.

MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-28 ta' Jannar, 2026

Appell Inferjuri Numru 35/2025 LM

Alan Coggs (Passaport Ingliż Nru. 136898901)
('l-appellant')

vs.

Foris DAX MT Limited (C 88392)
('l-appellat')

Il-Qorti,

<u>Preliminari</u>

1. Dan huwa appell magħmul mir-rikorrent **Alan Coggs (Passaport Ingliż Nru. 136898901)**[minn issa 'l quddiem 'l-appellant'] kif rappreżentat f'dawn il-proċeduri mill-Avukat Dr John Refalo, mid-deċiżjoni tal-Arbitru għas-Servizzi Finanzjarji [minn issa 'l quddiem 'l-Arbitru'], mogħtija fil-25 t'April, 2025, [minn issa 'l quddiem 'id-deċiżjoni appellata'], li permezz tagħha iddeċieda l-ilment

tiegħu fil-konfront tas-soċjetà intimata **Foris DAX MT Limited (C 88392)**[minn issa 'l quddiem 'is-soċjetà appellata'], billi ddikjara kif ġej:

"Decision

The Arbiter sympathises with the Complainant for the ordeal he suffered as a victim of a scam but, in the particular circumstances of this case, he cannot accept the Complainant's request for compensation.

The Arbiter is, however, of the opinion that the transaction of GBP £130,000 above referred to and other subsequent interventions should have triggered enough suspicion to require the Service Provider not only to question the clean provenance of the funds for AML/CFT purposes, but also to discuss the possibility of fraud with the Complainant and/or take other measures within its powers as outlined above. This view is fortified by the discussion held between the Complainant and a representative of the Service Provider on 19 April 2022, 12 May 2022 and 18 June 2022.

Crypto.com should have the experience to judge that the situation that prevailed at the time and the Complainant's comments carried the smell of fraud and should have extended in this direction the conversation they were having with the client and intervene appropriately.

However, the Arbiter is of the opinion that even if the Service Provider would have issued as a minimum due warning according to their fiduciary obligations, it is highly unlikely, given the particular circumstances, that the Complainant would have given heed to such warnings and withheld payments. The Arbiter's view is supported by the fact that the Complainant disregarded warnings from independent competent persons, such as his pension advisers and his UK Bank, and obstinately continued to put his misplaced faith in the fraudsters to the point that the UK Police had practically to force him to withhold the last payment and accept the reality of the scam. He stated:

"And it was only when the Cybercrime Police from my local county actually came to the house and told me it was a scam, that I realized it was a scam. So, up to that point, I was convinced it was a genuine operation." *(fn. nru. 129: p.266).*

Consequently, the Arbiter sees no direct causation between the Service Provider's failure in their fiduciary duties and the losses claimed by the Complainant. The Service Provider's failure is considered as a regulatory issue which should be handled by the Regulator (MFSA) (fn. nru. 130: Malta Financial Services Authority) to whom a copy of this decision will be submitted for their consideration.

Accordingly, the Arbiter dismisses the claim for compensation.

Each party is to bear its own legal costs of these proceedings."

Fatti

2. Ir-rikorrent sar klijent tas-soċjetà intimata meta huwa ġie approvat sabiex juża kartiera elettronika, '*wallet',* hekk kif huwa kien applika għaliha mill-applikazzjoni *Crypto.com.* Ir-rikorrent huwa ċittadin tar-Renju Unit, li spiċċa vittma ta' frodi f'forma ta' '*investment scam'* fil-valur ta' £609,096.14, wara li huwa kien għamel trasferimenti mill-imsemmija kartiera pprovduta mis-soċjetà intimata, lill-pjattaforma falza bl-isem ta' *RoyalFX.*

Mertu

3. Permezz tar-rikors tiegħu, ir-rikorrent jallega li s-soċjetà intimata ma pproteġitx lill-konsumaturi tagħha milli jaqgħu vittma ta' *scams*, liema fattur wassal għal-dannu lill-konsumaturi, liema dannu seta' jiġi evitat. Ir-rikorrenti qal li huwa ma kellux l-għarfien meħtieġ, u li kien għażel li juża *Crypto.com* hekk kif din kienet reklamata fuq l-*internet* bħala li kienet regolata fir-Renju Unit. Kompla li s-soċjetà intimata kienet naqset milli tavżah li l-attività fil-kont tiegħu kienet tirrispekkja *scam,* u li għalhekk *Crypto.com* ma kienx irnexxilha tidentifika il-*modus operandi* tal-i*scam,* u konsegwentement ma kienitx intervjeniet sabiex tipproteġih. Jgħid li kien biss wara li tilef l-assi tiegħu kollha li *Crypto.com* infurmatu li l-kartiera tiegħu kienet possibbilment involuta fi frodi, u din bl-ebda mod ma kienet ipprovat tirrikupra flusu, minkejja li l-flus kienu ttrasferiti f'kartiera oħra li kienet ukoll tinsab fuq il-pjattaforma tas-soċjetà intimata. Għalhekk huwa talab li jiġi rifuż is-somma ta' £609,096.14.

4. Is-soċjetà intimata wieġbet għal dan billi ipprovdiet l-istorja kornoloġika ta' tranżazzjonijiet mwettqa mir-rikorrent bejn il-25 ta' Jannar, 2022, u t-22 ta' Ġunju, 2022. Tgħid li f'dak il-perijodu, ir-rikorrent kien għamel numru ta' depożiti fil-munita GBP permezz ta' trasferimenti bankarji lejn il-kartiera *Fiat* tiegħu fl-applikazzjoni *Crypto.com.* Huwa imbagħad qaleb dawk l-ammonti għal *bitcoin*. F'okkażjoni minnhom anki xtara *bitcoin* b'mod direct mill-istess applikazzjoni. Il-*bitcoin* akkwistati mir-rikorrent kienu imbagħad kollha kemm huma ttrasferiti f'kartiera esterna. Tgħid li hija ma setgħetx tilqa' it-talba tar-rikorrent għar-rifużjoni, hekk kif kien huwa stess li ttrasferixxa dawk l-ammonti, u hija kienet qed issegwi id-direzzjonijiet mogħtija lilha mill-istess rikorrent. Tgħid ukoll li l-indirizz li r-rikorrent kien bagħat il-flus fuqu ma kienx tagħha, u għalhekk kwalunkwe *due diligence* dwar min kien is-sid tal-istess, kienet taqa' fuq il-provditur ta' dik il-kartiera esterna, u mhux fuqha. Tgħid ukoll li hija ma tistax tirrevoka trasferimenti ta' assi virtwali. Tagħmel riferiment wkoll għal Foris DAX MT Limited *'Terms of Use'* sabiex tissostanzja l-eċċezzjonijiet tagħha.

Id-Deċiżjoni Appellata

5. L-Arbitru, fid-deċiżjoni tiegħu tal-25 t'April, 2025, iddeċieda billi ċaħad it-talba għall-kumpens, u dan wara li għamel is-segwenti konsiderazzjonijiet:

> *"**Analysis and considerations***
>
> *Overview of transactions subject of this Complaint*
>
> *The Complainant made a series of transfers from his Bank in UK (HSBC) to his account on Crypto.com, whereby in total around GBP 650,000 were transferred over more than 30 transactions, (fn. nru. 52: p.11 – 12 & 183 – 216) of which:*
>
> - *8 transactions were lower than GBP 10,000*

- *13 transactions were between GBP 10,000 and below GBP 20,000*
- *13 transactions were between GBP 20,000 and GBP 25,000*
- *1 transaction was for a higher amount of GBP 130,000. (fn. nru. 53: Data from Table A below).*

Tables A to C below provide an overview of all the transactions authorised by the Complainant as explained and indicated in the Service Provider's reply. (fn. nru. 54: p.183 – 216).

Table A lists the deposits in GBP made by the Complainant to his Wallet with Crypto.com.

Table B lists the purchase of Bitcoin (BTC) he then made by exchanging GBP to BTC from his Fiat Wallet (or with a personal debit/credit card as indicated).

Table C then lists the subsequent withdrawals ensuing from his wallet where Bitcoin (BTC) was transferred to an external wallet address.

Table A

	Date	Deposits in GBP	Deposits in Crypto (BTC)
1	25-Jan-22	10,000	
2	25-Jan-22	5	
3	25-Jan-22		0.00274258 (Approx. EUR 88.77)
4	31-Jan-22	5,000	
5	04-Feb-22	7,500	
6	11-Feb-22	7,500	
7	24-Feb-22	16,020.34	
8	25-Feb-22	22,250	
9	01-Mar-22	25,000	
10	02-Mar-22	25,000	
11	10-Mar-22	15,000	
12	10-Mar-22	10,000	
13	13-Mar-22	15,000	
14	15-Mar-22	10,000	
15	16-Mar-22	25,000	
16	17-Mar-22	25,000	
17	26-Apr-22	20,000	
18	28-Apr-22	130,000	
19	28-Apr-22	16,700	

Table B

Date	Fiat money (GBP) paid to purchase Crypto	BTC Purchased
25-Jan-22	9,989.89	0.3576616
31-Jan-22	5,006.52	0.177
04-Feb-22	7,507.31	0.263952
11-Feb-22	7,497.04	0.2294
24-Feb-22	16,019	0.5952528
28-Feb-22	22,255.19	0.7645927
01-Mar-22	24,705.08	0.7354
02-Mar-22	25,291.02	0.7521338
10-Mar-22	25,003.73	0.8219048
14-Mar-22	4,537.35 *	0.15
14-Mar-22	15,000.05	0.4945404
15-Mar-22	9,999.54	0.332
17-Mar-22	49,997.19	1.5910563
28-Apr-22	149,989.72	4.6399285
28-Apr-22	16,697.18	0.517337
28-Apr-22	24.03	0.000748
11-May-22	24,994.96	0.9476198
11-May-22	2.82	0.0001085
12-May-22	25,004.41	1.0105

Table C

Date	Transfer of BTC to external wallet (excl. fees)
27-Jan-22	0.35980418
31-Jan-22	0.1764
04-Feb-22	0.2633572
11-Feb-22	0.2288
24-Feb-22	0.5946528
28-Feb-22	0.7639927
01-Mar-22	0.7348
02-Mar-22	0.7515338
10-Mar-22	0.8213048
14-Mar-22	0.6439404
15-Mar-22	0.3314
17-Mar-22	1.5904563
28-Apr-22	4.63932852
28-Apr-22	0.517485
11-May-22	0.9790731
12-May-22	1.0099
13-May-22	0.9830788
16-May-22	1.0174
31-May-22	0.9796

