

FRAUD & WHITE COLLAR CRIME

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CRYPTOCURRENCY: FINANCIAL GAME CHANGER OR GATEWAY TO FRAUD?

By Bambos Tsiattalou, Maria Theodoulou & Richard Cannon

**HIRED BY U.S. GOVERNMENT AGENCIES TO
TRACK ILLEGAL FLOWS OF MONEY, CRYPTO
RESEARCHER CHAINALYSIS CONCLUDED IN A 2020
REPORT THAT BINANCE HAD RECEIVED \$770M OF
CRIMINAL FUNDS IN 2019 ALONE.**

Cryptocurrencies are now firmly established as the new asset class of choice, especially among younger investors who are attracted by the dream of high returns from being on the right side of its volatility. But they have also become synonymous with fraud. Last year, crypto fraudsters swindled more than £150m from their British victims, while UK digital crime rose by more than 30% on 2020 figures, according to Action Fraud. In May 2022, NatWest CEO Alison Rose urged that Britain was now facing a “pandemic” of fraud as the bank continues to combat a wave of crypto-related investment scams.

This year has been characterised by a protracted crypto winter with falling values fuelling an increase in levels of crypto fraud. A Reuters investigation published in July claims that Binance, the world's largest crypto exchange, is a “hub for hackers, fraudsters and drug traffickers”, having “served as a conduit for the laundering of at least \$2.35bn in illicit funds”, over the past five years.

The misuse of cryptocurrencies to facilitate illicit payments has become subject to even greater scrutiny, particularly since crypto operates in a largely unregulated space. According to a 2022 Europol report, criminal networks that specialise in large-scale money laundering “have adopted cryptocurrencies and are offering their services to other criminals”.

Gary Cathcart, Head of Financial Investigations at the National Crime Agency (NCA), recently told the BBC: “There are parts of the cryptocurrency structure that are being exploited to launder criminal cash, particularly from drug dealing. The growing menace of ransomware also utilises cryptocurrencies as its payment mechanism.” The Reuters investigation into Binance further revealed that between 2017 and 2022, the exchange made and received crypto payments worth \$780m related to the financing of illegal drugs.

Hired by U.S. government agencies to track illegal flows of money, crypto researcher Chainalysis concluded in a 2020 report that Binance had received \$770m of criminal funds in 2019 alone. Across all exchanges, criminals received a record \$14bn in cryptocurrencies and laundered \$8.6bn of cryptocurrency in 2021, up 30% year-on-year, according to Chainalysis's latest report published in January. This further noted that “while billions of dollars’ worth of cryptocurrency moves from illicit addresses every year, most of it ends up at a surprisingly small group of services, many of which appear purpose-built for money laundering”. It concluded that: “Law enforcement can strike a huge blow against cryptocurrency-based crime and significantly hamper criminals’ ability to access their digital assets by disrupting these services”.

To date, global regulators have been long on rhetoric but somewhat short on regulation. The Financial Conduct Authority (FCA) and the Bank of England have both cautioned investors using uncharacteristically strong language to help them understand fraud, hacking, and money laundering risks. In the U.S, Treasury Secretary Janet Yellen has repeatedly questioned the legitimacy and stability of cryptocurrencies and suggested that an appropriate regulatory framework be implemented.

Notwithstanding these siren voices, bespoke crypto regulation has not yet been put in place on either side of the Atlantic, leaving an unclear regulatory position that does nothing to prevent cryptocurrency from being used for criminal purposes. Yet, regulation may soon be on the way. In July, the FCA's Chief Executive Nikhil Rathi signalled his intention to strengthen cross-border crypto-asset regulation. In a speech given at a Washington DC conference, Rathi told delegates that the U.S. and the UK had "agreed to deepen ties" on financial innovation and were "exchanging views on crypto-asset regulation and market developments."

According to the Reuters investigation, police officers and lawyers have told them it is harder for fraud victims to recover lost funds when they pass through a crypto exchange. In a demonstration of pragmatic flexibility, however, the courts have been quick to adjust, dealing with this situation expeditiously by adapting the current laws of England & Wales.

