Neutral Citation Number: [2024] EWHC 2365 (KB)

Case No: QB-2018-001055

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 September 2024

Before :

HHJ RICHARD ROBERTS
Sitting as a Judge of the High Court

- -

Between :

IBUKUN ADEBOWALE ADEGBOYEGA	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Zainul Jafferji of Counsel and Mr Sheraaz Hingora of Counsel (instructed by **Lawfare Solicitors**) for the **Claimant**
Mr Bilal Rawat of Counsel (instructed by **the Government Legal Department**) for the **Defendant**

Hearing dates: 12, 13, 14 and 17 June 2024

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

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Introduction

1. This is the hearing of the trial of the Claimant's claim for damages for:

   i) His unlawful detention at Brook House Immigration Removal Centre (Brook House) for 88 days between 28 April 2017 and 24 July 2017;

   ii) Trespass to the person on 5 June 2017;

   iii) Violation of his rights under Article 3 ECHR during the period of unlawful detention;

   iv) Psychiatric injury suffered as a result of his unlawful detention;

   v) Breach of his rights under Directive 2004/38/EC (the Directive) and the Immigration (European Economic Area) Regulations 2006 (EEA Regulations 2006);

   vi) Violation of his rights under Article 8 ECHR.

2. Mr Jafferji of Counsel and Mr Hingora of Counsel appear on behalf of the Claimant and I am grateful to them for their:

   i) Skeleton argument for trial, dated 10 June 2024;

   ii) Closing submissions, dated 17 June 2024;

   iii) Document describing the content of the video footage from the Police body worn footage when the Claimant was detained for driving with excess alcohol on 1 July 2023;

   iv) Document of extracts from the Brook House Inquiry report.

3. Mr Rawat of Counsel appears on behalf of the Defendant and I am grateful to him for his:

   i) Skeleton argument, dated 9 June 2024;

   ii) Closing submissions, dated 16 June 2024.

4. There are the following bundles of documents before the Court:

i) Core bundle;

ii) Supplementary bundle;

iii) Brook House Inquiry report bundle;

iv) Material referred to in Claimant's closing submissions;

v) Application notice bundle;

vi) Correspondence between the parties regarding the relevance of the Brook House Inquiry;

vii) Authorities bundle.

References to page numbers below are to the core bundle, unless otherwise stated.

Applications heard during trial

5. On the morning of the first day of the trial, 12 June 2024, the Claimant made an application to admit an amended schedule of loss, dated 5 June 2024, and witness statements, dated 23 June 2017, 20 December 2019 and 20 April 2021. This application was heard by Christopher Kennedy KC, sitting as a Deputy High Court Judge, who refused the Claimant's application to amend his schedule of loss but gave permission for him to rely upon the witness statements dated 23 June 2017, 20 December 2019 and 20 April 2021.

6. On the first afternoon of the trial, 12 June 2024, I heard an oral application by the Claimant for permission to rely upon the Brook House Inquiry report. This case concerns the period 28 April 2017 to 24 July 2017, and so is within the period investigated by the Inquiry. The context of the Brook House Inquiry report is summarised in the report's Executive Summary[1]:

> "On 4 September 2017, the BBC broadcast a Panorama programme called 'Undercover: Britain's Immigration Secrets' (referred to in this Report as 'the Panorama programme'). This had been filmed covertly over five months at Brook House, an immigration removal centre (IRC) near Gatwick Airport in Sussex. Containing disturbing footage, the documentary portrayed Brook House as violent, dysfunctional and unsafe. It showed the use of abusive, racist and derogatory language by some staff towards those in their care, the effects of illicit drugs, and the use of force by staff on mentally and physically unwell detained people.
>
> Following the broadcast of the Panorama programme, a series of investigations were conducted, including a special investigation by the Prisons and Probation Ombudsman (PPO) in 2019, …. On 5 November 2019, the Home Secretary announced that the

[1] Brook House Inquiry report bundle, 14-15

PPO's special investigation would be converted to a statutory inquiry under section 15 of the Inquiries Act 2005."

7. The application was vigorously opposed by Mr Rawat. On 13 June 2024, I handed down a written judgment, giving permission to the Claimant to rely upon the Brook House Inquiry report. I ordered that the weight to be attached to the report is subject to the factors in Section 4 of the Civil Evidence Act 1995.

8. On 13 June 2024, I heard the Claimant's application notice, dated 13 June 2024, to admit videos of a Police incident on 1 July 2023 (body worn camera footage) and the Claimant's updated medical records. I gave permission for the Claimant to rely upon this evidence.

9. On 17 June 2024, I heard the Defendant's application notice, dated 17 June 2024, to adduce a Police report and the accompanying witness statement of PC Betteridge, dated 1 July 2023. I gave permission for the Defendant to rely upon this evidence.

10. On 17 June 2024, I extended the time given at paragraph 1 of the order of Master Brown, dated 3 October 2023[2], for the Claimant's solicitors to show cause in writing as to why they should not be liable for 75% of the Defendant's costs of and incidental to the hearing of 1 February 2023. I grant permission for the Defendant to respond to the Claimant's letter showing cause, dated 8 July 2024, by 4pm on 30 September 2024.

11. On 17 June 2024, the parties agreed that five documents, which had been mistakenly omitted from the bundles, should be admitted. Those documents were put together in a bundle called "material referred to in Claimant's closing submissions".

Lay evidence

12. The Claimant relies upon the following witness statements, which he has made:

    i) Statement dated 23 June 2017[3], in support of his application for the Court to grant him release from detention;

    ii) Statement dated 1 February 2018[4], made pursuant to the order of HHJ Coe KC;

    iii) Statement dated 20 December 2019, in support of his application for an interim payment;

    iv) Statement dated 27 January 2020[5], made in support of this claim;

    v) Statement dated 20 April 2021[6], in support of his application for an interim payment;

    vi) Statement to the Brook House Inquiry, dated 19 November 2021[7].

[2] 73
[3] 152-157
[4] 139-151
[5] 92-126
[6] 85-91
[7] 161-192

13. The Claimant gave evidence and was cross-examined.

14. The Defendant did not rely upon any lay witness evidence.

Medico-legal evidence

15. The Claimant relies upon a medical report from Professor Tony Elliott MBChB FRCPsychMsoC Sci (Dist) FRSH, Consultant Psychiatrist, dated 28 December 2019[8], and an addendum report, dated 12 June 2024[9].

16. The Defendant relies upon an expert report from Dr Das MBChB MRPsych BSc MSc, Forensic Psychiatrist, dated 10 December 2019[10], and an addendum report, dated 14 June 2024[11].

17. There is a joint statement by Professor Elliott and Dr Das, dated 28 February 2020[12].

Admission of liability

18. The order of Stewart J, dated 1 June 2020[13], contains the following admission of liability[14],

> "AND UPON the Defendant having conceded within the proceedings that the Claimant is entitled in principle to substantive damages for unlawful detention and damages for breach of EEA law"

Issues

19. There are the following issues in this case:

    i) The amount of the basic award for unlawful detention;

    ii) Is the Claimant entitled to aggravated damages for unlawful detention and if so, the amount of the same;

    iii) Is the Claimant entitled to exemplary damages for unlawful detention and if so, the amount of the same;

    iv) The nature of the trespass to the Claimant's person on 5 June 2017;

    v) The amount of damages for trespass to the person;

    vi) Has the Claimant proved a breach of Article 3 ECHR and if so, the amount of damages;

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[8] 276-297
[9] Application notice bundle, 7-11
[10] 298-336
[11] This report was disclosed during the trial and is not in the trial bundles.
[12] 337-341
[13] 60-61
[14] 60

vii) What psychiatric injury was suffered by the Claimant;

viii) The amount of damages for psychiatric injury;

ix) The amount of damages for Cognitive Behavioural Therapy;

x) Loss of earnings caused by loss of EEA rights and the interest thereon;

xi) Is the Claimant entitled to damages for reporting, loss of benefits and a basic award for loss of EEA rights, and if so, the amount of the same.

xii) Is the Claimant entitled to exemplary damages for loss of EEA rights and if so, the amount of the same;

xiii) Is the Claimant entitled to aggravated damages for loss of EEA rights and if so, the amount of the same;

xiv) Has the Claimant proved on the balance of probabilities a breach of Article 8 ECHR if so, the amount of the basic award;

xv) Interest on awards of damages.

Narrative and findings

20. The Claimant is a Nigerian national. He was born on 6 February 1990 and is now aged 34.

21. In October 2013 the Claimant arrived in Cyprus to study Computer Engineering at the University of Nicosia. While he was studying, he met his EEA national (Romanian) wife, Ioana Adegboyega.

22. On 11 June 2014, the Claimant married Ioana Adegboyega in Cyprus.

23. In August 2014, the Claimant entered Romania on a five-day transit visa.

24. On 19 May 2015, the Claimant was granted an EEA family permit by the British High Commission in Bucharest, valid for six months until 19 November 2015.

25. On 13 June 2015, the Claimant entered the United Kingdom with an EEA family permit. He was accompanied by his wife, as required by the terms of the EEA family permit. In his witness statement dated 27 January 2020, he says[15],

> "19. On 14 June 2015 we arrived in the United Kingdom. When going through passport control my wife went to the EU national's gate and I went to the other national's gate. When they checked my family permit and realised that I had to be accompanied by my wife they asked her to come over. The immigration officer checked her passport and ID and only then allowed me to enter the United Kingdom."

[15] 98-99

26. On 22 August 2015, the Claimant applied for an EEA residence card as the spouse of an EEA citizen, prior to the expiry of his EEA family permit on 19 November 2015.

27. It is clear law that the rights conferred by the Directive on citizens of the EEA and their family members to move and reside freely within the territory of the Member States and the EEA Regulations 2006 do not depend upon the issue of residence documentation. The EEA residence card is merely declaratory of existing rights.[16]

28. On 3 September 2015, the Defendant issued the Claimant with a "short form" Certificate of Application, which stated,

> "The applicant has not provided satisfactory evidence of his or her identity or of his or her relationship to an EEA citizen. … original documentation for all of the following: current valid identity documents for himself and his sponsor; Evidence of relationship with your EEA national sponsor."

As a result the Claimant was not permitted to work.

29. On 27 January 2016, the Claimant was unlawfully refused an EEA residence card on the grounds that the Claimant had not supplied any valid ID for his wife[17]. The decision notice unlawfully failed to inform the Claimant that he had a right of appeal to the First Tier Tribunal (FTT) granted by Articles 15 and 31 of the Directive and Regulation 26 of the EEA Regulations 2006 but stated,

> "As your entitlement to rely on the provisions of the Immigration (European Economic Area) Regulations 2006 cannot be established there is no right of appeal against this decision."

30. The GCID record dated 27 January 2016[18] says that the Defendant was satisfied that the Claimant's EEA spouse was working, having seen photocopies of wage slips and spoken to her employer by telephone[19].

31. The Defendant informed prospective employers that the Claimant did not have the right to work in 2015/16, which prevented him from working.

32. The Claimant says that he received a letter from a company called Capita in February/March 2016, with a letter refusing to grant him a residence card. Capita told the Claimant that he had no lawful basis to remain in the United Kingdom and was liable to removal. They advised him to contact them and inform them of any circumstances which would give rise to a right to reside in the United Kingdom. The Claimant says he telephoned Capita and told them that he was the husband of an EEA national who was exercising treaty rights in the UK, and as a consequence he could not be removed. The employee of Capita asked him to scan to her the documentation that he had supplied with his application and that she would forward these documents to the Defendant. The Claimant says that on 31 March 2016 he sent her copies of the marriage

[16] *McCarthy v SSHD (C-202/13)* [2015] 1 QB 651, at paragraph 62
[17] 549
[18] 549-550
[19] 549

certificate, his identification document, his wife's identification document and her Romanian residence card.

33. On 31 August 2016, the Claimant was served with notices under s.10 of the Immigration and Asylum Act 1999, informing him that he was an overstayer and that he was liable to removal and detention.

34. On 2 September 2016, the Claimant was served with notification of a removal window as an overstayer. He was subsequently served with consequent notifications restricting his place of residence and ability to work in the UK.

35. By a notification from the Defendant's Immigration Enforcement, dated 5 September 2016[20], the Claimant was told that he must report to an Immigration Official at Lunar House, Croydon on 30 September 2016 and thereafter on the last Friday of each month, between 11am and 1pm.

36. The Claimant's solicitors at the time, William Lamb & Company, wrote a letter, dated 20 September 2016, to the Defendant saying[21],

> "In response to the Secretary of State's comment that our client 'no longer' holds leave to remain in the UK and therefore needs to make arrangements to leave, we respectfully submit that our client has never held leave to enter or remain in the UK; But rather was previously issued with an EEA Family Permit pursuant to the 2006 EEA Regulations on the basis of him being the spouse and hence family member of his EEA national wife who is currently exercising treaty rights in the UK on the basis of ongoing employment. We therefore further respectfully submit that as our client is the family member of an EEA national, he is not required to hold leave to enter or remain in order to reside in the UK lawfully. His ability to reside in the UK lawfully stems not from him being required to hold leave to enter or remain but from rights he derives from his EEA wife pursuant to the 2006 EEA Regulations. To this end we respectfully suggest that for the Secretary of State to suggest in the prevailing circumstances that our client requires leave to enter or remain is erroneous and misleading.
>
> …
>
> … With reference to the Secretary of State's comment that our client 'should make' an application for permission to remain in the UK, we respectfully trust that the Secretary of State will be perfectly aware that as the family member of a qualified EEA national, our client is not obliged to submit an application for a Residence Card. After all, it is not the Residence Card which grants our client permission to reside in the UK as an EEA family member. The grant of a Residence Card to our client only

[20] 496
[21] Material referred to in Claimant's closing submissions, 4-5

> confirms the existence of rights automatically bestowed upon our client under European law by virtue of him 'being' the family member of his qualified EEA national spouse.
>
> It is also notable that our client has been issued with an IS.96, which requires him to report to the UKVI at Lunar House in Croydon on 30/09/2016 between 11am and 1pm and regularly thereafter. We again respectfully submit that being lawfully permitted to reside in the UK as the family member of his EEA national spouse, our client should not be considered as a person 'liable to detention and removal'. We respectfully submit that in the given circumstances, it would be unlawful to detain and remove our client and that such actions could potentially render the Secretary of State liable to pay our client damages by way of compensation. To this end we respectfully request that the reporting conditions placed upon our client be cancelled with immediate effect and that the Secretary of State respect our client's right to reside in the UK without a residence card (if he so chooses not to apply for one)."

37. By a letter dated 28 October 2016 from the Defendant to the Claimant[22] it is said,

> "Therefore please send the following appropriate documentation to the address enclosed:
>
> - Photocopy of EEA national's passport and/or identity card
> - Evidence that the EEA national is exercising her treaty rights as shown above
> - Evidence of the relationship between your client and EEA national, marriage certificate and evidence of cohabitation would be appropriate."

38. The Claimant's solicitors replied to the Defendant by a letter dated 14 November 2016, in which they said[23],

> "We herewith enclose the following to aid you in your consideration of our client's matter:
>
> - 1 x copy of our client's spouse's Romanian National Identity Card.
> - 1 x letter from our client's spouse's employer confirming her ongoing employment with the company since July 2015.
> - 1 x copy of our client's and his spouse's marriage certificate from Cyprus.

[22] Material referred to in Claimant's closing submissions, 6
[23] Material referred to in Claimant's closing submissions, 7-8

- 1 x copy of our client and his spouse's marriage registration in Romania.

We respectfully trust that the Secretary of State will be familiar with the CJEU's judgement in the case of Diatta - Case 267/83, which is authority for the proposition that it is not necessary for the family member of an EEA national and the EEA family member to live together for the non-EEA family member to enjoy a derived right of residence."

39. The GCID record dated 29 November 2016 says[24],

> "Evidence of relationship submitted.
>
> Seeking further guidance before making a decision on how to progress further."

40. In an internal email dated 6 February 2017, from the Defendant's Returns Preparation Team, it is said[25],

> "In November 2016, we received the enclosed letter from the subject's appointed representatives. I am somewhat familiar with EEA case working, as I have previously dealt with foreign national offenders who are EEAs and I am aware that you do not need to necessarily apply for a residence card if you are the spouse/partner of an EEA national exercising treaty rights here in the UK.
>
> With this particular case, the subject's appointed representatives have supplied us with a copy of the identification for his EEA spouse, copy of the marriage certificate for both of them, as well as a letter from the EEA's employer confirming employment since 2015. Normally in these circumstances, if we were satisfied that the EEA was exercising treaty rights here in the UK and the relationship was genuine, we would close the case from our end, as the non EEA national being of no further interest to Returns Preparation.
>
> However, in this case, the subject's appointed representatives have made reference to the subject and EEA spouse not residing together, and a case law that states that it is not necessary for the family member of an EEA national and the EEA national to live together in order for the non EEA family member to enjoy a derived right of residence. Are you aware if this is correct?"

41. Debbie Shaw, Deputy Chief Caseworker, European Casework, replied on 6 February 2017, saying,

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[24] Supplementary bundle, 63
[25] 502

> "The reps are right with regard to the fact that if married there is no requirement for that couple to reside together. They mentioned the case law of Diatta …
>
> …..
>
> At this stage - Mr. A has not secured his right to remain under the EEA Regs so whilst he may claim that he has the right to remain as the spouse of a qualified person (*which he may well be*) he remains undocumented and would find it difficult to obtain employment etc in his own right."

42. The GCID record dated 6 March 2017 says[26],

> "Evidence submitted as proof of relationship is all photocopies - previous EEA was refused on this basis - in line with consistency I am not satisfied that photocopies evidence of gen and subsisting relationship.
>
> The rep has listed some caselaw in regards to the app and spouse not having to live together therefore I have made contact with EEA to check this out and see if it holds any bearing on my progression of this case."

43. On 4 April 2017, the Defendant sent a fresh removal window notification notice to the Claimant. However, this notice was not received by the Claimant.

44. The GCID record dated 7 April 2017 says[27],

> "Reasons for recommending detention: no current barriers to removal. Op Perceptor Same Day removal. RD's booked for 28/04/2017."

45. The GCID record dated 26 April 2017 says[28],

> "I have checked the CID record and there is no mention of any further representations being received. No record of an outstanding charged application submitted to TM under EEA, LTR or Settlement applications.
>
> No barriers to removal at present."

46. On 28 April 2017, the Claimant was detained when he reported to the Defendant at Croydon Enforcement Unit. The Defendant's intention had been to remove him on the same day. That was not possible as the notice of a removal window had not been served on time; the notice was returned by Royal Mail without being delivered. However, the

[26] Supplementary bundle, 63
[27] Supplementary bundle, 19
[28] Supplementary bundle, 20

Claimant was detained with the intention to remove him from the UK in due course. He was served with a fresh removal window notification, IS91.

47. I find that the Defendant had sufficient information before it to know that this was contrary to law and its own policy, because when the Claimant applied for a residence card in August 2015, he had submitted sufficient evidence to establish that he was the spouse of an EEA national residing and working in the UK:

    i) The Defendant had received copies of the Claimant's wife's Romanian national identity card, letter from the Claimant's wife's employer, confirming her ongoing employment with the company since July 2015, the Claimant's marriage certificate from Cyprus and the Claimant and his wife's registration of the marriage in Romania.

    ii) In the GCID note dated 27 January 2016, it is said that the Defendant was satisfied that the Claimant's wife was working, having seen photographs of her wage slips and spoken to her employer on the telephone[29].

    iii) In an email dated 16 January 2018, from Rachel Green, SEO Team Manager, she says,

    > "The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. […] I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. […] There was evidence that the spouse was working."

48. If the Defendant had considered the Claimant's case under the EEA Regulations 2006, it is most unlikely that the Claimant would have been detained, or remained detained for 88 days, because of the Defendant's policy not to detain EEA nationals and their family members pending determination of their entitlement to remain.

49. The Claimant was entitled to a right of appeal against any decision to remove him (Articles 15 & 31 of the Directive and Regulation 26 of the EEA Regulations 2006) which had to be formally notified to him (Articles 15 & 30 of the Directive and the Immigration (Notices) Regulations 2003). The Defendant has a pro forma decision notice for use in EEA cases, setting out the rights of appeal (IS 151A EEA), which ought to have been used in the Claimant's case, instead of the standard IS 151A. Contrary to law, the Claimant was not informed of his right of appeal to the First Tier Tribunal.

50. Even if the Defendant considered that the Claimant's right might have lapsed (for example, if the Claimant's wife had left the UK), the Claimant's position still fell to be considered under the more favourable provision of the EEA Regulations 2006.

51. In any event, the Claimant should have been offered a one-month grace period within which to leave the UK voluntarily, pursuant to Article 30(3) of the Directive 2004/38/EC (the Directive) and regulation 24(6) of the EEA Regulations 2006. The Claimant's detention was wrongly authorised on the basis that his removal was

[29] 549

imminent, when in fact his removal could not be effected for at least one month after he was first detained.

52. The Claimant says in his witness statement dated 27 January 2020 at paragraphs 43-47[30] that when he reported and was detained, he was taken to a room where he was made to wait for six hours. He was then transported to Brook House, which took a further two hours. He arrived at Brook House with two other detainees in the early hours of the morning. His mobile phone was taken from him and he was not provided with an opportunity to call his legal representatives until 4 days later. He had to wait a further 1.5 hours before he was given his cell, at 3:30 am. He says he was given cold baked beans and rice, which made him sick for the rest of the week.

53. The Defendant's notice of removal window, dated 28 April 2017, stated that from seven days after the Claimant received the notice of removal window for the remainder of the three-month period following 28 April 2017, he could be removed without further notice[31].

