

Fluency in the English Language: a new code of practice for the public sector

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Under Part 7 of the Immigration Bill 2016 all public bodies and any organisation providing services of a public nature will have to ensure that staff in a 'customer-facing role' have sufficient fluency in the English language to be able to do their job properly. Similar provisions apply to the Welsh language. The Government issued a draft code of practice in October 2015 and reported on the outcome of its consultation exercise in February 2016. See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467731/Draft_Code_of_Practice_on_the_English_Language_Requirement_for_Public_Sector_Workers.pdf

An exact commencement has yet to be confirmed but we anticipate that this will be effective by October 2016.

What is the extent of the duty?

Public bodies must examine all their 'customer-facing' roles and determine what level of fluency in the English language is required for each job. The standard will be determined by:

- the complexity of the topics of discussion;
- whether the communication is likely to include technical or specialist vocabulary;
- the typical duration of any meetings/conversations;
- whether the communication is repeated in or supplemented by written material provided to customers.

What is a customer-facing role?

This is ultimately a question of fact but any role that involves telephone and face-to-face communication with the public will be caught. By contrast, the Code gives an internal administrator as an example of someone to whom it does not apply.

Which staff are caught by this?

It's important to note that the Code applies to all staff irrespective of whether they are permanent, temporary, on fixed term contracts, self-employed consultants/ contractors or agency temps. Agency temps should be checked for fluency before they are recruited in a customer-facing role.

How do you assess proficiency in English ?

The Code gives examples of what examination certificates would be viewed as acceptable. It also explains that it is perfectly legitimate to make this assessment at a job-interview.

What happens if staff are not sufficiently fluent?

They should be supported and the public body should pay for any training to help them achieve proficiency. If staff cannot achieve this, then they should be redeployed to a non-customer facing role and only if there is no alternative employment, should dismissal be contemplated.

Self-Employed Contractors and Recruitment Agencies

For self-employed contractors, their contracts should contain provisions relating to language skills and fluency. This should also become a standard term with any recruitment agency.

Complaints procedures and management

Appropriate complaints procedures should be introduced to enable members of the public to complain and should be made widely available. This could include simply updating existing complaints

procedures. The Code confirms that a public body does not have to respond to complaints that are vexatious, oppressive or which amount to harassment.

The Code also recommends that:

- first and second line managers and supervisors are given an appropriate level of training and support to enable them to deal with complaints confidently and professionally;
- customers are made aware of this by adequately signposting the complaints process;
- appropriate reasonable adjustments are in place so that all members of the public are able to register their complaint;
- complaints are dealt with in line with the Data Protection Act 1998;
- all legitimate complaints are treated seriously;
- complaints are progressed and a response should be provided efficiently and in a timely manner. Some complaints may take longer to resolve than others because of the individual circumstances. The likely timescale should be part of the explanatory information.

Following a complaint, the public body must consider whether or not the individual member of staff was sufficiently fluent in the English language, give that person sufficient opportunity to comment on the complaint and if upheld, explain what remedial action will be undertaken in relation the fluency duty.

Equality Act 2010

The Equality Act needs to be complied with so that no discrimination complaints can be made. There is a high risk of a complaint of indirect racial discrimination due to the need to speak English fluently. It is a defence to show that there is a legitimate aim (need to comply with legal duty or a customer need for fluent English speakers) but it is also necessary to show that means of implementation are proportionate. This can be demonstrated by accurately assessing the level of fluency for each job, ensuring that any training is supportive but justified, that redeployment is handled fairly and that dismissal is only a last resort.

Next Steps for Senior managers and HR

1. Fully explain this new duty to all customer facing staff.
2. Update existing recruitment and selection practices and train all staff involved in this.
3. Update contracts of employment, procurement/recruitment agency contracts and complaints procedures.
4. Update complaints procedures.
5. Comply with the Equality Act 2010.
6. Currently, the fluency duty does not require public authorities to publish complaints data but if public bodies already publish this data, their internal recording mechanisms will need to be updated.

If you have any queries relating to this guide or wish to seek legal advice, please contact:

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