

Succession of digital assets in Guernsey

Service area / [Trusts and Private Wealth](#)

Legal jurisdiction / [Guernsey](#)

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Dealing with the succession of digital assets has become increasingly important with an estimated 5 million UK adults holding crypto assets in 2022, and can be complex and time-consuming. It can also raise many practical challenges for those administering estates, both in terms of access and ownership. However, by taking certain preparatory steps in relation to their estate planning, testators can ensure that their digital assets are dealt with in accordance with their wishes and will not be lost.

What are digital assets?

The term “digital assets” does not yet have a legal definition in Guernsey but it can broadly be understood to mean any asset that is represented digitally or electronically.¹ Digital assets include:

- cryptocurrencies;
- NFTs;
- social media accounts;
- photos, audio files and video stored in the cloud;
- reward cards/loyalty programmes;
- online bank accounts;
- email accounts;
- eBooks;
- websites.

What is the legal position?

While there is legislation in Guernsey to regulate virtual asset providers whose services include those related to digital assets such as cryptocurrencies and NFTs, there is no specific legislation or case law in Guernsey currently dealing with the succession of digital assets.

The Law Commission of England and Wales (“**Law Commission**”) has recently released a report on the legal framework for digital assets under English law.² Although the Law Commission did not consider succession of digital assets in that report, the Commission commented that “if a digital asset is found to be an object of personal property rights at law, then it will be capable of forming part of a deceased person’s estate”.³ The Law Commission’s report also endorsed Brian J’s conclusion in *AA v Persons Unknown* that crypto assets such as Bitcoin are property capable of being subject of a proprietary injunction even though it did not fit within the two historically recognised forms of property under English law being things in possession and things in action.⁴

What steps should testators take in their estate planning?

1. Create a digital assets inventory

As a first step, it is recommended that the testator create an inventory of all their digital assets containing details such as their location and how they can be accessed. It may also be

¹ Definition suggested by the Law Commission in its final report on Digital Assets.

² UK Law Commission, Digital Assets: Final Report (Law Com No 256).

³ UK Law Commission, Digital Assets: Final Report (Law Com No 256) pages 1-2.

⁴ *AA v Persons Unknown* [2019] EWHC 3556.

important to include the testator's devices (e.g. mobile phone, laptop etc) in this inventory if two factor authentication is required to access any of the digital assets. The inventory should be stored in an easily accessible place so that it can be updated regularly and a copy of it should also be stored with the will.

It is not recommended that the testator include passwords, answers to security questions and PIN numbers in the inventory as this is likely to be prohibited by the service provider's terms of service (e.g. for online bank accounts and social media accounts).

2. Consider appointing a digital executor

The testator may wish to consider appointing another person as the digital executor in their will to specifically deal with, collect, realise and distribute their digital assets which their executors may not have the skills or time to deal with. This is not a legally binding designation but having a digital executor would allow the testator to limit who will have access to the content of their digital assets.

Please note that some service providers may require a court order to access the digital asset even if the will provides for an executor or digital executor to have access to that asset. In *Apple v Rachel Thompson* (unreported), Apple required a court order in 2019 to allow a widow access to her late husband's photos in line with their terms of service. Apple has now added a legacy contact feature which allows a person nominated by the testator in their Apple account to have access to the stored data once a death certificate has been provided. Google and Facebook now also have a similar features.

3. Determine which digital assets are transferable

Care needs to be taken when considering succession of digital assets as not all types of digital assets will be capable of being things to which personal property rights can relate to or their transfer may be restricted by the service provider's terms of service (e.g. eBooks, loyalty points, air miles).

The transfer of cryptocurrencies and NFTs will require additional steps for the testator to consider outside the will such as making plans to ensure that their executors have access to the private key in a secure format, details of the crypto wallet or details of their crypto custodian if one is being used.

4. Include appropriate provision for digital assets in the will

Modern wills should be drafted to include a specific legacy for digital assets and provide for the appointment of a digital executor depending on the testator's preference.



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