

Digital, Culture, Media and Sport Committee

Oral evidence: Non-fungible tokens (NFTs) and the blockchain, HC 598

Tuesday 18 April 2023

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Members present: Julian Knight (Chair); Damian Green; Simon Jupp; John Nicolson.

Questions 1 - 69

Witnesses

[I](#): Emily Gould, Assistant Director, Institute for Art and Law; Angus Scott, Chief Executive, Artclear Ltd; and Reema Selhi, Head of Policy and International, Design and Artists Copyright Society.

[II](#): Joey D'Urso, Investigations Writer, The Athletic; and Kieran Maguire, Senior Teacher in Accountancy, University of Liverpool.

Examination of witnesses

Witnesses: Emily Gould, Angus Scott and Reema Selhi.

Q1 Chair: This is the Digital, Culture, Media and Sport Committee. It is still that Committee until 26 April, I am informed. Today's hearing is a special session into non-fungible tokens and the blockchain and exactly how they are being used in the worlds of creative industries and professional sports. We have two panels with us today. Our first panel contains Emily Gould, Assistant Director at the Institute for Art and Law; Angus Scott, Chief Executive at Artclear Ltd; and Reema Selhi, the Head of Policy and international at the Design and Artists Copyright Society. Reema, Angus and Emily, thank you very much for joining this morning.

Reema, I am going to come to you first. Imagine that you are talking to a roomful of middle aged members of Parliament—sorry, Simon. What are non-fungible tokens and what is their increasing importance in the creative sector?

Reema Selhi: Non-fungible tokens are a type of distributed ledger technology. Probably the starting point for this is Bitcoin, which is the first established protocol that created a peer-to-peer cash system. That is what we would generally term a cryptocurrency. The Bitcoin ledger was public. It is a sort of online spreadsheet that records transactions that everyone can see. That already shows us a little bit of a clear use for artists who are very much interested in records of ownership.

On top of Bitcoin, a couple of years later, the protocol called Ethereum was developed. Ethereum is Bitcoin 2.0 that has another layer of useability with what is known as a smart contract. If you imagine this online spreadsheet that can record transactions, you then get an operating system on top of that. There are a lot of wrappers that can be put on top of a token. A token is lines of code that just look like code when you read them on a screen. These lines of code show transfers of ownership from one party to another.

Q2 Chair: Transfers of ownership of what?

Reema Selhi: Transfers of ownership of that particular certificate itself. That certificate can refer to something physical, something in the physical world.

Chair: Like a right of ownership to a piece of art, for example?

Reema Selhi: Yes, for example. The certificate can refer to a piece of art, but what is being transferred with a non-fungible token is the certificate itself.

Q3 Chair: Is there any ownership that follows from that? If you have one of these NFTs—I am going to call them NFTs—what do you actually benefit from? Is there anything physical that you can benefit from?

Reema Selhi: That will completely depend on what the NFT itself has in it. NFTs were used as a form of themselves being a token that cannot be



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exchanged for something else. If we think about a traditional, physical artwork, the artwork itself is a store of value but there can only be one of that physical Picasso painting. The non-fungible token separates itself out from Bitcoin traditionally by itself being its own unique token. The uniqueness of the certificate becomes quite important as a store of value.

Q4 **Chair:** So effectively it is a type of cryptocurrency.

Reema Selhi: Effectively it is a type of cryptocurrency, but in a wider sense it can have a wider store of value and a fluctuating store of value, whereas a lot of cryptocurrencies, including Bitcoin, could have been fungible so that one could be exchanged for another, but the uniqueness of a non-fungible token is that they cannot be exchanged one for another. They are much more like a piece of artistic work that is original.

Q5 **Chair:** Could you explain to me what sounds like a prog rock album—the Bored Ape Yacht Club? What is the Bored Ape Yacht Club and how does that apply to the world of NFTs and creative industries?

Reema Selhi: I am not an expert on the Bored Ape Yacht Club, so to speak, but Bored Ape Yacht Club non-fungible tokens are a type of token that has been popularised through marketplaces such as OpenSea. The reason for the popularisation has often been the visual representation, which is a wrapper that surrounds the NFT. The NFT, once again, is just lines of code. You can look at them online as lines of code that are relatively incomprehensible to the layperson. However, the wrapper that covers them will be a JPEG, and that JPEG will be a picture of a bored ape. Whether or not the JPEG is being transferred will completely depend on what the code is saying.

Q6 **Chair:** These bored apes have value as you move through the chain, effectively. It increases in value, or should increase in value, or decreases in value according to the new ape that is being featured?

Reema Selhi: Potentially. Again, it depends on what is actually contained within the token, which is that block on the blockchain. For example, if that does not include the JPEG, perhaps the store of value may decrease over time. If it does include exclusive ownership over the JPEG, then perhaps that could increase, more likely.

Q7 **Chair:** I read that it was worth US \$4 billion, so you get from nowhere to US \$4 billion. These are particular works of art, but digitally created, and people effectively are buying the ownership of these pieces of art, but the ownership is just the certificate.

Reema Selhi: They are buying the ownership of the certificate, and the certificate may give them ownership over the JPEG.

Q8 **Chair:** Do you think that this helps the creativity and uniqueness of digital art?

Reema Selhi: In terms of scarcity and uniqueness, that is something that in the NFT marketplace the images themselves fail to have. If the digital art is the JPEG, which is the image of the bored ape, there is no



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scarcity or uniqueness within that. Anyone can see that. It is available on a marketplace and anyone can copy and paste that picture, print it out and do what they will with it. Uniqueness will only come from something where there is exclusivity. That type of exclusivity is something that we have already seen in physical artwork, where you only have one of these types of works. Some artists have been a little bit more intent on creating exclusivity rather than having their works readily available on marketplaces.

Q9 Chair: Emily, what is the current legal status of NFTs in the art world, and what are the main challenges that they pose from a legal perspective?

Emily Gould: In most countries, including the UK, they are not regulated as a distinct asset class in themselves at the moment, but trading in NFTs has certainly raised a lot of different legal issues from many different perspectives. Copyright has been a big issue. There have been quite a few reported instances of copyright infringement.

A copyright arises at many different stages of what we might call the lifecycle of an NFT. The term that is used is "mint an NFT". I have a piece of digital art. I want to create an NFT from it and trade it through NFTs. If I have created that piece of digital art myself and I own the copyright in it, that is probably fine to do. However, problems have arisen whereby people have taken images that they have found on the internet or elsewhere and minted them as NFTs without the right to do so when someone else owns the copyright, so they would need a licence to do so. That is one area.

The second juncture at which copyright issues frequently arise in the NFT market is when an NFT is sold. If a buyer buys an NFT that is attached to a piece of digital art, they might reasonably assume that they can do whatever they like with that digital art. In almost all cases, that is not the case, because all that the buyer will receive is an often quite limited licence to do certain things with that image. The copyright itself will remain with the creator. There have been numerous reports of instances where buyers have misunderstood that. There is a general misunderstanding about some of the fairly fundamental principles of copyright law within the NFT markets.

Q10 Chair: That may mean they have often massively overpaid for something that they think that they are getting. They think that they are getting something else, in some respects.

Emily Gould: Yes.

Chair: Is that what happened with the famous tweet by the founder of Twitter?

Emily Gould: Yes, possibly.

Chair: \$2.9 million was paid, he tried to resell it and was offered US\$5,000.



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Emily Gould: Yes, the prices have been extremely volatile over the last couple of years.

Q11 **Chair:** Angus, what is the main problem that you are trying to address in terms of NFTs with Artclear, and why do you think that blockchain and NFT technology is the best way to do it?

Angus Scott: The problem that we are trying to address with Artclear is a data problem. It is the availability of information about specific works of art that would affect their value or different aspects that it might be used for. A work of art obviously has aesthetic value, but it also has financial value. Sometimes it might be used as collateral for a loan, and it is stored in a certain location. There are many aspects of these things. The problem at the moment is that it is very difficult to pull together the information about that work of art in order to make a decision on whether you want to enter a certain type of transaction.

