Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12547/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th July 2022	**On 30th November 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

TSK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Hawkin instructed by Freemans Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 24th June 1973 and he entered the UK as a visitor in 2001. On 29th November 2001 he made an application for leave to remain for private medical treatment, but that application was refused in October 2002 although he was granted one month's leave in order to enable him to make preparations to return to Pakistan, which he failed to do. He overstayed. In July 2012 he made a further application for leave to remain on the grounds of private medical treatment which was also rejected in August 2012. A further application on Article 8 grounds was made on 23rd January 2013 but refused on 12th September 2013 with no right of appeal.

2. On 11th June 2014 the appellant was arrested for possession of class A drugs, handling stolen goods, a sexual related offence and driving under the influence of drugs. He was released without reporting restrictions, but failed to report on a number of occasions. Between May 2015 and November 2016 the appellant received three criminal convictions for ten offences including fraud. On 12th December 2017, he was convicted on six counts of driving whilst disqualified, using a vehicle whilst uninsured, three counts of possessing or controlling a false or improperly obtained identity document and failing to surrender to custody. He was sentenced to a total of nineteen months' imprisonment.

3. Owing to this conviction, the appellant was served with a deportation decision letter on 1st February 2017. In February 2017, the appellant made an asylum application on the basis that he had a fear of persecution in Pakistan because he was bisexual. On 13th November 2017 his asylum application was refused.

4. The appellant appealed that decision and, in a determination, promulgated on 4th January 2018, First-tier Tribunal ("FtT") Judge N M K Lawrence dismissed his appeal on the basis that he did not accept the appellant's claimed sexual orientation. The appellant's appeal to the Upper Tribunal was allowed by Mrs Justice Moulder and Upper Tribunal Judge Dr H H Storey in a decision promulgated on 5th July 2018 and the decision of the FtT was set aside because its reasoning was (i) contrary to the ruling of the Court of Justice of the European Union in C-14138/13 to C-150/13 known as **A, B and C** cases. This judgment held, inter alia, the court should focus on the applicant's sexual identity in the wider sense rather than on sexual practices for example a particular form of physical contact and further stereotyped notions of behaviour such as knowledge of local NGOs. The Upper Tribunal found the FtT judge approached the issue of the credibility of the appellant's claim to be bisexual entirely in terms of his engagement in sexual acts and concentrated on 'the nature of the sexual experience he claims to have had with M' and the appellant's responses to interview questions about sexual behaviour in the park. The judge concentrated in error on this aspect of the asylum interview.

5. The Upper Tribunal, however, rejected the challenge on the remaining grounds which outlined that the judge had focussed on a minor inconsistency in relation to an incident in the park in Pakistan (by which the appellant could not remember the date of the incident) and further, failed to consider that there were valid reasons why the appellant had not been able to produce witnesses or other evidence to support his claim to have visited gay clubs and access gay dating websites. The Upper Tribunal identified that it was entirely open to the judge to consider that the appellant's inconsistencies regarding the dates of the incidents in the park were more than peripheral because at questions 60 and 62 of the asylum interview the appellant said the incident was in 1992/3 whilst at question 84, he said it was in 1994. Bearing in mind the appellant's claimed that he had been beaten almost to death at this incident, it was 'within the range of reasonable responses to treat adversely' to the

appellant that he could not remember the year of the event said to have 'outed him'.

6. The matter was remitted to the First-tier Tribunal for a hearing de novo.

7. By the date of the Upper Tribunal hearing on the error of law on 26th June 2018, the appellant had obtained a report from Dr Sharon Kane of Medical Justice dated 21st June 2018, said to concern scarring from a homophobic attack, which the appellant claimed to have experienced in Pakistan. That report and further new medical and witness evidence supporting the appellant's claim as to his sexuality was put before First-tier Tribunal Judge Sweet at a fresh hearing on 19th May 2021. On 26th May 2021 Judge Sweet allowed the appeal on asylum grounds and under Articles 2 and 3 of the European Convention on Human Rights.

8. Owing to Dr Kane's report and also medical reports from Dr Heke, which state that the appellant has been diagnosed with major depression, post-traumatic stress disorder (PTSD) and other comorbid mental health problems, the judge accepted the appellant was a vulnerable witness and that remains the position.

9. The Secretary of State appealed the decision of First-tier Tribunal Judge Sweet to the Upper Tribunal, on the basis that he failed to give adequate reasons for accepting the appellant's claim to be gay, failed to identify and resolve key conflicts in the evidence particularly as to when the appellant first became aware he was bisexual, thirdly that the judge failed to take into account the judge's sentencing remarks that the appellant was not a man of good character, failed to apply Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and finally failed to apply **HJ (Iran) v Secretary of State [2010] UKSC 31**.

10. In a decision promulgated by UTJ Rimington and DUTJ Stout on 23rd December 2021 the Secretary of State's appeal was allowed because the legal errors asserted by the Secretary of State were well-founded, particularly in relation to the appellant's credibility. It was submitted by Mr Hawkin that at heart this was a "single issue case" and centred on whether the appellant's claim to be bisexual was credible or not.

11. Not only had the judge not given reasons for accepting the appellant's credibility in the light of the series of adverse findings made against the appellant but further he did not make relevant findings under **HJ (Iran)**.

12. The decision was set aside in its entirety with no findings of fact preserved. There was no procedural error identified and clear reasons were given for the retention of the appeal in the Upper Tribunal. There was no challenge to this approach or decision.

The Appellant's Claim Under the Refugee Convention

13. The appellant claims under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and further to Section 84 (1) that a

return to home territory would be a breach of the United Kingdom's obligations under the 1951 United Nations' Convention relating to the Status of Refugees and the later Protocol ("the Refugee Convention"). In determining this appeal I have paid due attention to Section 85 of the 2002 Act and in so doing have taken into account all avenues of appeal open to the appellant.

14. It is for an appellant to show that he or she is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.

15. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This has been expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the appellant were to be returned.

16. On 9th October 2006 the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualifying Regulations") came into force and some consequential changes in the Immigration Rules were inserted after paragraph 339 of the existing Rules. Under the Qualifying Regulations a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualifying Regulations).

The Appellant's Claim for Humanitarian Protection

17. The Immigration Rules provide for a grant of humanitarian protection in circumstances where a person does not qualify as a refugee but can show substantial grounds for believing that they would, if returned to their country of return, face a real risk of suffering serious harm. The applicant must be unable or owing to such risk unwilling to avail himself of the protection of that country.

Appeal under the Human Rights Convention

18. This appeal is also brought under the 2002 Act because the appellant alleges that the respondent has in making his decision acted in breach of the appellant's human rights. The appellant has in particular relied upon Articles 2 (Right to Life), 3 (Prohibition of Torture/Inhuman treatment) and 8 (Right to Respect for Private and Family Life) of the Human Rights Convention. The standard of proof for Articles 2 and 3 is that there should be substantial grounds for believing that there is a real risk of treatment contrary to Article 3 which creates a burden of proof on the appellant

which can be equated with the burden of proof in asylum cases. It also equates with the burden and standard of proof in claims for humanitarian protection. I have applied **AM (Zimbabwe)** [2020] UKSC 17). The standard of proof for Article 8 is that of the balance of probabilities with the Secretary of State required to demonstrate proportionality.

Documentation Considered

19. The respondent in accordance with the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber Rules) [2014] and Tribunal Procedure (Upper Tribunal) Rules 2008 submitted a bundle of documentation including decisions (21st May 2001 and 12th November 2002) on refusal of further leave to remain, representations from legal representatives dated 23rd January 2012 supporting an application for further leave to remain and an application for further leave to remain dated 22nd January 2013, a trial record sheet dated 12th December 2016, an order of imprisonment dated 12th December 2016 together with judge's sentencing remarks dated 12th December 2016, a stage 1 deportation decision letter dated 11th January 2017, an asylum screening interview record dated 13th June 2017 and asylum Statement of Evidence Form dated 1st July 2017 and further representations and statements of additional grounds and reasons for deportation letter dated 13th November 2017, and a deportation order dated 10th November 2017. Included in the respondent's bundle was a letter from the appellant's representatives in 2012, Zakk Associates and Solicitors. Also within that bundle was an undated letter from Mrs NH stating she was the aunt of the appellant, and she assisted him financially.

