

By email (ssfcpscp@swd.gov.hk) only to:

Mrs Chang Lam Sook-ye
Domestic Violence Team
Family and Child Welfare Branch
Social Welfare Department

PathFinders Limited
Written Submission

To

**The Social Welfare Department Review of Procedural Guidelines for Handling Child Abuse Cases
Consultation**

on

"Definition of Child Abuse and Handling Approaches"

Submitted: 18 April 2017



Introduction

PathFinders welcomes this opportunity to contribute to the review of the Social Welfare Department (“SWD”) Procedural Guidelines for Handling Child Abuse Cases (“**Procedural Guide**”).

About PathFinders

PathFinders is a Hong Kong-registered charity with tax-exempt status that assists pregnant, migrant workers, mainly current or former foreign domestic workers, and their children born in Hong Kong. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated and provided for that some will reproduce while employed here;

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. PathFinders’ cases include those where the child has been abused and neglected, is living in a brothel and left to roam the streets alone; where the drug abusing mother of siblings is in a coma and the father serving a long prison sentence; and where a new born baby has been left at a hospital and the mother and father are nowhere to be found. In each case, these children are utterly poor in every sense of the word. These children are some of the most vulnerable children in Hong Kong;

Since inception in 2007, PathFinders has helped over 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. PathFinders receives no government funding.

More about PathFinders’ work

Website: <http://www.pathfinders.org.hk/public/>

Facebook page: <https://www.facebook.com/pathfindershk>

Annual Report:

<http://www.pathfinders.org.hk/public/wp-content/uploads/Annual-Report-2015.pdf>

PathFinders’ public consultation submissions to the HKSAR Legislative Council and others

Please view our ‘submissions’ at this page:

<http://www.pathfinders.org.hk/public/resources/pathfinders-material/>

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PathFinders' Comments and Recommendations

1. General definition of child abuse

Definitions of child abuse vary across jurisdictions and professional disciplines as well as social and cultural sectors of society. The World Health Organisation (“WHO”) adopts the term ‘Child Maltreatment’. This covers both child abuse (an act of commission or deliberate) and neglect (an act of omission) and includes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power;

The US Centre for Disease Control and Protection (“CDC”) also uses the term ‘Child Maltreatment’ to refer to both acts of abuse, which include "*words or overt actions that cause harm, potential harm, or threat of harm to a child*" and neglect, meaning "*the failure to provide for a child's basic physical, emotional, or educational needs or to protect a child from harm or potential harm;*"

PathFinders recommends that the same basic principles be followed in reviewing the current definition of abuse. In particular:

- 1.1 The definition should explicitly cover both abuse and neglect be these either individual acts or patterns of behaviour which result in harm or potential harm to a child;
- 1.2 An operational definition relevant to the child care professionals who use the Procedural Guide in their day-to-day work with children and families should be adopted rather than a strictly legal definition;
- 1.3 As well as examining types of abuse, it is important that the definition include levels of harm. These have a large impact in determining what support is necessary to safeguard a child;
- 1.4 The definition should explicitly cover unborn children over 24 weeks’ gestation to children up to the age of 18;
- 1.5 Whether or not the perpetrator intentionally or inadvertently committed the act or acts of abuse should be excluded from the definition. What is important is whether or not abuse or neglect has taken place and the child has suffered harm. Practitioners should be reminded that “Child abuse is never acceptable in any community, culture, religion, or under any circumstances”. Standard safeguarding procedures must be applied and followed. However, when formulating welfare plans due consideration should be given to the characteristics and circumstances of the individuals and family involved;

1.6 Consideration be given to using the term “child maltreatment” when defining the harm suffered by a child. This is a wider term than the more generally used “child abuse” and covers both abuse and neglect. In practice, when handling the case, it may be preferable to refer to the “Child Protection Case” or “Child in need of support” depending of the level of seriousness;

1.7 PathFinders recommends that the Chinese translation of “child abuse” be “兒童受到傷害” and “Child Protection Case” be “保護兒童個案” and

1.8 The definition should recognise that perpetrators of abuse are not limited to a child’s parents or guardians, but can also come from anyone entrusted with care or responsibility for the child as well as unknown third parties. This can include relatives, teachers, health practitioners and other children as well as strangers. We recommend that the UK’s description on the identity of perpetrators be adopted:

“children may be abused in a family or in an institutional or community setting by those known to them or, more rarely, by others (e.g. via the internet). They may be abused by an adult or adults or another child or children”

2. Types of abuse

PathFinders broadly agrees with the current definitions of Types of Abuse as given in the existing Procedural Guide. However, we recommend that each definition is reviewed in light of the following:

