

## APPOINTMENT AND CONDITIONS OF SERVICE COMMITTEE – 7 MARCH 2017

<b>Title of paper:</b>	<b>PUBLIC SECTOR DUTY – ENGLISH LANGUAGE REQUIREMENT POLICY</b>	
<b>Director(s)/ Corporate Director(s):</b>	Richard Henderson, Director of HR and Transformation	<b>Wards affected: ALL</b>
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<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	Cllr Heaton, 24 January 2016	
<b>Relevant Council Plan Key Theme:</b>		
Strategic Regeneration and Development		<input type="checkbox"/>
Schools		<input type="checkbox"/>
Planning and Housing		<input type="checkbox"/>
Community Services		<input type="checkbox"/>
Energy, Sustainability and Customer		<input type="checkbox"/>
Jobs, Growth and Transport		<input type="checkbox"/>
Adults, Health and Community Sector		<input type="checkbox"/>
Children, Early Intervention and Early Years		<input type="checkbox"/>
Leisure and Culture		<input type="checkbox"/>
Resources and Neighbourhood Regeneration		<input checked="" type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
This report outlines the Council's statutory duty under the Immigration Act 2016 that requires all local authorities to ensure all colleagues or job applicants that are engaged to work in a customer-facing role have the ability to speak fluent English.		
<b>Recommendation(s):</b>		
<b>1</b>	To approve the Policy for inclusion in the Council's People Management Handbook.	

### **1 REASONS FOR RECOMMENDATIONS**

- 1.1 Under Part 7 of the Immigration Act 2016, all local authorities have a statutory duty to ensure that each person who works for the Council in a customer-facing role speaks fluent English. The Policy follows the standards and practices expected of local authorities as detailed in the statutory guidance, 'Code of practice on the English language requirements for public sector workers'.

### **2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 The English Language Requirement for public sector workers came into effect on the 21 November 2016. The aim of the statutory duty is to help public authorities to meet

their obligations of the “fluency duty” under Part 7 of the Immigration Act 2016 and to provide higher quality services to citizens of Nottingham.

2.2 According to the code of practice, the standard of English spoken language proficiency will depend on the type of customer-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.

2.3 Public authorities can, but are not required to, specify a minimum spoken English qualification if they determine this is appropriate for a customer-facing role. The specified level must not be below the Common European Framework of Reference for Languages (CEFR) Level B1.

2.4 A summary extracted from the CEFR levels of fluency can be found as follows:

<b>CEFR Certificate</b>	<b>Description</b>	<b>Linguistic Fluency</b>
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>

- 2.5 The code also states that many of the statutory health regulatory bodies have adopted the C1 level for workers in a health care setting. Level B1 of the CEFR levels has been set for those seeking to apply for naturalisation as a British citizen<sup>1</sup>.
- 2.6 A working group of colleagues from across a number of teams has explored the potential impact of this duty on the Council's policies and practices. The level of English proficiency that a public authority chooses to set should be reasonable and proportionate in all circumstances and can be justified and defended in the face of a challenge. The group felt that it was not necessary to specify in the Policy or the Council's recruitment practices a particular CEFR level of English language proficiency as set out in the table in paragraph 2.4 above.
- 2.7 Job applicants are already assessed at the point of interview to ensure they have the ability to competently answer questions; and there is no evidence to indicate that managers have had to performance manage employees in customer-facing roles who do not meet the required standard of English. Therefore it is envisaged that the implementation of this Policy will not change the way in which the Council recruits or performance manages colleagues or job applicants.
- 2.8 The Council has a responsibility to offer and implement measures to support colleagues in customer-facing roles who are found to not meet the necessary standard of spoken English, and to meet the cost of such training.
- 2.9 Further options that are available to managers in supporting employees include adjustments to the role of individual and redeployment. Dismissal is only to be considered by managers once all other options and/or procedures have been considered and/or followed.
- 2.10 The Code specifies that local authorities are also required to operate a complaints procedure to enable citizens to make a formal complaint to the Council if they feel that a customer-facing employee of the Council has insufficient proficiency in spoken English to perform their role.
- 2.11 A complaint about an employee's accent, dialect, manner or tone of communication, origin or nationality would not be considered a legitimate complaint and the Policy makes this clear. The Council's complaints procedure, under 'Have your say,' has also been amended to include this as a category.
- 2.12 For employees whose first language is a signed language, the duty will be met by the provision of a sign language interpreter who is registered with the National Registers of Communication Professionals working with Deaf and Deafblind People (NRCPD). The Council's current provider of sign language interpreters is the Nottinghamshire Deaf Society, whose interpreters are registered with the NRCPD, and therefore satisfies the requirements of the duty. Should the Council change its provider, this registration will need to be checked.
- 2.13 The duty has the potential risk of indirect race and/or disability discrimination when enforcing the requirements of this Policy and when dealing with complaints about the level of English of customer-facing employees from citizens. The requirement to speak fluent English could place employees or job applicants of nationalities or origins that do not have English as a first language at a disadvantage.

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<sup>1</sup> <https://www.gov.uk/english-language/approved-english-language-qualifications>

2.14 In order to protect the Council against claims of indirect discrimination from colleagues or job applicants whose first language is not English, the policy, job description and manager training will make clear that the level of English required for the customer-facing role will be no higher than necessary for the particular role and employees will be given reasonable support to attain the standard. The Council will therefore need to balance compliance with the English language requirement with the need to avoid unlawful discrimination.

2.15 It has been difficult to determine the impact this policy will have on the wider workforce, as it is difficult to estimate the number of customer-facing roles within the Council as this would need to be determined by managers based on aspects of the role. The Policy would therefore need to be reviewed to determine whether any particular groups of people are adversely affected.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 None.

### **4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

4.1 None.

### **5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

#### **5.1 Legal Implications**

5.1.1 The draft English Language Requirement Policy appended to this report complies with both Part 7 of the Immigration Act 2016 and the statutory code of practice issued by the Minister entitled: *Code of Practice on the English language requirements for public sector workers* (November 2016), whilst also balancing these against the duties of Nottingham City Council ("NCC") under the Employment Rights Act 1996 and the Equality Act 2010.

5.1.2 Therefore, subject to any comments put forward by others arising from this report, it is advisable that the draft policy appended to this report is approved by ACOS on behalf of NCC.

### **6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISION RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE) (AREA COMMITTEE REPORTS ONLY)**

6.1 None.

### **7. TRADE UNION COMMENTS**

7.1 None.

### **8 EQUALITY IMPACT ASSESSMENT**

8.1 Has the equality impact of the proposals in this report been assessed?

Yes



Attached as Appendix B, and due regard will be given to any implications identified in it.

**9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

9.1 None.

**10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

10.1 Cabinet Office (Nov 2016). Code of Practice on the English language requirements for public sector workers. Part 7 of the Immigration Act 2016.

10.2 Cabinet Office (Oct 2016, Version 1.0 Preliminary). Code of Practice on the English language requirements for public sector workers. Part 7 of the Immigration Act 2016.