

Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge – SOGICA

UK SOGI case law 1989-2017 (September 2018 update)

Case reference	Asylum seeker(s)	Main legal basis	Key outcomes	Citations	Date	Court
R v Secretary of State for the Home Department, Ex parte Zia Mehmet Binbasi, [1989] Imm AR 595	Gay man from Cyprus	Article 8 ECHR	Application dismissed. The Secretary of State had expressed the view that homosexuals per se could not constitute a social group within the meaning of article 1A (2) of the Convention. It was held that the Secretary of State's refusal to grant the applicant asylum was not unreasonable.	'For the purposes of the present case, it seems to me that it was unnecessary for the Secretary of State to decide whether homosexuals can be considered as a particular social group, because it is clear that in Cyprus there is no discrimination against homosexuals who are not active. So for there to be a well-founded fear of being persecuted, the social group would have to be restricted to active homosexuals.'	25 July 1989	High Court (England and Wales)
JOAN VRACIU v The Secretary of State for the Home Department(SSHD)	Gay man from Romania	Article 1 A Refugee Convention; ECHR	Appeal allowed. Disagreed with analysis in R V SSHD Ex Parte Binbasi 1989 that homosexuals are not a social group and stated that prosecution may amount to persecution.	'We find therefore that in Romania homosexuals are a particular social group within the meaning of the Refugee Convention.'	21 November 1994	Immigration Appeal Tribunal

Apostolov v SSHD 1998	Gay man from Bulgaria	Asylum and Immigration Appeals Act 1993, Asylum and Immigration Act 1996, Immigration Rules 1996, HC 725.	Appeal dismissed. Although the applicant had been arrested, he did not establish that he subjectively feared persecution for a Convention reason and that that fear was objectively well-founded. There was no question of prosecution as a means of persecution.	'Tribunal concluded that homosexuals per se did not constitute a social group within the meaning of the Convention'.	24 September 1998	Immigration Appeal Tribunal
Islam (A.P.) v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.) (Conjoined Appeals)	Two Pakistani women	Article 1 A(2) Refugee Convention; Section 8(2) of the Asylum and Immigration Appeals Act 1993	Appeal allowed. While not concerning SOGI-based claims, this established that women fleeing gender-based persecution can constitute a 'particular social group', an approach that was subsequently applied to claims based on sexual orientation and gender identity.		25 March 1999	House of Lords
Jain v Secretary of State for the Home Department [1999] EWJ No 5243	Gay man from India	Section 9 of the Asylum and Immigration Appeals Act 1993	Appeal dismissed. Criminalisation of 'homosexuality' per se is insufficient basis for granting asylum.		06 October 1999	Court of Appeal (Civil Division)
Beteringhe v SSHD 1999	Gay man from Romania		Appeal allowed. Homosexuals were a 'particular social group', who would be persecuted under the law of Article 200 para 5.	'We find as a fact that the Appellant is a practising homosexual. It follows that, if he is returned to Romania, he would be a member of the group which Mr Burke concedes to be a "particular social group" for the purposes of the Convention'.	11 October 1999	Immigration Appeal Tribunal

Dumitru v SSHD [2000]	Gay man from Romania		Appeal dismissed.	'He only engaged in consensual sexual relations with his partner in private. He did not see it as essential to his identity as a homosexual to adopt an overt style of homosexual behaviour in public.'	03 April 2000	Immigration Appeal Tribunal
Bridget MAINGI v SSHD	Lesbian woman from Kenya	Refugee Convention (no article specified)	Appeal dismissed. The appellant had not demonstrated a well-founded fear of persecution in Kenya.	'In addition her lesbian partner had died and there was therefore no likelihood that she would be subjected to further accusations of the kind which she earlier claimed.'	03 May 2001	Immigration Appeal Tribunal
Krasniqi v Secretary of State for the Home Department [2001] UKIAT 01TH02140	Gay man from Kosovo		Appeal dismissed. The credibility of the claimant was not accepted and even if it were, there was no evidence that the applicant would be at risk if removed to Kosovo.	'The claim of 'homosexuality' is 'easy to make and impossible to disprove'.	30 August 2001	Immigration Appeal Tribunal
Darnley Ashley v SSHD [2001] 01TH01837	Gay man from Zimbabwe	Article 8 ECHR	Appeal dismissed. No breach of private life because if removed, the claimant would be faithful to his partner in the UK so would not be sexually active in Zimbabwe.		21 September 2001	Immigration Appeal Tribunal
Z v Secretary of State for the Home Department [2001] UKIAT 01TH02634	Gay man from Zimbabwe	Article 8 ECHR	Appeal allowed. Affirmation that 'sodomy' laws, even where unenforced, constitute a breach of right to private life.	'The real mischief ... that is likely to be caused by this allowing his appeal is by encouraging a flood of fraudulent Zimbabwean (and no doubt other) asylum seekers posing as sodomites.'	08 November 2001	Immigration Appeal Tribunal
JMS (Homosexual - Behaviour - Prosecution) Kenya CG [2001] UKIAT 00007	Gay man from Kenya	Article 8 ECHR	Country guidance case. Appeal dismissed.	'There is no basis for a successful claim under Article 8 in the light of her finding that the appellant is able to have homosexual relationships provided he acts discreetly.'	03 December 2001	Immigration Appeal Tribunal

