

Systematic child abuse incidents in a children's residential home in Hong Kong: regulatory and criminal law reform proposals

Child abuse
in a children's
residential
home

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Abstract

Purpose – The paper aims to recommend legal and regulatory reforms to better prevent child abuse in childcare institutions in Hong Kong.

Design/methodology/approach – A summary of investigation report and news reports are referred to in describing the abuse incidents which occurred in a children's residential home. Routine Activity Theory (RAT) is used as the framework for identifying the causes. Local and overseas legislation, regulations, case law, and policies are analysed to provide recommendations for reforms.

Findings – There are systematic failures such as workload issues, inadequate supervision, and the absence of continuing professional development (CPD) that contributed to the incidents. The regulations governing the operation of childcare centres and criminal laws against child abuse are long overdue for an update in Hong Kong. On the institutional side, this paper recommends enacting regulations that mandate CPD, lower the staff-to-child ratio, and strengthen the Social Welfare Department's (SWD) supervisory powers over childcare centres. From the criminal law perspective, it is recommended that "reasonable chastisement" be abolished as a defence of corporal punishment, and that there be new offences for failure to report suspected child abuse incidents and causing or allowing the death/serious harm of a child.

Originality/value – The child abuse incidents, occurring in a childcare institution, have drawn wide public concern. Reform is required to protect vulnerable children and regain public confidence.

Keywords Children's residential home, Child abuse, Regulatory reform, Criminal law, Legal reform

Paper type Research paper

Introduction

The term "child abuse" may be interpreted as "all types of physical and/or emotional ill-treatment, sexual abuse, neglect, negligence and commercial or other exploitation, which



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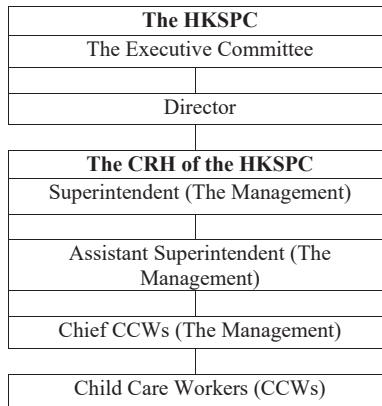
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results in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power” (World Health Organization, 2022). In December 2021, it was revealed that the Hong Kong Society for the Protection of Children (HKSPC) failed to prevent its staff from inflicting physical and emotional abuse to 40 children under its care. These incidents raise the question of what actions should be taken to prevent similar incidents in future.

This paper is structured into four sections. The first section provides an overview of the child abuse incidents at the Child’s Residential Home (CRH) of HKSPC. The second section analyses the causes of the incidents through the application of RAT. The third section outlines the research methodology this paper employs. The final section examines how the inadequacies of the regulatory framework governing CRHs and criminal laws against child abuse have contributed to or aggravated the causes of the incidents and recommends legal reforms.

An overview of the child abuse incidents

The CRH provides round-the-clock residential service for children aged below three who were abandoned, orphaned, come from families facing social problems, or were referred to it by court order (HKSPC, 2023). It is required to meet the essential service requirements and service quality standards under its Funding and Service Agreement with the SWD and comply with statutory requirements (HKSARG, 2022). Its organisation is as follows: (see Figure 1)



Source: By authors

Figure 1.
Organisation of the
CRH of the HKSPC

Below Table 1 is a chronology of the child abuse incidents:

Dates	Events
18/12/2021	The HKSPC received an email alleging that some of its staff were abusing children under their care
03/01/2022	An Independent Review Committee (IRC) was formed to investigate the incidents and provide recommendations to prevent similar incidents

Table 1.
A chronology of the
child abuse incidents

(continued)

Dates	Events
26/01/2022	Having reviewed the CRH's CCTV footage, the IRC discovered that some CCWs slapped children in the face, pulled their ears, and threw them onto the ground. The IRC opined that such conduct may constitute child abuse
17/03/2022	At least thirty-two CRH staff were arrested on suspicion of assaulting or neglecting forty children in their care. Twenty-seven of them were prosecuted (Leung, 2022).
31/03/2022	The HKSPC announced that the CRH's services will be fundamentally reformed over the next nine months, with "improved, additional training, expanded resources, and higher staffing ratios"
11/04/2022	The staff-to-child ratio of CRH was lowered from 1:7 to 1:5. Ninety percent of the CRH's current staff were newly recruited (Oriental Daily News, 2022)
28/06/2023	Fifteen of the CRH staff were convicted while other criminal proceedings remain ongoing

Table 1.

