



母親的抉擇
Mother's Choice

Changing Life Stories:
Understanding the Legal Aspects of
Working with Children and Families

Child Maltreatment



An Introductory Manual for Child Welfare Professionals

About the Authors



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Mother's Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

www.motherschoice.org

Contents

Child Maltreatment	2
Introduction	3
What is the definition of child maltreatment?	4
Care or Protection Orders (CPOs)	7
When can a CPO be applied for and what input can an NGO have?	7
Is it mandatory to report suspected child maltreatment cases?.....	10
Multi-Disciplinary Case Conference	15
What role can the child play in a child maltreatment investigation? Can they speak on their own behalf?	16
What happens to cases that are not established as a child protection case?	17
If a case of child harm/maltreatment is established for one child in a family, what happens to other children in the family?.....	18
What if a pregnant woman uses drugs while she is pregnant? Is this a form of child harm/maltreatment?.....	18
What is the Child Protection Registry?	18
What happens if a parent has been sentenced in a child harm/maltreatment case? Would this result in permanent removal of custody?	19

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Child Maltreatment

Introduction

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Article 19

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

“Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

WHAT
ROLE
CAN I
PLAY?

Social Workers can play a key role in identifying cases of child maltreatment, referring them to the appropriate departments and services, collecting evidence and information to determine best interests and ensuring that there is follow up on the case to guarantee that the child remains safe. By learning about maltreatment, and how to best intervene, it is possible for social workers to make a huge difference in such cases.

WHAT
ROLE
SHOULD
OTHERS
PLAY?

All professionals who work with children have a duty to be alert to signs of child maltreatment, and to take proper measures such documenting concerns and reporting cases of child maltreatment in the course of their work.

Children have the right to be free from all forms of maltreatment, including physical or mental violence, injury or abuse, sexual abuse, neglect, maltreatment, or exploitation.¹ The government has a legal responsibility under international law to take all appropriate legislative, administrative, social and educational measures to protect children from maltreatment.

1 Convention on the Rights of the Child, Art. 19.

While children should, as a general rule, not be separated from their parents, the law requires the best interests of the child to be the primary and paramount consideration.² Therefore, in cases of maltreatment by parents or guardians it may be necessary to remove children into appropriate care arrangements.

Governments are also required to establish social programs to provide necessary support for the child and their family, as well as putting in place procedures for prevention, identification, reporting, investigation, treatment and follow-up of instances of child maltreatment.³

Everyone, particularly professionals who work with children, should be alert to signs of child maltreatment, and to take measures to protect children who may be in need of special care and "intervention.

WHAT IS THE DEFINITION OF CHILD MALTREATMENT?

In the Social Welfare Department's *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation*, child maltreatment is defined in a broad sense as "any act of commission or omission that endangers or impairs the physical/psychological health and development of an individual under the age of 18⁴. Note that the SWD definition of maltreatment is not limited to immediate physical harm, but also covers situations that will endanger or harm the child in the long term. The Guide specifically outlines the four main categories of harm or abuse: Physical harm/abuse, Sexual abuse, Neglect, and Psychological harm/abuse.

Physical Harm/Abuse refers to physical injury or suffering inflicted on a child by violent or other means (e.g. punching, kicking, striking with an object, poisoning, suffocation, burning shaking an infant or Factitious Disorder Imposed on Another, formerly known as Munchausen's Syndrome by Proxy), where there is a definite knowledge, or a reasonable suspicion that the injury has been inflicted non-accidentally⁵.

Sexual Abuse refers to forcing or enticing a child to take part in any acts of sexual activity for sexual exploitation or abuse and the child does not consent to or fully understand or comprehend this sexual activity that occurs to him/her due to mental immaturity. This include acts that have or do not have direct physical contact with children (e.g. rape, oral sex, procuring a child to masturbate others/expose his/her sexual organs, or to pose in an obscene way/watch sexual activities of others, production of pornographic material, forcing a child to engage in prostitution, etc.). It may be committed inside or outside the home or through social media on the internet. It includes luring a child through rewards or other means for abuse, including sexual grooming.⁶

Consensual sexual activity between an adolescent and another person may also involve sexual exploitation by a person who, by his/her characteristics, is in a position of differential power to the adolescent. Cases where the adolescent is not mentally mature, too young (e.g. under the age of 13) or the sexual activity leads to sexually

2 Convention on the Rights of the Child, Art. 18.

3 Convention on the Rights of the Child, Art. 19.

4 *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation* (Revised 2020), pg. 24, para. 2.1. https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_fcwprocedure/id_1447/

5 *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation* (Revised 2020), pg. 26, para. 2.10.

6 *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation* (Revised 2020), pg. 26-27, para. 2.10.

transmitted diseases (“STDs”) or pregnancy may be considered and handled as suspected sexual abuse.⁷

Neglect refers to a severe or a repeated pattern of lacking of attention to a child’s basic needs that endangers or impairs the child’s health or development. Neglect may be:

- Physical (e.g. failure to provide necessary food, clothing or shelter, failure to prevent physical injury or suffering, lack of appropriate supervision or left unattended, a pregnant woman fails to receive treatment for drug /alcohol abuse or make every effort to reduce her drug/alcohol use during pregnancy resulting in signs of poisoning (e.g. being tested positive for dangerous drugs or alcohol) of the newborn or withdrawal symptoms for dangerous drug or alcohol of the infant)
- Medical (e.g. failure to provide necessary medical or mental health treatment)
- Educational (e.g. failure to provide education or ignoring educational needs arising from a child’s disability)⁸

Psychological Harm/Abuse refers to a repeated pattern of behaviour and/or an interaction between carer and child, or extreme incident that endangers or impairs the physical and psychological health (including emotional, cognitive, social and physical development)⁹.

Chapter 2 of the SWD Procedural Guide also includes a set of helpful indicators, checklists and risk factors.

The above definitions are not legal definitions and do not apply directly to the criminal law.¹⁰ Instead, whether a person has committed a crime will depend upon the offence with which they are charged. There are a number of offences that relate specifically or especially to maltreatment of children (see annex 10.2 of *Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation*). The most directly relevant to child harm and maltreatment are sections 26 (exposing child whereby life is endangered) and 27 (ill-treatment or neglect by those in charge of child or young person) of the Offences Against the Person Ordinance (Cap 212) (OAPO)¹¹. In relation to sexual abuse, there are a wide variety of offences set out in the Crimes Ordinance (Cap 200) and the Prevention of Child Pornography Ordinance (Cap 579).

