



Asylum and Immigration Tribunal

SW (lesbians - HJ and HT applied) Jamaica CG [2011] UKUT 00251(IAC)

THE IMMIGRATION ACTS

Heard at Field House
On: 7 December 2009 and 30 November 2010

Determination sent to parties
on 24 June 2011

Before

**Senior Immigration Judge Gleeson
Senior Immigration Judge Spencer**

Between

SW

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel instructed by Wilson & Co, Solicitors

For the Respondent: Mr J Auburn, Counsel instructed by the Treasury Solicitor

- (1) *Jamaica is a deeply homophobic society. There is a high level of violence, and where a real risk of persecution or serious harm is established, the Jamaicans state offers lesbians no sufficiency of protection.*
- (2) *Lesbianism (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder.*

- (3) *Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear.*
- (4) *Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion.*
- (5) *Because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. Newcomers in rural communities will be the subject of speculative conclusions, derived both by asking them questions and by observing their lifestyle and unless they can show a heterosexual narrative, they risk being identified as lesbians. Perceived lesbians also risk social exclusion (loss of employment or being driven from their homes).*
- (6) *A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence.*
- (7) *In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood.*
- (8) *Members of the social elite may be better protected because they are able to live in gated communities where their activities are not the subject of public scrutiny. Social elite members are usually from known families, wealthy, lighter skinned and better educated; often they are high-ranking professional people.*

DETERMINATION AND REASONS

1. This was the reconsideration before the AIT, with permission granted to the appellant, of the determination of the Tribunal dismissing her appeal against the decision of the Respondent to refuse her refugee recognition, humanitarian protection or leave to remain on human rights grounds on the basis of her sexual orientation (lesbian). The appellant is a Jamaican citizen and the respondent has accepted throughout that she is indeed lesbian.
2. The determination of this appeal was not delivered before the abolition of the AIT on 15 February 2010. The reconsideration accordingly continued as an appeal before the Upper Tribunal, the Tribunal having reached its views on credibility immediately after the hearing in December 2009.
3. The appeal was identified as a potential country guidance case on the risk on return to lesbians in Jamaica. The Tribunal heard evidence from the appellant herself, from her current girlfriend, and from Mr O Hilaire Sobers, the appellant's country expert. We also received into evidence a large bundle of country background analysis and documents.

4. Some of the legal and factual questions dealt with in the parties' arguments are no longer relevant since the decision of the Supreme Court's landmark decision on the proper approach to homosexuality in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31 (hereafter for clarity referred to as 'HJ and HT') which overruled the 'reasonably tolerating living discreetly' test approved by the Court of Appeal in HJ (Iran) v Secretary of State for the Home Department [2009] EWCA Civ 172 ('HJ (Iran)').
5. The test in HJ and HT has now been incorporated into the respondent's Operational Guidance Note on Jamaica, as from January 2011. There has been no new Country of Origin Report on Jamaica since December 2009, that being the report which was before the Tribunal when we first heard the appeal.
6. The appellant's oral evidence and that of her girlfriend is set out in full at Appendix A, together with the country evidence of Mr O Hilaire Sobers, and a summary of all the country evidence and documents before us, updated where appropriate if later versions of the document now exist. The documents before the Tribunal are listed in Appendix B.

Existing AIT country guidance

7. The Tribunal's relevant Jamaica country guidance is to be found in DW (Homosexual Men; Persecution; Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168 and AB (Protection, criminal gangs, internal relocation) Jamaica CG [2007] UKAIT 00018. The AIT's existing guidance does not deal with lesbianism, nor is there clear guidance on the protection available by internal relocation. Both cases include consideration of written reports by Mr O Hilaire Sobers.
8. In DW, the AIT held that:

"Men who are perceived to be homosexual and have for this reason suffered persecution in Jamaica are likely to be at risk of persecution on return. Men who are perceived to be homosexual and have not suffered past persecution may be at risk depending on their particular circumstances. The Secretary of State conceded that, as a general rule, the authorities do not provide homosexual men with a sufficiency of protection. There are likely to be difficulties in finding safety through internal relocation but in this respect no general guidance is given."

The respondent did not seek to argue in DW that there was an internal relocation option for male homosexuals.

9. In AB's case in 2007, the AIT held that:

"The authorities in Jamaica are in general willing and able to provide effective protection. However, unless reasonably likely to be admitted into the Witness Protection programme, a person targeted by a criminal gang will not normally receive effective protection in his home area."

Whether such a person will be able to achieve protection by relocating will depend on his particular circumstances, but the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general: it is a matter for determination on the facts of each individual case."

The HJ and HT test

10. Following the decision in HJ and HT, when considering the risk on return, the Tribunal is now required to answer the following questions:

- (a) whether it was satisfied on the evidence that the claimant was gay, or that he or she would be treated as gay by potential persecutors in the country of nationality; and if so
- (b) whether it was satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality; and if so
- (c) what the individual claimant would do if he or she were returned to that country.

11. Depending on the answers to those questions, the following questions arise which are determinative of the question of persecution, humanitarian protection or human rights breaches:

- (a) If the Tribunal found that the claimant would in fact live openly and thereby be exposed to a real risk of persecution, then he or she had established a well-founded fear of persecution, even if they could avoid the risk by living "discreetly";
- (b) If, on the other hand, the tribunal concluded that the claimant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* the claimant would do so. That would affect the outcome of the appeal in the following ways:
 - (i) where a claimant would choose to live discreetly simply because that was how he or she wished to live, or because of social pressures, for example not wanting to distress parents or embarrass friends, then an international protection claim should be rejected:

"Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay."

- (ii) However, where a material reason for the claimant living discreetly on return would be a fear of the persecution which would follow if he or she were to live openly as a homosexual, then international protection should be available:

"...other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect - his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him."

Procedural history and preliminary issues

The reconsideration application

12. The appellant's challenge to the Immigration Judge's determination was on three grounds: first, that the Immigration Judge had made findings of fact and credibility at the civil standard of balance of probabilities rather than the lower standard of real

risk or reasonable degree of likelihood which is the appropriate standard of proof for international protection claims. On that basis, the positive findings stand (because even to the lower standard, they would still have been made) but the negative findings must be remade.

13. Second, in the light of the respondent's concession that no sufficiency of protection was available for lesbians in Jamaica if a real risk of persecution or serious harm were established, the appellant contended that it was wrong in law to find that "there is always the possibility of harm but no one is entitled to absolute protection".
14. Thirdly, the appellant disputed the Immigration Judge's finding that there had been no real change in her behaviour and lifestyle in the United Kingdom sufficient to bring about a risk of harm if she were to be returned to Jamaica. Reconsideration was granted by SIJ Latter on all grounds.

Material error of law

15. The material error of law part of the reconsideration took place on 24 September 2008 before SIJ Waumsley and his decision is appended to this determination at Appendix C. For present purposes it suffices to cite paragraph 9 of that decision:

"9. I therefore find that the Immigration Judge did make a material error of law in reaching his decision [the standard of proof error], and accordingly that it cannot stand. Having so concluded, and having notified the representatives for the parties that I had done so, I also informed them that I did not consider it appropriate that the appeal should continue to be dealt with under the fast track procedure. I therefore made an order under rule 30(1) of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 that those Rules should cease to apply to the appeal."

16. That was the basis on which, in terms of the appeal process of the Upper Tribunal, the Tribunal proceeded to remake the determination.

Preliminary issues

17. Two preliminary issues arose. First, the respondent sought an adjournment of the hearing, claiming that she had not been able properly to prepare for it. She also sought to reopen the material error of law decision. Mr Auburn for the respondent, having not been present at any of the directions hearings over the previous year, also sought to challenge the selection of the appeal as a potential country guidance decision.
18. For the appellant, Mr Chelvan opposed any adjournment, arguing that at the stage 2 reconsideration hearing it was too late to challenge the material error of law finding. The appellant was ready for the hearing; Mr Sobers' report was in draft and he had arranged his air travel from New York and hotel accommodation in order to attend the hearing and give evidence in person.
19. The Tribunal refused the adjournment, observing that the material error of law decision dated back to 24 September 2008, and that the case had been the subject of country guidance directions at hearings on 8 October 2008, 6 November 2008 and 24 November 2008: on none of those occasions did the Respondent seek to reopen the

agreed position that there was indeed a material error of law in the determination in relation to the standard of proof. The Respondent had therefore had more than a year to prepare for the hearing, which would proceed as listed.

20. For the avoidance of doubt, even had Mr Blundell not agreed in 2008 that there was a material error of law in the determination, the Tribunal would certainly have reached the same conclusion: it is an obvious error of law to determine an international protection Convention case (refugee, humanitarian protection, or Article 3 ECHR) to the higher civil standard of balance of probabilities, as this Immigration Judge did.
21. The second preliminary issue concerned what, if anything, the respondent was to be taken to have conceded. The concession history was very similar to that considered by the Court of Appeal in NR (Jamaica) v Secretary of State for the Home Department [2009] EWCA Civ 856, also a Jamaican lesbian appeal. The factual acceptance that the appellant is a Jamaican citizen and a lesbian stands unchallenged, save for questions as to her likely behaviour on return (discreet or open).
22. At paragraph 12 of NR, the Court of Appeal said:

“12. ... the Tribunal may in its discretion permit a concession to be withdrawn if in its view there is good reason in all the circumstances for that course to be taken. Its discretion is wide. Its exercise will depend on the particular circumstances of the case before it. Prejudice to the applicant is a significant feature. So is its absence. Its absence does not however mean that an application to withdraw a concession will invariably be granted. Bad faith will almost certainly be fatal to an application to withdraw a concession. In the final analysis, what is important is that as a result of the exercise of its discretion the Tribunal is enabled to decide the real areas of dispute on their merits so as to reach a result which is just both to the appellant and the Secretary of State.”

23. In the light of that guidance, we considered the respondent's concessions. In the present appeal, the Respondent's adjournment request letter stated that:

“ ... The Secretary of State accepts that Jamaica is an extremely homophobic society; and that for a person to be openly gay in Jamaica would attract a real risk of persecution.”

24. In a letter served early on the morning of the hearing, Mr Scott Richardson, who has conduct of the appeal for the Treasury Solicitor, narrowed that concession to:

“ ...The Respondent accepts that Jamaica is a deeply homophobic society; and it is likely that a woman who behaves on return to Jamaica in a manner that is openly gay might attract adverse attention. However, there is no evidence that lesbians generally face serious ill-treatment in Jamaica. ...

8. Further, the Respondent certainly never intended to go further (by way of concession) than that established for Jamaican gay men in *DW*, where the AIT held:

[77] “... A man who is not thought to be homosexual, perhaps because he has hidden his sexuality, is not likely to be at risk. There will be no perception of homosexuality and no history”

and concluding –

[79] “... A man who is perceived to be homosexual and, as a consequence, has suffered past persecution is, unless there has been a material change in his circumstances, likely to be at risk of persecution ... A man who is perceived to be homosexual but has not suffered past persecution may also be at risk depending on his particular circumstances including, for example, the extent to which it is believed he suffered threats before departure and how he will behave on return.”
[Emphasis added]”

25. In addition, and on advice, Ms Alice Holmes, the Senior Presenting Officer (with Counsel’s advice) clarified the concession which the respondent wished to make on sufficiency of protection for lesbians in Jamaica:

“[During the hearing] ...the Secretary of State conceded that, if a real risk of treatment amounting to persecution were to be established, that there would be no sufficiency of protection. ...SIJ Gleeson asked if this could be confirmed by fax before the end of the day. I now write to confirm this, noting what is said in the Secretary of State’s Operational Guidance Note at paragraph 3.7.16 –

“Where a lesbian is able to establish a real risk of treatment amounting to persecution or Article 3 treatment, sufficiency of protection cannot be relied on.”

26. The respondent’s primary contention was that there was no evidence that lesbians generally faced a real risk of serious ill-treatment in Jamaica, despite the admitted risk of “adverse attention” to open or perceived lesbians.

Preserved factual findings

27. Having regard to the application of the higher civil standard of proof, and after discussion with the parties, the following factual findings were treated as preserved:

- (i) The appellant is a lesbian and a Jamaican citizen;
- (ii) The appellant came to no direct harm in Jamaica before coming to the United Kingdom, enjoying a discreet social life with other lesbian women and several covert lesbian relationships. In particular, the single incident at a nightclub on which the appellant relied did not lead to any actual harm to her or any of her discreet lesbian companions;
- (iii) In Jamaica, the appellant had the support of her brother and her former boyfriend.
- (iv) Her employer had discovered her discreet lesbianism and that had caused no difficulty;
- (v) The appellant has now experienced several open lesbian relationships in the United Kingdom, none of which amounted to family life within the meaning of Article 8 ECHR; and that
- (vi) The appellant is educated, sophisticated and articulate.

28. To that may be added the appellant's professional position as a recently qualified accountant, and her physical appearance. She attended the Tribunal and we were able to see that her style of dress was feminine rather than 'manly', and her skin is fairly dark.
29. The areas where negative findings were made and the Tribunal needs to remake any relevant part of the factual matrix were:
- (a) the freedom with which the appellant had been able to express her lesbian orientation in Jamaica before coming to the United Kingdom, and the bearing that had on her likely ability to express her lesbianism openly on return;
 - (b) the relevance of her personal appearance to any risk related to perception of lesbian orientation;
 - (c) whether it was reasonable to expect her to return to living as a discreet lesbian in Jamaica; and in general,
 - (d) The risk on return and the adjustments to her lifestyle which the appellant might have to make to achieve safety.
30. Points (c) and (d) are now questions of mixed fact and law. Point (b) was not pursued at the hearing or in any of the skeleton arguments or submissions.

