

Isle of Man

**Safeguarding Children
Board**

INFORMATION SHARING

POCKET GUIDE

Endorsed by the Safeguarding Children Board in October 2009

This pocket guide

- This pocket guide is part of the Isle of Man Safeguarding Children Board information sharing guidance package. It aims to support good practice in information sharing by offering clarity on when and how information can be shared legally and professionally, in order to achieve improved outcomes.
- This pocket guide presents a summary of the key decision making considerations which are detailed in the main document Information Sharing: Guidance for managers and practitioners which includes case examples to illustrate best practice in information sharing situations.
- This package of guidance is for practitioners who have to make decisions about information sharing on a case-by-case basis. It is also for managers and advisors who support these practitioners in their decision making and for others with responsibility for information governance.
- This pocket guide is not designed to be read as a stand alone document, rather to be a helpful tool in reminding the practitioner of the key messages received during training on information sharing and the detailed messages contained in the guidance.
- The Information Sharing Guidance will be used to inform all multi agency and child protection training.
- If you do not find the advice you need to make a decision from this pack of documents regarding Information Sharing, please contact an individual from the contacts list at the end of this guide, who should be able to advise you.

Introduction

Information sharing is key to the Government's goal of delivering better, more efficient public services that are co-ordinated around the needs of the individual. Information sharing is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. Information sharing is a vital element in improving outcomes for all.

The Government understands that it is important that people remain confident that their personal information is kept safe and secure and that practitioners maintain the privacy rights of the individual, whilst sharing information to deliver better services. It is therefore important that practitioners can share information appropriately as part of their day-to-day practice and do so confidently. **It is important to remember that there can be significant consequences to not sharing as well as sharing information.** You must use your professional judgement to decide whether to share or not, and what information is appropriate to share.

Myth buster on data protection

- The Data Protection Act 2002 is not a barrier to sharing information but provides a framework to ensure that personal information is shared appropriately.
- Data protection law reinforces common sense rules of information handling. It is there to ensure personal information is managed in a sensible way.
- It helps us strike a balance between the many benefits of public organisations sharing information and maintaining and strengthening safeguards and privacy of the individual.
- It helps us balance the need to preserve a trusted relationship between practitioner and client with the need to share information to benefit and improve the life chances of the client or protect the public.