Sarfrazy v Secretary of State for the Home Department [2002] UKIAT 00540	Gay or bisexual man from Iran	Home Office Country Information and Policy Unit report on Iran	Appeal dismissed. Appellant's credibility was not accepted but even if it were accepted that he was gay or bisexual, it was not accepted that he would be at risk if returned. The claim to have videotaped 'sexual practices' was seen as discrediting.	In Iran 'the police are not empowered to, nor do they actively pursue homosexual activity of any kind that is performed behind the "veil of decency" of closed doors'.	01 March 2002	Immigration Appeal Tribunal
Saeed v SSHD 2002	Gay man from Yemen	Refugee Convention and ECHR	Appeal allowed. The applicant would be persecuted by the police and his family if he returned.	'As it seems to me there is now a broad international consensus that everyone has a right of respect for his private life. A person's private life includes his sexual life, which thus deserves respect.'	10 May 2002	Immigration Appeal Tribunal
MS (Risk - Homosexuality – Military Service) Macedonia CG [2002] UKIAT 03308	Gay man from Macedonia	Articles 3 and 8 ECHR	Country guidance case. Appeal allowed on Article 3 grounds (but not Article 8 or Refugee Convention).	'Accordingly, while we dismiss the Appellant's appeal on Refugee Convention grounds, as we are not satisfied that he is a genuine conscientious objector, we are satisfied that, for him to be returned to serve a prison sentence, for failure to report for his military service, in the atrocious prison conditions in Macedonia, would amount to a breach of his Article 3 rights, but we are not satisfied that his being returned to Macedonia, without his partner, would be in breach of his rights under Article 8.'	30 July 2002	Immigration Appeal Tribunal
Musavi v SSHD 2002	Gay men from Iran	Refugee Convention (no article specified)	Appeal dismissed. The applicant did not give evidence that he wanted to express his homosexuality and lived in this way.	'The Adjudicator found that the Appellant had managed to go on living in Iran for six or seven years after his last difficulties in 1994. This was not consistent with somebody who left because he had a genuine fear of persecution.'	30 August 2002	Immigration Appeal Tribunal

FM (Risk - Homosexual - Illegal Departure) Iran CG [2002] UKIAT 05660	Gay man from Iran	Article 3 ECHR	Country guidance case. Appeal dismissed.	'As the Tribunal has said in other determinations, it is not for us to apply the European Convention world wide.'	05 December 2002	Immigration Appeal Tribunal
MS (Risk - Homosexual) Turkey CG [2002] UKIAT 05654	Gay man from Turkey	Articles 8 and 14 ECHR	Country guidance case. Appeal dismissed.	'Thus any risk of persecution or maltreatment in breach of Article 3 of the ECHR we consider is highly remote or fanciful and certainly not at the level of a real risk. ... In relation to the claims under Article 8 and 14 of the ECHR we do not consider that there is any evidence to indicate a real risk to a breach of the Appellant's right to a private life. It appears that he conducted a gay relationship for some two years prior to leaving Turkey. Beyond this any breach of Article 8 or indeed of discriminatory behaviour on the basis of his sexuality we consider is outweighed by the valid immigration control obligations of the United Kingdom and that it would not be disproportionate to return the Appellant to Turkey.'	06 December 2002	Immigration Appeal Tribunal

Kizza v SSHD 2002	Lesbian woman from Uganda	Articles 3 and 8 ECHR	Appeal allowed and case remitted.	'Lesbianism appears to be exceedingly rare, or at least, there is precious little material which deals with it in relation to Uganda. When we say lesbianism is rare, we do not mean that there are not a number of lesbians, what we mean is that problems relating to lesbians have singularly failed to surface. That of course, may only mean that they are forced to keep their proclivities under cover. But there is no real evidence to support a suggestion that lesbians as such are persecuted to the level required to enable the Convention to be brought into play'.	15 January 2003	Immigration Appeal Tribunal
Queen on the application of Dawkins v IAT neutral citation no [2003] EWHC373 Admin.	Gay man from Jamaica	Articles 2, 3, 8 and 9 ECHR; Human Rights Act 1998	Application refused. Article 8 does not apply extra-territorially. Criminal law alone cannot be the basis for UK giving refugee status to 'practicing homosexuals' from Jamaica.	'On that basis, anybody who was a homosexual could come to this country and claim asylum'.	18 February 2003	High Court (England and Wales)
MV (Risk – Homosexuals) Ukraine CG [2003] UKIAT 00005	Gay man from Ukraine	Articles 3 and 8 ECHR	Country guidance case. Appeal dismissed.		29 May 2003	Immigration Appeal Tribunal
IM (Risk – Objective Evidence – Homosexuals) Albania CG [2003] UKIAT 00067	Gay man from Albania	Home Office Country Information and Policy Unit report on Albania	Country guidance case. Appeal dismissed. The Adjudicator's earlier findings on internal relocation were seen as sustainable.		08 September 2003	Immigration Appeal Tribunal