The most basic information is authenticity. Sometimes it would seem obvious that a picture should be authenticated, but obviously it is not. There are many frauds and fakes in the world and there are also misattributions and so forth. That happens at the high end with your Jackson Pollocks and so forth in New York, but it also happens quite far down the chain. It is a relatively low-risk crime to reproduce artworks and sell them for £10,000 or £50,000.

If you want to enter a transaction to buy a work of art, how do you know what you are getting? The answer is that you don't, so you go to someone you trust—a dealer or an auction house or something—and you trust that they have done some work to validate it. They may have done, but even that work is uncertain, and it is quite expensive to do that every time you want to buy a work of art.

What we are trying to do is create a mechanism by which that kind of information about authenticity, history or ownership can be recorded digitally through some technology that we have attached to the work of art. That means that we can uniquely identify an individual physical version of a work of art and use that identification to create a digital record that contains the information. If you are then faced with entering a transaction involving that work of art, you can access that information, you can see where the source of it was and then you can make a better decision.

Q12 **Chair:** How would a member of the public be able to see whether or not one of these NFTs is authentic?

Angus Scott: Sorry; I answered the art question and did not answer the blockchain/NFT question. The point about an NFT, as Reema said, is that NFTs are lines of code in a blockchain. The only thing that is unique about the NFT is the line of code, and it is meaningless. I own something that says "123". So what? What do I want to do with that? The whole challenge with NFTs is: how you take that line of code and give it meaning in the real world?



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There are obviously legal aspects to that; you somehow have to link it to ownership of a thing or a right, or something. Then there are operational aspects in our world because you have to be able to link it to this object, this unique picture. We have developed a device—in the future, many devices; we are still quite young—that we would like to distribute widely, so that if you have a picture that has been registered with Artclear you could scan it with this device—it takes about 10 minutes to do so—and that would tell you whether that was indeed the picture that has previously been scanned. If that were the case, there would be certain information that you may, as a member of the public, have the right to access, or it may be owned by the owner of the picture, but you would know of its existence so you might ask for it.

For example, if the picture had been authenticated by its creator, that would be public data to say that this is indeed a work of art by such and such an artist. That is public. If the picture had been put into storage in a certain place, that would not be public, but you would be able to ask the owner of the picture for that information, and they could provide it and you could verify it.

Q13 Chair: We have heard that one benefit of NFTs for creators is that they can sell their work directly to buyers without the need for intermediaries. Doesn't your company effectively just add another layer, another party, into the process?

Angus Scott: The question of intermediation is quite interesting. Intermediaries almost always perform a useful function, although they have a bad reputation. That function is very rarely pure overhead. If you think about a gallery or a dealer of something, the gallery is maintaining lists of buyers. They know what the market is. They know the pricing and they have that specialist information. You need that information in order to sell your thing.

That applies also in the world of NFTs. You have to be able to find people who are interested in buying the NFTs and you need to go to places. Reema mentioned OpenSea. That is a marketplace for NFTs, so it brings together buyers and sellers, it lets you establish pricing data and so forth. It is a more automated and different model to a traditional gallery, but it is performing exactly the same function from an economic point of view.

Disintermediation is often about automating functions rather than removing them. Once they are automated, you still need organisations to run the automated thing, to maintain it, to make sure it is operating and improve it or whatever over time. You have not really disintermediated; you have just changed the nature of the business. Sorry, that was a slightly abstract answer.

Coming back to Artclear, we are not in any way changing the nature of intermediation. What we are doing is providing a service that improves the management of data around transactions. Some of those could be intermediated by traditional or new players. It could apply equally to non-intermediated transactions. If I met you down the pub and we agreed



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that you would buy my picture, you would still be able to access Artclear and transfer the data.

Chair: And check that it was your picture that you were selling me down the pub? All right, I understand.

- Q14 **John Nicolson:** Good morning, everybody. It strikes me that vulnerable people could easily be caught up in this, and I say this as an ex-consumer journalist. I remember once doing a story about people buying whisky from bonded warehouses and losing vast amounts of money because they did not understand the process. I did that story for *Watchdog*. Angus, what can be done to protect vulnerable people over this particular new product?

Angus Scott: First, I would caution you not to treat NFTs as a single product. As we have said, NFTs are lines of code that are meaningless. What gives them meaning is how they get wrapped up, whether they get attached with a copyright licence or, in our case, whether they get attached to an object through the technology that we have or whatever.

- Q15 **John Nicolson:** I take that point. Could you tell us which of the products you think are most likely to persuade the vulnerable to invest in a way that would be damaging for them?

Angus Scott: That is a good way of thinking about it. The problems arise because it is quite complex to link one thing—an NFT code—to another thing, whether it is some digital data in the form of a JPEG or something else. It is not a straightforward thing either legally or operationally. Many of the issues that a vulnerable person might encounter are the sorts of things that Emily mentioned, where they buy an NFT in good faith and think it gives them ownership of a JPEG. It doesn't. All they have bought is a receipt. They have paid money and got a bit of code, but the code itself is meaningless.

John Nicolson: Potentially, they could lose a lot of money on that.

Angus Scott: They could do, or they have bought a licence and it is a very weak licence. The key to this is to find ways to strengthen and expose the rights that get attached to the NFT so that you know what you are buying. I am not a copyright lawyer, but this can be quite complex. We need to think about how to enable people to have a clear understanding of what it is that they are getting and to make a judgment.

- Q16 **John Nicolson:** Your advice is, "Don't touch this unless you really know what you're doing"?

Angus Scott: I would be careful about entering a marketplace to buy a digital image, because ownership of digital data is problematic. You would need to know what your copyright licence is, and so forth.

- Q17 **John Nicolson:** Emily, can I come on to you? What evidence is there so far of fraud, and who are the fraudsters?



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Emily Gould: There is quite widely reported evidence of certain scams and hacks.

Q18 **John Nicolson:** Who are they and how are they scamming?

Emily Gould: People's digital assets are generally held within something called a digital wallet. There have been instances where people have managed to hack into those wallets and—a straight cash of theft—remove those items from them. There have been other cases where people have attracted investments on the basis that they are going to set up some big NFT project and nothing has transpired, people have got nothing back in return. There is a term called a rug pull that is used to describe that offence.

John Nicolson: A rug pull, as in pulling the rug from underneath you?

Emily Gould: Yes, precisely. Then there have been cases of fraud where people have minted works as NFTs to which they have no rights. There have also been what we might call market abuses, insider trading. There was an example in the US where somebody working for one of these NFT marketplaces, these NFT platforms, had used confidential data for his own gain. There is something called wash trading, where there is a transfer of ownership, effectively, of an NFT from one of these digital wallets to another, where in fact the owners of both wallets are the same person. That could be to try to artificially inflate the price or to launder money. All the fraudulent offences, theft offences, that we see in the real world you also see in the digital world.

Q19 **John Nicolson:** It is a whole new world of fraud opening up before us. Reema, could you tell us what we as parliamentarians should be doing to try to protect people from this potential fraud in all the various ways that the previous two witnesses have explained that it can happen?

Reema Selhi: One of the main problems is the fact that NFTs are mostly traded through marketplaces. It is the dominance of certain marketplaces, which include OpenSea, wearables, SuperRare and Nifty Gateway, which themselves have terms and conditions that absolve themselves of any liability or responsibility and leave the consumer very vulnerable.

When I use the word "consumer", I am referring as well to NFT creators and artists who are also signing up to the terms and conditions of these platforms. For the most part, these platforms take a 20% cut off any of the sales that take place on the platforms. However, looking through their terms and conditions, they are completely absolved of any responsibility, and the onus is on the purchaser to check the legality and the authenticity of what they are purchasing.

