Neutral Citation Number: [2020] EWHC 3242 (Comm)

Case No: CL-2018-000386

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

Before :

THE HONOURABLE MR JUSTICE BUTCHER

- -

Between :

Ramona Ang	**Claimant**
- and -	
Reliantco Investments Ltd	**Defendant**

- -
- -

Mr Daniel Saoul QC (instructed by **SCA Ontier LLP**) for the **Claimant**
Mr Matthew Bradley (instructed by **Cooke, Young & Keidan LLP**) for the **Defendant**

Hearing dates: 13th-15th & 19th-21st October 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE BUTCHER

The Honourable Mr Justice Butcher :

Introduction

1. This action arises from the termination of the account of the Claimant with the Defendant in August 2017. That has led to a bitter and acrimonious dispute, with serious allegations being made by each side against the other.

2. The Claimant, to whom I will refer as 'Ms Ang', is an individual. She is married to Dr Craig Wright, a specialist computer scientist and researcher with cybersecurity and blockchain expertise, who claims to be the or a principal inventor of Bitcoin.

3. The Defendant, to which I will refer as 'Reliantco', is a company registered in Cyprus which offers investments in financial products and services through a web-based trading platform under the trade name 'UFX'.

4. An account was opened in the name of Ms Ang through the UFX platform on 10 January 2017. Between January and August 2017 Ms Ang invested in Bitcoin futures though the UFX platform. Having withdrawn US$600,600 from the account on 22 and 23 May 2017, she invested a further £300,000 at the end of July and the beginning of August 2017. On 4 August 2017 Reliantco requested further documentation from Ms Ang, and made another request on 9 August. Reliantco then terminated the account on 10 August 2017.

5. This triggered a dispute between the parties as to (i) the entitlement of Reliantco to terminate the account, (ii) Ms Ang's right to recover the funds in the account and the increase in the value of her positions, as well as sums from Ms Ang's proposed reinvestment of those funds, and (iii) the value of such claims. This dispute has given rise to litigation in Germany, the Czech Republic and in this jurisdiction and has been the subject of the trial before me.

Chronology

6. It is convenient to set out a summary narrative of the parties' relationship and dealings. This is largely apparent from the documentation. To the limited extent that there was any dispute about any of what follows in this section of the judgment it represents my findings on the evidence.

7. Until 2015 Ms Ang and Dr Wright were resident in Australia. They then moved to the UK. After moving here, on 29 April 2016 Dr Wright opened an account with Reliantco, and deposited US$10,000 on the same day. On 3 May 2016 he was asked to provide identification documents and did so. On 4 May 2016 Reliantco did a LexisNexis check on Dr Wright, which indicated that he had been accused of fraud in 2015. Reliantco blocked his account. On 31 May 2016 Reliantco returned Dr

Wright's US$10,000. Dr Wright did not access that account with Reliantco again between May 2016 and January 2017.

8. On 16 June 2016 a sum of £437,242.80 was credited to Ms Ang and Dr Wright's joint bank account with Lloyds Bank, with reference 'F/FLOW DEMORGAN LT', and between 16 June and September 2016 a total amount of £260,000 was deposited from the Lloyds Bank account into an investment account in Ms Ang's name with the website www.IG.com. On 10 January 2017 £8,000 was withdrawn from that account.

9. On 10 January 2017 two accounts were opened with Reliantco, using its online form, one in Ms Ang's name and one in Dr Wright's. I will have to return to the evidence as to the nature of the interaction between Ms Ang and Dr Wright at this point, and whether, as Reliantco contends, Ms Ang's account was being opened by and for Dr Wright, but what took place can be summarised as follows.

   (1) A UFX account with Reliantco was registered in Ms Ang's name using the email address ramona@rcjbr.org, and US$100 was deposited into that account from the Lloyds Bank account by debit card. A first trade was made shortly afterwards, which was closed out at a small loss the next day because there were insufficient funds in the account at that point to support it.

   (2) About half an hour after the opening of Ms Ang's account, an account was opened in Dr Wright's name, using the email address craig@tuliptrading.net. US$150 was deposited in it and two trades opened, which were closed out at a small loss the next day.

   (3) On the same day, Sotiroula Constantin of Reliantco's Know Your Customer ('KYC') Department sent an email to Ms Ang requesting KYC documentation to validate her account, to include a copy of a valid passport or other official ID, a recent utility bill, and a copy of the back and front of any credit card used for making deposits. Ms Constantin sent a similar message to Dr Wright on 11 January.

   (4) In response to Ms Constantin's request for documentation, on 11 January Ms Ang sent her a copy of pages of her passport and her credit card for the Lloyds Bank account (account ending …260). She stated that her utility bills were online. That was responded to on the same day by Michael Boat of Reliantco saying that it would be satisfactory to send an older bill.

   (5) On 12 January Ms Ang sent to Ms Constantin a copy of an Elmbridge Borough Council council tax bill. Its addressees were shown as both Dr Wright and Ms Ang.

   (6) Also on 12 January Dr Wright sent to Ms Constantin copies of the KYC documentation which he had, separately, been asked for. These included a copy of

the same Elmbridge Borough Council council tax bill as Ms Ang had sent, but with her name redacted from it, so that it just showed his name as addressee, but with a space before the address; and of his credit card, which was on the same Lloyds Bank account as Ms Ang's (ending … 260), though each showed their separate names.

(7) On the same day, £400,000 was withdrawn from Ms Ang's account with www.IG.com to the Lloyds Bank account. US$50,000 was deposited in the UFX account registered under ramona@rcjbr.org from the Lloyds Bank account on 12 January, and a further US$70,000 on 13 January. On the latter date she signed and returned a Declaration and Approval of Payments Deposits form which provided, in part 'I hereby declare that I am the only person authorized to transact and/or execute forex trades in my account…' and stating that she had read and accepted Reliantco's Terms and Conditions.

(8) Within Reliantco there had again been an identification of the LexisNexis report indicating that Dr Wright had been accused of fraud. This had led to Gordana Nedeljkovi 'blocking' him on 12 January. On 16 January Alicja Kwiatkowska of Reliantco sent him an email saying that 'your application does not fulfil the Compliance Department's requirements and was found to be unsuitable therefore we cannot accept you as a client of UFX'.

(9) On 17 January Ms Ang was informed that, her compliance documents having been accepted, her account was now approved.

10. It was common ground that the process of Ms Ang's opening of her UFX account which I have referred to above resulted in a contract between her and Reliantco (which I will call 'the Customer Agreement'). While not strictly common ground, there was no serious dispute before me that it incorporated Reliantco's 'UFX Terms and Conditions' ('the Terms and Conditions'). I find that those terms were incorporated into the Customer Agreement. In Annexe 1 to this judgment appear those of the Terms and Conditions most material to the matters debated.

11. Between January and May 2017 there was trading on Ms Ang's UFX account. This all involved trading in Bitcoin futures, and always by the establishment of long positions. By May these were showing a considerable profit. Ms Ang and Dr Wright were contemplating buying the property which they had been renting, and with a view to spending it on that purchase it was decided to realise and withdraw some of the gains. On 2 May 2017 50 positions, each for 20 Bitcoin futures, were closed, generating a profit of US$546,725.60 in Ms Ang's UFX account. Further positions were closed in the following days. On 18 May 2017 US$600,000 was withdrawn from the UFX account to the Lloyds Bank account. On 22 May 2017 a further US$600 was similarly withdrawn.

12. Between May and July 2017 the UFX account was less used. Some positions were closed on 25 May, 12 June and 15 June. A long position for 40 Bitcoin futures was opened on 15 June. At the end of July, as a result, as Ms Ang said, of the prospective

house purchase having fallen through, it was decided to put more money back into the UFX account. On 31 July 2017 Dr Wright arranged for a payment of £100,000 to be deposited into Ms Ang's UFX account from the Lloyds Bank account. He did the same as to another £100,000 on 2 August, and again on 4 August. Two long positions for 100 Bitcoin futures were opened on 3 August 2017, and a further two long positions for 100 Bitcoin futures were opened on 4 August.

13. At this point, on 4 August, Ms Melina Theodorou, an employee of Reliantco, sent emails to Ms Ang asking her to fill in and return a Source of Wealth Form with supporting documentation within three business days. On the same day Ms Ang completed and returned the form. In answer to the question 'Employment Status', she ticked neither 'Self Employed' nor 'Employee', but created a box called 'Independent wealth' which she ticked. She then ticked a box for 'Disposal of Business or other asset', and by way of further details added '40% of DeMorgan Ltd (Australia) holdings liquidated on move to U.K. P&L and Tax return details for company attached. Value $80,000,000 AUD.' She also ticked the box 'Other Source', and added 'House sale (documentation attached).' The documentation which she attached consisted of (1) a DeMorgan Ltd ('DeMorgan') 2015 tax return, balance sheet and profit and loss statement; and (2) a letter from Australian solicitors to Ms Ang and her former husband confirming the sale of the Australian property and enclosing documents confirming the payment to them of the proceeds of sale.

