



HM Government

# Code of Practice on the English language requirements for public sector workers

Part 7 of the Immigration Act 2016

November 2016

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# Foreword

The quality of public services in the UK is amongst the finest in the world and everyone in society wants our public services in the UK to be accessible and delivered to the highest standards possible.

To serve the public it is vital that those working in public-facing roles can communicate in English, or in Wales, English or Welsh, fluently; be it with patients in hospitals, with students in schools, or with members of the public receiving local authority services.

Part 7 of the Immigration Act 2016 delivers on our manifesto commitment to help ensure the safe and high quality delivery of public services by ensuring that they are provided to an appropriate standard of fluency in English, or in Wales, English or Welsh.

This Code supports public authorities to meet their obligations under Part 7 of the Immigration Act 2016. The Code sets out considerations public authorities will need to take into account when deciding how to comply with this new legal duty, without creating more red tape in the recruitment of public sector staff. The intention is clear: a common sense approach to meeting the public's reasonable expectation to be able to communicate in English, or in Wales, English or Welsh, when accessing public services.

This Code should be simple to comply with: nothing is required of anyone already fluent in English. The aim is to bring standards up to the best.

Part 7 of the Immigration Act 2016 is in force from 21<sup>st</sup> November and so relevant employers need to ensure that they comply with the duty set out in the legislation from that date. This Code is to be issued on 29<sup>th</sup> November 2016 and then promptly brought into force by Regulations under the Act.

**Rt Hon Ben Gummer MP**

Minister for the Cabinet Office and Paymaster General

# Using the Code of Practice

## Status of the Code

The relevant Minister is required to issue a Code under Part 7 of the Immigration Act 2016 for the purposes of section 80 of that Act. It is a statutory Code. This means it has been prepared by the relevant Minister and s/he has laid a draft of it before Parliament. The Code contains practical guidance on the standards and practices expected of public authorities when complying with their legal duty under the Act.

This Code is not intended to prescribe the process for every type of public-facing<sup>\*</sup> role and it is not a definitive statement of the law. However, it provides principles and examples which public authorities can consider when fulfilling their legal duties and obligations.

## To whom this Code applies

This Code is aimed at public authorities defined in Part 7 of the Immigration Act 2016. It aims to assist public authorities in meeting their statutory duty under Part 7 of the Immigration Act 2016.

## How to use the Code

Public authorities must have regard to this Code when fulfilling their statutory duty under Part 7 of the Immigration Act 2016. Further references to that duty in this Code will be to the “fluency duty”. The Code aims to provide assistance to public authorities to determine the necessary standard of spoken English (or English or Welsh in Wales) to be met by their public-facing staff, the appropriate complaints procedure to follow should a member of the public consider that the required standard has not been met and the appropriate forms of remedial action which may be taken if a member of staff falls below the standard required.

Although all staff in public-facing roles will be required to speak English (or Welsh) to the necessary standard, the fluency duty does not require public authorities to ensure that their public-facing staff speak only in English or Welsh to communicate with members of the public. Public authorities are free to provide guidance to their public-facing staff that they may where appropriate, make use of any language skills they have to communicate with citizens who speak other languages.

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\* In this Code, a public sector worker is determined to be ‘public-facing’ if as a regular and intrinsic part of their role, they are required to speak to members of the public in English, or in Wales in English or Welsh. This is described in Part 7 of the Act as a ‘customer-facing role’ and defined in section 77(7) of the Act.

This Code is made up of five sections:

- **Section 1** defines the scope of the Code.
- **Section 2** explains the appropriate ways in which public authorities can set a standard of spoken English (or Welsh) for public-facing roles.
- **Section 3** provides options for remedial action where staff do not meet the necessary standard of spoken English (or Welsh).
- **Section 4** outlines the complaints procedure that must be followed in respect of complaints raised by a member of the public under the fluency duty.
- **Section 5** provides guidance on compliance with other legal obligations.

### Examples in the Code

Examples included in this Code are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light.

### Territorial Extent

The Code applies to all public authorities who are subject to the fluency duty. This is all public authorities in England and in relation to Scotland, Wales and Northern Ireland public authorities exercising functions relating to non-devolved matters.