Seven golden rules for information sharing

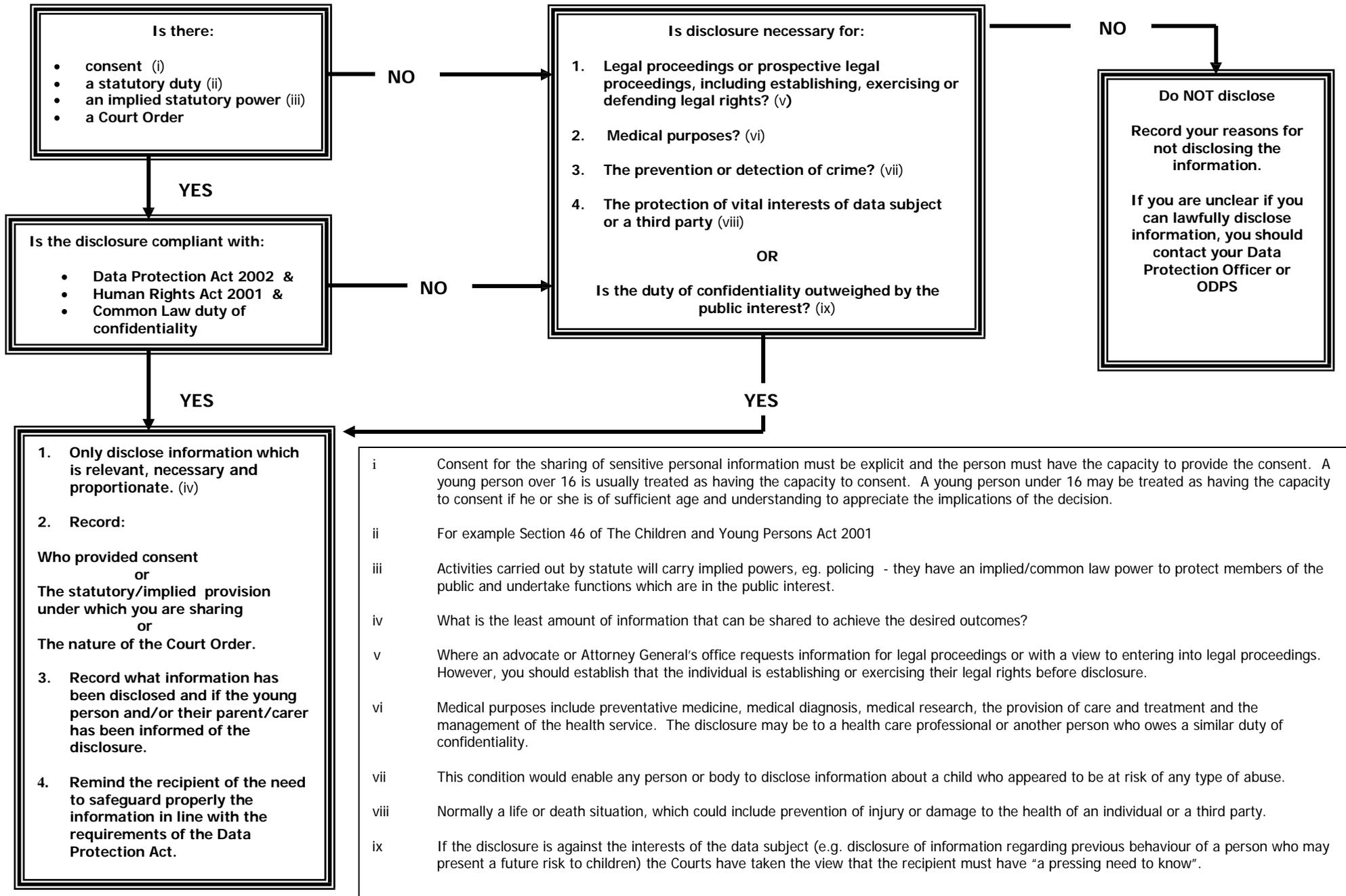
- 1. Remember that the Data Protection Act is not a barrier to sharing information** but provides a framework to ensure that personal information about living persons is shared appropriately.
- 2. Be open and honest** with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be, shared and seek their agreement, unless it is unsafe or inappropriate to do so.
- 3. Seek advice** if you are in any doubt. In the first instance this should be with your line manager or you can speak with one of the named contacts at the end of this document, where possible without disclosing the identity of the person.
- 4. Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden by the public interest. You will need to base your judgement on the facts of the case.
- 5. Consider safety and well-being:** Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions. (See also Safeguarding Children Board¹ guidance for advice on when information can be shared without consent to protect a child or young person from harm).
- 6. Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- 7. Keep a record** of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

The 'Seven Golden Rules' and the following Questions 1- 7 will help support your decision making so you can be more confident that information is being shared legally and professionally. If you answer 'not sure' to any of the questions, seek advice from your supervisor, manager, nominated person within your organisation or area, or from a professional body.