20. Additionally there was documentation in relation to a Mr N A (the appellant's said previous partner) including details of refusal for immigration bail dated 5th April 2018. A supplementary respondent's bundle pages 1 to 15 included in relation to N A a deportation order and a decision to refuse a human rights claim dated 21st July 2017.

21. A further respondent bundle was included, (largely duplicating the previous bundle) with a copy of the police national computer printout in relation to offences committed by the appellant.

22. For the hearing, the appellant relied on a bundle submitted before the First-tier Tribunal (pages 1-544) which included inter alia, a witness statement of the appellant and dated 7th January 2021, a witness statement of the appellant's said partner Mr N Z dated 4th January 2021, a witness statement of M W R N dated 22nd December 2020, a witness statement of A N (appellant's previous partner) dated 10th September 2019, a witness statement of O O dated 24th June 2020, a witness statement of D K dated 25th September 2019 and a statement of Miss A L dated 25th August 2019, a witness statement of T M S dated 26th September 2019 and a statement of R P K dated 22nd September 2019. This bundle included a Rule 35 report (dated 5th November 2017) a letter from Newham People First, various NHS referrals, photographs, messages

including those from 'Asif' timed but undated, various leaflets and country background material.

23. Additionally there was an updated psychological report by Dr Sarah Heke, consultant clinical psychologist, dated 1st January 2021, a report by her dated 24th September 2019, and a medicolegal report by Dr Sharon Kane dated 21st June 2018 and a psychological report by Dr Saima Latif, chartered psychologist, dated 18th April 2019. There were further various medical records and country background material. The GP records dated from 2018 to 2020 and included a patient contact report.

24. A further bundle was submitted to the Tribunal with an updated statement of the appellant dated 9th May 2022, a witness statement of N Z (said partner) dated 5th May 2022, a witness statement of M R R (friend) dated 3rd May 2022, a witness statement of M W R N (friend) dated 8th February 2022, together with repeat documents and various letters including a further clinical psychological reported by Dr Sarah Heke dated 5th May 2022 and the Home Office Country Policy and Information Note on Pakistan Sexual Orientation and Gender Identity and Expression dated April 2022. Additionally there was a letter dated 14th May 2021 from Newham People First (author Neil Johnson) together with a variety of photographs taken of the appellant with friends.

25. I have read and considered all the papers before me (even if not recorded in the key documents above) and the whole of the documentation set before me together with the oral evidence has assisted me in arriving at my conclusions.

The Hearing

26. At the hearing before me, I was invited to treat the appellant as a vulnerable witness in the light of all the medical evidence and he proceeded to give evidence in Punjabi, and he adopted his witness statements. The appellant underwent a cross-examination. I do not set out that evidence in my decision in detail, save where referred to in my conclusions, because the proceedings were recorded.

27. In submissions, Mr Clarke confirmed that there was no Section 72 certificate and therefore no 'exclusion' in relation to asylum and humanitarian grounds applicable.

28. Mr Clarke submitted that it was unclear whether the family even knew about the alleged attack in Pakistan or about his bisexuality. The appellant's evidence in his asylum interview ("AIR") at question 22 to 23 was that he had no contact with the family after entering the UK and AIR question 92 stated his friends did not tell the issue to his family. At question 30 he confirmed that no news was passed back despite the oral evidence he gave saying that he tried to pass information back. It was therefore unclear why he had no communication until 2014 when Stephanie passed information on to the family. But by that disclosure

everyone knew at the time in 2014 that the appellant was bisexual and yet still he did not claim asylum at that time and that was inexplicable given the frequent use of solicitors.

29. An important point to note that the leave to remain submissions, on human rights grounds, in 2012 refer to a stabbing incident in 2003 to 4 and in the asylum interview itself, the applicant refers to the incident again, at AIR question 204 to 206. There was a significant account of the stabbing incident in the United Kingdom which one would expect the experts to be alive to. The appellant, who had given the evidence previously, failed to set this out; it was clear that that undermined the expert evidence.

30. Mr Clarke also submitted that there was little in terms of witness evidence prior to the appellant going to prison. There was a letter from Newham First which stated that he had attended the group since 2013 but there was no other evidence to that effect and no-one from Newham People First was asked to attend, which would have been probative.

31. In terms of the witnesses, OO was not part of the LGBT community and the suggestions that he had seen the appellant hugging and kissing and videos of him at clubs was not corroborated by the people involved. It was very surprising that OO was engaged in that community given his personal profile.

32. In terms of the other witnesses, the said boyfriend N Z, who had allegedly been in an open relationship, referred to himself as gay but it came out in oral evidence that he had in fact a relationship with a female partner who he was living with, and that witness statement was a deliberate attempt to mislead. He was not a witness of truth when setting out the nature of his relationship or how they socialised.

33. There was a further statement from M R R who had only known the appellant for eighteen months and was oblivious to the fact that N Z had a female partner and either the witness had colluded in this claim, or he was misled by N Z and the appellant.

34. The witness who would have been beneficial would have been the aunt and she could have corroborated the appellant's account in relation to his family and lifestyle. It was telling that there was a failure to supply even a witness statement.

35. The appellant had entered the UK in 2001 and had made three applications when he was legally represented but failed to pursue an asylum claim in any of those despite the fact that he says came here for the purpose of protecting himself on the grounds of sexuality, and I was referred to the screening interview at 3.1 and 3.2.

36. In the 2012 application the representatives referred to problems at home in Pakistan, but no claim was made, and no detail was given as to why that

was the case; no protection problems were raised. In the light of those matters, the Secretary of State submitted that this case was in fact a sham claim and the appellant had simply tried to frustrate removal. It was notable that he had been sent to prison for fraud.

37. Looking at the evidence, and the tensions in the evidence there was an absence of corroboration from anyone who could corroborate the appellant's sexuality prior to going to prison. The error of law decision was a clear summary of his dishonesty and the evidence taken as a whole indicated a multiplicity of inconsistencies. It was not explained how the appellant went to Thailand and managed to financially support himself despite having no family support. He was able to fly to Thailand and then go to Hong Kong and pay for passports and visas. It is clear that he then lived independently when he first arrived.

38. Little weight should be given to the witness evidence. The appellant's claims regarding his sexuality leading up to the time he was in prison were not credible, bearing in mind he was supposed to have been attacked in 1994 in Pakistan. There was a significant difference between the account in the asylum interview and the account of the appellant when speaking to the medical experts, albeit there was a diagnosis of PTSD. It was notable that there were very different timings in the basis of the incident. The appellant maintained in his asylum interview that he was beaten by friends at question AIR 190 who were threatening to tell his parents and "they come to my house and pull me out" (question AIR 191). At questions 203 to 205, the appellant related that he had been stabbed in the early 2000s by his female partner Tammy's ex-boyfriend. At [6.1] of Dr Heke's first report, she stated that he was suffering from PTSD from an attack in Pakistan and made no mention of stabbing whilst the appellant was in the UK. The first report of Dr Heke referred to the appellant being subjected to repeated bullying and abuse including physical beatings and stabbings and sexual abuse including rape by friends in Pakistan. Mr Clarke suggested that it was also odd that his account of being stabbed was not in his asylum interview.

39. Dr Kane's report at 2.4 states that the appellant was bisexual and stabbed and attacked by four men and his hands were tied and his stabbings were severe and there were cigarette burns and he was attacked with a rod. None of this was mentioned in the asylum interview.