YF (Eritrea) v Secretary of State for the Home Department [2003] UKIAT 00177	Gay man from Eritrea	Section 69(5) and under Section 65 of the Immigration and Asylum Appeals Act 1999	Country guidance case. Appeal dismissed. The Tribunal accepted that the appellant was gay, but did not believe his account of persecution.		04 December 2003	Immigration Appeal Tribunal
EK (Non Overt - Homosexual) Uganda v Secretary of State for the Home Department, [2004] UKIAT 00021	Gay man from Uganda	Articles 3 and 8 ECHR	Appeal dismissed. Inability to engage in 'homosexual acts' not sufficiently detrimental to engage Article 3.	'His entire past shows that his homosexual urges are not matters which he has ever felt compelled to display, whether that be from fear of the authorities or otherwise'.	12 February 2004	Immigration Appeal Tribunal
Hylton, R (on the application of) v The Secretary of State for the Home Department [2003] EWHC 1992 (Admin)	Gay man from Jamaica	Section 94 of the Immigration and Asylum Act 2002	Appeal dismissed.	'The evidence adduced by the claimant in this case does not get sufficiently near to establishing a general serious risk or a general contravention of this country's human rights obligations, so as to create an arguable case that the Secretary of State was irrational in forming the view that there was no such general problem and therefore in deciding to include Jamaica in the relevant list'.	23 July 2004	High Court (England and Wales)
JD (Zimbabwe) v Secretary of State for the Home Department [2004] UKIAT 00259	Lesbian woman from Zimbabwe	Articles 3 and 8 ECHR	Appeal dismissed. The Tribunal held that the applicant could internally relocate and act with discretion in order to 'attain invisibility'.		17 September 2004	Immigration Appeal Tribunal
Z v The Secretary of State for the Home Department [2004] EWCA Civ 1578	Gay man from Zimbabwe	Articles 3 and 8 ECHR	Appeal dismissed. The claimant could not succeed based on the facts of the case under either the Refugee Convention or Article 8 ECHR.		02 December 2004	Court of Appeal (Civil Division)

YK and RL (Kosovo – Risk to homosexuals) Serbia and Montenegro CG [2005] UKIAT 00005	Two gay men from Kosovo	Article 3 ECHR	Country guidance case. Appeal allowed. The appellant was the Secretary of State for the Home Department.	'... on the evidence before us we find there to be no risk that either respondent will suffer a breach of their Article 3 rights on return to Kosovo.'	19 January 2005	Immigration Appeal Tribunal
MN (Findings on Homosexuality) Kenya v Secretary of State for the Home Department, [2005] UKIAT 00021	Gay man from Kenya	ECHR (no article specified)	Appeal allowed.	'We are persuaded that a person who can avoid persecution for his homosexuality only by living a lie, that is by persistently, and against his will, so organising his affairs that he lives furtively and at a constant worry of discovery is being oppressed.'	28 January 2005	Immigration Appeal Tribunal
RM and BB (Homosexuals) Iran CG [2005] UKIAT 00117	Two gay men from Iran	Article 3 ECHR	Country guidance case. Appeals allowed. Both appeals were remitted for fresh consideration.		08 July 2005	Immigration Appeal Tribunal
AT (Iran) v Secretary of State for the Home Department [2005] UKAIT 00119	Gay man from Iran	Article 3 ECHR	Appeal dismissed. No evidence that the applicant would engage in 'homosexual conduct' that would expose him to risk if returned.	'Whether there is or is not a “core right” for persons of any sexual orientation to conduct themselves with discretion in their public sexual practices is not something we need in our view decide, though we should have thought that such discretion was part of the ordinary consensus of civilized mankind (and still more so of a number of races considered “uncivilized”, so far as they still exist).'	27 July 2005	Asylum and Immigration Tribunal (AIT)
NR (Jamaica) v The Secretary of State for the Home Department [2009] EWCA 856	Lesbian woman from Jamaica	Refugee Convention Article 3 ECHR	Appeal allowed. The issue of the sexual identity of the claimant was not adequately addressed by the Asylum and Immigration Tribunal.	'[the Tribunal] found that she did not have a lesbian identity as she claimed; that her past lesbianism was in the nature of teenage experimentation rather than a settled sexual orientation'.	03 November 2005	Court of Appeal (Civil Division)
RG (COLOMBIA) v The Secretary of State for the Home Department [2005] EWCA Civ 1362	Gay man from Colombia	Article 3 ECHR Refugee Convention	Appeal allowed. The decision contained an error at law.		03 November 2005	Court of Appeal (Civil Division)

DW (Homosexual Men - Persecution - Sufficiency of Protection) Jamaica v Secretary of State for the Home Department, CG [2005] UKAIT 00168	Gay man from Jamaica	Article 3 ECHR	Country guidance case. Appeal allowed. Men perceived as 'homosexual' likely to be at risk of persecution in Jamaica. Internal relocation unlikely to be an option.		28 November 2005	Asylum and Immigration Tribunal (AIT)
J v Secretary of State for the Home Department [2006] EWCA Civ 1238	Gay man from Iran	Article 1 A(2) Refugee Convention; Articles 2, 3 and 8 ECHR	Appeal allowed. In reconsidering, the tribunal needs to take into account whether 'discretion' would be 'reasonably tolerable' for the applicant.		26 July 2006	Court of Appeal (Civil Division)
R (on the application of B) v Secretary of State for the Home Department, [2007] EWHC 2528 (Admin)	Gay man from Algeria	Articles 8 and 9 ECHR	Appeal allowed.	'The claimant will be afraid of what might happen to him if he acts as he would normally act, [if returned to Algeria] having regard to his inclinations were he able to express his homosexuality openly as is the case in this country.'	23 October 2007	High Court (England and Wales)
HJ v Secretary of State for the Home Department [2008] UKAIT 00044	Gay man from Iran	Refugee or Person in Need of International Protection Regulations 2006, Article 15 ECHR, Article 1A Refugee Convention	Appeal dismissed. The appellant can reasonably be expected to live his private life discretely.		10 May 2008	Asylum and Immigration Tribunal (AIT)