Evidence of appellant and her girlfriend

31. For present purposes, the following are the relevant features of the factual matrix. The appellant is a lesbian from Jamaica who, while in Jamaica, lived with her grandfather, had three boyfriends (one of whom remained a good friend) and a number of discreet lesbian relationships brokered through an internet chatroom specific to lesbians called 'Women for Women' (W4W). She came to no harm by reason of her sexual orientation while in Jamaica. Most of her relationships were conducted at night in discreet places; she had a long relationship with the wife of a pilot who was often conveniently away, on that basis.
32. On three occasions, W4W organised outings to bars. On the third, they were identified as possible lesbians because they were dancing together rather than with men, and the DJ began playing openly hostile popular songs (of which there are many in Jamaica), while the men in the bar began offering to 'sort them out' in a manner which made it quite plain that they were considering rape. The women left the bar rapidly, and fortunately the men did not pursue them.
33. The appellant took a number of holidays with her two sisters in the United States, where there was more freedom, returning to discreet lesbianism in Jamaica each time, but suffered clinical depression and stress, the reason for which she was unable to disclose to her male doctor.
34. In 2003, the appellant came to the United Kingdom as an accountancy student, a qualification she has now obtained. She also came out as a lesbian, and has had a series of fairly short but intense lesbian relationships with women here, two of whom have been prepared to give evidence at her asylum hearings. The appellant has been a member of Black Lesbians UK (BLUK) and has also taken part in a Gay Pride march.

35. For a time in the United Kingdom, the appellant lived in a house with two Jamaican men, without difficulty until she brought a girlfriend home for the weekend. There was a row: one of the men smashed all the crockery on the basis that the appellant had polluted it and thereafter she had to buy and use separate crockery. She never brought a girlfriend home overnight after that, but stayed a further five months in the flat because, on reflection, she considered that there was sufficiency of protection for lesbians in the United Kingdom, and further, that due to the precarious immigration status of at least one of the men, they would not risk her calling the police.
36. The appellant has since been dispersed by NASS to Stoke on Trent. She does not feel at risk there or indeed anywhere in the United Kingdom, because there is legal and police support here. She finds it rather dull and tends to meet her girlfriend in London rather than Stoke, where they go to bars, out to dinner, and dancing together and with other friends. She stays in with her girlfriends too, just watching television and being normal. She meets their families and has no difficulty being accepted for who she is.
37. The appellant was adamant that if returned to Jamaica she would not resume living discreetly, because after six years (now over seven years) she was not the same person; she would also not be prepared to risk her depression returning. For both those reasons, the appellant would only date someone who was prepared to be seen with her in public, whatever the risks, on the same basis as in the United Kingdom.
38. When it was put to her on behalf of the respondent that there existed no other open lesbians in Jamaica with whom she could enter into a relationship, that did not change her view. The appellant was asked in cross-examination whether she would be discreet if she were on a brief holiday in Saudi Arabia with a girlfriend (though why she might contemplate going there was unclear), or walking on a beach in the United Kingdom where there had recently been a homophobic attack. In both cases, the appellant stated that she would still behave openly, mentioning the sufficiency of protection in the United Kingdom in relation to walking on a beach where there had been a recent homophobic attack.
39. The appellant and her current girlfriend both said that if she was returned that would end their relationship, since the appellant would not expect her girlfriend to travel to such a dangerous place, and the girlfriend would not go, particularly as she has a young child to consider.

Mr Sobers' evidence

40. Again, Mr Sobers' evidence is set out in full in Appendix A to this determination. For present purposes, there were three areas of his evidence which we need to consider.
41. Mr Auburn for the respondent argued that Mr Sobers was not impartial, and that was put to him in cross-examination. Mr Auburn pointed out to Mr Sobers that he was a lifelong human rights campaigner who now did not live in Jamaica as a result of death threats received in 2001, and whose articles in the 'Jamaica Gleaner'

newspaper criticised the Jamaican government in vigorous terms incompatible with impartiality as a witness. Mr Sobers responded that his human rights career did not mean he could not give impartial evidence: indeed, the Jamaican government had thought sufficiently highly of him to appoint him a judge, and the UKBA Country of Origin unit had asked him for input to the Country of Origin Report on the question of gang violence, at short notice. That report, which was in our bundle, did not deal with homosexuality, but that does not appear to have been part of his remit. As to the death threats, Mr Sobers returned regularly to Jamaica for professional reasons, and also to visit his mother who still lives there, and again, he did not consider that those threats removed his ability to assist the Tribunal on the questions now before it.

42. Mr Sobers gave evidence on the position of women in Jamaican society. They were expected to become sexually active very young, with children coming along as no surprise, but only 20% of women ever married. Women were expected to have men around, or children by them, or both, until late in life. Mr Sobers described this as presenting or having a 'heterosexual narrative'.
43. If a woman did not present a heterosexual narrative in that way, there would be concern, but while she was still a student, or looking after an elderly relative, and was still young and thus not yet 'settled' in her life, people would not necessarily draw adverse conclusions about her sexuality. However, that protection was unlikely to outlast her twenties (Mr Sobers' evidence was not precise on this point) and as a woman became older, if she was living alone with no man 'buzzing around' and no children, suspicions would be raised.
44. Mr Sobers explained that Jamaican hostility to homosexuality arose in part from a literal interpretation of passages in the bible at Leviticus 18:22 ('Thou shalt not lie with mankind, as with womankind: it is abomination') and/or Leviticus 20:13 ('If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death. Their blood shall be upon them'). The situation was compounded by the slave heritage in Jamaica, and the breeding of child slaves from female slaves. There was a persistent myth in Jamaica that lesbians could be 'cured' by raping them which was often referred to in popular songs and on occasion acted out by men.
45. Mr Sobers also explained that Jamaica was a gossipy community where a woman new to an area might well be asked questions about her family arrangements, but equally, local people might draw conclusions without asking those questions, based on her behaviour. It was quite possible to be heterosexual and to be thought homosexual if no men were 'buzzing around' and the woman had no children. Mr Sobers gave the example of a goddaughter of his, in her early 20s, who was already causing her relatives concern because she had no interested men or boyfriends. This part of his evidence became rather confused in cross-examination but the thrust of his evidence was clear.
46. When asked about the consequences of being a lone woman, Mr Sobers said that there would naturally be approaches from local men if a woman did not appear to have a man or men friends. The reaction if a man was rebuffed was unpredictable:

if the woman was lucky, he might shrug it off, but if not, the response could be extremely violent. The man might also start rumours of lesbianism leading other men to attack the appellant or commit 'corrective' rape.

47. Mr Sobers identified a reduced risk for what he called the social elites: wealthy, professionally educated, light skinned people from 'known' families, living for the most part in gated communities where they could control what was known of their comings and goings. Such people if they were gay were not absolutely safe but they were certainly safer than the rest of the lesbian, gay, bisexual and transsexual (LGBT) community. The appellant, despite her new accountancy qualification, was not a member of that group and her salary would not even cover the mortgage on the properties in those communities. His understanding was that she was not from a known family, nor particularly highly educated. Only the very richest most senior accountants would become part of the elite, if they were not from a known family.

Submissions

48. After the oral evidence had been taken, it was agreed, given the lateness of the hour (just before 4 pm) that the parties would make written submissions, to supplement the skeleton arguments they had filed. In November 2010, the Upper Tribunal relisted the appeal to enable the parties to make any additional oral submissions but both parties elected to rely on the documents, evidence and submissions already provided, which at this stage included an HJ and HT submission by Mr Chelvan for the appellant. The respondent did not make any additional submissions in the light of HJ (Iran) although she was given the opportunity (and an extension of time) to do so.
49. We now summarise the legal and evidential submissions the parties made, to the extent to which they remain relevant to the issue of the risk on return to Jamaica for lesbians.

Respondent's submissions

50. Mr Auburn's arguments both before and after the hearing were based exclusively on HJ (Iran) since the respondent did not take the opportunity to make further submissions based on the new test set by the Supreme Court in HJ and HT. Much of the respondent's factual and legal argument falls in the light of that judgment.
51. For the respondent, the main passages in Mr Auburn's skeleton argument are found at paragraphs 11-16:

"11. The respondent agrees that the relevant inquiry concerns how the appellant will in fact behave if returned to Jamaica. ...

14. The respondent acknowledges the relevance of perception. The issue of perception is closely related to the issue of discretion. The respondent's case is that as a matter of fact the appellant will conduct her personal/romantic affairs in a discreet manner. If she does so then this is fundamental to how she is likely to be perceived by the general public.

15. It is more appropriate to address this issue further after the evidence, rather than before.
16. [How A will behave on return] is a question of fact which will be addressed after evidence.”
52. The respondent acknowledged that lesbians faced an increased risk of discrimination in Jamaica, but noted that lesbianism was not unlawful and asserted that an internal relocation option existed should difficulties occur. That position was reflected in the December 2009 Country of Origin Report and in the then current Operational Guidance Note, which has subsequently been substantially revised in the light of HJ and HT. The latest version of the Operational Guidance Note was issued on 3 May 2011.
53. In relation to Article 8 ECHR, Mr Auburn argued that this was a ‘foreign’ not a ‘domestic’ private and family life case and relied on the human rights element of the respondent’s original letter of refusal. He relied upon the European Court of Human Rights decision in F v United Kingdom (Application no. 17341/03) [2004] ECHR 723, an admissibility decision in which the court stated that
- “on a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention.”
54. Mr Auburn contended that if returned, the appellant would in all likelihood live in Jamaica discreetly; that if she did so she would not be at a real risk of persecution; and that doing so would be reasonably tolerable. On that basis, he submitted that the appeal should be dismissed.
55. On 5 December 2009, Mr Auburn produced a supplementary skeleton argument dealing with the concession question and the ‘reasonably tolerable’ point which has now been settled by the Supreme Court in HJ. Nothing in the supplementary skeleton remains relevant to the country guidance issue.
56. In Mr Auburn’s closing submissions, after setting out the factual background and relevant law, he analysed the evidence of Mr Sobers, arguing that while he was ‘an impressive individual in his work and career’, Mr Sobers could not properly be put forward as an impartial expert upon whose opinion evidence the Tribunal could rely, in the light of his long career as a human rights activist and campaigner, his vigorously expressed criticism of the Jamaican government, in language such as to call into question his objectivity, and the death threats he received in 2001, as a result of which he no longer lived in Jamaica, which Mr Auburn submitted must also have made it impossible for him to be objective about Jamaican government and society. Mr Auburn relied on paragraph 18.145 of Macdonald’s Immigration Law and Practice (7th edition, 2008) , in particular the following passage:

“In Slimani, a starred Tribunal approved the guidance given in The Ikarian Reefer that to be relied on, the expert needs to provide independent assistance to the Tribunal, must not assume the role of an advocate, and needs to specify the facts on which his or her opinion is based...”

57. Mr Auburn contended that no weight should be given to the evidence Mr Sobers had given, by reason of his partiality and his failure to appreciate that partiality. In the light of that partiality, even having regard to Mr Sobers' extensive knowledge of events in Jamaica, that the Tribunal could not have confidence that he had presented a full and balanced picture, rather than selectively emphasising facts which supported his position, omitting those which did not.
58. Mr Auburn contended that Mr Sobers ought to have disclosed his previous contribution to the Country of Origin Report on Jamaica and that his failure to comment on gay and lesbian matters in that commentary was unexplained, which the Tribunal ought to find unsatisfactory. Mr Sobers' evidence on LGBT matters should be regarded as inconsistent with the other country evidence and with the appellant's own experience before coming to the United Kingdom. Mr Auburn pointed to the lack of harm occurring to the appellant and her lesbian friends during the period when she lived in Jamaica.
59. Mr Auburn submitted that when she last lived in Jamaica, during her late teens and twenties, her three brief male relationships and lack of regular male visitors did not amount to a 'heterosexual narrative', yet she had not come to any harm and nor had her friends, none of whom had male partners.
60. Mr Auburn asked us to dismiss Mr Sobers' evidence that there was a risk of *perceived* lesbianism causing difficulty even for a woman who did not have a homosexual orientation, on the basis that there was nothing in the country evidence put forward to support that contention. He argued that press reports of harm to women who were lesbians should be regarded as instances of Jamaica's high general crime rate or the facts having emerged locally. He noted that the appellant had apparently been preserved from enquiry by living down a long drive and with her grandfather, and further, that after returning from her trips to the United States, there did not appear to have been any fresh local enquiry as to her sexuality.
61. Mr Auburn criticised the validity of Mr Sobers' observations in relation to the appellant's likely behaviour on return, on the basis that he was not in a position to comment as to whether she would have female visitors only, or a mixture of males and females, and if so how many. Mr Auburn argued that Mr Sobers' lack of knowledge in these respects would impair his assessment of how she would be perceived on return, and the level of risk entailed.
62. Mr Auburn asked the Tribunal to treat parts of the appellant's evidence as lacking in credibility. The Tribunal should not credit the appellant's evidence in response to the hypothetical questions which he had put to her (strolling along a British beach arm in arm with her partner at a spot where she was informed there had been a recent homophobic attack, or a brief stopover with a lesbian partner in Saudi Arabia) and should find that the appellant would, if truthful, have said that in those circumstances she would exercise discretion, in the light of the risk to her from any alternative conduct.
63. The Tribunal should also reject the appellant's account of the broken crockery incident. She had chosen to live in a council house with Jamaican men, despite the

risk they posed in the light of her lifestyle, and she continued to live there even after their reaction to her bringing a woman home overnight. Further, the appellant had not mentioned this incident when interviewed in August 2008, just four months after it occurred.