Non-devolved matters means:

- reserved matters in Scotland, as defined by the Scotland Act 1998;
- matters which are outside the legislative competence of the National Assembly for Wales, as defined by the Government of Wales Act 2006; and
- excepted matters in Northern Ireland, as defined by the Northern Ireland Act 1998.

In Scotland, Wales and Northern Ireland certain public authorities will hold a dual function and deal with both devolved and non-devolved matters. Public authorities must comply with the fluency duty and take the Code of Practice into account in respect of all staff in public-facing roles dealing with relevant non-devolved functions, such as equality and standards officers.

Public authorities exercising functions in Wales must ensure that someone working for them in a public-facing role dealing with non-devolved matters speaks fluent English or Welsh and comply also with the requirements of language schemes under the Welsh Language Act 1993 and/or the standards stipulated by the Welsh Language (Wales) Measure 2011.

# Section 1: Introduction

## Scope of the Code

### Public Authorities

- 1.1. This Code applies to all public authorities defined in section 78 of the Immigration Act 2016, as bodies which carry out functions of a public nature. This includes central government departments, non-departmental public bodies, councils and other local government bodies, NHS bodies, state-funded schools, the police and the armed forces, and public corporations.
- 1.2. This Code does not apply to the security and intelligence agencies or the Government Communications Headquarters.
- 1.3. If bodies are uncertain as to whether they carry out functions of a public nature the following factors should be considered:
  - **undertaking the responsibilities of central or local government** - the extent to which the organisation has assumed responsibility for the function in question;
  - **public Perception** - the nature and extent of the public perception as to whether the function in question is public rather than private;
  - **exercising statutory powers** - the nature and extent of any statutory power or duty in relation to the function in question, or whether the function involves or may involve the use of statutory powers;
  - **publicly funded** - the extent to which the state makes payment for the function in question.
- 1.4. The duty will not initially apply to voluntary sector or private sector providers of public services. However, Part 7 of the Immigration Act 2016 gives a power to extend the duty to these sectors at a later date.

### Workers

- 1.5. Public authorities are subject to the fluency duty and should have regard to the guidance in this Code in relation to all of their staff who work in public-facing roles including permanent and fixed-term<sup>†</sup> employees, apprentices, self-employed contractors, agency temps, police officers and service personnel.
  - 1.6. For a public sector 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 or Welsh to the necessary standard of fluency for that role.
  - 1.7. The fluency duty does not extend to workers employed directly by a private or voluntary sector provider of a public service, or whose work is carried out mainly or wholly outside the UK.
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## Members of the Public

1.8. 'Members of the public' should be given its usual dictionary meaning as members of the general population. Public authorities may use other terminology to describe a person using, interacting or receiving a service such as customer, patient or client.

## Public-facing Roles

1.9. Members of staff who, as a regular and intrinsic part of their role, are required to speak to members of the public in English or Welsh are considered as working in a public-facing role. Public-facing roles would include, but are not limited to the following illustrative examples:

- *A work coach directly employed by the Department of Work and Pensions would be viewed as operating in a public-facing role, as s/he will have face-to-face discussions with members of the public who are accessing the service on a daily basis.*
- *A local government employee working in customer service, receiving calls and fielding queries from members of the public would be viewed as operating in a public-facing role, as they will have regular telephone and face-to-face conversations with the public.*
- *A teaching assistant required to communicate with pupils to support their learning, would be viewed as operating in a public-facing role.*

1.10. As shown in these examples, both face-to-face and telephone conversations bring a role within the scope of the fluency duty. The degree of interaction with the public needs to be regular and planned to be an intrinsic part of the job role, as defined in a job description or in clear occupational goals.

1.11. Members of staff who occasionally speak to the public as they carry out their duties are not considered to be working in public-facing roles as discussions with the public are not a regular or intrinsic part of their role. Such roles would be outside the scope of the duty and would include but are not limited to the following illustrative examples:

- *A local authority employed street cleaner would not be viewed as working in a public-facing role as their main duties do not require regular interaction with members of the public.*
- *A clerical officer or IT user technician providing internal support within an organisation would not be viewed as working in a public-facing role as they are not required to communicate with members of the public over the telephone or face-to-face on a regular basis.*

1.12. When determining whether a role is public-facing or not, employers should consider the following aspects of the work involved:

- is there a business need for interaction with the public;
- what is the frequency and form of this interaction;
- what is the level of service quality and responsiveness expected by the public;
- what is the proportion of the role which would require spoken interaction with members of the public;
- what is the nature of the role; and
- is English or Welsh language the primary language required for the role?



