

# A race against time: can common law keep up with the crypto-world?

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Barely a week goes by when there isn't an article in the press about a new 'crypto-crime'. Only yesterday, it was discovered that scammers had impersonated Elon Musk by hacking his personal twitter profiles. The scammers convinced people to send small amounts of cryptocurrency in return for a much larger sum back.

Unfortunately some people fell for it. But in this relatively new area, is there a way for way for victims to recover their losses? Can they prosecute the scammers and get their 'money' back?

What will the courts make of crypto-coins?

Cryptocurrencies present a number of problems when it comes to enforcement, including defining precisely what it is that has been lost (are 'crypto-coins' money?) and whether you can prosecute those responsible when you don't necessarily know who they are.

A number of disputes have come before the Courts recently which have highlighted the English legal system's adaptability and willingness to evolve to meet the demands and challenges that these 21st century coins present.

One of the answers the courts have to address is what precisely is a crypto-coin? The answer is important because it dictates the remedy available. There is little doubt that English law treats cryptocurrency as 'property' (in September 2016, the US Court decided that Bitcoin is money). However, it is yet to be seen for certain how English law will adapt to cater for crypto-coins and other new forms of intangible property. Will the courts be able to extend the application of traditional remedies to assist victims who have lost their coins as a result of hacking or fraud?

Who will the defendant be?

Another challenge for crypto-crime victims is identifying the wrongdoers and enforcing their rights against them. Cryptocurrency transactions do not involve intermediaries – they are generally decentralised and take place peer to peer. For some cryptocurrencies, users do have to submit some personal information before obtaining coins, but this is generally fairly limited. However, all transactions are recorded on a public ledger which means that remedies such as tracing may be available, to follow and find the value.

Injunctive relief is also potentially available – preventing wrongdoers from dealing with the coins. Disclosure orders could also require them (and potentially other third parties such as the exchange itself) to disclose crucial information such as a debtor's private key. Such orders will assist victims to trace, find and freeze their assets. This will help them to determine whether and what cause of action might exist for them.

'Persons Unknown'

Very recently, in the case of *CMOC v Persons Unknown*, the English Commercial Court broke new ground in its fight against international fraud. This case concerned fraudsters who had hacked the email accounts of senior managers of a company causing that company to make payments in excess of £6m to various banks around the world. The judge in this case made a Freezing Order against the perpetrators of the fraud despite not knowing who they were.

Making the freezing order against 'persons unknown' enabled the Claimants to springboard to further remedies such as disclosure orders against other parties (in this case, the other banks used in the commission of the fraud) which would not otherwise be available without a primary freezing order in place. This development could be an extremely useful extension in the fight against cryptocurrency fraud, where the identity of hackers

or fraudsters are very difficult to determine due to the decentralised nature of the platform on which they operate.

Technology will not wait for the law to catch up. So far, the English Courts have set themselves apart as an effective forum for combatting wrongdoing of the nature discussed in this blog, and further developments can be expected.

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