

English Fluency Policy and Guidance

Document Control

Document Ref:	EFPG	Date Created:	December 2016
Version:	1	Date Modified:	
Revision due			
Author:	Katie Penlington	Sign & Date:	
Owning Service			
Equality Impact Assessment: (EIA)	Date undertaken:		
	Issues (if any):		
Chief Executive	Sign & Date:		
Corporate Director (Community Services)	Sign & Date:		
Corporate Director (Children & Young People)	Sign & Date:		
Corporate Director (Environment)	Sign & Date:		

Change History

Version	Date	Description	Change ID
1	December 2016	New policy	
2			
3			

This Policy is not for publication externally



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1. Purpose

- 1.1 The purpose of this policy is to support the Council in fulfilling its statutory duty under Part 7 of the Immigration Act 2016. It is based on the Government's [statutory Code of Practice](#) on the English language requirement for public sector workers issued under Part 7 of the Immigration Act 2016.
- 1.2 Part 7 of the Immigration Act came into force on 21st November 2016 and the Statutory Code was issued on 29th November 2016.
- 1.3 The statutory duty requires the Council to ensure that workers in public facing roles, whatever their nationality or ethnic origins, are able to speak English with a level of fluency appropriate to the role they are undertaking.
- 1.4 Personnel Committee has approved the English Fluency Policy.

2. Applicability

- 2.1 The English Fluency requirement applies to:
 - 2.1.1 All workers in public facing roles; both newly recruited and those in existing posts. This includes permanent and fixed term employees, apprentices, self employed contractors and agency staff.
- 2.2 It is the responsibility of each employee and other person mentioned in Section 2.1.1, their managers and recruiting managers to familiarise themselves with and adhere to this Policy.
- 2.3 Adherence to this Policy is a condition of working for the council or using its assets.
- 2.4 This Policy has had consultation with Heads of Service and Trade Unions and has been approved by Personnel Committee.

3. Policy

- 3.1 The Policy of the Council, set out in sections 3 to 15, aims to ensure that all workers specified in 2.1.1 who perform public facing roles speak English to an appropriate standard for their role.
- 3.2 In meeting the English language requirement the Council is also committed to fulfilling its duties under the Equality Act 2010 and will ensure that:
 - 3.2.1 The processes and methods used to determine whether a person has sufficient English fluency for effective performance of his/her role are fair and transparent.
 - 3.2.2 The Council will treat all workers and applicants from all nationalities and ethnic backgrounds in accordance with the Equality Act in employment and during the recruitment process.
 - 3.2.3 Reasonable adjustments will be made for applicants/employees with a disability.

3.3 Although all staff in public-facing roles will be required to speak English to the necessary standard, where appropriate, staff may make use of any language skills they have to communicate with citizens who speak other languages.

4. **Defining public facing roles**

4.1 A public facing role is defined under section 77 (7) of the Immigration Act 2016 as one that requires the job holder to speak to members of the public (either face to face and/or by telephone) as a regular and intrinsic part of their role.

4.2 Fluency relates to a worker's language proficiency and ability to speak with confidence and accuracy using accurate sentence structure and vocabulary.

4.3 Line managers are responsible for determining whether a role is public facing; in doing so they should consider:

4.3.1 The business need for interaction with the public

4.3.2 The frequency and form of the interaction

4.3.3 The level of service quality and responsiveness expected by the public

4.3.4 The proportion of the role which would require spoken interaction with members of the public

4.3.5 The nature of the role

4.3.6 Whether English is the primary language required for the role

5. **Defining the level of English fluency required**

5.1 Line managers will establish the level of English fluency required for each public facing role. This will vary from role to role. In determining the appropriate level line managers should consider:

5.1.1 The frequency of spoken interaction

5.1.2 The topic of spoken interaction

5.1.3 Whether communication is likely to include technical, profession specific or specialist vocabulary

5.1.4 The typical duration of spoken interaction

5.1.5 Whether the communication is repeated or supplemented by written material provided to service users

5.1.6 The significance of spoken interaction for service delivery

5.1.7 Whether a level of English fluency is already specified in standards determined by a professional body that the employee must comply with in order to practise their profession; for example the Teaching Standards for teachers.

