

GDPR

Consent

What's new?

When is consent appropriate?

What is valid consent?

How do we get consent?





Granular and separate

Granular and separate

What does
'granular'
mean?

Separate consent for
separate things

Separate from your
terms and conditions

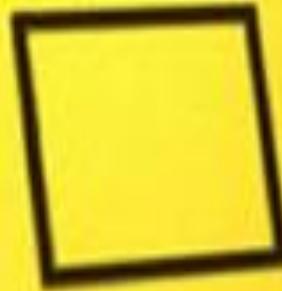
Specific to your
purposes and methods



YES PLEASE



NO THANKYOU



**Unambiguous and clear
affirmative action**

Unambiguous affirmative action

It must be obvious that they intended to consent – there can be no doubt

A clear affirmative action means a clear action to opt in



No pre-ticked opt-in boxes

No pre-ticked opt-in boxes

Don't use
pre-ticked
opt-in
boxes...

...or rely on any
other form of
silence,
inactivity, or
consent as the
default





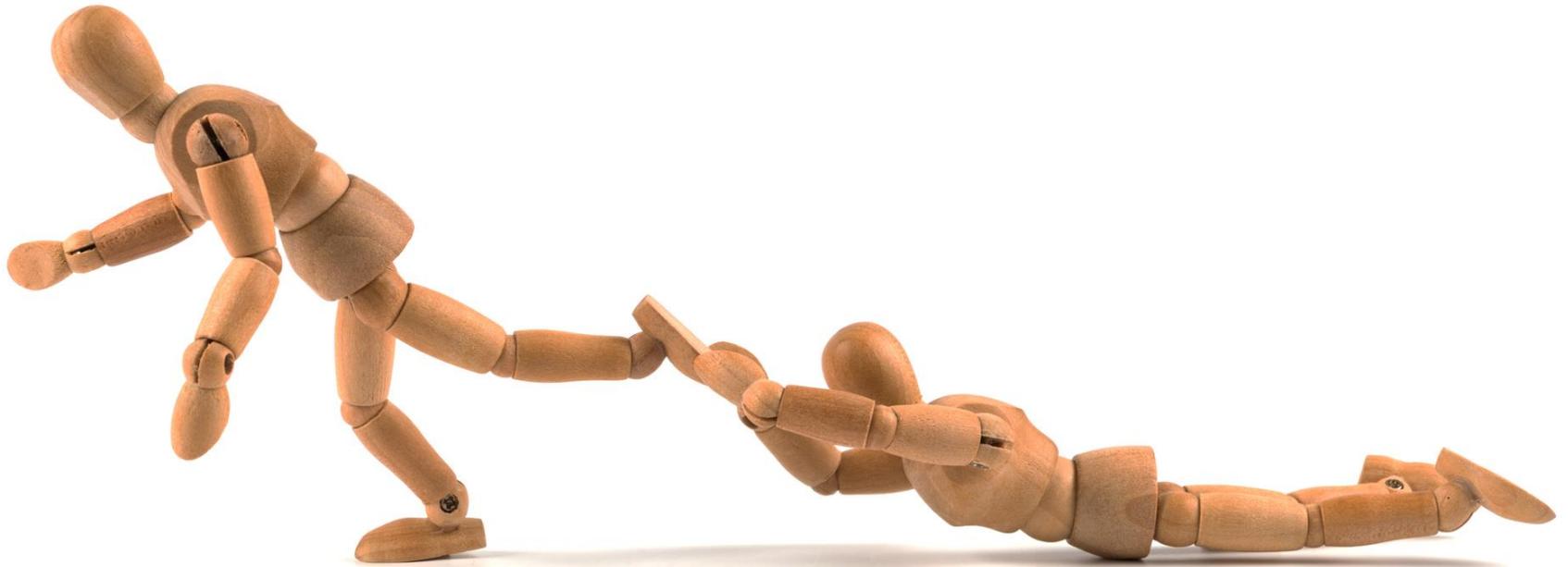
Identity of the controller

Identity of the controller

You must
name your
organisation

...and name any
third party
categories of
controller relying
third parties is
on the consent...
not specific
enough