54. The Claimant's solicitors wrote to the Defendant again on 3 May 2017, explaining clearly that the Claimant was lawfully in the UK. They said[32],

> "It was thus our respectful submission that our client was (and remains) lawfully resident in the UK, pursuant to the Immigration (European Economic Area) Regulations 2006 and thus does not require leave to enter or remain in order to reside in the UK lawfully. Furthermore, we also respectfully submit that the fact that our client was previously refused a Residence Card as the family member of an EEA national does not affect his lawful right to reside in the UK. We respectfully trust that the Secretary of State will be fully aware that our client is not legally required to hold a Residence Card in order to enjoy a right of residence in the UK as the family member of an EEA national.
>
> We can confirm that despite sending several letters to the Secretary of State in respect of our client, including one chaser letter in February 2017, we have received no letters/replies from the Secretary of State, other than a letter from 'C. Webb, RCC Team 36' …
>
> We are presently minded that our client's current residence in the UK is entirely lawful in light of him being the spouse and hence family member of an EEA national and that his current detention and possible removal are both unlawful. We accordingly request that the Secretary of State review the basis for our client's detention and also provide us with the reasons and basis upon which she feels that it is appropriate to detain our client."

[30] 105-106
[31] 505-506 at 505
[32] 515-516

55. The Claimant's solicitors telephoned the Defendant on 4 May 2017 and 9 May 2017, stating that the Claimant's detention was unlawful and that he had a right of residence pursuant to EEA law. The Defendant confirmed that the correspondence from the Claimant's solicitors had been received and was being considered. The Claimant's solicitors telephoned the Defendant again on 10 May 2017 and 11 May 2017, requesting an update.

56. On 11 May 2017, a 14-day detention review was carried out by Rebekkah Ridge-Williams and authorised by Laurie Derbyshire. It says[33],

> "10. … "Married to an EEA national, marriage certificates provided. EEA refused on the basis that no original documents were provided, but no consideration has been given to the relationship being either a sham or genuine.
>
> …
>
> 14. Recommendation (whether to maintain detention or release, supported by reasons).
>
> Please see the attached documents from the EEA team and the Returns Prep Team with regard to the EEA application. The letter dated 28.10.16 almost implies that should the rep provide the documents listed the EEA application will be reconsidered. Since receiving those documents and seeking advice from the EEA team no response has been made to the representative. If there is no barrier to removal the subject can be removed easily on his valid document. No consideration has been given to the subsisting relationship between the subject and his supposed wife. Although no original ID card was presented it has never been called for other than in the guidance notes on the EEA application. Do the barrier team need to consider the HR aspect? Should the EEA be reconsidered?
>
> Presumption in favour of release considered, however for the following reasons detention is maintained:
>
> The subject is an overstayer who has failed to leave the UK despite having no leave to remain. He has complied with reporting conditions in the past however it is clear from his past representations that he does not want to leave the UK. I do not believe therefore that were he to be released he would leave the UK.
>
> It appears from the papers presented by the rep that the EEA decisions should be reconsidered or at the very least a response provided by the RP case worker who wrote to them on 28 October 2017 to explain why it won't be. The letter gives a reasonable expectation that the case will be considered further

[33] 535-536

> should the requested documents be provided and they were. We should therefore get them to provide a response before proceeding to removal action. We should obtain a timescale for this and if longer than a week we will review detention."

57. By a letter dated 12 May 2017 from the Defendant to William Lamb & Co, it is said[34],

> "Having reviewed the contents of your letter along with supporting documents, it has not been demonstrated that your client has submitted sufficient evidence to meet the criteria in order for him to have an automatic right of residence in the United Kingdom as the spouse of an EEA national. With this in mind your client remains liable to detention and removal from the United Kingdom."

58. The GCID note dated 16 May 2017[35] states as follows in relation to the authorising officer's above note:

> "…. The evidence supplied is not sufficient to demonstrate to me that the applicant has an automatic right of residence and therefore the case was progressed to tasking in my absence on the instruction of my T/L on 23/03/17."

59. A GCID note dated 17 May 2017[36] states that the Claimant will be removed on a charter flight departing on 23 May 2017, and states,

> "Subject to be given no further notice. The date of the charter should not be disclosed."

60. A GCID note on 18 May 2017[37] states that the Claimant telephoned the Defendant and asked for an update on his case, and "was told that his case was being reviewed by the CWT". This was misleading because by this date, the Defendant had concluded its consideration of the EEA matter and had decided to remove the Claimant without any further notice.

61. A GCID note later the same day states[38],

> "I saw the subject here late this afternoon, served the letter + IFS from NRC and advised that RDs will follow shortly."

62. The Claimant's removal on 23 May 2017 did not proceed because the Defendant had insufficient escorts to take him from the detention centre[39].

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[34] 517
[35] Material referred to in Claimant's closing submissions bundle, 2
[36] Supplementary bundle, 35
[37] Supplementary bundle, 37
[38] Supplementary bundle, 37
[39] Supplementary bundle, 38

63. On 24 May 2017, the Defendant booked the Claimant's removal for 5 June 2017. The GCID note[40] states that the removal date and details were not to be disclosed.

64. On 25 May 2017, the Claimant submitted a Judicial Review claim based upon Article 8 ECHR. Consequently, on 26 May 2017 his removal was deferred[41].

65. On 26 May 2017, Rebekkah Ridge-Williams completed a 28-day detention review, authorised by Laurie Derbyshire. Detention was maintained. There was no mention of the Claimant's EEA rights, which had been raised in the previous 14-day detention review on 11 May 2017.

66. On 30 May 2017, the GCID notes state[42],

> "The other issue is that I'm not clear that we should have been treating him as a section 10 removal as he appears to have entered as the direct family member of an EEA national the general instruction on European Economic Area (EEA) administrative removal suggests that in these circumstances removal action should be conducted under the EEA regs rather than section 10 …
>
> …..
>
> The above scenario isn't exactly the same as this subject but appears to be analogous, i.e. we accepted the family relationship in the past and now we don't. If he should be dealt with under the EEA regs then he would have an in-country ROA and the JR claim would likely be academic (aside from the unlawful detention aspect).
>
> Refer the HR claim back to Solihull and they can take it forward or not depending on what happens with the JR."

67. On 31 May 2017, the Defendant confirmed that the Claimant would not be removed while the judicial review claim was pending. Despite this, the Claimant continued to be detained by the Defendant at Brook House.

68. The GCID note dated 5 June 2017 states[43]:

> "Not to be disclosed:
>
> Charlotte Hewitt, SEO Detention & Performance Manager provided me with the following update:
>
> "Just to update you following discussions with our barrier team. They are satisfied that as the legal reps still have not provided any original documents as evidence, they have not demonstrated

[40] Supplementary bundle, 39
[41] Supplementary bundle, 42
[42] Supplementary bundle, 44-45
[43] Supplementary bundle, 52

> that this person has a right of residence as the spouse of an EEA national. They are therefore proceeding to consider the HR application and have advised that this is likely to be refused and certified. The only matter remaining is whether removal action should have been conducted under the EEA regs rather than a Section 10 removal"

69. On 6 June 2017, the Defendant refused the Claimant's Human Rights claim, and certified it as clearly unfounded[44].

70. The Claimant applied for bail to the FTT.

71. The Defendant's bail summary, which it presented to the FTT, states[45],

> "REASONS FOR OPPOSING BAIL
>
> 1. The applicant's last period of leave in the UK expired on 19/11/15. The applicant has remained in the UK since this time, and has been unlawfully present for two years. It is submitted this is a very significant period of time which represents a very high level of disregard for immigration law, and further, that this conduct is not consistent with someone now likely to comply with bail conditions.
>
> 2. The applicant's representative contacted the Home Office on 20/09/16 after the applicant had been served a RED.0001 by post informing him of his status as an overstayer. The representative stated that their client should not have been served this document as a spouse of an EEA national exercising treaty rights. Section 3C of the Immigration Act 1971 provides for the conditions of existing leave to be deemed to continue while an in-time application for a variation of leave is being processed. However, an EEA residence card application is not an application for a "variation of leave" as such and therefore does not extend leave. The applicant's leave therefore expired ... and they have been unlawfully present since this date.
>
> 3. The applicant has reported monthly between 30/09/16 and 28/04/17 missing two events. Whilst it is noted the applicant has demonstrated relative compliance with reporting conditions to date, it is submitted that having been detained the applicant is now aware the Home Office intends to enforce removal, and it is submitted this lessens incentive to the applicant to continue to report if granted release at this time.
>
> 4. The applicant was served with a RED.0001 by post on 31/08/16 and a RED.0004 fresh as an overstayer. The applicant had no valid leave and was notified of their liability to removal,

[44] 521-530 at 528
[45] 651-652

> but failed to take any steps to depart the UK as required, and remained unlawfully present for a period of a further year. It is submitted the applicant's continued unlawful presence coupled with their failure to take any steps to regularise their status indicates a high level of disregard for immigration law."

72. I find these representations were untrue and misleading. The Defendant had cogent evidence that the Claimant was entitled to remain in the UK pursuant to the EEA Regulations 2006, as Rachel Green, SEO Team Manager accepted in her email dated 16 January 2018. The Defendant had been provided with evidence showing that the Claimant was entitled to remain in the UK pursuant to his EEA rights by the Claimant's solicitor's letter dated 14 November 2016[46].

73. On 13 June 2017, the Claimant's bail application was refused by Judge of the First Tier Tribunal Scott Baker. He said[47],

> "7. Despite the Home Office having advised the applicant that original ID document were required from his spouse no documents have been produced to date. There was evidence before me that the couple had married in Cyprus but there was no evidence of any kind to indicate that his spouse was in the UK exercising treaty rights."

74. It is plain from Judge Scott Baker's decision that in order to prevent the Claimant from obtaining bail, the Defendant made representations before him which were untrue and misleading.

75. The Defendant's submission to the Judge that the Home Office told the Claimant that original ID documents were required from his wife and none were provided was untrue:

i) The Defendant admits that it must have seen the Claimant's wife's original ID. In an entry dated 22 February 2018, the GCID note states[48],

> "CRS shows the applicant entered the UK [on 13 June 2015, accompanied by his wife] as the spouse of an EEA national. So we must have seen the sponsor's original ID at one point."

ii) In its letter dated 28 October 2016[49], the Defendant requested a photocopy of the Claimant's wife's EEA national passport and/or identity card. By a letter dated 14 November 2016, the Claimant's solicitors provided a photocopy of the Claimant's wife's Romanian national identity card[50].

iii) In an email dated 16 January 2018, Rachel Green, SEO Team Manager, stated:

> "With regard to the Claimant's ID, it is questionable as to whether the Defendant was entitled to demand an original copy

[46] Material referred to in Claimant's closing submissions, 7-9
[47] 657
[48] 554
[49] Material referred to in Claimant's closing submissions, 6
[50] Material referred to in Claimant's closing submissions, 7-9

> of the ID card given that she had previously accepted his ID, but in any event that is not what she said. She asked for a copy of his ID card, and that was provided. She did not ever say that the application was being refused because only a copy of the ID card had been provided. Given that she had asked for a copy, if she were dissatisfied with that one might expect her to go back to the claimant and ask for an original."

76. The Defendant's submission to Judge Scott Baker that there was no evidence of any kind to indicate that the Claimant's spouse was in the UK exercising treaty rights was, to its knowledge, untrue:

    i) In the GCID note dated 27 January 2016, it is said that the Defendant was satisfied that the Claimant's wife was working, having seen photographs of her wage slips and spoken to her employer on the telephone[51].

    ii) By a letter dated 14 November 2016, the Defendant was provided with a letter from the Claimant's wife's employer confirming her ongoing employment with the company since July 2015.

    iii) In her email dated 16 January 2018, Rachel Green, SEO Team Manager, says,

    > "The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. […] I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. […] There was evidence that the spouse was working."

77. On 22 June 2017, a 56-day detention review was completed by the Defendant's Maxine Williams and authorised by Donna Woodward. As in the 28-day detention review on 26 May 2017, there was not even a mention of the Claimant's EEA rights. The Defendant said, wrongly, that the Claimant was an overstayer.

78. On 24 June 2017, the Claimant made an application for interim relief. On 30 June 2017, the interim relief application was refused.

79. On 18 July 2017, Robin Purchas QC refused the application for permission to proceed with the judicial review claim on the papers. In doing so, he reasoned, inter alia, that the Claimant was an overstayer after 27 January 2016 when his EEA residence card application was refused; and that the fact that the Claimant was no longer residing with his spouse was relevant to whether he benefitted from an automatic right of residence.

80. On 24 July 2017, the Claimant was granted bail by the FTT.

81. On 5 September 2017, permission to proceed with the judicial review claim was granted after an oral permission hearing by Dinah Rose QC sitting as a Deputy High Court Judge[52].

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[51] 549

[52] Supplemental bundle, 367-368

82. On 10 October 2017, amended Judicial Review grounds were filed and served. In an email dated 16 January 2018, Rachel Green, SEO Team Manager, stated:

> "The applicant has amended his grounds and Counsel no longer thinks we can defend this matter. Would you be able to review your decision (EEA refusal and decision to detain) and advise if you think this can be defended - Counsel consider we have handled this case inconsistently and considers there is too much risk to proceed:
>
> The main issue for me is the letter of 28th October 2016, which asked the Claimant to send over various further documents in support of his application so that his case could be "considered further". …. The Defendant never told the Claimant that he would have to make a further formal application - and indeed even the letter of 12th May 2017 which said that the October letter was not promising a reconsideration (and which in any event post dated the decision to detain) did as a matter of fact consider the further documents but refused to grant an EEA card.
>
> The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. For the reasons set out in my previous advice, I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. It is not possible to identify what they might have been. There was evidence that the spouse was working. There was no evidence that the marriage had been dissolved or a divorce obtained. With regard to the Claimant's ID, it is questionable as to whether the Defendant was entitled to demand an original copy of the ID card given that she had previously accepted his ID, but in any event that is not what she said. She asked for a copy of his ID card, and that was provided. She did not ever say that the application was being refused because only a copy of the ID card had been provided. Given that she had asked for a copy, if she were dissatisfied with that one might expect her to go back to the claimant and ask for an original."

83. Carrina Webb, of Returns Preparation, replied on 16 January 2018, saying,

> "I would be looking to withdraw this but then serve an IS.151A(EEA) and IS.151B(EEA) instead, as per EEA regulations guidance. The applicant is still liable for removal, but
>
> In doing so:
>
> The IS.151B(EEA) initiates;
>
> • A 14 day notification period for appeals

> • A 30 day (minimum) period of notice during which the individual is invited to leave the UK
>
> • Removal cannot take place while an in-country appeal is pending
>
> Therefore if wanting to challenge further the applicant and the rep can appeal via the appropriate path and look to withdraw the JR.
>
> We would not serve a RED.0001 to a migrant that has previously been deemed to be in a relationship with an EEA national, having entered with his spouse serving the applicant a RED.0001 at this stage would be classed as an error.
>
> In 2016 when initially submitted following advice of my team leader, there was little if no guidance available to RP on how to progress these cases."

84. In an internal email dated 24 January 2018, Rachel Green, SEO Team Manager, said,

> "RE the right to work – I agree with what Counsel has suggested but do you have any thoughts about this? (he is now claiming damages on loss of earnings .. so if we can be robust now that should hopefully head that off)"

85. In a further email also dated 24 January 2018, Rachel Green said,

> "Hi again-
>
> sorry- hot off the press are further demands from the reps, this relates to what I have said below but there might be some other matters for you to consider which I have put in yellow. (my response is in UPPER CASE)
>
> …..
>
> 2. The decision to refuse the Claimant's application for a residence card is withdrawn and reconsidered within 28 days. The SSHD undertakes to carry out her own checks with respect to whether the Claimant's wife remains a qualified person pursuant to her own policy guidance. AWAITING INSTRUCTIONS FROM THE NEXT DECISION MAKING UNIT – UNLIKELY TO AGREE TO 28 DAYS DUE TO RESOURCING ISSUE – AND HE SHOULD NOT GET TO THE FRONT OF THE QUEUE
>
> …..
>
> 5. The Claimant is awarded his costs of bringing this claim on the indemnity basis. NO CHANCE – WE WANT TO RESIST COSTS AS MUCH AS POSSIBLE AND NOT EVEN AGREE

TO PAY HIS REASONABLE COSTS GIVEN THE CHANGE IN CASE FROM THE OUTSET – HAPPY TO GO ALONG WITH ANY WORDING YOU CONSIDER APPROPRIATE."

86. In a further email also dated 24 January 2018, Ms Green said,

> "Hi Carrina,
>
> I had another conversation with GLD just now, on reflection I don't think there is any basis that we can ask for him to report. I have said we will withdraw the RED0001 which is what you had said the other week.
>
> I've pushed back again on 3 as I think this is almost bypassing the correct process (counsel suggested that we could "just issue a COA [Certificate of Application]" on production of the passport) but I am not comfortable doing that (and I also think he will use this against us later down the line when claiming damages on loss of earnings)."

87. In a further email also dated 24 January 2018, Ms Green said,

> "I have previously been liaising with Carrina from returns preparation (RP) who picked up this EEA case and pushed it through to removal. Unfortunately due to a lack of proper guidance on dealing with EEA cases the decision on which NRC subsequently detained the claimant could not be defended and we got authority to settle today.
>
> ….
>
> Essentially the reps are asking that: (my thoughts are in UPPER CASE)
>
> 2. The decision to refuse the Claimant's application for a residence card is withdrawn and reconsidered within 28 days. The SSHD undertakes to carry out her own checks with respect to whether the Claimant's wife remains a qualified person pursuant to her own policy guidance. AWAITING INSTRUCTIONS FROM THE NEXT DECISION MAKING UNIT- UNLIKELY TO AGREE TO 28 DAYS DUE TO RESOURCING ISSUE – AND HE SHOULD NOT GET TO THE FRONT OF THE QUEUE.
>
> 3. The SSHD issues a certificate of application to the Claimant immediately that confirms that he is entitled to reside in the UK and work here until the determination of his application for a residence card. NOT UNTIL WE HAVE PROPERLY CONSIDERED HIS CASE."

88. On 25 January 2018, the hearing of the substantive Judicial Review came before HHJ Coe KC, sitting as a Deputy High Court Judge. At that hearing, Defendant informed the Claimant's legal representatives that the illegality of the Claimant's detention was conceded but that the Defendant would only pay the Claimant nominal damages. It was ordered, inter alia[53],

> "UPON the Defendant accepting that at the time of the decision to detain the Claimant there was insufficient consideration of the documents provided to her in response to her letter of 28 October 2016 and therefore that the Claimant's detention was unlawful;
>
> UPON the Defendant agreeing to withdraw the decision to remove the Claimant and to suspend any reporting or other condition on him in light of the further actions to be taken by both sides in this claim as set out below;
>
> 1. The Claimant was detained unlawfully between 28 April 2017 and 24 July 2017.
>
> …
>
> 5. The claim is to be transferred to the Queen's Bench Division of the High Court for assessment of the quantum of damages payable by the Defendant, and any other relevant live matters between the parties that bear upon the issue of quantum."

89. On 8 February 2018, the Defendant's caseworker Tazab Khan stated in an email relating to the reconsideration of the Claimant's application for an EEA residence card[54]:

> "In this circumstance, if the applicant can provide original ID for the sponsor and a marriage certificate, then I believe that should be sufficient to qualify the applicant for a long COA [Certificate of Application] at least."

90. In an entry dated 22 February 2018, the GCID note states[55],

> "CRS shows the applicant entered the UK [on 13 June 2015, accompanied by his wife] as the spouse of an EEA national. So we must have seen the sponsor's original ID at one point."

91. On 16 May 2018, the Defendant refused the Claimant's application for an EEA residence card. In its decision letter, dated 16 May 2018, it said[56],

> "Without sight of a valid passport/ ID card for your sponsor this department cannot accept that you are the family member of an

[53] 83-83
[54] Supplementary bundle, 119
[55] 554
[56] Supplementary bundle, 114

> EEA national as claimed and therefore that you have any right to rely on the provisions of the EEA Regulations.
>
> …..
>
> Furthermore you have failed to provide an original marriage certificate.
>
> Finally, you have failed to provide any evidence to confirm your EEA national sponsor is in the United Kingdom, exercising Treaty Rights."

92. The reasons for refusing to issue an EEA residence card were all untrue. The Defendant had seen an ID card for the Claimant's wife and did have evidence that the Claimant's wife was exercising treaty rights by working in the UK. I would refer to paragraph 76 (i) – (iii) above.

93. The Claimant appealed to the FTT. On 15 March 2019, FTT Judge Woolf allowed the Claimant's appeal for an EEA residence card, saying,

> "3. It was confirmed by Mr Macrae at the outset of the hearing that the sole issue which remains extant was the appellant's failure to submit the passport or identity card of his former spouse with his application in accordance with Regulation 21(5) of the EEA Regulations 2016.
>
> …
>
> 12. On the evidence before me I am satisfied that his failure to produce his ex-wife's ID document or passport was due to circumstances beyond his control. Had the respondent considered regulation 41 of the 2016 regs the guidance and the fact that they had evidence in the form of the appellant's passport in the form of the visa entry clearance was issued to the appellant that was endorsed "Family member to acc/ I Adegboyega" with the entry stamp of 14 June 2015 at Stansted, that should have indicated on the balance of probabilities that he entered the UK with an EEA national. The appellant's right to reside was however still dependent upon the sponsor's exercise of treaty rights.
>
> 13. In the course of the Judicial Review proceedings the appellant's representatives appear to have put to the respondent that the Home Office should make its own checks with respect to the sponsor's continued exercise of her treaty rights (C11 of the respondent's bundle refers). That was not done until these appeal proceedings were adjourned in February 2019 for those enquiries to be made. As that has now been resolved by a reference to HMRC there is no longer any good or lawful reason to deny the appellant a residence card."

94. It was not until April 2019 that the Claimant was granted a residence card and was able to exercise his right of freedom of residence and work in the UK under EEA law. On 5 July 2019, the Claimant resumed work for the first time since November 2015.

95. The Defendant made an application, dated 31 January 2020, for a stay of proceedings pending the conclusion of the Brook House Inquiry[57].

96. The claim was listed for trial on 2 June 2020. On 1 June 2020, the Defendant conceded that the Claimant was entitled to substantive damages for unlawful detention and damages for breach of his EEA rights. Stewart J. made an order by consent[58], which provided,

> "UPON the claimant making a claim within proceeding QB-2018-001055 (the proceedings) for breaches of Article 3, trespass to the person and personal injury while detained at Brook House Immigration Removal Centre over a time period that will be investigated by the Brook House Inquiry (the Inquiry)
>
> …
>
> AND UPON the Defendant having conceded within the proceedings that the Claimant is entitled in principle to substantive damages for unlawful detention and damages for breach of EEA law
>
> AND UPON the parties wishing for the matter to be stayed to enable the parties to continue to explore settlement and/or await the outcome of the Brook House Inquiry:
>
> IT IS ORDERED
>
> 1. This claim is stayed pending the conclusion of the inquiry (save for the limited purpose set out in paragraph 5 of the Order of Deputy Master Leslie made on 5 July 2009 (sic) (settlement)."