Section 27 of the OAPO makes it an offence where any person “over the age of 16 years who has the custody, charge or care of any child or young person under that age wilfully assaults, ill-treats, neglects, abandons or exposes such child or young person or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement)”¹². Ill-treatment includes emotional and psychological abuse such as “bullying or frightening”, or any course of conduct calculated to cause unnecessary suffering or

7 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020), pg. 27, para. 2.10.

8 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020), pg. 27-28, para. 2.10.

9 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) (Annexes) p. 15, para. 2

10 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020), pg. 28, para. 2.10.

11 Offences against the Person Ordinance (Cap 212), s 26 and s 27.

12 Offences against the Person Ordinance (Cap 212), s 27(1).

injury to health. The phrase “injury to his health” is understood in light of modern understanding of children’s health and development, and may be proved by expert evidence from child development, medical and psychological experts.

If you suspect that a crime has been committed, you should work with your supervisor to agree on information sharing arrangements with the police and SWD (where appropriate) in order to safeguard the child.

NOTE

DIFFERENCES BETWEEN CORPORAL PUNISHMENT AND ABUSE

The line between corporal punishment and child abuse is often difficult to determine. Studies show, however, that excessive corporal punishment can have a variety of negative outcomes and cause long-term harm for children, including increased anxiety, aggressive behavior, decreased academic success, and lower self-esteem.¹³

When determining whether an incident of corporal punishment amounts to child abuse, often it is necessary to weigh a variety of factors such as the severity of the injury, the age and development of the child, the manner of discipline, whether there is a pattern of abuse, the emotional effects of the incident, and the parent’s motivation.¹⁴

EXAMPLE CASE

F v L [2007] HKEC 1524

Father: “I was at home cooking noodles for the children to eat. After they finished eating, the elder son told me that he wanted to go downstairs to play. I said it was raining outside and asked him not to play downstairs in the street. At the time, I was not wearing any top, only a pair of shorts. I was washing the dishes in the kitchen. My elder son was very angry and scratched my back with his hands. So I walked out to the living room and got a rattan stick to discipline him I scolded the elder son loudly, saying that he was disobedient to his father. So I beat the elder son with the rattan stick. I aimed at the elder son’s hand, but the elder son dodged around. That’s why I ended up hitting him on his body and on his face. I did not use a lot of force in beating the son. Perhaps the end of the rattan stick was starting to split open, so it led to marks being left on the wound.”

Judge: “In his later affidavits, the husband changes his story and says that the N-H used a sharp object to scratch his back. Whatever the reality I am satisfied, having seen the photographs of the injuries suffered by the son, that the husband completely over reacted and that the punishment inflicted was out of all proportion to any act of naughtiness allegedly committed by N-H. In the discharge summary at the UC Hospital, the injuries are described as follows:

13 Doriane Lambelet Coleman et al., Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse, 73 LAW AND CONTEMPORARY PROBLEMS 107-166 (Spring 2010), 145, available at <http://scholarship.law.duke.edu/lcp/vol73/iss2/6/>.

14 Id.

NOTE
CONT'D

'A 8.5 cm linear reddish mark over the left face, two 3 cm linear marks over the left arm, a 2 cm reddish mark at the right forearm and a 2 cm mild reddish mark at the left upper buttock.'

I do not accept that this level of corporal punishment inflicted on a young child, N-H was then only 6 years of age at the time, is acceptable. So-called discipline of this severity cannot and should not be countenanced in a civilized society."¹⁵

CARE OR PROTECTION ORDERS (CPOS)

While some instances of child maltreatment may not constitute criminal offences, the legal system can respond to the types of conduct described in the SWD definition of child maltreatment by issuing a Care or Protection Order under the Protection of Children and Juveniles Ordinance (Cap 213) (PCJO). A court may issue a Care or Protection Order if a child is deemed in need of 'care or protection'.

Specifically, the PJCO states that, "[f]or the purposes of this Ordinance, a child or juvenile in need of care or protection means a child or juvenile-

- a. who has been or is being assaulted, ill-treated, neglected or sexually abused; or
- b. whose health, development or welfare has been or is being neglected or avoidably impaired; or
- c. whose health, development or welfare appears likely to be neglected or avoidably impaired; or
- d. who is beyond control, to the extent that harm may be caused to him or to others, and who requires care or protection."¹⁶

Accordingly, where a court is of the view that a child is suffering from child maltreatment or is otherwise exposed to a harmful situation, it may intervene pursuant to the PCJO.

WHEN CAN A CPO BE APPLIED FOR AND WHAT INPUT CAN AN NGO HAVE?

The PCJO enables action to be taken to protect a child or juvenile in need of care or protection (in accordance with the definition set out above) by applying to the Juvenile Court for a Care or Protection Order.¹⁷ The Juvenile Court may also make a Care or Protection Order of its own motion.

An application for a CPO can be made by the Director of Social Welfare, by a police officer, or by any person authorized by the Director of Social Welfare.¹⁸ If the court determines that the child or juvenile is in need of care and protection, it may carry out the following actions as deemed necessary and appropriate to the child's circumstances;

- appoint the Director of Social Welfare to be the legal guardian of the child or juvenile;
- commit the child or juvenile to the care of any person or institution who is willing to provide such care;

15 F v L [2007] HKCU 1419, FCMC 11896/2005, at 28, 29 and 30.

16 Protection of Children and Juveniles Ordinance (Cap 213), s 34(2).

17 Protection of Children and Juveniles Ordinance (Cap 213), s 34.

18 Protection of Children and Juveniles Ordinance (Cap 213), s 34(1).

- order his parent or guardian to enter into recognizance to exercise proper care and guardianship; and/or
- make an order placing the child or juvenile for a specified period under the supervision of any person appointed by the court.¹⁹

Not every suspected child maltreatment or child protection case warrants an application for a CPO under the PCJO. Such application should be considered on a case-by-case basis taking into account the parents'/carers' views and attitude towards professional intervention, the child's safety, psychological state, behaviour and views, and the seriousness of the incident(s), etc. In light of the possible adverse effects (e.g. distress to the child) caused by the legal proceedings, solicitation of the parents'/carers' co-operation in the intervention process should first be considered before resorting to statutory action to protect the child.²⁰

Many NGO social workers are not authorized to make an application for a CPO directly. However, NGO social workers play a key role by providing support, evidence and recommendations to the court and to persons authorized to make CPO applications, for example, Social Welfare Department (SWD) social workers. Importantly, NGO social workers can communicate elements of risks and insight from their interaction with families. They should seek all possible channels to provide their opinions and evidence relating to the case, including attendance at court hearings, particularly when the child is in institutional care or when the social worker is acting as the primary service provider.

