

# **Barriers at the Ballot Box: The (In)accessibility of UK Polling Stations**

**Stanford, B.**

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# ELECTORAL LAW

## Barriers at the ballot box: the (in)accessibility of UK polling stations

Dr Ben Stanford\*

*R (Rachael Andrews) v Minister for the Cabinet Office* [2019] EWHC 1126 (Admin).

### Introduction

The United Kingdom has a long and complex history in matters of electoral law and voting rights. Much of the current electoral legal framework and the voting process itself remains somewhat antiquated when compared with other liberal democracies. The infrastructure and the procedures used to facilitate voting in polling stations are, to some extent, no exception. In the present case, the failure to provide an adequate device to assist blind and partially sighted voters in polling stations to allow them to vote without assistance from a polling station worker or a companion and in secret was challenged. Although the High Court ruled for the claimant, the dispute should be considered in the broader context of polling station accessibility. Unfortunately, the barriers faced by some voters with disabilities remains deeply problematic in the face of the UK's human rights obligations and the most basic duty of any democracy to facilitate voting and participation in the electoral process.

### Facts

The claimant, Rachael Andrews, suffers from myopic macular degeneration and has been registered blind since 2000.<sup>1</sup> She has no sight in one eye and very little sight in the other, meaning that she is only able to read hard-copy documents if each letter is printed 4 or 5 cm high. She is currently unable to vote in polling stations without assistance, either from the Presiding Officer or a companion. Pursuant to Rule 29(3A)(b) of Schedule 1 to the Representation of the People Act (RPA) 1983,<sup>2</sup> a device that enables blind or partially sighted to vote without assistance must be provided in polling stations.

The claimant argued that the device currently provided, known as a Tactile Voting Device (TVD), fails to achieve this purpose. This is because the TVD, which attaches to an enlarged ballot paper given to the voter, merely consists of a series of flaps numbered in Braille, which correspond to the respective candidates. No other identifying information is provided, meaning that a blind voter must memorise the order of candidates on their ballot paper for the TVD to be able to serve its purpose. This was unrealistic according to the claimant, who pointed to the 2017 General Election in her constituency which featured six candidates, as well as the by-election in 2009 with 12 candidates. This task is further complicated if multiple elections are held simultaneously. The claimant argued that if the device was to meet the objective of enabling her to vote without assistance, it would need to at least have the name and party name of each candidate written in raised writing or in Braille.

In addition, polling station workers and companions who assist blind voters are required to maintain the secrecy of the vote of any person they have assisted.<sup>3</sup> The claimant argued that if she wishes to exercise her right to vote effectively, using the TVD to assist her, she would have to inform either the Presiding Officer or her companion which candidate on the ballot paper she wishes to vote for. As such, the claimant argued that due to the shortcomings of the TVD, she is unable to exercise her right to vote in secret.

The defendant argued that the High Court had to consider the construction of Rule 29(3A) and precisely what it is the device must enable a blind voter to do without assistance – “to vote”. In that respect, the

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\* Lecturer in Law, Coventry University

<sup>1</sup> *R (Rachael Andrews) v Minister for the Cabinet Office* [2019] EWHC 1126 (Admin).

<sup>2</sup> As inserted by s.13(2) of the Representation of the People Act 2000.

<sup>3</sup> Representation of the People Act 1983, s.66.

defendant argued that the current device met the objective of the rule, as the voter was able to vote without assistance by using the flaps on the device which indicated where exactly on the ballot paper the mark should be made. Moreover, a valid mark under one of these flaps would be a valid vote, as it would show an intention to vote for one candidate.<sup>4</sup>

## The Decision of the High Court

After examining the legislative framework and various procedural rules concerning the voting process, and the assistance available to blind voters, Mr Justice Swift concluded that the current device offered to such voters was insufficient. Rather, to allow a blind voter to cast her vote “without any need for assistance”, Swift J determined that the TVD would need to include the “name of each candidate and/or the party she stands for, either in raised lettering, or Braille, or both”.<sup>5</sup>

In response to the defendant’s argument that the TVD met the objective of Rule 29(3A), Swift J had to determine the true meaning of the words “to vote”. The RPA 1983 itself does not clarify this, other than explain that “... ‘voter’ means a person voting at an election... and ‘vote’ (whether noun or verb) shall be construed accordingly”.<sup>6</sup> As such Swift J had to consider whether the vote is “the making of the mark in one of the areas indicated on the ballot paper, or whether a person votes only when making the mark against the name of her candidate of choice”.<sup>7</sup> On this specific issue, Swift J referred to *R (Kolendowicz) v Proper Officer of the Greater London Authority*,<sup>8</sup> in which Mr Justice Hickinbottom “concluded that voting meant no more than the ability to mark a ballot paper independently”. However, Swift J disagreed with that conclusion, and found that if construed in its context, the words “to vote” and the act of voting itself “is an act of choosing between the candidates who have been nominated”.<sup>9</sup> Going further, if voting was to be described merely as the process of “marking a ballot paper” as a physical act, this would neglect the fundamental purpose of the act which is for “the voter to state her preferred candidate”.<sup>10</sup> Ultimately, Swift J held that it was not possible to separate the act of voting from its purpose.

