



Association of **Lawyers for Children**

Promoting justice for children and young people

Response of the Association of Lawyers for Children

To the Department for Education's Consultation on draft Statutory Guidance for the Information Sharing Duty

14 July 2026

Introduction

1. The Association of Lawyers for Children ("ALC") is a national association of lawyers working in the field of children law. It has over 1,300 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years' experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:
 - a. Lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice.
 - b. Lobbying against the diminution of such mechanisms.
 - c. Campaigning and advocating on against any form of discrimination which may affect children within the family justice system
 - d. Providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children.

- e. Providing a forum for the exchange of information and views on the development of the law in relation to children and young people.
 - f. Being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
 - g. Funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.
2. The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes the invitation to provide its views in respect of this consultation.
 3. Given its role and area of expertise, the ALC confines itself to making some observations about the wider context and answering Questions 3 to 8 of the consultation.

The Wider Context

4. The ALC welcomes the introduction of section 16LA of the Children Act 2004 and the proposal for Statutory Guidance to assist professionals in understanding their duties and obligations in relation to information sharing in matters relating to children's welfare.
5. As long ago as the Report of the Inquiry into Child Abuse in Cleveland 1987 (Cm 412), Lady Justice Butler-Sloss criticised '*the problems over establishing common patterns of joint working*' and '*strongly*' recommended '*the development of inter-agency co-operation*' (pp.73 and 248). This has been a common theme in subsequent inquiries into the deaths of children and reviews of social work practice ever since.
6. For example, the report of Lord Laming at the conclusion of the Victoria Climbié Inquiry (2003, Cm 5730) recommended that '*improvements to the way information is exchanged within and between agencies are imperative if children are to be adequately safeguarded*' and that the Government issue guidance in this regard (at [1.43]). At [17.115], Lord Laming further explained that:

'Throughout this Inquiry it was said repeatedly that when there is professional concern about the welfare of a child, the free exchange of information is inhibited by the Data Protection Act 1998, the Human Rights Act 1998, and common law rules on confidentiality. The evidence put to the Inquiry was that unless a child is deemed to be in need of protection, information cannot be shared between agencies without staff running the risk that their actions are unlawful. This either deters information sharing, or artificially elevates concern about the need for protection – each of which is not compatible with serving well the needs of children and families. Clearly these matters are complicated. There must be a balance struck between the protection of a child and the right to privacy.'

7. In 2011, the Munroe Review of Child Protection (Cm 8062) recorded that:

'A theme in Serious Case Reviews (SCRs) is that a lack of information sharing between the many agencies involved in supporting some children and families often contributes to inaccurate risk assessments...

...However, effective communication is not just a matter of moving a datum from one computer to another; it is 'the process by which information is transferred from one person to another and is understood by them'. A consistent finding from SCRs is that there is often a failure in the human performance, rather than an absence of the required framework, process, or procedures for sharing information...

...There is concern and confusion about what should and should not be done when it comes to sharing this sensitive information.'

8. Similar sentiments have been expressed in the various Inquiries and Reviews. Most recently, in Baroness Casey's National Audit on Group-Based Child Sexual Exploitation and Abuse (June 2025), she explained, at p.19, that:

'This audit is the latest in a long line of reports, reviews, recommendations and strategies into child sexual exploitation. All of which say the same things about system failures on information sharing, training and other processes...'

9. At p.42, Baroness Casey expanded upon this, as follows:

'Time after time, failures are identified in the ways services follow established processes, gather, use and share intelligence and data, or ensure staff have the awareness, knowledge and skills necessary for the job. Repeated recommendations are made for improvements across these areas. In response, new bodies are set up to provide support or oversee improvements, or to collect and analyse new data. Guidance is updated and local processes reviewed and strengthened. They seem to fade over time as new priorities emerge, improvements trickle through rather than wash over, but information is still not sufficiently shared on vulnerable children.'

10. At p.152, within her Recommendation 4, Baroness Casey stated that:

'...we have to ensure much more effective sharing of information regarding children in all child abuse cases. Sharing of information to prevent harm to children should trump all data protection issues.'

11. These sentiments are reflected in observations by senior judiciary within the Family Justice System. For example, in ***A County Council v A Mother, A Father, X, Y and Z*** [2005] 2 FLR 129, Ryder J explained, at [150] – [151], that:

'Time and again in many different contexts, the family courts and the reports of inquiries and reviews arising out of tragedies (both of over-zealous action and negligent inaction) have emphasised that child protection is but an element of a more sophisticated analysis of welfare that also includes the needs of the child throughout childhood into adulthood. That sophisticated analysis should rarely if ever be in the hands of one professional or one professional group...