Analysing the causes of the incidents through RAT

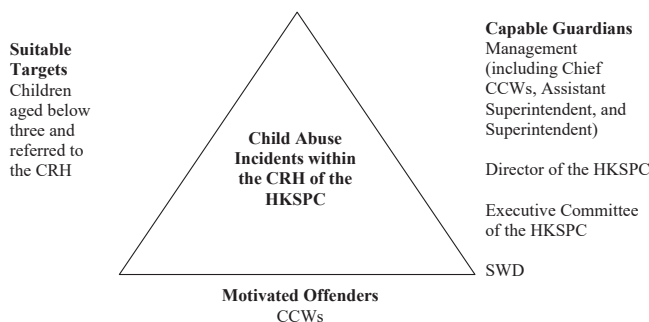
Cohen and Felson (1979) suggest that a direct-contact predatory crime occurs when three elements converge at the same time and space: motivated offenders, suitable targets, and the absence of capable guardians. RAT has been extended to explain child victimization (Culatta et al., 2020; Reid and Sullivan, 2009). As physical and emotional abuse inflicted on children is a direct-contact predatory crime, RAT will be applied to analyse the causes of the incidents (Felson and Boba, 2010). The following analysis corresponds to RAT's elements: (see Figure 2)

Motivated offender

A motivated offender has "criminal inclinations and the ability to carry out those inclinations" (Cohen and Felson, 1979, p. 590). In the present case, CCWs were responsible for ensuring the safety and taking care of children in the CRH (HKSPC, 2022). As they were rough in their physical handling of the children, CCWs are identified as the motivated offenders.

It is crucial to analyse the circumstances which bred CCWs' criminal inclinations to maltreat children. Firstly, the CCWs had a poor practice of disciplining children, focusing on controlling children quickly by using violent methods without regard for their feelings, emotions, and dignity. The result of this was a culture of rough handling of children among CCWs to compel submission of children (Kong, 2022). Although CCWs might not have caused any apparent injuries to children in their rough handling, the latter were in discomfort and pain (HKSPC, 2022).

Secondly, the culture of rough handling was exacerbated by the tremendous pressure that CCWs face. CCWs were required both to pay attention to children and perform administrative work. The staff turnover rate has also been high in recent years. With the heavy workload,



Source: By authors

Figure 2.
The three elements of a direct-contact predatory crime, as identified by RAT and applied to this case

colleagues discouraged new workers from comforting children to save time for other tasks (HKSPC, 2022). These discouragements prompted an atmosphere among CCWs adopting “uncaring attitudes and complicit oblivion” toward children in their care (HKSPC, 2022, para. 20).

Thirdly, CCWs lacked respect for the physical and emotional well-being of children and had little understanding of child protection. Astonishingly, the last child abuse training held for CCWs was in 2015 (HKSPC, 2022). The lack of training is identified as a common theme among mass abuses in CRHs (Stein, 2006).

Since rough handling of children had been an accepted norm among CCWs, they alerted one another when their supervisors were nearby and refrained from reporting any irregularity. The norm further developed and formed a vicious cycle that diminished the standard of care substantially over time (HKSPC, 2022).

Suitable targets

Cohen and Felson (1979) define “suitable targets” as people who lack the physical ability to resist and are easily visible and accessible to the motivated offender. Given that children have a smaller physical stature, are socially and psychologically immature, and are dependent upon adults for protection, they are unable to resist even if they are aware of any physical or psychological abuses (Finkelhor, 2007; Reid and Sullivan, 2009). As children referred to the CRH are unable to resist or complain and easily accessible to CCWs, they are identified as the suitable targets.