19 Protection of Children and Juveniles Ordinance (Cap 213), s 34(1).

20 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 154, para. 11.41

SIGNS OF CHILD ABUSE

1. Withdrawal from friends or usual activities
2. Changes in behavior – such as aggression, anger, hostility or hyperactivity – or changes in school performance
3. Depression, anxiety or unusual fears, or a sudden loss of self-confidence
4. An apparent lack of supervision
5. Frequent absences from school
6. Reluctance to leave school activities, as if he or she doesn't want to go home
7. Attempts at running away
8. Rebellious or defiant behavior
9. Self-harm or attempts at suicide



Physical Harm/Abuse	Sexual Abuse	Psychological Harm/ Abuse	Neglect
<ul style="list-style-type: none"> • Bruises that are unlikely to be accidental • Bite marks • Lacerations over the hands, arms or feet/to the frenulum • Burns and scalds • Fractures Brain/head injuries including Shaken Baby Syndrome • Abdominal injuries • Fabricated or induced illness, Factitious Disorder Imposed on Another • Poisoning • Hair loss by pulling or burning • Drowning • Multiple injuries sustained at different times • Ordered to carry out duties/activities that are beyond the child's physical ability for excessive hours • Sudden death of the infant • Explanations regarding injury are unconvincing/contradictory to or inconsistent with the injuries sustained • Failure or delay in seeking medical advice • Excessive amount of clothes worn to cover body • Enacting/reproducing scenes of harm/ maltreatment in play or daily behaviours 	<ul style="list-style-type: none"> • Torn, stained or bloodstained underclothes • Complaints of pain, swelling or itching in the genital area • Complaints of pain during urination • Bruises, bleeding, or lacerations in external genitalia, vaginal area, anus, mouth or throat • Vaginal/penile discharge • Bowel control or bladder control weakened despite toilet trained • Repeated urinary tract infection • Sexually transmitted disease • Pregnancy • Child showing particular interest in body parts of adults or touching adults' sensitive body parts repeatedly • Enacting/reproducing scenes of sexual abuse in play or daily behaviour • Child disclosing that his/her parent or other person has played secret games with him/her • Knowledge about sex or sexual behavior that is beyond the expectation for the age of the child 	<ul style="list-style-type: none"> • Underweight or frail • Developmental delay • Eating disorder • Psychosomatic symptoms • Resisting contact with others and the outside world • Anxiety symptoms • Wetting/soiling • Language delay • Self-harm or suicidal thoughts/attempts 	<ul style="list-style-type: none"> • Newborn showing symptoms of Neonatal Withdrawal Syndrome after birth • Newborn's urine sample is tested positive for dangerous drugs • Malnutrition, underweight or frail • Abnormal changes in weight • Delayed development • Severe rash or other skin problems • Unattended physical problems or unmet medical/dental needs • Inappropriate/inadequate diet • Persistently inappropriately dressed • Poisoning/accidental ingestion of dangerous drugs or hazardous substances • Frequent accidental injuries • Left unattended/ inadequate supervised for long periods of time • Being abandoned completely or for long periods of time • Left in the care of inappropriate carer • Child being confined at home • School-aged child being persistently absent from school or deprived of schooling

** *Keep in mind that warning signs are just possible signs. The presence of warning signs does not necessarily mean that a child is a subject of maltreatment.*

** *Please see the SWD's Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation p. 50-56 for a detailed checklist for identifying possible signs of child maltreatment.²¹*

IS IT MANDATORY TO REPORT SUSPECTED CHILD MALTREATMENT CASES?

While there is no legal duty to report crimes in Hong Kong save for limited circumstances, the Social Welfare Department has stated that, in handling cases with a child suspected to be harmed/maltreated, professionals should report it to the Police for investigation when they consider that a case may involve criminal elements.²²

Professionals may report a suspected child maltreatment case to the Police through normal procedures, or alternatively, to a Child Abuse Investigation Unit (CAIU), which is designated to investigate child maltreatment cases. Under no circumstances will the child being harmed/maltreated be obliged to report the case in person at a police station.²³ After reporting the case, professionals may subsequently complete a Report Form and Written Dated Notes and submit them to the CAIU (or the Family and Child Protective Services unit as the case may be).²⁴

There are exceptions within the Personal Data (Privacy) Ordinance (Cap. 486) allowing usage and sharing of personal data for cases where (a) the personal data related to the physical or mental health of the subject and maintaining privacy of that information would cause serious physical or mental harm to the subject or other individuals (Section 59), or (b) the personal data is necessary for detection or prevention of crime or seriously improper conduct and maintaining privacy of such information would hinder such purposes (Section 58). However, each case must be determined on its own merit.²⁵

Additionally, it may be part of the duty of social workers to report cases of maltreatment in order to protect their clients. Depending on the facts of the case, a social worker may owe a duty of care to the child, and if the child is harmed because the social worker has breached this duty, the child or his or her representative can bring a lawsuit against the social worker.²⁶ If a child discloses suspected maltreatment incident(s) and asks for confidentiality, the professional should explain to him or her that such a promise cannot be made in order to safeguard his or her best interests.²⁷