Q20 **John Nicolson:** What does that mean for us in terms of what we should be doing to protect people?

Reema Selhi: The first issue is the fact that these marketplaces are operating outside of the consumer regulations. They are not compliant with law. There is not a compliance mechanism in place for individuals



other than to go through a lacklustre complaints system with these platforms. Another problem is the fact that, especially for copyright holders, there is no opportunity to license their works on a blanket basis through online platforms. This is something historically that has been a problem with traditional platforms such as Amazon, and marketplaces such as eBay, Facebook and Google. This is now expanding into NFT marketplaces and platforms as well. Therefore, it is important that they are treated in the same category of relatively under-regulated platforms that are not giving any remuneration back to creators.

- Q21 Damian Green:** A couple of you have mentioned OpenSea, the biggest of these marketplaces. The analogy has been made that they are like a gallery, essentially, but OpenSea itself says that 80% of the products on the various marketplaces are either infringing copyright or are scams or fakes. If you or I were running a gallery and said, "By the way, 80% of the product in here is dodgy", I do not think that that gallery would survive very long. What needs to be done? Actually, the first question is: why does anyone participate in this market as a consumer? They appear to have no protection at all.

Reema Selhi: The popularity of NFTs started with a relatively utopian ideology of the fact that NFTs were a way of decentralised transactions. A lot of people who were interested in NFTs in the first instance wanted to remove themselves from the online marketplaces that already existed and that were dominated by big platforms. That is ironic, in the sense that we now have a situation where the marketplaces are large platforms. On top of that, there had been a surge of cryptocurrency investments and NFTs were a way to spend a lot of that cryptocurrency.

From an artist's perspective, the relationship between creator and collector was a lot closer. Artists did not have to go via a gallery. It is important to understand that for an artist it is like a very thin-at-the-top pyramid. There are hundreds and thousands of visual artists. Very few of them get gallery representation. When they sell on the primary market, their gallery will take about 50%, but in doing so the gallery will take them to international art fairs and promote their work and be very proactive. Therefore, I think that it is a bit of a misnomer that OpenSea calls itself a gallery when really it is a marketplace, because it does not do anything proactive for the artist, but it still does take a 20% cut.

The reasons why a lot of people are engaged in NFTs are twofold. One is because of the optimism over the artistic connection between artists and collectors, which sometimes has been realised, but also for the hype of using cryptocurrency and to spend cryptocurrency that people had already acquired and had not been able to trade for any meaningful reason in the past.

- Q22 Damian Green:** That is from the artist's point of view, but from the customer's point of view, Emily, what practical protections could there be to avoid you buying something that is already not quite what you think? You are not buying a work of art; you are buying a receipt, as Angus said. What do you think would be a sensible level of protection that would



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allow these marketplaces to continue but in a better-regulated way?

Emily Gould: One important thing to note about the NFT world generally is that there are a plethora of general pre-existing laws that will still apply—general laws like consumer protection laws and the Consumer Rights Act of 2015. Therefore, there is some base level protection. There is a case going through the courts at the moment in the UK that is looking at the protection given by the Consumer Rights Act and whether that will apply in the NFT world. There are protections there, but there are other things that we could think about in terms of the operations of the marketplaces themselves, since they do play a very key role. For lots of digital artists, without those marketplaces there would be too many barriers of entry to the NFT world. They would not be able to set up part of their businesses as NFT trading, so they do play a central role.

When we think about the way in which they operate, one thing to note is that most of them—the vast majority—are US-based companies, so they are subject to US law. If you look at their terms and conditions, they will state that they are subject to US law, albeit that some of the consumer protections will override that attempt to make the consumer always beholden to US law. That is the question that is being looked at in this particular case that I mentioned.

In terms of the marketplaces' operations, probably we need to think about it globally. Very obviously, NFT trading is conducted on a global platform. There are no territorial boundaries to sales over the internet. Therefore, there might be something in looking at international standards for these platforms and whether there might be some sort of global body that could spearhead a project to set up almost codes of practices—baseline ethical and legal principles—to which these operators will be held. There is some limit to what national regulators or authorities in the UK can do to directly impact the way in which they operate unless there is some international alignment.

Q23 **Damian Green:** We already have those international agreements in other spheres, like the safe harbour provisions. Do you think the safe harbour provisions are appropriate for NFT transactions in this way?

Emily Gould: As Reema said, there could be more stringent obligations, perhaps, on the marketplaces to play a more proactive role in ensuring that illegal content does not end up on their platforms. There are provisions within Europe from a relatively new European copyright directive that placed stronger obligations on content-sharing providers to ensure that proper licences are in place for content hosted on their sites, to ensure that they have very robust policies for dealing with any complaints about infringing material, to make sure that it is taken down and that it does not reappear on those sites. Those kinds of obligations might well relieve some of the burden on individuals trading in NFTs who have to constantly check those sites to ensure that their works have not been uploaded without their consent.

Q24 **Damian Green:** Specifically on safe harbour, do you think that there are



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other ways of providing protections?

Emily Gould: Yes, perhaps. I think the safe harbour principles have protected those platforms and perhaps there is a way of increasing the obligations on them rather than giving them that safe place.

Q25 **Damian Green:** Reema, on behalf of the artists, have you been in discussions with government about various forms of protection?

Reema Selhi: In terms of IP rights we have, yes. We have spoken very much about OpenSea and other platforms as being like marketplaces and as being platforms that need a level of regulation. We are keen to see, for example, “know your customer” measures being taken on by online platforms more generally. We also believe, with NFTs in particular, that relying on safe harbour is more risky because there is a greater financial risk to consumers. For a start, a consumer has to convert their fiat currency into a cryptocurrency to be able to trade on those platforms, and that currency can in itself lose value very quickly.

There is an awful lot of opacity. It is not transparent when you go on to these platforms exactly what it is that you are purchasing or what sort of fees you will incur as part of your purchase. There is something called gas fees, which is almost like a tip to the person who is minting the NFT. That can really fluctuate in price. That, again, is something that these platforms and marketplaces will say is not part of their liability. So it is very important that the safe harbour measures that the platforms are relying on are not applied to NFT marketplaces, because there is a much greater risk to individuals.

Q26 **Damian Green:** Do you agree with that, Angus—that they are not appropriate in this context?

Angus Scott: Probably. There are quite strong analogies to the way the NFT market is evolving with finance. If you think about how financial regulation works, it typically focuses on two things. One is product, for example listing rules or prospectus directives, and the second is conduct of business of the firms selling the financial services. You can very much see that in the NFT world.

The product dimension is this question of: what does the NFT mean, what rights attach to it and what does the consumer get by buying it, and is that understood and is that clear? That is equivalent to a prospectus of a financial instrument. The second is conduct of business. Are customer assets safe, and how do you stop these wash trades? Pump and dumps happened in penny shares years ago, where gangs would get together and sell the shares between themselves at ever-inflating prices. That is exactly what a wash trade model is. There are quite strong parallels going on there and it is not a bad way to think about NFTs.

The only thing against that is that NFTs are quite a small market, and if you think about the cost of financial regulation, it is immense, so there has to be some way of making it proportionate to the size of the market. Focusing on definition of the product, making sure that it is clear what



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people are buying and then how you make it safe and straightforward and transparent what the costs and the risks of dealing in these things are, would not be a bad way to go.

Q27 Damian Green: What is the scale of the market? How many customers are there? How many people out there are buying art using NFTs? That is a pretty broad question. Do we know?

Reema Selhi: OpenSea has over 80 million NFTs on its platform. In terms of other platforms, I do not think that the data are as readily available. In terms of how many people are purchasing them and how many people have converted fiat currency into cryptocurrency, those data are not something that I have at hand. It is a marketplace that has fluctuated a lot over time. There was a certain amount of hype where there was something like US\$100 billion of cryptocurrency in circulation. There have been moments in time where there has been a huge amount of capital that is subject to fluctuation and subject to potential loss.

