

11 February 2017

Clerk to Subcommittee on Children's Rights
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central

Dear Sir/Madam,

Re: Review on residential child care services

We are a group of lawyers who regularly advise child-welfare professionals and non-government organizations on child protection and the rights of children in care.

These submissions focus on the systemic and widespread problem of inadequate 'permanency planning' that faces children in residential care. This causes many children to become 'stuck' in residential care, sometimes for their whole childhood.

There are several related issues that deserve attention, which will not be dealt with here, such as: (1) the lack of data on the outcomes and experiences of children in care, (2) the number of residential care places available, and (3) the lack of resources allocated to residential child care (i.e. funding, manpower and facilities).

The importance of 'permanency planning'

Permanency plans are fundamental to protecting the best interests of children in residential care. A child's experiences with their significant caregivers can have a critical impact on development, and lifelong consequences for the child's learning capacity, mental health and wellbeing.

Appropriate permanency plans prevent protracted and unnecessary placements, facilitate positive attachments to a significant caregiver, help children recover from harm and assist a child to achieve his or her full potential.

Problems we observe

Unfortunately, we have seen many cases where children in care do not have a reasoned and appropriate permanency plan.

The problem is structural: there is no requirement on relevant social workers to write a reasoned permanency plan and little training or guidance. In a few cases, this leaves a child without any permanency plan at all. However, in most cases we have seen, the plan will record a 'collective decision' of the various parties, unsupported by reasoning and without any timeframes for action.

The result is a high risk of irrational and ineffective permanency plans.

For example, we have seen cases where:

1. Abandoned children ‘stuck’ in residential care for several years due to repeated and indefinite parental ‘tracing’;
2. Children ‘stuck’ in residential care indefinitely, despite their parents being assessed incapable of caring for a child, and the relatives stating they are unwilling;
3. Children ‘stuck’ in residential care indefinitely, yet their birth parent only visits twice a year and has no timeframe for resuming parental responsibility;
4. Children ‘stuck’ in residential care, as their parent is unable to care for them due to substance abuse and refuses to enroll in rehabilitation programs;
5. Children in residential care not provided with sufficient supervision and therapeutic support to meet their developmental needs; and
6. Children rotating through new residential care homes every few years, and unable to develop secure attachments to significant carers.

In this context, it is crucial that there be reasoned and child-focused permanency plans, with appropriate timeframes for action, and robust oversight.

Conclusion

In our view, it is essential that:

1. There be a statutory duty to make a reasoned permanency plan with specified timelines for action;
2. There be a like duty to update the permanency plan at regular intervals;
3. There be independent oversight of compliance with permanency plans, their review and the timelines;
4. Where appropriate, judicial oversight the adequacy of and compliance with a child’s permanency plan; and
5. There also be a (statutory) duty to provide for the developmental needs of all children in residential care.

Permanency planning must be put on a statutory footing. It is too important to allow it continue in an ad-hoc and arbitrary manner, without proper oversight. An example that should be considered can be found in the UK legislation, in Part III Children Act 1989.

Dated 11 February 2017

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