Case No: JR-2020-LON-001176

In the Upper Tribunal
(Immigration and Asylum Chamber)

Field House
Breams Buildings
London, EC4A 1WR

21 March 2023

Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE KING

On the application of
MR
(ANONYMITY ORDER MADE)

Applicant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Michelle Knorr (instructed by Bhatt Murphy Solicitors) for the Applicant
Gwion Lewis KC (instructed by the Government Legal Department) for the Respondent
(By means of written submissions)

JUDGMENT

The Tribunal confirms the anonymity order in the following terms:

> **Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicant. This order applies to, amongst others, the applicant and the respondent. Any failure to comply with this order could give rise to contempt of court proceedings.**

Judge O'Callaghan:

I. Overview

1. This judgment is concerned with an award of damages.

2. By an Order sealed on 6 December 2021 the Upper Tribunal declared that the respondent's refusal of a Take Charge Request ('TCR') made by the Greek authorities breached the applicant's private life rights protected by article 8 of the European Convention on Human Rights and article 7 of the Charter of Fundamental Rights of the European Union.

II. Award

3. For the reasons detailed below, the applicant is awarded non-pecuniary damages of **£10,000**.

III. Brief Facts

4. The applicant is a national of Afghanistan who was born on 1 January 2003. He was a child at the relevant time to these proceedings.

5. His uncle, HR, left Afghanistan before his birth and resides in the United Kingdom.

6. The applicant states that his parents were killed in 2018, resulting in his leaving Afghanistan and initially entering Iran before travelling to the European Union as an unaccompanied

asylum-seeking child. He entered Greece on 25 June 2019 and according to Alexia Sideri, a Greek lawyer, he registered an asylum claim with the Greek authorities on 16 July 2019. During examination of his claim, he stated his wish to be reunited with HR and on 24 September 2019 the Greek authorities made a TCR to the United Kingdom under EU Regulation 604/2013, the Dublin III Regulation. The United Kingdom authorities rejected the TCR by a decision dated 29 October 2019, on the ground that the required familial link had not been established. Three subsequent requests made by the Greek authorities for the United Kingdom to re-examine its decision were rejected.

7. Following the filing of the applicant's notice of claim, his legal representatives forwarded onto the respondent the results of a DNA test dated 12 August 2020 supporting the asserted familial relationship between the applicant and HR.

8. The Greek authorities sent a fresh TCR to the United Kingdom authorities on 22 October 2020. By an assessment dated 25 November 2020 HR's local authority confirmed that it possessed no safeguarding concerns and on 27 November 2020 the United Kingdom authorities accepted the TCR.

9. The applicant arrived in the United Kingdom on 10 May 2021, joining HR and his family.

IV. Previous Findings: Applicant's Right to a Private Life

10. By its judgment of 3 December 2021, the Upper Tribunal found that family life was not established between the applicant and his uncle at any time prior to the former's arrival in the United Kingdom.

11. The Upper Tribunal found in respect of the applicant's private life rights, *inter alia*:

> '95. I further find that the delay in completing the transfer of the applicant to the United Kingdom has consequences of such gravity as to engage the operation of article 8(1) ECHR in respect of private life. The initial TCR clearly identified HR

to be the applicant's uncle and provided details as to HR's date of birth and British citizenship. Several documents accompanied the TCR including evidence of HR's nationality, home address and employment. In addition, the Greek authorities provided to the respondent its 'Best Interests Assessment Form' which records the observation, "... the minor is severely traumatised and in need of psychosocial support. The minor can't talk about his past without crying and it is impossible for him to speak a lot about his parents … According to his statements, he feels sad, unprotected and anxious. He also stated that he finds it very hard to sleep and that he has intense headaches. The symptoms have severely deteriorated during the past few months, something that is probably related to the current context and lack of stable environment. The minor doesn't feel safe [living] unattended with so many people in the camp and he is afraid all the time."

96. ... There is evidence before me that the applicant's poor mental health continued to afflict him whilst he awaited a positive decision as to his transfer to the United Kingdom. Elli Avramidou, psychologist, details in her short note, referred to as a mental health certificate, dated 2 June 2020, that the applicant reported symptoms of PTSD, including severe and frequent flashbacks, recurrent nightmares and isolation. He was identified as being upset easily, crying without reason and being unable to cope with loud voices and noises. He reported problems with sleeping.