64. Mr Auburn's submissions on the law come to this: that although an open lesbian may attract adverse attention in Jamaica, such attention was not at a level which engaged international protection, in that there is no consistent pattern of ill-treatment. On the facts, the Tribunal should find that the appellant would return to living discreetly, despite her evidence to the contrary; in her asylum interview she had asserted a fear of people finding out about her sexuality in Jamaica; she had stated that she would not take her present partner to Jamaica because they would not be able to have a relationship in public; and that in any event, there were no other open lesbians in Jamaica with whom she could have a relationship.
65. If the Tribunal felt it necessary to deal with Article 8 ECHR in the 'domestic' sense, despite Mr Chelvan's indication that no such argument was relied upon, Mr Auburn noted that the relationship in which the appellant currently was involved was a very short-lived one and had been commenced at a time when the appellant's status in the United Kingdom was tenuous.
66. The appellant had exercised discretion while previously in Jamaica, largely because the cultural intolerance of homosexuals, but partly because of the need to respect the privacy of her married lover.
67. Mr Auburn accepted that the broader country evidence from newspapers, human rights organisations and so on in the background bundle did indicate the existence of attacks on lesbians in Jamaica, but he contended that they were infrequent, and that there was often no explanation why the incident had occurred or whether it related to the raising of a perception or suspicion in the local community, or a particular incident as a result of which an individual was labelled as a lesbian, rather than the overall very high crime rate in Jamaica. He contended that there was no clear understanding of the process by which individual lesbians might come to adverse attention. He relied on the Tribunal's analysis in *DW* as set out in the judicial head note:

"Men who are perceived to be homosexual and have for this reason suffered persecution in Jamaica are likely to be at risk of persecution on return. Men who are perceived to be homosexual and have not suffered past persecution may be at risk depending on their particular circumstances. The Secretary of State conceded that, as a general rule, the authorities do not provide homosexual men with a sufficiency of protection. There are likely to be difficulties in finding safety through internal relocation but in this respect no general guidance is given."

68. Where there had been no past persecution, the effect of *DW* was that the risk on return for any actual or perceived homosexual was a question of fact for the Tribunal. That analysis, contended Mr Auburn, was applicable also to lesbians, and on these facts, the present appellant had not demonstrated a real risk of persecution or serious harm on return. Therefore, there was no need to address the internal relocation question for this appellant. Even in cases where a lesbian appellant was able to establish a real risk of persecution or serious harm in her home area, Mr

Auburn contended that internal relocation within Jamaica would assist her. Mr Auburn asked the Tribunal to reject Mr Sobers' suggestion that in these days of modern communication, internal relocation was less effective, and also his reliance on the general high crime rate in Jamaica.

69. On the question of internal relocation, which was not settled in DW, Mr Auburn argued that there was no evidence in the country materials about lesbians whose problems had followed them to another area after internal relocation and that if such evidence existed, the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) or other human rights groups would have mentioned it.
70. In conclusion, Mr Auburn contended that there was no evidence of the existence of any other open Jamaican lesbians with whom the appellant could have an open relationship. The danger to discreet lesbians was of "isolated and infrequent incidents which fall short of the threshold for persecution". The test for persecution was a high one, requiring a 'consistent pattern' of ill-treatment and the evidence from Jamaica amounted to no more than one of isolated and infrequent incidents falling short of that threshold. Lesbians generally would therefore not be at risk on return to Jamaica. Individual lesbians might have circumstances particular to them which gave rise to a localised risk, but lesbians generally were not at risk because, in his submission, they all maintained discretion as to their sexual identity.

Appellant's submissions

71. For the appellant, so far as relevant, Mr Chelvan's skeleton arguments and submissions raised the following issues and matters. He reminded the Tribunal of the appellant's evidence, both at her asylum interview and in the hearings, that she had now fully 'come out' as a lesbian, since leaving Jamaica and entering the United Kingdom. She could not return to living discreetly in Jamaica, and it was unreasonable to expect her to do so, especially as it would aggravate her depressive illness. The appellant was a sexually active woman who would form relationships with women and there was risk amounting to persecution for lesbian Jamaicans, ranging from verbal abuse and threats through to rape and abuse by men who thought that they could 'convert' them to heterosexuality.
72. Mr Chelvan submitted that perception of lesbianism, rather than actual lesbianism, was the relevant test. The appellant could not return to her home area where her mother lived: her mother had married a pastor and it would not be safe or appropriate. It would embarrass her mother and possibly put at risk her mother's new marriage. The appellant would need to opt for internal relocation and, in an area where she was not known personally, would be assessed as a stranger. Mr Chelvan's argument was that without any males in her life, the appellant would be perceived as lesbian, no matter how discreet her behaviour, and would therefore be at risk.
73. In his supplementary skeleton, Mr Chelvan confirmed (paragraph 4) that no freestanding Article 8 ECHR right was being advanced in these proceedings, other than in relation to the interference with the appellant's right to respect for her private and family life on return by being required to resume living discreetly. Mr Chelvan

submitted that to require the appellant to act with discretion was to require the appellant to present a “lying” heterosexual female lifestyle to evade a persecutory perception of her. The other matters in the supplementary skeleton have already been dealt with in this determination.

74. In his closing submissions, responding to those of the respondent, Mr Chelvan resisted the suggestion that a negative credibility finding should be made on the appellant’s core evidence, or that Mr Sobers’ evidence should be deemed unreliable and partial. The Tribunal had not accepted a reverse Demirkaya argument that lack of previous persecution was determinative of future safety (see DW at paragraphs 14 and 20 and AB at paragraphs 163-164).

75. Lesbians, as women and lesbians, suffered a double bind of expected norms from which they were protected in Jamaica only where they could demonstrate what Mr Sobers had described as a ‘heterosexual narrative’. Mr Chelvan asked the Tribunal to consider the UNHCR Guidance Note of November 2008:

“Lesbian women often experience harm as a result of the interrelation of their sexual orientation and gender, since women’s position in society is generally less powerful than that of men. Lesbians are even more likely than gay men to feel obliged to conform outwardly to family and social expectations, for instance, by marrying someone of the opposite sex. In societies where women are regarded primarily as the wives (of men) and mothers, lesbians may be isolated and invisible.”

76. Further, he cited commentary by Dauvergne and Millbank in an article entitled ‘Applicants S396/2002 and S395/2002, a gay refugee couple from Bangladesh’ 25 Sydney Law Review 97 [2003]:

“Is this normal life? Would the court for example hold that a heterosexual person’s fundamental human rights were not infringed if, ‘for safety’s sake’ they had to pretend to be gay in every area of their professional, personal and social life, in every public place, by not living with their partner of choice, never showing affection to their partner or identifying themselves as a couple to friends or family, and only pursuing their heterosexual lifestyle by having swift and furtive sex with strangers or prostitutes in a public park. Is such desperate secrecy and deception, undertaken in fear, for months, years, or decades, a normal life?”

77. Dealing with Mr Sobers’ evidence, Mr Chelvan drew the Tribunal’s attention to earlier judicial assessments of his country expertise and to the respondent’s acceptance of his honesty and his knowledge relating to sexual identity asylum claims. The respondent had not submitted any country background evidence of her own which contradicted that of Mr Sobers, and his report in the present appeal was both balanced and sourced. Mr Chelvan directed the Tribunal to other country documents which were supportive of Mr Sobers’ evidence and invited the Tribunal to find that in Jamaica:

- (a) lesbians must adopt a heterosexual narrative to avoid persecution;
- (b) violence occurs in the private sphere;
- (c) persecution occurs whatever relative safety a lesbian might previously have enjoyed through ‘undetected’.

78. Mr Sobers' evidence, corroborated by other reports in the bundle as set out in the submissions, was supportive of the appellant's personal history in Jamaica before she came to the United Kingdom. Mr Sobers was not in a position to decide how the appellant would behave on return; that was a matter for the Tribunal.
79. Dealing next with the appellant's evidence, Mr Chelvan submitted that she had been found credible by the First-tier Tribunal judge and should be found truthful and honest by the present Tribunal. The broken crockery incident should not be held against her; the appellant had felt relatively safe on reflection, because in the United Kingdom, unlike Jamaica, there was sufficiency of protection for lesbians, open or discreet.
80. The appellant's evidence as to her likely behaviour on return to Jamaica had been very clear. She had been away from Jamaica for six years and had now 'come out' in the United Kingdom as gay. She described herself firmly as an open lesbian and was not prepared to modify her behaviour on return: the Tribunal should find that to be honest and credible evidence. The Tribunal should find that the appellant would not act discreetly. Her evidence had been consistent throughout on that point and extremely firm. The Tribunal should accept as credible the appellant's evidence that were she to adapt and return to living discreetly the appellant would be doing so out of fear, would be extremely stressed and that her depression would be aggravated.
81. Applying the proposed factual matrix to the legal framework, Mr Chelvan submitted that there was no need for the appellant to show a consistent pattern of ill-treatment of discreet lesbians since the need to return to discretion for safety's sake was itself persecutory, following HJ and HT, especially since such discretion would need to endure for the rest of an appellant's life. Sexual identity was more than just conduct; it was not a question of public sex acts, but rather, of the appellant's relationships with women being conducted openly. It would be intolerable for this appellant to conduct them in any other way, despite the risks that would entail.
82. Finally, dealing with the risk to Jamaican lesbians generally, Mr Chelvan relied principally on his skeleton argument. There would be a real risk in her home area (Montego Bay) but also a risk in any area of internal relocation. A person arriving in a new area in Jamaica would be assessed by the local population and conclusions drawn about her orientation, both from what she said when asked, and also from what she did or did not do. The risk was therefore present throughout Jamaica. Mr Chelvan asked the Tribunal to allow the appeal.
83. In response to the Tribunal's directions for further submissions after HJ and HT Mr Chelvan adopted his skeleton arguments and closing submissions, noting that in HJ and HT, the Supreme Court had rejected the 'reasonably tolerable living discreetly' test. The appellant's lesbian sexual orientation was not disputed; the respondent had conceded that open or perceived lesbians might attract risk; all lesbians in Jamaica should be considered as living discreetly, if they did so, by reason of a fear of persecution for their sexual orientation and therefore, all Jamaican lesbians should be considered as entitled to refugee status and human rights protection under Article 3 ECHR.

84. Mr Chelvan relied upon paragraphs 19.28 ff of the respondent's Country of Origin Report for December 2009, which he contended did not indicate that the problem for Jamaican lesbians was one of isolated incidents but a consistent pattern of serious harm, including rape and murder, simply for being lesbian. In MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC) the Upper Tribunal had held that Operational Guidance Notes were merely a policy statement and should not be regarded as country evidence.
85. The appellant was not a person who was naturally discreet about her sexuality, as contemplated by the final question in HJ (Iran). If she were to live discreetly (which Mr Chelvan did not accept), that would be because she was afraid to live openly. The Refugee Convention and Article 3 ECHR claims should therefore succeed. The Tribunal ought to be prepared to go further than the Supreme Court in HJ (Iran), and say that because of the risk to persons not able to show a heterosexual narrative in Jamaica, a naturally discreet lesbian or bisexual woman would still be a refugee.
86. The rest of Mr Chelvan's submissions dealt with the perception test already mentioned, which he contended was a new test not considered in HJ. The appellant, and any single woman with no heterosexual narrative in Jamaica, would be considered to be lesbian even if she were not. The presentation of a heterosexual narrative based on fear would offend the HJ and HT principles and to require it would be unlawful.

Our assessment

The weight to be given to Mr Sobers' evidence

87. We considered the weight to be attached to the evidence of Mr Sobers. Mr Sobers has given evidence (written and oral) in a number of Jamaican cases and both the AIT and the Court of Appeal have expressed both respect for his broad knowledge of conditions in Jamaica. However, in AB (Protection, criminal gangs, internal relocation) Jamaica CG [2007] UKAIT 00018, the AIT expressed concern about his objectivity when dealing with questions of gang violence. The AIT in that appeal had the benefit of a number of reports by Mr Sobers but not, as we have, of his oral evidence. The AIT assessed Mr Sobers' opinion on gang violence in these terms:

"128 ...So far as we are concerned, he is to be taken as an expert doing his best to perform his duty to the court. ..."

133. Whilst Mr Sobers' reports mostly seek to present all relevant evidence on the issue with which we are concerned, we do consider there are several aspects which reduce somewhat the weight we are able to give them. Miss Brown contended that he consistently approached the evidence about crime and violence in Jamaica from a fixed negative stand point. We do not agree with that criticism in full: in particular we think that in many respects (albeit not all) his reports take pains to identify all available evidence, even items which on their face do not support his viewpoint. However, we think his opinions on certain issues do betray a fixed viewpoint. ..."
88. We therefore approached Mr Sobers' oral evidence on the situation of lesbians in Jamaica with both respect and caution. Much was made by the respondent of Mr

Sobers' human rights activism and profile and it is right that since receiving death threats in 2001, he no longer lives in Jamaica. However, as the Tribunal has stated on many occasions, the mere fact that someone is a human rights activist does not entail a lack of objectivity. As regards knowledge of a country, the Tribunal has also stated in key cases that to be an expert one does not necessarily have to live there or to visit regularly.

89. We reminded ourselves of the guidance given by the European Court of Human Rights in NA v The United Kingdom (Application no. 25904/07) [2008] ECHR on the assessment of country information and expert evidence in particular:

“120. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy*, cited above, § 143).

121. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. ...

122. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be returned to that country. Thus the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3. ...”

