

## RNIB Scotland Response to the Electoral Commission Consultation on draft guidance for Returning Officers: Assistance with voting for persons with disabilities

### Introduction

The Royal National Institute of Blind People (RNIB) Scotland is the country’s leading charity working with blind and partially sighted people. We support children and adults with sight loss and help them to live full and independent lives, campaigning for their rights.

The most recent version of RNIB’s Sight Loss Data Tool, indicates that around 183,000 people live with a significant degree of sight loss in Scotland. This number could eventually double unless we act to prevent avoidable sight loss.

RNIB Scotland welcomes the opportunity to respond to this consultation. The right to vote independently, and in secret, is a cornerstone of our democracy. Yet 150 years after the Ballot Act – which guaranteed the right to vote in secret – blind and partially sighted people still face unacceptable barriers to exercising their democratic right to vote.

We have campaigned on this issue for many years, calling for an accessible voting system and guarantees that blind and partially sighted voters can access information about elections and candidates independently.

RNIB’s report on the 2021 elections, “Turned Out 2021”, found that only one in five (19 per cent) blind voters and less than half (46 per cent) of partially sighted voters said they could vote independently and in secret under the current voting system and that less than a third (30 per cent) of blind voters were satisfied with their experience of voting.

We note that the Electoral Commission says that:

“The Elections Act 2022 introduced provisions to assist those with disabilities with voting at polling stations.

“The Act:

* creates a requirement for you to provide each polling station with such equipment as it is reasonable to provide for the purposes of enabling, or making it easier for, relevant persons to vote independently and in secret.
  + Relevant persons are defined in the legislation as those who find it difficult or impossible to vote due to blindness, partial sight or another disability.
* requires you to have regard to the Commission’s guidance on the equipment to provide at polling stations. This guidance can be found in Providing equipment at the polling station that enables or makes voting easier for voters with disabilities
* extends the rules on who can act as a companion to include anyone who is over the age of 18.

“These provisions apply to the following election types:

* UK Parliamentary elections
* Police and Crime Commissioner elections in England and Wales
* Local elections in England and Northern Ireland
* Mayoral elections in England
* GLA elections
* Assembly elections in Northern Ireland

“These requirements do not apply to elections to the Scottish Parliament or the Senedd, or to local elections in Scotland and Wales. However, the duties under the Equalities Act 2010 and the RPA 1983 which relate to ensuring voting is accessible to voters with disabilities do apply.”

We are also aware that the Scottish Government will open a public consultation on elections in Scotland this autumn, a consultation we will respond to, whilst we have been working with the Scottish Government and the Electoral Commission in Scotland to trial accessible voting solutions for blind and partially sighted voters.

### RNIB Scotland Consultation response summary

This consultation response echoes concerns separately expressed by our RNIB colleagues in England, Northern Ireland, and Wales on the need for accessible elections. We have responded to Questions 1, 2, 3 and 4.

In summary:

1. We have identified further barriers to voting at the polling station that the draft guidance does not cover;
2. We do not think the suggested minimum requirements for equipment to be provided at the polling station are sufficient and reasonable;
3. We would like to see changes made to the guidance highlighting other types of equipment that could support voters to participate and providing support to help Returning Officers make decisions about what additional equipment and support to provide.
4. We don’t think that the draft guidance gives enough information to support Returning Officers with providing training to support making voting accessible for all.

### Consultation Questions

### Barriers to Voting

#### Question 1

#### Are there any other barriers that voters may experience when voting at the polling station that the draft guidance does not cover?

Yes

If so, what other barriers do people face at the polling station? How could these barriers be addressed?

In our view, the barriers that have been outlined in the draft guidance do not truly reflect the barriers that blind and partially sighted people face. While we appreciate that the guidance has tried to summarise all the barriers that all disabled people might face, this has meant that key barriers for blind and partially sighted people have been missed of this list. It’s critical that this guidance sets out barriers blind and partially sighted people face, so that Returning Officers truly understand what the issues are and can address them sufficiently.

We have concerns about some of the language that has been used in this section of the guidance. For instance, in the opening paragraph the guidance states: “some [disabled people] have physical obstacles to overcome in order to be able to vote”. We believe this is inappropriate, as it’s implying fault with the disabled person rather than the system being inaccessible itself.

The main barrier that exists for blind and partially sighted people is the practical act of voting - making a cross in a specific location on a piece of paper - is fundamentally a visual exercise and is therefore inaccessible for the majority. As one blind person told RNIB: “We all know the system is not accessible, and that’s not remotely acknowledged in the guidance.”