...Social services and education authorities have statutory duties but so do the police, the Children and Family Court Advisory and Support Service (CAFCASS), health service bodies and so on.'

12. Similarly, in ***S v SP and CAFCASS [2016] EWHC 3673 (Fam)***, Baker J (as he then was) dismissed an application to commit a CAFCASS children's guardian in relation to the sharing of sensitive information with the police in the context of private law proceedings. In doing so, Baker J stated that:

'A series of public inquiries in this country have identified the need for agencies to work together in order to protect children. That is the context in which the Family Procedure Rules have to be interpreted and applied. Too narrow an interpretation of the rules would, in my view, jeopardise the welfare of children. It is axiomatic that the administration of justice and the protection of children requires disclosure of information between professionals to ensure that children are protected...'

13. It is in this context that the ALC welcomes the new statutory duty and, in particular, the proposed statutory guidance to assist practitioners to understand their ability, and obligation, to share relevant information without undue inhibition.

Question 3: To what extent do you agree/disagree that the guidance will support earlier information sharing, where concerns relate to emerging need or prevention, rather than harm?

14. The ALC agrees that, provided it is accompanied by proper training for all those for whom it is intended, the draft statutory guidance should support earlier information sharing where appropriate.
15. In particular, the ALC endorses the emphasis in the draft guidance on the duty on relevant individuals to share information not only where to do so would potentially safeguard a child from harm, but also where relevant for the purposes of *'early help, prevention and unmet need'* and in order to *'assess risk, make a decision, provide support or take action...'* (paragraphs 2 and 5).
16. The ALC suggests information sharing for the purpose of safeguarding children from harm is more straightforward. However, understanding on the ground when the duty to share information arises for the purpose of emerging need or prevention is more difficult. The guidance may benefit from a more express explanation of what *'safeguarding or promoting the welfare of the child'* means in s.16LA(1)(b) of the Children Act 2004.
17. The definition of *'safeguarding or promoting the welfare of the child'* has evolved within each version of ***Working Together to Safeguard Children***. In the 2026 version, it is said to mean:
- a. Providing help and support to meet the needs of children as soon as problems emerge.
 - b. Protecting children from maltreatment, whether that is within or outside the home, including online.

- c. Preventing impairment of children's mental and physical health or development
 - d. Ensuring that children grow up in circumstances consistent with the provision of safe and effective care
 - e. Promoting the upbringing of children with their birth parents, or otherwise their family network through a kinship care arrangement, whenever possible and where this is in the best interests of the children
 - f. Taking action to enable all children to have the best outcomes in line with the outcomes set out in the Children's Social Care National Framework
 - i. Outcome 1: Children, young people and families stay together and get the help they need
 - ii. Outcome 2: Children and young people are safe in and outside their homes
 - iii. Outcome 3: Children and young people are supported by their family network
 - iv. Outcome 4: Children in care and care leavers have stable, loving homes
18. If the intention of the guidance is to assist practitioners to understand that information sharing is permissible, and indeed required, not only to protect a child from harm which currently exists, but also to identify and prevent future harm and to identify support which may be appropriate, it may assist to spell out the breadth of the concept of promoting a child's welfare. This may be particularly helpful if the intention is to make clear that there is no link between the threshold of '*safeguarding or promoting a child's welfare*' and any statutory threshold for local authority intervention within a family.

Question 4: To what extent do you agree/disagree that the guidance effectively sets out the updated legal framework for information sharing to safeguard and promote the welfare of children?

- 19. The ALC agrees that, subject to the observations at paragraphs 16 to 18 above and the two matters raised below, that the guidance effectively sets out the updated legal framework for information sharing as set out in s.16LA of the Children Act 2004.
- 20. The ALC endorses the three tests articulated at paragraph 13 as an effective summary of the approach required under s.16LA of the Children Act 2004 and as a useful tool for practitioners required to make decisions on the ground.
- 21. However, the ALC makes two observations, both of which relate to ensuring that children's rights are respected. First, and as set out at paragraphs 37 to 46 below, the guidance could provide greater clarity about the interplay between this duty and Data Protection legislation.

