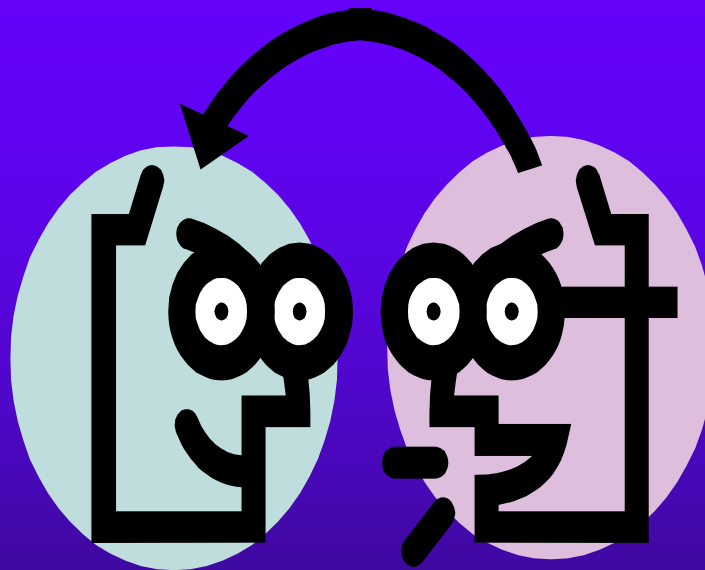


Information Sharing – Is it that Hard???



Paul Couldrey
Confidentiality manager
Dudley NHS Trusts



Legal Considerations

- The law that governs the Actions of the Public Bodies
- The Human Rights Act 1998 and European Convention on Human Rights
- Common Law duty of confidence
- The Data Protection Act 1998
- The Freedom of Information Act 2000 – policies etc
- European Union Law



Legal power to carry out function

Establish whether your organisation has the power to carry out the function to which the data sharing relates

- Ultra Vires – to act in excess of powers
- Local Government Act 1972 S. 111 (1)
- National Health Service Act 1977
- Education Act 1996 s.520 (School Nurses)
- Education Act 2002 s.175
- Childrens Act 1989
- Childrens Act 2004 s.10,s.11 & s.12 (databases)
- Crime and Disorder Act 1998 s.115

Human Rights Act

Article 8.1

“Everyone has the right to respect for his private and family life, his home and his correspondence”

Interference may be justified if can show that this is

- In accordance with the law
- In the pursuit of a legitimate aim
- Necessary in a democratic society

M.S. v Sweden, (Application number 00020837/92 dated 27 August 1997)



Common Law Duty of Confidence

- The information in question has the necessary 'quality of confidence'. This means that the information must not be in the public domain or readily available from other sources and that it should have a degree of sensitivity.
- The information must be imparted in the necessary circumstances which give rise to a duty of confidence. The obligation is primarily based on the relationship implied from the circumstances, but it may also arise from a special relationship between parties, such as the relationships between doctors and patients;
- There was an unauthorized use of that material. From the authorities it appears that it is not always necessary to prove damage or detriment nor is it necessary to prove dishonesty. These elements were identified in *Coco v A.N. Clark Engineers Ltd* [1969] R.P.C. 41.



PUBLIC INTEREST



Data Protection Act 1998

1st Principle – data should be processed lawfully and Fairly

If the general requirements that the processing be 'fair' and 'lawful' are met, it is a particular requirement that (a) at least one of the conditions of Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

- legal obligation to which the data controller is subject
- administration of justice
- exercise of any function conferred on any person by or under any enactment
- exercise of any other functions of a public nature exercised in the public interest
- legitimate interests pursued by the data controller
- Consent may also form the basis for legitimate data sharing. However, in the context of public sector data sharing that is *intra vires* it is likely that the processing involved will meet at least one of the conditions in Schedule 2 or Schedule 3 mentioned above and, where this is the case, consent is not a necessary precondition.