40. The sharp tension in what the appellant had said to the experts and what he had said in his asylum interview, was reflected for example in Dr Kane's report which recorded that the appellant was attacked and stabbed on account of his sexuality. There was a question of whether he was even stabbed in Pakistan, which undermined the medical report. It was pointed that there was no history of any medical issues prior to 2017. In Dr Kane's report at Section 4, it was identified that there were no mental health issues on entry, but the report did refer to the appellant's use of drugs including cocaine and amphetamine. A health screening entry on 25th November 2015 recorded "crystal meth use in past month." The first

mention of a mental health issue was in 2017 after deportation was raised. The medical reports contained not only an inconsistent account of the trauma but also potentially a very real reason why the appellant might have a mental health issue after being stabbed when asleep in 2004.

41. Dr Heke's conclusion was flawed because they were drawn from the basis of what she was told and albeit she may have had documents before her, but she did not factor those into the reasons for PTSD. As per **HA (expert evidence, mental health) Sri Lanka [2022]** UKUT 111 (IAC), an expert should be alive to an appellant endeavouring to frustrate removal and particularly whether there were inconsistencies in the evidence. In terms of the medical evidence Mr Clarke referred me to **HH (Ethiopia)** [2007] EWCA Civ 306 which confirmed that the more a doctor's report rested on an appellant's account, the less weight might be given to it.

42. There was a failure by the experts to identify and resolve those issues, and that reduced the weight to be given to those reports. Despite the assertions of Dr Heke that she had not relied entirely on the assertions of the appellant that was difficult to accept. Dr Heke in the report at 5.3.1 did acknowledge the possibility of feigning but dismissed it because it was not in accordance with his resources, but we did not know that he was experiencing financial hardship.

43. The medical reports should therefore carry little weight because the appellant was not credible in terms of his account and the attack suffered; the further reports did not take into account the support from the family on return. It should be noted that Dr Heke stated that the suicide risk was low.

44. There was no indication that the appellant was delusional, and his claimed subjective fears should be looked at against the background of the claim. The causation was not as suggested.

45. In relation to Article 3 it was difficult to see how Article 3 claim could meet the test of **AM (Zimbabwe)** [2020] UKSC 17.

46. In terms of Article 8 the appellant was a foreign national offender, and he could not meet the exceptions in Section 117C. In terms of social integration there was very little evidence of his social integration in the UK. He did not speak English and was not culturally integrated.

47. I was invited to find that Section 117C(4)(b) was not made out. **Kamara [2016] EWCA Civ 813** called for a broad evaluative judgment in relation to integration. The appellant had family in Pakistan, spoke the language and he was brought up there until he was 20 being born in 1973; he only entered the UK in 2001 at just under 30.

48. In terms of exception 2, it was not accepted that he had a partner in the UK and the partner he did claim was someone with whom he had an open

relationship and met once a week but that was not a credible relationship. The appellant could not succeed under the Immigration Rules and there were no very compelling circumstances.

49. Mr Hawkin relied on the skeleton argument submitted by Ms J Bond, dated 27th October 2019. This identified that the appellant made an application for leave to remain on 12th July 2012 which was refused on 23rd August 2012 (there was a further application before me dated 23rd January 2013).

50. He further submitted that the appellant's account was complicated, and he had experienced a long and hard course in his sexual orientation journey. The appellant emanated from a highly religious and highly conservative society, and it was accepted that if the appellant was found credible, he would be at risk on return because of the treatment of gays in Pakistan.

51. If this were the case of a sham claim the appellant might have undertaken a tidier job. All the witnesses had said something surprising and if it was concocted it would be expected there was more consistency.

52. Credibility was important but only in respect of his sexuality and how he would be perceived on return, bearing in mind the low standard of proof. Mr Hawkin submitted that the asylum interview and medical documents were sufficient, and the appellant did not need the witnesses. I was invited to read the asylum interview sympathetically against the country background information and the social pressures that were there, and the account was compelling. The appellant's answer at question 57 of the asylum interview was revealing. This was a perceptive description of what it was like to live in a homophobic society and that came from real experience. At [66] of the interview the appellant described precisely that his first relationship was a bit of fun and he stopped at the description of physical acts and was not asked to go into graphic description.

53. The appellant came to the UK in 2001 and did make a number of applications but those applications should be set against the developments at that time and the case law and what he may have heard or been told, for example **HJ (Iran)** only took place in July 2010 and would have taken time to filter down. Until that time, the approach taken was that if you could be somehow discreet you would not be at risk on return to a country such as Pakistan.

54. It could be seen from the asylum interview, the appellant at question 125 stated he had fifteen or twenty relationships in the UK, and he was clearly struggling with relationships. His account from question 115 to 123 showed he was struggling with his developing sexuality. The first time he felt able to speak and felt liberated was on 1st July 2017.

55. Mr Hawkin submitted that Mr Clarke had stated that the perfect witness would be the appellant's aunt but his staying at his aunt's address was on a clear basis of an unspoken agreement that he could not talk and would

keep a low profile. That was the only stable address he had and explained why he was not living with anyone else.

56. The medical evidence was credible evidence of his sexuality and overall was consistent and nothing undermined the reports. Those reports should be considered with care and at 3.3.13 of Dr Heke's report it was recorded by Dr Heke that his sexuality was "like an addiction". That was compelling. All of the reports were very thoughtful and considered documents and their details significantly consistent in terms of the appellant's presentation and diagnoses. The physical scarring was consistent with ill-treatment he described and severe PTSD. I was referred to Dr Kane's report, the GP report, but he accepted that there were no further GP reports after January 2020.

57. Notwithstanding the points had been made by Mr Clarke and looking at the asylum interview with a careful eye, it was clear that the appellant was bisexual and struggled with it.

58. In terms of the witnesses, Mr N Z was consistent about the length and nature of the relationship. The Home Office had suggested that the fact that Mr N Z had been having a relationship with a woman cast doubt over his account, but the only information was that the police received a report of domestic violence and there was nothing to suggest that the charges were brought against him. He was confronted today during the evidence but gave credible explanation that he could have pretended that his relationship was with a man, but he did not. That showed how complicated matters of sexuality were. Mr M W R N was supportive and had seen the appellant and N Z kissing and hugging on a number of occasions.

59. If the appellant was credible on the narrow issue of sexuality, then the appeal should be allowed.

60. In terms of Article 3, Dr Heke's report indicated a very significant deterioration in the appellant's mental state, and he did have suicidal ideation and that was likely to be increased should he be deported. His aunt would not be in Pakistan, and he would not have no support from family or friends and would not be able to access therapy. There was a real risk of him attempting suicide.

61. In terms of Article 8, all the factors had been made out clearly, that is the appellant's current relationship with Mr N Z was important and with the aunt was important. It was accepted in relation to the Newham's letters that it would have been ideal if they came to the hearing, but it was a registered charity and it was not previously suggested that this organisation would write untruthful letters.

62. Albeit that the exceptions of Section 117C were not fulfilled in terms of social and cultural integration, the appellant could fulfil the criteria of very compelling circumstances.

Analysis

63. I am mindful of the psychiatric reports including that of the updated report of Dr Sarah Heke, consultant clinical psychologist, who confirmed that the appellant experienced PTSD symptoms and considered that his capacity to give evidence was compromised by the difficulties relating to his PTSD. The appellant gave oral evidence but was treated as a vulnerable witness and given breaks during the course of giving evidence. He confirmed that he felt very stressed during the hearing but managed to give evidence, nonetheless. I have also addressed his evidence in the light of his vulnerabilities. I have not set out all of his oral evidence in the decision because it is a matter of record, but I have referred to that evidence in sections where it is relevant.

64. The appellant maintained, in his screening interview of June 2017 and his asylum interview of July 2017, that he came to the United Kingdom to protect himself following an incident in Pakistan in relation to his sexuality. The evidence contained in the bundle, a letter from Zakk Solicitors dated 23rd January 2012 was that the appellant was stabbed in 2003 in the UK by his girlfriend's ex-partner.

65. As a backdrop to the evidence I bear in mind that the country guidance material including the Country policy and information note: sexual orientation and gender identity and expression, Pakistan, which acknowledges that homophobic attitudes are prevalent, state protection is not generally available there and relocation unavailable. As stated by Mr Hawkin the key question is the appellant's credibility as to whether he is bisexual. To that end, I read the various interviews and considered the evidence within the context of the country background information.

