

# Policy and Resources Committee

Date: **Monday 23 March 2015**

Time: **10am**

Venue: **Edwards Room, County Hall, Norwich**

## **SUPPLEMENTARY A g e n d a**

- 7 Sharing information effectively for the purposes of Public Protection in Norfolk** **PAGE A2**  
Report by the Interim Director of Children's Services

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Date Supplementary Agenda Published: 20 March 2015



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# Policy and Resources Committee

Item No 7

<b>Report title:</b>	<b>Sharing information effectively for the purposes of Public Protection in Norfolk</b>
<b>Date of meeting:</b>	<b>23 March 2015</b>
<b>Responsible Chief Officer:</b>	<b>Sheila Lock</b>
<b>Strategic impact</b>	
<p>Information sharing is key to the Public Sector's goal of delivering better, more efficient public services that are coordinated around the needs of the individual. It 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. When things go wrong in public service, the failure of agencies to effectively share the information held is often at the core of the failings. This has been the subject of a number of review processes and was a major feature of the Alexis Jay Report into Rotherham and the Winterbourne View concordat.</p>	

## Executive summary

This report sets out the arrangements for the council to effectively share information with its partner organisations. It proposes a shift in the organisational culture to one that operates in a high trust climate with our partners and that starts from a premise that if it is in the interests of public protection, information will be shared.

The report is an early response to a joint ministerial letter of 3<sup>rd</sup> March 2015, Appendix 1, and is responding to the challenge of transforming ways of working, culture and processes in order to protect the most vulnerable.

The Data Protection Act is the foundation of good information sharing practice. It places duties on organisations and individuals to process personal information fairly and lawfully. The Act is often used as a reason not to share information, however it is clear that where there are public protection concerns, information should be shared and the decision and rationale for sharing should be recorded. This report sets out the principles for information sharing to be adopted by the Authority, the process that will be followed in all cases, the escalation routes and the recording of key decision making.

**Recommendations: Members are asked to**

**Endorse and agree the policy framework to be adopted by Norfolk County Council for information sharing in the interests of public protection.**

## 1. Proposal (or options)

Information sharing is key to the Public Sector's goal of delivering, more efficient public services that are coordinated around the needs of the individual. It is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. The public protection element of our work with other agencies and partners is critical to public confidence, the wider public wants to be assured that agencies work together and share information to enable communities and individuals to be safe. Information sharing is a vital element in improving outcomes for all.

It is recognised that tensions exist. 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 also important that managers also support staff to share information effectively and that managers are not afraid to make the decision to share information quickly when the public protection test is met.

It is important to remember there can be significant consequences to not sharing information as there can be to sharing information. This is at the heart of the joint ministerial letter to Authorities on the 3<sup>rd</sup> March 2015, in the wake of the Louise Casey report into the events in Rotherham.

It is proposed that in Norfolk we reaffirm the Principles of information sharing set out in DOH guidance set out at Appendix 2. The general principle is that information will only be shared **with the consent** of the subject of the information. However, sharing confidential information **without consent** will normally be justified in the public interest in the circumstances shown below.

It is the circumstances in which public interest is met that is the basis for this report and which stems from the joint ministerial letter.

### **The issue:**

The sharing of information is fraught with difficulty, with competing legislation and tension between the rights of individuals and the wider society. Across the county there have been issues around the consistency of approach, the bureaucracy and process driven attitudes that prevail, the delay in processing issues in a timely way. The legislative framework set out in The Data Protection Act 1998, Section 115 of the Crime and Disorder Act 1998, Article 8 in the European Convention on Human Rights, along with the associated guidance contained in Working Together 2013, Information sharing Guidance DOH 2008, and in the Caldicott framework is complex and can be summarised in key extracts below.

