

Article Information

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UK High Court recognizes digital assets as property at common law

The issue of whether digital assets and cryptocurrencies should be treated as property at common law has been considered in detail by the UK High Court, and the UK Jurisdiction Taskforce Legal statement on cryptoassets and Smart Contract's recommendation that these instruments should be considered property has been endorsed.

The United Kingdom has been a leader in the legal recognition of digital assets, with the recent [UK Jurisdiction Taskforce of the UK LawTech Delivery Panel publishing a statement](#) (we reported on this [here](#)) (**UKJT Statement**) which reasoned that digital assets had the indicia of, and should be recognised at law as, property.

In a recent decision, the High Court of the UK has given consideration to the point at a level not previously seen, and has endorsed the UKJT Statement as correct, finding that digital assets are property at common law, at least for the purposes of granting urgent interlocutory relief.

The Facts

The case, [AA v Persons Unknown](#) involved an insurance company, not named in the decision, which was subjected to hacking and the installation of malicious software.

That software, known as ransomware, encrypted the company's data and the hackers demanded USD\$1.2M, paid in Bitcoins, as a ransom to provide software to unlock and decrypt the data.

The hacked company called on their insurer, also not named in the decision, who called in an incident response team, leading to a negotiation and ultimately a payment of USD\$950,000 in Bitcoin to the hackers. The hackers then provided the tools for the encrypted data to be recovered (and it was).

The insurer, being subrogated to the rights of their insured, hired Chainalysis to investigate the public Bitcoin blockchain and determine where the Bitcoin had been transferred. The results of that investigation were that much of the ransom had ended up on the popular digital currency exchange Bitfinex (which has its own troubles unrelated to this lawsuit) who had been named as a defendant.

The insurer sought orders to freeze the Bitcoin held by Bitfinex and other relief but for technical reasons needed to limit their relief sought to an order or a constructive trust and restitution order against the four defendants (with 2 defendants being unknown hackers, Bitfinex companies being the third and fourth defendants).

His Honour noted, "this application raises certain novel legal issues relating to crypto currencies" and, "the difficulty identified in treating crypto currencies in property ... starts from the premise that the English law of property recognises no forms of property other than choses in possession and choses in action ... crypto currencies do not sit neatly within either category."

His Honour then went on to find that it would be "fallacious" to insist that the English Common Law was limited to only recognizing those two forms of property, and cited in full a number of paragraphs from the UK Statement which highlighted instances where "things" were recognized as property despite not being cleanly identifiable as choses in possession or

choses in action.

His Honour went on to note that digital assets have the 4 characteristics identified by Lord Wilderforce in the decision of [National Provincial Bank v Ainsworth](#), specifically that they are:

1. definable,
2. identifiable by third parties,
3. capable in their nature of assumption by third parties, and
4. having some degree of permanence.

In conclusion, the Court reinforced that it considered the UK Statement to be correct as a matter of law, and that crypto assets should be recognized as property under UK law.

Ultimately orders were made for Bitfinex to produce information relating to the ransom paid.

Any decision involving interlocutory proceedings carries less weight than a full hearing where both sides have made submissions (another [High Court decision](#) addressing crypto assets did not consider the matter in detail), but this decision represents the most detailed consideration yet of the position of crypto-assets at UK common law, and as such will be likely cited in future disputes where the question of whether crypto-assets are property at law is debated further.