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The Legal 500 Country Comparative Guides

United Kingdom

BLOCKCHAIN

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This country-specific Q&A provides an overview of blockchain laws and regulations applicable in United Kingdom.

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UNITED KINGDOM
BLOCKCHAIN

1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

Distributed ledger technologies ("**DLT**") have been applied in diverse sectors across the United Kingdom ("**UK**"), from financial technology to security, energy, entertainment, healthcare, cryptocurrency trading, transport and logistics and real estate. Financial services is a key area of strength and focus in this respect, as both financial institutions and government bodies have explored the potential efficiencies that blockchain could bring to, for example, the clearing process, identity checks and settlement and payment systems.

Enthusiasm for blockchain technology has, however, notably waned following the high-profile collapse of, and investigations into, a number of significant crypto market players over the past year and a half—where crypto and blockchain are often conflated—coupled with the ascendency of artificial intelligence as the new 'buzzy' area of emerging technology. We unpack this cryptoasset story further in our answer to question 2, from both a retail and wholesale perspective. The conflict in Ukraine (with accompanying concerns that cryptoassets will be used to evade sanctions) and increasing awareness of environmental, social and corporate governance ("**ESG**") issues have further galvanised conversation around how DLT is deployed. This is explored further in our answer to question 3.

Perhaps the most concrete gains to date are to be found in the area of supply chain management, as businesses seek to increase transparency, coordination and efficiency across their supply chains, and both businesses and individuals increasingly place a premium on the ability to track and record the responsible and ethical resourcing of products and assets.

The Electronic Trade Documents Act 2023 may further stimulate the use of DLT in the context of international trade. Under the current law of England and Wales, being the "holder" or having "possession" of a trade document has special significance, but the law previously did not allow an electronic document to be possessed—a status quo changed by this legislation. The UK government has also trialed the integration of blockchain technologies within its own processes, which we discuss further in our response to question 5.

Finally, decentralised finance ("**DeFi**"), where smart contract functionality is leveraged to facilitate use cases such as margin trading, lending and borrowing, presents a growth area. We discuss this further at question 17.

2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

Cryptoassets continue to dominate the blockchain conversation in this jurisdiction, and in early 2022 retail engagement had reached a new high. Research from the Financial Conduct Authority ("**FCA**") suggests that there was an almost threefold increase in the proportion of adults holding cryptoassets between February 2020 (2%) and May 2022 (5.8%), and in May 2022 1.6 million adults said they had used cryptocurrency to pay for goods or services. From these great heights, however, followed a 'crypto winter' that emerged in May 2022 and bankrupted a number of crypto firms on the international stage.

Investigations into the Singapore-incorporated Terraform Labs—the collapsed operator behind the stablecoin TerraUSD and its sister coin, Luna, which both failed in May 2022 and heralded the current crypto winter—are ongoing. This havoc was followed by the collapse of FTX in November 2022, and a further knock to market confidence emerged from a series of investigations levelled at Binance in France, Canada and the United States across 2023. This turbulence has been met with a domestic consumer response: FCA field research suggests that by August 2022, fewer adults were already purchasing cryptoassets for the payments of goods and services as compared with 2021.

On the wholesale side, the historic latency exhibited by financial institutions towards cryptoassets and tokenisation projects had appeared to be thawing. The October 2022 Fidelity Institutional Investor Digital Asset Study reported that 67% of surveyed European institutional investors held cryptoassets in 2022. Moreover, a number of international virtual asset projects involving global financial institutions have a UK nexus. A notable example is Fnality International, a UK-based project backed by a consortium of financial institutions led by UBS, which is developing tokenised versions of five major fiat currencies (CAD, EUR, GBP, JPY and USD). In June 2019, 14 major financial institutions (including Lloyds and Barclays) invested £50 million in Fnality, and the company received further, significant investment from the clearing giant Euroclear in March 2022. Other examples are found in Zodia Custody (a cryptocurrency custodian targeted towards institutional investors) and Zodia Markets (an institution-first crypto trading leader), both of which have arisen out of Standard Chartered partnerships and which launched in the UK across 2021-2022.

Again, however, there are signs that the crypto winter and the UK's increasingly strict regulatory environment (described further at questions 4 and 7 below) is slowing institutional engagement with virtual assets and tokens. It is telling that, as we explore at question 13, a number of banks have acted to restrict or block customers from buying cryptocurrencies in light of a proliferation of crypto scams. In August 2023, moreover, PayPal announced that it will 'temporarily pause' the ability for UK customers to buy crypto on its platform, resuming in early 2024, while it takes steps to comply with regulatory rules.

The maelstrom of activity witnessed in the UK in the area of non-fungible tokens ("**NFTs**") across 2021-22 has not been replicated in 2022-23. NFTs can be defined as unique records on a public blockchain capable of being traded, which commonly represent ownership and/or validate authenticity of an associated digital asset. The UK government signalled a loss of confidence in NFTs in March 2023, when it took the decision to pause the development of the Royal Mint's NFT. Moreover, a report published by dappGambl in September 2023 estimated that 95% of people holding NFTs are currently holding onto worthless investments. While some in the art world continue to exhibit support for NFTs (including Christie's which, towards the end of 2022, launched a platform that will allow for full on-chain NFT sales), their star is certainly waning.

As yet there have been no heavily publicised failures of blockchain technologies in this jurisdiction, although the reversal in fortunes of Terra, FTX and Binance on the international stage (detailed at question 1) have reverberated in the UK. Notably, prior to these events, the FCA had previously raised concerns about both FTX and Binance (explored further at question 13).

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

Blockchain technology has, including through its link to cryptocurrencies like bitcoin, garnered a reputation of being antithetical to ESG goals. This reputation stems from: (i) the perception that cryptoassets harbour an increased risk of money laundering, fraud and sanctions evasion; and (ii) the carbon-intensive mining process that underpins blockchains making use of a 'Proof of Work' ("**PoW**") consensus mechanism, including the pre-eminent Bitcoin network.

On the former charge, as recognised in a report published in 2018 by the United Nations Principles for Responsible Investment Network, blockchain technology can in fact facilitate secure decentralised transactions, reduce instances of fraud, and increase transparency and efficiency in multi-party transactions—all of which could feasibly assist in advancing ESG goals. Nevertheless, it remains the case that the National Crime Agency ("**NCA**") has assessed that, based on estimates of UK transaction volumes, illicit cryptoasset transactions linked to the UK in 2021 likely equated to at least £1.24 billion (~1% of total transaction value), with a realistic possibility that this figure may be significantly higher.

On the latter charge, there has been a shift towards making use of the more energy efficient Proof of Stake ("**PoS**") blockchain consensus mechanism. Most notably, in September 2022 prominent blockchain platform Ethereum transitioned to a PoS consensus mechanism in a change referred to as 'The Merge', announcing that this reduced Ethereum's energy consumption by 99.95%. Both PoW and PoS consensus mechanisms provide a means of ensuring the integrity of the blockchain ledger in the absence of a trusted central authority. Please refer to our blog post Merging Crypto and ESG for more context.