97. On 6 May 2022 Master Brown was informed that the Brook House Inquiry had concluded its evidence taking stage and the estimated date for publication of the report was November 2022. He ordered by consent that the stay be lifted[59].

98. The Brook House Inquiry concluded its public hearings in April 2022 and provided its report in September 2023.

99. The Claimant applied for interim payments in respect of basic damages for unlawful detention and basic damages for breach of his EEA rights, which the Defendant opposed. Following a contested hearing on 1 September 2022, Master Brown ordered[60],

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[57] Correspondence between the parties regarding the relevance of the Brook House Inquiry, 7-12
[58] 60-61
[59] 62
[60] 64

> "1. The Defendant is to make an interim payment to the Claimant in the sum of £22,500 on account of basic damages for false imprisonment. The payment is to be made by 22 September 2022."
>
> 2. The Defendant is to make an interim payment to the Claimant in the sum of £35,000 on account of basic damages for breach of his EEA law rights. The payment is to be made by 22 September 2022."

Brook House Inquiry report

Introduction

100. As stated at paragraph 6 above, I decided, following a contested application, that the Claimant had permission to rely upon the Brook House Inquiry report and that the weight to be attached to the report was subject to s.4 of the Civil Evidence Act 1995, which provides:

> "4. Considerations relevant to weighing of hearsay evidence.
>
> (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> (2) Regard may be had, in particular, to the following—
>
> (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>
> (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
>
> (c) whether the evidence involves multiple hearsay;
>
> (d) whether any person involved had any motive to conceal or misrepresent matters;
>
> (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
>
> (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

101. As I said at paragraph 29 of my judgment on the admissibility of The Brook House Inquiry report,

> "The Brook House Inquiry involved a four-year investigation into conditions and the treatment of detainees at Brook House.

> The final report is over 700 pages. It involves a depth of investigation which could not begin to be replicated in civil proceedings such as these, which involve one lay witness and a four-day hearing."

102. The Brook House Inquiry heard live witness evidence, including evidence from the Claimant.

Submissions

103. Mr Rawat submitted in his closing submissions,

> "2. The Defendant submits that, pursuant to section 4(1) of the 1995 Act, the Court can have regard to the following factors:
>
> (a) That the evidence adduced by the BHI was not tested in cross-examination.
>
> (b) That the legislative framework under which an inquiry operates does not provide for the existence of parties as found in civil litigation and so for the provision of a defence.
>
> (c) The manner in which '*matters of primary fact*' are recorded for example, whether they have been summarised.
>
> (d) That, in relation to this Claimant, the BHI did not for example adduce all medical opinion.
>
> (e) That the Claimant's position is that, as of June 2020, his case could have gone forward without the need for further evidence (had it not been stayed by agreement)."

104. Mr Jafferji submitted that the Court should place weight upon the findings in the Brook House Inquiry report as they had been made following an exhaustive four-year inquiry.

Findings as to weight to be attached to Brook House Inquiry report

105. I find that the Defendant's position on the Brook House Inquiry has been contradictory and unprincipled. In an email from the Defendant to the Claimant's solicitor, dated 28 January 2020, the Defendant wrote[61],

> "We note that your client makes a claim pursuant to Article 3 of the ECHR in his Particulars of Claim. Therefore, the findings of the Inquiry are directly relevant to your client's Article 3 claim."
>
> In that light, our client has instructed us to seek to stay your client's claim behind the Inquiry."

106. The Defendant applied for a stay of proceedings on the grounds that the claim could not be resolved until the Brook House Inquiry report was available because the report

[61] Correspondence between the parties regarding the relevance of the Brook House Inquiry, 5

was directly relevant to the Claimant's Article 3 claim: in the Defendant's application notice, dated 31 January 2020, it is said[62],

> "(c) The Inquiry will investigate matters and make findings that will very likely bear directly on the Claimant's Article 3 claim;"

107. However, at the hearing of this trial, Mr Rawat vigorously opposed the admission of the Brook House Inquiry report, and even went as far as submitting that the Court could not consider the report de bene esse when considering its admissibility. No reason was put forward for the Defendant's volte face from its previous position that the trial should be adjourned because the report's findings would very likely be "directly relevant to your client's Article 3 claims". Further, and more significantly, the Defendant accepted the broad thrust of the recommendations made by the Brook House Inquiry. In the Government Response to the Public Inquiry into Brook House Immigration Removal Centre, dated March 2024, it is said[63],

> "2. The aim of the inquiry was to establish the facts of what took place and ensure that lessons were learnt to prevent those events happening again. .... The documentary footage was utterly shocking, and the government has been clear from the outset that the sort of behaviour on display from some of those staff was totally unacceptable.
>
> 3. … We welcome this important contribution to ensuring the safety and welfare of those in detention. The government has carefully considered and accepts the broad thrust of the recommendations …
>
> …
>
> 6.8) Staffing and culture:
>
> 6.8.1. The report findings in relation to contracted service provider staff behaviour and culture were shocking and unacceptable. Significant changes have been implemented to better define operational staffing levels, introduce accredited training, a code of conduct, and a mandatory staff engagement strategy. The government is particularly mindful of the findings that the negative culture at Brook House during the time of the documentary was endemic and enabled by senior managers. The Home Office is working to ensure that all safeguards and monitoring of conduct apply to all staff, including senior leadership."

108. In the light of that admission by the Defendant, it is difficult to see how it can be contended that the Court should not place weight on the findings made by the Brook House Inquiry on the conditions of the Claimant's unlawful detention at Brook House and his treatment there. However, I find that when considering specific incidents, such

[62] Correspondence between the parties regarding the relevance of the Brook House Inquiry, 11
[63] Brook House Inquiry report bundle, 719, 723 and 724

as the Claimant's claim for trespass to the person on 5 June 2017, and the question of whether the Claimant has suffered psychiatric injury, I must reach my own findings based upon the evidence I have heard.

109. In response to Mr Rawat's other objections, I find that:

i) Whilst it is true that the legislative framework under which an inquiry operates does not provide for the existence of parties, the Inquiry considered a huge volume of evidence, including documentary evidence, video footage and live evidence over four years and made 33 separate recommendations, the broad thrust of which the Defendant accepted.

ii) Prior to making recommendations, the Inquiry sets out the evidence in minute detail, and does not merely summarise the evidence.

iii) I will decide the Claimant's claim for damages for a psychiatric injury solely on the lay and expert evidence I have heard in this case.

iv) It is ironic that Mr Rawat argues that the case could have gone forward without the Brook House Inquiry report when the Defendant obtained the adjournment of the trial because the findings of the Inquiry were directly relevant to the Claimant's claim.

Law – basic award for wrongful detention

110. In *Thompson v Commissioner of Police* [1998] QB 498[64], Lord Woolf MR said,

> "(5) In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for twenty four hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale. (These figures are lower than those mentioned by the Court of Appeal of Northern Ireland in *Oscar v Chief Constable of The Royal Ulster Constabulary* (unreported 1993) where a figure of about £600 per hour was thought to be appropriate for the first 12 hours. That case, however only involved unlawful detention for two periods of 30 minutes in respect of which the Court of Appeal of Northern Ireland awarded £300 for the first period and £200 for the second period. On the other hand the approach is substantially more generous than that adopted by this court in the unusual case of *Cumber v*

[64] Authorities bundle, 152-174 at 169

> *Hoddinott* (unreported 23 January 1995) in which this court awarded £350 global damages where the jury had awarded no compensatory damages and £50 exemplary damages.)"

111. In *MK (Algeria) v SSHD* [2010] EWCA Civ 980[65], Laws LJ gave guidance as to the principles to be applied when assessing the level of damages for false imprisonment:

> '8. There is now guidance in the cases as to appropriate levels of awards for false imprisonment. There are three general principles which should be born in mind: 1) the assessment of damages should be sensitive to the facts and the particular case and the degree of harm suffered by the particular claimant: see the leading case of *Thompson v Commissioner of Police* [1998] QB 498 at 515A and also the discussion at page 1060 in *R v Governor of Brockhill Prison Ex Parte Evans* [1999] QB 1043; 2) Damages should not be assessed mechanistically as by fixing a rigid figure to be awarded for each day of incarceration: see *Thompson* at 516A. A global approach should be taken: see *Evans* 1060E; 3) While obviously the gravity of a false imprisonment is worsened by its length the amount broadly attributable to the increasing passage of time should be tapered or placed on a reducing scale. This is for two reasons: (i) to keep this class of damages in proportion with those payable in personal injury and perhaps other cases; and (ii) because the initial shock of being detained will generally attract a higher rate of compensation than the detention's continuance: *Thompson* 515 E-F."

112. In *AXD v The Home Office* [2016] EWHC 1617 (QB)[66], Jay J said, when considering comparable cases,

> "27. Some general guidance as to the levels of awards for basic/compensatory, aggravated and exemplary damages was provided by the Court of Appeal in *Thompson*. However, the length of this Claimant's detention, and the progressively reducing scale of awards as time elapses, makes it difficult to apply the *Thompson* guidance with any precision.
>
> …
>
> 34. The precedential effect of these comparable cases needs to be considered. In my judgment, these cases are illustrative only, and should not be regarded as providing any clear framework, let alone any form of constraint. These cases are fact-sensitive; and, although consistency in judicial decision-making is important, the evaluative exercise in this domain must be even

[65] Authorities bundle, 346-353 at 348-349
[66] Authorities bundle, 1017-1030 at 1024-1025

> less precise, and even more of an art, than in the realm, say, of personal injury damages.
>
> …
>
> 41. In my view, it is not possible to reconcile the authorities to which I was referred by the application of principle, logic and analysis. Ultimately, the decision must be one of policy, calibrated with reference to the court's sense of the overall justice of the case. I consider that I must have something of a free hand inasmuch as the Claimant falls to be compensated in respect of a period of detention very much longer than addressed elsewhere, and the authorities do emphasise that the rate progressively falls as time elapses."

113. *R (Diop) v Secretary of State for the Home Department* [2018] EWHC 3420 (Admin). John Howell QC, sitting as a Deputy High Court Judge, said,

> "39. Apart from cases in which there may be special damages (such as loss of earnings) or an award for injury to the claimant's physical or mental health by reason of his confinement, an award of general damages for false imprisonment may reflect at least three elements: (i) compensation for the claimant's loss of liberty; (ii) compensation for any consequential injury to the claimant's feelings; and (iii) compensation for any consequential injury to his reputation.
>
> …
>
> 52. Although the amount of compensation for unlawful detention broadly attributable to the increasing passage of time normally falls to be tapered or placed on a reducing scale and although the Claimant suffered no initial shock, in this case the injury to his feelings as his unlawful detention continued, his increasing frustration, anger and anxiety about his release and when he might be able to see his children, increased with the length of his unlawful detention until he was told that accommodation had been found on December 5th 2017. That must be taken into account when considering the significance of the length of his unlawful detention in the assessment of the amount of compensation to which he is entitled."

Submissions on basic award for wrongful detention

114. Mr Jafferji referred to *R (Diop) v SSHD* (supra). He submitted that in the present case, the Court should not taper the award of compensatory damages because:

i) The conditions of the Claimant's detention at Brook House remained shocking and egregious throughout his detention;

ii) The Defendant's threat of deportation throughout the Claimant's detention caused the perpetration of his psychiatric injury.

115. Mr Jafferji referred the Court to the following comparable cases:

i) *Santos v SSHD* [2016] EWHC 609 (Admin)[67]. The Secretary of State was found to have acted unlawfully in failing to issue a Brazilian national with an EEA residence card as a family member of an EEA national exercising treaty rights. Mr Santos was not given a right of appeal and was detained as an overstayer. He spent 154 days in detention and received basic damages of £40,000, which updates to £59,051. I note that *Santos* is not a case involving "initial shock". Mr Jafferji submitted that this case was the closest comparator, although he submitted that the Claimant's case was more serious.

ii) *Muuse v SSHD* [2009] EWHC 1886 (QB)[68]. Mr Muuse was born in Somalia and subsequently became a Dutch citizen[69]. Following lawful imprisonment, he had been wrongly detained for a period of 128 days pending consideration of deportation. He therefore faced a risk of wrongful deportation. Given that the claimant was lawfully detained, this was not a case of initial shock. He received basic damages of £25,000[70], which updates to £47,520.

iii) *George Blunt v Liverpool City Justices* (unreported, but referred to in *R(Evans) v Governor of Brockhill Prison (N02)* [1998] EWCA Civ 1042), in which £81,507 (updated) was awarded for 42 days in detention.

iv) *MK (Algeria)* [2010] EWCA Civ 980, in which the Court of Appeal increased an award of basic damages for unlawful detention from £8,500 to £12,500, which included £3,000 for initial shock. When updated, this equates to £23,877.

116. Mr Jafferji submitted that the appropriate figure for basic compensatory damages for unlawful detention is £89,000.

117. Mr Rawat submitted that the appropriate award for basic damages for unlawful detention is £26,500, which includes £8,197 for the initial shock. He referred the Court to the following comparable cases:

i) *R v Governor of HMP Brockhill, ex p Evans* [1999] QB 1043[71]. A prisoner was awarded a global award of £5,000[72], which updates to £12,9602, having been detained for an additional 59 days following the miscalculation of a release date.

ii) *NAB v SSHD* [2011] EWHC 1191 (Admin)[73]. NAB was awarded damages of £6,150, which updates to £11,0744, for 82 days' unlawful detention, which had been preceded by two earlier lengthy periods of incarceration interspersed by time on licence and bail. There was therefore no award for first shock. In this

[67] Authorities bundle, 972-1016
[68] Authorities bundle, 324
[69] Authorities bundle, 325
[70] Authorities bundle, 334
[71] Authorities bundle, 175
[72] Authorities bundle, 191
[73] Authorities bundle, 591

instance, the Court explicitly calculated the award on the basis of a daily rate of £75, which updates to £135[74].

iii) *R (Chaparadza) v SSHD* [2017] EWHC 1209 (Admin)[75]. Mr Chaparadza was detained while reporting and held for 70 days. A failure to serve a statutory notice rendered a decision not to vary his leave void and the entire period of detention unlawful. He was awarded £10,500, of which £3,500 was for initial shock[76], which updates to £14,879 and £4,960 respectively.

iv) *Holownia v SSHD* [2019] EWHC 794 (Admin)[77]. A "rough sleeper" from Poland was detained for 153 days pursuant to a policy of detaining EEA nationals who were alleged to be homeless and not exercising Treaty rights. The policy had been found to be unlawful. Detention was unlawful from the start. While in detention, Mr Holownia went on hunger strike. He was awarded £32,000 in basic damages, of which £6,000 was for initial shock, and £5,000 in relation to the hunger strike[78]. The global award of £37,000 updates to £49,427; without the award of £5,000 for the hunger strike the figure updates to £42,748.

v) *Oluponle v Home Office* [2023] EWHC 3188 (KB). The claimant was found to have been detained unlawfully for a period of 60 days following four months of lawful detention. While the Court noted that there was no initial shock, it took into account that the claimant's surroundings were "frightening and had a severe effect on him although there is no evidence of personal injury". The claimant was awarded £20,000, which updates to £20,316.

Decision on basic award for wrongful detention

118. Compensatory damages are intended to compensate for the loss of liberty, the shock, humiliation and loss of reputation. I have had regard to the guidance referred to in *Thompson v Commissioner of Police* (supra), *MK (Algeria) v SSHD* (supra), *AXD v The Home Office* (supra) and *R (Diop) v SSHD* (supra). I have firmly in mind that:

i) The comparable cases are illustrative only and should not be regarded as providing any clear framework or form of restraint. Cases for unlawful detention are fact sensitive.

ii) I should not assess the damages mechanistically by fixing a rigid figure to be awarded for each day of incarceration. The daily rates which can be calculated from other awards and the levels of awards for injured feelings and for general damages in personal injury claims, are by way of cross-check only.

119. The Claimant was falsely imprisoned for 88 days, from 28 April 2017 to 24 July 2017. This is a case of "initial shock". The Claimant was a man of good character, who had never been in prison or detention. Mr Rawat says in his closing submissions for trial

[74] Authorities bundle, 594-595
[75] Authorities bundle, 1052
[76] Authorities bundle, 1069
[77] Authorities bundle, 1135
[78] Authorities bundle, 1147-1149

that the award of £3,000 for the first 24 hours, proposed by the Court of Appeal in *Thompson*, would today be updated to £8,197.

120. I have borne in mind the need to avoid double counting and have taken into account that I am making separate awards for psychiatric injury and also for breach of Article 3 ECHR.

121. Whilst generally a Court has regard to a progressively reducing scale of awards as time elapses during unlawful detention, in my judgment that applies in this case with less force because, as in *R (Diop) v SSHD* (supra), the Claimant's psychological injury and distress remained the same throughout his detention: the egregious conditions and ill treatment which he experienced at Brook House remained the same throughout his unlawful detention, and he was threatened with deportation throughout his detention. The Claimant's removal was only deferred by the Defendant on 23 May 2017 due to a lack of escorts. As was said in the Consultant Psychiatrists' joint statement at paragraph 3.4[79],

> "3.4 Professor Elliott's opinion is that Mr Adegboyega's experiences while in the detention centre, provided the Court finds these to be true, were likely to be psychologically traumatic and threatening to him over a prolonged period.
>
> …
>
> 5.2 Dr Das agrees with the above, though in his opinion, a more significant perpetuating factor was the ongoing threat of deportation."

122. In my view, the appropriate figure for basic compensatory damages for unlawful detention is £35,000.

Law - aggravated damages for wrongful detention

123. In *Thompson* (supra)[80], Lord Woolf MR said,

> "(8) Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.
>
> …

[79] 338-339
[80] Authorities bundle, 170

> 10. We consider that where it is appropriate to award aggravated damages the figure is unlikely to be less than £1,000. We do not think it is possible to indicate a precise arithmetical relationship between basic damages and aggravated damages because the circumstances will vary from case to case. In the ordinary way, however, we would not expect the aggravated damages to be as much as twice the basic damages except perhaps where, on the particular facts, the basic damages are modest."

124. In *R (Diop) v SSHD* (supra) John Howell QC, sitting as a Deputy High Court Judge, said,

> "42. 'Aggravated damages' are thus designed to compensate the victim of a wrong for any injury to his feelings in circumstances in which that injury has been caused or increased by the manner in which the defendant committed the wrong, or by the defendant's conduct subsequent to the wrong in relation to it. It is important to note, however, that 'aggravated damages' are concerned with providing compensation for the aggravated injury to a claimant's feelings as a result of the defendant's conduct.
>
> …
>
> 44. Drawing a sharp distinction between any injury to the claimant's feelings caused by the wrong itself (where that may be reflected in a "basic" award of damages) and any injury to the claimant's feelings caused by the manner in which it was committed (to be reflected in an award of "aggravated damages") is inevitably arbitrary: the injury to his feelings will be the product of both. This is illustrated by the decision of the Court of Appeal in *MK (Algeria) v Secretary of State for the Home Department* supra in which the particular facts surrounding the claimant's detention justifying an award of aggravated damages had already been referred to, and taken into account, when considering what should be awarded as general damages: see [10]-[15], [17] and [21]. The arbitrariness of such a division is liable to create a risk of double counting. This has led to the recommendation, contained in two decisions of the Court of Appeal which post-date *Thompson v Commission of Police* supra, that it is better to make one global award of general damages, including compensation for any injured feelings caused by the wrong and the manner in which it occurred, where appropriate"

125. In *Santos* (supra), Lang J said,

> "151. Aggravated damages are awarded to compensate for additional humiliation and injury to dignity suffered which mean that a basic award is not sufficient compensation."

Submissions on aggravated damages for wrongful detention

126. Mr Jafferji submits that the conduct of the Defendant in this case is significantly worse in light of the fact that the Claimant had a good immigration history, whereas Mr Santos was an overstayer and the Claimant in the present case had established a right of residence in the UK, and this was accepted by the Defendant. In *Santos* aggravated damages of £10,000 were awarded, which adjusted for inflation would be £14,763. Mr Jafferji submits that there are aggravating factors which would result in the Claimant not receiving sufficient compensation for the injuries suffered without an award for aggravated damages:

    i) The conduct in this case is, in multiple respects, high handed - see in particular the Claimant's experiences of not being able to communicate with the Defendant's officer while in detention so that he could explain why he should not have been detained.

    ii) The Judicial Review claim was defended until the morning of the final hearing, and then conceded in relation to the unlawful detention claim on the basis that the Claimant was only entitled to nominal damages. That position was maintained until the day before the final trial was listed for hearing in June 2020.

    iii) The circumstances of the Claimant's initial detention with him being kept waiting for around 6 hours, the transfer to Brook House at night, the circumstances of his initial arrival at Brook House, the failure to provide him with a phone or to enable him to contact his partner and his lawyer.

    iv) The conditions at Brook House IRC that the Claimant was subject to which are set out in detail in his witness statement, dated 27 January 2020, at paragraphs 45 - 83[81] and which are referred to in more detail in the section on Article 3 ECHR below.

    v) The mental and physical health impact upon the Claimant of detention which is set out in detail in his witness statement and evidenced in the medico-legal experts' reports and the treating doctors' medical records.

127. Mr Jafferji submits that the appropriate award for aggravated damages is £30,000.

128. Mr Rawat submits that it is not proportionate to award aggravated damages where a basic award and an award for psychiatric injury are made. He referred the Court to *Holownia v SSHD* (supra), in which Simler J (as she then was) said[82],

> "50. The artificiality of the exercise is increased by the difficulty of distinguishing between the injury caused by the unlawful detention itself and the injury attributable to any aggravating features found, since injury to feelings is not clearly divisible and is inevitably a product of both. The absence of any clear dividing line also gives rise to a risk of double-counting …. the ultimate question must be not so much whether the respective compensatory awards considered in isolation are acceptable but

[81] 105-120
[82] Authorities bundle, 1144

> whether the overall award is proportionate to the totality of the suffering caused to the claimant."

