

11 March 2016

3HR Legal Weekly

Immigration

Changes to the Home Office Points Based Calculator –Important Changes!

The Home Office announced this week that its Points Based Calculator would be removed from its website on 5th April this year, meaning it cannot be used to support any applications after that time (i.e. from 6th April onwards).

The Points Based Calculator (“PBC”) is a tool on the Home Office website that currently can be used to assist in determining whether an individual will qualify for a UK visa. More importantly, it is also currently available to evidence whether or not an overseas qualification will be sufficient to meet the English language requirement.

For certain visa categories (such as Tier 2 (General)) it is necessary to evidence an appropriate level of English language. One of the ways in which that can be evidenced is by producing a degree that is equivalent to a UK bachelor’s or master’s or a PhD, and which was taught (or researched) in English to the necessary level. In order to be able to use their degree certificate as evidence of meeting this requirement, the course that the migrant studied must be recognised by the Home Office as having both been taught in English and been taught at the necessary level.

At the moment, if a migrant wishes to check that their degree will be acceptable to the Home Office, they may use the PBC. However, from 6th April this year that will no longer be available. Instead, migrants will have to make an application to the National Academic Recognition Information Centre for the UK (known as “UK NARIC”) for a statement confirming whether or not the degree certificate is sufficient. Full details are not yet published, but it is expected this process will take around 10-15 days and that a fee of around £50 will be payable.

Alternatively, migrants can of course opt to take one of the Home Office approved English language tests to evidence their language abilities.

3HR regularly provide advice on all the requirements for UK visas and will be able to assist with making applications to UK NARIC in respect of overseas qualifications.

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Employment

Instructing Employees to speak English

Can we instruct an employee to only use English at work, rather than his own language?

Unfortunately this is not a straightforward area of law. There is conflicting case law on what is acceptable when it comes to instructing employees to communicate in certain languages and/or refrain from communicating in certain languages.

In *Kelly v Covance Laboratories*, it was ruled that it was not discrimination to require a Russian employee to speak English only at work. This was because there were justified security concerns that she might be an animal rights infiltrator seeking to cause serious harm to the business. The instruction to speak English was not given because of her race or national origin.

In contrast, in *Konieczna v Whitelink Seafoods*, it was ruled that an instruction not to speak Polish at work did amount to racial discrimination. A Polish HR administrator was told to speak only English in the workplace, even though many of her co-workers were Polish and unable to speak English. This resulted in a situation where the claimant conducted an interview in English with a Polish-only speaking colleague through an interpreter. Although the company argued the language instruction was made on health and safety grounds, the tribunal judge concluded it was “more likely to create a greater health and safety risk than reduce it”.

Generally speaking, we would advise that it would carry risk to instruct any employee not to use his or her own language at work, as this could constitute direct race discrimination. For direct race discrimination there is not even the opportunity in law for the company to seek to justify its actions on the grounds of business requirements and there is no cap on the amount of compensation that can be awarded.

The case law suggests that it **can be possible** to require employees to speak in English (rather than requiring them not to speak in their own language – there is a subtle distinction between the two). This has the potential to constitute indirect race discrimination, but it is possible to justify indirect discrimination if it is a proportionate action to achieve a legitimate aim. However, an employer would need to be very careful about how they go about implementing a policy requiring employees to speak only in English in order to avoid a claim. It is likely that you would need to apply such a policy to all your staff, which could cause problems if you have expatriate managers who frequently speak in their own language. You would also need to be able to show why it is necessary for everyone to speak (or write) only in English rather than in their native languages in order to be able to justify it as a proportionate means of achieving a legitimate aim.

If you require more advice on this complex area of Employment Law, contact your usual 3HR contact.

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