JR-2020-LON-00416 (JR/1265/2020)

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of
MA
(a child by his litigation friend ASM)

Applicant

-v-

Secretary of State for the Home Department

Respondent

NOTIFICATION of the Judge's decision

Final Damages Decision/Order by Upper Tribunal Judge Blum:

UPON hearing Ms. M Knorr, Counsel, instructed by Wilson Solicitors LLP, for the Applicant and Ms H Masood, Counsel, instructed by the Government Legal Department, for the Respondent at a remote hearing held at Field House on 1-2 October 2020 and 15 December 2020.

AND UPON the Tribunal granting remedies as set out in its Order of 15 December 2020 (at paragraphs 1 to 4) and making an order with respect to costs (at paragraph 6).

AND UPON the parties having complied with the directions concerning damages at paragraph 5 of the Order of 15 December 2020 and the Tribunal's further orders of 7 June 2021 and 15 September 2021 varying and supplementing those directions, and the Tribunal having considered the parties submissions with respect to damages together with the other documents filed in this claim as relevant to damages.

It is further ORDERED that:-

1. The Respondent is to pay the Applicant £10,500 in non-pecuniary damages for the breach of his Article 8 ECHR family life rights within 28 days of the sealing of this Order.

2. In addition to the costs awarded to the Applicant at paragraph 6 of the 15 December 2020 Order, the Respondent do also pay the Applicant's reasonable costs since 15 December 2020, to be assessed if not agreed.

3. The Respondent shall make a payment on account of costs in the sum of 40% of the Applicant's bill of costs within 28 days of receipt of the same.

4. The Applicant's legally aided costs be subject to a detailed assessment.

5. Permission to appeal is refused (no application for permission was made and the damages judgment does not disclose any arguable legal error).

Signed: D. Blum

Upper Tribunal Judge Blum

Dated: 20 April 2023

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *20 April 2023*

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2020-LON-000416
(formerly JR/1265/2020 (damages decision)

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

Before:

UPPER TRIBUNAL JUDGE BLUM

- -

Between:

THE KING
on the application of
MA
(a child by his litigation friend ASM)
[Anonymity Direction Made]

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

Michelle Knorr
(instructed by Wilson Solicitors LLP), for the applicant

Hafsah Masood
(instructed by the Government Legal Department) for the respondent

- -

DAMAGES JUDGMENT

- -

Background

1. The applicant is a male national of Somalia born in 2006. He is the second cousin of ASM, a British citizen of Somali origin who is resident in the UK having been granted refugee status.

2. The applicant's mother left him when he was approximately one year old and he mostly lived with his late father's cousin. From a young age the applicant has suffered from a medical condition that eventually required him to undergo an end-colostomy in 2014. As a result of his medical condition he suffered neglect, social exclusion, bullying and physical and mental abuse, and did not attend school. The applicant and ASM established a relationship as outlined in my judgment dated 15 December 2020.

3. On 7 September 2019 the applicant entered Greece and was accommodated by the Greek authorities in a hostel for children in Athens. On 24 December 2019 the Greek authorities made a Take Charge Request (TCR) to the respondent under the provisions of EU Regulation 604/2013 (Dublin III).

4. On 15 December 2020 the Upper Tribunal found that the respondent's decisions refusing the TCR from the Greek authorities breached rights under Article 8 ECHR. The applicant and ASM shared "family life" and the respondent's refusal to exercise discretion in the applicant's favour pursuant to Article 17(2) (Dublin III) constituted a disproportionate interference with the right to respect for family life. The applicant's application for judicial review was granted and the respondent's decisions dated 27 January 2020, 13 March 2020, 27 April 2020 and 2 June 2020 refusing the TCR were quashed. The Upper Tribunal declared that the respondent's decisions refusing to accept the TCR breached the applicant's rights under Dublin III, Articles 7 and 24 of the Charter of Fundamental Rights of the European Union, and Article 8 ECHR.

5. The Upper Tribunal required, inter alia, that the respondent make a new lawful decision in accordance with its judgment and order, and that in the event that she accepted the TCR the respondent was to request the Greek authorities to expedite the applicant's transfer to the UK insofar as they were able to do so. The Upper Tribunal gave the parties 8 weeks to try to reach an agreement on damages and case management directions were issued in the event they could not agree. The Upper Tribunal refused an application by the respondent for permission to appeal its decision to the Court of Appeal.

6. The UK accepted the TCR on 24 December 2020. There was then a delay on the part of the Greek authorities in transferring the applicant. He was eventually transferred on 24 May 2021. The respondent noted that there were generally delays at the time because of the Covid-19 pandemic.

7. On 24 May 2021 Lord Justice Popplewell granted the respondent permission to appeal on one of her two grounds (concerning whether, in light of FWF v SSHD [2021] EWCA Civ 88, an exceptionality threshold applied to Article 8 ECHR/Article 7 of the Charter of Fundamental Rights). Lord Justice Popplewell noted that "any expedition consideration should be given to the appeal being heard together with that in BAA if feasible" (this being a reference to R (on the application of BAA and Another) v SSHD (Dublin III: judicial review; SoS's duties) [2020] UKUT 00227 (IAC), a decision of the President of the Upper Tribunal in respect of which the SSHD had obtained permission to appeal to the Court of Appeal). MA was not joined with BAA. A full hearing in the Court of Appeal in BAA occurred on 23-24 June 2021 in which the same ground in respect of which permission was granted in MA's case was considered.

8. By order dated 7 June 2021 the Upper Tribunal varied the timescale of its previous order by requiring the applicant to file and serve written submissions on damages by 1 July 2021, with the respondent to file her submissions within 14 days of receipt of the applicant's submissions. The applicant was permitted to file and serve a reply within 7 days of receipt of the respondent's submissions.

9. The applicant produced written submissions on damages dated 1 July 2021. The applicant did not pursue any claim for damages for a breach of EU law ('Francovich' damages). The respondent produced written submissions on damages on 16 July 2021. The applicant provided a reply dated 22 July 2021.

10. On 15 September 2021 the Upper Tribunal ordered that consideration of whether to award damages in the applicant's case be stayed pending judgment in the SSHD's appeal in BAA (now reported as SSHD v BAA [2021] EWCA Civ 1428). Judgment in BAA/CA was handed down on 8 October 2021. Submissions on the relevance of BAA/CA were provided by the respondent on 17 October 2021, and by the applicant on 18 October 2021, and the applicant provided a reply dated 21 October 2021.

