

Our Ref: 432/2022

October 2022

Re: Your request made under the Freedom of Information Act 2000 Can you please advise if Agenda for Change posts at Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust are subject to any probation periods. If so, what is the length of the probationary period.

The Trust does not utilise probationary periods.

Can you please also advise if you consider work done outside the NHS but within healthcare as equivalent to NHS service when determining the NHS continuous / reckonable service. A possible example is work done within community pharmacy setting in the UK for a UK qualified and UK registered pharmacist wanting to enter hospital pharmacy.

There is a specific section within the NHS Handbook for England and Wales which is listed below.

12.2 Employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment. ¹

Footnote number 1

Is previous health care service abroad, including service in the health services of the member states of the European Union, relevant?

Employers are required to implement Agenda for Change and their own policies in a way that complies with EU law and which is not discriminatory. Agenda for Change allows for previous NHS service with a different employer to be taken into account for the purpose of calculating annual leave. It also contains (at paragraph 12.2) a discretion to take relevant non-NHS experience into account.

12.2 Employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment.

Relevant experience outside the NHS may include previous employment abroad or in the health services of another Member State of the European Union. It is important that this is included when employers consider "service with employers outside the NHS" when deciding whether to exercise the discretion to increase annual leave entitlement.

The exercise of discretion in paragraph 12.2 is a local matter. However it is important that any decision is made in a fair, transparent and non-discriminatory way. An employer should be able to demonstrate that it has given due consideration to any equivalent service in another country and that such consideration

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was part of the process in deciding whether or not to award additional annual leave in each case, as set out under Section 12.2 of the NHS Terms and Conditions of Service Handbook.

Employers are required to exercise their discretion in accordance with the legal framework, as required by the Equality Act 2010; and by Article 45 of the Treaty on the Functioning of the European Union and Article 7, paragraph 1, of the Regulation (EU) No 492/2011 on freedom of movement for workers within the Union, which prohibit discrimination between EU workers as regards conditions of employment and work.

A number of judgements from the Court of Justice of the European Union (CJEU) have addressed the issue of recognition of experience and seniority gained in the public service of another Member State, for example: Commission v Italy [Case C-371/04, ECLI:EU:C:2006:668]; Kobler [Case C-224/01, ECLI:EU:C:2003:513].

The views of the Commission regarding recognition of professional experience and seniority are set out in the Commission Staff Working Document "Free movement of workers in the public sector", SEC(2010)1609, of 14 December 2010.

Do you take the above into consideration when determining reckonable / continuous NHS service or not in the above scenario.

The Trust considers the terms under Section 12 of the Agenda for Change Terms and Conditions of service on a case-by-case basis taking into account individual information and employment history.

For new starters for AfC posts, can you please advise if they need to start by a particular date to be eligible for full annual leave entitlement for a given month.

When ending employment for AfC posts, how is the annual leave entitlement calculated. Is it based on each full month completed or is it pro-rated based on end date of employment (date on P45)

During the first and final year of service annual leave entitlement will be calculated pro-rata. This is calculated to completed calendar weeks of service.