



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/51092/2020  
IA/00603/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Tuesday 4 October 2022**

**Decision & Reasons Promulgated  
On the 06 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**CB  
[ANONYMITY DIRECTION MADE]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, I continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant [CB] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**Representation:**

For the Appellant: Mr D Grütters, Counsel instructed by Collingwood Immigration Services

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION**

1. By a decision promulgated on 21 June 2022, I found an error of law in the decision of First-tier Tribunal Judge Gumsley dated 12 April 2021 dismissing the Appellant's appeal against the Respondent's decision dated 6 August 2020 refusing his protection and human rights claims. I therefore set aside Judge Gumsley's decision whilst preserving most of the findings made. My error of law decision is appended hereto for ease of reference.
2. I also gave directions for the filing of further evidence. In addition to two further witness statements of the Appellant dated 28 September 2022 and 4 October 2022, the Appellant relied on an expert report of Mr Hugh Miles dated 4 September 2022 ("the Expert Report") and additional material contained in a supplementary bundle to which I refer below as [ABS/xx]. Evidence contained in the Appellant's original bundle before the First-tier Tribunal is referenced as [AB/xx]. Evidence in the Respondent's bundle is referred to as [RB/xx].
3. I also heard oral evidence from the Appellant via an interpreter. I was satisfied that the Appellant and the interpreter understood each other. Having heard that evidence and submissions from both parties, I reserved my decision and indicated that I would provide that in writing which I now turn to do.

## **THE ISSUES**

4. The background facts are set out in broad detail at [2] of my error of law decision. I will come to the detail of the protection claim which remains below.
5. The findings of Judge Gumsley as preserved by my error of law decision are as follows:
  - (a)The Appellant is not at risk from his former business partner, M2, or from M2's family or associates ([24] to [33] of Judge Gumsley's decision).
  - (b)Although it is accepted that the Appellant was a victim of modern slavery whilst in the UK at the hands of [D], the Appellant is not at risk from [D]'s family or associates in Algeria ([34] to [37] of Judge Gumsley's decision).
  - (c)The Appellant's claim to be homosexual is genuine. He has been aware of his sexuality from a relatively early age and engaged in homosexual activity whilst in Algeria. He has become part of the local LGBTI community in the UK ([38] to [40] of Judge Gumsley's decision).
  - (d)The Appellant retains contact with his family. He did not suffer any violence at their hands. He is not at risk from his family on return to Algeria ([41] to [48] of Judge Gumsley's decision).

- (e) Although the Appellant is accepted to be suffering from PTSD and depression for which he is receiving medication and counselling, treatment for his mental health conditions is available in Algeria. His mental health condition is insufficient to give rise to an Article 3 claim ([58] to [59] of Judge Gumsley's decision).
- (f) The Appellant failed to claim asylum in France or Spain in transit to the UK. That is relevant to his credibility having regard to section 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ([60] to [61] of Judge Gumsley's decision).
- (g) Even if the Appellant were at risk on return from [M2] or the family and associates of either [M2] or [D], the Appellant could internally relocate to avoid such risks. ([77] to [78] of Judge Gumsley's decision).
- (h) Subject to the outcome of the protection claim in other regards, Article 8 ECHR would not be breached by removal ([79] of Judge Gumsley's decision).

6. The issues which remain are as follows:

- (1) Was the Appellant arrested, detained, prosecuted and convicted in 2011 on account of his homosexuality?
- (2) Is the Appellant at risk on return from the community in Algeria on account of his homosexuality?
- (3) Is the Appellant at risk from State authorities in Algeria on account of his homosexuality?

7. Mr Clarke submitted at the outset of the hearing that I should not have left open as an issue whether the Appellant was arrested by the authorities in 2011. He pointed out that Judge Gumsley's findings at [49] to [53] of the decision were not successfully challenged. However, it seemed to me when reaching my error of law decision that this was part of the issue of risk on return from the Algerian authorities and, accordingly, that I needed to revisit this based on all the evidence about the situation for homosexuals in Algeria. I made clear however that both representatives were entitled to refer to the Appellant's evidence in relation to events in Algeria both from this hearing and that given on the previous occasion.

## **LEGAL FRAMEWORK**

8. I was referred by the representatives to two decisions. The first is OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC) ("OO"). That is the latest country guidance in relation to the situation for homosexuals in Algeria. The second, YD (Algeria) v Secretary of State for the Home Department (UNHCR intervening) ("YD") concerns the application of the guidance in OO in a subsequent appeal.

9. OO represents the most recent country guidance in relation to the situation for homosexuals in Algeria. The guidance reads as follows:

“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.”

10. As I noted at [21] of my error of law decision, the Appellant's case is not that OO should be departed from but that, properly understood, OO allows for there to be a risk to those who have "particular characteristics that might ...give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses" (per [6] of the guidance). Similarly, the Appellant's claim includes an assertion that he has been prosecuted in the past because he is gay. Although the guidance in OO states that there is no real risk of prosecution, it accepts that a prosecution might occur if there is "some other feature that has given rise to the prosecution" (per [1] of the guidance).
11. The Court of Appeal, in YD (Algeria) considered the application of OO in another appeal. As indicated at [3] of the judgment, the two issues which there arose were whether the Tribunal in OO "wrongly equated persecution with a risk of being subjected to physical violence" and, second, whether the Tribunal had failed to consider the treatment suffered by gay men on a cumulative basis. The Court also had to consider whether the Tribunal in OO had erred in its application of the principles in HJ (Iran) v Secretary of State for the Home Department [2011] 2 AC 596 ("HJ (Iran)").
12. As the Court pointed out, in relation to the first of the issues, whether treatment amounts to persecution depends on whether the treatment is "sufficiently serious" but is not limited to death or serious physical or mental violence ([29]). The treatment may be at the hand of the State or non-State agents. In relation to the latter, the protection offered by the State must be insufficient in the sense that the authorities are either unwilling or unable to offer that protection. As the Court also noted, persecution may take the form of individual acts or an "accumulation of different acts".
13. Having cited [172] to [190] of the decision in OO from which passage the guidance was drawn, the Court concluded that the Tribunal had not limited itself to the risk of physical violence ([43]), that the Tribunal did consider the cumulative effect of the treatment ([45]) and had not erred in its application of the principles in HJ (Iran) ([47]).
14. It is appropriate to note at this juncture and in relation to HJ (Iran) that the Tribunal found in YD (Algeria), consistently with the guidance in OO, that the appellant would not live openly in Algeria due to respect for social norms, tradition and religion ([64]). The appellant would not therefore have hidden his sexuality due to a risk to him if he were to conduct himself as an openly gay man. This is important because, as Lord Hope said in HJ (Iran) "[c]oncealment due to a well-founded fear of persecution is one thing. Concealment in reaction to family or social pressures is another." It was therefore necessary to consider why an individual would conceal his sexuality.
15. As with any protection claim, the burden of proving that there is a risk lies with the Appellant. However, the standard is a lower one. The issue

is whether to the lower standard which applies, the Appellant has a well-founded fear of persecution on return for a Convention reason. The Respondent accepts that, as a homosexual, the Appellant is a member of a particular social group. The only issue is whether there is a real risk of ill-treatment which amounts to persecution in Algeria. That issue may come either from State or non-State agents. I do not understand the Respondent to argue that the State would protect against a risk from non-State agents. If the Appellant is able to establish that he is at risk from either group therefore, he succeeds.

## **THE APPELLANT'S CLAIM AND EVIDENCE: DISCUSSIONS AND FINDINGS**

16. The Appellant's original claim was based on a variety of risks. I have upheld the findings made in the First-tier Tribunal that the Appellant is not at risk from his former business partner or that man's family or associates and is not at risk from associates of the individual who subjected the Appellant to modern slavery in the UK. I have also preserved the finding that the Appellant is not at risk from his own family. As noted above, therefore, the issue is whether the Appellant is at risk from the authorities and/or members of society against which risk the Appellant would not be protected.

### **The Appellant's Evidence**

17. The Appellant has signed three statements in his appeal, dated 17 December 2020 ([AB/3-7]), 28 September 2022 ([ABS/1-6]) and 4 October 2022 (filed at the hearing). He gave evidence through a North African Arabic interpreter. Although there were some difficulties with the evidence as I set out below, those were not due to interpretation, and I am satisfied that the Appellant and interpreter understood each other.
18. In light of my preservation of certain findings made by Judge Gumsley, I do not refer to the evidence contained within the statements which relates to those parts of the Appellant's claim. Mr Clarke asked the Appellant whether he accepted that those parts of his claim were not true. The Appellant did not concede this to be the case. I also accept that he has tried to explain away in his second and third statements some of the inconsistencies or failures to mention these parts of his claim previously. However, those findings were not successfully challenged and therefore First-tier Tribunal Judge Gumsley's conclusions in relation to those parts of the claim stand.
19. Turning then to the issues which I have to resolve, the Appellant realised that he was gay aged about seven years. He said in his asylum interview that when he reached eleven or twelve, he started liking to have sex with his male friends ([Q45, RB/C12]). People at his school started talking about him and he began to be rejected by his male friends ([Q49, RB/C13]). He was called a "girl", people made jokes about him and bullied him ([Q52, RB/C14]). He says that he was threatened by other

males that if he did not have sex with them, they would tell his family that he was gay ([Q57, RB/C15]).