Data Protection Act 1998

2nd Principle

personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes

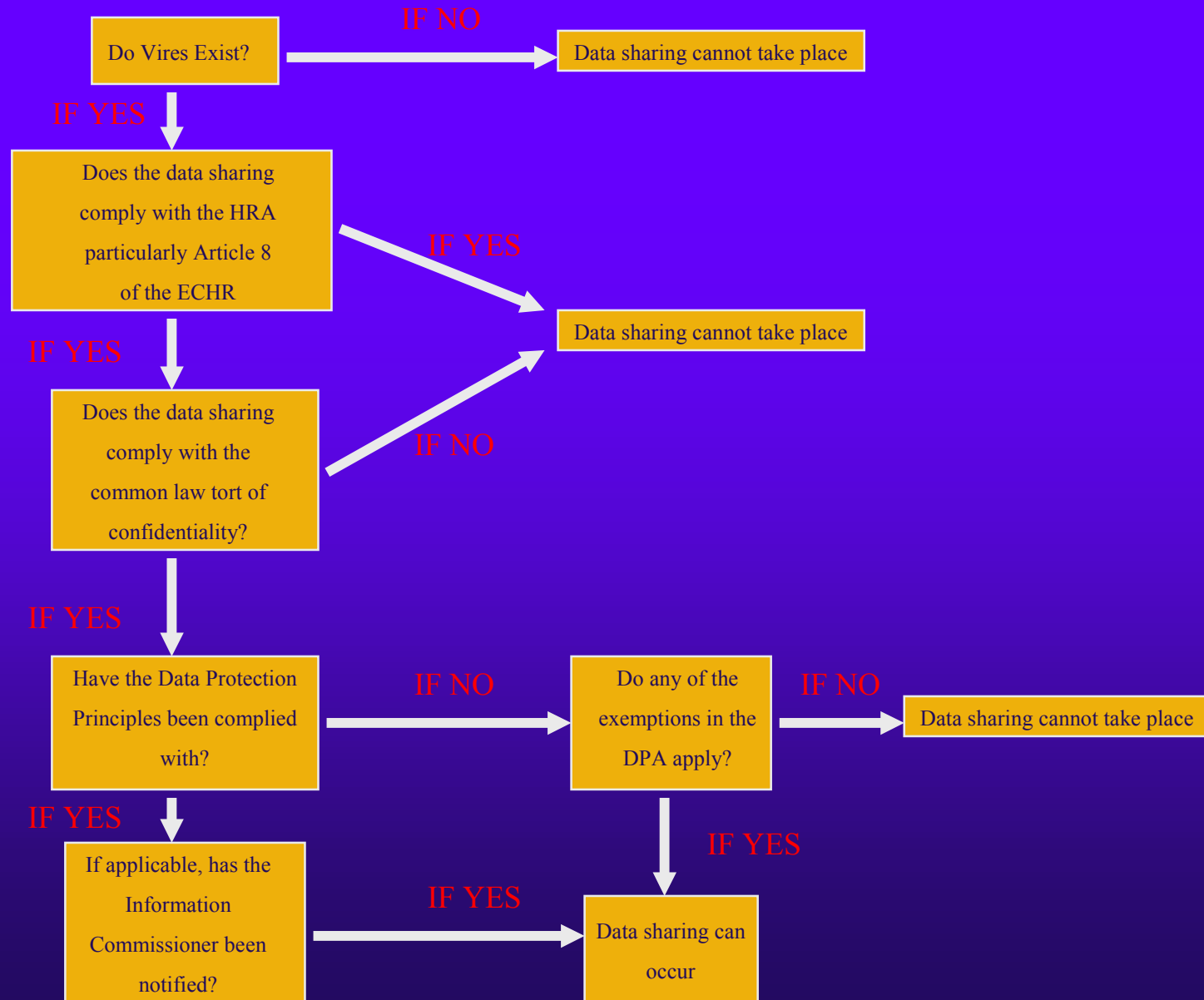




Data Protection Act 1998

Non- Disclosure Principles Exemptions

- S.28 National Security
- S.29 Crime & Taxation
- S.33 Research
- S.34 Information available to the public by or under an enactment
- **S.35 Disclosures required by law**



Help is out there !

Good Practice – Solihull M.B.C

IG Toolkit

DCA

ICO

NAIM

Regional Groups

West Midlands Code of Practice