66. I apply **HJ (Iran)** where the guidance is found at paragraph 82 as follows:

> *"When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.*
>
> *If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.*
>
> *If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.*
>
> *If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".*
>
> *If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so.*
>
> *If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his*

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

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

67. I first carefully studied the medical reports and take them in chronological order.

68. A report letter dated 13th February 2017 by a High Intensity Therapist from Oxleas NHS (IAPT Services) followed an assessment of the appellant's mental health on 23rd January 2017. This assessment date January 2017 predates the appellant's initial letter claiming bisexuality, his screening interview of June 2017 and his asylum interview of July 2017. This NHS Oxleas letter acknowledged his depression but makes no mention of the appellant having difficulty with his sexuality merely that there were uncertainties with his immigration status.

69. I note the letter from Zakk Associates submitted in 2012 that the appellant had divorced as a relationship did not work out with his wife but that he had a genuine and subsisting relationship with a partner.

70. I can find no GP reports prior to the appellant's incarceration to indicate difficulties with sexuality or mental health issues, and note that there were no further GP reports, as accepted by Mr Hawkin after 2020.

71. The Rule 35 dated November 2017 postdates the asylum interview, and the report relies heavily on the appellant's account, and I return to it below.

72. In relation to the reports of Dr Kane and Dr Heke, I take no particular issue with the expertise of the authors of those reports. Dr Kane is a general practitioner and Dr Heke a consultant clinical psychologist.

73. Dr Kane a GP with experience with mental health and survivors of torture, working with Medical Justice, compiled a report on 21st June 2018 focusing on mental health and particularly the scarring. Dr Kane states at 14.2 of her report concluding "*The scars and his mental state are highly*

consistent with his report that he was 'brutally beaten up and stabbed'." She identified for example at 8.25 that some of the wounds were "*highly consistent*" with stab wounds in particular "A12 and B1". She did apply the Istanbul Protocol but acknowledged at 9.33, when compiling the report that "*even by the end of the interview he had not told me all of the details that are written in his Rule 35 report. He also did not mention the stabbing in London at all and I had to make a further phone call to him in order to get some more information about that"*. She put this down to the fact that he had not embellished his report or exaggerated it.

74. She does not however clearly identify whether the stabbing scars might have been caused in London rather than Pakistan, perhaps because of the lack of information from the appellant, and also, I note that she confirmed that she did not have the appellant's record of his asylum interview or the Home Office refusal letter, (see 1.5 of her report). That asylum interview would have indicated to her that at no point had the appellant stated, during that detailed asylum interview, that he was stabbed in Pakistan and that there was merely a short reference to being beaten. Not until *after* his asylum interview did the appellant claim he had been stabbed in Pakistan.

75. Dr Kane also concluded in her report that he was burned with metal rods and cigarettes but again this was not identified either in the screening interview or in his asylum interview. I accept that detail does not have to be given in screening interviews, but such an important detail should have been set out in the asylum interview. Nothing to that end was identified in the Zakk Associates letter of 2012. Additionally, as identified in Dr Heke's report, the appellant told her he frequently accidentally harms himself by burns through fire and has accidents in the kitchen (3.3.7). That did not feature with any significance in her report. I have applied **KV (Sri Lanka**) [2019] UKSC 10, when addressing this evidence, but Dr Kane acknowledged herself that the cigarette burns on the forearms could have been the result of deliberate self-injury, and she herself at 14.1 notes the appellant's report of attempts at self-harm to distract himself. Even though Dr Kane refers to the scars as being highly consistent with his account of being beaten up and stabbed in Pakistan and one or two from being in a bar fight in London more recently, the stabbing attack in London took place in 2003 and fifteen years before the report was written. The attack in London is not properly addressed within the report and that undermines its weight.

76. Dr Kane also refers to the appellant's drug use at 4.8, with reference to the GP reports of 22nd November 2016 where she notes there is no mental health diagnosis recorded but a mention of drug use, crystal meth, becoming a dominant issue. The appellant was noted to be restless, edgy and scratching his skin at this point and asked for medication to calm him down. Dr Kane does not follow up the implications of the stabbing in London and when assessing whether a scar was highly consistent with a knife attack, and when attributing his PTSD, appeared to tie it to a claimed attack in Pakistan.

77. Dr Heke undertook three reports, the first on 24th September 2019, the second on 1st January 2021 and the third on the 5th May 2022. There is no indication that she used an interpreter although I proceed on the basis that she did. She stated at the outset that she had complied with the Practice Direction. There was, however, no indication she had consulted with any further GP reports post 2020 contrary to **HA**. In her 2019 report she referred at 3.3.2 and 3.3.4 to the appellant's difficulties with detention. She also noted that he used to have plenty of friends but was now a very private person. However, she put down his major depressive disorder and PTSD to abuse and sexual abuse (3.3.13). In her summary she identified that his PTSD was owing to the stabbings, sexual abuse and rape by friends in Pakistan and '*how on arriving in the UK he had felt able to express his sexuality and engage in bi-sexual relationships and sexual activities freely' [6.1]*. He was also, owing to this agreement with his aunt '*not allowed to drink alcohol'*.

78. In the second report, Dr Heke stated at 3.1.5 that the appellant had not been able to engage in social situations although I note that is not what the witness statements say in either their witness statements or their oral evidence. Dr Heke repeated standardised psychometric measurements which she confirmed were similar to the previous assessments, but she did not state on what population those tests were standardised and the intervals indicated for testing.

79. In her last report dated 5th May 2022 she stated that the appellant was, in her opinion, not a suicide risk and she (like Dr Kane) stated at 3.1.5 and 3.1.6 that his mental health was, at least in part, related to his immigration status. She also noted that he had not attended any therapy sessions. She administered again the same tests and at 4.2 concluded that the appellant had a major depressive disorder, severe anxiety and concluded that he had PTSD. She did consider at 5.3.1 whether he could be feigning the symptoms but added that they could not be ruled out "*without independent direct observations of him in his home situation*". There was no indication this was undertaken. I note, she also stated that was it was not unusual for PTSD to be delayed but there was no indication in Dr Kane's report which predated all of Dr Heke's reports that the previous records indicated any mental health diagnosis (4.8).

80. Dr Heke then finally concluded that the risk of suicide was unpredictable. Nonetheless Dr Heke made repeated reference to the cause of his PTSD, for example at Section 5 and at Section 6, for example stated

> "*with regards to a psychological formulation, T in my opinion is suffering from very severe posttraumatic stress disorder (PTSD) as a direct consequence of the attack he was subjected to in Pakistan due to his contravention of the cultural and societal practices within his friendship group by engaging in sexual activity with his male friend, Murad. He was then subjected to repeated bullying and abuse including physical beatings and stabbings and sexual abuse, including rape by these friends.*" [My underlining].

81. A careful reading of the reports of Dr Heke and Dr Kane, indicated that neither appeared to have read the asylum interview. There was no direct reference in that interview to sexual assaults or stabbings or rape. Dr Kane did not appear to be sent all the relevant documents and Dr Heke did not read them despite confirming that she did have in her possession the asylum interview. Dr Heke nevertheless did confirm that she had complied with the Practice Direction. The Practice Direction of the IAC in relation to experts sets out at Section 10.5 "*An expert should consider all material facts including those which might detract from his or her opinion"*. As I say, Dr Kane did not appear to be sent all the relevant documents and Dr Heke did not appear to have read the relevant asylum interview.

82. There is no indication that at the time of the asylum interview, that the appellant had severe mental health difficulties and Dr Kane clearly states at the time of early 2017 the appellant's mental health was not severe enough for the appellant to seek help, see [9.32]. Dr Kane was also of the opinion that the appellant's mental health condition was related to his detention. Oxleas identified severe distress owing to 'concerns regarding immigration'.