20. When the Appellant moved to High School, some of the boys from his previous school told others at that school. His “life became difficult” and he had to leave school because of it ([Q77, RB/C18]). He says that he left school in 2003 ([Q78]). He says that he was mocked by the boys and beaten up by the teachers ([Q79]).
21. I do not place weight on the fact that the Appellant did not mention risk from the public in his screening interview. He did mention these problems in very general terms in a preliminary information questionnaire ([RB/14-32]) when he said that he could not live openly as a gay man in Algeria because “this would place [his] safety and life in danger”. He provided greater detail in his asylum interview as set out above. He also said in his first statement that if he lived as openly gay in Algeria, he would be “hurt physically and emotionally and psychologically” (§ 7, [AB/5]).
22. However, as Mr Clarke pointed out, the Appellant did not mention any of this to his doctor in July 2016. There is a letter from Dr Al-Khabouri dated 21 July 2016 ([AB/96]) which reads as follows:

“This patient has come to see me regarding his mood and anxiety after the trauma he suffered by his boss at work a couple of months ago. Prior to this he tells me had no problems with anxiety and mood. From what he tells me it seems that this incident has caused him post-traumatic stress and depression...”
23. The Appellant confirmed in his oral evidence that this was what he had told the doctor. When asked why he had not mentioned his problems in Algeria, he said that he had been “very cooperative answering” and that the doctor did not ask about “this issue” so he did not mention it. When it was put to him that if he had suffered the abuse in Algeria which he claimed, he would have raised this, the Appellant changed his evidence and said that he perhaps had mentioned it, that he was “under great stress” and that he had mentioned it “whenever relevant”.
24. The Appellant was also asked about a document at [AB/100-102] which is a report from Talking Help dated 11 August 2016 following an assessment on that day. The report recounts the Appellant’s experiences in the UK when he was attacked by his employer. At that time, the Appellant said that most of his friends were in Algeria and that he retained contact with his siblings there. There is no mention of any problems when he was in Algeria.
25. In reply, the Appellant said that he did mention “very clearly” to “the psychiatrist” the risk which there might be from his business partner’s family in Algeria and the risk in the UK. He did not answer the question why he had not mentioned the abuse he claimed to have suffered in Algeria. The Appellant said that he mentioned this “from time to time”.

26. The Appellant was also taken to another document from his health centre, this time Dr Wendy Ross, who wrote a letter dated 13 February 2018 ([AB/110]) in response to a request for an update. She indicated that the Appellant had continued to attend the surgery about his “low mood” for which he was receiving medication. He had attended four sessions with “a mental health practitioner” which ended in February 2017. As Mr Clarke pointed out, this letter indicated only that the Appellant was claiming to be at risk in the UK. The Appellant said that he did not mention events in Algeria at that stage because he was “waiting for Home Office contact”. The Home Office had said that they could not offer him an interview “because of Dublin”. That is not an answer to the question asked.
27. The Appellant did volunteer that he had mentioned events in Algeria in his first interview with the police. He said he had “mentioned everything” but I have no evidence about that.
28. The Appellant confirmed what he said in his asylum interview about the problems which he faced at school (see above). He was asked what he meant in answer to question [54] ([RB/C14]) by a “disturbance [which came] from the neighbourhood”. He was asked how, if his neighbours were aware of his sexuality, he claimed that his family did not know. He said that “he did not mean neighbourhood”. He meant children. When asked whether it was his case that the adults did not know, he said that was “true because even at that age he was still considered young”. That was not an answer to the question.
29. When asked whether his mother knew about his sexuality, the Appellant said that he was “spoilt” and that “she did not take it seriously” because he was “young” and would “grow up as a man”.
30. As Mr Clarke pointed out, there is a discrepancy between the Appellant’s oral evidence that only the children were aware and the answer to question 59 of his asylum interview ([RB/C15]) that “almost everyone in the area knew about it”. The Appellant sought to explain that by saying that people had found out when he grew up. He said the incident was “over years and years”. I do not accept that explanation. It is clear from this section of the interview (from questions [45] to [61]) that the Appellant was talking about a time when he was still a child and at school. For those reasons, I do not accept that the Appellant’s family could have been unaware of his sexuality if, as the Appellant claims, this was well-known in the area.
31. As Mr Clarke also pointed out, there is an inconsistency between the Appellant’s case that he was threatened for sex by males who said that they would tell his family and his evidence that his family were aware. In addition to the evidence about his mother being aware, he said also that his sister may have known. The Appellant accepted that if his family were aware of his sexuality, there would be no basis on which he could be forced to have sex. He sought to answer the point by saying that



“they recognised later on that [he was] gay and had sex with males” and “not at the beginning”. That is not an answer to the question.

32. There were considerable discrepancies within the Appellant’s evidence about the timing of the incidents which he claimed occurred whilst he was at school. In answer to question [72] of his asylum interview ([RB/C17]), the Appellant said that “as he grew up the situation has evolved, [he] started knowing people outside the neighbourhood and moved school, some people moved to high school with [him] and they told others about [him]”. Mr Clarke asked him how old he was at this point. The Appellant answered that he was “seventeen or eighteen, maybe nineteen”. Mr Clarke miscalculated the dates in this regard and asked him whether this would have been in 1995 or 1996 to which the Appellant answered that he could not remember dates.
33. Mr Clarke pointed out that the Appellant said in interview that he left school in 2003. The Appellant was born in 1987 which would mean that he was only sixteen when he left school. It was pointed out to him that he could not have left school in 2003 if he claimed that he was suffering abuse at school when he was over sixteen. In spite of efforts to take the Appellant through his school career, it was impossible to get a straight answer to how old he was when he left school.
34. The Appellant was also asked whether he had tried to hide his sexuality. At question [87] of his asylum interview ([RB/52]), the Appellant was asked directly whether he had changed his behaviour in any way to hide his sexuality whilst he was at school to which he answered “no, I had just given up, I started obeying to the people who wanted sex with me, the numbers started increasing, 5 or 6”. When he was asked whether he had tried to hide his sexuality in his oral evidence, he said that he had. However, he went on to say that people had advised him to do so but it was “not in his hands”. As I understand his evidence, therefore, it is that he might have tried to hide his sexuality but was unable to do so. I do not consider his evidence in this regard to be inconsistent.
35. It was also suggested to the Appellant that, if he had been having sex with males whilst he was at school and everyone had been aware of this, the teachers would have intervened and would have called in his parents or the police. In response, the Appellant said that when “[he] felt it, [he] stopped going to school”. That answer was inconsistent with his earlier evidence that he continued to go to school and to suffer problems there after his sexuality was discovered and he was having sex with males. He then said that he did not know if the teachers “were sure” what was going on. They might have pretended that they did not know to protect the reputation of the school. That was inconsistent with his evidence that he was beaten up by the teachers ([Q79, RB/50]). He then said that none of his teachers intervened because he had left school. That evidence is internally inconsistent.

36. The Appellant says that after he left school, he trained to be a baker. He still lived at home. During that time, he was in a relationship with [M] for three years. When the Appellant was asked during his asylum interview, whether people questioned why he and [M] spent so much time together, the Appellant said that “that’s how people started suspecting something is wrong as we see each other every day and that’s why the problems started.” He said that “they started beating me up, throwing stones at me” ([Q113, [RB/56]). Mr Clarke put to the Appellant that if he still lived at home and people were aware of his sexuality, the problems would have started earlier.
37. This exchange followed a question when the Appellant was asked whether in Algeria, his family always lived in the same house to which he answered positively. The Appellant then said “actually we moved. We moved from one place to another”. Mr Clarke suggested that this was a change of evidence. The Appellant however said that this was a misunderstanding and he thought that Mr Clarke meant the whole family, that he had intended to indicate that all the family lived in one house and then they had moved. It is possible that the Appellant understood the first question to be whether the family had lived in the same household throughout rather than the same property and his correction of his evidence is an indication that this was a genuine misunderstanding rather than a change of evidence. I do not place weight on this as undermining the Appellant’s evidence.
38. Mr Clarke then asked the Appellant why he had not left home if he was being mistreated. The Appellant said that it was difficult to do so and to keep running away. However, Mr Clarke pointed out that on the Appellant’s evidence, he had continued to live at home until ten years after he left school (2013). The Appellant said that this was because he could not leave his mother. That is consistent with his answer in interview that his mother left in 2013. If the ill-treatment was as bad as he claimed however I do not accept that he would have stayed at home.
39. The Appellant said in his asylum interview that he was scarred on his face in 2008. He said that he was “hit on [his] face” with a knife and that the perpetrator took his phone, “they tried to take everything”. That appears to have been a mugging rather than an attack due to the Appellant’s sexuality. In any event, as Judge Gumsley pointed out at [28] of the previous decision, the Appellant has been inconsistent about how he suffered the scarring. He later claimed that he was in fact stabbed by his former business partner (which could not have been in 2008) and told Rainbow Home that the knife attack occurred after his mother died which was in 2013 ([AB/10]).
40. The Appellant says in his latest statement that he was insulted by people who would spit at him and throw stones. He said that he was recognisable as gay due to the way he dresses and walks. He said that this happened “every day” and that people “even incite[d] children against him”. He also says that he was “taken by someone on the

pretext of having sex with him but they tricked me, and brought some other men to beat me up". He said that this happened "many times - around every two weeks" and that he was "blamed for wanting to have sex with another man, not the men who beat me up". Whilst the Appellant's account of being spat at and having stones thrown is consistent with what he said in his asylum interview ([Q113, RB/56]), he did not say that he was tricked into sex and then beaten on a regular basis. There is no mention of any such regular incident in his first or second statement. I consider this to be an embellishment of the Appellant's claim.