97. The obligation to take charge under the Regulation did not arise until the respondent was satisfied that HR was the applicant's uncle. Once the applicant established the familial relationship and the respondent was satisfied that this fundamental requirement was met, in the absence of evidence establishing that it was not in the best interests of the applicant to be united with HR, an obligation rested upon the respondent to agree to the transfer.

98. The initial TCR was refused by a decision dated 19 October 2019 observing, *inter alia*, that having "consulted the minor's claimed uncle's previous Home Office submissions …. from the information provided within the claimed uncle's Home Office records, regrettably we have been unable to corroborate the claimed family link." The respondent now accepts this decision was made in error, as she was in possession of HR's asylum screening interview dated 2002 that corroborates the

> family link. The Greek authorities' request for re-examination, dated 18 November 2019, was accompanied by the applicant's Tazkira, with translation, detailing both his father and his grandfather. There is no dispute by the respondent as to HR having provided these names during his own application for refugee protection in 2002. Unfortunately, the request for re-examination was rejected by a letter dated 24 February 2020 on the mistaken basis that the applicant and HR asserted that they were 'siblings'.

12. The Upper Tribunal concluded, at [99], that a positive obligation arose requiring the respondent to take charge of the applicant on 29 October 2019 because the failure to comply with international obligations threatened his moral and physical integrity.

13. The delay between the respondent's TCR decision of 29 October 2019 and the respondent's eventual acceptance of the second TCR on 27 November 2020 amounted to almost 13 months.

V. Evidence

14. In preparation for the substantive hearing, various witness statements were filed and served, including from HR, as well as objective evidence addressing conditions in Moira refugee camp.

15. Moira, where the applicant resided from soon after his arrival in Greece on 25 June 2019 to 31 January 2020, was a barbed wire-enclosed facility established in a former military base on the island of Lesvos that operated until it was gutted by fire in September 2020. Various Guardian newspaper reports from 2019 to 2020 filed with the Tribunal by the applicant identify capacity at the relevant time as running at over 700% the number the camp was constructed to accommodate, with thousands of vulnerable people being placed in makeshift tents situated in areas surrounding the camp which were elevated on wooden pallets as a means of relief from the cold ground. Overcrowding impacted upon health conditions and the provision of food. The electricity supply was unreliable. The newspaper reports identify threats of violence in the camp being considered by many to be high.

16. By Order of the Upper Tribunal the parties were to provide disclosure and, additionally, serve further evidence relevant to the consideration of damages. Both parties complied. The applicant filed and served a small bundle of additional documents, including witness statements from the applicant and HR, photographs of the applicant at his new home in the United Kingdom, and evidence as to regular communication between uncle and nephew whilst the latter was in Greece.

17. The applicant relies upon a witness statement, dated 27 January 2022, stating that his uncle, HR, is like a father to him. He provides limited detail as to his journey to mainland Europe. He details travelling across water from Turkey to Greece and being fearful of drowning. He describes life in Moira as "very hard", and though meals were provided he was given no money for clothes. He was supplied with a shirt and a sleeping bag. He details the feeling of danger, with smugglers actively operating, men fighting and fires breaking out. He states that his room was crowded, being required to share with twenty-two other males.

18. Whilst in Moria he was able to persuade someone to call HR, who subsequently sent him money so that he could purchase his own phone. His uncle sent money so that he could buy clothes and food. The applicant reminisces, "I bought food from a stall that sold Afghan food. Having Afghan food was comforting as it felt more normal and more like home".

19. The applicant details that he became angry when the TCR was refused, and that he felt "that it was the end of my life".

20. As to his relocation to Athens, he states that the 30 Euros he received a month from the Greek authorities was insufficient, so he would request money from HR "just to go out and get food and clothes and sometimes to go [to a] shopping mall, beach or to [a] river to go swimming with the other children".