11. On 1 April 2022 the Court of Appeal handed down judgment in QH (Afghanistan) v

SSHD [2022] EWCA Civ 421 ('QH'), which concerned, inter alia, the issue of damages for breaches of Article 8 ECHR in the context of the Dublin III Regulation. The respondent provided written submissions dated 26 April 2022 in respect of the relevance of this authority, and the applicant provided written submissions dated 4 May 2022.

12. The applicant provided further submissions dated 21 March 2023 in respect of the Upper Tribunal decision in MR v SSHD (JR-2020-LON-001176), a decision handed down on 21 March 2023. Each case must however be decided on its own particular facts, particularly in relation to any award of damages. I have therefore not had regard to these short submissions. I have nevertheless read the submissions and conclude that they would not have materially changed my decision even if I had taken them into account.

13. I apologise for the delay in determining the issue of damages following receipt of the last written submissions. This delay has not had any negative impact on my assessment of the issues arising from the damages claim. In making my decision I have considered with care all the relevant documents before me, the authorities produced by both parties and the submissions made by them.

14. I will not repeat the history of this case. Both parties are familiar with the submissions made on their behalf and of my findings, as detailed in my judgment dated 15 December 2020. I will only refer to that evidence and my findings to the extent that it is relevant to my assessment of the issue of Article 8 ECHR damages.

The applicant's submissions

15. The applicant contends that he is entitled to damages despite the fact that the respondent's breach of Article 8 ECHR was brought to an end through the acceptance of the TCR and his eventual transfer to the UK.

16. The applicant submits that the ECtHR "routinely" awards damages in Article 8 ECHR cases that result in family separation or in which family separation is brought to an end. The applicant supports this proposition by reference to several decisions including TP & KM (2002) 34 EHRR 2; Tanda-Muzinga v France 2260/10 (judgment date 10 July 2014); Tuquabo-Tekle v Netherlands [2006] 1 FLR 798; Senigo-Longue v France 19113/09; Mugenzi v France 52701/09; P, C & S v UK (2002) 35 EHRR 31; and El Ghatet v Switzerland (Application No 56971/10).

17. The applicant further submits that awards have been made by the ECtHR in family reunion cases even in circumstances where the family separation was short (citing Biao v Denmark (2017) 64 EHRR 1) or where it was not even clear if, but for the breach, reunification would have been required under Article 8 ECHR (citing El Ghatet). The applicant submits that, although he is a more remote family member, the strength of the relevant relationship is what matters and his relationship with ASM was particularly close due to the applicant's vulnerabilities and his personal history.

18. The applicant contends that M.A. v Denmark (App No. 6697/18) (handed down in July 2021), upon which the respondent relies, does not support her submissions on damages as, having regard to the particular facts of that case, the finding of breach and damages was not premised on an 'overall delay' in reunification of over 4 years.

19. The applicant additionally relies on QH in support of his submission that an award of damages is necessary to afford just satisfaction in the context of Dublin III family unity. Although the factual circumstances were different, the applicant points out that the judgment in QH focused on QH's vulnerability as a child migrant without other family support, that the breaches of Article 8 ECHR were not merely technical but materially impacted on the enjoyment of family life, and that the Court's focus was on the consequences for the child whose rights were breached. Nor, submits the applicant, was there any suggestion in QH that damages were not appropriate because QH had been under the care of the Greek authorities during the period of his separation from his cousin or because his presence in the UK was fixed to the determination of his asylum claim.

20. The applicant further contends that an award of damages is consistent with the "recognised special obligations" toward unaccompanied asylum-seeking minors under the ECHR, which is interpreted consistently with the Convention on the Rights of the Child (CRC) (Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties.

21. Consistent with the principles established by the CRC, the applicant contends that Strasbourg case law has consistently recognised that unaccompanied migrant children are "*highly vulnerable*" with "*specific needs that are related in particular to their age*", "*lack of independence*" and "*their asylum-seeker-status*", and that their "*extreme vulnerability takes precedence of considerations relating to the status of illegal immigrant*".

22. The applicant contends that he is a particularly vulnerable unaccompanied asylum-seeking minor who endured four reunification refusals and prolonged separation from the only family with whom he shares family life and who can care for him. While separated the conditions he faced in Greece were, in the light of his characteristics, very difficult which, together with the delay in uniting him with ASM, is relevant to the seriousness of the breach (citing in support ZT (Syria) 1 WLR 4894 at §93). The applicant suffered distress and psychiatric harm as a consequence of the breach and damages should be awarded.

23. The applicant identifies as 'key facts' in the determination of his damages claim his particular vulnerability (with reference to his medical condition and the neglect, social exclusion and abuse to which he was subjected), that he was 14 years old at the time of the TCR refusal decisions and that he had no parents to care for him and no other family willing to look after him in Somalia. Further 'key facts' were the inability of the Greek authorities to offer him appropriate care, the absence of adequate privacy necessary to enable him to deal with his medical condition in a dignified manner, and his feelings of isolation due to his inability to communicate with those looking after him because of the language barrier. It is argued that he suffers from PTSD and a Major Depressive Disorder as detailed in a report by Dr Susan Walker, Consultant Child and Adolescent Psychiatrist, dated 23 July 2020, who found that the applicant's circumstances in his hostel served as a source of stress and re-traumatisation.

24. The applicant maintains that Dr Walker is an experienced Consultant with a long history of assessing and treating children with mental health disorders, and that her conclusions should be accepted unless there is good reason to depart from them. The applicant submits that the respondent's approach to Dr Walker's report (see below) runs counter to established principles concerning psychiatric evidence (relying on, inter alia, R v SSHD ex p Khaira [1998] EWHC Admin 355 and Y (Sri Lanka) v SSHD [2009] HRLR 22). The applicant contends that Dr Walker's conclusions should be accepted unless there was good reason for doubting them as her description of the applicant's presentation under each criterion was accurate and supported by the evidence as a whole, and was further supported by a psychometric test that was not mentioned by the respondent. The applicant criticises the respondent's submission that Dr Walker's diagnosis of PTSD should be rejected on the basis that this was a mere assertion by the respondent without any further explanation other than the criticism of her diagnosis of Major Depressive Disorder (see below). Nor was Dr Walker's assessment of the severity of

the applicant's condition with reference to the JC Guidelines outwith the scope of her expertise.

