

<b>Institution:</b> Keele University		
<b>Unit of Assessment:</b> UoA18 Law		
<b>Title of case study:</b> Prosecuting Trans People for Desire-Led Intimacy: the legal & ethical case against		
<b>Period when the underpinning research was undertaken:</b> 2012-2018		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>  Prof Alex Sharpe	<b>Role(s) (e.g. job title):</b>  Professor	<b>Period(s) employed by submitting HEI:</b>  2004 - 2020
<b>Period when the claimed impact occurred:</b> 2013-2018		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b> (indicative maximum 100 words)  Alex Sharpe's research presents a series of legal and ethical arguments against the prosecution of young trans and other gender non-conforming people for non-disclosure of their gender history. This research has: <ol style="list-style-type: none"> <li>1) Influenced policy formation processes through consultations with leading Crown Prosecution Service lawyers, public policy advisors and Amnesty International.</li> <li>2) Informed the understanding of practical criminal lawyers on relevant issues and shaped a strategic approach to defending gender fraud cases.</li> <li>3) Challenged conventional wisdom and enabled improved public understanding through publication, online participation and by giving interviews in popular media outlets.</li> </ol>		
<b>2. Underpinning research</b> (indicative maximum 500 words)  This original research (3.1-3.6) was supported by three research fellowships (Leverhulme Fellowship in 2016-2017; Parsons Fellowship, Institute of Criminology, University of Sydney in August 2014; and Crime and Justice Research Fellowship, Queensland University of Technology (QUT) in September 2014). It provides a critical analysis of, and legal response to, a series of sexual offence prosecutions brought between 2012-2016 against young trans and other gender non-conforming people for non-disclosure of their gender histories prior to sexual intimacy. All of the defendants were convicted, most received prison sentences of between two and half and eight years, and all were placed on the Sex Offenders Register. Moreover, it is LGBTQ young people who have borne the brunt of deception-based sexual offence prosecutions since 2012.  The research generates novel legal (3.1, 3.2 & 3.6) and ethical arguments (3.4 & 3.6) opposing criminalisation and the characterisation of non-disclosure of trans backgrounds as unethical. Novel arguments advanced derive from feminist and queer/trans theories. By rethinking the boundaries of the concepts of consent, harm and deception, they focus on agency, identity and the complexity of desire. In particular, the research argues that hetero and cis-normativity (the privileging of non-trans people and their experiences) frame interpretation of what counts as ignorance and knowledge, as 'material' facts that fall to be disclosed, as well as the ethical characterisation of conduct (3.4). In relation to complainant claims of ignorance regarding the trans backgrounds of defendants, it draws on the work of queer scholar, Eve Sedgwick, in order to highlight how 'ignorance' is not the opposite of knowledge but rather a form of knowledge, one which requires considerable agency to sustain. Moreover, in contesting the issue of deception in trans contexts, it pinpoints and tackles a central and urgent problem faced by trans people in our society. This is the legal and cultural tendency to deny the authenticity of trans people's gender identities. Accordingly, the research represents a crucial first step toward a more fundamental shift within		

law and civil society. Further, through public engagement, the research has helped to raise public consciousness regarding the struggles of a highly marginalized group.

This was scholarly 'desk-based' research employing the methods of analytical and critical philosophies to answer both theoretical and practical, policy-related questions concerned with the criminalisation of sexual conduct or omission and sexual ethics.

### 3. References to the research (indicative maximum of six references)

#### Peer-Reviewed Articles

3.1 'Criminalising Sexual Intimacy: Transgender Defendants and the Legal Construction of Non-Consent' (2014) Criminal Law Review 207-223  
[https://uk.practicallaw.thomsonreuters.com/Document/IDD881DC094BA11E38D89BDB56CD9E2CF/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/Document/IDD881DC094BA11E38D89BDB56CD9E2CF/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true)

3.2 'Sexual Intimacy, Gender Variance and Criminal Law' (2015) 33(4) Nordic Journal of Human Rights 380-391 DOI: [10.1080/18918131.2016.1125631](https://doi.org/10.1080/18918131.2016.1125631)

3.3 'Expanding Liability for Sexual Fraud through the Concept of 'Active Deception': A Flawed Approach' (2016) Journal of Criminal Law 28-44 DOI: [10.1177/0022018315623674](https://doi.org/10.1177/0022018315623674)

3.4 'The Ethicality of The Demand for (Trans)Parenthood in Sexual Relations' (2017) 43(2) Australian Feminist Law Journal 161-183 DOI: [10.1080/13200968.2017.1376366](https://doi.org/10.1080/13200968.2017.1376366)

3.5. 'Queering Judgment: The Case of Gender Identity 'Fraud' (2017) 81(5) Journal of Criminal Law 417-435 DOI: [10.1177/0022018317728828](https://doi.org/10.1177/0022018317728828)

#### Monograph

3.6 Sexual Intimacy and Gender Identity 'Fraud': Reframing the Legal & Ethical Debate (Routledge, 2018) pp. 204. In a review, Professor Zanghellini has described the monograph as "the most significant work of transgender law and queer ethics of the last decade" (Social & Legal Studies (2018) 27(6): 805).