Decision on award of aggravated damages for wrongful detention

129. In *Deptka and another v SSHD* [2019] EWHC 503, Soole J said,

> "I am persuaded that there are particular features of these two cases which compelled the additional award of aggravated damages in order to ensure that the compensation for their suffering is adequate; and thereby reflects the aggravated distress which the conduct has caused to these two claimants."

130. I find that the treatment of the Claimant by the Defendant does merit an award of aggravated damages because the Defendant's conduct has caused the Claimant additional humiliation and injury to dignity.

131. I find that the Defendant dealt with the Claimant's detention in a high-handed and oppressive manner:

i) As stated at paragraph 52 above, the Claimant was detained without any prior notification and made to wait for six hours, and transported to Brook House in the early hours of the morning, where he had to wait for a further 1.5 hours until 3:30 am before being given a cell. The Claimant was left without his telephone and was unable to contact his partner or solicitor for four days.

ii) The Defendant had sufficient information before it to know that the arrest and detention of the Claimant was contrary to law and its own policy because when the Claimant applied for a residence card on 22 August 2015, he submitted sufficient evidence to establish that he was the spouse of an EEA national who was residing and working in the UK.

iii) The Defendant failed to consider properly the Claimant's solicitors' very clear letters of 20 September 2016 (see paragraph 36 above) and 3 May 2017 (see paragraph 54 above), which clearly set out why the Claimant was entitled to remain in the UK, pursuant to the EEA Regulations 2006. The Defendant was sent all the documents it had requested by the Claimant's solicitors with their letter dated 14 November 2016. The Defendant's Rachel Green said in her internal email dated 16 January 2018 that there was no good reason for rejecting these documents. Notwithstanding this, the Defendant persisted in arguing falsely and without any basis that the Claimant was an overstayer and that the position was governed by the Immigration and Asylum Act 1999.

132. I find that the Defendant has conducted the litigation in a high-handed and oppressive manner:

i) The Defendant opposed the Claimant's bail application on 13 June 2017 and made misleading submissions (see paragraph 71 above) which led to the Claimant's bail being refused.

ii) On 25 January 2018, the hearing of the substantive Judicial Review came before HHJ Coe KC, sitting as a Deputy High Court Judge. At that hearing, the Defendant informed the Claimant's legal representatives that the illegality of the Claimant's detention was conceded and that was reflected in the Learned Judge's order. However, the Defendant stated that the Defendant would only pay the Claimant nominal damages. There was no basis for the Defendant not paying substantial damages. The Defendant maintained this position until the day before the final hearing on 1 June 2020, when the Defendant conceded before Stewart J that the Claimant was entitled in principle to substantive damages for unlawful detention and for breach of EEA law.

iii) Even then, the Defendant refused to make any interim payment, despite the fact that the Claimant required an interim payment to pay for treatment for post-traumatic stress disorder caused by his unlawful detention at Brook House, as he stated at paragraph 17 of his witness statement in support of his application for an interim payment, dated 20 April 2021[83]. In an email dated 5 March 2020 from the Claimant's solicitor to the Defendant, it is said[84],

> "It is of course open to your client to make an interim payment on the false imprisonment/EU law claim and I would suggest that the Santos case is a clear basis upon which a realistic interim payment could be made."

Following a contested hearing, the Court ordered that the Defendant make an interim payment of £22,500 in respect of the claim for unlawful detention and £35,000 in respect of the claim for breach of EEA rights.

133. I have kept in mind the principle that both heads of damages, basic and aggravated, are compensatory only and that the Court must be vigilant to avoid double counting. However, there are features of this case, which I set out in paragraphs 131 and 132 above, which justify an additional award of aggravated damages in order to ensure that the compensation for the Claimant's suffering is adequate. I have not taken into account:

i) The Claimant's repeated and serious ill treatment at Brook House;

ii) Post-traumatic stress disorder caused by his unlawful detention,

because I have made separate awards for these matters.

134. In my view, the Claimant is entitled to aggravated damages in the sum of £15,000.

Law - exemplary damages for wrongful detention

135. The classic exposition of the law on exemplary damages was given by Lord Devlin in *Rookes v Barnard* [1964] AC 1129. His Lordship said at pages 1226-1227,

> "There are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the

[83] 85-91 at 89
[84] Correspondence between the parties regarding the relevance of the Brook House Inquiry, 17

> strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal. ...
>
> The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. …
>
> Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. … this category is not confined to money making in the strict sense. … Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay."

136. In *Muuse v SSHD* (supra) Thomas LJ (as he then was) said[85]:

> "70. Lord Devlin's phrase "oppressive, arbitrary or unconstitutional" must be read, as was made clear by Lord Hutton in *Kuddus v Chief Constable of Leicestershire* [2002] AC 122 at paragraph 89, in the light of Lord Devlin's further view at page 1128:
>
> 'In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum.'
>
> As Lord Hutton observed, the conduct had to be 'outrageous' and to be such that it called for exemplary damages to mark disapproval, to deter and to vindicate the strength of the law.
>
> 71. In my view, the guidance given by Sir Thomas Bingham MR and Lord Hutton is sufficient. There is no need for this to be qualified by further looking for malice, fraud, insolence cruelty or similar specific conduct. There is no authority that supports Dr McGregor's view to this effect.
>
> *(iv) The unlawful imprisonment of Mr Muuse was an outrageous exercise of arbitrary executive power.*
>
> 72. There are a number of factors that show that the unlawful imprisonment of Mr Muuse in this case was not merely unconstitutional but an arbitrary exercise of executive power which was outrageous. It called for the award of exemplary

[85] Authorities bundle, 341

damages by way of punishment, to deter and to vindicate the strength of the law.

73. The junior officials acted in an unconstitutional and arbitrary manner that resulted in the imprisonment of Mr Muuse for over three months. The outrageous nature of the conduct is exhibited partly by the way in which they treated Mr Muuse and ignored his protests that he was Dutch, partly by the manifest incompetence in which they acted throughout and partly by their failure to take the most elementary steps to check his documents which they held:

i) The actions of the junior officials who exercised the power to imprison Mr Muuse and keep him imprisoned cannot be explained on any basis other than that the officials were incompetent to exercise such powers on the assumption favourable to them (which I have made for the reasons already given) that they were not recklessly indifferent to the legality of their actions.

ii) They disobeyed the order of the court to release Mr Muuse for no reason.

iii) They did not consider the conclusive evidence they held as to his nationality – his ID card and passport – and their other records."

Submissions on exemplary damages for wrongful detention

137. The Claimant says in his skeleton argument for trial at paragraphs 30-32 that the Claimant is entitled to an award for exemplary damages because of the following basic failings in the Defendant's treatment of the Claimant:

i) Treating him as an overstayer, and subject to the domestic immigration regime as opposed to the EEA Regulations 2006.

ii) Detaining the Claimant when removal was not to take place on the same day as intended when the initial decision to detain was taken. There was clearly an alternative to detention, and the Claimant clearly posed a low risk of absconding.

iii) Failing to afford him 30 days to leave the UK voluntarily as he was entitled to under the EEA Regulations even if he had ceased to benefit from an ongoing right of residence.

iv) Detaining the Claimant in breach of the Defendant's own policy guidance with respect to detaining the spouse of a Union citizen.

v) Failing to accept at any point during his detention that he benefitted from a right of residence under the EEA Regulations 2006 despite the point being made repeatedly and being supported by evidence.

vi) Failing to afford him a right of appeal against the decision to remove him.

vii) Failing to afford him a right of appeal against the decision to refuse his application for an EEA residence card.

viii) Misleading the FTT in the bail summary for both his bail hearings. In the first bail hearing, this led the FTT to refuse bail on the basis of an entirely erroneous understanding of the Claimant's immigration history and status.

138. Mr Jafferji submits at paragraph 26 of the Claimant's schedule of damages, dated 13 June 2024, that the Court should make an award of exemplary damages for wrongful detention of £50,000.

139. Mr Rawat submits in his closing submissions at a paragraph 20 "the Defendant does not concede that this is a matter where exemplary damages are necessary".

Decision on award of exemplary damages for wrongful detention

140. I find that the unlawful imprisonment of the Claimant was not merely unconstitutional but an arbitrary exercise of executive power which was outrageous for the following reasons:

i) When the Defendant detained the Claimant on 28 April 2017, the Defendant knew that this was contrary to law and to its own policy, because when the Claimant applied for a residence card in August 2015, he had submitted sufficient evidence to establish that he was the spouse of an EEA national exercising her treaty rights. I repeat paragraphs 47 and 48 above.

ii) The Defendant never told the Claimant that he was entitled to a right of appeal against the decision to remove him. I repeat paragraph 49 above.

iii) The Defendant never offered the Claimant a one-month grace period within which to leave the UK voluntarily. I repeat paragraph 51 above.

iv) The Defendant's submissions to Judge Scott Baker when the Claimant applied for bail on 13 June 2017 that it had told the Claimant that original ID documents were required from his wife, but he had not provided them, was untrue, as the Defendant knew. I repeat paragraph 75 above.

v) The Defendant's submissions to Judge Scott Baker that there was no evidence of any kind to indicate that the Claimant's spouse was in the UK exercising treaty rights was to its knowledge untrue. I repeat paragraph 76 above.

vi) The Defendant acted in a deceitful manner in relation to its attempts to remove the Claimant from the UK. On 17 May 2017, while the Claimant was unlawfully detained at Brook House, the Defendant booked to remove the Claimant on a charter flight departing on 23 May 2017. The GCID notes state that the Claimant is not to be given further notice nor told the date of his removal. When the Claimant telephoned the Defendant on 18 May 2017 to ask for an update on his case, he was told that his case was being reviewed. I repeat paragraph 60 above.

141. In short, there was a wholesale failure to comply with the law relating to the spouse of an EEA national exercising their treaty rights. This failure can only be described as outrageous. It goes beyond being unconstitutional and was arbitrary. The Defendant's

Rachel Green, SEO Team Manager, admitted in an internal email of 16 January 2018 that there was no good reason for rejecting the documents provided by the Claimant's solicitors in their letter dated 14 November 2016.

142. In my view, the appropriate award in this case for exemplary damages for unlawful detention is £25,000.

Trespass to the person – 5 June 2017

Claimant's evidence

143. On 5 June 2017, G4S officers conducted a "planned C&R intervention" to remove a detainee, D390, from the cell he shared with the Claimant.

144. In the Particulars of Claim, it is said[86],

> "11. … Here the Claimant was subject to the following trespasses to the person:
>
> aggressively assaulted by multiple officers during removal of cellmate, pinned down, and kept from being able to move.
>
> 12. The Claimant did not sustain any long-term physical injury as a result of the trespasses to the person."

145. In his witness statement dated 27 January 2020, the Claimant says[87],

> "63. … When they came into our cell I was sat on my bed and I stayed there, I did not move or try to interrupt them. Around four officers pinned down my cellmate and then some of them came over and pinned me down. There was no need for this given I had always remained compliant and I was of no harm to them I was just sitting on my bed. … They told me they were pinning me down to protect me. … I told the immigration officers that I would sit on my bed instead and I would not do anything, they could then come and detain Mr Ehek if they wanted. When they barged in, despite me sitting on my bed, they were very forceful. They used so much force at one stage I thought they had broken my hand. I was in a lot of pain and I was screaming for them to just release the pressure, but they ignored me.
>
> …
>
> 65. … They were wearing dark clothes and a jumper which covered their name badge. They were also wearing a helmet which covered their whole fact but their eyes … The way they were dressed made the whole experience even more menacing

[86] 35
[87] 111-112

and distressful. I did not feel safe. I felt there was no protection for me in detention."

146. In his oral evidence in the present proceedings, the Claimant confirmed that he had not been physically injured in any way and that no one had handled him.

Video evidence of 5 June 2017

147. The Court was shown the following video recordings:

i) UOF137.17 (1).MP4 ("G4S Video 1"). This recording lasts 4'18" and involves a pre-briefing to 6 staff in PPE including helmets with visors by Stewart Povey-Meier.

ii) UOF 137.17 (2).MP4 ("G4S Video 2"). Recorded on the same handheld camera as G4S Video 1, this recording lasts 12'29" and shows the staff entering the cell and escorting D390 out of the cell and down the stairs.

iii) UOF 137.17 BWC.MOV ("G4S Video 3"). Recorded on a body worn camera worn by the supervising G4S officer, this recording lasts 12'36". It also shows the staff entering the cell and escorting D390 out of the cell and down the stairs.

148. I find that the video evidence shows:

i) The layout of the room is that there was a curtained window on the far wall opposite the door; two beds on either side on the room and up against that far wall, and a privacy curtain shielding the toilet on the left-hand side.

ii) The detention custody manager, Stewart Povey-Meier, can be heard to ask the Claimant to come to the door. Mr Povey-Meier speaks to the Claimant through the crack along the hinged edge of the door, asking him to come out of the cell with the officers so that he can talk to the Claimant's cellmate, D390. The Claimant's response is only partially audible on the footage, but he says in a calm voice, "I'm sorry, I don't know what's going on (inaudible) sorry". The rest of the Claimant's response to Mr Povey-Meier is inaudible. Mr Povey-Meier replies, "Okay" and indicates to the others that the Claimant is not coming out. Mr Povey-Meier then unlocks and opens the cell door, and six officers immediately enter the cell, which is in darkness. All the officers are in personal protective equipment and two of them are carrying riot shields. Within a couple of seconds of the cell door being opened, Detention Custody Officer (DCO) Shadbolt, DCO Sayers and DCO Bromley move rapidly towards D390 and push him onto his bed using a shield. None of the officers speak to D390 before force is used against him. D390 says, "I'm here, I'm here, What happened? I'm packing my stuff".

iii) DCOs Timms, Bulled and Farrell follow behind and surround the Claimant's bed, thereby preventing him from moving from it. The Claimant is sitting in the bed, holding his hands up. DCO Timms holds his shield close to the Claimant to prevent him from moving.

149. I find that it cannot be seen from the video footage whether there was direct contact between DCO Timms' shield and the Claimant. The Claimant repeatedly said to the officers standing around his bed, "I am not going anywhere please. I am not going anywhere".

150. The cell lights were turned on approximately 25 seconds after the officers entered the cell, by which time D390 had been restrained. Approximately 15 seconds after this, D390 was led onto the landing, with his arms restrained behind his back by DCOs Bromley and Shadbolt.

151. The Claimant is not visible on the footage for the remainder of the incident.

Submissions on damages for trespass to the person

152. Mr Rawat submits that on the video, the time period with which the Court is concerned lasts from the time G4S officers enter the room to the point where D390 is brought out of the room (01'25" to 02'.00" on G4S Video 2; 01'.02" to 01'.37" on G4S Video 3). That would be 35 seconds. If the time is extended to the point where the officer with the shield exits the room, then the relevant time period is 1 minute 9 seconds (01'.02" to 02'.11" on G4S Video 3).

153. Mr Rawat accepts that where unlawful detention has been admitted, as here, in principle that renders any touching unlawful. Mr Rawat submits that the Claimant was not injured, was not handcuffed and the incident did not occur in a public place. Mr Rawat referred the Court to the following comparable cases:

    i) In *Okoro v Commissioner of Police for the Metropolis* [2011] EWHC 3 (QB)[88], the claimant was handcuffed upon arrest and then detained for four hours before being released without charge; a period during which the fire brigade had to attend to remove the handcuffs. He received £2,000 for unlawful arrest, unlawful detention, and assault (the handcuffing) (§135). That figure updates to £3,699.10, applying Simmons v Castle and adjusting for inflation.

    ii) In *Mohidin & Ors v Commissioner of Police for the Metropolis* [2015] EWHC 2740 (QB)[89], the judge found that the first claimant been forced into a police van which constituted a battery and was then detained for "about five minutes". He received £200 in basic damages, which updates to £297 when adjusted for inflation. The second claimant ("BK") was found to have been unlawfully arrested. He was physically assaulted by police officers and detained in a police van for a total of 25 minutes while handcuffed to the rear. Overall BK was detained for just short of 20 hours, during which he was strip searched. He was awarded £4,750 in basic damages, of which £250 was for the pain, suffering and loss of amenity arising from an assault. This award updates to £7,047, of which £372 is the updated award for pain, suffering and loss of amenity. The third claimant ("AH") failed to establish his claim, but the judge observed that had he done so then he would have received £3,500 for a period of detention lasting 10

[88] Authorities bundle, 596
[89] Authorities bundle, 869

hours, during which he was searched (an assault). Adjusted for inflation, this award updates to £5,193.

iii) *Stewart & Chergui v Commissioner of Police for the Metropolis* [2017] EWHC 921 (QB)[90] involved several incidents. One was the unlawful arrest of the second claimant from which he was released after 1.5 hours. Damages were agreed at £1,300 (updates, when adjusted for inflation to £1,850). The judge awarded an additional £500 for the fact that the second claimant was a minor whose arrest had involved him being handcuffed in a public place (updates to £711).

154. Mr Rawat submitted that the appropriate award for trespass to the person was £250.

155. In the Claimant's 2018 schedule of damages, he sought £3,500 compensatory damages for trespass to the person[91]. In the schedule of damages dated 13 June 2024, Mr Jafferji says,

> "Given the context and nature of the specific assault, that it was entirely unjustified, frightening, and the fact that it was carried out by multiple persons wearing body armour, an award of £5,000 is appropriate in this case."

Decision on award of damages for trespass to the person

156. I find that the Claimant has in his written statement for the Brook House Inquiry and in his witness statement dated 27 January 2020 deliberately exaggerated the seriousness of the trespass. Having watched the video footage, I accept the Defendant's case that there is no basis for the Claimant saying that:

i) The officers pinned him down. While I accept that the officers prevented him from moving by standing around him, the video footage does not show them using their hands or any part of their body or a shield to pin him down.

ii) The officers were very forceful and that the Claimant thought they had broken his hand. The video evidence shows that the officers did not use any force against the Claimant. The officers stood around the Claimant's bed, preventing him from moving. The Claimant did not ask to receive any medical assistance because he suffered no physical assault.

iii) He was screaming for the officers to release the pressure.

157. I find that it is impossible to conclude from the video footage whether the officer with the shield brought the shield into contact with the Claimant. If the shield did come into contact with the Claimant, the Claimant accepted in evidence that he suffered no injury. Having regard to the deliberate exaggeration in the Claimant's account of the trespass to his person, as shown by the video evidence, I cannot accept his evidence that the shield came into contact with his body.

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[90] Authorities bundle, 1071
[91] 37

158. Although the Claimant's exaggeration significantly reduces his credibility and the weight I can place on his evidence, I accept that the six officers rushing into his cell and three surrounding his bed in personal protective equipment, one of which was carrying a shield and standing very close to the Claimant to prevent the Claimant from moving, was unjustified because it was disproportionate, unnecessary and inappropriate. I accept that the officers' personal protective equipment and shield made the experience menacing and distressing.

159. In assessing the damages for trespass to the person, I bear in mind that the trespass to the person took between 35 seconds and 69 seconds, and involved no injury to the Claimant.

160. I accept Mr Rawat's submission that the appropriate award for general damages for trespass to the person is £250.

Law - Article 3 ECHR

161. Article 3 of the ECHR provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

162. In order for there to be a violation of Article 3, the ill treatment must attain a minimum level of severity. In *Szafrański v Poland*, case 17249/12, the European Court said[92],

> "19. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).
>
> 20. As the Court has held on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is 'degrading' within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see Peers v. Greece, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and Valašinas v. Lithuania, no. 44558/98, § 101, ECHR 2001-VIII).

[92] Authorities bundle, 84-95 at 90-91

21. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the level of suffering and humiliation involved must not go beyond that which is inevitably connected with a given form of legitimate treatment or punishment.

22. In the context of prisoners, the Court has emphasised that a detained person does not lose, by the mere fact of his incarceration, the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. (see *Valašinas*, cited above, § 102, and *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

23. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

24. In the context of prison conditions the Court has frequently found a violation of Article 3 of the Convention in cases which involved overcrowding in prison cells (see, among many other authorities, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007, and Orchowski, cited above, § 135). However, in other cases where the overcrowding was not so severe as to raise an issue in itself under Article 3 of the Convention, **the Court noted other aspects of the physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation**, access to natural light or air, the adequacy of heating arrangements, **compliance with basic sanitary requirements and the possibility of using the toilet in private**. Thus, even in cases where a larger prison cell was at issue - measuring between 3 and 4 sq. m per inmate - the Court found a violation of Article 3 since the space factor was coupled with an established lack of ventilation and lighting (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; and Peers, cited above, §§ 70-72), or with a lack of basic privacy in the detainee's everyday life (see, mutatis mutandis,

> *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov*, no. 6847/02, §§ 106-107, ECHR 2005-X (extracts), and *Novoselov v. Russia*, no. 66460/01, §§ 32, 40-43, 2 June 2005)." (my emphasis)

163. In *R (HA) Nigeria v SSHD [2012] EWHC 979 (Admin)* Singh J (as he then was) said in respect of degrading treatment under Article 3 ECHR, by reference to principles derived from the jurisprudence of the ECtHR, and in particular the decision in *Kudla v Poland (2002) 35 EHRR 11*,

> "(4) It has deemed treatment to be degrading because it was such as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them (para. 92)."

164. In *Grant v Ministry of Justice* [2011] EWHC 3379[93]. Hickinbottom J (as he then was) said,

> "36. In respect of Article 3 generally, "degrading treatment" means treatment "such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance" (Republic of Ireland v United Kingdom (1978) EHRR 25 at paragraph 167, ("Ireland")). It is important to note that "degrading treatment" is defined in terms of its effects on the victim, a point to which I shall return (see paragraph 47 and following below).
>
> 37. It has frequently been said that, for treatment to amount to a breach of Article 3, it requires a "minimum level of seriousness" (Gorodnichev v Russia (2007) Application No 52058/99 at paragraph 100) or, more usually, a "minimum level of severity" (see, e.g., Pretty at paragraph 52). This has been described as "in the nature of things, relative" (Selmouni at paragraph 100); but that does not mean that the Article 3 norm for degrading treatment is variable. As Selmouni goes on to explain (in paragraph 100), it simply means that the assessment of the minimum level of severity "… depends on all the circumstances of the case such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age a state of health of the victim etc".
>
> 38. Furthermore, in the context of prison conditions, although the court may focus on particular aspects (notably of course those of which specific complaint is made), in considering whether the minimum level of severity is met, it looks at the conditions as a whole and their effect as a whole. That is the consistent approach of the Strasbourg court: to look at all of the relevant circumstances of each case.

