

## The electronic Spanish Prisoner: Romance Frauds on the Internet

Alisdair A. Gillespie, Professor of Criminal Law and Justice, Lancaster University, UK.

Whilst a considerable amount of scholarship has been produced about cyber-fraud, this article seeks to adopt a slightly different approach. It focuses on the issue of ‘romance fraud’, the phenomenon whereby a person meets a person ostensibly for romance, yet with the real purpose of defrauding them. This article builds upon empirical research conducted by others<sup>1</sup> to question whether romance fraud should be treated as a financial crime or whether its behaviours are more similar to offences against the person. After discussing how romance frauds are perpetrated, it will consider alternative liability and put forward the thesis that treating romance fraud as a financial crime lets victims down, particularly where the fraud has involved sexual intimacy.

### The origins of the Romance Fraud

Romance frauds are sometimes portrayed as a new form of criminal behaviour<sup>2</sup> but it is the latest guise of an old trick. In terms of cybercrime, the romance fraud is a variant of an Advance Fee Fraud<sup>3</sup> but its origins pre-date the internet. Indeed, romance fraud dates back to the 16<sup>th</sup> Century where it was known as the ‘Spanish Prisoner’ scam.

A typical 16<sup>th</sup> century case would involve a wealthy benefactor being engaged in discussion by the trickster. The benefactor would be told that the trickster (who will invariably be posing as a member of society) is in correspondence with a wealthy and important member of the Spanish nobility who was being held captive. Money is required to help secure his release (generally to bribe the guards, pay for passage etc) and the trickster ‘allows’ the benefactor to share some of these costs in return for a percentage of the significant reward that has been promised. As an added bonus, the Spanish prisoner has a beautiful daughter who is as yet unwed, with the noble Spanish prisoner no doubt looking favourably on any match involving their saviour.

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<sup>1</sup> The most notable authors in this field are Dr Monica Whitty (University of Leicester) and Dr Tom Buchanan (University of Westminster) who have conducted research looking at the behaviour and the impact it has on victims.

<sup>2</sup> Whitty, M. ‘The scammers persuasive techniques model’ (2013) 53 *British Journal of Criminology* 665-684.

<sup>3</sup> An advanced fee fraud is a type of scam that persuades people to make payments in advance for goods, services or financial gains. It is a broad group of fraud that ranges from dishonest sellers to the classic 419 scams operated by Nigerian gangs which promise a share of a greater fortune for the cost of a small service charge (for a useful discussion see Clough, J. (2016) *Principles of Cybercrime* (2<sup>nd</sup> Ed, Cambridge) p.209).

The original Spanish prisoner scam played to two key traits of certain members of society at that time. The first is greed. The opportunity to make a significant sum of money in return for a relatively modest outlay (although, of course, once the initial payment had been made there were either accidents (the ship bearing the money sinks) or further complications (additional guards to bribe) and thus additional monies was required, something that was readily paid due to the plausibility of the scam and to secure the money that had already been paid). The second trait was romance and social positioning. A wealthy trader or a minor noble might consider that their social standing would be significantly raised through marriage to nobility.

## Identifying the Modern Romance Fraud

There is no single type of romance fraud. The very nature of the crime means that it will turn on the individual approaches and responses between perpetrator and victim. However, the research does highlight several common features of the modern romance fraud, and these can be presented to aid our understanding of the behaviour.

The vast majority of romance frauds begin on online dating sites. Some begin at physical ‘single nights’ but these tend to be more uncommon, with dating sites being the most obvious starting point. Online dating has been one of the big successes of the internet. The industry has grown exponentially in recent years,<sup>4</sup> particularly facilitated by mobile technologies. Online dating has moved away from the belief that it was rather ‘sad’ or ‘seedy’ and has become socially acceptable.<sup>5</sup> The leading sites have turnover in the tens of million dollars<sup>6</sup> and the trend does not appear to be shifting.

Whilst internet dating sites may be a common starting point, their use differs. For some offenders, the whole operation is fraudulent. Thus the profile of the scammer is completely fictitious, including their actual identity. Famously, Robert Frost – a professional racing car driver – discovered that his photograph had been used hundreds of times as fake profile pictures, leading to him being ‘recognised’ by complete strangers.<sup>7</sup> This is not uncommon, and whilst dating sites will try to weed out duplicate photographs it will not always be possible to do so.

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<sup>4</sup> Roscoe, P. and Chillias, S. (2014) ‘The state of affairs: critical performativity and the online dating industry’ 21(6) *Organization* 797-820.

<sup>5</sup> For a useful discussion see Rosenwarne, L. *Intimacy on the Internet: Media representations of online connections* (2016, Abingdon: Routledge).

<sup>6</sup> *Ibid.*

<sup>7</sup> Rege, A. (2009) ‘What’s love got to do with it? Exploring online dating scams and identity fraud’ 3(2) *International Journal of Cyber-Criminology* 494-512.

In other cases the profile may be real, or largely real, because the scam is going to operate in a non-remote way. As will be seen, it is not uncommon for there to be visits so using a fictitious photograph is obviously not going to assist in pursuing the scam.

Online dating sites are considered to be fruitful 'hunting ground' for these types of scams, partly because there is arguably a self-selecting potential group of victims. Those who have signed up to online dating services are interested in pursuing romance and therefore will respond positively. It is possible to be more targeted. Whilst some people on sites will only be interested in matches and physical dates, others will not. Some will be interested only in local matches but others will make clear that they are prepared to talk to people anywhere in the country, or indeed world. The media are full of stories of couples who found love over the internet despite distance.<sup>8</sup> The media encourage the romantic ideal that love conquers all. This should not be a surprise as many early childhood tales are based on the message that romance is a powerful force<sup>9</sup> and thus society find romance to be an ideal. This follows through to romance fraud where it has been suggested that a belief in romantic ideology – meaning the belief that romance displaces obstacles or love at first sight etc.<sup>10</sup> – makes it more likely that a person will become a victim of fraud.<sup>11</sup>

The stereotypical victim of a romance fraud is a middle-aged woman<sup>12</sup> but, as with most stereotypes, it masks a lot of detail. Studies have suggested that anyone is capable of being a victim of romance fraud, and there is significant victimisation in the LGBTQ community.<sup>13</sup> This should not realistically be a surprise given that the LGBTQ community has embraced internet dating technologies,<sup>14</sup> with it being noted that internet dating allows people who have not yet publicly admitted their sexuality to experience LGBTQ romance.<sup>15</sup>

Whilst most frauds begin on online dating sites, the offender will try to move away from these networks quickly. This is partly because commercial dating sites consider fraud a problem to their business-model and so will act to remove fraudulent profiles, and partly because these

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<sup>8</sup> Rosenware, n 5 above, discusses media representations of romance, including online dating.