14. Apparently distinct from the process of requesting the Source of Wealth documentation, others within Reliantco and connected companies came to concentrate on Ms Ang's new deposit of funds and new positions. Within 'connected companies', I include in particular an Israeli company called 'Toyga', to which Reliantco outsourced some of its functions, including some back office support. On 4 August Jason Perry, called 'VIP Retention Manager', forwarded to Ameen Qussoom (ameen@toyga.com), another employee of Toyga, information which had been found about Dr Wright on the internet by an employee in Toyga customer services, including that Dr Wright was the founder of DeMorgan Ltd. The email included a link to a gizmodo site.

15. On 6 August Ameen Qussoom sent an email nominally to himself which stated:

> 'Pls see the mail below, she is the one who made around 600000$ profit by trading on Bitcoin this year.
> Now she is back and made 2 transfers of 260000$ in total.
> Do we have a legal right to cancel the profits she made?'

16. On 7 August 2017, a Mr Libby Weizman, who used a UFX email address, but who was an employee of Toyga, sent an email to an individual identified as 'Chris Judd' or 'Noam', which read:

> 'Hi Noam,

> Please follow up on this user.
> The accumulated risk is substantial.
> Immediate action is needed to hedge this risk
> Libby'

17. On the same day, Chris Judd emailed Mr Dennis De Jong, Reliantco's non-executive director and 100% shareholder, forwarding the information about Dr Wright and the gizmodo link, and stating as follows:

> 'Hello Dennis,
> Pls check the mail below and tell me what you think we should do.
> The user's deposited here around 600k and withdraw 600k, she's not speaking with us, she sends money time to time and opens bitcoin positions.
> The strange story is that after she opens deals we see a big movement on the bitcoin.
> We found that her husband claim that he's created the bitcoin (look at the link below also watch the videos).'

18. On the same day, Mr De Jong emailed various employees in the internal compliance team of Reliantco asking them to request proof of funds from Ms Ang and undertake extended due diligence; gave certain information in relation to Dr Wright as a 'starting point'; and stated that any withdrawals had to be approved by him. Ms Theodorou responded to this by saying that she had already requested the Source of Funds documentation, and forwarded Ms Ang's response to Mr De Jong. As Mr De Jong said in his evidence, he did not look at that documentation at the time because he was on holiday, but he said that they may have been discussed on a conference call. What he certainly did was to ask Ms Theodorou, also on 7 August, what the standard worldcheck report said, to which Ms Theodorou replied that it was clear. He then asked for a check also on the company name and on Dr Wright, and Ms Theodorou responded that 'This is the guy we were looking at a year ago', and attached the LexisNexis report which indicated that he had been accused of fraud. Mr De Jong did not recall reading it, but said that he was sure it would have been discussed on a phone call.

19. On 8 August 2017, Mr De Jong emailed Noam, as follows:

> 'Good morning Noam,
> There would be enough information to put her account under review: suspected fraud and adverse media of husband.
> So we can notify her that her account is in review and she needs to supply further information to her being married to Craig Wright and in connection with that the adverse media, fraud, etc. By this we can limit her opening new positions until further notice and we can even advise her that all open positions will automatically close by e.g. 18:00 Thursday (3 days from now).
> If this is what you want to do, we have to notify her at the time we put the account in review, we cant wait and then cancel the trades we dont like.
> On the other hand if this traders hit ratio is very good, we could also send her trades to JFD and piggy bag (sic) on them with our prop money…? All subject to approval of Haim obviously.

Let me know what you think.'

20. Noam replied to this email:

> 'Hello Dennis,
> This is what I want to do with her, tell me if we can do it.
> 1. the open positions will be canceled (sic)
> 2. to block her from open new one.
> 3. to freeze her account until full details about her doc' requests.
> Dennis she withdrew two months ago 600k if we found that she is fraud user, can we sue her and meanwhile freeze her money in our company, she has now 400K balance.
> I don't think now it's smart to cover her, I think we need to go with what we have and to block her.
> Libby send me mails and I believe he will start calling me about her, he still doesn't know about what we found.
> I will update him after we know in what direction we want to choose.'

21. On the same day 'Cedrick Toledano' who had the email address haim@toyga.com asked Ameen Qussoom to share what he thought should be done in the light of the above emails.

22. Also on the same date, Mr Weizman sent a further email to Noam, Ameen Qussoom and copying Haim Toledano. This email stated:

> 'Ameen and Noam.
> This user behavior must be checked thoroughly.
> There is nothing random about her trades, timing, exposure to one asset and timing of volume.
> Block the accounts and run deep and thorough KYC, research for sources of funds deposit and withdraw account names and beneficiaries, tax residency information over the net with the KYC papers submitted etc.
> If you keep it running, dealing must cover her exposure.
> Libby'

23. Noam replied to that email on the same day:

> 'Hello Libby,
> I'm investigating her activity (AML doc', KYC) soon I will let you know what we have about her.
> I will do my best.
> Noam'.

24. Ameen Qussoom's response to Mr Toledano's request for him to share his views as to what should be done was as follows:

> 'If we have a legal reason to cancel all her profits and trades then let's do so (relevant for past profits too). Otherwise we need to make a decision if we want to have such a trader who we don't have any impact on her decisions nor trades.

> Of course there is a risk. Aside from the min deal size and RC we don't have other things that can be done.'

25. On 9 August, at Mr De Jong's prompting, Ms Theodorou requested, in an email to 'Ramona Watts' a copy of the DeMorgan shareholders' certificate, and also 'as we can see from your email you are using your husband's surname', a copy of her marriage certificate. Ms Ang responded on the same day to say that she was on holiday but would provide the requested documents when she returned.

26. On 10 August Reliantco sent an email to Ms Ang as follows:

> 'Reliantco Investments LTD (hereinafter 'the Company') hereby informs you that your account has been terminated due to the Company's internal Anti Money Laundering policy.
> As per 26.5 q), the Company has proceeded with blocking your account and terminating the Customer Agreement.
> As stated in Article 26.5 b) and g) of the T&C's, the Company has proceed with the cancellation and debit of all transactions performed by the terminated account.
> Since the remaining balance of the account will be refunded, you will have no remaining balance in your favor for us to return to you as provided for in Article 26.7 of the T&C's.
> The Company's obligations towards you are thus fulfilled in this regard and you acknowledge that there are no outstanding payments to be made in your favor.
> Please consider this as written notice of the termination of the Customer Agreement between the Company and yourself, as per Article 26.3 of the T&C's.
> Please note that this letter in no way limits, restricts or waives any or all rights that the Company retains under the T&C's or applicable national or international law.'

27. On 14 August Ms Ang sent an email to Reliantco responding to the request for documents which had been made on 9 August. That email read:

> 'Hi,
> I am back from holidays and submitting the documents you require.
> Please note that I have attached:
>
> - Confirmation of Australian house sale
> - Proof of married last name (Watts), although I am now divorced and use my maiden name as per my passport (Ang)
> - DeMorgan share register as requested.
>
> Re proof of funds:
> The majority of funds that I have put in Reliantco are from the sale of my house in Australia. My other source of wealth comes from the distribution of an Australian public company which we have now closed since we no longer reside in Australia. I now live in the UK. I had 50% shareholding in Wright Family Trust which had shares in DeMorgan Ltd as per the attached share register.
> Please let me know when you can unblock my account.'

28. Ms Ang then sent a number of chasers, some of which Mr Qussoom appears to have directed should not be answered.

29. Internally, on 15 August 2017 Noam emailed Mr De Jong as follows:

> 'HI Dennis,
> Any update about her, there is not chance we keep her balance here and sue her that she scam us and we sent 600K for her?
> We must find something that will not letting her to take from us money.'

30. Again internally to Reliantco/Toyga, on 16 August Mr Weizman emailed Noam, Ameen and Haim Toledano, as follows:

> 'Hi Chris and Dennis
> Regardless of her withdrawal, you MUST cancel all her bitcoin deals from day one. This will put her balance in negative (not 400,000$ currently shown)
> If the recent bitcoin deals are canceled, same treatment should be apply on the initial deals prior to her withdrawal.
> You should not approve any withdrawal as she already withdraw approximately 600,000$ driven from illegal abusive use of the platform.'

31. On 17 August Noam responded to that:

> 'agreed as well, we must find some way not to give the 400K she deposited 2 weeks ago.
> Dennis I know it's the third time I talking with you about her but find something.'

32. On 17 August Mr Plischke of Reliantco's Compliance Department sent an email to Mr De Jong, copied to other members of the Compliance Department, including Ms Theodorou, and Ms Nadia Ali, as follows:

> 'Hi Dennis
> Ramona called again today. Nadia convinced her to wait until Tuesday. She very frustrated and is threatening legal action.
> She is mainly asking what is the reason behind the account being blocked and what is happening with her funds. We do not know what to tell her as we have not received instructions or information on what is happening and why we are terminating this account.
> We have received all the documents we requested but we terminated the account anyway on general 'AML policy' reasons.
> We have not discussed with her anything further regarding her account.
> The funds are all in her account and any withdrawal must be approved by you.
> Can you please advise on what we should tell her about the reason for terminating the account and what will happen to her funds? She has not raise the issue of the cancelled trades yet, but what should be our position if she does raise the issue?'

