



GOVERNMENT OF MALTA
MINISTRY FOR SOCIAL JUSTICE
AND SOLIDARITY, THE FAMILY
AND CHILDREN'S RIGHTS

MANDATORY REPORTING GUIDELINES

FOR PROFESSIONALS IN TERMS
OF THE MINOR PROTECTION
(ALTERNATIVE CARE) ACT, CAP.
602 OF THE LAWS OF MALTA

TECHNICAL COMMITTEE
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INTRODUCTION

This document aims to support professionals in determining the need for a child protection inquiry based on the available information. It is not the scope of this document to replace professional judgement; much rather it tries to offer a system that can support the professional to exercise his/her discretion. Whilst this document intends to support the professional in making adequate and informed decisions, there shall always be the possibility for the professional who is in doubt to consult and this to ensure that no risks are taken with the safeguarding of children.

This guide follows a pathway; offering an eligibility section first, followed by a risk positioning section and concluding with a series of practical questions that can support the professional in determining in what risk the child may or is in.

BACKGROUND

Mandatory reporting is the concept whereby particular individuals, often professionals, *in formal or informal settings* in contact with children, are obliged by law to report knowledge or strong suspicions of child maltreatment.

Child maltreatment (CM) represents a violation of children's rights and wellbeing and is a public health and social welfare problem, which carries a significant morbidity and mortality. Child Protection (CP) is everybody's responsibility and all institutions working with and for children, must ensure that the welfare of children is being safeguarded.

The Member States of the European Union are bound by international and European treaties to protect, respect and promote the rights of the child¹. The United Nations Convention on the Rights of the Child (UNCRC) acknowledges the fact that children are not only individuals with human rights but given their inherent vulnerability, they also require additional protection from the State in order to ensure that their right to survival, development and well-being is not infringed². Article 19 of the UNCRC states that all children have a right to be protected 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'. Furthermore, it explicitly mentions that it is the State's responsibility to ensure 'appropriate legislative, administrative, social and educational measures' in order to safeguard children from all forms of maltreatment.

1. Article 1, Chapter 1 of European Convention on the Exercise of Children's Rights

2. Preamble to the United Nations Convention on the Rights of the Child

DEFINITIONS

Child Abuse and Maltreatment: Child abuse is a complex set of behaviours causing harm to a minor. Child abuse and maltreatment are usually associated with episodes of physical violence unto a minor; inappropriate sexual actions unto a minor; neglect unto a minor; and episodes of belittlement, humiliation and emotional derogation unto a minor; sexual exploitation; female genital mutilation; exposure to violence or risks; fabricated induced illnesses; forced marriage; online abuse; human trafficking; child labour; et cetera.

Child abuse may be performed by means of a commission of an act or via distinct omissions of tasks of care necessary for the protection and development of a minor. Perpetrators of abuse may be adults or other minors who may or may not be criminally liable according to the provisions of the Criminal Code, Chapter 9 of the Laws of Malta. Abuse may be a harmful action that is directed towards a minor, or a harmful action that is intended to harm someone vicariously through a minor.

Significant Harm: Significant harm in this document shall be held to have the same meaning as that provided in article 9(4) of Cap. 602.

Minor: The term minor means any child under the age of eighteen (18) years. Protective Factors: Protective factors are any action taken by virtue of the care responsibility of a carer or parent that is clearly delineated towards the best interests of the minor (e.g. engagement to universal medical services), or any factors that are present within the child's surroundings or within the self of the child, that serve to boost the child's resilience and safety.

Peer: The term peer shall be held to refer to a social group which is of an approximate similar age and whose participants share a paralleled life experience and interests.

Important Supporting Documents

Criminal Code, CAP. 9 of the Laws of Malta³

3. Criminal Code CAP 9. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>

CHILD PROTECTION CONCERNS

The 2020 Minor Protection (Alternative Care) Act reflects the State's commitment to ensure that children in Malta are safeguarded from all forms of maltreatment. This Act introduces the concept of mandatory reporting whereby professionals working with children, or work in a context that may influence children (eg. parent coaching) must always act in the child's best interests and are obliged to report any concerns that may place the child at risk of significant harm.

Children are best protected when professionals are clear about their role and responsibilities vis-à-vis mandatory reporting of child maltreatment. The scope of this document is not to replace the professional judgement but rather to support the professional to exercise his/her discretion in deciding what is the best course of action to address reasonable suspicions or knowledge of child maltreatment that has come to them through their work. When in doubt, it is always advisable to discuss individual concerns with any member of the leadership team at the Child Protection Directorate via phone, email or in person. However the underlying principle is that anyone who has concerns about a child's welfare should make a referral in the child's best interest.