<sup>9</sup> Perhaps the classic examples are Cinderella (a folk tale usually called "The Glass Slipper") and Sleeping Beauty (by the Brothers Grimm).

<sup>10</sup> For a useful discussion see Anderson, T.L. 'Relationships among internet attitudes, internet use, romantic beliefs, and perceptions of online romantic relationships' (2005) 8 *CyberPsychology & Behaviour* 521-531.

<sup>11</sup> Buchanan, T. and Whitty, M.T. 'The online dating romance scam: causes and consequences of victimhood' (2014) 20 *Psychology, Crime & Law* 261-283 at 264, 269.

<sup>12</sup> *Ibid.*, p.278.

<sup>13</sup> *Ibid.*

<sup>14</sup> Gudelunas, D. (2012) 'There's an app for that: The uses and gratifications of online social networks for gay men' 16(4) *Sexuality & Culture* 347-365.

<sup>15</sup> Yurchisin, J.; Watchravesringkan, K. and McCabe, DB (2005) 'An exploration of identity re-creation in the context of internet dating' 33(8) *Social Behaviour and Personality* 735-750.

public spaces increases the possibility that the suspects, or their fraudulent behaviour, will be detected.

Where the scammer is not trying to hide his or her own person (meaning their face, body etc. although it is conceded that their actual identity is unlikely to be real) then communications will move on to a variety of communication tools. Personal email accounts are likely to be one of the first methods by which communication shifts from online dating, and then more personal communication systems such as SMS messages, chat-messenger programmes (such as Snapchat) and ultimately VoIP services such as Skype or Facetime will be employed. An offender is likely to telephone a victim, creating the illusion that the romance is real.

Others will be trying to hide not only their identity but also their profile. Thus, for example, if a man is posing as a woman (or vice-versa) then there is little point in using telephony or VoIP as it would be difficult to disguise their voice or gender. Those scammers will encourage text-only conversations, such as email and SMS. This strategy is particularly used where the claim is that the person is overseas or in a rural location. Thus they can blame poor internet connectivity or an absence of technology to justify text-only communication. Whilst this was, at one time, not uncommon,<sup>16</sup> it is becoming less common because of the growth of mobile technologies (particularly the development of VoIP technologies such as Skype and Facetime). Refusing to use these technologies can raise suspicions, meaning that the fraud is less likely to succeed. That said, the perpetrators are usually convincing and therefore they can present convincing reasons why they are not able to speak.

No matter how the scam begins, the aim of the scam will be to accelerate the feelings of the victim. The scammer will seek to persuade the offender that they are in a serious and committed relationship. This may include physical meetings, which could include intimacy, or the relationship may exist solely online. This returns us to the notion of romantic ideology. It has been postulated that those who believe in romantic ideology are more likely to react to romantic communications, including ignoring their context<sup>17</sup> i.e. ignore the fact that the two people communicating cannot know who the other person is and whether they are telling the truth about who they are.

The ultimate aim of the romancing stage is to ensure that there is a genuine (from the victim's perspective) emotional attachment between the scammer and the victim. Once this has been

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<sup>16</sup> Rege, n 7 above.

<sup>17</sup> Anderson, n 10 above, at p.528.

established, the fraud can begin. This could include small sums as a test. Thus, for example, the scammer could claim that their computer or tablet has been stolen and ask the victim to provide them with a replacement (or wait to see if the victim offers to do so). This may be seen as a test to see whether the emotional attachment is such that they are willing to provide money. It has been reported that where a victim is reluctant, there will sometimes be gifts in the opposite direction to reassure the victim that they are in a serious relationship.<sup>18</sup> These gifts are usually inexpensive but sentimental and could include flowers or a soft toy. The amount of time that is spent on this stage varies greatly. It has been reported in one (early) report that it could last six to eight months<sup>19</sup> whereas others have reported that it might only last a matter of days or weeks.<sup>20</sup> This variation is understandable because it will differ on the individuals. As noted from the literature on romantic ideology, people fall in love in different ways; some fall in love at first sight and others need to be courted.<sup>21</sup>

The next stage will involve greater sums of money. The amount of money that is lost varies greatly, from tens of pounds to tens of thousands.<sup>22</sup> Again, the reason for the variance will depend on the gullibility of the victim, their means and the persuasiveness of the scammer. Some will try to keep the fraud relatively low-level but spread out over a number of months. Thus requests for airline tickets or university tuition costs may be made,<sup>23</sup> whereas in other situations it can be for a large amount of money quickly. Within domestic frauds this could include money to pay for the renovations of a house required to make it marketable so that the scammer can sell the house in order to move down to live with their partner. Such a scam will often follow a process whereby the parties have met on numerous occasions so it sounds plausible. The scammer will, of course, offer to reimburse the victim upon the sale. As many are caught in a trap whereby they have equity in property that cannot be released without money being paid out immediately to make the property marketable, this seems a reasonable thing for a person in a committed relationship to do.

Alternative strategies involve a crisis.<sup>24</sup> The scammer will state that they are going abroad on business. The travel will be to a country that is known to have problems. Once there, a third-party will contact the victim to say that the scammer has been arrested by corrupt police or has been involved in an accident. Either is plausible, not least because the scammer will have

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<sup>18</sup> Whitty, MT. 'Anatomy of the online dating romance scam' (2015) 28 *Security Journal* 443-455 at 449.

<sup>19</sup> Rege, n 7 above, p.498.

<sup>20</sup> Rege, n 7 above, p.498.

<sup>21</sup> Anderson, n 10 above.

<sup>22</sup> Whitty and Buchanan, n 11 above, at 276-277.

<sup>23</sup> Whitty, n 18 above, at p.670.

<sup>24</sup> *Ibid.*

prepared the ground for such stories, and thus the shock that this causes to the victim makes them less likely to check the legitimacy of the story. If a 'doctor' rings to say that the scammer has been involved in a road accident, and there are no details of medical insurance and the main number dialled on their mobile telephone is this number, it sounds plausible. The request for £10,000 to perform surgery or the patient will die fits in with the stereotypes and fears a person has. They are unlikely to ask too many questions and are, instead, likely to panic and to try and do what is needed to help their loved one. If there are doubts, sending realistic pictures of someone in a hospital bed is not difficult. Similarly, if a lawyer states that a person has been arrested and their bank accounts frozen, a victim may not think too carefully about the realities of this. Even if they did, the opportunities to research the story are limited. A respectable looking website can be produced in minutes. Thus an email could include a firm name and a URL which would link to what appears to be a respectable law firm.