33. Mr De Jong responded to this, telling Mr Plischke that 'the account is terminated due to adverse media (potential fraud as per AML check) and employing abusive trading strategies'. Mr Plischke prepared a draft email to Ms Ang, which stated, inter alia,

that Reliantco would refund US$8,972.02. This was on the basis that she had deposited a total of $609,572.02 and had withdrawn $600,600. In the email which Mr Plischke sent to Mr De Jong enclosing this draft, Mr Plischke said:

> 'We will notify Vlada to refund the remaining deposits. What shall we do with the balance (profits) left in the account? Debit to 0?
> We should also consider that this will not end here and she will want us to define 'adverse media' and 'abusive trading strategies' so she can then challenge them. She might display significant resistance/retaliation (she has the financial means to act) and our arguments are not very strong. The burden of proof will be on us to show that we have justifiable, legitimate grounds to cancel her profits.'

34. On 24 August 2017 Reliantco sent Ms Ang an email which read:

> 'Dear Ramona Watts,
> We have received your inquiries regarding the status of your account in relation to the email sent to you on the 10th August 2017, informing you about the termination of your account.
> Your account is currently blocked as it is under investigation due to regulatory requirements.
> We are not able to disclose any further information regarding your account at this stage as this may constitute an unlawful declaration in breach of our regulatory obligations and which may prejudice the current and/or future investigation.
> We shall not be able to communicate with you regarding this matter until further notice.'

35. In September 2017 Ms Ang applied to the court in Munich, Germany, for relief analogous to a freezing order over Reliantco's bank account with Deutsche Kontor Privatbank. This order was then served on Reliantco in Cyprus. In the same month, Ms Ang also applied to a court in the Czech Republic, where another Reliantco account was held, for a similar freezing type order, but that application was refused by the Czech court.

36. Reliantco did not report any concerns about Ms Ang's account, including any money laundering or insider trading issues, to MOKAS, the Cyprus anti-money laundering authority in August. According to Mr De Jong a report was made in October. No documentation was produced which showed this, but this, according to Mr De Jong, was because it was impermissible for such information to be disclosed. Be that as it may, on 13 February 2018 MOKAS informed Reliantco that it would not be taking any action relating to Ms Ang's account.

The English Proceedings

37. On 17 April 2018 Ms Ang sent a letter before action to Reliantco. On 5 June 2018 she issued the Claim Form in the present action. Reliantco then challenged the jurisdiction of this court. It relied on the Terms and Conditions and in particular on clause 27.1 thereof which provides that the courts of Cyprus are to have exclusive jurisdiction over 'all disputes and controversies arising out of or in connection with'

her Customer Agreement, and on Article 25 of the Brussels Regulation (Recast) (ie Regulation (EU) No. 1215/2012 on jurisdiction and enforcement of judgments in civil and commercial matters) ('Brussels (Recast)').

38. This jurisdiction challenge came before Andrew Baker J in February 2019. His judgment was handed down in April 2019. As Andrew Baker J recorded, Ms Ang answered Reliantco's case on the application of the jurisdiction clause in the Terms and Conditions in two ways: first, she contended that she was a consumer within Section 4 of Brussels (Recast); and secondly that clause 27.1 was not incorporated into her Customer Agreement in such a way as to satisfy the requirements of Article 25 of Brussels (Recast).

39. By his judgment and ensuing order, Andrew Baker J dismissed Reliantco's application. In his judgment, Andrew Baker J:

    (1) Stated, on the basis of the evidence before him, that Ms Ang did not have any education or training in cryptocurrency investment or trading, and while she had worked in money markets for two months as a trainee had no other professional currency trading or money market experience. Her primary occupation, Andrew Baker J said, was running the family home and bringing up the children, looking after the family wealth, and acting as an unpaid part time PA to Dr Wright.

    (2) Recorded that Dr Wright is a computer scientist who works as Chief Scientist for nChain Ltd, a blockchain technology company, and publishes prolifically. As Andrew Baker J recorded, he is the same Craig Wright who has identified himself publicly as 'Satoshi Nakamoto', the online pseudonym associated with the inventor of Bitcoin; and who had reputedly built up a huge Bitcoin cache.

    (3) Found that Ms Ang was a consumer within Section 4 of Brussels (Recast). In reaching this conclusion, Andrew Baker J found that speculative investment with a view to financial gain was not inherently a business to which the consumer rule could not apply; that investment by a private individual of her surplus wealth in the hope of generating good returns was not, speaking generally, a business activity; and that on the evidence her contract with Reliantco was outside any business of Ms Ang's.

    (4) Held, contrary to Ms Ang's case, that clause 27.1 of the Terms and Conditions was effectively incorporated into her agreement with Reliantco. He rejected her claimed recollection that she had attempted to click the link to the Terms and Conditions and that it was not working. He found that this was 'demonstrably unreliable and cannot be trusted' (paragraph [78]).

40. At a consequentials hearing on 15 May 2019, Andrew Baker J indicated that he had regarded Ms Ang's story of successive, unsuccessful, attempts to access the Terms

and Conditions as being 'invention', and an 'implausible factual claim' that was 'rather effectively debunked'.

41. In August 2019, Reliantco served its Defence. In that Defence, Reliantco made the case that it was not Ms Ang who had opened the account in her name in January 2017, it had been Dr Wright; that it was Dr Wright who had thereafter operated the account 'as a means of overcoming the effects of the Defendant's termination of Dr Wright's own account with it'; that the account was thus operated 'pursuant to a deceitful misrepresentation as to the identity of the true holder and operator of the account'; that to the extent that Ms Ang invested any sums using the platform, she did so as agent for Dr Wright; and that her statements as to the sources of wealth in her emails of 4 and 14 August 2017 were incorrect. These matters were said to give rise to rights to 'rescind' or terminate the agreement between the parties, and to establish an 'upper limit' on the amount that Ms Ang could claim from Reliantco of US$8,972.02, calculated as US$222,275 invested in January 2017, less US$213,302.98 (being her 'extraction' of US$600,600 less her reinvestment of US$387,297.02 by 4 August 2017). Reliantco pleaded a counterclaim on the basis of an indemnity provision in the Terms and Conditions; and that the decision of Andrew Baker J and the freezing order of the Munich court had been obtained by fraud and/or deceit on the part of Ms Ang that she was the individual who had opened and was the sole user of the account.

The Issues at the Outset of the Trial

42. When the trial commenced, the issues between the parties could be summarised as follows. Ms Ang claimed the return of the money standing to the credit of her account when it was closed on 10 August 2017, in an amount of US$708,857.63, comprising somewhat over US$400,000 invested in July/August, together with c. US$300,000 which were the trading gains as at that date on her open positions. She claimed also damages for loss of the profit which she claimed she would have made had that money not been withheld, in an amount of c. US$600,000. These claims were based on three causes of action:

    (1) Breach of contract. Specifically Ms Ang contended that there was a breach of various express provisions of the Terms and Conditions which Reliantco itself contended were those incorporated into the contract. She also relied on certain terms which she contended were to be implied into the contract either pursuant to the English Consumer Rights Act 2015 ('CRA 2015'), or as a matter of common law.

    (2) Breach of trust. Ms Ang's case in this respect was that she had made all transfers to Reliantco for the specific and sole purpose of those funds being invested in accordance with her instructions, and on the understanding that her funds would be segregated. She contended that there was either an express trust or a Quistclose trust (per Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567). There was an issue as to whether Cyprus law recognises Quistclose trusts.

    (3) Breach of the Data Protection Act 1998 or other applicable data protection law. Ms Ang contended that Reliantco, as data controller, had breached data protection

principles, including in particular that personal data being processed should be accurate.

43. At the outset of the trial, Reliantco maintained all the points put forward in its (Amended) Defence and Counterclaim, and of which I have already given an outline. Specifically, in its Skeleton Argument, Reliantco advanced the following defences:

(1) It contended, in answer to the breach of contract claim, that it had been entitled to terminate its contract with Ms Ang for the reasons it then gave; or alternatively for other reasons which were then available to it. These other reasons included in particular an alleged right to terminate the agreement because certain representations and warranties given by Ms Ang had been or became untrue. This was said in particular to be the case in relation to a warranty Ms Ang had given as to the accuracy of information which she had given to Reliantco. Reliantco argued that this warranty was broken because the information which she had given as to her source of wealth on 4 and 14 August 2017 was untrue; and also that there was a breach of Clauses 10.2, 10.7 and 10.9 of the Terms and Conditions because either Ms Ang's account was opened and thereafter operated by Dr Wright and not by Ms Ang and insofar as Ms Ang had any involvement with the account it was simply as Dr Wright's agent, or at least that Dr Wright had some access to that account.