1.13. For example, taking these considerations into account, the fluency duty is unlikely to apply to members of staff whose role involves performing content or editorial functions for a public service broadcaster, such as journalists, programme-making roles or broadcast output. The nature of these roles may require interaction with members of the public, but the extent, frequency and form of interaction with the public either face-to-face or by telephone is likely to be limited and thus not an intrinsic part for the effective performance of the role.

## Section 2: Setting a Standard

- 2.1. This section of the Code is about setting the necessary standard of fluent English or Welsh required for a public-facing role in a public authority to which this Code applies.
- 2.2. Public authorities must ensure that members of staff in such roles, whatever their nationality or origins, are able to speak fluent English or Welsh. This means that they must have a command of spoken English or Welsh which is sufficient to enable the effective performance of their role. The fluency duty applies in respect of existing staff as well as to new recruits.

### Deciding on the Standard

- 2.3. Setting the necessary standard of English or Welsh spoken language proficiency will depend on the type of public-facing role. Each public authority must carefully consider the nature and extent of the spoken communication which is necessary for effective performance. The following factors may be relevant when considering the standard required:
  - the frequency of spoken interaction;
  - the topic of spoken interaction;
  - whether the communication is likely to include technical, profession-specific or specialist vocabulary;
  - the typical duration of spoken interaction;
  - whether the communication is repeated in or supplemented by, written material provided to members of the public; and
  - the significance of the spoken interaction for service delivery.
- 2.4. Some public-facing roles of public authorities are already subject to a language standard. It is not anticipated that public authorities will need to impose a higher standard in fulfilling the fluency duty than already required for such roles. For example:
  - Teachers in local authority maintained schools must be appraised annually against the Teachers Standards. One of the Standards states that teachers must:  
*“Demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher’s specialist subject.”*
  - The General Medical Council core guidance, Good Medical Practice (2013) states:  
*“All doctors who practise medicine in the UK must have the necessary knowledge of English language to provide a good standard of practice and care in the UK.”*
- 2.5. A standard specification of English speaking ability could include:

*“An ability to fulfil all spoken aspects of the role with confidence through the medium of English or (in public functions in Wales) Welsh.”*

- 2.6. The level of fluency required must however be matched to the demands of the role in question to ensure a proportionate approach to the fluency duty.

### **Level of Language Proficiency**

- 2.7. Employers must satisfy themselves that an individual has the necessary level of fluency appropriate for the role they will be undertaking, whether an existing or a potential new member of staff.
- 2.8. Fluency relates to a person's language proficiency and their ability to speak with confidence and accuracy, using accurate sentence structures and vocabulary. In the context of a public-facing role, a person should be able to choose the right kind of vocabulary for the situation at hand without a great deal of hesitation. They should listen to the member of the public and understand their needs. They should tailor their approach to each conversation appropriate to the member of the public, responding clearly with fine shades of meaning, even in complex situations. The Common European Framework of Reference for Languages (CEFR) provides a useful descriptor of fluency levels, a summary extract is referenced at 2.18 below.
- 2.9. Public authorities may consider using descriptors to explain to candidates the necessary level of fluency required for the role when recruiting, such as:

*The ability to converse at ease with members of the public and provide advice in accurate spoken English is essential for the post.*

- 2.10. The Welsh Language Commissioner's guidance for workplace assessments describes spoken fluent Welsh as:

*‘able to conduct a conversation and answer questions, for an extended period of time where necessary.’*

- 2.11. Fluency does not relate to regional or international accents, dialects, speech impediments or the tone of conversations.

