



# Taxing Matters

## The legal landscape of crypto fraud

**Alice** Hello! And welcome to Taxing Matters, your one-stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and I will be your guide as we explore the sometimes hostile and ever changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth.

In case any of you miss any crucial information - or just want some bedtime reading - there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters).

Today we are following up on our episode on the launch of the CFAAR network by delving deeper into the legal landscape of crypto fraud.

Joining us to look into this knotty question from the criminal perspective we have Michael Goodwin, Queens Counsel. Michael is a highly regarded Silk with expertise in business, financial crime and serious crime cases. Along with his masterful grasp of the law and very tactical focus, he also has incredible eye for detail and an amazing grasp of the technical aspect of any case - which I did not just read from his client testimonials, I actually can speak to this from my own experience of working with him!

Michael is also devoted cyclist enthusiast and can often be found early in the morning racing through the lanes of the countryside impeding the flow of rural traffic!

Michael welcome to Taxing Matters.

**Michael** Thank you Alice, thank you for that introduction. I am absolutely delighted to be here and thank you for inviting me to focus on criminal law and the criminal justice aspects of crypto currency.

**Alice** So, first question is: why is crypto important?

**Michael** Firstly, it is the practical reality. I'm sure many of your listeners will be aware of this already: crypto is the first alternative to mainstream and traditional finance systems. It provides a cheaper and faster money transfer system, making it possible to transfer value online without the need for a middleman like a bank, or a payment processor and, so, what we got now is a mechanism by which, near instantly, value can be transferred for very low fees.

This reality is giving access to a financial system to many people who would not, otherwise, be eligible under the more traditional banking systems, either because of government control or regulation.

Secondly, the importance of crypto really comes about because of 'reduced risks which exist when using crypto assets. I am of course referring to the fact that crypto assets are decentralized and completely transparent.

The third headline is its uses. Although we are all aware of it being used as a virtual currency store, there are a forever-growing range of uses which are coming about particularly as the technology develops. Some of your listeners Alice will be aware of things like, for example, "DeF", which is the 'decentralized finance' or peer-to-peer financial services infrastructure which is being developed - and now exists. This is something that provides a base for innovative technology with DeFi you can now do most things that a bank supports. For example, you can earn interest, you can borrow, buy insurance, trade and much more - and it is faster and easier to use, it is quicker and more effective - and so, the uses by which crypto is developing is undoubtedly making it even more important.

Lastly, I would refer, of course, to the reason we're here which is: because of the developments - which we will come on to talk about - crypto provides a new and extensive potential for cyber fraud. The eye watering and huge losses which are being made as a result of people falling victims to crime within this sector and that's why crypto is so important in this way.

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<b>Alice</b>	<p>[Thank you. You've mentioned there that it is an attractive prospect for a number of different reasons. What projections are there at the moment for individuals who choose to invest in crypto currencies and other uses of this crypto technology?</p>
<b>Michael</b>	<p>The core protection is, really, the crypto itself. If we can we just stand back for a moment and consider crypto and what it actually is - this point is often missed in discussions on crypto crime. The currency itself, and its related block chain, are generally safe and secure. The currency and the asset exist in an open central ledger for every transaction that has ever happened and the block chain is managed by a network of computers. So, what that means is that no single individual, or company, has complete control over it. Computers are constantly re-verifying the transactions on the block chain and this constant process of verification means that the block chain cannot be interfered with, or altered. That is an important starting point. That is the good news. The bad news, and what counter-balances this, are the problems and risks of theft and fraud that come from the manner in which crypto is traded, exchanged and held as digital assets either by individuals, or organisations.</p> <p>The simple point is that currently there are very few protections out there for the crypto trader, investor, or consumer. So, perhaps not surprisingly, that means that the fraudsters are capitalising on this at, really, all levels across the full range of cyber-crime and fraudulent methods.</p> <p>You have asked what protections there are at the moment? The reality is that the financial services compensation scheme offers no protection at all and the sector is largely unregulated, but, in terms of protections, there have been steps in the right direction which it is worth highlighting for your listeners.</p> <p>The first of those is within the money laundering context. Alice, the position, now, is that exchange firms and custodian wallet providers have been brought within the scope of anti-money laundering and combating the financing of terrorism regulation by the 5th money laundering directive. What this means is that companies taking part in these activities are now under an obligation to register the business with the FCA and to comply with anti-money laundering obligations; that's an important step.</p> <p>What else exists in terms of current protections? Other important developments include the fact that the FCA has recently ruled that a trading platform can no longer conduct regulated activity in the UK. That is sending out a forceful message that regulators intend to take a strong stance within this sector when circumstances require it.</p> <p>The FCA has also published - on its website - a list of UK businesses that appear to carry out crypto asset activity which have not been registered with the FCA for anti-money laundering purposes and so consumers can check that before they start investing. But, perhaps most interestingly, the government has - last month - announced that they are planning to bring advertising of crypto assets within FSMA and that means that the government is planning to, effectively, legislate to address misleading crypto asset promotions and to ensure that adverts are brought into line with other financial advertising. That's important because, as we will discuss later on, a lot of the fraud exists as a result of misleading advertising and criminals, effectively, taking advantage of this unregulated position.</p> <p>So, it is clear that the protections that exist have a long way to go but the infrastructure is , the appetite is there ,we are all eagerly awaiting the outcome of the recent 'crypto asset taskforces consultation' - which is due to be published - so that we can see what the next steps are in this area.</p>
<b>Alice</b>	<p>Given the protections inherent in the properties of crypto both by the decentralization and the blockchain itself, which you have described, and the steps that you have also described that have been taken thus far, why are enhanced protections important?</p>
<b>Michael</b>	<p>There are many people out there who believe that regulation is against the whole spirit of the technology and, actually, harms the innovation and reduces the value of the assets. But, the protection is important because crypto is an expanding phenomena and an exciting opportunity.</p> <p>The statistics and the reality of what is being reported, really, speaks for itself. We know that something around the region of 78% of all adults have now heard of crypto. About 4% of the adult population in this country have now invested or hold crypto currency. The exchanges which are used to trade crypto are very easy to access and it's, really, ordinary members of the public who are involved in this now. It is not the case that this requires specialist knowledge and tech-savvy folk who are there, in a dark corner, involved with crypto That's important, because with that - and with the risks that are associated with crypto currency - comes the need for heightened protection. Even before we look at what is down the line, for example, we</p>

