



**Upper Tribunal
(Immigration and Asylum Chamber)**

OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 23 and 24 September 2015**

Decision Promulgated

.....

Before

**Upper Tribunal Judge Southern
Deputy Upper Tribunal Judge Kamara**

Between

OO

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R. Chapman of counsel (assisted by Ms U. Dirie), instructed by Luqmani Thompson & Partners, solicitors

For the Respondent: Mr S. Singh, counsel instructed by the Government Legal Department.

- 1. Although the Algerian Criminal Code makes homosexual behaviour unlawful, the authorities do not seek to prosecute gay men and there is no real risk of prosecution, even when the authorities become aware of such behaviour. In the very few cases where there has been a prosecution for homosexual behaviour, there has been some other feature that has given rise to the prosecution. The state does not actively seek out gay men in order to take any form of action against them, either by means of prosecution or by subjecting gay men to other forms of persecutory ill-treatment.*

2. *Sharia law is not applied against gay men in Algeria. The criminal law is entirely secular and discloses no manifestation, at all, of Sharia law in its application.*
3. *The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.*
4. *Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.*
5. *Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man, in any event.*
6. *For these reasons, a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members, or because he has a particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation.*

Decision

1. In this determination the Upper Tribunal addresses the current situation in Algeria in order to determine the appellant's appeal and to give country guidance upon the risks faced in that country by gay men.
2. We should make clear, at the outset, that the Tribunal has made an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the effect of which is that nothing is to be published that may lead to the identification of the appellant.
3. The appellant, who was born in 1995, left Algeria in 2008 and, having spent just over a year and a half in France then travelled to the United Kingdom, arriving concealed in the back of a lorry in mid 2010. He claimed asylum on the basis of facing a real risk of persecution in Algeria as a gay or bisexual man. His appeal was dismissed but,

permission to appeal having been granted, his claim was considered afresh by the Upper Tribunal which resulted in the country guidance decision *OO (gay men: risk) Algeria* [2013] UKUT 00063 (IAC). The appeal now comes before the Upper Tribunal once again as a consequence of an order of the Court of Appeal, made with the consent of the parties on 19 January 2015 in which it was said that:

“The appeal is hereby allowed to the extent that the decision of the Upper Tribunal of 25 March 2013 in this appeal be set aside and the appeal be remitted to the Upper Tribunal (IAC) for the issues of the risk to gay men in Algeria generally and whether the Appellant’s claim to be bisexual is credible to be heard by a differently constituted Tribunal.”

4. Therefore, this decision replaces the country guidance presently in place.
5. The Tribunal heard oral evidence from the appellant and from one of the two expert witnesses, Dr David Seddon. The Tribunal has had regard to written evidence from another country expert, Ms Alison Pargeter, and received oral and written evidence from Dr Ludovic Zahed who, although not presented as an expert witness, is someone who is well placed to express an informed view upon the matters we must consider, for the reasons we give below. The Tribunal has also had regard to a wide range of documentary evidence which is identified in the annex to this decision.
6. In support of his factual account of his experiences in Algeria and his claim to be a bisexual man, both of which are disputed by the respondent, the appellant relies upon a further range of evidence, including the expert evidence of Dr David Bell, a consultant psychiatrist who has examined issues concerning the appellant’s mental health and, as will be relevant to our assessment of his credibility, how that impacts upon his ability to give oral evidence effectively and reliably.
7. In this determination we consider first the question of risk faced by gay men generally in Algeria before addressing the separate question of the appellant’s own credibility and his claim to be a refugee.
8. In advancing her final submissions, Ms Chapman confirmed that the appellant does not pursue in these proceedings any claim under article 8 of the ECHR and so, although there is reference to that in her skeleton argument, we need concern ourselves only with the appellant’s protection claim.

The Legal Framework

9. Article 1A(2) of the Geneva Convention provides that a refugee is a person who:

“... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”

In this appeal the Convention reason in play is the appellant’s asserted membership of a particular social group, that being gay or bisexual men in Algeria. It is uncontroversial that gay and bisexual men in Algeria are capable of constituting a

particular social group and so the question is whether, as a consequence, the appellant would face a well-founded fear of persecution on that account.

10. Article 9 of the Qualification Directive provides:

Article 9

Acts of persecution

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature."

11. Any assessment of a protection claim of this type is informed by the leading case of *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 31. In particular, at para 82, under a heading "*The approach to be followed by tribunals*", per Lord Rodger:

"When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, eg, not wanting

to distress his parents or embarrass his friends, then his application 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.

If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, 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.”

12. As we shall see, in Algeria homosexual behaviour is criminalised by legislation. It is established by the decision of the Court of Justice of the European Union (CJEU) in *XYZ v Minister voor Immigratie en Asiel* (Case C-199/12 to C201/12) that:

“... the mere existence of legislation criminalising homosexual acts cannot be regarded as an act affecting the applicant in a manner so significant that it reaches the level of seriousness necessary for a finding that it constitutes persecution within the meaning of article 9(1) of the (Qualification) Directive.

...

... However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopts such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.”

13. Ms Chapman pursues a further argument in this regard, that being founded upon the judgment in the European Court of Human Rights (ECtHR) of Judge De Gaetano in *M.E. v Sweden* (*Application no 71398/12 [2014] ECtHR*). Although Judge Gaetano agreed with the outcome arrived at by the Court, and so did not dissent from that, he considered that there was simply no need for the court to adopt, at para 50 of the judgement of the Court, the reasoning of the ECJ in respect of laws criminalising homosexuality that in practice are not applied. In his “separate opinion” he therefore departed from the text agreed by the other six judges who agreed it, and said:

“The reference to the judgement of the ECJ in the names *Minister voor Immigratie en Asiel v X, Y and Z* in paragraph 50 is totally unnecessary for the determination of the present case. The controversial statement (admittedly made in the specific context of Council Directive 2004/83/EC) to the effect that “criminalisation of homosexual acts *per se* does not constitute an act of persecution could be seen as somewhat undermining the standards set by the Court as far back as the 1980’s in connection with the criminalisation of homosexual acts and the resulting violation of Article 8 (see *Dudgeon v the United Kingdom* no. 7525/76, 22 October 1981 paras 40 to 46; *Norris v Ireland* no. 10581/83, 26 October 1988, paras 38 and 46 to 47) and the consequent irrelevance, for the purpose of a violation of fundamental human rights, of whether or not such laws are in fact applied or applied sporadically.”

However, in our view, for a number of reasons, quite apart from the fact that Ms Chapman made clear that she pursued no claim under article 8 of the ECHR, that submission leads nowhere. First, in this separate opinion Judge Gaetano simply expresses an opinion of what *might be* the position. Second, as he recognised, the ECJ was concerned with the Directive and not the ECHR. Third, the only firm view expressed is that the issue was irrelevant for the purpose of determining the application before the Court. Fourth, and in any event, the assessment to be made is a holistic one: all of the circumstances are to be considered. It is not simply a question of whether laws carrying a possibility of prison sentences are in fact enforced. The question is whether the existence of such laws, whether enforced or not by the state authorities, impact upon those who fall within their scope in a manner giving rise to persecution. For example, the existence of such laws, even if in practice not enforced by the prosecuting authority, might theoretically encourage other forms of persecutory ill-treatment to be perpetrated against gay men by people other than state agents. Finally, if the position is that there is shown to be no real risk that an unenforced law would impact in any negative way at all then it is hard to see how any rights protected by the ECHR could be infringed.

14. Before leaving *X, Y and Z* we must deal with one further submission advanced by Ms Chapman. In short, she submitted that the ECJ took a step further than did the UK Supreme Court (UKSC) in *HJ (Iran)* at para 70:

“... it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity that the persons concerned cannot be required to renounce it.”

If we understand correctly the point being made, it is the absence in that observation of any requirement that there be persecution threatened or deployed to secure that requirement to conceal sexual orientation. However it is plain from the opening paragraph of this section of the judgment that no such departure from the *HJ (Iran)* approach was signalled:

“...the referring court asks essentially whether article 10 (1)(d) of the Directive.... Must be interpreted as meaning that it is unreasonable to expect that, in order to avoid persecution, an asylum seeker must conceal his homosexuality...”

Evidence of Dr David Seddon

Introduction

15. Dr Seddon is a well-known and respected country expert with extensive experience of Algeria going back more than 30 years, although he told us his interest in issues of sexual identity in Algeria first arose about two years ago. He has a distinguished academic background and provided oral and written evidence in the previous country guidance case also. He has made visits to Algeria in 2001, 2008 and 2012 and before that had lived in Algeria for a period of time. Over the last 15 years he has spent a total

of 3 months in Algeria. He has maintained an interest in general country conditions in Algeria and we accept that he is well placed to express an expert view. Having said that, we recognise also that his expert view can be informed only by the relevant up to date evidence that is available to him, evaluated through the prism of his extensive knowledge of the country and its citizens.

16. Dr Seddon has provided a lengthy written report and has responded in writing to questions arising from it that were posed by the respondent for him to answer. His oral evidence was extensive, taking most of a day of the two day hearing. This evidence has, of course, been assessed in the context of the evidence as a whole, including the appellant's own evidence of his experiences in Algeria, and the submissions advanced on his behalf which we examine in detail below. However, it is convenient for us to make clear what we made of Dr Seddon's evidence as we summarise the significant aspects of it. We record here that we take the same approach when considering the evidence of each witness who has provided evidence in this appeal.
17. At the beginning of his oral evidence, Dr Seddon was asked about the material upon which he based his expert opinion. He recognised that there was a real paucity of hard evidence available concerning the matters he discusses in his report. He said that the difficulty faced is that much of what occurs in this respect takes place within the family and very few cases are well documented. He said that he had examined local press reports as well as international reports but found very little to assist. He therefore founded his view upon what little was available in documentary reports, his own personal experiences of living in Algeria, although that was some considerable time ago, since when he has made a few relatively brief visits, and anecdotal evidence provided by Algerian nationals he had spoken to, although generally they were speaking not about what had happened to themselves but to others whose accounts they were passing on "second hand".
18. Dr Seddon placed reliance also upon conversations with contacts associated with Algeria. He had been unable to establish contact with the two individuals he knew who remained in Algeria, but he had had a long conversation with an Algerian gay man who now lives in France. However it emerged during the oral evidence that this person had left Algeria more than ten years ago. Finally, Dr Seddon drew upon four determinations of the First-tier Tribunal where appeals had been allowed on the basis that gay men faced risk on return. We are aware that he also had regard, in reaching his conclusions, to the fact that the documentary evidence includes very brief details of a number of cases in which the respondent has recognised as refugees gay men from Algeria so that there was no need for them to pursue appeals in respect of their asylum claims.

Prosecutions of gay men

19. The Algerian criminal code criminalises all homosexual acts, both private and public, although more severe penalties are available for public acts or where one participant is under 18 years of age. Dr Seddon summarises the provisions of the code as follows:

“Thus, according to Article 338 of Algeria's Penal Code, people who participate in homosexual acts may be punished by two months' to two years' imprisonment and to a fine of 500 to 2,000 Algerian dinars (DIN) (see Sodomy Laws 21 Apr. 2005; ILGA Apr. 2007, 6). If one participant is under 18 years of age, the punishment of the older participant can be increased to three years' imprisonment and a 10,000 DIN (see Sodomy Laws 21 Apr 2005; ILGA Apr. 2007, 6). According to Article 333, when ‘an outrage to public decency’ has consisted of an act against nature with an individual of the same sex, the penalty is punishable by a prison term of six months’ to three years’ imprisonment, and a fine of 1,000 DIN to 10,000 DIN (Sodomy Laws 21 Apr. 2005).”

20. It is unambiguously clear, however, that prosecutions for homosexual behaviour are extremely rare. Dr Seddon adopted the observations of Ms Pargeter, set out in an earlier report prepared by her, and we take him to express agreement with what she said:

“... same-sex activity is illegal in Algeria and is a punishable offence; also ... whilst the state imposes such legislation, it is ‘rare’ for it to prosecute people for homosexuality, largely because homosexuality is a taboo subject and is something that is kept hidden (para 11). She referred to one prosecution in 2010 – which was also reported in the media. ...

She explained the apparent contradictions of a situation in which homosexuality is illegal and thus not tolerated officially by the state, but where prosecutions are relatively rare, by commenting that practising homosexuals are fearful of widespread homophobia in Algerian society, and so practice secretly – living ‘an almost underground existence’. Homosexuals, she said, faced severe social stigma and in many cases, where their orientation became known, their own families disowned them, as they deemed them to have brought shame upon the family as a whole. She stated that responses ranged from mockery and isolation to outright hostility.”

21. Dr Seddon added, in his report:

“Prosecutions, in this sense, are arguably, by any definition, relatively rare. Even if prosecutions are considered rare, relatively rare or very rare, however, this does not, of course, mean that criminal prosecutions do not take place, just that they do not occur ‘often’ or in ‘many’ instances.”

At para 5.14 of his report, Dr Seddon assembles what information is available to him of actual prosecutions having taken place. In recent years just three were identified:

- i. A commentator, Mr Dan Littauer, has referred in a report that was before the last Tribunal hearing in 2012, to “a young lawyer being imprisoned and judged according to these laws” in February 2008, although no further details are given;
- ii. Mr Littauer referred also to a young Imam or cleric being convicted in 2008 of violation of Article 338 of the Criminal Code with a minor, although there is no evidence he had actually served a prison sentence;
- iii. A well-publicized case in 2010 of a gay imam being imprisoned for 2 years. The cleric was a 36 year old man charged in February 2010 and was “caught *in flagrante delicto* in the mosque”. However the report of that case in LGBT Asylum News, reproduced by Dr Seddon in his report, states that:

“The facts date back, in fact, to February when the faithful warned the police about the acts of the Imam. He will be detained and interrogated by the prosecutor and then placed in custody. Yesterday, the prosecution sought against him a sentence of ten years.”

From which it appears that the Imam had not even been taken into custody. There is no subsequent report or other evidence before the Tribunal that he was ever subjected to a term of imprisonment or, indeed, ever convicted, despite being found, apparently, engaged in homosexual conduct in a mosque. Dr Seddon said in oral evidence that he had “trawled” for evidence that the Imam had been put in custody but was unable to find any. However, he said that he “strongly expected him to be imprisoned” even though there was no evidence that he was and the evidence available suggested that he had not in fact been taken into custody. Dr Seddon made no mention of that ambiguity in his report.

22. It is on the basis of this, frankly, scant and unpersuasive evidence that Mr Littauer concluded that “Articles 338 and 333 are applied regularly” and in part placing reliance on that, Dr Seddon feels able to conclude that:

“So, prosecutions for homosexuality do take place, even if only rarely or relatively rarely, and those found guilty are evidently subjected to fines and/or prison sentences”

23. We are satisfied that it is unambiguously clear that the evidence that Dr Seddon identifies does not support his view that a person whose homosexual behaviour comes to the attention of the public or the authorities can expect to be prosecuted. In fact, the evidence he relies upon points the other way as there is evidence that the authorities choose not to prosecute even where there appears to be cogent evidence of behaviour of a type made unlawful by the Criminal Code. A good example of this is found in one of the four determinations of appeals allowed by the First-tier Tribunal examined by Dr Seddon in his report, which we examine below. Indeed, in two of the three examples that have been identified above, there is no reliable evidence before us that a prison sentence was served.
24. It follows from this that we are also satisfied that Dr Seddon’s view that terms of imprisonment are, in practice, applied in Algeria for homosexual behaviour is one that is simply not sustainable and, as we shall see, we can find nothing in the other evidence before the Tribunal to justify or support such a view.

Sharia Law

25. In his written response to questions posed by the respondent, Dr Seddon indicated that gay men in Algeria were also at risk because Sharia law, which “effectively underpins the criminal law in Algeria as it does in all areas of the law” provided for particularly severe punishment for those found to be homosexuals. In his written report he said this:

“The majority of Algerians are Sunni Muslims, and Algeria also practices Sharia’s (Islamic) law, which regards homosexuality as anathema. Homosexuality is not only a sin, but a crime against God (Allah) under Islamic law. ...

In the Hanafi *madhhab* or tradition, the homosexual is first punished through harsh beating, and if he/she repeats the act, the death penalty is to be applied. As for the Shafi'i school of thought, the homosexual receives the same punishment as adultery (if he/she is married) or fornication (if not married). This means, that if the homosexual is married, he/she is stoned to death, while if single, he/she is whipped 100 times...

Some scholars, basing their views on the Qur'an and various *hadith* (accepted commentaries), hold the opinion that the homosexual should be thrown from a high building or stoned to death as a punishment for their crime, but other scholars maintain that they should be imprisoned until death. Another view is that between two males, the active partner is to be lashed a hundred times if he is unmarried, and killed if he is married; whereas the passive partner is to be killed regardless of his marital status."

