and completed Consent Forms are placed on the clients file.

If a client withdraws their consent from a service the service area must ensure that a Withdrawal of Consent Form has been signed by the client. Their information should be removed from the service as soon as possible and notification of the consent withdrawal should be provided to the Information Governance Team.

11. Breaches of this Policy

If a breach of this policy has been detected it must be reported to the Information Governance Team for investigation.

Failure to abide by the rules and procedures written in this policy will be classed as a breach of this policy and may also be a breach of the Data Protection Legislation.

Breaches of this policy will be considered in accordance with the Council's disciplinary policies and procedures and may result in disciplinary action up to and including dismissal.

12. Legal Considerations

In creating this policy the Council has given due regard to the following Legislative frameworks:

The Human Rights Act 1998 – Article 8 of this Act gives a right to respect for private and family life, home and correspondence. The Council acknowledges that our clients have a reasonable expectation of privacy. This policy does not intend to infringe the Article 8 rights.

The Data Protection Act 2017 – This Act provides a legal framework which sets out how information relating to employees, customers, clients etc. can be collected, handled and used.

The General Data Protection Regulations – the GDPR provides that the request for consent must be given in an intelligible and easily accessible form, with the purpose for data processing attached to that consent. Consent must be clear and distinguishable from other matters and provided in an intelligible and easily accessible form, using clear and plain language. It must be as easy to withdraw consent as it is to give it. Explicit consent is required only for processing sensitive personal data - in this context, nothing short of “opt in” will suffice. However, for non-sensitive data, “unambiguous” consent will suffice.

13. Implementation Responsibilities

The Information Governance Team shall develop, maintain, and publish processes to achieve compliance with this policy.

The use of obtaining consent must be done in accordance with this policy. This policy shall apply to all methods of obtaining consent.

Employees will be aware of and adhere to all other relevant policies and procedures.

All Heads of Service shall be responsible for implementing this policy within their areas of responsibility.

14. Policy Review and Maintenance

This policy shall be reviewed annually and at times as dictated by operational needs and changes in the Data Protection Legislation.

15. Policy Acceptance

All staff must confirm acceptance and adherence to the Consent Policy and must confirm that they have read and understood the contents of this policy.

PRINT FULL NAME: _____

JOB TITLE: _____

SIGNATURE: _____

DATE: _____ / _____ / _____

(This Page should be printed and returned to the Data Protection Officer located in the Information Governance Team, Legal and Governance Services, Civic Centre)

Merthyr Tydfil County Borough Council

Consent Policy – Appendices

1. Consent Form
2. Statement of Interpreter
3. Withdrawal of Consent Form

Merthyr Tydfil County Borough Council
Consent Form

This form can be used by a client and for a parent, guardian, carer, advocate or other support person to give consent for services to be given to the client or a young person.

Client's Details:

First Names:

Surnames:

Date of Birth:

Address:

Telephone:

This section to be completed by the Service Area:

This consent form has been prepared for the services provided below:

I can confirm that I have explained how the client's information will be used in order for the Council to provide the services detailed above. I have given the client sufficient information in order for them to make an informed decision to provide consent for this service.

Name:

Position:

Signature:

Date:

This Section is to be completed by the Client/Parent/Guardian/Carer

1. I am the client / parent / guardian / carer (delete as appropriate)
2. I agree to receive the services outlined in this form and the member of staff named on this form has explained this to me.
3. I understand that the sharing of any information I provide to the Council in order to receive this service will be done in accordance with the Data Protection and Privacy Laws.
4. I have explained to the named member of staff details of the service that I do not wish to participate in, these include:

5. I have notified the named member of staff of any issues I have that may mean I am unable to participate in this service, these include:

Signature of client / parent / guardian / carer: _____

Full name of client / parent / guardian / carer: _____

Address if different to the Client: _____

If this service is offered to a child and the child would like to sign this form they may do so here:

I agree to receive the services that have been explained to me

Signature: _____

Date: _____

Note to Staff:

All clients that provide consent have a legal right to withdraw that consent at any time. They may also withhold consent prior to the services being delivered. Clients should be given sufficient information in way that the can understand about the proposed service and any risks should they not wish to proceed. The clients consent to the service must be recorded on this form.

Note to Client:

The staff member should explain the details of the service and any risks associated with refusal. You are able to ask questions and seek further information. You have a right to refuse this service and can withdraw your consent at any time.

Statement of Interpreter (where appropriate)

I have interpreted the information contained within the Consent Form to the best of my ability and in a way which I believe the client understands.

Signature: _____ Date: _____

Name: _____

This form once completed needs to be kept with the clients Consent Form contained within their record.

Merthyr Tydfil County Borough Council
Withdrawal of Consent Form

This form can be used by a client and for a parent, guardian, carer, advocate or other support person to withdraw consent for services to be given to the client or a young person.

Client's Details:

First Names: _____

Surnames: _____

Date of Birth: _____

Address: _____

Telephone: _____

This section is to be completed by the Service Area:

This withdrawal of consent form has been prepared for the member of staff to explain the issues that could arise if the client withdraws consent from the service which is detailed below:

I can confirm that I have explained the above issues that could arise because the client has withdrawn consent from the service. I have given the client sufficient information in order for them to make an informed decision to withdraw consent from this service.

Name: _____

Position: _____

Signature: _____

Date: _____