Capable guardian

A capable guardian is “any person or thing that discourages crime from occurring” (Cohen and Felson, 1979; Reynald, 2019, p. 13). It prevents crime by serving as a reminder that someone is looking (Felson, 1995). In CRHs, daily supervision and necessary intervention are crucial components of effective guardianship (Reynald, 2019).

The management

The management (including Chief CCWs, the Assistant Superintendent, and the Superintendent) was responsible for overseeing the frontline operations and administrative tasks of the CRH, including monitoring the performance of CCWs and reporting to the Executive Committee (HKSPC, 2022). As its supervisory functions are crucial to the prevention of child abuse, the management assumes the role of a capable guardian. Nevertheless, it failed to prevent the motivated offenders from offending.

There were four aspects of failure from the management (HKSPC, 2022). Firstly, the management was wilfully blind to CCWs’ rough handling of children. It only gave mild reminders to CCWs about their duties, to which the latter responded perfunctorily or not at all. It claimed that CCWs were trustworthy and seldom monitored their performance or gave them any feedback. Even when the management stipulated occasional requirements on CCWs, it did not audit their compliance. Further, when it realised that abuses might have occurred, it did not intervene timely or report to the police. Secondly, there was no effective supervisory mechanism. The management took little or no disciplinary action against professional malpractice. Furthermore, it did not regularly review CCTV footage to detect possible incidents. The absence of scrutiny contributed to CCWs’ fearless continuance of their abuses. Thirdly, the management was unable to perform its supervisory functions due to its tremendous workload. The Chief CCWs were required to supervise staff, handle administrative work, and resolve mundane matters. Its focus was also diverted by administrative issues. Fourthly, the management did not encourage internal reporting of child abuse. The lack of internal reporting was attributable to the management’s indication that it would accept the practice of rough handling and CCWs’ fear that reporting would lead to isolation from their colleagues (Li, 2022). The management, as capable guardian, in failing to discharge its supervisory duties, was inept in preventing the motivated offenders (i.e., CCWs) from abusing children.

The Organisation

The Director of the HKSPC. The director of the HKSPC, who is accountable for the entire administration of the CRH, is supposed to be a capable guardian. However, she reported that she was oblivious to the incidents, made few visits to the CRH, and never reviewed the CCTVs, all of which provided ample opportunities for the motivated offenders (Li, 2022).

The Executive Committee. The HKSPC's Executive Committee was responsible for supervising and monitoring the performance of the management and CCWs (HKSPC, 2022). Given its broad supervisory powers, the Executive Committee was capable of preventing CCWs from abusing children. However, it failed to prescribe any monitoring procedures at the organisational level. There were also no delegates to oversee child protection or the CRH's management, nor were there any complaint-handling or whistleblowing mechanisms for suspected cases of child abuse.

The SWD. The SWD is obliged to inspect the CRH. However, even though the SWD conducted six full inspections of the CRH in 2021, no abnormalities or suspected cases of abuse were discovered (Lao, 2022). As such visits did not include random checks, instances of child abuse were not readily detectable. Nor were there any health inspectors and professionals during inspections (Labour and Welfare Bureau and Social Welfare Department, 2022). This provided a breeding ground for motivated offenders.

Research methodology

This section outlines the research methodology that this paper employs in making reform recommendations on the regulatory framework governing CRHs and criminal laws against child abuse.

Hong Kong legislation and government policies

Relevant legislation, cases, and government documents were examined as a desktop study design for understanding Hong Kong's regulatory framework governing CRHs and criminal laws against child abuse. It supplements the above analysis on the causes of the incidents and lays the foundation for legal recommendations made.