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know that large companies such as Amazon are looking to build its own blockchain and digital currency roadmap and they're not the only corporate entities which are involved in those sorts of projects.

The FCA lists the main risks of crypto currency under five headings. Firstly 'consumer protection' - the need to regulate and ensure money laundering compliant. The second risk is the 'price volatility' - your listeners will be very aware of this particularly recently with the huge crashes that have been taking place - people can lose a lot of money and they can gain a lot of money and it can happen very quickly. There are high risks involved as a result of price volatility. Thirdly, many of the products are complex in the way that they are traded and handled. So, for example, some crypto assets cannot just be converted back to cash, there has to be a demand and there has to be a willing buyer before you can actually sell them and people getting involved in purchasing crypto assets are not necessarily understanding some of the complexity involved with the trading. The fourth risk is 'charges and fees' - which can be high as they are completely unregulated and the final risk that the FCA identifies is the material marketing. I have already touched upon the changes and added protection that is coming in relation to advertising but that is important because often individuals overstate the returns and understate the risks - all of which affects the consumer. So protections for consumers and financial investment are very much required and I believe these are just going to expand and become more relevant and ultimately, we hope, will reduce the fraud and crime

**Alice** And that is probably a good time for us to talk about it in fact! So, with every new technology there are those who will exploit it and from the various news stories like the "Squidcoin fraud", the hacks of various exchanges and, indeed, the use of crypto currency to pay ransomware demands - and other less savoury activities - it appears that crypto is no different, but is this media portrayal accurate?

**Michael** Well, the short answer is "yes, absolutely!".

The media portrayal of an increasing climate of crypto-fraud is very accurate and very relevant, but, we should not lose sight that many of the crimes that are being committed are, really, well known frauds, scams and thefts which have just been fashioned into the crypto currency context.

The reality is that about 86% of reported fraud is now estimated to be cyber-related. That's been exacerbated by the Covid pandemic as our lives have been brought online even more. This has, really, led to the well-publicised, first ever CPS economic crime strategy, an ambitious plan to combat economic crime, which is estimated to be costing billions each year to the economy. As with all areas of financial crime the fraudsters are targeting everyone, from the largest institutions to the smallest investors. Your listeners will have read in the headlines almost on a daily basis that at one end of the scale you have examples such as the Metropolitan Police who have recently seized £114m of crypto currency as part of an ongoing money laundering investigation - that being the largest every seizure of crypto assets in the UK and one of the largest in the world - and at the other end of the scale there is the increasing number of smaller frauds taking place against amateur investors and individuals who are, perhaps, more vulnerable to the scams.