[93] Authorities bundle, 644 – 696 at 651, 652 and 657

…

> 52. In my view, the test with regard to minimum severity is an objective test, to be determined on the basis of all relevant circumstances, including the effects that the treatment or conditions are likely to have upon a person with the attributes of the victim. However, the definition of "degrading treatment" is focused on the effects on the victim; and, as the Strasbourg cases indicate, unless a claimant can show, by direct or inferential evidence, that the ill-treatment in fact caused him serious suffering in terms of (e.g.) physical or psychiatric injury, or psychological harm or particularly serious evidenced distress, it will usually be difficult for him in practice to show that that objective test has been satisfied. (I return to this below, in the context of the burden and standard of proof in Article 3 claim: see paragraphs 74 and following). He may be able to do so if, for example, (i) it can be inferred from the nature of his ill-treatment that he must have suffered distress or anguish of a sufficient level, or (ii) he suffered from a mental condition that meant that he could not fully appreciate his own suffering, or protect himself from it by (e.g.) pursuing a complaints procedure."

165. In *D v Commissioner of Police of the Metropolis* [2014] EWHC 2493, Green J gave the following general guidance as to the application of Article 3[94]:

> 17. … In the latter case of non-pecuniary harm (covering harm not readily quantifiable) the court adopts a more broad brush approach to setting an appropriate quantum award. No attempt therefore is made to apply a "but for" or counterfactual analysis, or seek to equate harm with any identifiable measure of financial value. Routinely, quantum figures are justified simply by the broadest of references to "equity".
>
> …
>
> 36. An overarching principle found in Strasbourg case law (and reflected in section 8 of the HRA) is that of flexibility, which means looking at all of the circumstances and "the overall context". This includes bearing in mind "moral damage" and the "severity of the damage". As the Grand Chamber explained in Al-Jedda v United Kingdom (2011) 53 EHRR 789, para 114:
>
> "The court recalls that it is not its role under article 41 to function akin to a domestic tort mechanism court in apportioning fault and compensatory damages between civil parties. Its guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach

[94] Authorities bundle, 820, 822, 823 and 837

occurred. Its non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage."

…

40. The court has also identified, as relevant to the "overall context" of a case the need to take account of the state's overall conduct. The sorts of factors of potential relevance here would be: whether the violation was deliberate and/or in bad faith; whether the state has drawn the necessary lessons and whether there is a need to include a deterrent element in an award; whether there is a need to encourage others to bring claims against the state by increasing the award; whether the violation was systemic or operational. For instance, in *Assenov v Bulgaria (1998) 28 EHRR 652* , para 175 the only factors which the court identified as relevant to quantum were "the gravity and number of violations". In similar vein in *Van Colle v Chief Constable of the Hertfordshire Police [2007] 1 WLR 1821*, para 124, the Court of Appeal stated that the "culpability of the misconduct in question" was relevant to both the issue of liability and compensation.

…

68. … (7) The following identifies the range of awards for relevant article 3 violations. The range (taking into account adjustment factors for cost of living and inflation) of awards for psychological/mental or other harm in article 3 cases is: (a) €1,000-8,000 where the court wishes to make a nominal or low award; (b) €8,000-20,000 for a routine violation of article 3 with no serious long term mental health issues and no unusual aggravating factors; (c) €20,000-100,000+ for cases where there are aggravating factors such as (i) medical evidence of material psychological harm, (ii) mental harm amounting to a recognised medical condition, (iii) where the victim has also been the victim of physical harm or a crime caused in part by the state, (iv) long term systemic or endemic failings by the state, (v) morally reprehensible conduct by the state. This list is by no means exhaustive."

166. In *R(ASK) v SSHD* [2019] EWCA Civ 1239, Hickinbottom LJ said[95]:

"67. It is uncontroversial that conditions of detention … may result in a detainee suffering inhuman or degrading treatment.

…

[95] Authorities bundle, 419 - 484 at 438-439

> 69. As Singh J suggests, not only must the suffering and humiliation be over and above that inevitable in legitimate detention, a high level of suffering is usually required, variously put in terms of (e.g.) "…intense suffering …" (*Iovchev v Bulgaria* (2006) (ECtHR Application No 41211/98) [2006] ECHR 97 at [133]); "… serious suffering…" (R *(Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66 at [8] per Lord Bingham), or "… intense physical or mental suffering" (Pretty at [52]).
>
> …
>
> 71. However, in this respect, although subjective suffering will often be crucial evidence, the threshold test is objective,"

Submissions on Article 3 ECHR

167. In their closing submissions, Mr Jafferji and Mr Hingora say,

> "66. Thereafter, the Claimant was kept in detention in appalling conditions, and in an environment where there was widespread abuse. The Claimant describes the circumstances in detail at §§50 – 83 of his witness statement. Pertinent matters set out by the Claimant are:
>
> i. Prison like conditions
>
> ii. Widespread drug use
>
> iii. Did not ever feel safe, lived in fear, worried about the convicted criminals he was detained with
>
> iv. Fell ill after around a week, but did not receive any proper treatment; only saw a medical professional around three days after he made a request
>
> v. Very stressful environment, constantly negative mood in the detention centre, heard detainees frequently being taken for enforced removal and they would be shouting and screaming, creating an environment of fear and stress (para 60)
>
> vi. Small, cramped cell conditions (paras 49, 75-76)
>
> vii. Dirty, smelly, and unclean cells and toilets that were not cleaned by staff even between detainee change-overs (paras 50-51, 78, 80)
>
> viii. Lack of cleaning provisions provided to detainees to clean their own cells (para 80-81)
>
> ix. Being locked-up 9pm-8am in his cell overnight as well as during roll-counts during the day (paras 74-75)

x. Screaming and banging on cells by distressed locked-up detainees, adding to anxiety and lack of sleep (para 74)

xi. Complete lack of privacy when using the toilet which he had no choice to use during lock-in and for which a curtain had not been provided (para 75, 78)

xii. Close proximity of the toilet to his bed, which resulted in him inhaling all the smell coming from the toilet (para 78)

xiii. Having to clean the toilets and sinks in the cell (paras 80 – 81)

xiv. Lack of ventilation which contributed to his cold and flu-symptoms and headaches (paras 75-77)

xv. Communal, smelly, dirty and poorly maintained showers in which our client had to disrobe in sight of other men (para 75)

xvi. Basic and poor-quality food (paras 60, 83)

xvii. Insufficient food to go around for those who were unlocked last for from their cells, which felt like being tortured as whether you were able to have food or not was at the whim of the officers who decided who should be unlocked for food first (paras 60, 83)

xviii. Witnessing drug abuse and detainees fainting and being rushed to hospital (paras 68-70)

xix. Bad sanitation and hygiene generally, with overflowing and stinking dustbins everywhere on the wing

xx. Witnessing use of force on his cellmate and being subject to two officers surrounding him in full PPE and having to push the shield of one of them away as he pressed down on him- this amounted to unlawful use of force on him; and this experience left him crying, and fearful of what could happen to him and in addition to the lack of safety he felt outside his cell, it made him fearful of what could happen to him in his cell, and feeling that he was in a lawless environment (paras 63-65)

xxi. Seeing another detainee being forcefully taken away from his cell and put into confinement (para 66)

xxii. Incident in his cell when his cellmate was running around the cell and hitting the walls in the middle of the night but nobody answered the emergency call (para 67)

xxiii. Being threatened by another detainee (para 71)"

168. In his closing submissions, Mr Rawat says,

"51. The Claimant has not pleaded which of the substantive duties arising under Article 3 ECHR (operational or systemic) have been breached.

52. The leading domestic authority on the application of Articles 3 and 8 ECHR, when considering detention conditions, remains Grant v. Ministry of Justice [2011] EWHC 3379 (QB) [**AB/644**]. The case concerned the regime of "*slopping out*" at HMP Albany. Prisoners were held overnight for up to 13 hours unable to access a toilet and were provided a plastic bucket in which to urinate and defecate. They had to empty that bucket when they next had an opportunity. The claimants in Grant were two prisoners who had been held at HMP Albany for seven and two years respectively and alleged that being subjected to slopping out breached their rights under Article 3 and Article 8 ECHR.

53. Dismissing the claims, Hickinbottom J (as he then was) provided an authoritative analysis of the relevant principles to be derived from the jurisprudence of the European Court of Human Rights ("ECtHR") on Article 3. These principles have been reiterated in further decisions of the higher courts (see in particular R(ASK) v SSHD [2019] EWCA Civ 1239, where an appellant in reliance on expert evidence argued detention had worsened his mental health but the Court of Appeal found that the detention did not breach Article 3 ECHR. Hickinbottom LJ, as he had become, gave the judgment of the Court in ASK **AB/419**). Thus:

(a) To give rise to a breach, Article 3 ill-treatment must attain a "*minimum level of severity*", the test for which is an objective one having regard to all the circumstances of the instant case (Grant §37-38, 52; ASK §68 (1), 71).

(b) This "minimum level of severity test" has a high threshold (Grant §46). That high threshold is not variable even if the allegation is limited to degrading treatment (Grant §37).

(c) Where prison conditions are at issue, factors of particular importance to the overall consideration are the intention behind the treatment and the effect it is likely to have on someone with the attributes of the victim (Grant §39-40).

(d) That a person is in state detention does not lower the threshold for the minimum level of severity test. Where treatment or conditions in prison generate more humiliation, distress or other suffering than is inherent in a prison sentence then, to prove a violation of Article 3 it remains necessary for a complainant to show that, in all of the circumstances, the treatment or conditions satisfy the minimum level of severity test. The Court must exclude that suffering and humiliation

which is the inevitable consequence of being detained (Grant §46; ASK at §68(5) and 69).

(e) An individual complainant bears the burden of showing that he has suffered the ill-treatment he alleges, and that this amounts to a violation of Article 3 (Grant §73).

(f) As to the standard of proof, the ECtHR has treated with "certain caution" a case where a prisoner has not adduced any medical evidence showing the impact of the conditions on his physical and psychological well-being. It has refused applications where, notwithstanding prison conditions were not acceptable, there was an absence of evidence that the applicant had suffered anything other than "raised anxiety" as a result of those conditions and therefore, "it has not been conclusively established that the applicant suffered treatment that could be classified as inhuman or degrading" (Grant §74-75).

(g) Hickinbottom J held that the standard in domestic law is the balance of probabilities (Grant §70, 74, 77, 78.3-78.4). In ASK, Hickinbottom LJ observed as to the standard "[there] is no clear guidance in the [ECtHR] cases; other than it is a very high hurdle, and one which complainants generally may not find it easy to overcome. (§72) [emphasis added].

(h) The learned judge said a "*high level of suffering is usually required*" and that the "*Strasbourg court looks for positive evidence of such suffering*". The ECtHR's caselaw indicates that, unless a claimant can show, by direct or inferential evidence, that the ill-treatment in fact caused him serious suffering in terms of (e.g.) physical or psychiatric injury, or psychological harm or particularly serious evidenced distress, it will usually be difficult for him in practice to show that the objective test has been satisfied (Grant §32; 36, 47-50, 52). In *ASK*, Hickinbottom LJ stated: "*ill-treatment that attains the appropriate minimum level of severity usually involves the relevant individual suffering evidenced actual bodily harm or intense physical or mental suffering*." (§70). He continued that while "*subjective suffering will often be crucial evidence*", the test remained objective (§71). That usually means there must be serious suffering: this important point is emphasised when one considers *Hilton v United Kingdom* (1981) 3 EHRR 204, where the Court said that for conditions to amount to degrading treatment, they must be shown to be more than merely "*depressing or discouraging*".

(i) Hickinbottom J did not define "inhuman treatment" in Grant. The learned judge did so in ASK observing that the ECtHR has considered "treatment to be inhuman because, inter alia, it was premeditated, was applied for hours at a stretch, and caused either bodily injury or intense physical or mental suffering" (68(3)).

Decision on whether Article 3 ECHR was violated

169. A finding as to whether Article 3 ECHR was violated is a finding of law, not fact. It is an objective test, having regard to all the circumstances of the case.

170. The question is whether the conditions of the Claimant's detention and treatment at Brook House attain a "minimum level of severity" to amount to inhuman or degrading treatment. The test is an objective one, and the test of a minimum level of severity is a very high hurdle. An overarching principle is that of flexibility, which means looking at all the circumstances and "the overall context". It is clear law that conditions of detention may result in a detainee suffering inhuman or degrading treatment. When assessing conditions of detention, account has to be taken of the cumulative effect of those conditions, as well as of specific allegations made by the Claimant.

171. The Claimant has the burden of proving on the balance of probabilities that he has suffered the ill treatment he alleges. If he does so, the question is whether that ill treatment attains a minimum level of severity to amount to inhuman or degrading treatment. I set out my findings below as to whether the Claimant was subject to ill treatment while unlawfully detained at Brook House.

172. Firstly, I accept the Claimant's evidence that he was kept in prison-like conditions, which were oppressive and made him feel humiliated:

i) In his witness statement, dated 27 January 2020, the Claimant says[96],

> "46. In Brook House, I noticed there were barbed wire and tall fences. It resembled a prison and was very imposing. Inside it was no different."

ii) In his witness statement, dated 20 April 2021, the Claimant says[97],

> "I was detained at Brook House Immigration Removal Centre (Brook House). The conditions of Brook House were no different to a prison. I felt humiliated and felt as if I was a criminal."

iii) The Claimant's GP's notes for 14 September 2017 record the Claimant as saying that he had a history of flashbacks since spending three months in a detention centre, which was like a prison[98].

173. I find that the Claimant's account is corroborated by the Brook House Inquiry report:

i) In Chapter D.3, "The Physical Design and Environment", it is said[99],

> "In 2018, Ms Sarah Newland, Head of Tinsley House during the relevant period (1 April 2017 to 31 August 2017), and

[96] 106
[97] 85
[98] 344
[99] Brook House Inquiry report, 293-294 and 296-298

subsequently Deputy Director of Brook House and Tinsley House (Gatwick IRCs), remarked:

'Brook House is ostensibly a prison. It is built like a prison – it is prison wings. I think the whole environment that that brings, the acoustics, the noise, the numbers can be really overwhelming for people who haven't experienced it before.'

…

Conditions inside Brook House

15. The prison-like, short-term specification for Brook House had consequences for the environment in which detained people lived.

16. Professor Bosworth commented:

"The design of Brook House Immigration Removal Centre is inappropriate for its purpose. The half doors of showers are undignified, while the toilets in the bedrooms and the inability to open the windows create unpleasant living spaces. Men on the footage … report that their living spaces became uncomfortably hot in the summer months. These claims are reinforced by details in the IMB minutes. There is limited access to natural light and outdoor space as well as only a small area for activities. The daily schedule is punctuated by roll calls during which men are locked back in their rooms."

Cells

17. Detention Custody Officer (DCO) Callum Tulley told the Inquiry that most DCOs referred to detained people's rooms as cells since they "were so obviously cells". They were small, with two single beds. There was no handle on the inside of the door which would enable detained people to leave freely, the window was unopenable, and there was a toilet in the cell that caused it to smell.

…

19. HMIP highlighted these and other issues about poor conditions in every inspection report since 2010 (discussed in Chapter D.11). Following its 2016 inspection, one of HMIP's main recommendations was that:

"Concerted action should be taken to soften the prison-like living conditions. Showers and toilets should be adequately screened, and toilets deep cleaned. Units should be well ventilated and detainees should have more control over access to fresh air."

ii) In Chapter D.9, "Staffing and culture", of the Brook House Inquiry report, it is said[100],

> "The prisonisation of Brook House
>
> 42. Brook House was built to the specification of a Category B prison. It was not just the building that was prison-like; the regime, the way staff saw their roles and the treatment of detained people all demonstrated 'prisonisation' (which refers to a non-prison setting being treated, in effect, as a prison, with detained people treated as criminal and dangerous).
>
> 43. DCO Shayne Munroe told the Inquiry that some staff "thought they were working in a prison". This manifested in the way they spoke to detained people. I find the use of prison-focused language entirely unsurprising, as I have no doubt that Brook House felt like a prison to many, particularly to the majority of detained people."

174. Secondly, it is common ground that the Claimant was locked in his cell for a manifestly excessive number of hours each day, from 9pm until 8am, as well as during two roll calls during the day. The Claimant says in his witness statement, dated 27 January 2020, at paragraphs 74-75[101] that he was locked up for the majority of the day and his "freedom" was non-existent. This is confirmed by the Brook House Inquiry report, where it is said in Chapter D.4[102],

> "35. Before and during the relevant period, detained people at Brook House were locked in their cells from 21:00 to 08:00 every day, and during two daily roll calls, each lasting approximately 30 minutes.
>
> 36. This lock-in regime had a detrimental impact on detained people, which was likely exacerbated by the poor conditions in cells."

175. The Government accepted in its Response to the Public Inquiry into Brook House Immigration Removal Centre, that the number of hours detainees were locked in their cells, namely approximately twelve hours, was excessive. It is said[103],

> "One of the most significant changes [following the publication of the report] affecting staffing levels is a shorter night state, when staffing requirements are reduced, limiting the amount of time a person can be locked in their room overnight to up to a maximum of 9 hours. This 9-hour maximum night state is now embedded."

[100] Brook House Inquiry Report bundle, 496
[101] 116-117
[102] Brook House Inquiry Report bundle, 325
[103] Brook House Inquiry Report bundle, 721

176. Thirdly, there was a complete lack of privacy when using the toilet in his cell. The Claimant says in his witness statement dated 27 January 2020, at paragraph 75, that for half of the time he was unlawfully detained, there was no curtain and when sitting on the toilet, you could see the fellow detainee. In addition, if someone walked into the cell, they would be able to see the person using the toilet. This is corroborated by the Brook House Inquiry Report, where it is said in Chapter D.3, "The Physical Design and Environment"[104],

> "18. There was a toilet with a privacy screen (a waist-high partition) and sometimes a curtain (although this was not always available) that separated the toilet from the rest of the cell. Detained people vividly described the humiliation they felt about having to use the toilet in front of their cell mates. Mr Tulley told the Inquiry that he would visit cells with unscreened toilets "on a weekly if not daily basis" and that detained people would often complain to him about the smell in their cells and the lack of fresh air after they had been locked in for long periods of time. It was humiliating for detained people to use the toilet without a curtain in very close proximity to others, particularly where the ventilation was poor. There was no reason why, at the very least, adequate partitions could not have been provided between the toilet and the rest of the cell."

177. Fourthly, the lack of privacy was exacerbated by the lack of adequate ventilation in the Claimant's cell. The Claimant says in his witness statement, dated 27 January 2020[105],

> "As there was no ventilation in our cell the smell of the toilet would linger around. The smell was horrible. The toilet and sink also got dirty quickly. There were two of us using the same toilet every day. The toilet had no lid and there was no way to cover it over, so you could see the inside of it constantly."

178. This is corroborated by the Brook House Inquiry report, where it is said in Chapter D.3, "The Physical Design and Environment"[106],

> "20. The lack of ventilation in cells was described in 2018 as the "chief complaint among detainees" by Mr Jeremy Petherick, Managing Director of G4S Custodial and Detention Services. In his evidence to the Inquiry in March 2022, Mr Petherick said that "we were doing our best to alleviate many of the inherent problems" with the design of the building, which included unopenable windows. Mr Lee Hanford, Business Change Director at G4S during the relevant period, also recognised that ventilation was an "issue" even before the introduction of 60 additional beds. He said that the windows were worse than prison windows because prison windows had a "triple vent". The Brook House windows did not have such vents in order to reduce the

[104] Brook House Inquiry report, 296-298
[105] 118
[106] Brook House Inquiry report, 296-298

sounds from Gatwick Airport, which is located next to Brook House."

179. Fifthly, the toilet was continually dirty and it was difficult to clean. In the Claimant's evidence to the Brook House Inquiry, is the following passage[107]:

> "Q. What about the toilet itself? Was it clean or dirty?
>
> A. No, it's not clean. It's like an old WC toilet with plaques on it, brown and things like that.
>
> Q. So it was stained?
>
> A. Proper stained."

180. In his witness statement, the Claimant says at paragraph 80[108],

> "We would also do a deep clean of the toilet every few days to help keep the smell away, but this did not work, and the smell would still fill the room every day. … There was no proper cleaning materials and chemicals etc. … It was disgusting and unhygienic."

181. The Claimant's evidence is confirmed by the Brook House Inquiry report. It is said in Chapter D.3, "The Physical Design and Environment"[109],

> "20. … Mr Petherick, in his evidence to the Inquiry, stated that the toilets were difficult to clean because their construction materials required particularly abrasive chemicals to be used (cleanliness had to be balanced against the health risks associated with the use of those cleaning materials)."
>
> 21. However, the Inquiry heard no evidence that specific action was taken by G4S in response to HMIP's recommendations. Poor conditions remained during the relevant period. Issues with the lack of ventilation and unscreened and unclean toilets in small cells, partly a product of the prison-like design, led to humiliating experiences for many detained people."

182. The Brook House Inquiry report summarised the lack of privacy, lack of ventilation and the smells in the cells, and the toilet being dirty and stained is summarised in the Executive Summary of the Brook House Inquiry report as follows[110],

> "24. Poor, sometimes dirty, facilities and a lack of activities further contributed to the harshness of the environment. Detained people stayed in small, poorly ventilated cells,

[107] Brook House Inquiry report bundle, 210
[108] 119
[109] Brook House Inquiry report, 296-298
[110] Brook House Inquiry report bundle, 19

containing toilets that were sometimes unscreened and unclean. This led to humiliating experiences for many detained people."