JM v Secretary of State for the Home Department [2008] UKIAT 00065	Gay man from Uganda	Article 5 Council Directive 2004/83/EC; Articles 3, 8, 10 and 14 ECHR	Country guidance case. Appeal dismissed. Appellant would behave discretely if returned and it would be reasonable to expect him to do so.	'We observe the appellant to be a sensitive and attentive person who would be discreet in his public behaviour, being mindful of his society's concepts of good manners and the general social mores. We find as a matter of fact that he will on return act in the same relatively discreet way he did before. We recognise that such discretion in his case may extend to avoiding kissing in public or of a public act or remark which might provoke comment or outrage.'	11 June 2008	Asylum and Immigration Tribunal (AIT)
AJ (Risk to Homosexuals) Afghanistan CG [2009] UKAIT 00001	Gay man from Afghanistan	Article 8 ECHR	Country guidance case. Appeal allowed. Relocation to Kabul not viable.		07 January 2009	Asylum and Immigration Tribunal (AIT)
NR (Jamaica) v SHHD [2009] EWCA Civ 856	Lesbian woman from Jamaica	Nationality, Immigration and Asylum Act 2002; Articles 3, 8 with 14 and 10 with 14 of ECHR	Appeal allowed and the appellant's sexuality should be reconsidered by a fresh Tribunal.	'It is of course her sexual orientation at the time of the hearing which is important.'	05 August 2009	Court of Appeal (Civil Division)
MK (Lesbians) Albania v Secretary of State for the Home Department	Lesbian woman from Albania	Articles 3 and 8 ECHR	Country guidance case. Appeal dismissed.	'In general terms, lesbian women do not frequent cruising areas and do not join LGBT organisations. Therefore there is lacking the opportunity for them to be harassed or persecuted by the police. ... In general terms in Albania women of lesbian orientation are able to carry on lesbian relationships discreetly without attracting the risk of serious harm.'	09 September 2009	Asylum and Immigration Tribunal (AIT)

OO (Sudan) & Ors v The Secretary of State for the Home Department [2009] EWCA Civ 1432	Gay man from Sudan and gay man from Uganda	Amare v SSHD [2005] EWCA Civ 1600 [2006] Imm AR 217	Appeal dismissed. The court found that the AIT had properly considered the impact of removal on this appellant's private life.		18 November 2009	Court of Appeal (Civil Division)
HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31		Article 9(1)(a) EC Council Directive 2004/83/EC; Article 1A(2) Refugee Convention	Appeals allowed. The key case in establishing the 'discretion test' of how a claimant would behave if returned (para 82).	'... male homosexuals are to be free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates'.	07 July 2010	Supreme Court
SW (lesbians - HJ and HT applied) Jamaica v Secretary of State for the Home Department, CG [2011] UKUT 00251(IAC)	Lesbian woman from Jamaica	Articles 3 and 8 ECHR	Country guidance case. Appeal allowed.	'Lesbianism (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder. ... Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear.'	24 June 2011	Upper Tribunal (Immigration and Asylum Chamber)
LZ (homosexuals) Zimbabwe CG [2011] UKUT 00487 (IAC)	Lesbian woman from Zimbabwe	Refugee Convention (no article specified)	Country guidance case. Appeal allowed.	'Although the appellant was successful, the Tribunal agreed with GALZ (Gays and Lesbians of Zimbabwe) that Zimbabwe is 'not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia'.	08 January 2012	Upper Tribunal (Immigration and Asylum Chamber)

HL (Malaysia) v SSHD (2012) - gay man	Gay man from Malaysia	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal dismissed. There was no error of law in the determination of the First-tier Tribunal.		08 May 2012	Court of Appeal (Civil Division)
OO (gay men: risk) Algeria [2013] UKUT 00063 (IAC)	Gay man from Algeria	Article 9 EC Council Directive 2004/83/EC; Article 3 ECHR	Country guidance case. Appeal dismissed.	'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.'	08 April 2013	Upper Tribunal (Immigration and Asylum Chamber)
JB (Jamaica), R (on the application of) v The Secretary of State for the Home Department [2013] EWCA Civ 666 (12 June 2013)	Gay man from Jamaica	Section 94 of the Nationality, Immigration and Asylum Act 2002	Appeal allowed. The court found that It cannot be disputed that a serious risk of persecution for LGBT exists in Jamaica. Also the decision of the Tribunal that the claimant was lying about his sexuality was deemed unfounded.		12 June 2013	Court of Appeal (Civil Division)

The Secretary of State for the Home Department and VK	Gay man from Namibia	Article 8 ECHR	The Secretary of State's appeal to the Upper Tribunal was dismissed. The Judge did not err in law in allowing the appellant's appeal under Art 8.		24 July 2013	Upper Tribunal (Immigration and Asylum Chamber)
SD (military service – sexual identity) (CG) [2013] UKUT 00612	Bisexual man from Turkey	Articles 9 and 10 EC Council Directive 2004/83/EC; Articles 3 and 8 ECHR	Country guidance case. Appeal allowed. The decision of the First tier Tribunal was set aside.		05 December 2013	Upper Tribunal (Immigration and Asylum Chamber)
Sameer Neelam and the Secretary of State for the Home Department	Trans man from India	Articles 2 and 3 ECHR	Appeal dismissed. Relocation would not be 'unduly harsh'.	'This is not someone whose drive towards transitioning from female to male was so strong that he could not bear to live in his female body because he continued to use his female name and to describe himself as transgender some two years after his arrival in the UK ... Mr Neelam is a highly intelligent man with financial resources. He had the money to be able to pay for an MBA. One would have expected him to have used his resources to pay for surgery. His case that there has been such a significant shift in his feelings about who he is since he came to the UK is not borne out by the facts.'	12 December 2013	Upper Tribunal (Immigration and Asylum Chamber)
MD (same-sex oriented males: risk) India CG [2014] UKUT 65 (IAC)	Gay man from India	Article 15(b) EC Council Directive 2004/83/EC; Articles 3 and 8 ECHR	Country guidance case. Appeal dismissed. Same sex relations are criminal in India, but prosecution is rare and it is safe to relocate.		14 February 2014	Upper Tribunal (Immigration and Asylum Chamber)

