



MASTER OF  
THE ROLLS

## THE RIGHT HON. SIR GEOFFREY VOS

### **Contracts, just smarter. Seizing the opportunity of smarter contracts**

#### **Lawtech UK. Launch of Smarter Contracts report**

#### **The View, Royal College of Surgeons, and Online – Thursday 24 February 2022**

1. Good afternoon to everyone here at the View and those joining online.
2. This is the launch of the third major project undertaken by the UK Jurisdiction Taskforce. The first two have already paid dividends.
3. In November 2019, the UKJT published its Legal Statement on the status of Cryptoassets and Smart Contracts under English law. The Legal Statement has received judicial approval in various jurisdictions and is widely regarded as an important step forward for the common law. It makes clear, one might think uncontroversially, but actually after quite a lot of technical debate, that cryptoassets are properly to be regarded as property in English law, and that smart legal contracts are indeed legally binding contracts in English law.
4. In April 2021, the UKJT published its Digital Dispute Resolution Rules intended for on-chain digital relationships and smart contracts. Again, that development has been well received. The rules provide for arbitral or expert dispute resolution under English law in very short periods for digital and blockchain disputes; they allow arbitrators or experts to implement decisions directly on-chain using a private key, and for the optional anonymity of the parties. Both are ground-breaking innovations.
5. The Smarter Contracts Report that we are launching today aims to explain how smarter contracts and blockchain technology are currently being used.

6. The theory is to dispel the myth that blockchain is a fringe technology used only by those wanting to risk their livelihoods or possibly make their fortunes on volatile cryptoassets like Bitcoin.
7. The blockchain is now at a stage in its development equivalent to where the internet was in or around 1995. The internet was unstoppable in 1995 and blockchain technology is unstoppable now. It will become ubiquitous in all major industrial and financial sectors, simply because it allows for the immutable recording of data, thereby reducing friction in commercial and consumer transactions and obliterating the scope for dispute as to what has occurred.
8. As the Master of the Rolls and Head of Civil Justice in England and Wales, I hold an office that pre-dates modern trade in derivatives and reinsurance, even steam engines, powered flight, and certainly the internet. I am particularly and obviously concerned about the reputation and development of English law and the jurisdiction of England and Wales.
9. Many people do not realise that English law governs trading in €600 trillion of OTC derivatives annually, in €11.6 trillion in metals trading, in £250 billion in M&A deals, and in £80 billion in insurance contracts every year – just to take a few examples. My hope is that English law will prove to be the law of choice for borderless blockchain technology as its take up grows exponentially in the months and years to come.
10. We will see today some of the best examples of how the new technologies are already in use in mainstream applications across business and consumer life. We will hear also how the Law Commission is actively engaged in providing advice and draft bills to government to prepare the legal infrastructure in the UK for the growth in the use of blockchain technology and smarter contracts that I have been talking about. I will leave Professor Sarah Green, who you will see shortly, to explain the Law Commission's essential role in this process.
11. I would like to touch upon the developments that I think will transform the speed of uptake of new technologies, and bring them into the mainstream of economic, business and financial life.

12. There is at the moment something of a credibility gap. Many of you here physically and online this afternoon are already converted. You understand the importance of these new technologies to transforming business efficiency, to improving services to consumers, to smoothing financial services and transactions and also actually to improving regulation and revenue collection. But many people do not understand these parameters. They think instead that blockchain is a passing fad which they can afford to ignore. We need to persuade them they are wrong, as those that thought in 1995 that they could shun the internet proved to be woefully mistaken.
13. I believe that there is an urgency about this project, because other jurisdictions are already well advanced. Smaller jurisdictions can move faster, but there is a big prize, as I have said, in making the UK the leading jurisdiction of choice for international business using new technologies.
14. There are three main developments that will kick start decentralised finance, smarter contracting and the mainstream use of distributed ledgers. First, the launch of wholesale or retail central bank digital currencies. Secondly, the use of digital transferrable documentation such as electronic bills of lading, and thirdly the widespread use of digital/smart commercial documentation in place of analogue applications such as PDF and Word.
15. The UK should, I think, be in the vanguard of these developments and be absolutely ready for them when they occur - which is likely to be sooner rather than later. The UKJT is an important entity because it brings together the judiciary, the regulators, the Law Commission and the legal practitioners that are most active in this area. Its objective, like that of Lawtech UK itself, is to remove impediments to the legal and regulated use of these new technologies and to promote the choice of English law to provide the necessary foundation for on-chain transactions and smart and digital contracting.
16. The Smarter Contracts project is a timely part of this process. It showcases a range of technology-enabled applications. The range runs from straightforward technology such as e-signing without the blockchain to

on-chain e-signing, from contract lifecycle management tools that do not use distributed ledgers to those that do. There is no doubt that machine readable contracting provides a huge data advantage to those that embrace it. This is an advantage to business, but also to consumers, where utilities and consumer-facing providers make the move.

17. We are majoring this afternoon on the practical rather than the theoretical. But before we look at real life use cases, I want to just touch on one or two other developments that will smooth the path towards the use of new technologies.
18. We are noticing in the courts that litigation, whether in court or arbitration, concerning cryptoassets and smart contracts is increasing significantly. Cases are, however, proving complex because of the difficulty of applying our historic analogue rules to the digital environment.
19. In the world of crypto fraud, there are no national barriers and unlawfully obtained cryptoassets can be difficult to trace. That is the experience of lawyers working in this field. Accordingly, the Deputy Head of Civil Justice and I have set up a sub-committee of the Civil Procedure Rules Committee to look at amending or expanding the grounds on which proceedings can be served out of the jurisdiction. It is that obstacle that has impeded many sets of proceedings aimed at tracing the proceeds of crypto fraud. Under current case law, third party disclosure applications cannot easily be served outside the jurisdiction, even if one can serve out orders requiring a third party to disclose documents relating to the account of someone who can be shown to be prima facie responsible for a fraud. I hope that developments in the court's rules will make this fine distinction less significant and will make it generally easier to litigate issues that arise in relation to on-chain transactions and the tracing of cryptoassets.
20. In addition, the government is legislating at the moment for an Online Procedure Rules Committee that will be able to provide high level agile governance for the online justice system and for the pre-actions portals that are being created across the civil jurisdiction.

21. Leaving these connected developments aside, it seems to me that there is a tremendous need to explain in the simplest possible language what blockchain technology does, why it is important and how it will affect every aspect of our lives, whether we are in commerce, finance and banking, government or are simply consumers. People do not need to understand the finer technical details. They need to understand how distributed ledgers recording immutably every aspect of every transaction and smart documentation and contracts will change (a) the consumer world, (b) the way the financial and insurance markets work, (c) the way people's personal finances are operated, and (d) legal business, whether transactional or litigious – all just for a start.
22. The Smarter Contracts report gives real life examples of what is happening now, including: (i) blockchain technology automating the sale, purchase and registration of house purchases, (ii) digital documents and contracts being read and analysed by machines and humans, (iii) smart supply chains reducing friction in global trade, (iv) digitised insurance allowing for instant pay-outs, (v) smart energy microgrids made up of households and businesses, and (vi) original art works bought and sold as non-fungible tokens. These examples of what is happening now to improve business and consumer activity should, I hope, capture people's imagination.
23. Blockchain technology is not something that *might* happen in years to come; it is happening now. Our report collates some of the most accessible examples.