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PathFinders Limited

Written Submission

to

The Hong Kong SAR’s Legislative Council’s Subcommittee on Children’s Rights

In advance of a meeting on Tuesday 17 January 2017

on

Multi-Disciplinary Case Conference (MDCC) review and permanency planning

Submitted on 16 January 2017

Introduction:

PathFinders is a Hong Kong based and registered charity that assists pregnant, migrant workers, mainly foreign domestic workers (FDWs), and their Hong Kong-born children. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated that some will reproduce. The focus and purpose of PathFinders' submission today is to give a voice to the babies and children born in Hong Kong to these women.

Since its inception in 2007, PathFinders helped 1,400 newborns and toddlers up to 2 years' age of whom over 140 were in such a vulnerable, abandoned and/or otherwise isolated predicament that they would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking. There is no other NGO serving these children and PathFinders receives no government funding.

It will be recalled that in 2013, five-year old Yeung Chi-wai died tragically in the care of his parents, likely from ingestion of the drug methamphetamine¹. This occurred despite the recommendation of the Multi-Disciplinary Case Conference (**MDCC**), involving the Social Welfare Department (**SWD**) and other childcare professionals, that he be removed from his parents' care. This case highlighted the failure of current MDCC practice and processes to protect children at risk.

PathFinders' cases include examples similar to Chi-wai's and highlight similar failings in the existing childcare system. In cases where PathFinders' children have ended up in the SWD care system, frontline social workers seem to be content with a short-term childcare plan. Not having any time frames for children in out-of-home-care, as per international best practices², is not only detrimental to the child's emotional and cognitive development, but has also contributed to there being a serious backlog in Hong Kong's residential care and foster system.

An example of one such PathFinders' case where two years after an MDCC was called, the child was still languishing in the care system is given below. It clearly demonstrates the current system's failure to work collaboratively to find time bound and permanent solutions for children in out-of-home-care and to follow up on MDCC recommendations.

¹ *Hong Kong government urged to amend guide on handling child abuse in coroner's case involving death of boy who probably ingested Ice*
<http://www.scmp.com/news/hong-kong/law-crime/article/1926244/hong-kong-government-urged-amend-guide-handling-child-abuse>

² <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

While PathFinders welcomes the underlying intentions of the MDCC in the Procedural Guide for Handling Child Abuse and notes that the Guidelines lay out basic principles for holding and running an MDCC, we are concerned that they lack clarity and detail as to how the process works in practice both before and after a MDCC is held and they are almost completely silent on the need for permanency planning. In particular our concerns relate to:

1. Triggering mechanism When should an MDCC be called? The current MDCC Guidelines focus on cases of sexual and physical abuse resulting from clear and identifiable incidents. There appears to be a reluctance to include cases that are less obvious and may involve psychological abuse and neglect occurring over a period of time. This ‘hidden harm’ can be even more devastating to a child’s development and well being than an isolated incident. Although definitions of abuse appear in the Procedural Guidelines, these definitions are not legally binding and no practical guidance is given as to how they should be applied in deciding whether or not to hold an MDCC.
2. Inclusiveness Who should be invited to attend a MDCC and follow up process? Although the current Guidelines identify interested parties who should be included in an MDCC, in our experience, parties outside of the SWD, including school social workers, teachers, foster family parents, child care workers and paediatricians are not usually invited to the meeting. Moreover, there is no provision to include relevant professionals from other government departments, NGOs and other experts such as lawyers who have an understanding and established connection with the case. In the past, PathFinders’ social workers have only been invited to attend MDCCs after our case workers strongly advocated that they should be present. In one example, the chairman of the MDCC questioned why PathFinders was attending as the case had now been taken up by SWD. Yet PathFinders had unique insight into that family’s situation as we had been the first contact point of the family in seeking support and had been the front-line social work provider for the case before it was passed onto SWD.
3. Provision for ethnic minority and other marginalised groups. Ethnic minority and marginalised families face particular problems and are often stigmatised and excluded. Specific guidance is required to ensure that their cases are dealt with in a culturally and linguistically sensitive and appropriate manner. There is no such provision in the current Guidelines.
4. Scope and purpose of the MDCC and Permanency Planning As currently framed, the MDCC is primarily intended as a mechanism to establish if a child is at risk. Much less emphasis is put upon establishing measures to minimise harm, support the family and, crucially, put timeframes in place to ensure the child’s long term welfare. Just one short paragraph refers to implementation of a permanency plan with no indication as to what this should look like, appropriate timescales and enforcement measures. This is unacceptable and not in the child’s best interests
5. Follow up and enforcement of MDCC recommendations As Chi-wai’s case demonstrated only too starkly, there is a serious lack of enforcement of MDCC recommendations and decisions. While the Guidelines call for reports on and reviews of cases, no specific or detailed framework is given for this to take place. There is no responsibility to follow up and no requirement to report back to MDCC members or to hold further meetings. Review of cases is typically held within SWD and external parties, including those involved in the