22 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 111, para. 10.1

23 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 111, para. 10.2

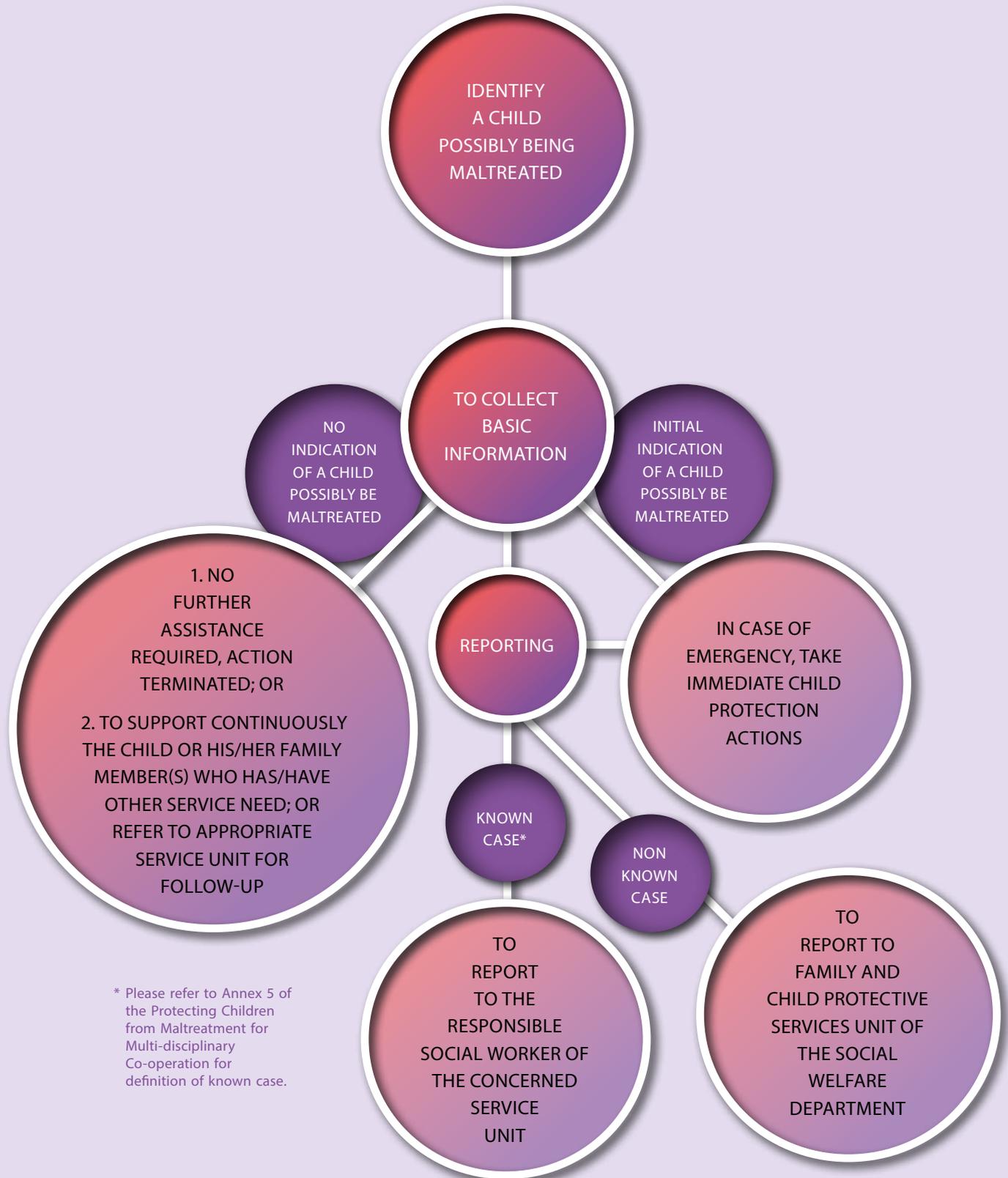
24 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 112, para. 10.5

25 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) (Annex 2) p. 9, para. 8

26 *CN & GN v Poole BC* [2019] UKSC 25, para 88-89

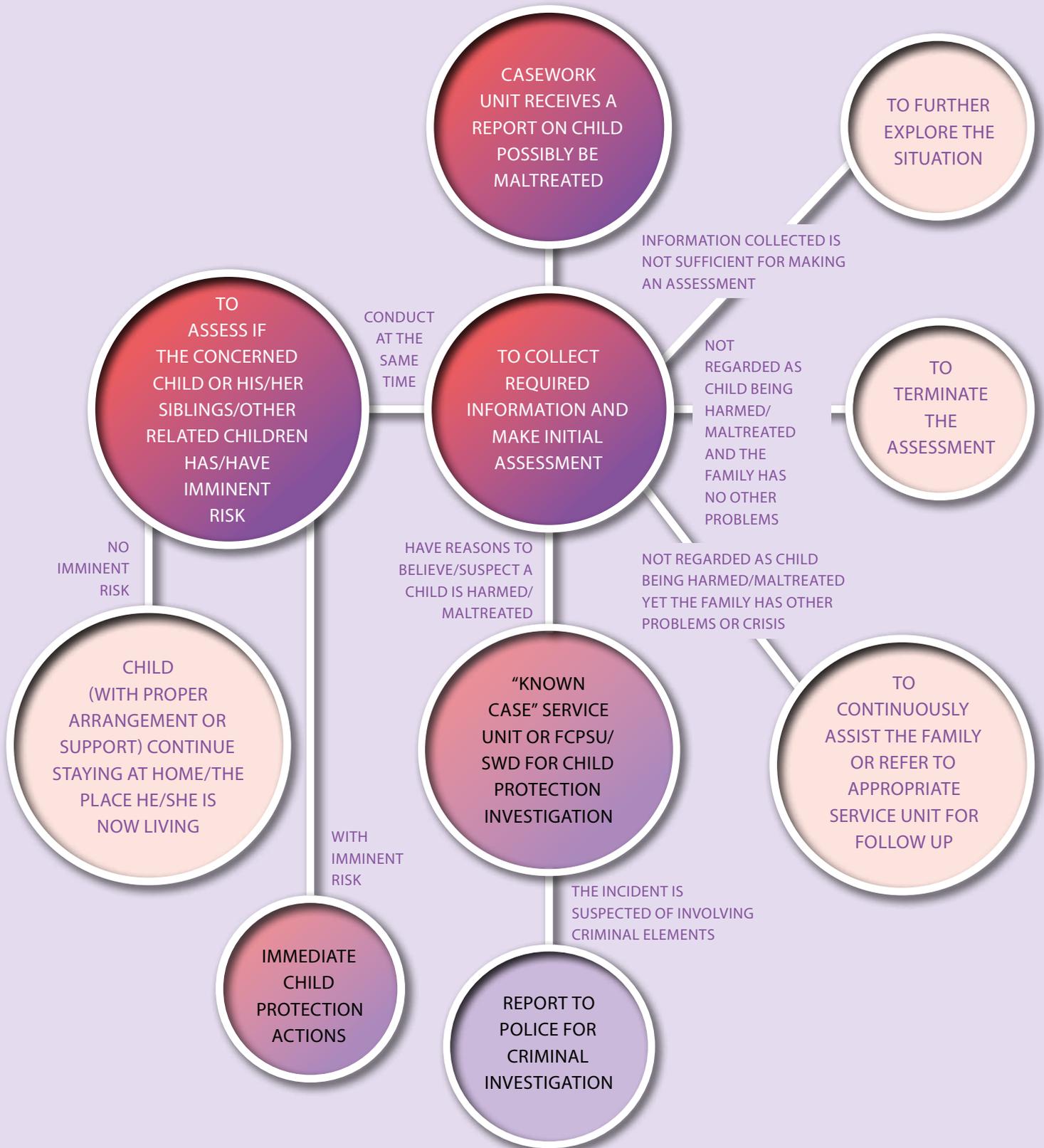
27 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 59-60, para. 4.15