Dr Seddon set out in his report an extract from that of Mr Razi Isalam, which he quotes with approval:

"The goal of the Islamic fundamentalists in Algeria is the establishment of a religious state where every aspect of life is determined by the principles of the Koran and Muslim tradition. This means the enforcement of Sharia law, where apostates, queers and adulteresses are stoned to death."

26. There are, however, formidable difficulties with that evidence. When pressed in oral evidence, Dr Seddon conceded that he was unable, in fact, to identify any way at all in which Sharia law manifested itself in the implementation of the entirely secular criminal law code. He said that his written evidence "was not well phrased" and that what he had intended to convey, as confirmed in his written response to the respondent's questions was that:

"the Sharia law effectively underpins the criminal law in Algeria as it does in all areas of the law."

We are satisfied that this also is to seriously overstate the influence of Sharia law upon the application of the criminal law. Dr Seddon accepted in oral evidence that the evidence in fact does not establish that Sharia law is applied to gay men and nor is there any reliable account, certainly in the last ten years, of a gay man being stoned to death or thrown from a high building. Such things simply do not happen in Algeria today. Instead, he qualified his evidence by saying that he agreed that Algerian Criminal law is secular and distinct. He was unable to point to any example of a gay man suffering punishment under Sharia law.

27. Having said that, we do accept that hard-line views taken by Islamic fundamentalists are not immaterial. At para 5.32 of his report, Dr Seddon provides details of one more recent example of a risk of persecution of gay men in Algeria being recognised. In 2013, eight members of the Algerian National Ballet, which was performing in Ottawa and Montreal, were recognised as refugees and granted asylum in Canada after deserting the tour and seeking protection on the basis that they had been threatened by Algerian Islamists who "equated ballet with homosexuality and depravity". It might be noted that the reports available do not assert that the dancers were in fact gay men, just that the men claiming asylum in Canada said they had received threats from Algerian Islamists who "equate ballet with homosexuality". Also, as with the case of the Iman found having sex with a youth in the mosque, we consider that this was regarded as a

high profile incident likely to be a matter of general public interest and not an example of a single man seeking to conduct a private consensual act in a manner not likely to attract public attention.

Risk of targeted or arbitrary attacks or abusive treatment by police

28. Dr Seddon has also provided written and oral evidence about the risk faced by gay men in Algeria of being subjected to targeted or arbitrary attacks on account of being perceived to be gay or of being arrested by police on suspicion of engaging in homosexual behaviour, whether that be after having been found in a compromising situation with a male partner or being detained in an area known to be one where gay men seek out gay partners, although not charged with any offence. He says that there is a risk that gay men detained by police are at risk of being ill-treated, even if no charge is brought. He suggests that this was a significant aspect of risk not adequately considered in the previous country guidance decision:

“What is not discussed by the Tribunal but is of considerable importance, even though poorly documented (perhaps almost by definition), is the number of arbitrary and/or targeted arrests of LGTB persons made by the police, when those arrested are not formally charged but are detained for some time, often incommunicado and garde a vue, without legal representation or family visits, and sometimes ill-treated or even tortured. To my knowledge, on the basis of conversations in Algeria with those in the LGBT community, such arrests are made relatively frequently but rarely receive any publicity, for obvious reasons, except that they serve to terrorise the LGBT community. They rarely result in formal prosecutions.”

and that:

“... in my opinion, the evidence suggests that the LGBT community and gays in particular, are often subject to persecution – systematic harassment causing serious harm with no effective protection - by the police in Algeria.

29. This point was repeated and emphasised elsewhere in Dr Seddon’s written report, at paragraph 5.19:

This fear is, in my opinion, justified and reasonable; for there is certainly evidence in the public domain of police brutality towards homosexuals in the public domain. According to an article in the *UK Gay News*, the police and military reportedly ‘harass and brutalise gay people with impunity’ (21 Feb. 2005). Also, one of the witnesses in this hearing, Mr Littauer, stated that ‘if you admit that you are gay (by complaining to the police) you are opening yourself to further violence by the police and potential blackmail...’ (para 28). He also said that there were places where people could perhaps meet for sex, but even there it carries the risk of arrest, blackmail, abuse, attack...’ (para 29). Presumably he meant here ‘by the police’.

30. The difficulty with that analysis is that, although Dr Seddon asserts that there is evidence to support that view, on examination, reliable evidence is simply absent. The only quoted source relied upon is over ten years old and is itself a bare assertion of the attitude of the police, entirely unsupported by any evidence or cited examples of such behaviour by police. In the extract above, Dr Seddon insists that there is evidence of violence being used but any search for documented actual examples of that occurring leads nowhere.

31. Similarly, although Dr Seddon appears to accept that there are places in Algeria where gay men can meet for sex, the so called “cruising areas”:

“... even there it carries the risk of arrest, blackmail, abuse, attack... by the police.”

again, it is impossible to identify any reliable evidential foundation for this assessment that stands up to scrutiny, only the anecdotal unattributed accounts we have referred to above which are, of course, impossible to examine in any detail as they are presented as a collective view expressed by unidentified persons. In oral evidence, Dr Seddon was able to identify just one account of a gay man being beaten by police when detained while “cruising” in a gay pick up area, that being his contact who now lives in France. But that person left Algeria more than ten years ago and Dr Seddon confirmed, specifically, that despite all of his research he was unaware of any specific example of such an incident since then.

32. In oral evidence, having confirmed that, in fact, he was not himself aware of any example in the last five years of a gay man being arrested for homosexual behaviour but not being charged, although suffering ill-treatment while detained, Dr Seddon said that as there was very little evidence that gay men have been assaulted in public, he has relied upon what he referred to as anecdotal evidence, explaining that:

“none of those I spoke to had experience of this themselves but they told me what others had told them about what happened to them.”

Recognising also that he was unable to draw upon the country reports to which one would generally have resort in a search for confirmation that abuses take place:

“... reputable NGO’s like Amnesty International and Human Right Watch are “very clear about the risks to women from Islamic fundamentalists and others in Algeria (but) are remarkably silent on violence against homosexuals and the LGBT community more generally”

33. We observe that this, incidentally, deals with one submission advanced to explain the absence of reports of ill-treatment being meted out to gay men in Algeria, being that representatives of those NGOs were denied access to Algeria and so had no opportunity to collect evidence. But, of course, that does not prevent the harvesting of evidence from gay men who have left Algeria and the ability to report upon abuses in the case of other vulnerable groups means that difficulty in having access cannot explain the absence of reports of persecution or harassment of gay men in Algeria.

34. Although Dr Seddon accepts that evidence of violence directed at gay men is “undeniably patchy and much of it is to be found in the social media and “alternative” sources rather than in official publications”, he seeks to explain this on the basis that gay men are reluctant to speak out because of:

“... the criminalisation of their sexual inclinations and practices, and the violence to which they are subjected by the Algerian authorities and by third parties in the wider Algerian society including, (but by no mean confined to) Islamic fundamentalists.”

35. Thus, it is said that there is no real evidence of violence to gay men but this is because, due to fear of being subjected to violence, they do not speak out as victims. It seems to

us, however, that there is evidence of gay men continuing to leave Algeria to re-establish themselves elsewhere, particularly in France, and so this does not explain why, if routinely subjected to such violent adverse attention, such persons do not continue to speak out when safely established outside Algeria.

36. Under a heading "Evidence of Violence", Dr Seddon collects together in his report such evidence as he has been able to assemble of violent attacks on gay men in Algeria.
37. First, he refers to a Reuters report of 19 June 1998, that France granted asylum to an Algerian transsexual who had been threatened by Islamic fundamentalists and then sexually abused by police when he sought their help. Next he places reliance upon writings of 2 December 2004 entitled "Behind the Mask" that recorded the case of a man whose real name is unknown who had reported that two gay friends had been killed by Islamic fundamentalists in 1994 and 1996 and of having witnessed the public stoning of a gay man in 2001. The author of this piece also provided an account of himself being beaten up and threatened with death after he was found having sex with another man after which he fled to the United Kingdom to claim asylum.
38. These accounts are of incidents that all took place more than ten years ago and the accounts published in Behind the Mask are un-particularised and lacking in any of the detail that would enable them to be verified. Dr Seddon does not say whether the asylum claim made in the United Kingdom was successful or, if it was not, the reasons why the account of being at risk on return was, presumably, not found to be made out.
39. Next, in seeking to set out a body of evidence such as to illustrate a risk of attacks upon gay men, Dr Seddon relies upon an article written in 2005 by Ramzi Isalam of his own experiences in Algeria. As a lengthy extract is reproduced in the report, it is clear that some reliance is placed upon it. But, again, in our judgement this falls significantly short of comprising reliable evidence. Mr Isalam asserts that:

"Algeria is not a safe place for queers. Gay sex is totally illegal; punishable by up to two years' imprisonment. Arrest and torture by the police and military are ever present dangers... Islamic terrorists target gays for beatings, torture and extra-judicial execution..."

However, there is not before the Tribunal a single reliable example of the extra-judicial execution of a gay man and, again, the account of prevalent attacks on gay men is un-particularised and apparently based upon vague anecdotal evidence rather than upon accounts of events that have actually occurred. Further, Mr Isalam is a man whose asylum claim in the United Kingdom, made as long ago as 2003, was unsuccessful. Dr Seddon does not disclose whether he pursued an appeal but, if he did, it was plainly not a successful one because Mr Isalam says in the extract:

"I could now face deportation to Algeria"

40. Continuing in his search for evidence in support of accounts of gay men facing violent attacks in Algeria, Dr Seddon draws upon the Refworld report of 30 July 2007 but in doing so does not accurately reproduce what was written. Dr Seddon says that the report from "The Web site 365gay.com", cited in the Canadian Immigration and Refugee Board report, states that "'honour killings' take place (18 July 2005)" whereas

the phrase actually used by that source was: ““honour killings” *have been attempted* (18 July 2005)”. Indeed, in oral evidence Dr Seddon confirmed that he was not aware of any example of a gay man in Algeria being the victim of an honour killing.

41. Next in his written report, Dr Seddon refers to a report published in “Pink News” on 24 October 2007, saying:

“... that the High Court in London had overturned an order that a gay man from Algeria seeking asylum in the UK should be repatriated. The Home Office had argued the 27-year-old man, referred to as B, would be safe from persecution as long as he was “discreet” about his homosexuality. However Mr Justice Collins disagreed, saying that B, who has been fighting to remain in the UK since 1996, was at risk of persecution...”

If it is to be inferred from that summary of the judgment of Collins J in *R (B) v SSHD* [2007] EWHC 2528 that Dr Seddon considered that to be correct then he was wrong to do so as the judgment said nothing of the kind. This was an application for judicial review of a decision of the respondent that further submissions advanced on the applicant’s behalf did not amount to a fresh claim such as to generate a fresh right of appeal if those submission were refused. Collins J was satisfied that the further submission were sufficiently different to amount to a fresh claim because the applicant had developed a way of living in the United Kingdom as an openly gay man and he had an established relationship with a male partner, neither of which factors informed the earlier decision under challenge. The judge did not make a finding that the applicant “was at risk of persecution” and that Dr Seddon felt able to say so discloses a fundamental misunderstanding of the judicial process in play. In fact, Collins J observed at para 29 of his judgment:

“It is important to note that the evidence of persecution of homosexuals in Algeria is not strong if one bears in mind what has to be established in order to show persecution within the meaning of the Refugee Convention.”

Therefore, reliance upon this judgment takes the appellant’s case no further at all.

42. Apart from this, in asserting that there is a real risk of gay men in Algeria being subjected to violent attacks, Dr Seddon relies upon the four determinations of the First-tier Tribunal that have been identified in which gay Algerian men were successful in their appeals. It is, therefore, necessary to examine those determinations to see why the appeals succeeded. There follows our assessment of those determinations and of the reasons that led to the appeals being allowed.
43. In the first of those determinations, [D1], the appeal was allowed because the appellant’s attempt to avoid harm from family members failed when brothers managed to track him down to the place of relocation where, incidentally, he had been living with his gay partner for about a year during which this cohabiting gay couple were able to pursue work and study. Thus the appellant faced a real risk of harm because, as the respondent accepts, there is not a sufficiency of protection available from persecutory ill-treatment at the hands of family members and, here, attempts at internal re-location had failed to put the appellant beyond the reach of the only source of such ill-treatment, members of his own family.

44. Pausing there, it might be observed that during the months that this appellant lived with his male partner in the place to which he had moved to avoid adverse attention from his family members, there is no suggestion that they encountered difficulty from anyone else as two young men living together, although they did not make it known that they were a gay couple, explaining that they were friends sharing the flat.
45. In the second determination, [D2], the appeal was allowed for a number of reasons which, taken cumulatively, established a real risk of harm on return such as to amount to persecution. The First-tier Tribunal accepted not just that the appellant was a gay man who had been imprisoned for attacking one of those convicted for his gang rape when aged just 13, but that having refused to assist a terrorist group on his release from prison with the murder of a prison guard, his brother had been stabbed and crucified by the group in retaliation for his refusal to assist after which the appellant had helped a rival group whom he had assisted in identifying ten terrorists who were apprehended and taken to the barracks. Significantly, the Tribunal found it to be reasonably likely that the appellant was, as a consequence, wanted by the authorities for his involvement with the execution of those ten apprehended men and that his failure to attend a tribunal hearing to which he had been summonsed before he left Algeria would be seen as “an anti-government act” which would lead to ill-treatment. Further, the tribunal accepted that the appellant would be at real risk of harm from the families of the ten executed men and that there was a real risk of suicide should he now be returned to Algeria. Although the Tribunal found that the appellant would be at risk on account of his sexuality, that was because he would, for the reasons just given, come to the adverse attention of the authorities on return for other reasons and not simply because he was a gay man living in Algeria.
46. The circumstances in the third appeal, [D3], were that the appellant feared reprisals from persons who had been sentenced to 2 years imprisonment for a homophobic attack upon him as they were about to be released. He had remained at home even though his father became aware at the trial of his sexual relationship with another boy. The appeal was allowed because the appellant could not reasonably be expected to relocate to avoid being ill-treated by those who sought revenge for their imprisonment because he was “extremely young and suffering from mental health issues”. The trial judge had rejected the defence advanced by the attackers that the attack was justified because they had come across the appellant in the park having sex with his boyfriend and such behaviour was unacceptable in a Muslim country. It is notable also that although this appellant was said to be having sex with a male partner in a public park, it was his attackers who were prosecuted and jailed and no action was contemplated against him.
47. In the fourth appeal referred to in Dr Seddon’s report, [D4], the judge allowed the appeal on the basis that the appellant, who was a gay man working in Algeria as a prostitute, was arrested in 1998 by police for having sex with another man in an area known for that activity, although the judge accepted that he had been arrested not for prostitution but simply “for engaging in homosexual conduct” with another man. The appellant was jailed for a year and suffered sexual abuse while serving that sentence. In reaching that conclusion the judge had accepted the view expressed by Dr Seddon who had provided a report in that appeal also. The judge concluded that:

"I find the authorities are prepared to take action against men for homosexual activity as in the Appellant's case."

What is though, remarkable, is that there is no discussion in the determination, at all, of the fact that by any view such prosecutions are extremely rare. Thus, if the judge's attention had been drawn to that he appears not to have considered it to be a significant matter in this particular appeal.

48. What can be drawn from a review of these determinations is that each discloses some feature additional to the basic situation of a gay man in Algeria being at risk of persecutory ill-treatment simply on the basis that his sexuality had become known to others. Put another way, in none of these cases was an appeal allowed for that reason alone. Thus, the fact that some such claims have succeeded before the First-tier Tribunal says nothing about the position generally concerning gay men in Algeria

The range of adverse responses to homosexual behaviour

49. Dr Seddon is clear that the most significant risk to a gay man in Algeria is from his own family. It is not at all hard to accept that view because it is within the family that a son's behaviour is under closest scrutiny and, given what Dr Seddon and the other expert witnesses have said about the shame and dishonour perceived to be brought upon a family on account of having a gay son, we have no difficulty in accepting this to be the case. Dr Seddon said:

"... the most violent reactions to discovery of homosexual behaviour... are usually within the family."

50. It was Dr Seddon's oral evidence that, outside the family context, while any display of homosexual behaviour was likely to attract an adverse response from those confronted with it, there was a range of responses possible. At one end of that range, the man thought to be gay might be subjected to expressions of disapproval, name calling or other forms of harassment and at the other there was a risk of violent attack.
51. This echoes his written evidence in that, although Dr Seddon regarded violent incidents of the sort depicted in the four determinations we have examined above as "the tip of the iceberg" he said also::

"Almost all sources agree, however, that there is widespread societal discrimination in Algeria against and general hostility towards homosexuality and homosexuals, and several sources (as indicated above) suggest that this sometimes takes a violent form."

And he added in his written response to questions that some gay men were driven into unwelcome marriages:

"for fear of family shame, social opprobrium and hostility towards them for their inclinations and sexual orientation."