### **Information Sharing: Guidance for practitioners and managers DoH 2008 P21**

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*“Even where you do not have consent to share confidential information, you may lawfully share it if this can be justified in the public interest. Seeking consent should be the first option. However, where consent cannot be obtained or is refused, or where seeking it is inappropriate or unsafe...., the question of whether there is a sufficient*

*public interest must be judged by the practitioner on the facts of each case. Therefore, where you have a concern about a person, you should not regard refusal of consent as necessarily precluding the sharing of confidential information.*

*A public interest can arise in a wide range of circumstances, for example, to protect children from significant harm, protect adults from serious harm, promote the welfare of children or prevent crime and disorder. There are also public interests, which in some circumstances may weigh against sharing, including the public interest in maintaining public confidence in the confidentiality of certain services.”*

### **Working Together 2013:**

*“... all organisations should have arrangements in place which set out clearly the processes and the principles for sharing information between each other, with other professionals and with the LSCB; and no professional should assume that someone else will pass on information which they think may be critical to keeping a child safe. If a professional has concerns about a child’s welfare and believes they are suffering, or likely to suffer, harm, then they should share the information with local authority children’s social care.*

*Information Sharing: Guidance for practitioners and managers (2008) supports frontline practitioners working in child or adult service who have to make decisions about sharing personal information on a case- by-case basis. The guidance can be used to supplement local guidance and encourage good practice in information sharing.”* **Where there is a clear risk of significant harm to a child, or serious harm to adults, the public interest test will almost certainly be satisfied.**

### **The Data Protection Act 1998 requires that:**

*Personal information is obtained and processed fairly and lawfully; only disclosed in appropriate circumstances; is accurate, relevant and not held longer than necessary; and is kept securely.*

*The relevant issues for social workers are usually around sharing information where consent has been withheld. There is a public interest defence if sharing information is for the purposes of safeguarding a child or vulnerable person.*

### **Section 115 of the Crime and Disorder Act establishes:**

*The power to disclose information is central to the Act's partnership approach. The Police have an important general power under common law to disclose information for the prevention, detection and reduction of crime. However, some other public bodies that collect information may not previously have had power to disclose it to the Police and others. This section puts beyond doubt the power of any organisation to disclose information to Police authorities, local authorities, Probation Service, Health Authorities, or to persons acting on their behalf, so long as such disclosure is necessary or expedient for the purposes of crime prevention. These bodies also have the power to use this information.*

## **Article 8 in the European Convention on Human Rights states that:**

Everyone has the right to respect for his/her private and family life, home and correspondence;

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

## **Caldicott Guardian and Caldicott Principles.:**

These are applicable to local authority children's services and Health Trusts and provide a framework for working within the Data Protection Act 1998 and promote appropriate information sharing.

Every local Health Service and Children and Young People's Directorate has its own Caldicott Guardian, to provide advice and guidance on appropriate information sharing and who can offer advice in complex cases

The key point in all of the legislative guidance is that while the protection of individual and personal data is important, so is the principal of data sharing for the purpose of protecting others. This is the reinforced element contained in the joint ministerial advice. It is clear that we need to do this appropriately and proportionately with appropriate advice but in an expeditious way that recognises the urgency by which some requests are made.

In preparing this paper there has been discussion with partner agencies on the NSCB, the Chair of the NSCB, with the police specifically and comment has been invited from other council Directorates.

A revised process map for sharing information is attached at Appendix 3 along with a set of principles for a joint agency protocol based on best practice which will be the subject of joint agency sign up discussions

## **2. Evidence**

Sharing information is critical to effective public protection and the ministerial guidance is clear. The sharing of information is central to integrated ways of working, these include working together on the ground in multi-agency locations to deliver services, alongside effectively risk assessing situations for individuals and communities. There are some good examples of this across the county, collaboration in integrated health and care teams and the work in the MASH are two examples. Critical to success though is leadership and clear governance that creates a can do culture. Setting out a framework is a key important step in championing the sharing of information and dealing robustly with staff who block, hinder or fail to share.

### 3. Financial Implications

There is no immediate costs associated with the implementation of these recommendations

### 4. Issues, risks and innovation

It is clear that there is no justification for failing to share information that will allow action to be taken to protect and safeguard vulnerable citizens. Failure to share brings significant risk – in recent ministerial correspondence, the cases in Rotherham highlighted the failings of the public sector in which information was not shared and many vulnerable children were placed at risk. The nature of this example brought with it significant issues for individuals but significant adverse media attention for public sector systems in which this was allowed to occur.

### 5. Background

Further information is available through the Alexis Jay report into CSE in Rotherham and the Louise Casey report into the identified failings.

#### Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, e.g. equality impact assessment, please get in touch with:

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## Appendix 1: Joint-ministerial letter



Department  
of Health



Home Office



Department for  
Communities and  
Local Government



Ministry  
of Justice



3 March 2015

To the Chief Executives of local authorities, Directors of Children's Services, Police and Crime Commissioners, Local Safeguarding Children's Boards, Health and Wellbeing Boards and GPs.

### **Our joint commitment to share information effectively for the protection of children**

Today we have issued the Government's response to the chronic failures to protect children from sexual exploitation in Rotherham, which were the subject of recent reports by Alexis Jay and Louise Casey. The findings of these reports show that organised child sexual exploitation had been happening on a massive scale, over many years. This complete dereliction of duty in safeguarding vulnerable children is shocking. But it is not unique to Rotherham. We must use the tragedies experienced here and elsewhere across the country as opportunities to transform our processes, our ways of working and our cultures to tackle this threat. A key factor in this is sharing information. This letter sets out how and when personal information should be shared.

We all know that decisions to share information, with whom and when, can have a profound impact on a child's life. These decisions enable action to disrupt and deter offenders early on, to protect children from risk and support them to recover from the harm they may have suffered. These decisions can even mean the difference between life and death.

There can be no justification for failing to share information that will allow action to be taken to protect children. We know that skilled frontline staff can be hesitant and uncertain as to when and how they should be sharing information with other agencies. There can be many reasons for that, including a blame culture, bureaucracy and a fear of being challenged. Professional staff need to be able to

make these crucial decisions on a day to day basis. They need clarity and simple guidelines about when and how personal information should be shared.

An overview of the existing legislation and guidance on information sharing is annexed to this letter, together with a summary of our package of cross-Government information sharing guidance which will be published by the end of March 2015. The golden thread throughout all of this is that the duty to safeguard children must be paramount. Let's be absolutely clear - a teenager at risk of child sexual exploitation is a child at risk of significant harm. Nothing should stand in the way of sharing information in relation to child sexual abuse, even where there are issues with consent. The updates we are making to the Working Together to Safeguard Children guidance will be clear on everyone's responsibility in this regard. We will also publish a myth busting guide to help professionals take informed decisions.

Of course, failures to share information are not just due to legal barriers. We, as Secretaries of State, are clear on the need for genuinely integrated multi-agency approaches to underpin information sharing. Local processes or models must ensure that the right input from the right agencies is reflected and considered as part of risk assessments at the right time and in the right way, with jointly agreed and executed actions.

Every agency should commit to this approach. Local areas should consider the following principles for multi-agency working<sup>1</sup>:

- **Integrated working (e.g. co-location)** – Close collaboration in multi-agency working is essential in developing 'real time' risk assessments to enhance decision making. A truly integrated approach helps to break down cultural barriers, leading to greater understanding and mutual respect among different agencies.
- **Joint risk assessments** – these ensure clear and sufficient information about particular cases and joint plans for individual interventions.
- **A victim focused approach** – the needs of the victim must be at the forefront of our approach not systems and processes.
- **Good leadership & clear governance** – strong leadership can often bind different organisations together to develop a shared culture.
- **Frequent review of operations** – to continue to drive improvement of service.

We know that there have been persistent and complex barriers to the effective sharing of information over the course of many years. We also appreciate that implementing the changes outlined in this letter will require sustained efforts at the local level. But it can and must be achieved. As leaders, you are responsible for developing a culture where the interests of the child are put first through championing the appropriate sharing of information and dealing robustly with staff who block, hinder or fail to share.

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<sup>1</sup> Further detail on best practice arrangements can be found in the Multi Agency Working and Information Sharing Project Final Report, July 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300000/MASH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300000/MASH.pdf)

We understand that the Information Commissioner is today welcoming our initiative. This is a joint commitment. If there is anything more we can do to support you in achieving the goals set out in this letter please do not hesitate to tell us.