183. Sixthly, the Defendant failed to provide a secure institution by failing to prevent significant illicit drug use by detainees at Brook House, which caused the Claimant to feel unsafe and scared. The Claimant says in his witness statement, dated 27 January 2020[111],

> "70. I would see people taking drugs such as spice and losing control and I remember feeling unsafe and scared because some of the people around me were murderers.
>
> …
>
> 74. It was also not uncommon to see people wetting themselves, collapsing and frothing at the mouth because of spice. The detention centre smelled of spice. Brook House has damaged me mentally and physically."

184. The Claimant's evidence is corroborated by the Brook House Inquiry report, in which it is said:

i) In the Executive Summary[112],

> "28. Illicit drug use by detained people at Brook House was a significant problem during the relevant period, particularly with the new psychoactive substance known as 'spice'. G4S and the Home Office were aware of the availability of drugs at Brook House. The Inquiry heard evidence alleging that staff members may have been bringing drugs into Brook House. G4S's response to specific allegations against individual staff members was slow and inadequate. There was a sense of defeat from staff in how to address the spice problem and this was compounded by a lack of training on how to deal with those who were suffering the effects of spice."

ii) At Chapter D.4, "Detained people's safety and experience"[113],

> 3. There was a significant drug problem during the relevant period at Brook House, particularly with the new psychoactive substance known as spice, a synthetic drug that mimics the effect of the active ingredient in cannabis.
>
> …
>
> 5. Professor Mary Bosworth, the Inquiry's cultural expert, considered the extent of the drug problem at Brook House to be "shocking", referring to the "number of times that the footage

[111] 115 and 117
[112] Brook House Inquiry report bundle, 20
[113] Brook House Inquiry report, 311-313

> showed people having medical emergencies as a result of having taken spice". She considered that "one of the very basic aspects of the institution had failed, which was to provide a secure institution". In its report following an October–November 2016 inspection, HM Inspectorate of Prisons (HMIP) observed: 'The supply and misuse of drugs was the most significant threat to security.'"

185. Seventhly, the staff at Brook House used bad and abusive language, which made the Claimant stressed and depressed:

    i) In the Brook House Inquiry report it is said in the "Pen Portrait" of the Claimant[114],

    > "13. When D1851 [the Claimant] first arrived at Brook House, he thought the environment was like a prison. He found it oppressive, the conditions "disgusting" and felt that his experience was "completely dehumanising". He saw staff using "bad and abusive language". In terms of the manner in which staff spoke to detained people, he said: "You're reminded and being told, 'You should know your place'." He felt he could not complain:
    >
    > "no-one will listen to you, because, in reality, no-one cares about what is happening to you".
    >
    > He was "reminded every day that you could be picked up and thrown back to where you came from at any time", which made him feel stressed and depressed.
    >
    > D1851 described the effect that Brook House had on his mental health as "crushing"."

    ii) The Brook House Inquiry report reached conclusions regarding Brook House which both the Brook House Inquiry and the Government described as shocking events. In its response to the public enquiry, the Government said[115],

    > "2. The documentary footage was utterly shocking, and the government has been clear from the outset that the sort of behaviour on display from some of those staff was totally unacceptable."

186. Eighthly, I have found that the Claimant deliberately exaggerated the trespass to the person on 5 June 2017 to suggest that he was subjected to physical force. In his oral evidence to the Brook House Inquiry and his evidence before me, he accepted that he did not suffer any physical injury. However, I find that the fact that the officers were in PPE and one officer, who was preventing the Claimant from leaving his cell, had a

[114] Brook House Inquiry report bundle, 32
[115] Brook House Inquiry bundle, 719

shield was not justified. I note that a similar view was reached by the Chair of the Brook House Inquiry report. It is said in Chapter C.8, paragraph 28[116],

> "During the relevant period, there was an assumption that full PPE would always be used, with no apparent consideration of the fear or distress that might be caused to detained people by its routine use."

187. Having seen the video footage, I accept that the entry of the officers in PPE and the officer surrounding the Claimant to prevent him from moving from his bed was a frightening experience for the Claimant. Indeed, the Claimant says in his witness statement[117], dated 27 January 2020,

> "65. The way they were dressed made the whole experience even more menacing and distressful. I did not feel safe. I felt there was no protection for me in detention."

188. Ninthly, the Claimant says that he felt unsafe from other detainees due to the failure of the staff at Brook House to provide adequate supervision from the staff at Brook House to break up fights and come to the assistance of detainees who required medical assistance. The Claimant says in his statement to the Brook House Inquiry[118],

> "52. I generally felt very unsafe from the other detainees in the centre. I was threatened by a man who was a Pakistani national. I was playing pool with a few other detainees and he came over to us and told us he wanted to play. Myself and a few other people told him he would have to wait until we were finished. He came right up to me and said, "Do you know who I am". I did not respond because I am not a confrontational person, I do not like to have fights or arguments. He then proceeded to shout at me saying he was going to kill me and that he was going to cut my head off. He also kept gesturing his hand across his neck as if he was going to cut off my head. I had never experienced anything like this before. I was very frightened."
>
> …
>
> 54. Every day I would wake up in Brook House and I would be fearful for my life. Just knowing I was living somewhere with murderers and violent people was terrifying. I felt extremely unsafe around these people and could not rely on the staff to protect me - it was out of control. It was very mentally draining trying to just get on by.
>
> …
>
> 94. I remember one night when I need urgent help from medical problem for my soul mate and nobody came. At about 2:00 AM

[116] Brook House Inquiry report bundle, 194
[117] 113
[118] 174-175 and 185

> in the morning, D390 suddenly got out of bed and started roaming around our cell and hitting walls. He started saying things that did not make sense, it was as if he was not really there. I called the emergency line for around 30 minutes, but nobody ever came to help. When this was happening, I was so scared. I had not witnessed anything like this before. … The officers just did not turn up - I did not feel safe. Again, I cannot stress how the conditions in that detention centre seemed to be designed to mentally torture you. ”

189. The Claimant's evidence is corroborated by the Brook House Inquiry report:

i) In Part A, it is said[119],

> "The treatment revealed in the Panorama programme was shocking and has no place in a decent and humane immigration detention system. This has been acknowledged by the Home Office, which apologised for 'the failures in the contract, in the level of Home Office supervision'. G4S [the Defendant's contractor] also apologised, commenting:
>
> 'Both the mistreatment of the detainees and the failure, by other staff who were present, to intervene to stop it or, to report it was wholly inappropriate, and abhorrent.'"

ii) In the Brook House Inquiry report it is said at Chapter D.1, under the heading "Staffing and Culture"[120],

> "The Inquiry found that there was a toxic culture among staff, with racism, bullying, bravado and 'macho' attitudes present. There was also a considerable amount of abusive, racist and derogatory language used by staff towards or about detained people."

iii) Understaffing led to the conditions for detainees being unsafe and dangerous. In the Brook House Inquiry report Executive Summary it is said under the heading "Staffing and culture"[121],

> "During the relevant period, the environment at Brook House was not sufficiently caring, secure or decent for detained people or staff. It is clear that inadequate staffing levels were a significant issue and affected the experience of detained people. Indeed, witnesses told the Inquiry that Brook House was dangerous because of understaffing. Senior G4S managers and the Home Office were aware of staffing issues, but I found little evidence of attempts to combat them and in turn meet the needs of the increasing numbers of detained people."

[119] Brook House Inquiry report bundle, 43
[120] Brook House Inquiry report bundle, 272
[121] Brook House Inquiry report bundle, 24

190. It is common ground in the present case that the Claimant's ill treatment at Brook House has caused him to suffer a medically recognised psychiatric disorder. The Defendant accepts that the conditions at Brook House were such that it was likely that a detainee would suffer mental health issues. In the Executive Summary to the Brook House Inquiry report it is said[122],

> "The Home Office DES Area Manager for Gatwick IRCs, Mr Ian Castle, characterised Brook House as a place where:
>
> 'if you spend more than 24 hours … you're going to develop mental health issues. It's not a nice place to be."

191. I reject Mr Rawat's submission that the Claimant has not pleaded which of the substantive duties under Article 3 ECHR, operational or systemic, have been breached. It is obvious that the duties which have been breached were systemic. The Brook House Inquiry report says that the problems were systemic.

192. The fact that the duties breached were systemic is, as was observed by Green J in *D v Commissioner of Police of the Metropolis* (supra), a matter that needs to be taken into account in deciding whether the ill treatment had obtained a minimum level of severity.

193. I find that the ill treatment has, when looked at cumulatively, attained a minimum level of severity of inhuman or degrading treatment. The following factors all demonstrate that the minimum level of severity has been reached in this case:

i) The gravity and number of violations. In the present case the violations are very grave and occurring on a daily basis, and this points to the threshold for Article 3 being attained. The Government accepts that Brook House was built to the specification of a Category B prison and that many staff behaved as if it was a prison, speaking to the detainees as if they were prisoners. The Claimant being locked in his cell for 12 hours a day was recognised by the Government as being unacceptable, and the Government said in its response to the Brook House Inquiry report that staffing had been increased to ensure that detainees were not locked in their cells for more than nine hours[123]. The lack of privacy, lack of ventilation and dirt and staining in the toilet were all exacerbated by the unacceptable period of time detainees were locked up in their cells, and led to humiliating experiences for the Claimant. It is common ground that there was significant illicit drug use by detainees at Brook House, and that no attempt was made to bring this under control. I accept the Claimant's evidence that seeing detainees taking drugs such as Spice, loosing control and collapsing was very frightening. The use of bad and abusive language by staff at Brook House was shocking and caused the Claimant to feel humiliated and anxious. The Government described the sort of behaviour on display from some of the staff as "totally unacceptable". I find that the Defendant's failure to provide adequate supervision and break up fights and to come to the assistance of detainees who

[122] Brook House Inquiry Report, 19
[123] Brook House Inquiry Report bundle, 721

required medical assistance led him to be fearful for his life and to feel extremely unsafe.

ii) The high degree of culpability on the part of the Defendant. The breaches were endemic and enabled by senior managers. As was said in the Government Response to the Public Inquiry into Brook House Immigration Removal Centre, dated March 2024, at paragraph 6.8.1[124],

> "The government is particularly mindful of the findings that the negative culture at Brook House during the time of the documentary was endemic and enabled by senior managers."

iii) The breaches were systemic.

iv) The guidance of the European Court in *Szafrański v Poland* (supra) in assessing whether the conditions of detention attain the Article 3 minimum level of severity. The lack of privacy when using the toilet is specifically referred to by the European Court in *Szafrański,* and points to the minimum level of severity being satisfied. Moreover, the lack of privacy is significantly compounded by the lack of adequate ventilation in the Claimant's cell, which again is specifically identified by the European Court in *Szafrański* as a factor pointing to the minimum level of severity being attained.

194. I conclude that the Claimant has proved on the balance of probabilities that the ill treatment to which he was subject when unlawfully detained at Brook House has attained the minimum level of severity of inhuman and degrading treatment.

Decision on award of damages for breach of Article 3 ECHR

195. Christopher Kennedy KC, sitting as a Judge of the High Court, ordered on 12 June 2024,

> "6. The Claimant is permitted to put forward an amount for damages in relation to breach of Article 3 ECHR, there being no figure for such in the 2018 schedule of loss;"

196. In his schedule of damages, dated 13 June 2024, the Claimant claims £26,000 for breach of Article 3 ECHR.

197. I have considered the guidance of Green J in *D v Commissioner of Police of the Metropolis* (supra) at paragraph 68. I find that the present case falls within the range,

> "(c) €20,000-100,000+ for cases where there are aggravating factors such as (i) medical evidence of material psychological harm, (ii) mental harm amounting to a recognised medical condition … (iv) long term systemic or endemic failings by the state, (v) morally reprehensible conduct by the state. This list is by no means exhaustive."

[124] Brook House Inquiry report bundle, 724

198. I have taken into account all those elements of the other sums which I have awarded to the Claimant, which it could be argued cover the same harm as is the subject of Article 3 ECHR. I accept Mr Jafferji's submission that the just, fair and reasonable award is £26,000. I have then considered the totality of the awards in this case. It seems to me that in all the circumstances of this case, the award I am making is not excessive. I accept Mr Jafferji's submission that this is an exceptional case and find that the sum awarded for the violation of Article 3 is not disproportionate in the overall context of the case.

Psychiatric injury

Pre-incident vulnerability

199. In their joint statement, dated 28 February 2020, Professor Elliott and Dr Das say[125],

> "WE AGREE that, based on Mr Adegboyega's self-report, there is no pre-incident vulnerability to developing psychological symptoms."

Psychiatric injury caused by unlawful detention

200. It is common ground that the Claimant's unlawful detention has caused him psychiatric injury. In the joint statement of Dr Das and Professor Elliott, they say[126],

> "3.1 WE AGREE that Mr Adegboyega developed a psychiatric disorder following the index events.
>
> …
>
> 4. Aetiology of Psychological Symptoms
>
> 4.1 WE AGREE that the index events, together with Mr Adegboyega's perception that the detention was incorrect, were on the balance of probabilities the cause of his post-index events psychiatric disorder."

201. Professor Elliott argues that the Claimant has suffered a post-traumatic stress disorder. Dr Das refutes that the Claimant has suffered a post-traumatic stress disorder and says that he has suffered a mixed anxiety and depressive state with PTS features, which he classifies as mild.

Treating doctors' records from 14 September 2017 to 30 June 2023

202. The Claimant was released from the unlawful detention on 24 July 2017.

203. The Claimant's GP notes for 14 September 2017 state[127],

> "Problem stress related problem

[125] 331
[126] 338
[127] 344

history flashbacks from detention centre 3/12 - like a prison

usual sleep was 1am – 8am now in bed by 9 as had to in detention centre

not going to the gym/enjoying things

not eating as much but not exercising either"

204. The Claimant's GP notes for 14 February 2018[128] state:

"Problem Stress related problem (new)

History really struggling-flashbacks, hypervigilant, on guard, insomnia, nightmares, avoids going out. Cannot even bring himself to go to the gym.

Cries when talks about the centre.

Trained as a computer engineer but not working since release. Not suicidal.

Examination anxious but settled with conversation

Medication Citalopram 20mg tablets One To Be Taken each day 28 tablet

Comment signs of PTSD

Refer to HiM [Health in Mind]

start SSRI -given pros and cons = agreed to try"

205. In a referral form from Health in Mind, dated 7 March 2018, the "Clinical Presentation" completed by Dr Evashni Chetty says[129],

"I would be grateful if you could see this gentleman who has symptoms of post-traumatic stress disorder together with depression. ...

Last year he was unfortunately held in a detention centre for 3 months which has led to his PTSD symptoms.

Since his release he has been having flash-backs, hypervigilance, on-guard, insomnia, nightmares and avoiding going out.

…

[128] 344
[129] 359

> He was also previously very active and fit but has been unable to go to the gym. He rarely leaves the house.
>
> When he talks about the detention centre he breaks down in tears.
>
> …
>
> His symptoms have been getting worse with time and he has significant anxiety as well."

206. Between April and June 2018, the Claimant received eight sessions of Cognitive Behavioural Therapy (CBT) treatment.

207. In a letter dated 23 May 2018 from Veronique Jowitt, CBT Therapist, to the Claimant she says[130],

> "At the initial meeting you presented with symptoms of PTSD and depression. These included re-experiencing memories or feelings from the trauma, a heightened sense of threat and vigilance, avoidance of triggers and changes in your beliefs about yourself, other people or your future.
>
> You described feeling tainted by your experience of detention leading to feelings of shame and intense sadness and a strong desire to 'delete' this event from your memory. You described a total lack of trust in the systems which you previously trusted to protect you and your rights leading to hyper-vigilance, fear and mistrust. You described an inability to see a future for yourself leading to feelings of sadness and anger and dealing with this by putting your life on hold and retreating into inactivity and social withdrawal which unfortunately fuelled your depression.
>
> In our work together, we have focused on working with memories, beliefs and reclaiming your life. This involved talking through what had happened, deciding what is a fair way to think about yourself and re-engaging in the activities which you used to enjoy and valued before the trauma.
>
> A month after we started working together, you reported that you had made a number of changes (e.g. going out more, being more active, socialising more) and were beginning to see 'the light at the end of the tunnel'. …"

208. In a letter dated 19 June 2018 from Ms Jowitt to the Claimant she says[131],

> "At the start of our work together you told me about the symptoms of post-traumatic stress that you were experiencing

[130] 357
[131] 356

> following being wrongly detained for three months in an immigration removal centre about a year ago.
>
> …
>
> In your feedback you said that the therapy had helped you to lift yourself from the lowest point in your mind to a much better place. You said you had been holding on to a lot of feelings and thoughts and that the therapy enabled you to pour this out within a safe environment and be given tools to manage your worries, concerns and fears. You are now able to reflect on your learning from your experience and even draw some positives from what has happened to you."

209. In a letter dated 5 March 2019 from the Claimant's GP, Dr Keith Barrow, he says[132],

> "We have been seeing him over 18 months now for post-traumatic stress disorder.
>
> He was in a migration detention centre for 3 months. He felt it was like a prison and he became very anxious having flashbacks of being in the detention centre, being on guard at all times, suffering from insomnia and nightmares and avoiding going out.
>
> We referred him to the mental health team to help him come to terms with his stress and anxiety."

Arrest of Claimant on 1 July 2023

210. On 1 July 2023, the Claimant was arrested for driving with excess alcohol. The Court has seen police body worn video footage of the arrest, at the roadside.

211. I find that at the roadside, the Claimant was calm, composed and answered questions from the Police appropriately.

212. Having failed the breathalyser test at the roadside, the Claimant was taken to Eastbourne Police Station. Again, there is police body worn video footage of the questioning of the Claimant at Eastbourne Police Station, lasting 56 minutes 19 seconds.

213. Mr Hingora has provided a detailed note, titled "Annex 1", of the interview from the police body worn video footage.

214. The footage shows that the Claimant was escorted into a small room at the Police Station. From the very beginning of the interview, the Claimant becomes breathless, anxious and asked for a mental health professional. At between 1:44 and 3:52 the Claimant says, "Come on, come on deep breathing (moaning loudly), come on, come on, I thought this was gone (crying), I thought it was gone (crying and moaning), it's hard, it's bad, it's bad, it's bad (moaning) you don't know. Have you seen the BBC documentary of Brook House?" He says, "I was there! Immigration!" (Loud crying), "You guys look the same. You look the same." At 5:26 he says, "This uniform you guys

[132] 348

are wearing it's not helping, can you cover that, is there any way you can wear another jacket?". At 6:55 – 09:20 he says, "Seeing you guys in that uniform, it's a trigger for me. … I am not going anywhere please contact them. Crying (face in hands). I don't want to go back there. It's hard for me the reason why, can I explain, let me explain, ok let me explain. The reason why is it's hard for me seeing you guys it's bringing back everything again. They look like that then pinned me down and abused me and it's hard for me I am begging you. I get it but please, please I am not leaving get the professional here." At 10:00 – 11:27, when asked to answer questions about the offence, he repeats his requests for a mental health professional and says, slamming his hands on the table, "I need a professional! I need a mental health professional! Go on strangle me! Go on. I am not sitting down. Strangle me! If you are not going to listen I need a professional! I am not going to listen. I won't. I won't answer. I need a mental health professional. Let them get here then I will answer!" At 11:20 – 13:45, he says, "(Crying) 'Don't touch me. Just move away.'" He is sitting on a chair pushed against the wall, with his hands hugging himself. He says, "'Go away please"! (crying and moaning) "it's triggering me. Change the uniform! It's triggering me please. Please ask someone else who does not have this uniform on to ask me the question!".

215. On 15 August 2023 the Claimant saw Shay Rosenthal, Cognitive Behavioural Therapist, for an initial assessment. The record of the assessment states[133]:

> "Current presenting difficulties (and coping strategies)
>
> What: PTSD - recent event that 1 month ago- got stopped by police for suspected drink driving - too many triggers - not feeling safe – flashbacks: felt like I was back at the detention centre when being frisked - when being taken to the cell same colour of bed. In the following 2 weeks struggling with depression but improved when spending more time going out with friends. What if it happens again.
>
> Anxiety: 4/10
>
> …
>
> Impact: avoiding crowds. Energy level dropped since then - low motivation. Procrastinating.
>
> Duration: low motivation and low energy can last until the last minute.
>
> Appetite: no change.
>
> Sleep: sleep okay.
>
> Support network: have friends and family but do not talk them about problems in depth.
>
> CBT 5 Factors

[133] 429 and 432

> Triggers: police station being body frisked
>
> Thoughts: memories of being in the detention centre, I'M NOT SAFE, I'm vulnerable, I'm back where no one can help me, they are all against me
>
> Feelings: Anxious, tearful
>
> Behaviour: using grounding
>
> Physical symptoms: heart racing, tight chested, restless
>
> …
>
> Treatment plan
>
> Formulation: Ibukun is a 33 year old male Nigerian refugee who had a traumatic experience when held at a detention centre in 2017 for nearly 4 months which he then received treatment for at Health in Mind which was helpful. Since then Ibukun has been managing well until an incident 1.5 months ago where he was taken into police custody for suspected drink driving. This experience triggered flashbacks, anxiety and subsequent symptoms of depression. Ibukun is now fearful that his PTSD may be triggered again, avoiding many of his daily responsibilities including work and university assignments, feeling generally anxious and on-alert and using more alcohol and tobacco than is typical for him. Ibukun wants help to manage the relapse in his symptoms of PTSD and associated depression.

216. On 22 August 2023, Mr Rosenthal sent an email to Ms Jowitt, also of Sussex Partnership NHS Foundation Trust, saying[134],

> "I saw this client last week for an assessment - he is presenting after a recent incident which appear to have caused a relapse in PTSD symptoms.
>
> Looking at the notes it appears he engaged well with CBT previously and so wondering what your thoughts would be on offering him some top-up sessions to help manage this relapse?"