52. Dr Seddon notes the view expressed in the US State Department Country Report on Human Rights Practices 2008 that there was "societal discrimination against

homosexuals” and that “while some homosexuals lived openly, the vast majority did not; but the conclusion reached in the US report, with which Dr Seddon disagrees, was that:

“there was no reported violence or official discrimination.”

That brought from Dr Seddon this view, expressed at para 6.3 of his report:

“If it is accepted that there is ‘no evidence of violence’ – which I dispute – or of ‘official discrimination’ – which I dispute even more strongly, given the criminalisation of homosexuality and practice as a direct result by definition by many state officials – then the argument that homosexuals are liable to persecution becomes difficult to maintain, as it undermines the argument that homosexuals are ever at real risk of serious harm, and merely suffer societal discrimination and harassment, or in the view of some sources, merely social disapproval.”

53. Other commentators have expressed a view that gay men generally face expressions of disapproval falling short of violence. Dr Seddon recorded also, without expressing any disagreement, Ms Pargeter’s view that the appellant, being a gay man facing ill-treatment from family members in response to his sexual identity, could move to another district of Algiers or to another city in Algeria to get away from his father but that, as a homosexual or bisexual man:

“... he would continue to face social stigma and hostility, and would be forced to conceal his sexuality.”

There are, in that reproduced comment of Ms Pargeter, two issues to be explored. First, the likely reaction to those thought to be gay men, which here Ms Pargeter speaks of in terms of social stigma and hostility, and the quite separate issue of the reasons why a gay man who has established himself away from the potential violence to be experienced at the hands of family members who have become aware of his sexuality should choose to live discreetly in a place of relocation where, if that is the correct assessment of the situation, at worst he faces social stigma or hostility.

Reasons for discretion or concealment of sexual identity

54. Dr Seddon, who has more than 30 years of experience of monitoring country conditions in Algeria, said that he had never himself come across an example of a gay man living openly as such. He recognises though, that although most gay men live discreetly in Algeria, concealing their sexuality, not all do. In his written evidence he said:

“The fact that some homosexuals do behave as such ‘openly’, risking being discovered in a relationship or, more usually, seeking casual encounters in parks and other venues where such activity takes place, does not, in my opinion, indicate that the risk of discovery does not carry with it the real risk of serious harm. There are clearly some homosexuals who dare, against the odds, to live ‘openly’, in this way, not ignoring but defying the real risk of persecution...”

And in a written response to the respondent’s questions:

“It would be easier for someone with a LGBTI sexual orientation to live in certain neighbourhoods or even to behave “openly” in such neighbourhoods, but only a tiny minority would be able to live in these affluent areas of Algiers in any case, and only a very few indeed

are prepared to risk openly LGBTI type behaviour, even in these areas. There are not, to my knowledge, any such residential “gay communities” or “gay quarters” anywhere in Algeria....”

He said also:

“All the available evidence, I suggest, taken in the round, indicates that homosexuality is a real but officially, socially and culturally hidden issue in Algeria – criminalised and a matter of sin, shame and taboo – as far as the vast majority are concerned.”

55. Dr Seddon has addressed an issue which is something of a puzzle. If prosecutions for homosexual behaviour are extremely rare and if it were found to be the case that the scant evidence of violent attacks upon gay men is because such violence generally does not take place as a manifestation of disapproval of homosexual behaviour, why is it that gay men in Algeria do not live openly? Expressing agreement with the view stated by Mr Zahed, whose evidence we consider in detail below, Dr Seddon wrote of:

“... many people not referring to themselves as ‘gay’ because of the extreme taboo in society – in fact, in Algeria, people who are homosexual do not generally consider themselves to be ‘gay’; they might have a sexual relationship with another man but will not say they are ‘gay’.”

He continued:

“This is, to my mind, an important point on which it may be worth elaborating. It could be argued that in a culture which severely represses what it regards as sexual deviation and impropriety, including extra-marital heterosexual relations, but particularly regards same sex relations as anathema, even the concept of homosexuality as a distinctive and easily recognisable sexual orientation (and even more so the concept of “gay” or the term “gay”) is difficult to grasp, even by those who have homosexual feelings or inclinations

Furthermore, even those who are homosexually inclined may feel guilt or doubts about their own sexuality when virtually the whole of society is so hostile towards homosexuality; the same may be the case with those who are bisexually inclined. The widespread and almost universal condemnation and hostility means not just that being ‘openly gay’ is virtually impossible (and at the very least dangerous) but also that admitting to being homosexual or bisexual become difficult, even to oneself.

Of deployment of the term “anathema”, Dr Seddon added:

“I use this religious term advisedly, as there is a strong proscription against homosexuality (as same-sex relations) in the Islamic tradition, as we see below. This is far stronger than mere societal disapproval.

56. At para 4.15 of his report, Dr Seddon reproduced, without expressing any disagreement, a view previously expressed by Dr Zahed:

“He referred to many people not referring to themselves as “gay” because of the extreme taboo in society – in fact, in Algeria, people who are homosexual do not generally consider themselves to be “gay”; they might have a sexual relationship with another man but will not say they are “gay”. He referred to interviews he has conducted in France with refugees who are established and do not need to justify their identity and could in theory say they are “gay”, but do not do so because of the high societal pressure: it is impossible for them to classify themselves as “gay” “because it is like a perversion.”

57. We consider this evidence to be significant. It is plain that for gay Algerian men who have moved to France there appears to be no obstacle preventing them from living openly if that is what they choose to do. The fact that the evidence before us indicates that they generally do not choose to live openly as gay men indicates that it is not a fear of persecution that leads them to live discreetly but other reasons to do with self-perception and how they wish to be perceived by others.
58. In oral evidence, Dr Seddon emphasised the importance of what he called the religious aspect and the social class and educational background of the family. Families with traditional religious views or values regard homosexuality not just as a crime but as a shame on the family although:

“... other families are more relaxed. It depends upon the degree of religiosity.”

And Dr Seddon referred to the view of his contacts, who are mostly middle class or educated men, that life as gay men in Algeria was easier for them than it would be for working class gay men, although life remained difficult, even for them. He considered that social class was a relevant factor in assessing the position of gay men in Algeria.

59. Dr Seddon said also that it must be emphasised that Algeria is a very conservative society in which neither homosexuality nor extra marital relationships were discussed. He observed that it has always been difficult for homosexuals to admit to their sexuality. He said that over the last 15-20 years it can be seen that Algerian society has become much more conservative as is evidenced by radical views on alcohol, the veiling of women and music becoming ever tougher.
60. It emerged from Dr Seddon’s oral evidence that although any concept of a gay “community” in Algeria was effectively illusory, as it existed only in the world of internet sites and social media sites rather than by gay people coming together as a group to meet and interact in person, there had been one surprising exception. There is an annual event, known as “TenTen Day”, which involves those sympathetic to the gay cause lighting a candle at a specified time on the same day in October each year. When asked about this Dr Seddon confirmed it was indeed an annual event although he was unable to estimate the scale of support it attracted. He volunteered the information that although generally this is a private affair, involving people lighting candles in the safety of their homes, in one recent year there had been also a march through the streets of Algiers by approximately twenty people, it being clear that this was behaviour in support of gay rights. There was no violence or other trouble generated by this public display, and although Dr Seddon thought that a “ringleader” had been arrested, there was no information to suggest that he was charged, prosecuted or otherwise ill-treated. Dr Seddon said that he had not intended to suppress this single manifestation of a gay rights organisation in Algeria acting publicly but offered no explanation why it was not mentioned in his report, although he was aware of it.
61. As we have seen, Algeria is a deeply conservative society in which people respect the strict religious values expected to be observed. Responding to a question as to what could an unmarried heterosexual couple do that a homosexual couple could not, in his written answer he responded to a different question altogether, saying:

“Heterosexual couples, if married, would be able to openly express their affection for each other, in a variety of ways that LGBTI individuals and couples could not; they could go out together with a reasonable expectation that they would not be harassed, assaulted and persecuted.”

Asked about this in oral evidence, Dr Seddon agreed that open displays of affection such as kissing would not be acceptable even by a married heterosexual couple. When pressed on what a *unmarried* heterosexual couple could do that a homosexual couple could not, again, instead he chose to address a different question, saying that a married heterosexual couple could show each other affection by “smiling and leaning at each other”, adding that “kissing was possible” although he had also just said that kissing in public would not be acceptable.

62. In any event, given that, effectively, even married couples are expected to, and do, behave in a manner that respects social *mores* when out together in public in Algeria, such as when eating at a restaurant or out shopping together, Dr Seddon observed in his oral evidence that it was “not obvious” why two gay men in such a situation should act in a “demonstrably gay” manner.

Internal relocation

63. Dr Seddon recorded in his report, without expressing any disagreement, Ms Pargeter’s view that the appellant, being a gay man (now) who would face ill-treatment from family members because of his sexual identity, could move to another district of Algiers or to another city in Algeria to get away from his father, but that as a homosexual or bi-sexual man:

“... he would continue to face social stigma and hostility, and would be forced to conceal his sexuality.”

Risk on return from authorities

64. At paragraph 7.15 of his written report, Dr Seddon identified a different category of risk to which the appellant might be exposed upon return to Algeria:

“If OO were to be removed successfully to Algeria he would, I suggest, face questions at immigration as a failed asylum seeker. If he were to be open about his orientation and inclinations, and his intention to live openly as a homosexual and bisexual, he is likely to be arrested and detained for at least some time, probably incommunicado and without a lawyer, as homosexuality is a criminal offence in Algeria. He might then be brought to trial and sentenced on the basis of his avowed sexuality. During his period of detention he might be ill-treated, raped and otherwise physically and sexually abused, if the evidence already cited of what happens to at least some homosexuals in prison is to be believed.”

65. But there is no evidential basis, at all, for the suggestion that the appellant would face questioning on return on account of being a failed asylum seeker and that this would lead to disclosure of his sexuality so that he would be arrested, detained and ill-treated.

Evidence of Ms Alison Pargeter

66. Ms Pargeter, who is an analyst and consultant specialising in political and security issues in North Africa and the Middle East, maintains also an interest in “political Islam and radicalisation”. As a Senior Research Fellow at the Royal United Services Institute in London she is presently engaged with a project concerned with Islamic movements in North Africa. In her report she provides a full account of her academic background and the work she has completed. We accept that she is well placed to express an expert view of the matters to be addressed although, as was the case with Dr Seddon, her expert view can be informed only by the relevant up to date evidence that is available to her, in the light of her knowledge of conditions in Algeria.

Prosecutions for homosexual behaviour

67. Ms Pargeter’s evidence in this regard echoes that of Dr Seddon:

“... as stipulated in my original report ... prosecutions are rare. This is because the state is broadly secular in orientation and as such does not actively seek out and prosecute homosexuals.”

68. Her report identifies four examples of prosecutions over the last 12 years:

“As well as the case cited in my original report of the imam of the El-Atick mosque in Tizi Ouzu who, in March 2010, was convicted alongside his companion, and sentenced to two years imprisonment and a fine of 20,000 dinars after they had been discovered engaged in a homosexual act, there have been other prosecutions. In September 2003 the Liberte newspaper reported that a military judge was imprisoned by the military tribunal of Blida on charges of “fraud and homosexuality”. In June 2010 two Islamists were caught in what the press described as “an act against nature” in a car in a forest near to Misserghin in Oran. The two men were arrested and sent before a Tribunal in December 2013 the police arrested a local official and a student in Imzouren after they were discovered in the official’s car “in the process of indulging in sexual intercourse” The pair were prosecuted for “homosexuality”, “indecent assault” and “attempted bribery”. They were initially convicted to three years each in prison although in January 2015 had their sentences reduced to eighteen months. Therefore, although it happens rarely, homosexuals in Algeria run the risk of being arrested and prosecuted if they are caught having sex.”

But, as we have seen, other reports concerning the Imam reproduced in Dr Seddon’s report raise doubts that he was ever taken into custody at all, although he was confident that he had been. In any event, that was a high profile case that had attracted the adverse attention of members of the congregation. The prosecution in 2003 was before a military tribunal of a judge who had also been accused also of fraud. Of the account of a prosecution said to involve “two Islamists” no details are given of their actual status in that respect nor, significantly, what the outcome was of the tribunal hearing referred to. Similarly, the final example of a prosecution in 2003 was said to be of a person who had a form of official status and was not said to be simply for homosexuality but also for attempted bribery. Therefore, in each of those cases, an examination of what is known about them discloses some feature that illustrates

something more than a simple accusation of homosexual behaviour and reinforces Ms Pargeter's earlier view that the state does not actively seek out and prosecute homosexuals. Indeed, at para 3i of her report, Ms Pargeter says that the appellant:

"... would be highly unlikely to face persecution by the state..."

69. Ms Pargeter reports also the case of:

"two young homosexual students at Es-Sania University who were arrested and accused of having breached customs and traditions after they announced on Facebook their support for marriage for all and also declared their wish to marry in Algeria".

However, she does not suggest that any prosecution or conviction followed and, significantly, there is no suggestion that these two openly gay men were subjected to any ill-treatment while in the hands of police nor, indeed, that they suffered any persecutory ill-treatment from anyone else.

Arrests of gay men not resulting in prosecution

70. In answer to the respondent's written questions as to how the LGBTI community was treated by the police, Ms Pargeter said that:

"Although the police do not actively hunt down homosexuals, they do make arrests. As an Algerian security official stated, in 2011 there were 1,330 sexual offences involving "deviancy" i.e. homosexuality".

71. We make the following observations about that evidence. The official is not identified and we do not know what his position was, nor whether he had access to reliable statistical information. The footnote provided by Ms Pargeter leads to a document written in Algerian and so it is not possible to explore this further. Other evidence before the Tribunal was to the effect that there were no statistics available. Further, it appears to be common ground that prosecutions for homosexual behaviour are extremely rare. If it be the case that 1,330 gay men were arrested in 2011 on account of their sexuality, then the absence of any accounts of ill-treatment while in police custody before being released without charge is striking.

Violence against gay men

72. While read as a whole, it is plain from Ms Pargeter's written evidence that she considers that gay men do face a risk of violence or, at least, a risk of the threat of violence, her report discloses a paucity of evidence of violence in fact being perpetrated against gay men. Responding in writing to a question posed by the respondent, whether LGBTI groups have recorded any data on violence against the LGBTI community, Ms Pargeter responded, simply:

"Not as far as I am aware."

Given that such groups include Abu Nawas, an organization that describes itself as "a group of Algerian militants for the rights of LGBT persons" (according to the

Refworld report identified by Ms Pargeter), the absence of any attempt to record and quantify accounts of such attacks is hard to understand, if such attacks routinely or regularly take place. Ms Pargeter points out that there are no reliable statistics as to the size of Algeria's LGBTI community but refers to one local press source that advanced an estimate that the number of gay men in Algeria is about 500,000.

73. Ms Pargeter says that it is difficult to quantify the extent to which persecution and violence against gay men "is an issue" because "the taboos surrounding homosexuality prevent reporting" and because gay men are said to be fearful of going to police to seek assistance. She says that:

"Algerian homosexuals regularly cite their fear of assault and homophobic attacks."

74. But, of course, the real question is whether that oft cited fear is well founded. In support of her conclusion that gay men declined to report abuse suffered by them because of fear of reprisal from the authorities, Ms Pargeter cites the US State Department report for 2014 and concludes that:

"... homosexuals remain soft targets and are unlikely to secure adequate protection from the police if they are attacked or assaulted. Indeed, they may even find themselves subjected to further abuse at the hands of the law enforcement agencies."

It is notable that the section of the US State Department report upon which she draws speaks of the asserted fear of reprisals but offers no example of such a consequence actually occurring.

Attitudes towards homosexuality

75. It is the evidence of Ms Pargeter that both official and societal attitudes towards homosexuality in Algeria are severely adverse. She points out that in September 2014 Algeria voted against the UK Human Rights Council's resolution to combat violence and discrimination based on sexual orientation and gender identity. Unfortunately, the full text of the resolution is not provided and it may be noted that although 24 countries supported the resolution no fewer than 15 countries voted against it and the Tribunal has not been provided with details of any reasons for doing so that may have been given.
76. Ms Pargeter quotes in illustration of official attitudes towards homosexuality in Algeria comments made by "a member of the official religious establishment" that:

"Homosexuality is a sexual inversion that goes against human nature that is based upon natural relations between males and females."

and of "a spokesman for the Ministry of Religious Affairs" that:

"there is nothing positive about this unnatural act... we must encourage demographic growth and therefore encourage marriage between men and women."

which comments are entirely consistent with the other evidence before the Tribunal as to the intolerant attitude the religious establishment in Algeria has taken.

77. At paragraph 2i of her report, Ms Pargeter observed that:

“Although some reports suggest that there is a growing degree of tolerance towards homosexuals in the big cities, by and large society remains overtly hostile to homosexuality and continues to view it as a perversion and a disease that needs to be cured.”

