

Rochdale Borough Safeguarding Adults Board

Guidance on the use of photographic evidence

Author: Carl Travis/Jane Timson
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General Principles:

This Guidance relates to the taking of photographs in the context of concerns re: abuse and neglect and the use of photographic evidence in relation to safeguarding. Ordinary photos – holiday snaps etc. – are not covered in this policy and will be subject to the individual agency's own policy and procedures.

The purpose of photographic evidence is to demonstrate and support the fact that harm has occurred to the adult at risk with a view to presenting this to a court or for regulatory or disciplinary processes. The physical and mental well-being of the adult at risk will take priority over the need to gather evidence and investigating staff will always ensure that any plans to take photographs take account of the likely consequences that this will have. This guidance focuses on photographing individuals but it may also apply to premises or rooms. If the photograph is in relation to self-neglect and hoarding please consider using the Clutter Scale in the Self Neglect Strategy and Toolkit, and always ask for permission before taking photographs.

In some cases (e.g. pressure areas) photography will be required also for clinical care reasons and such photographs may also be admissible as evidence where they indicate neglect or ill treatment. Whenever photographic evidence of injuries has been obtained it is advisable to obtain a medical opinion to provide expert interpretation of the images. Any photography undertaken must take account of all medical or nursing care that is being provided and of any clinical advice provided (e.g. removal of dressings). If the photographs are being taken for clinical purposes then they will be taken by staff that are suitably trained and experienced in this area.

Those taking photographs should seek advice from their employers as to any policies / procedures they may have in relation to taking photographic evidence. In addition consideration should be given to the equipment being used to take the photos.

It is never acceptable for any worker to take photographs of injuries on mobile telephones or on their personal cameras. Relatives and carers should also be discouraged from doing so in the interests of the dignity of the service user and wider confidentiality. As part of their normal daily duties, most staff should not need to take photographs of individuals or of any injuries they may have received. Where this might be part of their usual duties they should refer to their own agency guidance governing the taking/storing of photographic images of service users.

The photographing of a service user will follow the same principles as for any other individual:

1. Consent should be sought from the individual before any photograph is taken;
2. The individual's dignity must be preserved at all times.
3. There must be clear evidential or clinical reasons for the use of photography.

When considering using photography as part of a safeguarding enquiry consideration needs to be given to Article 8 of the Human Rights Act (1998) which enshrines the right to private and family life. Any photography needs to respect that right to privacy, be proportionate and be part of the person's record.

Consent:

Staff must be aware that they need valid consent from the person they wish to photograph before doing so. For consent to be valid, staff would need to make sure that the person understood why the staff member wanted to take a picture and what this would be used for. If the service user lacks the mental capacity to consent to being photographed then the principles of the Mental Capacity Act 2005 will apply and it will only be acceptable if photography is considered to be in the best interests of the service user. Any Appointee who has been granted an LPA (Welfare) should be part of that decision making. You should always take reasonable steps (for example involving more specialist colleagues) to support adults in making their own decisions, before concluding that they are unable to do so. Staff should note that the consent of a third party on behalf of the service user who has capacity will be not regarded as valid consent.

It is recommended that written consent is obtained where possible. However, all staff should refer to their own agency policy in respect of this issue for further and more detailed guidance.

Receipt of Photographs

If presented with any photographic evidence, staff members should keep the same on file or keep an electronic record of what they have received. Staff members should also keep an accurate record of who has provided the photograph together with when it was received. Members of staff should refer to their own agency's policy for further guidance and should also consult their agency's confidentiality/data protection policy for information on whether such photographs can subsequently be disclosed to third parties.

Record Keeping

An auditable trail should be commenced so no stage is left unaccountable and should include:

1. Whether the adult had Capacity to consent / a Best Interests decision to take the photographs (see the section on consent below);
2. Who took the photograph/s (name and organisation and details of any other person/s present at the time);
3. When the photographs were taken (time/day/date);
4. Where the photographs were taken;
5. Why the photographs were taken (include details of adult, name, DOB, address and summary of alleged abuse);

Individuals who have sustained an injury (however slight) should be referred to the appropriate health professional (GP, Hospital etc.) and/or the police who may decide, using their own policy/procedure, whether it is appropriate to start or keep a photographic record of an injury.

Where the primary purpose of the photographs is to provide evidence for a criminal investigation the photographer will be a member of the police service and will have received appropriate training

Retention of Photographs

Members of staff who take photographs in accordance with their own agency's policy should note that such photographs will be regarded as confidential personal data in accordance with the General Data Protection Regulations.

Accordingly, photographs should be stored securely and retained in accordance with your agency's retention procedure. You should refer to your own agency's data protection policy for further guidance and information in respect of this issue.

Covert Photography

Guidance on the use of covert photography can be found on the www.rochdalesafeguarding.com website.