2.1 Neglect

The UK’s London Child Protection Procedures note that “neglect is characterised by a cumulative pattern rather than discrete incidents or crises”. All too often single events are treated by investigating social workers as not meeting the threshold for child abuse or summarily dismissed as “not child abuse”. Yet often these single events can be indicative of a pattern of behaviour whose cumulative effect amounts to harm or potential harm;

It is important that investigating social workers take into account the risk of harm and do not merely look for evidence of actual harm. Allegations of a child being harmed should be clearly set out and investigated and the investigating social worker should set out his/her opinion of the allegations, whether the allegations are substantiated and, if not, whether there is any risk of harm in the future. The investigating social worker should look beyond the evidence of actual harm and not simply dismiss allegation if there is no actual harm;

PathFinders recommends that any definition of neglect should reflect the potential for low-level failures to provide care to amount to harm. Investigations into abuse should include consideration of other events and concerns in the child’s life and consultation with other caregivers, doctors, teachers and support organisations such as NGOs working with the family. As the London Child Protection Procedures point out “It is important to see current events in light of the full history of child protection issues, including previous responses to support;”

Neglect falls into several sub-categories. PathFinders recommends that the following should be separately covered by the Procedural Guidelines:

2.1.1 *Abandonment*

A clear and time limited definition of when a child has been abandoned should be set and guidelines given for its subsequent care and long term planning. According to FindLaw, In the US a child is considered abandoned if a carer “deserts a child without any regard for their physical health, safety or welfare and with the intention of wholly abandoning the child or, fails to provide the necessary care for a child living under their roof”

Using the definition of abandonment found at FindLaw and based on our experience, PathFinders’ suggests that the following behaviours should be considered as constituting abandonment by a caregiver;

1. Leaving a child with another person without provision for the child's support and without meaningful communication with the child for a period of three or more months;
2. Making only minimal efforts to support and communicate with a child;
3. Failing for a period of at least six months to maintain regular visits with a child;
4. Failing to participate in a suitable plan or program designed to reunite the parent or guardian with a child;
5. Leaving an infant in a public place such as on a doorstep, in trash cans and dumpsters or on the side of the road;
6. Leaving a child alone at home for a period of time that exposes the child to a substantial risk of serious harm;
7. Failing to respond to a notice of child protection proceedings; and
8. Being unwilling to provide care, support or supervision for the child

PathFinders is particularly concerned that in Hong Kong parents who abandon their children as described above are still given responsibility when best interest decisions need to be made in relation to their children. We urge SWD to recognise that a parent who abandons their child effectively relinquishes their parental rights. In these cases the parent may not be the best person to make welfare decisions and that the child’s interests take priority over parental rights;

2.1.2 *Physical Neglect*

Physical neglect includes a failure to provide food, clothing and shelter. PathFinders recommends that exclusion from home should be explicitly included in the guidelines. In our experience, in addition to leaving children at home unattended, parents have sent their children out onto the streets often for hours on end. In other cases, the parents have excluded children from the home as a means of discipline or for other reasons;

PathFinders is aware of reports of parents leaving their young child in a supermarket, a park, a public toilet or a library. As long as the child was found before he/she suffered any physical harm there was no follow up or consequences for the parents;

2.1.3 *Legal Neglect*

In 2015, Hong Kong was shocked by the case of an undocumented 15 years old girl who jumped to her death in Repulse Bay. In the following inquiry, the Births and Deaths Registry reported there

were 55 children whose parents had failed to register them within 1 year of their birth. Without a birth certificate, a child has no access to welfare, medical care and education;

Failure to document or represent a child's legal rights should be included as a form of neglect. This would be in line with the current draft "Child Proceedings (Parental Responsibility) Bill" which specifically includes legal representation as a parental responsibility;

2.1.4 Medical Neglect

Neglect in failing to provide medical care should include:

1. Pregnant women who do not access prenatal care and fail to take newborns for vaccinations and/or regular newborn baby check ups;
2. Repeated failure to send a child for developmental or mental assessments; and
3. Repeated failure to send a child to attend medical appointments and medical follow ups;

2.1.5 Educational Neglect

Education is a key developmental need for all children. All children have the right to access to education and failure to register a child into school (including home schooling) or send a child to school should be considered to be neglect;

2.1.6 Emotional Neglect

In PathFinders' experience, children who stay in out-of-home care are seldom, if ever, visited or contacted by their parents. Even if in prison or overseas, parents can still find a way to contact their children or the caretakers if their children are very young via telephone, WhatsApp, Facebook, email or letter. Failure by a parent to contact their child at least once a month should be regarded as neglect unless the parent is ill or is prevented by a court order or legal proceedings from contact;