(2) It relied on a defence of misrepresentation, which was said, 'put at its lowest' to be based on the allegedly incorrect statements in the Source of Wealth documentation; and 'put higher' to be based on the 'deceit' involved in the account having been opened and thereafter operated by Dr Wright and not by Ms Ang. The misrepresentations, whether innocent or deceitful, were said to justify the termination 'or rescission' of the account on 10 August 2017, and to nullify any suggestion that Ms Ang should be entitled to the trading gains which there had been by 10 August 2017. It was also contended that Ms Ang should not be entitled to recover the amount which she had deposited, which stood in her account in the sum of US$407,442.40. This argument was put in a number of ways, including the adoption of the argument, already outlined, that the upper limit on any recovery was US$8,972.02 because the amount which Ms Ang had taken out by 23 May 2017 had to be taken into account, and the contention that Reliantco's counterclaim exceeded any claim which Ms Ang might have to the return of the monies which stood to her account.

(3) It denied that there was any Quistclose or other trust.

(4) It denied that Ms Ang could succeed in relation to her claims for breach of data protection principles, and specifically contended that they failed for reasons of lack of causation and remoteness.

(5) It put forward a counterclaim on the basis that a fraud had been perpetrated on the German court and on Andrew Baker J by Ms Ang's assertion that she was the user of the account.

44. The parties intended to call, in addition to factual witnesses, (1) IT experts, and (2) Cyprus law experts. In relation to Cyprus law, the parties had agreed that this should be treated as the same as English law, save in two respects, namely (1) the principles applicable to determining whether clauses in the Terms and Conditions would be rendered ineffective as a matter of the Cypriot Unfair Terms in Consumer Contracts Act 1996, and (2) whether Cypriot law recognises Quistclose trusts.

The Narrowing of the Issues

45. The issues in the case narrowed significantly after Mr De Jong had commenced giving his evidence. The reason for this was that he accepted that Reliantco held sums received from clients for the purposes of their trading in a fiduciary capacity, and specifically that the sums which it had received from Ms Ang had been held for her, and were 'her monies', and that Reliantco had not intended to keep her money. This led, on the fourth day of the trial, to Reliantco accepting that it would no longer contest Ms Ang's claim to the balance of the amount deposited in her account as at 10 August 2017, which it contended was an amount of US$399,298.79. Reliantco would still be able to advance its counterclaim and an alleged right of set off, though any such right of set off was denied by Ms Ang on the basis that her claim to these monies was a proprietary one. Given the above concession, it was agreed that the Cypriot law experts, who had principally been going to give evidence on the Quistclose trust aspect, no longer needed to be called, and that, insofar as there were any disputes as to issues of Cypriot law other than related to the recognition of Quistclose trusts or their equivalent, the evidence of Dr Marcos Dracos, who had been instructed by Ms Ang as an expert, should be accepted.

46. I need only comment on these developments that I did not find Mr De Jong's concessions in the evidence to which I have referred to be in any way surprising, especially in the light of clauses 4.3, 7.1 and 7.2 of the Terms and Conditions, and of Reliantco's audited accounts. I had found more surprising the case which it had made in its pleadings and its opening that, notwithstanding that it was an agent, and had received sums on the basis that they would be held in the client's name and would not be used in the course of Reliantco's business, it was entitled to retain them itself. In the event, as I have said, that issue was removed from the trial.

The Evidence

47. As with many cases in this Court, I considered that the most reliable basis for making findings of fact was in general the contemporary documentation, and the inferences which could be drawn from it or, in relation to certain matters, its absence. This was, however, a case in which the oral evidence had a rather greater significance than in many commercial cases as a result, in part, of the domestic context (to use at the moment a neutral phrase) of Ms Ang's setting up and use of the account, as well as the absence of documentation on certain issues. It is therefore necessary for me to set out my assessment of the evidence given by the four factual witnesses who testified.

48. Ms Ang herself gave evidence. She was clearly an intelligent witness. She was aware of the nature of points which might be made against her case and was in some instances anxious to pre-empt them. I also gained the clear impression that she had to some extent embroidered or elaborated on her memory of events. She was thus not an entirely reliable or truthful witness, but I did not form the impression that Ms Ang was trying to deceive the court in relation to the essential elements of her narrative. On the contrary, I considered her core evidence, that she had regarded the UFX account opened in her name as her account, using what she saw as her money, to have carried conviction. Ms Ang came across as having independence of mind and I did not consider that Reliantco's case that, to the extent she had been involved at all with the UFX account, it had been as Dr Wright's agent, acting solely on his instructions, to have been consistent with the view I formed as to Ms Ang's character.

49. Dr Wright gave evidence. He was an unsatisfactory witness in many respects. He was belligerent, argumentative and deliberately provocative. He evaded questions to which he did not wish to give a straight answer. On occasion he refused to accept what documents plainly indicated. He was prepared to make grave and unsustainable allegations, for example in relation to the supposed fabrication by or on behalf of Reliantco of an email from him of 3 September 2017. He sought on occasion to blind with (computer) science. I came to the conclusion that I could not rely on Dr Wright's evidence as to whether and how particular events had happened unless it was supported by documentation, other evidence I could accept or by the inherent probabilities.

50. What however did emerge from Dr Wright's evidence were certain features of his character and circumstances which I consider to be of relevance in assessing the factual issues in this case. In the first place, as Dr Wright made clear, he is someone who has amassed a considerable fortune in Bitcoin. He said that he has US$14 billion of Bitcoin in a trust. The following were representative passages of his evidence:

> 'On the other hand, I don't really care about this because my car is worth more than their whole thing is [by which I understood him to mean the value of this case]. I have got a Lamborghini. I have got other sports cars. Their whole thing is a rounding error for me. (Day 2/187) …
> You again seem to think I would care about $5000 deposits. I have a watch that bloody makes this a rounding error. (Day 3/19)'

51. A further significant feature of his evidence was his recognition that, if he decided to apply himself to a matter, he would do it with pertinacity, even if it was apparently insignificant. He gave the following evidence:

> 'I get – my wife tells me with these sort of things I get too upset. I sued Amazon. Amazon dropped a parcel over the fence and broke it. I sued them. I won, but I still sued them. Over a £70 parcel I spent $700 worth of legal fees against Amazon. (Day 2/175)'

Furthermore, he made it clear that he did keep an effective watch over what was his wife's money and what was his. He said:

> 'Basically, I keep track of everything. I've actually – I've got qualifications in finance and accounting. I used to work in an accounting firm. I track all these things. (Day 3/20)'

52. It was also clear from his evidence that he valued his wife having funds of her own. The following evidence was, in my view, broadly credible:

> 'And when I take money out of the [joint] account I do put it back, because it's my wife's money. And I think it's important – I've got my own source of wealth. And I don't want her beholden to me. I think that leads to problems.
>
> If she's beholden to me, then it leads to dependency problems. I had that in my first marriage, part of why my first marriage collapsed was my wife was completely dependent on me so I want my wife to be independent from me. I don't want her asking, going, 'Can you put more money in for the school account, can you do this?' I want her just to have her own funds and I want her to earn from it.'

53. I also accepted that Dr Wright had a dim view of Ms Ang's technological and financial abilities. As he said:

> 'So, yes, my wife had no ability to work out financial calculations'.

His low estimation of her technological knowledge was clearly manifested in his evidence at Day 2/175-180.

54. Reliantco called two factual witnesses: Mr Dennis De Jong and Ms Melina Theodorou. Ms Theodorou was an essentially trustworthy witness in relation to her, relatively limited, involvement in the matters with which I am concerned.

55. Mr De Jong's evidence was more difficult to assess. He was straightforward in relation to the issue of whether the monies which Ms Ang had deposited were held in a fiduciary capacity. I considered, however, that he was evasive in relation to the issue of why the decision had been taken to close Ms Ang's account and 'cancel' her trades; and, more generally, as to the relationship between Reliantco and Toyga, and the role in the relevant decisions of Messrs Toledano, Noam, Ameen Qussoom, and Weizman.

56. I consider, further, that Ms Ang made a legitimate criticism that none of the four Toyga individuals I have just referred to, nor anyone else from Toyga, was called to give evidence.

57. As I have already said, IT experts were called. The reason for this evidence was as follows. Reliantco produced a log of occasions on which Ms Ang's account had been accessed electronically. Although Ms Ang did not accept the reliability of this log,

what it had shown, inter alia, was access to the account on 14 and 20 April 2017, from the UK IP server address by which her account was intermittently accessed over the period 7 to 15 February 2017 and consistently over the period 25 February to 24 May 2017. The significance of this was said to be that during the period of 12 to 20 April 2017 Ms Ang was in Singapore celebrating her father's birthday. Reliantco accordingly pointed to this as an occasion on which, as it said, it had clearly not been Ms Ang, but had been Dr Wright, who had accessed her account. Similarly, Ms Ang's account had been accessed 21 times from a Samsung Galaxy S7 mobile phone in the period between 17 February 2017 and 14 August 2017. Reliantco pointed to this as significant, because Ms Ang had had an iPhone, while Dr Wright had had a Samsung Galaxy. To these points made by Reliantco, Ms Ang and Dr Wright responded that it was use of a VPN connection which had allowed Ms Ang to access her account through her home network while she was away from home; and that the explanation of the contact through the UK IP address on 20 April 2017 was probably that it was through the VPN connection, by her using the inflight WiFi while on board a Singapore Airlines plane. The expert evidence was designed to shed light on the extent to which Ms Ang's / Dr Wright's account in relation to the VPN network was a possible or plausible explanation of the entries in the log.