An unusual feature of romance frauds is that there is often repeat victimisation. Even when a person should realise they are the victim of fraud, they seek to continue the contact and even send more money.<sup>25</sup> Partly this is out of a refusal to believe it is a fraud. They are convinced the romance is real. Take the following words of a victim:

It doesn't make any sense now, but I believed it was a scam at that point but I didn't believe that he wasn't real because I had no... it's really hard to explain. I mean I'd had this guy, pictures in my house for a year...<sup>26</sup>

In any fraud there usually comes a point when a person realises that they have been defrauded and they begin to feel angry or stupid. This is true of romance fraud too but where there appears to be a difference in that with romance fraud the financial loss is very-much secondary to the loss of romance. Romance is based on trust and the behaviour prior to the fraud was calculated to establish trust. Thus there can be a refusal to believe that the whole relationship was based on a lie even when it is, or should be, obvious that a fraud has occurred. Indeed, it has been noted that even when law enforcement approaches a victim to explain that they are the victim of a fraud there is a refusal to believe or a desire to maintain the relationship despite the mistrust.<sup>27</sup>

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<sup>25</sup> Rege, n 7 above.

<sup>26</sup> Whitty, MT and Buchanan, T 'The online dating romance scam: The psychological impact on victims – both financial and non-financial' (2016) 16 *Criminology & Criminal Justice* 176-194 at p.184.

<sup>27</sup> Whitty, n 18 above, at p.454.

## Impact of the Fraud

Fraud is one of a small number of crimes where it is not unusual for the victim to be blamed for the crime. This is particularly true of internet frauds, partly because of the belief that people fall for scams that are obvious. A classic example of this are the so-called 419 frauds, which usually entails a request to use the victim's bank details to move money out of Nigeria or the email that says you are the last-surviving descendent of a rich relative.<sup>28</sup> Research has shown that victims are often blamed for falling for such crimes, partly because they are viewed as being greedy.<sup>29</sup>

Alongside greed is the accusation that people are 'stupid'. Again, this is a somewhat unusual response to crime as we would not normally blame a victim, but it is clear that many ordinary people believe that only stupid people are taken in by frauds.<sup>30</sup> Admittedly this research did not focus on romance frauds but rather looked at all frauds. Thus participants may have been focusing on 419 frauds where media attention should mean that people are no longer taken in by such frauds (although some continue to do so).

What of romance fraud? Interestingly, blame is still present. Research has suggested that the family of those who fall for a romance scam will blame the victim and consider them stupid or become angry.<sup>31</sup> The same research suggests that many victims did not tell their family because they feared this response. Of course, that does not mean that families will not be supportive, and victims are likely to be at their lowest upon the realisation that they have been the victim of a fraud, but it is notable that this is their fear. Part of the reason for the distress and anger is usually the notion that somehow the money is the family's 'by right'. So, for example, one victim noted how her children were angry and did not speak to her because they had 'lost' their inheritance.<sup>32</sup> Of course nobody is entitled to an inheritance: a person is entitled to give their money to whomever they wish, but the tradition of inheritance raises emotional bonds and feelings of entitlement, enhancing anger.

As noted previously, the loss of the relationship and the effect this has on the victim is often considered more significant than the financial loss.<sup>33</sup> The effect on the victim perhaps means that this behaviour is more akin to an offence against the person rather than a financial crime. It has

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<sup>28</sup> They are referred to as 419 frauds because this is the section of the Nigerian Criminal Code that was introduced to tackle such behaviour.

<sup>29</sup> Cross, C. (2015) 'No laughing matter: Blaming the victim of online fraud' 21(2) *International Review of Victimology* 187-204 at p.192.

<sup>30</sup> *Ibid.*, at p.194.

<sup>31</sup> Whitty and Buchanan, n 26 above, at p.181.

<sup>32</sup> *Ibid.*, at p.182.

<sup>33</sup> Rege, n 7 above.

been reported that victims go through feelings of grief because they have lost someone they have loved. Their emotions are compromised because of the emotional damage and the feelings of betrayal.

## Just Fraud?

The effect on the victim means that it is legitimate to consider whether romance fraud should only be considered a financial crime or whether alternative liability can be found. It is to this question that we now turn. This section will not consider offences of fraud<sup>34</sup> because it will be taken as read that these apply.<sup>35</sup> Instead, this section will consider whether the behaviours of an offender could, or should, lead to alternative liability.

Pursuing alternative charges could bring about changes to the way romance fraud is investigated. It is known that cyber-fraud overwhelms the police and they can only investigate a very small proportion of all reported cases.<sup>36</sup> Even if the police decided to prioritise the investigation of romance frauds, the potential liability will influence how a crime is investigated. Fraud is often passed to small, central teams,<sup>37</sup> which are under-staffed and under pressure. They are tasked to look for specific offences (i.e. fraud) and not more general offences, which means that some other liability may be missed. It can also mean that the focus of the investigation is not on what the victim considers most pertinent. The police will focus on the financial loss but the victims are normally concerned with the emotional betrayal.

What liability should be considered? Whitty has suggested that the romance stranger can be described as ‘grooming’ which is a term that has resonance with the internet age. ‘Grooming’ tends to be used in the context of the solicitation of a minor for sexual purposes<sup>38</sup> and the law has responded to this. Even if it does not constitute grooming, or the law does not tackle this form of grooming, the analogy serves to remind us that romance frauds can involve sex and so we should consider the applicability of sexual offences. If emotional harm is caused, as the research suggests, then this also raises questions about the applicability of non-fatal offences.

Accordingly, this section will look at:

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<sup>34</sup> Sections 1-4, *Fraud Act 2006*.

<sup>35</sup> The most likely form of fraud would be fraud by false representation (s.1, *Fraud Act 2006* when read in conjunction with s.2). There is unlikely to be any difficulty proving this offence where there is an intention to cause financial loss.

<sup>36</sup> Yar, M. *Cybercrime and Society* (2<sup>nd</sup> Edn. 2013, London: Sage Publishing).

<sup>37</sup> *Ibid.*, at p.91.

