

20 May 2016

Clerk to Panel on Welfare Services  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
[By Email: mchiu@legco.gov.hk]

Dear Ms Chiu,

**Re: Proposal for Special Meeting on 28 May 2016 - Discussions on mechanism for handling abuse cases relating to children from high risk families and follow-up to the Child Fatality Review Report**

We are a group of lawyers in private practice who regularly advise child-welfare professionals and non-government organizations on child protection. We often see cases of drug involvement, parental neglect, sexual and physical abuse directed at children, and exposure to domestic violence in the home.

We wish to express our deep sadness about the case of Yeung Chi Wai. However, in our experience this case is not the first of its kind: it is emblematic of a failing system of child protection in dire need of reform.

In many ways Yeung Chi-wai's case is, sadly, not unusual: no one was responsible to conduct a systematic assessment and welfare plan; no one was responsible to take steps to protect him; and there were not enough resources available to provide him with safe residential care.

In these submissions, we cannot detail every comment that we might wish to make about the various defects that are encumbering child protection. Instead, we will highlight the key problems that demonstrate the need for root and branch reform. In particular, we would like to highlight the following themes (1) delay and an absence of statutory timelines; (2) inadequate resources, training and support; (3) lack of accountability for decision making (on the part of parents and professionals); and (4) a lack of judicial oversight.

We have seen children fall through the cracks in the system time and again:

1. Investigations are not conducted despite referrals being made;
2. There is a significant problem of delay throughout the system at all stages;
3. Child welfare plans are made with no timelines and no oversight;
4. Many children in residential care have 'family reunion' plans, even when there are no steps for how that is supposed to happen – and they sometimes spend their entire childhood in residential care;
5. Births are not registered within the statutory time frame (even where the Births & Deaths Registry is informed);

6. MDCCs are not held in many cases that plainly require them;
7. Where MDCCs are held, often police and other relevant parties do not attend, and it is not clear who has responsibility to follow up;
8. Children are left in unsafe situations because there is no space in the residential care;
9. Protective steps are not taken when a parent refuses to consent to a welfare plan;
10. Legal advice is not sought, leading to misinterpretation and inaction by frontline workers;
11. Social workers are not sufficiently trained with an understanding of the law, and the procedural avenues to move cases forward;
12. Social workers are regularly rotated, leading to significant failures and further delays, but also leaving children feeling insecure in their relationships with their assigned social worker;
13. There is insufficient training in how to conduct MDCCs and child welfare assessments;
14. Dedicated and capable social workers are overburdened with heavy caseloads that make it impossible for them to devote sufficient time and effort to the children in their care;
15. Parents are not provided with the social resources (such as housing, training, jobs, daycare, etc.) needed to assist them to care for their children.

**It is elementary that child protection requires: investigation, assessment, planning, and oversight. Under the current laws, these steps are no one's responsibility.**

Although the recent version of the Procedural Guide (December 2015) marks a significant improvement – it remains unclear who is responsible to conduct an investigation or an assessment, and there is no provision for oversight or accountability.

In any event, the Guide itself will never be enough without new laws, proper training, and sufficient resources. Currently:

- a. No one has a legal responsibility to investigate and assess children at risk;
- b. Systematic child welfare assessments based on the “Assessment Framework” Model are not made as a matter of routine;
- c. No one has a legal responsibility to take steps to protect children; and
- d. There is no independent review or court oversight of welfare plans.

Hong Kong's principal child protection laws are based on outdated UK laws (from the 1950s), and have not been substantially reformed since their promulgation.

More than 27 years ago, the UK Parliament engaged in root and branch reform following comprehensive review of their child protection regime. Our own Law Reform Commission in 2005 suggested that we follow suit. Regard should be had to Parts III, IV and V of the UK Children Act 1989 (and subsequent amendments) and the experience of the UK in reforming its child protection regime.

SWD should have the legal *responsibility* to investigate all referrals, and perform child welfare assessments of children in need. Such assessments should be regularly updated, and subject to court oversight within a fixed time period if a child is taken into residential care. Finally, there should be established an independent body to ensure ongoing oversight of the system and the implementation of children's rights under the Convention on the Rights of the Child.

Dated 20 May 2016

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