The primary aim of mandatory reporting is not to prosecute the caregivers, but rather to provide early interventions by the social welfare services to help the vulnerable child and prevent further abuse, neglect, and trauma.

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REFERRALS

Any report made on any person who has exceeded the age of eighteen (18) years or that fails to adequately point the presence of at least one (1) featured abuse shall be held to be inconsistent with these guidelines. Any such situation should be directed to other appropriate services and it should not be referred to CPS.

Professionals who are aware or have strong suspicions that a child is being maltreated, should fill in the referral form available online and send a signed copy to the Child Protection Directorate located at 220, Cannon Road, Santa Venera. The online form can be found on this link:

<https://fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Child-Protection-Services.aspx>

Child Protection Directorate will strive to maintain the identity of the reporter and the contents of the reports confidential. The law states that professionals reporting in the child's best interest, hence in good faith, are protected against any form of legal liability, however failing to report concerns that may jeopardise the child's welfare will result in a criminal offence in accordance with article 9 (4) of Cap. 602, apart from any disciplinary action that may be taken according to any regulations specific to each profession. The new law further protects mandated reporters by making it an offense to act

aggressively towards a person fulfilling his/her responsibility under the Act, including the responsibility of reporting as hereabove outlined.

CHILD MALTREATMENT

CM can be broadly defined as any act of commission or omission by a person in a position of power, trust or responsibility (which may include caregivers, strangers as well as other children) that results in harm, and can be either intentional or unintentional. CM is traditionally categorised as physical abuse (PA) (including fabricated induced illness), emotional or psychological abuse (EA), sexual abuse (SA), and neglect. Other forms of abuse have also been recently recognised including female genital mutilation (FGM), sexual exploitation and trafficking, child labour, parental alienation, human trafficking, prostitution, cyber grooming, et cetera.

SIGNIFICANT HARM

The 2020 Minor Protection (Alternative Care) Act⁴ has been amended to include a wide-encompassing definition of “significant harm” such that it includes abuse, neglect, harassment, ill treatment, exploitation, abandonment, exposure, trafficking, fear of violence, female genital mutilation as well as experiencing and witnessing domestic violence. Significant harm is therefore the threshold at which children’s social care services have a duty to intervene in family life in order to protect a child.

Individual entities working with children should have in place threshold criterion on what merits an immediate referral to social services and others that may only warrant further consultation. For example, within the health sector, professionals can refer to the evidence based guidelines issued by the National Institute for Health Care Excellence (NICE) (<https://www.nice.org.uk/guidance/cg89>) which offer scenarios on when to suspect and when to consider child maltreatment. The scope of this document is not to provide an exhaustive list of such scenarios, however, definitions of the various categories of abuse are presented and a number of indicators that reflect potential significant harm are identified to help the professional to exercise his/her professional judgement.

4. <https://legislation.mt/eli/cap/602/eng/pdf>

CATEGORIES AND INDICATORS OF CHILD MALTREATMENT

Physical abuse

A form of abuse may involve hitting, tying, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child. Harmful practices that cause physical harm and hence constitute abuse, include practices like FGM.

Sexual abuse

This involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and fondling. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

Child Sexual Exploitation

This is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage of or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology.

Emotional abuse

The persistent emotional maltreatment of a child such as to cause severe and persistent adverse affects on the child's emotional and/or psychological development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or belittling them ('making fun' of what they say or how they communicate). It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child from participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyber bullying), causing children frequently to feel frightened or in danger or

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that someone else that they love (including a pet) may be in danger of suffering harm if they disclose information, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.

Neglect

This is the persistent failure to meet a child's basic physical, educational and/or psychological need and such failure is likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:

- provide adequate food, clothing and shelter (including exclusion from home or abandonment);
- protect a child from physical and emotional harm or danger;
- ensure adequate supervision (including the use of inadequate caregivers); or
- ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional need; and
- ensure that the minor attends an educational entity once the child reaches compulsory-school age or failure to ensure that the child is dressed adequately and has the necessary things that the child will need throughout the day.

Vicarious Abuse

This type of abuse is characterized by the intention of harming another person through the child. Whilst the intention is usually not to directly harm the child, there are instances where an adult may use the child as an instrument to harm another person, therefore subjecting the minor to a highly negative experience and/or certain risks. Vicarious abuse is most commonly associated to parental alienation contexts, whereby a custodial parent engages in a steady strategy of derogation towards the non-custodial parent with the express intent of hurting. Whilst the insults or the harm are not performed directly upon the non-custodial parent, the custodial parent advertedly or inadvertedly, induces stressful and negative ideas against the non-custodial parent with the intent that the child develops an antipathy towards the non-custodial parent. When there is severe vicarious abuse, the child reaches a stage where the child rejects the non-custodial parent and harbours unjustifiable negative emotions towards that parent.