Going further, Swift J pointed to Rule 18 which provides that the “outcome of an election is determined by the count of votes given to each candidate”, and Rule 47 which determines whether a ballot paper is void for uncertainty and must be rejected. This, according to Swift J, “reflects the clear...connection between marking the ballot paper and choice”.<sup>11</sup> A brief discussion followed in respect of the Howarth Report and a House of Commons Select Committee on Home Affairs report,<sup>12</sup> both published in 1999, as well as Hansard material,<sup>13</sup> but Swift J found that these sources offered little to support the defendant except to confirm that blind voters should be provided with additional assistance to vote.

Ultimately, the High Court granted declaratory relief for the claimant, finding that a “device that does no more than enable blind voters to identify where on a ballot paper the cross can be marked, without being able to distinguish one candidate from another, does not in any realistic sense enable that person to vote”.<sup>14</sup> Moreover, Swift J rebuked this as “a parody of the electoral process established under the Rules”.<sup>15</sup> As such, Swift J agreed with the claimant that the TVD would need to include the names of the candidates and/or the names of their political parties in Braille and/or raised letters, in order to allow a blind voter to vote without assistance.<sup>16</sup>

## Commentary: Barriers at the ballot box

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<sup>4</sup> Rule 47(2) of Schedule 1 to the Representation of the People Act 1983.

<sup>5</sup> *R (Rachael Andrews) v Minister for the Cabinet Office*, para. 14.

<sup>6</sup> Representation of the People Act 1983, s.202(1).

<sup>7</sup> *R (Rachael Andrews) v Minister for the Cabinet Office*, para. 18.

<sup>8</sup> *R (Kolendowicz) v Proper Officer of the Greater London Authority* (CO/1672/2016).

<sup>9</sup> *R (Rachael Andrews) v Minister for the Cabinet Office*, para. 20.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, para. 21.

<sup>12</sup> *Ibid.*, paras. 25-28.

<sup>13</sup> *Ibid.*, para. 29.

<sup>14</sup> *Ibid.*, para. 22.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, para. 30.

The claimant's personal circumstances and the fundamental reason for the complaint in this legal challenge are not unique. According to the Royal National Institute of Blind People (RNIB), there are approximately 350,000 people in the UK registered as blind or partially sighted.<sup>17</sup> In a survey conducted by the RNIB of blind and partially sighted people covering the 2017 General Election, only 1 in 4 of the 400 respondents felt that the current system let them vote independently and in secret.<sup>18</sup> Moreover, 8 in 10 of the respondents who voted at a polling station using the Tactile Voting Device did so with the assistance of a polling station worker or companion.<sup>19</sup> Clearly, the experience of the claimant in this case reflects a much more widespread lack of confidence in the capability of the current device to enable blind or partially sighted voters to vote without assistance.

However, the specific issue in this case should also be viewed in the wider context of polling station accessibility for voters with disabilities. This has attracted considerable attention in recent years, with the frequency and range of complaints demonstrating that the infrastructure and processes used at polling stations are, to some extent, in need of significant improvement and modernisation. In November 2017, the Electoral Commission published a report which examined the experiences of people with disabilities at the 2017 General Election, finding that "people with a disability were less likely to say that the general election was well-run" – 72 per cent compared to 80 per cent of people without a disability.<sup>20</sup> Perhaps indicating one reason why this might be the case, the Electoral Commission found that 5 per cent of people with a disability said it was "hard for them to get into the polling station", in contrast to no one without a disability.<sup>21</sup> To some extent demonstrating this problem, Kingston Council agreed to pay compensation to Adam Lotun, a wheelchair-user, in 2017 after he was unable to access a polling station in the 2014 local and European elections.<sup>22</sup> The Council also pledged to review access arrangements at all buildings currently used as polling stations as part of its next polling place review.<sup>23</sup>

The Electoral Commission report also highlighted a significant number of other issues faced by voters with disabilities. In respect of the registration process, some voters with learning disabilities found that the registration form, both online and in hard copy, was not easy to understand as "there is too much jargon and the font used is not easy to read".<sup>24</sup> Furthermore, some indicated that their local authority's automated helpline was "confusing and it is not clear what they should do next".<sup>25</sup> In respect of polling cards issued to voters, some people found that the print was too small, it used unfamiliar words and jargon, it had an unhelpful map of the polling station and the use of black words on white paper was difficult to read.<sup>26</sup> Voters with disabilities are statically more likely to use postal voting, but some respondents "did not understand the instructions on their postal vote" whilst others said there were "too many bits of paper and it was not easy to know which bits of the postal vote went in which envelope".<sup>27</sup> Moreover, some people did not know that alternative instructions, such as those provided in large print, are available.<sup>28</sup>