41. This brings me on the Appellant's claim to have been arrested, detained and prosecuted in 2011. This is dealt with at questions [132] to [138] of the asylum interview ([RB/60-61]). The Appellant claims that this occurred in 2011 when he was on holiday at the coast for three or four days. The Appellant said that he was accused of "inciting others for sex and also we were dressed like women while we were taking sunbath". He said that he and his friend were wearing make-up. He said he was sentenced to a year in prison but was put on probation after appeal. When the Appellant was asked whether his sexuality was brought up at the trial, he said it was not.
42. The Appellant was asked why he had not provided any documentary evidence of the prosecution and conviction. He said he had tried and had talked to his solicitor. He said it was not easy because the solicitor was in Algeria, and it was not the same city. He said he had even tried to contact his lawyer on Facebook. I do not accept the Appellant's evidence in this regard. It would have been an easy matter to provide evidence of the attempts at contact even if those were unsuccessful. No such documentation has been provided.
43. I accept that the Appellant has been consistent in his evidence about the fact of the prosecution and conviction. However, I agree with Mr Clarke that it would have been relatively straightforward for him to obtain documentary evidence of the prosecution and conviction whether from his lawyer or the Court. Even such efforts as he is said to have made to obtain that documentation are not supported by documentary evidence. I do not find it credible that he was arrested and prosecuted as he claims.
44. Even if I did accept the fact of the prosecution and conviction, I do not accept his evidence that the prosecution was brought because of the Appellant's sexuality. The Appellant's insistence later in his oral evidence that it stands in complete contrast to his answer in interview that it was not. Further, the Appellant went on to say that he was not arrested because of his sexuality. He was arrested because he was "exposed" not because of "being gay".
45. Mr Grutters sought to explore this evidence further in re-examination. He suggested that even though the prosecution was for the Appellant exposing himself and inciting others for sex, that was directly related to

the Appellant's sexuality. The Appellant agreed. However, he then went on to say that in Algeria, there is a "specific rule in relation to exposure in a public area which is illegal". He suggested that he was arrested because his dress was "unusual" and was "awkward". When asked what was "awkward", the Appellant said that he was wearing shorts, a top without sleeves and was tanned and wearing make-up. He also mentioned that this was seen as encouraging males for sex. I do not accept that this shows that the authorities prosecuted the Appellant for being gay. If he was prosecuted at all, that was for exposing himself and possibly also for soliciting.

46. Finally, I come to the Appellant's evidence in relation to his journey to the UK. The Appellant admits that he travelled to the UK having previously been in France, Sweden and Germany. He claimed asylum in Germany and Sweden. The Appellant's insistence in his first statement that he did not claim asylum in the UK on arrival because he did not know how to (§21, [AB/7]) is not credible. Indeed, the Appellant's oral evidence showed that he was very familiar with the asylum system. He referred several times to "Dublin" and was clearly aware that if he had claimed asylum on arrival in the UK, he might have been returned to one of the other European countries. The Appellant denied that his asylum claims were rejected in Sweden and Germany. He said that those countries had refused to entertain the claim because it was for France to resolve it. Whilst the Appellant's delay in claiming asylum cannot be attributed to any lack of knowledge of the asylum system, I do not place any great weight on his failure to claim asylum on arrival as he would have known that the UK would in all likelihood seek to return him to France under the Dublin Regulation.
47. The Appellant's evidence in relation to the attacks which he claimed to have suffered at the hands of the public more generally in Algeria was evasive and lacking in detail. He was inconsistent in relation to the timing of events. His explanation for why the authorities would not have become involved if he had been known to be having sex with males whilst he was young and at school lacked credibility. He was unclear and inconsistent about when he was at school and when he left. Similarly, there is a lack of any detail about attacks which he said he suffered after he left school. He now claims to have been scarred on his face in 2008 but his evidence in that regard has been inconsistent. He may have suffered some ill-treatment in the sense of being spat at. It may be the case that on occasion stones were thrown. He may have suffered an attack, but I do not accept that he was attacked with the daily regularity he claims nor that he was tricked into sex and then beaten in consequence every two weeks. I consider all of that to be an embellishment.
48. I have not accepted that the Appellant has been credible about the prosecution and conviction in 2011. In any event, for the reasons I have given, I do not accept that the prosecution even if it occurred was for being gay. On the face of the Appellant's evidence, he was prosecuted

for an offence of exposing himself and possibly soliciting others for sex and not because of his sexuality.

49. I accept that the Appellant was conducting himself as an openly gay man whilst in Algeria. His sexuality has been accepted as genuine. I accept that he would not hide his sexuality on return as he has not done so in the past. The issue then is what treatment would befall the Appellant on return as an openly gay man.

### **The Expert Report**

50. The Appellant relies on a report of Mr Hugh Miles which is at [ABS/1-26]. He is a journalist who has researched and written extensively about the Middle East and North Africa. The examples he gives of his work however mainly concern the political situation in those countries (as one might expect). Similarly, his investigative work largely concerns the political regime in those countries. He does not apparently claim any specific expertise in relation to LGBTQ+ issues in those countries or generally. Although Mr Miles indicates that he has received information from LGBTQ+ organisations who cover Algeria, he accepts that the information he relies upon does not come from first-hand accounts from LGBTQ+ individuals but mainly through third parties. For those reasons, I can give less weight to his evidence, particularly in relation to those parts of his evidence which are unsourced or have a very thin evidential basis.
51. I accept Mr Miles' evidence concerning the lack of transparency of the Algerian regime and lack of media freedom as that is likely to fall within his area of expertise. I accept that this may have a bearing on how much information there is likely to be about treatment of LGBTQ+ individuals in Algeria. On the other hand, there is some information in the media and from certain organisations, most notably the US State Department (USDS), which indicates that there is some reporting of incidents which occur. I deal with that additional evidence below.
52. Mr Miles accepts that there are "gay areas" in Algeria but says that gay men suffer "harassment" from the public and police in such areas. He also accepts that there is an Algerian LGBTQ+ community online but that people take steps to protect their identity when using it.
53. In general, Mr Miles says that LGBTQ+ individuals are "at risk of harassment if they do not hide their orientation". If they do not hide their sexuality, "they are at risk of discrimination and persecution, including possible physical violence". He goes on to say that "[e]ven when physical violence does not actually manifest itself, the threat of physical violence is always present". Mr Miles does appear to accept however that there is a "degree of social acceptance" which however varies depending on "family background, education and social status". He also says that treatment of LGBTQ+ individuals varies depending on location within Algeria - "social behaviour in affluent areas of Algiers...is much more permissive than in poor cities and the rural countryside".

54. It is of course accepted that homosexual acts are criminalised both in private and in public. In relation to prosecutions, Mr Miles cites the USDS report 2021 which confirms that there had been no known prosecutions during the year, that LGBTQ+ status is not criminalised but that other offences may be utilised to bring prosecutions, that harsher sentences are given to LGBTQ+ individuals for such offences and that there are no anti-discriminatory provisions which apply to LGBTQ+ individuals although they are covered by the general law. There is said to be discrimination in accessing health services and employment.
55. Mr Miles makes the point that it is not possible to know how many prosecutions there are of LGBTQ+ individuals due to limitations on available information. Whilst I accept that there are limitations, the background evidence to which I refer below show that it is possible to obtain such information even though the reporting may not be complete. Mr Miles points to “sporadic reports” on social media of LGBTQ+ individuals who have been “targeted or disappeared” which he says taken together “appear to indicate an ominous pattern of a widespread ongoing crackdown”. However, he has given only one example of an individual who is alleged to have been prosecuted for blasphemy after posting on Facebook (see Twitter feed at [ABS/238-239]). Mr Miles also fairly accepts that the case cannot be verified. I can give very little weight to this evidence.
56. Mr Miles also points to the case of Anouar Rahmani, an “Algerian human rights defender and independent writer” who Mr Miles says has been convicted “for supporting the LGBTQ community in Algeria”. However, the detail of the conviction as published (which appears at [ABS/233]) appears to have related to criticism of high-level government officials for corruption. I cannot infer that the prosecution and conviction is as a result of his support for the LGBTQ+ community. That is said in the report to be based only on Mr Rahmani’s own belief.
57. Although Mr Miles refers to evidence in the USDS report about the treatment of LGBTQ+ individuals in detention which indicates that there is no special provision for sexual orientation, treatment in detention obviously depends on whether an individual is liable to be detained in the first place.
58. I cannot accept the evidence that “LGBTQ+ men are at heightened risk of being abused or tortured by the police”, that “[t]he police terrorizes the LGBTQ+ community and the LGBTQ+ community live in fear of the authorities” or that there is “systemic harassment from the police”. Mr Miles offers no source for those comments which do not sit comfortably with what he says subsequently. Even if I accept the Appellant’s case in relation to arrest and conviction, the Appellant himself only claims to have been arrested and convicted on one occasion despite being openly gay for many years whilst living in Algeria.