### **Language Qualifications and Tests**

- 2.12. Where a particular standard of spoken language ability has been legitimately set as an essential requirement for the role, applicants may need to be assessed on their English or Welsh-speaking ability, either through a formal test or as part of the interview process as commonly used to assess communicative competence. However, it is not envisaged that existing members of staff will all need to be tested. Where staff or job applicants are clearly fluent to the necessary standard for the role in question, no further action is necessary.
- 2.13. Public authorities should be prepared to accept a range of evidence of spoken English or Welsh language ability. There are a number of ways a member of staff or job applicant could demonstrate their fluency, including, but not limited to:
- competently answering interview questions in English or Welsh;

- possessing a relevant qualification for the role attained as part of education in the UK or fully taught in English or Welsh by a recognised institution abroad<sup>‡</sup>; or
- passing an English or Welsh spoken language competency test or possessing a relevant spoken English or Welsh qualification at CEFR Level B1 or above, taught in English or Welsh by a recognised institution abroad (and from September 2017 this includes Welsh second language GCSE)<sup>§</sup>.

- 2.14. When the fluency duty is met by the provision of a sign language interpreter, the interpreter should be registered with the National Registers of Communication Professionals working with Deaf and Deafblind People (NRCPD). Registration will satisfy employers that the level of language proficiency will be met, as NRCPD Registrants will be highly skilled in a signed language like BSL, ISL or ASL and hold a second language that can be another signed language or a spoken language. One of those languages must be native to the UK and Ireland. If it is impossible, after a determined effort, to engage an NRCPD Registrant, employers must make sure the communication and language professional holds at least the qualification(s) required for NRCPD registration\*\*.
- 2.15. Public authorities can, but are not required to, specify a minimum spoken English or Welsh qualification if they determine this is appropriate for a public-facing role. The specified level must not be below the CEFR Level B1. A British General Qualification may denote a particular standard of language ability but it would not be acceptable evidence as a qualification of spoken fluency, because spoken English is not part of the overall assessment of British qualifications. Although some elements of spoken English will be assessed as part of GCSE English from 2017<sup>††</sup> onwards, this is still not a generally recognised spoken language qualification or test.
- 2.16. The UK National Academic Recognition Information Centre<sup>‡‡</sup> (UK NARIC) provides information and advice about how qualifications and skills from overseas compare to the UK Regulated Qualification Framework including English language tests. Applicants may provide a letter of comparability from UK NARIC for public authorities to use in the selection process.
- 2.17. The Common European Framework of Reference for Languages<sup>§§</sup> (CEFR) was put together by the Council of Europe as a way of standardising the levels of language tests and qualifications across national and regional languages. It provides a good reference point for authorities by describing the levels of spoken interaction and fluency, with a wide-range of available information and guidance for setting standards. It is very widely used internationally and language exams are often mapped to the CEFR Levels.

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<sup>‡</sup> Recognised institutions: <https://www.gov.uk/check-a-university-is-officially-recognised/overview>

<sup>§</sup> <http://qualificationswales.org/news/update-gcse/?lang=en>

<sup>\*\*</sup> <http://www.nrcpd.org.uk/training>

<sup>††</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432097/2015-06-04-assessment-of-spoken-language-in-the-new-gcse-english-language.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432097/2015-06-04-assessment-of-spoken-language-in-the-new-gcse-english-language.pdf)

<sup>‡‡</sup> <https://www.naric.org.uk/naric/>

<sup>§§</sup> <http://www.coe.int/lang-cefr>

2.18. The table below provides a useful summary extracted from the CEFR levels<sup>\*\*\*</sup> of fluency:

| CEFR Certificate | Description                                   | Linguistic Fluency                                                                                                                                                                                                                                                                                                                              |
|------------------|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B1               | Threshold or intermediate                     | <ul style="list-style-type: none"> <li>• Can exploit a wide range of simple language flexibly to express much of what he/she wants.</li> <li>• Can keep going comprehensibly, even though pausing for grammatical and lexical planning and repair is very evident, especially in longer stretches of free production.</li> </ul>                |
| B2               | Vantage or upper intermediate                 | <ul style="list-style-type: none"> <li>• Can adjust to the changes of direction, style and emphasis normally found in conversation.</li> <li>• Can produce stretches of language with a fairly even tempo; although he/she can be hesitant as he or she searches for patterns and expressions, there are few noticeably long pauses.</li> </ul> |
| C1               | Effective operational proficiency or advanced | <ul style="list-style-type: none"> <li>• Can express him/herself fluently and spontaneously, almost effortlessly. Only a conceptually difficult subject can hinder a natural, smooth flow of language.</li> </ul>                                                                                                                               |
| C2               | Mastery or proficiency                        | <ul style="list-style-type: none"> <li>• Can express him/herself spontaneously at length with a natural conversational flow, avoiding or backtracking around any difficulty so smoothly that the person with whom they are conversing is hardly aware of it.</li> </ul>                                                                         |

