Consent

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Consent is the freely given, specific, informed and unambiguous agreement by a person (i.e. the 'data subject' or 'participant') to take part in the market research (MR) and for the processing of their personal data.

It is worth taking time to consider the data needs and business requirements as failure to properly address issues of informed consent may restrict the opportunities for initial collection and subsequent use of data.

Consent to participate in Market Research

Involves a participant voluntarily confirming their willingness to take part in a particular project, after having been informed of all aspects of the project that are relevant to their decision to participate.

Consent to data processing

The General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018 define consent as 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.

The BHBIA's Legal and Ethical Guidelines' first principle is:

> You must obtain informed consent from MR respondents, willingly given, to collect and use their data. Before you do this, you must make sure they clearly understand the specified and lawful purposes for which you're collecting the data and how it will be used. In cases where you are collecting and using special category personal data, you must obtain explicit consent.

Explicit consent must be confirmed in a clear and specifically worded statement (oral or written), so signing a statement would be explicit consent but an affirmative action alone e.g. responding to an email requesting consent would not be explicit consent. The ICO advise that if you need explicit consent, you take extra care with the wording.

Consent must be:

- Given by a clear affirmative action
- Freely given
- Specific, consent is always specific to a single purpose
- Clear – unambiguous, concise and easy to understand, using simple and clear language.
- Prominent and obvious, not 'bundled up' with other terms and conditions
- Verifiable – you must be able to demonstrate that someone has consented
- Informed

Informed consent to participate in MR and for processing personal data requires you to tell potential respondents:

- ✓ Who you are
- ✓ Who you are going to share the information with (named or types of organisations)
- ✓ Why you are going to share the information
- ✓ Legal basis for processing and the purposes of the processing
- ✓ The types of processing activity

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Keeping you informed about changes in the UK legal ethical environment.

Consent

BHBIA ETHICS & COMPLIANCE | Quick Guide

- ✓ Where processing is based and details of any data transfer to countries without adequate data protection
- ✓ How long the data will be stored
- ✓ Their right to withdraw consent at any point and other rights
- ✓ Existence of any automated decision making
- ✓ Contact details of data protection officer where applicable

Consent as part of the terms and conditions

Consent is sometimes obtained as part of terms of use, for example consent may be included within the terms of some online forums, but you must consider whether in these cases they extend to your purpose.

Recording consent

Respondents' consent or refusal must be recorded; consent may be given:

- Verbally during telephone recruitment/fieldwork
- By clicking on an acceptance box if the work is carried out online or via a mobile device
- In writing if recruitment/fieldwork is face to face.

Consider what data is being collected. It is very likely that this will contain personal data. For guidance on maintaining data securely see the BHBIA Data Security including Breaches and International Transfer guide: https://www.bhbia.org.uk/guidelines-and-legislation/privacy-data

Remember you will need consent or an alternative lawful basis to process personal data:

- ✓ If the identity of a healthcare practitioner (HCP) receiving remuneration will become known to the commissioning pharma company **disclosure is required**, this in turn requires consent to pass on the HCP's personal data for this purpose.
- ✓ If personal data is to be collected as part of an **adverse event/product complaint/special reporting situation report**, consent to forward personal data for PV reasons is required (or an alternative legal basis).
- ✓ If you want **to interview a child** you will need consent from the responsible adult to ask the child as well as the child's explicit consent.
- ✓ If you want **to install and use software such as an app** to gather personal data, you must inform the individual of its purpose, the type of data it collects and any impact it will have on their device's functioning or performance e.g. reducing battery life.
- ✓ **If fieldwork is being viewed or recorded**, even if it's only for analysis by the agency, you must tell anyone being recorded why you're doing this and who will see or listen to it and get consent for this.
- ✓ If you think you might wish to **re-contact a respondent** (even if only for simple clarification), you must obtain their consent during recruitment or fieldwork. You must tell respondents who agree to be re-contacted what the purpose of this is and who will be contacting them (in terms of the organisation and roles, rather than names).
- ✓ To keep respondent details on file to contact them about **taking part in future MR**. Respondents must have agreed to being re-contacted for this purpose and to their personal data being held on file.
- ✓ When you're **developing a list** for a non-MR purpose, you must have consent or an alternative lawful basis for this data processing.
- ✓ To use non-anonymised MR outputs for a non-MR purpose
- ✓ To add individuals to an influencer mapping exercise
- ✓ To process personal data not available in the public domain

Consent

BHBIA ETHICS & COMPLIANCE | Quick Guide

You don't need

- To name the commissioning client company – only the type of company (e.g. a pharmaceutical manufacturer), unless the client is:
  - a data controller (see Naming the End Client for description of data controller)
  - the source of the personal data
  - going to receive personal data
- Specific consent for a recruiter to pass respondent personal data to a fieldwork or MR agency as long as the two are contractually linked.
- Specific consent to use anonymised MR findings for the purpose for which they were collected, e.g. MR findings can be used in a journal article if represented entirely appropriately.

You must not:

- × Use personal data for anything other than the purpose respondents gave consent for.
- × Seek consent to use it for other purposes after the event.
- × Identify the commissioning client company without their permission.

If you need to share the personal data collected with third parties, or other parts of your organisation, then consider what purpose they are intending to use that personal data for and therefore what consent (or alternative lawful basis) is needed for that processing to take place.

Withdrawing Consent

Individuals have the right to withdraw their consent at any time they want to. This right must be respected and their personal data must be withdrawn and destroyed. It must be as easy to withdraw consent as it was to give it.

Further Information

For further detail on all guidelines please see the BHBIA Legal & Ethical Guidelines for Healthcare Market Research at www.bhbia.org.uk/guidelines-and-legislation/legal-and-ethical-guidelines upon which the Quick Guide is based.

If you have any queries about this Quick Guide or the BHBIA Legal & Ethical Guidelines for Healthcare Market Research, please visit **www.bhbia.org.uk** and submit your query via **'My BHBIA'** Please note: this ad hoc advisory service is available to full BHBIA members only.

Disclaimer

This guidance is provided by the BHBIA for information purposes only and is not intended and should not be construed as regulatory or legal advice. It does not cover all legislative and regulatory requirements pertaining to Members and it is the responsibility of all Members to familiarise themselves with these.

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British Healthcare Business Intelligence Association
St James House, Vicar Lane, Sheffield, S1 2EX
t: 01727 896085 • admin@bhbia.org.uk • www.bhbia.org.uk
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