The following legislation and cases in Hong Kong are scrutinised:

- (1) Child Care Services Ordinance (Cap. 243) (CCSO)
- (2) Child Care Services Regulations (Cap. 243A) (CCSR)
- (3) Offences Against the Person Ordinance (Cap. 212) (OAPO)
- (4) *R. v. William Ryan Erisman* [1988] 1 HKLR 370

Related government documents are also analysed:

- (1) Service Quality Standards (SQSs) and Criteria
- (2) Operation Manual for Pre-Primary Institutions
- (3) Service Performance Monitoring System Performance Assessment Manual (SPMSPAM)
- (4) Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Procedural Guideline for Protecting Children)
- (5) The Law Reform Commission (LRC) of Hong Kong: Consultation Paper and Report on Causing or Allowing the Death of a Child or Vulnerable Adult

Legislation in other common law jurisdictions

Relevant legislation in other common law jurisdictions such as the United Kingdom (“UK”) and Australia are reviewed because:

- (1) Same with Hong Kong, the UK and Australia are common law jurisdictions which allow for a meaningful comparative exercise in search for better procedures and measures in the regulatory and criminal law framework.
- (2) The UK’s legal regime has undergone fundamental reform in the recent decade. Also, some Australian states mandate a reporting duty which is novel to Hong Kong. The development in these jurisdictions is of immense reference value.

The following documents are scrutinised:

- (1) The Children’s Homes (England) Regulations 2015 (TCH(E)R)
- (2) The Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (TEYFS(WR)R)
- (3) Statutory Framework for the Early Years Foundation Stage (The EYFS Framework)
- (4) Her Majesty’s Chief Inspector of Education, Children’s Services, and Skills (Fees and Frequency of Inspections) (Children’s Homes, etc.) Regulations for Inspection, 2015 (The Inspection Regulations)
- (5) Inspection Handbook: Children’s Homes
- (6) Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (C(ADRP)(W)A)
- (7) Children and Young People (Safety) Act 2017 (South Australia) (CYP(S)A)
- (8) Criminal Law Consolidation Act 1935 (South Australia) (CLCA)

A three-step review process is adopted to identify recommendations:

- (1) The selected legislation and documents were examined.
- (2) The UK’s legal regime has been selected as the primary model to reference for institutional reform as its laws are more recent than Hong Kong’s after an amendment and there has been a growing emphasis on the institutional side. Other UK and Australian Acts are helpful references for proposing criminal law reform.
- (3) Having analysed the relationship between the causes of the incidents and deficiencies in Hong Kong’s regime, other documents (e.g., consultation papers) relevant to selected laws have been studied to reach the final recommendation.

Secondary sources

The Executive Summary of the IRC’s First Interim Report and other news reports are studied to identify the causes of the incidents.

Legal recommendations for preventing similar incidents

This paper has previously analysed the causes of the incidents through RAT. It is suggested that Hong Kong’s unsatisfactory state of law, both institutional and criminal, has contributed to or aggravated such causes. Immediate legal reform is therefore required. With reference to the relevant UK and Australian laws, this section will make legal reform recommendations to strengthen child protection in Hong Kong and prevent similar incidents from reoccurring.

1. Enacting mandatory CPD regulation

Through RAT, it is observed that the absence of staff training (or CPD) on child abuse had bred CCWs' lack of respect for the well-being and dignity of children. This created a norm of rough handling that encouraged CCWs to employ violent methods to ensure submission of children. Under this norm, CCWs also shielded one another and refrained from reporting any irregularity to the management. Therefore, CCWs have become the motivated offenders.

There are currently no requirements for CCWs to undertake CPD in Hong Kong. To qualify as a CCW, Regulation 3(1)(b) of the CCSR simply requires one to complete a course approved by the Director of Social Welfare (DSW) (HKSARG, 2008). Neither does the Operational Manual (which elaborates upon the statutory obligations that the CRH should follow) require the management to provide CPD for CCWs (Education Bureau, 2021).

CCWs have highly demanding roles and duties which require experience and the personal skills necessary to foster trusting relationships with children (Bettmann *et al.*, 2015). Quality training is crucial in ensuring children's needs are met and that they achieve positive outcomes (Department for Education [DfE], 2014). CPD is also necessary to equip CCWs with the requisite skills (e.g., attachment-informed care) to support vulnerable children (Steels and Simpson, 2017).