<sup>38</sup> Gillespie, A.A. ‘Child protection on the internet – challenges for criminal law’ (2002) *Child and Family Law Quarterly* 411-426.

- Offences relating to sexual activity between offender and victim.
- Grooming.
- Offences relating to intimate photographs sent between victim and offender.
- Emotional harm.

### *Physical intimacy*

It was noted earlier in this paper that whilst many frauds operate at a distance, this is not always the case. In some situations the offender and the victim do meet and a ‘normal’ sexual relationship begins. This can be part of the relationship-forming stage that persuades the victim to trust the offender, allowing the later fraud to take place.

There are two circumstances in which the legality of the physical intimacy may have a question mark over it. The first is where the offender’s true identity is not known to the victim. The second is where the true motivation for the intimacy – to facilitate the fraud – is not known to the victim. In either situation, could it be argued that a sexual offence has been committed?

For adults, the threshold that marks the boundary of an offence is consent. The question that needs to be answered is whether consent is vitiated when one person is not in the full possession of the facts? We can assume that there is ostensible consent (ie the victim agrees to have sexual contact with the person they know as their partner), but this consent may be masked in the two ways noted above.

Traditionally only deception as to the nature of the act, or deception as to a person known personally to the offender could vitiate consent.<sup>39</sup> Thus, for example, where a man agrees to pay V, a female sex worker, a sum of money to have sex but never intends to provide that sum, there can be no liability for rape.<sup>40</sup> There is little authority on what ‘known to an offender personally’ means, but it is commonly believed to mean those (rare) situation where a person pretends to be the spouse of the victim.<sup>41</sup> It is unlikely that this would assist here, as the victim of the romance scam never personally knows the true individual; they only ever know the person as presented to them.

Historically the law dealt with deception through the creation of discrete offences. s.3(2), *Criminal Law (Amendment) Act 1885* created the offence of procuring women and girls by fraud.

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<sup>39</sup> Ormerod, DC and Laird, K (2015) ‘Smith & Hogan’s Criminal Law’ (14<sup>th</sup> Ed, Oxford University Press) and Roberson, C. and Azaola, E. (2015) *Deviant Behaviour* (New York: CRC Press) at p.113.

<sup>40</sup> *R v Linkar* [1995] QB 250.

<sup>41</sup> Ormerod and Laird, n 39 above, at 844.

This was later re-enacted as s3, *Sexual Offences Act 1956* which criminalised the procurement of a woman by false pretences or false representations to have sexual intercourse. The offence was rarely used and there is little authority as to what was meant by false pretences or false representations.<sup>42</sup> There is no reason why, in principle, it could not apply to a situation where D posed as a wealthy individual who was seeking romance with V, when in reality he was always intending to defraud V.<sup>43</sup>

The offence under s.3 was repealed by the *Sexual Offences Act 2003* but was not replaced, potentially leaving a lacuna. All that could be now argued is that the deception constitutes an offence of rape,<sup>44</sup> assault by penetration,<sup>45</sup> sexual assault<sup>46</sup> or causing a person to engage in sexual activity without consent.<sup>47</sup> To the best of the author's knowledge, no case has specifically considered the applicability of rape to romance fraud. However, it is possible to identify how the courts would approach this issue.

Under English law, consent now bears a statutory definition:

....a person consents if he agrees by choice, and has the freedom and capacity to make that choice.<sup>48</sup>

The issue of relevance here is not the agreement by choice – as that will probably be satisfied in most romance fraud cases – but whether V has the freedom and capacity to make that choice. The argument would be that the deception influences the context under which V would agree to have sex. A person may decide to have sexual intercourse if events were presented one way but not if they were presented another way. Section 76 of the *Sexual Offences Act 2003* establishes presumptions of a lack of consent in respect of some deceptions but these echo the traditional

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<sup>42</sup> A relatively recent example of a case under s.3 is *R v Jbeeta* [2007] EWCA Crim 1699 which was an unusual case where V's boyfriend posed as both a stalker and as a number of police officers.

<sup>43</sup> It is undoubtedly a false representation and has been made in order to deceive V into having sexual intercourse.

<sup>44</sup> Rape is defined by s.1, *Sexual Offences Act 2003* as the penile penetration of another's vagina, anus or mouth without their consent. Thus rape can only be committed by a man (as it requires penile penetration) although the victim can be either male or female.

<sup>45</sup> Section 2, *Sexual Offences Act 2003*. This deals with the penetration of another's vagina or anus with a part of the body or anything else (other than a penis as that would constitute rape). Thus it would cover digital penetration or penetration by an object (e.g. a dildo).

<sup>46</sup> Section 3, *Sexual Offences Act 2003*. This would be where there is no penetration but there is sexual touching.

<sup>47</sup> Section 4, *Sexual Offences Act 2003*. The most relevant use of this term in this context would be where D (the scammer) was female and V (the victim) was male. As a female does not have a penis she cannot commit the offence of rape and therefore the most appropriate offence where a woman forces a man to penetrate her would be the offence under s.4.

<sup>48</sup> s.74, *Sexual Offences Act 2003*.

approach of a deception as to the nature of the act or deception as to a person known personally to the victim.<sup>49</sup>

However, the courts have begun to how deception influences the statutory definition of consent. The first case of note is *Assange v Sweden*.<sup>50</sup> As the case-name suggests, this relates to the legal dispute that exists between Julian Assange, the Australian founder of Wikileaks, and the country of Sweden, where he was a sometime resident. Assange has been accused by Sweden of four sex crimes and they issued a European Arrest Warrant. Assange believes that this is a cover and ultimately the proceedings are designed to facilitate his extradition to the USA, although Sweden has denied this. He has sought refuge in the Ecuadorian Embassy in London for the past five years.

The most relevant sexual offence for our purposes was the second offence with which he was charged, that of sexual molestation (the anglicised name of the Swedish offence). The circumstances of this allegation were that the victim had made clear that she would only ever have sexual intercourse with him if he wore a condom. He deceived the victim into believing he was wearing a condom when, in fact, he was not and yet still penetrated her. Assange sought to argue that this did not constitute an offence under English law but the High Court disagreed. After examining the law of consent in s.74, they were satisfied that a deception as to the wearing of a condom would vitiate consent.<sup>51</sup>

In *R v McNally*<sup>52</sup> the defendant was a girl but had posed as a boy when she had met another girl of a similar age on the internet. After four years of communication, they considered themselves to be 'boyfriend' and 'girlfriend'. They eventually met and, on two occasions, the defendant penetrated the victim by using a 'strap-on dildo' but the victim believed she was being penetrated by a penis. Eventually the defendant admitted to being female and the victim stated that she considered herself heterosexual and only consented to the sexual activity because she thought D was male. The Court of Appeal rejected an appeal that the consent obtained was valid.