58. The parties each instructed an IT expert, as follows: on behalf of Reliantco, Dr Nedko Nedev; and on behalf of Ms Ang, Mr John Douglas. This led to the proliferation of extremely technical (sub)issues, and to the experts being asked to come close to expressing views as to the reliability of the evidence of Ms Ang and Dr Wright. Ultimately, the matters which were properly the subject of expertise which separated Dr Nedev and Mr Douglas were limited, and I will return to them below. I considered each to be properly qualified and seeking to assist the court.

59. The parties served evidence as to Cyprus law: from Dr Dracos on behalf of Ms Ang; from Mr Pavlou on behalf of Reliantco. As I have said, insofar as this related to whether the equivalent of a Quistclose trust would exist or be recognised as a matter of Cyprus law, the issue fell away, and I will not say more about it. In relation to other issues of Cyprus law, as I have also said, it was agreed that I should proceed on the basis of Dr Dracos's evidence. That evidence was that Cypriot Law No. 93(1)/1996 on unfair / abusive terms in consumer contracts harmonised Cypriot law with Directive 93/13/EEC; and that that law must be interpreted consistently with the Directive and decisions of the CJEU. Dr Dracos's evidence was that a significant imbalance between the parties' rights and obligations is not enough, on its own, to render a contract term unfair; nor is it enough, on its own, that a term falls within the 'grey list', the Cypriot Supreme Court's decision in Frakapor Courier Ltd v Bank of Cyprus (Civ. App. 9/2011, Decision 15 June 2016) being to that effect. It must be established in all the circumstances that there was an absence of good faith. This issue would be approached consistently with the jurisprudence of the CJEU. Dr Dracos gave evidence that in his opinion this involved an objective not a subjective evaluation.

The Principal Factual Issues

60. I turn to consider and make findings upon the main factual issues which divided the parties. These can be classified as falling into three main categories: (1) the issue of whether the Reliantco account opened in Ms Ang's name was in reality Dr Wright's account, with the further issues of whether and to what extent Dr Wright may have accessed and traded on that account, and whether Ms Ang and Dr Wright sought to mislead Reliantco as to the real user of the account; (2) whether the information provided by Ms Ang in the Source of Wealth Form submitted on 4 August 2017 was inaccurate; and (3) what were the reasons for Reliantco's closing Ms Ang's account and seeking to 'cancel' her trades. I will take these in turn.

What involvement did Dr Wright have with the account?

61. Reliantco's primary case in relation to Ms Ang's account was an uncompromising one. On that case, it was always Dr Wright's account. He had set it up; he always used it; and he, with Ms Ang, took steps to try to ensure that Reliantco did not know that he had any involvement with it or indeed, as I understood it, with Ms Ang. Reliantco's case was put in its opening skeleton argument for the trial as being that 'insofar as [Ms Ang] (as opposed to [Dr Wright]) invested any sums using [Reliantco's] platform at all, she did so in the capacity as agent for her fraudulently undisclosed principal ([Dr Wright])'.

62. I do not accept Reliantco's primary factual case about the 'true operator' and nature of the account. I find that the account was indeed, in a real sense, Ms Ang's; that it was opened by her, albeit with help, and very probably with the encouragement, of Dr Wright; and that Ms Ang thereafter did trade on the account, though I conclude that Dr Wright probably did as well, in order to assist her. I consider that this accords much better with the documentary evidence and the evidence from Ms Ang and Dr Wright that I am able to accept than does Reliantco's primary case.

63. More specifically in relation to the establishment of the account:

(1) I accept Ms Ang's essential account that she had played the principal role in the setting up of her account on 10 January 2017. I have no doubt that she sought, and obtained, some help from Dr Wright in doing so. He is very expert and experienced in financial and computing matters; she, by her own (and his) account is not.

(2) It is not clear as to why Dr Wright sought to open an account on 10 January 2017 in his own name. It may be that it was, as he said, simply a demonstration account, for the purposes of showing Ms Ang what to do; or it may be that he thought that he might use it once opened. Whatever the precise truth in relation to that, I consider that the opening of this account does not alter the basic point that Ms Ang wanted to open an account in her own name for herself.

(3) I find that Ms Ang and Dr Wright were not seeking to conceal their relationship from Reliantco. It would have been surprising, if they had been wanting to do that, that Ms Ang would have sent a Council Tax bill with both their names on it. It would also have been surprising for them, on consecutive days, to have sent to the same person at Reliantco copies of bank cards for the same account at Lloyds Bank but with their different names on them.

64. As to the subsequent accessing of the account, I accept that much, probably most, was done by Ms Ang; and that many, and probably most, of the trades were done herself albeit, at least on some occasions, after some discussion of what she was doing with Dr Wright. But I also find, on the balance of probabilities, that Dr Wright himself accessed the account. I do this on the following basis:

(1) There was, in the end, no dispute between the IT experts as to the reliability of the access logs produced by Reliantco. There remained a residual issue as to whether all the entries represented user authentications, but the logs were, in Mr Douglas's words, 'very accurate' in showing some sort of access, and as to its date and time, and some information as to the type of platform the account was accessed from.

(2) Given (1), I consider that the most likely explanation of the access to the account from the UK IP address on 14 and 20 April 2017 is that it was by Dr Wright. Whilst it might perhaps be possible that it was by Ms Ang through a VPN network, I do not consider that this is the most likely explanation. This is in particular because of the access on 20 April, whilst Ms Ang was on a flight with Singapore Airlines. While she suggested that she may have been using the on board Wifi, including for checking her emails, I did not consider this to be correct. She had not responded to an email sent to her from a tutoring agency on 13 April until 06.39 on 20 April, at which point she wrote that she had been overseas and had just returned. It seems to me most likely that that was sent just after she had touched down at Heathrow, and suggests to me that she had not been actively using Wifi on board.

(3) Similarly, I consider that the most likely explanation of the occasions on which the account was accessed from a Samsung Galaxy phone was that that was by Dr Wright. The occasions of such accesses included accesses from Spain and from Italy. I did not find convincing Ms Ang's suggestion that these were to be accounted for on the basis that she had used Dr Wright's mobile because he had had a better mobile data roaming package. As Dr Wright himself was keen to stress, he and his wife were staying in a '£20,000-a-night-type hotel', 'one of the top hotels in the world in a suite that well royalty stays in'. He was, as he put it himself, a 'bloody billionaire'. I did not regard it as likely that Ms Ang had an inadequate data roaming package.

(4) I accepted Dr Wright's evidence that he wanted Ms Ang to have her own money, and earn from it. But I was also sure, having seen Dr Wright give evidence, that if he came to focus on the matter, and thought he could help her make her investment profitable without taking it over, he would have done so. Furthermore,

as he said himself, he had 'real problems actually explaining things to people, but I can show them and I can write them … the only way I can express myself is to actually do something…' This seemed to me strongly to indicate that had he wanted to help his wife with her trading in Bitcoin futures, what he would have done, at least on occasion, was to do it himself. His low estimation of his wife's financial and technological abilities, at least by comparison with his own, would, I think, have meant that he had little compunction in helping her in this way.

(5) It is apparent that Dr Wright did keep track on the positions in Ms Ang's UFX account. As his Affidavit in the German proceedings said, he made certain 'parallel' investments, with positions similar to those which Ms Ang had opened with UFX. In evidence on Day 3 of the trial Dr Wright said that he had known of the positions on Ms Ang's UFX account and had reflected them in his own positions, though he had other positions as well. The fact that he was conducting such parallel investing suggested to me that he would have been all the more likely, on occasion, to access Ms Ang's account, at least to monitor what the position on it was.

Was the Source of Wealth Information Inaccurate?

65. The second area of factual dispute was as to the source of funds utilised for Ms Ang's investments and more particularly whether the information given in the Source of Wealth Form which she submitted on 4 August 2017 was untrue. I have already set out what that Source of Wealth Form said. Given that that Form was filled in and returned pursuant to Ms Theodorou's email of 4 August, which had specifically mentioned Ms Ang's recent deposits and said that documentation was required to sustain her deposits, and that the form itself asked 'Please state how the source of wealth for your last deposits has been raised…', I consider that the information contained in the completed Source of Wealth Form would reasonably be considered as relating to Ms Ang's recent deposits, not to the deposits made prior to late July 2017.