20	29-Apr-22		0.0319448 (Approx. EUR 1,209.48)	13-May-22	24,933.68	0.9836788	02-Jun-22	1.0254
21	11-May-22	25,000		16-May-22	25,048.61	1.018	07-Jun-22	0.327908
22	12-May-22	25,000		31-May-22	25,016.63	0.9802	09-Jun-22	1.6978561
23	13-May-22	25,000		02-Jun-22	24,989.42	1.026	10-Jun-22	0.4623816
24	16-May-22	5,000		07-Jun-22	7,999.83	0.3280021	10-Jun-22	0.4616823
25	16-May-22	20,000		07-Jun-22	12.3	0.0005059	14-Jun-22	0.5544
26	31-May-22	25,000		09-Jun-22	41,972.27	1.6984561	16-Jun-22	0.6164694
27	02-Jun-22	25,000		10-Jun-22	11,394.14	0.4618485	22-Jun-22	0.7896334
28	07-Jun-22	8,000		10-Jun-22	27.89	0.0011331	22-Jun-22	0.5812385
29	08-Jun-22	21,000		10-Jun-22	11,262.85	0.4622823	**Total**	**BTC 23.9032769**
30	08-Jun-22	4,000		14-Jun-22	10,501.78	0.555		
31	09-Jun-22	17,000		16-Jun-22	10,800.73	0.6170694		
32	10-Jun-22	11,400		22-Jun-22	13,375.76	0.7902334		
33	10-Jun-22	11,260.80		22-Jun-22	9,785.55	0.5818385		
34	14-Jun-22	10,500		**Total**	**GBP 656,643.47**	**BTC 23.8853843**		
35	16-Jun-22	10,800						
36	21-Jun-22	13,375						
37	22-Jun-22	9,785						
	Total	**GBP 652,096**	**BTC 0.0346**					

* Purchase by personal debit/credit card (P.193)

Summary of key aspects and main submissions

Various claims and extensive submissions were provided by the parties during the proceedings of this case. The Arbiter shall focus on the main pertinent aspects.

The key aspect of this Complaint basically revolves around whether the Complainant is correct in arguing that the Service Provider failed in its duty of care to protect him from falling victim to a scam. The Complainant argued that the Service Provider failed to spot the operation of the scam and had a duty to intervene and warn him that the history of transactions on his account and his activities were signalling suspicion of fraud.

On its part, the Service Provider maintains that once they verified that the transactions were properly authorised by the Complainant, their duty was simply related to ensuring that the money being transferred by the Complainant from his UK bank account was clean and raised no AML/FT suspicions as to the source of such funds.

The Service Provider further argued that they had no obligations to issue any warnings to the client once they had no reason to suspect that the unhosted wallet

where BTC were being transferred had any alert or suspicion of fraudulent activity. The Service Provider also pointed out that the Complainant had ignored the warnings provided to him previously by other financial entities regarding the possibility of the scam.

The Arbiter shall next proceed to consider the following key aspects pertinent to the case in question in order to reach his decision on this Complaint:

(1) The regulatory requirements applicable to the Service Provider at the time and whether Foris DAX was subject to the duty of care and fiduciary duty.

(2) The reasons why, if any, the Service Provider was required to intervene and warn the Complainant in the particular case in question, in terms of the applicable duties and obligations.

(3) The Complainant's actions, the prior warnings he ignored, and the relevant context.

(4) The extent of damages arising to the Complainant, if any, from the actions or lack thereof of the Service Provider.

(5) Responsibility for the losses incurred taking into consideration the parties' actions and relevant aspects.

A). Applicable regulatory framework and other pertinent matters

i. <u>VFA Framework</u>

At the time of the events giving rise to this Complaint, Foris DAX was the holder of a Class 3 VFAA licence granted by the Malta Financial Services Authority ('MFSA') under the Virtual Financial Assets Act, 2018, Chapter 590 of the Laws of Malta ('VFA Act').

Apart from the relevant provisions under the VFAA, and the Virtual Financial Assets Regulations, 2018 (L.N. 357 of 2018) issued under the same Act, Foris DAX was also subject to the rules outlined in the Virtual Financial Assets Rulebook ('the VFA Rulebook') issued by the MFSA. The said rulebook complements the VFAA by detailing inter alia ongoing obligations applicable for VFA Service Providers.

Chapter 3 of the VFA Rulebook specifically includes the rules applicable for VFA Service Providers which such providers must adhere to.

The Arbiter further notes that in the year 2020, the MFSA has also issued a 'harmonised baseline guidance on Technology Arrangements' *(fn. nru. 55: Guidance 1.1.2, Title 1,* 'Scope and Application' *of the* 'Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements'*.) applicable to*

its licence holders (including under the Virtual Financial Assets) titled 'Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements' ('the Guidance'*).*

The Arbiter shall refer to the said framework in the consideration of this Complaint.

ii. AML/CFT Framework

Further to the Prevention of Money Laundering Act (Cap. 373) and Prevention of Money Laundering and Funding of Terrorism Regulations ('PMLFTR'), the Financial Intelligence Analysis Unit (FIAU) issued Implementing Procedures including on the 'Application of Anti-Money Laundering and Countering the Funding of Terrorism Obligations to the Virtual Financial Assets Sector'. (*fn. nru. 56: https://fiaumalta.org/app/uploads/2020/09/20200918_IPsII_VFAs.pdf) These are* 'sector-specific Implementing Procedures [which] complement the Implementing Procedures – Part I [issued by FIAU] and are to be read in conjunction therewith'*. (fn. nru. 57; Page 6 of the FIAU's Implementing Procedures on the* 'Application of Anti-Money Laundering and Countering the Funding of Terrorism Obligations to the Virtual Financial Assets Sector'*). Section 2.3 of these Implementing Procedures detail the monitoring and transaction records obligations of VFA licensed entities.*

It is noted that the VFA Act mainly imposes transaction monitoring obligations on the Service Provider for the proper execution of their duties for Anti Money Laundering ('AML') and Combating of Financing of Terrorism ('CFT') obligations in terms of the local AML and CFT legislative framework.

Failures of the Service Provider in respect of AML/CFT are not in the remit of the OAFS and should be addressed to the FIAU. In the course of these procedures, no such failure was indeed alleged, and the many enquiries made during the course of the relationship to seek clarity about the source of funds being transferred support the Service Provider's adherence with the obligations applicable regarding the verification of the source of funds. The Arbiter shall accordingly not consider compliance or otherwise with AML/CFT obligations in this case.

iii. MiCA and the Travel Rule

As to the identification of the recipient of the funds, it is noted that the Service Provider correctly maintains that MiCA (Fn. nru. 58: EU Directive 2023/1114 on markets in crypto assets https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32023R1114) and Travel Rule (fn. nru. 59: EU Directive 2023/1113-https://eur-lex.europa.eu/legalcontent/AUTO/?uri=CELEX:32023R1113&qid=1740401464257&ri

d=1 and EBA Guidelines on Travel Rule https://www.eba.europa.eu/sites/default/files/2024-07/6de6e9b9-0ed9-49cd-985d-c0834b5b4356/Travel%20Rule%20Guidelines.pdf) obligations which entered into force in 2025 and which give more protection to consumers by having more transparency of the owners of the recipient wallets were not applicable at the time of the events covered in this Complaint which happened in 2022. The Arbiter shall thus not consider the MiCA provisions and Travel Rule obligations for the purposes of this Complaint.

iv. Other - Technical Note

A Technical Note (issued in 2025) with guidance on complaints related to pig butchering was recently published by the Arbiter. This Technical Note was referred to and reproduced as part of the Complainant's final submissions. (fn. nru. 60: P. 474 & 485 – 503) In respect of VFA licencees the Technical Note states as follows:

"Virtual Financial Assets Service Providers (VASPs)

VASPs should be aware that with the coming into force of Regulation (EU) 2023/1113 and the Travel Rule Guidelines (fn. nru. 61: Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 - EBA/GL/2024/11 of 04/07/2024 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1113 https://www.eba.europa.eu/publications-and-media/press-releases/eba-issues-travel-rule-guidance-tackle- money-laundering-and-terrorist-financing-transfers-funds-and) their obligation to have reliable records on the owners of external (unhosted) wallets increases exponentially as from 30 December 2024.

Arguments that they have no means of knowing who are the owners of external wallets which have been whitelisted for payments by their client will lose their force.

VASPs have been long encouraged by the Office of the Arbiter (in decisions dating back from 2022), (fn. nru. 62: Such as Case ASF 158/2021) for the devise of enhanced mechanisms to mitigate the occurrence of customers falling victims to such scams.

Furthermore, in the Arbiter's decisions of recent months there is a recommendation that VASPs should enhance their on-boarding processes where retail customers are concerned warning them that custodial wallets may be used by scammers promoting get-rich-quick schemes as a route to empty the bank accounts of retail customers and disappear such funds in the complex web of

blockchain anonymous transactions. (fn. nru. 63: Such as Case ASF 069/2024).**Compliance with such recommendations or lack thereof will be taken into consideration in future complaint adjudications."** *(fn. nru. 64: Emphasis added by the Arbiter).*

The Arbiter will not apply the provisions of the Technical Notes retroactively. ***Hence, for the avoidance of any doubt, the said Technical Note is not applicable to the case in question.***

v. Duty of Care and Fiduciary Obligations

It is noted that Article 27 of the VFA Act states:

"27. (1) Licence holders shall act honestly, fairly and professionally and shall comply with the requirements laid down in this Act and any regulations made and rules issued thereunder, as well as with other legal and regulatory requirements as may be applicable.

(2) A licence holder shall be subject to fiduciary obligations as established in the Civil Code (CAP 16) in so far as applicable." (fn. nru. 65: Emphasis added by the Arbiter).

Article 1124A (1)(a) of the Civil Code (Chapter 16 of the Laws of Malta), in turn further provides the following:

"1124A. (1) **Fiduciary obligations arise in virtue of law, contract, quasi-contract**, unilateral declarations including wills, trusts, **assumption of office or behaviour whenever a person** (the ''fiduciary'') –

(a) **owes a duty to protect the interests of another person and it shall be presumed that such an obligation where a fiduciary acts in or occupies a position of trust is in favour of another person;** …" *(fn. nru. 66: Emphasis added by the Arbiter).*

It is further to be pointed out that one of the High-Level Principles outlined in Section 2, Title 1 'General Scope and High Level Principles' *Chapter 3, Virtual Financial Assets Rules for VFA Service Providers of the VFA Rulebook, that applied to the Service Provider at the time of the disputed transactions in 2022, provides that:*

"R3-1.2.1 VFA Service Providers shall act in an ethical manner taking into consideration the best interests of their clients and the integrity of Malta's financial system."

It is also noted that Legal Notice 357 of 2018, Virtual Financial Assets Regulations, 2018 issued under the VFA Act, furthermore, outlined various provisions relevant and

applicable to the Service Provider at the time. Article 14 (1) and (7) of the said Regulations, in particular, which dealt with the 'Functions and duties of the subject person' provided the following:

> "14. (1) A subject person having the control of assets belonging to a client shall safeguard such assets and the interest of the client therein.
> …
> (7) The subject person shall make appropriate arrangements for the protection of clients' assets held under control and shall ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss and which permit the delivery of such assets only in accordance with the terms and conditions of the agreement entered into with the client."

