



What future for cryptocurrency?

09 August 2024

1997. New Labour takes power, soundtracked by Northern Irish group D:Ream's *Things Can Only Get Better*, a song that has now become synonymous with political sea change. It was masterfully reimaged in the sixth episode of the final season of Netflix's *The Crown*, as part of a dream sequence that sees 'King Tony' crowned as Head of State, while choristers belt out in angelic tones a falsetto reworking of the tune as the '*New National Anthem*'.

Almost three decades later, and after 14 years of Conservative rule, Labour is back in the driving seat. However, Sir Keir's road to election victory was not musically accompanied by the D:Ream hit, after the band voiced their regret at allowing Blair to use the song during the '97 election, stating in a recent LBC interview that they would not lend Labour the track for this year's campaign as 'there's no way – our songs and politics, never again'. Regardless of the group's attempts at disassociation, the song's lyrical message may however ring true for the digital asset arena under the new regime change. The question these authors ask is: can things get better for crypto?

New age assets

Seemingly since its inception, crypto has often been perceived as the currency of the criminal. High-profile scandals are often splashed across the headlines, which at times have overshadowed the asset's use as a viable alternative fiscal product, daring to push the boundaries of traditional fiat finance.

For instance, in May, two men from the South West of England pleaded guilty to three counts of conspiracy to commit fraud, after the pair admitted to spoofing the crypto-exchange website, Blockchain.com, and stealing in excess of £5.7 million worth of cryptocurrency. Their scheme allowed the men to access Bitcoin wallets, drain the wallets of their funds, and take user login details.

During its investigation, the South West Regional Organised Crime Unit identified 55 victims of the fraud in 26 countries, with 11 of those victims being UK based. This recent case again highlights the global magnitude of the problem. The borderless nature of cryptoassets allows fraudsters to tap into international hunting grounds for their victims, from the comfort of their own homes.

It should also be noted that the scale of crypto-criminality regularly involves eye-watering amounts. The Mt. Gox scandal for example – a blast from the past that is once again gracing the news. The beleaguered Japanese cryptocurrency exchange (which at one point was overseeing over 70% of all bitcoin transactions) was forced to file for bankruptcy in 2014 in the wake of a series of hacks that saw approximately 950,000 bitcoin (worth in excess of \$58 billion based on the conversion rate at the beginning of July 2024) disappear.

However, on 5 July, the rehabilitation trustee announced that it had transferred bitcoin and bitcoin cash to some of the designated cryptocurrency exchanges who had been charged with distributing the funds to relevant creditors. The announcement explained that 'repayments to other rehabilitation creditors will be promptly made' once specific conditions have been met. Mercifully, around 140,000 coins were recovered after the exchange went bankrupt. Therefore, based on July's prices, creditors are now vying for a share in a pot of bitcoin worth approximately \$9 billion.

While this may seem like a happy ending, it should be remembered that countless victims have been kept on the hook for the past 10 years, with more creditors still having to wait for their payouts. A warning that when things go wrong with crypto, they can really go wrong.

However, it is important to not lose sight of the boundless potential that cryptocurrencies and digital assets offer. As of 10 July 2024, the global cryptocurrency market capitalisation was \$2.25 trillion, with total cryptocurrency trading volume at \$76.62 billion.

Despite the instances of fraudulent misuse that have long hounded the sector, bitcoin and her sister currencies have been on the up. It can be argued that increased usage of these types of assets has in part been aided by greater mainstream adoption, which in turn, has been bolstered by a stronger and more cohesive regulatory approach to the technology. The UK has made significant strides in this area of late and appears to be staking a claim to become a crypto-regulatory powerhouse.

For example, the UK has recently touted a series of rigorous legislative advancements that have sought to further instil market certainty. The Economic Crime and Corporate Transparency Act 2023, which received Royal Assent on 26 October 2023, has augmented the powers available to law enforcement in the search and seizure of cryptoassets, specifically through the amendment of criminal confiscation powers under Parts 2 to 4 of the Proceeds of Crime Act 2002, and civil recovery powers in Part 5. Moreover, the enactment of the Financial Services and Markets Act 2023 (which received Royal Assent on 29 June 2023) has, amongst other things, brought cryptoassets under the purview of the definition of 'investment' for UK Regulated Activities.