Kaminda Harsha Kumara Seekku-Wellage and the Secretary of State for the Home Department	Gay man from Sri Lanka	Articles 4 and 8 ECHR	Appeal allowed.		18 June 2014	Upper Tribunal (Immigration and Asylum Chamber)
H and the Secretary of State for the Home Department	Transgender lesbian woman from Singapore	Articles 3, 8 and 14 ECHR	Appeal dismissed. The decision of the First-tier Tribunal was not materially flawed in law.		08 August 2014	Upper Tribunal (Immigration and Asylum Chamber)
MRS LOICE MUTANDWA And The Secretary of State for the Home Department	Lesbian woman from Zimbabwe	Article 3 ECHR	Appeal dismissed. No justification was found for the application of Article 8 relief for the Appellant.	'... Judge Baker considered that the appellant's account of her sexuality and desired lifestyle, taken at its highest, would not put her at risk of persecution on return to Zimbabwe.'	13 November 2014	Upper Tribunal (Immigration and Asylum Chamber)
M A A M and The Secretary of State for the Home Department	Gay man from Sri Lanka	Article 3 ECHR	Appeal dismissed.	'The most that will happen to him is harassment from the police, extortion, sexual favours or assault. I am not persuaded that this ill-treatment amounts to persecution for a Convention reason or reaches the high threshold of Article 3 ill-treatment'	14 November 2014	Upper Tribunal (Immigration and Asylum Chamber)
AAT and The Secretary of State for the Home Department	Bisexual man from Algeria	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal allowed.	'... the appellants' removal would cause the United Kingdom to be in breach of its obligations under the Refugee Convention'.	20 November 2014	Upper Tribunal (Immigration and Asylum Chamber)

LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073 (IAC)	Gay men from Sri Lanka	Article 1 A(2) Refugee Convention; Article 8 ECHR	Country guidance case. Appeals dismissed. The treatment of gay men does not reach required level for persecution.	'Gay men in civil partnerships' in Sri Lanka do not constitute a particular social group for the purposes of the Refugee Convention. The Sri Lankan authorities' failure to recognise alternative marital and quasi-marital statuses such as civil partnership or homosexual marriage which are available in other countries of the world does not, without more, amount to a flagrant breach of core human rights.'	18 February 2015	Upper Tribunal (Immigration and Asylum Chamber)
Miss Hoang Duong Nguyen and the Secretary of State for the Home Department	Transgender woman from Vietnam	Articles 3 and 8 ECHR; paragraph 276ADE HC 395, Immigration Rules; Section 19 Immigration Act 2014.	Appeal dismissed under the Immigration Rules.	'It is '[n]ot legal for transgender people to have gender-confirmation surgery in Vietnam and surgeons are forbidden from performing such operations [and it is] Illegal for transgender people to change their name or gender on identification and legal documents'.	19 February 2015	Upper Tribunal (Immigration and Asylum Chamber)
R (on the application of Brown) Jamaica UKSC [2015] 8	Gay man from Jamaica	Section 94(5) Nationality, Immigration and Asylum Act 2002	Appeal of the Secretary of State dismissed. Confirmation of general risk to all LGBT people in Jamaica.		04 March 2015	Supreme Court
YS and The Secretary of State for the Home Department	Gay man from Uganda	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal allowed. The Appellant satisfies the Court that he has a well-founded fear of persecution if returned to Uganda.	'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'.	09 March 2015	Upper Tribunal (Immigration and Asylum Chamber)

The Secretary of State for the Home Department and SO	Gay man from Turkey	Article 8 ECHR	Appeal allowed. The First-tier Tribunal had made an error of law.	'... the judge failed to make any attempt to engage with any of the evidence before him or to offer any reasoned findings of fact. He simply set out his conclusions upon risk or return and a reading of the determination provides no indication of why he reached those conclusions.'	24 July 2015	Upper Tribunal (Immigration and Asylum Chamber)
KL and the Secretary of State for the Home Department	Gay man from Albania	Article 3 ECHR	Appeal allowed. The decision of the First-tier Tribunal was set aside.		14 September 2015	Upper Tribunal (Immigration and Asylum Chamber)
HERD and the Secretary of State for the Home Department	Gay man from Sri Lanka	Refugee Convention (no article specified)	Appeal dismissed. The decision of the First-tier Tribunal stands.		18 January 2016	Upper Tribunal (Immigration and Asylum Chamber)
AAS (Bangladesh and the Secretary of State for the Home Department)	Gay man from Bangladesh	Articles 8 and 15 ECHR	Appeal dismissed. The decision of the First-tier Tribunal stands.	'The society to which the appellant would be returning is not a liberal one, but, as stated by Lord Hope, it is wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and openly as a gay person as he would be able to do if he were not returned.'	26 January 2016	Upper Tribunal (Immigration and Asylum Chamber)

