

Blockchain and Stablecoin Developments: January 07, 2021

Dr Stephen Castell has reported a significant development in the USA: the Office of the Comptroller of the Currency (OCC) has clarified national banks' and federal savings associations' authority to participate in independent node verification networks (INVN) and use stablecoins to conduct payment activities and other bank-permissible functions.

Dr Castell's view is this may signal that the USA is moving towards greater central authority acceptance of digital currencies and assets as a regular, and regulated, feature of the financial services and capital markets landscape, and notes that it may be no coincidence that this comes at a time when Bitcoin, the best-known INVN cryptocurrency has seen a surge in market value to over US\$30,000.

And via his MP, Rt Hon Priti Patel MP, Home Secretary, Stephen Castell has drawn this US development to the attention of the UK government in submitting once again his proposal, first set forth to HM Treasury and the Bank of England in 2017, for the issue of the UK's own National Stablecoin, the QE2-Coin/BOECoin. Castell's idea is that this would be used to fix the UK housing shortage, the Government granting tranches of QE2-Coins to Local Councils, with a mandate to employ them to secure a rapid expansion in supply of badly-needed new starter and rental homes throughout Britain. Castell says "This can now proceed immediately and would be a stunning shining-light for British professionalism in financial innovation and leadership in these dark, dismal and depressing days of the Third UK Lockdown".

Dr Castell also notes that disputes over cryptocurrency transactions, exchange trading, and identification and ownership of digital asset holdings – which in a recent article he christened *Crypto Dragons* – are on the increase ('Authored by AI: Here Be Crypto Dragons: It's All about the Evidence'. Stephen Castell, *Solicitors Journal*, October 2019, 43-45). "This will bring into increasing attention the techniques of 'blockchain forensics' and the associated standards of examination and presentation of digital evidence, expert analyses and provision of expert opinion testimony", he says, "In both the USA and the UK, there are mandated guidelines and protocols for the processes and reporting of examination of computer data and other digital evidence, and these standards apply as much to forensic analysis of blockchain and cryptocurrency data, and expert conclusions derived therefrom, as to any other computer data, software and systems investigations".

"Several best practices and guidelines developed by the Scientific Working Group on Digital Evidence, the UK Association of Chief Police Officers and the US National Institute of Justice have been developed to assist investigators in the collection and handling of digital evidence during forensic analysis ... The key criteria ... are ...:

- Under no circumstances should evidence be altered. ...
- Where a person finds it necessary to access original data held on a computer or storage medium, they must ... give evidence to explain the actions taken ...
- An audit trail or record of all processes applied to computer-based electronic evidence should be created and preserved. A third party should be able to repeat these processes and replicate the results. ..."

'Admissibility of digital evidence in court. ... Principles of digital evidence'. Elias Neocleous, *Elias Neocleous & Co LLC*, July 2, 2019.

<https://www.lexology.com/library/detail.aspx?g=29828d6d-8396-4070-9424-05ac2e0ecfae>
<https://nij.ojp.gov/digital-evidence-and-forensics>

Furthermore, whether or not presenting digital forensic expert evidence, any expert witness has an *overriding duty to the court*, to give an unbiased, clear and complete opinion in a written Expert's Report:

"The responsibility of experts in relation to their written evidence A recent judgment from the Honourable Mr Justice Marcus Smith provides a cautionary tale for experts: The last point that I make in relation to Professor Morgan's evidence concerns less his oral evidence and more the written reports he submitted before the hearing and which he affirmed represented his expert opinion when he gave his evidence in-chief. ... An expert is responsible for his or her evidence, including the precise wording of any report submitted to the court ... That ... only serves to enhance the importance of the expert being entirely satisfied that his or her opinion is properly reflected in the report(s) submitted in that expert's name. This is the duty of the expert ... An expert will be giving opinion evidence in relation to a subject-matter with which a lay person - specifically, in this case, the judge - will be unfamiliar. ... It is incumbent on the expert not merely to present evidence that is technically correct, but that makes a fair presentation of the expert's opinion"
NEURIM vs GENERICS, [2020] EWHC 3270 (Pat).

'The responsibility of experts in relation to their written evidence'. Simon Berney-Edwards, *Expert Witness Institute*, 14 December 2020.

<https://www.ewi.org.uk/News/the-responsibility-of-experts-in-relation-to-their-written-evidence-1>

As a result of his experiences in a recent crypto assets dispute heard in a US District Court, in which he was retained as expert witness and gave (remote) oral testimony at trial, Dr Castell concludes "The particular techniques and specialist examination software used by 'blockchain forensics' experts, together with their subjective cryptocurrency personal judgement and experience, are focused, intricate, and, to the 'laity', opaque. Such deep technical experts should perhaps consider teaming up with more experienced expert witnesses to produce well-written good quality Expert's Reports, in clear English, that meet court expectations and standards, and are a credit to and worthy of the reputation of ICT Professionals generally".

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