Notwithstanding this shift, recent estimates by the University of Cambridge's Bitcoin Electricity

Consumption Index suggest that Bitcoin's global annual energy consumption is nearly 130 TWh per year, or approximately 45% of the UK's annual total energy consumption (or put yet another way, the amount of electricity consumed by the Bitcoin network in a single year could power all tea kettles used to boil water in the UK for 29 years). Moreover, a report published by dappGambl in September 2023 found that the energy required to mint a group of 195,699 NFT collections which had been identified as having no apparent owners or market share was equivalent to the yearly emissions of 3531 cars.

This issue is being taken seriously by the UK government. In a paper published by His Majesty's Treasury ("**HMT**") in October 2023 on the future financial services regulatory regime for cryptoassets, HMT confirms that it will tackle the environmental impact of the cryptoasset sector primarily through sustainability disclosures (with initial exploratory work focusing on whether existing frameworks and indicators could be applied). This approach is not without its critics, who point out that if the government were serious about its commitment to tackling the climate emergency, it would not permit PoW tokens to be promoted on UK regulated financial services markets. The Bank of England ("**BoE**") has further signalled that if the UK adopts a CBDC (which may be based on DLT, further discussed at question 7), this would be designed to be consistent with the UK government's commitment to reach net zero greenhouse gas emissions by 2050, and would not use a PoW consensus mechanism.

Despite discussion often focusing on the 'E' in ESG, in the UK the benefits of blockchain technology are perhaps most evident in the social and governance spheres. For example, Proxymity—a digital proxy voting platform live in the UK market—uses blockchain technology to connect and authenticate an issuer company and its investors and shareholders, with the intention of making the AGM voting process more efficient, accurate and transparent. There have, moreover, been a number of collaborations between public sector bodies, such as the Foreign, Commonwealth and Development Office and UK Aid, and tech companies with the aim of using blockchain to help solve issues of supply chain transparency and managing logistics across humanitarian and aid funding.

While a nascent trend, we expect the intersection of blockchain technology with ESG outcomes to continue to develop across 2023/2024.

4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

For several years, the legal approach to blockchain and cryptoassets largely involved applying existing areas of law to this novel technology. Increasingly, however, legislation and regulation is designed with cryptoassets (although not broader blockchain technology) in mind.

As we describe in our response to question 9, HMRC has developed a tax regime to accommodate cryptoassets. Money laundering legislation now explicitly encompasses crypto firms. The fifth Money Laundering Directive as implemented in the UK via amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**MLRs**") (the majority of which came into force in January 2020) brought virtual currency exchange platforms and custodian wallet providers within the scope of anti-money laundering and counter-terrorist financing ("**AML/CFT**") regulation. These businesses are required to register with the FCA and implement AML and CFT policies, controls and procedures and, since August 2022, it has been necessary to obtain FCA approval before acquiring or increasing control over an FCA-registered crypto firm. The Economic Crime and Corporate Transparency Act, which received Royal Assent in October 2023, provides additional powers to law enforcement to facilitate quicker and easier seizure and recovery of cryptoassets which are the proceeds of crime or associated with illicit activity such as money laundering, fraud or ransomware attacks.

The UK's financial sanctions regime, implemented and enforced by the Office of Financial Sanctions Implementation ("**OFSI**"), does not differentiate between cryptoassets and other forms of assets. Cryptoasset exchange providers and custodian wallet providers have been within scope of sanctions reporting obligations since 30 August 2022, and since 1 September 2023 the so-called 'Travel Rule' has required cryptoasset businesses in the UK to collect, verify and share information about certain cryptoasset transfers. Moreover, combatting kleptocracy and the evasion of sanctions through the use of cryptoassets will continue to be a key priority for the UK government over the next three years (from 2023-26), as set out in its second economic crime plan.

More broadly the UK financial regulators, the FCA and the Prudential Regulation Authority ("**PRA**"), under the auspices of HMT, are departing from their historic 'technology neutral' approach, and are instead formulating blockchain-specific regulation. In this vein, the FCA has prohibited the marketing, distribution or sale—in or from the UK—to all retail clients of derivatives and exchange traded notes ("**ETNs**") that reference certain types of unregulated, transferable cryptoassets. These rules came into force on 6 January 2021 and we discuss them further at question 10. The FCA further oversees the MLR-registration regime referenced above, and from 8 October 2023 the FCA's remit expanded in relation to cryptoasset promotions. This is because the financial promotions restriction set out in section 21 Financial Services and Markets Act 2000 ("**FSMA**") has been expanded to capture a much broader range of 'qualifying cryptoassets', which includes bitcoin and ether (although excludes NFTs).

Looking to the future, in October 2023 the UK government confirmed its plans to regulate a broad swathe of cryptoasset activities by folding them into the regulatory framework established by FSMA. This approach builds on the government's commitment, first announced in April 2022, to bring fiat-backed stablecoins into the perimeter, on the basis that they have the potential to become a widespread means of retail payment. The Financial Services and Markets Act 2023 ("**FSMA 2023**") provided the government and regulators with the necessary powers to enact these changes, and this workstream will now follow a phased approach. Phase 1 (where secondary legislation is expected by early 2024) will involve bringing the use of fiat-backed stablecoins in payment chains into the Payment Services Regulations 2017, and bringing the activities of issuance and custody of fiat-backed stablecoins where the coin is issued in or from the UK within FSMA. Phase 2 (where the government's aim is for secondary legislation to be laid in 2024, subject to Parliamentary time) will involve the absorption of a broader range of cryptoasset activities within FSMA. These new regulated activities will include the issuance of cryptoassets; operating cryptoasset exchanges and trading platforms; investment and risk management activities, e.g. dealing in cryptoassets; operating a cryptoasset lending platform; and safeguarding and administering cryptoassets.

This plan of action represents an evolution of the FCA's prior approach, which was to retrofit cryptoassets into pre-existing regulated categories (as further described in our answer to question 9), and will herald the phasing out of the registration regime under the MLRs.

5. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

In April 2022, Rishi Sunak (then Chancellor of the Exchequer) announced the government's ambition "to make the UK a global hub for cryptoasset technology". This ambition is, however, likely to have been tempered by the recent crypto winter. Suggestions of this can be found in the government's decision in March 2023 to drop plans for a Royal Mint NFT, in addition to recent political pressure exerted by the House of Commons Treasury Select Committee. Following an inquiry into the cryptoasset industry, in May 2023 (in a report entitled 'Regulating Crypto') the Committee called for retail trading and investment activity in unbacked cryptoassets, such as bitcoin and ether, to be regulated as gambling rather than as a financial service. This was on the basis that unbacked cryptoassets "*have no intrinsic value, and their price volatility exposes consumers to the potential for substantial gains or losses, while serving no useful social purpose*" (notably, however, this suggestion has not been accepted by HMT).