25. The applicant contends, in any event, that the evidence relating to his vulnerability and suffering as a consequence of the refusals of the TCRs and the delay in their acceptance entitles him to compensation for the anxiety, distress and uncertainty he suffered (Alseran v MOD [2017] EWHC 3289 (QB) ('Alseran') at [912]).

26. The applicant submits that the refusal to accept the TCR and the delay in transferring him to the UK consequent to that unlawful refusal caused him psychiatric damage and significant distress. The applicant notes:

> Overall it took 1 year and 5 months from the time the TCR was made (on 24.12.19) until the Applicant was transferred (on 24.05.21), there was 1 year between the TCR and the acceptance of responsibility (24.12.20), approximately 11 months between the first unlawful refusal (27.01.20) and acceptance of responsibility, approximately 8 months between the April unlawful refusal (27.04.20) and acceptance of responsibility and approximately 1 year 1 month between the April unlawful refusal and the Applicant's transfer.

27. The applicant contends that the breach additionally had the effect of delaying his access to asylum procedures in the UK, contrary to the objectives of Dublin III. The applicant asserts that the respondent maintained a defence to the claim "… despite clear breaches of policy and well-established obligations, including best interests obligations." These breaches were said to include the respondent's investigative duties and a failure to comply with prior judgements by the Tribunal in respect of those duties. The applicant contends that the respondent refused to reverse her unlawful decisions even after proceedings were lodged and after the provision of extensive evidence of the applicant's vulnerability and instead issued two further unlawful refusals.

28. In respect of quantum, the applicant provided some examples of awards made by the ECtHR citing, inter alia, P, C & S v UK, TP & KM v UK, Tuquabo-Tekle v Netherlands, Senigo-Longue v France, Mugenzi v France, and El Ghatet v Switzerland. The applicant submitted that the starting point following the decisions of the ECtHR was between £5,200 and £20,000 where there was no specific medical evidence proving psychiatric damage. It is contended that the applicant has suffered psychiatric harm as outlined in the psychiatric report, and whilst it is accepted that the breach exacerbated an existing disorder, the contribution

caused by the respondent's unlawful actions were significant and specific. The applicant contended that the facts specific to his case, as outlined above, were aggravating features that increased the quantum that should be awarded. They applicant further contends that the respondent was aware of the applicant's vulnerability and the damage he was suffering, and that the applicant has not contributed to the breach or been dilatory in his application or in the provision of evidence supportive of his application. The applicant contends that an award of £25,000 is appropriate.

The respondent's submissions

29. Contrary to the submissions of the applicant, the respondent contends that the present case is not of the type in which the ECtHR "routinely" awards damages. The respondent's position is that damages are not necessary to afford just satisfaction as the applicant achieved what he set out to achieve in bringing his judicial review claim, which was to compel the respondent to accept the TCR and thereby bring to an end the infringement of his Article 8 ECHR rights. The respondent contends that, as the applicant was essentially seeking a public law remedy, his case fell within the first category of cases considered by Legatt J in Alseran (at [933]), and the claim for damages was of secondary importance. The fact that the applicant has been transferred to the UK, in conjunction with a detailed judgment vindicating his rights through a grant of declaratory relief, meant that he achieved just satisfaction and an award of damages was unnecessary. The respondent emphasises the importance of a grant of declaratory relief as described in DSD v Commissioner of the Metropolis [2014] EWHC 2493 (QB) ('DSD').

30. The respondent submits that, in the context of an application that would have taken her "several months" to lawfully consider given that it involved a minor seeking to enter the UK to stay with a second cousin with whom he had never previously lived, the fact that it took "a few months longer to facilitate his reunion" for what may only be a temporary period did not require damages to afford just satisfaction, and any suggestion to the contrary was not supported by any ECtHR authority.

31. The respondent makes the point that Dublin III is not an instrument that is used for settlement purposes or for family reunification, but rather is limited to determining which Member State is to examine a claim for international protection. The applicant could not therefore have had an expectation of anything

other than a temporary or limited reunification with ASM whilst his application for international protection was being examined.

32. The respondent contends that the applicant and ASM only met for the first time in 2014 and that they had never lived together other than for a short period in India in 2018. Moreover, they had not spent a significant period of time together.

33. The respondent further submits that the authorities upon which the applicant relies involved the separation of immediate family members and these separations were for significantly longer periods (e.g. 3 years and 5 months in Tanda-Muzinga v France and 6 years in Mugenzi v France). The respondent notes that M.A. v Denmark involved a separation of 4 years and 2 months (para 80) of husband and wife who had been married for 25 years (paras 78 & 131) (an award of EUR 10,000 was made), and that Biao v Denmark (2017) 64 EHRR 1 – a case which the applicant submits involved a short period of separation – was not a case concerning a violation of Article 8 ECHR, but of Article 14. The respondent argued that the applicant has not been able to identify a truly comparable case in which the ECtHR awarded damages.

34. The respondent notes that the time that elapsed between the first TCR and the UK's final acceptance was one year exactly, and this is the only period for which the UK can be held responsible as the delay between the applicant's entry to Greece on 7 September 2019 and the making of the TCR on 24 December 2019 was not attributable to the UK, and nor was the 5 month delay by Greece (during the time of the pandemic) in transferring the applicant to the UK. The respondent notes that under Article 17(2) of Dublin III it was within the U.K.'s discretion to accept responsibility for examining the applicant's asylum claim, and the UK had two months to provide a reply, and the time limit for transfer, following an acceptance, was six months. The respondent contends that the present situation is a "positive obligation context" and that the issue of damages should be judged by outcome, and that any lawful decision was bound to take several months to achieve.

35. The respondent notes that she did not defend her first and second decisions in the judicial review and she acknowledged that they were tainted by public law errors. Only the third and fourth decisions were defended. In relation to Article 8 ECHR, the respondent's primary position was that she had been rationally entitled to have found that Article 8 ECHR was not engaged on the basis that there was no family life between the applicant and his second cousin.

36. The respondent notes that at all times the applicant was under the care of the Greek authorities and had access to classes and activities when available and the support of a psychologist (Mr Othon Christofilis) and access to healthcare. Throughout his time in Greece the applicant remained in regular contact with ASM. Nor did the applicant claim to have suffered any pecuniary loss.