90. Mr Sobers, although he no longer lives in Jamaica, visits regularly, both for professional and personal reasons (his mother still lives there) and he still contributes articles and letters about Jamaican political governance in the Jamaican press. We were not satisfied from the answers given by Mr Sobers to questions about the death threats he received in 2001 that those threats had, as suggested, caused him to lose perspective about the Jamaican government. Even had we been satisfied in that respect, it would have had no real relevance to this appeal, which deals with an asserted risk of persecution or serious harm from actors of persecution other than the Jamaican government.

91. Mr Auburn's criticisms of Mr Sobers' contributions to the 'Jamaica Observer' and the 'Jamaica Gleaner', were that the views there expressed were intemperate and betrayed a lack of impartiality. He produced a number of articles from those publications wherein Mr Sobers expressed views about the shortcomings of the Jamaican government, in forceful and vigorous language:

(a) Mr Sobers described the Jamaican government as “intolerably corrupt and degenerate”, and people of Jamaica as being “complicit in the corruption of our institutions”;

- (b) He criticised the banning of any recognition that LGBT people might have families as “rank backwardness...fetid hypocrisy”;
 - (c) In another article, he responded to an allegation that human rights groups in Jamaica were simply carrying out the wishes of their donors;
 - (d) Mr Sobers criticised a number of proposals by an MP, Ernest Smith, as making a virtue of “crassness, bigotry and stupidity”. Mr Smith’s proposals were that the Jamaican authorities should ban J-FLAG, deprive gays of gun licences and enforce virginity tests on high school girls at the beginning of each school year as a condition of readmission to their schools.
92. Such highly emotive and personalised language is a far cry from that which we would expect from a country expert, but we have not seen any other samples of the language considered appropriate in letters to the ‘Jamaica Gleaner’ and the ‘Jamaica Observer’ when discussing political governance in Jamaica. The allegation about human rights organisations to which Mr Sobers responded appears also to have been in strong language. In contrast, Mr Sobers’ reports for the APCI and for the Tribunal are in restrained and proper language and we are not persuaded that his views are so unreasonable or intemperate in relation to the Jamaican government that we should give them no weight.
93. In relation to the criticism that Mr Sobers failed to disclose his involvement in the November 2006 Jamaica Country of Origin Report, it is difficult to see how that was to his discredit. His commentary and the minutes of the relevant meeting, together with subsequent commentary by the respondent and Mr Sobers, have all been disclosed. Mr Sobers’ brief was, at short notice, to contribute on the question of gang violence in Jamaica. He was not asked to deal with LGBT issues and he did not do so.
94. The respondent accepted that Mr Sobers was an honest witness in the context of the report he prepared for these proceedings in his capacity as a country expert. He is an internationally known figure, a member of the Jamaican Bar and an established human rights campaigner. Mr Sobers has strong views, but his expression of them was restrained and where available he provided sources. Some of the evidence Mr Sobers gave was from his personal knowledge of Jamaican society. In contrast with the position in AB, the evidence he gave the Tribunal in this appeal was consistent with the other country sources before us. It is right, therefore, that we should give significant weight to his description of the attitudes of Jamaican men and the societal treatment of lesbianism in Jamaica.

Conclusions arising out of Mr Sobers’ evidence

95. We accept the following assertions in Mr Sobers’ report and evidence as established to the appropriate standard of proof for the international protection Conventions:
- 1. Jamaican women become sexually active early. Only 20% ever marry but children are expected to come along at any time after the mid-teens and women are expected to remain interested in sexual activity and available for sexual relationships until their sixties. We add this qualification: since

the risk arises from perceived as well as actual lesbianism, a woman of any age, but particularly an older woman, who had recently lost a husband or boyfriend might not need to explain why they had no partner for the time being.

2. Young women need to establish a heterosexual narrative to avoid being perceived as lesbian. That can be done by having a boyfriend (or husband) or having children. Young women who are still studying and living in dormitories will not necessarily be suspected of lesbian orientation, while women who are living with elderly relatives as carers may also be exempt for a time, but in either case, as the woman becomes older, if she has no regular male visitors and no children come along, questions will be asked and conclusions drawn, whatever her actual sexual orientation.
 3. Enquiries would be made of newcomers to an area to establish whether they were in a relationship, had children, or were sexually available to the local men. Atypical dress or behaviour, such as having no men in attendance and no children, or wearing manly clothes, was likely to be interpreted as indicating that the woman was a lesbian.
 4. If a woman were unattached, local men would indicate their availability. Their reaction to rejection was unpredictable: the woman might be fortunate in that the man might walk away, but there was a real risk that he would be offended and either seek to harm her himself or tell others that she was a lesbian. The harm might come from another man: a report in the Guardian newspaper in 2007 described the risk from a 'boyfriend twice removed' who would come over to 'whoop [her] arse' when he heard an ex-girlfriend described as lesbian, or the rape which a woman would not report, knowing that protection was not available.
96. We reject Mr Auburn's submission that Mr Sobers cannot properly be regarded as a country expert on LGBT issues in Jamaica, either because of the death threats, or because of his lifelong interest in human rights and the vigour with which he criticised Jamaican political governance. Mr Sobers' evidence was honest, largely internally consistent, and properly sourced. It was not expressed with inappropriate vigour.
97. However, we attach no weight to Mr Sobers' commentary on the appellant's likely behaviour on return to Jamaica: the question was not a proper one for him to be asked as a country expert, since it is a question of fact for the Tribunal, and he is not in a position to know how this individual appellant would behave.

Other country evidence

98. The country evidence before the Tribunal at the date of hearing is set out in Appendix A. In particular, we note that at paragraph 19.28 of the respondent's Country of Origin Report for December 2009:

"Lesbians

19.28 An article in Women's E-News on the plight of lesbians in Jamaica reported that women who step outside societal norms by dressing in 'too manly' a style or having few male visitors, for example - risk threats of verbal and physical abuse. Women have reportedly been raped, beaten, murdered and forced out of their homes or jobs simply for being lesbians. (Women's E-News, 'Lesbian Activists in Jamaica Tell Horror Stories'), 3 September 2005 ...

19.29 The Guardian reported that: "The lesbian experience is neither better nor worse but certainly different [than the gay male experience]. 'The abuse against women is a bit more subtle,' says one lesbian who did not wish to be named. 'There's the rape that you probably never report. The beating from the boyfriend twice removed who's just heard that you're lesbian and has come to whoop your arse;...'"

19.30 Lesbians in Jamaica have also faced forced evictions from the communities they live in. In April 2007, residents of the McGregor Gully community in East Kingston gave gays and lesbians two weeks notice to move out or "or suffer the consequences." Lesbians were the main target of the eviction order, but gay men were also told to leave. According to the Jamaica Star, the residents said they would not stop until their community was "gay free" and were "not afraid of resorting to extreme measures." ...

19.31 Beenie Man's 'Han Up Deh' also includes the incitement: "Hang chi-chi gal [lesbians] with a long piece of rope." ...

99. The disputed Operational Guidance Note was revised and reissued in January 2011, and again on 3 May 2011. The guidance to caseworkers on behalf of Country of Origin unit now reads:

"3.7.6 Conclusion. ...

3.7.7 In general the Jamaican authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection. There are also likely to be difficulties in finding safety through internal relocation. The law provides for freedom of movement within the country and Government generally respects this right in practice. However, in the case of *DW (Homosexual Men; Persecution; Sufficiency of Protection)*, it was found that in a country like Jamaica, where homophobic attitudes are prevalent across the country, it would be unduly harsh to expect a gay man or someone who is perceived as such to relocate. In addition, the Supreme Court in the case of *HJ (Iran)* made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

3.7.8 If there is a real risk that a gay man, lesbian or bisexual sexual relationship or those perceived as such, has, or will, become known, the applicant would on return to Jamaica face a real risk of discrimination and violence by members of the public or criminal gangs, to the extent that this would amount to persecution. As gay men, lesbians and bisexuals in Jamaica may be considered to be members of a particular social group, they should be granted asylum.

3.7.9 However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

- 3.7.10 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation."
100. There has been no new Country of Origin Report on Jamaica since December 2009. The other country materials set out in Appendix A support and underline the position now accepted by the respondent in the Operational Guidance Note guidance.
 101. On the basis of the evidence before the Upper Tribunal, it is clear that the anti-gay stance in Jamaica goes right to the top of the political structure. The Prime Minister recently stated that he would not accept any male or female homosexual in his cabinet and that Jamaica will not bow to international pressure and change its stance on homosexuality. Ernest Smith MP's call for increased sentences for buggery, virginity tests on girls returning to school after the summer vacation, and a ban on gun licences for homosexuals were all indicative of that political and social climate. A poll by the Jamaica Gleaner recorded that 70% of Jamaicans considered that homosexuals should have no civil rights at all.
 102. Levels of criminality and violence in Jamaica are very high overall, and there is ample evidence of attacks on homosexuals and lesbians, including the perception that rape is a method of "curing" sexual orientation. The evidence was that there was no sufficiency of protection: police attending reported attacks on gays arrived slowly, did little, and on occasion joined in on the side of the aggressors. The social elite are in a better position: they live in gated communities and can regulate what the world knows of them. They have money, education, geographical protection, and, usually, come from families that are "known" and have lighter skin. Even they are not necessarily safe, but they are safer: their financial position may enable them to hire personal protection rather than relying on sufficiency of protection from the Jamaican state.
 103. In contrast to the ability to go out in all-female groups in the United Kingdom, we accept that the evidence is that in Jamaica, it is unacceptable socially to go out to dinner with another woman, or to go to a club or go dancing with her, particularly if you then reject approaches from men. The lyrics of dancehall music incite violence against gays and lesbians, suggesting that they are better dead, or that they be raped. Some Church leaders regard it as brazen for gays and lesbians even to have a representative support group.
 104. In order to live safely in Jamaica, a single woman must present a "heterosexual narrative", normally involving male friendships and/or children. If a woman had no men friends, local men would indicate their availability and their reactions to rejection would be unpredictable, ranging between walking away and violence, even murder. Mob violence is a problem; jobs can be lost and people driven out of their homes if they were perceived to be gay or lesbian.

105. Open or perceived lesbians are at risk throughout Jamaica. While the greatest risk is in the metropolitan areas, outside the cities locals gossip about a woman with no children or men friends, unless there is an obvious, good reason, and perceived lesbianism entails risk, even where a woman is not lesbian.
106. We rejected Mr Chelvan's argument that all lesbians in Jamaica are at risk of persecution, by reason of the risk of being perceived as lesbian. That is to go much further than the Supreme Court in HJ and HT and very close to finding a generic risk to all single women throughout the country, eliding the final point in HJ and HT that those who are naturally discreet for reasons other than fear do not require international protection. On the evidence, lesbians who chose to live discreetly for societal or family reasons, rather than because they feared persecution, and who elected to create a heterosexual narrative to support that position, would not be entitled to international protection because they would be able to avoid the risk of being perceived as lesbian by having either men around or children.

Country guidance conclusions

107. We give the following guidance overall on the risk to lesbians and perceived lesbians in Jamaica:
- (1) Jamaica is a deeply homophobic society. There is a high level of violence overall, and where a real risk of persecution or serious harm is established, the Jamaicans state offers lesbians no sufficiency of protection.
 - (2) Lesbianism (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder.
 - (3) Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear.
 - (4) Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion.
 - (5) Because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. Newcomers in rural communities will be the subject of speculative conclusions, derived both by asking them questions and by observing their lifestyle and unless they can show a heterosexual narrative, they risk being identified as lesbians. Perceived lesbians also risk social exclusion (loss of employment or being driven from their homes).
 - (6) A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence.

- (7) In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood.
- (8) Members of the social elite may be better protected because they are able to live in gated communities where their activities are not the subject of public scrutiny. Social elite members are usually from known families, wealthy, lighter skinned and better educated; often they are high-ranking professional people.

The appellant's case

108. We turn next to the factual matrix in this appellant's case. She is a Jamaican lesbian, and is not a member of the social elite. She is fairly dark skinned, at the beginning of her professional career as an accountant, and does not have a manly appearance.
109. The appellant came to no direct harm in Jamaica before coming to the United Kingdom, apart from her depressive illness. She had a discreet social life with other lesbian women and several covert lesbian relationships and the single incident at a nightclub on which the appellant relied did not lead to any actual harm to her or any of her discreet lesbian companions. Her employer, on whom she had a crush, was aware of her sexual identity but it caused no problems.
110. The appellant when last in Jamaica was a young woman, in her twenties and not yet settled. She had a heterosexual narrative in that she lived with her elderly grandfather, had a male friend in her life (her former boyfriend), and her longest discreet relationship was with a woman who could demonstrate a heterosexual narrative because she was married. The W4W group went dancing on three occasions, and on one of those, got into difficulty from which, fortunately, they escaped unharmed. The description of the music playing and the threats by the men at the dancehall are, again, entirely consistent with the country evidence.
111. The appellant is much older now; she has been in the United Kingdom since 2003 and is no longer of an age where she would be expected not to be settled. She has had a number of short-lived open lesbian relationships here and is educated, sophisticated and articulate.
112. The appellant's account of her various United Kingdom relationships was not challenged by the respondent, save in relation to the crockery incident and her ability to remain on those premises for a few months longer.
113. Having considered all of the evidence before us, immediately after the hearing we formed the view that the appellant was a witness of truth and that her account was not exaggerated. The appellant and her girlfriend gave their evidence calmly, clearly and consistently. In particular, the appellant gave a coherent and credible account of the gradual emergence of her sexuality in Jamaica, and of the social,

religious and family difficulties it caused her, as well as her reliance on antidepressants.