The reports suggesting a growing degree of tolerance in big cities in Algeria are not discussed in the report and the footnote that presumably identifies the source of those comments provides a web address that is ineffective. As Ms Pargeter did not attend to give oral evidence it was not possible to explore this any further. However, later in her report we find this:

“This is not to say that all of Algerian society is completely hostile to expressions of homosexuality. There is growing tolerance towards homosexuals in some urban areas, especially in the upmarket districts of the big cities where attitudes are generally more liberal and westernised. It is in these areas that one can find venues that attract a gay crowd. Although these venues are not openly gay and do not advertise themselves as such, there are a handful of cafes, nightclubs and meeting points that are known locally as places where gay and lesbians can meet and socialise or where they can watch gay singers and performers. Providing the clientele of such places keep themselves to themselves and are discrete, they are generally ignored.”

and a little later in her report:

“In poorer neighbourhoods and outside the big cities, meanwhile, there is no such tolerance. In these areas, where religion and conservatism are pervasive, society is overtly hostile to any expression of homosexuality and anyone discovered to be a homosexual would be at real risk of assault and abuse.”

78. Ms Pargeter went on to describe the so called “cruising areas”:

“There are also specific areas in the big cities where gay men can go to pick up other men. This includes the Sahat Souhada and parts of the Casabah in Algiers as well as the seafront on Oran and some local parks and streets. ”

But, although those areas are identifiable as such because, presumably they are used by gay men, she added this caveat:

“However, engaging in such activities is not without risk. Anyone frequenting such places is liable to be chased by the police or to suffer abuse and harassment.”

79. In her written response to the respondent’s questions, Ms Pargeter added this:

“... there are no specific areas where homosexuals tend to live although it is generally easier for them to reside in more affluent neighbourhoods where attitudes are relatively more tolerant than in poorer more conservative ones.”

She recorded also that Deutsche Welle reported in December 2013 that:

“despite the fact that some homosexuals they had spoken to said that they felt they had slightly more freedom to express their homosexuality these days, in general Algerian society rejects homosexuals and considers them to be “diseased and deviant””

Again, unfortunately, the foot note for that source does not deliver a route to the material and so we know no more about it.

80. Ms Pargeter reinforced the point made elsewhere in the evidence before us that:

“Algerian society is extremely conservative and traditional and considers homosexuality as a gross transgression of social norms.

...

Furthermore, Algerian society is still very male dominated and places great value on traditional male attributes such as physical strength and virility. Any signs of effeminacy or homosexuality are generally considered as a betrayal of these values and codes....”

And she quoted a spokesmen for the gay interests group Abu Nawas Association:

“Being homosexual for a guy is to degrade oneself to the inferior level of a woman.”

Although she added this:

“Interestingly, while homosexuality is generally not accepted, there is somewhat greater tolerance afforded to the active partner in the sexual act as opposed to the passive one. One young Algerian homosexual explained:

“People say you are a fag... it’s an insult for someone who gets buggered, who gets penetrated. But it’s not for someone who buggers the other because someone who buggers is considered a macho, a real man... They’ll let him off even if [they think] he is depraved but he’s still respected, his authority is respected... whereas someone who gets buggered not only gets penetrated but he’s got to live with the shame.”

81. A number of observations can be made about this. First, it is reasonable to assume that Ms Pargeter included this material in her report because she considered it to be of significance and possibly representative of views held, being contained in a section of her report under a heading “Algerian Society and Attitudes towards Homosexuality”. Second, the young Algerian homosexual concerned spoke of the response to homosexuality as being subjected to name calling of a derogatory nature. Thirdly, in the context of this view of the position, it seems that the fact of being involved in a sexual act with another man does not necessarily lead to exposure to unrestrained disapproval. A person so engaged who is perceived to be a dominant participant may, it is said, even earn respect for his manliness and “authority”.

82. Ms Pargeter went on to say of these comments made by the young homosexual male:

“This reflects the fact that in Algeria as in other parts of the region, there has traditionally been some tolerance of same sex relations between men arising from the extremely tight restrictions on

heterosexual activity before marriage. However, this type of same sex intercourse is considered something different to homosexuality itself.”

83. Focussing upon the impact of family pressures upon how gay men conduct themselves, Ms Pargeter provides the following analysis which, in our judgement is important:

“Given that in Algeria, as elsewhere in the Arab world, the family is valued extremely highly, anyone not conforming to traditional family values tends to be shunned and stigmatised. Homosexuals are deemed not only to have brought shame upon themselves, but upon their whole families. In addition, there is a tendency to blame the families of homosexuals for not having brought them up properly and having failed to adequately rein in what are often considered to be youthful wayward tendencies. As such, it is not uncommon for families to try to force their homosexual children to marry in order to uphold the family honour. When homosexuals reject such a proposition, they often find themselves abused and disowned.

...

Likewise, the Muftah organisation has commented “Outing oneself within one’s family is still unthinkable for most lesbian and gay Algerians because of social norms and binding traditions.”

84. It might be added that the last paragraph is taken from a publication identified by Ms Pargeter as “Gay & Lesbian Mobilization in Algeria: the Emergence of a Movement” which also includes the following observation, having discussed the fact that the criminal code makes unlawful any homosexual behaviour:

“But, the way homosexuality is treated is first and foremost a question of custom. Society punishes gay and lesbian persons by marginalizing them. In fact, few Algerians are aware of the penal articles criminalizing homosexuality. They are rarely enforced, and few complaints are filed...”

85. In response to the respondent’s enquiry as to what factors may impact upon a gay man’s decision to “come out”, Ms Pargeter said:

“This is a difficult question to answer given that “coming out” is an individual matter related to personal choice. However, Algerians from richer and more westernised families may find it easier to reveal their sexuality than those from poorer backgrounds. This is because the middle class and the elite in Algeria tend to have a more westernised lifestyle and to be relatively more open-minded.”

But she added:

“However, this does not mean that families will accept their children coming out as homosexual... for the vast majority of families, regardless of their background, having a family member who is gay would still be considered shameful and as a slight to family honour. As such middle class families and those from the elite may well react negatively and even violently towards their children if they reveal their homosexuality.

...

... such shame would be felt all the more keenly by those who are religious given that Islam is explicit in its condemnation of homosexuality.”

Range of responses to gay men recognised as such

86. As did Dr Seddon, Ms Pargeter recognised that there could be a range of responses experienced by gay men in Algeria facing disapproval on account of their sexuality on the part of those with whom they come into contact. Ms Pargeter speaks variously of those reactions :

“Societal responses to homosexuals range from mockery and stigmatisation to outright hostility.”

so that gay men risk being:

“shunned and stigmatised”

and might:

“suffer abuse and harassment” when using cruising areas

And, drawing this together in her written response to questions posed by the respondent:

“Anyone openly displaying their homosexuality anywhere in Algeria would be at risk of mockery, harassment and possible abuse.”

87. Asked about how a gay man would be treated, if recognised as such, when shopping or at a restaurant, Ms Pargeter said:

“If it were known that the couple were gay or if they manifested their sexuality and their relationship then they may well be mocked, insulted, refused service and possibly asked to leave the establishment. It should be noted that in more upmarket urban areas a gay couple may find it slightly easier than in poorer neighbourhoods where attitudes are more rigid. In such neighbourhoods a couple openly displaying their homosexuality may be at risk of physical attack.”

Forced marriages

88. In her response to the written questions Ms Pargeter said that it is well known in the Arab world that a forced marriage is a family’s way of restoring its honour and avoiding scandal when it is discovered that a family member is gay. She reports that the Abu Nawas group has asserted that:

“one often hears about forced marriages of homosexuals among the LGBTI community in Algeria although it notes that rather than being forced marriages per se, in many cases, homosexuals end up agreeing to such unions in order to satisfy their families.”

Discrimination against gay men

89. Ms Pargeter quotes one source, identified by a footnote that reveals only Arabic script, as saying that a majority of lawyers and doctors “refuse to have anything to do with the community as if homosexuality was an infectious disease”. She extracts also from the 2014 US State Department report the observation that LGBT activists reported that access to health services could be difficult because health professionals often treated LGBTI patients “unprofessionally”. However, in her written response to the respondent's questions as to how a person thought to be LGBTI would be treated when seeking medical attention, including access to HIV treatment she said,:

“This would not be an issue and they would receive treatment regardless of their sexuality”.

90. Ms Pargeter says that gay men face discrimination in the workplace but recognises that there is very little in the way of evidence to support that view. She says that “anecdotal evidence would suggest that such discrimination exists”. In support, she offers only the comments of one young gay man who reported that he had experienced “verbal attacks including insults sarcasm and being undermined”. It is not possible to explore that evidence any further because the footnote identifying that source takes one to a lengthy document written in Arabic and no translation is provided.

Living as a gay man in Algeria

91. The starting point of Ms Pargeter’s evidence is her view that:

“In practice gay men can live together in Algeria. This is because it is quite normal in Algerian society for young men to share accommodation. However, if it were to become known that two men sharing a house or flat were homosexual and living as a couple, they would face severe social stigma and could find themselves chased out of the area. In such a scenario they would be vulnerable to harassment and attack.”

But Ms Pargeter offers no example or illustration of this actually having happened. Therefore, this is what she expects to happen, even though she does not point to any example of that being the case.

92. Speaking of general restrictions upon public displays of affection, not limited to gay couples, Ms Pargeter said:

“It would be impossible for gay men to engage in any sort of public display of affection without attracting severe disapproval and hostility. However, the same applies to heterosexual couples. Given the conservative nature of society, all forms of physical affection are frowned upon.”

and concluded that:

“While homosexuals in Algeria are not hunted down and systematically persecuted by the state, they are certainly subjected to severe societal disapproval and stigma and are always soft targets for anyone wishing to harass them or attack them. As a result homosexuals in Algeria are forced to conceal their sexuality or else put themselves at risk of discrimination and persecution including the threat of physical violence.”

93. Two things are notable about these conclusions. It is striking that, despite the fact that Ms Pargeter says that gay men are *always* soft targets for harassment and attack, she offers no evidence at all of such attacks actually taking place. Secondly, she speaks of “the threat of physical violence” rather than the actual manifestation of violence.
94. In responding to written questions posed by the respondent, Ms Pargeter reiterated that the conservatism of society prevented public displays of affection by either gay or heterosexual couples but she said that while a heterosexual couple could live together if they were married (obviously):

“while men can share accommodation as friends and commonly do so, if it became known that a couple living together were homosexual they would be at risk of harassment, insults and possible physical abuse. They could also well be chased out of the neighbourhood.”

Evidence of Dr Ludovic Zahed

95. Dr Zahed has provided written and oral evidence. We are particularly grateful for the effort he made to appear in person, having travelled from France to do so. We can deal with his evidence relatively briefly but in so doing do not intend to suggest that we consider it to be in any way unimportant simply because he is not put forward as an expert witness. Indeed, we recognise that he has maintained a close interest in the issues under consideration and, as he is himself a gay man from Algeria, he has personal experience upon which to draw.
96. Dr Zahed now lives in France, where he is Director of the “CALEM International Cabinet” which he described as being a research organisation concerned with issues of identification in terms of being gay and Muslim. The organisation provides training courses for Imams, that take place in France, South Africa and Asia, and issues publications. His personal role is to co-ordinate conferences and he was also the founding Imam of an “inclusive mosque” established in Paris. He last visited Algeria in 2009 but cannot now return because he fears that he would face imprisonment because he is known as “an inclusive Imam” and a gay man who has given interviews in the Algerian media advocating same-sex marriages. He told us that his activist contacts in Algeria now number “less than ten individuals”.
97. In his written evidence, Dr Zahed described how homosexuality in Algeria is still faced with utter silence and denial although in recent years there have been more vocal homophobic utterings from the authorities. Because of this, he says, more and more gay men are now hiding their sexuality and refraining from behaviour that might reveal that they are gay. In common with the other country witnesses, Dr Zahed accepts that:
- “(the) authorities do not seem to be actively going after LGBTI individuals and arresting them...”
- and that:
- “... the strategy of the government is not to officially crack down on homosexuals...”
- He said that:
- “... LGBTI individuals in Algeria are afraid of being socially ostracised, being rejected from their families and friends and losing their jobs in case they are outed, which would mean a social death for them.”
98. He spoke of anti-gay themes in public broadcasting, although the example he gave was that of a private TV Channel, Hogar TV, which has now closed down, he thought because of funding issues, suggesting that it was unable to generate sufficient revenue.
99. It became clear from Dr Zahed’s oral evidence that his absence from Algeria since 2009 meant that he felt unable to speak with confidence about life as a gay man in that country. He said that since then “it has changed a lot” and he could not tell us what behaviour would and would not, specifically, be tolerated.

100. Asked if a gay couple could “come out” to their families, Dr Zahed said that it was difficult to provide a precise answer. He said that it was possible in some households in some circumstances, explaining that in some open-minded families it was possible to come out. He added that levels of education and the family’s religious views would also be relevant. If the family is secular then it would be easier for a gay son to “come out” to his family.

101. In his written response to the respondent’s questions, Dr Zahed had been asked to describe the treatment to which a person seen to be gay would be subjected. He said they would experience:

“... prejudice, rejection, sometimes forced marriage (such as a gay cousin of mine) sometimes even death threats.”

Asked about this answer in oral evidence, it being pointed out that he had not included that such a person would be exposed to violence, he said that receipt of death threats and facing the prospect of a forced marriage did amount to violence.

102. In his written evidence Dr Zahed had said that gay men will experience discrimination in the workplace. He was asked in oral evidence to identify the evidence he relied upon in making that assertion. He said only that he had studied this for over twenty years and he *knew* that there was discrimination, but he was unable to point to any other evidence in support.

103. Views expressed by Dr Zahed of his experiences as a gay man have been published in a document entitled “Life as a Gay Imam Isn’t As Bad As It Sounds” (page D481 of the bundle) dated 14 February 2014. This reports an interview with Dr Zahed in which he said that he had “come out” to his family when he was about 21 years old, although, even as a child, he was called names like “faggot” and so “everybody knew, but we didn’t speak about it”. Asked what happened when he finally told his family he said:

“I packed a suitcase, because I thought they would throw me out. I prepared for the worst, but before I could finish one sentence my father said calmly, “Stop, we are going to accept you like that.” He knew I had tried everything to get rid of my homosexuality. I am HIV positive, and when I later told them about that my mother was more OK with me being HIV-positive than me being gay. Yes it was horrible. She was horrible to me at the time, but it passed. When it passed it was weird because I had to reinvent myself. Because they didn’t reject me, I had to find a new place in the family as the “real me”.

Evidence of Zoheir Djazeiri

104. Zoheir Djazeiri is a *nom de plume* of this witness, who has provided a witness statement but did not attend to give oral evidence. His true identity cannot be disclosed because, as an Algerian citizen who is a former chairman of Abu Nawas, the first group campaigning for gay rights in Algeria, he considers himself to be at risk if identified. That is not simply because he is a prominent gay man but because his activities in promoting gay rights will be seen, he believes, as campaigning in favour of what is an illegal activity. We are satisfied that his safety will not be compromised because of the discussion of his brief written evidence that follows but we do make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 that should anyone

be able to draw inferences from what we say that might enable him to be identified, then he is not to be identified or referred to by any name other than the one that appears above.

105. Having secured funding to continue his work in Lebanon, Mr Djazeire has recently returned to Algeria “just to pack up and leave” after a period of absence from his country of nationality. He says that his two colleagues with whom he worked under the banner of Abu Nawas have also decided to leave Algeria and have moved to Belgium and France where he believes they may have been granted asylum.

106. Mr Djazeire has been a gay rights activist for about ten years. He describes Algerian society as being very homophobic. He says that such is the extent of disapproval of homosexuality from family members that:

“...you will finish by hating yourself and hating to be alive.”

He describes how, in 2010, a friend killed herself after her family discovered that she was a lesbian and said they wanted to force her into an unwelcome marriage.

107. Mr Djazeire detects a deterioration in the situation of gay men in Algeria over the last few years. Whereas previously homosexuality was a taboo subject, now:

“... the subject has become attractive in the media as well as in the street...”

108. According to Mr Djazeire, recent years have been “the worst period for the LGBTI community” and he says that:

“homosexuals are increasingly assaulted and fear has become a permanent companion of our community.”

109. It will be seen from this summary of the witness statement he has provided, that this witness does not seek to descend into any detailed discussion of the issues we have to examine and this evidence does not take the matter very much further.

The documentary evidence

110. There is a substantial body of documentary evidence before us, although neither party has specifically referred to very much of it in submissions. However, much of what is relevant to be drawn from it has been reviewed by the witnesses whose evidence we have already considered and so it is not necessary for us to revisit all of that material. We have, of course, had regard to all of the documentary evidence but identify the following matters, in particular.

111. As we have seen, the, US State Department Human Rights Report, updated on 3 April 2014 states that:

“While some LGBTI persons lived openly, the vast majority did not, and most feared reprisals from their families or harassment from authorities.”

Which is yet another illustration that it is the asserted fear of reprisals, rather than the actual manifestation of it, that is said to impact upon how gay people in Algeria conduct themselves.