Identification and Reporting of a Suspected Child Maltreatment Case²⁸



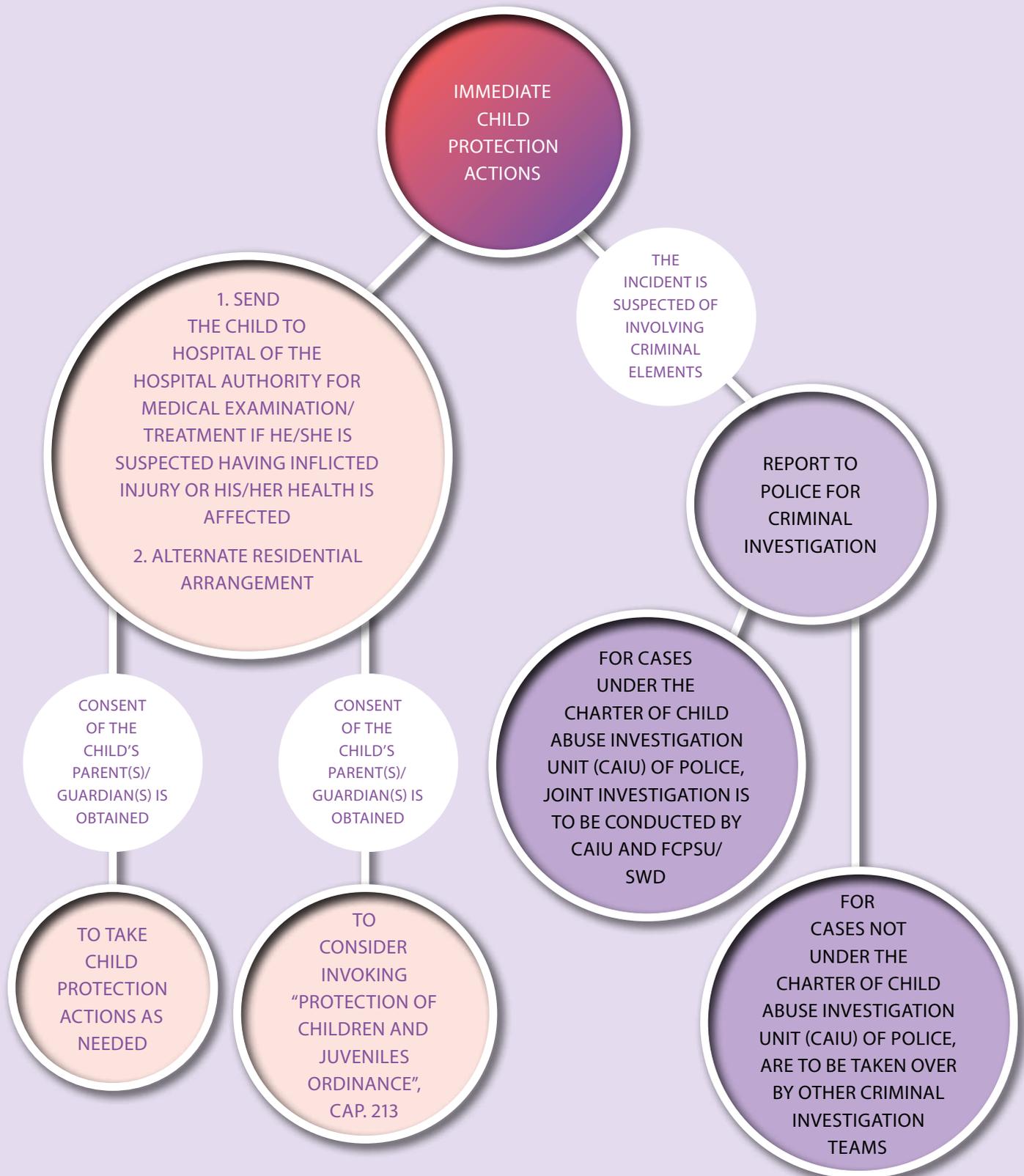
28 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 43