66. Reliantco's case is that the information in the completed Source of Wealth Form was inaccurate for the following reasons:

(1) The money from the sale of the Australian property which Ms Ang had owned with her former husband was paid into a Natwest bank account in Ms Ang's name, and the majority of it was paid into another Natwest account in Ms Ang's and Dr Wright's joint names. None was paid out into the Lloyds Bank account from which the deposits in late July / early August were made.

(2) The amount which she had received from DeMorgan had not been a sum paid in the liquidation of DeMorgan, but had been the repayment of loans to that company.

(3) That a considerable part of the amount received from DeMorgan in June 2016 had been paid into Ms Ang's IG account, where it was added to some money which Dr

> Wright had provided, and that there were then significant trading gains on positions opened in the IG account. It was this IG account which had then been used to fund the initial deposits made by Ms Ang after her UFX account was opened in January 2017.

67. Ms Ang said that she did not recall all the details of these matters. She denied, however, that her statements in the Source of Wealth Form had been untrue or inaccurate. Her evidence was that she had indeed seen the source of her deposits as being the two matters she had identified: they were important sources of her own wealth. Specifically in relation to the amount deriving from DeMorgan, the repayment of loans had taken place as part of the liquidation of the company, and what she had said in the Form as to DeMorgan was accurate.

68. I find that the information which Ms Ang provided in the Source of Wealth Form was not untrue or inaccurate. The question which she was asked to answer was as to the 'source of wealth', and the three suggested answers, if the source was other than annual income, were 'Inheritance from a third party', 'disposal of business or other asset' and 'other source'. That was clearly not seeking the identification of the bank account(s) out of which the deposits were being made, but was, or could reasonably be taken to be, looking to identify the origins of the depositor's relevant wealth. The question was not specific about how the Form should be filled in if the ultimate source of wealth was one of the two specifically suggested matters, but the money derived from those sources had been added to by investment. In light of these points I consider that Ms Ang's answers were not inaccurate or untrue. The matters which she identified were a significant source of her own wealth, and more than equalled the amount of the deposits which she was making.

69. Specifically in relation to Reliantco's complaint that the Source of Wealth Form was untrue or inaccurate because it suggested that the sums from DeMorgan had been paid on its liquidation, whereas they had been the repayment of a shareholders' loan, I considered that this point was incorrect. The Form said that a source of funds had been '40% of DeMorgan Ltd (Australia) holdings liquidated on move to U.K.'. I do not consider that the Form was stating, or would reasonably be read as stating, exactly how in the process of liquidation of DeMorgan Ms Ang had been entitled to a sum of money, but was rather saying that DeMorgan had been liquidated on her move to the UK and she had been the recipient of monies as a result of that process. That was not inaccurate.

70. Even if it can be said, contrary to my view, that the information was not an accurate answer to the questions, I reject Reliantco's case that it was deliberately untrue. The case which was put to Ms Ang in this respect was that she deliberately avoided giving a source of funds which indicated that part of it was Dr Wright's money. I considered Ms Ang's evidence as follows to have been credible, and I accepted it:

> 'Q. … I suggest that you interpreted the question exactly as you were meant to right from the off, but you gave an untrue answer in responding to it, didn't you?

> A. I did not and I would have no reason to. What reason would I have had to do that?
>
> Q. Because, firstly, the funds originally came from trading on the IG account, yes, that's a good reason not to tell them. But you [had] a better reason not to tell them, because some of those funds derive ultimately from Craig Wright's money?
>
> A. No, but the thing is they asked me for my source of wealth. My source of wealth was how I came to have money. What enabled me to put money into UFX? What enabled me to do that was the fact that I had $1 million coming from my house sale and DeMorgan had liquidated, resulting in some-
>
> Q. What enabled you to do it was trading profits on an IG account –
>
> A. That's not how I saw it.'

71. Reliantco's case in this area appeared to suggest that what Ms Ang was doing, in the way in which the Source of Wealth Form had been filled in, was to conceal any connection with Dr Wright at this stage. Mr Bradley submitted that that was 'the effect of what she was doing'. I did not consider that this was correct. The documentation which Ms Ang included with the Source of Wealth Form included the financial statements for DeMorgan as at 30 June 2015. The Balance Sheet had entries for 'Related Entity Loans – Wright Family Trust' and 'Related Entity Loans – Craig Wright R&D'. Following Ms Theodorou's request on 9 August, on 14 August Ms Ang sent a copy of the DeMorgan's shareholders' register showing the Wright Family Trust as having 131 million 'Founder' shares. Also included was the Register of Directors, which showed both Dr Wright and Ms Ang as Directors, and gave the same address in New South Wales for both of them. None of this was consistent with an attempt to conceal a connexion with Dr Wright.

The Reasons for the Termination of the Account and Cancellation of Trades

72. The third area of factual dispute related to Reliantco's reasons for terminating Ms Ang's account and 'cancelling' her trades on 10 August, and the connected issue of what had actually been done by way of 'cancellation' of those trades.

73. As I have said, this was an area in which various of the Toyga individuals who seem to have been intimately involved were not called. There was also a dearth of information, including documentation, as to what exactly had been done by way of the 'cancellation' of the trades.

74. Reliantco's case was that the reason for the termination of her account was that it had been discovered that Ms Ang was married to Dr Wright, who had been accused of fraud and who was supposed to be the inventor of Bitcoin, and that she had made significant gains earlier in the year from opening long positions which was a potential indicator of insider trading or the like. Such at least was Mr De Jong's evidence.

75. I consider that these were the concerns which initially prompted Reliantco to consider closing Ms Ang's account. However, I do not consider that that is the full story. It appears to me to be apparent from the emails that there are from Messrs Noam, Qussoom, Weizman and Toledano that they were concerned to try to get back the profits on Ms Ang's earlier trades, and to deal with her open trades in such a way that she neither received back the money she had invested nor made the gains which the value of her open positions as at that date indicated. Noam's email of 15 August 2017 said 'there is not chance we keep her balance here and sue her that she scam us and we sent 600k for her? We must find something that will not letting her to take from us money'. I do not consider that this type of concern and desire would have arisen if Reliantco's position had been being considered in isolation. Reliantco was, as the Terms and Conditions stated, simply a broker in relation to these trades. Mr De Jong's evidence as to Reliantco's business was that it '[did] not take the other side of our customers' trades'. It is hard to see how it could have occurred to a broker in that position to claim to recover for itself profits previously paid out on trades placed through it, or to appropriate to itself the sums which Ms Ang had invested with it. I conclude that the likely explanation is that the counterparty to Ms Ang's trades was PX Exchange; and that PX Exchange was a subsidiary of ParagonEx Ltd, of which, as in the case of Toyga, the ultimate beneficial owners were Mr Toledano and a Mr Pilosof. In the absence of any evidence from the individuals concerned, I draw the inference that the desire was at least to recoup losses made by PX Exchange on the earlier contracts it had entered into, and to avoid PX Exchange sustaining losses on Ms Ang's open positions. It may also be that, if PX Exchange had hedged Ms Ang's positions as Mr Weizman's emails of 7 and 8 August 2017, quoted above, suggest may have been the case, PX Exchange would have made a profit as a result of the 'cancellation' of Ms Ang's positions.

76. On any view it seems clear that the decision to 'cancel' Ms Ang's trades with immediate effect on 10 August 2017, and not to return what she had deposited, was taken by, or was at least the result of the attitude of, those within Toyga. This course went significantly beyond what Mr De Jong had advised on 8 August 2017 might be possible, and it is apparent from Mr Plischke's email of 17 August that Reliantco's Compliance Department had been given little information as to what was happening or why Reliantco was terminating Ms Ang's account.

Analysis of the Claims

Ms Ang's claims

77. As already set out, Ms Ang contends that she is entitled not only to recover the amount which she had deposited with Reliantco, but also the unrealised gains on the open positions which were in her account as at 10 August 2017, as well as the loss of investment returns which would have been made on those amounts. She makes breach of trust, breach of contract and data protection claims.

The sums deposited

78. As further set out above, Reliantco now concedes that it has an obligation to return the amount which Ms Ang had deposited. I understood this, particularly when taken with Reliantco's acceptance of Dr Dracos's evidence as to Cyprus law, to be an acceptance that there was the equivalent of a Quistclose trust in respect of these amounts. Even if there was not, I consider it clear that Reliantco was obliged to return these monies pursuant to the Terms and Conditions and in particular to clause 26.7. In that regard, there was no suggestion that any amount needed to be withheld from those amounts in respect of future liabilities.

Gains on open positions

79. Reliantco did, however, contend that it was not liable in respect of the amount which represented the unrealised gains as at 10 August 2017 on Ms Ang's then open positions.

