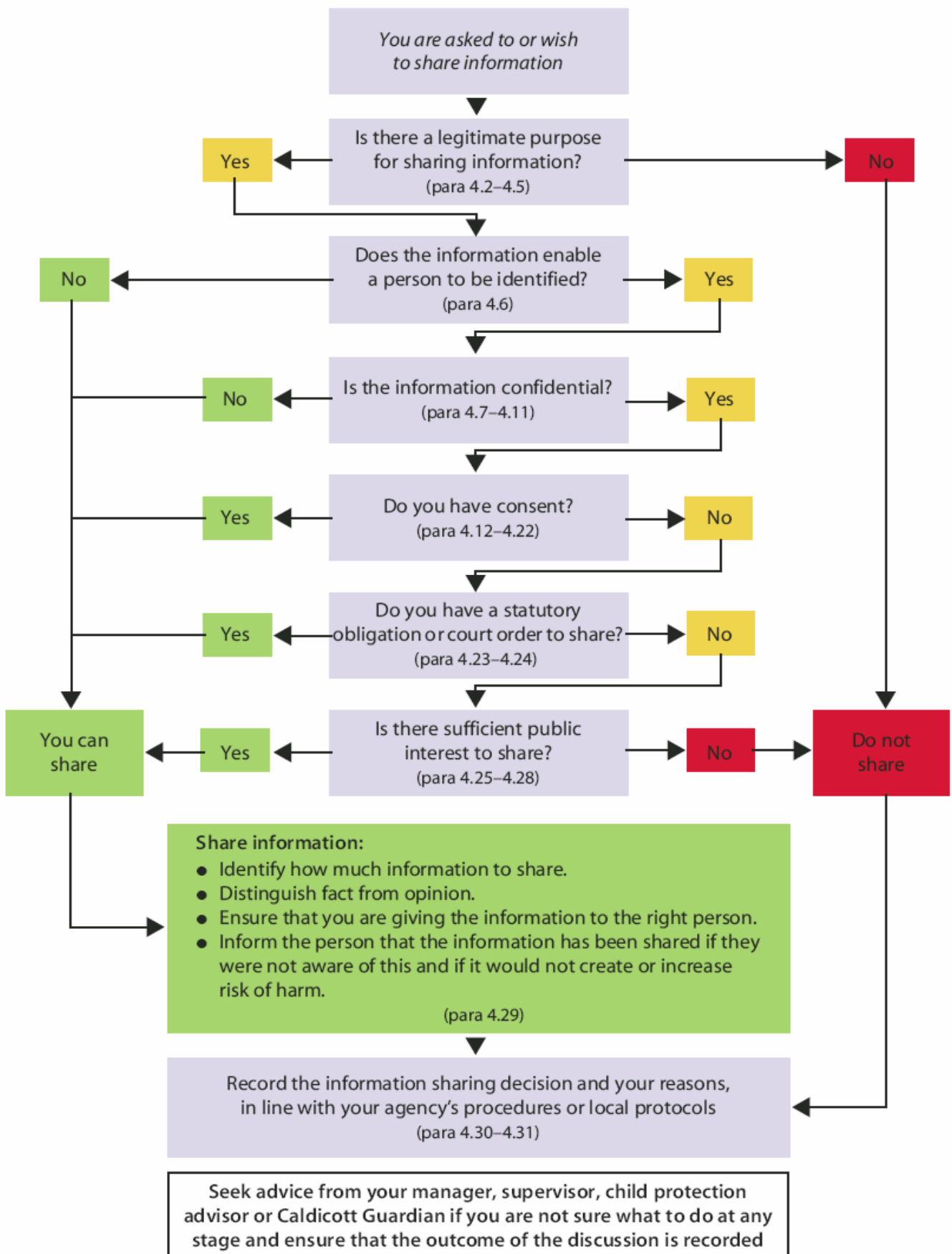


Flowchart of key principles for information sharing



FURTHER INFORMATION TO INFORM DECISION-MAKING:

(Every Child Matters: Information Sharing: Practitioner's guide 2006)

4.1 To inform your decision-making this section sets out further information illustrating the key principles underlying information sharing. This section explains these through eight key questions. The relationship between them is illustrated in the flowchart.