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<sup>17</sup> Royal National Institute of Blind People, 'Turned Out 2017: Why the UK Voting System must Change so Blind and Partially Sighted Voters can be in Sole Control of their Right to a Secret Ballot' (2017) at [https://www.rnib.org.uk/sites/default/files/Turned%20Out%202017%20APDF\\_1\\_0.pdf](https://www.rnib.org.uk/sites/default/files/Turned%20Out%202017%20APDF_1_0.pdf) p. 2.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> The questionnaire was completed by 188 people. See Electoral Commission, 'Elections for Everyone: Experiences of People with Disabilities at the 8 June 2017 UK Parliamentary General Election' (November 2017) at [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/237194/Accessibility-report-call-for-evidence.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/237194/Accessibility-report-call-for-evidence.pdf) para. 1.11.

<sup>21</sup> The survey was much wider than the questionnaire, with some 3519 responses. See above, para. 2.28.

<sup>22</sup> John Pring, 'Disabled Voter Secures Legal Settlement over Polling Station Discrimination', *Disability News Service* (22 June 2017) at <https://www.disabilitynewsservice.com/disabled-voter-secures-legal-settlement-over-polling-station-discrimination/>.

<sup>23</sup> *Ibid.*

<sup>24</sup> Electoral Commission, 'Elections for Everyone: Experiences of People with Disabilities at the 8 June 2017 UK Parliamentary General Election', para. 2.10.

<sup>25</sup> *Ibid.*, para. 2.11.

<sup>26</sup> *Ibid.*, para. 2.16.

<sup>27</sup> *Ibid.*, para. 2.21.

<sup>28</sup> *Ibid.*, para. 2.23.

As already discussed, polling station accessibility for wheelchair-users has been one of the most prominent and obvious barriers when it comes to voting, but some people with disabilities find that there are actually difficulties once inside the polling station too. For example, some voters found it difficult to vote due to the noise and crowding inside, some staff did not know how to use the TVD or did not offer it to people who might need it, people did not know they could ask for a TVD, the voting process was not confidential, people could not vote by themselves, staff were unhelpful and unfriendly, the pencil was too hard to hold, the large print ballot paper was not useful, and that the instructions were not clear about how to vote.<sup>29</sup> Whilst most people who responded to the questionnaire knew they could vote, some people were not aware that they could take someone with them to assist in a polling station, or that polling station staff could help them.<sup>30</sup> Given the requirement that a person who assists must either be someone entitled to vote or an immediate family member, some voters found it hard to find someone who could accompany them to the polling station.<sup>31</sup> Ultimately, some voters suggested that there needed to be better awareness about the support available to help them, that carers and support workers need to know they can support the people they care for to register to vote and vote, and that people running elections need to know what support and help people with disabilities can have.<sup>32</sup> Lastly, whilst not relevant to polling station accessibility, some voters expressed concern at the information they get from candidates and political parties, suggesting that the materials were sometimes not easy to read or to understand.<sup>33</sup>

Given the extensive legal framework that promotes disability equality in public life, it is extremely difficult to comprehend how the circumstances prompting some of these complaints can arise. In that respect, the Disability Discrimination Act 1995 imposes the duty upon public authorities to have due regard in the exercise of their functions to the need “to promote positive attitudes towards disabled persons” and “to encourage participation by disabled persons in public life”.<sup>34</sup> Moreover, the Public Sector Equality Duty under the Equality Act 2010 requires public authorities in the exercise of their functions to have due regard to the need to “eliminate discrimination” and to “advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it”.<sup>35</sup>

Furthermore, although not discussed in the *Andrews* judgment, the human rights issues at stake are significant. Article 3 of the First Protocol to the European Convention on Human Rights (ECHR) obliges state parties, including the UK, to “hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” Immediately, the obligation to secure a “secret ballot” imposes the burden upon all state parties to respect and accommodate the particular needs of blind and partially sighted voters. Nevertheless, despite the fact that Article 3 of the First Protocol is phrased in general terms rather than in terms of a particular right or freedom, the European Court of Human Rights has confirmed that Article 3 of the First Protocol includes the implied right to vote.<sup>36</sup> Such is the importance of these rights that the European Court has stressed that they are “crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law”.<sup>37</sup>

The rights guaranteed under the Convention, including Article 3 of the First Protocol, must also be secured without unlawful discrimination on a number of grounds specified under Article 14 of the ECHR. Whilst “disability” is not specified under Article 14, there is little doubt that physical disability and health impairments can fall within the scope of the broad notion of “other” status.<sup>38</sup> It is also

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<sup>29</sup> *Ibid*, paras. 2.29-2.31.

