

The Fraud Act 2006: The E-Crime Prosecutor's champion or the creator of a new inchoate offence?

Maureen Johnson

Senior Lecturer, University of Hertfordshire, School of Law
M.C.1.Johnson@herts.ac.uk

Kevin M Rogers

Lecturer in Law, University of Hertfordshire, School of Law
Member, Law Society's Electronic Law Committee
K.Rogers@herts.ac.uk

Abstract

After a considerable gestation period, the Fraud Act 2006 came into force on 15th January 2006. It introduced a general fraud offence (section 1), which can be committed in one or three ways outlined in sections 2-4 (by false representation, failure to disclose information and abuse of position). The introduction of general offences is intended to provide a substantial scope for ensure that technologically focused crime can be targeted by this provision. This covers 'newer' offences such as phishing and spoofing and provides sentences for up to ten years. Indeed, Barty and Carnell (2005) are of the view that there will be more persecutions for technology-related crimes.

However, whilst the sentiments behind the new Act are to be welcomed, it is argued that there are a number of deficiencies in the new Act, which could lead to considerable problems. First, although the Act shifts focus away from deception problems (notably that deception of a machine or computer is not legally possible) it moves towards the concept of dishonesty, as defined in *R v Ghosh* (1982). This is problematic in itself as there already exist a number of "...powerful criticisms" (Ormerod, 2006) relating to the Ghosh decision. Second, there are problems with a failure of the Act to provide for specific definitions of key concepts, such as 'fraud', 'false' or 'abuse'. Third, and arguably most importantly, under the new Act the liability-threshold for fraud shifts; fraud is no longer a result crime, but a conduct crime. This has the advantage of the law stepping in at an early stage to prevent further criminality; although at the same time potentially provides a completely new concept of the criminal act of fraud.