They are:

1. Is there a legitimate purpose for you or your agency to share the information?
2. Does the information enable a person to be identified?
3. Is the information confidential?
4. If the information is confidential, do you have consent to share?
5. Is there a statutory duty or court order to share the information?
6. If consent is refused, or there are good reasons not to seek consent to share confidential information, is there a sufficient public interest to share information?
7. If the decision is to share, are you sharing the right information in the right way?
8. Have you properly recorded your decision?

Is there a legitimate purpose for you or your agency to share information?

4.2 If you are asked to or wish to share information about a child or young person, you need to have a good reason or legitimate purpose to share information. This will be relevant to whether the sharing is lawful in a number of ways.

4.3 If you work for a statutory service such as education, social care, health or youth justice, or if you work in the private or voluntary sector and are contracted by one of the statutory agencies to provide services on their behalf, the sharing of information must be within the functions or powers of that statutory body. It is likely that this will be the case if you are sharing the information as a normal part of the job you do for that agency.

4.4 Whether you work for a statutory service or within the private or voluntary sector, any sharing of information must comply with the law relating to confidentiality, data protection and human rights. Establishing a legitimate purpose for sharing information is an important part of meeting those requirements.

4.5 Different agencies may have different standards for sharing information. You will need to be guided by your agency's policies and procedures, any local information sharing protocols, and – where applicable – by your professional code.

Does the information enable a person to be identified?

4.6 In most cases the information covered by this guidance will be about a named child or young person. It may also identify others, such as a parent or carer. If the information is anonymised, it can lawfully be shared as long as the purpose is legitimate. If, however, the information does allow a person to be identified, it is subject to data protection law and you must be open about what information you might need to share and why and you must also take account of other relevant laws.

Is the information confidential?

4.7 Confidential information is explained in paragraph 3.7. This section provides further information.

4.8 There are different types of confidential relationship. One is where a formal confidential relationship exists, as between a doctor and patient, social worker and client, or counsellor and client. In these relationships all information shared, whether or not directly relevant to the medical, social care or personal matter which is the main reason for the relationship, needs to be treated as confidential.

4.9 Another is an informal confidential relationship that exists between, say, a teacher and a pupil. A pupil may tell a teacher a whole range of information some of which is not confidential, but may also ask the teacher to treat some specific information as confidential.

Then, for the purposes of the confidential information only, the teacher and pupil will have a formal confidential relationship.

4.10 Sometimes people may not specifically ask you to keep information confidential when they discuss their own problems or pass on information about others, but may assume that personal information will be treated as confidential. In these situations you should check whether the information is or is not confidential, the limits around confidentiality and under what circumstances information may or may not be shared with others.

4.11 Public bodies that hold information of a private or sensitive nature about individuals for the purposes of carrying out their functions (for example children's social care) may also owe a duty of confidentiality, as people have provided information on the understanding that it will be used for those purposes. In some cases the body may have a statutory obligation to maintain confidentiality, for example in relation to the case files of looked after children.

Do you have consent to share?

4.12 Consent issues can be complex, and lack of clarity about them can sometimes lead practitioners to incorrect assumptions that no information can be shared. This section gives further information to help you understand and address the issues. It covers:

- what constitutes consent;
- whose consent should be sought;
- when not to seek consent.

What constitutes consent?

4.13 Consent must be ‘informed’ – this means that the person giving consent needs to understand why information needs to be shared, who will see their information, the purpose to which it will be put and the implications of sharing that information.

4.14 Consent can be ‘explicit’ or ‘implicit’. Obtaining explicit consent is good practice and it can be expressed either orally or in writing, although written consent is preferable since that reduces the scope for subsequent dispute. Implicit consent can also be valid in many circumstances. Consent can legitimately be implied if the context is such that information sharing is intrinsic to the activity, and especially if that has been explained at the outset, for example when conducting a common assessment. A further example is where a GP refers a patient to a hospital specialist and the patient agrees to the referral; in this situation the GP can assume the patient has given implied consent to share information with the hospital specialist.

4.15 The approach to securing consent should be transparent and respect the individual. For example, it is good practice to set out clearly your agency’s policy on sharing information to children, young people and families, when they first access the service.

Consent should not be secured through coercion, or inferred from a lack of response to a request for consent. If there is a significant change in the use to which the information will be put to that which has previously been explained, or in the relationship between the agency and the individual, consent should be sought again. Individuals have the right to withdraw consent after they have given it, although in practice this is rarely exercised.

Whose consent should be sought?