37. The respondent takes issue with the psychiatric report by Dr Walker. The respondent contends that Dr Walker's diagnosis of a serious psychiatric condition was not supported by the material in her report, and her analysis and reasoning do not withstand scrutiny. Dr Walker assessed the applicant by video link on 20 May 2020 and also spoke to Mr Christofilis and ASM. The account provided to Dr Walker and her own assessment of the applicant is recorded in section 7 of the report. At 8.2.1 – 8.2.2 Dr Walker concludes that the applicant meets the diagnostic criteria for Major Depressive Disorder and that he suffers from PTSD. The respondent notes that, at a minimum, the diagnostic criteria for Major Depressive Disorder (set out at 8.2.1 of the report and in the appendices at 12.0) require five or more of the specified symptoms to have been present during the same two-week period (at least one of which must be depressed mood or loss of interest or pleasure) and this must represent a change from previous functioning. The respondent argues that the information described in section 7 of Dr Walker's report does not support some of her findings at 8.2.2.

38. The respondent contends that QH was a case that revolved on its own particular facts which were materially different (concerning the unlawful removal of a child from the UK to Germany for a period of 19 months and the severing of Article 8 ECHR relationships that he had developed whilst present in the UK).

39. The respondent submits that, if the Upper Tribunal decides to make an award of damages, it should be no more than £4,000. If the Upper Tribunal accepts Dr Walker's diagnosis, it was her opinion that the applicant's psychiatric condition was the result of a combination of experiences, including those in Somalia. At most the TCR refusals "caused some exacerbation in the applicant's depression/PTSD". Nor was it appropriate to use the JC Guidelines as the guidelines concerned cases in which the breach of the Convention right had an outcome for the applicant which constituted or was akin to a private wrong (e.g. the tort of trespass to the person), a point the respondent asserts is supported by Legatt J in Alseran (at [931]), and a breach of

respect for family life does not give rise to a claim for damages in tort. The respondent further contends that, as the applicant's case is "very far removed" from the type of case envisaged by the JC Guidelines, the application of the Guidelines is not straightforward and cannot provide reliable assistance.

40. Even if the JC Guidelines are used, the respondent submits that the applicant does not fall within the "moderately severe" category and any opinion from Dr Walker relating to whether the applicant falls within this category is outside her role as an expert. In respect of the description of how the applicant's daily activities have been affected, the appropriate category is "less severe".

41. The respondent further contends, with reference to Alseran, that reference to awards made by the ECtHR should only be used as no more than "… a cross-check to ensure that the amount of any damages awarded would not, as best as can be judged, be likely to be perceive by the European Court as inadequate or excessive."

Relevant legislative framework

The Human Rights Act 1998 and Article 8 ECHR

42. Section 6(1) of the Human Rights Act 1998 ('HRA') makes it unlawful for any public authority to act in a manner incompatible with a Convention right. **Article 8 of the 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.

Section 8 HRA 1998 provides:

> (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
>
> (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

> (3) No award of damages is to be made unless, taking account of all the
> circumstances of the case, including—
>
> > (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
> >
> > (b) the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
>
> (4) In determining—
>
> > (a) whether to award damages, or
> >
> > (b) the amount of an award,
> >
> > the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

Relevant decisions

43. In Greenfield v SSHD [2005] UK HL 14 ('Greenfield'), the House of Lords emphasised that there should only be an award damages under s.8 of the 1998 Act if a court was satisfied that it was "necessary" to do so. In Lee Hirons v Secretary of State for Justice [2016] UKSC 46, the Supreme Court held that the victim must establish that the effects of the breach were sufficiently grave to merit compensation.

44. In Anufrijeva v London Borough of Southwark [2003] EWCA Civ 1406 the Court of Appeal stated that the award of compensation is very much a secondary objective in those cases where the core concern is to bring to an end a violation of human rights:

> "52 . . . The remedy of damages generally plays a less prominent role in actions based on breaches of the articles of the Convention, than in actions based on breaches of private law obligations where, more often than not, the only remedy claimed is damages.
> 53 Where an infringement of an individual's human rights has occurred, the concern will usually be to bring the infringement to an end and any question of compensation will be of secondary, if any, importance."

45. In DSD Green J indicated that, in relation to non-pecuniary harm, the Strasberg Court adopts a more ‘broad brush’ approach. The starting point is to ask whether a non-financial remedy is sufficient 'just satisfaction'.

> “The essential question for the court is therefore whether it is “necessary” to award damages on the facts of the present case in order to “afford just satisfaction” to DSD and NBV. In deciding this, the court takes account of all of the circumstances of the case including the existence of other relief or decisions of other courts.”

46. In determining whether a financial reward should supplement a declaration it is necessary to first ask whether there is a causal link between the breach and the harm which should be appropriately reflected in an award of compensation in addition to other remedies; and secondly, whether the violation is of a type which should be reflected in a monetary award. The need for a clear causal link to be established between the damage claimed and a violation found by the court is apparent from the 2007 Practice Direction: Just satisfaction claims (Article 41 of the Convention) issued by the ECtHR and the case of Alseran (at [909]).

47. Green J also noted that damages are not likely to be substantial and will generally be modest [41]. In determining an award by reference to Strasbourg cases an appropriate adjustment should be made to take account of any difference in the cost of living in the contracting State with that in the UK, and a temporal adjustment should also be made if the award was made many years previously.

48. At [36] Green J stated that, “An over-arching principle found in Strasbourg case law (and reflected in s 8 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*”. At [25] and [68] Green J noted that the Strasbourg Court often assumed, without expert medical evidence that the claimant had suffered distress, anxiety or anguish which fell short of any recognised medical condition but nevertheless warranted compensation. Awards for non-pecuniary damage are intended to provide financial compensation for non-material harm (such as physical or mental suffering) if the existence of such damage is established (paragraph 13 of the Practice Direction). The purpose of an award of damages is to compensate the applicant, not to punish the state responsible for the violation.

49. The conduct of the parties is also relevant ([37] & [40]), including whether the respondent has acted in bad faith, whether the violation was deliberate, and whether the violation was systematic or operational.