What do these crimes and frauds look like, how does it happen? You know from your experience in this field and RPC's involvement in this area advising and representing clients that crypto fraud takes many different guises, but, really, there are four main categories of crime in this sector:

There are the ICO-frauds the "initial coin offering" frauds where the latest token or coin comes out offering an investment that is, essentially, worthless; it is complete fraud. Secondly, you have the use of cloned websites which are being used to steal from investors, or consumers, that log on and think that they are buying coins and, of course, they are not. Then you have the usual hackers and scammers stealing from individuals' digital wallets where they have kept their crypto online. Often, gaining access to an individual's assets through either the exchange accounts, or by tricking them by clicking the wrong links or disclosing passwords, that sort of thing. Lastly you have the, sort of, "giveaway-frauds" which are also common in the crypto space.

You mentioned the "Squidcoin" case which was November 2021. That was a prime example of the sort of 'typical crime' that is taking place. That involved a digital token inspired by a Netflix series, in fact. The token was marketed as a ploy to earn crypto currency. Its price soared by thousands of percent, but it turned out to be a scam. The promoter drew in all its buyers then stopped trading made off with all the money an estimated \$3b.

The media portrayal is accurate; it's happening every day; it's in the news; the scams are coming thick and fast!

**Alice** You mentioned the efforts by CPS and other prosecutors to check this fraud, 'pandemic' I guess I could say? The present Computer Misuse Act is 1990 and some people think that given its age it is not really fit for this

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purpose which the government have kind of acknowledged with a call for evidence about how to update it which closed in June 2021. What would you see as the types of issues which the government will need to grapple with in relation to crypto to make it fit for at least this purpose.

**Michael**

As you have said the Computer Misuse Act, 1990, is now 30 years old. It was introduced, primarily, to deal with traditional hacking offences - such as unauthorised access to computers - but it is also right to say, it has evolved to meet the modern technology requirements. As you know it was amended by the Police and Justice Act, 2006, then looking to tackle the new and growing internet-based problem of denial of service attacks; cyberattacks had started to shut down networks causing considerable damage. Then, the Act was further amended in 2015; introducing a new aggravated offence of 'unauthorised act causing or creating a risk of serious damage' - with a substantial increased maximum sentence of 14 years imprisonment.

So, what we have got now, really, are four main offences created by the Act including "unauthorised access to computer", "unauthorised access with intent to commit another offence" such as theft or fraud and "doing an act intending to impair the operation of a computer". To give credit to the Act it's still successfully being used by law enforcement to meet the two major categories of cyber-crime; cyber dependent crimes and cyber enabled crimes, but it is also right to say - as you have pointed out - that the Home Office have put out a call for information on the Act and are currently analysing the results. In my view, it is inevitable that the legislation that is relied on to combat a lot of the criminal wrongdoing in this sector is going to evolve. It is necessary for the legislative gaps in the Act to now develop and for there to be a response to what is, now, sophisticated technological advancements leading to evermore sophisticated and threatening criminal conduct.

I suppose really we just have to wait and see how the government responds and what the Home Office report, but I think we'll all agree that the law must continue to evolve and keep track of the technological innovation within this sector and ensure that the criminal justice system is able to continue to respond and ensure that justice takes place and that recovery occurs through the use of the criminal court, if that is what is decided.

**Alice**

Bringing us on to the criminal courts, what about the victims? How can criminal law help to address this crypto-fraud problem?

**Michael**

The criminal law is ready and waiting and is already being used by the authorities. As well as the computer related offences, which I have just referred to, crypto offences can be prosecuted just like any financial or business crime. Whether you are looking at offences under the Theft Act, money laundering offences under the Proceeds of Crime Act or even the Fraud Act itself, property and false representations can be the subject of fraud. What is important is that the criminal law is evolving and has evolved in order to impact in this sector. Assisted by the common law - which has defined property as including things in action and other intangible property - which is particularly relevant within the crypto sector.

Once proceedings are instigated in the criminal courts then the criminal law is able to proceed same as it does for any other type of events so that the courts have a wide range of powers that following conviction; they may impose compensation order in favour of the person, or the company, who suffered loss. Restitution orders can be imposed by the criminal courts to restore stolen crypto assets and even confiscation aimed at recovering proceeds of crime removed from defendants - as well as any benefit that they have accrued as a result of their crime can be brought and crypto assets feature in relation to those. There are also powers that exist as part of the criminal process to, for example, restrain assets - before a trial takes place - to ensure that they are preserved once the conviction is obtained.

The cases are beginning to be reported. The police across the UK recently having seized bitcoin and other crypto currencies to the value - it has been reported - of a third of a billion pounds, during multiple criminal investigations - that was reported last month. October last year a 17-year old, who set up a fake website from home part of a sophisticated cyber fraud, had more than £2m of crypto currency seized by the police. He admitted charges of money laundering, fraud before the Lincoln Crown Court - and in July of last year the Met police seized a record of £180m worth of crypto currency in London.