2.19. There are a range of external assessment tools available to determine English language competency. English language courses and tests examples include, but are not limited to:

- International Speaking and Listening (IESOL) Diploma: City and Guilds
- International English Language Testing System (IELTS): Cambridge English Language Assessment
- EIKEN test in Practical English Proficiency: The Society for Testing English Proficiency (STEP)
- Europass – self assessment language passport: Council of Europe.

2.20. Some workforce groups are already subject to specific language standards that require assessment or qualifications and these are likely to be sufficient evidence of the necessary standard to fulfil the fluency duty for their role:

### **Health**

*Many of the statutory health regulatory bodies have adopted the use of IELTS to assess workers for the health care setting. The overall IELTS English language test score of 7.0 has been set, this is the equivalent of C1 of the Common European Framework for Reference of Languages.*

2.21. The Home Office sets language requirements as a condition of granting immigration status in some cases. Individuals from outside the EEA who make an immigration application may need to provide evidence that they have passed an appropriate language test listed by the Home Office<sup>†††</sup>. Whilst these are not tailored to

<sup>\*\*\*</sup> [http://www.coe.int/t/dg4/education/elp/elp-reg/Source/Key\\_reference/Overview\\_CEFRscales\\_EN.pdf](http://www.coe.int/t/dg4/education/elp/elp-reg/Source/Key_reference/Overview_CEFRscales_EN.pdf)

<sup>†††</sup> <https://www.gov.uk/government/publications/guidance-on-applying-for-uk-visa-approved-english-language-tests>

employment, public authorities may wish to have regard to such tests when determining whether an individual meets the required standard for a particular public-facing role. However, employers will need to satisfy themselves independently that members of staff or prospective employees have the necessary level of fluency for the role.

## Policies and Practices

2.22. Each public sector organisation will need to review HR policies and practices to ensure that they reflect the fluency duty as well as comply with existing legislation. In order to fulfil the fluency duty public authorities should consider if it is appropriate to:

- make all public-facing members of staff aware of this new duty and explain the possible actions which may be taken if their proficiency in spoken English or Welsh is found to be insufficient;
- ensure existing selection and appointment practices facilitate compliance with the fluency duty and inform those responsible for evaluating candidates of the spoken language requirements for the role in question in each case;
- stipulate in contracts of employment the standard of fluent English or Welsh required for the role;
- ensure that their recruitment processes do not contravene the Equality Act 2010; all job applicants must be treated in the same way at each stage of their recruitment process (save for any reasonable adjustments required for disabled applicants);
- make clear in adverts and job descriptions the necessary standard of spoken English or Welsh required for the sufficient performance of the public-facing role;
- ensure consistency when advertising for similar types of public-facing roles; and
- ensure those responsible for evaluating candidates understand the spoken language requirements for the role. Interview panel members should be provided with an objective method of evaluating candidates against clear criteria set out in the role specification.

2.23. Public authorities in Wales should be mindful that their selection and appointment policies and practices will also need to comply with the Welsh Language Act 1993 and/or the Welsh Language (Wales) Measure 2011.

### Agency workers

2.24. Agency staff are engaged to work for public authorities under the terms of a contract between the public authority and an employment agency. For public-facing roles the instructions of public authorities to employment agencies should include reference to the standard of spoken English or Welsh required, which will help ensure that the employment agency only supplies candidates who meet the necessary standard. This can be integrated into the service level agreement.

2.25. The selection of agency workers can be undertaken under pressure of time and without the degree of formal assessment applied to the recruitment of employees. However, public authorities must ensure that included in the selection process for agency workers is a specific assessment of their ability to speak English or Welsh to the necessary standard required for the public-facing role. No higher or lower

standard of spoken English or Welsh should be applied to agency workers than to employees of the public authority working in an equivalent role.