Therefore, it is recommended that a provision mirroring Regulation 33(4)(a) of the TCH(E)R, which requires residential homes to ensure all employees undertake appropriate CPD courses (HM Government, 2015a), be incorporated into the CCSR. Topics including child psychology, behaviour management, child protection, and mandatory reporting should be covered (White *et al.*, 2015). CCWs should be given the opportunity to discuss the challenges that they encountered at work (The RTK Ltd., 2021). This recommendation aims to prevent the norm of rough handling by inculcating CCWs with the importance of child protection. Mandatory CPD could enhance the competency of CCWs by strengthening their confidence and enthusiasm in addressing the challenges brought by vulnerable children (Rohta, 2021).

2. Lowering the staff-to-child ratio

Through RAT, it is suggested that the tremendous workload faced by CCWs and the management contributed to the incidents. The unbearable work pressure in the CRH resulted in a high turnover rate of CCWs, which contributed to the deterioration of good practices and the norm of rough handling (Kong, 2022). This transformed CCWs into motivated offenders. Furthermore, the management was unable to discharge its role as a capable guardian, as its time was primarily occupied by administrative issues.

The regulatory regime contributed to the norm of rough handling and bred motivated offenders. Regulation 6 of the CCSR stipulates a 1:8 staff-to-child ratio during the daytime (8 am–8 pm) and a 1:12 ratio during the night-time (8 pm–8 am). The regulation is legally binding on all Child Care Centres (CCCs) and was followed by the CRH (HKSARG, 2008). The calculation of staff includes CCWs and supervisors present in the CRH (Education Bureau, 2021). At the operational level, the staff-to-child ratio of the CRH is 1:6 (for children aged 0–below 2) and 1:11 (for children aged 2–below 3) (Committee on Review of Residential Child Care and Related Services, 2022). As children at the CRH are below three and incapable of controlling themselves well (Tao *et al.*, 2014), it is expected that CCWs have to invest tremendous effort and time to take care of a large number of children.

In the UK, to ensure that children are adequately supervised, paragraphs 3.31–3.32 of the EYFS framework (binding on all early years providers under Regulation 3(2) of the TEYFS(WR) R) provides a staff-to-child ratio of 1:3 and 1:4 for children aged under and over two respectively (DfE, 2021; HM Government, 2012). The UK regulations are relatable to Hong Kong as the CRH

accommodates children aged under three (HKSPC, 2023). In comparison, the staff-to-child ratio in Hong Kong is disproportionately high. To end the norm of rough handling and strengthen the capacity of capable guardians, the staff-to-child ratio in the CCSR should be lowered. Thus, this paper supports the HKSPC's reduction of staff-to-child ratio from 1:7 to 1:5 and recommends the CCSR be amended accordingly (Oriental Daily News, 2022).

3. Strengthening the supervisory regime over CRHs

It has been analysed through RAT that the SWD, another capable guardian, was unable to discover any instances of child abuse despite having conducted inspections. There are areas of concern with the SWD's supervisory framework which may have contributed to the incidents.

Under Section 13(a) and (b) of the CCSO, the DSW or any inspector may enter and inspect any CCC as well as any document related to its management (HKSARG, 2021a). The SPMSAM differentiates between Regular and Surprise Visits. While Regular Visits are conducted within 28-35 days after a notice is given, no such notice is given for Surprise Visits. Both types of visits assess the CCC's implementation of SQS and performance under the SFA (SWD, 2012). Particularly, SQS16 requires the CRH to take reasonable steps to ensure that children are not abused (SWD, 2022).

The SPMSAM requires the assessor to report all non-compliance found in the assessment. The service operator must then submit to SWD a rectification action plan and rectify them under SWD's scrutiny (SWD, 2012). Under Section 9(a) of the CCSO, the DSW may cancel a CCC's registration if it is run by unfit persons or not under the continuous supervision of a person with sufficient experience (HKSARG, 2021a).

