

Supporting people with their right to vote

The challenge

People with disabilities are less likely to vote in local and national elections. There is growing evidence that people with a learning disability often don't know about their right to vote, and there is still a **misperception that adults who lack 'capacity' cannot vote.** **Section 73 of the Electoral Administration Act (2006) abolished mental incapacity as grounds to prevent someone from being able to participate in elections.**

The Electoral Commission's guidance makes it explicitly clear that:

"A lack of mental capacity is not a legal incapacity to vote: persons who meet the other registration qualifications are eligible for registration regardless of their mental capacity."

The guidance also sets out that the decision to vote and who for at an election must be made by the person who lacks capacity and not by any other person on their behalf. No person has a right to prevent a person from voting on capacity related grounds.

What does the Mental Capacity Act 2005 say about voting rights?

The Mental Capacity Act 2005 provides the framework for making decisions on behalf of people who lack mental capacity. These can be decisions about day-to-day matters such as how much money someone should spend on a weekly food shop, to more significant life events such as whether a person should move into a care home. However, there are certain decisions set out in section 27-29 and 62 of the Act which can never be made on behalf of someone who lacks capacity because they are either so personal to the individual; or governed by other legislation.

Voting rights fall under this bracket with section 29 stating that:

"Nothing in this Act permits a decision on voting at an election for any public office, or at a referendum, to be made on behalf of a person."

This means that no person can vote on behalf of someone who lacks capacity. A family member or carer cannot vote on someone's behalf, nor can an attorney or deputy decide who to vote for on someone's behalf. No medical practitioner should assess a person's mental capacity to vote because the Mental Capacity Act 2005 does not apply to voting rights.

It is up to the individual to decide whether or not they want to vote. If they are expressing a wish to vote then it **is important that the vulnerable person is supported to take part in any vote** and do not lose their right to vote.

Supporting a person without capacity to vote

Although a carer, deputy or welfare attorney cannot decide who to vote for on behalf of a person without capacity, they can help the person with the registration process.

There is more scrutiny now on residential care homes and services that fail to accurately return information regarding who is a resident for the electoral register. You can only be deprived of being put on electoral register if you are a detained convicted criminal.

Once registered, a person without capacity can vote at the polling station or by postal vote. A person without capacity cannot however appoint a proxy as the Electoral Commission requires a person to have mental capacity to do this.

A person who lacks capacity may face a number of barriers when it comes to voting. It may be that the person needs a companion to accompany them or simply a reminder to vote on the right date, or get to the correct location.

The person who lacks capacity should be supported to ensure that they have the information and support they require to exercise their right to vote. However, the person must choose who to vote for themselves. This decision cannot be made on their behalf, even by an appointed Deputy or attorney and when supporting an individual in this manner, care should be taken not to exercise influence or encourage an individual to vote for one party over another.

Halton believe that the ability to cast your vote is central to rights based practice, and the support that can be offered by social workers is key to making explicit the connections for people between voting and the right to make other decisions about their lives, being able to choose how to spend the day and being able to decide where you want to live and who to live with.

Services that prevent people from voting on capacity related grounds

These services may be committing an offence if they fail to return accurate information regarding who is resident in that service for the electoral register. They are also interfering with a person's legal rights to vote, which may be a breach of Article 3 Protocol 1 of the European Convention on Human Rights.

The **Care Quality Commission** may determine in their regulation activity whether services had registered people to vote. **If visiting professionals come across a service that has not, or refuses to, they may alert CQC to this issue and the local authority's registration officer.** The biggest obstacle to people living in care services voting is not mental incapacity, but a lack of support to exercise their suffrage rights as a citizen

What can you do?

Supported living and care home providers can review their current systems and care planning approaches to determine if:

- Do you have a policy on voting?
- Do staff receive training on voting rights?
- Do you include support for people to vote in their support plans.
- Do you have any success stories you would like to share with the Quality Assurance Team?

What can we do?

At the end of this document, there is some supporting guidance and documentation that you can use to work with the people you support, to enable people to vote. This includes a voting passport, a practice ballot paper, government guidance and easy read documentation.

As more services take part each year, a bank of expertise is being built up, which means that more experienced workers can support those new to the campaign.

Social workers who visit services will be asked to review arrangements, as part of any review or reassessment undertaken for people.

Voting and DoLS

A Best Interests Assessor completing their assessments under the Deprivation of Liberty Safeguards framework may, as part of **setting conditions**, state that the care home must ensure that the relevant person must be supported to vote. We will be sharing this guidance with Best Interest Assessors to ensure that people's rights are adhered to.





What have you done?

Below is a document that can be completed to share the good work and efforts of your service, in supporting people to vote. **Please complete and send to our Quality Assurance Team.** We can use these as good case examples going forward, **to further embed how services and social workers are supporting people with their right to vote.**



supporting peopel
with their right to v

Supporting information/contacts.

| Name of document/source | Document/contact | How can this support people with their right to vote? |
|---|--|--|
| My Voting Passport |  My Voting Passport .pdf | This document can be used to support a person with their right to vote. It enables social care staff to determine what support may be required to vote, as well as an overview of the law regarding voting, particularly around their right to vote. |
| MENCAP – easy read guide to voting |  Easy_Read_Guide_Mencap_July_2015.p | Used to support people with providing the information needed in order to make a decision. More info https://www.mencap.org.uk/get-involved/campaign-mencap/elections/guides-voting |
| Local Elections practice ballot paper and easy read |  Easy-read-guide-to-voting-for-the-local | Used to support people with what to expect when they go the ballot box. To be used in advance of attending More resources from United Response can be found here - https://www.everyvotecounts.org.uk/what-is-every-vote-counts/easy-read-resources/ |
| The Electoral Commission |  IER - Supporting applicants to register | Guidance for provider services to support people to vote. |
| Guidance on registering to vote | https://www.gov.uk/register-to-vote | Information and mechanisms to support people to register and vote. |
| Quality Assurance Team | contracts@halton.gov.uk | You can share success stories with the team, as well as discuss any particular barriers you may have in implementing support for people to vote locally. |
| Integrated Adult Safeguarding Unit | 0151 511 8555 adultsafeguarding@halton.gov.uk | The team can provide support and advice to services around how they can support people to vote. |