2.2 Physical Abuse

2.2.1 The only circumstances in which physical harm to a child may be excusable is if it is inflicted to prevent the child from suffering or causing more serious harm, for example in cases of suicide, self-harm or in self defence;

2.2.2 Drug and alcohol misuse during pregnancy can damage the unborn child and should be included as physical abuse;

2.3 Domestic/Sexual Abuse

2.3.1 In the UK, guidance on domestic violence includes the advice that, "Children and young people can be subjected to domestic abuses perpetrated in order to force them into marriage or to 'punish' him/her for 'bringing dishonour on the family". In extreme cases such honour-based

violence can culminate in the death of the victim. In others the child or young person may be subjected to a variety of different types of abuse over a long period of time and ranging in severity. The abuse is often carried out by several members of a family, thereby increasing the child's sense of powerlessness and making it harder for professionals to identify and respond to;

According to children's rights organisation Plan International, 46% of girls in South Asia become child brides. PathFinders learnt from a teacher of a 12 year old Pakistani girl living in Hong Kong who was taken back to Pakistan to be married. Fortunately a husband could not be found and the girl returned to Hong Kong;

Given that the age of sexual consent in Hong Kong is 16, marriage of children under the age of 16 should be considered as sexual abuse;

2.3.2 Sexual activity between children under 16 years old must also be included under sexual abuse. Puberty can begin as early as 10 years old and any 'child sex play' during puberty can involve rape and even result in a pregnancy;

Further, studies have shown that children who initiate or solicit overtly sexual acts with other children most often have been sexually [victimized](#) by an adult beforehand or by another child who was in turn abused by an adult. The guidelines should acknowledge that cases of child-on-child sex play below the age of puberty may indicate that one or the other, or both, of the children involved may have been exposed to sexual abuse by others and should be investigated;

Case study 1

The 5 year-old daughter of a PathFinders' client was bleeding vaginally and had started wetting herself. She informed her mother that another child at school had touched her inappropriately whilst in the school toilets. PathFinders referred the case to International Social Services (ISS). After investigation, it was decided that the incident was not sexual abuse but child-on-child sex play.

It is not clear to the PathFinders' social worker involved, what actions were taken in regard to the boy that allegedly instigated the incident. However, the school headmistress is reported to have undertaken her own internal investigation into the incident and concluded that there had been no abuse. The definition of abuse and handling of this case is of grave concern to PathFinders. Even for cases where, upon investigation, it is found that children of this age were playing or exploring, it is necessary for further support to be given to both parties to prevent further inappropriate behaviour. An independent, designated officer should have carried out the school investigation to promote transparency.

Case study 2

A recent news report revealed an incident where a boy and girl, both 7 years old, were sexually abused by a 9-year old boy. The post trauma behaviours displayed by the two

younger children clearly demonstrated that “sexual activity among children or child sex play” is as harmful as other forms of sexual abuse.

2.4 Psychological Abuse

2.4.1 “Children who witness domestic violence suffer emotional and psychological maltreatment (Note: Section 31 Children Act 1989: impairment suffered from seeing or hearing the ill treatment of another [amended by the Adoption and Children Act 2002]). They tend to have low self-esteem and experience increased levels of anxiety, depression, anger and fear, aggressive and violent behaviours, including bullying, lack of conflict resolution skills, lack of empathy for others and poor peer relationships, poor school performance, anti-social behaviour, pregnancy, alcohol and substance misuse, self blame, hopelessness, shame and apathy, post traumatic stress disorder - symptoms such as hyper-vigilance, nightmares and intrusive thoughts - images of violence, insomnia, enuresis and over protectiveness of their mother and/or siblings;”

2.4.2 Unreasonable isolation, for example being locked in a small dark room, a suitcase or a wardrobe, should also be included explicitly as psychological abuse;

2.4.3 Bullying, causing children to feel frightened or in danger, should be added as another potential source of psychological abuse;

3. Approaches in handling suspected child abuse/child neglect cases

3.1 Level of harm/risk based approach

3.1.1 The existing Procedural Guide focuses on establishing if abuse has occurred. This is a reactive approach and, because the threshold is relatively high, risks ignoring cases where, although abuse has not been established, the potential for harm still exists. In most cases, it is those families that are not deemed to meet the threshold of child abuse that if left unmonitored, without support, escalate into child protection cases. PathFinders is aware of cases where although a Multi-Disciplinary Case Conference (**MDCC**) has determined there has been no child abuse, there has been a lack of follow up and monitoring, and abuse has subsequently occurred;

3.1.2 PathFinders urges that the focus of investigation and case handling should be to decide whether a child is at risk of harm and how best to protect the child. In the UK, childcare teams are sometimes subdivided into Children in Need, or Family Support teams, and Child Protection teams. The Children in Need team’s objective is to address low-level concerns and provide family support to empower families and prevent situations from

escalating to child protection cases. Child Protection teams handle more serious cases requiring a high level of support;

