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# Can a Trustee Hold Bitcoin? What the Trustee Act 2000 Asks of Trustees Who Invest In, and Keep, Bitcoin

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The Trustee Act 2000 does not mention bitcoin, yet its default rules reach a bitcoin holding in two ways. The investment duties apply, subject to the trust deed on the power to invest. The custody rules sit less comfortably, and whether a single trustee who holds the only private key has been “appointed” as a custodian is a question the sources we read do not answer.

Picture a family trust that owns bitcoin. One trustee holds the only private key. That trustee dies, loses capacity or cannot be reached. Who can move the coins, and which rules govern how the key was held in the first place? This is an illustrative scenario, not a reported case. It shows where two bodies of rules, one legal and one technical, meet.

**The Trustee Act 2000 does not mention bitcoin or digital assets, yet its default rules for trusts in England and Wales reach a bitcoin holding in two distinct ways. The power to invest is subject to the trust deed; the duties that come with investing — suitability, diversification, periodic review and proper advice — apply whenever trustees exercise a power of investment, whether it comes from the Act or from the deed. The custody rules are where bitcoin sits less comfortably: the Act limits whom trustees may appoint to keep trust assets, and neither the Act nor the commentary we read says whether a single trustee who holds the only private key has been "appointed" as a custodian at all. Legal authority to hold bitcoin, the duty to manage it, and the practical control that the keys confer are three separate questions, and the statute answers the first two more clearly than the third.**

## The question

When bitcoin enters a trust in England and Wales — settled by a family member, or bought by the trustees — what does the Trustee Act 2000 permit, what does it require, and where do its rules on custodians meet the practical fact that whoever controls the private keys controls the coins?

## Method and sample window

We read the relevant provisions of the Trustee Act 2000 on legislation.gov.uk (sections 1, 3 to 6, 17 to 20, 22 and 23, and Schedule 1), the Explanatory Notes to section 3, and the Law Commission's announcement of the Property (Digital Assets etc) Act 2025. We compared them with four pieces of practitioner commentary for trustees published between January 2022 and March 2025 (Withers; Mishcon Private, writing in eprivateclient; Farrer & Co; Kingsley Napley). The Hogan Lovells Cadwalader item in the sources list is background on the 2025 Act's commencement, not practitioner commentary for trustees, and the Blockchain Commons tutorial is cited only for how multisignature arrangements work. Research was carried out on 2 November 2026.

**How we weigh the sources.** The statute states what the law is. The Explanatory Notes explain the government's intention but are not law. Practitioner commentary shows how specialists read the law and what they recommend; a recommendation is not a statutory requirement. In the searches we ran, we found no reported English judgment applying the Trustee Act 2000 to a trust holding bitcoin; that is a gap in the record we searched, not proof of a gap in the law, and the absence of a case shows neither that any practice is lawful nor that it is unlawful.

This piece assesses the default statutory position. It does not examine any particular trust deed, and trust deeds can widen, narrow or exclude the statutory powers, and can exclude the statutory duty of care. It covers England and Wales only.

## 1. Cryptoassets are treated as capable of being held on trust

The Property (Digital Assets etc) Act 2025 received Royal Assent on 2 December 2025. The Law Commission describes it as making clear that a thing is not prevented from being the object of personal property rights merely because it is neither a thing in possession nor a thing in action, the two existing categories, and as leaving the courts to develop the third category. The Law Commission's announcement refers to crypto-tokens and non-fungible tokens; it does not name bitcoin or trusts. Before the Act, Farrer & Co's guidance for trustees (October 2023) already stated that cryptoassets are capable of being the subject of a trust. We read the Law Commission's summary, not the text of the 2025 Act itself.

## 2. The general power of investment is wide, and the trust deed comes first

Section 3(1) of the Trustee Act 2000 provides that a trustee "may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust". Section 3(3) excludes investment in land other than loans secured on land. Section 6 makes the general power of investment subject to any restriction or exclusion imposed by the trust instrument.