## Section 3: Remedial Action

- 3.1. This section of the Code explains the actions which may be taken by a public authority where a person who works in a public-facing role does not meet the necessary standard of spoken English or Welsh. This may become apparent because of a complaint received from a member of the public or as a result of performance management.
- 3.2. It is the responsibility of the public authority to implement measures to support members of staff in public-facing roles who are found to not demonstrate the necessary standard of spoken English or Welsh fluency.

### Training

- 3.3. Public authorities should consider providing training or re-training to support their staff to meet the requirements of the fluency duty. Suitable training courses or qualifications determined by the organisation must reflect the necessary standard of fluent English or Welsh required. The interventions must give the member of staff the opportunity to meet the necessary standard within a reasonable period. Where appropriate, public authorities should meet the cost of training and enable members of staff to undertake training during their working hours. Staff already clearly fluent should not need training however, managers may consider supporting those who have themselves identified learning needs, as part of regular learning and development practices.
- 3.4. Public authorities in Wales are already required to comply with any standards specified in accordance with the Welsh Language (Wales) Measure 2011 in planning for and training its workforce. It is therefore likely that such authorities will already have provisions in place to support staff to meet the necessary standard of fluent Welsh required for any public-facing role.
- 3.5. Public authorities should consider individual learning and development needs to determine which aspects of spoken communicative competence needs to be addressed and the nature of any training should, if possible, be agreed with the member of staff.
- 3.6. There are many resources and means of providing training and support for employees to develop their spoken language proficiency to the necessary level, such as:
  - listening to language podcasts;
  - mobile language applications;
  - providing an internal mentor or coach;
  - online resources:
    - communities – supports interaction and practice of language through conversation, study and social exchange with others;
    - self-study and tutoring – these often offer individual study plans and access to interactive study material and support from qualified teachers;



- courses and vocabulary training – there are many free courses and on-line resources available, for example from the British Council<sup>###</sup> or the BBC;
  - interactive language programmes; and
  - more traditional language classes are available in a number of community venues and educational institutions.
- 3.7. One of the best ways to improve language skills is to converse with native speakers. One-to-one support with someone who understands the context of the role is likely to help individuals currently operating in the workplace more than a generic English or Welsh language class.

## Re-deployment

- 3.8. If the member of staff does not meet the necessary standard of spoken English or Welsh fluency, adjustments to their role may also be considered, such as reducing the frequency of communications with the public or supplementing communications with written material for the public. Consideration could also be given to moving or job swapping the individual to a non-public-facing role.

## Dismissal

- 3.9. Public authorities must ensure that fair and consistent policies are in place in respect of the fluency duty and that these are effectively communicated to staff and managers.
- 3.10. Members of staff must be given a reasonable opportunity to meet the necessary standard of spoken English or Welsh fluency. As a last resort, the public authority could consider dismissing the individual on the basis that they are not capable of fulfilling their duties, for example if:
- a member of staff has unreasonably refused to undertake training aimed to bring them up to the necessary standard for their role; or
  - a member of staff has not been able to attain the standard of fluent English or Welsh required for the role within a reasonable amount of time, after reasonable training opportunities have been provided; or
  - no other suitable post without public-facing duties can be made available for that individual.
- 3.11. Prior to the dismissal of an employee, a public authority must ensure that the situation has been investigated fully in accordance with its capability and disciplinary procedures. All other usual policies and procedures should be followed to give the employee the opportunity to explain their position and provide mitigation, including an opportunity for the employee to appeal against a disciplinary decision. Public authorities should only consider dismissal after considering all reasonable alternatives and where appropriate, take legal advice.

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<sup>###</sup> <http://learnenglish.britishcouncil.org/en/>

3.12. During this process public authorities should adhere to the Advisory, Conciliation and Arbitration Service Code of Practice on Disciplinary and Grievance Procedures<sup>§§§</sup> as appropriate.

## Agency workers and self-employed contractors

3.13. Agency workers are not employed by a public authority and the terms on which they are engaged depend on the contract between the employment agency and the public authority and their own arrangements with the employment agency. If an individual agency worker is unable to meet the necessary standard of spoken English or Welsh fluency, a public authority can consider terminating the agreement with the employment agency for their engagement in accordance with the terms of the contract between the employment agency and public authority.