The government has also expressed interest in blockchain technology more broadly, with UK government bodies exploring how blockchain might be used to improve their own processes. For example, His Majesty's Land Registry ("**HMLR**") has been looking at the possibility of tokenising UK real estate on a blockchain to reduce friction in real estate transactions, and in April 2019 demonstrated an end-to-end proof of concept real estate transaction using blockchain technology that took less than 10 minutes to complete. In January 2020, His Majesty's Revenue and Customs ("**HMRC**") sought expressions of interest from vendors for a blockchain analytics tool to aid in catching cybercriminals trading in cryptocurrencies.

The financial regulators have historically taken a balanced and flexible approach to the use of blockchain technology. They have recognised that this technology has the potential to deliver significant benefits and have voiced support for its development. In this vein, the FCA has supported tests of blockchain technology within its Regulatory Sandbox and has embraced HMT's proposal for a specific Digital Securities Sandbox (discussed in our answers to questions 6 and 7), while the BoE has undertaken analytical work to evaluate the risks and opportunities involved in the creation of a UK CBDC (discussed in our answer to question 7),

The financial regulators have also, however, stressed the need for caution in the context of the cryptoasset market, and the need to ensure that the UK financial markets remain safe and transparent. For example, only 14% of cryptoasset business applicants have successfully achieved MLR-registration with the FCA since January 2020, and the FCA issued warnings to consumers about interacting with FTX and Binance in advance of the problems that plagued both companies throughout 2022-23. Meanwhile, the BoE has repeatedly issuing warnings about the potential systemic risks posed by cryptoassets to financial institutions and core financial markets.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

There are several initiatives in the UK designed to encourage the development of blockchain technology, concentrated in the financial services sector.

On the investment side, government-led Innovate UK—which supports businesses in developing and realising the potential of new ideas— continues to invest in DLT-based projects. For example, in January 2022 it awarded a six-figure grant to TAG TrustNet, which aims to make digital advertising market more accountable and efficient by leveraging DLT, and in 2023 it invested in facilities that will pioneer a new approach to preserving, promoting and progressing cultural heritage through emerging technologies, including blockchain.

In terms of practical support, the FCA and the Information Commissioner's Office ("**ICO**") (the latter being the data privacy regulator) host sandboxes to support organisations that are developing innovative products and services, including those that make use of blockchain technology. The FCA also runs "Innovation Pathways" to help firms understand how regulation relates to their activities when launching innovative products and services. Through these initiatives, the FCA had supported 133 DLT-based innovations, including some cryptoasset firms, as of June 2023.

From a policy perspective, the BoE maintains a Fintech Hub (launched in 2018) through which it seeks to understand how fintech developments may affect systemic stability and the safety and soundness of firms. In 2022, the FCA ran 'CryptoSprint' events which sought industry views around the current market and the design of an appropriate regulatory regime.

More broadly, in April 2022 HMT announced several proposals designed to make the UK a global hub for cryptoasset technology and investment. These included: (i) the creation of a financial market infrastructure ("**FMI**") sandbox, in conjunction with the BoE and the FCA, to enable firms to experiment and innovate with technologies like DLT in providing the infrastructure services that underpin markets; and (ii) the formation of a Cryptoasset Engagement Group chaired by the Economic Secretary, which will convene key figures from the regulatory authorities and industry to advise the government on issues facing the cryptoasset sector. HMT has since published a proposal for the first FMI sandbox, called the Digital Securities Sandbox ("**DSS**") for consultation, which concluded in August 2023 (discussed in our answer to question 7).

Finally, changes are being made to the UK payments infrastructure which will facilitate the wider adoption of blockchain technology, and the UK may ultimately place a distributed ledger at the heart of its economy. The government has now concluded that a retail CBDC, the 'digital pound', will likely be needed in the future, and a design phase has begun (discussed further in our answer to question 7). In 2021, the BoE launched a new omnibus account as part of its Real-Time Gross Settlement service, enabling it to support a wider range of innovative payment systems including those using DLT, and in August 2022 Sterling Fnality became the first newly designated payment system harnessing DLT under the remit of the Payment Systems Regulator ("**PSR**"). On the industry side, UK Finance (and a number of its members and interested parties) have come together with EY to explore the viability of a DLT-based 'Regulated Liability Network', a regulated FMI that would operate a shared ledger that records, transfers, and settles regulated liabilities of central banks, commercial banks, and regulated non-banks.

7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

Like last year, there have been a number of consultations during the past 12 months considering the opportunities and risks associated with blockchain technology, and how these might be addressed via legislation and regulatory rules.

In February 2023 HMT launched its consultation on the future financial services regulatory regime for cryptoassets, on which it published a response in October 2023 as described at question 4.

Also in February 2023, HMT and the BoE published a consultation on a retail CBDC, colloquially referred to as the “digital pound”. The consultation focused on the technical requirements and design considerations for a digital pound, as well as the rationale for introducing a retail CBDC and potential features. It is currently proposed that the digital pound would be issued by the BoE for use by households and businesses for their everyday payments, and be available to both UK and non-UK residents. No decision, however, has yet been made as to whether the core ledger underpinning the digital pound will make use of DLT.

In terms of next steps, the BoE and HMT will invest in a ‘design phase’ meaning that, while no firm decision has been taken on whether to introduce the digital pound, they will: (i) increase the scale of their development work; (ii) build out the necessary skills and expertise; and (iii) put in place the technical capability to introduce the digital pound in a timely manner should the proposal be given the green light. The PSR has confirmed, in its response to the consultation, that it is supportive of the proposal, noting, among other things, that the digital pound could support the UK’s financial stability in the future, on the basis that it would be a means for the payments ecosystem to retain access to public money, even as cash usage declines.

HMT has also consulted:

- in August 2022, on the government’s proposed approach to managing the failure of systemic ‘digital settlement asset’ firms (where the definition of digital settlement asset includes stablecoins together with wider forms of digital assets used for payments/settlements) by way of a modified FMI Special Administration Regime. In October 2023, it was confirmed that the government will proceed with these proposals, and will lay regulations to this effect when Parliamentary time allows; and
- in July 2023, on its proposal for the first FMI sandbox, the DSS. The DSS will enable firms to set up and operate FMIs using innovative digital asset technology in relation to notary, settlement and maintenance services and the operation of a trading venue.