Q28 Damian Green: However, we do not know whether it is millions of people around the world, tens of millions or hundreds of thousands.

Reema Selhi: I do not have that information at the moment, but there probably is more data that can be put together.

Angus Scott: There is a survey that gets published every year by UBS and Art Basel into the art market, and they survey NFTs in the fine art market. We can look it up. I cannot remember what the number is, but it has just come out. That is an indication of at least the part that relates to the fine art market. There is obviously a much bigger part that relates to the Bored Ape Yacht Club and other sites.

Q29 Damian Green: I am picking up on a point that John was asking about what useful protections this Committee could recommend to the UK Government, in an international context—I take that point as well. If what we are dealing with is a small number of relatively sophisticated people who know the risks of NFTs generally, regardless of the specifics of the art market, you would need one level of protection. If a lot of innocent, non-financially-minded art lovers are being drawn into this because that is the way that you get access to the digital art, it seems to me that you would need a greater level of protection. I am trying to get a sense of where we are on that spectrum.

Angus Scott: It is not a widely held consumer product, but on the other hand it is accessible, particularly when hype levels rise. It is not hard for people to get involved, so it is not like some specialised financial product where you have to go through certain intermediaries and there is a KYC process. You can sign up as a consumer and get involved in this if you want to. It is a very accessible market if you want to get involved. How far people do is the open question.

The other thing is that it is very much evolving. We have seen one wave of the use of this technology, the use of these tokens, to do Bored Ape Yacht Club things or—you are talking to sportspeople—sports-related



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things or collectibles or whatever. Our view—listening to the other two, I guess it is our view—is that it has not necessarily been very well reflected in the way that these things have been defined. Nevertheless, that is one set of things. Other uses of this technology can and will evolve over time.

One obvious use of NFTs would be for ticketing events. You could make an NFT equal a ticket to an event, and it is a right. That might be a useful way of doing digital online ticket sales. If that were the case and someone developed that, you would not necessarily regulate that in the same way as you would regulate NFTs representing digital art, because they are very different products even though they are using the same underlying technology. Therefore, it is important to think about the context in which this technology is being applied and the consumer environment around that context. It is not going to be the same in every case.

Q30 Damian Green: One other thing that has been discussed, en passant, is smart contracts. They are not really contracts, are they?

Angus Scott: The way to think about them is that they are computer programs. What they do is they regulate and automate the transactions that can happen on a blockchain. As Reema said at the start, a blockchain is a spreadsheet, a ledger, that records transactions in bits of code, which we call NFTs, a transaction being: I transfer control of my bit of code from me to you. That is a blockchain transaction.

A smart contract can impose conditions on that transfer. It could be that I could only transfer it to you if I have held it for a minimum of five days or six months, or if there is a minimum price, or something like that. In order for those conditions to be filled, there has to be some way for the data that defines the conditions to be entered into the blockchain. They serve a useful function in that way because they place certain limits on the transactions.

In the way we use tokens, one of the conditions that we allow people to set is that if they issue a work of art, the first sale cannot happen for, say, six months. That is because some galleries are concerned about people buying works of art and flipping them quickly. We can use smart contracts as a way to limit that in certain circumstances. That is essentially an operational matter, and that is a good way to think about them. Whether they are legal contracts is to some extent moot. They limit or control certain data transactions. The data transactions themselves may or may not have legal status. That is a question of what gets wrapped around them and how they get defined. Legal things probably kick in mostly when things go wrong.

The problem with thinking that you can write every circumstance into a smart contract is that of course you cannot. There will always be things happening that you had not thought of, or circumstances arise that need an exception. The reason that legal contracts have terms like “reasonable endeavours” and so forth is because you cannot think of every possibility. You have to have some room for people to get together and interpret,



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and you cannot write that into computer code. They are operational controls on data operations within a blockchain more than they are legal contracts, I think.

Emily Gould: I want to add a couple of points about smart contracts. One of the reasons why NFTs have been a very popular way for digital artists to start selling their art is because they can embed into their smart contract an automatic resale royalty such that every time that that NFT is sold on on that particular network, on that particular platform, a resale royalty will automatically be remitted back. That is programmed into the code so that it happens automatically.

The other thing that I would say is that sometimes—or often, as Angus was saying—smart contracts are not the full picture. They might be linked with natural language terms to explain the basis of a copyright licence to tell the user of that digital work exactly what they can and cannot do with it.

On the smart contract itself, there have not been any legal cases that I know of discussing whether or not they are legally enforceable, but most commentators and scholars have come to some form of consensus that there is no inherent reason why they should not be legally enforceable. But often they will need to be accompanied by natural language terms to explain the full basis of the contract.

Damian Green: So they are useful.

Emily Gould: Yes, they are useful; they do have their uses.

Q31 **Chair:** One final question to you, Emily, as you have been listening to what everyone has been saying. Where do you think that the regulatory burden should fall, if there is to be a regulatory burden?

Emily Gould: Now is not necessarily the time to be thinking of a whole new regulatory regime, for a number of reasons. The first is because there are so very many different use cases for NFTs—and we have looked at a few of those this morning—both within the art world and outside, so it is difficult to conceive of some form of overarching legislation that would cover all of those cases.

Another reason is because there is already quite a lot of legislation out there that can apply to NFT trading. We have already seen the courts in the UK applying existing rules and being prepared to be flexible. That is part of the beauty of the common law. We can take these existing rules and apply them to a new technology, and that is happening quite rapidly. There have been lots of discussions about the property status of NFTs, for example—both within the courts, and the Law Commission has conducted a very broad project about that issue. There are rules there. As I say, the technology is developing fast and new cases are coming onboard. I also think that any discussions about the future of regulation do need to have some kind of international input so that the UK—

Q32 **Chair:** That is where the rub is, isn't it, when it comes to safe harbour?



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We have heard about safe harbour in our streaming inquiry, for example. The reality is that the country that has the most to gain from safe harbour, which is the United States, is the one that is less willing to see any way in which that could be devalued in any sense. Is that the case in this area as well?

Emily Gould: Possibly. The broader point is that any form of regulation needs to be aligned and there needs to be international discussion. I cannot speak to the specifics of safe harbour in the US. There is something called the Digital Millennium Copyright Act, whereby if infringing material is found on a platform, there have to be mechanisms for the taking down of that material. There are some forms of obligation in place, which perhaps temper the safe harbour principle.

Chair: Emily Gould, Angus Scott and Reema Selhi, thank you very much for joining us today.

Examination of witnesses

Witnesses: Joey D'Urso and Kieran Maguire.

Q33 **Chair:** This is the Digital, Culture, Media and Sport Select Committee and this is our second panel today in our hearing into non-fungible tokens and the blockchain. We are joined for the second panel by Joey D'Urso, the Investigations Writer at *The Athletic*, and Kieran Maguire, Senior Teacher in Accountancy at the University of Liverpool. Joey and Kieran, thank you very much for joining us today. Our first question is going to come from Simon Jupp.

Simon Jupp: Thank you, Chair, and good morning. Thank you very much for coming along this morning. First, a pretty basic question, which is to be expected from me as I am not an expert in this matter: why have NFTs become so popular in professional sports?

Kieran Maguire: If we take a look at the Premier League as an example, we have reached a plateau in terms of revenue generation. Since the Premier League started in 1992, revenues have increased by 2,700% and wages have increased by 3,400%. Therefore, football clubs are looking for alternative ways to generate revenue.

If we take a look at the three traditional forms of revenue, we have match day tickets. Stadiums have, to a certain extent, reached an upper limit as to how many people we can get in them, and clubs are reluctant to increase prices. Secondly, we have commercial sponsorship. As far as front-of-shirt deals are concerned, again, there does not appear to be very much growth. If we look at Manchester United, its commercial revenue has stayed static, broadly, since 2016. This is for the football club that most people would say is the biggest brand within the Premier League itself. Thirdly, we have broadcasting. As far as the broadcast deals are concerned, the current deal between Sky and BT has been rolled over at the same price. On international deals, there is some growth but not very much because, as far as consumers are concerned, there is a limit to what they are prepared to pay for subscription levels.