OO (Gay Men) Algeria CG [2016] UKUT 00065	Gay man from Algeria	Article 9 EC Council Directive 2004/83/EC; Article 8 ECHR	Country guidance case. Appeal dismissed.	'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. ... 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'.	26 January 2016	Upper Tribunal (Immigration and Asylum Chamber)
AR and NH (lesbians) India CG [2016] UKUT 00066	Two lesbian women from India	Articles 9 and 10 EC Council Directive 2004/83/EC; Articles 3 and 8 ECHR	Country guidance case. Appeals dismissed.	'The absence of recognition for their civil partnership is not of itself sufficient to amount to a breach of Article 8 ECHR, still less to persecutory treatment or serious harm .	01 February 2016	Upper Tribunal (Immigration and Asylum Chamber)
SAM and The Secretary of State for the Home Department	Gay man from Pakistan	Refugee Convention	Appeal allowed. It was accepted that were the appellant to live his sexual identity openly in Pakistan he would be at serious risk of persecution.	'While sex between young men might be tolerated to a certain extent, the background evidence makes clear that core family values are seen to provide essential cohesion in Pakistani society. An openly gay identity is seen to threaten or undermine those core values.'	03 February 2016	Upper Tribunal (Immigration and Asylum Chamber)

Miss MK and the Secretary of State for the Home Department	Woman from Gambia	ECHR (no article specified) and Immigration rules	Appeal dismissed. The appellant had made a sur place claim to be a member of a particular social group for a number of reasons including her advocacy on behalf of the LGBT community.		01 April 2016	Upper Tribunal (Immigration and Asylum Chamber)
The Secretary of State for the Home Department and EFH	Transgender woman from Singapore	Article 8 and 10 ECHR	Appeal of Secretary of State dismissed. The court confirmed that the treatment that the appellant would have to endure in Singapore would amount to persecution.		21 April 2016	Upper Tribunal (Immigration and Asylum Chamber)
SB (India) and CB (India) v The Secretary of State for the Home Department [2016]	Two lesbian women from India	Article 8 ECHR	Appeal dismissed. Lack of flagrant breach of Art 8 ECHR	'The mere fact that the United Kingdom had passed the Civil Partnership Act 2004, the Marriage and Civil Partnership Scotland Act 2014 and the Marriage (Same Sex Couples) Act 2013, recognising its Convention obligations towards same-sex couples, did not predicate that any removal of a same-sex couple to their country of origin, where legal protection was not afforded to such relationships, necessarily involved a flagrant breach or denial of article 8 rights'.	12 May 2016	Court of Appeal
SASS v The Secretary of State for the Home Department	Gay man from Sri Lanka	LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073 (IAC)	Appeal allowed. The court accepted that gay men in Sri Lanka are at risk of persecution.		08 June 2016	Upper Tribunal (Immigration and Asylum Chamber)

R (Aderonke AdeJumoke Apata) and The Secretary of State for the Home Department	Lesbian woman from Nigeria	Paragraph 353 of the Immigration Rules	Appeal dismissed. All grounds of appeal were deemed unarguable.	'The underlying claim which has generated this appeal provides a troubling, but not unique, illustration of how proceedings in the Administrative Court can go badly awry when no discipline is exercised.'	29 July 2016	High Court (England and Wales)
The Secretary of State for the Home Department and MR MSH	Gay man from Bangladesh	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal by the Secretary of State was dismissed. The decision of the First-tier Tribunal did not disclose an error of law and was allowed to stand.	'... the evidence confirmed that [in Bangladesh] LGBTI individuals "cannot be open about their sexuality regardless of their socio-economic status or the geographical location" and that "LGBTI individuals, especially gay men faced a high risk of societal discrimination because of the widespread traditionally held views about sexuality and gender and visibly gay men faced a high risk of violence, including being killed.'"	05 February 2017	Upper Tribunal (Immigration and Asylum Chamber)
LC (Albania) v The Secretary of State for the Home Department & Anor [2017] EWCA Civ 351	Gay man from Albania	Article 8 ECHR; Articles 9 and 10 EC Council Directive 2004/83/EC	Appeal dismissed. Discretion test confirmed.		09 May 2017	Court of Appeal (Civil Division)
MD M R and The Secretary of State for the Home Department	Gay man from Bangladesh	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal allowed on asylum and humanitarian protection grounds.	'Having considered the evidence in the light of the FTT's conclusion that the appellant is gay and that he will live openly in Bangladesh, it is my view that in so doing he faces a real risk from non state agents of persecutory behaviour including violence from family members for which there is no sufficient state protection'	12 May 2017	Upper Tribunal (Immigration and Asylum Chamber)

R A and The Secretary of State for the Home Department	Lesbian woman from Sri Lanka	LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 00073 (IAC)	The decision made by the First-tier Tribunal to accept the claim stands.	'The secretary of state contended that even if she were at risk in her local area, she was educated and had extensive work experience and would be able to live and work in a different area of Sri Lanka such as Kandy'.	09 June 2017	Upper Tribunal (Immigration and Asylum Chamber)
R (On the Application Of) v Secretary of State for the Home Department [2017] EWHC 1580 (Admin)	Gay man from Nigeria	Permission sought to file replacement grounds for judicial review	Appeal dismissed.	'The single point which might have amounted to harassment or mistreatment was an allegation by the claimant in his witness statement that he had suffered from homophobic verbal abuse from other detainees. There did not seem to be any independent record of a report of it at the time. Taking the allegation at its highest, however, it does not seem to me to be a foundation for a submission that the defendant failed to ensure substantive equality between the Claimant and heterosexual detainees, in that the detention policy failed to treat LGBT detainees differently, resulting in harassment and discrimination. I do not regard this ground as arguable.'	21 June 2017	Court of Appeal (Civil Division)
Z and The Secretary of State for the Home Department	Gay man from Pakistan	Procedural unfairness	Care remitted to the First-tier Tribunal. The determination of the First-tier Tribunal involved the making of an error on a point of law.		07 July 2017	Upper Tribunal (Immigration and Asylum Chamber)