<sup>30</sup> *Ibid*, para. 3.1.

<sup>31</sup> *Ibid*, paras. 3.2-3.3.

<sup>32</sup> *Ibid*, para. 3.6.

<sup>33</sup> *Ibid*, paras. 4.1-4.2.

<sup>34</sup> Disability Discrimination Act 1995, s.49A(1)(a)-(b).

<sup>35</sup> Equality Act 2010, s.149(1)(a)-(b).

<sup>36</sup> *Mathieu-Mohin v Belgium* (1988) 10 E.H.R.R. 1, paras. 46–51; *Sitaropoulos v Greece* (2013) 56 E.H.R.R. 9, para. 63; *Scoppola v Italy (No.3)* (2013) 56 E.H.R.R. 19, para. 81; *Hirst v United Kingdom (No.2)* (2006) 42 E.H.R.R. 41, para. 57.

<sup>37</sup> *Hirst v United Kingdom (No. 2)*, para. 58; *Scoppola v Italy (No.3)*, para. 82.

<sup>38</sup> *Glor v Switzerland* App No. 13444/04, judgment of 30 April 2009, paras. 53-56.

significant that the claimant found the continued need for assistance when voting to be humiliating, raising questions in respect of Article 3 of the ECHR which prohibits degrading treatment.

The barriers discussed in this article thus far have been limited to those faced by voters with disabilities. However, a number of reforms to electoral law and procedure in recent years have proven controversial and prompted suggestions of potential disenfranchisement, despite claims that the changes are necessary to modernise elections and to safeguard the integrity of the electoral process. In light of the discussion in this article, it is entirely conceivable that some of these reforms may disproportionately affect voters with disabilities. For example, individual electoral registration replaced household registration in 2014, which now requires individuals to register to vote rather than one person being able to register an entire household.<sup>39</sup> Subsequent developments prompted concerns that hundreds of thousands of voters have disappeared from the electoral register.<sup>40</sup> Given the difficulties faced by some voters with disabilities when registering to vote, more research is needed to identify how exactly the change to voter registration has affected these voters. Voter registration procedures can sometimes be complicated even further, as demonstrated by the recent European elections in May 2019 in the UK. The elections provoked much anger as potentially thousands of EU citizens were turned away at polling stations due to clerical errors by local councils when registering eligible voters.<sup>41</sup>

Looking to the future, a series of voter ID pilots took place in the May 2018 and 2019 local elections,<sup>42</sup> with a nationwide roll-out likely to take place in the future, meaning that voters may soon need to show some form of identification in polling stations. This has attracted criticism from some academics and campaigning organisations amidst concerns of potential discrimination and disenfranchisement of marginalised and minority voters, including those with disabilities.<sup>43</sup>

## Conclusions

Electoral procedures and reforms that alienate and potentially deter eligible voters, or in the worst cases essentially disenfranchise them through no fault of their own, are difficult if not impossible to justify in any democracy. Whilst the *Andrews* case did not concern the risk of disenfranchisement, it demonstrates nonetheless that work still needs to be done in order for blind and partially sighted voters to be able to vote at polling stations in a completely independent and confidential manner, as required by the Representation of the People Act 1983. Other issues concerning accessibility at polling stations for voters with disabilities remain, although greater awareness of these is gradually encouraging modernisation.

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<sup>39</sup> Cabinet Office, 'About Individual Electoral Registration' Guidance (3 July 2013) at <https://www.gov.uk/government/publications/about-individual-electoral-registration-ier>.

<sup>40</sup> Rowena Mason, 'Nearly 800,000 Names Axed from Voter Register, Official Figures Show', *The Guardian* (24 February 2016).

<sup>41</sup> Alex Therrien & Francesca Gillett, 'European Elections 2019: EU Citizens Turned Away from UK Polls' (23 May 2019) at <https://www.bbc.co.uk/news/uk-politics-48384000>.

<sup>42</sup> Electoral Commission, 'May 2018 Voter Identification Schemes: Findings and Recommendations' (July 2018) at [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/244950/May-2018-voter-identification-pilots-evaluation-report.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/244950/May-2018-voter-identification-pilots-evaluation-report.pdf).

<sup>43</sup> Ben Stanford, 'The 2018 English Local Elections ID Pilots and the Right to Vote: A Vote of (no) Confidence?' [2018] 23(6) *European Human Rights Law Review* 600-613; Michela Palese & Chris Terry, 'A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials', Electoral Reform Society (September 2018) at <https://www.electoral-reform.org.uk/wp-content/uploads/2018/09/2018-Voter-ID-Trials.pdf>.