We also have concerns about choice of language for the following barrier: “Being unable to read or understand instructions given due to: Visual impairments or blindness”. We’re concerned that this is another example of ableist language. The wording implies it is the blind person’s fault that they cannot read or understand instructions. Whereas the real barrier that blind and partially sighted people experience in this scenario is that written information is not provided in an accessible format and instructions are not given in an appropriate way for a blind or partially sighted person to follow. Neither of these should be something that blind or partially sighted people have to “overcome”. Instead, Returning Officers should think about how they can minimise these barriers, through providing equipment or improving training for polling station staff.

Similarly, the next identified barrier in the list is “Not being able to communicate effectively with polling station staff”. The phrasing of this sentence again implies the blame lies with disabled people. The use of this type of language risks leading to harmful and negative misconceptions about disabled people being perpetuated. We would be happy to suggest some alternative wording that the Electoral Commission can use.   
  
Other points raised by blind and partially sighted people include anxiety as a barrier to getting to the polling station, from the journey to the polling station, not knowing what will happen there etc. This minimises the numerous barriers blind and partially sighted people face.

Navigating the polling station itself presents challenges while another barrier is lack of awareness that a companion can assist with voting.

Since the December 2019 general election Electoral Commission guidance has suggested allowing use of mobile phones either for magnification or to “read back” the list of candidates, or use of pocket-sized video magnifiers as an additional means of supporting blind and partially sighted voters.

RNIB Scotland encouraged and welcomed the Electoral Commission’s issuing of guidance to Polling Station staff on the option for voters to use a mobile phones/other assistive devices (Page 23 of the [Polling Station handbook](https://protect-eu.mimecast.com/s/w0r_Cv8YzuEjE8NhQXqYx?domain=electoralcommission.org.uk) at the 2022 Scottish local government elections.

However, RNIB’s UK-wide surveys and focus groups on recent elections report many accounts of blind and partially sighted people being challenged about using their smartphones. Ergo, we believe it would be helpful to reference this as a barrier, so Returning Officers are reminded not to challenge the use of smart phones at the ballot box if it is aiding someone.

Given the unique challenges blind and partially sighted people face at the polling station, we believe there is merit in specifically outlining the barriers blind and partially sighted people experience.

RNIB’s “Turned Out” surveys of blind and partially sighted people about their voting experiences since 2015 and over the years consistently highlight the following barriers:

* The way in which we vote today is fundamentally a visual exercise – it therefore inherently prevents the equitable participation for the majority of blind and partially sighted people.
* Every aspect of voting requires vision. From reading and navigating the ballot paper, to knowing physically where on the ballot paper to make your mark and verifying that you have made a mark.
* Polling station staff being unfamiliar with the barriers blind and partially sighted people experience, both in navigating the physical environment of the polling station and the physical act of voting itself.
* Polling station staff being unfamiliar with the voting aids that can support blind and partially sighted people and being unable to use them, resulting in an inability to correctly help blind and partially sighted individuals.
* Polling stations not having the correct equipment that can support blind and partially sighted people. This includes but is not limited to a handheld copy of the large print sample version of the ballot paper and the correct tactile voting device.
* Polling station staff having little sight loss awareness and not knowing how to appropriately interact with someone with sight loss.

We strongly recommend these are included in the guidance, as we have previously advised in our initial discussion with the Electoral Commission.

In terms of addressing these barriers, it’s critical that every polling station offers a voting aid or voting aids that have both a tactile and audio component, so that blind and partially sighted people can review and mark the ballot paper independently and in secret. Training of staff is also critical in ensuring blind and partially sighted people have a positive experience at the polling station. Not only do staff need to be aware of the equipment that can support blind and partially sighted people, but they need to be confident and comfortable using that equipment. In addition, polling station staff need to be confident and comfortable asking people with sight loss how they can support them.

### Provision of equipment

#### Question 2

#### Do you think the suggested minimum requirements for equipment to be provided at the polling station are sufficient and reasonable?

No

If not, are there any changes you would want made to the list of minimum requirements?

RNIB Scotland considers that the only way to avoid a postcode lottery of provision is to have both a tactile and audio solution at every polling station. We therefore believe that the minimum standard, which does not specify the need for an audio solution, is not sufficient or reasonable.   
  
Under the new legislation in the Elections Act, Returning Officers are required to provide: “such equipment as it is reasonable to provide for the purposes of enabling, or making it easier for relevant persons to vote independently in the manner directed by rule 37 (including in relation to voting secretly)”. In our view, audio provision, in addition to tactile provision is necessary to meet this requirement as it is not possible to review the ballot paper and know the order of the candidates listed using the tactile voting device alone.   
  