The Act does not define "investment". The Explanatory Notes say so ("'Investment' is not defined in the Act") and state that the general power of investment permits trustees "to invest assets in a way which is expected to produce an income or capital return" (paragraph 22). On that description, an asset held for a capital return rather than income is within the intended scope, although the Notes explain the government's intention and are not law.

The practical question then turns on the wording of the deed. Kingsley Napley (March 2025) notes that trust wording may distinguish between making investments and investing in securities, and that not all cryptoassets are likely to be classed as securities, so a trustee whose power is limited to securities may be prevented from investing in them. Farrer & Co (October 2023) takes the view that a power to invest in such securities as the trustees think fit would not include cryptoassets. Withers (August 2022) says that deed provisions expressly permitting speculative or higher-risk investments may provide a degree of comfort that investing in cryptoassets would be within the scope of the trustees' mandated authority. These are practitioners' readings, not court decisions.

## 3. The investment duties apply in full

Section 4(1) provides: “In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria”. Those criteria are “the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained”, and “the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust” (section 4(3)). Section 4(2) adds that a trustee “must from time to time review the investments of the trust” and consider whether they should be varied. Section 6 makes the general power of investment, not these duties, subject to the trust instrument.

Section 5 requires a trustee to obtain and consider proper advice before exercising any power of investment and when reviewing investments, unless the trustee reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so. Proper advice is the advice of a person the trustee reasonably believes to be qualified to give it by ability in and practical experience of financial and other matters relating to the proposed investment (section 5(4)). Kingsley Napley observes that the availability of trusted, regulated specialist advisers for cryptoassets may be limited.

Two points of precision. First, the criteria apply to investments “proposed to be made or retained”, so they are engaged by bitcoin a settlor has put into the trust, not only by bitcoin the trustees choose to buy. Second, the statutory duty of care in section 1 applies when trustees exercise any power of investment, however conferred, and when they carry out the section 4 and 5 duties (Schedule 1, paragraph 1). For a trustee who acts in the course of a business or profession, it has regard to the special knowledge or experience it is reasonable to expect of a person acting in that kind of business or profession (section 1(1)(b)). Farrer & Co’s view is that the standard expected of professional trustees is likely to be higher than that of lay trustees.

**What these duties may mean when the investment is bitcoin.** The Act does not say. The following are questions a trustee would need to be able to answer, not statements of what the law requires. Suitability concerns “investments of the same kind”, so trustees may need to ask what share of the trust fund the bitcoin represents and why that share suits this trust’s purposes and beneficiaries. Diversification applies “in so far as is appropriate to the circumstances of the trust”, so a bitcoin holding that grows to dominate a fund, for example one a settlor contributed, may prompt a documented review. The review duty in section 4(2) applies “from time to time”, so the timing and reasoning of reviews is itself a matter for the records. We did not find a source in our sample that sets a percentage or a review frequency for bitcoin.

## 4. The Act limits whom trustees may appoint as a custodian

Section 17 gives trustees a power to appoint a custodian, defined as a person who “undertakes the safe custody of the assets” (or of documents or records concerning them); the appointment must be in or evidenced in writing. Section 17 is a power, not a duty. (Section 18 requires trustees to

appoint a custodian for bearer securities unless the trust instrument permits otherwise; we found no source treating bitcoin as a bearer security and do not suggest that it is one.)

Section 19 then restricts who may be appointed. A person may not be appointed as a nominee or custodian unless one of three conditions is met: the person carries on a business which consists of or includes acting as a nominee or custodian; the person is a body corporate controlled by the trustees; or the person is a body corporate recognised under section 9 of the Administration of Justice Act 1985. Section 19(5), which is expressed to be subject to subsections (1) and (4), says the persons trustees may appoint include one of their number if that one is a trust corporation, or two or more of their number if they are to act as joint custodians. (Subsection (4) concerns Charity Commission guidance for charitable trusts.)

