

## **Consent and disclosure including when to share with third parties**

Northern Ireland staff - please use the UCNI Guidance.

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### **Introduction**

Claimants have full access to information held on their account. If a representative asks the claimant for information about the claim, the claimant can locate and provide the information themselves.

If claimants feel unable to find the information or understand more complex issues, they may ask a representative to contact the Department for Work and Pensions (DWP) on their behalf to obtain the information. This information can usually be provided if there is explicit consent. Certain information can never be released under any circumstances, see Information that should never be disclosed.

If a claimant is considered capable to identify the information on their own account or has an existing appointee, they should be encouraged to use their online account.

### **Consent and disclosure**

If a claimant or their appointee is unable to use the Universal Credit account to provide information asked for by a third party, they can ask for the Department for Work and Pensions (DWP) support to do so.

The Department can only disclose the claimant's information to a third party if, in every case, the claimant has given explicit consent for information to be disclosed and confirmed all of the following:

- the specific information to be disclosed
- why the information is needed
- who the third party is that needs the information

Explicit consent can be given by the claimant using the journal, face to face or by phone.

Once provided, the period for which explicit consent applies is limited. There is an exception to the explicit consent time limit in some circumstances. See Disclosure to private landlords and Disclosure to social landlords sections below.

Information can be disclosed to a third party using the most appropriate channel.

Before any information is provided by telephone, the third party must verify their identity.

Only the information that the claimant has given their consent to release can be disclosed to the third party.

Certain information should never be disclosed. See Information that should never be disclosed below.

There are some circumstances where DWP can disclose information without the claimant providing explicit consent. This includes elected representative or MP enquiries relating to Universal Credit on their constituent's behalf. For full details see Circumstances where consent to disclose is not required below.

Where it is clear that a claimant with complex needs or a child faces clear and significant risks to their welfare or safety, DWP staff are explicitly empowered to proactively disclose information to the relevant body without the claimant providing explicit consent. When making the disclosure the decision and reason for it must be fully documented.

## **Explicit consent**

The claimant must provide explicit consent before information can be disclosed to a representative. Explicit consent can be provided by the claimant using the most appropriate channel in their circumstances, whether that is through the journal, in writing, over the telephone or face to face.

For consent to be lawful the claimant must state:

- that they give consent for their personal information to be disclosed
- what information they want to be disclosed
- why the information is needed
- the relationship to the claimant where the representative is a family member or friend
- the name of the representative and the organisation, including the branch where applicable. If the claimant cannot provide the name of the

representative, they need to be as specific as possible, for example the representative's job role or team name within the organisation.

There is no set or preferred wording to be used by claimants to express their consent as long as it covers the above criteria. Judgment should be used to decide whether the claimant has provided enough information to satisfy explicit consent to disclose the information to the representative.

The information provided must be recorded in the claimant's history and journal.

### **Who is a representative?**

A representative is any person or organisation acting on behalf of or making enquiries for the claimant. This can be at any stage of the claimant's Universal Credit claim.

### **How long does explicit consent last for?**

Explicit consent is not indefinite for representatives. Once provided by the claimant, it only lasts until either:

- the specific request for information is resolved or
- the end of the assessment period after the one in which the consent was given

The consent expiry date must be entered in the claimant's history every time.

If the query remains unresolved at the consent expiry date, the date should be reviewed and extended to the end of the next assessment period if necessary.

The claimant can withdraw their consent at any stage by either:

- making an entry on the journal
- face to face in a jobcentre
- by phone

### **Disclosure**

Once explicit consent is provided by the claimant the information must be disclosed using the most appropriate channel:

- through the journal
- inbound or outbound call with the representative

If responding by telephone, the representative must provide the following details to verify they are entitled to receive the information:

- the claimant's name

- claimant's address or date of birth
- what information is to be disclosed
- the purpose for which the information is to be disclosed
- the name of the representative and the name of the organisation they belong to (where it applies)

These details should match those provided by the claimant when they gave their explicit consent and noted on their account history.

If there is any doubt as to the identity of the representative making the inbound call no information should be disclosed and the Bogus Caller guidance should be used.

Once information has been disclosed, the consent entry in the claimant's history must be deleted. However, it must remain in the claimant's journal.

### **Information that should never be disclosed**

The following information relating to claimants or their partners must never be revealed to a representative:

- addresses
- dates of birth
- National Insurance numbers
- bank details (sort code, account number, account holder name)
- telephone numbers
- names of household members
- names of employers or former employers

If a person claiming to be acting as a representative asks for this information, this should immediately raise suspicion about whether the caller is genuine.