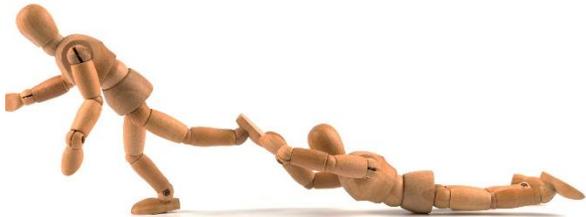


Right to withdraw consent

Right to withdraw consent

Individuals have the right to withdraw consent at any time

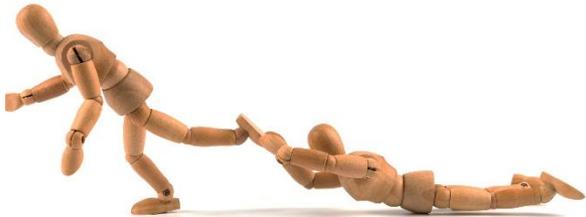
You must tell them this when you get consent



Right to withdraw consent

Individuals have the right to withdraw consent at any time

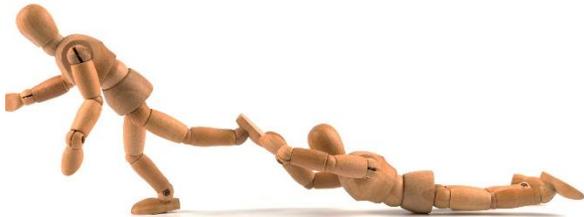
It must be as easy to withdraw consent as to give it



Right to withdraw consent

Individuals have the right to withdraw consent at any time

You must stop processing **as soon as possible**





Clear records of consent

Clear records of consent

You will need
to show:

Who
consented...

When they
consented...

What they were
told...

How they
consented



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When should you use consent?

There's no other appropriate lawful basis

You want to give people choice and control

Or you are required to have consent





When **not** to use consent

When **not** to use consent

If you would do it anyway – asking for consent is misleading and inherently unfair

If you are in a position of power – they may feel they have no choice

If consent is a condition of service but not necessary for the service



Remember
there are
alternatives
to consent



Contract **with the individual**

Compliance with a legal obligation

Protecting vital interests

‘Public task’ - official functions or public interest tasks laid down by law

Legitimate **interests**



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“Any freely given, specific, informed and **unambiguous** indication of the data subject's wishes by which he or she, by a statement or by a **clear affirmative action**, signifies agreement to the processing of personal data relating to him or her”

Consent **must** be:

Freely given

(genuine choice
& control)

**Specific and
informed**

(targeted to your
purpose & easy to
understand)

**Unambiguous
by a clear
affirmative
action**

(a clear signal that
they agree)





Explicit consent

Explicit consent

Explicit consent is not very different from regular consent...

however...

It must be affirmed in a clearly worded statement (either written or oral)...



Explicit consent

Explicit consent is not very different from regular consent...

however...

It must specifically refer to the element of processing that requires explicit consent...



Explicit consent

Explicit consent is not very different from regular consent...

however...

A request for explicit consent should be separate from other consent requests





Consent timescales

Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

For example...



Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

The scope of the consent...



Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

The individual's expectations...



Consent timescales

There is no specific timescale for expiry of consent in the GDPR

How long consent lasts will depend on the context...