Counsel for the defendant had stated that deceptions such as age, marital status, wealth or HIV status were not considered to be capable of vitiating consent, and therefore neither should gender. The Court of Appeal stated this was too simplistic and said that whilst physically the

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<sup>49</sup> *R v Jheeta* [2007] EWCA Crim 1699 considered the applicability of s.76 to deceptions carefully. The Court of Appeal noted that deception as to the nature of the act meant the act of intercourse (at [24]), something unlikely to be in doubt in the context of romance fraud.

<sup>50</sup> [2011] EWHC 2849 (Admin).

<sup>51</sup> *Ibid.*, at [86].

<sup>52</sup> [2014] QB 593.

penetration of a vagina is the same if done by a female or male, it could not be said that the sexual intercourse was (ie separating out the physical act from its context). Leveson LJ held:

[The victim] chose to have sexual encounters with a boy and her preference (her freedom to choose whether or not to have a sexual encounter with a girl) was removed by the defendant's deception.<sup>53</sup>

The court did accept that some factors – e.g. wealth – would ‘obviously’ not vitiate consent, although interestingly they did not say why this was the case and at least one commentator has questioned why it is obvious?<sup>54</sup> It also raises the question about what traits vitiate consent? It will be remembered that HIV was mentioned above. In *R v B*<sup>55</sup> the Court of Appeal held that deception as to H.I.V. status was not relevant to consent. It is perhaps difficult to reconcile this with the decision in *Assange* but it reflects the general approach the courts have taken to sexually transmitted diseases since the 19<sup>th</sup> Century.<sup>56</sup> However, this does mean that V's consent is vitiated if D says ‘I'll wear a condom’ but not if he (falsely) says ‘I don't have HIV’. The logic of this distinction is questionable. It is difficult to see how the victim in *B* had her freedom and choice respected. It is surely her choice as to whether she wanted to risk contracting HIV?<sup>57</sup> By deceiving her, that freedom and choice was taken away. Following the logic in *Assange* and *McNally* that should mean consent is vitiated. Realistically the decision can only be seen as an oddity as a result of the doctrine of precedent: the courts (in England) being inconsistent as regards biological harm.<sup>58</sup>

Both *Assange* and *McNally* are clear that some forms of deception can vitiate consent. The question then becomes which? If wealth does not, but gender does, where does this leave us in respect of romance fraud? Can it be said that if D deceives V into why he is having sexual intercourse with her – as part of the strategy for seeking to commit fraud – this would constitute a vitiation of consent? At least one author has argued the answer is ‘yes’.<sup>59</sup> Herring argues that sexual autonomy must be protected and this means recognising that deceiving an individual about a material fact should be recognised as a vitiation of consent. He suggests that the test for

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<sup>53</sup> *Ibid.*, at p.604.

<sup>54</sup> Laird, K. (2014) ‘Rapist or rogue? Deception, consent and the Sexual Offences Act 2003’ *Criminal Law Review* 492-510 at 506.

<sup>55</sup> [2007] 1 WLR 1567.

<sup>56</sup> In *R v Clarence* (1888) 22 QBD 23 the court quashed the conviction of a husband who deceived his wife into believing that he did not have gonorrhoea.

<sup>57</sup> Under English law, for the purposes of non-fatal offences it is possible to consent to the transmission of HIV, although it must be made freely (*R v Dica* [2004] QB 1257). However *Dica* does not contradict *R v B*, above, as the latter relates to sexual offences not non-fatal offences.

<sup>58</sup> For a general discussion on these issues see Ormerod and Laird, n 38 above.

<sup>59</sup> Herring, J. (2005) ‘Mistaken sex’ *Criminal Law Review* 511-524.

this is if V is mistaken about a fact and, if (s)he had known the truth about the fact, would not have given consent then it should be held that the consent has been vitiated by the deception.<sup>60</sup> Herring specifically uses the example of someone with a criminal past and suggests that such deception does not respect the sexual autonomy of the individual and therefore cannot be considered consensual.<sup>61</sup>

If we were to apply Herring's argument to romance fraud then a finding that there has been sexual offending would almost certainly follow. Let us take an example:

A and B met on an internet site and have been chatting since. B believes that A is a Major in the Royal Marines and that he is shortly due to be discharged from the marines. They meet on a couple of occasions and at the last occasion they have sexual intercourse, when A says that he wants to marry B and to move in with her when he is discharged from the Royal Marines. In fact, he is not a member of the Royal Marines and is simply setting all of this up as a 'back story' whereby he can later ask for help in selling his house, leading to him defrauding A of thousands of pounds.

It will be remembered from the first section of this paper that this is an example of a standard romance fraud. Herring would ask us to consider whether A would have sex with B if she knew that he had lied to her about who he was and what he ultimately intended to. The answer to this is almost certainly 'no' and therefore Herring would argue that the consent obtained for the sexual intercourse has been vitiated.

Herring's call is not universally supported and it is notable that the courts have never gone as far as Herring would wish. It has been noted that the traditional approach of the courts was to be cautious about such matters as it would criminalise much of the seduction of love.<sup>62</sup> The argument here is that in order to woo a person, a series of half-truths, white lies or outright lies will often be said. Herring does not disagree with this and indeed he hits it head-on. He argues that the belief that the law should somehow accept deception is flawed, and the law should uphold the moral standards expected of society.<sup>63</sup> He rejects the suggestion that consent simply relates to the physical act (i.e. whether a person consents to be penetrated or not) and insists that the context in which this consent was given must be considered.

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<sup>60</sup> *Ibid.*, at 517.

<sup>61</sup> *Ibid.*

<sup>62</sup> Laird, n 54 above.

<sup>63</sup> Herring, n 59 above, at p.521.