As inferred in its final submissions, the Service Provider seems to contest the existence of a duty of care applicable to its activities beyond its AML/CFT obligations. (fn. nru. 67: P. 504). This view is not shared by the Arbiter in all circusmtances.

The Arbiter is of the view that for the general fiduciary obligations to apply in the context of the VFA ACT, there must be something which is truly out of the ordinary and which should really act in a conspicuous manner as an out of norm transaction which triggers the application of such general fiduciary duties.

The duty to protect and safeguard assets and interests of the client needs to be seen in the wider context and not just limited to measures to prevent unauthorised access. Consideration needs to be taken of the Service Provider's position vis-à-vis its customer and interplay and relevance of the various provisions quoted including other provisions relating to the PMLFTR framework and the Service Provider's own terms and conditions as shall be considered further on in this decision below.

The Arbiter thus considers that the Service Provider did have, in terms of the provisions outlined in this decision, a duty of care and fiduciary obligations towards its customer, the Complainant, when considering certain particular aspects as shall be delved further in this decision.

Any argument, that given the particular circumstances of this case, fiduciary duties as provided by the Civil Code apply given that Article 27 of the VFA Act is applicable only for the purpose of AML/CFT, is not considered by the Arbiter as a valid argument.

The Arbiter is of the view that general fiduciary obligations in the context of the VFA Act apply in a wider context particularly in situations which are truly out of the ordinary and stand out in a conspicuous manner or which raise reasonable suspicion

of fraud or criminal intent and which accordingly trigger the application of such general fiduciary duties where appropriate intervention is necessary to uphold such duties.

B) Duty and need to intervene

A key issue which needs to be considered in this Complaint is whether the Service Provider had, in the Complainant's case, a duty to intervene given the suspicion of fraud that the Complainant claimed to have been displayed in his account activity. The Complainant pointed out that he had specifically notified Crypto.com on various occasions about his dealings where he specifically mentioned RoyalFX. (fn. nru. 68: E.g. During the hearing of 7 October 2024, the Complainant testified inter alia that 'Obviously, I have given several points of notice here on the platform I am engaging with, which was Royal FX' - *P. 268).*

i. <u>Claimed lack of due diligence by Crypto.com about RoyalFX</u>

The Complainant claimed that RoyalFX was known to Crypto.com as it was claimed this was a client of the Service Provider.

It has not been demonstrated nor emerged, however, that the alleged fraudster to whom the payment was made by the Complainant, was another Crypto.com App user and, thus, a client of the Service Provider in the first place. The transfer was rather indicated to have been done to an 'external wallet' *and hence the Service Provider had no information about the third party to whom the Complainant was actually transferring his crypto assets. Furthermore, the Complainant must have himself* 'whitelisted' *the address giving an all-clear signal for the transfer to be executed.*

Complainant's allegation that the 'beneficiary wallet (was) being hosted on the Crypto.com platform' *(fn. nru. 69: p. 3) has been emphatically denied by the Service Provider and has not been proven. Crypto.com alleged affirmative reply to Complainant's question whether the beneficiary wallet address was valid (fn. nru. 70: p. 275) does not equate to a confirmation that the wallet was hosted on Crypto.com.*

The Service Provider was accordingly not bound to make due diligence on RoyalFX in the absence of any client relationship between RoyalFX and Foris DAX. Moreover, ***due diligence on the trading platform used by the Complainant to carry out his trades was the responsibility of the Complainant and not an obligation of Foris DAX****.*

Another aspect that was raised is that the Service Provider should have undertaken certain checks on RoyalFX (which was mentioned to it multiple times by the Complainant during the communications that the Complainant had with Crypto.com). It was claimed that such checks should have been part of the AML/CFT checks given

that the Service Provider was aware that RoyalFX was the recipient of the 'staggering amount' *of funds that was deposited to the same wallet address by the Complainant. (fn. nru. 71: p.13).*

Whilst certain checks could possibly have been undertaken in such circumstances, the Service Provider cannot reasonably be expected to have carried out a comprehensive due diligence on RoyalFX.

The obligation for VFAs to identify the beneficial owners of unhosted wallets was not part of the regulatory regime at the time of events that gave rise to this complaint. VFAs obligations of due diligence relate to their own customers, in this case, the Complainant, not to owners of the unhosted wallets recipients of crypto assets transferred by their client.

Obligations for VFA's to identify such beneficiaries only entered into force in 2025 in terms of ***EU REGULATION 2023/1113 of 31 May 2023 on information accompanying transfer of funds and certain crypto assets*** *as further explained in the* ***EBA Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfer under Regulation EU 2023/1113 (Travel Rule Guidelines – reference EBA/GL/2024/11 of 04/07/2024).*** *(fn. nru. 72: In particular, article 4.8 para 76 – 90. https://www.eba.europa.eu/sites/default/files/2024-07/6de6e9b9-0ed9-49cd-985d-c0834b5b4356/Travel%20Rule%20Guidelines.pdf).*

Without entering into the merits of whether the Service Provider complied with AML/CFT requirements, the Arbiter rather takes cognisance of the applicable provisions with respect to the Complainant as its customer. For example, section 4.4 of the FIAU's Implementing Procedures Part I provides:

> "In terms of Regulation 7(1)(c) of the PMLFTR, subject persons are required to assess and, where appropriate, obtain information and/or documentation on the purpose and intended nature of the business relationship. In addition, subject persons are also required to establish the customer's business and risk profile. These requirements entail gathering and analysing information to:
>
> (a) determine whether a service and/or product being provided makes sense in the customer's situation and profile;
>
> …
>
> (e) carry out meaningful, ongoing monitoring since it will be able to understand and identify the expected behaviour, including the expected nature of transactions or activities, of the customer throughout the business relationship.
>
> 4.4.1 Purpose and Intended Nature of the Business Relationship

> Subject persons have to understand why a customer is requesting its services and/or products and how those services and/or products are expected to be used in the course of the business relationship".
>
> …
>
> In all cases, subject persons should have a good understanding of how the business relationship will be used so as to carry out proper monitoring, as well as to be able to determine that the product or service requested makes sense in view of the customer's profile …". *(fn. nru. 73: Page 133/134 of the FIAU's Implementing Procedures – Part I (Version: First Issued on 20 May 2021 & Last amended on 18 Oct 2021).).*

The above provides some further context on the nature of the assessment required to be done in respect of the customer. Such a background is more relevant to the case in hand.

ii. Claimed warning about RoyalFX

In his submissions, the Complainant also claimed that Crypto.com should have known about adverse information involving RoyalFX, given the warning issued by the FCA, UK.

The Arbiter notes that, as emerging during the hearing of 4 February 2025, there was a warning about the lack of authorisation held by RoyalFX to operate in the UK, with such warning issued by the FCA, UK in August 2023. (fn. nru. 74: P. 464 – 466; https://www.fca.org.uk/news/warnings/royalfx). This notice is, however, post the date of the disputed transactions and, for this reason, not considered by the Arbiter to be relevant for the purposes of this Complaint.

In its final submissions, the Complainant's representatives referred to a similar warning issued by the FCA on 25 June 2020 about "RoyalsFX". *(fn. nru. 75: P. 481; https://www.fca.org.uk/news/warnings/royalsfx).*

The Arbiter, however, notes that apart from the fact that the warning of June 2020 is about an entity with a slightly different name ('RoyalsFX' *as compared to* 'RoyalFX'*, the latter being the only name indicated by the Complainant during communications with Crypto.com) (fn. nru. 76: E.g. P. 475) the address indicated for* 'RoyalsFX' *in the FCA's notice of June 2020 was one in Switzerland. (fn. nru. 77: https://www.fca.org.uk/news/warnings/royalsfx). This location does not reflect the one with whom the Complainant was dealing with - that is, RoyalFX based in St Vincent & The Grenadines. Neither did the websites listed for RoyalFX and RoyalsFX match. (fn. nru. 78: In the communication sent by Charles Stanley to the Complainant, reference was made to the URL of RoyalFX being* 'www.theroyalfx.io' *where* 'The

Contact Us page says the registered address is St Vincent and the Grenadines…' *(P. 152). The website is different to the one 'https://royalsfx.co' indicated in the FCA's notice of June 2020, where the address of RoyalsFX was indicated to be in Switzerland.)*

*For these reasons**, the Arbiter cannot give any weighting to such notices both of which are not considered relevant to the case in question.***

iii. <u>Powers of intervention</u>

The Service Provider is considered to have had the power to intervene. It is noted that, as outlined in one of the communications sent by Crypto.com:

'In our terms you have accepted during the registration process, it says:

…

15.1 Crypto.com may at any time and without liability to, terminate, suspend, or limit your use of the Crypto.com Wallet App Services (including freezing the Digital Assets in your account or closing your Digital Asset Wallet, refusing to process any transaction, or wholly or partially reversing any transactions that you have effected), including (but not limited to): (a) in the event of any breach by you of these Terms and all other applicable terms; (b) **for the purposes of complying with Applicable Laws; (c) where Crypto.com suspects that a transaction effected by you is potentially connected to any unlawful activities (including but not limited to money laundering, terrorism financing and fraudulent activities);…**' *(fn. nru. 79: P. 392 – Emphasis and underline added by the Arbiter).*

Whether the Service Provider had not just the power but also the obligation to intervene in a timely manner with some sort of warning about suspicions indications of fraud is considered further in this decision.

iv. <u>The extent/size of the transactions</u>

The Complainant referred to the multiple transactions and the size and extent thereof undertaken between January and June 2022.

In the context of the history of the transactions on this account, it is noted that the Service Provider intervened on various occasions to enquire and ask the Complainant about his source of funds and activities. A particular instance which gave rise to such obligation was the transfer of GBP £130,000 effected on the 26 April 2022 (received by Foris DAX on 28 April 2022) together with an earlier transfer of GBP £20,000 on the same day (received on 26 April 2022). On 28 April 2022, these payments of GBP £150,000 were converted to BTC and transferred out to the 'usual' *wallet.*

This transfer was completely out of line from previous and subsequent transfers which never individually exceeded GBP £25,000. It is evident that Foris DAX made enquiries to ascertain the clean provenance of the funds in question but never indicated any suspicion of fraud even though the conversation from 19 April 2022 till execution of transfer on 28 April 2022 (fn. nru. 80: p. 363 – 370) should have given rise to such suspicion. The Arbiter notes that there were further other instances where the Service Provider intervened about the source of funds where such suspicion of a scam could have arisen.