83. The late disclosure of this sexual assault, attributed by Dr Kane to possible late onset PTSD did not explain the absence of any reference to stabbing in London in the asylum interview and a failure to disclose the stabbing in London for the purposes of the report. The appellant may have forgotten some elements of his claim owing to his mental health condition, but I do not accept that he would have failed, owing to his mental health to relate this very serious assault when describing his medical history to the doctors. Indeed Dr Kane had to chase him for a description whereupon he apparently described it, but Dr Heke does not deal with the issue of the stabbing in the United Kingdom. To my mind, the failure to recognise the issue of stabbing in the United Kingdom or its importance to the contents of the report, significantly undermines the validity of both of the reports of Dr Kane and Heke. Albeit that Dr Kane did make enquiries as to the stabbing, it does not appear to feature in her report in terms of a significant event.

84. One further comment I would make is that the scarring on the appellant's penis, which Dr Kane said was suggestive of a sexual assault, was in fact assessed by Dr Singh who said it was a possible result of an infection. I note from the GP records an entry on 31st July 2018 identifies an injury to his genitalia three to four years ago, during a sexual act. I do not consider that the appellant was candid with the doctors for the purposes of compiling the reports but nor did I consider that the doctors complied adequately with either one or all of the following: **JL (medical reports-credibility) China [2013] UKUT 00145**, **HA** and the Practice Direction. For those reasons the weight attached to the reports is limited.

85. Dr Latif, in 2019, referred throughout to the appellant being 'homosexual', but her report was geared towards his removal from detention. She stated he was a poor historian and refers to him being 'badly beaten' at home

(presumably she means Pakistan). She added that 'from that point' (in 1992) he suffered 'a low and anxious mood'. Her report was brief, and concluded that in her 'professional opinion' his condition of PTSD was related to his alleged torture and persecution experiences. She merely stated in the report she had 'sight' of the appellant's 'documentation'. It was not clear what that was, there was no reference to the Istanbul Protocol and her report was rather, perhaps understandably in view of the focus of the report, general. The assessment was conducted at the detention centre and the report appeared to be highly reliant on the information from the appellant and did not reference any GP records or other medical documentation. I place limited weight on that report which is now three years old.

86. I have considered the Rule 35 report dated 5th November 2017, but this report again is heavily dependent on the appellant's account which stated that he has experienced cigarette burns on both arms and he was stabbed whilst in Pakistan. The author of that report again did not have the benefit of the Asylum Interview Record. The report states that the appellant was stabbed both in Pakistan but also in the United Kingdom for his sexuality. That contradicts the documentary assertion in the Zakk Associates letter of 2012 (and nearer the event) that it was in fact the ex-boyfriend of his female partner. There was no indication it was motivated by the appellant's bisexuality. Additionally there no cigarette /burning was referred to in the asylum interview. I place little weight on this report.

87. I note that there are references to the appellant's claimed bisexuality during the GP records but there are no records which predate 2018 and all follow the appellant's detention. . The records remark on the appellant's previous use of cocaine and crystal meth and that he had been given a supply of Mirtazapine and Zolpidem (31st July 2018). I note on the 17th June 2019, the appellant told the GP that "states trying to find a job and become independent – auntie/uncle aware he is gay/signposted to LGBT charities". This indicates to me that the appellant was not being candid or frank with the GP. Apart from the fact that the appellant is not permitted to work, and is under the threat of deportation, the documentation he produced at court claims that he had been actively involved in LGBT charities from 2013. I make particular references to the appellant's repeated disclosures to the GP that he was bisexual and on 18th March 2019, it is recorded by the GP that the appellant "needs to come out". According to the other evidence presented and as described within this decision below, he already had 'come out'. These records show the inconsistency in the presentation of the evidence said to support his claim.

88. Despite making three applications when he was legally represented the appellant made no reference in those applications to a claim that he had any difficulties in relation to his sexual orientation. That is despite his response in his screening interview [3.1] to the question '*why have you **come** to the UK?*' that he wanted to protect himself because his sexuality was revealed. I note previously he gave evidence to the FtT that he had

received poor advice although there is no evidence of any formal complaint.

89. In oral evidence before me, the appellant, when asked why he had stated in his screening interview dated 13th June 2017 at section 3.1, that he came here to protect himself but did not tell his representatives of his sexual orientation problems in Pakistan, when making an application in 200,1 the appellant simply replied, "I just didn't". His gave evidence that in 2001 he did not meet the lawyer and a "friend" arranged the application for him in order to obtain legal status. The appellant then in oral evidence said he was not aware of the basis of the application until *after* the refusal was issued. When asked if he was saying solicitors had fraudulently completed the claim, he simply said he did not know.

90. The appellant was conversant with visa applications and had previously arranged his travel to Thailand and Hong Kong, had secured visas to work in those destinations and to assert that he was not aware of the content of an application which he had signed and thus made a declaration as to its truthfulness was simply not credible. Even making allowance for his mental health condition when giving oral evidence he did clearly assert he just did not read the application. Overall this undermines the appellant's credibility.

91. The appellant had specifically stated in his screening interview that he had problems with his sexuality in Pakistan but at no point raised these with any of the legal representatives. His solicitors in a letter dated January 2012 went into some detail of the reasons why he should be allowed to stay in the UK.

92. In the application dated 2013, the appellant relayed that he was introduced to a lawyer who told him he could secure legal status because the appellant had been here for ten to eleven years, and his application could be made on human rights grounds. When asked why he did not make any claim in relation to his sexuality at that time, he responded that the answer was long and at that time he did not intend to make an application on basis of sexuality, and secondly this whole matter was disclosed when he went to prison when his aunt found out and told the family. It was put to him however that he went to prison a number of years later and he responded that he did not remember and then again that "I did not think about this". He thus gave various answers including that he did not know the contents of the visa application. Even taking into account his mental health issues, bearing in mind the application was made on human rights grounds, it is not believable that experienced solicitors (and the Zakk letter demonstrates an understanding of immigration law) would not at the very least enquire further about any problems in Pakistan when trying to secure leave on behalf of their client on human rights grounds. In the solicitors' submissions in 2012 the appellant refers to 'problems' in Pakistan at that time, the application is made on human rights grounds, but does not make any mention of any difficulties with his sexual orientation. It is not credible, having added his

signature to his application, that he did not read or enquire about the contents of this application.

93. Even if he has now forgotten the detail, there is no medical report stating that his PTSD dated back to 2012 or 2013 and there is no medical reason to believe that at the time the appellant would have forgotten about his sexuality and merely delegated the task a solicitor to fabricate difficulties in Pakistan when he had a valid reason to claim asylum. The human rights application shows some level of expertise and I do not accept that the solicitor would not have been aware of **HJ (Iran)** two years after it was handed down.

94. The fact is that the appellant gave evidence that he signed an application form on two occasions having been told he could secure legal status. He made at least one untruthful application without even checking the contents and in relation to the 2012 application did not apparently know the basis of the human rights claim. He candidly said in evidence before me that he did not know the contents of the applications despite having signed them and knowing that they were to be submitted to a government department.

95. In terms of his relationships it is a matter of record that the appellant has had three consecutive relationships with women since he entered the UK. I realise that forms part of the context for assessing the appellant's claim that he is not simply gay but bisexual. When asked at question 53 of the Asylum Interview Record) "How did being bisexual affect you in PAK?", the appellant answered "It completely changed my life. It affects me big time. It made me realize that I am not suitable for that society".

96. In his asylum interview the appellant also noted that he had a relationship with someone by the name of Aliya in Pakistan but on entry to the UK had a relationship and married someone by the name of Saira (female) in Oldham and London and then, after that relationship broke up, he had a relationship with someone by the name of Tammy and they lived in Millhill. He then had a further relationship with someone by the name of Stephanie beginning in approximately 2012, according to question 159 and his relationship with her lasted for two years. The asylum interview was dated July 2017 and the appellant maintained that he separated from her in approximately 2014. That is not long before he was first convicted in May 2015. He was in fact imprisoned in 2016. The appellant maintained that Stephanie, with whom he had his last relationship, discovered his embryonic relationship with someone by the name of Kaleem and that she told his aunt and as a result he had to leave the house of his aunt and uncle.

