

SECTOR SPOTLIGHT: QUICKFIRE Q&A WITH A CRYPTO DIVORCE LAWYER

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Interviewee: Victoria Clarke, Elite Law Solicitors, Partner



This week I met with crypto lawyer Victoria Clarke, who hosted a roundtable discussion at our HNW Divorce Next Gen conference alongside Dean Armstrong KC. I wanted to catchup with Victoria and ask some very basic questions about crypto and divorce. So for those HNW divorce lawyers who are new to the subject, or have yet to see any cases concerning crypto and divorce, here is a very brief introduction.

1. In the first instance, what can a lawyer do if their client is divorcing someone with crypto assets?

Ask the client for as much information as they have about the crypto assets, and use that information to help our further investigations into those assets.

2. So I have the information about what potential crypto assets there are in the 'matrimonial pot', how can I now prove what crypto assets are held?

One would look at the activity in bank accounts, then request some browsing history. You can even request information of what websites a specific IP address has used, to determine whether there has been any crypto activity.

3. What happens if the other side suggests that they have lost the assets, or been hacked?

As with anything, they would need to show evidence of this loss or hacking. I am not sure many can show evidence of simply losing an asset such as this.

4. So how are agreements reached when dividing up crypto assets? How do you deal with potential volatility - as especially with altcoins, they might suddenly drop by 95% or go up 5x?

We have to work with assets that change their value already, although not quite as quickly as crypto assets currently. Either a settlement would be reached on a percentage of the crypto asset which is then dependant on value, or the spouse without the crypto may choose to waive their interest in it because of volatility and instead take a larger percentage of a more stable asset.

5. Have there been any crypto divorces go through the courts yet?

All divorce proceedings are confidential, unless they are reported case law. There could have been several cases in the lower courts already that have involved crypto assets which we simply do not know about. I myself have had a few so it is quite likely.

6. What do you imagine for the future of divorces that involve crypto assets?

I think it will become more common, and people will become more comfortable dealing with them as part of a settlement. I imagine there will be a test case or two about how this asset should be treated, but until then it will be on a case-by-case basis.

7. How did you start working in crypto divorce law?

I have been a family lawyer for many years. I first became involved in the crypto space in 2011 and it was more of a personal hobby at the time. I never imagined crypto would become part of my work as well. When I realised that there are barely any people in the family law arena that understand crypto assets, I knew that this was something I could really get involved with.

8. What would your advice be to anyone thinking about getting married to someone with crypto assets? or to someone marrying someone who they know holds crypto?

If you are about to get married, and you are worried about your assets on divorce, then I would always advise considering a pre-nuptial agreement setting out what will happen to your assets if you do get divorced, and how you will support each other. This would be the case whether they were crypto assets or not; just because they are crypto assets does not mean there are any special measures. You could spend the marriage checking up on their wallet balances and their online account activity, but I am not sure that is a healthy marriage!

9. What advice could you offer to someone who is already married, but in an unstable situation in terms of the longevity of that relationship - is there anything they can do now to avoid a messy divorce later?

Any divorce is as messy as the people involved want to make it. If both people are reasonable and fair, then the process should be quick and affordable irrespective of the assets involved. If they take a polarised view of how things should be divided, then it gets difficult.

10. What is the law in the UK surrounding crypto assets and divorce? Does this vary much between different countries?

Divorce Law in England and Wales does not cover specific assets, but rather how the parties' total assets should be divided in accordance with the Matrimonial Causes Act. This remains the same following the introduction of crypto. What will be interesting in the future is where we see coins/tokens used for currency as opposed to being seen as an asset like shares or stocks.

11. What if your client is the person holding the crypto assets - is there anything they can legally do to protect or hide their assets?

You cannot legally hide your assets. The divorce process requires both people to give full disclosure of all of their assets.