If the processing has evolved beyond the original consent



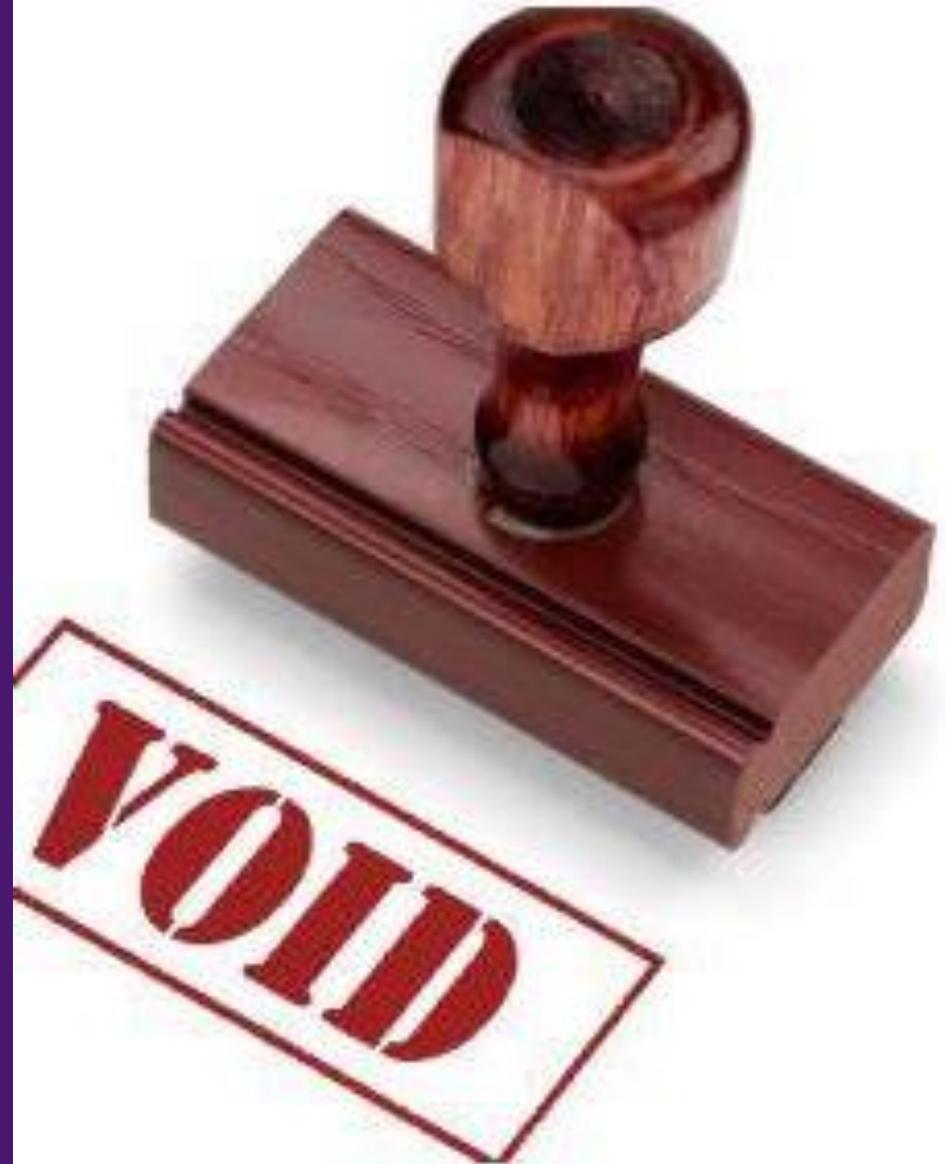
Consent timescales

There is no specific timescale for expiry of consent in the GDPR

And don't forget consent can be withdrawn at any time – in which case you must stop the processing



When is
consent
not consent?



For example, it's not consent:

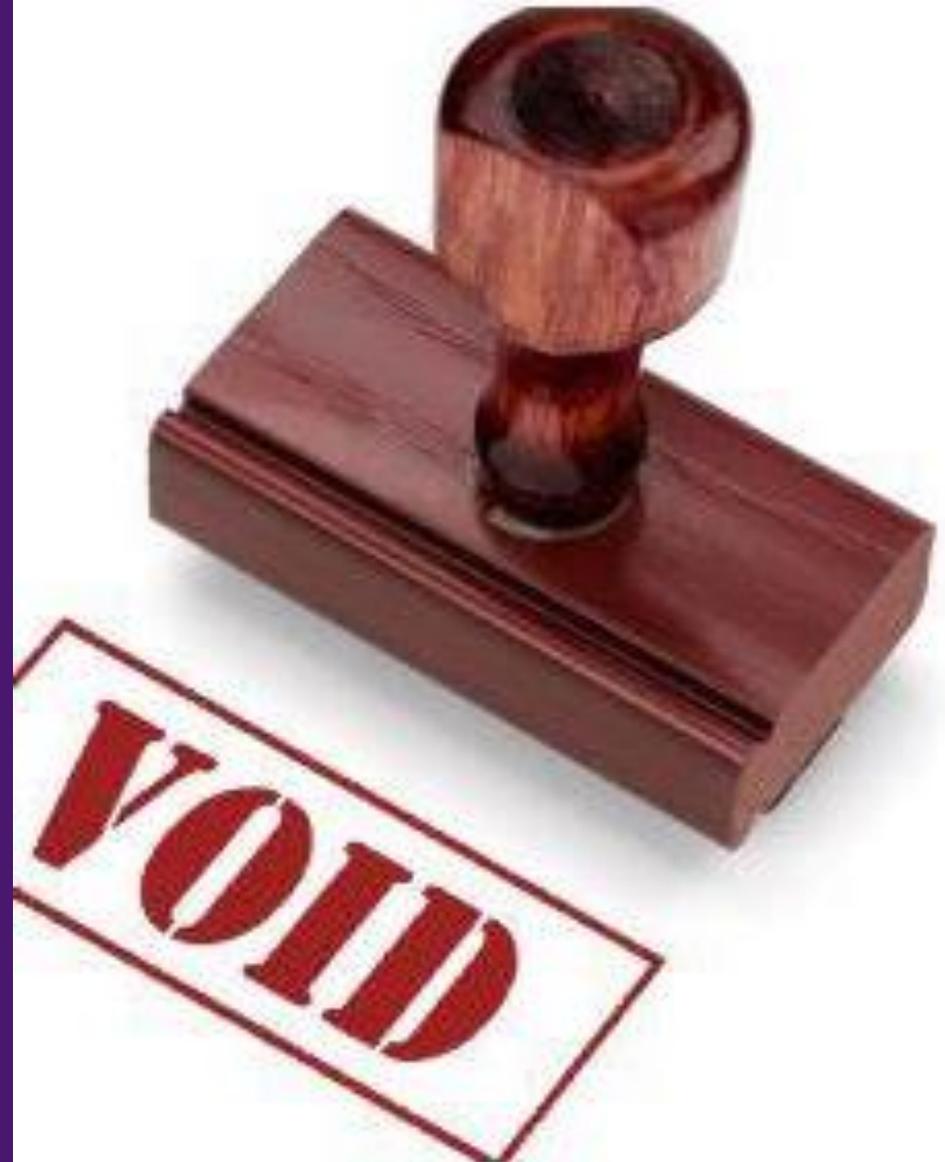
If it's not obvious that the individual has consented;

If you can't actually prove that you've got consent;

If you weren't named as seeking consent from the individual;

If you used pre-ticked opt-in boxes or other methods where consent is the default; or

If you're not sure – as that means it's not unambiguous!