The UK is now attempting to master a difficult balancing act. On the one hand promoting fiscal certainty and appropriate safeguards, whilst on the other, encouraging innovation and promoting Britain's reputation as a global financial hub. Perhaps this is mostly deftly illustrated by the UK's struggle with exchange traded products. In January, the US Securities and Exchange Commission approved 11 new spot bitcoin Exchange Traded Funds (ETFs).

ETFs are a form of security that track the value of an underlying asset (i.e. bitcoin). The ETF purchases bitcoin and issues shares that denote the bitcoins owned by the fund. The shares can then be traded on traditional stock exchanges. Market players therefore get a slice of the cryptoasset action, while negating the need to hold the underlying cryptocurrency itself. The UK, however, refuses to join the ETF dance.

Nevertheless, the Financial Conduct Authority (FCA) announced in March that it would not object to requests from Recognised Investment Exchanges to create a UK-listed market segment for cryptoasset-backed exchange traded notes (crypto ETNs), only available to professional investors. Crypto ETNs are forms of unsecured debt instruments that are linked to cryptoassets and are traded on major exchanges. The London Stock Exchange announced that it would accept applications for the admission to trading of Bitcoin and Ethereum crypto ETNs, from 8 April.

The Exchange went live with crypto ETNs admitted for trading on 28 May. Since the launch, nine crypto ETNs, which are entirely backed by Bitcoin or Ethereum, have been listed for trading across 16 currency lines. Although this is a relative baby step in comparison to ETF adoption, the UK's willingness to jump into the exchange traded product foray is nothing to be sneered at. Although it may not be the blanket endorsement that crypto-fans may have been waiting for, the FCA is ostensibly attempting to adhere to its need to protect consumers from the drawbacks of this technology, while promoting legitimate market opportunities.

Future focussed

As the dust begins to settle from the political events of the past few weeks, and with a new occupant in No.10, attention will undoubtedly turn to actually running the country. What, then, will this new government promise for digital assets?

Prior to the changing of the guard, the former Economic Secretary to the Treasury, Bim Afolami, announced at the Innovate Finance Global Summit in April that the UK government was working to introduce new legislation to target cryptocurrencies and stablecoins by June or July of this year.

Afolami explained that 'once it goes live, a whole host of cryptoasset activities, including operating an exchange, taking custody of customers' assets and other things, will come within the regulatory perimeter for the first time.' As we race through July, this initiative might be on the back burner for now. Whether that legislation comes to light, post Labour's win, is a matter for speculation.

During the election, Labour's manifesto was silent on cryptocurrency. Nonetheless, we can attempt to piece together their sentiment towards the sector from the party's January 2024 publication entitled, 'Financing Growth, Labour's Plan for Financial Services'.

Here, Labour promised a vision for the financial sector that embraced 'innovation and fintech as the future of financial services by becoming a global standard-setter for the use of AI in financial services, delivering the next phase of Open Banking, defining a roadmap for Open Finance, embracing securities tokenisation and a central bank digital currency, and establishing a regulatory sandbox for financial products to reach underserved communities.'

They went on to pledge that 'a future Labour government will therefore look to make the UK a global leader in tokenisation by advancing work to clarify the law around tokenisation, and working with regulators to establish a proportionate, outcomes-based regulatory regime to oversee the technology.'

Whether this results in meaningful action is now a waiting game. The incoming administration – New New Labour? Newer Labour? Starmerism? (the nicknames will work themselves out) – has indicated that it intends to make growth and job creation key priorities.

Perhaps then the crypto-sphere will prove to be fertile ground in this regard, merging technological advancement and progress, with sector expansion and job opportunities.

What is certain is that whatever the future may hold, meaningful and lasting regulatory solutions must be used to bolster the industry and promote stability for users in the UK and worldwide. That is the only way that things will get better. And maybe, without seeking to sound jingoistic, Britain (and London in

particular) can return to its historical preeminent position as the World's leading financial centre. Just maybe – watch this (virtual!) space!

A shorter version of this article was published in [New Law Journal](#) on 9 August 2024.