59. This brings me on to Mr Miles' comment on arrests in February and July 2020. The February arrest is said by the USDS to have resulted from the sharing of images of a same-sex wedding ceremony on social media. The July 2020 arrests appear to be those to which I referred at [19] of my error of law decision. Mr Miles records that the convictions were for public indecency offences. As I noted in my error of law decision, and as recorded by Judge Gumsley, the background evidence is not entirely consistent as to the nature of the offences nor as to the extent of the convictions. I will come back to this when dealing with the background evidence.
60. Mr Miles goes on to accept that the Algerian authorities do not normally prosecute "unless there is another aggravating feature". He contends that this could include being "openly gay". He also accepts that "[g]ay men who are not openly gay, camp or effeminate are much less likely to be targeted or prosecuted". Notwithstanding his reference to those who are "openly gay" being more likely to be prosecuted (which reference is unsourced), it is not entirely clear how Mr Miles then reaches the conclusion that "[s]ince the Appellant is openly gay, 'camp' or effeminate, in addition to being gay ...this places him at particular risk of serious violent attacks". That is said to be Mr Miles' own opinion. There is no indication that he has ever met the Appellant in order to form a view whether he is "camp" and "effeminate". He has in any event provided no source for these comments, and I can therefore give them little weight.
61. Turning then to the risk from the public, I accept Mr Miles' opinion that Algerian society "is deeply conservative by western standards" which is consistent with other background evidence (see below). Although Mr Miles says that homosexuality is a crime under Islamic law, he appears to accept that there are no Islamic courts in Algeria. Mr Miles offers no source for his comment that the LGBTQ+ community "lives in constant fear of unprovoked attacks and reprisals". The "intermittent rumours online" that persons using gay dating sites are targeted relies only on one post which is a Twitter thread at [ABS/172-173]. This is based on a comment from the Twitter account of one individual. It is not clear where he lives or what his own experience is nor why he says that "apparently it's confirmed" that those using gay dating apps in Algeria are targeted. The remainder of the feed is largely replies to the first post and although others say that they feel "unsafe" there is nothing to substantiate what is said to be confirmed. It is also worthy of note that one of the posts refers to companies (presumably in Algeria) changing profile pictures to show support to the LGBT community "during pride month" which is suggestive of there being some pro-LGBTQ+ support in Algeria.
62. Mr Miles agrees with parts of the Appellants' own evidence, but it is for me to consider the credibility of that evidence and not for Mr Miles as an expert. Mr Miles appears to ignore when considering that evidence the Appellant's claim that he lived an openly gay life before coming to the UK

and it is in that context that his claim as to what will befall him on return must be judged.

63. I accept that gay marriage is not permitted in Algeria. However, although the Appellant says in his second statement that he was in a relationship when in Newcastle (and also in Algeria when he was younger), those do not appear to have been serious relationships. There is no evidence to suggest that the Appellant wishes to marry another man. There are also many other countries in the world, including some European countries, which still do not recognise same-sex marriages.
64. I do not need to deal with Mr Miles' evidence about honour killings. The Appellant has been found not to be at risk from his family members. I have preserved Judge Gumsley's findings in that regard.
65. As I have indicated when dealing with the legal framework, the Appellant's case is not founded on a need to depart from OO but an assertion that, properly applied, the Appellant will be at risk based on that guidance. As such, I do not need to deal with Mr Miles' evidence that the situation has worsened since OO. In any event, that is based on the evidence of the February and July 2020 arrests (see above and below) and otherwise on changes in the political and human rights landscape or restatement of the position in background evidence (for example in the USDS 2021).
66. Overall, whilst I place some limited weight on the elements of the Expert Report which are sourced, I can place less and little weight on the assertions which are derived from Mr Miles' own opinions, are unsourced or rely on very limited material which may not be entirely objective. Mr Miles does not profess to be an expert in LGBTQ+ issues in relation to Algeria (nor indeed elsewhere). As he himself accepts, the evidence which is not sourced from official channels is third-hand.

### **Evidence from Rainbow Home/ MESMAC**

67. The Appellant relies on a MESMAC report dated 8 August 2022 provided to the Tribunal on 26 September 2022. That follows evidence from that organisation (also known as Rainbow Home) dated 8 October 2019 ([RB/125-37]) and 5 October 2020 ([AB/8-23]). I have considered that evidence as a whole.
68. Rainbow Home has been providing support to the Appellant since at least 2018. The evidence is provided by Ms Janet Owen and Ms Alessandra Mondrin who are Asylum Community workers with Rainbow Home. Rainbow Home is a charitable organisation.
69. The evidence summarises the support which the Appellant has received from that organisation and what he has told the support workers about his claim. The opinions of Ms Owen and Ms Mondrin about the credibility of the Appellant's claims are not relevant to my consideration. They do



not profess to have any expertise in assessing credibility and have simply recorded what they have been told. It is for me to assess credibility based on the evidence of the Appellant himself and not second-hand reporting of what he has said. The genuineness of the Appellant's sexuality is not disputed. The support workers do not live in Algeria, nor do they apparently have any experience of living there. Again, therefore, their opinions about life in Algeria, are not relevant. They are based only on what the Appellant has told them and their reading of material which the Appellant has sent them. They do not profess to be experts in relation to the risk to homosexual males in Algeria. I can give their evidence no weight.

### **Other Background Evidence**

70. In general, the other background evidence is focussed on a number of themes. There is some evidence about the increasing Islamic influence in Algeria. Whilst I accept that this could lead to increased discrimination against LGBTQ+ individuals, the evidence is at too general a level to draw that inference. There is evidence suggesting a crackdown by the authorities on anti-government protesters, human rights campaigners and the press. The Appellant is not within those categories. Similarly, I did not find of assistance the background evidence concerning honour-based violence. The Appellant's claim to be at risk from his family has been found not to be credible and I have preserved that finding.
71. The high point of the background evidence is that concerning the "gay wedding" and what is said in the USDS reports for 2020 and 2021 more generally about the treatment of LGBTQ+ individuals in Algeria.
72. I begin with the reporting of the prosecutions arising from the "gay wedding" which appears at [ABS/164-165]. It is there reported that two men were sentenced in September 2020 to three-year prison terms and forty-two others to one-year suspended terms after mass arrests "at what the police alleged was a 'gay wedding'". Human Rights Watch were told by the lawyer involved in the case that the court relied on police reports of decorations indicative of a wedding ceremony and "the men's supposedly gay appearance" to prove the case. The report also talks of "perceived sexual orientation". The convictions were for "'same-sex relations', 'public indecency' and 'subjecting others to harm by breaking Covid-19-related quarantine measures'". The report speaks more generally about the laws criminalising homosexual conduct and the lack of antidiscrimination protection based on sexual orientation and gender identity. It also reports that Algeria has a law that prohibits registration of organisations "whose aims are deemed inconsistent with 'public morals'" which has been used to prevent the formation and organisation of LGBT groups. As is also there reported, however, at the time of the arrests, Algeria had imposed a ban on all social gatherings to slow the spread of Covid-19 and it is not therefore clear to what extent that impacted on the decision to arrest and prosecute.