21. He details that though educational classes were established when residing in Athens, he could not concentrate because of flashbacks and headaches. He details, "I have problems

with sleeping, I avoided people from Afghanistan as they talked about Afghanistan". He states that he was often hungry because the food provided at mealtimes was so bad that he would not eat anything other than breakfast which consisted of bread, cheese and a glass of milk. He bought food from shops.

22. He recounts the means of modern communication by which he was able to stay in contact with HR.

23. By a witness statement dated 27 January 2022, HR details that the applicant resided in Moira from June 2019 to 31 January 2020, a period of approximately seven months. He asserts that living conditions were poor. The applicant was subsequently transferred to Athens, residing there from 31 January 2020 until leaving for the United Kingdom in May 2021. HR confirms that he sent money to the applicant during his residence in Athens, "so that he could buy food, use public transport and buy other items".

24. Following his arrival in the United Kingdom the applicant was referred to a psychologist in July 2021 and is prescribed an anti-depressant, Fluoxetine.

Medical evidence

25. Among various documentary evidence filed with the Upper Tribunal, the applicant relies upon a mental health certificate prepared by a psychologist, Ellie Avramidou, in June 2020 and a clinical psychological report prepared by Dr. Alicia Griffiths, dated 6 October 2020.

26. Ms. Avramidou noted the applicant's reports of post-traumatic stress symptoms, such as severe and frequent flashbacks, recurrent nightmares and isolation. These flashbacks were impeding his ability to engage in lessons and caused him severe headaches. He exhibited an inability to control anger and used isolation to avoid others. Ms. Avramidou concluded that the applicant showed a psychological reaction compatible with post-traumatic stress disorder.

27. Dr Griffiths' assessment of the applicant followed a two-hour consultation conducted by Zoom over two days in August 2020, the first day being subject to communication difficulties following a power cut.

28. Dr Griffiths' conclusions were that the applicant was living with symptoms of post-traumatic stress disorder that meant he was experiencing intrusive images and memories from his past. Additionally, he was preoccupied with worry as to whether he would be able to be reunified with his uncle in the United Kingdom. Dr Griffiths opined that the delays in accepting the applicant's transfer, and the refusals he received, contributed to the development of psychiatric injuries.

VI. Decision and Reasons

29. The applicant submits that it is just and equitable in the circumstances arising for there to be an award of damages as just satisfaction, rather than there be a declaratory order alone. He seeks an award of £30,000 for non-pecuniary damages.

30. It is accepted on behalf of the applicant that there can be no double recovery, and so there is no requirement for the Upper Tribunal to separately consider an award in respect of breach of European Union law rights.

31. The respondent submits that an award of damages is not necessary to give just satisfaction for the identified breach.

Is an award of damages necessary?

32. Though article 41 ECHR, concerned with just satisfaction, is not one of the articles scheduled to the Human Rights Act 1998, it is reflected in section 8 of the Human Rights Act 1998 which provides for the grant of such relief or remedy as considered just and appropriate. Pursuant to section 8(3) of the 1998 Act damages must be a 'necessary' remedy and pursuant to section 8(1) it must also be 'just and appropriate' to award them. In *R (Greenfield) v.*

Secretary of State for the Home Department [2005] UKHL 14, [2005] 1 WLR 673, at [6], Lord Bingham elaborated that the 'necessity' was the key test:

> '6. … It would seem to be clear that a domestic court may not award damages unless satisfied that it is necessary to do so, but if satisfied that it is necessary to do so it is hard to see how the court could consider it other than just and appropriate to do so.'

33. The respondent contends that damages are not necessary to ensure just satisfaction for the breach of the positive obligation found by the Upper Tribunal. She observes that the initial failures to make lawful decisions in respect of the TCR have since been remedied by a lawful acceptance of the TCR and the applicant's successful transfer to the United Kingdom. The Upper Tribunal's conclusion that the respondent was under a positive obligation arising from article 8 ECHR to accept the TCR earlier than she did is appropriately reflected in the declaration already made and the applicant can properly regard this declaration as a vindication of his rights under article 8 ECHR.