97. When asked in cross-examination why he, the appellant did not claim asylum after his ex-girlfriend revealed to his family in 2014 (his aunt and uncle in the UK) his sexuality, who then in turn revealed it to his family in Pakistan, he responded that he did not know about asylum then and did not discuss his status. He made no mention in his oral evidence of

Newham People First which I shall come to. When asked in his asylum interview why he did not claim asylum after Stephanie showed the people his messages, he merely stated "I just didn't. By then in 2012 again one of my friends said I can apply for length of residence". The appellant did not say that he did not know about asylum. He also appeared to be confused on the timing.

98. In response to question 199 of the appellant's asylum interview [2017] "*Have you sought any help and advice from any organizations in the UK*", the appellant responded "*No. I told you, this is the first time I shared it with someone. I didn't even share it with myself, but it is different now. It is years years*".

99. Although the appellant stated in his oral evidence that he did not think about his problems of sexuality, and that he acknowledged his sexuality only later and after the formal date of the human rights application, he was, according to the Newham People First correspondence that very same year with working with Newham People First, an organisation which addresses LGBTQ issues.

100. Indeed there are two letters from Newham People First. The letter of 20th January 2022 is co-authored between Ms Hanna Shamshoo (Lead Support Worker) and Neil Johnson Chair whilst the letter dated 14th May 2021 is written by Neil Johnson alone. Both letters confirm that the appellant was engaged with the group since 2013. The 2022 letter stated the appellant had '*also helped us run awareness groups on the impact of mental health and LGBT issues within the BAME community'*. The letters specifically refer to the appellant '*attending our organisation since 2013, he was referred to us by one of our peer advocates who deals with LGBTQ issues at our organisation*'. The letter written on 14th May 2021 from Neil Johnson confirmed that the appellant was "*attending our organisation since 2013*" and they had been "*offering support and guidance, signposting Mr K to other organisations and healthcare sectors in Newham that are suited to support him regarding his mental health needs*". This letter stated "*Mr K has spoken to us in depth around the issues and challenges he faces coming from an LGBT background and being a Muslim man from the Pakistani community. He has been very open with us about these challenges...*".

101. I find these letters not only directly contradict the claim that in 2013 (his claim was refused in late 2013), the appellant did not think about his sexuality as being a problem in Pakistan (especially as he claims he left on that very basis) but it also undermines the assertion that he was not attending organisations at all at the time and still wished, according to the GP in 2018, five years later, to 'come out'. I note that no-one from that organisation, Newham People First, attended as a witness to confirm the contents of the letters. These letter also undermined Mr Hawkin's submission that 2017 was the first time the appellant felt able to speak out in his journey on sexual orientation. I understand that the discovery of sexual orientation may be a long one but the chronology in this claim is

inconsistent. The date of 2013 also undermines the suggestion that the appellant would not have been aware of **HJ (Iran)** which was decided in 2010. According to the Newham First letter the appellant was signposted to other organisations. The appellant had by this time already sought legal representation.

102. The appellant was asked about the Newham People First letter which stated that he ran an "awareness group on LTBT issues" but the appellant could give no indication whatsoever of how he "ran" the group. This was a very simple question addressing an issue of the appellant's experience. He responded to the question by merely describing sitting in a circle listening. There was no description of actively "running" anything. When asked why someone from that group had not attended and who could testify to his involvement in the group, the appellant simply stated that he thought three witnesses were enough. Bearing in mind again that he was legally represented, I found the absence of anyone from his circle prior to 2017 or from the Newham group undermines the weight of the letter significantly and undermines the appellant's evidence. He might have forgotten running a group, but I have already addressed the problem with the contents of the letter above.

103. Even if he had forgotten because of his PTSD and memory problems, the letters themselves state that he was active in that organisation from 2013 and thus either the letter is unreliable, or the appellant was at the time simply choosing not to claim asylum because he did not have sexuality issues.

104. It is not thus just the delay in claiming asylum on the basis of sexual orientation and that delay consisted of approximately fifteen years after he entered the UK in 2001 which undermines his credibility. The letters suggest that he attended Newham First from 2013. If that is the case, there is at very best a significant delay between the appellant's 2013 sexual realisation and his claim in 2017 which remains unexplained.

105. To underline the point, in his asylum interview in 2017 the appellant to the question 'Have you sought help and advice from any organisations in the UK?' replied '*No. I told you this is the first time I shared it with someone'*. The answer at [199] reconfirms a response at [163]. Again this is in direct contrast to the Newham First letter.

106. Evidently, the Newham First letters undermine the appellant's claim and his claim, in turn, undermines the letters.

107. There were further significant contradictions in the appellant's asylum interview. I acknowledge the later diagnoses of PTSD, and which identify that it is possible to have late onset of such difficulties. I note that even though he was treated in hospital he did not tell anyone close to him. That may be the case. I would, however, expect that he would remember the date of the claimed attack in his asylum interview, at q59-62 he said it was in 1992/3 whilst at q84 he said it was 1994 because it is significant.

Bearing in mind, he could give extensive detail about other aspects of the stated attack including that he went to hospital with a broken shoulder, it is not credible he could not remember the date. More crucially, he claimed he was beaten almost to death in Pakistan and 'they tried to kill me' and I see where he has claimed 'beatings', but nowhere can I find any reference to actual 'stabbing' in Pakistan in the asylum interview record. That is important. The appellant clearly understood the concept at the time because in the asylum interview, he specifically referred to the 'stabbing' in 2003 in the UK. The appellant, however, emphasised the 'stabbing' aspect of the attack in Pakistan to the doctors and which I have criticised above. In his *witness statement* in 2021 the appellant merely states 'I was stabbed' having been dragged out of his house with no further detail. I consider that to be an embellishment and inconsistent with earlier interviews. As I state, that stabbing in Pakistan appeared nowhere in his asylum interview, which was closer in 4 years to the asserted event, particularly bearing the appellant's claimed memory see 2021 w/s [23]. He in turn referred in this witness statement to the medical report '*at the time'* with reference to a stabbing but this has not been disclosed.

108. It was stated that the appellant had depression and PTSD but not that he had special needs in terms of cognition. The appellant frequently stated during evidence that he could not remember or did not know certain events or facts but he could remember clearly and accurately some detail, for example when making his first application that his friend had said he would pay for his application and he would be able to get status and he brought the papers and he asked him to sign the papers. That was described lucidly, and the appellant appeared to have no difficulty in understanding any of the questions put to him.

109. Although the appellant claimed he could not remember staying in the family home before leaving for Thailand he nevertheless in his evidence, confirmed that his family had "doubts about his sexuality but he nonetheless remained there in the family home and his siblings did not harm him in any way". I find the appellant's claims he stayed at his parents' house for 4 to 5 months 'after all this' before he left 2021 w/s [27] further undermines his account of being attacked and stabbed in Pakistan.

110. I move on. The appellant was convicted in 2015 of offences of dishonesty, which included fraud and kindred offences and in 2016 at Woolwich Crown Court and he was convicted of possessing and controlling a false/improperly obtained another person's identity document. These convictions for dishonesty contribute to the erosion of his credibility.

111. As identified above, the applicant made three applications which were either rejected or refused prior to his incarceration in prison on 12th December 2018. He served, according to the appellant, nine and a half months and would spend seven or eight months in immigration detention. He was released in July 2019, but whilst in detention he met someone by the name of A N, and he claimed that had a relationship with A N (whom

the appellant also claimed was possibly bisexual w/s 2021 [36]) following their release.

112. Included in the documentation before the First-tier Tribunal and thus before the Upper Tribunal was a witness statement from Mr A N, said to be the appellant's "previous partner". This documentation was copied for both Mr Hawkin and Mr Clarke. A N in his statement dated 10th September 2019 gave evidence that he entered the UK illegally and applied for an EEA card on the basis of his relationship which had broken down whilst 'in prison' and after his release from prison he and the appellant entered a relationship. He stated that he hoped in the future they could live together.

