

THE DIGITAL DIVORCE:



THE RISE OF THE CRYPTO ASSETS IN FINANCIAL REMEDIES

Authored by: Connie Atkinson - Kingsley Napley



What is Crypto

Cryptoassets are a digital type of asset. The ownership of, and transactions relating to, most cryptoassets are recorded on a giant ledger or 'Blockchain'. The first modern cryptoasset was Bitcoin but there are now thousands of others in the market. Most Blockchains are available to the public and cannot be changed or hacked.

A fiat gateway (the act of swapping fiat to crypto) is usually used to make the initial cryptoasset investment. Cryptoassets can be held via digital wallets which are used to store public 'keys' (or addresses) which are used to receive or spend cryptoassets and appear on the Blockchain. Private keys are the passwords to the digital wallets and should not be shared publicly. These keys are not attached to the name or personal details of the owner

(they are instead a sequence of letters and numbers) which means the owner is not easily identifiable.

For the vast majority, cryptoassets are held on a digital exchange such as Coinbase, Kraken, Bitstamp, or Binance (as opposed to a private digital wallet). They can provide the cryptoasset holder with a platform to purchase, sell and transfer their cryptoasset. On these centralised exchanges, the cryptoasset holder allows the exchange custody of the assets (the exchange holds the private keys).



Financial disclosure

In divorce proceedings, each party is obliged to provide full and frank disclosure of their financial circumstances. This usually takes place on a Form E. While there is (currently) no specific place for cryptoassets to be listed, it should obviously form part of the financial disclosure, most likely

in the "Capital: Other assets" section. While no documents in support need to be provided in accordance with this part of the Form E, it is likely to be helpful to provide detailed information about the cryptoassets held, to reduce the likelihood of detailed questions being asked later.

For a spouse wanting to know whether their ex partner held or holds cryptoassets, bank statements are likely to be the first port of call. Unless a spouse has been gifted cryptoassets, their bank statements should show fiat deposits to an exchange (such as Coinbase). If a spouse suspects that cryptoassets are or have been held, they should formally ask whether their spouse holds any cryptoassets; including but not limited to privacy coins, utility coins and NFTs. It will also be necessary to ascertain the service or venue (including exchanges and custodial and non-custodial wallets) on which those assets are held. Requests should also be made for: a) the name and amounts held for each token; b) the public address keys for each token (the deposit address(es) for each token on each exchange or service where tokens are held); and c) a statement of holdings from each exchange or service where tokens are held.

It is worth noting that most of this information is in the public domain (i.e. amounts, tokens, venues, public address keys) albeit it is not always possible to find out who is associated with a particular cryptoasset.



Non disclosure and verification

The crypto market is opaque but it does not mean that a spouse can hide cryptoassets forever. There are a number of experts in the crypto market who can be instructed to verify information provided in divorce proceedings or trace cryptoassets.

If an address is provided, it can be found on the Blockchain. The timing of transactions, amounts traded and whether the trades correspond to assertions made can be checked. In circumstances where the 'non crypto owning spouse' is not familiar with the family's financial history, it is important for expert advice to be obtained. A savvy 'crypto owning spouse' could for example claim to have sold cryptoassets by providing transaction details showing cryptoassets leaving their wallet only for it to reappear in their wallet later via a different public address.

Transactions can be difficult to follow. Some trades involve the exact sum being provided while others send 'change' back to the sender, which are often deposited into a freshly created address in the user's wallet, thereby increasing the number of addresses on the ledger and controlled by the user. As long as the public address of where tokens are or were sitting or a transaction reference or 'hash' is provided, the cryptoasset can usually be traced. Expert tracing services also deploy heuristics algorithms to identify associated addresses within a wallet. This in turn can help reveal assets which a spouse may have sought to hide.



Settlements

Digital investments such as cryptoassets have been popular among younger, digitally confident and savvy investors. It is not surprising therefore that we are seeing more and more cases in which cryptoassets form part of the assets which a would-be spouse wants to protect in a prenuptial agreement or that must be dealt with on divorce.

Issues remain in respect of the transparency of financial disclosure as referred to above but also, once the asset has been properly identified,

the options available when it comes to settlement. It is not as simple as just withdrawing funds from your cryptoassets wallet. Disposal into fiat currency depends on the type of token held, access to exchanges willing to handle crypto-to-fiat transactions, and whether there is a market for those assets.

While courts often aim to spread the risk when looking at the division of each asset class on divorce, this may not be possible or appropriate for a spouse who is not digitally or financially savvy and would not know what to do as a cryptoasset owner.

The cryptoassets market is now a trillion dollar industry. With these sums and level of activity comes the perception that the market is rife with fraud. The marketplace is also extremely volatile which brings its own issues when engaged in lengthy court proceedings. Values may fluctuate significantly during proceedings and a 'crypto owning spouse' who wants to retain this more risky asset in lieu of the more stable assets, will need proper financial advice before committing to this.

One thing that is certain about crypto, is that we all need to get to grips with it.