80. The starting point is that Reliantco had entered an agreement with Ms Ang. Unless it was entitled to bring it to an end, to close her positions without her consent, and not to allow her to give instructions in relation to them, would have constituted a breach of the express or implied terms of the Customer Agreement, including clauses 10.1, 11.2 and 11.5 of the Terms and Conditions. Reliantco's answer is that it was entitled to bring the relationship with Ms Ang to an end. Reliantco put this case in two ways, not including its reliance on its counterclaim, which I will consider in due course. Those two ways were: (1) it contended that Ms Ang had been guilty of misrepresentation and deceit; and (2) that it was contractually entitled to take this course. The further issue then arises as to whether, even if Reliantco was entitled to terminate Ms Ang's account, it was entitled to deal with her open positions in a way which meant that she did not receive the value of the unrealised gains as at the date of that termination.

81. In relation to its case as to misrepresentation and deceit, Reliantco was not always clear as to what misrepresentation it was relying on and when it contended it had been made. Reliantco relied primarily on what it alleged was the material misrepresentation following the submission of Ms Ang's Source of Wealth documentation (Skeleton paragraph 26). That plainly was not pre-contractual and cannot have induced the making of the Customer Agreement. No pre-contractual misrepresentation was established. Insofar as Reliantco made a case that there was a pre-contractual representation to the effect that it was Ms Ang who was opening the account, and that that was a misrepresentation because it was in fact Dr Wright who was doing so (ADC para 5(v)), I find that that fails on the facts. It was Ms Ang who opened the account. Furthermore, even if there had been a pre-contractual misrepresentation there was no right on the part of Reliantco as at 10 August 2017 to rescind the Customer Agreement. By that time rescission was not possible; many trades had been entered into between Ms Ang and third parties through Reliantco as agent, which had been fully performed.

82. As I understood it, Reliantco's case on misrepresentation, at least at trial, was directed not so much to saying that there was a pre-contractual misrepresentation, but instead

was a case that there had been misrepresentations during the course of the existence of Ms Ang's account. This case was thus effectively the same as its case in relation to its entitlement to terminate by reason of what it contended were Ms Ang's breaches, including by reason of misrepresentations allegedly made by Ms Ang, and its case as to what the Terms and Conditions in the Customer Agreement entitled it to do in the event of such breaches, to which I will now turn.

83. Reliantco contended that its termination of Ms Ang's account on 10 August 2017 was not wrongful because it was entitled to do so for the reasons it then gave. Alternatively it contended that it was entitled to point to other reasons which existed at the time as justifying the termination, in accordance with the principle in Boston Deep Sea Fishing v Ansell (1888) 39 Ch D 339. The alleged matters were: (1) that clause 26.2(n) was applicable because Ms Ang had made misrepresentations in her Source of Wealth Form and documents, and that this constituted a breach of the warranty in clause 15.1(f) and/or (g); (2) that there was a breach of clauses 10.2, 10.7 and 10.9. The breaches alleged by Reliantco in relation to (2) were said 'at the very lowest' to be that Ms Ang was not the sole individual enjoying access to and/or the use and/or operation of the account, because Dr Wright had such access and/or made such use; and '[p]ut higher', to be that there was a breach because the account was always Dr Wright's and not Ms Ang's, and it had been opened and operated by him pursuant to a deceitful misrepresentation of the true holder and operator of the account.

84. Taking first Reliantco's case that clause 26.2(n) was applicable because of Ms Ang's misrepresentations in her Source of Wealth Form, this argument fails because I have found that the statements made by Ms Ang in the Source of Wealth documentation were not untrue or inaccurate. That is sufficient to dispose of this point, but I should add that Reliantco's case in relation to the inaccuracy of the Source of Wealth Form was on any view a highly technical one. This documentation appears to have played no role in the decision to terminate. Furthermore, it was almost unprecedented for a customer to return such a form at all. When she had received this form, Ms Theodorou forwarded it to her colleagues adding the comment (in Greek) 'first time in history' which, as she confirmed in evidence, was a remark on how infrequently such documents were returned, and was prompted by the fact that she was pleasantly surprised at the helpfulness of this client.

85. In relation to Reliantco's case as to breach of clauses 10.2, 10.7 and/or 10.9, as will be apparent from what I have said above, I find that it is not correct that the account was Dr Wright's, or that he alone, or he predominantly, operated it, or that Ms Ang was simply his agent in anything she had to do with the account. Accordingly, I reject Reliantco's case on breaches of these clauses insofar as it was 'put higher'. However, I have found that Dr Wright did have some access to the account. This must have involved a breach by Ms Ang of clause 10.9, in that Dr Wright was not 'an individual who ha[d] been expressly authorized to act on [Ms Ang's] behalf according to Section 16' of the Terms and Conditions. Furthermore, and though it may be of limited significance given my finding in relation to clause 10.9, I consider that the fact that Ms Ang permitted Dr Wright to access the account also constituted a breach of clause

10.2, because his was not 'authorized access'; and there was also a breach of clause 10.7 because permitting Dr Wright to access the account was use 'in contravention of th[e] Customer Agreement'. I do not however find that there was a breach of that part of clause 10.7 which required Ms Ang only to use the trading system for the benefit of her account and not on behalf of any other person, because I find that the account was used only on her behalf, even when it was accessed by Dr Wright.

86. On the basis that there were breaches of clauses 10.2, 10.7 and 10.9, as I have found there to have been, what were the legal consequences? In my judgment they gave Reliantco the right to terminate Ms Ang's account under the second sentence of clause 10.2, in addition to the right which it had, irrespective of breach, to terminate by sending a notice under clause 26.3. I do not consider that clause 26.2 was engaged. I have already given my reasons as to why I reject the case that 26.2(n) applied. For completeness, I should add that I did not consider that 26.2(e) was applicable, given that there was no suggestion that Reliantco considered that the Customer Agreement could not be 'implemented'.

87. The separate question arises as to whether in such circumstances, Reliantco was entitled to deal with Ms Ang's open positions in such a way as, in effect, to arrange that they should be 'cancelled' as if they had not been entered into. This, though it did not explain with any specificity as to how it had done it, was what Reliantco contended that it had done, and been entitled to do. I do not consider that the Customer Agreement gave Reliantco such a right for breaches of clauses 10.2, 10.7 and 10.9. 'Cancellation' is, within the terms of the Customer Agreement, distinguished from 'closing' or 'closing out' open positions (clauses 26.2(r) and (s) and 26.5(g), compared with clauses 11.7, 11.9, and 26.5(b)). As is obvious, and as had happened when Ms Ang had closed open positions previously, the ordinary process of closing out trades would realise the unrealised gains on her Bitcoin futures positions at the time of closure. Any right to 'cancel' under 26.5(g), assuming it to be a valid provision, arose only if there had been the occurrence of an event within 26.2. I find that there had not been.

88. I did not in fact understand Reliantco actually to contend that, if Ms Ang's only breaches consisted of letting Dr Wright have access to her account, those breaches had entitled it to 'cancel' as opposed to closing out her open positions (Reliantco Skeleton Argument, para. 22). In any event, I am of the view that the Customer Agreement did not entitle it to do so.

89. Further, if I am wrong as to the construction of the Customer Agreement, and it is to be construed as providing by clauses 26.2 and 26.5(g) for a right in Reliantco's discretion to 'annul or cancel' open positions for any breach of clauses 10.2, 10.7 and 10.9, then I would consider that Ms Ang is correct in her case that those clauses are not binding on her by reason of s. 62 CRA 2015. I consider that the relevant provisions of that Act are applicable to the Customer Agreement. The Customer Agreement was a consumer contract within Article 6(1) of the Rome I Regulation (Regulation 593/2008); and the relevant protections afforded the consumer by the CRA 2015 are protections afforded the consumer by provisions that cannot be

derogated from by agreement by the law which would, in the absence of choice, have been applicable under Article 6(1), namely English law. If the effect of the clauses in the Terms and Condition to which I have referred was as Reliantco contended, then they would in my judgment be unfair, in causing a significant imbalance in the parties' rights and obligations to the detriment of the consumer, contrary to the requirement of good faith. If these clauses had such an effect they would permit Reliantco, for what might be trivial breaches, to deprive the consumer of what might be very significant gains showing on her open trading positions. In relation to a consideration of whether a term causing such imbalance was contrary to the requirements of good faith, it is relevant to consider whether the trader could reasonably have assumed that the consumer would have agreed to such terms in individual contract negotiations. In my judgment that could not have been reasonably assumed.

90. Further, and if I am wrong that the English CRA 2015 is applicable, and that it is Cyprus law which governs, I would conclude that, applying that law, the relevant terms were not binding on Ms Ang. As already set out, Cypriot Law No. 93(1)/1996 harmonised Cyprus law with Directive 93/13/EEC. For the reasons I have given in relation to s. 62 of the English CRA 2015, which derives from the same Directive, I find that considering the matter under Cyprus law leads to the same conclusion.

91. On this basis, I consider that Reliantco's obligation to pay the 'Balance' on Ms Ang's account under clause 26.7 of the Terms and Conditions included an obligation to pay the amount which represented a closure of Ms Ang's open positions in a way which captured the unrealised gains which were shown on those trades on 10 August 2017. The failure on the part of Reliantco to close the open positions and realise that gain (if that is what happened) and to pay the balance which should have resulted from such closure 'as soon as reasonably practicable' constituted a breach of the Customer Agreement and in particular of clause 26.7.