Perhaps a key difficulty here is the term ‘rape’. Where we are talking about a person’s consent being vitiated then we mean, in law, that this person has been raped. However, ‘rape’ is a term and an offence that has its problems. In many countries, the stereotypes of ‘rape’ has a direct impact on the conviction rate.<sup>64</sup> Only a minority of rapes are reported and a minority of reported rapes are ever prosecuted, let alone lead to a conviction.<sup>65</sup> Commentators have suggested that, in part, this is because of the continuing prevalence of rape myths.<sup>66</sup> Indeed, in some countries the term ‘rape’ became so problematic that its use in legislation has been discontinued.<sup>67</sup>

It could be argued that deception as to the context of sexual intercourse is an example of these difficulties. It is unlikely that the average person would consider this to be rape where V does consent to having sexual intercourse with D, but where the argument is that V would not have done so if she knew the full facts. Even if the law held this to be rape, in the eyes of many it would not, and research suggests that where people view an act as not constituting rape, the defendant will be acquitted even when the law suggests D should be convicted.<sup>68</sup>

Whilst some would find it difficult to accept that the crime of rape has occurred where a person has consented to sexual intercourse, albeit under false pretences, it would be difficult to argue that the sexual autonomy of the victim has not been compromised. The law should protect sexual autonomy, but the question is how. An obvious solution would be to re-enact an offence similar to s.3, *Sexual Offences Act 1956*, albeit in gender-neutral terms. Where a person deceives a person into having sexual intercourse in circumstances when they otherwise would not, the law should punish this. Questions may arise as to the mental fault required. Intention would be required for the sexual intercourse but would an intention to deceive be sufficient as a fault element? Or would it be more appropriate to require dishonesty? If the latter was to be given its usual definition<sup>69</sup> the objective element may act as a filter to ensure that trivial deceptions are not actionable but others are.

### *Virtual Sex*

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<sup>64</sup> See, for example, Krahe, B. ‘Societal Responses to Sexual Violence Against Women: Rape Myths and the “Real Rape” Stereotype’ in Kury, H.; Redo, S. and Shea, E. *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (2016, London: Springer International Publishing) (pp.671-700).

<sup>65</sup> McGlynn, C. (2010) ‘Feminist activism and rape law reform in England & Wales: A Sisyphean Struggle?’ in McGlynn, C. and Munro, V.E. *Rethinking Rape Law* (Abingdon: Routledge) (pp.139-153).

<sup>66</sup> Ellison, L. and Munro, E. (2010) ‘Jury deliberation and complainant credibility in rape trials’ in McGlynn, C. and Munro, V.E. *Rethinking Rape Law* (Abingdon: Routledge) at pp.281-293.

<sup>67</sup> Most notably in Canada and certain Australian states such as the *Australian Capital Territory*, *New South Wales* and the *Northern Territories* (the two territories calling the offence ‘sexual intercourse without consent’ and NSW calling it ‘sexual assault’).

<sup>68</sup> Ellison and Munro, n 66 above.

<sup>69</sup> *R v Ghosh* [1982] 3 WLR 110.

In some romance fraud cases, the victim may be asked to engage in virtual sex as part of the romancing stage. That is to say, they may be asked to perform in front of a webcam or to send intimate pictures of themselves. The (legal) implications of the latter is discussed below but how would the former be dealt with? Certainly it could not be argued that it constitutes rape as there is no penetration by another. However, should the deception mean that another offence is committed?

The prevalence of rape myths may mean that securing a conviction in circumstances that could not constitute rape may actually be easier. In England & Wales the most relevant offence would be causing a person to engage in sexual activity without consent.<sup>70</sup> Again, this would depend on the issue of consent, raising the same issues around s.74, *Sexual Offences Act 2003* discussed above.

Let us take the example of V who is asked to pose sexually in front of a webcam. If she does so because she is speaking to her lover Robert, who she believes is a white male aged 32 who is a member of the Royal Marines, does it make a difference if it is actually a 50-year-old black man from Nigeria or a Russian female? Or a 40-year-old unemployed white male who lives in a bedsit? In each of these situations, it would seem that following *Assange* and *McNally* the key question to be answered is whether V had the freedom to choose, or whether the deception has taken that away?

Following *McNally* it would seem that in order to have the freedom and choice to engage in sexual activity, the victim must know whom they are engaging with. If the person is of a different sex then there is no consent. What about race? The courts have not ruled, but presumably the answer must be the same. A person can presumably choose to engage sexually with a person from a particular race. It may be morally questionable to decide that you will never have sexual relations with a particular race, but *McNally* sets a precedent that it is a matter of choice for the victim, and thus if they are deceived on that point, their freedom of choice is taken away and there would be no consent.

What about age and profession or employment? This is more difficult to predict. Herring would say that the answer must be 'yes'. It will be remembered that he argues that if there is deception over *any* material fact, then consent is undermined. It is not clear that the courts would rule the same way. Reference to wealth 'obviously' not being relevant could mean that issues as to the employment of the offender would not be taken into account. What of age? There is some

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<sup>70</sup> s.4, *Sexual Offences Act 2003*.

evidence to suggest that age is often misrepresented on online dating.<sup>71</sup> Does it make a difference if person X says that they are in their 30s but are actually in their 50s? What if they are in their 70s or 80s? To some, age is very relevant, particularly in the context of establishing a lasting relationship. Is it different to gender in that regard (a personal choice as to dating a particular gender vs. a personal choice as to age)? A minor discrepancy may not be considered relevant, but a larger discrepancy may. Again, it raises issues about whether the law recognises the sexual autonomy of an individual, not least because s.3, *Sexual Offences Act 1956* did not apply to situations that did not involve sexual intercourse. It would be highly problematic if the law decided that deception in circumstances that did not involve sexual intercourse would be non-consensual but where it involved sexual intercourse it was not (as if it were non-consensual then it would amount to rape).

### *Grooming*

It was noted above that some have argued the romancing stage is akin to grooming. Whilst the term was never meant to be applied solely to children or the solicitation of children on the internet,<sup>72</sup> it is perhaps best known in this context. In recent years there has been increased use of the term in the offline context (see, for example, group localised grooming<sup>73</sup>) but it tends to remain focused on children.

In order to better understand grooming, it would be prudent to consider this behaviour briefly. A useful working definition is that it is the process of befriending a child, with the aim of getting them to acquiesce to sexual contact.<sup>74</sup> It has been pointed out that grooming is often more than this and can involve the grooming of other family members, the child's parents and their physical environment<sup>75</sup> but for our purposes we can focus on the befriending which is more relevant to a comparison with romance fraud. That said, it should be noted that some romance frauds do involve the offender meeting the victim's wider family so that the perception of a credible relationship is enhanced.

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<sup>71</sup> Drouin, M.; Miller, D.; Wehle, S.M.J. and Hernandex, E. (2016) 'Why do people lie online? "Because everyone lies on the internet"' 64 *Computers in Human Behaviour* 134-142.