Turning to tax, in July 2022 the government launched a consultation on the taxation of decentralised finance (“**DeFi**”) transactions involving the lending and staking of cryptoassets. The consultation (which ended in August 2022) sought views on the revisiting of the tax treatment around certain DeFi transactions where a charge to capital gains tax (“**CGT**”) could arise even in circumstances where the effective economic ownership of the cryptoassets is retained. The government proposed three potential options for reform, including changes to the legislation which would seek to ensure that a charge to CGT should arise only when the cryptoassets are economically disposed of (for example, by an outright sale or when they are exchanged for goods and services). In April 2023 the government published its response to the consultation having had the benefit of reviewing stakeholder responses. The government then sought further views from interested parties on the scope and design of legislative changes, which would disregard from CGT any disposal of beneficial interest which may occur for tax purposes where cryptoassets are staked or lent as part of a DeFi transaction. The deadline for responses to this, more targeted, consultation ended in June 2023.

Separately, in April 2022 the government announced its intention to expand the Investment Transactions List for the purposes of the UK’s investment manager exemption (“**IME**”) to include cryptoassets. The IME uses qualifying tests to provide certainty that non-UK resident investors can appoint UK-based investment managers to conduct certain investment transactions on their behalf, without bringing those non-UK resident investors into the scope of UK taxation. This expansion provides certainty of tax treatment to UK investment managers and their non-UK resident investors who seek to include cryptoassets within their portfolios, and the government noted that it will encourage new cryptoasset investment management businesses to base themselves in the UK.

In May 2022, HMRC accordingly sought views on the scope of such an extension to the IME, looking in particular at the types of cryptoassets which should be included within the regime. HMRC also consulted on whether there is a case for extending this change to other tax regimes which also use the Investment Transactions List. Legislation to define ‘designated cryptoassets’ and include them in the Investment Transactions List (for the purposes of qualifying for the IME) was published in December 2022, and applies to transactions entered into from tax year 2022 to 2023 onwards, and accounting periods that include 19 December 2022 onwards.

8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

The Law Commission—a statutory independent body that keeps the law of England and Wales under review and recommends reforms—published its final report on digital assets in June 2023. As explored further in our answer to question 15, the Law Commission has concluded that some digital assets are neither things in possession nor things in action, but that nonetheless the law of England and Wales treats them as capable of being things to which personal property rights can relate. This follows the Law Commission's report on smart contracts, published in November 2021 and described further in our answer to question 16, which expressed the view that the current legal framework in England and Wales is capable of facilitating and supporting the use of smart legal contacts without the need for statutory reform.

In February 2023, the UK Jurisdiction Taskforce ("**UKJT**"), a body which brings together the Judiciary, the Law Commission of England and Wales and technology and legal professionals) published a legal statement on the issue and transfer of digital securities under English private law using a system deploying blockchain/DLT. The statement considers that many digital bond use cases, where all participants are contractually bound to a common rulebook, are unproblematic under English private law and unlikely to give rise to novel legal issues as a result. The statement further considers that digital bonds intended to be capable of circulation on a public blockchain without custodians or any other form of intermediation raise more challenging legal questions, but should equally be capable of being accommodated within traditional English legal concepts. This follows a UKJT statement published in 2019 on the legal status of cryptoassets and smart contracts, and publication of the Digital Dispute Resolution Rules in April 2021 (discussed in our answers to questions 15 and 16).

In addition, a raft of guidance has been issued in respect of cryptoassets. In July 2019 the FCA published its landmark cryptoasset guidance in a policy statement ("**PS19/22**"), which seeks to clarify the regulatory perimeter for market participants carrying on activities in the cryptoasset market, and which is explored in further detail in our answer to question 9. In November 2023 the FCA finalised its guidance on cryptoasset financial promotions (FG23/3), and has further published feedback on good and poor practice to help firms prepare to comply with the cryptoasset financial promotions regime from 8 October 2023. This guidance and feedback complements the FCA's policy statement (PS23/6) on financial promotion rules for cryptoassets, published in June 2023.

The financial service regulators have also issued guidance in the form of letters and notices. For example, in March 2022 the PRA wrote to CEOs of UK-authorised banks, insurance companies and large complex investment firms to ensure that where firms do have exposures to crypto they understand the PRA's expectations around risk management and measurement against the existing prudential framework. Elements of the existing framework that the PRA expects firms to consider when measuring and mitigating risks resulting from crypto activities include strong risk controls, robust new product approval processes and the full Pillar 1 framework. The FCA also published a notice to all FCA regulated firms in March 2022 reminding them of their existing obligations when they are interacting with or exposed to cryptoassets and related services. The notice covers, among other things, systems and controls, robust new product approval processes, prudential considerations and custody considerations.

In March 2021 HMRC, the UK's tax authority, published a dedicated HMRC Manual on the taxation of cryptoassets for individuals and businesses (including sole traders and partnerships), updating guidance previously published in December 2019. This updated manual largely reflects pre-existing guidance, although it does include a broadening of the categories of cryptoassets covered, and includes new topics such as the practice of 'staking' and new analysis on crypto-derivatives. HMRC's approach to the taxation of cryptoassets is considered in our answer to question 9.

Finally, in July 2020 the Joint Money Laundering Steering Group ("**JMLSG**"), which encompasses the leading UK financial services trade associations, updated its guidance on the prevention of money laundering and terrorist financing in the UK financial services sector to include new guidance for cryptoasset exchanges and custodian wallet providers. This guidance was approved by HMT in August 2020.

This guidance is in addition to EU guidance which—although the UK has now left the EU—should continue to be relevant, as well as that produced by international bodies such as the Financial Action Task Force, the Financial Stability Board, the Basel Committee on Banking Supervision, UNIDROIT and the International Organization of Securities Commissions.

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

The UK regulatory authorities have opted for a taxonomy of cryptoassets, rather than cryptocurrencies, as this captures a broader range of tokens than just those designed to act as a means of exchange in online transfers (to which the term cryptocurrency typically applies). For the purposes of financial regulation, to date the FCA has adopted (as set out in PS19/22) three categories for the classification of cryptoassets: (i) exchange tokens, which are not issued or backed by a central authority and are intended to be used as a means of exchange; (ii) security tokens, which are tokens amounting to a debt and/or an equity interest in an undertaking; and (iii) utility tokens, which can be exchanged by the holder for the use of a digital resource (such as use of a network, digital storage, computing power or an application).The classification of a particular cryptoasset will depend on its features, and its classification will dictate its regulatory treatment. Under the current taxonomy, cryptocurrencies (such as bitcoin or litecoin) are generally classified as exchange tokens, although some may fall within the definition of e-money.

As described further at question 4, this taxonomy is set to expand in the coming years. A range of additional regulated activities in relation to both fiat-backed stablecoins and a broader range of cryptoassets are to be brought into the perimeter via a phased approach. One of the steps that will be taken to facilitate this change will be to include cryptoassets in the list of specified investments in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

As observed in our answer to question 4, all UK cryptoasset exchanges and custodian crypto-wallet providers must comply with AML regulations, including registering with the FCA, implementing identity and other AML checks, and complying with sanctions reporting obligations. They must also clearly disclose to customers where a cryptoasset activity is not covered by the Financial Ombudsman Service or the Financial Services Compensation Scheme (most cryptocurrency transactions will not be so covered).