113. A letter on file from Majestic Solicitors dated 12th February 2018, however, comprised Section 120 representations and a request for a revocation of deportation on behalf of Mr A N. It identified that Mr A N had been convicted in 2014 and sentenced to seven years' imprisonment for class A drugs offences and was in immigration detention from 13th November 2017 onwards. As part of those representations it was submitted that Mr A N was living with his partner Yolanda (not Yolada), clearly a female, and she wished to live with him in the UK permanently. The relationship was ongoing. Prior to being incarcerated he was living, it was said, "*happily with his EU partner (Spanish national)"*. Additionally there was a refusal of bail notice dated 5th April 2018 which confirmed that Mr A N had relied on false documentation and identity to enter the UK and noted that the representations were still current at that date. This affects the credibility of Mr A N as a witness and also undermines the assertion that the appellant experienced a genuine intimate relationship with Mr A N. Not least this witness did not attend so that he might be cross-examined, presumably because he had been deported. I place no reliance on his statement.

114. The appellant's claimed current partner Mr N Z attended and gave oral testimony before the court. He stated that he had refugee status owing to him being gay. He made a statement dated 4th January 2021 which was placed before the First-tier Tribunal that he was a "*gay man and an active member of the LGBT community*".

115. At the hearing, Mr Clarke advised that the Home Office had recorded that the witness had been arrested on 1st April 2022 on an allegation of domestic violence. The witness had referred to the victim as a "female partner" and that she had called the police after an incident at her home. The witness was said to be no longer in a relationship with her, but Mr N Z had, said Mr Clarke, made no mention of that either in his written statement of 4th January 2021, where he said he was gay, or his later statement dated 5th May 2022 of the fact that he had been in a relationship with a woman for three years. In both statements he referred to himself as gay and not bisexual.

116. This witness in oral evidence merely asserted he was living with his female partner "on and off" and did not adequately explain how he was able, as the appellant said, to visit his house on Wednesday evenings. The witness then stated that he in fact lived separately from his female partner. I found the contradictions in his evidence lacked credibility and moreover his witness statements to be deliberately misleading to the Tribunal. Had the arrest report not come to light, this witness, whom I do not accept is a bisexual or having a relationship with the appellant would not have disclosed any relationship with a woman at all. His written statement was that he was gay not bisexual. I have noted his refugee status but that does not lead to me to accept that his evidence is truthful either in relation to his own sexuality or that of the appellant. The fact that he was not charged with assault following the report on domestic violence does not increase the weight to be given to his evidence as that is not to the point.

117. Mr M R R, a friend of the appellant, attended and gave evidence. In his written statement, which he adopted, he identified also that he was born in Pakistan, and he too had been given a refugee status on the basis of being gay. I note from his passport that he spends a considerable amount of time in Pakistan and this year spent nearly two months there and last year visited on 11th May 2021, almost immediately after his new passport was issued on 6th May 2021. He accepted he had only known the appellant since 2020 and stated they mostly saw each other at clubs and parties. He knew nothing about the relationship of N Z and his female partner but stated that he had seen the appellant and NZ kissing. In the context of the lack of knowledge of M R R about Mr N Z and his female partner and on the basis that he clearly has no hesitation in returning to Pakistan for months at a time, despite the fact that he had been given refugee status on that basis, I do not accept his evidence.

118. Mr O O also attended and confirmed that he was "straight". He gave evidence that he had known the appellant since 2015 and had seen the appellant "doing activity". He stated under cross-examination in response as to whether the appellant was a member of the gay community that "he likes [present tense] drinks and drugs and that is why they know each other". He stated that he was not comfortable in that environment. I do not accept that someone who is straight, as Mr O O asserted, he was, would attend such events *regularly* to be witness to such events. In the context of the compromised evidence of both N Z and Mr M R R, I attach no weight to his evidence. I simply do not accept his statement that he had seen the appellant "many times participating in different events organised by local gay people" because as a straight person I do not accept that he would attend *many* events organised by local gay people.

119. The appellant gave evidence that his aunt provides him with board and lodging and gives him cash for his mobile phone and travel and yet there was no attendance by her at court and even if she could not attend there was a failure to provide a current statement. (An old letter appeared to date from 2012/13). I do not accept that she and the appellant's uncle

would permit the appellant to stay in their home for many years including after him being released from prison if he were of the sexuality of which they disapproved, and which he clearly stated they did in his response to his asylum interview at question 174, where he stated "*my uncle went ballistic. I had to leave the house. Basically I didn't go to the house after that*". This is particularly so if the remainder of the family in Pakistan had an antipathy towards him on the basis of his sexuality. In his evidence the appellant confirmed that they even arranged for his bail. The evidence is not consistent and is contradictory. The appellant's explanation that they simply would not talk about the case and say he could live with them was simply inconsistent with the overall family hostility on his own previous evidence. These responses of the appellant are simple answers to simple questions, and I do not consider the contradiction can be explained by his mental health difficulties.

120. The appellant stated that additionally it was his choice the aunt did not come to court but in view of the fact that she could support his account, that decision, particularly bearing in mind he was legally represented, was not credible. I find that in the light of the support she had afforded the appellant (and it appears from the Home Office bundle she provided an undated letter of support to the appellant in his 2013 application) that her absence spoke to the fact that the appellant was not truthful about his sexuality. I have no doubt that she would assist him in an asylum claim bearing in mind she was supporting him with his essential needs including supplying him with board and lodging and financial top ups for his mobile phone. As the appellant stated himself in oral evidence - if she had to tell the truth she would say so – and that, I conclude, was why she was not present.

121. I have considered the witness evidence of those together with the statement of Mr M W R N. Mr M W R N 's statement of 22nd December 2020 was almost identical to that of his updated statement of 8th February 2022 and no further detail was given. He produced an isolation note dated 24th July 2022 in the name of Mr M W R N. It appears he was told to self-isolate by the NHS. Nonetheless, the appellant did not attend court and the respondent had no opportunity to cross-examine him, which must inevitably reduce the weight to be given to his witness statement. The statements of Mr M W R N are brief and declare that he is a gay man and that he was aware of the appellant's sexual relationship with N Z because "*We attended gay club together and where I saw them hugging and kissing, that made my believe on his sexuality and their relationship stronger*". The witness then proceeds to state he supported the asylum case because the appellant "is living at bisexual man in UK". There was no indication in this undetailed witness statements as to how the witness knew the appellant was bisexual if he had only seen him with a man. I place little weight on Mr M W R N's statements apart from the fact he was unable to attend court for valid reasons.

122. The same could be said of the statement given by N Z on 4th January 2021, compared with that given on 5th May 2022 and similarly the same

could be said for the statement given by Mr O O. The statement of 24th June 2020 was still relied on, albeit I accept the witness attended and gave oral testimony.

123. I conclude that the witnesses were unreliable; indeed, the evidence of one of their number was that they knew each other through drugs and drink. Even Mr Hawkin acknowledged, sensibly in my view, that the witnesses' evidence was 'surprising'. That puts it euphemistically. I simply reject, in these circumstances, the submission that the account must be true because, if it were concocted, more consistency could be expected.

124. The further statements including that of R K who stated that Mr A N had been her friend for many years, but she had known the appellant for only months made no mention of Yolanda or his time in incarceration. Neither she nor T S, nor D K, nor A L attended the hearing to give evidence and the last referred to the appellant as gay rather than bisexual. Mr T S said he had a 'talk' with the appellant in 2008 about his sexuality. That again contradicts the appellant's asylum claim that he had not talked about it before 2017. I place little weight on their statements which were brief and revealed little knowledge of the appellant and in instances actively undermined his claim.

125. I have taken into account the witness statements of those cited at paragraph 22 above but find that they are brief and lack detail and I give little weight to the statements of those who did not attend. I have addressed the statement of the individual isolating owing to Covid separately.