- 5.2 The level of fluency required must be matched to the demands of the role to ensure a proportionate approach to the fluency duty.
- 5.3 English fluency does **not** relate to regional or international accents, dialects, speech impediments, the tone of conversations, origin or nationality.
- 5.4 For a worker whose first language is a signed language and who is in a public facing role, the fluency duty will be met by the provision of a sign language interpreter who speaks English to the necessary standard of fluency for that role. The sign language interpreter should be qualified as specified in section 2.14 of the [Code of practice on the English language requirement for public sector workers](#).
6. **Specifying the requirement in person specifications and advertisements**
- 6.1 Managers will ensure that where a role has been defined as public facing, this is defined in the job description and that the person specification contains an essential criterion such as:
- 6.1 'This role has been identified as public facing in accordance with Part 7 of the Immigration Act 2016, and therefore the ability to fulfil all spoken aspects of the role in confidence in English will be required. Conversing at ease with members of the public, providing advice and using any specialist terminology appropriate to the role is essential for the post.'
- 6.2 Job adverts will specify the English language requirement for public facing roles with similar wording
7. **Assessment of fluency**
- 7.1 All applicants for, and workers in, public facing roles must be assessed, not just those whose first language is not English. Care must be taken not to allow accent, dialect, origin or nationality to deflect from the individual's English language performance.
- 7.2 **Existing staff:** There is no need to formally test existing staff. Managers will assess whether existing members of staff in public facing roles meet the English fluency requirement as part of day to day and performance management. If any employee does not meet the requirement, steps will be taken in accordance with section 10 and the guidance section below.
- 7.3 **When recruiting:** Recruitment panels will assess English language competency at interview, through the competent answering of interview questions in English.
8. **Agency workers and contractors**
- 8.1 When placing a request with an agency for a worker to work in a public facing role, managers will specify to the agency the requirement for the worker to be able to fulfil all spoken aspects of the role with confidence in English. The selection process for agency workers will need to include a requirement that the agency undertake a specific assessment of their ability to speak English to the standard required for the role. This will help ensure that employment agencies only provide candidates who meet the necessary standard. No higher or lower

standard of spoken English should be applied to agency workers than applies to employees of the Council working in an equivalent role.

- 8.2 Managers will need to ensure that when procuring contracts, both the tender and the specification make clear the English fluency requirement for the contractor and their employees and/or subcontractors engaged in performing public facing roles for the Council, and the steps that will be taken if this requirement is not met, including the ability to terminate the contract.

9. **Complaints from the public**

- 9.1 Where a member of the public believes that a public facing Council worker is not sufficiently proficient in spoken English for their role they (or someone acting on their behalf) have the right to complain to the Council and have their complaint investigated via the Council's [Corporate Complaints Procedure](#).

- 9.2 Members of staff will be given an opportunity to respond to their manager regarding allegations made and will be kept fully informed at each stage of the complaints process. They will be given appropriate support throughout the process. Further information can be found in section 19 of the guidance below.

10. **Action where an employee does not meet the required standard of spoken English**

- 10.1 Where an employee is identified; either through day to day or performance management, or following an investigation under the Council's complaints procedure, as not having sufficient proficiency in English to fulfil their role satisfactorily, the matter will be handled under the Council's Capability Procedure.

- 10.2 Fluency issues will normally be handled informally in the first instance as specified in section 6 of the Capability Procedure, but where this approach has failed to resolve the matter, or where the lack of fluency is more serious, the formal stages of the Capability Procedure will be invoked.

- 10.3 Appropriate measures will be implemented to support employees attain the required level of spoken English within a reasonable timescale. Further information can be found in the guidance below.

11. **Action where agency workers/contractors do not meet the required standard of spoken English**

- 11.1 If an agency worker/contractor is identified; either through day to day management, or following an investigation under the Council's complaints procedure, as not having sufficient proficiency in English to fulfil their role satisfactorily, the Council will consider terminating the agreement with the employment agency/contractor for engagement of the worker in accordance with the contract between the agency/contractor and the Council. Advice should be sought from WBC Legal Services.

12. **Implementation**

- 12.1 This Policy will be supported by the guidance set out in section 16 to 24 of this document.

13. **Roles and Responsibilities**

13.1 The overall responsibility for the English Fluency Policy within WBC rests with the Chief Executive.

13.2 All managers are directly responsible for implementing this Policy.

14. **Failure to comply with WBC English Fluency Policy**

14.1 This document provides staff and others with essential information regarding the English Fluency requirement and sets out conditions to be followed. It is the responsibility of all to whom this Policy document applies to adhere to these conditions. Failure to do so may result in:

- informal disciplinary processes
- formal disciplinary action in accordance with the Council's Disciplinary Procedure

15. **Review**

15.1 This policy will be reviewed to respond to any changes and at least every 3 years.

15.2 The Service responsible for reviewing and maintaining this Policy and guidance is Human Resources.

16. **Guidance:**

17. **Examples of public facing roles**

17.1 Examples of roles that do and do not meet the definition of public facing can be found in appendix A. This list is not exhaustive; each role should be assessed as described in point 3.3 of the Policy to see whether it is public facing.

18. **Assessing the level of English language proficiency**

18.1 In both recruitment and in day to day performance management managers should satisfy themselves that all workers in public facing roles, regardless of their nationality and ethnic origin, are sufficiently fluent in English to competently and confidently communicate with service users and other members of the public.

18.2 Managers cannot assume that employees/applicants holding certain English qualifications (e.g. GCSE English) are sufficiently fluent in English as these qualifications are not assessed orally.