PI: Alex Sharpe

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### 4. Details of the impact (indicative maximum 750 words)

#### Influence on policy formation processes

**Crime Prosecution Service:** John Edwards, Senior CPS Policy Advisor, states that Sharpe's arguments in 3.1, 3.3 & 3.5 have had a direct impact on the thinking behind the CPS's draft revisions "of the 'Evidential considerations' in the draft revisions to the legal guidance" on sexual offences (5.3). The 'Evidential considerations' "are fundamental questions in assessing whether a case meets the evidential test for prosecution" and "the draft section draws on some of Professor Sharpe's concerns regarding the need for those in the criminal justice system to better understand the behaviour of trans persons and suspects" (5.3).

**Amnesty International:** commenting on 3.1 & 3.2 and on Sharpe's contribution to an Amnesty organised coalition of experts focusing on overcriminalisation of sexuality and reproductive conduct, Jaime Todd-Gher, Policy and Strategic Litigation Advisor, reveals that, "[Sharpe's] precise understanding of the discriminatory impact of relying on cis-normative constructions of 'consent' as a standard for determining criminal liability for sexual offences deepened the coalition's discussion and ultimately Amnesty International's broader analysis of the human rights impact of state criminalisation practices" (5.5). Amnesty now also use the example of 'gender fraud' prosecutions in their capacity building and training regarding these issues (5.5).

### **Influenced lawyers' understandings of relevant issues and strategic approaches to representing trans people in gender fraud cases**

Sharpe provided legal and strategic advice to criminal defence barristers in *R v McNally* [2013] and *R v Newland* [2015] (and retrial 2017). Commenting on the research, Nigel Power QC, defending in *R v Newland* states that Sharpe's publications (3.1 & 3.5) enabled him to make "a proper assessment of the legal strategies that might be adopted around consent and deception" in relation to gender 'fraud' (5.1). Barrister, Tom Wainwright, defending in *R v McNally* [2013] CA and junior in *Newland* [2017], states: "[Her] articles (3.1, 3.3, 3.5) are essential reading for anyone carrying out this area of work" adding that Sharpe's research has been particularly helpful in his consideration of "the possibility of judicial review by those affected by *R v McNally*" (5.2).

Sharpe was also invited by TELI (Transgender Equality Legal Initiative) to participate in legal workshops held at barristers Chambers (Garden Court, June 2016) and solicitors offices (Linklaters, November 2016) in London in response to 3.1, 3.2 & 3.3. Barrister, Allan Briddock, and co-founder of TELI, stated that Sharpe's research "has assisted in helping to formulate a TELI law reform agenda on this issue, one that involves working with activists, practicing lawyers and a range of institutional stakeholders, including the CPS and the EHRC" (5.4).

### **Challenged conventional wisdom and enabled improved public understanding**

Sharpe's media engagement and journalistic publications have brought her research to a broader audience, stimulating public debate and understanding about the prosecutions. For example, she published articles in *The New Statesman* (2013, 2015, 2015 - daily readership 120,000) on various aspects of the *McNally*, *Newland* and *Lee Mason* cases, including the punitive sentencing in the two former cases; in *Inherently Human*, a gender, sexuality and law blog at Durham University (2013, 2015, 2016, 2016, 2017); in *Legal Voice*, legal professional blog (2017); and in *The Conversation* (5.7). All were extensively read, shared and commented on. The *Conversation* article on the Gayle Newland case (2017) was read almost 5000 times, elicited 30 comments from readers and was republished on four platforms (5.7). In 2015, Sharpe was invited to discuss the high-profile case of Newland on LBC Radio (average audience 462,000) and internationally on Canadian Radio Station CBC (The Current Show) (5.7). Her research and insights about the case were then drawn on in media debates and coverage of the case during 2015, including in *The Sun* (daily reach: 2,955,000), *The Mirror* (daily reach: 440,671) and *Global News Online* (5.7).

Sharpe's research also significantly influenced and helped shape the writing of the play *Scorch*, by playwright, Stacey Gregg. After first experiencing difficulties getting backing for the play, Gregg started to include Sharpe's research in the commissioning process which led to a productive dialogue with funders and collaborators and ultimately to *Scorch* being staged, touring internationally and winning a series of prestigious awards (e.g., Irish Times Best New Play) and has had a real impact on public perceptions of the relevant issues (5.6). Gregg reports: "we were able to circulate [Sharpe's] articles and blogs and discuss the below the line commentary in response to them as indicative of the general public's response" which "informed our approach to our anticipated audience and the prejudices or questions they may bring" (5.6).

### **5. Sources to corroborate the impact (indicative maximum of 10 references)**

5.1. Letter - Nigel Power QC, Harrington Chambers, Liverpool (8/12/17).

5.2. Letter - Tom Wainwright, barrister, Garden Court Chambers London (23/1/18)

5.3. Letter - John Edwards Senior CPS Policy Advisor London HQ (1/6/20)

5.4. Letter - Allan Briddock, barrister, One Pump Court London and co-founded of TELI (Trans Equality Legal Initiative) (30/4/18)

5.5. Letter - Jaime Todd-Gher, Policy and Strategic Litigation Advisor, Amnesty International (June 2019)

5.6. Letter - Stacey Gregg, playwright and author of *Scorch*.

5.7. Press Coverage Report: Media publications: New Statesman x 3; The Conversation x 1; Inherently Human and Legal Voice BLOGS x 6; Radio Interviews: LBC, London 2015; CBC Canada 2015; Media quotations in The Sun 2015; The Mirror 2015; Global News Online 2015.