112. The current Country of Origin Information Report, published by UKBA on 17 January 2013, reports that “LGBTI issues is a subject considered taboo” but:

“However, in practice, it is not tightly restrained by the State, unless minors are involved. There are not many homosexuals that are condemned, and the minority is not sought after by the authorities.

The representative of Liberte did not know whether the authorities, in practice, tended to act with tolerance or not.”

113. At para 21.10 of the COIR is an extract from the Swedish FFM Report from 2012:

“The Swedish FFM Report 2012, were informed by Representatives of the newspaper Liberté, that: “The topic is very sensitive and is not discussed in the press. It is hard to live as a homosexual in Algeria, and those who are, generally act very discreetly. Acceptance among families varies. Homosexuals who do not conceal their sexual orientation risk verbal harassment. There are no clubs for homosexuals. Sexual intercourse between individuals of the same sex may render a prison sentence in accordance with the Penal Code.”

114. It is noted in the Amnesty International report of 25 February 2015 that although Algeria has become a member of the UN Human Rights Council, it continued to refuse to issue visas to representatives of UN bodies, Amnesty International itself and others. In February 2014 Amnesty International issued a joint statement, together with organisations such as Human Rights Watch, in which it was said that:

“Algeria remains the only country among its neighbours that generally restricts access to human rights organisations...”

115. The respondent draws attention to a report by the Human Rights Campaign Foundation concerning “the state of human rights for LGBTI people in Africa”, published in October 2013, which report includes this discussion of the views of a young lesbian woman in Algeria, under a heading “A gradually evolving society”:

“Some, though not many, gay Algerians are lucky enough to have “open-minded family members”, Amelle explained. Her aunt, for example, “often asks me why I don’t have a girlfriend”, she said.

Thanks to television, which offers Algerian society a window onto the world beyond its borders, mentalities in the country are starting to change. “Especially with what happened in France – gay marriage being legalised – that opened up a debate here,” Amelle said. “I have several colleagues who say they aren’t against it. Things are evolving, and it’s a relief”.

116. The respondent has submitted also a Landinfo report dated 4 September 2014 in which the following extract, which chimes with observations made by the expert witnesses that we have discussed above, is to be found:

“In Algeria, sexual relations between men are not uncommon (although impossible to quantify), both before or during marriage (Daum 2014, Gourlay 2009). The reason for this is partly the family-oriented culture’s control over women and their sexuality, and therefore

women are not available to unmarried (heterosexual) men. In such cases, sexual relations between men are not necessarily expressions of preference, but are contextually sensitive sexual practices to which society turns a blind eye, as it does not threaten the established gender roles and the institution of marriage.”

And, our attention having been drawn to this report, we reproduce also the following extract, concerning the issue of marriages being entered into by gay people in Algeria, although neither expert witness referred to it:

In the light of religious views on marriage being a duty, one must assume that it is not uncommon for gay men to marry women, in order to hide their sexual orientation and escape the questioning and pressure from their families and social networks. The fact that gay people marry is not necessarily a response to direct or indirect pressure; given the fundamental role of marriage in Algerian society, as well as the respectability and significance that marriage and children provide, it is fully possible to wish to marry and have children, even if one’s sexual preference is for people of the same sex.”

117. The same Landinfo report addresses the consequences for a gay man of “coming out”:

“Given the significant degree of social stigma against homosexuality and being gay in Algerian society, there is little room to express one’s gay identity (coming out of the closet) to family members and social networks. A family member revealing themselves as homosexual will weaken the family’s reputation and expose the family to slander, accusations and potential social marginalisation....

It is not possible to predict family members’ reactions when a person comes out or is exposed as gay within the immediate family network. According to the International HIV/AIDS Alliance (2005), examples of reaction include

- Social marginalisation and exclusion (for example, being excluded from and shunned by the family during visits, celebrations, etc.)
- Isolation, restricting freedom of movement or other controlling behaviour from the family’s side
- Hurtful language (“you are no longer my son”, “you have brought shame to the family”)
- Various attempts to alter behaviour (for example, hiring an exorcist to drive out the “curse” or a psychologist who believes homosexuality can be cured)
- Pressure to marry, cover up or prevent future scandals
- Use of physical violence
- Disowned by the family (temporary or permanent)

The activist Zouheir Djazeiri explains that if one is exposed, one is obliged to leave home to avoid one’s family becoming victims of a public scandal

It is still not certain that the family will react in such a way if a family member is revealed to be gay. The activist Nabil.... Says that after he had left his family as a result of coming out as gay, he is reconciled with them today. However, he adds that this is generally unusual in an Algerian context.”

118. This reinforces the concept of the range of responses to be expected that was described by Dr Seddon. Two observations might be made about this evidence. First, it is clear that the context being considered is a domestic one, as the focus here is upon the reaction from the family. This is not concerned with reactions from others after a gay man has moved away from his family. Second, while that range, according to the

Landinfo report, includes the use of physical violence, a footnote to that possibility adds this:

“... The activist interviewed by Daum (2014) had been exposed on Algerian TV and said, in direct response to the journalist, that he does not fear physical violence or being killed, but that he does fear being exposed to his mother and his community. ...”

119. Before concluding our review of the documentary evidence, we should record that mid-way through the hearing the respondent produced a letter from the Foreign and Commonwealth Office dated 23 September 2015, that had just been received by Mr Singh. This comprised a brief report upon a meeting that took place on 26 May 2015 between “members of the diplomatic community” and others “at which a representative of Algerian LGBTI organisations said that life in Algeria was becoming more difficult for the gay community and many feared for their safety, compelling them to leave the country”. This letter, from the Desk Officer, Algeria, Morocco and Western Sahara, reproduced some extracts from report we have looked at above and concluded:

“It is our informal and anecdotal assessment that, despite illegality, there is no extensive systematic persecution or prosecution of LGBTI individuals by the Algerian state. Rather, it is a social stigma in Algerian society that makes life difficult for LGBTI persons in Algeria and prompts them to leave.”

120. Ms Chapman raised concerns about the late submission of this document but we did admit it. However, it adds very little, if anything at all, to the body of evidence before us and, as Ms Chapman pointed out, the fact that she had no opportunity of testing that evidence in cross examination reduces further the weight that can properly be given to it.

Submissions on behalf of the appellant on the Country Guidance issue

121. Ms Chapman submits that gay men living in Algeria are subjected to discriminatory ill-treatment that amounts to acts of persecution falling within Article 9 of the Qualification Directive. The reason for that persecution, she submits, is that a gay man in Algeria is a member of a particular social group within the definition of Article 10. In advancing that submission she points out that the definition of persecution found in the Qualification Directive is narrower than that set out in the UNHCR Handbook.

122. Ms Chapman takes as her starting point that engaging in a homosexual act is illegal and, if prosecuted, a gay man faces imprisonment and a fine. Further, Algeria is a strict Islamic society in which Sharia law demands strict penalties for homosexual behaviour, including the prospect of being stoned to death.

123. Perhaps recognising that hard evidence of physical ill-treatment being meted out to gay men in Algeria is scant, a key aspect of her submissions is that in *X, Y & Z* the decision of the ECJ establishes that, while the criminalisation of homosexual acts does not in itself constitute an act of persecution, where terms of imprisonment are actually applied, that must be regarded as a punishment that is disproportionate and

discriminatory and so persecutory. As there is evidence that terms of imprisonment have been imposed, therefore, she argues, the test laid down by the ECJ has been met.

124. As has been discussed above, that submission is developed into two separate strands that are drawn from it. First, in *M.E. v Sweden*, Judge De Gaetano reasoned that the decision of the ECJ in *XYZ* undermined standards set by the ECtHR recognising in such circumstances a violation of rights protected by the ECHR, whether or not the law is applied sporadically or at all. Therefore, the very fact that homosexual acts are criminalised is *prima facie* evidence of a breach of protected human rights. We have explained why we do not accept that analysis.

125. Secondly, in oral submissions, Ms Chapman submitted that, correctly understood, the effect of the decision of the ECJ in *XY & Z* was that a *requirement* to conceal sexuality, as is evidenced in Algeria by the absence of any gay men living openly as such, amounts to persecution. Again, we have explained above why we are unable to accept that submission.

126. In seeking to establish that the evidence has demonstrated the existence of state sponsored persecution of gay men in Algeria, Ms Chapman points to the following matters, submitting that taken together they constitute state sponsored discrimination at a level sufficient to amount to persecution:

- a. public pronouncements by State Officials, such as the Minister of Religious Affairs, who spoke of homosexuality in terms of a war against those supporting “moral decadence and the destruction of the family”;
- b. The fact that Algeria voted against the UN Human Rights Council’s resolution, discussed above;
- c. An ever present risk facing gay men of arbitrary arrest and detention, and of suffering serious ill-treatment at the hands of police during detention;
- d. The fiercely adverse media comments directed at the gay community;
- e. The eight dancers from the Algerian National Ballet recognised as refugees in Canada, and the official reaction from Embassy officials;
- f. The deeply homophobic attitude of the religious authorities;
- g. Overt public hostility to homosexuality;
- h. The need for gay men to lead a double life, concealing their sexuality and being unable to live openly as gay men;
- i. The risk of attack or assault for gay men recognised to be such;
- j. The absence of a gay community, other than on-line;
- k. Discriminatory barriers to access by gay men to doctors and lawyers.

127. Ms Chapman submits that the absence of “official reports” of the manifestation of acts of persecution is due, in part, to the fact that human rights observers are denied access to Algeria. She places reliance also upon the confirmation by the respondent that she has accepted the claims of twelve persons seeking asylum as gay men from Algeria and that in five more cases, appeals to the First-tier Tribunal have been allowed. Four of those appeals have been discussed by Dr Seddon in his report and the determinations have been made available.

Submissions on behalf of the respondent on the Country Guidance issue

128. The respondent's position is that the evidence before the Tribunal does not disclose a risk of persecutory harm to gay men generally in Algeria. Although homosexual acts are criminalised, the law is very rarely enforced and when it is there is usually some aspect of the particular case that explains why, exceptionally, a prosecution is proceeded with. This is in response, in Mr Singh's submission, not to acts of homosexuality but to what is perceived to be dissident acts against the state and a challenge to accepted social *mores*, for example in the case of the open expression of views on gay marriage and the cases that have been referred to in the evidence concerning a judge, an Imam, persons described as "Islamists" or "officials".
129. Mr Singh invites the Tribunal to follow closely the approach set out by the Supreme Court in *HJ (Iran) v SSHD* [2010] UKSC 31, which we have examined above. He takes issue with the analysis offered by Ms Chapman of the decision of the ECJ in *X, Y & Z* and does not accept that the judgment in that case has taken the matter any further so that, although speaking in terms of "a requirement to conceal" sexuality, there was still a requirement that such requirement be in order to avoid persecution.
130. Mr Singh accepts that there is little evidence of open displays of "gayness" but submits that it is established by the evidence that this is not because of a need to avoid exposure to violence or other ill-treatment sufficiently serious to cross the threshold into persecution but because of deep rooted societal disapproval and entrenched conservative and religious pressures which, if offended, are likely to result not in persecution but, as articulated by Ms Pargeter, in "mockery, harassment and possibly abuse" which, he submits, falls short, on the evidence, of persecution.
131. Developing that submission, Mr Singh argued that the evidence clearly established that there would be a range of responses to open displays of homosexuality and the reaction would also vary depending upon factors such as whether the family concerned is secular or not, well-educated and middle class and whether the areas in which those concerned were residing was a poor neighbourhood where families lived in very close proximity to each other or whether they had the space and privacy afforded by middle class residential areas where families did not live "cheek by jowl".
132. Addressing the witness evidence, Mr Singh submitted that the evidence of Dr Zahed should be approached with caution. He invited the Tribunal to conclude that this was not a "completely independent" witness as he was involved with the training of gay activists. He had not been to Algeria since 2009 and his opinions might be thought to be "discursive". On the other hand, Mr Singh noted that Dr Zahed's evidence was that not every openly gay man, which we take to mean no more than a man who is recognised to be a gay man, was at risk in Algeria today. Whether he faces any real risk on that account will depend upon the range of factors he had identified.
133. In Mr Singh's submission, the evidence of Dr Seddon should also be treated with caution for the following reasons. He had not lived in Algeria for 30 years and has made just three relatively brief visits in the last fifteen years. He relied in part upon information provided by a source who himself had not lived in Algeria for more than

ten years. He had strayed beyond his remit as an independent country expert and had taken to himself the assessment of the appellant's credibility, without having heard oral evidence from him, and has expressed the view that the Upper Tribunal should allow the appeal. That meant, according to Mr Singh, Dr Seddon had become an informed advocate supporting the appellant's appeal rather than a truly independent expert witness. Finally, as Dr Seddon frankly and properly accepted, his views were founded upon very little in the way of sourced verifiable accounts and to a significant extent upon what he described as anecdotal evidence.

134. Having said that, Dr Seddon had accepted in his evidence that not every gay man recognised as such in Algeria would on that account be at risk. It would depend, he had said, upon matters such as his family circumstances, social class, level of education and the religious views of his family. Mr Singh pointed out that while in his report, Dr Seddon emphasised a risk of violence as a reaction to an openly gay man, in his oral evidence he was clear that there could be a range of responses and that evidence of gay men in fact being subjected to violence is sparse. It cannot therefore be said, he submitted, that there is a real risk of gay men suffering a violent response to their sexuality if it is disclosed or perceived. Similarly, although Dr Seddon had written in his report about gay men being denied access to medical treatment, there was no evidence of that actually being the case.

135. Thus, in Mr Singh's submission, there is scant evidence of gay men being subjected to violence but there is evidence of them being subjected to social stigma, which does not amount to persecution. It was significant, he suggested, that the reports of NGOs, who are adept at publishing reports of violence, do not provide any reports of that in Algeria suffered by gay men.

136. Addressing the conundrum: if there is no real risk of gay men living openly as such coming to harm on that account, why do so few choose to do so, Mr Singh argues that the answer is to be found in the deeply rooted conservative and religious disapproval of homosexuality. This means that gay men choose to live discreetly not to avoid persecution but to avoid themselves and their families attracting societal disapproval that may manifest itself in ways that fall short of amounting to persecution.

137. Having said that, Mr Singh made clear that it was not the respondent's case that a protection claim by a gay man from Algeria could never succeed. It is accepted that most problems experienced arise within the family and there is evidence of violence arising as a consequence, at the hands of family members, and the respondent accepts there is no sufficiency of protection available in those circumstances from the state authorities. But it may well be open to the gay man coming out to his family to avoid a violent reaction from his family by relocating elsewhere and, although he may well become to be recognised in his place of relocation as a gay man and so attract disapproval there also, the evidence simply does not establish, in Mr Singh's submission, that he will generally face a response in those circumstances that amounts to persecution. However, there may be some characteristic of the individual that means that there is no reasonable and safe internal relocation option and that explains why the respondent has granted asylum claims to a number of gay men from Algeria.

Discussion

138. As we have seen, at the beginning of his oral evidence, Dr Seddon recognised that there was a real paucity of “hard evidence”, in the sense of verifiable sourced illustrative examples of the consequences he considered flowed from a man being recognised in Algeria to be gay. None of the witnesses who gave oral or written evidence to the Tribunal has suggested otherwise. On behalf of the appellant it is suggested that the reason for the absence of such evidence of gay men in Algeria having in fact suffered physical ill-treatment is that much of what occurs happens within the family and gay men do not report abuse to the police because they have no expectation of receiving an appropriate response. That does not, though, explain for example why even the organisations focused upon gay rights issues make no attempt to record reports of violent attacks or other abuses perpetrated upon gay men in Algeria.
139. It is the respondent’s position that the absence of such evidence is because such abuse simply does not generally occur and so there is nothing to report. We do not accept that the absence of reports of violence directed at gay men in Algeria can be explained away simply because NGOs who monitor human rights issues face restrictions in access to the country because, as we have observed, they are able to catalogue other human rights concerns in respect of other disadvantaged or vulnerable groups, including women. Also, it might be thought that those most likely to be a fertile source of information about such ill-treatment are those gay men who have felt compelled to leave Algeria and move to live in another country where they face no restrictions at all in terms of expression of their sexuality.
140. The shortage of evidence of such matters in the form of verifiable examples of such events actually having occurred does not, of course, disqualify informed or expert witnesses from expressing a view. But any opinion offered must be scrutinised in the light of the evidence available and in the light of the reasoning that led to it being formed by the witness. This is what we seek to do in our analysis of the evidence.

Prosecutions of gay men in Algeria

141. It is unambiguously clear that prosecutions of gay men in Algeria under the criminal code for homosexual acts are extremely rare. Thus, as a starting point, as Dr Zahed observed:

“(the) authorities do not seem to be actively going after LGBTI individuals and arresting them...”

and that:

“the strategy of the government is not to officially crack down on homosexuals...”