Conducting Initial Assessment and Immediate Child Protection Actions²⁹



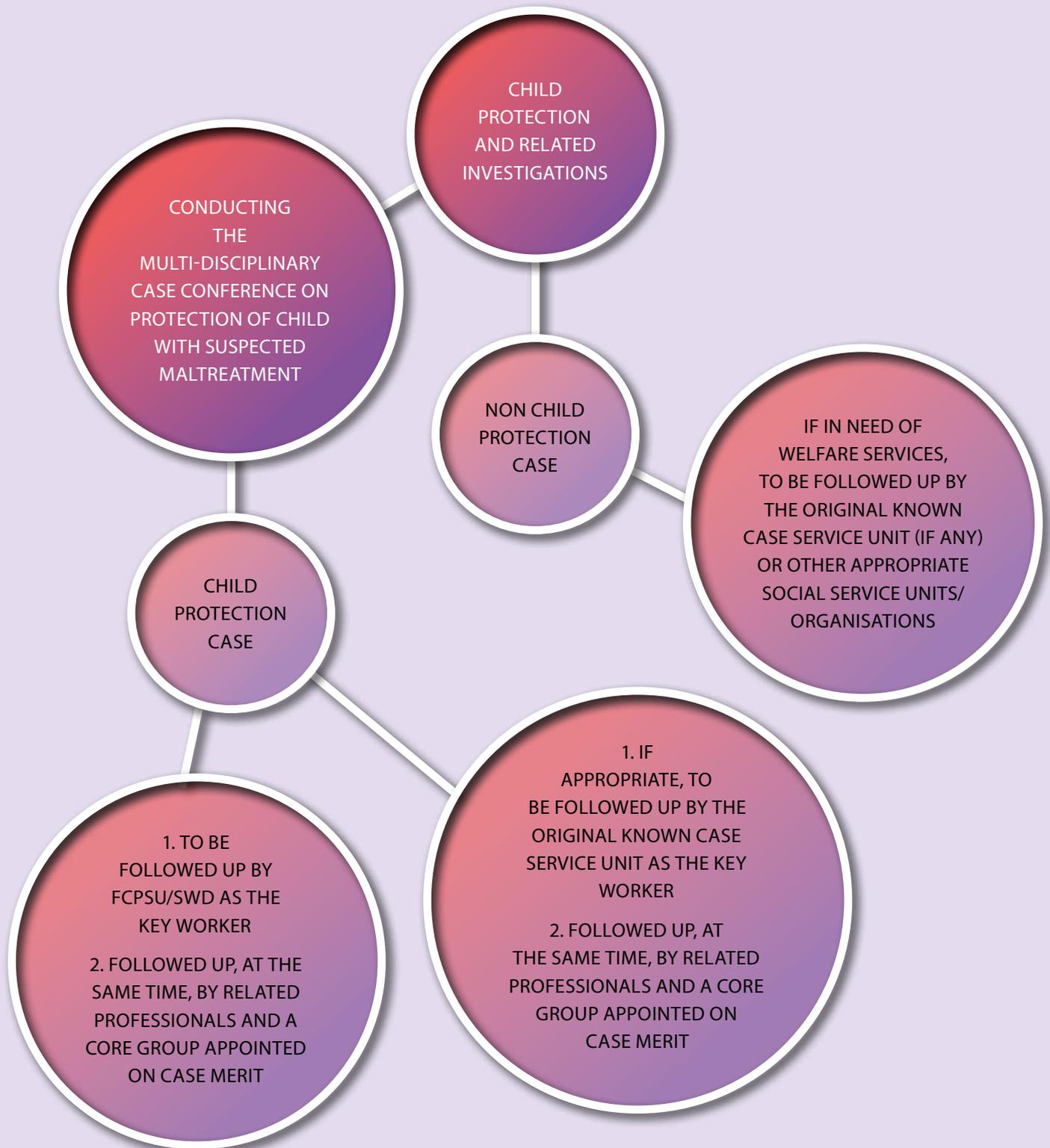
29 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 44

Immediate Child Protection Actions and Investigations³⁰



30 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 45

Conducting the Multi-disciplinary Case Conference on Protection of Child with Suspected Maltreatment and Follow-up Services³¹



31 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 46

MULTI-DISCIPLINARY CASE CONFERENCE

In addition to reporting to the relevant authorities, there are other intermediate steps that should be taken in response to concerns about child maltreatment. An MDCC (Multi-disciplinary Case Conference) is a meeting of all professionals involved in the case from a variety of disciplines. An MDCC should always be called when it is suspected that the physical or mental health and development of a child is endangered.³² The purpose of the conference is to allow professionals to share knowledge and concerns, plan for the protection and welfare of the child, and recommend a follow-up plan for the child and his/her family.³³

TIP

MDCCs should be used not only after an incident of child maltreatment has already occurred, but as a way to plan for the future welfare of a child and to prevent child maltreatment from occurring.

When a case of child maltreatment is referred to the SWD, it is their practice to search the Child Protection Registry to see whether the case is already known to the SWD or whether it is a new case.³⁴

Cases will be divided into different types, and handled by different units accordingly (see above flowcharts on "Identification and Reporting of a Suspected Child Maltreatment Case" and "Conducting Initial Assessment and Immediate Child Protection Actions"). MDCC is required when there is/are suspected child maltreatment incident(s) with investigation conducted by social worker and other professionals. It should be conducted unless there are exceptional situations, which are highlighted in para 11.5 of the Procedural Guide³⁵. Usually the chairperson of the MDCC will be the officer-in-charge, supervisor, or senior social worker of the units providing casework service and conducting the investigation.³⁶ If the relevant personnel is not experienced in conducting MDCC or for other reasons is not the appropriate chairperson for that case, the FCPSU of the SWD will provide support and assistance including helping to chair the MDCC if necessary. FCPSU social worker will also act as chairperson of the MDCC if the youth service unit of NGOs is the agency conducting the child protection investigation.³⁷

An MDCC should be conducted within 10 working days of when the case was received by the investigating social welfare unit.³⁸

32 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) (pg. 143)

33 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 143)

34 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 5 (pg. 65, para 5.4)

35 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 144, para 11.5)

36 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 144, para 11.11)

37 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 144, para 11.12)

38 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 145, para 11.9)

In addition to the investigating social worker, the chairperson may invite other professionals, including other social workers, to participate in the MDCC.³⁹ Each participant of the MDCC is responsible for preparing a written report or notes on the child for reference of the MDCC, and such materials should be distributed to other members as soon as practicable.⁴⁰

In the MDCC, participants should consider the following factors: nature of the incident; level and nature of risk to the child and other children of the family; formulation of a safety/follow-up plan to protect the child; parents'/guardians' suggestions and attitudes on the plan; and the needs and views of the child and other family members.⁴¹ The MDCC will also discuss if the child should be placed on the Child Protection Registry.⁴² Participants of the MDCC are required to share their findings of the investigation on the incident, contribute their professional knowledge and experience, represent their organisation's views and to share relevant information and concerns with the child's family members.⁴³ However, if any participants have reservation about giving views, they should not be compelled to do so and their reasons can be included in the notes of MDCC if necessary.⁴⁴ More detailed information about these procedures is available in the SWD's Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation.⁴⁵

WHAT ROLE CAN THE CHILD PLAY IN A CHILD MALTREATMENT INVESTIGATION? CAN THEY SPEAK ON THEIR OWN BEHALF?