The Service Provider indeed intervened to enquire about the source of funds and activities on various occasions including:

a) *During March 2022 – In his message with the scammer of 18 March 2022, the Complainant noted that* 'Having to give Crypto.com lady 6 months bank statements'. *(fn. nru. 81: p. 168).*

b) *19 April 2022 – Crypto.com requested additional information to conclude* "routine review"*, including copy of the* "inheritance will"*,* "bank statement2"*,* "screenshots from the external wallets where you withdraw your cryptocurrency". *(fn. nru. 82: p. 363). By the time of this enquiry, the Complainant had already done GBP 218,275 in deposits (from 25 January 2022 to 17 March 2022) with Crypto.com as per Table A above.*

c) *22 April 2022 – Requested clarification from the Complainant on what was* "the reason to state an inheritance as a source of funds if is not due for some months"*; for the Complainant to* "elaborate what was the origin of the funds you used for the fiat deposits made to your Crypto.com … account"*; requested again* "screenshots from the external wallets where you withdraw your cryptocurrency".(*fn. nru. 83: p. 368).*

d) *26 April 2022 – Crypto.com requested clarification of certain transactions (transfer ins) featuring on his bank statements. It again requested* "screenshots from the external wallets where you withdraw your BTC, once withdrawn from your Crypto.com … wallet". *(fn. nru. 84: p. 375).*

e) *29 April 2022 – Crypto.com asked the Complainant for additional information, namely:* "2A bank statement for the last two months with full transaction history …"*; for the Complainant to* "elaborate on the flow of your BTC withdrawals once withdrawn from your Crypto.com … account". *(fn. nru. 85: P. 382). By this time the Complainant had already done GBP 384,975 in deposits (from 25 January 2022 to 28 April 2022) with Crypto.com as per Table A above.*

f) *12 May 2022 – Crypto.com requested the Complainant to provide* "clarification about the nature" *of a number of incoming transfers that were* "visible on the provided bank statements" *which included a transfer of GBP 130,000. (fn. nru. 86: P. 386). Again asked the Complainant to* "please elaborate on the flow of your BTC withdrawals once withdrawn from your Crypto.com account".*(fn. nru. 87: ibid).*

g) *17 June 2022 – Customer support team of Crypto.com again contacted the Complainant as they* "need a bit more information from you"*, where they requested him to provide:* "Loan agreements with your friends or business loans to support your recent transactions between 28 April and 06 June 2022"; *to* "confirm the external BTC wallet address … where you withdrew all the fund"*; and again noted that* "As we previously asked, please elaborate on the flow of your BTC withdrawals once withdrawn from your Crypto.com account as there are no transactions present on the accounts … showing funds processed back to your account". *(fn. nru. 88: P. 390). By this time the Complainant had done GBP 628,936 in deposits (from 25 January 2022 to 16 June 2022) with Crypto.com as per Table A above.*

h) *1 August 2022 – A few days after the Complainant informed Crypto.com on 23 June 2022, that he was "*having problems with TheRoyalFx who take money through this wallet" *and asking whether this was a* "genuine trading company"*, (fn. nru. 89: P. 394). Crypto.com sent the Complainant a message notifying him inter alia that* "… we found that you may have conducted crypto transactions with a wallet address that is linked to a potential scam". *(fn. nru. 90: P. 396) By the said time the Complainant had done GBP 652,096 in deposits (from 25 January 2022 to 22 June 2022) as per Table A above.*

v. *<u>Key exchanges and communication by the Complainant with Crypto.com</u>*

The Complainant provided a timeline of his interactions with the Service Provider which, according to him, had several red flags at different points in time which should have raised suspicion of fraud for someone as experienced as Crypto.com with fraudulent activities going on in the crypto world. (fn. nru. 91: P. 418 – 419). Obviously, any interactions after the last in the series of transfers complained of, i.e., after 22 June 2022 are irrelevant as once transfers occur on blockchain, they cannot be reversed.

The Arbiter considers the following as the key communications sent by the Complainant to Crypto.com in reply to its requests:

a) *19 April 2022 – Complainant explained:*

"In reply to your request. The inheritance is from my wife's fathers house and is not due for some months. **We expect a large input from recent trading with theRoyalfx to come into my wallet from Blockchain**, where I have already sent them the anti money laundering requirement.

I do not expect to put any further trading money into my wallet, **only approx £150,000 to show Blockchain liquidity**, Which **I have to borrow**, and **will be returned as soon as my funds arrive from Blockchain**". *(fn. nru. 92: P. 363 – Emphasis added by the Arbiter).*

b) 24 April 2022 – Complainant replied:

"All the **funds used** were from personal accounts and **some borrowed from friends.**

I am **not sure what you mean by external wallets**. I **only have Crypto.com … wallet**. I believe you can see into that." *(fn. nru. 93: P. 368 - Emphasis added by the Arbiter).*

c) 27 April 2022 – The Complainant further explained:

"The money from … was a loan from a good friend and has been repaid. The money from … is a loan from my sister in law ... **I do not have any wallets, the money from Crypto wallet goes only to theRoyalfx**". *(fn. nru. 94: P. 375 - Emphasis added by the Arbiter).*

d) 29 April 2022 – Complainant noted:

"Once withdrawn, funds will go into my HSBC bank. **I have no other wallets**". *(fn. nru. 95: P. 382 - Emphasis added by the Arbiter).*

e) 12 May 2022 - Complainant informed Crypto.com the following:

"As you are aware, I am **having to borrow money to provide Blockchain with liquidity**. The 75k is part of my wife's father's estate. **The 140k is from selling my boat**, you will note NYA princess 55 relate to that. **Others are transfers and borrowing from my Company, friends and family. The 100k going in at the moment is from my friends loan. Once the million plus goes into my wallet it then goes back to the bank and to repay all my friends. You try raising the sims [sums] Blockchain require and maybe you would understand my problems"**. *(fn. nru. 96: P. 386 - Emphasis added by the Arbiter).*

f) 24 May 2022 - Complainant informed Crypto.com of the following:

"Hi Guys

I expect next week a large amount into my wallet from Blockchain
I would like to transfer it into my bank at £250,000 per day.
Can you fix that for me? Regards Alan". *(fn. nru. 97: P. 379 - Emphasis added by the Arbiter).*

g) 17 June 2022 - The Complainant explained to Crypto.com:

"Hi … 1 there are no written agreements between my family and friends. 2 the **blockchain insisted through HMRC demanding the profit and liquidity returned to TheRoyalFx and sent to my bank. 3 no money is expected to go back to my bank via your wallet, only through TheRoyalFx.**

You have the only written agreement for £130,000
Hope that answers your questions. If you need anything more please ask". *(fn. nru. 98: P. 390 - Emphasis added by the Arbiter).*

vi. <u>Identified shortfalls by the Service Provider and lack of intervention</u>

There is no doubt that the Service Provider rightfully intervened multiple times to verify the source of funds throughout the multitude of transactions undertaken by the Complainant over the indicated six-month period.

Whilst intervention was merited and done by the Service Provider specifically with respect to the source of funds, the question however arises whether the replies and information provided (or lack thereof) by the Complainant reasonably necessitated the Service Provider's intervention under their general fiduciary duties (by way of relevant warnings and proper discussion with the client and/or suspension, blocking or limitation of use of his account) at the time of the multiple reviews and analysis of the Complainant's account and amidst the multiple deposits and transactions the Complainant was making.

The Arbiter considers that sufficient, reasonable grounds and basis exist in the particular circumstances of this case to conclude that the Service Provider failed to adequately intervene. This is when clearly there were various red flags cumulatively piling up throughout the course of operation of the wallet/account. Some of the red flags, individually and even more cumulatively, were evident signs that things were not right, and that appropriate intervention was necessary to safeguard the client's assets and interests.

Apart from the extent of transactions and the high amounts being frequently transacted (which were far from "a simple withdrawal of cryptocurrency", *(fn. nru. 99: P. 505) the following factors, especially in their cumulative effect, should have raised concerns:*

1) <u>Departure from original intention</u> - In its submissions, the Complainant explained that, at the account opening stage with Crypto.com, he had indicated that the intention for the use of the Crypto.com services was "to trade with 'the RoyalFX' for £100 per month". *(fn. nru. 100: P. 475). This was not disputed by the Service Provider.*

The material divergence from the original intention of investing just a small amount per month was much evident by March 2022 (within just three months), when the sum of £218,275 had already been deposited by the Complainant.

Despite such volume (with single deposits ranging from GBP 5,000- 25,000), the Complainant then approached Crypto.com with the intention to make an even much higher one-off deposit of around £150,000.

2) <u>Further discrepancy about the Complainant's intention regarding the extent of his trading</u> – Notwithstanding that in his communication of 19 April 2022, the Complainant indicated that he did not intend to put further deposits for trading apart from the additional sum of £150,000, he again materially deviated from such intention. Indeed, not only did he proceed to deposit £150,000 but also kept on making additional high amounts of deposits. On top of the £150,000, he ended up depositing a total additional sum of £267,121 through various multiple incoming deposits undertaken over the subsequent months between May and June 2022, as per Table A above.

3) <u>Expectations of large returns</u> – The Complainant indicated his expectations of receiving high returns from his trades undertaken with another party on various occasions. The communications of 19 April 2022, 12 May 2022 and 24 May 2022 as highlighted above, particularly refer.

4) <u>Financing of deposits through borrowing and sale of assets</u> – It became evident that the large sums of money that the Complainant was investing (in contradiction to his original intentions) were being financed through borrowings, loans and sale of assets. This emerges from the communication of 19 April 2022, 24 April 2022 and 12 May 2022 as highlighted above.

5) <u>Convoluted explanations</u> – It was also apparent that the explanations and answers being provided by the Complainant to the questions raised by the Crypto.com support staff, were unclear, convoluted and indicative that the Complainant not really understanding what he was doing.

He confusingly referred to money needed for "Blockchain liquidity"*, to* "funds arriv[ing] from Blockchain", to "borrow money to provide Blockchain with

liquidity" *that he was* "try[ing] raising the s[u]ms Blockchain require" *and the* "problems" *he was having in this regard, as well as that* "blockchain insisted through HMRC demanding the profit and liquidity returned to TheRoyalFX" *as indicated in his communications above.* ***His emails of 19 April and 12 May 2022, are particularly telling of the senseless explanations being provided by the Complainant****. (fn. nru. 101: Blockchain itself is namely a record-keeping system (serving as a decentralized ledger to record transactions). E.g. Blockchain is defined on Investopedia as:* "a decentralized digital ledger that securely stores records across a network of computers in a way that is transparent, immutable, and resistant to tampering. Each "block" contains data, and blocks are linked in a chronological 'chain.'" - *https://www.investopedia.com/terms/b/blockchain.asp).*

6) No external wallets/all dealings revolving a single party/unhosted wallet – The Complainant informed Crypto.com on multiple times that the only wallet he had was with Crypto.com. His messages of 24 April 2022, 20 April 2022 and 17 June 2022 refer. It was amply clear that the Complainant was transferring all his funds to the same party, RoyalFX, with whom he had indicated he was trading, and that the Complainant was not understanding what the Crypto.com support staff had asked of him to explain regarding the flow of his BTC withdrawals undertaken from his Crypto.com account, an important aspect related to what was going on.