There are three areas of concern with the current supervisory regime. Firstly, the frequency of inspections should be stipulated. In the UK, Regulation 27(1) of the Inspection Regulations requires children's homes to be visited at least twice per year (HM Government, 2015b). All such visits are surprise visits (The Office for Standards in Education, Children's Services and Skills, 2015). To ensure timely and effective monitoring, the inspection frequency of at least two visits per year should be stipulated in Section 13 of the CCSO. During such visits, the SWD should review CCTV footage to identify any instances of non-compliance. As child abuse incidents may be easily revealed, the motivated offenders will be deterred from maltreating children. Secondly, the inspection regime could be improved by imposing a statutory duty on CRH to uphold its duties of child protection. Unlike the UK's TCH(E)R, which sets out the quality standards that children's homes must meet, Hong Kong has no equivalent. The CCSO should mirror the "quality and purpose of care" and "protection of children" standards in the UK Regulations 6(2)(b)(iii), 12(2)(a)(v), and 12(2)(a)(vi) to oblige the management to ensure that CCWs treat children with dignity and respect, understand their responsibilities in protecting children, and take effective action whenever there is a serious concern about children's welfare (HM Government, 2015a). These standards are consistent with the CRHs' duties to protect vulnerable children from abuse and provide the highest quality of care (DfE, 2014). Thirdly, the Justice of the Peace Visit Program (which arranges visits to custodial institutions or detained persons) should be expanded to cover CRHs. Inspections conducted by independent persons not only enable impartial assessments to be made (DfE, 2014), but also relieves the SWD of pressure. They should be empowered to conduct investigations by making inquiries into staff complaints and referring them to the SWD for follow-up action (Administration Wing of the Chief Secretary for Administration's Office, 2020). This provides an additional safeguard for early identification of suspected cases of child abuse.

Criminal laws against child abuse

1. Abolishing the defence of reasonable chastisement

The IRC identified ten instances of physical abuse administered by motivated offenders (i.e., CCWs), including using slapping as corporal punishment. General Comment No. 8 of the United Nations Committee on the Rights of the Child (UNCRC) defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light” (UNCRC, 2007, para. 8). Although Regulation 15 of the CCSR prohibits corporal punishment, it only carries a maximum penalty of one year’s imprisonment to offenders and thus lacks a deterrent effect (HKSARG, 2008). In Hong Kong, the common law defence of reasonable chastisement, which permits corporal punishment unless it is “excessive”, remains valid in cases of common assault and assault occasioning actual bodily harm (The Supreme Court of Hong Kong, 1988; Birchall and Burke, 2020).

In Wales, under Section 1(1) of the C(ADRP)(W)A, this defence has been abolished, meaning that corporal punishment is unjustifiable on any grounds (Welsh Government, 2022). In fact, there is no evidence associating physical punishment with positive outcomes in children (Gershoff and Grogan-Kaylor, 2016). Corporal punishment is correlated with child aggression, antisocial behaviour, mental health problems, and diminished moral internalisation (Smith, 2006).

By permitting some forms of unacceptable physical punishment such as slapping, the reasonable chastisement defence may encourage motivated offenders’ (i.e., CCWs’) rough handling practices. Although children aged below three may be hyperactive or inquisitive, it does not mean that the use of corporal punishment to maintain desirable behaviour in them can be justified (Goldschmied and Jackson, 2004). At common law, given the ambiguous concept of “reasonableness”, it is unclear that what kind of punishment is considered excessive (Rowland *et al.*, 2017). Such a legal uncertainty may cast an impression on the motivated offenders that only some forms of corporal punishment are criminally liable.

It is therefore recommended that the defence be abolished in Hong Kong through legislation. If the motivated offenders understand that physical assault on children is unacceptable for whatever reason, they will no longer regard rough handling as the norm and their criminal inclinations can be curbed.

2. Mandatory reporting of suspected child abuse cases

The child abuse incidents were not revealed until reported by the public. As a capable guardian, the management was aware of the incidents but did not intervene. Also, none of the CRH staff reported any incidents to the police or the management out of fear of alienation from their colleagues. While the SWD has published a Procedural Guideline for Protecting Children which establishes the steps that professionals may take to report suspected abuse incidents (SWD, 2020), Hong Kong has no mandatory reporting system for child abuse (when this paper is prepared). The occurrence of the incidents indicates that the SWD guidelines were not strictly observed by the CRH. The absence of a mandatory reporting system has contributed to the intentional oversight of the capable guardians over the incidents.