In 2019, a Judicial Review found the UK Government’s previous provisions, referring to the use of the tactile voting device, unlawful. The judge described the provisions as “a parody of the electoral process” because of the inability for voters to review and mark the ballot paper independently. The Government changed these very provisions to make voting more accessible and to allow for greater flexibility in the offer of support. Yet, in this current version of the guidance, it isn’t clear that the tactile voting device alone does not facilitate an independent and secret vote.

We would also recommend that there is more advice on how and where Returning Officers can source equipment. As well as advice on which piece of equipment works best. This could either be included within this guidance or within supplementary information. This is Important as we don’t expect Returning Officers to be accessibility experts who are aware of all the different types of technology that is available and where to get them.

In terms of what is included in the current minimum standard, there needs to be greater clarity on what magnifiers and the tactile voting device can do to avoid any confusion for Returning Officers. For instance, magnifiers may support some partially sighted people to vote independently, but this won’t be the case for everyone. There is also significant variation in the strength of magnifiers, so it would be useful if clearer specifications are provided.

In relation to the tactile voting device, the guidance should acknowledge that in line with the 2019 Judicial Review, the tactile voting device alone does not enable an independent and secret vote. Again, we would be more than happy to suggest some alternative wording.

RNIB Scotland is also ready to consider and assist in testing any new voting aids that could improve people’s voting experience.

#### Question 3

#### The guidance highlights other types of equipment that could support voters to participate and provides support to help Returning Officers make decisions about what additional equipment and support to provide. Are there any changes you would want made to this guidance?

Yes

If yes, please tell us more here.

As referenced in the above answer, we would like to see an audio device in the minimum standard, rather than the additional piece of equipment. We would also like to see a clearer explanation of how the audio device can support blind and partially sighted people, so that Returning Officers understand how this piece of equipment can improve blind and partially sighted people’s voting experience. We would be happy to advise on some wording.

In our view, the “Making decisions” section of the guidance does not give Returning Officers all the information they need to make a decision that will hold up to any scrutiny. We also query how Returning Officers are expected to weigh up all the considerations that are included in the guidance, as there doesn’t appear to be a hierarchy of what is the most important factor.

This could be setting up Returning Officers to fail, as they are having to use their own judgement to decide what is “reasonable” and their interpretation might not line up to their statutory duties. This is especially the case in circumstances where the cost of any equipment does not fall on individual Returning Officers/local authorities and the resources of national government are relevant.

A very important consideration that is not included in this section of the guidance is Returning Officers’ anticipatory duty under the Equality Act, which could leave Returning Officers open to litigation if they are unable to demonstrate how they have met this duty. It’s essential that the anticipatory duty is considered in the decision-making process and therefore should be properly explained in the guidance. The same could be said for the new requirements in the Elections Act, where there is a duty to provide equipment to enable or make it easier for disabled people to vote independently and in secret. It would also be prudent to reference the Government’s clarification that the “making it easier” clause does not result in a dilution of this requirement.

The guidance also states that Returning Officers are not required to record requests from individuals. We strongly disagree with this, because if requests are not recorded there cannot be a clear audit trail of the decision-making process. This could mean there is no accountability if a request has been denied unfairly and has put someone at a significant disadvantage. The requirements of the PSED and the need for equality impact assessments are also likely to be relevant here.

As a standard there needs to be a mechanism for individuals to request equipment, for all requests to be recorded and a clear process for ensuring that all requests are met in translating those requests into the provision of equipment.

For this section of the guidance, we would also like further clarification on why cost implication has been included as a factor to consider, when it is our understanding that new burdens funding will cover any additional cost of equipment that is required under the Elections Act legislation.

### Ensuring those working to support the poll are aware of accessibility needs

#### Question 4

#### Does the draft guidance give enough information to support Returning Officers with providing training to support making voting accessible for all?

No

If not, what other information should the draft guidance include?

We welcome the recommendation that all staff who interact with voters should receive accessibility training to help improve awareness and their understanding of the accessibility needs of disabled voters. However, for staff to have the right training, the resources need to be comprehensive and up to date. So that Returning Officers have all the information they need to support disabled voters and are aware of any new voting aids that could improve people’s voting experience.

It is worth noting that the RNIB video that is included in the guidance is not an ‘evergreen’ resource. While there are some helpful tips, that video was designed for the 2021 election where the legislation was different and where social distancing was in place. We would be delighted to work with the Electoral Commission to develop some new evergreen resources. We would also suggest that any resources developed should be shared centrally, so there is consistency.