Under the Convention on the Rights of the Child, children have the right to be heard and to express their views in all matters affecting their own lives.⁴⁶

Family participation in a child maltreatment investigation aims to enhance parents' understanding of the issues of concern, tap their contribution to the formulation of the welfare plan, and enlist their involvement in the implementation of the welfare plan. It is also an empowering process. However, the welfare and rights of the child should always be the paramount concern throughout the process of this investigation.⁴⁷

The MDCC normally consists of two parts. The first part is for professional sharing and discussion while the family members will be invited to join the second part. The Chairperson, with consultation with members as appropriate, will decide at which time point the family members will join the MDCC according to individual case merit but at least when the initial welfare plan is formulated. All members are expected to attend the MDCC including the part of meeting with the family unless there is a specific

39 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 144, para 11.15)

40 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg.155, para 11.44)

41 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 (pg. 143, para 11.3)

42 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 Sample agenda for reference (pg. 173)

43 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 page 154, para 11.43

44 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11 page 152, para 11.37

45 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 11

46 Convention on the Rights of the Child, Art. 12.

47 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p.156, para. 11.50

reason. It is not appropriate for the social worker of a refuge centre, where the mother and the child concerned are residing, to meet the father who is the suspected perpetrator of child maltreatment.⁴⁸

If the parents or the child are not attending the MDCC they may express their views on the incident and follow-up plan to the investigating social worker or other members of the MDCC for their consideration.⁴⁹

A pre-conference meeting with the child/ren and their parents/guardians should be held so they may be briefed regarding the objectives, focus and ambit of the MDCC, the proceedings and issues to be discussed, the roles of the participants and how the child/ren and their parents/guardians may give their views and contribute.⁵⁰ A post-conference meeting should also be held to address their possible emotions, clarify any queries and allow the family to recapitulate their roles and contribution in the process of child protection.⁵¹

If criminal proceedings eventuate, and the child is required (or wishes) to give evidence of the maltreatment, special rules apply to evidence provided by children to make it easier and more comfortable for children to give testimony. For example:

- children under the age of 14 can give evidence in the form of an unsworn deposition (a written statement made outside of the court)⁵²
- children may also be allowed to testify via CCTV⁵³
- in some cases, previous interviews with the child may be presented as evidence.⁵⁴

WHAT HAPPENS TO CASES THAT ARE NOT ESTABLISHED AS A CHILD PROTECTION CASE?

One of the major functions of the MDCC is to decide whether a case is a child protection case, which refers to cases in which there have been incident(s) which the MDCC thought constituted harm/maltreatment to a child, the MDCC thought the harm/maltreatment incident was very likely to have happened, or there is high risk of harm/maltreatment in the future. If, after assessing the case, the MDCC determined it is not a child protection case, the MDCC can suggest follow-up services be rendered by a social service unit/organisation as appropriate if welfare services are required.⁵⁵

If a social worker still has concerns, it is incumbent on that social worker to use their own initiative and continue to follow up and check on the case, providing ongoing support to the family to maximize the ongoing welfare and safety of the child. Sometimes in these cases, an MDCC may still be arranged to plan for the welfare of the child.

48 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 156, 157, para. 11.51

49 Leaflet on Child Protection Investigation and Multi-disciplinary Case Conference for the Protection of Child with Suspected Maltreatment - Notes to Parents (https://www.swd.gov.hk/storage/asset/section/1447/en/Leaflet_MDCC_Supp_EN.pdf).

50 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) pg. 159, para 11.64

51 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) pg. 160, para 11.66, 11.67

52 Evidence Ordinance (Cap 8), s 4.

53 Criminal Procedure Ordinance (Cap 221), s 79B. See also Live Television Link and Video Recorded Evidence (Cap 221J).

54 Criminal Procedure Ordinance (Cap 221), s 79C. See also Live Television Link and Video Recorded Evidence (Cap 221J).

55 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) pg. 148-150, para 11.26

IF A CASE OF CHILD HARM/MALTREATMENT IS ESTABLISHED FOR ONE CHILD IN A FAMILY, WHAT HAPPENS TO OTHER CHILDREN IN THE FAMILY?

When one child in a family is harmed/maltreated, there is a high risk that other children in the family may also be harmed/maltreated. At the initial assessment stage, any imminent or future risk of harm/maltreatment to other children in the family (e.g. whether the alleged perpetrator can harm other children) should also be assessed. If there are reasons to believe or suspect harm/maltreatment, consideration should be given to whether actions should be taken to ensure the safety of the other children.⁵⁶

A major purpose of the MDCC is to assess the level of risk to the other children in the family, make recommendation and concrete arrangement in relation to follow-up plan, and determine whether the names of the siblings should also be placed into the Child Protection Registry.⁵⁷

WHAT IF A PREGNANT WOMAN USES DRUGS WHILE SHE IS PREGNANT? IS THIS A FORM OF CHILD HARM/MALTREATMENT?

An unborn child does not generally have legal rights until after it is born. Therefore no offence of child harm/maltreatment normally arises. However, if a mother engages in a dangerous activity while pregnant, such as using drugs and/or alcohol, this may constitute neglect. In considering whether the case constitutes neglect, personnel consider whether the behaviour has harmed or may harm the physical/psychological health and development of the infant or child. Appropriate support/services should also be provided to pregnant women with drug/alcohol abuse, with a view to protecting the safety of the infant or child concerned. If necessary personnel may call for an MDCC and develop a follow-up plan in such cases.⁵⁸

WHAT IS THE CHILD PROTECTION REGISTRY?

The Child Protection Registry (CPR) is a computerized record system designed to keep a record of all instances of child maltreatment. The main objectives of the CPR are to:

- facilitate better communication among government departments and NGOs and make it easy to check whether a case is known to any other departments or organizations;
- collect statistical information on the problem of child maltreatment in Hong Kong; and
- plan and develop services and public education using a preventative approach to child maltreatment.⁵⁹

Different service units are invited to report child maltreatment cases and children found at risk to the CPR.

56 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) pg.66-68, para 5.9

57 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) pg.149, para 11.26

58 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Annex 1 to Chapter 2, pg. 35

59 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Annex 14, para 2.

Only registered users can make enquiries to the CPR.⁶⁰ The information that can be obtained is restricted to:

- whether or not the child/sibling(s) is registered;
- whether the case is active or closed; and
- the name and telephone number of the officer-in-charge/supervisor of the service unit handling/last handled the case.