On our plain reading, a family member or friend who is not a trustee, and who does not carry on a custody business, does not meet any of the three conditions. Because section 19(5) is expressed to be subject to subsection (1), the text suggests that two lay trustees appointed as joint custodians would still need to meet one of the section 19(2) conditions. We found no commentary or case confirming how that applies to individual lay trustees, and this reading has not been checked by a solicitor.

## 5. Custodian terms and liability

Section 20 allows trustees to appoint a custodian on such terms as they determine, but they may not agree certain terms unless it is reasonably necessary to do so. Those restricted terms are a term permitting the custodian to appoint a substitute, a term restricting the liability of the custodian or its substitute to the trustees or beneficiaries, and a term permitting the custodian to act in circumstances capable of giving rise to a conflict of interest (section 20(3)). A custody agreement for bitcoin that contains any of these terms therefore engages the “reasonably necessary” test. We did not survey custodians’ terms and make no claim about how many contain such terms.

While a custodian continues to act, section 22 requires the trustees to keep the arrangements under review, to consider whether there is a need to exercise any power of intervention (which includes giving directions and revoking the appointment) and, if they consider there is a need, to exercise it. Section 23 provides that a trustee is not liable for any act or default of the custodian unless the trustee failed to comply with the duty of care when entering into the arrangements or when carrying out the section 22 review duties.

Section 23 is framed around the act or default of an agent, nominee or custodian, and its test refers to the duty of care in Schedule 1, paragraph 3, which applies when entering into arrangements to authorise an agent or appoint a nominee or custodian (including appointments under section 17 or 18) and when carrying out the section 22 review duties. Its text does not address a trustee’s own handling of keys where no appointment has been made.

## 6. Where the keys sit is the unresolved question

The commentary we read treats key management as a central trustee decision. Mishcon Private (writing in eprivateclient) describes private keys as giving those with access to them the right to sign transactions, and says trustees will need to decide how keys are stored and who is responsible for that. Kingsley Napley says access credentials, such as a private key, seed phrase or exchange login, must be safeguarded and protected, and that security measures must be balanced against cost, the technical expertise required and the ease and speed of transacting. Withers says trustees will also need to consider whether a settlor who retains copies of the private key has properly divested themselves of the asset.

None of the sources we read addresses whether a single lay trustee who keeps the only key has, in law, been appointed as a custodian under section 17 — which would engage the section 19 restrictions — or is simply a trustee holding trust property. Nor do they address whether an arrangement that requires two or more trustees' keys to move the coins corresponds to "joint custodians" under section 19(5). These are open questions on the record we examined. We do not offer an answer to them.

## 7. Three ways of arranging control of the keys

The legal questions above look different depending on how control is arranged. We describe three arrangements and what the statute's text would engage in each. These are descriptions, not legal conclusions, and real arrangements vary.

**One trustee holds the only key.** Farrer & Co notes that if the private key is lost, there is no other way to access the cryptocurrency. Where one trustee holds the only key, loss of that person's access, through death, incapacity or loss of the key, is therefore a practical risk to the whole holding. Whether this person has been "appointed" as a custodian, and so is caught by section 19, is the question the sources do not answer.

**Several trustees hold separate keys in a multisignature arrangement.** In a multisignature arrangement a set number of signatures out of a larger group of keys is required to move the coins (Blockchain Commons describes this as "m" of "n"). Where fewer keys are required than exist, no single trustee can act alone and, on that description, the coins can still be moved after one key is lost if the remaining keys meet the threshold. Whether this is a collective holding by the trustees or an appointment of "joint custodians" under section 19(5) is again not addressed in the sources we read.

**A third party holds the keys.** If a business that acts as a custodian is appointed in writing, sections 17, 19(2)(a), 20, 22 and 23 apply on their face: the appointment, the custodian's eligibility, the terms the trustees may agree, the review duty and the limit on the trustees' liability. The details depend on whether the third party holds all the keys or only one of several, which we did not examine.