For direct taxation purposes, cryptoassets (including cryptocurrencies) are generally regarded by HMRC as capital assets that are subject to the capital gains regime. Therefore, subject to various exemptions and deductions, when a cryptoasset is disposed of (including where it is used to purchase something, where it is sold for a fiat currency or where it is exchanged for another cryptoasset), any increase in value (by reference to Pounds Sterling) over the period that the asset was held, will be a capital gain on which the person or entity disposing of the cryptoasset will be chargeable to tax. Any loss of value over that period will be a capital loss which may be capable of being used to off-set other taxable capital gains the person or entity may have.

For VAT, in line with the Court of Justice of the European Union's decision in the 2014 *Skatteverket v David Hedqvist* case, the position adopted by HMRC is that the exchange of a cryptocurrency for a fiat currency is a transaction which is a supply of services for VAT purposes but is nonetheless exempt from VAT (as are financial services provided by a cryptocurrency exchange in facilitating the exchange of a cryptocurrency for a fiat currency or other exchange tokens). Where a cryptocurrency is used to pay for goods and services, VAT will still be chargeable in the normal way on the supply of those goods or services, but will not be due on the supply of the cryptocurrency itself. Where cryptoassets which are not a cryptocurrency or other exchange token are used to pay for goods and services, the VAT treatment will depend on the nature of the cryptoasset concerned.

Cryptocurrency received from mining activities or other rewards for participating in a cryptocurrency network is not generally subject to VAT (generally, either on the basis that the activity of mining is not an economic activity for VAT purposes or there is no customer for VAT purposes for the mining service), but the receipt will usually be taxed as income (either as trading income or miscellaneous income).

If the cryptoasset activities of a person or business amount to taxable trading, any trading profits will be taxable as income. Transactions involving cryptoasset exchange tokens that are undertaken by businesses may, depending on the activity being undertaken, attract further taxes such as PAYE, National Insurance contributions and Stamp Taxes (for example, if an employee is paid in exchange tokens, this will normally give rise to the same PAYE/national insurance obligations as a cash payment).

On the question of characterisation, the dominant (although by no means the only) view in the UK appears to be that cryptocurrencies are not considered to be "currency" or "money". This is, at least, the position adopted by the Cryptoassets Taskforce, a grouping announced in March 2018 that encompassed HMT, the FCA and the BoE, and which sought to provide a roadmap for the UK's policy and regulatory approach to cryptoassets and DLT in financial services in a report published in October 2018. This line of thinking has continued through to the consultation published by HMT in February 2023 and discussed at questions 3 and 7 above, with HMT preferring the term "exchange token" to avoid a potentially unwarranted equivalence with fiat currencies. This point has not yet received judicial attention and may be subject to change, although the view of the Cryptoassets Taskforce is persuasive.

However, under English law the consequences of cryptocurrencies not being characterised as currency are less significant than one may assume. For example, while cryptocurrencies are treated as capital assets for tax purposes, this is similar to the approach taken in the UK to all foreign currency. Subject to various exemptions (such as certain personal expenses) and deductions, when foreign currency is disposed of (spent), changes in the value of that currency by reference to Pounds Sterling may be treated as capital gains or losses for tax purposes. Additionally, in terms of asserting or exercising legal rights over cryptocurrencies, much more turns on whether or not a cryptocurrency can be characterised as property (considered further in our response to question 15 below) than whether it is characterised as currency.

10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

There are currently no specific prohibitions on the use or trading of cryptocurrencies in the UK.

However, the FCA has instituted a ban—which took effect from 6 January 2021—on the marketing, distribution or sale to retail clients of certain investment products (such as derivatives and ETNs) which reference cryptoassets. The FCA is of the view that retail consumers cannot reliably assess the value of these products because: (i) the underlying cryptoassets have no reliable basis for valuation; (ii) there is a prevalence of abuse and financial crime in the secondary market for cryptoassets; (iii) there is extreme volatility in cryptoasset prices; and (iv) retail consumers have an inadequate understanding of cryptoassets and there is a lack of a clear investment need for investment products referencing cryptoassets. The FCA has estimated that the harm to retail consumers that could be reduced by implementing this ban in the UK is in the range of £75 million to £234.3 million per year.

Similarly, as discussed in our answers to questions 4 and 8 above, cryptoasset firms are now prohibited from promoting "qualifying cryptoassets" unless (i) the promotion is communicated or approved by an FCA-authorised person (subject to the incoming gateway regime for authorised persons approving financial promotions); (ii) the firm is registered with the FCA under the MLRs: or (iii) the promotion otherwise complies with the conditions of an exclusion from the regime.

As explained above, cryptoasset exchange providers and crypto-wallet providers are required by the MLRs to register with the FCA, comply with AML checks and make certain disclosures to customers, and are subject to sanctions reporting. Some cryptoassets may, moreover, already fall to be regulated as security tokens or e-money, in which case dealing with them would generally require a permission. Finally, as described further at question 4, a number of cryptoasset activities are set to be annexed within the regulatory perimeter, including dealing in cryptoassets as principal or agent, and making arrangements with a view to transactions in cryptoassets.

11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

There are no outright prohibitions on launching an initial coin offering ("ICO") in the UK, although, depending on the particular ICO, various regulations may apply (as further described in our answer to question 12 below) which may, for example, require registration with the FCA.

In the peak period of ICOs in early 2018, a report by PwC in collaboration with Crypto Valley found that the UK was in the top 5 countries globally (based on funding volume) for launching ICOs. In line with the global trend, the market for ICOs declined significantly during 2018. As the crypto market recovered in the years following 2018, the focus of investors shifted from ICOs towards stablecoins, security tokens and utility tokens. The associated emergence of DeFi is considered in further detail in our answer to question 17. As the market continues to recover from the latest crypto winter of 2022 it remains to be seen whether the interest in ICOs will re-emerge.

During the ICO peak of 2017-2018, the financial regulators and the House of Commons Treasury Committee adopted a relatively sceptical approach toward ICOs, urging caution on the part of investors and declaiming ICOs as high risk.

12. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

ICOs as such are not currently regulated in the UK, in that there are no overarching laws imposing legal and/or regulatory requirements on the activity of launching or running an ICO. As a result, at the present time, whether an ICO will be subject to regulatory requirements is determined on a case-by-case basis. It is worth highlighting that all ICOs will be subject to generally applicable laws such as those concerning taxation, the sale of goods, trading standards, and laws preventing the deception of consumers/investors.