As we have observed, it is also clear that the evidence that Dr Seddon identifies simply does not support his view that a person whose homosexual behaviour comes to the attention of the public or the authorities can expect to be prosecuted. In fact, the evidence he relies upon points the other way as there is evidence that the authorities

choose not to prosecute even where there appears to be cogent evidence of behaviour of a type made unlawful by the Criminal Code.

142. It is clear from our analysis of the evidence set out above that in those rare cases where there is an arrest and prosecution for homosexual behaviour, in each of those cases, an examination of what is known about them discloses some feature that illustrates something more than a simple accusation of homosexual behaviour. This reinforces the view expressed by Ms Pargeter, agreeing with that of Dr Zahed, that the state does not actively seek out and prosecute homosexuals, which led her to conclude that the appellant:

“... would be highly unlikely to face persecution by the state...”

143. It follows from this that we do not accept Dr Seddon’s evidence that terms of imprisonment are, in practice, applied in Algeria for homosexual behaviour. Nor is there any evidence to suggest that the existence of such laws, generally unapplied in practice, motivate or facilitate persecutory behaviour towards gay men in Algeria by non-state agents. Therefore, the mere existence of the criminal law relating to homosexual acts does not in itself constitute persecution of gay men in Algeria.

Sharia Law

144. Although Sharia law as it is understood in Algeria provides for severe punishments in response to homosexual behaviour, the criminal law is secular and wholly distinct. There is no reliable account, certainly in the last ten years, of a gay man being punished in accordance with Sharia law. Dr Seddon confirmed in oral evidence that he was unable to point to any example of a gay man suffering punishment under Sharia law. Although he said also that Sharia law “underpinned” the criminal law it is clear that, in fact, there is no actual manifestation of Sharia law in the operation of the criminal law in Algeria.

Risk of targeted or arbitrary attacks on gay men or abusive treatment by police

145. The respondent accepts that gay men do sometimes experience violence at the hands of family members when their homosexuality becomes known, whether that is because they have decided to “come out” to their families or because they have been discovered to be gay for other reasons. This was emphasised by Dr Seddon in his evidence. He said that “the most significant risk” to a gay man in Algeria was from his own family and that:

“... the most violent reactions to discovery of homosexual behaviour... are usually within the family.”

146. The reason for this is not hard to find. Dr Seddon explained that:

“... it is within the family that feelings about personal and sexual behaviour tend to run deepest in Algerian society- where the honour of the family is at stake, and the notion of shame and dishonour most acutely felt when norms (and particularly sexual norms) are contravened.”

147. We accept this evidence and are satisfied that gay men may well face an extremely hostile reaction from family members when their homosexuality is discovered that may escalate into violence. There is a risk of that being the case throughout Algerian society but it is clear from the evidence that that is especially the case in the less affluent and densely populated neighbourhoods where, typically, values will be conservative and non-secular and households are under close scrutiny from neighbours.
148. Such men, in seeking to relocate beyond the reach of their families may, therefore, have experienced such physical ill-treatment and may well entertain a fear of encountering similar ill-treatment from strangers in their chosen place of relocation should they be recognised to be gay there as well. But, it is clear from our analysis of the evidence that such fear, even if sincerely held, is not well-founded. Absent, of course, in the place of relocation is any notion of family honour to be protected or preserved and there will be no concern from persons other than relatives of the possibility of shame being brought upon them because a person now living in their neighbourhood is thought to contravene social *mores*.
149. We have carried out, above, a rigorous examination of the evidence identified by the witnesses and drawn to our attention in submissions concerning the risk of gay men being subjected to violent attacks. There is very little reliable evidence of that happening outside the family home, either at the hands of the authorities or by members of the public with whom gay men may have to engage. There is also very little evidence of family members attempting to seek out a gay son who has left the family home to re-establish himself elsewhere. Indeed, even if one looks where one would expect there to be motivation to record such incidents, nothing is disclosed. Asked whether LGBTI groups have recorded any data on violence against the LGBTI community, Ms Pargeter responded, simply:

“Not as far as I am aware.”

150. The absence of any attempt to record and quantify accounts of such attacks, is hard to understand, if such attacks routinely or regularly take place. Dr Seddon insisted in his evidence that there is evidence to support his view that there is a risk of such violent attacks being carried out but on examination, reliable evidence is simply absent. Similarly, although Dr Seddon accepts that there are places in Algeria where gay men can meet for sex, the so called “cruising areas” he cautioned that:

“... even there it carries the risk of arrest, blackmail, abuse, attack...” by the police.

But, again, it is impossible to identify any reliable evidential foundation for this assessment that stands up to scrutiny. We recognise that in the absence of hard evidence, Dr Seddon had little option but to rely upon what he described as anecdotal evidence but, quite properly, he recognised that:

“... none of those I spoke to had experience of this themselves but they told me what others had told them about what happened to them.”

151. Dr Seddon did rely upon the determination of the four appeals by gay Algerian men that were allowed by the First-tier Tribunal. That, however, takes the matter no further forward because, for the reasons we have explained, in each of those cases there were other reasons, quite apart from the fact of the appellant being a gay man, that led to the consequences that enabled those appellants to establish that they had a well-founded fear of persecution.

152. Therefore, in the absence of any reliable evidence of it occurring in fact, it has not been established, even to the low standard of proof applicable, that gay men in Algeria in reality face a real risk of being subjected to violent attack by the authorities or by members of the public who may come to know that a man is gay.

153. The issue of the perception of a gay man of the risk of being subjected to violent attack as opposed to the real risk of that in fact happening was touched upon by Ms Pargeter in her written evidence. She said:

“While homosexuals in Algeria are not hunted down and systematically persecuted by the state, they are certainly subjected to severe societal disapproval and stigma and are always soft targets for anyone wishing to harass them or attack them. As a result homosexuals in Algeria are forced to conceal their sexuality or else put themselves at risk of discrimination and persecution including the threat of physical violence.”

Although Ms Pargeter says that gay men are *always* soft targets for harassment and attack, she offers no evidence at all of such attacks actually taking place. Significantly, she speaks of “the threat of physical violence” rather than the actual manifestation of violence.

The range of responses to homosexual behaviour

154. It should be recognised at the outset that Algeria is an extremely conservative society where behaviour is regulated by reference to the strict Islamic values endorsed by the state. It is not just open displays of affection by gay men that are not tolerated but such behaviour by heterosexual couples also, particularly between unmarried heterosexual couples. As explained by Ms Pargeter:

“It would be impossible for gay men to engage in any sort of public display of affection without attracting severe disapproval and hostility. However, the same applies to heterosexual couples. Given the conservative nature of society, all forms of physical affection are frowned upon.”

155. Each of the expert and well informed witnesses agreed that there could be a range of responses experienced by gay men recognised as such. Although in most, possibly nearly all, cases this would involve an expression of disapproval, the evidence falls a very long way short of establishing that the response can generally be expected to be one involving physical ill-treatment. Ms Pargeter spoke of that range of responses as follows:

“Societal responses to homosexuals range from mockery and stigmatisation to outright hostility.”

so that gay men risk being:

“shunned and stigmatised”

and might:

“suffer abuse and harassment” when using cruising areas”

And, drawing this together in her written response to questions posed by the respondent, she said:

“Anyone openly displaying their homosexuality anywhere in Algeria would be at risk of mockery, harassment and possible abuse.”

156. The evidence of Dr Zahed was that:

“... LGBTI individuals in Algeria are afraid of being socially ostracised, being rejected from their families and friends and losing their jobs in case they are outed, which would mean a social death for them.”

157. Dr Seddon reproduced in his own report, without expressing any disagreement, the view expressed by Ms Pargeter that the appellant, being a gay man facing ill-treatment from family members because of his sexual identity, could move to another district of Algiers or to another city in Algeria to get away from his father, but that as a homosexual or bi-sexual man:

“... he would continue to face social stigma and hostility, and would be forced to conceal his sexuality.”

158. Dr Seddon spoke of the range of responses to displays of homosexual behaviour outside the family context extending from one end as simple expressions of disapproval to the other end to what he referred to as:

“a risk of violent attack”

adding that although almost all sources agree that there is widespread social discrimination on Algeria against and general hostility towards homosexuality:

“... several sources... suggest that this sometimes takes a violent form.”

although the sources relied upon are those we have discussed above and found not to provide any real support for that conclusion.

159. The view expressed by the US State Department report on Human Rights Practices of 2008 is that there was “societal discrimination against homosexuals” and that “while some homosexuals lived openly, the vast majority did not” but the conclusion reached in the US report, with which Dr Seddon disagrees, was that:

“there was no reported violence or official discrimination.”

And at para 21.10 of the COIR is an extract from the Swedish FFM Report of 2012 that includes:

“... Homosexuals who do not conceal their sexual orientation risk verbal harassment.”

160. Finally, in this regard, we have discussed above the Landinfo report that expresses the view that the range of responses can be expected to be from social marginalisation such as been excluded from family celebrations and being subjected to hurtful language to the use of physical violence, but as we have discussed above, that is within the family context and this reinforces that violence, where it does arise in response to discovery of homosexuality, is likely to be within that family context.
161. We have seen also that the view has been expressed by those offering expert opinion that few gay men will be able to “come out” and remain with their families but that those that are accepted are likely to be from middle class, well-educated secular families.
162. Drawing all of this together we are satisfied that the evidence clearly demonstrates that there will be a range of responses to displays of homosexual behaviour outside the family context, but while the risk of a physical attack cannot be excluded, generally the response will be at the lower end of that range. Where the response is at the upper end of the possible range of responses, that is likely to be because open displays of affection in public are simply not tolerated, whether that be by heterosexual couples or homosexual couples.

Are gay men in Algeria able to live openly as such?

163. Several sources of evidence to which we were referred have discussed or emphasised the importance of appreciating that gay men in Algeria may well not identify themselves as such. Dr Seddon referred in his report this observation by Dr Zahed:

““He referred to many people not referring to themselves as “gay” because of the extreme taboo in society – in fact, in Algeria, people who are homosexual do not generally consider themselves to be “gay”; they might have a sexual relationship with another man but will not say they are “gay” .

Reinforcing this point, Dr Zahed referred to interviews he had conducted in France with refugees who are established and face no obstacle to living openly as gay men but choose not to because, according to Dr Zahed, of the

“high societal pressure: it is impossible for them to classify themselves as “gay” “because it is like a perversion.””

164. Ms Pargeter confirmed in her evidence that it is “quite normal in Algerian society for young men to share accommodation” but she said that if it became known that they were living together as a homosexual couple:

“they would face severe social stigma and could find themselves chased out of the area. In such a scenario they would be vulnerable to harassment and attack”

Although, as we have observed, she offered no example or illustration of that actually having occurred.

165. The view expressed by the US State Department Human Rights Report as updated on 3 April 2014 is that:

“... while some LGBTI persons lived openly, the vast majority did not, and most feared reprisals from their families or harassment from authorities”

Although no information followed of the nature of such harassment. It is significant, therefore, that this evidence is an asserted fear of consequences rather than any evidence that such consequences in fact materialised.

166. This discussion of the reasons that might explain why, given the absence of any reliable evidence of gay men facing persecutory ill-treatment outside the family context, very few gay men choose to live openly as such, is informed, therefore, by a number of considerations. It is said that gay Algerian men, as a consequence of cultural, religious and societal views, do not generally identify themselves as gay, even if their sexual preferences lead them to prefer same sex relationships. It is said that even men with settled sexual preferences for same sex relationships may well continue to entertain doubt about their sexuality. Second, gay men recognise the intense and deep rooted near universal disapproval of homosexuality that obtains in Algeria. Third, near universal adherence to and respect for established social and religious *mores* including the expectation that men of a marriageable age will marry and produce children leads gay men to choose to marry. This was explained in the 2014 Landinfo report that suggests that it may be misleading to speak of such marriages as being “forced”:

“In the light of religious views on marriage being a duty, one must assume that it is not uncommon for gay men to marry women, in order to hide their sexual orientation and escape the questioning and pressure from their families and social networks. The fact that gay people marry is not necessarily a response to direct or indirect pressure; given the fundamental role of marriage in Algerian society, as well as the respectability and significance that marriage and children provide, it is fully possible to wish to marry and have children, even if one’s sexual preference is for people of the same sex.”

167. The reality of the position is that there is no reason at all to doubt that there are in Algeria gay men who have left their family homes in order to escape intense family disapproval of their sexuality, whether that was expressed in persecutory terms or not. The absence of evidence of gay couples living openly as such leads to the inevitable conclusion that they choose to live discreetly. As Ms Pargeter observed, in practice, gay men “can live together in Algeria” and it is “quite normal for young men to share accommodation”.

168. The absence of reliable evidence of adverse reactions to gay men living away from their families of a type sufficiently serious to constitute persecutory ill-treatment demonstrates that the choice to live discreetly as a gay man is not generally driven by a need to avoid persecution. In living in a manner that does not require others to be confronted with open displays of the affection a gay couple have for each other such a couple are doing no more than what is demanded of a heterosexual couple. That two gay men do not volunteer the information that they are living together not simply sharing accommodation as friends but living together as sexual partners, gay men are acting discreetly to avoid social pressures of the type contemplated in *HJ (Iran) v SSHD* that does not give rise to a sustainable claim for asylum. Put another way, a gay man

who did live openly as such in Algeria may well attract upsetting comments; find his relationships with friends or work colleagues damaged; or suffer other discriminatory repercussions such as experiencing difficulty in dealing with some suppliers or services. But none of that amounts to persecution.

169. We make one further observation in respect of this. There is evidence that gay men in Algeria do not identify themselves as being gay and continue to entertain doubts about their sexuality even if they have recognised within themselves a preference for same sex relationships. The evidence of the expert witnesses suggests that may be driven by the conditioning to which they have been subjected in growing up in a society that holds the fiercely negative views of homosexuality that we have discussed above. Plainly, a person who does not consider himself to be gay would not wish to inform others that he is. That may also be part of the explanation why Algerian men do not seek to make known that they have a preference for same sex relationships. That may help to explain also the evidence of such men, whom one would normally refer to as “gay” living in France who choose to live discreetly despite the absence of any risk at all of persecution should they “come out” as gay.

Risk on return as a failed asylum seeker

170. We can deal with this asserted risk, raised by Dr Seddon in his report, briefly. Other than his bare assertion to this effect, there is no evidence before us to support the suggestion that a person returned involuntarily as a failed asylum seeker would, on that account, face questioning or interrogation at the point of return, or the prospect of detention during which he faces a real risk. We are satisfied that no such risk exists.

Country Guidance

171. The discussion of the situation for gay men in Algeria is complicated by the fact that both country experts who have provided evidence agree that men in Algeria who have a settled preference for same sex relationships do not identify themselves as gay men in the sense that term is used in Europe and much of the world. Such a person is likely, according to the expert evidence, to continue to entertain doubts about his sexuality and to feel ashamed of his sexual preferences. Therefore, where we refer to gay men in Algeria, it must be remembered that term is used to identify a man whose sexual preference is for same sex relationships rather than a person who would wish to be known as a gay or homosexual man if there were no risk involved in letting that be known.

172. Although the Algerian Criminal Code makes homosexual behaviour unlawful, the authorities do not seek to prosecute gay men and there is no real risk of prosecution, even when the authorities become aware of such behaviour. In the very few cases where there has been a prosecution for homosexual behaviour, there has been some other feature that has given rise to the prosecution. The state does not actively seek out gay men in order to take any form of action against them, either by means of prosecution or by subjecting gay men to other forms of persecutory ill-treatment.

173. Sharia law is not applied against gay men in Algeria. The criminal law is entirely secular and discloses no manifestation, at all, of Sharia law in its application.
174. Algeria is an extremely conservative society where behaviour is regulated by reference to the strict Islamic values endorsed by the state. It is not just open displays of affection by gay men that are not tolerated but such behaviour by heterosexual couples also, particularly between unmarried heterosexual couples. Because there is general adherence to strict Islamic doctrine, which includes a similar intolerance to extra-marital sexual relations, young unmarried men do not have access to women and so may have resort to same-sex liaisons. This is not seen as homosexual conduct but pragmatism in achieving sexual gratification. Indeed, there is some evidence that where one of the same sex partners is perceived to be “dominant” he will be admired as virile and masculine.
175. There are, undoubtedly, gay men in Algeria and there is no reason to suppose that they do not represent a similar proportion of the population as in other countries. Therefore, it is remarkable that there is little evidence of gay men living openly as such anywhere in Algeria. That much is accepted by the respondent.
176. It is conceded by the respondent that where a gay man does face a real risk of persecution, which, when such occurs, is likely to be from his own family members, there is no sufficiency of protection available from the police or other state authorities.
177. There is a real risk of violent and persecutory ill-treatment of gay men from family members, motivated by the deep sense of shame and dishonour perceived to be brought upon the family as a consequence of it becoming known in the neighbourhood that there is within the household a gay son. There is a risk of that being the case throughout Algerian society but it is clear from the evidence that that is especially the case in the less affluent and densely populated neighbourhoods where, typically, values will be conservative and non-secular and households are under close scrutiny from neighbours. But once the gay son has left the family home and re-established himself elsewhere there is no real risk that family members will pursue him to that place of relocation, and so generally that risk of persecution can be avoided by the availability of a safe and reasonable internal relocation alternative.
178. Typically, a gay man in Algeria will first encounter problems when his family becomes aware that he is gay, either because he “comes out” to his family, perhaps when resisting pressure to marry, which is something expected of all Algerian men when they reach marriageable age, or because his sexual orientation has come to the attention of family members for other reasons. In such a situation, some, but certainly not all, gay men may face a real risk of ill-treatment from family members of a nature such as to cross the threshold into persecution. There is some evidence that “caring and concerned” fathers will beat or otherwise “discipline” gay sons in an attempt to “straighten them out” for their own good. Very few families will be prepared to accept and tolerate the fact of a son’s homosexuality. Those that do are likely to be educated, secular, middle class families, living in more prosperous lower density areas.