No warnings were issued, and the normal operation of the account continued despite that Crypto.com had asked for explanations about what was happening once BTC were being withdrawn from his Crypto.com account not less than on six different occasions - 19 April 2022, 22 April 2022, 26 April 2022, 29 April 2022, 12 May 2022 and 17 June 2022.

The Arbiter does not accept that **"there was no reasonable basis to suspect such fraud at the material time"**, *(fn. nru. 102: P. 507)* ***as submitted by the Service Provider.***

Adequate and timely intervention was evidently required to inform Complainant about suspicions of fraudulent activity emerging on his account.

The Arbiter further notes and takes into account also the following in the particular situation:

- *Late generic warning – It is noted that the warning of 1 August 2022, (fn. nru. 103: P. 396) came rather late in the day.*

The Complainant had been making a high volume of transactions with the same external wallet over a number of months. Whilst there may be "very legitimate purposes for why non-custodial wallets are used"*, (fn. nru. 104: P. 467) no warnings were, however, seemingly sent to the Complainant regarding the potential dangers and the need to exercise caution and ensure the identity with whom one is dealing. This despite the extent and amount of transactions that were being executed by the Complainant to the same unhosted wallet.*

- *Awareness about scams – It is also noted that during the hearing of 4 February 2025, the representative of the Service Provider inter alia testified that:*

> "At that point in time, there was an increased level of fraudulent services and investment services. I think there was one called Petero and Torkbot, which were very popular at that time. And that was precisely in the aftermath of a lot of what was happening in and around the industry at that time that scams were starting to emerge in 2022. In the summer of 2022 to be precise". *(fn. nru. 105: P. 468).*

The Arbiter, however, observes that pig butchering scams were already evident and reported on in previous periods much earlier than summer 2022. ***The Service Provider should have been aware and knowledgeable of pig butchering scams when the disputed transactions occurred.***

Suffice to say that one of the pig butchering cases, which was previously considered by the OAFS (Case 158/2021 against Foris DAX), (fn. nru. 106: https://financialarbiter.org.mt/sites/default/files/oafs/decisions/457/ASF%20158-2021%20-%20AG%20vs%20Foris%20DAX%20MT%20Limited.pdf) involved a similar pig butchering scam which occurred in 2021 and of which Foris DAX was aware through a formal complaint way back in 2021.

An FBI Internet Crime Report for 2021 (released in March 2022), specifically highlighted the increase in pig butchering scams. (fn. nru. 107: https://www.fbi.gov/news/press-releases/fbi-releases-the-internet-crime-complaint-center-2021- internet-crime-report).

C) Complainant's actions, ignored warnings and context

Having considered the Service Provider's actions, the Arbiter shall next consider the Complainant's own actions as this evidently impacts the decision and extent of any compensation awarded.

The extent of checks done by the Complainant on TheRoyalFX to whom he had entrusted so much money, and about the validity of the requests for additional funds

being made by this party, is unclear, but was evidently inappropriate. The Complainant was, in the first place, undoubtedly himself responsible for verifying that he was dealing with a suitable party.

It is furthermore noted that, as emerging from the exchanges that the Complainant had with the scammer, the Complainant himself stated on 9 February 2022, that:

> "I do not have any more cash to put in if that is what you want. It will all have to done with what you have, and if that's not possible then we just sit and wait. If it grows great, if only slowly, still good",

And, again, on the 10 February 2022:

> "… My wife says this is definitely the last input from our funds, anything else will have to come from profits …". *(fn. nru. 108: P. 131 & 132).*

Despite the fact that the Complainant had himself stated in early February 2022 that he would not make further investments and transfer any more money, not only did he continue to transfer funds, but the funds he ended up transferring were more than 25 times the sum he had already transferred by then. (fn. nru. 109: By 10 February 2022, the Complainant had transferred £22,505. After the said date till 22 June 2022, he ended up transferring £629,591 more.)

Further material aspects that need to be taken into account relate to the warnings and feedback that were given to the Complainant by other third parties as follows:

a) <u>*Warning from his pension advisor, Charles Stanley:*</u>

It is noted that Charles Stanley (the Complainant's financial planner involved with his pension) refused to make a payment from the Complainant's pension to RoyalFX when the Complainant tried to get some funds from his pension to transfer to RoyalFX in March 2022.

As emerging from the communications exchanged between the Complainant and the scammer, on 7 March 2022, the Complainant informed the scammer that:

> "I have been advised by Charles Stanley that they think this is a scam. They will not provide funds and the police have been informed. The Royalfx will have to come up with a written contract that this is for real. Have your legal team look at this asap". *(fn. nru. 110: P. 148).*

The Complainant believed so much that he was dealing with a genuine party that he even stated to the scammer that "Your company is unregulated in the UK and that does not help. So many scammers out there. Pass it onto Dan and legal". *(fn. nru. 111: ibid). The following day, on 8 March 2022, the Complainant even*

forwarded to the scammer the reply he had received, listing the reasons for the concerns of Charles Stanley's Compliance Department. (fn. nru. 112: P. 151 – 152).

Subsequent to this, the Complainant requested the scammer to transfer money back into his bank so that he could "show to [his] advisor that this is genuine". *(fn. nru. 113: P. 153). It seems that the scammer managed to convince the Complainant on the 9/10 March 2022, that the transaction was genuine by sending him a payment on a Crypto wallet (instead of his bank account) and providing evidence of the blockchain transfer. (fn. nru. 114: P. 154 – 155).*

It is noted that a payment of GBP 22,967 was eventually made from the trustees of the Complainant's pension (his Self-Invested Pension Plan, SIPP) on 16 March 2022 as evidenced in the bank statement. (fn. nru. 115: P. 343 & 375). It is unclear what has ultimately convinced his pension plan to make a payment or whether this payment was something unrelated to his original enquiry with Charles Stanley.

b) <u>Warnings/feedback from his banker, HSBC</u>: It transpires that the Complainant called HSBC on 9 March 2022 to report a scam (fn. nru. 116: P. 290) – it seems this occurred after Charles Stanley informed him on 7 and 8 March 2022 that they think this was a scam. As detailed in the report of the UK Financial Services Ombudsman ('UK FSO'), the Complainant called again the bank, a day after, on 10 March 2022, to inform it "that he is satisfied he hasn't been scammed and for the bank to stop any investigation". *(fn. nru. 117: P. 290). This pairs with the exchanges that the Complainant was having with the scammer at the time (and the payment to a crypto wallet referred to earlier above).*

It has not been indicated that the Complainant's bank had given him any warnings at that stage in March 2022 (or earlier).

In his attempt to make a payment of GBP130,000 later in April 2022, an intervention was, at that point, made by HSBC as outlined in the UK Financial Services Ombudsman's ('FSO') Report. The FSO report stated as follows:

> "A later intervention is made on 25 April 2022 for a payment of £130,000, [the Complainant] at first refuses to tell HSBC what he is doing.
>
> Once the nature of the payment is discussed, [the Complainant] states that he doesn't understand the logic of why he has to make the payment and that everyone he has spoken to has told him that it doesn't sound right – but yet continues to make the payments anyway which I think was grossly negligent.
>
> The call handler on 25 April 2022 says that he is very sceptical and has never heard of an investment working this way and advises that if he chooses to

> proceed, he will need to take full responsibility for the payment which [the Complainant] agrees to.
>
> Overall, given that (Complainant) has ignored warnings from two paid and trusted advisers who are hired to advise on his financial affairs who told him it was a scam, I can't fairly argue that a warning from the bank would have convinced him to stop. He has made a large number of additional payments despite being put on notice that he was being scammed.
>
> (Complainant) appears to have been so under the spell of the scammer that he was willing to ignore the advice of both a financial adviser and a pension fund manager. I don't think the bank could have done any more than these two parties had already done to prevent the scam." *(fn. nru. 118: P. 290).*

In his defence, the Complainant provided some additional information to the OAFS with respect to the FSO's Report, where he inter alia explained that:

> "The calls to the bank to release £130,000, the agent asked where the money was going. I asked him if [he] knew anything about Crypto and he said no, was I sure it was OK to transfer the funds and I said yes. I explained that the money was going to the Royalfx to get the funds out of the Blockchain. He then transferred them.
>
> The bank never once stopped any payments ... I only spoke to one person and the bank …'". *(fn. nru. 119: P. 292).*

Further to the above, the Arbiter notes that it only emerged that the representative of the Complainant's banker informed the Complainant during a call that he was very skeptical about the investment. During the hearing of 4 February 2025, the Complainant explained:

> "'Look, I'm not convinced,' and I would make a comment here: the bank never, never once said to me, 'We think this is suspicious.' Not once. I've had nothing from the bank at all. They just asked me, 'You sure you want to invest in this?' 'Yes, I'd like to invest in this.' They didn't say, 'Do you think you should check it out? We think it's suspicious.' If they had thought it was suspicious, they probably would have stopped the payment going …". *(fn. nru. 120: P. 458).*

Context

Account is taken of the context within which the disputed transactions have occurred. Apart from the extent of manipulation and sophistication of the scam (as emerging from the exchanges the Complainant had with the scammer), the following factors are also taken into account:

a) Complainant's mindset with respect to his pension advisor – In his explanations, the Complainant stated:

"The reason I called my pension provider was because to retrieve my funds from the Royalfx required liquidity into the Blockchain wallet that I assume they had set up … **I asked my pension provider if they could do this and they discussed it, but came back saying crypto was out of their expertise**, they had not heard of this, and so would not release any funds. I only spoke to my financial adviser, and as I had done onto the Blockchain site and checked out this liquidity requirement, understood that the pension providers were sceptical of any crypto dealings, and so went elsewhere for the funds". *(fn. nru. 121: P. 292 – Emphasis added by the Arbiter).*

It is also noted that during the hearing of 4 February 2025:

"In answer to that, I say that I went to a pension provider to ask for some money to put into this investment company. **They have no experience in crypto whatsoever, which they admitted they had no idea of crypto. They would not, as a pension provider, allow me to do anything with crypto, period**. That was the end of the story." *(fn. nru. 122: P. 458 – Emphasis added by the Arbiter).*

b) Mindset with respect to his Bank – During the proceedings of the case, the Complainant explained:

"I did tell the bank after reporting it as a scam by my pension provider. **As he had no knowledge of crypto I could see he could say nothing else** …". *(fn. nru. 123: P. 292 – Emphasis added by the Arbiter).*

During the hearing of 4 February 2025, the Complainant further testified:

"So going on from that**, the Royal FX said, of course, nobody wants to deal with crypto at the moment because the normal banking is losing millions to crypto investment which seemed reasonable to me**." *(fn. nru. 124: P. 458 – Emphasis added by the Arbiter).*

In a message on 26 January 2022, when the Complainant contacted Crypto.com Support due to "My card crypto purchase failed"*, the Crypto.com Support explained that* "Your most recent attempt for card purchase of cryptocurrency has been declined by your card issuer … The most common reasons for a card transaction to be declined by the issuers are: - restrictions over a certain type of transactions, like crypto purchases, among others …". *(fn. nru. 125: P. 325).*

It is further noted that in a message on 23 March 2022 exchanged with the scammer, the Complainant himself stated that "Banks won't touch crypto". *(fn. nru. 126: P. 172).*

From the early stages of the scam, as early as in February 2022, the scammer had seemingly subtly planted the idea to the Complainant that banks were against cryptocurrency. This was evidently done to downplay any possible warnings and intervention on the bank's part as anticipated by the scammer, in turn making it easier for the scammer to manage any arising concerns and continue with the manipulation of the victim, notwithstanding the bank's intervention, as has happened in this case. When the scammer was enquiring with the Complainant as to the status of the bank transfer and the Complainant messaged him (on 11/02/2022) that "Looks like fraud have stopped it …"*, the scammer in return replied to the Complainant by stating:* "The banks against Crypto so obviously they will refuse …". *(fn. nru. 127: P. 134).*

D). Impact of lack of proper and merited actions

The Arbiter considers that there are three pronounced stages at which the Service Provider ought to have intervened on the basis of the replies received from the Complainant to its queries. These are following the queries and replies received on the same day of 19 April 2022, 12 May 2022 and 17 June 2022.