3.14. Self-employed contractors work for public authorities in accordance with the terms of a services contract. The terms of the contract will determine the steps which a public authority can reasonably take should the individual fail to meet the necessary standard of spoken English or Welsh fluency required for a public-facing role.

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<sup>§§§</sup> <http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

## Section 4: Complaints Procedure

4.1. This section of the Code is about the procedure a public authority should follow should there be a complaint regarding an alleged breach of the fluency duty.

### Complaint Handling

4.2. A public authority must operate a complaints procedure so that if a member of the public feels that a public-facing public authority worker has insufficient proficiency in spoken English or Welsh for the performance of their role they can make a formal complaint to the public authority which is then investigated and a response provided.

#### What is a complaint?

- 4.3. For the purposes of the fluency duty, a legitimate complaint is one about the standard of spoken English or Welsh of a public sector member of staff in a public-facing role. It will be made by a member of the public or someone acting on his or her behalf complaining that the authority has not met the fluency duty.
- 4.4. A complaint about a public sector member of staff's accent, dialect, manner or tone of communication, origin or nationality would not be considered a legitimate complaint about the fluency duty. Public authorities should make this clear in the terms of their complaints policy.
- 4.5. Public authorities are not obliged by this Code of Practice to respond to complaints that are vexatious, oppressive, threatening or abusive. These words should be given their usual dictionary meaning and should be seen as those complaints which are without foundation and/or which are intended to result in harsh or wrongful treatment of the person who is the subject of the complaint. In these types of circumstances a complaint should not be taken forward by the public authority.

#### Providing effective means for the public to make complaints

- 4.6. Knowing how to complain and what will happen when a complaint is made is essential to confidence in public services. The public needs information about the complaints system: who can make a complaint, how they go about it and what complaints come within the scope of the fluency duty.
- 4.7. Public authorities are responsible for dealing with such complaints and must therefore:
- establish an appropriate complaints procedure, using existing channels where appropriate;
  - update their complaints procedure as necessary;
  - provide first and second line managers and supervisors with an appropriate level of training and support to enable them to deal with complaints confidently and professionally;
  - adequately publicise and signpost the complaints procedure;

- ensure appropriate reasonable adjustments are in place so that all members of the public are able to make a complaint;
  - ensure that complaints are dealt with in line with the Data Protection Act 1998;
  - ensure that all legitimate complaints are treated seriously;
  - ensure complaints are progressed and complainants receive a response efficiently and in a timely manner. Some complaints may take longer to resolve than others and the likely timescale should be made clear; and
  - ensure the complainant or their representative are made aware of any escalation route in relation to the decision on the complaint, for example to an ombudsman service. Escalation routes across the public sector will vary however, if a public authority does not comply with the fluency duty, its failure to comply can also be challenged through an application to the High Court for judicial review.
- 4.8. Following the receipt of a legitimate complaint, public authorities must assess its merits against the necessary standard of spoken English or Welsh fluency required for the role in question. This should be undertaken through an objective assessment against clear criteria set out in the role specification or against the level of fluency descriptors relevant to the role in question. The table above at 2.17 in Section 2, provides a useful summary extracted from the CEFR levels\*\*\*\* of fluency.
- 4.9. If the complaint is upheld, a public authority must consider what steps can be taken to meet the fluency duty. Steps may include specific training, retraining or assessment, re-deployment or dismissal. Public authorities should refer to Section 3 of this Code of Practice and ensure they take account of the:
- nature of the complaint;
  - information received from the complainant or their representative; and
  - complainant's expectations of an outcome.
- 4.10. Members of staff who are the subject of a complaint should be notified of the complaint and the action being taken in relation to it. They should be given the opportunity, as soon as practicable, to give their own account of the facts leading to the complaint. The complaints procedure should make it clear to prospective complainants that this will take place following a legitimate complaint. Public authorities must also ensure:
- that staff who are the subject of a complaint are kept fully informed at each stage of the complaints process; and
  - that complaints are dealt with efficiently and brought to a timely conclusion.
- 4.11. Public authorities have a duty of care toward their members of staff and should consider their wellbeing, being mindful of the potential impact complaints may have. They should consider providing staff with appropriate support to ensure that they are protected from vexatious complaints and not subjected to unnecessary fluency testing.
- 4.12. Public authorities in Wales must also ensure their complaints practices and procedures meet the requirements of any schemes under the Welsh Language Act