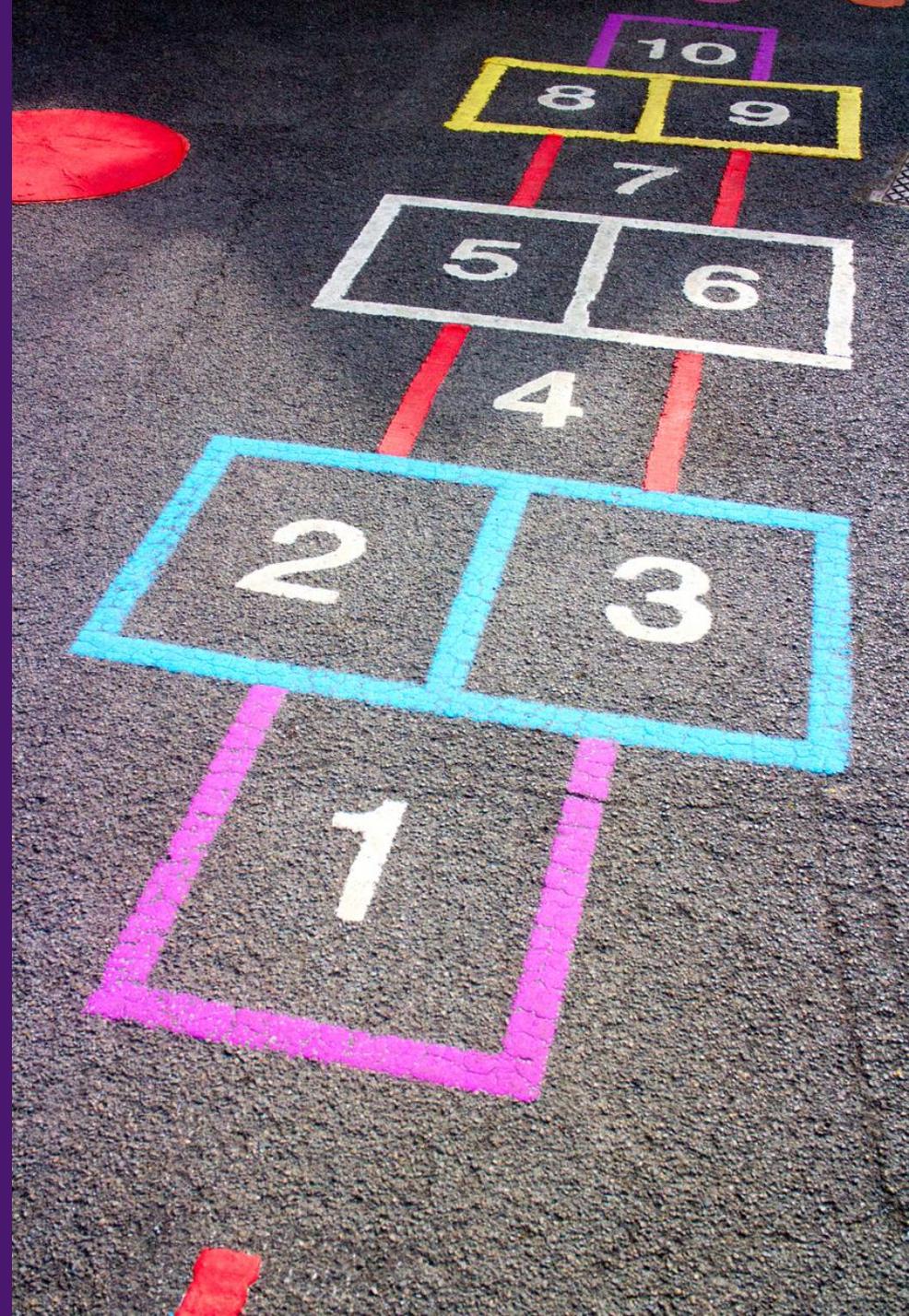


What's new?

When is consent appropriate?

What is valid consent?

How do we get consent?



Your consent request must be:

Prominent – make it obvious

Separate and granular – separate from T&Cs and separate consent for separate things

Concise – don't be vague or long winded and rambling

Easy to understand – use plain language and don't be confusing



As a minimum you must:

Name your organisation

Name any third parties who will be relying on the consent

Explain your purposes and activities (what you'll be doing and why)

Tell people they can withdraw consent at any time





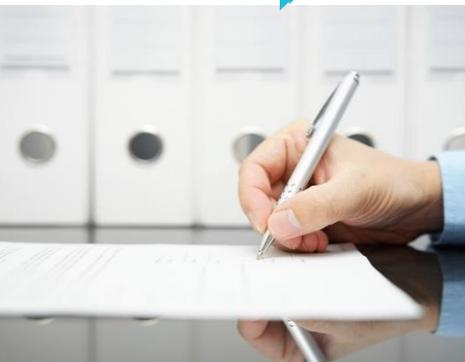
Methods of obtaining consent

Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual signs a consent form...

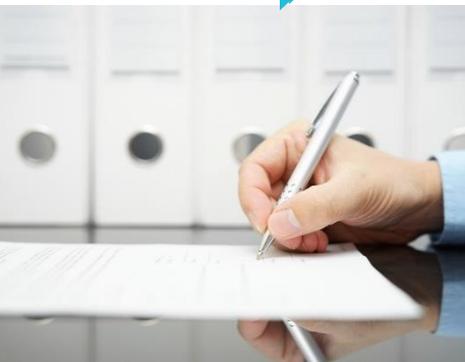


Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual ticks an opt-in box, either online or offline...