At a recent interim relief hearing in the High Court, Mr Justice Trower delivered a landmark judgement which stated that cryptocurrency exchanges could be served with legal papers. This grants the right to serve these papers on unidentified fraudsters who are connected with digital wallets over the blockchain by NFT, relating to £2m of misappropriated cryptocurrency: roughly £1.8m worth of Tether and £190,000 of USD Coin.

It is the first time that any court in Europe has given permission to serve court proceedings on unknown fraudsters via a non-fungible token (NFT) and only the second time that such an order has been granted globally – the first having been made by the Supreme Court of New York in June. Given the absence of specific crypto regulation, the innovative approach taken by the UK courts does at least provide some confidence until more substantive regulation is available.

The U.S. Securities and Exchange Commission (SEC), arguably the world's leading regulator, recently announced plans to combat crypto fraud by hiring a raft of specialist employees who will be responsible for protecting crypto investors against cyber-attacks and scams. In trying to restrict criminals' use of crypto, regulatory bodies elsewhere have been endeavouring to apply control measures using current laws and regulations. Many regulations are being continuously updated in an attempt to counter complex money-laundering techniques and dynamic technological evolution.

But will this be enough? Effective combatting of crypto-related crime will ultimately require a step change in the scope and scale of crypto-specific regulation underpinned by significant multi-jurisdictional cooperation. But it is far from certain that all international key players will fully sign up for the cause. The disruptive nature of crypto to the established international financial system can be attractive to nations whose agenda is not in line with the traditional system. Given the borderless nature of the blockchain, this means regulation by major countries might just be sidestepped.

There's a long road ahead.



Bambos Tsiattalou is the Founding Partner and a highly respected and sought after criminal defence lawyer at Stokoe Partnership Solicitors. Prior to his admission on the roll of solicitors, he was a barrister acting in many high profile cases.

Bambos has many years' experience of investigations and prosecutions relating to serious crime, including murder, fraud, drug trafficking, bribery and corruption cases. He specialises in cases involving money laundering, confiscation, civil recovery and extradition matters.

Bambos is highly ranked in leading law directories in recognition of his talent and legal knowledge. He is ranked in Chambers and Partners and is a Leading Individual in The Legal 500 UK Guide for his general crime expertise, and is also highly ranked for his financial crime and fraud practices.



Maria Theodoulou has been a Partner at Stokoe Partnership since 2004, having joined the Practice as a trainee in 1997. She oversees all branches of Stokoe Partnership Solicitors, ensuring that the Firm's high standards and ethos are carried through by each member of the team. She has overseen the rapid expansion of the Practice.

Maria has a solid and strong track record as a criminal defence lawyer with a passion for defending her client's interests. Maria specialises in all types of criminal defence matters, often those attracting media attention. She has considerable expertise in defending serious cases involving allegations of murder, armed robbery and conspiracy to supply large scale Class A drugs.

Maria is ranked as a 'Recommended Lawyer' in The Legal 500 UK 2022 Guide where she is described as "an excellent tactician and adviser to clients, always knows the best strategy."



Richard Cannon is a Partner at Stokoe Partnership Solicitors. He is an extremely experienced white collar crime lawyer, practising primarily in serious fraud and related areas. Richard has particular expertise in cases relating to serious and complex fraud together with matters of alleged bribery and corruption relating to both private and corporate clients. He also has extensive experience in high value and complex money laundering matters across the Proceeds of Crime Act.

Richard has a strong practice in relation to matters relating to cross border financial crime allegations particularly involving the United States assisting clients on a number of fronts including civil proceedings and fighting extradition to the US.

Richard has been consistently ranked by Chambers and Partners for financial crime where he has been described as a "fantastic person to have on your side" who is "knowledgeable, thoughtful and efficient". He has also been praised as "a great tactical defence lawyer" and "a very smart and intuitive lawyer". He is also ranked as a Recommended Lawyer in The Legal 500 UK 2022 guide where he is described as having "notable experience in international matters involving the US."



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