34. The question of damages and just satisfaction was considered by the Court of Appeal in *QH (Afghanistan) v. Secretary of State for the Home Department* [2022] EWCA Civ 421, [2022] I.N.L.R. 243. Careful consideration must be given to the facts of the breach itself. The starting point is that the respondent was required to take the applicant as she found him at the relevant time. Significant respect was to be given by her to a vulnerable minor, living apart from family members in a refugee camp, with mental health concerns.

35. In this matter, I accept that the interference with the applicant's private life rights was very significant. He was a vulnerable child, recently orphaned, suffering from mental health concerns, who was seeking stability with his uncle and other close relatives. On his evidence, he was struggling with his life in Greece, particularly during his time in Moira where he had been residing for approximately four months when the respondent first rejected the TCR request in October 2019. He was ultimately separated from his preferred support network for a further 13 months, the decision to accept the TCR request being made in November

2020. This is a case in which, from the facts arising, the only reasonable conclusion is that damages are necessary to provide the applicant with just satisfaction.

Assessment of award

36. The award of damages is in respect of a breach by the respondent of the applicant's private life rights as protected by article 8 ECHR from the rejection of the TCR on 29 October 2019 to its acceptance on 27 November 2020, a period of twelve months and thirty days.

37. As noted at [30] above, the applicant seeks an award of £30,000 for non-pecuniary damages.

38. Neither party has referred the Tribunal to a domestic award of damages identified as being relevant to the assessment to be undertaken in this matter, which is focused upon the article 8 ECHR private life rights of a vulnerable child with mental health concerns.

39. The applicant's reliance upon an identified range of awards for psychological/mental or other harm arising in article 3 ECHR cases is unhelpful; no breach of article 3 was asserted or found.

40. In respect of a breach of article 8 ECHR rights the applicant expressly identifies eight damages awards from the Strasbourg Court in written submissions filed with the Upper Tribunal, which are addressed below. None of the judgments were filed with the Tribunal. References to inflation and uplift are as identified by applicant, with no express criticism of the calculations by the respondent.

41. Additionally, in a general section of the written submissions concerned with damages in principle, there was reference to a further nine authorities, none of which were filed with the Tribunal.

42. I observe that the Strasbourg Court does not articulate guideline tariffs or bands, as is common domestically, to govern and structure the quantification exercise. It adopts a broad

equitable approach to assessment, determining what is just on the facts of each case and, generally, without consideration of past awards. Article 41 case law is therefore marked by inconsistency and a lack of predictability with Leggatt J (as he then was) observing in *Alseran v. Ministry of Defence* [2017] EWHC 3289 (QB), [2019] Q.B. 1251, at [942], that the Strasbourg Court adopts what is essentially an arbitrary course. It remains appropriate for domestic courts and tribunals to adopt the mirror approach to article 41 awards, replicating the award the Strasbourg Court would make on similar facts, though being mindful that the Court may take guidance from domestic standards and so may take into account domestic scales: *D v. Commissioner of Police for the Metropolis* [2014] EWHC 2493 (QB), [2015] 1 WLR 1833.

43. Lord Reed confirmed in *R (Sturnham) v. Parole Board* [2013] UKSC 47, [2013] 2 A.C. 254, at [74], that although the Strasbourg Court does not make precise adjustments to reflect inflation, older awards ought properly to be treated with caution and may not provide relevant guidance as to the sums the Court would award at the present time.

44. In undertaking an assessment of damages in this matter, it is appropriate to note that a government department cannot be required to pay in respect of harm or loss for which it is not responsible.

45. My starting point is that between 29 October 2019 and 27 November 2020, the period relevant to the breach of private life rights, the applicant was a highly vulnerable child with mental health concerns, living in accommodation provided by the Greek authorities. He suffered distress when informed as to the rejection of the Greek TCR and subsequent three requests for re-examination.