92. Furthermore, and in case I am wrong in relation to the existence of a contractual claim, I consider that Ms Ang's claim to equitable compensation is made out. As I have said, it was ultimately not contested that the monies which Ms Ang had invested with Reliantco were the subject of the equivalent of a Quistclose trust. In my judgment Reliantco acted in breach of trust and of its fiduciary duties of loyalty in dealing with the positions opened on Ms Ang's account with those funds in such a way that meant that she did not accrue the benefit of the market gains on those positions at the time of termination of the account. As I have said, I find that this was done, at least in large part, in order to benefit Reliantco or parties which it or its controllers were related to, in the ways to which I have referred above.

Ms Ang's claim for loss of investment returns

93. Ms Ang claims what she says would have been earned by her had the monies to which she was entitled been paid to her upon the termination of the account. Although this claim had been formulated in a number of ways, by the time of trial the claim was put as follows. She contended that she and Dr Wright had decided in about May 2017,

when it became public knowledge that Bitcoin was going to 'fork' into Bitcoin Cash, that at the end of August or September 2017 she would close any positions she then had on UFX and he would close positions on an exchange called Kraken. They had decided that because they wished to purchase Bitcoin Cash on the Kraken exchange. Had she been able to do so, and if Reliantco had not blocked her account, she would have closed her positions with Reliantco on about 3 or 4 September 2017 and would have bought 3530 Bitcoin Cash. As at 3 July 2020, 3530 Bitcoin Cash would have been worth US$1,334,163.30.

94. It was put to Ms Ang that her account in relation to her planned investment through Kraken was entirely invented. I concluded that that was not the case. There appeared to me no very good reason why Ms Ang should have invented that account. It would have produced a considerably larger claim had she said that she would have stayed invested, or would have reinvested, in the same type of Bitcoin futures as she had purchased through Reliantco.

95. Accordingly I consider that Ms Ang is entitled to succeed on this aspect of her claim. I have already found breach of contract on the part of Reliantco. Remoteness of damage is not an issue, as it was plainly within the reasonable contemplation of the parties when they contracted that if Reliantco failed to pay to Ms Ang sums which she had invested in and/or made from investing in Bitcoin futures, she might lose the amount which she might gain from investing in similar products.

Data Protection

96. Ms Ang also made her claims on the basis of data protection law. Given that Cyprus and English law were, on the point, assumed to be the same, the matter was put on behalf of Ms Ang, for convenience, by reference to the Data Protection Act 1998. It was common ground that Ms Ang was a data subject, and Reliantco a data controller. Ms Ang's case was, in particular, that Reliantco had contravened Data Protection Principles 1 and 4. Specifically it was said that she had supplied considerable amounts of personal data, including in response to Reliantco's 4 August 2017 request. Her account had then been closed, apparently as a result of an alleged money laundering risk which her data was perceived to indicate. This, it was said, could only be because the personal data Reliantco processed was inaccurate, contrary to DPP 4; or that the processing of the data had not been fair and lawful.

97. It did not appear that, given my conclusions in relation to Ms Ang's other causes of action, anything turned on her data protection claims. Because of that and because I was concerned that they had not been fully explored, I do not consider that it is necessary or would be helpful to deal with this case in detail. I will say only that it did not appear to me that Ms Ang's real complaint is most naturally put as a claim in respect of improper or unlawful data processing, as opposed to breach of contractual or equitable obligations.

Reliantco's Counterclaim

98. I have already indicated the broad nature of Reliantco's counterclaim. It contended that it was entitled to recover (i) repayment of the costs paid to Ms Ang of £115,000 pursuant to the order of Andrew Baker J of 15 May 2019; (ii) its own costs of these proceedings; and (iii) its own costs of the proceedings which had been taken against it in Germany and the Czech Republic. This was put on two bases.

99. The first basis was that it was entitled to recover these amounts pursuant to the indemnity provision in Clause 6.8 of the Terms and Conditions. This provides:

> 'You agree to indemnify us against any loss, liability, cost, claim, action, demand or expense incurred or made against us in connection with the proper performance of your obligations under this Customer Agreement except where that loss, liability, cost, claim, action, demand or expense arises from our negligence, fraud or wilful default or that of our employees.'

100. Mr Saoul QC for Ms Ang put forward an argument that clause 6.8 was intended to apply only to actions brought by third parties, and not to actions brought by Ms Ang herself. While neither side referred me to it, there is authority that similar indemnity clauses can apply to actions brought by the person providing the indemnity: John v Price Waterhouse [2002] 1 WLR 953; Renewable Power & Light Ltd v McCarthy Tetrault [2014] EWHC 3848 (Ch). Clause 6.8, however, is in distinctive terms. It provides for an indemnity for claims made against Reliantco in connection with 'the proper performance of **your** obligations under this Customer Agreement' (emphasis added). 'Your' there means Ms Ang, as is confirmed by the definitions in Part VI of the Terms and Conditions. I do not consider that it can sensibly be said that the claim made by Ms Ang in the present proceedings are claims made in connection with the proper performance of Ms Ang's obligations under the Customer Agreement, as opposed to claims for the allegedly (and as I have found, established) improper performance by Reliantco of its obligations.

101. In any event, I consider that the present claims would fall within the exception for liability arising from Reliantco's 'negligence, fraud or wilful default or that of our employees'. I consider that this proviso must be taken as at least embracing a case such as the present where Reliantco has itself been in breach of its fiduciary and contractual obligations to Ms Ang such that she can successfully claim sums from it. In this regard, and if there is any ambiguity in the width of the proviso it should, as pleaded by Ms Ang in her Reply, be accorded that meaning that is most favourable to the consumer, pursuant to s. 69 CRA 2015.

102. The second basis on which Reliantco's counterclaim is advanced is a claim that the judgments of Baker J and of the German Court were procured by fraud. The nature of the fraud or deceit alleged to have procured these judgments was, as it was put in Reliantco's skeleton argument 'her assertion that … she was the individual who opened and was the sole user and operator of the account held with [Reliantco] in her name (and so was the relevant 'consumer' for the purposes of the Brussels regime on jurisdiction) whereas in fact [Dr Wright] was that individual and/or operator of that account.'

103. Reliantco submitted that the legal principles to be applied in relation to the setting aside of judgments procured by fraud were set out in Royal Bank of Scotland plc v Highland Financial Partners LLP [2013] EWCA Civ 328, at para. [106] per Aikens LJ. These principles were in summary and insofar as relevant for present purposes, that: (i) there had to have been 'conscious and deliberate dishonesty' in relation to the relevant evidence given or statement made which is relevant to the judgment sought to be impugned; (ii) the relevant evidence or statement had to be 'material', which means that the fresh evidence [i.e. that disclosing the true position] 'would have entirely changed the way in which the first court approached and came to its decision', and this meant that the dishonesty had to be 'causative of the impugned judgment being obtained in the terms it was'; and (iii) the question of materiality was to be judged by reference to its impact on the evidence supporting the original decision, not on what decision might be made if the case were retried on honest evidence.

104. Reliantco argued that it was able to rely on the alleged fraud in a separate action and not solely by way of appeal of the original decision. It was said that this flowed naturally from the fact that a cause of action accrues from the procurement of a judgment on the basis of fraud, which is distinct from that in the underlying action, and for that proposition Reliantco referred to Takhar v Gracefield Developments Ltd [2019] UKSC 13, and to the summary of the principles in Henry Longe v Bank of Scotland plc [2019] EWHC 3540 (Ch) at paragraphs [52]-[53].

105. In my judgment this basis for the counterclaim clearly fails, as a result of my findings of fact. Whilst it is true to say that I have made findings that Ms Ang has given inaccurate, and indeed I find untruthful, evidence as to Dr Wright's having never accessed her account, I have found that she opened it and was its principal user. I have rejected the case that the account was simply Dr Wright's, and that everything Ms Ang did in relation to the account was done as his agent. While not condoning any untruthful evidence, I do not consider that the respects in which Ms Ang's evidence was false were material in the sense used in Royal Bank of Scotland v Highland Financial Partners, either in relation to the proceedings in Germany or to the decision of Andrew Baker J. I do not consider that truthful evidence in relation to those matters would have entirely changed the way in which either court would have come to its decisions. In particular, they were not material to Andrew Baker J's conclusion that Ms Ang was the relevant 'consumer' for the purposes of the Brussels jurisdiction regime.

106. Furthermore, Reliantco has not made out its case on causation. That it was sued in Germany and in these courts was caused by its failure to pay to Ms Ang the sums which it should have paid her after terminating her account.

Conclusion

107. For these reasons, Ms Ang's claim succeeds and Reliantco's counterclaim fails. I will hear submissions as to the terms of the order which should be made, if it cannot be agreed.