It is noted that any immediate intervention by the Service Provider on or following 19 April 2022, would have been prior to or around the call of 25 April 2022 that the Complainant had with HSBC Bank were the Bank had seemingly first indicated that it was "very sceptical and has never heard of an investment working this way*" as indicated in the UK FSO's Report. (fn. nru. 128: P. 290).*

Hence, this would have been a most timely warning at the time which would have also shortly followed the earlier warning provided by Charles Stanley in March 2022.

The ensuing transactions which subsequently occurred (from 26 April 2022, till the next trigger event of 12 May 2022) amounted in total to a cumulative further amount deposited of £191,700 with Crypto.com which were transferred to the scammer.

Any interventions by the Service Provider following the replies of 12 May 2022 and 17 June 2022 would have supported and strengthened the warnings previously provided even further.

The Complainant proceeded to make many more transactions. Between 12 May 2022 and 17 June 2022, the Complainant deposited £218,961 and after 17 June 2022 a

further £23,160, which he proceeded to convert into BTC and transfer to the scammer (as per Tables A to C above).

The Arbiter notes the context within which the Complainant took his decisions and the mindset which affected his approach to the warning from his pension planner and feedback from his bank as outlined above.

In the circumstances, there is a possibility that ***a warning from Crypto.com****, a professional party solely focused in crypto and, thus, an expert in this line of business, could have reinforced the warnings given by other professionals who were however not involved in this line of business.*

It is difficult to determine the impact that could have resulted from the Service Provider's issuing due warning about suspicions of fraud. Even if the possibility of the Complainant's heeding an appropriate warning issued to him by the Service Provider is, in the circumstances, considered low, it does not exempt the Service Provider from their obligations.

Furthermore, besides the issue of warnings, the Service Provider had other measures available to it (such as suspension and limitation of use) of the account which could have been applied in addition to a due warning to protect the Complainant's interests and his assets.

E) Extent of responsibility

There is no doubt that the Complainant was primarily responsible for the losses he has incurred due to his own actions and negligence considering various factors:

(i) the lack of adequate and proper due diligence about RoyalFX that he evidently did not carry out about this party and the requests being made for additional funds (ii) exceeding his own imposed limitations on the extent of amount to be invested or transferred to this party (iii) providing the scammer access to his computer/applications through the Anydesk app (iv) ignoring the concerns and specific warning provided by his pension planner, Charles Stanley, in March 2022 about the possibility of this being a scam; (v) ignoring the feedback provided by HSBC in April 2022 and the skepticism pointed out to him by the Bank's representative about the investment.

However, the Complainant's actions do not exonerate the Service Provider from its identified shortfalls and failures.

Material difference from other cases

Apart from the differences in the particular circumstances of the case, the Complainant's case stands out from the various other cases decided by the Arbiter against Foris DAX which were not upheld.

A key material difference is the information that has emerged that the Service Provider was in possession of about the activities of the Complainant which included various red flags. This information resulted during the communications that the Service Provider held with the Complainant when reviewing the source of funds at the time of the numerous frequent transactions in high amounts that the Complainant was making during a six-month period.

Once the Service Provider was evidently in possession of information and sight of activities which should have created awareness about the likelihood of fraud or inappropriate behaviour, the Service Provider is considered to have had a fiduciary obligation to intervene at least by issuing a dutiful warning of its suspicions."

L-Appell

6. L-appellant ippreżenta ir-rikors tal-appell tiegħu fl-14 ta' Mejju, 2025, fejn talab lill din il-Qorti sabiex:

"jogħġobha tħassar u tirrevoka d-deċiżjoni tal-Arbitru għas-Servizzi Finanzjarji tal-25 ta' April 2025 fil-proċeduri fl-ismijiet premessi u minflok tgħaddi biex tiddeċiedi finalment l-ilment tal-Appellant billi tilqa' l-ilment tiegħu u tikkundanna lill-kumpannija Appellata għar-riżarċiment tas-somma minnu mitluba fl-ilment de quo bl-imgħaxijiet u bl-ispejjeż tal-proċeduri kollha inklużi dawk quddiem l-Arbitru għas-Servizzi Finanzjarji".

7. L-appellant ibbaża ir-rikors tiegħu fuq żewġ aggravji. Permezz tal-ewwel aggravju huwa jgħid li l-Arbitru kien żbaljat meta ikkunsidra li minkejja n-nuqqasijiet tas-soċjetà intimata li huwa kien irriskontra, sab li s-soċjetà appellata ma kienet ikkaġunat l-ebda danni lill-appellant. Fit-tieni aggravju, jgħid li l-Arbitru kellu fejn jikkonkludi li l-parteċipazzjoni tas-soċjetà appellata kienet twassal għar-responsabiltà tal-istess soċjetà *in solidum* mat-terzi li kienu iffrodaw lill-appellant, u dan skont l-artikolu 1049 tal-Kodiċi Ċivili.

8. Is-soċjetà appellata wieġbet li l-apprezzament tal-provi mill-Arbitru kien korrett u sostnut mill-atti, u li l-konklużjonijiet raġġunti fid-deċiżjoni huma mibnija fuq l-istess provi. In vista ta' dan, u kif ukoll ta' eċċezzjonijiet oħra fir-rigward tal-aggravji, issostni li d-deċiżjoni tal-Arbitru għandha tiġi kkonfermata minn din il-Qorti fit-totalità tagħha.

Provi u riżultanzi

9. Il-Qorti rat li minkejja li skont il-verbal tal-udjenza tat-22 t'Ottubru, 2025, il-partijiet qablu li t-trattazzjoni issir bl-Ingliż, jirriżulta li dan l-appell sar, u ġie imwieġeb, bil-lingwa Maltija. Tqis ukoll li ma saritilha l-ebda talba sabiex dawn il-proċeduri jsiru bil-lingwa Ingliża. Għalhekk issib li dawn il-proċeduri fil-fatt saru bil-lingwa Maltija.

Konsiderazzjonijiet ta' din il-Qorti

10. Din il-Qorti tibda billi tqis l-aggravvji tal-appellant, u li huwa jikkunsidra flimkien b'mod ħolistiku. L-appellant jgħid li għalkemm l-Arbitru ikkonkluda li s-soċjetà appellata kienet taf li huwa kien vittma ta' '*pig butchering scam',* ma għamlet xejn sabiex twissih, trażżan u / jew tissospendi l-istess tranżazzjonijiet, u għalhekk kienet aġġixxit bi ksur tal-obligazzjonijiet tagħha, li kienu ta' natura fiduċjarja. Jgħid li l-konklużjoni tal-Arbitru ma kienitx skont il-liġi, hekk kif *Crypto.com* naqset serjament fl-obbligazzjonijiet tagħha, u kienet irrendiet ruħha kompartečipi fil-frodi li kien qiegħed jiġi perpetrat kontra l-istess klijent tagħha. Jgħid li l-Arbitru kien konvint li t-tranżazzjonijiet kienu frawdolenti, u li kien elenka diversi fatturi li kellhom iqajjmu dubji, '*concerns',* b'dana li jirreferi għal '*red flags'* li jindikaw li seta' kien hemm problemi fl-użu tal-kont. Jgħid li

service provider ma jistax jinjora dawn is-sinjali partikolarment minħabba l-obbligazzjonijiet fiduċjarji li huwa għandu lejn il-konsumatur. Ikompli li dawn ir-*red flags* kumulattivament iwasslu għal stampa ċara, li waslet lill-Arbitru isib li l-appellata bilfors kienet taf li dawn it-tranżazzjonijiet kienu frott ta' aġir frawdolenti, tant li anke *service providers* oħra kienu ġibdulu l-attenzjoni. Jgħid li l-Arbitru għamel riferiment għal każijiet oħra li kienu wkoll jikkonċernaw lis-soċjetà appellata. Jgħid, li l-fatt li s-soċjetà appellata kien diġà kellha każijiet oħra simili quddiem l-Arbitru, jfisser li kellha l-esperjenza meħtieġa sabiex tidentifika l-fatti li kellha quddiemha bħala *scam.* Jgħid li l-appellata kienet taf li huwa kien vittma ta' frodi, u li hija kellha obbligazzjoni fiduċjarja li tintervjeni. Hawnhekk jagħmel riferiment għall-artikolu 27 tal-Kap. 590 tal-Liġijiet ta' Malta, u jgħid li s-soċjetà appellata bħala liċenzjata taħt dak l-Att, għandha tikkomporta ruħha b'mod konsistenti ma' *standards* għolja u mal-*bona fede* rikjesta mil-liġi. F'dan ir-rigward jgħid li r-reazzjoni tas-soċjetà appellata għall-każ kienet li (a) infurmatu li kienet qed tinvestiga, imma ma iffriżattx il-kont u lanqas ma waqqfitu milli jagħmel tranżazzjonijiet; (b) qaltlu li l-investigazzjoni kienet skont ir-rekwiżiti applikabbli; (ċ) ma tatu l-ebda twissija; u (d) damet żmien twil tinvestiga, u meta ikkonkludiet l-investigazzjoni, tat lill-klijent x'jifhem li ma kien hemm xejn ħażin bil-kont. Ikompli jgħid li skont l-Arbitru, s-soċjetà appellata kellha twissih, u dan sab li persuna soġġetta għal obbligazzjonijiet ta' natura fiduċjarja, għandha tuża l-livell ta' diliġenza ta' *bonus pater familias.* Jgħid li l-appellata ma mxietx b'dan il-mod, u li skontu, ladarba s-soċjetà appellata kienet taf, jew kellha tkun taf li huwa kien vittma ta' frodi, hija kellha tissospendi l-kont tiegħu jew tirrifjuta li tagħmel it-trasferimenti minnu mitluba. Ikompli li meta s-soċjetà appellata għażlet li ma tagħmel xejn minn dan, hija kienet irrendiet lilha