179. Where, exceptionally, a family is prepared to accept the homosexuality of their son that does not enable the son to manifest his sexual orientation outside the family home. He will choose to conceal it, not to avoid persecution, (there being no adequate or sufficient evidence of such taking place) but to protect the reputation of his family within the local neighbourhood and because he is likely to feel ashamed of having the sexual preferences that he does and will wish to avoid damaging relationships with friends, work colleagues and others.
180. As there is no sufficiency of protection available, the next question is whether the gay son whose family is not prepared to tolerate him living as a gay man, can relocate elsewhere in Algeria to avoid ill-treatment from family members and if so whether it will be reasonable to expect him to do so. If it is not reasonable then, having travelled to the UK, he will be entitled to international protection.
181. That question, of whether there is a safe and reasonable internal relocation option, is a difficult and complex one in the Algerian context. Generally, there will be no real difficulty preventing relocation and there is no indication that disapproving family members have the means, inclination or reach to cause difficulties after relocation. But where such a person has established himself elsewhere in Algeria, as marriage is expected of all Algerian men, in pursuance of what is seen as an "Islamic duty to procreate", it may well, sooner or later, become apparent that he has not adhered to the norms expected and that is likely to generate suspicion that he is a gay man.
182. There is no real risk of gay men being subjected to violence or other persecutory ill-treatment outside the family home, either at the hands of the authorities or by members of the public with whom gay men have to engage. There is an absence of reliable evidence of that occurring.
183. Very few gay men live openly as such in Algeria. Gay Algerian men, as a consequence of cultural, religious and societal views, do not generally identify themselves as gay, even if their sexual preferences lead them to prefer same sex relationships. Even Algerian men with settled sexual preferences for same sex relationships may well continue to entertain doubt about their sexuality. Second, gay men recognise the intense and deep rooted near universal disapproval of homosexuality that obtains in Algeria. Thus, Algerian gay men who have moved to France where, plainly, they face no obstacle to living openly as such, generally choose not to because they refuse to categorise themselves as gay, even though there is no persecutory disincentive to doing so.
184. The fact that there is very little evidence of gay men living openly in Algeria invites the conclusion that must be because the risk of persecutory ill-treatment likely to be attracted is such as to prevent that from happening. But the expert and other country evidence does not establish that, in fact, there is any real risk outside the family context of such persecutory ill-treatment being meted out to persons suspected as being gay. The expert evidence indicates that a gay man recognised as such is very likely to attract an adverse response from those by whom he is encountered as he goes about his daily business. But that adverse reaction is not reasonably likely to be such as to amount to persecution, being on a range of responses from a simple expression of disapproval,

mockery or name calling up to the possibility of physical attack. But there is simply no reliable evidence of the expression of disapproval being expressed in such circumstances generally being otherwise than at the lower end of that range of responses.

185. That gives rise to a conundrum. If there is no evidence of persecution of gay men who have escaped ill-treatment from family by relocating elsewhere, why is there no evidence of gay men feeling able to live openly? Alternatively, is the absence of evidence of physical ill-treatment of gay men due to the fact that there are no gay men living openly?

186. The answer, in our judgement, is as follows:

- a. The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.
- b. Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.
- c. Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social *mores* and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man, in any event.

187. Underpinning these conclusions is recognition that Algerian society is governed by strict Islamic values which all citizens, including gay men, in practice respect, even if only for pragmatic reasons.

188. This gives rise to a compromise which in some senses is unsatisfactory but, as a matter of law, does not give rise to a right to be recognised as a refugee. Algerian society, including the state authorities, effectively tolerates private manifestations of homosexual conduct, both between young unmarried men and gay men who have established themselves away from the family home, provided there is no public

display of it. Gay men choose to live discreetly not to avoid persecution, because there is no evidence that there is any, but because they recognise that the society they live in is a conservative one, subject to strict Islamic values, that is unable to openly embrace the existence of the practice of homosexuality, just as women are expected to submit to Islamic requirements such as being veiled and accepting other limitations upon their ability to act as they may wish to.

189. The evidence before us indicates that as a result of societal views and conditioning, Algerian men with a preference for same-sex relationships generally do not in fact regard themselves as gay men and so have no reason to identify themselves as such to others by conducting themselves in a manner that has come to be regarded as “living openly” or discreetly. Therefore, choosing not to live openly as gay men is not due to a fear of persecution but other reasons to do with self-perception and how they wish to be perceived by others.
190. For these reasons, a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members, or because he has particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation.

Determination of OO’s appeal

191. It is the appellant’s case that he is at risk on return to Algeria on account of his sexuality. He is a gay man although, as he has also had relationships with women, he now describes himself as bisexual. In the light of the country guidance findings set out above, his protection claim cannot succeed on that account alone. We must, therefore, examine his account of his experiences in Algeria and make findings of fact. There are two credibility findings to be made. First, in respect of his factual account of the events that he said led to his need to leave Algeria and second, in respect of his sexuality as the respondent does not accept that he is a gay or bisexual man at all.
192. The submissions of the parties can be summarised briefly, although we do not repeat the submissions advanced in respect of the country guidance issues. For the appellant, Ms Chapman submits that we should accept the appellant’s asserted sexual orientation and she points to the evidence of Drs Perrin and Bell and the letter from Nabil Diafi, an outreach worker, each of whom accept what the appellant says about this. Making allowances for any contradictions in his evidence for the reasons identified by Dr Bell, she submits that we should find the appellant to be a credible witness in respect of his account of his experiences in Algeria. It follows from that, she submits, that the appellant will be at risk on return as a gay or bisexual man who could not return to his family so that he would be homeless and unable to form or pursue open relationships with other men.

193. For the respondent Mr Singh submits that the contradictory and inconsistent account given by the appellant is explained not by any difficulty in giving evidence about these events but because the appellant has fabricated his entire account of his experiences in Algeria. Mr Singh submitted that so extensive is the inconsistency, contradiction and implausibility in the appellant's account of his experiences in Algeria that it is simply impossible to accept that he has shown to be reasonably likely that which he says has occurred.
194. We heard oral evidence from the appellant. His account has been set out on a number of occasions. The most recent statement is dated 15 September 2015, which he adopted as his evidence in chief. He adopted also what had been written in earlier statements of February, March and June of 2011 and March 2012. We heard detailed oral evidence from the appellant at some considerable length. However, for present purposes the following summary of his account will suffice, taken from his most recent statement:
- “When I was about 12 to 13, I developed a friendship with an older boy, Karim, who led me into a sexual relationship. Homosexual relationships are illegal and regarded as sinful in Algeria. One day in 2008, my parents came home unexpectedly and caught us in an undressed state together. They were shocked. My mother threw herself from the balcony, from the third floor. I fled. I passed and saw the broken body of my mother outside as I fled. I thought my father would kill me if he caught me. I had no opportunity to embrace my mother. The next day I could only observe her funeral from a distance, without revealing myself. My father did subsequently find me in a park and stabbed me but I escaped again. I then left Algeria. I left to escape my father and the consequences of being discovered in a homosexual relationship which caused my mother to kill herself.”
195. The appellant explained how, after being stabbed by his father when he was encountered in the park, he went to hospital to have the wound stitched after which he caught a train to the coast where, after a short stay, he was able to travel by boat to Spain. Although he had only a very small amount of money he was able to make those journeys because he boarded the train without a ticket and the people smuggler whose boat took him to Spain took pity on him and so allowed him to travel for free, although the other eleven passengers paid for their passage. After spending four days in Spain, the appellant travelled with some Moroccan people he had met to France. He stayed in Marseille between November 2009 and June 2010 during which time he supported himself with money he made by selling cigarettes. After that, he decided to travel to the United Kingdom. With a friend, he travelled to Belgium when they boarded the lorry that brought them into this country.
196. Before assessing the issue of credibility, we must have regard to the evidence of Dr David Bell, who is a consultant psychiatrist who has been commissioned by the appellant's solicitors to prepare a report which is now before the Tribunal, being dated 8 September 2015.
197. Having set out a summary of the events that brought the appellant to the United Kingdom as an unaccompanied minor, Dr Bell records that the appellant was granted discretionary leave to remain until his 18th birthday but he notes that although now 20 years old, the appellant remains in the care of Croydon Social Services as a Care Leaver which Dr Bell regards as “an acknowledgement of the

degree of his psychological vulnerability". Before embarking upon his analysis, Dr Bell said:

"I am also informed by Miss Bye (the appellant's solicitor who commissioned the report from Dr Bell) that [Mr OO] has been fairly chaotic in his manner but consistent in his story. Miss Bye also informs me that he is finding it very difficult to cope in general and cannot remember things, is unable to concentrate and has complained of sleep disturbance and hallucinations and that he has been referred to mental health services. However, because of his frequent changes of address and his forgetfulness, it has been difficult for him to get proper assessment and treatment."

198. Dr Bell referred to a report prepared in 2011 by Dr Perrin, a clinical psychologist, who recorded an account of the appellant's "traumatic experiences in Algeria and also on the journey to the United Kingdom" and of his "quite severe traumatic experience whilst in Feltham (Young Offenders' Institution) where he was attacked by other prisoners and also by the guards" and concluded that the appellant suffered from post-traumatic stress disorder and Depressive Episode. Dr Perrin found the appellant to be credible and accepted all that he said.
199. Next, Dr Bell carried out a review of the appellant's medical records, disclosing incidents of self-harm and alcohol abuse as well of him reporting having "heard voices" since his time in France. Dr Bell concluded:

"These records indicate that [Mr OO] has suffered from severe psychological disorder at least since 2010 and in all likelihood before. The alcohol consumption and drug taking should be understood in relation to this disorder. As far as I can tell he has never had appropriate specialist treatment for this disorder."

200. Dr Bell met the appellant for an interview that lasted about 1 ¾ hours. He said:

"At the start of the interview it was clear, as I have already indicated, that I was dealing with a man who was quite seriously disturbed..."

And a little later:

"His attention, concentration and memory are all very poor. He forgets things all the time and is constantly making lists..."

201. Dr Bell's conclusions are set out at some lengths and include:

"It is clear to me that [Mr OO] suffers from Severe Psychiatric Disorder. His condition would satisfy the diagnostic criteria for Severe Post-Traumatic Stress Disorder... I refer here to the intrusive thoughts, flashbacks, dissociation, claustrophobia, anxiety, panic attacks, typical post traumatic dreams... disturbances of attention and concentration, sleep disturbance, marked volatility of mood (that is, surges of unmanageable rage), paranoid ideation, hallucinations ...noise sensitivity..."

Adding:

“... in this case, there have been a series of traumatic events over an extended period of time. I refer here to the sexual experience he described at the age of about thirteen which may amount to abuse or even rape, the events surrounding the suicide of his mother and the subsequent violent attack by his father, the journey from Algeria to Spain which was a highly traumatic event both in terms of being removed from his country and the experience of the journey in which he was exposed to the possibility of death and witnessed deaths of others and then living rough as a very young person in Spain before moving to France.

...

Thus, in my view, the more appropriate diagnosis is of Chronic Traumatized State.”

202. Pausing there, we observe that the appellant’s oral evidence in this appeal is not easy to reconcile with Dr Bell’s conclusion that the appellant’s first sexual experience with Karim amounted to rape. The appellant said:

“The first time we were playing around. It was a joke. It was at my home.”

203. The consequence, according to Dr Bell, is that:

“... although [Mr OO] is technically an adult, he functions psychologically as a minor...”

204. Dr Bell added to his diagnosis as the report proceeded. He detected and diagnosed also “typical Survivor Syndrome” as well as “Déjà vu phenomenon” and “a significant degree of Dissociation”. Dr Bell was satisfied that the appellant is “primarily homosexual” although he found that “there was some confusion about his sexual identity”, and:

“It is of great importance in this regard that [Mr OO] has “come out” as gay/bi-sexual.”

Finally, Dr Bell said:

“I think it is already clear from what I have stated in my report that he is highly compromised in his attention, concentration and memory, as a result of his psychiatric disorder. In my opinion he would be very limited indeed in his ability to give cogent evidence.”

205. Dr Bell referred to the earlier report prepared by Dr Perrin in June 2011, but does not mention that Dr Perrin said of the appellant, at para 5.1.2 of his report:

“He had no difficulties suggestive of memory problems. He was able to recall and describe painful material from his past including sexual and violent experiences...”

206. We have had careful regard to all that Dr Bell has said in his report. The question for us is not, of course, whether any particular diagnosis is correct but whether the matters to which Dr Bell has referred to impact upon the assessment of the evidence that we received from the appellant on this occasion.

207. The appellant gave extensive oral evidence before us. Mindful of Dr Bell’s concerns,

we made clear that the appellant could take a break whenever he, or Ms Chapman, thought necessary. However, the appellant demonstrated no difficulties in giving his evidence which, although riddled with inconsistency and contradiction, was delivered confidently, coherently and in a manner that disclosed no difficulty at all in responding to all questions. There was no indication of anxiety, loss of concentration or lack of understanding. We are entirely satisfied that the appellant fully understood the questions he was asked to respond to and that his answers were those he intended to provide, some of which he clarified by volunteering additional information. We have no doubt at all that his participation in the hearing was not in any way compromised by any of the difficulties identified by Dr Bell.

208. There are formidable difficulties with the appellant's evidence.
209. At the very core of his claim is his account of his relationship with Karim. In his oral evidence he said both that he first met Karim when he was 13 years old and, later, that he was just six years old when he first met Karim, whose family occupied a flat in the same building, after which they had grown up together and gone to the same school. In his statement dated 15 February 2011 he said that he had known Karim since he, the appellant, was 10 or 11 years old. That is a significant inconsistency because by the time the appellant was 10 or 11 he had left school.
210. It might be observed also that the account recorded by Dr Perrin of how the appellant and Karim first met sits uneasily with what the appellant now says about this:
- "When he was a child selling food, then later other goods in the street for his mum, he attracted the attention of older boys and sometimes men. They would try to befriend him. He was not alone in that regard, as men and older boys approached other younger kids on the street. One such boy who was about 15 or 16 (Karim) befriended [the appellant] who was then 12 or 13 years of age..."
211. The appellant has said both that his father would not usually allow his mother to leave the house and that she went out to visit friends, to do the shopping and to pay for the electricity. In his statement the appellant said that some evenings his mother would go out to see her friends. That is simply impossible to reconcile with his contradictory evidence of a controlling father who would not let her leave the house.
212. The appellant's evidence before us was that before his parents were married his father would take drugs and was "always drunk". When asked why his mother would want to marry someone who took drugs and was drunk all the time the appellant said that "he was good to her".
213. At the last hearing the appellant's evidence was that he and Karim had sex together at Karim's family home but in his oral evidence to us he said that they only ever had sex at his own home and never at Karim's home, explaining this was because Karim had a number of brothers also living at home. Despite all that Dr Bell has said, it is very hard to accept that such an error of recollection can be explained away if the appellant were giving evidence of events that had in fact occurred.