50. In QH the Afghan national applicant, who was a minor at the relevant times, had succeeded in his judicial review challenge to an illegal decision removing him to Germany after he had arrived in the UK and resided with his uncle, D, and had formed strong private life relationships with support workers in this country. One of the issues before the Court of Appeal was whether the admitted breaches of QH's Article 8 ECHR private life rights entitled him to damages (the Upper Tribunal having found that there was no Article 8 ECHR family life between QH and his uncle living in the UK). In that part of its assessment dealing with Article 8 ECHR damages, the Court referred to factors which, on the face of it, necessitated an award of damages in order for QH to be provided with just satisfaction [77] and [78]). These included a "very significant" interference with QH's private life rights, his status as a vulnerable child and his suffering from mental health difficulties, and the "half-life" he felt he was living on his return to Germany. The Court noted that QH was separated from "… his few friends and his support network for about 19 months" at this critical time, and that the breach of Article 8 ECHR had "significant practical consequences" for him.

51. The Court concluded that the Upper Tribunal erred in law in concluding that "the 'conflict and confusion' between the relevant authorities about how to resolve the dispute about [QH's] age", and "the complexity of the procedures involved". It was immaterial to the consideration of damages that the SSHD did not know that QH was a child when he was removed to Germany. The Court also considered that "… the UT erred in principle in attributing to [QH's] solicitors any responsibility for the length of the disruption of [QH's] private life, and in attributing the length of that disruption to the complexity of the procedures for sorting things out."

Discussion

Damages in principle

52. In determining whether an award of damages is necessary for the purposes of 'just satisfaction' I have considered the fact that the applicant achieved his primary goal of being reunited with ASM for the purposes of the processing of his asylum claim. The quashing of the unlawful decisions, and the respondent's consequential exercise of her discretion under Article 17(2) of Dublin III in the applicant's favour, rectified the breach of Article 8

ECHR. The parallel remedies, in the form of the quashing order and declaration, are matters that I must take into consideration.

53. I am satisfied there is a causal link between the respondent's breaches of Article 8 ECHR and the harm suffered by the applicant which, by reason of the impact on the applicant due to his separation from ASM, should be appropriately reflected in an award of compensation in addition to the declaratory relief already granted and the fact that the applicant has now been united with ASM. I am therefore satisfied, for the reasons given below, that damages are necessary in order for the applicant to achieve just satisfaction.

54. In his statement the applicant stated (at [3] & [5]) that ASM loved him, that ASM was the only family the applicant had, and that ASM was the only person the applicant could count on for support. In his 1st witness statement ASM stated that the applicant "… is feeling depressed because he is lonely. He is feeling anxious about his situation…" (at [58]). In his 2nd witness statement ASM stated that the applicant is lonely and feels depressed, that he was on his own and that no one was there for him except for ASM (at [3]). At [4] ASM repeated that the applicant felt lonely, frustrated and isolated. ASM described the powerlessness he felt in being unable to answer the applicant's questions about when they would be reunited (at [5]). ASM described how the applicant did not speak much to the other children or staff in the hostel because of the language barrier, that he was not friends with the other boys and was not close to anyone in Greece (at [7]). The applicant informed ASM that he was laughed at when he came out of the toilet and that he still shared a room despite the privacy he needed to manage his medical condition (supra).

55. In her 1st witness statement Ms Solopova, an Assistant Solicitor at Wilson Solicitors LLP, stated,

"MA told me that sometimes he feels very bad and becomes depressed. He explained that he thinks a lot about his time in Somalia but he tries to forget what happened. He told me that ASM encourages him to be strong and patient. … MA told me he feels lonely and cannot express what he is feeling to people at the shelter. He explained that he does not tell anyone in the shelter about all of his problems and that ASM is his support."

56. In his 1st witness statement the psychologist Mr Christofilis stated,

> "MA does not have much interaction with the other children unfortunately. … Even before the virus MA did not go out of the shelter much. He attends very few external activities. He doesn't have friends or relatives in Athens like other boys. He is very young so we do not let him go out alone as the shelter is in the centre of Athens. … He doesn't want the other children to know about his condition, so he has to find the right time to go to the toilet when other children are not there to change his bag in the bathroom and it takes some time…the other boys complain about the smell. … [the applicant] seems withdrawn and lonely. As much as we try to get him out of the shelter he prefers to stay in the shelter."

57. I find, on the balance of probabilities that, were it not for the respondent's breach of Article 8 ECHR occasioned by her unlawful refusal to accept the TCR, the applicant would have been reunited with ASM on an earlier date. The respondent's breach of Article 8 ECHR delayed a vulnerable child from being reunited with his only family attachment figure. I find that the respondent's unlawfulness prolonged the applicant's sense of isolation, instability and loneliness, which were exacerbated by the difficulties he experienced in communication due to language differences (the applicant could not speak English or Greek and he would need to wait for between 10 days and 2 weeks for an interpreter). The delay caused by the respondent's unlawfulness additionally prolonged the applicant's exposure to ostracization and abuse from some of the other boys in the hostel, further contributing to his sense of loneliness and isolation, and prevented him from having an earlier opportunity to gain access to a private space which made it difficult for him to regulate his medical condition with dignity. I also take into account the applicant's young age, his status as an unaccompanied asylum seeking child without any other meaningful family support other than from ASM, his traumatic personal history and the quality of his relationship with ASM. I have found there has been a breach of the substantive Article 8 ECHR relationship between the applicant and ASM, as disclosed in the statements of the applicant and ASM. I additionally find that the breach of Article 8 ECHR caused by the unlawful refusal of the TCR exacerbated the applicant's stress and anxiety caused by his continued separation from ASM. It is not necessary at this stage, for the purpose of determining liability in principle, to consider the accuracy of the medical diagnoses of Dr Walker. It is readily apparent from the factual descriptions detailed in section 7 of Dr Walker's report, and the documents she considered in section 6, and from the statements of the applicant, ASM and Mr Christofilis, and in the context of my factual findings (detailed in my earlier judgment and this

judgment), that the applicant's prolonged separation from ASM, and his prolonged exposure to the conditions in the hostel in light of his particular circumstances, had a material adverse impact on his wellbeing and his mental and emotional state. Whilst the respondent notes that the applicant and ASM only met for the first time in 2014 and that they had never permanently lived together before, the breach of Article 8 ECHR led to a vulnerable child being separated from the only family member who was able to provide him with the emotional support he needed.