73. Turning then to the USDS reports, the 2020 report is at [ABS/179-230] and the 2021 report at [ABS/244-295]. I have already referred to these in the context of the Expert Report and I do not repeat what is there said (see [54] above). The following points are worthy of note. Although the 2020 report confirms that homosexual acts are criminalised, as is pointed out at [ABS/221], “LGBTI status is not, in itself, criminalized”. Notwithstanding that, the report confirms that individuals may be prosecuted using other offences. Although the report shows that Algerian laws do “not explicitly prohibit discrimination” based on sexual orientation in relation to employment, the report goes on to say that “the government did not adequately enforce the law, since discrimination reportedly existed”. The examples thereafter given do not suggest generalised discrimination against homosexuals in the employment field. The report refers to the prosecutions arising from the “gay wedding”. It also reports NGOs facing government harassment although does indicate that LGBTI NGOs exist in Algeria and had organised virtual meetings (this report would of course cover the period when Covid-19 measures were in place).
74. The USDS report 2021 largely repeats what is said in the 2020 report about criminalisation of homosexuality and discrimination. At [ABS/288] it reports that “LGBTQI+ activists reported hostility against the LGBTQI+ community as increasing and typically emanated from the younger generation”. This is said to take the form of being “followed and intimidated” and that “sometimes the harassment escalated to physical violence”. The report again refers to some discrimination from employers and in relation to access to healthcare. It is said that lawyers and journalists were reluctant to become involved in or report on LGBTQI+ cases and/or discrimination (which may be said to back up Mr Miles’ comments about the lack of information coming out of Algeria on this subject).
75. Finally, I turn to the Home Office Country Policy and Information Note entitled “Algeria: Sexual orientation and gender identity” dated May 2020 (“the CPIN”) at [ABS/296-322]. The CPIN confirms the lack of information about State treatment of LGBTI individuals and the lack of anti-discrimination provisions. However, although it refers to the USDS reporting “multiple arrests” in 2018 and 2019 the point is made that none of those are confirmed elsewhere. Generally, “prosecutions for same-sex acts are rare”. The CPIN notes that the USDS is alone in referring to harsher sentences for LGBTI individuals prosecuted and that the USDS did not provide details of the cases nor the reasons for arrests and sentences. Other information refers to mistreatment by the police but did not provide details.
76. Having referred to the findings in OO, the CPIN goes on to note that “there is no indication that these [arrests] are frequent or widespread, and prosecutions for same-sex relations almost never occur”. The view expressed in the CPIN is that, although as found in OO, LGBTI individuals in Algeria are rarely open about their sexuality, it concludes that those

who are open “are not subject to treatment by the state which by its nature and/or repetition amounts to persecution”. It goes on however to provide guidance that decision makers must consider whether there are any “particular factors” which might place an individual asylum-seeker at risk.

77. In terms of societal treatment, the CPIN confirms that Algeria is “a conservative, strongly heteronormative society”. The CPIN accepts that there are reports of violence from family members or society more generally and that LGBTI individuals do face discrimination in healthcare and employment. Having referred again to the findings in OO, the CPIN expresses the view that the main risk to an openly gay man comes from family members rather than society more generally. Again, the CPIN concludes that “in general, LGBTI persons who are open about their sexual orientation or gender identity are not likely to face treatment that by its nature and/or repetition amounts to persecution by societal actors”. However, the CPIN recognises the need to consider each case on its own facts.
78. I have read and had regard to the source material relied upon in the CPIN for the views expressed (as set out in section 3) which I do not consider undermines those views. I note the report of a murder in 2019 of a medical student, killed it is said because of his perceived homosexuality.

## **DISCUSSION AND CONCLUSIONS**

79. Mr Clarke invited me to find the Appellant’s evidence about his past experiences in Algeria including his arrest and prosecution not to be credible. As he pointed out, the Appellant has previously been found not to be credible in relation to his claim so far as concerns risk from his former business partner and his former employer in the UK (although the latter is based on future risk and not past events). He has also been found not to be credible in relation to risk from his family.
80. For the reasons set out previously, I have accepted that the Appellant may have suffered some minor incidents of violence at the hands of members of the general public including being spat at and having stones thrown at him. He might have suffered an attack although his evidence about the details of that is inconsistent. I do not accept that he was regularly beaten or forced into sex for the reasons I have given. I do not accept that the treatment he suffered was sufficiently severe or systemic as to amount to persecution by members of society. That is consistent with the guidance in OO and with the background evidence.
81. I have not accepted that the Appellant was prosecuted and convicted of an offence in 2011. Even if he was, I have not accepted that he was prosecuted and convicted on account of his sexuality. Although I accept that the background evidence suggests that some prosecutions are brought on the pretext of other offences, the Appellant’s evidence about the arrest indicates that it was for exposing himself and possibly

soliciting. His evidence in relation to whether his sexuality was reason for it has been inconsistent.

82. As I have already pointed out, and as noted at [10] above, the Appellant's case is not that I should depart from OO but rather that the Appellant falls within the exceptions identified in that guidance. That is in relation both to risk from the authorities and risk from the public. I take those risks in turn.
83. Whilst I accept that the evidence about the forty-four arrests in 2020 discloses a prosecution of a large number of LGBTQ+ individuals at a "gay wedding", I do not accept that this shows that the Algerian authorities have increased their targeting of LGBTQ+ individuals since OO. There was the "aggravating factor" of this being a same-sex wedding and also a breach of Covid-19 regulations.
84. As I pointed out at [24] of my error of law decision, the guidance in OO did not say that prosecutions never occur but that they were rare. As I also pointed out at [22] of my error of law decision, prosecutions involve a "feature that illustrates something more than a simple accusation of homosexual behaviour". As such, the prosecution and conviction of the Appellant in 2011 for an offence linked to but not due to his sexuality even if it occurred is consistent with that guidance and does not indicate that either he or any other LGBTQ+ individual is prosecuted and convicted simply for being a homosexual or even for being involved in homosexual acts.
85. I have accepted both that the Appellant did live openly when in Algeria previously and that he would want to do so on return. As such, he does not fall within the guidance in OO as regards those who would live discreetly. If he did so, I accept that he would be doing so only to avoid risk. As such, applying HJ (Iran) principles, he would be entitled to be recognised as a refugee, if he were at risk.
86. As indicated at [3] and [6] of OO, the evidence is not such as to show that a gay man, even one who identifies as such, is at real risk of persecutory ill-treatment from those outside his own family. I have preserved the finding that the Appellant is not at risk from his family members. Moreover, the general risk would arise only if 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".
87. I have not accepted as credible much of the Appellant's evidence about the treatment which he says he suffered whilst in Algeria previously. He was at that time openly gay. However, whilst he may have suffered some ill-treatment, I do not accept that this was at a level which amounts to persecutory ill-treatment. The evidence does not show that he was discriminated against at that time. He was able to obtain employment

and set up a business with another man whilst in Algeria. He was also able to conduct a sexual relationship with at least one other man.

88. I have carefully considered whether it can be said that being “openly gay” is an aggravating factor which would put the Appellant at particular risk. Whilst I accept that OO is based largely on the premise that those who are gay behave discreetly for reasons other than risk, the Tribunal did there consider the position of those who, like the Appellant, are accepting of their sexuality and wish to live openly. The Tribunal concluded that, in such cases, the risk of ill-treatment amounting to persecution arises from family members and not society more generally. The Tribunal considered specifically at [163] to [169] whether openly gay men were able to live as such in Algeria. Whilst that section returns to the theme that, in general, gay men do not choose to live openly, the Tribunal indicates that those who are openly gay may experience harassment and discrimination but that “none of that amounts to persecution” ([168]). As Mr Clarke pointed out, that is based on the evidence of the experts at [28] to [117] of the decision. I am therefore unable to accept that being openly gay can be said to be a particular factor as referred to in OO placing the Appellant at risk or offering a reason to depart from OO.
89. There is a further reason why I am unable to accept that being “openly gay” in Algeria gives rise to a specific risk on return and that is the Appellant’s own case. On his own evidence, he was openly gay in Algeria. He even entered into a same-sex relationship there. I have not accepted due to the lack of cogent evidence that he faced daily violence due to his sexuality. I have not accepted that he was prosecuted but even if he was, I have not accepted that this was due to him being openly gay as such. I have accepted that he may have been taunted or harassed and may have faced an act of violence but not that this was sufficiently severe or systemic to amount to persecution. Although there is background evidence that gay men (and other LGBTQ+ individuals) may well face discrimination in the workplace and healthcare, the Appellant’s own evidence is that he was trained as a baker in Algeria and managed to work there, including setting up his own business. Although I accept that discrimination against LGBTQ+ individuals does occur, there is no evidence that the Appellant himself suffered as a result of such discrimination in employment or healthcare.
90. Mr Grütters referred me to [190] of the decision in OO and the reference there to “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”. He also referred to the Tribunal’s comment at [174] that open displays of affection even between heterosexual couples are frowned upon. He said that this was all material because of the Appellant’s evidence that he is recognisable as gay because of the way he talks, “because he has an effeminate way of walking” and the way he dresses. However, although none of that was immediately evident from

his presentation before the Tribunal, even accepting that to be the case, it does not explain how the Appellant was able to live in Algeria openly in the past. It must be assumed from what he says in that statement that he behaved in the same way in Algeria. Given my findings in relation to the credibility of his account about what happened in Algeria, I am unable to accept the Appellant's case that he is at risk based on any particular characteristics which he has.

## **CONCLUSION**

91. In conclusion therefore, I do not accept that the Appellant's claim to have been subjected to ill-treatment amounting to persecution in the past is credible. I do not accept that he was prosecuted and convicted on account of his sexuality as he claims. I have preserved the findings made by Judge Gumsley that the Appellant is not at risk from his family members or other specified individuals on return. I do not accept therefore that the Appellant is at risk on return either as a result of his sexuality or for any other reason. His appeal on protection grounds therefore fails. I have also preserved the finding made by Judge Gumsley that if the Appellant's protection claim failed, there was no other reason for allowing the appeal on human rights grounds. The appeal also fails on human rights grounds.