46. Reliance is placed by the applicant upon the award of 12,000 Euros to each parent, adjusted to £20,300 for inflation, in *P, C & S v United Kingdom* (App. No. 56547/00) (2002) 35 EHRR 31 ‘for the loss of opportunity of a different outcome in family proceedings and distress and anxiety’. The Strasbourg Court was concerned with circumstances where a mother had previously been convicted of deliberately administering laxatives to her child to

endanger health. She was adjudged to suffer from Munchhausen's syndrome, a mental illness. Subsequently, the mother's child was removed after birth consequent to a local authority obtaining an emergency protection order. The local authority then initiated care proceedings. When lawyers withdrew from the case, the mother was left without representation at the trial. At the conclusion of the trial the court imposed a care order on the basis that the mother suffered from a personality disorder which her husband refused to accept existed. A freeing application took place one week later at which mother and father were also not represented. The child was subsequently adopted and all direct contact with her parents ceased. The Strasbourg Court found that the lack of representation when coupled with the absence of any real time lag between the care proceedings and the freeing proceedings meant that the parents had been prevented from adequate input into the decision-making process to the extent necessary to safeguard their interests under article 8 ECHR. Further, the draconian step of removing the child from her parents shortly after her birth had not been supported by relevant and sufficient reasons and could not have been regarded as having been necessary in a democratic society to safeguard the child. Accordingly, there had also been a breach of article 8 in that respect.

47. By means of her written submissions, Ms. Knorr relies upon [149] to [151] of the Court's judgment as to 'loss of opportunity'. However, an award of damages is fact sensitive. In *P, C & S* the Court was concerned with a baby being physically removed from its mother, against her will, immediately after birth because of a procedure in which neither she nor her partner had been involved. Further, all parental ties with the child were cut. The loss of opportunity was focused upon the conclusion that "it can be asserted that [the child] would not have been adopted if the flaws identified in the procedures had not occurred …" It is abundantly clear that the award was made in respect of the loss of the opportunity to prevent the cutting of parental ties. The facts in the applicant's matter come nowhere close to the seriousness of the breach in *P, C & S*.

48. The applicant relies upon the award of £10,000, adjusted to £19,000 for inflation, in *TP & KM v. United Kingdom* (App. No. 28945/95) (2002) 34 EHRR 2, observing in written submissions that 'the applicant was awarded non-pecuniary damages, which included

distress and unspecified medical problems affecting the mother.' The Upper Tribunal's attention was drawn by Ms. Knorr to [112] to [117] of the judgment.

49. The breach of article 8 ECHR related to the failure of a local authority to disclose promptly to a court, for determination in care proceedings, a video interview and related transcript in which a child was questioned concerning allegations of sexual abuse. During the interview the child gave the first name of her alleged abuser which was also the name of her mother's boyfriend. Notwithstanding that the child had insisted that he was not the perpetrator, the mother was informed that her boyfriend had been named by the child as her abuser and the child was removed from her mother's care. The Strasbourg Court concluded that the issue of whether the video and its related transcript be disclosed should have been decided promptly in order to give the mother an effective opportunity to respond to allegations that her daughter should not be returned to her care. The local authority's failure to do so had resulted in the mother not being adequately involved in the decision-making process regarding her daughter's care and accordingly breached article 8.

50. At [78] of its judgment, the Strasbourg Court confirmed that the seriousness of measures which separate parent and child requires that they should not last any longer than necessary for the pursuit of the child's rights and that the State should take measures to rehabilitate the child and parent, where possible. During the separation, access between mother and child was severely restricted and there was no contact with the child's wider family. The child's grandmother died during this period. The Court further confirmed that it is essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking measures of protective care.

51. Central to the award was the conclusion of the Strasbourg Court at [83] that the question whether to disclose the video of the interview and its transcript should have been determined promptly to allow the mother an effective opportunity to deal with the allegations that her daughter could not be returned safely to her care. The local authority's failure to submit the issue to the court for determination deprived her of adequate involvement in the decision-making process concerning the care of her daughter and thereby of the requisite protection

of their interests. There was in this respect a failure to respect their family life and a breach of article 8. As to the award of damages the Strasbourg Court noted that mother and daughter were reunited after a year's separation. I observe that this matter concerned the separation of a parent and child who had previously resided with each other, which are not the circumstances arising in respect of the applicant. It is through the lens of a mother and daughter being separated that the Court considered the loss of the opportunity of being reunited earlier. The facts in respect of the breach in the applicant's case are properly to be considered less serious than in *TP & KM,* the latter being concerned with a much closer relationship between a mother and her 6-year-old child who had resided together from the child's birth.