58. In reaching my decision I accept the importance of a grant of declaratory relief as described in DSD in determining whether an award of damages is necessary for the establishment of just satisfaction. I have considered and applied the general principles relating to awards of damages for breaches of the HRA, helpfully identified in DSD. These include, in relation to non-pecuniary harm, the 'broad approach' to be adopted to setting an appropriate quantum award ([17]), that precision in establishing causation is not an identifiable hallmark of Strasbourg case law and that the ECtHR "quite regularly simply assumes that a claimant *must have* suffered some form of generalised anxiety, stress, distress or anguish warranting compensation which falls short of any recognised medical condition" ([25]), and the taking into account the conduct of the applicant and the respondent ([37] & [40]). I take full account of the consequence of the quashing of the unlawful decisions and the fact that the applicant has now been transferred to the UK, and that he has therefore achieved a significant element of the purpose of his claim. There has however, in my judgment, been a significant breach of the substantive Article 8 ECHR relationship between the applicant and ASM such as to warrant a reward of damages.

59. I have considered the respondent's argument that it would always have taken "several months" to lawfully consider the TCR application given the complexity of the applicant's relationship with ASM. The respondent has not indicated with any specificity how many months it would have taken for the TCR application to have been processed if there has been no unlawfulness (I do not hold this against the respondent as any such indication is likely to have been speculative given the unusual nature of the Article 8 ECHR relationship), and I do not consider I am able to speculate on this point. I do however accept that it was unlikely that a lawful decision to accept the TCR would have been made immediately on receipt of Greece's request. I note in this regard the two month period under Dublin III in which a decision was to have been made. It remains my finding that the respondent's unlawfulness delayed the applicant's entry to the UK and caused him to continue to live in difficult conditions in Greece.

60. I have considered the authorities upon which the respondent relies in support of her contention that the ECtHR awards damages in situations where there are lengthy periods of separation (Tanda-Muzinga v France, Mugenzi v France and Biao v Denmark). Each case must however be determined on its own facts; whilst the length of separation may have been less in the instant case than in others, the particular nature of the Article 8 ECHR relationship is relatively strong in the instant case. I see no reason in principle why the applicant should not be entitled to damages merely because the length of his separation from ASM was not as long as that in other cases.

61. Whilst I accept the respondent's contention that the applicant could not have had an expectation of anything other than a temporary or limited reunification with ASM whilst his application for international protection was being examined as being accurate, I have nevertheless found that Article 8 ECHR was breached, a finding in respect of which there has been no successful challenge. In my earlier judgment (at [153]) I stated;

> "I find, on the facts of the instant case, having particular regard to the applicant's young age, his serious medical condition, the circumstances in which he is living in the Greek hostel, the absence of any other close family members and his strong emotional dependency on ASM, that the factual matrix supporting the existence of a family life relationship also goes to the question of whether the respondent's refusal to exercise her discretion under Article 17(2) constitutes a disproportionate interference under Article 8 ECHR. I note that the principal decision under challenge (27 April 2020) failed to address the issue of proportionality as it rejected the existence of an Article 8 ECHR family life relationship. I take into account the factors identified in section 117B of the Nationality, Immigration and Asylum Act 2002 as being relevant to the public interest considerations, including the public interest in the maintenance of effective immigration controls. I note that the applicant would not be transferred to the UK for the purposes of settlement but to enable his asylum claim to be determined. I find however that the applicant's need for affection and support from the only family relation willing to provide it during the processing of his asylum claim, which is a challenging time, in light of his age and his history of neglect and abuse and his medical condition, and his dependency on ASM, is sufficient, even having regard to the width of the discretion, to render the refusal to exercise discretion under Article 17(2) a disproportionate

interference with the right to respect for family life under Article 8 ECHR."

62. The respondent has not identified any authority to the effect that Article 8 ECHR damages in the context of a reunification involving family life considerations cannot be awarded where that reunification has occurred within the framework of Dublin III, or in another context where unification is for a theoretically temporary period. There was no suggestion in QH that the applicant in that case would not be entitled to damages on the basis that the breaches of the Article 8 ECHR relationships he had established occurred in the context of his theoretically temporary or limited residence in this country. I see no reason in principle why an individual who is exposed to harm by virtue of a breach of Article 8 ECHR should not be entitled to damages if they have suffered non-pecuniary loss even if their admittance is notionally only for a temporary period. I remind myself that any entitlement to damages will always depend on the particular facts of each case. Moreover, it is apparent from TP and KM v UK that, in appropriate cases, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress in accordance with Article 13 of the ECHR.

63. On the particular facts of this case I am satisfied that the applicant's transfer to the UK and the declaration made in his favour do not constitute just satisfaction for the respondent's breach of Article 8 ECHR.

Quantum

64. I now consider the quantum of damages that should be awarded to the applicant.

65. Whilst I share to some degree the respondent's concerns regarding the applicability of the JC Guidelines given that a breach of the right to respect for family life does not give rise to a claim for damages in tort and that the applicant's case, in the sense of being a breach of Article 8 ECHR, is far removed from the cases for which the Guidelines are designed (a point noted by Green J in DSD), and whilst I remind myself that in Greenfield the House of Lords indicated that in determining the amount of an award, the domestic courts should look to the ECtHR and not to precedents in the field of domestic tort law, I nevertheless consider the Guidelines are of some assistance when assessing the appropriate quantum of damages in a case concerning emotional/psychiatric harm (see the analysis of Green J in DSD at [33]). The JC Guidelines are primarily concerned with the nature

and extent of the harm that has been caused, and this is more relevant than the categorisation of the legal wrong or breach of duty that gave rise to that harm. I remind myself however that the approach taken by the ECtHR to the issue of quantum is a broad one which emphases flexibility by reference to the overall context of a claim.

66. I consider the relevant period of time for determining quantum of damages based on breach of Article 8 ECHR to be the period that elapsed between the first TCR and the UK's final acceptance, one year. I do however bear in mind that it was unlikely that the TCR would have been immediately accepted even if the respondent had not acted unlawfully given the need for the respondent to have carefully considered the unusual nature of the Article 8 ECHR relationship. I note in this regard that Dublin III provides for a 2 month period in which a response to a TCR should be made.