¹ 'Working Together on the Isle of Man to Safeguard Children' (2009) Ch 5

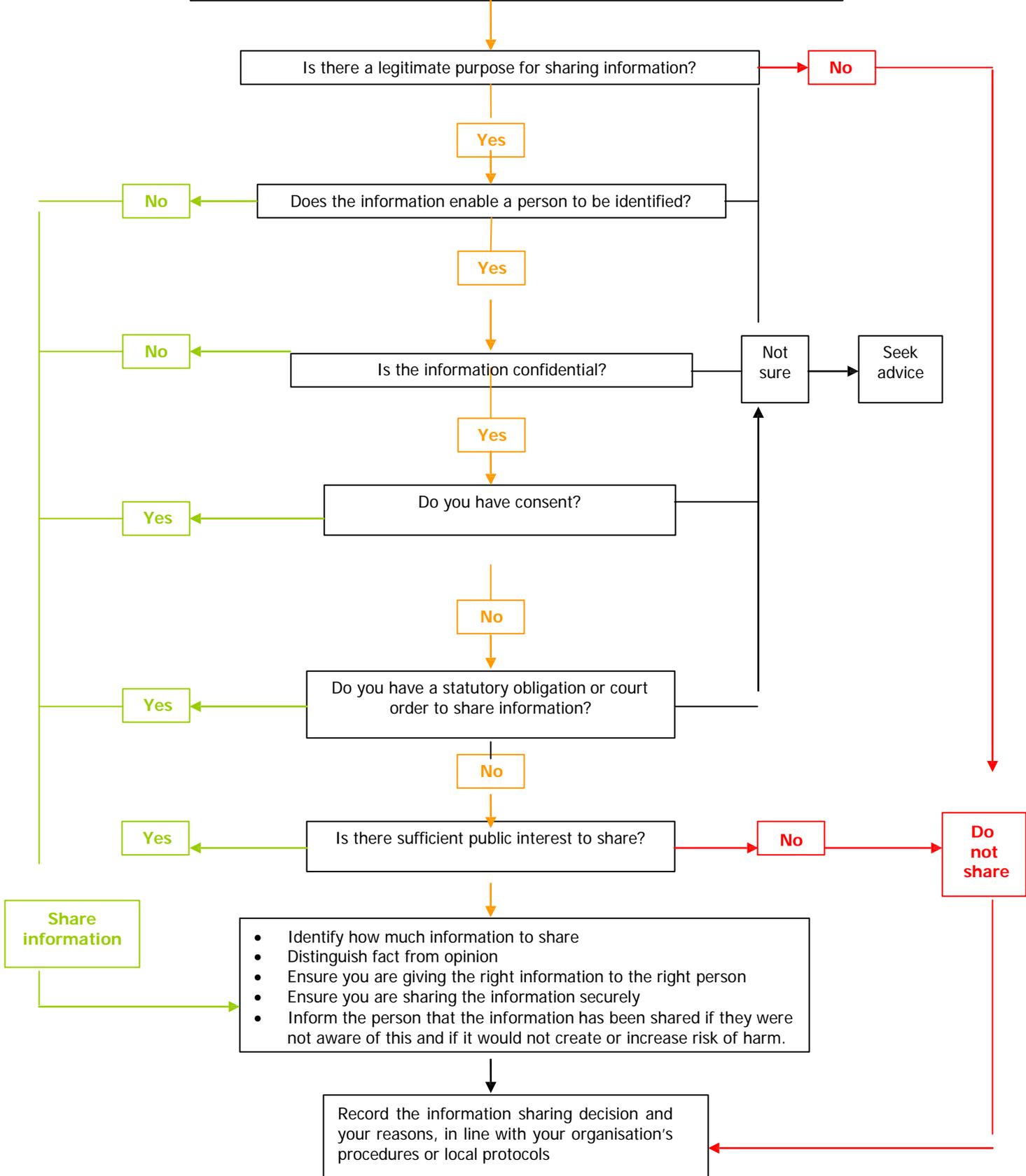
'What to Do if you are worried a child is being abused, or is at risk of abuse' Practitioner Guidance

Sharing personal data, including personal sensitive data about children, young people and their families.



- i Consent for the sharing of sensitive personal information must be explicit and the person must have the capacity to provide the consent. A young person over 16 is usually treated as having the capacity to consent. A young person under 16 may be treated as having the capacity to consent if he or she is of sufficient age and understanding to appreciate the implications of the decision.
- ii For example Section 46 of The Children and Young Persons Act 2001
- iii Activities carried out by statute will carry implied powers, eg. policing - they have an implied/common law power to protect members of the public and undertake functions which are in the public interest.
- iv What is the least amount of information that can be shared to achieve the desired outcomes?
- v Where an advocate or Attorney General's office requests information for legal proceedings or with a view to entering into legal proceedings. However, you should establish that the individual is establishing or exercising their legal rights before disclosure.
- vi Medical purposes include preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of the health service. The disclosure may be to a health care professional or another person who owes a similar duty of confidentiality.
- vii This condition would enable any person or body to disclose information about a child who appeared to be at risk of any type of abuse.
- viii Normally a life or death situation, which could include prevention of injury or damage to the health of an individual or a third party.
- ix If the disclosure is against the interests of the data subject (e.g. disclosure of information regarding previous behaviour of a person who may present a future risk to children) the Courts have taken the view that the recipient must have "a pressing need to know".

You are asked to or wish to share information



Seek advice from your manager, supervisor, child protection adviser or Caldicott Guardian if you are not sure what to do at any stage and ensure the outcome of the discussion is recorded.
 If there are concerns that a child may be at risk of significant harm or an adult may be at risk of serious harm, then follow the relevant child protection procedures without delay.

Question 1

Is there a clear legitimate purpose for sharing information?

- Why do you or the other person want the information?
- What is the outcome you are trying to achieve?
- Could the aims be achieved without sharing the information?

Golden Rule

Remember that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.

Other things to consider

- Do not assume that you need to share the whole case file
- Different agencies may have different processes for sharing information. You will need to be guided by your organisation's policies and procedures and, where applicable, your professional code.

For more details, see the Information Sharing: Guidance for managers and practitioners paragraphs 3.3-3.10.

Question 2 - Does the information enable a living person to be identified?

- If the information is about an identifiable living individual, or could enable a living person to be identified when considered with other information, it is personal information and is subject to data protection law. This is likely to be the case in the course of your work. You should be open about what information you might need to share, and why.
- However, it may not be appropriate to tell a person that information is being shared, or seek consent to this sharing. This is the case if informing them is likely to hamper the prevention or investigation of a serious crime, or put a child at risk of significant harm or an adult at risk of serious harm.