22. Second, nowhere in the guidance is there a reference to the United Nations Convention on the Rights of the Child (“UNCRC”). While not incorporated into English law, it contains binding obligations in international law and *‘the spirit, if not the precise language, has also been translated into our national law’ (ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166, at [23])*. This is important in two particular respects.
23. Article 12 of the UNCRC guarantees the right of a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
24. The guidance includes very little reference to obtaining the views of a young person about the sharing of information about them (beyond paragraph 27). While the guidance properly recognises, both as a matter of common sense and of Data Protection law, that the young person’s consent cannot be a pre-requisite for information sharing, this does not obviate the importance, where appropriate, of engaging the young person in decision making about the sharing of information about them and obtaining their views about it.
25. Moreover, while the guidance recognises that *‘effective engagement with children and families remains critically important’* and that *‘transparency and honesty is important’*, it does not recognise that involving a young person in the decision-making about information sharing is, in and of itself, a means of promoting their welfare. For example, at paragraph 10, there is no reference to the views of a young person when considering any possible “detriment”. The ALC recommends that the importance of obtaining and considering a young person’s views (but not as a barrier to urgent information-sharing if necessary) should be emphasised in the final version of the guidance.
26. Article 16 of the UNCRC guarantees the right of a child not to be subjected to arbitrary or unlawful interference with his or her privacy.
27. While the ALC recognises that the guidance makes reference to Article 8 of the European Convention on Human Rights (“ECHR”), which guarantees a child’s (and parent’s) right to respect of their private and family life, it does so in only a perfunctory manner (at paragraphs 42-43). The ALC acknowledges that it is likely that a proper application of s.16LA of the Children Act 2004, particularly by reference to the three tests set out at paragraph 13, is likely to be compatible with Article 8 ECHR.
28. However, the ALC also observes that it is well-established that the provisions of the Children Act 2004 and Working Together to Safeguard Children do not absolve a public body from considering necessity and proportionality when it comes to information sharing (***R (AB) v The Chief Constable of Hampshire Constabulary [2015] EWHC 1238 (Admin)***), at [75], [80], and [84]-[85]). While the Guidance makes reference to necessity and proportionality, it provides little assistance to practitioners in understanding how this would apply in practice.
29. The ALC acknowledges and endorses the need to remove myths about confidentiality preventing information-sharing where appropriate. However, the guidance makes very little reference to a child’s right to confidentiality which, as complex as it makes the question of information sharing, is an important one.

Question 5: To what extent do you agree/disagree that the guidance makes clear when and how to consider detriment, and that this should only apply in limited and exceptional circumstances?

30. The ALC agrees that that the guidance provides a helpful outline as to when and how to consider detriment.
31. However, following on from the observations at paragraphs 28 to 29 above, the ALC queries whether the circumstances which may constitute a detriment (at paragraph 10) are too narrowly drawn when compared with the way in which this “test” is framed at paragraph 13: *‘...could sharing be of greater detriment to the child than not sharing? Are there any mitigating steps that can be taken to reduce risk?’*.
32. In particular, the decision as to whether to share information is likely to require a balance between the “relevance” of information sharing and the strength of the detriment. There may be circumstances, for example where the “relevance” is not to prevent immediate harm, but to identify emerging need or to identify support, where the consequences may not amount to an *‘immediate risk of harm’* (paragraph 10), but may nevertheless constitute a real detriment to the child which outweighs the benefit of disclosure.
33. By way of example, a young person who has disclosed to a professional their sexual orientation, gender identity, a pregnancy, or some other private information in confidence, may require support and have an emerging need. The sharing of information may arguably be relevant for the purposes of promoting their welfare. However, the young person may also have a belief, based on their own wish for confidence or their knowledge of their own family, that they wish that information to be private and/or that its onward disclosure to a parent (which may occur indirectly through onward multi-agency sharing) would result in rejection, expulsion from the family home, or some other detrimental consequence short of immediate harm.
34. The guidance does not currently assist a professional to understand how to undertake the balance in a more nuanced case such as this, and gives the impression that detriment may only outweigh relevance where there is an immediate risk of harm. These are nuanced and complex decisions which are highly fact specific. However, the ALC suggests that it may be helpful to: (a) adopt a more nuanced approach to what constitutes detriment; and, (b) to provide some more reasoned case studies of situations which might arise.

Question 6: To what extent do you agree/disagree that the guidance, supplemented by examples, makes clear what kinds of information fall under the information sharing duty, including information held about other individuals connected to a child?

35. The ALC agrees that the guidance makes clear the kind of information falling under the information sharing duty and that this includes information about other individuals connected to the child. This is obviously correct and reflects the fact that a caregiver's or connected adult's own vulnerabilities, and other children's or young people's behaviour, can be directly relevant to a child's welfare. The ALC welcomes this emphasis in the guidance.

