

**TO: EMPLOYMENT COMMITTEE
5 OCTOBER 2016**

**CODE OF PRACTICE ON ENGLISH LANGUAGE REQUIREMENT FOR
PUBLIC SECTOR WORKERS
(Director of Corporate Services - HR)**

1 INTRODUCTION

- 1.1 The Government has published a draft Code of Practice which covers a requirement for customer-facing workers to be fluent in spoken English. It is anticipated that the Code of Practice will be finalised in October. The Code of Practice is being described as intended to support public sector organisations to meet the duty, which was part of the Immigration Act 2016, with “minimal burden”. Corporate HR will make minor changes necessary to employment policies and will communicate changes to recruiting managers, and this report is to make Employment Committee aware of this new requirement.

2 RECOMMENDATIONS

- 2.1 That the Committee note the report and HR make the minor changes to appropriate employment policy as necessary in order to comply with the new Code of Practice when finalised in October.

3 SUPPORTING INFORMATION

- 3.1 The new Code of Practice main requirements are not onerous as when someone is recruited to a customer facing role, considerations of whether they can understand and be understood sufficiently to perform the role are already taken into account; but some minor changes are required to demonstrate adherence to the new Code.
- 3.2 Workers from agencies, apprentices, contractors etc are all covered by the Code and the duty.
- 3.3 Workers who as a regular and intrinsic part of their role speak to members of the public in English are considered as working in a customer facing role. Examples in the Code show that a customer services employee would be customer facing because speaking to people is an intrinsic and regular part of the role; whereas a street cleaner would not, as their main duties do not include interacting regularly with the public. Identification of roles to which the requirements apply will need to be done with managers in consultation with HR.
- 3.4 Where a specific language standard already exists (eg for teachers) this code will not impose a higher standard and the current arrangements will be unchanged.

Unrestricted

- 3.5 Managers will need to decide the level of fluency required for a particular role and express that when recruiting – for example they could include in recruitment materials or person specifications a sentence such as “The ability to converse easily with customers and provide advice in accurate spoken English is essential for the post”. There is no uniform requirement as the level of fluency should be proportionate to the needs of each role. Where no existing standard for fluency already exists we could adopt CFR B1 Standard but this will need to be reviewed and agreed by HR on a case by case base depending upon the role. It is suggested that the standard be reviewed when a job description or person specification is being revised or reviewed before being used for a recruitment exercise, rather than amending and reissuing existing job descriptions for all customer facing staff.
- 3.6 Fluency can be tested as simply as, by looking at their ability to answer interview questions in English. No special test is required by the code, although it could be included if it was felt necessary. (Accents, dialects, ethnic origins, nationality etc are not the consideration here and every applicant to a customer facing job should be treated equally in establishing if they can communicate in spoken English to a level required for the job. Nobody should be excluded from consideration for an interview, for example, due to untested assumptions about whether they might be fluent in spoken English because of their background.)
- 3.7 Changes which the code says the employer may consider (ie they are not compulsory) include:
- Making clear in advertisements and job descriptions the necessary standard of spoken English
 - Ensuring existing recruitment practices include assessing fluency, and communicating this to people who are involved in interviewing
 - Providing clear guidance on how to assess candidates against clear language criteria in the job description/person specification
 - Ensure recruitment processes do not contravene Equality legislation, and treat all candidates equally in the recruitment process.
- 3.8 The recruitment policy and procedures are contained in three documents, each of which requires a small amendment. The section on “Attracting Applicants” will be amended to reflect the changed requirements for person specifications for customer facing roles, as will a specific guidance note on person specifications; the section on “Planning and Selecting for Interview” will include advice in a section on use of tests in interviews; and the final section on “Interviewing Applicants and Making an Offer” will be amended to include how to ask appropriate questions at interview to assess language fluency, and to advise manager to include their assessment in the interview notes.
- 3.9 Advice evidence and training will be issued to all managers as appropriate about the Code, and what they need to do in practical terms to apply it fairly including assessing fluency and to avoid unfair discrimination.
- 3.10 HR will develop a communication to existing staff to raise awareness of the new requirement.
- 3.11 In the rare case that it should come to light that an employee in a customer facing role does not meet the standards for spoken English for the role, the Code says the employer should consider retraining; redeployment; or changing the role to involve less communication with the public. This will dealt with in accordance with existing Council and HR policies and practices.

4 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Treasurer

- 4.1 Nothing to add to the report.

Borough Solicitor

- 4.2 Section 77 of the Immigration Act 2016 requires the Council to ensure that each person who works for it in a customer-facing role speaks fluent English. The Act defines a person who works in a customer-facing role as someone who, as a regular and intrinsic part of their role, is required to speak to members of the public in English. It applies to Employees, Apprentices and workers but does not extend to workers employed directly by a private or voluntary sector provider of a public service,

In determining how to comply with this duty a public authority must have regard to the Code of Practice. The Council must operate an adequate procedure for enabling complaints to be made to the Council about breaches of this duty and for the consideration of such complaints.

According to the Act , a person speaks fluent English if the person has a command of spoken English which is sufficient to enable the effective performance of the person's role.

Equalities Impact Assessment

- 4.3 For an employee in a customer facing role who uses sign language, the fluency duty can be met by providing a sign language interpreter who speaks English to the necessary standard of fluency for that role.
- 4.4 Advice will be given to recruiting managers on how to avoid unfair discriminatory impact.

Strategic Risk Management

- 4.5 Considered throughout the report.

Background Papers

Draft Code of Practice and Finalised Code of Practice once published.

Contact for further information

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