67. I have not found all of the Strasburg decisions relied on by the applicant to be of material assistance. In many instances they relate to entirely different factual circumstances and involved breaches of Article 8 ECHR that were of a different nature to those in the instant challenge. TP & KM for example, concerned loss of opportunity in the context of proceedings to remove a very young child from its mother where there were serious welfare issues, and P, C & S concerned disclosure failures in the context of family proceedings in circumstances where a child previously lived with her mother. Other cases, such as Mugenzi v France and Tanda-Muzinga v France, whilst more relevant (as they dealt with delays in family reunion) concerned situations in which the close family members had previously lived together. I have nevertheless had regard to the particular awards of damages in those decisions.

68. In considering the Strasbourg awards I have taken into account that an appropriate adjustment should be made based on differences in the cost of living in the contracting States and that I should make a temporal adjustment if the awards in the Strasbourg decisions were made many years ago (paragraphs 34-5 of Green J's decision in DSD; see also Simmons v Castle [2012] 1 WLR 1239, where the Court of Appeal decided that from 1 April 2013 a 10% increase would apply to all civil claims and to all heads of non-pecuniary loss).

69. The respondent contends that Dr Walker's diagnosis of a serious psychiatric condition was not supported by the material in her report, and that her analysis and reasoning do not withstand scrutiny. Dr Walker assessed the applicant by video link on 20 May 2020 and also spoke to Mr Christofilis and ASM. The account

provided to Dr Walker and her own assessment of the applicant is recorded in section 7 of the report. At 8.2.1 – 8.2.2 Dr Walker concludes that the applicant meets the diagnostic criteria for Major Depressive Disorder, and that he suffers from PTSD. The respondent notes that, at a minimum, the diagnostic criteria for a Major Depressive Disorder (set out at 8.2.2 of the report and in the appendices at 12.0) require five or more of the specified symptoms to have been present during the same two-week period (at least one of which must be depressed mood or loss of interest or pleasure) and this must represent a change from previous functioning.

70. The respondent contends that the information detailed in section 7 of Dr Walker's report does not support her findings at 8.2.2 that the applicant (i) had a markedly diminished interest or pleasure in all, or almost all, activities most of the day nearly every day; (ii) that he had significant weight loss or weight gain or decreased or increased appetite nearly every day; (iii) that he displayed a diminished ability to think or concentrate or that he displayed indecisiveness nearly every day; and (iv) that he experienced recurrent thoughts of death, recurrent suicidal ideation or had attempted suicide or have a specific plan for committing suicide.

71. No issue has been raised with Dr Walker's qualifications, as set out at section 3 and appendix 4 of her report. It is apparent from sections 5 and 6 of Dr Walker's report that she reviewed a number of documents in making her assessment including the statements from the applicant and ASM and the statement from Mr Christofilis, Anastasia Solopova, the psychosocial report and the best interests report. Dr Walker additionally took into account the applicant's completion of a PHQ-9 Adolescent questionnaire test for the assessment of depression (detailed at appendix 3 of Dr Walker's report). On this he scored 13, which corresponds to a diagnosis of moderate depressive disorder. Dr Walker's conclusions in section 8 should therefore be approached on the basis that the documents she assessed, including the statements she read, informed those conclusions.

72. The respondent contends that there was nothing in section 7 of Dr Walker's report supporting a finding that the applicant displayed "marked diminished interest/pleasure in all or almost all activities most of the day, nearly every day." The respondent contends that s.7 noted that the applicant "played games on his phone, sometimes with other boys in the house." The report stated:

> "He said that there are about 3 boys in the house that he does play with sometimes and they play games together on their mobile phones. He is not able to speak with them or any of the other boys as he does not speak English."

73. The report also stated that the applicant "sometimes plays games on his phone." The actual extract above indicates that the applicant "sometimes" plays mobile games with other boys. "Sometimes" playing games with other boys is not inconsistent with a person showing a markedly diminished interest or pleasure with almost all activities most of the day, particularly if one has regard to the written statements describing the applicant's general lack of interaction with the other children and his general mood. In her statement Ms Solopova said, "MA told me that sometimes he feels very bad and becomes depressed. He explained that he thinks a lot about his time in Somalia but he tries to forget what happened. He told me that ASM encourages him to be strong and patient." (Para 30). "MA told me he feels lonely and cannot express what he is feeling to people at the shelter. He explained that he does not tell anyone in the shelter about all of his problems and that ASM is his support." (Para 32). In his statement ASM said, "He [the applicant] is feeling depressed because he is lonely. He is feeling anxious about his situation..." (Para 58). Mr Christofilis stated, "MA does not have much interaction with the other children unfortunately" (Para 25). "Even before the virus MA did not go out of the shelter much. He attends very few external activities. He doesn't have friends or relatives in Athens like other boys. He is very young so we do not let him go out alone as the shelter is in the centre of Athens" (Para 28). "He doesn't want the other children to know about his condition, so he has to find the right time to go to the toilet when other children are not there to change his bag in the bathroom and it takes some time…the other boys complain about the smell" (Para 23). "[the applicant] seems withdrawn and lonely. As much as we try to get him out of the shelter he prefers to stay in the shelter" (Para 40).

74. I note also that in section 7 the applicant described playing games on his phone as a way of distracting himself from disturbing memories. Dr Walker's assessment was also based on a conversation with Mr Christofilis who said the applicant was lonely, and a conversation with ASM who said the applicant "stayed at home all the time doing nothing." The applicant informed Dr Walker that, " … he did very little with his time and was not even going out of the home. There was nothing he was really looking forward to, other than his phone calls with ASM and his hope that he may be able to reunite with ASM in future." Although the respondent refers to section 7 of Dr Walker's report,

which indicated that the applicant did not go out of the hostel due to the pandemic, Dr Walker also took into account the statement of Mr Christofilis who stated that even before the pandemic the applicant did not go out of the shelter much. The fact that the applicant no longer attended lessons because they were only offered in Greek and he found this too hard does not of itself undermine Dr Walker's findings. Although the applicant had shown an interest in learning English there is nothing to indicate that Dr Walker failed to properly factor this into her assessment, and there was nothing in the evidence before me to suggest that an interest in learning English is inconsistent with a person showing a markedly diminished interest or pleasure on almost all activities most of the day.

75. I do however accept the criticism in the respondent's damages submissions that there was no apparent adequate support for Dr Walker's conclusion that the applicant displayed "significant weight loss or weight gain or decrease or increase in appetite nearly every day" as a symptom of depression. There is nothing to indicate that there were other details before Dr Walker relating to eating issues or weight issues, and the applicant had indicated that the food was different to that in Somalia and not to his liking. Although the applicant reported to Dr Walker that he thought he was eating less than usual, he was also not sure whether his weight had changed.