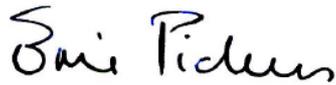
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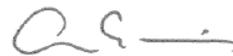
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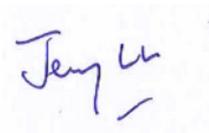
**NICKY MORGAN**



**ERIC PICKLES**



**CHRIS GRAYLING**



**JEREMY HUNT**

## ANNEX

### A summary of existing legislation and guidance on information sharing

- The Data Protection Act is the foundation of good information sharing practice. It places duties on organisations and individuals to process personal information fairly and lawfully. The Act is not a barrier to information sharing where a child is at risk.
- The seven Caldicott principles<sup>2</sup> build on this, setting out the approach to the handling of information to protect patient confidentiality. In order to provide effective care for children, information often needs to be shared beyond the normal boundaries of health and social care services. The seventh Caldicott principle makes clear that the duty to share information can be as important as the duty to protect patient confidentiality.
- The Information Commissioner's Office Data Sharing Code of Practice explains how the Data Protection Act 1998 (DPA) applies to the sharing of personal data. It provides helpful checklists for data sharing and advice on privacy impact assessments and data sharing agreements.
- In addition, we are streamlining and simplifying our approach to information sharing. By the end of March 2015, we will publish a comprehensive package of information sharing guidance. The package will include:
  - Her Majesty's Government '*Working Together to Safeguard Children*' statutory guidance which spells out the legislative requirements and expectations on individual services to safeguard and promote the welfare of children; and provides a clear framework for Local Safeguarding Children Boards (LSCBs) to monitor the effectiveness of local services.
  - *Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers* specifically for all frontline practitioners and senior managers working in child and/or family services who have to make decisions about sharing personal information on a case by case basis. This simplifies current legislation and guidance into six overarching principles, and dispels common information sharing myths.

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<sup>2</sup> The term Caldicott refers to a review commissioned by the Chief Medical Officer in 1997 on the sharing of patient information in respect of confidentiality. The subsequent Caldicott report recommended key principles for effective sharing and access to patient information.

## Appendix 2: Principles of information sharing and guidance for staff

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, without disclosing the identity of the person where possible.
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 judgment, that lack of consent can be overridden in the public interest. You will need to base your judgment 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.
6. Necessary, proportionate, relevant, accurate, timely and secure. Ensure the information that you share is necessary for the purpose for which you are sharing it, is shared only with 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 reason 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. 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.

### **Appendix 3: Norfolk Joint Agency Information Sharing Protocol (draft)**

It is proposed to develop a joint agency protocol is to provide guidance on service user information sharing and confidentiality issues. The aim is to send out a consistent message across the local public service organisations on the best practice standards of information sharing, derived from statutory, mandatory and professional codes of practice and expected from everybody working in those services, including public and private contracted partners and volunteer agencies.