Where an ICO is of a cryptocurrency which functions like bitcoin or litecoin—that is, an exchange token—the issuance of the cryptocurrency is subject to FCA registration requirements under the MLRs, in addition to sanctions and financial promotions requirements, but is not otherwise caught by the regulatory perimeter. Subject to the application of the UK's e-money regime, the position is the same for utility tokens. Where a token does constitute e-money, however, the issuance may itself be a regulated activity for which authorisation or registration is required.

Organisations looking to raise money by means of an ICO would usually be looking to do so by way of selling debt and/or equity (i.e. shares in, or a right to profits of, the organisation). In these cases, the token will almost certainly be regarded as a security token and thus subject to financial regulation as a security. This means that the issuer will have to comply with, for instance, AML requirements, restrictions on financial promotions, and may be required to comply with prospectus, disclosure and transparency obligations. A company will not usually need regulatory permissions to act as an issuer of its own security tokens, but other market participants involved in an ICO, such as advisers, brokers, wallet providers, trading platforms and possibly promoters may require authorisation or registration.

As trailed at question 4, in October 2023 HMT confirmed that further regulatory requirements will be imposed on ICOs in future. Issuance of fiat-backed stablecoins will become a regulated activity under Phase 1 of the incoming cryptoasset workstream, and both admitting a cryptoasset to a cryptoasset trading venue and making a public offer of a cryptoasset will become regulated under Phase 2. Broadly, the government intends to establish an issuance and disclosures regime for cryptoassets grounded in the intended reform of the UK Prospectus Regime: the Public Offers and Admissions to Trading Regime, and tailored to the specific attributes of cryptoassets.

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

Investment and trading in cryptocurrencies are common in the UK, with a number of large cryptocurrency exchanges offering direct exchange of Pounds Sterling for bitcoin and other cryptocurrencies. It is therefore relatively simple for individuals and organisations to buy and trade cryptocurrencies. While the pseudonymity afforded by most cryptocurrency networks means it is difficult to compile geographical statistics on cryptocurrency investment, FCA consumer research estimates that as of August 2022 almost 10% of, or 4.97 million, UK adults own some form of cryptocurrency (up from 4.4% or 2.3 million in 2021).

The FCA has sent strong signals that cryptoasset exchanges operating in the UK must engage with the FCA's processes and comply with its rules. In June 2021, the FCA banned Binance—the world's largest cryptocurrency exchange—from undertaking any regulated activities in the UK without its written consent, after finding that Binance was "not capable of being effectively supervised". Binance continued to offer deposit and withdrawal services to UK users through Paysafe, a UK regulated entity, until March 2023 when Paysafe terminated the partnership on the basis that the UK regulatory environment was too challenging to navigate. The FCA reiterated its sceptical attitude towards cryptocurrency trading following the collapse of FTX in November 2022, stating that the exchange's demise highlighted the "volatile and unpredictable nature of crypto activity". The regulatory mood and increasingly strict regulatory environment has introduced frictions for crypto exchanges, evidenced by PayPal's recent announcement that it will 'temporarily pause' the ability for customers to buy crypto on its platform, resuming in early 2024, while it takes steps to comply with regulatory rules.

As a counterbalance, the FCA has reiterated its commitment to registering cryptoasset exchanges which meet its anti-money laundering standards. As of 1 October 2023, the FCA had registered 43 cryptoasset platforms since January 2020. Nevertheless, data provided to the Treasury Select Committee's consultation into regulating crypto suggests that more than 8 in 10 companies applying for this registration fail to achieve it, underlining the stringent approach that the FCA maintains towards cryptoasset exchanges.

On the whole, mainstream financial institutions have also remained fairly sceptical of cryptocurrency investments. This may be influenced by the strident tone adopted by those such as the Treasury Select Committee (see our answer to question 5), and may also reflect an uptick in levels of cryptoasset-related investment scams and failures. The proliferation of customers falling victim to crypto scams has led to some financial institutions imposing limits on crypto transactions (like NatWest and HSBC), and even blocking customers from buying crypto altogether (like TSB, Starling and most recently Chase UK). Action Fraud, the UK's national reporting centre for fraud and cyber crime, reported losses from crypto fraud being 41% higher in the 12 months to March 2023 compared to the previous year. The collapse of FTX was estimated to be responsible for one third of these losses, with £115.7 million of crypto fraud losses for the year occurring in November 2022 (the month of the exchange's collapse). The disintegration of such a high-profile cryptocurrency exchange has likely hardened institutional attitudes towards the sector.

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

In its October 2023 paper on the future financial services regulatory regime for cryptoassets, HMT was keen to assuage concerns that NFTs might unintentionally be captured by the incoming rules, confirming that "*activities relating to truly unique or non-fungible NFTs that are more akin to digital collectibles or artwork than a financial services (in the general sense) or product should not be subject to financial services regulation*."

15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

The main challenge from an English legal perspective stems from the fact that the common law traditionally recognises property only as either real property (land) or personal property, with all personal property being either a chose in possession (tangible property) or a chose in action (an intangible legal right to possess something that can be enforced by an action in a court). Accordingly, English courts have historically refused to recognise information or data (other than intellectual property rights subsisting in that information or data) as property, as they are neither tangible nor are they a legal right capable of being enforced. Cryptographic tokens and virtual assets simply exist as information or data on a distributed ledger or blockchain, with anyone who knows the relevant private key (itself simply information/data) having the ability to deal with those tokens or virtual assets. It is therefore possible to reason by analogy that they are not property for the purposes of English law.

Nonetheless, it is recognised that tokens and virtual assets have many of the characteristics of property. In its legal statement published in November 2019, the UKJT concluded that cryptoassets are to be treated in principle as property under English law. The UKJT suggested that cryptoassets can be regarded as intangible personal property (whether or not they meet the definition of a chose in action), and should be treated as such, in principle.

Building on this statement, the Law Commission has affirmed (in a report published in June 2023, as introduced in our answer to question 7) the existence of a third category of thing to which personal property rights can relate, within which virtual assets can fall. This represents the confirmation and restatement of a position that has emerged through existing common law. In a ruling in February 2023, the Court of Appeal confirmed that cryptoassets are capable of being things to which personal property rights can relate. NFTs have also been recognised (in April 2022) by the High Court of England and Wales ("**EWHC**") (one below the Court of Appeal) as legal property over which a proprietary freezing injunction can be ordered, the EWHC having held in 2019 that cryptoassets are capable of being the subject of a proprietary injunction.

The Law Commission report is likely to have persuasive authority in the courts, and marks an important development on the question of whether law recognises title to tokens and virtual assets (and thus permits legal transfer of that title), and whether security (such as a charge or lien) can be granted over tokens and virtual assets. The Law Commission further recommends that legislation is passed to confirm and support the existing common law position.