114. The appellant's account of her continued emergence into open lesbianism after she reached the United Kingdom was equally consistent and credible. She did not claim to have developed a family life in the United Kingdom with any one woman, but she had lived freely as a lesbian.
115. With some reservations, we accepted the appellant's evidence that she would continue to live openly as a lesbian if she were returned to Jamaica, even if it put her at physical risk there. We have considered whether her being prepared not to bring girlfriends home after the broken crockery incident was a return to discretion. It may have been, but that was three years ago and the appellant has continued to develop.
116. We noted Mr Auburn's submission that the appellant would return to discreet lesbianism principally because of the hostility to lesbians in Jamaica. We do not consider that assists the respondent in the light of HJ and HT, because the appellant's reason for so doing would not be social discretion but fear. The appellant is not in a position easily to represent her former heterosexual narrative, even if she wished to do so: she is older, her grandfather has died, and her ex-boyfriend, whom she has not seen since 2003, now lives outside Jamaica. The appellant has no children and does not wish to have any.
117. The appellant has no heterosexual narrative to support her now and we accept that she is one of the rare people who would live openly as a lesbian, despite the risks, in a relationship if she could find someone who would do the same, but in any case, without a supporting male figure. If Mr Auburn is right that there would be no other lesbian in Jamaica prepared to live openly as a lesbian with her, that does not improve the situation, since the effect would be that the appellant would be deprived of any expression of her sexuality at all.
118. The evidence of the appellant's girlfriend was credible and direct: theirs was a new relationship. She would like to see it develop but would not go to Jamaica if the appellant were returned, because the girlfriend considered that it was dangerous to do so and she had a young child to consider. Article 8 ECHR is not engaged in the domestic sense, and the appellant's Counsel rightly did not rely on it.

Conclusions

119. We follow the step-by-step approach in HJ and HT, which may be summarised thus:
 - (1) Is the appellant homosexual?
 - (2) Is [her] country of nationality one where homosexual people who live openly are liable to persecution?
 - (3) Would this appellant live openly as a homosexual?

- (4) If the appellant would not live openly, what is the reason?
- (a) If it is a question of the appellant being naturally discreet or responding to social pressures such as a wish not to embarrass [her] parents, that will be insufficient to engage the Refugee Convention or other international protection; but if
 - (b) a material reason for the applicant living discreetly on [her] return would be a fear of the persecution which would follow if they were to live openly as a homosexual, then, other things being equal, the application for refugee status should succeed.

120. Applying that analysis to the facts of the present appeal, we answer questions 1 and 2 in the affirmative. The appellant's sexual orientation is accepted and the respondent conceded that Jamaica is a country where people who lived openly as lesbians were liable to persecution. We also answer question 3 in the affirmative; the appellant impressed us as a calm and credible witness and we believe her firm evidence that she would not return to living discreetly, whatever the risk.

121. If we are wrong about that and question 4 must be considered, we find on these facts that the appellant is not now 'naturally discreet' and her case does not fall into the exception at 4(a) of the test; any return to discreet living would be by reason of her fear of persecution rather than by reason of social pressures, and the appellant therefore would be entitled to refugee protection under question 4(b) in the alternative.

122. It follows that the appellant has established a risk of persecution on return and the Refugee Convention is engaged. The respondent accepted that there was no sufficiency of protection in Jamaica for lesbians who could establish that they were at real risk of persecution or serious harm. Internal relocation is a question of fact, and on the facts of this appeal, would not avail the appellant. Those findings are determinative in her favour and the asylum appeal must be allowed.

Decision

123. The original Tribunal made a material error of law in this appeal (by applying the higher civil standard of proof rather than the asylum and human rights standard of real risk or reasonable degree of likelihood). We set aside that determination and proceed to remake the decision.

124. We substitute a determination allowing this appeal under the Refugee Convention and Article 3 ECHR. Humanitarian protection was inapplicable as the asylum appeal succeeds.

Funding

125. The Tribunal is satisfied that, at the time the appellant made the Section 103A application and for the reasons indicated in the order for reconsideration, there was a

significant prospect that the appeal would be allowed upon reconsideration. Accordingly it orders that the appellant's costs in respect of the application for reconsideration and in respect of the reconsideration are to be paid out of the relevant fund, as defined in Rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed
Senior Immigration Judge Gleeson

Appendix A

Oral and documentary evidence before the Upper Tribunal

Appellant's evidence

1. The appellant gave oral evidence after adopting her witness statement of 20 November 2009. Her account fell into two phases, the first 30 years of her life spent in Jamaica, and the period after she came to the United Kingdom, during which she gradually emerged as an open lesbian. Her various girlfriends are referred to by alphabetical initials, in chronological order.

Jamaica: 1973-2003

2. The appellant's early life may be taken quite shortly: she was aware of her sexual orientation from the age of about 7 and had a close school friend whom she used to kiss on the lips, behind the school premises. They were spotted by a teacher and both girls were spanked. They did not do it again. Her mother was a Pentecostal Christian and very religious. The family went to Church every Sunday. The appellant's mother never mentioned the incident and thereafter the appellant suppressed her feelings for many years.
3. The appellant's homosexual feelings returned in her early 20s. She experienced three short sexual relationships with men, none lasting more than a couple of months, because sexual relations with them did not feel right. One remained a good friend and is aware of her sexual orientation. The appellant became clinically depressed, she considers because of the difficult social situation caused by her sexual orientation. She received antidepressant treatment from her doctor from the age of 24 but did not disclose the reason for her depression. Eventually, the appellant discovered how to meet women online, at first in general chat rooms in which she approached other women (with mixed success), and then in a lesbian-specific chat room ("Women4Women", hereafter W4W), where she was able to set up discreet dates with other lesbians. They would go out, chat and discuss how they coped, or take a car to a secluded spot and kiss where they could not be seen. The appellant had learned the lesson of her schooldays.
4. The appellant continued gradually to discover her sexuality. Members of W4W arranged social outings to a nightclub or the beach, or would meet at someone's home. In the appellant's area of Jamaica, there were five or six women in the group. If they went to a bar, they were very careful not to give any indication of being gay. They were very careful who they invited to group outings: sometimes men would prompt straight women to join the online group, seeking to discover information about its lesbian members, so new members were vetted for a period of time online before they were allowed to meet other members.
5. After a time, the appellant began a relationship with one of the group, Ms A, a married bisexual woman with a son. Ms A's husband was a pilot and often away, which made it easier for them to meet. They would drive out, always at night, to a secluded spot beside the beach, far away from where they both lived, and with Ms A the appellant finally had full sex. They met at least once a week and spoke on the telephone two or three times a week. They could not go out to dinner, or the cinema, or even hold hands in public. The appellant heard from friends who took more risks than she did that if two women went out together, men would come and threaten them, asking if they were lesbian. Some women she heard of were beaten and raped because they were considered to be lesbians.

6. The appellant only had one hostile experience while in Jamaica. It was during a W4W outing to a nightclub. The women were dancing together and the DJ started playing music with homophobic lyrics by artists such as Beenie Man and TK. A group of men surrounded the women and began calling them "chi-chi girls", "sodomites", "pea eaters" and "pussy eaters" all terms for homosexuals and/or lesbians. They were saying, "Let us convert you, we will make you into straight women" and the women understood clearly that they were threatening rape. The group left the club fast; the men followed them out but did not carry out their threats. The appellant could not say why: she thought perhaps on that occasion there had been safety in numbers.
7. In early 2000, the appellant told her brother that she was lesbian; he was supportive. From July 2000 to May 2003 she worked at the Ritz Carlton Golf and Spa. She had a crush on her female boss there; her boss was not lesbian but was probably aware of her infatuation. Her boss called a meeting and told the staff to accept people who were gay and lesbian. The appellant felt that remark was intended to make her more comfortable.
8. Generally, though, the appellant had to live a very discreet life in Jamaica and she felt frustrated, trapped and restricted. She felt less of a human; she resented the freedoms which heterosexual people had to express their sexuality publicly. She also had to deal with her sexuality without any counselling or support; a referral to J-FLAG's support worker in her area was not very helpful as the male support worker did not really engage with her. J-FLAG was a new organisation and under-resourced.
9. In 2003, the appellant decided to leave Jamaica and come to the United Kingdom to study accountancy here. Her visits to the United States, to see her sisters living there, had shown her how different life could be in a country where she was free to express her sexuality, but she had not told her sisters of her orientation or considered seeking asylum there. When in America, she was just on holiday, combined with a family visit.

United Kingdom: 2003-2009

10. On arrival in the United Kingdom, the appellant began a short-lived relationship with a woman, Ms B, which lasted from December 2003-August 2004. On New Years' Eve 2004, she told her sister S of her orientation. S was very disappointed and cried, saying that it was not right. The appellant and her sister S are still in touch but the subject is not mentioned.
11. In January 2005, the appellant began a relationship with Ms C, and in May 2005 they moved in together. During 2005, the appellant told her sister J (who lives in New York) that she was lesbian. J was supportive and even permitted the appellant to take Ms C over in 2006 to visit. The appellant's relationship with Ms C ended in September 2006.
12. The appellant had intended to tell her mother about her sexuality, but before she could do so, J's boyfriend told her mother, who was devastated, distraught, and blamed herself. The revelation was particularly distressing because her mother had recently married a pastor and she feared social consequences if her daughter's orientation became known to his parishioners. After the initial shock, the appellant and her mother were reconciled. The appellant's mother prays for change and they remain close. Other family members have not been told, though aunts and uncles have speculated about the appellant because she is still unmarried and childless.
13. From December 2006-August 2007, the appellant had a relationship in the United Kingdom with Ms D. From February-March 2008, she had a short relationship with Ms E, a bisexual woman whose husband was in prison at the time. Ms E stayed at the appellant's flat for a

night one weekend, upsetting the two heterosexual Jamaican men with whom the appellant was living. They started gossiping and saying she was lesbian, then one of the men broke all the cups and bowls they shared, saying that he did not want to be around a “sodomite” or to share utensils with one. They felt she might infect them. The appellant had to buy separate crockery to use for herself. Nevertheless, she stayed in the house for another four months; the men were not very pleased, but one of them had no status in the United Kingdom and they were not prepared to risk her reporting them to the police.

14. The appellant’s student leave to study accountancy was extended several times up to January 2008, when the respondent refused to extend it further: the appellant’s appeal against that refusal was dismissed in August 2008. Apart from short periods when she lived with Ms C and Ms F, the appellant stayed rent-free with various Jamaican friends while in the United Kingdom. Her sisters in the United States supported her studies financially as much as they could. The appellant also obtained employment as a bookkeeper and accounts clerk. The appellant pursued her accountancy studies at a number of colleges, and sat the final examination in June 2009. She is now a fully qualified accountant and has been in the United Kingdom for over seven years.
15. From April 2008, the appellant was in a relationship with Ms F, a previously heterosexual woman, whose first female relationship was with the appellant. They went to gay bars and pubs, or just stayed in and watched movies. She did not tell Ms F about her immigration situation.
16. In August 2008, the appellant claimed asylum, and was detained at Yarlswood. She was forced to explain her situation to Ms F, who was supportive, visited her in detention and gave evidence at the appellant’s Immigration Judge appeal hearing. It was a very serious relationship: Ms F introduced the appellant to her family, friends and colleagues. When the appellant was released in September 2008, she moved in with Ms F, but the relationship came to an end in August 2009.
17. The appellant met her current girlfriend, Ms G, in Club Life over the August Bank Holiday of 2009. On 9 September 2009, she was dispersed to NASS accommodation in Stoke-on-Trent. The relationship continued up to the date of the reconsideration hearing, conducted mainly in visits to pubs and clubs in London. They also went out as a group with friends. The appellant had met Ms G’s mother and sister.
18. The appellant enjoyed the freer atmosphere in the United Kingdom. The question of her being lesbian was simply not a problem here. She marched in Gay Pride in 2005 with BLUK (Black Lesbians UK). The appellant was a member of various gay Facebook groups and pages. A few of her friends removed her as a Facebook friend when they became aware of her orientation but the rest did not. She had become more open about her sexuality: her Facebook friends now knew of her orientation, including those still living in Jamaica. The appellant told one or two friends directly and they accepted her. It followed that the appellant was now “out” not just to her family but to a wider group of non-homosexual Jamaicans who knew her when she lived there.
19. In her oral evidence, the appellant adopted her statement and confirmed that she was 30 years old when she arrived in the United Kingdom to study accountancy. She considered that she would have been perceived as marriageable and available from the age of 18. In her 20s, she had been at university, travelled to the United States and so on; she had been busy with college and establishing herself at work. She had begun meeting other lesbians in groups from the age of about 24, but did not have a physical relationship until she was 27.

