

# HIDDEN TREASURES:

## UNVEILING CRYPTOASSETS IN DIVORCE PROCEEDINGS



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Financial infidelity can be a marriage-breaker, but it's better for your clients to know than not.

London is considered to be the divorce capital of the world due to the discretionary approach the judiciary takes to financial cases and the obligation to ensure that any award meets the parties' (often generously interpreted) needs. For that reason, often the financially weaker party will usually want their divorce dealt with here. Whether that is possible, however, will depend on whether the English court has jurisdiction to deal with the proceedings.

As cryptocurrency becomes more accessible, the likelihood of digital assets featuring in a divorce dispute continues to increase, despite the misconception that digital assets are hard to trace.

When coupled with a lack of understanding of those assets, this misconception can be used to the advantage of the party seeking to deliberately conceal assets during

divorce proceedings. However, while tracing hidden digital assets can be a challenge, when armed with the right tools, the public record of digital asset transactions contained on the blockchain means they are in fact one of the most difficult assets to hide.

Using a specialist global team of asset recovery experts can therefore assist spouses with their divorce litigation to identify, trace, value and recover digital assets.



### The cost of non-disclosure

In the UK, divorcing couples are expected to disclose all assets at the beginning of proceedings, specifically when completing a Financial Statement (Form E).

*The English courts have held that digital assets constitute 'property' and therefore, they must be disclosed in Form E. Form E states that "proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth".*

If assets are later discovered to have been hidden by a spouse, it is likely that the courts will vary the order in favour of the other party.

## Identifying digital assets when there is suspicion

When it comes to digital assets, indicators to look out for include transfers to cryptocurrency exchanges in bank statements, the use of cryptocurrency-related tools (such as mobile apps designed to manage accounts or digital asset wallets) or an engagement with the cryptocurrency community (for example, through social media).

Once a link has been identified, it may be possible to identify entities that hold information regarding the concealed assets, in which case steps can be taken to obtain court orders seeking disclosure of such material.

Depending on the circumstances, action can be taken without reference to the concealing party, thereby mitigating the risk of the individual being tipped off that their digital assets are about to be revealed and looking to put them further beyond the reach of their spouse.

Transfers of cryptoassets are recorded on the blockchain, a publicly accessible ledger of transactions. Therefore, as soon as a single digital asset is traced to an individual, it is often possible to quickly build a clear picture of how assets have been moved and where they are currently located. This information has already been used in civil proceedings outside of the context of matrimonial disputes to secure assets, often through injunctive relief, to ensure they are available for enforcement at a later date. These authorities will no doubt influence the family courts as they grapple with an increasing number of cases involving digital assets.

Along with the growing number of experts specializing in digital asset valuation, the stage is already set for concealed digital assets to be translated into the 'real world' and properly dealt with in financial divorce settlement overalls.

This methodology demonstrates just one of the routes through which corporate intelligence, forensic investigations and valuation skills can build on often-limited initial financial information to identify, secure and value undisclosed digital assets.



## For example

HNW individuals often value privacy and are keen to avoid their financial details from entering the public domain. This provides scope for negotiation in divorce scenarios, but it is essential for clients to be armed with the full picture to be able to achieve a fair outcome.

For example, assume a scenario where during the divorce proceedings, the husband completes Form E and discloses his financial assets with a total value of £2million made up of shareholdings and residential properties in the UK and US.

Post-completion of Form E, several paper wallets are discovered with handwritten notes indicating large holdings of a lesser-known cryptocurrency. The client believes that the crypto holds significant value but consults specialists for professional advice.

Upon review, it is determined that there is minimal value in the lesser-known crypto identified by the client. However, using blockchain analytics tools it is discovered that disposals of more established cryptocurrencies were made leading up to Form E disclosure.

**Armed with this knowledge, the client is in a much stronger position and can consider options such as:**

**(1) Seeking injunctive relief against the spouse to prevent them further dealing with the assets**

**(2) Using the spouse's failure to disclose the assets as leverage to encourage full and frank disclosure in ongoing settlement negotiations.**

## Distributing cryptoassets in divorce proceedings

There is also the question of what happens to cryptoassets in HNW divorce disputes when they come to being divided or distributed.

In this regard, clients should lean on asset recovery and valuations specialists to understand the value of the digital assets held, and how they might be located and/or preserved to enable spouses to formulate a recovery strategy to ensure the digital assets are distributed correctly and in accordance with legal protocols. Not everyone needs to be an expert, but it is important to appreciate the unique nature of these assets and know where to start with getting the basics right.

If cryptoassets are identified, and there are various challenges to divide and/or distribute the assets (i.e., the spouse is found to have concealed the digital assets is not forthcoming with payment) then asset recovery specialists can assist with formulating a strategy to enforce payment of the divorce settlement.

Spouses need to be aware that locating and taking control of the digital asset (whether that be cryptocurrency or another digital asset) is the only first stage, and that protection and preservation of the asset through a court directed procedure such as a court appointed receivership, or another type of formal appointment needs to be considered from the outset.

The starting point will be to ensure spouses take quick action. It can take less than five minutes to move funds out of reach!