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Therefore, football clubs are looking for alternative forms of income. We know that the Premier League in particular, but also the rest of European football, is very popular. If we take a look at Manchester United, Manchester United's revenue works out—according to Manchester United's own estimates of its fan base—as 57p per fan per year. It believes that being able to expand that by having a closer relationship with the fan base, through the use of fan tokens and also NFTs, is a way of enhancing revenues and ensuring that the valuations that we have of football clubs and the continued interest will be able to be maintained.

Q34 Simon Jupp: Thank you. Joey, is there anything that you want to add to that?

Joey D'Urso: Yes. To echo Kieran's point about the rampant wage inflation in football, the top layers are constantly being paid more and more, which costs more and more, and there are very few places to get that revenue in from. Another reason why it is so popular in sport, particularly football in this country, is that it is seen as the cheapest way to advertise to young men—not exclusively men, but largely men—in the younger age groups who probably do not watch loads of linear TV, read magazines or listen to the radio, those traditional methods of advertising, but do watch lots of sport. These crypto companies have figured out that this is a very good-value way of reaching that demographic who have lots of disposable income.

Q35 Simon Jupp: We will talk about profiling a bit in a moment. Do you think that there is a chance that the need for clubs to look at alternative revenue streams could have been exacerbated by the pandemic and the impact of what happened for the best part of 18 months with things open and closed and everything else?

Kieran Maguire: I do not genuinely think that the pandemic would have prevented what we have seen arise. There is no doubt that the likes of Socios and Sorare—two of the bigger players in the market—have been involved with other sports, especially US franchise sports pre their relationships as far as the Premier League is concerned. The clubs feel that to a certain extent they are missing out because they have global fan bases, but they are not able to monetise them.

Therefore, if I were pitching on behalf of one of the organisations to the Premier League, I would be encouraging them to get involved from this perspective, because we know that we have a huge fan base in Nigeria, in Indonesia and so on, but you cannot bring Old Trafford or Anfield to the fans. By engaging with the fans through the use of these products, there is a way of enhancing that degree of fan loyalty or devotion. The brand loyalty that you get in football is probably unique compared to all other products.

Q36 Simon Jupp: Joey, is there anything you want to add to that? Clearly, I was wrong. I would assume that, for example, because a lot of sports clubs would have been struggling to a point throughout the pandemic, they sought to diversify, and this is one of the reasons that this has been



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brought on, but clearly I am mistaken.

Joey D'Urso: Specifically when it comes to the crypto industry, that is completely tied in to the pandemic. We saw it boom all throughout 2021, peaking in November—the price of Bitcoin, Ethereum, the best-known cryptocurrency tokens. Since then, it has fallen off a lot. A lot of the hype and attention, random football clubs signing up with deals with incredibly obscure things involving pictures of cartoon monkeys every day has died down a lot.

That has a lot to do with the pandemic. People were sat at home all day and had more time on their hands. Although a lot of people were financially hurt by the pandemic, plenty of people were not, because they were not spending any money. So they had a bit of spare cash to look at investing, which they might never had been able to do before, because they had more money at the end of the month. Since everything has opened up, that is a large reason for a lot of the crypto hype dying off. There is the cost of living crisis and people are worrying about paying their gas bills, not about putting their spare cash into a NFT. Therefore, I think that those things are very linked. Potentially, if we saw something similar, wider conditions could make this crypto boom happen again.

Simon Jupp: Interesting. You mentioned about profiles and trying to target younger men, for example, who might be interested in these sports. The interest in cryptocurrency has been mainly focused around football, F1 and basketball because they are predominantly male audiences. Is that the only reason why it has been focused around those particular sports, and is there any other sport that you would like to add to that list that you think I have unfairly not said?

Kieran Maguire: There have been some top-flight rugby clubs that have signed up with fan token providers. When it comes to money, in this country football is so far ahead of the others, not in terms of cultural profile or other things but in terms of cash. You have vast numbers going every week to even pretty far down the football league pyramid. That is a reason why this is very much a football story with a bit of other sports on the side. Certainly in the US, basketball was a large part of this in 2021, but in the UK this is largely a football story, though not exclusively.

Q37 **Simon Jupp:** Kieran, how do you think that these are targeted? What demographics are we looking at here? What is the target audience for these things?

Kieran Maguire: It is not me.

Simon Jupp: Is it me? Don't judge my age right now; I have already had that once this morning.

Kieran Maguire: We are looking at people under 35. When I have attended conferences and events, when somebody has asked how many people have got involved in these, I was quite surprised. Certainly, among my peer group, this is something that we would not countenance. When you are in your 60s you are looking to de-risk any portfolio of any



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investments. The thing that I have heard most often is that it might be a disaster, but also it could be the equivalent of a lottery ticket. That is the way that it has been hyped. Therefore, as far as the demographics are concerned, I would say that it is certainly the 21 to 35 area, with a view to those people trying to get out of it just as quickly as they get in and make profits.

Q38 Simon Jupp: I am devastated; I am outside that age bracket—only just, I hasten to add. Do you think that there is a difference between these products and the way that sports leagues are using them, compared with individual clubs? What would you say about the difference in approach by different parts of the industry, whether it is the professional club or the league itself?

Kieran Maguire: There is a degree of gravitas that the Premier League wants to present, which perhaps can be to its advantage, whereas we know with individual clubs that, to a certain extent, if you are not in the Premier League you are not at the party. For those 10 to 12 clubs at the start of each season in the Premier League whose ambition is to avoid relegation, I think they look at this from a slightly different perspective. They might be trying to ride the wave on a short-term basis.

I believe the Premier League has signed a four-year deal with Sorare—worth an estimated £30 million a year—with a view to trying to get an ongoing product and to generate a broader interest in this market. There is nothing inherently wrong with a digital Panini card, which is effectively what we are seeing with the likes of Sorare. It is when they are being marketed on a dog-whistle basis where they are a form of investment that I think that we have to have reservations.

Q39 Simon Jupp: If I can move on to broadcasting, you have mentioned already the sorts of contracts that are being signed by various big groups. If we look at those deals that have been signed, if those deals in the future are less poignant for the clubs' finances, do you think that clubs will look to invest more in cryptocurrency and NFTs and so forth?

Kieran Maguire: I do not think that the clubs themselves will be looking to invest more. I think that the clubs will be more willing to listen to all propositions. With regard to individual clubs, we have seen that they have signed up. For example, Crystal Palace has signed up with Socios. They would have to distinguish between the NFTs and the fan tokens. The fan tokens are fungible in the sense that it is a token, it is interchangeable just like beans in a can of beans are—you have no preference for one or the other.

Then you can use them as a sort of a loyalty card as far, as the club is concerned. There is the opportunity, because there is normally a finite number available, that there could be a secondary marketplace in which they can be traded. It has to be said, however, that the prices of these tokens have fallen almost universally since their launch, and the take-up from the clubs' perspective has been disappointing.



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Joey D’Urso: I think that there is an artificial or misleading complexity to a lot of this. A lot of people would be baffled by terms like fan engagement and digital collectibles. What does it all mean? My view, having reported extensively on this for two years, is that this is largely nonsense and that the purpose of it is to create digital assets out of thin air that you can sell to people. However, you can tell a story out of both sides of your mouth to give it something that is more meaningful than that, when you are just creating a thing that you can sell to people for real money. You swap your fake money for the real money. When it crashes in value, the person holding the fake money loses out.