MDCC, are excluded from attending or giving their views on the development and progress of the case and implementation of a permanency plan.

6. Independence, oversight and accountability It is essential that the MDCC is seen to be totally impartial and should be bound by legally enforceable regulations. The current Guidelines are just that - guidelines. There is no mechanism to ensure impartiality, in particular of the MDCC chair, and no provision for external oversight.

Recommendations:

PathFinders recommends that:

1. The Social Welfare Department be compelled to consider requests for convening an MDCC from trusted third parties, including other government departments and NGOs, such as PathFinders, who are concerned with child welfare. Otherwise, there is a risk that cases may be overlooked, especially when the children concerned are from ethnic minority and marginalised groups, have been abandoned and/or are at risk of being trafficked;
2. MDCC participation should be expanded to include all professionals, government departments and key non-governmental actors involved with, or having an understanding of, the welfare of the child in question;
3. The MDCC should not limit itself to involvement only in cases of obvious physical or sexual abuse, but should also intervene in situations where physiological abuse, neglect and abuse of unborn children by pregnant mothers is suspected. In particular, the current practice of establishing intent to harm, may rule out holding an MDCC for children where it is neglect that poses a risk rather than a specific intent to harm;
4. MDCC and permanency planning should make no distinction between care for children of Hong Kong citizens and children of migrant workers or illegal immigrants. Undocumented children and other 'public' children are the most vulnerable in our society and deserve to be treated in a linguistically and culturally sensitive and appropriate manner;
5. Current practice in other countries should be reviewed to establish best practices and to set clear and practical procedures to guide the MDCC in making a decision as to the nature of the abuse suffered, the level of risk to the child, the threshold at which action needs to be taken and in setting out time-bound permanency plans, support packages and case review mechanisms. In particular, in the UK a strict timetable of case reviews and actions is set out and the UK Children and Families Act of 2014 enforces a 26 week deadline in all care supervision and other family proceedings³, while the US Federal government has developed a concurrent system of family support and permanency planning to minimise delay in establishing

³ Children and Families Act 2014: <http://www.legislation.gov.uk/ukpga/2014/6/section/14/enacted>

a safe and permanent future for the child⁴;

6. Establishing a permanency plan for children at risk should be the paramount objective of the MDCC. The MDCC should be required to discuss and make provision for determination of a structured and time sensitive permanency plan, particularly in situations where the child must be removed from their parents/guardians. Again reference should be made to British practices where child protection MDCC conferences, chaired by an independent reviewing officer, assess the risk to the child, draw up an protection programme and review the plan regularly. In this scenario the social welfare department is responsible for the key task of setting out the care plan, but is accountable to the MDCC through the independent reviewer to ensure cases do not drift;
7. Oversight of the MDCC should be through an external and independent body, through which complaints and reviews can be processed;
8. The Procedural Guidelines and MDCC should be fully backed by accompanying legislation that will compel compliance and remove ambiguity, allowing for prosecution of cases where necessary and providing a legal instrument for enforcing protection of the child(ren);
9. A fully comprehensive Children’s Bill should be introduced specifically to cater for the rights and needs of all children in Hong Kong, including those in the care system, ethnic minorities, asylum seekers and those with special needs. Only in this way will it be possible to have legally enforceable definitions, procedures and systems in place to protect those at most risk⁵; and
10. Statistics on the numbers of MDCC’s held, their composition, findings, recommendations and follow up actions should be routinely collected and published.