20. In cross-examination, the appellant was asked about the reaction to lesbians here in the United Kingdom. She considered that, though levels of tolerance might vary, she had never felt unsafe and any question of risk seemed hypothetical. If there were a problem, the domestic protection was much better. She would not contemplate changing her open lesbianism to avoid harm, wherever she lived. She was "out" now: being discreet had made her ill with depression and she had no intention of risking that again. When asked by Mr Auburn how she would behave if on holiday in Saudi Arabia, the appellant said that if she were to put herself in that position, she would reason that it was not for long and would not be afraid to be open about her sexuality there. There had been no previous suggestion that the appellant wished to travel to Saudi Arabia, on holiday or otherwise.
21. The appellant confirmed that six years ago, when she left Jamaica, she had been living discreetly. She had gone out with lesbian friends but always at night and usually to safe places. If the W4W group went to a bar, there would be six or seven of them. She could only recall three such occasions and one of them was the one where they had difficulty. Her relationship with Ms A had been conducted discreetly, driving somewhere safe for sex maybe once a week. It was an unhealthy lifestyle and not sustainable. The relationship ended after three years, during which they were never out in public together as it was too dangerous. Even if two women went to a restaurant and a man came over, that was a risk. If they showed no interest in him or refused to dance, that would lead to a negative perception.
22. The appellant was nevertheless most emphatic that she would, now, take the risk. She would not return to secrecy after six years of openness; however, she feared what might occur if she behaved openly, as she would do. She would not take Ms G. It was not fair to expect it. If in Jamaica anyone asked why the appellant was not married, she would tell them she was a lesbian. She knew who she was now and would not modify her behaviour. She felt really strongly about it; she was not prepared to take a retrograde step, even though she knew it was unsafe not to do so. She was no longer prepared to live closeted and if she met someone in Jamaica, they would have to be prepared to be open or she would not consider going out with them. She had suffered depression in the past from her closeted life and was not prepared to return to that.
23. The appellant was asked about the crockery-smashing incident in the United Kingdom. She explained that she was living, rent free, in a house owned by a friend of her mother, with two men and another girl who was heterosexual. They did not behave homophobically until her girlfriend stayed over one weekend. By that time the appellant had been there for a couple of months: she was initially unsure how to deal with their reaction but she soon relaxed, since she knew that they could not risk any trouble with the police. They had to be tolerant because of that. She stayed for a further five months, but after that her girlfriend came in the daytime only. It was put to the appellant that this was inconsistent with her claimed fear of Jamaican men, but she emphasised that it was the availability of domestic protection in the United Kingdom which made the difference.
24. The appellant had no difficulty before she left Jamaica because she had men friends in evidence and was living with her grandfather. The appellant confirmed that her mother and brother were aware now of her sexual identity, as was her male friend, but she had not seen him since leaving Jamaica six years ago and would not be able to use him to recreate the heterosexual narrative she had projected before leaving, if she now returned. Nevertheless, if returned she would do the same as she did now in London, going out to clubs and pubs with other women. She would want a partner to be with and she would not hide. Heterosexual women in Jamaica had female friends and went out in the evenings with them; the appellant and her W4W friends had done the same.

25. The appellant was asked why she had not claimed asylum in the United States on her visits in 1997 and 1998, returning to Jamaica each time, and the same on her visit to the United States from the United Kingdom in 2006 with Ms C. She stated that at that time she had no reason to do so since she was not in danger in America.
26. In re-examination, the appellant stated that she took pictures of the broken crockery just to be on the safe side, since initially she was not sure whether the situation would escalate. She was working as an accounts assistant and living free helped her finances, especially as she was also studying. The other girl who lived there was also a friend of the person who owned the house, and the men knew the appellant was studying. She did have some platonic male friends in the United Kingdom and in Jamaica; one, a heterosexual man who had a son now, was still there, but others had moved to the United States. She did not know his present social status, or whether he was in a relationship, but she had spoken to him on the phone when he was last in London.
27. Only one woman, Ms A, had visited the appellant's home when she was in Jamaica. At that time, the appellant was living with her grandfather, and Ms A only came at night. Her grandfather was "old school": the appellant was not permitted to take visitors to his home. He was known and the appellant had moved there when she was working in Montego Bay. He did not have many neighbours. The grandfather had since died.
28. Now, if returned, she would tell people at work that she was a lesbian. "Coming out" and accepting herself had been liberating. Now she was herself, and she could be who she was without fear. Other lesbians lived discreetly because they feared harm: the appellant would not do so. She was not prepared to have children, it would be horrible and not "her". She would not be living the life she wanted to live. If she entered into a relationship in Jamaica, she would expect a partner there to take the risks with her.

Evidence of appellant's girlfriend

29. In her witness statement, Ms G stated that she was a British Citizen and met the appellant at Club Life in Vauxhall on August Bank Holiday 2009. She went there with friends and noticed the appellant, whom she thought very attractive. After a time, the appellant asked her to dance. They danced and kept company all night, then exchanged numbers, meeting several times over the next week or so. The appellant told Ms G that she was moving to Stoke-on-Trent. Ms G was surprised and disappointed: she really liked the appellant but was not keen on a long distance relationship, having just finished one.
30. The relationship continued, mainly by daily telephone calls, with the appellant staying with Ms G about twice a month. Ms G went once to Stoke-on-Trent to visit the appellant but there was not much to do there; the clubs and pubs they liked were in London. Some of Ms G's gay friends had met the appellant. She had introduced the appellant to her son, her mother, her sister and various nieces and nephews, and spoken of her to her straight friends. The appellant had introduced Ms G to a couple of her friends too. The appellant was comfortable in her sexuality and happy to refer to herself as lesbian. That was unusual and refreshing.
31. Ms G understood that the appellant might be returned to Jamaica, which she found hard to contemplate as it would end their relationship. Ms G was looking to settle down and it was difficult to plan ahead in the present situation. Ms G would not go to Jamaica: it would make no sense, because she and the appellant wanted to be who they were, and to be together. It was well known on the gay scene in the United Kingdom that Jamaica was one of the places where as a lesbian you simply could not go.

32. In contrast, in the United Kingdom, they could be normal; they had nights out together, they stayed in to watch television, they played sport, they went out for dinner, together and with friends. That was a freedom they would not have in Jamaica. Papers such as “The Voice”, West Indian newspapers, the internet, and friends in the gay community all reported that in Jamaica, gays were raped and killed, and the government, police, and people in general frowned on homosexuals.
33. In her oral evidence, Ms G adopted her witness statement and was tendered for cross-examination. In cross-examination, she stated that she had never been to Jamaica. She was not even prepared to move to Stoke, never mind Jamaica. The appellant had moved to Stoke just two weeks after they met. There was not enough to do in Stoke. In re-examination, she said she might visit Jamaica for a holiday but not to live; it was out of the question. The life there was totally different and not safe. The relationship was still in the early stages and if it came to an end now, Ms G would be disappointed.

Country evidence

Expert report and oral evidence of Mr Sobers

34. Mr O. Hilaire Sobers LLB (Hons) UWI, LLM (Warwick), Attorney-at-Law (Jamaican Bar) was instructed by the appellant’s solicitors. The appellant’s representatives disclosed the letter of instruction which, with corrections for several obvious typographical errors, asked him to deal with the following questions:
- (1) What are the current risks faced by lesbians in Jamaica and have things changed over the last 1-2 years?
 - (2) What is Jamaican society’s attitude to lesbianism?
 - (3) To what extent can a woman identified as a lesbian access state protection or relocate within Jamaica to avoid any risk?
 - (4) How possible is it for a lesbian woman to have a relationship with another woman, including cohabiting? Can this be done discreetly? Would 2 women living together arouse suspicions? To what extent can women show affection in public?
 - (5) How (un)usual is it for a woman to live alone or with another woman in Jamaica? Can a woman without family support be economically self-sufficient?
 - (6) Looking at this appellant’s particular case, what are the risks she would face in Jamaica? To what extent could she have the same lifestyle there that she does here?
35. Against that background, Mr Sobers’ report set out his understanding of the facts of this particular appeal and summarised the questions rather more shortly:
- (a) The risk of discrimination and harm to lesbians in Jamaica;
 - (b) The sufficiency of protection currently available to women of same-sex orientation by the Jamaican state; and
 - (c) The possibility of internal relocation to avoid the risk of homophobic-inspired violence.
36. Mr Sobers’ report set out his qualifications and experience. He had been an attorney-at-law with the Jamaican Bar for over 30 years. Before coming to the United Kingdom in 2001, he had been resident in Jamaica, where while practising law he appeared in both civil and criminal courts. He was Executive Director of the Independent Jamaican Council for Human Rights from 1998-1999. In September 1991, he had been a member of the Public Defender’s legal team at the Commission of Inquiry into violence in West Kingston, which he described as a garrison community. From 1994-1995 he founded and ran “Brother’s Keeper”, an NGO designed to promote solutions to Jamaica’s violent crime problem.

37. Mr Sobers came to the United Kingdom in September 2001 to study here. In December 2002, he was awarded the LLM in Law in Development from the University of Warwick, with particular focus on human rights and criminal justice. Since completing that qualification, he had lived in America, and currently in Washington DC, where he was a human rights consultant, but he maintained both professional and personal ties to Jamaica, visiting every year.
38. Mr Sobers in his latest report noted the high rate of murders in Jamaica (1611 in 2008, about 60 per 100,000 inhabitants) and a reported increase in shootings, rape and robbery in 2008. Violence against women was widespread. Of those offences which were reported, sexual assault was the second highest cause, after fighting. Mr Sobers relied upon the following documents in support of that position:
- the US State Department Report for 2008;
 - the Jamaican Ministry of Justice Victim Support Unit information between 2005-2008;
 - a 1999 report by the UN Development Program,
39. All three reports recorded high levels of violence against women and significant underreporting of such assaults. More particularly,
- In 2006, Amnesty International reported that the Sexual Assault Investigation Unit in Jamaica considered that only 25% of sexual assaults were reported;
 - On 23 April 2009, the Jamaica Information Service reported Senator Dwight Nelson, Minister of National Security as calling for a culture change as Jamaican men “have been acculturised to the notion that they have a right to sexually harass women” and that the government was committed to efforts to eradicate all types of violence against women, including sexual violence;
 - A March 2009 study found that almost half of Jamaican adolescent females had experienced sexual coercion, with 27% having experienced some form of sexual violence.
40. In contrast to the reports which were criticised in *AB*, Mr Sobers’ report for this appeal was carefully sourced throughout, drawing both upon the country materials mentioned and on his personal knowledge of Jamaica, to support his conclusions that women who lived alone there would be perceived as lesbians, whatever their actual sexuality, and that those who claimed to be bisexual or transgendered would be regarded as homosexuals (of whichever sex). A long section of the report then considered questions relating to male homosexuality, with which we are not concerned directly in the present determination.
41. The aspects of Mr Sobers’ report which related to female homosexuality may be summarised as follows. He noted that lesbianism in Jamaica was not a criminal offence, the criminal legislation being directed at male homosexuals. The Government of Jamaica had repeatedly refused to repeal the buggery laws criminalising male homosexuality. Verbal abuse of lesbians and gays was a given, with violence more unpredictable, but involving virulent physical brutality when it occurred. Senior Church figures such as Wellesley A Blair, Administrative Bishop of the New Testament Church of God, had called for criminal penalties such as public lashing for “sodomites” and criminals. Dance-hall song lyrics called for lesbians to be killed. A consistently reported aspect of the hostility to lesbians was the notion that they could and should be forcibly cured by rape. Mr Sobers gave a small number of examples of rapes and attacks on women who were openly lesbian, observing that the Jamaican culture of masculinity “views lesbianism as a particular affront to what is perceived to be the natural prerogative of men in their relations with women”. A manly

physical appearance or other visible manifestations of sexuality were risk factors. Risks to women perceived as lesbian included community ostracism, physical violence and rape.

42. Police attitudes at lower levels mirrored those of society as a whole. There were examples of police officers and civilians failing to attend promptly at premises where homosexuals were under attack, or joining in the verbal abuse (“nasty battymen”) and themselves striking homosexuals who had sought protection. Again, these examples mainly concerned men, although the report included a troubling account of the murder of two lesbians at the end of June 2006, followed by a two month delay in arresting and charging the only suspect. Overall, Mr Sobers’ report supported the Respondent’s concession that sufficiency of protection was not available to lesbians who were at risk of persecution or serious harm in Jamaica.
43. As regards internal relocation, Mr Sobers’ report noted that there were improved internal communications (new roads and the spread of mobile telephony), but increased levels of violence in rural parishes. It was his considered opinion that the appellant’s fear of return as an open lesbian was well-founded.
44. In his oral evidence, Mr Sobers adopted his statement and confirmed that he was now living in Maryland, United States. Mr Sobers confirmed that he had given written, but not oral, evidence in *DW*, which was accepted by the Tribunal. There was, he considered, no difference between the evidence in his report for this appeal and the respondent’s Country of Origin Report on Jamaica for 2009.
45. Mr Sobers had been asked to contribute to the respondent’s revision of the 2006 Country of Origin Report, on the question of gang violence. The terms of reference for his contribution were limited to criminal violence, not to homosexuality questions. He had been given only about three weeks’ notice of that brief and whilst he accepted that it might have assisted the respondent for him to have made a broader response, that had not been in his remit and there was no time to do it.
46. Mr Chelvan put to Mr Sobers that he described himself in letters, articles and on his blog as a human rights activist as well as a lawyer. Mr Sobers agreed, stating that he had 15 years’ experience in human rights, including as an academic, and was a member of the Inter American Commission of Human Rights, an intergovernmental organisation. That was different from the NGO which he had personally set up in 1994, the Independent Jamaican Council for Human Rights, of which he was Executive Director. He wrote a weekly column in the ‘Jamaica Gleaner’ and was regularly consulted by international non-governmental organisations such as Human Rights Watch. Amnesty International had asked him to go on a mission to Africa. Overall, he regarded his role as speaking out on Jamaican matters.
47. Mr Sobers had visited Jamaica regularly over the previous years. According to his passport, he had visited in December 2005, December 2007, October and December 2008, May and June 2009. Some of those were family visits (his mother is still in Jamaica) and some were work-related. For example, in May 2009, he had met with a coalition of vulnerable communities of the Caribbean, gay rights activists and those involved in HIV/AIDS support programmes, who were dealing with regional patterns of homophobia. He had visited Jamaica 4 times in the last 12 months.
48. Turning to the position of the appellant, Mr Sobers stated that perception was the key. The appellant was 36 years old, unmarried with no children. In order to avoid a real risk of harm in Jamaica, she would need to project or present a heterosexual narrative, some indication of a visiting relationship with a man, or of children. This kind of social cover was used by the

gay community, people who lived alone or with a same-sex friend needed to explain their lack of male followers. Sometimes, their age itself was sufficient explanation, for example a female over 65 years old living alone would raise few if any queries, if she were widowed or divorced. It would be assumed that her reproductive life was behind her. For younger women, male visitors were not essential if they had children.