What I have found from my reporting is that it is often quite hard to identify the losers in these situations because it is, frankly, embarrassing. Are you going to go home and tell your wife that you have lost £10,000 on a cartoon footballer? This is the reason why I think that a lot of this is hidden. There are a lot of people around the UK who have lost money on cryptocurrency who may be hiding it or not telling people about it.

I went to Istanbul a couple of months ago. Turkey is a huge market for crypto because the domestic currency has collapsed, so people are looking at alternative investment. I met a man—it sounds almost funny, but it is not—who lost \$2,000 on a football NFT. \$2,000 to a bicycle delivery driver in Turkey means a lot more than it might to someone in the UK. This is devastating real lives in the UK and beyond, and I think that it is just a vehicle for financial speculation that transfers money from poorer people to richer people.

Q40 **Simon Jupp:** Do you think that it is quite dangerous, essentially, to have this widespread use of these cryptocurrencies in this way?

Joey D’Urso: Yes. If you completely know what you are getting in for and you know that you might lose money, you should be free to do that—fine. However, that is not what it is sold as. That is not what it is marketed as. That is not what it is saying to the clubs that are helping it advertise. It is not what it is saying to regulators. People should be free to buy these things and trade them and take personal risks with their finances—fine—but these services, these clubs, are not being straightforward about what is actually on offer. The clubs are taking huge amounts of money for something that is pretty dangerous to a lot of their fans.

Q41 **Simon Jupp:** Would you agree with that, Kieran?

Kieran Maguire: From the perspective of the clubs, it is zero risk. You are getting paid money, effectively, for the use of your name and your brand. That is what football clubs have. By aligning with brands that people do have a degree of loyalty to—and also individuals; we have seen retired players, the likes of John Terry and Michael Owen, for example, launch their own products—the people who are selling the tokens, the people who are selling the NFTs, are achieving normalisation and legitimacy as far as their products are concerned, and that is beneficial.



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- Q42 **Simon Jupp:** There is a risk, though, isn't there? If your club brand is associated with these things—I am not going to go into the names of them, because quite frankly I find most of them baffling—you can also have your brand hugely damaged by your involvement in cryptocurrencies, surely.

Kieran Maguire: In theory, yes. We have seen the advertising standards Authority, for example, criticise Arsenal in respect of the way that it launched its tokens, effectively ignoring the issues in respect of linking to cryptocurrencies, ignoring the fact that there were potential losses available. Football is an interesting industry in that it has an incredibly short-term memory. If you are criticised on Thursday for—

- Q43 **Simon Jupp:** Going back to Joey's good point about losing a couple of grand, for example, if you lost a couple of grand because you invested in something that had the brand name of a team that you love, surely that taints your relationship with those brands.

Kieran Maguire: It does, but every single Premier League club has a waiting list for season tickets. It is a difficult thing to decide to withdraw your support. It is a bit like trying to stop loving your children. No matter how much they misbehave, that affection and that bond will still be there.

- Q44 **Simon Jupp:** I have never heard children compared with non-fungible tokens before. That is a first. Joey, is there anything you want to add to that? It is an interesting point.

Joey D'Urso: I think that there is very little correlation between match-going fans and people who are buying these tokens. People are not necessarily buying the token of a particular club because they want to engage in it or because it is their favourite team and they want to show that. They are engaging in it because it is a financial investment.

They might be flicking through an app where there are loads of Monkey Coins. These things have bizarre meme cartoon names a lot of the time. You might see one with a world-famous football club brand and think, "Okay, that sounds legit. I will put some of my wages into that". I think that a lot of this is about giving respectability to these meaningless assets, which are traded on apps all around the world.

One of the odd things about this is that very admirable fan representatives of various clubs will have debates with the clubs about it. This is an odd exchange, because no one is buying these things. No one cares about it. Hang on, why is the company paying the club millions of dollars to advertise it? It is because they are not advertising to people in the stadium. It is for these people spread all around the world who view these things as a financial asset to be traded.

Simon Jupp: Interesting. I am still not sure how I would respond if someone in a pub asked me to buy a non-fungible token. I would think they were probably drunk.

- Q45 **Chair:** Before we move on, to nail this down a bit, say I am a fan of the mighty Crystal Palace, for instance, and I invest in an NFT. Is there



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anything tangible I would get as a fan?

Joey D'Urso: You get a string of letters and numbers on the blockchain, which is there forever. It is yours to keep, print out and gaze at. They will argue, though, that just as you can have a playing card of your favourite player or a sticker, this is just a digital version and we should all stop being such dinosaurs and wake up to the world. But I think this is nonsense. Nobody is buying and selling these things to collect them. People are buying them to trade and to try to make money, as quite a lot of people have done in the short-term, in the same way as when Bitcoin was on the rise. We have all heard stories of someone who has bought a new house because they bought Bitcoin in 2009. These things often do go up quickly and if you get in at the right time—

Chair: A Ponzi scheme.

Joey D'Urso: You might use that phrase. I would have to be very careful about doing so. If you get in at the wrong time, which might be when your favourite football player is advertising it, you can lose a hell of a lot of money.

Q46 **Chair:** Football has a long and discredited history of financial interaction with fans. For example, share ownership in football clubs is one way in which many people were able to lose quite a bit of money. In that case, you were actually buying a part of the club. This is effectively buying an intellectual idea.

Joey D'Urso: Yes. By the way, the Advertising Standards Authority has been very impressive with a lot of this. It has had a lot of teeth and done a lot of good stuff. That is one of the things it has clamped down on, eliding between share ownership or owning a piece of your club and this nonsense token.

Kieran Maguire: Crystal Palace actually has fan tokens, which are slightly different, and you are allowed to generate privileges from that. For example, at present, the Palace token gives you the opportunity to play crazy golf with one of the players. If you ever wanted nine holes with Jeffrey Schlupp on a windmill, this could be your chance to invest.

Q47 **Chair:** That is very worthwhile, but does it give anything in relation to your football club? For example, access to tickets, like a club membership scheme or anything like that? Is there a model here that could benefit fans more than what Joey is describing?

Kieran Maguire: Yes, there is. Again, there is the opportunity that if you buy into the tokens, effectively, you are putting your money into a lottery, and you could end up with a seat in the Directors' Box or it could allow you to attend a training session. In Manchester City, if you are a purchaser of the fan tokens, you are allowed to vote for moment of the season or goal of the season. You could claim these to be unique benefits. You could also say, "Surely everybody that has a season ticket should be entitled to get involved in this as well". That comes down to



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individual clubs as to how they stratify the benefits they give to alternative ways of putting money into the club.

- Q48 **John Nicolson:** Thank you both for coming in. Unlike our first group of witnesses, you guys sound really worried about this in a way that they weren't. They were very relaxed about this development. I have written down some of the things you have both said. Joey, you said that this was a way of transferring money from poor people to rich people. You have said it is a way of conjuring digital assets out of thin air. You have suggested that it might be widespread, and we just do not know about it because people will be too embarrassed to tell their families that they have lost 10 grand on a cartoon footballer. All of this sounds, Kieran, as if we as MPs should be doing something about this.

Kieran Maguire: To sum up the position of the industry, it is an unregulated, highly volatile and potentially easily manipulated product. Under those circumstances, I think that we need education and awareness. That must come from the sellers of the products. At present, in terms of the relationship between the football industry and the NFT and digital industry, the football clubs say, "Thank you very much for the money", and then they let the likes of Sorare and Socios market their products. There is nothing inherently wrong with the products. I think that it is the marketing.

John Nicolson: They are worthless.

Kieran Maguire: A piece of art is worthless, inherently, unless somebody is prepared to pay a price for it.

- Q49 **John Nicolson:** No, but you actually own the piece of art and hang it on your wall and look at it every day and nobody else is allowed to touch it. It is yours.