The Law Commission also concludes that:

- it is possible to effect a legal transfer of a virtual asset even if the transfer operation involves the creation of a new, modified or related virtual asset instead of transferring the original virtual asset (note, the terminology of the report is slightly different, referencing crypto-tokens, that is, a notional quantity unit manifested by the combination of the active operation of software by a network of participants and network-instantiated data);
- a transfer of legal title can also be effected "off-chain" by transferring physical control of a private key or hardware; and
- "possession", an indication of ownership for more traditional, tangible objects, would not apply to the proposed category of "digital objects" (the chosen label for digital things, including virtual assets, that fall within the

category of "third category thing"). The suggestion that virtual assets are not capable of possession would likely mean that possessory security-based arrangements—a pledge, for instance—cannot be used in respect of virtual assets. Non-possessory security-based arrangements, or a title transfer arrangement, such as mortgages and charges, on the other hand, may be granted by owners of virtual assets.

The Law Commission recommended that the Government create a panel of industry-specific experts to consider further the issues relating to control and virtual assets and the subsequent impact upon using tokens and virtual assets as collateral.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

English law is generally recognised as being able to accommodate smart contracts. In November 2021, the Law Commission published a paper containing advice to the UK government confirming that the current legal framework in England and Wales is capable of facilitating and supporting the use of smart legal contacts, without the need for statutory law reform. It noted that, in some contexts, an incremental development of the common law is all that is required to facilitate the use of smart legal contracts within the existing legal framework.

The Law Commission's findings build on the earlier work of the UKJT, which concluded that the ordinary rules and interpretative principles of English contract law can, and should, apply to smart contracts, including those written entirely in computer code. The UKJT noted in its 2019 Legal Statement that: "*a Smart Contract is capable of satisfying those requirements just as well as a more traditional or natural language contract, and a Smart Contract is therefore capable of having contractual force*".

In its November 2021 paper, the Law Commission advised the market to anticipate and cater for the novel issues emerging from smart legal contracts by encouraging parties to include express terms aimed at addressing them. Examples of such provisions include clauses allocating risk if, for example, there are inaccurate data inputs, bugs and coding errors, performance issues caused by external factors such as IT upgrades, or misunderstandings as to how the code will operate.

Other issues that the Law Commission considered may lead to disputes if not properly considered early by parties to a smart legal contract include the role of code within the smart legal contract and, in particular, whether the code is intended both to define contractual obligations and perform them, or just perform them. Similarly, the parties may wish to consider the relationship between any natural language and code (and, in particular, where a term is expressed both in natural language and code, which takes precedence in the event of a conflict) as well as the role of non-executable comments in the code and whether these should be considered to have the effect of contractual terms.

Another practical difficulty identified was that, depending on the platform used for the smart contract, it may not be possible to unwind the parties to their pre-contract positions where a contract is voidable. That said, the Law Commission noted that the courts could achieve "practical justice" through other means, such as by ordering the parties to enter into a second transaction on the blockchain, thus reversing the effects of the first transaction, effectively creating the same result.

The pseudonymity and the irrevocable nature of smart contracts give rise to a number of dispute resolution challenges that make it important for the parties to agree to a robust dispute resolution process. The UKJT published the Digital Dispute Resolution Rules in 2021 with a view to enabling the rapid resolution of blockchain and crypto legal disputes by offering users a procedural framework and a choice of either arbitration or expert determination.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

A number of important UK initiatives are in progress. Several focus on the development of interoperable technical data standards and models, indicating that smart contract technology is maturing.

Many UK financial services market participants, including trade associations, are proponents of the mainstream adoption of smart contract technology. The International Swaps and Derivatives Association ("**ISDA**"), for example, has argued that smart contracts can play a role in the derivatives market and has published a series of guidelines that aim to support technology developers by promoting compliance with existing legal, regulatory and commercial standards, many of which are reflected within the existing ISDA documentation architecture. The pace of adoption of ISDA's Common Domain Model ("**CDM**"), a machine-readable and machine-executable data model for derivatives products, processes and calculations, is also accelerating. ISDA's CDM has recently been integrated into ISDA Create, a digital platform for electronic negotiation of derivatives documents.

In March 2020, the British Standards Institute—the UK national standards body—published a publicly available specification draft on smart legal contracts, which was intended to provide some universal technical parameters to assist organisations wishing to develop or adopt smart contracts, or to digitise their conventional contracts.

LawtechUK, a government-backed initiative established to support the transformation of the UK legal sector through technology, published its "Smarter Contracts" report in February 2022, highlighting a range of case studies in which smart contracts are being deployed, many of which have been developed through the FCA's Regulatory Sandbox. A notable example is Nivaura, which has developed a "General-purpose Legal Markup Language" for converting contracts into machine readable and executable formats. Nivaura recently partnered with Santander and Natwest on a pilot to automate the issuance of tokenised securities on a public blockchain using a DLT-enabled payments system. The Lawtech Sandbox has developed the UK Legal Schema, an open-source initiative to develop a universal common language for creating digital legal documents.

Other firms that have participated and that continue to participate in the FCA Regulatory Sandbox are using smart contracts for a variety of other purposes, ranging from the transfer of assets to the facilitation of charitable donations. Please refer to question 6 above for further details of the sandbox.

Although the growth of DeFi applications in the UK has been impacted by the crypto winter of 2022, their adoption has continued to steadily increase. Many of these applications leverage smart contract functionality to facilitate a range of use cases, such as margin trading, lending and borrowing. DeFi applications and products have begun to enter the financial mainstream, with popular UK-based Revolut announcing in February 2023 that it would begin to offer Ethereum staking, allowing Ethereum holders to generate a return for their holding. PayPal has also committed to incorporating smart contracts and DeFi applications into its offering, although it remains to be seen whether the company will launch a UK equivalent to the Ethereum based stablecoin issued in the US in August 2023.

DeFi applications and products often rely upon a novel corporate structure, the Decentralized Autonomous Organisation ("**DAO**"). A DAO operates principally through a smart contract, which defines the organizations' rules and holds its funds. In November 2022, the Law Commission launched a public call for evidence to inform a policy report on how DAOs should be accommodated in English law. The report, which is due to be published in early 2024, is expected to touch upon smart contracts within the contexts of DAOs and whether their relationship can be accommodated within the law of England and Wales. In October 2023, the government announced that it would currently be premature and ineffective for the UK to regulate DeFi activities. Instead, the government will support efforts at the international level to inform a future domestic framework. Notably, the government also announced that it does not intend to ban DeFi on the basis (at least in part) that it may come to play an important role in financial services.

Question 1 above contains other prominent examples of applications of blockchain technologies in the UK.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

The UK authorities have acknowledged the need, and have shown willingness, to take measures to protect consumers from harm arising from the deployment of blockchain technologies.