innifisha parteċipi fl-aġir delittwuż li kien qed isir. Jgħid ukoll li dan mhux każ ta' inkuranza jew nuqqas ta' ħsieb, iżda nuqqas ta' interess fil-klijent tagħha, u jiddeskrivi dan bħala '*recklessness',* u jipparagunah ma' xufier li jsuq karozza b'sewqan eċċessiv mingħajr ma jinteressah mill-konsegwenzi, jekk imutx hu jew jolqotx lil xi ħadd. Jagħmel riferiment għad-duttrina tal-'*culpa lata dolus est',* u jgħid li l-aġir tas-soċjetà appellata kien tali li irrendiha kompliċi mal-kriminal. Jgħid li wieħed ma jistax jgħid li nsterqu l-flus mingħajr ma jsir responsabbli daqs il-ħalliel, u għalhekk jirreferi għall-artikolu 1049 tal-Kodiċi Ċivili. F'dan ir-rigward jagħmel riferiment għal siltiet mis-sentenza tal-Qorti tal-Appell Superjuri fl-ismijiet **HSBC Bank Malta PLC (C 3177) *vs.* Alexander Boiciuc**[1], flimkien ma' sentenzi oħrajn. Jgħid li fil-każ odjern, ir-relazzjoni bejn il-partijiet hija ta' natura kuntrattwali, u l-obbligazzjonijiet fiduċjarji twieldu mill-kuntratt li sar bejn il-partijiet. Jgħid ukoll li l-Arbitru ma setgħax jgħid li l-aġir tas-soċjetà appellata ma kkawża l-ebda dannu, mingħajr ma kkunsidra l-elementi ta' responsabiltà skont il-Kodiċi Ċivili. Jagħmel riferiment wkoll għall-kundizzjoni tiegħu stess, u jenfasizza li huwa vittma. Jispjega wkoll in-natura ta' *pig butchering scam,* u għalhekk jgħid li dan ma kienx każ fejn huwa kien negliġenti jew traskurat. Jaqbel mal-Arbitru li ma tax każ l-eċċezzjoni tal-appellata fejn din eċepiet li r-rikorrent kien taha l-kunsens tiegħu għat-trasferiment. Hawnhekk jagħmel riferiment għall-artikolu 974 tal-Kodiċi Ċivili dwar il-kunsens, u jgħid li s-soċjetà appellata ma setgħet qatt tistrieħ fuq il-kunsens tal-individwu li kien qed jiġi iffrodat. Jgħid li għalhekk huma l-istituzzjonijiet finanzjarji li għandu jkollhom il-mezzi biex jipproteġu lill-klijenti tagħhom, u jikkontendi li kieku s-soċjetà appellata għamlet xogħolha, forsi l-Pulizija kienu jintervjenu qabel. Jgħid li

[1] 5.12.2024

investitur li jpoġġi flusu ma' istituzzjoni finanzjarja liċenzjata, jistenna li din tipproteġih mill-iżbalji tiegħu stess. Jikkonkludi li jibqa' l-fatt s-soċjetà appellata kienet konxja tal-fatti kollha, u ma għamlet xejn biex tipproteġih, u li għalhekk il-punt li qajjem l-Arbitru dwar in-ness bejn id-danni u l-aġir delittwuz tas-soċjetà appellata ma jsibx riskontru la fil-liġi u lanqas fil-fatt. B'hekk jgħid li s-soċjetà appellata ġiet reża kompliċi mal-frodisti, u għalhekk huwa għandu jiġi kkumpensat ta' dan.

11. Is-soċjetà appellata wieġbet li l-azzjoni mressqa mill-appellant hija ibbażata fuq is-sub-artikolu 27(2) tal-Kap. 555 tal-Liġijiet ta' Malta, u tgħid li d-deċiżjoni tal-Arbitru hija waħda ġusta, ekwa, legali, u timmerita konferma. Tgħid li l-apprezzament tal-provi mill-Arbitru kien korrett u sostnut, u li għalhekk din il-Qorti m'għandhiex tiddisturba dak l-apprezzament, hekk kif m'hemm l-ebda raġuni gravi għalxiex din il-Qorti għandha tagħmel dan. Tkompli billi tagħmel riferiment b'mod dirett għall-aggravji, u tagħmel riferiment għal dak li qal l-Arbitru li m'hemmx dubju li l-appellant kien primarjament responsabbli għat-telf soffert minnu, u dan minħabba l-azzjoni u n-negliġenza tiegħu stess. Tgħid li s-settur ta' *crypto exchnage* mhuwiex regolat bħas-settur bankarju minħabba n-natura diġitali tal-assi, u li t-trasferiment ta' dawn l-assi mhuwiex traċċabbli. Tgħid li dan ifisser li hemm numru ta' obbligi fuq il-konsumatur li jindaga n-natura tat-tranżazzjonijiet. Tgħid li l-aġir tal-appellant kien jammonta għal negliġenza grossolana hekk kif ma ndagax ma' nies professjonali dwar il-leġittimità tal-pjattaforma *TheRoyalFx.* Tgħid ukoll li huwa kien imwissi tliet darbiet minn tliet persuni differenti, u xorta injorahom. Tgħid ukoll li l-appellant kellu *custodial wallet* magħha, u dan wara li l-i*scammers* kienu ipproponewlu li jiftaħ dan il-kont sabiex iżomm l-assi diġitali mixtrija minnu. Tgħid li nstab li l-

i*scammers* kienu talbu wkoll lill-appellant iniżżel l-applikazzjoni *AnyDesk* sabiex b'hekk ingħatalhom aċċess u kontroll tad-*device* tal-appellant. Is-soċjetà appellata tagħmel riferiment għall-element ta' negliġenza kontributorja, u tgħid li l-appellant kellu d-dmir jaġixxi bi prudenza raġonevoli, u tagħmel riferiment għal diversi twissijiet fuq pjattaformi varji, dwar ir-riskju ta' *crypto assets* u *sharing device access.* B'hekk tgħid li n-nuqqas li wieħed jaqra mqar dawn l-avviżi, jikkostitwixxi negliġenza u imprudenza, jew tal-anqas negliġenza kontributorja. Tiddefinixxi din in-negliġenza bħala t-traskuraġni li wieħed jieħu ħsieb li ma jikkawżax ħsara lilu innifsu bl-għemil tiegħu, u tgħid li l-appellant wera dipendenza persistenti fuq ir-rappreżentazzjonijiet magħmula mill-frodisti, u li għalhekk it-telf kien riżultat tad-deċiżjonijiet tal-appellant, u mhux ta' xi ommissjoni jew nuqqas min-naħa tagħha. Tgħid ukoll li hija qatt ma ġiegħlet lill-appellant jagħmel xi trasferiment, u li kien dejjem l-appellant stess li awtorizza t-trasferimenti. Tispjega wkoll li l-utent tal-kartiera, huwa dejjem responsabbli mill-kodiċi u *d-digital key* tiegħu. Teċepixxi wkoll li f'dak iż-żmien, ma kienx possibbli, u ma kienx hemm l-obbligu li hija tindaga u żżomm *record* tal-benefiċċjarji ta' kartieri esterni. Tenfasizza li l-Arbitru qatt ma qal li *"minkejja li kienet taf ...m'għamlet xejn biex twissi"*, u tgħid li m'hemm l-ebda prova li hija kellha l-għarfien li l-kartiera esterna, li kienet saħansitra ġiet *whitelisted* mill-appellant stess, kienet assoċjata ma' frodi. Tindika li l-Arbitru dejjem tkellem fuq il-possibbiltà ta' suspett ta' frodi, u qatt ma afferma li hija kienet taf li l-appellant kien qed jiġi iffrodat. Tgħid ukoll li ma hemm l-ebda prova li hija kienet kompartecipi f'xi frodi, u aktar minn hekk ma ġiet ppruvata l-ebda forma ta' malizzja min-naħa ta' *Crypto.com,* b'dana li l-artikolu 1049 tal-Kodiċi Ċivili jispeċifika li l-aġir irid ikun doluż. Tgħid li l-Arbitru ma sab l-ebda għemil doluż

min-naħa tagħha, u li *Crypto.com* (a) qatt ma kellha aċċess jew kontroll fuq il-kartiera esterna tal-frodist; (b) qatt ma kienet taf li din il-kartiera esterna kienet frawdolenti; (ċ) qatt u fl-ebda waqt ma rċeviet qliegħ għad-dannu tal-appellant; u (d) fl-ebda waqt ma kienet parteċipi fil-korrispondenza bejn is-soċjetà appellata u l-frodist. Tgħid ukoll li l-argument tal-appellant fir-rigward ta' *red flags* huwa wkoll żbaljat, u tagħmel riferiment għal dak li trid il-leġislazzjoni sussidjarja 373.0, dwar evalwazzjoni fir-rigward ta' ħasil ta' flus, u mhux fir-rigward ta' frodi. Tgħid ukoll li anki d-Direttiva tal-Unjoni Ewropea UE 2015/849, li tgħid li kif sab l-Arbitru, mhijiex applikabbli fil-każ odjern, tobbliga li jsir l-intraċċar għall-iskop ta' traċċar ta' ħasil ta' flus u mhux ta' frodi. Tgħid li l-Arbitru ikkonkluda li n-nuqqasijiet tagħha setgħu kienu ta' ksur regolatorju, iżda ma kienx il-punt kruċjali li wassal għat-telf soffert. Fir-rigward tan-ness bejn id-dannu u l-allegati nuqqasijiet tagħha, tgħid li jrid ikun hemm ness ta' kawżalità bejn il-fatt kolpevoli u l-konsegwenza dannuża. F'dan ir-rigward tagħmel riferiment għal diversi sentenzi tal-Qrati tagħna, fosthom dik ta' din il-Qorti kif diversament preseduta, fl-ismijiet **Adrian Deguara *vs.* Joseph Olivier Ruggier**[2], u tgħid li f'dawn l-atti, ma ġiet stabbilita l-ebda rabta kawżali diretta jew prossima bejn l-ommissjonijiet attribwiti lill-fornitur tas-servizz u t-telf imġarrab. Tikkonkludi billi tgħid li parti tinżamm responsabbli għad-danni biss meta l-att jew l-ommissjoni tagħha jikkostitwixxu kawża fattwali u legali ta' telf, imma f'dan il-każ it-telf kien riżultat ta' azzjonijiet indipendenti u volontarji tal-appellant nnifsu. Konsegwentement hija qalet li din il-Qorti għanda tiċħad l-appell imressaq quddiemha.

[2] 17.10.2008.