The LRC Consultation Paper explains that under a mandatory reporting system, professionals who work with children are “obliged to report cases of suspected abuse and neglect” to the authorities (LRC, 2019, para. 8.54). An example can be found in Sections 30 and 31 of the CYP(S)A, which require employees of childcare services to report suspected cases of child abuse if they reasonably believe that a child is at risk (Government of South Australia, 2017).

This paper recommends the implementation of such a system in Hong Kong. Firstly, if failure to report child abuse constitutes a criminal offence, staff will not knowingly cover up incidents in fear of criminal sanctions (Mathews, 2015). Motivated offenders will also be prevented from embarking upon their criminal inclinations due to the enhanced risk of detection. Secondly, there could be swifter interventions by law enforcement agencies if reports on suspected cases of child abuse were made much earlier. Thirdly, the system can strengthen the public’s awareness of the

significance of reporting child abuse (UK Home Office, 2015) and foster a child-centred culture that abhors child abuse (Australian Institute of Family Studies, 2020).

However, in Hong Kong, the Procedural Guideline for Protecting Children, which was introduced by the SWD to strengthen staff's awareness of reporting child abuse, was simply disregarded by the CRH staff. Furthermore, as compared to the UK, Hong Kong generally lacks a whistleblowing culture in its child protection system that brings the same benefits of a mandatory reporting system. Therefore, it is recommended that a mandatory reporting mechanism mirroring the CYP(S)A should be enacted to deter CCWs from concealing suspected cases of child abuse. The authorities may then take prompt action after receiving such reports.

3. A new offence of failure to protect a child

As previously analysed, the CRH has failed to discharge its duty as a capable guardian to children under its care, and its supervisory mechanism failed at all levels (including the management, the Director of HKSPC, and the Executive Committee). The absence of criminal liability over failure to discharge such important duties contributed to their wilful blindness.

Section 27(1) of the OAPO prescribes an offence on anyone aged above sixteen who wilfully assaults, ill-treats, or neglects children under his/her care, carrying a maximum penalty of ten years of imprisonment (HKSARG, 2021b). However, when multiple defendants are charged with such an offence, they must be all acquitted if it is unclear which of them inflicted harm on the victim (LRC, 2021).

The LRC (2021) has recommended enacting a new offence of "failure to protect a child or vulnerable person" based on Section 14 of the CLCA. The offence criminalises negligence in a person: 1) who owes a "duty of care" to the victim; 2) who knew, or had reasonable grounds to believe, that there was a risk of serious harm to the victim; and 3) who failed to take reasonable steps to protect the victim from such harm. Such a person who falls so far short of the standard of care reasonably expected of him or her is, in the circumstances, so seriously negligent that a criminal penalty is warranted (Government of South Australia, 1935).

This paper supports implementing the LRC's proposed offence as it also criminalises those who permitted child abuse to occur without taking reasonable steps to prevent the abuse (Henry *et al.*, 2020). This remedies Section 27(1)'s weakness. It would also facilitate early identification of suspected child abuse cases by imposing a duty on capable guardians to intervene (LRC, 2021). Finally, the proposed offence only reinforces the basic duties that childcare professionals bear in safeguarding children's best interests and does not impose any additional obligations. Institutions that have complied with their required standards will be considered to have taken reasonable steps to protect children (LRC, 2021).

Conclusion

Using RAT as the framework, it is analysed that the lack of CPD on child protection and disproportionate staff-to-child ratio contributed to a norm of rough handling in the CRH, which encouraged CCWs (as motivated offenders) to handle children under their care (as suitable targets) roughly. There is also maladministration of the management as a capable guardian due to manpower issues. The lack of supervision from the management aggravated CCWs' assimilation of this norm, leading to the incidents. By analysing the incidents through RAT and their relationship with the insufficiencies in the existing legal regime, this paper recommends urgent legal reform to protect vulnerable children and regain the shattered public confidence in the childcare industry.

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