### **Proactive disclosure**

There are circumstances where information can be disclosed to third parties where it is clear that a claimant with complex needs or a child faces clear and significant risks to their welfare or safety. DWP staff are explicitly empowered to take any reasonable steps felt necessary in order to address these risks. This includes concerns about the:

- risk of injury
- ill treatment
- neglect
- physical abuse or sexual abuse
- exploitation

These are examples and not a full list.

Consent is not required:

- from a DWP safeguarding perspective, for example DWP contacting social services or the police with a concern
- when DWP is contacted by social services or the police as part of their own investigations.

It is expected that staff will take action to volunteer to disclose information without any undue delay. When making the disclosure the decision and reason for it must be fully documented. This is essential in case of any challenge or dispute over information that has been disclosed. It protects both staff and the Department.

Only information that is directly relevant to the issue of concern should be volunteered to the relevant body for example social services, the police without the claimant's consent. Any information given must be factual and relevant.

There is no defined list of when to use proactive disclosure, each situation needs to be assessed on its individual circumstances. Staff can get support from their line manager or Local Data Protection Officer if they have any concerns or need advice. Management must be informed about any proactive disclosure.

On contacting the relevant body, the information disclosed should be the minimum required to ensure the claimant can be supported to take the required steps. This is absolutely vital to demonstrate compliance with the General Data Protection Regulation.

In the case of a child, such information may be provided without the consent of the parents or guardian if a child's welfare is at risk. The parents or guardian do not need to be informed about the disclosure.

There is no obligation for DWP staff to:

- inform the claimant that they have approached Social Services or relevant body
- give permission for the relevant body to disclose the source of the allegations made to them - this is particularly important where it may be obvious to the claimant where information has come from, for example a face to face meeting with their work coach or a home visit

## **Circumstances where consent to disclose data to third parties is not required**

DWP does not need to rely on consent of the individual to disclose information, if a third party contacts DWP, where any of the following apply:

Court Orders	Where a court sends a court order to DWP to disclose information we do not need to obtain the claimant's consent to disclose
Legal Gateways	There is legislation which permits the exchange of the claimant's personal information with an organisation if they are acting in a welfare capacity.
MPs engaging with Universal Credit on their constituent's behalf	<p>Any correspondence, (letter, email or phone enquiries) relating to Universal Credit will be answered directly to the MP without the need for the claimant's consent.</p> <p>However, it is common practice for MPs to include explicit consent from the claimant when contacting the department in writing.</p> <p>Members of Scottish Parliament and Assembly Members in Wales can still represent claimants using explicit consent.</p>
Public interest	Where it is in the best interests of the public, disclosure can be made without the claimant's consent, for example claimants with complex needs. Only information that is directly relevant to the issue of concern should be volunteered. These requests will usually come from the Social Services within the relevant district and/or the Police. Case conference with a line manager before disclosing information or refer directly to the National Disclosure Unit. For any mention of suicide or self-harm see the DWP six point plan.

## **Disclosure to social landlords**

Certain information can be shared with social landlords to assist with the following without the need for explicit consent:

### **Alternative Payment Arrangement (Managed Payment to a Landlord)**

Social landlords may only receive the following information:

- the start date of the Managed Payment and/or third party deduction

- when to expect to receive the first payment of the Managed Payment and/or the third party deduction from DWP
- the amount of the next Managed Payment to Landlord
- the maximum amount of housing costs payable in the next payment of Universal Credit (if this has changed the circumstances that led to the change will not be discussed)

### **Crime and disorder**

Social landlords may only receive information that is relevant to the prevention of crime and disorder, including anti-social behaviour or other behaviour adversely affecting the local area. They are not entitled to receive any personal data. All requests for information should be considered under the General Data Protection Regulation (GDPR).

### **Disclosure to private landlords**

Private landlords may ask for their tenant's rent to be paid directly to them without the need for explicit consent from the claimant.

The claimant is informed about the request for Alternative Payment Arrangements (Managed Payment to a Landlord). If the claimant is happy for the Managed Payment to go ahead, they do not need to reply to give their consent. The rent will automatically be paid to the landlord. If the claimant does not want the rent to be paid directly to the landlord, they can dispute this. The claimant would need to provide evidence that they are not in arrears or they are in an official dispute with their landlord.

Once the Alternative Payment Arrangement is in place, the following information can be disclosed to the landlord if requested:

- the start date of the Managed Payment and/or third party deduction
- when they can expect to receive the first Managed Payment and/or the third party deduction from DWP
- the amount of the next Managed Payment to Landlord
- the maximum amount of housing costs payable in the next payment of Universal Credit (if this has changed the circumstances that led to the change will not be discussed)

A private landlord can act as a representative for the claimant but will always need the claimant's explicit consent to do so, unless it is about requesting an Alternative Payment Arrangement. There is no legal provision to suspend the claim whilst awaiting the claimant's explicit consent to deal with the private landlord.