52. The applicant identifies three awards from the Strasbourg Court where awards, adjusted for inflation, were made in the region of between £8,000 to £9,400.

53. In *Tuquabo-Tekle v. Netherlands* (App. No. 60665/00) [2006] 1 FLR 798 the first applicant and six members of her family, including her mother and siblings, were awarded 8,000 Euros, adjusted for inflation and uplift to £9,400. The applicant mother challenged a decision of a domestic court that there were no close family ties with her minor daughter, who was integrated into her grandmother's family in Eritrea. The Strasbourg Court found that it was clear that the mother has always intended for her daughter to join her, she had been lawfully present in the Netherlands for many years, had obtained nationality and two of her children had minimal connection to Eritrea. In awarding damages for non-pecuniary damages, the Strasbourg Court observed with short reasoning that the award was made in respect of all seven applicants consequent to their being separated from each other, distress having been caused to them by the negative attitude of the Dutch authorities and the mother having developed medical problems because of her prolonged separation from her daughter. The sum awarded is not helpful in assessing damages in the applicant's matter, being a global sum made in respect of seven applicants and the distress they individually suffered.

54. In the Grand Chamber judgment of *M.A. v. Denmark* (App. No. 6697/18) [2021] ECHR 628 the applicant was awarded 10,000 Euros, £8,580, having been denied as a person enjoying

temporary protection status the ability to make a family reunion application for his wife, to whom he had been married for twenty-five years at the date he secured status. The focus of the Court was upon Danish legislation that deferred for three years the applicant's right to be granted family reunification, and not upon delay in considering the application once received. No express reason was given for the award itself, save that it was the sum sought by the applicant. It is noted that the Court was aware of the substance of the judgments addressed at [56] below, though no reference is made to the awards in those matters. It is properly to be considered that the award reflects the Court's decision that subjecting the applicant to a three-year waiting period before he could apply for family reunification did not strike a fair balance between, on the one hand, the applicant's interest in being reunited with his wife in Denmark and, on the other, the public interest in controlling immigration.

55. In *El Ghatet v. Switzerland* (App. No. 56971/10) [2016] ECHR 963 a mother sought family reunification with her child. The mother had the right of custody for the child who had previously lived with her in Switzerland for one and half years, from July 2003 to January 2005. The child's return to Egypt had, from the start, been meant to be temporary. The applicants were together awarded 8,000 Euros, adjusted to £8,900 for inflation, in line with awards for non-pecuniary damages being awarded where there was a separation of parents and children. The Court was critical of the Federal Supreme Court and other domestic courts for their summary reasoning, and for not placing the child's best interests sufficiently at the centre of the balancing exercise and reasoning over three and a half years. Again, as observed above, the applicant in this matter has failed to engage with the award being a global sum, this time awarded to two applicants.

56. In *Tanda-Muzinga v. France* (App. No. 2260/10) [2014] ECHR 744 the applicant was awarded 5,000 Euros, adjusted to £5,200 for inflation, consequent to a delay of three-and-half years in an application for family reunion with wife and children being granted, following six years of separation. The same award was made for similar delay, though involving different time periods, in *Senigo-Longue v. France* (App. No. 19113/09) [2014] ECHR 747 and *Mugenzi v. France* (App. No. 52701/09] [2014] ECHR 752, both concerning reuniting with children; the former being a naturalized French citizen and the latter applicant

being a recognised refugee. The Strasbourg Court noted the difficulties each applicant encountered in their applications, namely excessive delay accompanied by lack of reasoning or explanation throughout the process, even though they had themselves previously suffered traumatic experiences.

57. The latter three awards provide aid to this Tribunal in its present assessment, though it is noted that they concern separation of close family members who previously resided together. Additionally, I note that the applicants were not vulnerable minors.

58. Further to the delay in securing a positive decision to his application, such delay leading to anxiety and concern, the applicant further relies upon the distress and psychiatric harm suffered by the conditions he faced whilst present in Greece.