<sup>72</sup> Gillespie, n 38 above.

<sup>73</sup> Group localised grooming can be approximated as the behaviour where groups of men groom children for sexual abuse, with the children often being passed amongst themselves. See, for example, Ost, S. and Mooney, JL (2013) 'Group Localised Grooming: What is it and what challenges does it pose for society and law' *Child & Family Law Quarterly* 425-450.

<sup>74</sup> Gillespie, n 38 above.

<sup>75</sup> McAlinden, A. (2012) *'Grooming' and the Sexual Abuse of Children: Institutional, Internet and Familial Dimensions* (Oxford: OUP).

O'Connell, who conducted some of the earliest research on internet grooming, noted that offenders would seek to target victims based on accessibility, opportunity and vulnerability<sup>76</sup> and romance fraud echoes this. The analogy can be taken further, with Proulx and Oumet noting that offenders will often identify a 'hunting ground' where victims are most likely to be found. Once there, they will identify a particular victim to target and develop a strategy to exploit them.<sup>77</sup> This behaviour can be found in romance frauds too where offenders identify a pool of victims and then identify which persons they believe will be most susceptible.

Moving on to the actual behaviour, similar echoes can be found. With online grooming, the initial discussions will take place in a public space but will then quickly move to private forms of communication, partly to ensure exclusivity.<sup>78</sup> The romancing stage then begins where the offender seeks to convince the child that they are in a serious relationship. This can include sending gifts to the child and engaging in romantic discussion.<sup>79</sup> A risk-assessment stage then follows whereby sex is introduced to gauge the child's response to this and likely attitude to engaging in sex. This echoes romance fraud where the eventual end goal (procuring money) is often introduced in an incremental way. Eventually the child is persuaded that they are in a serious relationship and will do what they believe their 'partner' would want, and what is normal in the context of a romantic relationship. An interesting final resonance is that of repeat victimisation. It is not unusual for victims of grooming to believe that the offender is truly in love with them and that they are sorry for the hurt that they caused. This can lead to further grooming and abuse, something that can be seen (by analogy) in romance fraud.

If one replaces 'sexual exploitation' with 'financial exploitation' it would seem that there are strong parallels between grooming and romance fraud. That being the case, however, does it assist us in understanding what the legal response should be? Where specific offences have been introduced to tackle grooming, they tend to be a form of inchoate liability.<sup>80</sup> Thus laws have been prepared that will allow a criminal justice intervention to take place before a child is abused. Inchoate liability is not uncommon but it can be controversial since, if it is enacted too early, it could take the form of criminalising innocent behaviour. Where the concerns relate to the sexual abuse of a child it is perhaps easier to justify taking legislative steps in advance of any harm

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<sup>76</sup> O'Connell, R.A *Typology of Child Cyberserexploitation and Online Grooming Practices*. (2003, Preston: University of Central Lancashire).

<sup>77</sup> Ost, S. (2009) *Child Pornography and Sexual Grooming: Legal and Societal Responses* (Cambridge: CUP) at p.33 citing Proulx and Ournet.

<sup>78</sup> *Ibid.*, at p.32.

<sup>79</sup> Gillespie, A.A. (2008) *Child Exploitation and Communication Technologies* (Cullompton: Russell House Publishing).

<sup>80</sup> Ost, n 77.

occurring. The same is probably not true of romance frauds. Could the same be true of romance fraud? Probably not. It is easier to justify an early intervention in order to protect a child, who is automatically vulnerable. Also, preparatory acts are already criminalised in respect of fraud,<sup>81</sup> which perhaps means the pressure is not present. Whilst fraud tackles the issue that is of secondary importance to the victim – the financial loss – it does mean that a perpetrator can be convicted of *something*. The same was not true of child grooming, partly justifying the need for early action.

Does that mean the parallels should be ignored? No. The grooming behaviour separates out the romance fraud from other types of fraud. With fraud it is easy to base a sentence on the economic loss that is suffered. However, that should not always be the case. Some small frauds can be more problematic or unpleasant than large frauds. Romance fraud is a good example of this. In the absence of any alternative liability (including those discussed in this article), the sentence imposed for the offence of fraud should reflect that the person was groomed, that their emotions were manipulated and that this is not a purely economic crime but had an impact on the victim.

### *Intimate photographs*

It was noted above that the relationship-forming/grooming stage could sometimes involve virtual sex in which individuals are asked to provide intimate photographs and/or perform sex acts in front of a webcam. Not only do victims feel betrayed by the fraud, they are concerned about what has happened to any footage.<sup>82</sup>

Nothing in the research states what happens to the footage but there is undoubtedly a risk that the footage is shared. It is known from other behavioural studies that sexualised footage is often uploaded to the internet.<sup>83</sup> It would be surprising if some of the footage that is taken of offenders is not shared beyond the offender, including through posting it on the internet. Recently we have become accustomed to so-called ‘revenge porn’, which is where intimate photographs taken within a relationship are distributed more widely. Whilst much of the literature focuses on those in a physical relationship, there is clear evidence that it also applies to those who are persuaded to perform sex acts over the internet.<sup>84</sup>

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<sup>81</sup> The offence under s.2, *Fraud Act 2006* requires only an intent to cause gain or loss after making a dishonest false representation. Nothing in the legislation requires there to be an actual gain or loss.

<sup>82</sup> Whitty and Buchanan, n 25 above, at 181.

<sup>83</sup> Taylor, M. and Quayle, E. (2003) *Child Pornography: An Internet Crime* (Abingdon: Routledge) p.24.

<sup>84</sup> Cooper, P.W. (2016) ‘The right to be virtually clothed’ 91 *Washington Law Review* 817-846.

It is perhaps surprising that more is not known about the extent to which romance fraud generates published intimate photographs although this could, in part, be because of the reluctance of victims to come forward. Moreover, it may also be as a result of how this crime is policed. If it is classed as a financial crime then it is likely to be investigated as a financial crime. This may mean that the police will not seek to discover whether images have been circulated and will instead just attempt to 'follow the money'. Computer forensic examinations are complicated and expensive, meaning there is a temptation to go for the 'easy' prosecution, ie the fraud. The danger with this approach is that other crimes are missed, including the dissemination of sexualised images. This not only lets victims down but arguably exacerbates their victimisation, with it being known that victims of revenge pornography suffer psychological harm<sup>85</sup> and there is no reason to suppose the same would not be true of victims of romance fraud.