## What a trust's own records can establish

For families and trustees, the findings point to matters that a trust's own documents and records can establish:

- **The deed:** what investment power it gives, whether it limits investment to "securities" or similar, and whether it addresses digital assets, key holding or trustee liability.
- **Advice and review:** whether advice was obtained and considered under section 5 before bitcoin was bought or retained, or a reasoned conclusion recorded that advice was unnecessary, and when the holding is next due for review under section 4(2).
- **Who holds the keys:** which trustee or third party can move the coins, under what written arrangement, and whether that person meets a condition in section 19 if the arrangement is an appointment as custodian.
- **Custodian terms:** where a custodian is used, whether its terms include a substitute, liability-limitation or conflict term listed in section 20(3), and whether the trustees recorded why such a term was reasonably necessary.
- **Settlor divestment:** whether the settlor retains any copy of the keys after settlement.

## The case for the opposing view

A reasonable reading is that the Act needs no change for bitcoin. Its investment power is wide and does not depend on any particular technology; the suitability, diversification, review and advice duties are general enough to govern a volatile asset; and the 2025 Act, as the Law Commission describes it, removes an obstacle to treating digital assets as property without disturbing the rest of trust law. On this view the custody questions are drafting questions: a well-drafted deed can authorise particular holding arrangements and address the trustees' liability (the duty of care does not apply "if or in so far as it appears from the trust instrument that the duty is not meant to apply", Schedule 1, paragraph 7), and trustees who want the protection of section 23 can appoint a business that acts as a custodian. None of the Farrer & Co, Withers or Kingsley Napley pieces we read calls for new legislation; each works through existing duties and the wording of the trust deed.

That reading is consistent with our findings. The gap we identify is narrower: the statute's default custody rules do not mention private keys.

## Conclusion

The evidence supports a measured conclusion rather than a claim that trust law fails bitcoin holders. On the commentary we read and the Law Commission's account of the 2025 Act, cryptoassets, bitcoin among them, can be held in a trust in England and Wales; whether trustees

may invest in bitcoin depends first on the trust deed; and when they do hold it, the statutory investment duties apply, including to bitcoin a settlor contributed. What the evidence does not show is how the Act's custody rules apply when a trustee holds the keys personally. The legal framework for trustees and the technical framework for control of bitcoin do not obviously line up, and that mismatch is the central finding of this piece.

## The View From The Edge

**The property question has moved on; the custody question has not.** Since December 2025 the law has said that a thing is not prevented from being the object of personal property rights merely because it is neither a thing in possession nor a thing in action. The questions that remain open sit in the deed and in the key arrangements.

**Investment and custody are different decisions.** Trustees can meet the investment duties and still leave open who can move the coins and on what authority.

**Unanswered is not the same as unlawful.** A gap in guidance and case law is a reason for clear documentation, not a finding that any existing arrangement is wrong.

Related reading: Losing Capacity, Not Life, What Splitting the Keys Changes and Alderlux Succession.

## Basis and limits

This piece describes the default provisions of the Trustee Act 2000 as they apply in England and Wales, the government's Explanatory Notes and published practitioner commentary. It does not examine any particular trust deed, Scottish or Northern Irish law, offshore trusts, trusts that hold bitcoin through a company, tax, or anti-money-laundering obligations. We read the Law Commission's summary of the Property (Digital Assets etc) Act 2025, not the Act's text. We did not read sections 11 to 16 of the Trustee Act 2000 (agents and nominees) in full, or the Explanatory Notes to Part IV (custodians). The practitioner commentary is dated between January 2022 and March 2025 and in part predates the 2025 Act. We found no reported judgment applying the Trustee Act 2000 to bitcoin. This piece has not been reviewed by a solicitor, and its reading of section 19 in particular is ours. Statutory text was checked against legislation.gov.uk's revised version on 2 November 2026; the site notes that revised legislation may not be fully up to date.

**Alderlux advises families on Bitcoin custody and succession, so we have a commercial interest in this problem being taken seriously.** Every point above can be checked against the statute and sources listed below without involving Alderlux.

## Sources


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