59. Turning to the applicant's residence in Moira, the respondent has made no observation upon the evidence filed by the applicant with this Tribunal. I note the wide-ranging concerns raised by the media reports in respect of overcrowded conditions existing during the time the applicant resided at the refugee camp. However, he was present at the camp for approximately four months before the respondent refused the TCR on 29 October 2019 and so the initial shock of being placed in such conditions had passed. The applicant confirmed in his January 2022 statement that he was able over time to secure telephone contact with HR, as well as spend money on clothes and food. These actions establish that he had learned to negotiate life in the camp. However, I accept that he continued to have general fears for his safety and struggled with engaging in education between 27 October 2019 and his leaving the camp on 31 January 2020, a period just over three months.

60. I do not accept that certain events in Moira took place after the respondent's decision on 29 October 2019. The applicant informed Dr Griffiths that he witnessed "stabbings, beatings and deaths of multiple people in Moira refugee camp including a friend who was in a coma for 4 months", but he details no evidence establishing whether such events took place after the October decision. Observing that the applicant left the camp at the end of January 2020, and it is not his evidence that he remained in contact with anyone after he left the refugee

camp, the latest his friend could have been stabbed is at the end of September 2019, some weeks before the respondent's initial TCR decision. The same absence of detail as to chronology is evident in respect of the applicant informing Dr Griffiths that he had "experienced beatings himself whilst in Moira refugee camp". I further observe, as addressed below, the applicant's inconsistency as to events detailed to Dr Griffiths and later addressed in his witness statement of 22 January 2022.

61. I consider the exacerbation of the applicant's mental health concerns whilst in Moira below.

62. From 31 January 2020 until 4 February 2020 the applicant was placed in a temporary shelter for minors in Athens, a transfer about which no complaint is made. The applicant then resided from 4 February 2020 to the relevant date of 27 November 2020 in a shelter for minors in Athens managed by Koinoniko EKAV, the Hellenic Social Welfare Assistance Unit, an independent social organization aiming to combat social exclusion. It was founded by a group of physicians, health professionals, legal professionals, journalists, and social and political scientists. From 10 February 2020 the applicant was represented in his international protection claim by his lawyer, Alexia Sideri, who was employed by Koinoniko EKAV.

63. The sole complaint directed by the applicant in his January 2022 statement towards his accommodation in Athens is that the food provided was 'very bad' and so he would only eat breakfast, buying food for other meals from shops. However, he does not contend that he did not eat for the rest of the day, as previously reported to Dr. Griffiths. I observe the applicant's complaint to Dr Griffiths that he was not taken to school whilst in Athens is inconsistent with his witness statement where he confirms that some classes were set up, but he experienced difficulty with his concentration due to flashbacks and headaches. I find that the applicant's primary concerns whilst accommodated by Koinoniko EKAV were boredom and not liking meals provided. I am satisfied that the humanitarian ideals of the organization provided him with a safe and secure environment, including the provision of education, as well as ensuring that he had legal representation in his claim for international protection.

64. I further find that adequate health care, both physical and mental, was provided to the applicant by Koinoniko EKAV whilst he resided in their Athens shelter for children. No complaint is made by him as to personal care and, observing that he consulted with Ms. Avramidou, I am satisfied that his mental health was being appropriately addressed.

65. I concluded in my substantive decision that a positive obligation arose in this matter with the United Kingdom's international obligations requiring the government to take charge of the applicant, who was outside of the United Kingdom, where a failure to comply with those obligations threatened his moral and physical integrity. I accepted that the applicant's poor mental health continued to afflict him whilst he awaited a positive decision as to his transfer to the United Kingdom.

66. The medical evidence filed with the Tribunal establishes that at the date of Ms. Avramidou's June 2020 assessment, and Dr Griffiths assessment in August 2020 the applicant suffered with severe post-traumatic stress disorder and a major depressive disorder.

67. Dr Griffiths addresses in her report the extent to which mental trauma/psychiatric disorder was caused or contributed to by conditions in Moira, the refusal of the TCR and the delay in being reunified with his uncle, HR.

