



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101349/2022

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Held via Cloud Video Platform (CVP) on 12 May 2022

Employment Judge O'Dempsey

10 **Ms Joan Kennedy**

**Claimant
Represented by:
Ms L Simpson -
Solicitor**

15 **Mr Macpherson and Partners**

**First Respondent
No appearance and
No representation**

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**Dr Stephen Macpherson, Dr Rumpa Mukherjee,
and Dr Elaine McLellan t/a The Abercromby Practice**

**Second Respondent
No appearance and
No representation**

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30 **Abercromby Practice**

**Third Respondent
Represented by:
Ms J O'Hara -
Practice Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claimant's claim for:

- 40 (1) Arrears of pay (unlawful deductions from wages) succeeds and the second and third respondents are ordered to pay ordered to pay to the claimant £3488.14; and

(2) Failure to provide particulars of employment under section 1 of the Employment Rights Act 1996 succeeds and (i) the second and third respondents are ordered to pay £524.32 to the claimant (ii) the terms of the claimant's contract (a) are as set out in the written contract of 2020 save as
5 ordered in (b); (b) the terms relating to sick pay are declared to have the following sense: the claimant:

(a) Is entitled to the benefit of sick pay terms as set out in Agenda for Change from time to time (stipulated as at 12 May 2022 to be that she is entitled to six months at full pay and six months at half pay). The
10 terms agreed between the parties (after the hearing) are set out in the Appendix to this judgment;

The judgment concerning the declaration of the terms relating to annual leave is postponed pending written submissions from the parties on its terms.

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Employment Judge: D O'Dempsey
Date of Judgment: 27 May 2022
Entered in register: 30 May 2022
and copied to parties

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Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a
25 written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at
30 www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

APPENDIX

Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below:

- 5 • during the first year of service – one month's full pay and two months' half pay
- during the second year of service – two months' full pay and two months' half pay
- during the third year of service – four months' full pay and four months' half pay
- 10 • during the fourth and fifth years of service – five months' full pay and five months' half pay
- after completing five years of service – six months' full pay and six months' half pay.

15 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.

 The definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous
20 three months at work or any other reference period that may be locally agreed.

 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

25 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated by deducting from the employee's entitlement on the first day of sickness the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:

- unpaid sick absence
- injuries or diseases sustained to members of staff in the actual discharge of their duties through no fault of their own
- 5 • injury resulting from a crime of violence not sustained on duty but connected with or arising from the employee's employment where the injury has been the subject of payment by the Criminal Injuries Compensation Board (England and Wales), the Criminal Injuries Compensation Authority (Scotland) and the Compensation Agency (Northern Ireland)
- 10 • as above, but an injury which has not been the subject of payment by the Board on grounds that it has not given rise to more than three weeks' loss of earnings or was not one for which compensation above the minimum would arise.

Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see above).

The foregoing provisions in respect of sickness leave and pay are correlative with the terms in respect of sickness leave and pay in the NHS "Agenda for Change" Terms and Conditions, and any future change in respect of the said terms in the NHS "Agenda for Change" Terms and Conditions shall be reflected in the provisions of this contract, and implemented simultaneously.