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\*\*\*\* [http://www.coe.int/t/dg4/education/elp/elp-reg/Source/Key\\_reference/Overview\\_CEFRscales\\_EN.pdf](http://www.coe.int/t/dg4/education/elp/elp-reg/Source/Key_reference/Overview_CEFRscales_EN.pdf)

1993 and any relevant standards specified under the Welsh Language (Wales) Measure 2011 relating to complaints.

### **Complaints data**

- 4.13. As standard practice, a record should be kept of all complaints. If authorities publish their complaints data, they should include any complaints that fall under the fluency duty. At the time of publishing this guidance, the fluency duty does not require public authorities to publish complaints data.
- 4.14. Public authorities in Wales subject to the Welsh Language (Wales) Measure 2011 must also ensure they comply with standards relating to a body keeping records. This also requires authorities to keep a copy of any written complaints that they receive that relates to the Welsh language, whether or not that complaint relates to the standards with which they are under a duty to comply.

## Section 5: Compliance

5.1. This section of the Code is about how a public authority should comply with its other legal obligations as well as complying with the fluency duty.

### Obligations under the Equality Act

- 5.2. Public authorities must take into account their obligations under the Equality Act 2010 when considering their duty to ensure that each person in a public-facing role speaks fluent English or Welsh. The processes and methods used to determine whether a person has a command of spoken English or Welsh for effective performance in the role must be fair and transparent.
- 5.3. It is unlawful to discriminate directly or indirectly against a person on grounds of race. Public authorities should ensure that people from particular nationalities or ethnic backgrounds, in a recruitment process or whilst at work, are treated in the same way as people from an English or Welsh ethnic background. When a public authority considers a complaint in relation to the fluency duty it should reject any complaint which relates to the public-facing worker's race, nationality, ethnic origin or disability.
- 5.4. Public authorities have a duty towards disabled members of staff under the Equality Act 2010 to provide such adjustments as are reasonable to remove a disadvantage caused by the application of a particular provision, criterion or practice. For a public sector worker whose first language is a signed language, the fluency duty will be met by the provision of a sign language interpreter who speaks English or Welsh to the necessary standard of fluency for that role.
- 5.5. The public sector equality duty (PSED) came into force in England, Scotland and Wales in 2011. The PSED is set out at Section 149 of the Equality Act 2010. It requires that those public authorities in scope must, when exercising their functions, have "due regard" to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### Other Legal Obligations

- 5.6. In Wales, the Welsh language should be treated no less favourably than the English language. The Welsh Language (Wales) Measure 2011 sets a new legal context for the Welsh language. This creates a legislative framework for enforcing duties on persons operating in Wales with regard to the Welsh language.
- 5.7. Although the fluency duty and the Welsh Language (Wales) Measure 2011 are different in their application and policy intent, relevant public authorities in Wales

should consider obligations required under the Welsh Language (Wales) Measure 2011 when deciding how to comply with the fluency duty.

- 5.8. Many of the public authorities subject to the standards of the Welsh Language (Wales) Measure 2011 currently operate Welsh Language Schemes under the Welsh Language Act 1993. Each public authority will still be obliged to comply with its Welsh Language Scheme, as approved under the Welsh Language Act 1993, until such a time as that public authority becomes subject to standards under the Welsh Language (Wales) Measure 2011.
- 5.9. Public authorities may have specific legal duties towards members of the public, for example under the Medical Act 1983, which will inform the decision as to the standard of spoken English or Welsh required for particular public-facing roles.
- 5.10. Additionally, as referred to in paragraph 2.4 above, a certain standard of fluency in English or Welsh can be required as an entry requirement for some roles, or stipulated by the regulatory body of certain professionals. This will inform the decision as to the standard of spoken English or Welsh required for particular public-facing roles: it is not anticipated that public authorities will impose any higher standard in fulfilling the fluency duty than are already required for such roles.