The FCA's latest consumer investments data review, covering the period 1 April 2021 to 31 March 2022, revealed that the FCA opened 649 cases about potential unregistered or scam cryptoasset businesses during this time. Since the start of 2023, and as at August 2023, the FCA has visited and inspected 34 locations in the UK that are suspected of illegally hosting unregistered "crypto-ATMs" in a joint operation with the Metropolitan Police. The FCA's tough stance is also evidenced in its approach to crypto heavyweights Binance and FTX, as described in our answer to question 13.

Notably, the FCA's rigorous approach to cryptoasset business registration under the MLRs (as described in our response to question 5, only 14% of applications have been successful) has found support in the courts. The Upper Tribunal has rejected a number of requests to suspend the effects of FCA Decision Notices which refused applications for registration as a cryptoasset exchange provider under the MLRs.

The Advertising Standards Authority ("**ASA**") has historically taken an active role in holding cryptoasset advertising to account. In March 2022, the ASA issued an enforcement notice to over 50 companies advertising cryptocurrencies and crypto-exchanges requiring them to review their adverts to ensure compliance with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing ("**CAP Code**"), and has ruled against multiple cryptoasset adverts for (among other things): (i) not making it clear that CGT had to be paid on profits from investing in crypto, (ii) trivialising investment, (iii) failing to illustrate the risk of the investment, and (iv) not making it clear that the product was not regulated or protected in the UK in breach of the CAP Code. The FCA has, however, now taken over the regulation of adverts for qualifying cryptoassets following the expansion of its financial promotion regime on 8 October 2023 (see our answer to question 4).

The ICO has also flexed its muscles, announcing in July 2023 that it will be making enquiries into the recent launch of blockchain-based WorldCoin, which aspires to become the world's largest digital identity and financial network, and its use of (high risk, biometric) data.

The proposed expansion of the UK's legal and regulatory regimes to cover a broader range of blockchain applications (further described in our answer to questions 4 and 7) may result in an increase in enforcement activity.

Please also refer to question 5 above for details of the current attitude of the UK government and regulators to the use of blockchain technology.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

The Law Commission and UKJT findings, discussed in our answers to questions 15 and 16, are likely to have persuasive authority when courts are considering legal questions relating to blockchain concepts or smart contracting.

There have now been a number of judgments confirming that English law treats cryptocurrency as a form of property, meaning that various forms of interim relief to freeze, preserve or identify such cryptoassets are potentially available to claimants. In these discussions, the courts have variously:

- granted an interim proprietary injunction, a worldwide freezing order and a Banker's Trust order in a claim relating to the alleged misappropriation of bitcoin;
- given guidance as to the lex situs of cryptoassets and made available effective remedies from the English court in order to assist recovery of cryptoassets;
- concluded that there was at least a realistically arguable case that NFTs should be treated as property under English law, and that the appropriate lex situs was the place where the owner of the NFTs was domiciled;
- granted permission to serve proceedings on Persons Unknown by NFT, whereby the documents would be airdropped into the digital wallets of the defendants;
- found that a cryptocurrency exchange defendants held the claimant's identifiable cryptoassets as constructive trustees;
- refused a request for security for costs to be paid in bitcoin, citing in particular, the volatility of the cryptocurrency market; and
- stated that there was a "realistic" argument that software developers owed fiduciary duties considering that there is a defined group or network subject to any duties and the developers made discretionary decisions affecting the network participants.

20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

In addition to the law and regulation outlined in our answer to question 4, many areas of law which are technology neutral may be engaged by a blockchain application, including laws relating to data protection, competition, property, tax, insolvency, privacy and intellectual property.

A notable issue for all UK or EU blockchain applications is their interaction with data protection legislation. In its response to the Treasury Select Committee's inquiry into the cryptoasset industry published in 2022, the ICO outlined the various challenges which blockchain technology presents to compliance with the UK version of the EU General Data Protection Regulation (the "**UK GDPR**"). One issue which the ICO focused on is the question of whether blockchain technology meets the requirements for personal data storage and erasure. The immutable nature of blockchain data storage conflicts with the principle contained in the UK GDPR that personal data be retained for no longer than necessary to achieve the purposes of data processing. It also conflicts with the right for individuals to have their personal data erased. Our 2019 paper March of the Blocks has further detail on the interaction between blockchain technology and the UK GDPR. Our article The Collapse of Cryptography? Considering the quantum threat to blockchain also considers whether the rise of quantum computing threatens the ability of blockchain solutions to respect the fundamental principles of data protection and privacy.

Another source of uncertainty is how to treat cryptoassets for the purposes of insolvency proceedings. Difficult questions in this context may also include how to trace cryptoassets in cases where the debtor does not disclose their existence and how to dispose of them. Previously, in 2021 the English courts suggested that cryptoassets will be located in the same jurisdiction in which the person or company who owns them is domiciled. This position has now been refined by the High Court which in 2022 held that, where there was a difference between a company's domicile and its residence, the appropriate test for determining the location of cryptoassets should be the place of residence—in other words where its central management and control is located.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

Differences in the regulatory treatment of cryptoassets between the UK and the EU are already starting to emerge, as the EU proceeds with its standalone Regulation on Markets in Cryptoassets ("**MiCA**"), which will start to take effect from 30 June 2024. In comparing the UK and EU's approaches, early signals suggest that points of departure include the definition of cryptoasset (although the UK's approach here is yet to be bottomed out), and the decision to regulate the activity of operating a cryptoasset lending platform under the UK regime.

International (including UK) antitrust authorities are increasingly showing an interest in the potential risks of anticompetitive conduct associated with the use of blockchain technology, including the potential for information sharing and co-ordination, among other things. In August 2022 a claim was brought in the Competition Appeal Tribunal on behalf of an estimated 240,000 UK investors in Bitcoin Satoshi Vision ("**BSV**"). The claim alleges that, beginning in April 2019, UK BSV holders suffered estimated losses of up to £9.9 billion as a result of the delisting of BSV by exchanges Binance, Bittylicious, Kraken and Shapeshift. The application states that the four exchanges combined in such a way as to breach the Competition Act 1998 by reducing, preventing or distorting competition. This claim marks the first time that competition law has been applied to the digital assets in the UK.

In a further development, the Court of Appeal has indicated that copyright may subsist in certain critical aspects of the technology underpinning cryptoassets. In the case, the Court of Appeal overturned a decision of the EWHC, which had previously held that there was no prospect of success for claimants seeking to establishing that copyright subsisted in the Bitcoin file format. The Court of Appeal found that the EWHC had not applied the test for fixation correctly and deemed that there was sufficient merit to the claimant's case to establish a real prospect of success. The Court of Appeal's conclusion is not wholly determinative, given that the issue was only considered in the context of an interim application, and so it remains to be seen how the issue will be dealt with at full trial and what this will mean for cryptoassets going forward.

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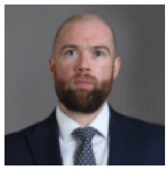

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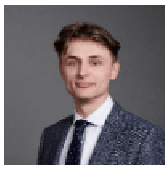

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