## **DECISION**

**I dismiss the appeal on all grounds.**

Signed L K Smith

Dated: 30 November 2022

Upper Tribunal Judge Smith

**APPENDIX: ERROR OF LAW DECISION**



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

Appeal Number: PA/51092/2020  
IA/00603/2020

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Monday 30 May 2022**

**Determination Promulgated**  
.....

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**CB  
[ANONYMITY DIRECTION MADE]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, I continue that order. Unless and until a Tribunal or court directs otherwise, the Appellant [CB] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**Representation:**

For the Appellant: Mr D Grutters, Counsel instructed by Collingwood Immigration Services

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Gumsley dated 12 April 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 6 August 2020 refusing his protection and human rights claims.
2. The Appellant is a national of Algeria. He arrived in the UK on 9 December 2015 and claimed asylum on 27 March 2016. He had previously also claimed asylum in Sweden and Germany. Both claims were refused. The Appellant claims to be at risk on return due to his sexuality. He has also claimed to be at risk from an ex-business partner (M2) to whom he owes a debt. The Appellant has been found to be a victim of modern slavery arising out of his treatment by his employer (D) whilst working in the UK. He has also claimed that he would be at risk from D’s family in Algeria.
3. The Judge disbelieved the Appellant’s claims to be at risk from either M2 or from D’s family on return. In relation to his sexuality, the Judge accepted that the Appellant is a gay man. He did not accept that the Appellant would be at risk from his family on account of his sexuality. He also did not accept that the Appellant would be at any wider risk for that reason. He relied on the guidance given by this Tribunal in OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC) (“OO”). The Court of Appeal at the time of the Decision had recently considered the guidance in OO in YD (Algeria) v Secretary of State for the Home Department [2020] EWCA Civ 1683 (“YD”). The Judge relied also on the judgment in that case.
4. The Appellant does not challenge the Judge’s adverse findings in relation to his claim to be at risk either from M2 or D’s family. Neither does he challenge the finding that he would not be at risk from his own family on account of his sexuality. He does not appeal against the Judge’s dismissal of his Article 8 claim or his Article 3 medical claim. Mr Grutter confirmed that to be the position. I do not therefore need to say much more about those claims. The challenge to the Decision relates only to the Judge’s findings in relation to the Appellant’s sexuality insofar as the Appellant claims to be at risk from non-state agents and/or from the authorities. The human rights claim under Article 3 (save for the medical claim) stands or falls with the asylum claim.
5. The Appellant challenges the Decision on three grounds as follows:
  - Ground 1: the Judge misdirected himself in law when finding that although the Appellant would be at risk of suffering violence, he was not at risk of persecution. This includes a challenge to the Judge’s finding about how the Appellant would or could be expected to behave on return.
  - Ground 2: the Judge failed to resolve a conflict of fact on a material matter and/or made a perverse finding on a material matter. This ground concerns the Judge’s finding in relation to the



violence which the Appellant claimed to have suffered hitherto and the violence which he might face on return.

Ground 3: the Judge erred in law by concluding that he could not and did not depart from the guidance in OO.

6. Permission to appeal was refused by First-tier Tribunal Judge J K Swaney in the following terms so far as relevant:

“... 3. It is clear from relevant caselaw that ill-treatment must reach a substantial level of seriousness taking into account factors such as repetition, intensity and duration. A single act of violence unless particularly severe will not constitute persecution. Not all violence is necessarily capable of reaching the threshold of persecution.

4. Although the judge accepted that the appellant had been subjected to some violence in Algeria, he did not unreservedly accept all of the appellant’s claims about the treatment he suffered there. The judge deals with each aspect of the appellant’s claim in some detail and gives sustainable reasons for rejecting aspects of his evidence, and finding much of his evidence as lacking in credibility.

5. The judge gives sustainable reasons which were open to him on the evidence for refusing to depart from the guidance in OO and for finding that the treatment the appellant is likely to face on return would not amount to persecution.

6. The grounds of appeal do not disclose an arguable error of law.”

7. On renewal of the application for permission to appeal on the same grounds, permission was granted by UTJ Plimmer on 31 August 2021 in the following terms:

“1. It is arguable that the FTT failed to resolve its finding that this appellant has been the victim of threats and violence from individuals outside his family with the country guidance in OO (gay men) Algeria CG 2016 UKUT 65 (IAC) (as upheld in YD (Algeria) v SSHD [2020] EWCA Civ 1683) to the effect that gay men do not in general face ill-treatment outside their own families. It is arguable that the assessment of prospective risk in this particular case required a more nuanced application of OO.

2. It is also arguable that the FTT may have erred in law in its application of the definition of persecution to the accepted facts, for the reasons outlined in the grounds of appeal.

3. All grounds are arguable.”

8. The matter comes before me to determine whether there is an error of law in the Decision and if I so conclude whether I should set it aside. If I set it aside, I then need to determine whether the appeal should be remitted for the purpose of re-making or whether the decision can be re-made in this Tribunal.

9. I had before me a core bundle of documents relating to the appeal to this Tribunal as well as the Respondent's bundle before the First-tier Tribunal and the Appellant's bundle also before the First-tier Tribunal ([AB/xx]). The Respondent has not filed a Rule 24 Reply.

## **THE HEARING**

10. At the outset of the hearing, Mr Grutters invited me to deal with the first ground in isolation before hearing from either party in relation to the remainder of the grounds. If I were with him, he submitted that the finding that the Appellant would suffer some violence from members of the public on return was sufficient to reach a finding that the Appellant would be persecuted, having regard to the guidance in OO. He said therefore that I could set aside the Decision on that account and allow the appeal outright.
11. I declined that invitation. As Judge Swaney said when refusing permission to appeal, not all acts of violence amount to persecution. On my preliminary reading of the Judge's findings read with OO, those did not inevitably lead to a conclusion that the Appellant would be at real risk of persecution, on a proper interpretation of the guidance given in OO. As Judge Swaney said, much depends on the nature and extent of the violence which the Judge found might occur. Not all acts of violence amount to persecution. An isolated incident at a low level of violence would not in my view suffice to meet the threshold. That was my initial view of the basis of the Judge's decision in relation to risk of violence.
12. However, having heard from both parties in relation to all three grounds, I indicated that I found an error on grounds one and two taken together. For the same reason as above, I again declined Mr Grutter's invitation to find that the Appellant had made out his case on that analysis. Much depends on what treatment the Appellant is found to have suffered in the past and what treatment he risks on return. It is due to the lack of reasoned findings and/or failure to resolve conflicts of evidence that I was prepared to find an error which turns largely although not entirely on ground two. I also indicated that I would not have found for the Appellant on ground three alone but, as part of the risk which the Appellant claims he would suffer on return, it is appropriate also to revisit that aspect of the case.
13. Ms Ahmed invited me to preserve findings in relation to those aspects of the case which were not challenged (see [4] above). I agreed with both representatives that I should do so. Although I set aside the Decision, therefore, I have preserved all findings save for [49] to [57] and [62] to [76] (which are the paragraphs containing the impugned findings).
14. I agreed directions with the parties for a resumed hearing. Those are set out at the end of the decision. I indicated that I would provide my further reasons in writing which I now turn to do.

## **DISCUSSION**

15. The Judge dealt with the claim of risk based on sexuality from [38] of the Decision onwards. He had by this stage rejected the claimed risk on any other basis. He concluded at [33] of the Decision that the claimed risk from M2 was not credible. He was not satisfied that the Appellant was ever in business with M2 or even that M2 exists.
16. In relation to the risk from D's family, the Judge accepted at [37] of the Decision that the Appellant's fear of retribution from that source (for having reported D to the authorities) was a genuine subjective fear but he concluded that it was not well-founded or reasonable. He did not accept that the Appellant had received any threat from D's family and in any event concluded that there was no evidence of what family if any D has in Algeria. The Judge was "not satisfied that there is any reliable evidence that they would have the motivation or ability to find the Appellant were he to return to Algeria, even if it was discovered he had done so."
17. Turning back then to the risk arising from the Appellant's sexuality, the Judge did not accept that the Appellant was genuinely in fear from his own family. He did not believe that the Appellant had been subjected to ill-treatment from that source in the past due to inconsistencies in his account as set out at [41] to [48] of the Decision. Those findings are not challenged by the Appellant's grounds as Mr Grutter confirmed.
18. The Judge also considered whether the Appellant faced any risk from the authorities or State agents in Algeria. The Judge considered this at [49] to [53] of the Decision. The Appellant said that he had been prosecuted and convicted on account of his sexuality in the past. The Judge did not accept that the prosecution and conviction were on account of the Appellant's sexuality even if he was prosecuted and convicted as he claimed (which the Judge doubted: [53] of the Decision). He concluded that the evidence and facts did "not suggest that the authorities have any particular motivation to pursue the Appellant or interest in the Appellant at all".
19. The Appellant's third ground takes issue with the Judge's findings in relation to risk from the authorities. The impugned findings are not in relation to what happened to the Appellant in the past but are findings in relation to what the background evidence shows and whether that remains consistent with the guidance in OO. At [66] of the Decision, the Judge referred to background evidence dealing with an incident in 2020 which led to prosecution of a number of men attending a gay wedding. He said the following:

"Further, reference is made to reports of the arrest of 44 people who attended a gathering in 2020, and what was said to have been a gay wedding between two men. Regrettably the reports on this are not entirely consistent. Pinknews.co.uk says over 40 people were sentenced to prison for attending a gay wedding. The Independent seems to

suggest 2 men received 3 years imprisonment and a fine, whilst 42 received one year prison sentences. Hisham A reports of a complaint from residents leading to a raid. Perhaps a more authoritative report comes from HRW which refers to 2 men receiving prison terms and the others receiving suspended sentences. This speaks not only of offences of 'same-sex relations' but also 'public indecency' and 'subjecting others to harm by breaking COVID-19 related quarantine measures'. Although the reports are troubling, the lack of detail, the inconsistencies between them and the fact that this incident seems to have been connected to other matters such as the COVID-19 crisis, its large scale and it seemingly being prompted by complaints, lead me to the conclusion that this does not form sufficiently cogent evidence to depart from OO and YD. In the absence of such evidence I am required to follow the guidance set out in country guidance cases in force."

20. As Ms Ahmed submitted and I accept, a First-tier Tribunal Judge is required to follow extant country guidance unless cogent evidence is provided to justify departure. As she also pointed out, it is for the party inviting the Judge to depart from the extant guidance to provide that evidence. She referred me to the guidance given by this Tribunal in ROBA (AAR) v The Secretary of State for the Home Department (Rev1) (OLF members and sympathisers) Ethiopia (CG) [2022] UKUT 1 (IAC). I did not understand those propositions to be controversial and I do not therefore need to set out what is there said.
21. The Appellant's primary case is not in any event that the Judge should have departed from OO but rather that the Judge was not, as he thought, following the guidance in OO and YD; on a proper analysis, he was departing from it. Mr Grutter took me to [141] to [143] of OO as follows:

"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."

22. That passage is not inconsistent with the article relied upon as analysed by the Judge for the following reasons. First, as Ms Ahmed pointed out, the Judge drew attention to the inconsistency between the various articles which the Appellant had produced. He settled on the Human Rights Watch article which appears at [AB/145-146] and to which both parties referred. However, that article makes clear that the prosecutions were not simply for 'same-sex relations' but also 'public indecency' and Covid-19 regulation breaches. As such, they fall within the ambit of what this Tribunal described as a "feature that illustrates something more than a simple accusation of homosexual behaviour".
23. Mr Grutter made reference to the fact that the event was within a private residence which he said showed that the authorities had actively sought out the attendees for prosecution. However, the event had been reported to the authorities and, particularly if the event was a breach of Covid regulations at the time, I see no reason why that indicates a common or consistent practice by the authorities of seeking out, arresting, charging and prosecuting homosexuals under the Algerian criminal law.
24. That brings me to the final point that this Tribunal in OO did not say that prosecutions never occur. It said that they were extremely rare. The Appellant provided evidence of one such occurrence presumably in the five years or so since OO. That is not evidence of a consistent practice let alone sufficiently cogent evidence to show a change of circumstances since OO. Nor is it sufficient to undermine the Court of Appeal's summary of what was said in OO at [38] of YD that the authorities "did not generally prosecute a person for homosexual behaviour" (my emphasis).
25. For those reasons, the Judge was entitled to find that the reports did not justify departure from OO. The Appellant's ground three does not

disclose an error on this account. However, as I have already indicated, I have set aside the findings in relation to risk from the authorities as, at the resumed hearing, I am bound to consider the general position as at that date. I have permitted the Appellant to provide more evidence if such is available.

26. I turn then to the Judge's findings concerning risk from the community or non-State agents at [54] to [57] of the Decision. Since the findings of fact in this section lay at the heart of the Appellant's challenge, I set them out in full:

"54. Finally, in relation to the community in general, the Appellant gives accounts of being regularly bullied, taunted and abused both verbally and physically, being 'blackmailed' into engaging in sexual practices with some of his tormentors (amounting to serious sexual offences) and of being regularly beaten by various members of society. I accept that hostility may well be shown to those who identify as being gay, particularly those who wish to express their sexuality openly in Algeria. In the Respondent's own CPIN dated May 2020, it is accepted that Algeria is a conservative and strongly heteronormative society and refers to some LGBTI persons reporting violence shown towards them. Such behaviour, whatever its level, is wholly unacceptable and the external evidence is consistent with the Appellant's claim to have experienced at least some level of hostility.

55. However, despite his claims of the most serious of sexual assaults and the frequency of violence shown towards him (he said at one point it was on a daily basis) the Appellant was, even on his own account, able to set up a business (albeit ultimately not successful), work, he said in evidence, for about 4 years in different roles, and obtain employment in various places (he said he was sleeping in the shop he was working in in 2013/2014). He was able and willing to seek out romantic and sexual partners, notwithstanding the risks he said were associated with doing so, form and maintain relationships with other men (albeit not in the open manner in which he would have wished) and meet people on Facebook.

56. So far as sustaining serious injuries are concerned, in reality the Appellant only speaks of the scar on his face, neck and leg. However, as set out above, on his latest account this appears to have been as a result of the debt matter with M2 and not related (despite previously suggesting it was) arising from hostility shown to his sexuality. No medical evidence or indeed any detail has been provided as to any other serious injury he has sustained. I also note that despite his claims of serious sexual assaults in the past, and whilst accepting that his counselling was focussed on the assault in the United Kingdom, Talking Help speak of the assault in the United Kingdom 'having completely changed my life' and has no reference to significant events having occurred or having had any impact on him whilst he was in Algeria. Neither is there any reference of such matters in letters from his GP when he was seen for low moods. In a letter from the GP's Health Centre dated 21 July 2016, it is noted 'prior to this (the assault) he tells me he had no problems with anxiety or mood.' He was referred and placed on medication. Whilst I am extremely mindful that a person might be reticent about reporting such matters, I

do find it surprising that he did not do so to those who were charged with counselling him about trauma.

57. Whilst I do accept, on the lower standard, that the Appellant has on occasion suffered unpleasant abuse, threats and hostility and even minor physical violence from members of society, I am not satisfied the Appellant has experienced other than what might be considered the 'usual' hostility shown to those who are perceived to be gay by what is a strict and conservative society in general. However abhorrent this may be, I am not satisfied that this behaviour reaches the level of persecution, or serious harm."

27. Having dealt with the Appellant's mental health and human rights claim in that regard as well as the Appellant's failure to claim asylum in France or Spain (through which countries the Appellant had also travelled en route to the UK), the Judge turned to the future risk and fear. Again, since the Judge's application of the country guidance is put squarely at issue by the Appellant as is his application of the principles in HJ (Iran) and another v Secretary of State for the Home Department [2010] UKSC 31 ("HJ (Iran)"), I set out the paragraphs of the Decision dealing with that guidance as follows:

"62. I turn therefore to the risks arising from the Appellant's sexuality. The cases of OO (2016) and YD (2020) are of considerable importance, as is the case of HJ (Iran).

63. Whilst homosexuality is illegal in Algeria, YD confirms 'the fact that homosexualised acts are criminalised in a particular country is not, of itself, recognised as giving rise to a well-founded fear of persecution.' OO found that the authorities do not seek to prosecute [sic] gay men even where they are aware of such behaviour; where there has been prosecution there has been another feature; the state does not actively seek out gay men to take action against them. Although OO itself is a case from 2016, in YD the principles and guidance set out within it were confirmed by the Court of Appeal. Whilst the facts of that case are very similar to those in the present matter of the Appellant's case, I make clear that each case must be considered on its own facts with the onus on the Appellant, albeit on the lower standard, to demonstrate a risk. OO finds that 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.' I have rejected a real risk coming from the Appellant's family. In addition, OO said that '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.' Again this is consistent with my findings as to fact in relation to the societal treatment of the Appellant he had hitherto experienced. YD was clear that the Upper Tribunal was entitled in OO to find on the evidence that, 'outside the family, a gay man in Algeria would not face a real risk of persecution."

28. In relation to HJ (Iran), the Judge made the following findings at [72] and [73] of the Decision as follows:

“72. Consequently, if the Appellant lives openly as a gay male, caselaw is clear that, whilst he may face discrimination, hostility, abuse and even some violence, he will not face difficulties which amount to persecution or serious harm. As such he does not meet the criteria for international protection.

