



English language requirement for Public Sector workers

The Immigration Act 2016 created a duty for public authorities to ensure that all staff with a customer facing role can speak fluent English or Welsh, to an appropriate standard. The government has since issued a draft statutory Code offering guidance on the legal duty.

What is an appropriate standard of fluency?

Members of staff, both new recruits and current staff regardless of their nationality or origin, must have a level of fluency which allows them to perform their role effectively. Fluency relates to the ability to choose the right kind of vocabulary depending on the circumstances, to construct sentences and to speak confidently and accurately.

The public authority should set the standard depending on the nature and extent of spoken communication needed for effective performance of the role. Some factors to assess when choosing the standard include:

- The frequency, the duration and the topic of any spoken communication;
- If the communication involves any technical, professional or specialist vocabulary;
- Whether spoken communication is supported by written material; and
- How significant spoken communication is for service delivery.

If the public authority already has an English or Welsh language requirement in place for certain roles, it is likely that this will be sufficient.

How to ensure staff have the appropriate standard

Employers can set in place a description of the fluency standard required in their recruitment campaign, for example "The ability to conduct a conversation and provide advice in accurate spoken English is essential for the post".

Where a particular standard of language has been legitimately set, applicants and current employees may need to be assessed on their ability, either by a formal test or as part of an interview process, unless it is clear that they have the necessary fluency. Employers should accept a wide range of evidence including spoken answers to interview questions, whether a specific qualification

relating to language ability is held or if a spoken language competency test has been passed.

What should employers do to put the standard in place?

Once the standard of fluency has been set, employers will need to review their practices and policies to ensure they contain the fluency duty so all customer-facing members of staff are aware of the duty and the consequences of insufficient levels of fluency. Employers should also ensure that discrimination is not occurring in their recruitment and selection processes by reason of the fluency duty.

Employers will need to establish a complaints procedure where members of the public can make a formal complaint where they feel the worker has insufficient fluency of English or Welsh for the performance of their role. The procedure should be publicised to employees and customers.

What happens if the member of staff does not have the required fluency?

Staff in customer-facing roles who cannot demonstrate the necessary standard of spoken English or Welsh fluency should be supported by training, or re-training, provided by the employer where they are given a reasonable period to reach the necessary standard. If the member of staff does meet the standard, and cannot reach this with training, then employers may need to consider making adjustments to the role such as reducing the frequency of spoken communication with customers or moving the individual to a non-customer-facing role.

As a last resort, the public authority can consider dismissal on the basis that the individual is not fulfilling their duties so long as they have had a reasonable opportunity to meet the necessary standard and all reasonable alternatives have been investigated.

The content of this briefing is correct at the time of publishing.

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