3.1.3 Both teams are manned by social workers, have regular statutory reviews which involve multi-disciplinary input. Cases are only closed when risks to the child have been managed and there are identified community partners (from the multi-disciplinary team, for example school, health visitors, NGOs) able to monitor the case;

3.1.4 PathFinders' view is that in Hong Kong all matters related to children's cases should be handled with a multi-disciplinary, case manager approach. Cases should be assessed as to the degree of harm suffered and/or the risk of future harm. A matrix should be developed to analyse each case and indicate the level of support required. Guidelines on case handling would be required, backed up by a database of case precedents;

3.1.5 Lower-level cases would cover those where the reporting or frontline caseworker can intervene at his/her level or within his/her agency or department to assist the family to resolve the concerns. In these cases a lower level of evidence is required to establish a risk of harm, while still acknowledging that harm has occurred or is likely to occur. Neutral terms such as 'child-in-need', 'family-in-need' and 'family support case' should be used. The child should still be registered on the Child Protection Registry, in order to keep track of the family history and monitor any escalation;

3.1.6 In all cases, a MDCC should be called to ensure that all those involved in the child's life have input. This should include extended family, teachers, doctors, NGOs and other support organisations as appropriate to the nature and seriousness of the case;

3.2 The MDCC

3.2.1 While PathFinders welcomes the underlying intentions of the MDCC as laid out in the existing Procedural Guide, we are concerned that, at present, formation of the MDCC excludes key parties, including the government departments concerned with immigration, housing and justice and no accommodation is made for participation of key non-governmental actors concerned with the child's welfare, such as PathFinders;

3.2.2 An additional concern is the lack of enforcement of MDCC recommendations and decisions. While the Procedural Guide calls for reporting and review of cases, no reference is made to enforcement that should, ideally, be supported through a legal instrument compelling compliance. Only in this way can the welfare of the child be assured. It will be recalled that in Yeung Chi Wai's case this inability to enforce MDCC decisions was a contributing factor in his death because the welfare plans set up to protect him were unreviewed and unenforced;

3.2.3 Strict timelines for MDCC recommendations and permanency planning should be determined and clearly stated to ensure the best interests of the child are pursued in a timely manner and that SWD is required to adhere to them;

3.3 Collaboration

One of the reasons children born to migrants and migrant families in Hong Kong may receive poorer services is due to a lack of understanding of NGO's roles and how NGO social workers can work together effectively with SWD. For example:

Case Study 3:

PathFinders was supporting a migrant mother who had just had a baby and was living in a very unsafe 'metallic structure.' The mother was reported by other PathFinders' clients to be experiencing difficulties feeding and caring for her newborn. A Pathfinders' Case Manager and nurse provided support in the form of milk and clothing for the baby and parenting advice to the mother over a period of time. Eventually, a concerned neighbour reported that the mother often physically chastised the newborn. PathFinders referred the case to ISS and to the police. However, the ISS worker in charge of the case accepted the mother's version of events did not make enquiries of her neighbours or consult PathFinders, and no action was taken;

In such a case, it would be instructive for the ISS worker to analyse the concerns reported in line with previous concerns about the baby's welfare to build a clearer picture of the baby's life from professionals and others who had been more actively involved with the family.

4. Further considerations

PathFinders would further urge, when reviewing the current Procedural Guide:

1. That the child's safety is given priority over parental rights. More often than not we have seen cases where parents' views and choices for their abused children are acceded to over what would be a better/safer option for the child;
2. That in line with International practice and the UN Convention of the Rights of the Child (**UN CRC**) all children in Hong Kong should be treated as equal and cared for regardless of their legal or immigration status;
3. Practitioners should be provided with guidance on levels of child abuse and thresholds; and
4. The suggestion of involving the wider family in finding solutions for vulnerable children should be extended to children born to migrants in Hong Kong even where their extended families are not resident in Hong Kong.

Thank you for considering our comments and recommendations. We are happy to discuss them further. In addition to myself, you are welcome to contact PathFinders' key team members in relation to this submission who are:

- Ms Jessica Chow R.S.W, Director of Services, Director of Social Work and Health on +852 9133 3607 or jessica@pathfinders.org.hk
- Ms Ruth Jackson R.S.W, Senior Social Worker, Child Protection Programme on + 852 9177 8009 or ruth@pathfinders.org.hk
- Ms Jenny McAlpine, Access to Justice Programme Manager on +852 5327 3467 or jenny@pathfinders.org.hk

Very best,

Kay McArdle

CEO

PathFinders Limited