73. In fact, when questioned about this I am satisfied that the Appellant made it clear that he would live discreetly or rather secretly. This is in accordance with the way he says he tried to live before leaving Algeria. In fact it is recorded that the Appellant says in his witness statement that ‘I would have to stop being myself immediately and hide my sexuality.’ In evidence, he said that whilst he did not want to spend the rest of his life hiding and he would feel ‘psychological pressure and depression’ he would have to pretend to be normal whilst being ‘inside a gay.’ He said he would have to hide his sexuality which he did not want to do, and he ‘would be scared, hiding who I am.’ I am satisfied that, despite the Appellant not wanting to live in this way, he would ultimately ‘choose’ to do so. YD, in confirming what was said in OO with reference to HJ (Iran) states that ‘The fact that the Appellant would not live openly as a gay man if he returned because of social, cultural and religious norms in Algeria did not amount to persecution,’ considering that such a conclusion was consistent with the decision in HJ (Iran) and saying ‘If it were the case that the fact that a gay man concealed his sexual orientation was sufficient to establish persecution, that would have been the basis of the decision of the Supreme Court in HJ (Iran).’ Rather it was said that Lord Rogers said ‘if he would not live openly, a tribunal would have to ask why he did not do so. If that were the result of social pressures, then his application for refugee status would fail.’”

29. I did not understand Ms Ahmed to disagree that what is important when one is considering the principles in HJ (Iran) is the reason why an individual would “choose” to live discreetly. The point made in OO (as confirmed by YD) is that the “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” ([5] of the headnote). As a general proposition, as the Judge in this appeal found, that might well be right. However, as the Appellant points out in his grounds, at [7] of his statement ([AB/5]), he says he would “have to stop being myself immediately and hide my sexuality because if I did not I would be hurt both physically and emotionally and psychologically”. Whilst he does go on to say that he would be “immediately accused of living my life completely outside of social norms in Algeria” which might suggest that it would be social pressure not risk of ill-treatment which would force his “choice”, the Judge does not deal with this aspect of the Appellant’s statement nor consider whether the reason why the Appellant would live discreetly is to avoid ill-treatment amounting to persecution.
30. That brings me back to the heart of the Appellant’s case that the Judge has in fact found that the Appellant is at real risk of treatment amounting to persecution, consistently with the guidance in OO and YD.



31. Mr Grutter referred me in particular to the following two paragraphs in OO:

“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.

...

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.”

32. In short summary, Mr Grutter’s submission is this. The Judge has found at [57] of the Decision that the Appellant is at risk of “minor physical violence”. Whilst the Tribunal in OO at [184] recognised that the “range of responses” was from “expression of disapproval” “up to the possibility of physical attack”, it found that most would be “at the lower end”. It followed, Mr Grutter says, that it did not find that physical attack would be other than persecution. Moving then to [190], if an individual was at “risk of attracting disapproval at the highest level of the possible range of adverse responses” (which Mr Grutter said was the “physical attack” referred to at [184]), that would be because of some “particular characteristics” which gave rise to such risk. That must apply in this case as the Appellant is accepted to have suffered physical violence. The Judge’s findings would therefore mean that the Appellant has a well-founded fear of persecution.
33. Whilst that argument has a certain simplistic attraction, I agree with Ms Ahmed that those conclusions do not necessarily follow. I also agree with Judge Plimmer when granting permission that what is required is a “nuanced application” of the guidance in OO to determine whether the individual will in fact be at real risk of treatment amounting to persecution.

34. Beginning with the latter point first, I did not understand Mr Grutter to disagree with the proposition that not all physical ill-treatment is necessarily persecution. Ms Ahmed referred me to article 9 of the Qualification Directive which is cited in both OO and YD and makes the point that “[a]cts of persecution...must....be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights”. Those “can (my emphasis) ... take the form of acts of physical or mental violence” but it does not follow that an isolated act of minor violence would amount to persecution.
35. I also reject Mr Grutter’s attempt to separate out the reference to “physical attack” in [184] from the remainder of what is there said to be the “range of responses” and to suggest that the Tribunal in OO had found that “physical attack” did not generally occur and that, if it did, that would always amount to persecution (reading [184] with [190]). As Ms Ahmed said, if the Tribunal had meant to say that homosexual men in Algeria were never at risk from isolated physical attacks, it would have said so. That is also consistent with what is said in YD. At [38] of the judgment, the Court of Appeal concluded that the Tribunal in OO had found that, outside the family, gay men did not “face a real risk of being subjected to violent attack ...by members of the public” (my emphasis). That is not inconsistent with a fair reading of [184] and [190] taken together. This does not mean that someone who faces a real risk of “minor physical violence” is necessarily and automatically at real risk of persecution. Much depends on the nature and intensity of the violence and whether there is a real risk of it occurring (which turns to some extent on regularity of ill-treatment). It is for those reasons that Judge Plimmer pointed to the need for a “nuanced” application of the guidance. It does not follow that the findings necessarily lead to a favourable outcome for the Appellant as Mr Grutter submitted.
36. That leads me on then to the second ground which relates to the Judge’s findings about the risk which the Appellant faces. In my view this is the strongest of the grounds. Mr Grutter first referred me to [54] of the Decision and to what is said to be the ill-treatment which the Appellant suffered in the past. I did not understand him to disagree that what is there said is a record of the Appellant’s evidence or claim and not a finding that this is what occurred. That record though is that he was “abused”, suffered treatment which amounted to “serious sexual offences” and had been “regularly beaten by various members of society”. The difficulty with the Judge’s finding at [57] is how he reached the view, on that evidence, that the Appellant had “on occasion” been subjected to “minor physical violence”.
37. The reasons appear at [55] and [56] of the Decision. The first is that the Appellant had managed to run a business, find work, and had some romantic and sexual partners notwithstanding the risks which he said he ran based on his sexuality. It is entirely unclear why the ability to run a business or find work has anything to do with a risk based on sexuality. Moreover, the Judge also found that the Appellant had behaved discreetly

when in Algeria. As such, it is difficult to see why he would not have been able to conduct relationships in the same way. The main difficulty though is that, if the Judge intended to doubt the evidence about the treatment which the Appellant said he suffered because, perhaps, the Appellant would not have carried out those activities if he was genuinely in fear, he needed to say so. Otherwise, it was not reason for finding that the Appellant had not suffered as he said he had in the past.

38. The second reason relates to injuries which the Appellant said he suffered because of attacks. The Judge points out that the Appellant first said that he suffered the injuries which are still visible as a result of his dealings with M2. I accept that this is an inconsistency with his later position that these injuries were suffered because of attacks linked to his sexuality. However, the Judge had by this stage found not to be credible the claimed risk from M2. If the Judge meant to say that he did not believe that the injuries were caused by attacks linked to the Appellant's sexuality but were or might have been due to the claimed risk from M2, he needed to square that with his earlier finding. In any event, the fact that the Appellant had no other medical evidence is nothing to the point. The Judge needed to make a finding whether the Appellant had been attacked as he said and what motivated that attack.
39. Finally, the Judge pointed out that the Appellant has not raised what he says were serious sexual assaults with counsellors to whom he has now been referred. The Judge recognises that "a person might be reticent about reporting such matters" but expresses surprise that he did not do so to someone expressly tasked with counselling him. However, the Judge does not make a finding whether the Appellant did in fact suffer the treatment he says he suffered.
40. The failure to make findings about whether and with what frequency or intensity the Appellant suffered ill-treatment is an error because, by the time one reaches [57] of the Decision, it is entirely unclear what the Judge means by his finding that the Appellant has "on occasion suffered unpleasant abuse ...and even minor physical violence". Without the interim reasoning and findings, the reader cannot know whether the level of violence which the Appellant is accepted to have suffered would be sufficient to amount to persecution. Without that finding it is then difficult to assess whether the Judge was entitled to reach the conclusion he did about future risk at [72] of the Decision.
41. For those reasons, I accept that the Appellant's grounds disclose errors of law in the Decision.

## **CONCLUSION**

42. In conclusion therefore, I find that there is an error of law disclosed by the Appellant's grounds. I set aside the Decision but preserve all findings

except what is said at [49] to [57] and [62] to [76] of the Decision. Since the issues which remain are limited in scope, it is not necessary for this appeal to be remitted. I have given directions below for further evidence so that the appeal can be considered on the up-to-date evidence about the country conditions and the Appellant's circumstances.

## **DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Gumsley dated 12 April 2021 is set aside but I preserve all except paragraphs [49] to [57] and [62] to [76] of the Decision dealing with the protection claim in relation to risk from the authorities and public. I give directions below for the re-making of the decision in this Tribunal.**

## **DIRECTIONS**

- 1. By 4pm on Wednesday 31 August 2022, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely in relation to the remaining issues for resolution.**
- 2. By 4pm on Friday 23 September 2022, the Respondent shall file with the Tribunal and serve on the Appellant any evidence in response.**
- 3. The appeal will be relisted for a resumed hearing before me on a face-to-face basis on the first available date after Friday 30 September 2022. Time estimate ½ day. The date is to be fixed to the convenience of Mr Grutter of Counsel. An Arabic Algerian interpreter is to be booked for the hearing.**

Signed

L K Smith

Dated: 1 June 2022

Upper Tribunal Judge Smith