SK and the Secretary of State for the Home Department	Gay man from Pakistan	Articles 2 and 3 ECHR	The appellant's appeal was allowed on human rights grounds having demonstrated a real risk that he would suffer persecution on return to Pakistan.	'I find that the Appellant, as a gay man who lives an openly gay lifestyle now, and who wants to live as an openly gay man on return to Pakistan, and who has previously been raped and suffered sexual abuse in Pakistan, would be at risk on return to Pakistan on account of his sexuality. There is no sufficiency of protection, and he would not be able to internally relocate.'	28 July 2017	Upper Tribunal (Immigration and Asylum Chamber)
K M and The Secretary of State for the Home Department	Gay man from Kenya	Article 8 ECHR	Appeal dismissed. The decision of the First-tier Tribunal stands.	'Even though gays may be harassed and discriminated against in Kenya this does not mean that they are persecuted'.	01 August 2017	Upper Tribunal (Immigration and Asylum Chamber)
S A C and The Secretary of State for the Home Department	Gay / bisexual man from Bangladesh	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal dismissed. The decision of the FTT does not disclose a material error of law.	'The FTT had found that although there was discrimination, intimidation and harassment of gay and bisexual men, and there were isolated incidents of horrific violence, this did not reach the high level required to amount to a real risk of persecution'.	02 August 2017	Upper Tribunal (Immigration and Asylum Chamber)
AR (AP), against a decision of the Upper Tribunal (Immigration & Asylum Chamber) [2017] CSIH 52	Gay man from Pakistan	ECHR (no article specified)	Case remitted to the First-tier tribunal.		04 August 2017	Upper Tribunal (Immigration and Asylum Chamber)

IsI and the Secretary of State for the Home Department	Transgender man from Malaysia	Articles 8 and 15 ECHR, Art 5(1) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006	Appeal allowed on asylum grounds.	'The only way the appellant could live openly in Malaysia without a risk of persecution is by acting discreetly and concealing his sexual orientation and gender identity but I am satisfied that his reason for doing so would be because he genuinely feared that otherwise he would be persecuted.'	10 August 2017	Upper Tribunal (Immigration and Asylum Chamber)
JS and The Secretary of State for the Home Department	Gay man from Albania	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	The decision of the original immigration judge was set aside and remade. The appeal was dismissed.	'The appellant has not established an entitlement to a grant of international protection based upon a real risk of serious suffering serious harm'	03 October 2017	Upper Tribunal (Immigration and Asylum Chamber)
Medical Justice & Ors v Secretary of State for the Home Department [2017] EWHC 2461 (Admin)		"Adults at Risk in Immigration Detention", AARSG, issued under s59 of the Immigration Act 2016, after it had been laid before Parliament on 22 August 2016	Home Office definition of torture in immigration detention policy was held to be unlawful.		10 October 2017	High Court (England and Wales)

JMG v The Secretary of State for the Home Department [2017] CSOH 128	Gay man from Gambia	Article 3 ECHR	Petition granted. The petitioner was successful in challenging the Secretary of State's rejection of his asylum application.	'For the reasons I have given I shall grant the petition to the extent of reducing the determination by the respondent in the Decision Letter dated 22 March 2016 that the submissions set out in the letter of 2 March 2016, and the accompanying medical report dated 27 January 2016, do not amount to a fresh claim.'	12 October 2017	Outer House Court of Session
NN and The Secretary of State for the Home Department	Lesbian woman from Pakistan	HJ (Iran) ; Articles 3, 4, 5, 8, 12 ECHR	Appeal allowed on protection and human rights grounds.	'In summary, the uncontested evidence is that gay women are "invisible" in Pakistani society, because of the overwhelming societal expectation that women will marry men and have children, because of religious and cultural hostility towards homosexuality, and because "unnatural" carnal intercourse is prohibited by law'.	25 October 2017	Upper Tribunal (Immigration and Asylum Chamber)
Secretary of State for the Home Department and b s	Gay man from India	MD (same-sex oriented males: risk) India CG [2014] UKUT 65 (IAC)	The claimant's appeal was dismissed. There was not sufficient evidence to depart from MD.	'In our assessment there are no good reasons to consider that the claimant will face a repetition of the mistreatment he suffered at the hand of his family because he will be able to avoid that by living elsewhere in India.'	30 October 2017	Upper Tribunal (Immigration and Asylum Chamber)
YA and The Secretary of State for the Home Department	Gay man from South Africa	Article 3 ECHR	Appeal allowed on asylum and human rights grounds. The decision of First-tier Tribunal Judge was set aside and the case listed for further hearing before the Upper Tribunal limited to an assessment of the objective evidence to determine the risk upon return to South Africa.	The respondent's position was that 'the laws implemented in South Africa do not persecute LGBT individuals, and the environment for homosexual individuals in South Africa is not such that would amount to persecution'.	02 November 2017	Upper Tribunal (Immigration and Asylum Chamber)