So, the examples are there the criminal law is working and is available. One other example of interest to your listeners may have been the case of Andrews where, a defendant, through his IT support website business managed to hack and steal crypto currency from his clients and he pleaded guilty recently and was sentenced to 20 months imprisonment.

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**Alice** You mentioned previously that crypto is increasing, that's just a reality of the situation now and that the media portrayal of the fraud risk is both accurate and, frankly, worrying. So how do you see this area developing, within the criminal law, in the future?

**Michael** Well, there are, really, two aspects: the public and the private enforcement. On the public front the Crown Prosecution Service has launched an ambitious plan to combat economic crime. The DDP, Max Hill QC, is firmly committed to a forecasted plan to combat economic crime and is providing more resources for specialist economic crime prosecutors.

The first economic crime court is in the process of being born and we all wait, eagerly, to see that birth, but - as with many other issues within the criminal justice system currently - there is the issue of proper resourcing and, ultimately, that is the issue that is going to determine the effectiveness of the drive to improve the economic crime reduction.

So, really, that neatly takes me onto the private enforcement, and recovery, that is developing and firmly exists already in this area. Because public resources are limited, it does happen that when a victim or a company turns to the police for investigation and looking for justice, it is not always the case that the public authorities are prepared to take on that investigation. So, more commonly, what is now happening in this fast moving arena, is that victims of crypto fraud are turning to private investigations and private prosecutions to recover their stolen assets and I would expect, as with the recovery of any loss for there to be an increased use of private investigations and private prosecutions, by those with the available means, to ensure that their losses are recovered.

Private prosecutions are a unique tool in the fight against crypto fraud and, Alice, I know that RPC and you conduct these and have been involved in the private prosecutions recently. The fact is that companies and individuals can bring about the criminal proceedings in the criminal courts through this route in order to ensure that their stolen assets are recovered; and also seeking wider sense of justice under the criminal law.

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**Alice** And Michael what should an individual, or a company do, if they do encounter a crypto fraud issue themselves?

**Michael** Well, step one, obviously, would be to report it to the authorities and to Action Fraud and those details are widely available and publicised.

Step two: individuals may consider - and I would encourage them to consider - obtaining advice from legal professionals with expertise in this field about their options regarding recovery and investigation and really to do that immediately and quickly, because time can be very much of the essence when you are looking at crypto fraud.

The best way to go about that is to approach professionals, with experience in this area, and to seek advice, quickly, and sparing your, Alice - because I know you were instructed in your first crypto case in 2014 - using the expertise of teams such as those at RPC - and the wider capability within RPC - victims of this type of fraud are able to, very quickly, ensure that specialist investigations can take place, funds and assets can be located and recovered and that perpetrators can be identified ensuring that effective enforcement can take place to restore the stolen property. That can proceed through the criminal route and, of course, there are the civil-recovery aspects and options to that.

The victim of crypto fraud has a variety of options available to them, but one of the key challenges with cases in this area is dealing with the cross-jurisdictional issues that can arise and locating and tracing and freezing the crypto assets that can, literally, be anywhere in the world. It is really the expertise of firms such as RPC and, of course, drawing on the network of CFAAR - which I know RPC are proud to have been a founding member of - that the criminal law can be evoked and used successfully and efficiently to restore the loss.

This is really important because millions of people of all ages, large and small organisations, are investing and trading in these crypto currencies which are becoming normal in daily life, so it is essential that the public understand the options open to them if they fall victims of crime in this field. It would also be particularly interesting to see how the insurance sector develops in this area and adapts to the need to underwrite crypto transactions as they become a more common place and the norm. So that, when individuals are being paid wages using crypto currency and individuals are acting as consumers using crypto transactions, the insurance sector will inevitably have to adapt in relation to that - that is going to be an important development.

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<b>Alice</b>	Thank you Michael unfortunately that is all we have got time for in this week's episode so thank you again Michael for joining us. You can find Michael Goodwin QC on Red Lion Chambers website. You can email him <a href="mailto:Michael.goodwin@18rlc.co.uk">Michael.goodwin@18rlc.co.uk</a> . You can also find him on LinkedIn and on Twitter @mgoodwinqc. If you have any questions for me or for Michael or any topics you would like us to cover in a future episode please do email us on <a href="mailto:taxingmatters@rpc.co.uk">taxingmatters@rpc.co.uk</a> we would love to hear from you.
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