Medico-legal expert evidence

Professor Elliott

217. Professor Elliott says in his report dated 28 December 2019[135],

[134] 433
[135] 276-297

> "18.1 In my opinion, Mr Adegboyega has suffered and is still suffering from several psychological sequelae arising from his experiences while under detention from April 2017.
>
> 18.2 Mr Adegboyega outlined his experiences, and confirmed his experiences were as outlined in his witness statement. In my opinion, his relating of his experiences appeared to be genuine, but the final decision on this is a matter for the Court to decide. Provided, therefore, the Court finds his experiences were as he has outlined in his Witness Statement, then in my opinion these were likely to be prolonged, psychologically traumatic and 'stressful' experiences to Mr Adegboyega, and led to the development of his psychiatric disorder.
>
> …
>
> 18.11 These symptoms are corroborated in the medical records.
>
> 18.12 His relating of his coping prior to his detention appeared to me to be genuine, but the final decision on this is a matter for the Court to decide. Provided the Court accepts his self-report, Mr Adegboyega was coping with dealing with the Home Office prior to his detention and had no mental health symptoms. Mr Adegboyega had no previous history.
>
> 18.13 Therefore, on the balance of probabilities if not for the detention, in my opinion the symptoms would not have occurred."

218. In his addendum report, dated 12 June 2024, Professor Elliott says that he has reviewed the CBT records in 2023 and from these records,

> "It appears Mr Adegboyega was assessed by the local Mental health Services around September 23 following the drink-driving arrest
>
> I note that he is reporting that following a recent incident, there was an increase in low mood and loss of motivation, and concerns about future relapse.
>
> It states:
>
> '...Got stopped by police for suspected drink driving. Too many triggers, flashbacks. Felt like I was back at the detention centre. In the following two weeks depression but improved. Spending more time going out with friends. What if it happens again?'
>
> In my opinion this confirms there was a transient relapse of his symptoms which affected his ability to work and study when in the trigger situation of his arrest, but that over subsequent weeks

this improved but he was understandably worried about further relapse

It states:

'... Formulation has been managing well until incident 1.5 months ago… This experience triggered flashbacks. Anxiety and subsequent symptoms of depression. Is now fearful his PTSD may be triggered again. Avoiding that many of his daily responsibilities. Including work and university assignments.

...PHQ 9 score 10 (this score indicates mild to moderate depressive symptoms at that time but is not diagnostic of depression) GAD7 score of 11 (this indicates Moderate anxiety symptoms at that time but is not diagnostic of a anxiety disorder)..."

I note he apparently attended for 1 session and was offered a short course of CBT but did not attend any future further sessions.

In my opinion, this confirms that the arrest was a significant trigger which produced some transient relapse of his PTSD symptoms.

In my opinion, however, this incident was likely to produce a relapse in any person with a pre-existing PTSD brought about in similar circumstances to Mr Adegboyega's.

In my opinion this is not indicative of ongoing PTSD because:

The history is that he was well before and managing

His symptoms were improving only weeks after the incident

He only attended one session which suggest further improvement.

This would indicate, however, he remains at risk of relapse."

Dr Das

219. In his report, dated 10 December 2019, Dr Das says[136],

"57. Mr Adegboyega told me that his main mental health issues started after his release. He also stated that he saw a programme about prison around two weeks after his release and this reminded him of his detention (including seeing the black plastic

[136] 322

plates and bowls that he used); he stated: "I broke down. I started crying". He also would not talk to his partner about his struggles.

58. Mr Adegboyega told me that he suffered flashbacks. He described these as remembering things from the Immigration Removal Centre and feeling like he was there.

…

86. I have concluded this by noting that I have carried out over 50 assessments in Immigration Removal Centres and several hundred assessments of people who have been detained in prison (including working for around 2 years as a senior Prison Psychiatrist at HMP Bronzefield, carrying out several clinics per week). The vast majority of these patients did not have Post-Traumatic Stress Disorder.

…

88. Further, the very fact, that Mr Adegboyega's mental health has improved dramatically within a year (possibly less, according to some reports in the medical notes) is not in keeping with a significant degree of Post-Traumatic Stress Disorder (which is a chronic and difficult to treat disorder).

…

99. There is a risk that Mr Adegboyega's mental health could deteriorate in the future related to similar issues with deportation, i.e. if he were threatened with deportation, was deported or was detained again in the future."

220. Dr Das says in his addendum report, dated 14 June 2024,

"20. … Nevertheless, in my opinion, Mr Adegboyega's presentation within that footage was in keeping with somebody who was acutely intoxicated with alcohol (which I believe was confirmed by the police on that occasion) and also suffering from 'acute stress'.

21. My understanding is that Professor Elliott opines that Mr Adegboyega was suffering from 'acute situational anxiety', which is reflective of transient symptoms of Post-Traumatic Stress Disorder. I would concur that Mr Adegboyega was suffering from acute situational anxiety at that moment. For the benefit of the Court, this is a form of anxiety that happens in response to new, unfamiliar, or stressful situations.

Common scenarios might be immediately before one has to give an important presentation at work or a job interview. Typically,

one's heart speeds up, the palms sweat, and breathing becomes shallow and quick. One might feel lightheaded and panicky.

22. However, crucially, I would respectfully refute that this is reflective of transient symptoms of Post-Traumatic Stress Disorder. In fact, acute situational anxiety is a normal human response, and the vast majority of people that experience this would not have a diagnosis of Post-Traumatic Stress Disorder. I would also respectfully highlight that it appears that Professor Elliott has neglected to consider that Mr Adegboyega was reportedly intoxicated at the time (which I believe is a significant factor in his generally non-cooperative behaviour)."

Joint statement of Professor Elliott and Dr Das

221. In the joint statement, it is said[137],

"3.3 Professor Elliott's opinion is that provided the Court finds Mr Adegboyega's self-report to be true, he developed a Moderate 'Post Traumatic Stress Disorder' (PTSD) as described in the Diagnostic and Statistical Manual of Mental Disorders (DSM V).

3.4 Professor Elliott's opinion is that Mr Adegboyega's experiences while in the detention centre, provided the Court finds these to be true, were likely to be psychologically traumatic and threatening to him over a prolonged period. He therefore believes, on balance of probabilities, that Criterion A for PTSD is met.

3.5 If, however, the Court finds that Criterion A is not met, then Professor Elliott's opinion is that de facto the diagnosis of PTSD cannot be made.

3.6 In this circumstance, Professor Elliott's opinion would be that Mr Adegboyega's symptoms represented an "Adjustment Disorder with Depressive and Post-Traumatic Stress (PTS) Features" (DSM V). If this were classified, however, using ICD IO criteria, his opinion would be that this was a Moderate "Mixed Anxiety and Depressive State with PTS features.

3.7 Dr Das' opinion is that Mr Adegboyega has not gone through a stressful event or situation of an exceptionally threatening or catastrophic nature; and therefore, this would automatically negate a diagnosis of Post-Traumatic Stress Disorder (by either the DSM V or ICD l O criteria). He disagrees that in this context, Mr Adegboyega's detention occurred 'over a prolonged period' (3 months). He agrees with the diagnosis of "Mixed Anxiety and

[137] 338-339

> Depressive State with PTS features', though would classify this as mild, not moderate."

Decision on psychiatric injury sustained by Claimant

Credibility

222. On the one hand, I have found that the Claimant exaggerated in his witness statements the trespass to his person on 5 June 2017. On the other hand, I find that the Claimant's account of his ill treatment at Brook House is in all material respects internally consistent throughout his witness statements and with the findings of the Brook House Inquiry report. When giving evidence before me, the Claimant accepted that he did not suffer any physical injury on 5 June 2017 and I found his testimony to be honest and reliable. My assessment chimes with:

i) Professor Elliott, who says in his report[138],

> "18.2 In my opinion, his relating of his experiences appeared to be genuine."

ii) Dr Halari, Consultant Chartered Clinical (Neuro)Psychologist, who says in her report[139],

> "117. People who malinger PTSD tend to recite symptoms in textbook learnt lists and this was definitely not the case here."

iii) The Brook House Inquiry report, in which the Chair, Kate Evans, says at paragraph 33, page 182 of the report,

> "D1851 [the Claimant] was one of the few former detained people who were able to give live evidence regarding their experience, and I found him to be an honest and reliable witness. He was candid about what he could see, and readily accepted that he could not see a baton being used. Moreover, he voluntarily clarified that he had to sit up and push a shield away, rather than being pinned as he originally described."

223. I have noted that Dr Das says in his report[140],

> "69. Of note, he did not become in any way distressed when discussing his situation (including his time in detention); this contrasts his reported presentation during the assessment by Dr Halari; when he was described as having quiet speech, poor eye contact, with signs of agitation and anxiety, when he discussed his traumatic issues."

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[138] 288
[139] 260
[140] 319

224. In the joint statement Professor Elliott and Dr Das say[141],

> "1.5 We agree that patients' psychological symptoms may wax and wane over time, but note that there are some differences in Mr Adegboyega's self-report between these two assessments although they were undertaken relatively close together.
>
> 1.6 Professor Elliott has assumed that the self-report of his history and symptoms as related by Mr Adegboyega is true, but notes there appear to be some inconsistencies in history between his assessments with himself and Doctor Das. The reason for these apparent inconsistencies, and the final decision as to the validity of his symptoms, is a matter for the court to decide.
>
> 1.7 Doctor Das would highlight that Mr Adegboyega had reported to him that he had no issues with his mood at the time of the assessment, though told Professor Elliott that his mood was variable at the time of his assessment. He did not become in any way distressed when discussing his situation, including his time in detention with Doctor Das, though was described as angry and upset when discussing these issues with Professor Elliott."

225. It is not suggested by Dr Das, and could not be suggested, that the account which the Claimant has given of his unlawful detention at Brook House to Professor Elliott and to Dr Das was materially different. I find that I cannot draw any adverse inference against the credibility of the Claimant by reason of the fact that his mood was different when he recounted his time in detention to Professor Elliott and to Dr Das. I note that Professor Elliott says at paragraph 9.4 of his report that the Claimant told him that his mood was variable[142]. Dr Das states at paragraph 67 of his report[143],

> "Mr Adegboyega told me he is now able to talk about his time in detention and does not become upset whilst doing this; whereas previously he would. He reported that he has accepted it and has managed to move on to a degree (though still has residual feelings of anger and frustration at the services responsible)."

<u>No pre-existing psychiatric history</u>

226. It is common ground that the Claimant did not have a pre-existing psychiatric history and was not vulnerable prior to his unlawful detention at Brook House.

<u>Psychiatric disorder</u>

227. It is common ground that the Claimant has suffered a psychiatric disorder as a consequence of his unlawful detention at Brook House. What is in issue is whether he

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[141] 338
[142] 282
[143] 315

has suffered post-traumatic stress disorder or a Mixed Anxiety and Depressive State with PTS features.

228. I prefer the evidence of Professor Elliott to that of Dr Das and find on the balance of probabilities that Criterion A of DSM V is satisfied by the Claimant's serious ill treatment at Brook House, and which included threats of death, actual or threatened injury, and exposure to detainees taking drugs and losing control.

229. Professor Elliott's view is in keeping with the evidence of Dr Halari, who says in her report, dated 30 April 2018[144],

> "100. The Impact of Events Scale (IES) was administered to assess for the symptoms of Post Traumatic Stress Disorder (PTSD). This scale is a widely used, standardised assessment of symptoms of PTSD. It is a self-rating scale that measures the degree of psychological impact caused by a traumatic event both though it reflects the degree to which individuals experience a traumatic incident, the degree of intrusiveness these re-experiences have for them, as well as possible attempts by individuals to use avoidance/numbing mechanisms in dealing with the consequences of the event."
>
> 101. Creamer, Bell and Fallia (2003) suggest that a cut off scores of 33 on the IES indicates significant emotional distress. Mr Ibukun's total score on the IES was 68, which is suggestive of significant emotional distress as a result of his experiences in detention. Mr Ibukun's scores on the IES suggest that he experiences moderate levels of avoidance, intrusions and moderate levels of hyperarousal.
>
> …
>
> 105. Mr Ibukun suffers from symptoms, which are characteristic of a post-traumatic stress condition. He experiences hypervigilance, nightmares and flashbacks of his traumatic experiences related to being unlawfully detained. He struggles to manage these memories and avoidance strategies have as yet proved unsuccessful.
>
> 106. The evidence for this is in his account and development of the symptoms following the negative and traumatic events, and the findings on psychological examination.
>
> …
>
> 114. … As a result of his experiences, he has developed PTSD, anxiety and depression which he continues to suffer from within the moderate to severe range."

[144] 257-259

230. Professor Elliott's view is also consistent with a number of the treating doctors' records, which refer to the Claimant's post-traumatic stress disorder:

i) The Claimant's GP's notes dated 14 February 2018 state[145],

"Comment Signs of PTSD"

ii) The Claimant's GP says in his letter dated 5 March 2019[146],

"We have been seeing him for over 18 months now for post-traumatic stress disorder."

iii) A note by Shay Rosenthal, CBT Therapist, dated 5 September 2023, says[147],

"Thank you for talking with me on 15/08/23 I hope that you found the appointment helpful. During the meeting we talked briefly about your experience of Post Traumatic Stress Disorder and that since the recent incident you have noticed an increase in symptoms of low motivation, anxiety and concerns about further relapse."

231. The Claimant's University of Brighton Learning Support Plan, which was approved on 4 March 2024, states[148],

"Disability summary

Ibukun has a diagnosis of PTSD, anxiety and depression. He finds it particularly difficult being around people in a busy environment, including campus, and his attendance is likely to be impacted as a result."

232. Professor Elliott saw the video footage of the Claimant's arrest and interview at Eastbourne Police Station on 1 July 2023. He says in his addendum report, dated 12 June 2024,

"Upon his initial stopping by the police and arrested at the roadside Mr Adegboyega did not appear overtly psychologically distressed even when having to undertake a breath sample which is typically very stressful for most people. He appeared smiling and relaxed at times."

233. The video footage of the Claimant at Eastbourne Police Station showed a significant deterioration in the Claimant's mental health consistent with a relapse of post-traumatic stress symptoms. The small room in which the Claimant was interviewed and the uniform which the Police officers were wearing "triggered", to use the Claimant's word, flashbacks to the trauma which he suffered at Brook House. The Claimant broke

[145] 344
[146] 348
[147] 468
[148] 482

down and was in tears, and was for a significant period of time unable to deal with the interview. As Professor Elliott says in his supplementary report,

> "In my opinion, this confirms that the arrest was a significant trigger which produced some transient relapse of his PTSD symptoms.
>
> In my opinion, however, this incident was likely to produce a relapse in any person with a pre-existing PTSD brought about in similar circumstances to Mr Adegboyega's."

234. Dr Das disagrees that the Claimant's behaviour in the video footage is reflective of transient symptoms of PTSD. He agrees with Professor Elliott that the Claimant was suffering from acute situational anxiety but says,

> "22. … acute situational anxiety is a normal human response, and the vast majority of people that experience this would not have a diagnosis of Post-Traumatic Stress Disorder. I would also respectively highlight that it appears that Professor Elliott has neglected to consider that Mr Adegboyega was reportedly intoxicated at the time (which I believe is a significant factor in his generally non cooperative behaviour)."

235. I prefer Professor Elliott's analysis of the video footage of the Claimant at the roadside and at Eastbourne Police Station for the following reasons:

i) Although Dr Das notes that the Claimant's behaviour was different at the roadside, where he appeared "relatively calm and collected", and the Police Station, where he seemed "generally distressed and agitated", he provides no explanation for this change in behaviour.

ii) Dr Das says that the Claimant's intoxication was a significant factor in his generally non-cooperative behaviour at the Police Station. However, the Claimant was already intoxicated at the roadside, but was fully cooperative, calm and collected.

236. What is conspicuous about the Claimant's behaviour at Eastbourne Police Station is that he became very distressed. He repeatedly said that the police officers' uniforms and the small room in which he was being interviewed were triggering flashbacks to his detention at Brook House.

237. Professor Elliott's opinion that the Police Station triggered a transient relapse of the Claimant's PTSD symptoms is entirely consistent with the assessment of Shay Rosenthal, Cognitive Behavioural Therapist, when he saw the Claimant on 15 August 2023. The record of the assessment states[149]:

> "Current presenting difficulties (and coping strategies)
>
> What: PTSD - recent event that 1 month ago- got stopped by police for suspected drink driving - too many triggers - not

[149] 429 and 432

> feeling safe – flashbacks: felt like I was back at the detention centre when being frisked - when being taken to the cell same colour of bed."

238. Further, I note that Dr Das records in his report, dated 10 December 2019, at paragraphs 57 and 58[150], that when, two weeks after his release from Brook House, the Claimant was exposed to a situation reminiscent of Brook House (a programme about prison), he broke down and suffered flashbacks.

239. I conclude that the Claimant's behaviour at Eastbourne Police Station is entirely supportive of Professor Elliott's view that on the balance of probabilities the Claimant has suffered a post-traumatic stress disorder as a result of his unlawful detention at Brook House.

Decision on award of damages for psychiatric injury

240. I accept Professor Elliott's opinion that the Claimant has suffered a moderate post-traumatic stress disorder and remains at risk of future relapse, particularly in circumstances which remind him of his unlawful detention at Brook House.

241. The Judicial College Guidelines, 17th edition 2023, provide at page 14,

> Chapter 4 - Psychiatric and Psychological Damage
>
> Section (B) - Post-Traumatic Stress Disorder
>
> Cases within this category are exclusively those where there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to actual or threatened death, serious injury, or sexual violation. The guidelines below have been compiled by reference to cases which variously reflect the criteria established in the 4th and then 5th editions of 'Diagnostic and Statistical Manual of Mental Disorders' (DSM-IV-TR and DSM-5). The symptoms may include nightmares, flashbacks, sleep disturbance, avoidance, mood disorders, suicidal ideation, and hyper-arousal. Symptoms of hyper-arousal can affect basic functions such as breathing, pulse rate, and bowel and/or bladder control.
>
> …
>
> (b) Moderately Severe
>
> This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between £35,100 and £45,300.

[150] 313-314

> £28,250 to £73,050
>
> (c) Moderate
>
> In these cases the injured person will have largely recovered, and any continuing effects will not be grossly disabling.
>
> £9,980 to £28,250

242. At paragraph 26 of the Claimant's schedule of damages, dated 13 June 2024, Mr Jafferji seeks general damages for pain and suffering and loss of amenities (PSLA) caused by the Claimant's post-traumatic stress disorder of £54,861.

243. Mr Rawat says at paragraph 41 of his closing submissions that the appropriate award of general damages for psychiatric injury is £10,000.

244. I find that the Claimant falls within band (c) of the moderate band of the Judicial College Guidelines for post-traumatic stress disorder and is entitled to general damages for pain, suffering and loss of amenities of £25,000.

Cognitive Behaviour Therapy (CBT) Treatment

245. In his report, dated 28 December 2019, Professor Elliott says[151],

> "18.28 UK NICE Guidance (NICE 2018) recommends that patients with PTSD receive trauma-focused CBT which should typically be provided over 8 to 12 sessions, but more if clinically indicated.
>
> 18.29 It should also include planned booster sessions if needed, particularly in relation to significant dates (for example trauma anniversaries).
>
> 18.30 Mr Adegboyega has undergone a course of Cognitive Behaviour Therapy, which appears to have been helpful.
>
> 18.31 In my opinion, however, he continues to experience residual symptoms, and in particular ongoing anger in relation to his perception that the index events could have been avoided.
>
> 18.32 In my opinion, therefore, he would benefit from a further course of interpersonal therapy/CBT.
>
> 18.33 I would expect that these psychological treatments could be provided by a trained therapist on a weekly basis, but this may not be available routinely on the NHS, and if sought privately I would estimate that the cost of this therapy would be £150 per session over 20 sessions.

[151] 292

> 18.34 The Department of Health states that therapy of less than eight sessions is unlikely to be optimally effective for most moderate to severe mental health problems. Often at least sixteen sessions are required for symptomatic relief and more for lasting change (Dept of Health 2001)."

246. In the Psychiatrists' joint statement it is said[152],

> "8.3 Professor Elliott's opinion is that approximately 16-20 sessions, delivered by a Consultant Psychologist, would be reasonable.
>
> 8.4 Professor Elliott's opinion, however, is that if the Court finds Mr Adegboyega does not continue to experience clinically significant residual symptoms, then no further treatment is warranted.
>
> 8.5 Dr Das broadly agrees with the above (aside from recommending that 10 to 12 sessions is appropriate)."

247. In Professor Elliott's addendum report, dated 12 June 2024, he says,

> "In my initial report I recommended up to 20 sessions of CBT at £150.
>
> If the Court finds he appears more settled (based upon his initial appearance at the roadside) and eg is working and able to study albeit with some limitations, I would revise my recommendation to between 10-20 sessions of CBT but given that Mr Adegboyega is based in the London area, and inflation, costings are likely to be higher at £230-£250 per session."

248. Dr Das says in his addendum report, dated 14 June 2024,

> "25. I would stand by my original recommendation of 10 to 12 sessions, though in my opinion, Professor Elliott's suggestion is not unreasonable."

Decision on award of damages for CBT

249. Both experts opine that the Claimant is at risk of future relapse, particularly in circumstances which remind him of the index events:

i) Professor Elliott says in his addendum report, dated 12 June 2024,

> "In my opinion, he remains at risk of future relapse particularly in circumstances which remind him of index events."
>
> I would therefore still recommend he have access to a further course of CBT as advised in my initial report which he could

[152] 340

> access flexibly in the future if eg he is exposed to an incident which is a significant reminder."

ii) Dr Das says in his report, dated 10 December 2020[153],

> "99. There is a risk that Mr Adegboyega's mental health could deteriorate in the future related to similar issues with deportation, i.e. if he were threatened with deportation, was deported or was detained again in the future."

250. I accept Professor Elliott's evidence, which is based upon guidance from the Department of Health, that often at least 16 sessions of CBT are required for symptomatic relief, and more for lasting change. I award 16 sessions @ £250 per session, totalling £4,000.

Damages for breach of EEA Regulations 2006

251. The Defendant has conceded that the Claimant is entitled to substantive damages for breach of the EEA Regulations 2006.

252. In the Schedule of Damages, dated 10 May 2018, the Claimant sought the following damages for breach of the EEA Regulations 2006:

i) Damages for loss of earnings of £38,955;

ii) Exemplary damages of £30,000;

iii) Aggravated damages, for which no sum was specified.