49. Mr Sobers stated that small communities liked to “place” incomers. Questions would be asked, and opinions formed from her apparent conduct. If the answers were unsatisfactory, the appellant would be at risk: his opinion was that a woman who did not appear to conform to the social norm of heterosexuality would receive hostile reactions which could escalate to violence.
50. When asked about the risk of enquiries from men in the neighbourhood. Mr Sobers explained that if a woman had no male visitors, the local men would be likely to indicate their availability and assume that she was available. If the woman rejected them, their reaction would vary: some might simply walk away, others might take rejection personally and assume, therefore, that the woman was a lesbian. The adverse reaction then provoked could range between verbal abuse and serious violence. There was what Mr Sobers described as a “pathological myth” in Jamaica that lesbians could be cured by male rape.
51. Mr Sobers was asked about the protection afforded to what his report in *DW* described as “social elites” who could evade harm. He stated that they could be defined or recognised by income, education, where they lived, family lineage or light skin, and that the social elite could largely insulate themselves from persecution or attack because of the social and economic power they wielded. They lived in gated communities with greater privacy, thus minimising their exposure to such risks, but not eliminating it. There were examples of people from the social elite who had suffered persecution or harassment.
52. Mr Chelvan asked Mr Sobers to consider the position of the appellant, who was now a fully qualified chartered accountant. He replied that she would not qualify as a member of the social elite, since she had education, but no lineage or geographic protection. Members of the social elite would be those at the top of her profession, not newly qualified chartered accountants. Her skin colour was quite dark; light skin in Jamaica made it more likely that you would be assumed to be a member of the social elite. Houses in Strawberry Hill and other gated communities would be outside her financial capacity; her salary would barely cover the rent.
53. If the appellant were living with another woman, that would have to be explained. In general, if the appellant were to live with another woman, that would be likely to generate a perception that the appellant and her partner were lesbians. In order to protect herself, the appellant would need to present a heterosexual narrative to explain away her lifestyle which appeared contrary to the heterosexual norm. Two sisters, or two recently divorced or widowed women, or two college students living together would not excite suspicion of lesbianism. A young girl might be forgiven for living in a group of younger women; the same was true of a person living with an elderly aunt, for whom she had obvious carer responsibilities. The appellant could not, as he understood it, bring herself within any of these groups.
54. Mr Sobers was asked to explain the difference between the appellant's situation now, and in 2003 when she left Jamaica. He observed that before the appellant left Jamaica, she was a much younger woman (29 years old) and was now in her mid-30s. There would be concern that she had not married or had children yet. When previously in Jamaica, she had brief relationships with men, plus a supportive ex-boyfriend and cousin. While in Jamaica, her

cultural instincts had restrained her and she had not lived as an open lesbian. She had a heterosexual narrative in place. It was not surprising that she had no difficulty, particularly as she was too young to be really “settled”.

55. In the six years since the appellant came to the United Kingdom, his understanding was that her position had evolved, that the appellant was now operating openly in her gay relationships and would continue to do so on return. If the appellant wanted to minimise the risk now, operating openly was just not an option. Jamaica was still a patriarchal culture, with men perceiving women as vessels for their sexual gratification and women’s sexuality seen as subordinate to that of men. There was an asymmetry between what men expected, and offered, in sexual matters. There was a significant incidence of violence against women which was underreported; a comparison of the number of women treated in hospital with the number who had reported being attacked supported that asymmetry. Among his own acquaintances, he knew of few women who had not suffered a sexual assault.
56. If the appellant were now to return, single and with no children, she was likely to be at risk. Women in Jamaica were expected to begin having children from 17 -18 years old. Only 20% of women ever married. Beginning in their teens, one or two children, or even more, were considered no surprise for a Jamaican woman. Women who were unable to have children might be perceived as lesbians; it all depended on what their local community knew about them. If the community knew nothing, it would make assumptions, particularly if she had only female visitors and they were ones who could not be explained as family members; in that case, her risk would be increased.
57. For the respondent, in cross-examination, Mr Auburn put to Mr Sobers that he was a former human rights activist. He agreed. He had campaigned against the death penalty, expressing himself in strong terms, but he saw no conflict between that language and his claim to impartiality. Indeed, despite that advocacy, his country had seen fit to appoint Mr Sobers as a judge. Mr Auburn suggested that the witness’ former activities called into question the degree to which he could be considered to be an impartial expert. Mr Sobers vigorously rejected that, stating that none of his reports to the Tribunal could be impugned as less than factual. He agreed that he had received a death threat in 2001 but disagreed with the suggestion that this had made it difficult for him to see anything positive in the Jamaican government, since he was part of the story, not an observer: Mr Sobers did not follow that argument, stating that he could see no connection between receiving a death threat and not feeling compassion.
58. Mr Auburn then asked the appellant about the political context for the origins of homophobia in Jamaica. Mr Sobers referred to historical, political and religious factors set out at paragraphs 8 and 36 of his report, and to the well-known passages from Leviticus chapters 18.22 and 20.13 regarding homosexuality:
- “18.22 Thou shalt not lie with mankind as with womankind: it is abomination.
- 20.13 If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.”
59. In Jamaica, where religion was very important, that approach to homosexuality was deeply rooted. In common with other developing countries, the Jamaican male population had a deep rooted antipathy to homosexuality, because sexual activity incapable of producing issue undermined survival overall. The Offences against the Person Act, sections 76 and 79, continued to prohibit buggery and gross indecency. The government had absolutely refused

to abolish either offence, reflecting a deeply entrenched prejudice at the heart of Jamaican politics.

60. Mr Sobers himself had been perceived as gay because he campaigned about homosexuality. Pressed about the age of sexual activity for teenagers, Mr Sobers expressed concern about his 21-year old god-daughter's status (she is in her early 20s with no boyfriend or children). Much was made of this in submissions but we are not inclined to put weight upon it. It seems too fact-specific. The appellant herself was now a pastor's step-daughter: Mr Sobers said that was two-edged, since although it gave you some protection, you would be expected to know how the world worked. Homophobic violence formed part of the wider culture of violence in Jamaica.
61. In re-examination, Mr Sobers stated that Jamaica had the highest density of churches per square mile in the world, 14 parishes, although it was a very small country. The appellant herself came from a deeply Christian family, it appeared. He would expect a lesbian to conduct herself discreetly, refraining from lesbian behaviour, giving absolutely no indication in her dress or manner to suggest that she was not heterosexual, receiving male visitors at home and dancing with men when out. That could create a narrative of conformity, a heterosexual norm. The alternative was possible violence: some bishops considered that homosexuals should be lashed in punishment.

Other country background evidence

FCO travel advice

62. FCO travel advice in April 2009 for Jamaica stated that:

"Jamaica has laws which make certain homosexual acts illegal. The attitude of many Jamaicans to gay, lesbian, bisexual, transgender and intersex people is hostile."

That advice still appeared on the website in May 2011.

UKBA Operational Guidance Note and Country of Origin Reports

63. The respondent's Country of Origin Report for December 2009, which remains the most recent report, contained a section dealing with lesbians, as well as more generic consideration of the position of all homosexuals. The overview of the position of homosexuals, female and male, is at paragraph 19.01 and following:

"OVERVIEW

19.01 Traditional societal attitudes about homosexuality remained entrenched with homophobia continuing to be a significant problem in Jamaica. Lesbians and gay men remained a marginalised group and were often the target of harassment and violence. (Freedom House, Freedom in the World 2009 – Jamaica) Gareth Thomas, a Minister at the Department of International Development, was reported by Pink News on 9 November 2008 as stating that

"... the treatment of lesbian and gay people in Jamaica is a disgrace ... The Church condemns them as sinful and the Prime Minister is unashamed to say he would not have a gay person in his Cabinet. The wildly popular dancehall culture is viciously homophobic, with many lyrics calling for lesbians and gays to be burned, beaten and shot."

19.02 The US State Department Report on Human Rights Practices 2008 (US State Department Report 2008), published on 25 February 2009, noted that the suspicion of homosexuality was often enough to trigger violence.

“Despite the easygoing image propagated by tourist boards, gays and their advocates agree that Jamaica is by far the most hostile island towards homosexuals in the already conservative Caribbean. They say gays, especially those in poor communities, suffer frequent abuse. ... homophobia is pervasive across the sun-soaked island, from the pulpit to the floor of the Parliament.” (365 Gay, 20 July 2009)

A recent opinion poll carried out by the ‘Jamaica Gleaner’ found that 70 per cent of Jamaicans did not believe that gays and lesbians should have any civil rights. (365Gay website 20 June 2008).

Newsweek International reported in September 2007 that 98 gay men and lesbians were targeted between February and July 2007 in 43 separate mob attacks. The article stated that: “Four lesbians were raped, four gay men murdered, and the houses of two gay men were burned down.” The USSD 2008 noted that the murder of gay men continued during the year.

19.03 Freedom House’s report “Freedom in the World 2009 – Jamaica’, observed that the anti-gay lyrics of some Jamaican entertainers, in particular reggae singers, remained a source of contention.

The Immigration and Refugee Board of Canada has found that:

“[T]he homophobia which suffuses the music, religion, society and government has combined into a peculiar nationalism ... For people that believe this, gay-bashing has become a kind of patriotism, an act in defence of the nation, and an integral part of the Jamaican identity.” (Responses to Information Requests, Immigration and Refugee Board of Canada, February 22, 2007)

Additional information on anti-gay lyrics can be accessed via the following weblink: Amnesty International - Action against homophobia in Jamaica

19.04 Amnesty International’s (AI) 2009 Human Rights report stated that it was difficult to gauge the true extent of violence against lesbians and gay men because levels of violence and prejudice in the country ensured that the subject remains taboo: lesbians and gay men “... do not report attacks for fear of exposure.” In addition, the police were often responsible for participating in violence against gay men and lesbians. (Jane’s Sentinel Country Risk Assessments, 22 October 2008)

19.05 The ‘Jamaica Gleaner’ reported on 11 March 2009 that a survey had revealed that gay men were not using health care facilities because of stigma attached to gays. “As debate stirs over the Jamaican Government’s insistence on retaining legislation against buggery, homosexual men continue to suffer from discriminatory acts which make it difficult for them to seek health care in the country, a study has indicated.

“A 2008 survey commissioned by the Ministry of Health showed 31.8 per cent of gay men in Jamaica are living with HIV. Another 8.5 per cent were found with Chlamydia, 2.5 per cent had gonorrhoea and 5.5 per cent had syphilis.

“According to a release from the Caribbean HIV & AIDS Alliance (CHAA), the high number of sexually transmitted infections among gay men, sometimes termed men who have sex with men (or MSM), is linked to the way they are treated by the law and members of the general population, including those in the health sector.” ...

19.06 The Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG) is Jamaica’s only human rights organisation working to eliminate discrimination against gay and lesbian Jamaicans. (Amnesty International, “ “Battybwoys affi dead:” Action against homophobia in Jamaica”, accessed 12 October 2009).”

64. The section on lesbians begins at paragraph 19.28:

“LESBIANS

19.28 An article in Women’s e News on the plight of lesbians in Jamaica reported that women who step outside societal norms by dressing in “too manly” a style or having few male visitors, for example - risk threats of verbal and physical abuse. Women have reportedly been raped, beaten, murdered and forced out of their homes or jobs simply for being lesbians. ...

19.29 The Guardian reported that: “The lesbian experience is neither better nor worse but certainly different [than the gay male experience]. “The abuse against women is a bit more subtle,” says one lesbian who did not wish to be named. “There’s the rape that you probably never report. The beating from the boyfriend twice removed who’s just heard that you’re lesbian and has come to whoop your arse.” (‘Victory for Gay Rights Campaign as Reggae Star Agrees to Ditch Homophobic Lyrics’, The Guardian, July 23, 2007, available at <http://www.guardian.co.uk/uk/2007/jul/23/musicnews.gayrights> , accessed 2 October 2008.)

19.30 Lesbians in Jamaica have also faced forced evictions from the communities they live in. In April 2007, residents of the McGregor Gully community in East Kingston gave gays and lesbians two weeks notice to move out or “or suffer the consequences.” Lesbians were the main target of the eviction order, but gay men were also told to leave. According to the Jamaica Star, the residents said they would not stop until their community was “gay free” and were “not afraid of resorting to extreme measures.” (‘Gays Must Leave Today’, Jamaica Star, April 26, 2007) Full details can be accessed at the following weblink: <http://www.jamaicastar.com/thestar/20070426/news/news1.html>,

19.31 Beenie Man’s “Han Up Deh” also includes the incitement: “Hang chi-chi gal [lesbians] with a long piece of rope.” See: “Black and Gay and Hunted’, New Statesman, 4 October 2004, which can be accessed at the following weblink: <http://www.newstatesman.com/200410040017> , accessed 25 September 2008.”

65. On 1 June 2009, the respondent issued an Operational Guidance Note for Jamaica, which was reissued in July 2010 and dealt with the position of gays and lesbians in Jamaica. That has subsequently been replaced by an updated Operational Guidance Note, in line with *HJ and HT*, which is set out in the body of the determination.

UNHCR Guidance Note

66. A UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity in November 2008 adds nothing to the thorough consideration of the proper approach in the Supreme Court’s *HJ and HT* judgment. It does not deal specifically with Jamaica.