126. The photographic evidence did not take the case further. It was put to the appellant that the photographs were posed specifically to support his claim and his response was merely that if that is what you think, it is up to you. He stated, "We were having good times and so we took these photos". I bear in mind the guidance in **A,B and C** such that the appellant might have been 'reticent in revealing intimate aspects of his life' but if that were the case, I find it not credible that he would even have had the photographs taken. He was asked about these photographs and why they were taken but when asked about the circumstances, the appellant's response was that was he *hated* having his photograph taken and thus his explanation that they were "just having fun" was contradictory. The photographic evidence overall did not, in my view, attest to anything more than friendship at best and appeared evidently staged for production. Aside from that fact, placing significant weight on these photographs would concentrate unduly on 'sexual practice' (if they showed that which I do not accept) rather than 'sexual orientation'. As the appellant states candidly at [19] of his September 2019 witness statement 'male friendships can be quite physical, and this is fairly common…holding hands is not necessarily seen as a sign of homosexuality'. In these particular circumstances, I place no weight on the photographic evidence.

127. The production of the messages between the appellant and 'Asif', in the context of my conclusions above on that witness, and the unspecified timeframe in which these messages are said to have been produced, do not take the case further forward. Nor does the generic material such as Disco Rani flyers confirm the appellant's sexuality one way or another.

128. **JT Cameroon v SSHD** [2008] EWCA Civ 878 confirms that it is the duty of the judicial decision maker in every instance to reach his own conclusion upon the credibility of the claimant. Section 8 of the Asylum and Immigration Treatment of Claimants) Act 2004 should be taken only as part of a global assessment of credibility and is not the starting point **SM [2005] UKAIT 00116**. Nevertheless, having considered the evidence overall, I find the delay in the claim for asylum weighs against the appellant.

129. On consideration of the evidence as a whole for the reasons given above, I do not find the appellant credible in his claim to be bisexual.

Humanitarian Protection

130. As I do not find the appellant has a valid claim for protection as a refugee it is necessary for me to go on to consider whether the appellant has a claim for humanitarian protection. For the reasons I set out above in relation to asylum and below in relation to Article 3 of the Human Rights Convention, I do not find the appellant has any valid claim to such protection. There is no substantive difference in this case between the appellant's claim under the Refugee Convention, and under paragraph 339C of the Immigration Rules (which deals with claims for humanitarian protection). I do not find the appellant can show substantial grounds for belief that he would face a real risk of suffering serious harm if returned to Pakistan because of his sexuality. I therefore dismiss the appeal on humanitarian protection grounds.

Human Rights grounds

131. Turning to Article 3, as I find the appellant not credible, I do not accept that the appellant is at risk of serious harm on return to Pakistan owing to his sexuality or that any of the appellant's psychological problems stem from his sexual orientation. He experiences support from his family in the UK and I find he can if he wishes receive support from his family abroad. Applying the principles laid down in **AM (Zimbabwe)** and taking into account the medical reports, which referred to his mental health problems in relation to his drug addictions, his detention and his incarceration, I conclude that he would be able to access treatment in Pakistan and would have the support of his family. He would no longer have the stresses of his detention and would be free to work.

132. At 5.4.2 of Dr Heke's third report, she stated if his treatment was not continued his depression "may" worsen. It is clear however that the appellant has not attended for various therapy sessions and there is no

reason as to why he could not access medication in Pakistan albeit the limited facilities there. She concluded that his risk of suicide was unpredictable but bearing in mind I do not accept that he has PTSD owing to his sexual orientation but may have mental health problems generally, not least owing to his immigration problems, these can be addressed. None of the doctors addressed whether the appellant had PTSD as a result of the stabbing in the UK, but it is clear from Section 3.1.4 that Dr Heke on 5th May 2022 concluded "I explored more fully T's reference to the suicidality, and he described how he was too cowardly to act on his thoughts". That is not a criticism of the appellant but a frank acknowledgement that his suicidal ideations would not in reality be acted upon. Applying **J v SSHD** [2005] EWCA Civ 629 I do not find, on the evidence before me, that the appellant would be at risk of suicide on removal.

133. I do not accept that this appellant would be at risk of suicide on return or that his mental health condition comes anywhere near the relevant Article 3 threshold set out in **AM (Zimbabwe)** which has been acknowledged can apply to suicide cases. I do not accept his underlying claim of issues on sexuality and thus that he would risk his life. Further, I do not accept he cannot seek support from his family, moreover he is capable of work and has friends who regularly visit Pakistan.

134. Turning to Article 8, I find that the appellant cannot comply with Section 117C of the Nationality, Immigration and Asylum Act. For clarity I set out the provisions:

> ***17CArticle 8: additional considerations in cases involving foreign criminals***
>
> *(1) The deportation of foreign criminals is in the public interest.*
>
> *(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.*
>
> *(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.*
>
> *(4) Exception 1 applies where—*
>
> *(a) C has been lawfully resident in the United Kingdom for most of C's life,*
>
> *(b) C is socially and culturally integrated in the United Kingdom, and*
>
> *(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.*
>
> *(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.*
>
> *(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation*

unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

135. He is not, as accepted by Mr Hawkin, socially and culturally integrated in the UK. He is subject to a deportation order. Even if he were, and I note he has resided in the UK for a significant time, Section 117C(4) should be read conjunctively. He has not been living in the UK for most of his life because he was born in 1973 and entered the UK in 2001 when he was nearly 30 years old, 21 years ago. Nor do I consider there would be very significant obstacles to his return to Pakistan.

136. **SSHD v Kamara [2016] EWCA Civ 813** held as follows:

> *'In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life'*.

137. The appellant left Pakistan in his 20s, having been educated there and is conversant with the language and still has family there. I do not accept his sexual orientation as claimed and I do not accept that he would be unable to obtain the support of his family on return. He has work experience and would be free to work on return. He still retains links with those who return to Pakistan on a regular basis and there is no reason to suppose he could not seek assistance from them bearing in mind they were prepared to attend court on his behalf and profess to be a friend. Even without that assistance or that of his family, I find that he is adaptable and resourceful, having worked in Thailand and Hong Kong, and can access medical care for his mental health condition and return to work. He will clearly against that background have a reasonable opportunity to be accepted in Pakistan.

138. At best the claimed relationship with his partner was described as an 'open' relationship seeing each other once a week and cannot be described as 'qualifying partner' or an article 8 protected relationship. I make plain I do not accept this relationship. The appellant cannot succeed in relation to exception 2.

139. Turning to very compelling circumstances, for the reasons I have given above, I accept on applying a 'balance sheet' approach that the appellant has lived in the United Kingdom for over 20 years, has friends in the UK and has been absent from Pakistan for many years. He may

contest that he has family life with his aunt, but she did not attend to give evidence on his behalf and thus I do not accept further to **Beoku-Betts v SSHD** [2008] UKHL 9 that she would be affected or that it would be disproportionate to remove him on her account. As I say he is fully able to be an independent adult and I employ my reasoning above in relation to the very significant obstacles on his return. He cannot succeed in relation to Section 117C or the immigration rules which sets out the position of the Secretary of State, and he cannot succeed under paragraph 276(1) ADE being subject to a deportation order. In relation to Section 117B he may be able to speak English, but he has made ample use of NHS funds through GP access, but he has remained illegally in the UK following his visit in 2001. Little weight can be afforded to his private life.

140. No very compelling circumstances, that I accept, were presented to me. I have considered the principles set out in **HA (Iraq) v Secretary of State** [2022] UKSC 22. The appellant has been convicted of an offence for which he was given more than a year but less than four years in prison. When considering the 'very compelling circumstances test', I have considered factors in relation to 'exceptions 1 and 2' in conjunction with any other factors relevant to the application of article 8. I have rejected the appellant's claim on sexuality although I acknowledge his length of residence in the UK and his mental health difficulties. I was not presented with significant information of any rehabilitation. None of the factors for reasons given amount to very compelling circumstances to outweigh the public interest. The appellant is able to return and reintegrate in Pakistan.

141. I dismiss this appeal on all grounds.

Notice of Decision

The appeal is dismissed on asylum grounds, on humanitarian protection grounds and on human rights grounds, Articles 2, 3 and 8.

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

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

Signed Helen Rimington Date 29th November 2022

Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Helen Rimington Date 29th November 2022

Upper Tribunal Judge Rimington