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POSSIBLE INDICATORS OF ABUSE AND NEGLECT:**Neglect**

- inadequate or inappropriate clothing on repeated occasions
- appears underweight and unwell and seems constantly hungry (after medical causes have been excluded)
- failure to thrive physically and appears tired and listless, after medical conditions have been excluded
- dirty or unhygienic appearance despite repeated interventions
- frequent unexplained absences from school
- child not attaining significant developmental milestones and parents who do not seek medical treatment when children are ill or injured
- lack of parental supervision or involvement in school activities

Physical abuse

- any injury such as bruising, bite marks, burns or fractures where the explanation given is inconsistent with the injury
- non-accidental injuries in unexpected places or that are not typical of normal childhood injuries or accidents
- high frequency of injuries
- parents seem unconcerned or fail to seek adequate medical treatment or seek medical attention from different professionals for separate injuries

Sexual abuse

- sexual knowledge or behaviour that is unusually explicit or inappropriate for the child's age/stage of development
- sexual risk-taking behaviour including involvement in sexual exploitation (e.g. with older persons)
- continual, inappropriate or excessive masturbation
- Minor who appears with unexplained gifts or new possessions
- physical symptoms such as injuries or discomforts to genital or anal area or bruising, sexually transmitted infections, pregnancy
- Persistent feeling that their body is damaged/dirty

Emotional abuse

- developmental delay in the context of lack of stimulation
- attachment difficulties with parents and others
- withdrawal and low self-esteem

Indirect indicators of abuse and neglect

- sudden changes in behaviour
- withdrawal and low self-esteem
- eating disorders
- self harm
- aggressive behaviour towards others
- sudden unexplained absences from school
- drug/alcohol misuse
- running away/going missing
- Acts of animal cruelty
- Fear towards professionals contacting parents
- Fear of returning home
- Clear notes by the minor left for adults

Parental attributes

- misusing drugs and/or alcohol
- physical/mental health or learning difficulties
- domestic violence
- avoiding contact with school and other professionals
- criminogenic histories
- involvement in prostitution

RISK POSITIONING GUIDE

This section is inspired by the NICE guidelines for child protection in the medical field. These guidelines offer a simple system that demarcates with good clarity a course of action to be taken depending on the available information. For the purposes of these guidelines, we ought to use a three-tier paradigm that should guide the professional in taking the most adequate course of action.

Any situation that is categorised as SUSPECT through the judgement of the professional shall be held to merit a CP referral.

Any situation that is categorised as CONSULT through the judgement of the professional shall be held to be a situation that does not merit an automatic CP referral, but would benefit from further consultation with CPS and other relevant consultation points.

Any situation that is categorised as NO REPORT through the judgement of the professional shall be held to be a situation that does not merit a CP referral and that the difficulties found in the family may be better resolved through other available and suitable services in the community.

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SUSPECT - instances found to be **suspect** should be immediately referred officially to the Child Protection Directorate via a formal referral delivered to 220, Cannon Road, Santa Venera.

(1) Any situation that manifests clear, or some, evidence of the possibility of an occurrence of an act comprised in article 216 (1) of the Criminal Code, Cap. 9 of the Laws of Malta.

(2) Any situation that suggests risks, or that manifests an expressed threat towards life or health of a minor.

(3) Any situation whereby a minor expressly reports him/her/themselves to be a victim of abuse.

(4) Any situation which manifests a discernible pattern of lethal, non-lethal or slight harm towards a child over a period of time.

(5) Any situation whereby a person openly justifies the act of abuse and proclaims an intention to repeat the action of abuse.

(6) Any situation where a minor under the age of sixteen (16) is known to have been made to engage in sexual activities.

(7) Any episode(s) that comes with evidence that the parent(s) or carer(s) have actively fabricated false testimonies to explain injuries on the minor(s).

(8) Any situation that outlines a pattern of neglect by omission which will

result in an impairment of the child's physical, developmental and emotional well being

(9) Any situation which outlines an illegal arrangement of fostering or adoption.

(10) Any situation where there is confirmation that a child under the age of sixteen (16) has contracted gonorrhoea, chlamydia, syphilis, genital herpes, hepatitis C, HIV, trichomonas infection or any other sexually transmitted disease through an obvious act of sexual abuse, and unless there is clear evidence of mother-to-child transmission during birth or blood contamination.

(11) Any situation where the parent/caregiver is unable to explain the significant injuries such as fractures, lacerations or significant burns.