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US State Department Reports on Jamaica

68. The US State Department Report for Jamaica 2008, published in February 2009, was included in the bundle. It has now been overtaken by the 2009 Report published in March 2010, which dealt with sexual orientation thus:

“Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

...The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report human rights abuses, including arbitrary detention, mob attacks, stabbings, harassment of homosexual patients by hospital and prison staff, and targeted shootings of such persons. Police often did not investigate such incidents. J-FLAG reported 33 cases of serious injuries to gays and lesbians over an 18-month period. The violence led many such persons to emigrate.

J-FLAG members also suffered attacks on their property and home intrusions, as people demanded to know the number of persons and beds in a home. In one instance, a fire bombing at the home of two men left one of them with burns on more than 60 percent of his body. In addition such persons faced death and arson threats, with some of these directed at the J-FLAG offices. J-FLAG did not publicize its location due to such threats, and its officials reported feeling unsafe having meetings with clients at the organization's office.

...Lesbian women were subject to sexual assault as well as other physical attacks. Human rights NGOs and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community.”

69. Additional passages in the February 2009 version were:

“...No laws protect persons living with HIV/AIDS from discrimination. Human rights NGOs reported severe stigma and discrimination against this group. The ILO worked with the Ministry of Labor on a program to reduce the stigma of HIV/AIDS in the workplace and to assist employers in designing policies for workers with HIV/AIDS. Although health care facilities were prepared to handle patients with HIV/AIDS, health care workers often neglected such patients.”

Amnesty International

70. Two documents from Amnesty International in August 2001 record the death threats against Mr Sobers. Additionally, the Amnesty International Annual Report for 2009 on Jamaica dealt with discrimination against LGBT people as follows:

“Discrimination - lesbian, gay, bisexual and transgender people

There were continuing reports of mob violence against people, mostly men, perceived to be involved in same-sex relationships. The true extent of attacks on gay men was unknown as the subject is taboo and people do not report attacks for fear of exposure.

In August [2008], a Molotov cocktail (petrol bomb) was thrown into a house in Clarendon, south central Jamaica, occupied by two men who were alleged to be gay. As the emergency services arrived, a small jeering crowd assembled outside the house. One of the men received burns covering 60 per cent of his body and was hospitalized for three weeks.”

71. In July 2009, Amnesty International issued a report entitled, “Jamaica: Public Security Reforms and Human Rights in Jamaica”, which, while it did not deal directly with homosexuality, recommended reform of the police and justice systems in Jamaica.

Press reports

72. The bundles contain a number of press reports. In 2004 The Guardian newspaper’s article entitled, “If you’re gay in Jamaica, you’re dead!” was self-explanatory. An article dated 9 March 2005 from Women’s eNews, “Lesbian activists in Jamaica tell horror stories” reports the evidence of Karlene (who uses her first name only, for safety reasons), on an Amnesty

International-sponsored speaking tour of the United States. It records that women who dress “too manly” or have few male visitors risk verbal and physical abuse, including being raped, beaten, murdered and forced out of their homes and jobs simply for being lesbians. In particular, an example is given of a lesbian raped and beaten by the local gang leader because she had no men coming to visit her.

73. A Human Rights Watch report of 1 February 2008 entitled “Jamaica: Shield gays from mob attacks” referred to “roving mobs attacking innocent people and staining the streets with blood”, with protection from Jamaican police illusory or non-existent. On 18 February 2008, HJT Research News Reporting Service reported the pastor of the Fellowship Tabernacle in St Andrew, Jamaica, as telling the ‘Jamaica Gleaner’ that

“Jamaicans generally deem homosexuality as wrong...attempts by gay activists to force their beliefs on society would in no way influence Jamaicans to change their views.”

74. The Rev Dr Lloyd Maxwell of the AGAPE Christian Fellowship in Portmore said that the Church “would not sanction nor encourage homosexuality...the Scriptures take a very clear stance on the matters”. Elder Nancy Wilson of the Metropolitan Community Church in Florida, United States, had led a demonstration outside the Jamaican consulate in Miami, and in a comment reported in the Miami Herald said this:

““Every month, we hear incidents of people beaten and harassed...People are afraid, they are leaving the country if they can afford to,” Wilson said.”

75. A leading Jamaican J-FLAG activist, Gareth Henry, had fled to Canada and claimed asylum, saying that 13 of his friends had been killed since 2004. He had been attacked himself by a mob at a chemist shop in 2007. An attack in St Andrew had involved up to 2000 people. On 27 February 2008, the New York Times described Jamaica as a “dire” place for gays. On 28 May 2008, the Inter Press Service News Agency (IPS) carried a report headed “Rights-Jamaica: bad place to be gay just got worse” recording that on a visit to Britain, Jamaica’s Prime Minister Bruce Golding stated that Jamaica would not allow values to be imposed upon it from outside and that he would not permit gays in his cabinet. A number of Jamaica’s leading entertainers, whose music promoted anti-gay violence, had been banned in Europe (examples included Shabba Ranks and Buju Banton).

76. A report from Asylum Aid deals with the internal relocation option for women asylum seekers. Since the homophobic problem in Jamaica is not limited to one geographical area and the claimed risk to lesbians is based both on perceived lack of male company and actual homosexuality, we do not consider that internal relocation is relevant in this appeal.

77. On 19 February 2009, Human Rights Watch wrote an open letter to Jamaica's Prime Minister Golding, asking him publicly to condemn verbal or other attacks on LGBT people in Jamaica, in response to remarks by MP Ernest Smith, suggesting that Jamaica was being overrun by homosexuality, calling for life sentences for buggery, suggesting that homosexuals were abusive and violent and that the forming of J-FLAG was “brazen” by the homosexual community in Jamaica. It was this outburst that Mr Sobers’ Jamaica Gleaner letter characterised as ignorant, stupid and bigoted.

78. At the end of March 2009, Boycott.Jamaica.org in a blog post by Mr Wayne Besen entitled “Jamaica: a killer vacation”, said this:

“[The United States] should stop doing business with a country that is proud of its persecution against gay, lesbian, bisexual and transgender people. Our goal is to turn Jamaica into a pariah state, as long as GLBT people live in a state of terror. ...

Why boycott? Because Jamaica is on a downward spiral and suffers from collective cultural dementia on this issue. There is clearly a pathological panic and homo-hysteria that has infected this nation at its core. Consider that the Jamaica Cancer Society has raised concerns that the fear of being labeled gay is causing some Jamaican men to avoid prostate examinations, causing one of the highest prostate cancer rates in the world. ...There must be consequences for state sanctioned gay bashing. Such countries will not change on their own – so economic carrots and sticks must be applied.”

Inter-American Commission on Human Rights

79. A December 2008 report from the Inter-American Commission on Human Rights, of which Mr Sobers was a member, giving its preliminary observations on a visit to Jamaica, stated as follows:

“Discrimination based on sexual orientation

The Commission strongly condemns the high level of homophobia that prevails throughout Jamaican society. This homophobia has resulted in violent killings of persons thought to be gay, lesbian, bisexual or transsexual, as well as stabbings, mob attacks, arbitrary detention and police harassment. The resulting fear in turn makes it difficult for people within this group to access certain basic services, for example, medical services that might reveal their sexual orientation. Defenders of the rights of gays, lesbians, bisexuals and transsexuals have been murdered, beaten and threatened, and the police have been criticized for failing in many instances to prevent or respond to reports of such violence. The State must take measures to ensure that people within this group can associate freely, and exercise their other basic rights without fear of attack.”

UK Lesbian and Gay Immigration Group (UKLGIG)

80. The appellant relied on a commentary written in November 2009 by UKLGIG dealing with the UKBA Country of Origin Report on Jamaica for 2008. We have considered the comments made. They are largely points of detail, save for quotations from antigay lyrics by dancehall artists, and the result of a Jamaica Gleaner poll in 2008, which showed that 70% of Jamaicans did not believe that gays and lesbians should have any civil rights at all.

81. On 23 December 2009, Martyn Potts, the then Chair of UKLGIG, emailed Wilson & Co, reflecting the results of subsequent UKLGIG input into the Country of Origin Report, and stating that with the help of UKLGIG, the Country of Origin Service was developing internal guidelines on LGBT issues. UKLGIG, along with Amnesty International, Asylum Aid, the Refugee Council and UNHCR were members of the UKBA-led Refugee and Asylum Forum. UKLGIG had an established relationship now with the Country of Origin Service with its research and input being well regarded. Its own research continued and UKLGIG had a particular interest in the outcome of the present appeal.

Freedom House Reports

82. The Freedom House report for 2009 had this to say:

“Amnesty International has identified homosexuals as a marginalized group that is targeted for extreme harassment and violence. Same-sex intercourse is punishable by 10 years’ imprisonment at hard labor. In recent years, several Jamaicans have been granted asylum in Britain on the grounds that they were in danger because of their homosexuality. The antigay lyrics of Jamaican entertainers, particularly reggae singers, remain a source of contention. In 2004, Brian Williamson, a spokesperson for the advocacy group Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG), was brutally murdered in his New Kingston apartment. The perpetrator was sentenced to life in prison in 2006. Separately, Steve Harvey, a well-known activist on behalf of HIV/AIDS-related causes, was killed in 2005, and four people were later charged in the killing. In 2008, prominent J-FLAG member Gareth Henry fled to Canada and filed for refugee status following an

escalating series of threats against his life. The government remains resistant to decriminalizing homosexuality.”

83. The 2010 Freedom House Report is similar, confirming that the problems continue:

“... Activists for gay and lesbian rights remain targets of violence. Gareth Henry, a prominent member of the advocacy group Jamaica Forum for Lesbians, All-Sexuals, and Gays (J-FLAG), fled to Canada in 2008 and filed for refugee status following an escalating series of threats against his life. In 2009, Prime Minister Bruce Golding endorsed keeping homosexuality illegal and vowed never to allow gays in his cabinet. The antigay lyrics of Jamaican entertainers, particularly reggae singers, remain a source of contention.”

Appendix B

Country of Origin Documents

<u>DATE</u>	<u>DOCUMENT</u>
2001	
7 August 2001	Amnesty International: "Jamaica: Fear for safety, O. Hilaire Sobers
8 August 2001	Amnesty International: Jamaica "Fear for safety: O. Hilaire Sobers, human rights activist, journalist, lawyer'
2004	
2 August 2004	The Guardian, "If you're gay in Jamaica, you're dead!"
14 November 2004	Human Rights Watch report: "Hated to death: Homophobia, Violence and Jamaica's HIV/AIDS epidemic'
2005	
9 March 2005	Womens eNews: "Lesbian Activists in Jamaica tell Horror Stories"
April 2005	UKBA Country of Origin Report: Jamaica
23 May 2005	Amnesty International country report: Jamaica
2006	
21 JUNE 2006	Amnesty International: "Jamaica: sexual violence against women and girls in Jamaica"
28 September 2006	UKBA: Country of Origin Report: Jamaica
2007	
25 February 2007	Mr Sobers: Commentary on November 2006 Country of Origin Report: Jamaica, prepared for the Advisory Panel on Country Information, (O. Hilaire Sobers, Legal Practitioner and Human Rights Consultant)
6 March 2007	Minutes of APCI meeting: Revision of Country of Origin Reports for Eritrea and Jamaica (December 2006 reports).
14 March 2007	Mr Sobers: Response to Home Office on Country of Origin Report: Jamaica
10 November 2007	Jamaica Observer: "Reason subverted by religiosity" (Mr Sobers)
2008	
27 January 2008	Jamaica Gleaner: "Seaga and post-Independence governance" (Mr Sobers)
1 February 2008	Human Rights Watch: "Jamaica: Shield gays from mob attacks"
18 February 2008	HJ Research: "Church leaders say homosexuality will not be accepted in Jamaica"
27 February 2008	HJT Research: "New York Times says Jamaica is "dire" place for gays"
28 May 2008	IPS: "Rights-Jamaica: Bad place to be gay just got worse"
18 August 2008	UKBA Country of Origin Report: Jamaica
November 2008	Asylum Aid: "Relocation, Relocation - the impact of internal relocation on women asylum seekers"
21 November 2008	UNHCR guidance note on claims for refugee status under the 1951 Convention relating to Sexual Orientation and Gender Identity

5 December 2008	Inter-American Commission on Human Rights: "Preliminary observations on visit to Jamaica"
2009	
19 February 2009	Human Rights Watch: "Jamaica: Condemn homophobic remarks"
21 February 2009	Jamaica Gleaner: Letters Page "Ignorance, Stupidity, Bigotry" (Mr Sobers)
23 February 2009	US State Department Report: Jamaica
31 March 2009	Boycott.Jamaica.org : "Jamaica: A killer vacation"
23 April 2009	FCO Travel Advice: Jamaica
28 May 2009	Amnesty International Annual Report: Jamaica
1 June 2009	UKBA Operational Guidance Note: Jamaica
16 July 2009	Freedom House report
21 July 2009	Amnesty International: "Jamaica: Public security reforms and human rights in Jamaica"
2 October 2009	Wilson & Co letter of instruction to Mr Sobers
16 November 2009	Letter to Wilson & Co from Sebastian Rocca, Trustee and former Executive Director of UKLGIG (UK Lesbian and Gay Immigration Group)
27 November 2009	Jamaica Observer: Letters page "Fallacies, fatuities and just plain lies" (Mr Sobers)
27 November 2009	Copy Blogger profile for Hilaire Sobers
29 November 2009	Country report of Mr O. Hilaire Sobers
30 November 2009	UKLGIG's comments on UKBA 2008 Country of Origin Report on Jamaica
23 December 2009	Email: Martyn Potts, Chair, UKLGIG To Wilsons Solicitors