4.16 You may also need to consider whose consent should be sought. Where there is a duty of confidence it is owed to a person who has provided the information on the understanding it is to be kept confidential and, in the case of medical or other records, the person to whom the information relates. A young person aged 16 or 17, or a child under 16 who has the capacity to understand and make their own decisions, may give (or refuse) consent to sharing.

4.17 Children aged 12 or over may generally be expected to have sufficient understanding. Younger children may also have sufficient understanding. When assessing a child’s understanding you should explain the issues to the child in a way that is suitable for their age, language and likely understanding. Where applicable, you should use their preferred mode of communication.

4.18 The following criteria should be considered in assessing whether a particular child on a particular occasion has sufficient understanding to consent, or refuse consent, to sharing of information about them:

- Can the child understand the question being asked of them?
- Does the child have a reasonable understanding of:
 - what information might be shared?
 - the main reason or reasons for sharing the information?
 - the implications of sharing that information, and of not sharing it?
- Can the child or young person:
 - appreciate and consider the alternative courses of action open to them?
 - weigh up one aspect of the situation against another?
 - express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do?
 - be reasonably consistent in their view on the matter, or are they constantly changing their mind?

4.19 In most cases, where a child cannot consent or where you have judged that they are not competent to consent, a person with parental responsibility should be asked to consent on behalf of the child.

4.20 Where parental consent is required, the consent of one such person is sufficient. In situations where family members are in conflict you will need to consider carefully whose consent should be sought. If the parents are separated, the consent of the resident parent would usually be sought. If you judge a child or young person to be competent to give consent, then their consent or refusal to consent is the one to consider even if a parent or carer disagrees.

4.21 These issues can raise difficult dilemmas. You must always act in accordance with your professional code of practice and in the best interests of the child, even where that means overriding refusal to consent.

When not to seek consent:

4.22 There will be some circumstances where you should not seek consent, for example where to do so would:

- place a child or young person at increased risk of significant harm; or
- place an adult at risk of serious harm; or
- prejudice the prevention or detection of a serious crime; or
- lead to unjustified delay in making enquiries about allegations of significant harm.

Is there a statutory duty or a court order to share information?

4.23 In some situations you are required by law to share information, for example, in the NHS where a person has a specific disease about which environmental health services must be notified. There will also be times when a court will make an order for certain information or case files to be brought before the court.

4.24 These situations are relatively unusual and where they apply you will know or be told about them. In such situations you must share the information, even if it is confidential and consent has not been given. Wherever possible, you should inform the individual concerned that you are sharing the information, why, and with whom.

Is there sufficient public interest to share information?

4.25 Eliciting the views of children, young people and parents is important and represents good practice. However, even if consent is refused, that does not automatically preclude you from sharing information about a child about whom you have a concern. Paragraphs 3.6 to 3.12 above explain this in more detail, including the public interest test, the need to consider the public interest in maintaining confidence in confidentiality and how a risk of significant harm to a child or serious harm to an adult increases the public interest in sharing. There will be cases where sharing limited information without consent is justified to enable practitioners to reach an informed decision about whether further information should be shared or action should be taken.

4.26 In deciding whether the public interest justifies disclosing confidential information without consent, you should be able to seek advice from your line manager or a nominated individual whose role is to support you in these circumstances. If you are working in the NHS or a local authority the Caldicott Guardian may be helpful. Advice can also be sought from professional bodies, for example the General Medical Council or the Nursing and Midwifery Council.

4.27 If the concern is about possible abuse or neglect, all organisations working with children and young people will have a named person who undertakes a lead role for child protection, so consulting this person may also be helpful.

4.28 If you decide to share confidential information without consent, you should explain to the person that you intend to share the information and why, unless one of the points at 4.22 is met.

If the decision is to share, are you sharing the proper information in the proper way?

4.29 If your decision is to share, you should share information in a proper way. This means:

- share the information which is necessary for the purpose for which it is being shared;
- share the information with the person or people who need to know;
- check that the information is accurate and up-to-date;
- share it in a secure way;
- establish with the recipient whether they intend to pass it on to other people, and ensure they understand the limits of any consent which has been given;
- inform the person to whom the information relates, and, if different, any other person who provided the information, if you have not already and it is safe to do so.

Have you properly recorded your decision?

4.30 You should record your decision and the reasons for it whether or not you decide to share information. If the decision is to share, you should record what information was shared and with whom.

4.31 You should work within your agency's arrangements for recording information and within any local information sharing protocols in place. These arrangements and protocols must be in accordance with the Data Protection Act 1998