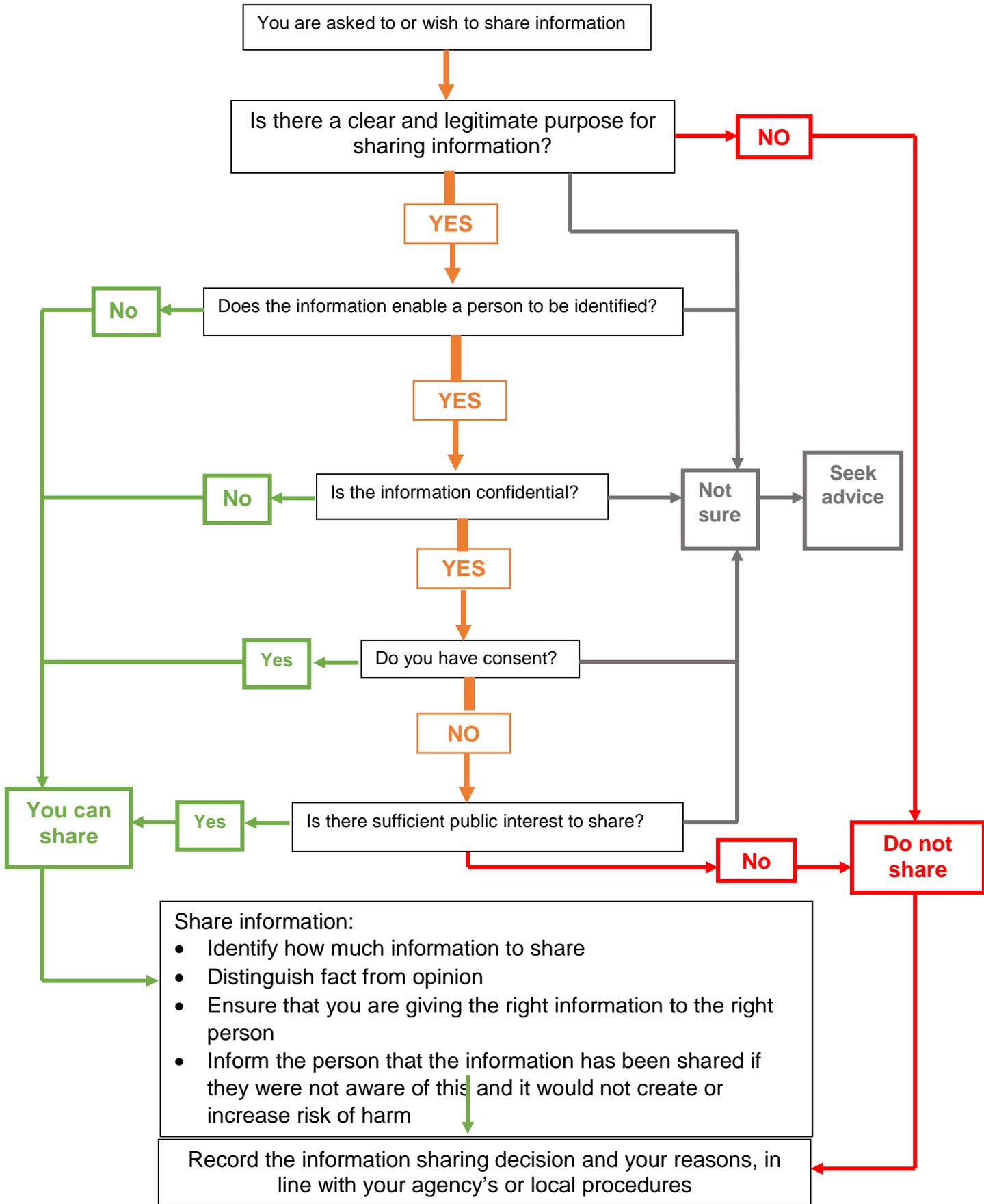
It also takes into account best practice arising from the recent joint ministerial letter. There needs to be in place a Good Practice Model for the Disclosure of information in cases of alleged child abuse, Adult Safeguarding and linked criminal and care directions hearings. This needs to build on the work that has been completed in Information Management and the working arrangements with the Police but with a much simpler and expedited process.

The aims and objectives of this protocol are to set out a Framework in which information is shared:

- To provide early notification to the Local Authority and to the Family Court that a criminal investigation has been commenced;
- To provide timely early notification to the Local Authority and to the Family Court of the details and timescale of criminal prosecution;
- To facilitate timely and consistent disclosure of information and documents from the police, and the CPS, into the Family Justice System;
- To provide notification to the police and the CPS of an application to the Family Court for an order for the disclosure of prosecution material into the Family Justice System;
- Subject to the Family Procedure Rules 2010 (and relevant Practice Directions<sup>3</sup>) the Criminal Procedure Rules 2013 and the common law duty of confidentiality, to facilitate timely and consistent disclosure of information and documents from the Family Justice System to the police and/or the CPS;
- To provide a timely expeditious process for the Local Authority to respond to a request from the police for material held by the Local Authority which would assist a criminal investigation;
- To provide for timely consultation between the CPS and the Local Authority where Local Authority material satisfies the test in Criminal Procedure and Investigations Act 1996 for disclosure to the defence;
- To provide a streamlined and standard process for applications by the police and/or the CPS for the permission of the Family Court for disclosure of material relating to Family Court Proceedings;
- To specify a procedure for linked directions hearings in concurrent criminal and care proceedings.

This work is already the subject of dialogue with key partners and may be available in draft form at Committee.

# Process map for sharing information



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 procedures without delay. Seek advice if you are not sure what to do at any stage and ensure the outcome of the discussion is recorded.