WHAT HAPPENS IF A PARENT HAS BEEN SENTENCED IN A CHILD HARM/ MALTREATMENT CASE? WOULD THIS RESULT IN PERMANENT REMOVAL OF CUSTODY?

Being convicted of a child harm/maltreatment offence does not automatically mean that a CPO will be imposed, that a child will be removed from their parents, or that the parents will lose their parental rights.

The immediate placement of a child will depend on the determination of the MDCC or a court order. In severe child maltreatment cases, it is highly likely that the child will be placed into foster care or other temporary care (following a CPO). It is a decision for the court to determine if, and how soon, the child can be returned to the parents if the child was removed from the parents under a court order.

Save for cases of adoption by consent, the parental rights of a parent will only be terminated if the child is: (a) in the care of the Social Welfare Department; and (b) the Director of Social Welfare applies for a *freeing order*. This will only happen in extreme cases, for example if the child has been “abandoned, neglected, or persistently ill-treated.”⁶¹

EXAMPLE CASES

“Children’s rights advocates say case of malnourished girl, 7, highlights serious flaws in Hong Kong’s child welfare system”

South China Morning Post, Jennifer Ngo and Emily Tsang, Sept 10, 2015

“[A] girl moved to Hong Kong from the mainland in November last year to stay with her birth parents, brother and half-sisters. She has been in hospital since July, is said to weigh less than 15kg, has gangrene on her thighs, buttocks and feet and has skin ulcers all over her body.

Lawmakers and social work scholar[s] said there were obvious gaps between departments, which allowed the girl’s plight to go unreported.

“Family social workers usually don’t look too deep. If there’s a financial problem they help the family apply for welfare; if there is a marriage issue they offer counselling. They may not look into the children if they do not suspect abuse,” he said. “What I’d ask is why the school didn’t report the case – it was a red flag when the girl withdrew from school after staff questioned her mother about her wounds.”

60 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p. 65, para 5.4 Staff of service units from SWD/NGOs, police officers of CIAUs and senior medical officers/medical officers in charge of dealing with child abuse cases who wish to be registered as users of the CPR are required to send in the completed Record Form for Access. Process outlined at <http://www.swd.gov.hk/doc/en/08Appendix%20VI.pdf>

61 Adoption Ordinance (Cap.290) s. 5A, 6

The girl is in a stable condition, but has been unresponsive to all attempts of stimulation since being admitted. Her parents and older twin sisters have been released on bail.”

See: www.scmp.com/news/hong-kong/law-crime/article/1856831/childrens-rights-advocates-say-case-malnourished-girl-7

“Child abuse has no place in society”

South China Morning Post, Editorial, Jan 15, 2018

A five-year-old girl died after what was suspected to be long-running physical abuse in the home. Her eight-year-old brother also suffered from malnutrition and multiple injuries. Her father and step-mother were charged with murder.

Questions were raised as to why the case went unnoticed. In the alleged murder case, a court heard that the siblings were subject to physical abuse on an almost daily basis. Furthermore, the family at one point stopped sending the girl to school and eventually withdrew her altogether. However, the kindergarten in question did not report the situation. The primary school at which the brother attended noticed the bruises on the boy and had called the Social Welfare Department, but the department denied handling the case. A social work staff union later stated the case might only have been treated as seeking views from the government as opposed to referral, which takes further procedures.

See: <https://www.scmp.com/comment/insight-opinion/article/2128222/child-abuse-has-no-place-our-society>

These cases raise serious questions not just for Hong Kong's child protection network, but also the roles of individual professionals handling child welfare cases.

Child Maltreatment Rates in Hong Kong

*Research Findings*⁶²

A 2005 study by Chan, based on a territory wide household survey, found: around 45% of children had been physically assaulted by one or both parents at some point; around 9% of children had encountered severe physical assault by their parents; around 72% of children reported having encountered psychological aggression by their parents; and 27% of children reported having encountered neglect.⁶³

62 The below studies are cited from Patrick Ip and Chun-Bong Chow, *Child Abuse and Child Policy, PREVENTING FAMILY VIOLENCE: A MULTIDISCIPLINARY APPROACH* (ed. Ko-Ling Chan) (2012).

63 Chan, K.L., *Study on Child Abuse and Spouse Battering: Report on Findings of Household Survey, Hong Kong: Department of Social Work and Social Administration, the University of Hong Kong* (2005).

A 2010 study by Patrick Ip, analyzing the data from the Hospital Authority's Clinical Management System, found that from 2000 to 2008 there were 5,400 admissions into public hospitals because of child abuse. The data also showed an increasing trend of admissions to the hospital for child abuse. In 2000 there was an admission rate of 3.3 per 10,000 individuals under the age of 19. In 2008 this went up to 7.3 admissions per 10,000 children.⁶⁴

The number of newly registered cases in the Child Protection Registry in 2019 was 1006. Amongst these, 42.7% of them were physical abuse cases, 30.3% were sexual abuse cases, 23.6% were neglect, 0.8% were psychological and 2.6% were multiple abuse cases⁶⁵

64 Ip, P., Child abuse and neglect in Hong Kong, 5 HONG KONG JOURNAL OF PAEDIATRICS 61-64 (2010).

65 Social Welfare Department, Child Protection Registry Statistical Report 2019, available at https://www.swd.gov.hk/storage/asset/section/3219/en/Annual_CPR_Report_2019_Final.pdf



What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 My family has the responsibility to help me learn to exercise and protect my rights.
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 I have the right to live with a family who cares for me.
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 I have the right to be listened to, and to be taken seriously.
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.
- 18 I have the right to be raised by both parents if possible.
- 19 I have the right to be protected from abuse – from being hurt or badly treated in body and mind.
- 20 & 21 I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.
- 22 If I am a refugee (if have been forced to leave my home country), I have the same rights as children in my new country.
- 23 If I have a disability, I have the right to special care and education.
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 I have the right to play and rest.
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 I have the right to know my rights! And everyone around me should learn about my rights.
- 43 - 54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the United National Convention on the Rights of the Child (UNCRC) in 1994.

I am a child, and I have all of these rights.

As I grow older, I have more responsibility to make choices and exercise my rights.

These rights will help me thrive and reach my full potential.