J H M and The Secretary of State for the Home Department	Lesbian woman from Cameroon	Asylum and Immigration Act 2004, s.8	Appeal dismissed. The First-tier Tribunal's decision did not involve the making of an error of law.		15 November 2017	Upper Tribunal (Immigration and Asylum Chamber)
PPN and The Secretary of State for the Home Department	Gay man from the Philippines	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal dismissed. The discrimination that the appellant would suffer if returned would not amount to persecution.	'The fact that there is discrimination does not mean that there is persecution or ill treatment'.	11 December 2017	Upper Tribunal (Immigration and Asylum Chamber)
R (on the application of ZA) and The Secretary of State for the Home Department	Gay/questioning person from Pakistan	Paragraph 17(1) of and schedule 2 to the Immigration Act 1971	Claimant's claim for damages for unlawful detention failed.	'I do not accept that this should have been regarded as a particularly complex case. It was slightly more complicated than one where there was no doubt about the fact that the Claimant was gay; however the issues of fact were likely to be dependent simply on the credibility of the Claimant at an interview designed to probe the consistency and reliability of his account while giving him every opportunity to articulate matters in his own way without necessarily using labels familiar to Western ears, on which the Asylum Policy Instruction I have referred to gives valuable guidance to interviewers'.	06 February 2018	High Court (England and Wales)
YH (China) and The Secretary of State for the Home Department [2018] EWHC 92 (Admin) (09 February 2018)	Lesbian woman from China	Hardial Singh principles	The three previous detentions of the claimant were found to be unlawful.		09 February 2018	High Court (England and Wales)

SH (BANGLADESH) and The Secretary of State for the Home Department	Gay man from Bangladesh	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal dismissed. The decision of the First-tier Tribunal did not contain an error of law	'I conclude that [the appellant] has throughout his life and would continue to live discreetly simply because that was how he himself would wish to live, or because of social pressures'.	08 March 2018	Upper Tribunal (Immigration and Asylum Chamber)
E K and The Secretary of State for the Home Department	Gay man from Malawi	Refugee Convention; Article 3 ECHR	Appeal allowed on asylum grounds and on human rights grounds. The applicant has demonstrated that he has a well-founded fear of persecution on return to Malawi on account of his sexuality.		23 March 2018	Upper Tribunal (Immigration and Asylum Chamber)
M J and The Secretary of State for the Home Department	Gay man from Jamaica	HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department [2010] UKSC 31	Appeal allowed. The Appellant probably would not naturally act 'discreetly' with regard to his sexuality.	'it is entirely clear from the appellant's own evidence that whether or not his reasons for behaving discreetly on return to Jamaica included the fact that he was naturally a private person, one of his subjective reasons was his fear of persecution'.	27 April 2018	Upper Tribunal (Immigration and Asylum Chamber)
S B and The Secretary of State for the Home Department	Gay man from Bangladesh	Articles 3 and 8 ECHR	Appeal allowed on asylum and human rights grounds. The decision of First-tier Tribunal Judge was set aside and the case listed for further hearing before the Upper Tribunal limited to an assessment of the objective evidence to determine the risk upon return.	'The Appellant's right to family and private life outweighs the public interest in maintaining immigration control, particularly given the risks on return'.	01 May 2018	Upper Tribunal (Immigration and Asylum Chamber)

ROO (Nigeria), R (on the application of) v The Secretary of State for the Home Department [2018] EWHC 1295 (Admin) (7 June 2018)	Lesbian woman from Nigeria	Section 96(2) Nationality, Immigration and Asylum Act 2002	Appeal allowed.	<p>'This was a case in which the assessment of the credibility of the Claimant was critical in the exercise of the Defendant's discretion. There are a number of concerning features about the way in which her claim was investigated and considered, most significantly: (1) the failure of the Defendant to obtain a Rule 35 Report before making a decision; and (2) the manner in which the questioning was conducted in her asylum interview, given that this was someone who was speaking of significant incidents of trauma in her life which potentially may have left her vulnerable and less able to express herself with the conviction which the decision-maker was evidently expecting during his confrontational approach'.</p>	25 May 2018	High Court (England and Wales)
The Secretary of State for the Home Department and SMR	Gay man from Bangladesh	Article 8 ECHR	Appeal dismissed. The decision of the First-tier Tribunal involved the making of an error of law such that the decision of the Judge to allow the appeal on Article 8 grounds is set aside.	<p>'The Judge found that the appellant's sexuality is a very significant obstacle to his integration in Bangladesh. ...However, on that same evidence, the Judge found that the appellant could internally relocate within Bangladesh'.</p>	13 June 2018	Upper Tribunal (Immigration and Asylum Chamber)

I. J. and The Secretary of State for the Home Department	Gay man from Serbia	Article 3 ECHR	Appeal allowed on asylum and Article 3 grounds.	'I accept therefore that if one views the evidence in the round it is plain that attitudes within Serbia are changing, and changing far faster than Dr Sloomaeckers has been prepared to acknowledge. On the other hand I am not satisfied that the position has yet been reached in which I can be satisfied that adequate state protection from homophobic violence is in reality afforded to an individual member of the LGBT community'.	14 June 2018	Upper Tribunal (Immigration and Asylum Chamber)
I A and The Secretary of State for the Home Department	Gay man from Pakistan	Refugee Convention	Appeal allowed. The appellant has a well-founded fear of persecution for reasons of his membership of a particular social group if returned to Pakistan.	'The conclusion that the appellant would live discreetly solely because of societal disapproval is irrational in light of the appellant's evidence, which showed that he would live discreetly, not only because of societal disapproval, but because he feared that he would be subject to physical violence from his family or other members of the community if he lived openly as a gay man'.	26 June 2018	Upper Tribunal (Immigration and Asylum Chamber)



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