(12) Any situation where there is a display of abnormal or defiant sexual behaviour that is not age appropriate⁵ such as; if a pre-pubertal child displays or is reported to display repeated or coercive sexualised behaviours or preoccupation (for example, sexual talk associated with knowledge, emulating sexual activity with another child); if a child or young person's sexual behaviour is indiscriminate, precocious or coercive; or if a pre-pubertal child displays or is reported to display unusual sexualised behaviours, for example oral-genital contact with another child or a doll; requesting to be touched in the genital area; inserting or attempting to insert an object, finger or penis into another child's vagina or anus.

(13) If a minor is known to be at risk of female genital mutilation; underage marriage; exposure to violence; exposure to risks associated to addictions; child labour; human trafficking; prostitution; fabricated illnesses; etc.

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CONSULT – instances found to be **consult** should be discussed with any superior that may support child protection decisions and also with any member of the leadership team at the Child Protection Directorate via phone, email or in person.

(1) Any situation which appears to manifest episodes of abuse, but where the person committing the harm shows commitment towards an action plan to change any such behaviour.

(2) Any situation which seems to have some evidence suggesting abuse (e.g. bruises), yet there is other positive factors (e.g. presence of love) that seems to create a contradicting picture.

(3) Any situation where the commission of abuse appears to be the result of erroneous beliefs of parenting (eg hitting the child to instill discipline is often seen as an act of love).

(4) Any such situation where a minor under the age of sixteen (16), known to

5. Children's Sexual Behaviours: A parents' guide retrievable from http://www.gov.pe.ca/photos/original/CSS_CSBPGEEn.pdf

have defiant tendencies, regularly engages in sexual activities where consent may or may not have been granted.

(5) Any situation where a minor below the age of sixteen (16) has tested positive to a pregnancy test.

(6) Any situation where a minor over the age of sixteen (16) years declares to have given sexual consent to a partner who does not appear to be a peer and who appears to be exploiting the minor sexually.

(7) Any such situation where the parent(s) or carer(s) seem to be unable to respond to the needs of the minor in terms of structure setting, the provision of necessities and of emotional response.

(8) Any situation where engagement to the process of treatment is present, but there is either no apparent progress or the progress is slow (eg father is attending a perpetrator's programme diligently, but he continues to be violent at home).

(9) Any situation where the minor displays highly depressive states related to any form of maltreatment and reports difficulty in the daily functioning.

(10) Any situation where the minor displays a sudden loss of a previously acquired developmental skill which has not been explained due to medical causes. Such situations should look at patterns of behaviours and developmental regressions that are strongly associated with different forms of abuse (eg a 12 year old wetting the bed).

(11) Any situation which shows high rates of absenteeism and no progress has been managed through intervention by the education services.

(12) Any situation where the minor is known to steal, scavenges, hoards or hides food to save it for later, without a medical explanation.

(13) Any situation where the minor is observed to use inadequate attire or regularly soiled/dirty clothes.

(14) Any situation where the minor complains of symptoms that might be related to mental illness, such as repeated complaints of physical ailments that are not accompanied by an apparent physical condition.

(15) Any situation where the minor shows rapid changes in weight in an unusually short period of time and any medical cause for these changes has been excluded.

(16) Any situation where there is an evident stream of negative messaging to a child against a non-custodial parenting with the apparent aim of alienating a non-custodial parent.

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NO REPORT

(1) Any situation where the index person has attained the age of eighteen (18) years of age.

(2) Any situation that does not manifest at least one (1) FA.

(3) Any situation that appears to be closely and adequately monitored by universal or community services, and despite the presence of FA, there appears to be engagement to a treatment plan and evidence to suggest that the family are able and willing to reach the therapeutic goals.

(4) Any situation that manifests significant injuries, behaviours and/or illnesses that are accompanied by a legitimate and reasonable justification.

FURTHER REFERENCES

1. United Nations. Convention on the rights of the child 1989.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

2. European Commission. An EU Agenda for the Rights of the Child, Brussels 2011.

http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf.

3. United Nations. General Comment No. 13: The right of the child to freedom from all forms of violence 2011.

http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf.

4. Minor Protection (Alternative Care) Act, 2019. ACT No. XXIII of 2019.

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29676&l=1>

5. The Department of Education. Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf

6. Camden Safeguarding Children partnership Multi-agency thresholds and assessment guidance 2019.

<https://cscp.org.uk/wp-content/uploads/2019/11/CSCP-multi-agency-threshold-and-assessment-guidance-Oct-19.pdf>

7. National Collaborating Centre for Women's and Children's Health. When to suspect child maltreatment, National Institute for Health and Clinical Excellence. Manchester, United Kingdom 2009.

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