Claimant's inclusion of new heads of loss

253. On 12 June 2024 the Claimant applied for permission to admit an amended schedule of loss, dated 5 June 2024. Christopher Kennedy KC, sitting as a Deputy High Court Judge, ordered,

> "1. The Claimant's application to amend his schedule of loss is dismissed.
>
> 2. The Claimant's claim for loss of earnings shall be limited to the loss pleaded set out at paragraph 19 in his 2018 schedule being £38,955.00 together with interest at the full special account rate from the midpoint of the loss, to be determined by the trial judge if it cannot be agreed.
>
> 3. The Claimant is to remove the amended schedule of loss from the trial bundle.
>
> 4. The calculation at page 50 should also be removed from the trial bundle.

[153] 325

> 5. The Claimant is not limited in advancing different figures for the other heads of claims set out in the 2018 schedule of loss.
>
> 6. The Claimant is permitted to put forward an amount for damages in relation to breach of Article 3 ECHR, there being no figure for such in the 2018 schedule of loss.
>
> 7. The Claimant is permitted, if he so wishes, to set out a calculation for all revised figures under the different heads of claim save for the loss of earnings in a 4-page document by 10:30am on 13 June 2024. That calculation should explain the new figure and how it was calculated.
>
> 8. The Claimant is prohibited from inflating his separate claim for breach of EEA law rights by reference to loss of earnings."

254. The Claimant served a schedule of damages filed pursuant to the order of Christopher Kennedy KC dated 12 June 2024, in which are included for the first time and without permission heads of claim in respect of breach of EEA law rights for:

    i) At paragraph 18, damages for reporting to the Defendant at Croydon on eight occasions prior to his detention and a further seven after release from detention, and reporting to the FTT on 13 July 2018 in the sum of £32,000.

    ii) At paragraph 19, general damages for the Defendant's denial of the Claimant's right under EEA law to enjoy the freedom to live, work, travel and develop his life in the UK in the sum of £20,000.

    iii) At paragraph 20, damages for loss of benefits that he would have been entitled to between February 2018 and April 2019 in the sum of £12,710.

255. The Claimant has no permission to amend his schedule of loss to claim damages for i) to iii) above. The Claimant made an application to amend his 2018 schedule of loss on 12 June 2024, and it was refused. The Claimant never sought to renew that application. Therefore, I make no award for these three claims.

Loss of earnings caused by breach of EEA Regulations 2006

256. At paragraph 19 of the Claimant's 2018 schedule of damages[154], the Claimant stated that his loss of earnings between November 2015 and January 2018 was £38,955.

257. Although Mr Rawat reserved his position at paragraph 33 of his skeleton argument for trial, he says at paragraph 25 of his closing submissions, "The Defendant accepts the figure of 38,955".

258. I award the Claimant loss of earnings in the agreed sum of £38,955.

[154] 53

Interest on loss of earnings

259. Christopher Kennedy KC, sitting as a Judge of the High Court, stated at paragraph 2 of his order that the Claimant was entitled to interest on the loss of earnings at the full special account rate from the midpoint of the loss:

i) The midpoint of the loss between November 2015 and January 2018 is December 2016. Cumulative interest at the special account rate from December 2016 to 13 June 2023 is 4.99%[155]. The Claimant is entitled to £1,943.85.

ii) 14 June 2023 - 22 August 2023: the special account rate was 4.5%. The Claimant is entitled to £336.19[156].

iii) 23 August 2023 - 17 September 2024: the special account rate has been 6%. The Claimant is entitled to £2,510.20[157].

260. The total interest due to the Claimant on the loss of earnings as at 17 September 2024 is £4,790.24.

Law - Exemplary damages for breach of EEA rights

261. I bear in mind the guidance in *Rookes v Barnard* (supra) and *Muuse v SSHD* (supra), to which I referred at paragraphs 135 and 136 above.

262. In *Santos* (supra) Lang J said[158],

> "160. Exemplary damages are, in principle, available for a breach of EEA law and in my judgment, this is a case in which the Defendant has behaved in an outrageous, oppressive and unconstitutional manner. … there was a sustained and deliberate refusal to give effect to the Claimant's EEA rights, over several years, during which time the Defendant displayed a blatant disregard for the law. Even after Burton J. granted a stay on removal in June 2012, and the Defendant released him, she deprived him of the right to work and the benefits of lawful residence, for nearly two years, and when called to account by the FTT, she was unable to put forward any justification for her refusal of a residence card. I award £25,000 by way of exemplary damages in respect of the breaches prior to and after his detention."

Submissions on exemplary damages for breach of EEA rights

263. Mr Jafferji submits that in the present case, the Defendant's behaviour was oppressive, arbitrary and unconstitutional for the following reasons:

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[155] Facts and Figures 2023/24, p. 200
[156] 70 days @ 4.5%
[157] 392 days @ 6%
[158] Authorities bundle, 1014

i) The Claimant applied for an EEA residence card on 22 August 2015, but was not issued with an EEA residence card until April 2019.

ii) The EEA residence card application dated 22 August 2015 was never lawfully determined as the Claimant was not granted a right of appeal.

iii) The Defendant informed various prospective employers that the Claimant did not have the right to work in 2015/2016 which prevented him from taking up the relevant employment.

iv) The Claimant was unlawfully detained with a view to removing him between 28 April 2017 and 24 July 2017.

v) Failing to apply its own policy on enforcement action against family members of EEA nationals set out in the European Casework Instructions (ECI) and Enforcement Instruction and Guidance (EIG).

vi) Failing to offer him a one month's grace period within which to leave the UK voluntarily, pursuant to Article 30(3) of the Directive and Regulation 24(6) of the EEA Regulations 2006.

vii) Placing restrictions on his right to reside after 2 September 2016, including preventing him from working; preventing him from accessing any public funds or other assistance that would be available to him as a person lawfully resident in the UK; requiring him to report and preventing him from travelling.

264. In the 2018 schedule of damages, exemplary damages for breach of EEA rights is claimed in the sum of £30,000[159]. This is increased in the schedule of damages dated 13 June 2024 to £50,000.

265. Mr Rawat submits in his closing submissions,

> "26. The Defendant accepts that the Claimant had a right to work and the loss of earnings claim compensates him for the loss of that right. If the Court considers that the Claimant is entitled to exemplary damages for example because of the loss of other EEA rights, then the Defendant contends that an award of £15,000 would be adequate."

Decision on award of exemplary damages for breach of EEA rights

266. I bear in mind that the claim for exemplary damages in respect of breach of the Claimant's EEA rights must not duplicate the award I have already made in respect of the unlawful detention of the Claimant between 28 April 2017 and 24 July 2017. I therefore do not consider the fact and conditions of the unlawful detention of the Claimant in the breaches below.

267. On 13 June 2015, the Claimant entered the United Kingdom, accompanied by his wife, exercising his EEA Treaty rights. The Defendant repeatedly denied being provided with

[159] 37

the necessary documentary evidence to recognise the Claimant's EEA rights, despite having been provided with it.

268. The Defendant saw the Claimant's wife's original ID when she entered the UK on 13 June 2015. This is admitted in the GCID notes on 22 February 2018, where it is said,

> "CRS shows the applicant entered the UK [on 13 June 2015, accompanied by his wife] as the spouse of an EEA national. So we must have seen the sponsor's original ID at one point."

269. As FTT Judge Woolf said on 15 March 2019, when allowing the Claimant's appeal for an EEA Residence Card,

> "They had evidence in the form of the appellant's passport in the form of the visa entry clearance was issued to the appellant that was endorsed "Family member to acc/ I Adegboyega" with the entry stamp of 14 June 2015 at Stansted, that should have indicated on the balance of probabilities that he entered the UK with an EEA national."

270. By a letter dated 28 October 2016[160], the Defendant asked the Claimant for a photocopy of his spouse's passport, evidence that his spouse was exercising her treaty rights, his marriage certificate and evidence of co-habitation. This documentation was provided by the Claimant's solicitors on 14 November 2016[161]. The Defendant never asked for the original of the Claimant's wife's passport. In the 14-day detention review carried out on 11 May 2017, the Defendant admits[162], "Although no original ID card was presented it has never been called for". By a letter dated 12 May 2017 from the Defendant to William Lamb & Co, it is said[163],

> "Having reviewed the contents of your letter along with supporting documents, it has not been demonstrated that your client has submitted sufficient evidence to meet the criteria in order for him to have an automatic right of residence in the United Kingdom as the spouse of an EEA national. With this in mind your client remains liable to detention and removal from the United Kingdom."

The Defendant did not say in this letter what documents the Claimant had not provided. I find that the Claimant provided all the documents requested by the Defendant in his letter dated 28 October 2016[164] and there was no basis for the Defendant's refusal to accept the Claimant had an automatic right of residence in the UK as the spouse of an EEA national.

271. In an email dated 16 January 2018 from Rachel Green, SEO Team Manager, she admits,

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[160] Material referred to in Claimant's closing submissions, 6
[161] Material referred to in Claimant's closing submissions, 7-8
[162] 535-536
[163] 517
[164] Material referred to in Claimant's closing submissions, 6

> "The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. […] I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. […] There was evidence that the spouse was working. […] With regard to the Claimant's ID, it is questionable as to whether the Defendant was entitled to demand an original copy of the ID card given that she had previously accepted his ID, but in any event that is not what she said. She asked for a copy of his ID card, and that was provided. She did not ever say that the application was being refused because only a copy of the ID card had been provided. Given that she had asked for a copy, if she were dissatisfied with that one might expect her to go back to the claimant and ask for an original."

272. Despite this, the Defendant said in its decision letter dated 16 May 2018 refusing the Claimant's application for an EEA residence card[165], that without sight of a valid passport/ ID card for his sponsor, the Defendant could not accept that the Claimant was the family member of an EEA national as claimed.

273. The Defendant said in the GCID note dated 27 January 2016, that the Defendant was satisfied that the Claimant's wife was working, having seen photographs of her wage slips and spoken to her employer on the telephone[166]. Rachel Green says in her email dated 16 January 2018 "There was evidence that the spouse was working". However, in its decision letter dated 16 May 2018, the Defendant said, without any basis, "You have failed to provide any evidence to confirm your EEA national sponsor is in the United Kingdom, exercising Treaty Rights."

274. I find that for over three years, despite having before it evidence which demonstrated that the Claimant had EEA Treaty rights in the UK, the Defendant unlawfully served the Claimant with notices under s.10 of the Immigration and Asylum Act 1999, which did not apply, and argued that the Claimant had no EEA rights and was an overstayer.

275. The Defendant failed to issue a residence card to the Claimant, in breach of Articles 9 and 10 of the Directive and Regulation 17 of the EEA Regulations 2006, following his application on 22 August 2015, in circumstances where he was a family member of an EEA national exercising Treaty rights in the UK and therefore entitled to a residence card.

276. The Defendant failed to grant the Claimant a right of appeal in respect of his application for a residence card, granted by Articles 15 and 31 of the Directive and Regulation 26 of the EEA Regulations 2006.

277. The Defendant wrongly informed prospective employers that the Claimant did not have the right to work in 2015/16, which prevented him from working.

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[165] Supplementary bundle, 114
[166] 549

278. Prior to being detained unlawfully on 28 April 2017, the Claimant was required unlawfully to report to Lunar House, Croydon on eight occasions.

279. The Defendant failed to apply its own policy on enforcement action against family members of EEA nationals set out in the ECI (European Casework Instructions) and Enforcement Instruction and Guidance (EIG) by unlawfully detaining the Claimant on 28 April 2017.

280. The Defendant acted unlawfully in never offering the Claimant a one-month grace period within which to leave the UK voluntarily, pursuant to Article 30(3) of the Directive and Regulation 24(6) of the EEA Regulations 2006.

281. Even if the Defendant considered that the Claimant's EEA rights might have lapsed, the Claimant's position still fell to be considered under the more favourable provision of the EEA Regulations 2006.

282. The Defendant unlawfully arranged to remove the Claimant from the UK on 28 April 2017, 23 May 2017 and 5 June 2017, without any proper regard to his right of residence as a family member of an EEA national, exercising Treaty rights in the UK[167].

283. The Defendant failed to issue a lawful notice of decision with respect to the decisions to remove the Claimant from the UK, denying him a right of appeal to the FTT against the decision to remove him granted by Articles 15 and 31 of the Directive and Regulation 26 of the EEA Regulations 2006.

284. The Defendant placed restrictions on the Claimant's right to reside after 24 July 2017, including preventing him from working. The Claimant was not given an EEA residence card until April 2019.

285. The Defendant required the Claimant to report on seven occasions after he was released from unlawful detention on 24 July 2017. In an email dated 24 January 2018, Ms Green said,

> "Hi Carrina,
>
> I had another conversation with GLD just now, on reflection I don't think there is any basis that we can ask for him to report."

286. The Defendant required the Claimant to attend the FTT on 13 July 2018 for a hearing where it was alleged that the Claimant had breached his reporting requirements, despite the reporting requirements being expressly withdrawn, pursuant to the order of HHJ Coe KC on 25 January 2018.

287. As a result of the Defendant's wrongful refusal of the Claimant's EEA rights, the Claimant could not receive medical treatment for his psychiatric injury, which had been caused by the Defendant. In his witness statement in support of his application for an interim payment, dated 20 April 2021, the Claimant says[168],

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[167] Although these dates fall during the Claimant's unlawful detention, I am not considering here the conditions of his detention and therefore there is double counting with the awards for unlawful detention.

[168] 89

> "15. … I have also been advised by Professor Elliot in his report that if I undertake private treatment then the cost of therapy would be £150 per session over 20 sessions which amounts to a grand total of £3,000.
>
> …
>
> 17. I am not entitled to free NHS treatment and will therefore be required to pay for any sessions carried out by the therapist. As I do not have the funds to pay for my treatment, and given that the Home Office's unlawful decision to detain me at Brook House is the reason I am now suffering from mental health issues, I feel that it is only fair and just for the Home Office to make interim payment to cover the costs of my CBT treatment."

288. The Defendant refused to make a voluntary interim payment, and an order had to be obtained from the Court.

289. I find that the Defendant has behaved in an outrageous, oppressive and unconstitutional manner in respect of the Claimant's EEA rights, for the reasons set out above. As in the case of *Santos* (supra), there was a sustained and deliberate refusal to give effect to the Claimant's EEA rights over several years, during which time the Defendant displayed a blatant disregard for the law. This unlawful action calls for an award of exemplary damages by way of punishment, to deter, and to vindicate the strength of the law. In my view the appropriate award of exemplary damages is £30,000.

Submissions on aggravated damages for breach of EEA rights

290. In his closing submissions, Mr Rawat says at paragraph 24,

> "Hitherto the Claimant's argument has been that he is entitled to damages for breach of EEA law under two heads. First for loss of earnings and second for exemplary damages (as per Santos)."

291. In fact, the Claimant did claim aggravated damages for breach of his EEA rights at paragraph 17 of his 2018 schedule of damages[169], albeit that he did not quantify these damages, and Christopher Kennedy KC ordered on 12 June 2024,

> "5. The Claimant is not limited in advancing different figures for the other heads of claims set out in the 2018 schedule of loss"

292. Mr Jafferji summarise his reasons for submitting that the Claimant should receive aggravated damages of £25,000 at paragraph 22 of the schedule of damages dated 13 June 2024:

    i) The Defendant caused a four-year delay in the resolution of the claim by arguing successfully that there should be a stay pending the Brook House Inquiry report, only at trial to argue that the report was inadmissible.

[169] 36

ii) The Defendant's refusal to make any payment on account of damages, which required the Claimant to make an application for an interim payment, which aggravated his mental health symptoms.

iii) The Defendant's prolonged and inexplicable breach of the Claimant's EEA rights.

iv) The Defendant's refusal of the Claimant's application for an EEA residence card in 2018. The Claimant appealed to the First Tier Tribunal (FTT) and was granted an EEA residence card. FTT Judge Woolf found that the Defendant's conduct in opposing the appeal was so unreasonable as to merit the Claimant receiving the costs of the appeal, which is an exceptional situation in FTT proceedings, where costs are not usually awarded to either party.

Decision on aggravated damages for breach of EEA rights

293. I find that it would not be appropriate to award aggravated damages in this case, as the factors relied upon by the Claimant have already been taken into account in the award of exemplary damages for breach of the Claimant's EEA rights and for loss of earnings.

Submissions as to Article 8 ECHR

Claimant's submissions

294. Article 8 ECHR provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

295. In the Particulars of Claim, it is said[170],

> "54. The conditions of detention set out above resulted in a breach of the Claimant's Article 8 ECHR right to respect for his private life while he was detained.
>
> 55. Further, as a direct result of the false imprisonment of the Claimant, and the breaches of EEA law that are ongoing, the Claimant's right to respect for his private and family life have been unlawfully and disproportionately interfered with subsequent to his release from detention. The Claimant has not been able to develop his private life in terms of employment, personal development, and establishing friendships and

[170] 27-28

> relationships here in the UK since the Defendant refused to recognise his right to reside freely in the UK pursuant to EEA law by granting him a certificate of application that confirmed his right to work and reside freely in the UK (pursuant to his application for a residence card in August 2015). The interference has been ongoing since that time. The interference was heightened by his false imprisonment, and the consequent psychiatric injury suffered by the Claimant.
>
> 56. Further, the Claimant has not been able to enjoy his family life with his current partner as a result of being detained, and then as a result of not being able to work and live and travel freely, and as a result of the symptoms of the psychiatric injury he has suffered during his false imprisonment by the Defendant."

296. In the Claimant's 2018 schedule of damages, he sought at paragraph 20[171] an award of £7,500 for the violation of Article 8 ECHR. At paragraph 24 of his schedule of damages dated 13 June 2024, he seeks £10,500.

Defendant's submissions

297. Mr Rawat submits that:

i) Article 8 ECHR does not guarantee absolute privacy.

ii) For Article 8 ECHR to be engaged, the conduct complained of must cause "substantial prejudice": *Anufrijeva v London Borough of Southwark* [2004] QB 1124 at paragraph 44-4[172].

iii) Damages under the Human Rights Act 1998 are a discretionary remedy.

iv) Damages under the Human Rights Act 1998 are intended to be modest. Mr Rawat referred to *DSD v The Commissioner of Police for the Metropolis* [2014] EWHC 2493 as authority for this proposition. In fact, what Green J said was that[173],

> "41. … if a domestic court is looking to Strasbourg to glean a measure of the appropriate scale than it is that which guides the ultimate figure and one does not, having taken proper account of this Strasbourg guidance to arrive at a figure, then discount it further to make it 'modest'."

v) Double counting must be avoided. Thus, where compensatory damages for unlawful detention have been awarded and there is a separate claim for trespass to the person, the Court would need to identify what any HRA damages address which has not been considered under other heads of claim.

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[171] 37
[172] Authorities bundle, 226
[173] Authorities bundle, 827

Decision on Article 8 ECHR

298. I find that Article 8 ECHR is engaged and the Claimant's Article 8 rights have been infringed. However, I find that compensation for the violation of Article 8 has already been met by:

i) The awards of basic, aggravated and exemplary damages for unlawful detention when the Claimant was unlawfully detained between 28 April 2017 and 24 July 2017;

ii) The award of damages for trespass to the person;

iii) The award of exemplary damages for loss of EEA rights.

299. For these reasons, I find that it would be double counting to make an award of damages for the violation of the Claimant's Article 8 ECHR rights, and I make no award.

Summary of awards of damages

300. I summarise my awards of damages as follows:

i)	Unlawful detention:		
	a)	Compensatory (basic)	£35,000
	b)	Exemplary	£25,000
	c)	Aggravated	£15,000
ii)	Trespass to the person		£250
iii)	Article 3 ECHR		£26,000
iv)	Post-Traumatic Stress Disorder		£25,000
v)	Cost of CBT treatment for PTSD		£4,000
vi)	Loss of EEA rights:		
	a)	Loss of earnings	£38,955
	b)	Exemplary	£30,000
	c)	Aggravated	£ nil
vii)	Interest on loss of earnings		£4,790.24
viii)	Article 8 ECHR		£ nil
			£203,995.24
	Less interim payments		- £57,500

£146,495.24

Interest on awards

301. I leave it to Counsel to calculate interest on the awards for damages summarised in paragraph 300 i) -v) and vi) b)

Final order

302. My provisional view as to costs, before hearing the parties, is that:

i) Costs should follow the event, pursuant to CPR 44.2(2)(a).

ii) The Defendant should pay the Claimant's costs of and occasioned by the claim on a standard basis, subject to a detailed assessment.

iii) The Defendant should make a payment on account of costs. CPR 44.2(8) provides,

> "(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

303. In *MacInnes v Gross* [2017] EWHC 127 (QB) at paragraphs 25 to 28 Coulson J (as he then was) gave guidance as to the amount of a payment on account of costs, pursuant to CPR 44.2(8), where a case has been cost budgeted. His Lordship said that the Court should award 90% of the budgeted costs (the costs assessed by the Court). This was approved by Davis LJ in *Harrison v University Hospitals Coventry & Warwickshire NHS Trust* [2017] EWCA Civ 792 at paragraph 40. I do not have information as to the amount of the budgeted costs and therefore I leave it to the parties to calculate this figure.

304. In respect of incurred costs, in *Cleveland Bridge UK Limited v Sarens (UK) Limited* [2018][174], Joanna Smith QC, Deputy High Court Judge (as she then was), said the payment on account in respect of the incurred costs should be a reasonable sum because this, unlike the budgeted costs, has not been subject to judicial scrutiny. She assessed this at 70% of the sum being claimed[175]. I do not have information as to the amount of the incurred costs, and therefore I leave it to the parties to calculate the payment on account in respect of the incurred costs.

305. I direct that the parties send me a draft order in word format by 4pm on 7 October 2024. If the parties are unable to agree an order, I direct that they email me by 4pm on 7 October 2024:

i) Skeleton arguments in relation to:

[174] EWHC 827
[175] Para. 21

a) Interest on the Defendant's damages pursuant to s.69 of the County Courts Act 1984;

b) The Claimant's solicitor showing cause as to why they should not be liable for 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023.

c) Costs of the claim.

ii) Their dates of availability between:

a) 28 October 2024 - 8 November 2024;

b) 9 - 12 December 2024;

c) 16 – 20 December 2024

and their time estimate for the hearing.

iii) Draft orders. The draft orders should include the orders I made during the trial as recitals.

306. A hearing will then be arranged on a date convenient to Counsel in one of the periods mentioned above.