68. I am satisfied upon assessing the applicant's own evidence that the delay in a positive decision being made upon the TCR had a deleterious impact upon his mental health. However, Dr Griffiths' report is of limited aid in the Tribunal's assessment of the adverse impact of conditions upon the applicant between 29 October 2019 and 27 November 2020, as there is a failure to clearly delineate the mental health concerns that existed prior to the refusal of the TCR, exacerbated by the conditions in which the applicant was then residing in Moria, and any exacerbation in such concerns subsequently arising, both from a failure to have access to adequate health treatment prior to 31 January 2020 and the accompanying anxiety and concern arising from the delay in the TCR being accepted. As previously observed, the respondent is not liable in respect of harm for which it is not responsible.

69. The applicant experienced significant and adverse life experience events prior to 29 October 2019. He travelled from Afghanistan to Greece in traumatic circumstances, having lost his parents suddenly and in distressing circumstances. I find that his mental health deterioration had commenced from the time of his parental loss. He reported to Dr Griffiths that his thoughts were negatively drawn to the loss of his family, the war in Afghanistan and why he found himself in his situation. He expressed distress at not knowing where his parents were buried. He reported being fearful throughout his time residing in Afghanistan; feeling insecure whenever he left his home.

70. The continuing impact of the loss of his parents was clearly explained by the applicant to Dr Griffiths:

> 'Most of the time I remember the incidents, some of the time I see their [on clarifying: my parents'] pictures in front of me … Every night when I am going to bed, I lay down, before I get to sleep; all those incidents from the past coming in front of my eyes, particularly my parents, in front of my eyes and it doesn't allow me to get to sleep, for hours and hours until I get to sleep.'

71. The applicant informed Dr Griffiths as to adverse circumstances that arose when he travelled through Iran:

> 'I stayed in Iran and worked there a little while. The people I was working with did not pay my salary, they misbehaved [mistreated] me. In Iran they do not like Afghans, this misbehave [mistreat] Afghans and they were acting like racist towards me … On one occasion they beat me up. It was Eid day, we celebrated Eid. I went out and at some point the Iranian people came out, they pointed a knife towards me and said give us your money and your belongings, and they took everything and beat me.'

72. The applicant therefore arrived at Moira as a vulnerable child with mental health concerns. I accept that at the time of his arrival he was suffering from post-traumatic stress disorder and a major depressive episode. By the time of the respondent's October 2019 decision, he was suffering severe and frequent flashbacks, which caused him severe headaches. He

experienced intrusive images and memories from his past, as well as recurrent nightmares. He exhibited an inability to control anger. He sought to address his mental health concerns by adopting isolation to avoid others.

73. I accept that from the time of the respondent's initial TCR decision, and throughout his remaining time in Moira, the applicant did not receive adequate health care. At this time, I find that he was fearful of being physically harmed and seeking to navigate life in an overcrowded camp. Additionally, and consequent to the respondent's decisions, the applicant was preoccupied with worry as to whether he would be permitted to join his uncle in the United Kingdom. The lack of adequate health care provision at the relevant time in Moira, coupled with anxiety as to his personal circumstances, contributed to the adverse continuation of pre-existing psychiatric injuries. Though he received adequate health care upon his transfer to Athens, he continued to struggle with mental health concerns that pre-existed the October 2019 decision and developed thereafter whilst at Moira.

74. I accept that the adverse impact of the repeated confirmation of the respondent's refusals was exacerbated by the applicant not having any direct family to turn to whilst in Greece.

75. Taking all of the circumstances into account, observing the delay arising, and the related factors including both the conditions and the lack of adequate health care provision in Moria, and that throughout the relevant time the applicant was a vulnerable child with serious mental health concerns to whom the respondent owed best interests' obligations, I conclude that the applicant should properly be awarded £10,000 for non-pecuniary damages arising from the breach of his article 8 private life rights by the respondent from 29 October 2019, the date of the respondent's initial refusal of the TCR, to 27 November 2020, when the respondent accepted the second TCR.

76. I conclude by thanking counsel for their written submissions, and for the aid provided to this Tribunal by their instructing solicitors.

VII. Further Steps

77. I invite the parties to agree an order reflecting my decision, with attendant consequential orders if deemed necessary.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 21 March 2023