Golden Rule

Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.

Other things to consider:

- If the person was informed about how and with whom their personal information might be shared at the outset, it will usually not be necessary to inform them again as long as the use as described in the original notification is the same.

For more details, see the *Information Sharing: Guidance for practitioners and managers* paragraph 3.11-3.12.

Question 3 - Is the information confidential?

- Not all information is confidential.
- Confidential information is information of a private or sensitive nature that is not already lawfully in the public domain or readily available from another public source; and
- Has been provided in circumstances where the person giving the information could reasonably expect that it would not be shared with others.

Golden rule

Seek advice if you are in any doubt, without disclosing the identity of the person where possible.

For more details, see the Information Sharing: Guidance for practitioners and managers paragraphs 3.13 – 3.17.

If the information is not confidential you must now consider Question 6.

If the information is confidential you must now consider Question 4.

Question 4 - Do you have consent to share?

- You should seek consent where possible and respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement on the facts of the case, that lack of consent can be overridden in the public interest.
- You do not always need consent to share personal information. There will be some circumstances where you should not seek consent, for example, where doing so would:
 - Place a child at increased risk of significant harm; or
 - Place an adult at increased risk of serious harm; or
 - Prejudice the prevention, detection or prosecution of a serious crime; or
 - Lead to unjustified delay in making enquiries about allegations of significant harm or serious harm.

Golden rule

Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You need to base your judgement on the facts of the case.

Other things to consider:

- Generally, there should be 'no surprises'.
- Obtaining explicit consent is best practice. It can be expressed either verbally or in writing, although written consent is preferable since that reduces the scope for subsequent dispute.
- You will need to consider whose consent should be sought. Does the person have the capacity to understand and make their own decisions on this occasion? If not, is someone else authorised to act on their behalf?
- Consent must be informed, i.e. when people agree to information sharing, they must understand how much of their information needs to be shared, who will see it, why it is necessary to share the information, and any implications of sharing or not sharing.
- Consent can be withdrawn at any time.

For more details, see the Information sharing: Guidance for practitioners and managers paragraphs 3.18 – 3.38.

Question 5 - Is there sufficient public interest to share the information?

- Even where you do not have consent to share confidential information, you may lawfully share if this can be justified in the public interest. Where consent cannot be obtained or is refused, or where seeking it is unsafe or inappropriate (as explained at Question 4), the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. A public interest can arise in a wide range of circumstances.

For a fuller definition of public interest refer to the Glossary in Information Sharing: Guidance for practitioners and managers.

- Where you have a concern about a person, you should not regard refusal of consent as necessarily to mean that you cannot share confidential information.
- In making the decision you must weigh up what might happen if the information is shared against what might happen if it is not, and make a decision based on professional judgement.

Golden rule

Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.

Other things to consider:

- A competent adult has the right to make decisions which may put themselves at risk but which present no risk of significant harm to children or serious harm to other adults. In this case it may not be justifiable to share information without consent.

For more details, see the Information Sharing: Guidance for practitioners and managers paragraphs 3.39 – 3.48.

If you decide not to share information you must consider Question 7.

If you decide to share information you must consider Question 6.

Question 6 - Are you sharing information appropriately and securely?

- Only share what is necessary to achieve the purpose, distinguishing clearly between fact and opinion.
- Share only with the person or people who really need to know the information.
- Make sure the information is accurate and up-to-date.
- Understand the limits of any consent given and especially if the information has been provided by a third party.
- Check who will see the information and share the information in a secure way. For example: confirm the identity of the person you are talking to; ensure a conversation or phone call cannot be overheard; use secure email; ensure that the intended person will be on hand to receive a fax.
- Establish with the recipient whether they intend to pass it on to other people and ensure that they understand the limits of any consent that has been given.
- Inform the person to whom the information relates that you are sharing the information, if it is safe to do so, and if you have not already told them that their information may be shared.

Golden rule

Necessary, proportionate, relevant, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.

For more details, see the Information sharing: Guidance for practitioners and managers paragraphs 3.49 – 3.50.

Question 7 - Have you properly recorded your information sharing decision?

- Record your information sharing decision and your reasons, including what information you have shared and with whom, following your organisation's arrangements for recording information and in line with any local information sharing procedures in place.
- If, at any stage, you decide not to share information, you should record this decision and the reasons for it.

Golden rule

Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

For more details, see the Information Sharing: Guidance for practitioners and managers paragraphs 3.51 – 3.52.