Kieran Maguire: As far as an NFT is concerned, in the world of football, you have the digital receipt, and it is the receipt that has the value. I have bought signed shirts from my football club with a certificate of authenticity. That makes it slightly different to going into the same club and saying, "Put the name and number of the player on the back of the shirt". I could put that up on my wall as well, but it is the certificate of authenticity that gives it value.

- Q50 **John Nicolson:** No, I get that, but again the signed shirt is something unique and you have it. It may not be completely unique because lots of other people have signed shirts, but that particular shirt is unique to you. Did the Chair have a good point when he said this is a Ponzi scheme?

Kieran Maguire: It has the opportunity to be a Ponzi scheme, certainly.

- Q51 **John Nicolson:** It might be, and we might just not know about it because, as Joey says, people are too fearful to tell their relatives that they have lost all this money on it. They are embarrassed. We may not know the scale of this so far.

Kieran Maguire: That was exactly the same with Bernie Madoff.



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John Nicolson: Exactly.

Kieran Maguire: Is there the opportunity for this to be a Ponzi scheme? Yes, there is. As we saw with Football Index, something Joey investigated himself, which was a stock market—and they used the words “stock” and “market” separately to make the definition not that of a traditional stock market—for football players where you traded the players. You could say, “Hold on. As an individual, I do not have ownership or, in fact, any relationship with an individual footballer.” Points were awarded in terms of their performances, and people were trading these. Then it collapsed because the whole aim was to attract more people into the market. Could we have something similar with some of these schemes? Potentially, and that is why perhaps some form of scrutiny would be of benefit.

Q52 **John Nicolson:** As MPs, we should be concerned about transferring money from poor people to rich people, shouldn't we? That is intrinsically immoral.

Joey D'Urso: So many of these tokens have declined in value over the past year or so. I am not going to sit here and say this whole industry is a scam or a Ponzi scheme. There are companies that are solvent, which are making money in providing a service. Lots of users of them will tell you, “It is all going great,” and “Don't look at the bad actors, look at these big companies.” My response to that would be that on this topic, the sceptical view has almost always been proved correct over the past couple of years, which is that these tokens will eventually decline in value and people will lose real money. That has not been the case on every single company that we have mentioned—

John Nicolson: Yet.

Joey D'Urso: —and it might not happen. If I am completely wrong, good luck to them. Go and retire on your yacht in the Bahamas; you do not need to listen to people like me. But if the sceptics are right, real people will lose vast sums of money in an unregulated industry trading anonymous cards on an anonymous platform. They might be too embarrassed to tell their family, let alone their MP. It is a sort of secret world, which is another thing that boomed during the pandemic. People would spend hours on the internet not talking to friends and family, not going out or having a conversation at work where you might say, “Is that really a good idea?” I think that there is a secrecy and anonymity to a lot of this stuff, which is unhealthy.

Q53 **John Nicolson:** What evidence do you have that people losing money on it and then being too embarrassed to talk about it is widespread?

Joey D'Urso: Speaking to dozens of them.

Q54 **John Nicolson:** What amounts are they losing?

Joey D'Urso: Hundreds, thousands. Looking back to the Football Index example, I spoke to one man who lost £200,000. That is a very different topic. That was not cryptocurrency, but there are people losing very significant sums. When I found my man in Turkey, I did that by going



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through all these anonymous profiles and sending out messages to literally hundreds of them, and I got so many back saying, "What you are doing is great. It is good to talk about this. There is no chance I will put my face to this, because—"

Q55 John Nicolson: You told us earlier your man in Turkey had lost \$2,000 and he was a poor person.

Joey D'Urso: Yes—three months' wages for him, so it was devastating. He will survive. He will be okay, but it has completely ruined his life in the medium-term. There are lots of people like this in the UK as well, not necessarily on the exact companies that we have named but in this broader industry.

Q56 John Nicolson: Are they established gamblers or are they new to this? Are they being seduced by this, never having had a gambling problem before?

Joey D'Urso: The industry will fiercely dispute that this is anything to do with gambling. It is regulated in a completely different way.

John Nicolson: What do you think?

Joey D'Urso: I think there are a lot of similarities. In some ways, gambling can be less dangerous, in that if you put a bet on, you know what the odds are. It is very clear; it says you will win or lose, and you will not lose more than you put in. There are probably very few people putting £20,000 on a bet, thinking, "I will be able to grow this and get a good interest yield, like an investment". I think that people treat cryptocurrency like an investment and will put in large sums of money that have turned to dust over the past year.

Q57 John Nicolson: We have people losing money—it turning to dust, as you say—and poor people transferring money to rich people. There are lots of similarities with a Ponzi scheme, but clubs are taking advantage of this. Should the clubs take responsibility for the fact that their names are attached to this and poor people are losing out?

Joey D'Urso: Yes, I think that they should. It is notable that not all the clubs in the league have decided to do this. Some have looked at it. I have spoken to people who have been in those meetings, and they have thought, "No, this is reputationally damaging. This is nonsense".

Q58 John Nicolson: Which clubs are those?

Joey D'Urso: I will not name them, but you can look at the list of clubs that have agreed or have not agreed to these sorts of schemes. Kieran made the point about whether it is reputationally damaging. I think that football clubs do not have that capacity for commercial shaming like that.

John Nicolson: A reputation to lose?

Joey D'Urso: No, because you will not support the team down the road that you have hated all your life, will you? It is not a competitive



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industry. If a big supermarket does something terrible, you might very likely shop at the one next door. Football does not work like that.

John Nicolson: You could find yourself enthusing about a Saudi butcher buying your club and that would not worry you, so I take your point.

Joey D'Urso: Football does strange things to the brain.

Q59 **Damian Green:** I almost feel I should declare an interest, as I am such a fan of *The Athletic*. I think *The Athletic* is a great product. Congratulations on that and your individual stuff.

Joey D'Urso: Thanks. That is good to know.

Damian Green: Having had these disasters that you have talked about, do you detect that now football fans that were attracted to cryptocurrencies have learned a lesson? Having had this disastrous 18 months or so, do you think fewer people would be—conned is perhaps a strong word—attracted to this kind of product?

Joey D'Urso: I think that this is the big question. If anyone knows the answer, they can probably go and become extremely rich. Will the tokens go up or down again? Nobody quite knows the answer to that question. People talk about the crypto winter, which implies it is a seasonal thing and there will be the summer coming down the track. The longer time goes on, I am sceptical of that view, and I don't think that this will ever be like the hype it was about 18 months ago. I think that the scepticism is very widespread and deep now. Of course, it is possible that these things will all boom in value again.

Q60 **Damian Green:** We have talked about whether it is worth individual clubs taking risks with their reputation, because you will always be a fan of that club. Would it be better if it was done on a league-wide basis rather than on an individual club basis? Do you think you would get more responsible use of digital tokens?

Joey D'Urso: The league has made deals as well, and I think that it is a similar thing. Will you stop supporting the Premier League and start watching the German league if it does a commercial deal you do not like? Football does not really work on those terms. I think that there is little capacity for brand damaging in football. That is not really how it works.

Q61 **Damian Green:** Exactly. I think of the analogy of the NBA. It has set up its own marketplace. It actually runs the marketplace. Is that proving equally damaging to fans?

Joey D'Urso: I am not an expert on this, so I will say my words carefully. I believe that it all boomed quickly, and there were thousands of articles written about how this is the future of sport. There is often this language of innovation and technology, and if you do not quite understand it it is because you are behind the times rather than because there is something odd here. Then it has steadily declined, and people do not talk about it as much, which is often the pattern. The fall is often not



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as dramatic as the rise. Slowly the life bleeds out of it and people move on to the next thing.

Kieran Maguire: I think that because the NBA is a franchise organisation, effectively, it is therefore controlled by the owners. They have always used centralisation in contracts and commercial deals. In the Premier League there is a bit more independence for individual clubs.

In the relationship between the token organisations and fans, there has been a significant pushback. For example, I am friendly with people from the Palace Foundation. They have not been particularly enthusiastic. If you talk to people at Spirit of Shankly about Liverpool, they have expressed their reservations as well.