214. The appellant told us that it was some time between 2.30 pm and 4 pm that his parents came home and found him and Karim having sex. However, he said also that Karim was at that time still attending at school and would be there in the afternoons and that he himself spent the days on the streets selling food that his mother had made, but he initially offered no explanation why, on that particular day, Karim was not at school and he was not selling his mother's food on the streets.
215. Asked for an explanation, the appellant said he did not have to sell food on that day because his mother had told him they had enough money. But in oral evidence he said that his father had no income and gave his mother no money who was, therefore, only able to keep the household going and to put food on the table from the income produced by the sale by the appellant of the food that she prepared. It is simply not credible that the appellant's mother should say that they would not need to do on that particular day something that otherwise would be essential to provide the family income. It was because of the need to earn money that the appellant was taken out of school.
216. In any event, as he knew that his parents had gone to the mosque at noon and would generally return after three or four hours it is impossible to understand why the appellant would, at about the anticipated time of return of his parents, be in a state of undress with Karim while having sex.
217. The appellant said first that when his parents returned to the flat he and Karim were undressed from the waist down and were having sex. On seeing this his mother threw herself out of the window and as his father went to the window he and Karim rushed out of the apartment to make their escape. When asked how he could have run away when undressed, the appellant said, contradicting his earlier account, that he was not in fact undressed from the waist down but had merely lowered his shorts. Therefore, he was able to leave immediately without waiting to find some clothes. That, however, is impossible to reconcile with his oral evidence as reflected in this exchange:
- Q: What were you wearing when you were found?
A: We had jumpers on top but without trousers.
Q: Did you have underwear?
A: No.
218. He said in oral evidence that having fled from his home he stayed initially in a local park, known as Red Park, wearing the clothes that he had when he fled. Asked about this he said, for the first time, that he had found some trousers in a waste bin.
219. It is notable that the appellant's account was silent as to what happened to Karim, even though he said that they fled together when his parents returned. The appellant said that Karim lived with his family in the same block of flats, on a different floor. Therefore, it seems improbable that Karim would return to his own home, which was known to the appellant's father. Yet the appellant makes no

suggestion that he looked to see if Karim also had moved to the Park, which he said was the obvious place to sleep, given the circumstances.

220. That gives rise to another difficulty with the appellant's credibility. If Red Park was the obvious place to sleep out in and he knew that his father would wish to do him harm, which is why he had fled, it is difficult to see why he should stay there, close to his home, where the risk on that account would be greatest.

221. A significant contradiction in the appellant's evidence is that in oral evidence the appellant said that he saw his mother's "broken body" as he fled from the apartment block after she had thrown herself out of the window but in his witness statement he said:

"I heard what happened from other people."

222. Similarly, in his witness statement dated 15 February 2011 the appellant said that after his mother had thrown herself from the window of their third floor flat:

"My father went to see what had happened, and it was then that we escaped. I ran from the house. He then chased after me, but he could not catch me."

But in oral evidence he was clear that his father did not chase after him. We do not accept, had this been an event that had occurred, that the appellant would be unclear as to whether or not he was chased by his father as he fled from the flat.

223. The appellant has given a contradictory and inconsistent account of his mother's funeral. It is not in dispute that his evidence at the earlier hearing was that he discovered the arrangements for the funeral when he heard about this when attending the mosque. His oral evidence now is that he knew that the funeral would take place the day following his mother's death and would start from the local mosque and so he had no need to be told of the arrangements. Also, whereas his evidence previously had been that the cemetery where his mother was to be buried was a two hour bus ride away, his evidence now is that it took him 1 ½ hours to walk from the mosque to the cemetery.

224. The appellant said that his father found him in Red Park, where he had been sleeping rough. He said his father was an Iman at a nearby mosque, although he did not know if that was a paid position. The park was close to both the family home and the mosque. As that meant that there was plainly a risk that the appellant would encounter his father, that choice of refuge is lacking in credibility. He described how his father stabbed him in the shoulder after which he managed to get away from him, saying only that he ran away, and walked for about 1 ½ hours to the nearest hospital. Asked how he managed to do that, as he was bleeding from a stab wound that needed urgent medical attention, he said, for the first time, in oral evidence that a passer-by provided some cloth torn from his own T-shirt and bandaged the wound so that the bleeding was stopped so that he was able to make the journey to the hospital.

225. Whilst it is entirely plausible that the appellant may have been able to complete his train journey without a ticket, we find his account of being offered a free journey on the boat that took him to Spain completely lacking in credibility. This was a small boat that accommodated just twelve passengers. The persons organising the boat were traffickers doing this for profit. The appellant accepted that a significant sum had been paid by each of the other passengers for their place on the boat. The explanation that the traffickers took pity upon the appellant and so allowed him to travel without payment is one that we do not accept is reasonably likely to be true. He had been in this area for just three days and we do not accept that was time enough for a relationship to be forged to produce such a gesture of generosity.
226. The appellant claims to have had homosexual relationships with three men since leaving Algeria. Although those relationships were said to have lasted for up to 18 months the appellant was unable to remember the surnames of any of these men. In respect of one of those relationships, during which the appellant said that he and his male partner lived together, he said that he did not look at the post delivered to that address, which would have revealed the name, because someone else's post was nothing to do with him. We do not accept that the appellant would be unaware of those names or unable to recall them had his account of the relationships be true. Similarly, his explanation for having no record of contact details, which is that he managed to lose his mobile phone on three separate occasions shortly after each relationship ended, is one that we do not accept to be true.
227. These are some of the contradictions or inconsistencies disclosed by the appellant's evidence. We do not accept that they can be explained away by the matters raised by Dr Bell. Even if the appellant had engaged in some sexual contact with a male person in Algeria, whether that be his friend Karim or anyone else, the evidence indicates that such behaviour would not be unusual nor indicative of homosexuality. The appellant has also formed relationships with women and has no current male partner in the United Kingdom and there is absent any evidence at all to support his asserted sexual orientation, other than a letter from an outreach worker, prepared for these proceedings, in which it is said that the appellant disclosed the fact that he is bisexual and the opinions of Dr Bell and Dr Perrin, both of whom accepted all that the appellant had told them an. . Absent also is any real detail of the few same sex relationships the appellant has described, he being unable to provide the surname of any of his former partners, even though he said that those relationships persisted over a period of months during which they were living together at hostels.
228. In his letter, incidentally, the outreach worker, who has been in contact with the appellant since 2010, said:
- "I am currently still in contact with [Mr OO]; we occasionally meet in Finsbury Park and other places, he looks very positive and in good health. No concerns."
229. In his oral evidence the appellant explained that he had not told Algerian friends about his sexual orientation because:

“I have maybe only three friends in the Algerian community. If I told them I was gay or bisexual they wouldn’t understand and would be very disrespectful to me and they would call me names.”

We do not accept that would be sufficient to motivate a suppression of sexual identity by the appellant. We are satisfied that the reason he has not told friends and associates that he is gay is because he does not regard himself, in truth to be a gay or bisexual man.

230. As we have observed, there are two separate credibility issues to be resolved. The first is the appellant’s account of events in Algeria and the second is his asserted homosexuality or bisexuality. We shall address each in turn.
231. The appellant has given a contradictory, inconsistent and sometimes implausible account of events which, if they had in fact occurred, it would be reasonable to expect a more consistent account to be given, even allowing for the difficulties described by Dr Bell. We do not accept that these contradictions arise because of any difficulty in recollection or in responding to questions. We find that the events described by the appellant are a fiction and have been fabricated to manufacture a basis upon which to advance an asylum claim.
232. It does not follow from that finding of fact that we must necessarily also reject his claim to be a gay or bisexual man. However, it is for the appellant to establish the facts upon which he seeks to rely, albeit the burden of proof facing him is a low one. For the reasons we have given we find that he has failed to discharge that burden in respect of his asserted sexuality and so we find as a fact that he is not a gay or bisexual man and so will not face any difficulty on that account upon return to Algeria.
233. In any event, even if we were wrong to reject his account of his own sexual orientation, as we have rejected his factual account of the events that he claimed led to the need for him to leave Algeria, in view of our conclusions in respect of the position of gay men in Algeria his claim for international protection would fail even if we were wrong about his sexuality. The appellant has proved himself to be a resourceful individual who has produced an income in Algeria by selling food on the streets when he was a child and supported himself in France by selling cigarettes on the streets, an activity sufficiently successful to enable him to pay for accommodation. Therefore, on the basis of our findings of facts there is no obstacle to the appellant returning to live with his family in Algeria or, if he prefers, to establish himself elsewhere.
234. We are reinforced in our conclusion that the appellant cannot succeed in this appeal by returning to the approach set out in *HJ (Iran)* by Lord Rodger to be followed in assessing claims of this nature. We have found the first question to be addressed, which is whether we are satisfied on the evidence that he is gay or would be treated as gay by others upon return to Algeria, delivers a negative answer. But even if we were wrong about that, the process of addressing the questions that follow

demonstrates that the appeal cannot succeed. We have found that there is no evidence before the tribunal to support the assertion that gay men living openly in Algeria would be liable to persecution, other from family members while remaining in the family home. However, there will generally be available a safe and reasonable alternative in relocating outside the family home.

235. That is sufficient to establish that the appeal must fail but, for the sake of completeness we will address the remaining questions posed by Lord Rodger. We recognise that the Algerian context is unusual because the evidence indicates that very few gay men do live openly. If the appellant were to be returned to Algeria as a gay man we are entirely satisfied that he would live discreetly and so not attract any level of disapproval from others. He would do so not in order to avoid persecution, because there is no real risk of such, but because he would choose to do so, as do other men in Algeria with a preference for same sex relationships, because that is how he himself would choose to live, because of social and societal pressures that do not amount to persecution
236. Ms Chapman confirmed that the appellant does not pursue in these proceedings any claim under article 8 of the ECHR and so there is no need for us to address it.

Summary of decision

The appeal is dismissed.

Signed



Date: 5 January 2016

Upper Tribunal Judge Southern

ANNEX

Schedule of Documentary Evidence Considered

Expert Reports before the Upper Tribunal

<u>Date</u>	<u>Source</u>
2011	<i>Report of Dan Littauer</i>
2011	<i>Report of Dr Ludovic Zahed</i>
08 June 2011	<i>Report of Dr S Perrin</i>
13 June 2011	<i>Report of Alison Pargeter</i>
14 May 2012	<i>Letter of Dr L Zahed</i>
13 June 2015	<i>Report of Dr D Seddon</i>
29 July 2015	<i>Report of Alison Pargeter</i>
08 September 2015	<i>Report of Dr David Bell</i>
09 September 2015	<i>Report of Dr Ludovic Zahed</i>
16 September 2015	<i>Report of Dr David Seddon</i>
16 September 2015	<i>Response of Dr David Seddon</i>
18 September 2015	<i>Response of Alison Pargeter</i>
18 September 2015	<i>Response of Dr Ludovic Zahed</i>

Material referred to in Expert Reports/Responses

<u>Date</u>	<u>Source</u>	<u>Description</u>
10 August 2010	<i>Reuters</i>	Hardline Islam steps out of shadows in Algeria
13 September 2013	<i>JOLPRESS (Paris)</i>	Algeria: a blogger publishes a manifesto for Homosexuality
15 December 2014	<i>AlAraby</i>	Algeria flirts with rehabilitation of Islamist foes
06 January 2015	<i>Algerie-Focus</i>	Oran Sida: Les mentalities commencent a changer en Algerie
16 January 2015	<i>Le Monde</i>	En Algerie, les islamistes radicaux a l'air libre
14 February 2015	<i>Le Soir d'Alerie, Actualities</i>	Le minister des affaires religieuses a Oran: L'imam implique dans une affaire de pratiques homosexuelles a ete radie
25 August 2015	<i>The Independent</i>	Being gay in the Islamic State: men reveal chilling truth about homosexuality under Isis

Country Documents before the Upper Tribunal

<u>Date</u>	<u>Source</u>	<u>Description</u>
Undated		
Undated	<i>Embassy of PDR Algeria</i>	Constitution

Undated	<i>Law Texts</i>	Algerian Law affecting LGBT
Undated	<i>Letter</i>	From Randa Lamri, Sweden
Undated	<i>Avert</i>	Gay men in Africa and HIV/AIDS
Undated	<i>In Brief</i>	Homosexuality in the UK
2001		
2001	<i>Amnesty International</i>	Crimes of hate, conspiracy of silence
2006		
08 August 2006	<i>ILGA Europe</i>	Keynote address by Louise Arbour UNHCHR
2007		
31 May 2007	<i>Ramzi Isalam</i>	Death to Deviants
30 July 2007	<i>IRB of Canada</i>	Algeria: treatment of homosexuals
2008		
06 March 2008	<i>UN Human Rights Council</i>	Summary by HCHR
2010		
13 April 2010	<i>LGBT Asylum News</i>	Algeria: two-year jail sentence for gay Imam
09 July 2010	<i>CNN</i>	Algerian transsexual's memoirs reveal life of discrimination
13 September 2010	<i>LGBT Asylum News</i>	Being gay in Algeria today
09-10 October 2010	<i>CALEM</i>	France 24 interview with Dr L Zahed and information about the organisation
30 December 2010	<i>Court of Appeal Order with related statement and letter</i>	MB (Algeria) v Secretary of State for the Home Department
2011		
2011	<i>USSD</i>	Human Rights Report, Algeria
2011	<i>Home Office API</i>	Sexual orientation issues in the asylum claim
Winter/Spring 2011	<i>International Gay & Lesbian Human Rights Commission</i>	Newsletter
25 January 2011	<i>UNHCR</i>	Certificate: I H AI Omary
02 February 2011	<i>San Diego Gay and Lesbian News (SDGLN)</i>	In Algeria, a gay blog breaks boundaries
02 March 2011	<i>Ksari</i>	Tizi-Ouzou: the Imam of the Mosque El-Atik placed in custody
19 May 2011	<i>DW</i>	EU asylum policy for gays and lesbians criticized by LGBT groups
11-16 June 2011	<i>Swedish Migration Board</i>	The development in Algeria in the shade of the Arabic Spring, and its consequences on migration

10 October 2011	<i>Care2</i>	In North Africa, gays light a candle for visibility
03 November 2011	<i>Home Office</i>	COI Report: Algeria
17 November 2011	<i>Changing Attitudes</i>	Beirut, an imperfect haven for LGBT Refugees
2012		
2012	<i>Discover Algeria</i>	Lesbian, gay, bisexual, transgender law and rights in Algeria
May 2012	<i>Alouen</i>	Print out
15 May 2012	<i>Gaymiddleeast.com</i>	Email from Adams Wahid
25 May 2012	<i>American Psychological Association</i>	Sexual orientation and homosexuality
19 July 2012	<i>Asylum Law</i>	Sexual minorities & HIV status
11 October 2012	<i>France24</i>	Being gay in Algeria: I'll never live with the one I love
22 October 2012	<i>UNHCR</i>	Guidelines on International Protection No.9, Claims to Refugee Status based on Sexual Orientation
19 November 2012	<i>Erasing 76 Crimes</i>	Lively gay community in Algeria gains visibility
2013		
2013	<i>USSD</i>	Algeria Human Rights Report (extract)
Spring 2013	<i>Northwestern Journal of International Human Rights</i>	From 'Kill the Gays' to 'Kill the Gay Rights Movement': the Future of homosexuality legislation in Africa
17 January 2013	<i>Home Office</i>	COI Report: Algeria (extract)
May 2013	<i>UNHCR</i>	Beyond Proof: credibility assessment in EU asylum systems (extract)
07 May 2013	<i>Colours and Shapes</i>	Online posting
23 May 2013	<i>Amnesty International</i>	Annual Report 2013: Algeria
July 2013	<i>IRB of Canada</i>	Algeria: situation of sexual minorities 2010-July 2013
14 September 2013	<i>National Post, Canada</i>	Algerian refugees sought protection from Islamists who equate ballet with homosexuality and 'depravity'
2014		
2014	<i>Guardian Witness</i>	Algeria - They don't kill us
2014	<i>Landinfo</i>	Algeria, conditions for gay men, HO translation
11 February 2014	<i>AI joint public statement</i>	Algeria: allow rights groups to visit
14 February 2014	<i>Tofik Dibi</i>	Life as a gay Imam isn't as bad as it sounds
27 February 2014	<i>USSD</i>	2013 Human Rights Reports, Algeria
July 2014	<i>Human Rights First Report</i>	The state of human rights for LGBT people in Africa
25 July 2014	<i>Freedom House</i>	Freedom in the World 2014 - Algeria
26 September 2014	<i>Gay Star News</i>	UN Human Rights Council condemns

		violence and Discrimination against LGBTI people
24 October 2014	<i>Erasing 76 crimes</i>	Sex, youth and politics in Algeria, Pierre Daum
03 December 2014	<i>France24</i>	Behind the scenes with Algeria's first LGBT magazine
15 December 2014	<i>Nuftah</i>	Gay & Lesbian mobilization in Algeria: the emergence of a movement
2015		
11 February 2015	<i>Home Office</i>	API, sexual identity issues in the asylum claim
25 February 2015	<i>Amnesty International</i>	Report 2014/15: Algeria
May 2015	<i>ILGA</i>	State sponsored homophobia: a world survey of laws
12 May 2015	<i>Echorouk online</i>	Algeria's religious affairs minister commentary
10 June 2015	<i>My East-West</i>	Margarida Santos Lopes, A former Salafi opened the first gay-friendly mosque in Europe
26 June 2015	<i>USSD</i>	Algeria Human Rights report for 2014
13 August 2015	<i>Afamena</i>	Algeria: campaigns turn population against homosexuals
06 October 2015	<i>ILGA</i>	Ten Ten: the 6 th Algerian national day against Homophobia and transphobia
02 November 2015	<i>El Watan</i>	Algeria - the Minister of Religious Affairs and WAKFS has announced the impending creation of a national observatory to Combat religious extremism