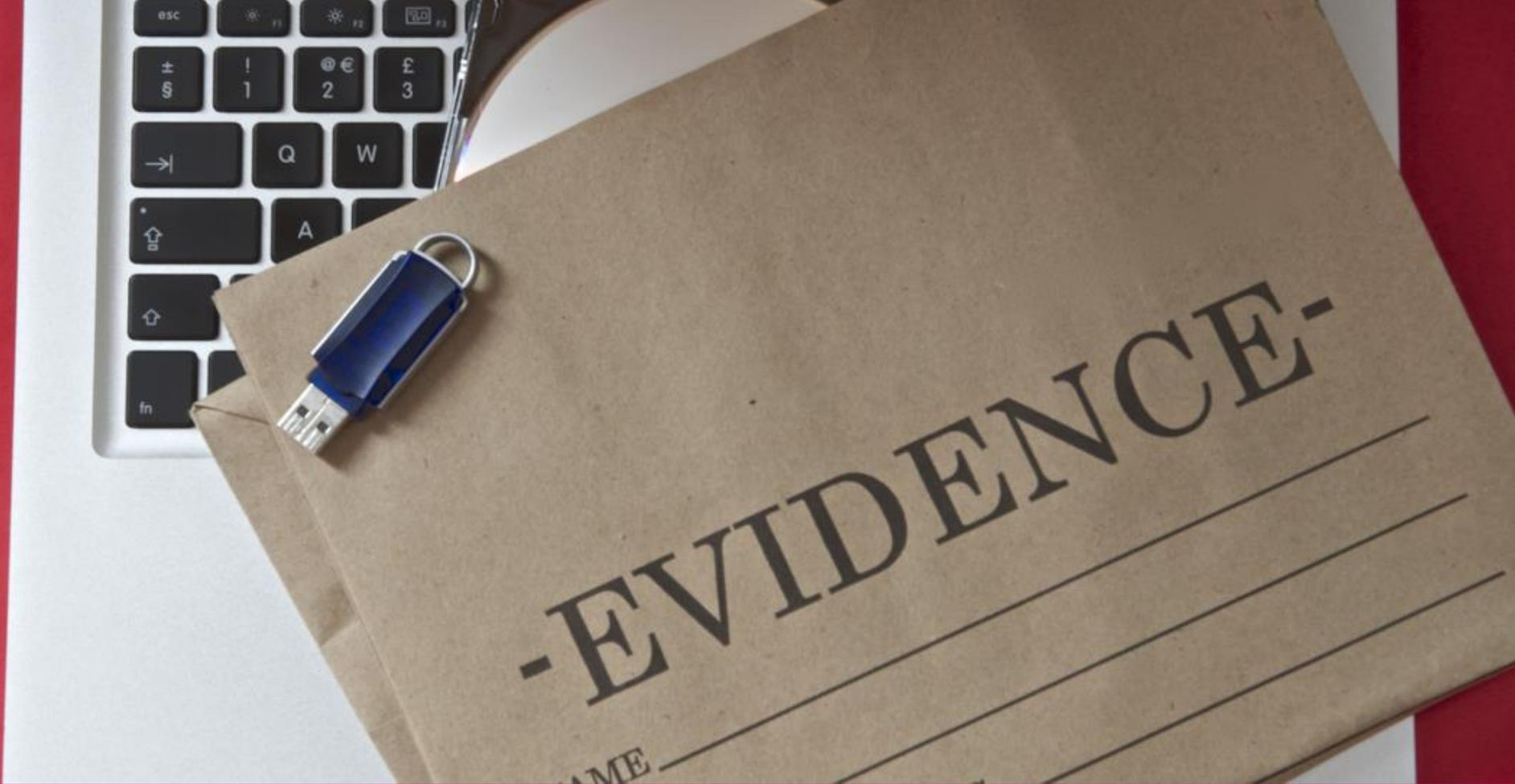
Methods of obtaining consent

You can use a range of possible methods...

For example...

The individual says 'yes' to a clear oral request for consent





Evidence of consent

Evidence of consent

You need
evidence of:

Who

The individual's
name or other
identifier (eg
username, session
ID)



Evidence of consent

You need
evidence of:

Who
When

eg a dated document,
electronic timestamp,
or a note of the date
and time of the
conversation



Evidence of consent

You need
evidence of:

Who

When

What

eg a master copy of
the document with
the consent request,
or script that was
used at the time



Evidence of consent

You need evidence of:

Who

When

What

How

eg a copy of the data capture form, the data submitted online (with timestamp), or a note of oral consent made at the time





Reviewing and refreshing

Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified

There is no such thing as 'evolving consent'

because consent must be specific



Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified

Consider whether to automatically refresh at appropriate intervals



Reviewing and refreshing

Keep consent under regular review, and refresh if your purposes evolve beyond those originally specified

How often you need to refresh consent will depend on the particular context and expectations



What about
existing DPA
consents?



No requirement to automatically refresh all existing DPA consents

But you need to make sure that your existing consents meet the GDPR standard

If your existing consents don't meet the GDPR standard you need to:

seek fresh GDPR consent;

identify a different lawful basis; or

stop the processing.



More information is available...

Pick up a
leaflet from
the hub

Check out our
lawful basis
tool

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website
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