⁴ Child Welfare Permanency Planning: <https://www.childwelfare.gov/pubPDFs/concurrent.pdf>

⁵ PathFinders’ response to the November 2015 Public Consultation Invitation issued by the Labour and Welfare Bureau Department regarding the Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access as set out in the Children Proceedings (Parental Responsibility) Bill

Case Example

F was born in hospital, but his mother discharged herself two days later, leaving F in the hospital. Both his parents later re-surfaced and resumed care of F. However, both had criminal records and a history of drug abuse. F's case was determined to be one of child neglect after methamphetamine was found in his urine when he was 7 months old. The parents were deemed to be unfit and a Multi-Disciplinary Case Conference ('MDCC') was held. This was some two years ago.

Present at the MDCC were representatives from International Social Services (which provides in-kind and social support to asylum seekers on behalf of SWD), the hospital, PathFinders, SWD and the Police Department. It is noted in the MDCC record that:

1. Both parents had admitted to taking methamphetamine on numerous occasions;
2. F was found to have traces of methamphetamine in his urine;
3. Both parents had criminal records;
4. The parents had missed most of F's medical appointments scheduled by the hospital, had neglected to collect medication prescribed for F and had made no effort to ensure he received the medication;
5. They did not have a set routine for F in terms of eating and sleeping, and had left F alone in their flat;
6. Both parents had failed to attend numerous appointments at Immigration and the Birth Registry, and F's birth was not registered;
7. The parents had an argumentative relationship and the mother alleged that she had been subjected to domestic violence by the father throughout their relationship;
8. Both parents had significant debts; and
8. It was noted that neither parent was able to keep a hygienic environment for F and they were negligent and careless in feeding him.

Outcomes from the MDCC were that:

1. All parties agreed that this was a case of child neglect and there was a high risk of it becoming a child abuse case;
2. All parties highly recommended that a one-year Care and Protection Order be sought;
3. For F's safety and protection, all parties strongly recommended residential care for the baby;
4. PathFinders recommended that arrangements be made for F to obtain a birth certificate as soon as possible;
5. PathFinders recommended that arrangements be made for F to receive necessary immunisations as soon as possible; and
6. All parties recommended that the parents attend drug rehabilitation as well as counseling to improve their parenting skills.

After the MDCC, a one-year CPO was put in place and F was transferred from the hospital to an institution as a 'temporary measure'.

It is now two years since the MDCC. F is still residing in the institution and no permanency plan has been put in place. F's parents, after going missing for more than 20 months have recently been located. They refused to sign a consent

to allow F to be freed for adoption, yet have not fulfilled any of the parenting requirements set for them at the MDCC and had not visited F until recently when one of the parents visited him in the institution.

F has been diagnosed with developmental delays, but the institution that cares for him does not have access to the specialist assessment he needs to achieve his full potential. F's case was recently transferred to SWD's Family and Children Protective Special Unit ('FCPSU'). However, FCPSU has refused to allow F to be taken to a pro bono private doctor arranged by PathFinders to undertake a developmental assessment, because of the lack of direct authorization from his parents. FCPSU has advised PathFinders that public assessment services would be arranged for F.

Despite PathFinders previous close involvement in the case, including being present at the MDCC, FCPSU currently refuses to disclose to PathFinders further information about F, his parents' visits and future plans for F.