Revenge pornography has led countries to consider their response to the non-consensual disclosure of intimate footage. Many have enacted laws to tackle this behaviour. The United States of America was the first to take the lead on this although it remains a matter for state, rather than federal, laws. US laws differ between states but the State of Jersey's law is notable in that it criminalises the disclosure without consent.<sup>86</sup> Thus the central issue is consent and, more importantly, it requires the consent of the individual to be sought before it is disclosed. This safeguards the sexual autonomy of the individual by allowing them to control who sees it.

More common, however, are crimes that require ulterior intent. So, for example, the law in Texas requires the disclosure with intent to arouse or sexually gratify any person<sup>87</sup> and California requires the intent to cause 'serious emotional distress'.<sup>88</sup> England also recently adopted a law to tackle revenge pornography.<sup>89</sup> Whilst the offence is triggered by non-consensual disclosure, it requires the disclosure to be with the intention of causing that individual distress.<sup>90</sup> Interestingly, Canada has also recently adopted a law<sup>91</sup> which follows the New Jersey model of simply requiring the absence of consent. Thus, it is an offence to disclose an image either knowing there was no consent, or being reckless as to whether V consented.

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<sup>85</sup> Bates, S. (2016) 'Revenge Porn and Mental Health: A qualitative analysis of mental health effects of revenge porn on female survivors' *Feminist Criminology* 1-21.

<sup>86</sup> NJ Criminal Code, Title 2C:14-9(c).

<sup>87</sup> Texas Penal Code § 21.15.

<sup>88</sup> California Penal Code § 647(j)(4).

<sup>89</sup> s.33, *Criminal Justice and Courts Act 2015*.

<sup>90</sup> s.33(1)(b), *Criminal Justice and Courts Act 2015*.

<sup>91</sup> s.162.1(1), *Criminal Code of Canada*.

Those laws that require an ulterior intent of, for example, distress will be unsuitable for romance fraud cases. In many instances the victim will not know that the content has been distributed further, and so they will not suffer distress at that stage. The principal reason for the distribution is likely to be financial (in that some sites will pay for original content). However, the law should recognise such behaviour as both inappropriate and a breach of sexual autonomy warranting criminalisation. It is regrettable that this is not always the case.<sup>92</sup>

### *Emotional Harm*

If, as was identified above, a victim of romance fraud can suffer emotional harm, then it would be logical to consider non-fatal offences. Could they provide a solution? Ultimately the answer would seem to be ‘no’. Whilst the law no longer requires ‘harm’ to mean physical harm,<sup>93</sup> there is a question whether mere emotional harm suffices. Under English law it does not, with the leading decision arguably being *R v Chan-Fook*<sup>94</sup> where it said ‘mere emotions’ cannot constitute bodily harm. That said, it has been accepted that *psychiatric* harm can constitute bodily harm<sup>95</sup> but it does not extend to *psychological* harm.<sup>96</sup>

This is where the problem perhaps arises. Most of the research has suggested that the effects are psychological<sup>97</sup> rather than psychiatric and so would not be covered under the law. That said, the police should be alert to the possibility of using non-fatal offences in those rare situations where diagnosable psychiatric harm is caused.

The difficulty in establishing a causal link to psychiatric harm is one reason why other predatory behaviours have been criminalised separately. Stalking is a good example of this, where existing non-fatal offences did not provide adequate protection, resulting in specific legislation being created.<sup>98</sup> It is unlikely that such an approach could be adopted for romance frauds as some form of criminal liability (fraud) exists and so the pressing need is perhaps missing. Even if the existing liability does not properly cover the harms suffered by the victim, there is still an offence and so some protection is offered.

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<sup>92</sup> Admittedly there may be other alternative offences to cover such behaviour but they probably do not encapsulate fully the behaviour presented. So, for example, in England & Wales the distribution of indecent or obscene footage can constitute a communications offence (Gillespie, A.A. (2015) “Trust me, it’s only for me”: “Revenge Porn” and the Criminal Law’ *Criminal Law Review* 866-880) but the penalty for such offences is minor and it is not considered an offence against an individual but rather an offence against the state for the misuse of the public telecommunications network.

<sup>93</sup> Ormerod & Laird, n 39 above, p.738.

<sup>94</sup> [1994] 2 All ER 552.

<sup>95</sup> (*Chan-Fook* and *R v Ireland*; *R v Burstow* [1998] AC 148).

<sup>96</sup> *R v Dhalival* [2006] 2 Cr App R 24.

<sup>97</sup> Rege, n 7 above; Whitty and Buchanan, n 26 above.

<sup>98</sup> Finch, E. (2001) *The Criminalisation of Stalking* (London: Cavendish).

## Conclusion

Romance fraud is a particularly unpleasant type of crime. Any crime against an individual must be considered unpleasant, but romance fraud appears particularly cruel. The perpetrator plays with the emotions of an individual and manipulate them so as to exploit them, often for large sums of money. The consequences for victims can be serious, with significant impact on their emotional and social lives.

The law considers romance fraud to be a type of fraud but it is materially different to most other frauds. Whilst many frauds will depend on some kind of relationship between two people, it is not an intimate one. Intimacy is one of the most important features of an individual's life, and it goes to the heart of their autonomy. Romance frauds undeniably interfere with the (sexual) autonomy of an individual and can therefore be thought of as a harm.

Identifying what the law can do about this is less easy. Many would struggle to consider intimate relations within a fraudulent relationship as constituting rape. That is perhaps more to do with the nature of that offence and the myths that have grown around it. Expanding the definition – or, more correctly, seemingly expanding it – could cause difficulties by playing to the myths that already exist. However, the breach of autonomy must be recognised by the law and this could be done by reintroducing an offence of procuring sexual intercourse through deception. What of those situations where there is no intimate activity but whose emotions are similarly toyed with? It would be difficult to create an inchoate offence of grooming along the lines of those laws created to tackle the soliciting of children. Minors have a specific status in law and have a particular need for protection. The same cannot be true of adults. However, the law should facilitate courts taking into account this emotional abuse when sentencing an offender. The gravity of a romance fraud should not be identified through the value of the financial loss but by the emotional harm caused. In this way, significant sentences should be passed even where the financial loss may be trivial. This is not undermining the offence of fraud but rather ensuring the effects of the fraudulent activity are recognised. Law enforcement should treat romance frauds differently from other frauds, recognising the personal consequences that arise and therefore prioritise the prosecution of such individuals so that there is, at least, some sense of closure to victims who have been defrauded.