18.3 Fluency relates to a person's language proficiency and their ability to speak with confidence and accuracy, using accurate sentence construction and vocabulary.

18.4 The level of English fluency required will vary according to job; some will require workers more complex conversations than others. However within the context of the job workers should be able to:

- 18.4.1 Be able to choose the right kind of vocabulary for the situation at hand without a great deal of hesitation
 - 18.4.2 Listen to the member of the public and understand their needs
 - 18.4.3 Tailor their approach to each conversation appropriately to the member of the public
 - 18.4.4 Respond to the member of the public clearly with fine shades of meaning, even in complex situations.
- 18.5 Managers should take care not to unlawfully discriminate either directly or indirectly through the level of English fluency required. Managers should ensure that people are treated in the same way in the recruitment process and whilst at work regardless of their nationality or ethnic background.
- 18.6 Some workforce groups are already subject to specific language standards or require specific qualifications e.g. the Teaching Standards for teachers. Where this is the case recruiting managers should not normally require applicants to have higher levels of fluency than those already required.
- 18.7 Recruiting managers should design careful interview questions to assess use and understanding of vocabulary relevant to the job and provide all applicants with an equal opportunity to prove appropriate levels of fluency. Careful records of answers should be kept.
- 18.8 Managers are not expected to test existing members of staff but should assess whether English fluency is sufficient for the role through normal performance management. Further advice can be sought from HR if they identify that an existing member of staff does not meet the level of English fluency required to perform their role to a satisfactory standard.
19. **Complaints raised under the Council's complaints procedure:**
- 19.1 When a legitimate complaint is received the employee's manager will assess the employee's English fluency against the necessary standard of English required for the role in question.
- 19.2 Members of staff subject to a complaint will be notified of the complaint and of action being taken in relation to it. They must be given the opportunity, as soon as reasonably practicable, to give their own account of the facts leading to the complaint and to respond to the allegations made.
20. **Supporting an existing worker in attaining the required level of spoken English**
- 20.1 The Council will use its Capability Procedure where an existing employee in a public facing role is found not to have the required level of English fluency. The aim will be to support the employee in attaining an appropriate level of English fluency for the role.
- 20.2 Fluency issues will normally be handled informally in the first instance as specified in section 6 of the Capability Procedure, but where this approach has

failed to resolve the matter, or where the lack of fluency is more serious, the formal stages of the Capability Procedure will be invoked.

20.3 The employee must be given the opportunity to meet the necessary standard within a reasonable timescale. Managers will consider what reasonable support measures can be implemented to assist the employee attain the required level of fluency as outlined in sections 21 and 22 below.

21. **Training/retraining:**

21.1 Training or retraining should be considered to support the employee to meet the requirements of the fluency duty.

21.2 Individual learning and development needs will be considered to determine the aspects of spoken communication competence that need to be addressed and where possible the nature of any training required should be agreed with the employee.

21.3 Means of providing support and training appropriate to the requirements for the role may include:

21.3.1 Listening to language podcasts

21.3.2 Mobile language applications

21.3.3 Providing an internal mentor or coach – especially useful as the mentor/coach should be someone who understands the context of the role and the vocabulary required

21.3.4 Online resources

21.3.5 Interactive language programmes

21.3.6 Language classes

21.4 Suitable training courses or qualifications must reflect the necessary standard of fluent English required for the role.

21.5 Where appropriate the costs of training will be met by the Corporate training budget and the employee will be allowed time off during working hours to attend the training.

22. **Reasonable adjustments or redeployment**

22.1 Reasonable adjustments to the role may also be considered, such as reducing the frequency of communications with the public, or supplementing spoken communication with written material.

22.2 Redeployment to a non- public facing role may also be considered

23. **Dismissal**

23.1 As a final resort, once reasonable opportunity has been given to enable the employee meet the English fluency requirement, the employee may be

dismissed **under the Capability Procedure**. This may occur where the employee has:

- 23.1.1 Unreasonably refused to undertake training aimed to bring them up to the required standard of fluency for their role
 - 23.1.2 Not been able to attain the required standard after a reasonable amount of time and after reasonable training opportunities have been provided
 - 23.1.3 No suitable redeployment opportunities to a post without public facing duties are available
- 23.2 Further information on the process for handling capability issues can be found in the Capability Procedure. Further advice can be sought from HR.

Glossary

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Other Relevant Documentation

WBC Capability Procedure
HM Government Code of Practice on the English language requirement for public sector workers

Appendix A

Examples of public facing roles:

A customer services assistant receiving calls and handling queries from members of the public would be considered as public facing as the job holder has regular telephone and face to face conversations with the public.

Further examples will be identified once public facing roles have been identified.

Examples of roles that are not public facing

An ICT technician providing internal support within the Council would not be public facing as they do not have to communicate with members of the public either face to face or by telephone on a regular basis.