36. However, as set out elsewhere in this consultation response, the ALC suggests that the guidance could be clearer, and provide further case studies illustrating, the balance which may need to be struck when determining what information falls under the information sharing duty. Those aspects of this response are not repeated here.

Question 7: To what extent do you agree/disagree that the guidance, supplemented by examples, makes clear the role of data protection legislation, including alternative lawful bases to consent?

37. The ALC agrees that, in one respect, the guidance makes clear the role of data protection legislation when it comes to information sharing. The guidance is clear and emphatic about consent being an inappropriate basis under data protection legislation for the sharing of information for the purposes of safeguarding or promoting the welfare of children. The ALC welcomes this as a correct statement of the law and an important reminder that consent is not a pre-requisite to information sharing.
38. However, the ALC suggests that the guidance could be clearer in relation to other aspects of data protection legislation. In this respect, the ALC commends the Information Commissioner's guidance entitled *A 10-Step Guide to Sharing Information to Safeguard Children*¹. While this is referred to in passing within the guidance, and a link is provided, its easily accessible contents are not replicated.
39. The Information Commissioner's guidance states that '*there is no single definition of safeguarding*', but that '*sharing information to safeguard children*' includes:
- a. Preventing harm;
 - b. Promoting the welfare of a child; and,
 - c. Identifying risk in order to prevent harm (especially helpful where the risk may not be obvious to a single person or organisation).
40. The Information Commissioner's guidance also provides a helpful description of the balancing exercise which needs to be undertaken (from a data protection perspective). It states that:

'You are working with a child and have identified concerns about their welfare. You are going to share this information with an organisation who can help, and you want to know how much to share.'

- *You may be able to share a minimal amount of information to achieve your purpose, such as accessing direct support for a service to benefit the child. In this scenario, it's appropriate only to share this minimal information.*

¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/a-10-step-guide-to-sharing-information-to-safeguard-children/>

- *However, there will be times where multiple organisations are involved in an intervention, or where there are concerns about serious harm. In these cases, it may be necessary to share information more widely, or to share more information on a child's circumstances.*

It is not always clear how the details of a child's history or circumstances are relevant to the concerns you've identified. But you will be sharing proportionately if you can link it back to a compelling reason to share. In these circumstances, that compelling reason is safeguarding the child.

Documenting this link will not only help you make your decision, but it helps you comply with the law.'

41. The Information Commissioner's Guidance continues, advising as follows in relation to decision-making:

'For one-off information sharing, make a decision on what is needed to safeguard a child based on the circumstances at the time, bearing in mind what is fair and proportionate. Planning ahead within your organisation will make the process clear to everyone. However, in some instances you may decide, or be asked, to share information in one-off situations that are not covered by any routine arrangement or agreement. You may still share that information, assessing the risks at the time. We recommend that you make plans to cover such situations.

Sometimes you may have to decide quickly about sharing information in conditions of real urgency, or even in an emergency. In these situations, don't be put off from sharing information; assess the risk and do what is necessary and proportionate.'

42. It is acknowledged that this latter paragraph is reflected on page 21 of the draft guidance.
43. The themes of assessing risk and taking a proportionate approach run throughout the Information Commissioner's Guidance. For example, elsewhere it states that:

'When you are making a decision about sharing information about a child, it is very important to assess the risks.'

'Some situations might be urgent, but not an emergency. Take a proportionate approach in the circumstances.'

44. Finally, the Information Commissioner's guidance emphasises the latitude that the Information Commissioner will give to any complaints about information-sharing in the context of child protection:

'Also, don't worry about receiving a fine or other penalty, when you share information in good faith to help identify and safeguard a child you believe is at risk of harm. You won't get into trouble with us. It will never breach UK data protection law to share all the information you need to with an appropriate person or authority in order to safeguard a child.'

45. The ALC suggests that a more accessible explanation of the balance which must be undertaken from a data protection perspective may be of assistance to practitioners.
46. Finally, the ALC notes that Chapter 3 is framed almost entirely around the discloser's obligations. The guidance would benefit from a corresponding, equally clear statement of the recipient's obligations once information has been received, including the principles of purpose limitation, data minimisation and storage limitation principles under data protection legislation.

Question 8: To what extent do you agree/disagree that the guidance makes clear that the common law duty of confidentiality does not apply when sharing information in compliance with the information sharing duty?

47. The ALC agrees that the guidance is clear (as too is s.16LA(7) of the Children Act 2004) that disclosure of information under the duty does not breach any obligation of confidence owed by the person making the disclosure.
48. This is distinct from issues of privacy and a young person's autonomy which have been addressed above and are not repeated here.