12. Il-Qorti tqis li l-ewwel parti tal-aggravju tal-appellant tittratta l-fatt li minkejja n-nuqqasijiet li l-Arbitru irriskontra, kien sab li s-soċjetà appellata ma ikkaġunat l-ebda danni lill-appellant. Din il-Qorti tibda billi tqis li l-Arbitru korrettament kkonstata li s-soċjetà appellata kellha obbligazzjonijiet ta' natura fiduċjarja, madanakollu fl-istess waqt tgħid li dan l-obbligu m'għandux jissarraf f'xi forma ta' eżenzjoni sabiex l-appellant ma jkunx diliġenti fl-aġir tiegħu. Imma aktar minn hekk, il-Qorti tqis li sabiex hija tkun tista' teżamina dan l-aggravju tal-appellant, hija trid tħares lejn jekk l-Arbitru sabx ness bejn in-nuqqasijiet tal-appellata u t-telf soffert mill-appellant. Imma minn eżami tad-deċiżjoni tal-Arbitru, ma tirriżulta l-ebda raġuni gravi għaliex din il-Qorti għandha tvarja l-apprezzament tal-provi kif mwettaq mill-Arbitru. Aktar minn hekk, jirriżulta li l-appellant mhuwiex qed jikkontesta dak l-apprezzament *per se*, iżda l-konklużjoni li l-Arbitru wasal għaliha meta sab li n-nuqqasijiet ma kienu kkaġunaw l-ebda dannu lill-appellant. Din il-Qorti tqis ukoll li l-Arbitru għamel eżami akkurat mhux biss tal-fatti, iżda wkoll tal-konsegwenzi tal-istess fatti. Il-Qorti tagħmilha ċara, li hija, kuntrarjament għal dak li jgħid l-appellant fir-rikors tiegħu, l-Arbitru mkien ma qal li s-soċjetà appellata kienet konxja tal-frodi u li kienet konxjament ippermetiet it-tkomplijja ta' dak l-aġir. Għalhekk, din il-Qorti, f'dan l-istadju tqis li minn dak li sab l-Arbitru, ma jirriżultax li kien hemm xi konnessjoni diretta bejn l-aġir tas-soċjetà appellata u t-telf li ġarrab l-appellant, u dan kuntrarjament għal dak allegat mill-appellant f'din il-parti tal-aggravju. In vista ta' dan, din il-Qorti issib li l-Arbitru aġixxa korrettament u wasal għall-konklużjoni ġusta. Fil-fatt, huwa identifika serje ta' nuqqasijiet, li huma elenkati b'mod ferm ċar fl-istess deċiżjoni, iżda din il-Qorti ma ssibx li dawk in-nuqqasijiet waslu b'xi mod dirett sabiex l-appellant tilef flusu. Jibqa' l-fatt, li anki jekk is-

soċjetà appellata naqset f'xi aspetti, xorta waħda jirriżulta li l-aġir li wassal għat-telf tal-flus kien imputabbli għall-appellant. Il-Qorti f'dan l-istadju tiddistingwi bejn l-atti nfushom li wasslu lill-appellant sabiex jitlef flusu, pereżempju l-mod kif il-frodisti aġixxew sabiex inkorraġġewh jittrasferilhom flusu, u n-nuqqasijiet tas-soċjetà appellata, li twissi u tinfurmah b'xi suspett ta' irregolarità. L-aġir proattiv tas-soċjetà appellata fi kwalunkwe każ seta' biss jittanta jikkonvinċi lill-appellant jieqaf milli jkompli jinvesti mal-frodisti, u m'hemm l-ebda garanzija li dak l-aġir tas-soċjetà appellata kien ser iwaqqaf lill-appellant milli jkompli jittrasferixxi flusu favur il-frodisti. Dan qiegħed jingħad ukoll fid-dawl tal-fatt li l-appellant baqa' jwebbes rasu anki meta terzi ippruvaw jiftħulu għajnejh għall-possibbiltà li kien qed jiġi iffrodat, tant li emmen lill-frodisti u mhux lill-bank tiegħu stess. Dan ikompli jikkonferma l-konklużjoni li wasal għaliha l-Arbitru, hekk kif ma tirriżulta l-ebda konnessjoni bejn in-nuqqas tas-soċjetà appellata u t-telf tal-flus tal-appellant, liema telf kien frott l-aġir tal-appellat u tal-frodisti, u mhux b'xi aġir jew ommissjoni tas-soċjetà appellata. Il-Qorti issib li l-liġi, aktar u aktar fiż-żmien in kwistjoni, ma kienitx tobbliga lis-soċjetà appellata sabiex tagħmel verifiki fuq kartieri esterni, u dak li jrid japplika l-Arbitru hija l-liġi kif kienet dak iż-żmien. Il-Qorti tagħmilha ċara wkoll li dan kollu ma kienx ikun applikabbli li kieku l-kartiera li fiha ġew trasferiti il-flus kienet amministrata mis-soċjetà appellata, kif kien oriġinarjament allega l-appellant, imma dan il-fatt qatt ma ġie issostanzjat u ppruvat, u anzi rriżulta li l-kartiera amministrata mill-frodisti ma kinitx taħt l-awtorità tas-soċjetà appellata, iżda kienet kartiera estranea. Għalhekk, din il-Qorti issib li l-Arbitru interpreta l-liġi applikabbli f'dan ir-rigward b'mod korrett.

13. L-appellant imur lilhinn fl-aggravju tiegħu, u saħansitra jsostni li s-soċjetà appellata kienet kompartecipi fl-att frawdolenti u f'dan ir-rigward straħ fuq is-sub-artikolu 27(2) tal-Kap. 590 tal-Liġijiet ta' Malta, li jirreferi għall-obbligi fiduċjarji kif stabbiliti fil-Kodiċi Ċivili sa fejn applikabbli. Imbagħad kompla jistrieħ fuq l-artikolu 1049 tal-imsemmi Kodiċi Ċivili, u jgħid li s-soċjetà appellata hija responsabbli *in solidum* għat-telf ta' flusu. Is-soċjetà appellata min-naħa tagħha għamlet riferiment għan-negliġenza kontributorja tal-appellant stess, u kif ukoll għar-rekwiżit li sabiex japplika l-artikolu 1049 tal-Kodiċi Ċivili, irid ikun hemm aġir 'doluż'. Din il-Qorti, hekk kif ukoll ġie nsenjat fil-ġurisprudenza, issib li kif sewwa qalet s-soċjetà appellata, sabiex japplika l-artikolu 1049 tal-Kodiċi, il-ħsara trid tkun saret dolożament, u li għalhekk irid jintwera li dik il-ħtija nisslet id-dannu, u li dak id-dannu jkun imkejjel u ċert. Huwa minnu wkoll li l-Qrati sabu li parteċipazzjoni sekondarja, b'mezzi li jgħinu b'xi mod fl-eżekuzzjoni tal-attività li wasslet għall-ħsara, tista' titqies ukoll li taqa' fl-ambitu ta' dan l-artikolu. Madanakollu, din il-Qorti tqis li fil-każ odjern, in-nuqqas tas-soċjetà appellata ma kienx tali li jgħin l-eżekuzzjoni tal-frodi. Fi kwalunkwe każ, in-nuqqasijiet tas-soċjetà appellata fl-ebda waqt ma ippromovew b'xi mod il-frodi, jew il-kartiera estranea relattiva, b'dana li mill-provi jirriżulta wkoll ampjament li fiż-żmien li l-appellant kien qed jagħmel it-tranżazzjonijiet, *Royal FX* kienet għadha mhijiex identifikata mill-awtoritajiet bħala frawdolenti. Il-Qorti tqis ukoll li l-appellant ma jistax jippretendi li huwa ma kellu l-ebda obbligu jew rwol f'dan kollu. Filwaqt li huwa minnu li istituzzjonijiet bħal m'hija s-soċjetà appellata għandhom diversi obbligazzjonijiet, dan ma jeżonorax lill-investituri milli jkunu prudenti fl-investimenti tagħhom, u tali prudenza titlob li tal-anqas wieħed ikun kawt fl-aġir tiegħu, u jiċċekkja u jivverifika favur min ikun qiegħed jittrasferixxi

flusu. L-ebda *bonus pater familias*, ma jaġixxi bi flusu bil-mod kif aġixxa l-appellant, aktar u aktar meta kien hemm entitajiet oħra li ppruvaw jiftħulu għajnejh, u baqa' jwebbes rasu, tant li inizjalment anki ddubita meta l-Pulizija avviċinawh bil-possibbiltà li kien qed jiġi iffrodat.[3] Il-Qorti hawnhekk iżżid tgħid ukoll li mhijiex qiegħda tistrieħ fuq il-kunsens li l-appellant ta lis-soċjetà appellata sabiex isiru it-tranżazzjonijiet, iżda fuq il-fatt li: (a) l-appellant ma għamilx il-verifiki neċessarji qabel investa, (b) meta ġiet indikata lilu l-possibbiltà ta' *scam,* anki jekk minn terzi, huwa njora dan, (ċ) m'hemm l-ebda konnessjoni bejn l-ommissjoni tas-soċjetà appellata u d-dannu li sofra l-appellat, u (d) anki li kieku ġie b'xi mod imwissi b'aktar konvinzjoni mis-soċjetà appellata, jew saħansitra ġew imblukkati t-tranżazzjonijiet, m'hemm l-ebda garanzija li huwa kien ser iwaqqaf l-investiment tiegħu, jew li l-att frawdolenti kien ser jiġi evitat. Persuna li tqis ruħha vulnerabbli għandha aktar u aktar tagħti widen għal dak li jkunu qegħdin jgħidulha l-professjonisti, u mhux tinjorahom, kif huwa ippruvat li għamel l-appellant. Il-Qorti m'għandha l-ebda dubju, li s-soċjetà appellata ma tista' qatt tkun responsabbli għal tali aġir min-naħa tal-appellant. Fid-dawl ta' dan kollu, din il-Qorti issib li l-Arbitru kien korrett fid-determinazzjonijiet minnu mwettqa, u għalhekk tgħaddi sabiex tiċħad l-aggravju tal-appellant fit-totalità tiegħu.

<u>Decide</u>

Għar-raġunijiet premessi, il-Qorti taqta' u tiddeċiedi l-appell billi filwaqt li tiċħdu, tikkonferma d-deċiżjoni appellata fl-intier tagħha.

[3] L-appellant xehed quddiem l-Arbitru waqt l-udjenza tal-04.02.2025 *"...the Cyber Crime Agency came round a couple of days later. And I said, 'Look, they have asked for this last bit of money and then they will transfer me my funds,' and they said to me, 'They won't because it's a scam.' And then, I said, 'You're sure?' So, he said, 'Just. send them a message saying that we're here and see what happens.' So, I sent them a message and said the Cyber Crime team are here. And that was it."*

l-ispejjeż ta' dan l-appell huma a karigu tal-appellant. L-ispejjeż tal-ewwel istanza jibqgħu kif deċiżi.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Christian Sammut
Deputat Reġistratur