We now see that the industry, like Sorare and Socios, is trying to pitch to the fan groups to give them the legitimacy that they crave. The numbers of tokens being sold compared to the market capitalisation limit is significantly lower. I think that Palace are sold at about 3.5% of what they are entitled to sell, simply because the fans have said, "What is in it for us?"

I think that you have to be able to distinguish and stratify the Premier League itself. The likes of Manchester United and Liverpool have a global fan base and, therefore, perhaps they can see the benefits of trying to sell to a much broader market. With no disrespect, a small club such as Palace has a local fan base. Therefore, trying to pitch to them will be that much more difficult.

Q62 **Damian Green:** Either you sell something to fans that they know they are buying, and they will get some benefit, even if it is a slightly intangible benefit. You could say, "I am buying the potential to have nine holes of golf with a player, or whatever, or go to a training session". That is one thing. The other half of it is that they think that they are buying a financial asset, which happens to have this rather nice badge of their favourite football club on it. Is the problem that those two things have been completely confused?

Kieran Maguire: Yes. The position is being muddled. As a digital Panini card, they are absolutely great. You can trade them. I collect the traditional Panini cards myself. Having to post them to strangers on markets on Facebook and so on is not a particularly efficient use of my time. Being able to trade these on a digital basis certainly has some benefits.

Dog-whistling and saying, "Actually at the same time, these are investments; add them to your portfolio", is where problems have arisen. I think that social media has to take some responsibility here, because social media itself is an unregulated market. That is where we have the crypto bros saying traditional things: "Buy the dip, get in early". That creates a hype.

When you launch any product, there is always a hype. You are always trying to persuade people to buy into it, and I think historically crypto has



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been quite successful in that particular regard. Now there is greater caution because we have far more products and I think that there is a slight increase in awareness and education among those people who are thinking about buying them.

Joey D'Urso: All these clubs have digital membership. You pay your £30 a year or whatever it is, and you get posted a scarf, you get priority access to tickets, you can enter ballots for various prizes, you can collect points and get a free water bottle or whatever. Great. That is all fine and good. This stuff is completely separate to that and markets itself as somehow the same thing, somehow giving you these opportunities that you would not have had without a volatile, unregulated cryptocurrency. It is nonsense.

You mentioned buying a football shirt. I think there is a big difference. When the new Premier League season starts, clubs will sell shirts for £100 for a piece of cheap polyester. I personally think that is a rip-off and would not buy it. However, if people want to buy it, good for them. They understand what the transaction is. They are not expecting anything more than what they are getting.

There is a big difference with a cryptocurrency. You spend £100 on cryptocurrency that you expect to increase in value as a financial investment. If that then crashes in value, I think that is very different. These companies often say, "People don't have to buy it. It is their choice". I think that is very different to selling someone a football shirt for a lot of money, or a scarf or whatever else, because there is that dog-whistle—the phrase that Kieran uses—that this is a financial investment. I think that absolutely all of it is about financial investment.

Q63 **Damian Green:** In a sense, the fans are being conned into thinking that this is a financial investment when actually it is not, and the clubs are just working out new ways to extract more money from their existing fan base. Is that your basic proposition?

Joey D'Urso: Yes. I think these companies are finding stories to tell about why you should buy these digital assets that are different from, "The line will go up and you could get rich like your neighbour who got a new garage because he bought Bitcoin in 2009." There is this hype about these tokens because they have made some real people tangibly rich, and everyone wants to be that next person.

Q64 **Damian Green:** Thinking about practical recommendations this Committee could make, do you think that the threat of financial services-style regulation is needed to stop relatively financially unsophisticated innocent people getting involved in this kind of quasi-investment?

Joey D'Urso: That sounds sensible. One of the problems you will have is that lots of these companies span multiple jurisdictions, so it is a hard thing to do, but that certainly sounds like a good idea. I think that the leagues also have a big responsibility here. They do not take any interest in the commercial deals of their clubs. I think that is a bad set-up. The



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league will have nothing to say about a commercial deal of a particular partner—silence.

- Q65 **Damian Green:** However, an independent football regulator, which appears to be coming, might well. This might be another burden to load on to the poor soul who will be the football regulator.

Joey D'Urso: That is something that Kieran knows a lot more about than me. Yes, I do, although I don't think this is necessarily a specifically football thing. Football is the means by which these are sold. Expertise to get under the skin of what is going on is financial expertise rather than football expertise. I think that there are many good things about the regulator, and that may be another topic. I don't think those things are necessarily tied together.

Kieran Maguire: Regarding what potentially could be done, we have significant advertising now on packets of cigarettes, "This is going to damage your health". I think if the clubs were honest—but then this is a broader issue. Should this also be extended to the relationship between the gambling industry and football, to say, "Chances are, you will lose all your money. Therefore, buyer beware. If you want to enjoy it as a product just as I would enjoy buying a shirt or any other product, then fine. This is not something we would recommend as an investment"? It could come with some sort of health warning. Then it is down to the individual to make those decisions.

- Q66 **Chair:** Joey, you praised the ASA's actions before with Arsenal. It effectively fought them off to win the case. Do you think the ASA needs more teeth to deal with how these tokens are marketed in sports?

Joey D'Urso: Yes. As I said, the ASA have got to grips with this. There are these health warnings now. It is frankly a ludicrous sight. You will see a club tweet, "Do you want to win a selfie with one of our players?" and then a list of things, like it is advertising heart medication or something with risk of sudden death. It is bizarre.

- Q67 **Chair:** Is there a halfway house, though? The Premier League has now said it will take gambling companies off its shirts by the 2026 season. Will we see that potentially replaced by some of these NFTs and crypto companies?

Joey D'Urso: Six months to a year ago I would have said absolutely yes, but we are actually seeing some cryptocurrency companies disappear off shirts. WhaleFin, which sponsored Chelsea and Atlético Madrid, among others, has gone up in a puff of smoke. With lots of these companies, it is hard to tell who runs them or where the money really is. They span borders and continents and there is a lot of murky things as well. A lot of these companies do not last very long. Right now, I don't think that there is a huge wave of crypto money coming into football to replace the gambling, but that could change, too.

Kieran Maguire: Certainly, there is interest from the digital industry in the benefits that football can bring. With the decision to remove front-of-



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shirt gambling sponsorship, we will still have shirt sleeve sponsorship, potentially training kit sponsorship, and there will be individual sponsorship arrangements between football clubs and the gambling industry.

The gambling industry has the biggest pockets at present. Therefore, if you talk to a club's commercial director, they will say that lots of people gamble. I gamble myself quite regularly on football, and it is not an illegal activity. Similarly, the crypto industry is not an illegal activity. Therefore, there is a case for allowing it to advertise in football.

Q68 Chair: Has most of the damage been done already? If you are looking at the fact that most of these cryptocurrencies are going up in smoke, to a degree is this after the Lord Mayor's show—people have already been ripped off?

Joey D'Urso: Yes, I think so. We cannot predict the future, but definitely a lot of damage has been done. I think that this industry has taken a huge credibility whack, which means I cannot really see it hitting the heights it did 18 months ago, obviously with the caveat: who can predict the future?

Q69 Chair: Presumably, the only way in which it could hit the heights would be if it was offering something more tangible backing up the NFT.

Joey D'Urso: Yes, but then what is the point of the NFT? A membership of a football club, which I suppose is just a line on a database on the club's computer, does all those things. The phrase, "a solution looking for a problem", has been used about NFT. This new technology exists. It is out there and, because it works as a financial asset to be traded, people are desperate to spin some story that there is this exciting technological innovation out there, whether that is art or fan engagement. It is desperately looking for a legitimate story for financial trading.

Chair: Thank you very much. That concludes our session today. Joey D'Urso and Kieran Maguire, thank you.