

29 March 2018

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

Dear Sir/Madam,

Re: Reform of child protection legislation

The Hong Kong Family Law Association is a group of lawyers, social workers, mental health and other practitioners, established with the aim of developing family law in Hong Kong. We welcome the opportunity provided by the Subcommittee to share our views on the extremely pressing and crucial issue of child protection reform.

Our laws do not contain any tangible duties to protect children, to provide for their needs and to investigate concerns of abuse and neglect.

We trust that there is a will to take a critical look at the present system and enact the needed reforms. The Children of Hong Kong deserve no less.

The problems with child protection in our community are systemic and not individual. We have utmost respect and admiration for the social workers of NGOs and the Social Welfare Department, and other professionals, who dedicate their lives and energy to protecting children from abuse and neglect.

In this letter, we explain the how the child protection system currently operates in Hong Kong (in theory and in reality), and then set out our views on how it can be fixed.

We hope that this discussion will continue amongst the Government and all stakeholders after the Subcommittee meeting this International Children's Day.

A duty to protect children?

Children have a right to be protected – and the Government has a duty to enact necessary legislation. That is Hong Kong's commitment under international law (Art. 4 of the Convention on the Rights of the Child), and under our constitution (Art. 4 of the Basic Law and Art. 20 of the Bill of Rights).

But who is actually responsible to make those rights a reality? Our child protection system is essentially voluntary and non-legal. This has had tragic consequences:

- (i) 5 year old Yeung Chi-wai died from swallowing methamphetamines even though professionals knew he was at risk. There was no space for him in residential care, and no one was under a duty to take him to safety.
- (ii) 5 year old Chan Siu-lam stopped going to school last October, and died allegedly from physical abuse in January 2018. The newspapers reports say that the school had been documenting her injuries. But there was no duty to investigate, no duty to assess the risk she faced, and no duty to help her.

Those are not isolated problems. We have seen children fall through the cracks time and again: investigations not being conducted, significant delays, welfare

plans with no timelines or oversight, MDCCs not being held, police and others not attending MDCCs, and protective steps not being taken.

The current system

Our comments here are confined to the civil laws protecting children from harm (and not the criminal law).

There is no comprehensive child protection legislation in Hong Kong. The child protection ‘system’ is largely voluntary, and highly decentralized (amongst numerous NGOs, SWD units, schools and hospitals).

The child protection system has 2 main parts:

- (i) A limited set of powers available to the Police/SWD in the Protection of Children and Juveniles Ordinance (Cap. 213 (the “**PCJO**”).
- (ii) A set of non-legal ‘guidelines’ called the Procedural Guide for Handling Child Abuse Cases (“**the Procedural Guide**”), that is supposed to be followed by NGOs/SWD/schools/hospitals/etc.

The existing legislation

The only legislation concerning child protection is the PCJO.

The heart of the PCJO is Section 34¹: When a child is at risk Police and SWD may apply for a ‘care or protection order’ (“**CPO**”) – i.e. an order that a child be supervised or placed in an institution. The Police and the SWD are under absolutely no obligation to take any steps to protect children.

¹ There are also various ancillary powers to detain children on an emergency basis, and to search for and assess children.

With few changes, the law traces directly back to section 58 of the UK's Children Act 1908², which is now 110 years old and now badly outdated:

- (i) There is no 'legal duty' to protect children – only a discretionary power to supervise or take into residential care.
- (ii) There is no duty to conduct an assessment and produce a welfare plan for children whose health or development is at risk of being impaired.
- (iii) There is no duty to provide for children's needs (and help them stay with their families where possible).
- (iv) There is no judicial oversight of the welfare plans of children in care.

The procedural guide

The Procedural Guide provides 'guidance' to government departments, NGOs, teachers, medical professionals, and others who work with children.

It provides for 3 main steps:

- (i) Referral of abuse and initial assessment (Chapters 6 and 7).
- (ii) Social Enquiry/Investigation (Chapter 8).
- (iii) Multi-Disciplinary Case Conference (Chapter 11).

² Section 58 of the Children Act 1908 was enacted in Hong Kong via section 17 of the Juvenile Offenders Ordinance (1932), and transferred to section 34 of the Protection of Women and Juvenile's Ordinance in 1951.

In theory, various NGO or SWD social workers are responsible for steps 1 and 2, and there is consensus reached on step 3 (the MDCC) and what to do next (the welfare plan).

Despite the hard work and good will of all the professionals involved, the reality is often very different:

- (i) There is no obligation to follow the Procedural Guide.
- (ii) The Procedural Guide is largely focused on abuse, while neglect is overlooked. Neglect is the ongoing failure to meet a child's basic needs, and is the most common form of child abuse.
- (iii) It is not clear who is supposed to take action and lead the process. The Procedural Guide places much of the responsibility to act on the 'key social worker'. But this could be any number of different NGO/SWD social workers.
- (iv) The social workers tasked with implementing the Procedural Guide are often not specialists tasked with, or trained in, child protection. Most are already overburdened and focused on their primary role of service provision.
- (v) The system is piecemeal and there is no centralized oversight. There is no requirement to maintain a written record of referrals, and no single database. Social work is provided by a number of different NGOs and SWD units and information is rarely coordinated.
- (vi) The Procedural Guide is largely backward-looking. It operates only after children have been abused, and is not designed for prevention.

- (vii) Many allegations are uninvestigated, and the investigations are often inadequate. NGOs in particular operate on extremely tight budgets. They do not have the time, resources or training to conduct investigations – and they do not have any statutory powers. It is not fair or reasonable to expect them to investigate and decide whether allegations are ‘substantiated’.
- (viii) MDCCs are often focused on deciding whether allegations of abuse are ‘substantiated’, rather than risk assessment and welfare planning.
- (ix) The risk assessments and welfare plans are also often inadequate. They are decided by agreement at the MDCC. This collective decision-making can force an artificial consensus. It results in welfare plans that are not supported by reasons, and without clear responsibilities and timelines for action.
- (x) There is a real problem of drift and delay in residential care, especially where children are voluntarily taken into care (i.e. with parental consent).
- (xi) There is no oversight on the implementation of welfare plans.

Our views on reform

The child protection laws in Hong Kong are in need of comprehensive reform. We urge those responsible to consider reforms along the lines of those in the parts III, IV and V of the Children Act 1989. In particular, we suggest that:

- (i) Child protection should be centralized, and the primary responsibility of a specialist government unit.

- (ii) Child protection should be obligatory and not discretionary.
- (iii) Our laws should provide for greater prevention (i.e. provision of services and support) as well as detection of abuse and neglect.
- (iv) There should be a legal duty to assess the needs of all children whose health and development is at risk of being impaired, to safeguard them, and provide necessary services.
- (v) There should be judicial oversight of the welfare plans of all children in residential care.
- (vi) There should be an independent and statutory Children's Commissioner.

Yours sincerely,

The Hong Kong Family Law Association