76. I accept the respondent's assertion that there was nothing to the effect that the applicant struggled to concentrate when playing games on his mobile phone in section 7 of the report. Dr Walker does not however state that the descriptions in section 7 are exhaustive of her observations, and the assertion at 8.2.2 A (8) of her report is clear, specific and unambiguous - "MA reported struggling to concentrate e.g. when playing a game on his mobile phone." Although one may reasonably expect the material observations made by Dr Walker to have been included in section 7, I am not persuaded that the absence of any reference to the applicant's ability to concentrate in section 7 undermines the clear and particularised observation made by Dr Walker at 8.2.2, particularly when one considers the PHQ-9 questionnaire where the applicant indicated, in response to a question inquiring whether he had trouble concentrating on things, that he had been bothered by this symptom 'more than half the days' in the past two weeks.

77. In relation to the symptom of 'Recurrent thoughts of death (not just of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide', Dr Walker stated that the applicant "… said that he often

thinks about how he can get out of this life, but denied that he has ever had any suicidal thoughts." The respondent notes that the applicant denied having thoughts of suicide or self-harm, that in the PHQ-9 questionnaire he responded "not at all" to a question about the frequency of 'thoughts that you would be better off dead or of hurting yourself in some way', and that there was nothing in section 7 of Dr Walker's report that suggested that the applicant experienced recurrent thoughts of death.

78. Dr Walker's report makes clear that the applicant denied ever having had suicidal thoughts, but at 7.10.6, which deals with Dr Walker's examination of the applicant, with reference to the side heading 'suicide', Dr Walker wrote,

> "He [the applicant] said that he was fed up with his life and was always trying to think of ways to leave his difficult life, but he denied ever having had suicidal thoughts."

79. It is not clear to me what the applicant meant when he told Dr Walker that he was "fed up with life" and "always trying to think of ways to leave his difficult life." In her report at 8.2.2(9) Dr Walker stated that the applicant often thinks about how he can get out of this life, although he denied ever having had suicidal thoughts. There is no express reference in the medical report or the other evidence before me to the applicant having 'recurrent thoughts of death', but it is possible that Dr Walker construed the applicant's reference to thinking of ways of leaving his difficult life to constitute recurrent thoughts of death. It is unfortunate that the report is not clearer, but given Dr Walker's experience and qualifications, and in the context of the applicant's history and circumstances, I do not find that this element of Dr Walker's diagnosis has no evidential basis.

80. Although the evidence before Dr Walker did not support her conclusion relating to the symptom of weight loss and/or appetite, I am satisfied that the other symptoms with which the respondent took issue were adequately assessed by the Consultant Psychiatrist. I therefore find that a minimum of 5 symptoms required for a diagnosis of Major Depressive Disorder were present. I consequently find I can attach weight to this aspect of Dr Walker's report. Dr Walker concluded that the applicant's depression fell into the moderately severe range. This was a clinical assessment that the Consultant Child and Adolescent Psychiatrist was entitled to make. In making this assessment Dr Walker did not exceed 'the proper bounds'.

81. The respondent further contends that Dr Walker's diagnosis of PTSD, at 8.2.4, "… similarly fails to stand up to scrutiny." The

diagnostic criteria for PTSD is however different to that of a Major Depressive Disorder (see the diagnostic criteria at appendix 2 of Dr Walker's report). The respondent does not offer any reasoned explanation why Dr Walker's PTSD diagnosis should not be relied on. For the reasons given by Dr Walker at 8.2.4 of her report I am satisfied that the applicant suffered from PTSD. Independently of my assessment of Dr Walker's diagnosis of a Major Depressive Disorder, I am satisfied that she was fully entitled to conclude that the applicant suffered from PTSD.

82. I have drawn together the various strands relevant to the assessment of quantum taking into account the totality of evidence regarding the applicant's circumstances in Greece during the period occasioned by the unlawful refusal of the TCRs. I take into account the applicant's young age, and that the applicant is suffering from PTSD and a Major Depressive Disorder. The respondent's delay did not cause either the PTSD or the Major Depressive Disorder, although it did exacerbate these pre-existing conditions. Throughout his time in Athens the applicant had access to medical treatment, although he only had limited psychological support. Whilst in the hostel the applicant was clothed and fed, and he had access to education (which he was unable to utilise because of language issues). I take into account that during the period of the respondent's unlawful conduct the applicant lacked the privacy needed to manage his medical condition with dignity, and that he suffered abuse from some of the other children in the hostel. I take into account the anxiety, distress and uncertainty that the applicant experienced during the period of the respondent's unlawful conduct. I do not consider there is any basis for finding that the respondent acted in bad faith given the very unusual Article 8 ECHR family life relationship that I found existed between the applicant and ASM, and I do not consider it appropriate to award damages for any delay to the applicant's ability to access asylum procedures as this does not fall within my understanding of the nature of the harm that can be compensated by an award of damages for a breach of Article 8 ECHR.

83. Although the relationship between the applicant and ASM is strong, I note that they had only lived together for short periods of time and that most of the emotional support provided by ASM had been done at a distance. This emotional support continued to be provided remotely during the period of the respondent's unlawful conduct as they communicated frequently. I note that the applicant maintained contact with ASM during this time using a mobile phone purchased by ASM. There was therefore no severing of the relationship during the period of the breach of Article 8 ECHR. I also take into account the communication

difficulties the applicant experienced in the absence of a regular Somali interpreter, although I note that ASM was able to interpret on his behalf and liaised with the hostel in relation to the applicant's interests and was able to discuss the applicant's behaviour and progress with staff. The applicant also continued to be financially supported by ASM.

84. Although a period of one year elapsed between the first TCR and the UK's final acceptance, I take into account that the respondent would almost certainly have needed some time to consider the unusual relationship between the applicant and ASM and that under Dublin III the respondent had up to 2 months to make a decision.

85. Having looked at all the circumstances of this case and the overall context, and having regard to the authorities drawn to my attention I consider it appropriate to award the applicant £10,500 for non-pecuniary damages for the breach of his Article 8 ECHR family life rights.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the applicant in this judicial review is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

D. Blum

Signed:

Upper Tribunal Judge Blum

Dated: **20 April 2023**

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