
FINAL NOTICE

Kapook UK Limited
94 Caledonian Road
Kings Cross
London
N1 9DN

25 March 2013

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS hereby gives Kapook UK Limited final notice of the refusal to grant Kapook UK Limited's application for authorisation as an authorised payment institution:

ACTION

1. By an application received by the FSA on 13 January 2012, Kapook UK Limited applied under regulation 5 of the Payment Services Regulations 2009 for authorisation as an authorised payment institution to perform money remittance services.
2. For the reasons listed below and pursuant to regulations 9(2) and 9(8) of those regulations, the FSA has refused the Application.

DEFINITIONS

3. The definitions below are used in this Final Notice.

“Application” means the application referred to in paragraph 1, i.e. Kapook's application dated 13 January 2012 to become an authorised payment institution;

“FSA” means the Financial Services Authority;

“Kapook” means Kapook UK Limited;

“Mr Hussain” means Mr Akhtar Hussain;

“PSD” means the Payment Services Directive (2007/64/EC);

“PSRs” means the Payment Services Regulations 2009 (2009 No.209).

REASONS FOR THE ACTION

4. On the basis of the facts and matters described below, the FSA has refused the Application because the FSA is not satisfied that the conditions set out in (6)(a) and (b) of regulation 6 (Conditions for authorisation as a payment institution) of the PSRs are satisfied.
5. The FSA is not satisfied that Mr Hussain:
 - (1) having a qualifying holding in Kapook, is a fit and proper person having regard to the need to ensure the sound and prudent conduct of the affairs of Kapook; and,
 - (2) as a director of Kapook, is of good repute.
6. The FSA’s concerns as to the fitness and propriety and reputation of Mr Hussain arise from the following.
 - (1) On 21 April 2010, while an employee of [Company A], Mr Hussain stole money from the till at his workplace. The money was taken on more than one occasion during the day and totalled £22.
 - (2) Mr Hussain confessed to the police that, when a customer came up to the till with two identical items, he would scan only one of them and steal the amount for the second item.
 - (3) Mr Hussain admitted the offence and, on 17 August 2010, he received a caution.
7. Kapook has failed to satisfy the FSA that the dishonesty and breach of trust demonstrated in the events leading to the caution renders Mr Hussain fit and proper to have a qualifying holding in, and to be a director of, an authorised payment institution.

FACTS AND MATTERS

8. The Application was received on 13 January 2012, together with a number of supplementary forms and supporting documentation.
9. Kapook was incorporated in the UK on 20 November 2009 with company number 07082541. Its registered address and place of business is 94 Caledonian Road, Kings Cross, London, N1 9DN. Mr Hussain is the sole shareholder and sole director of Kapook.

10. Kapook became registered as a small payment institution on 25 February 2010 and, according to Mr Hussain, Kapook became functional at the beginning of May 2010. It also became an agent for MoneyGram International Limited on 2 August 2010.
11. Kapook's primary business is money remittance. In the capacity of a small payment institution, Kapook offers money remittance services to Thailand and, in the capacity of agent, it offers money remittance services to other countries. These services are provided only to retail clients.
12. As the sole director of Kapook, Mr Hussain was the only person to complete the "PSD Individual Form" i.e. the "Application Form for an individual responsible for the management of an Authorised Payment Institution". Mr Hussain disclosed in the form that he received a caution for an offence of theft. It was later confirmed that the caution was received on 17 August 2010 and that there are no other criminal records against him.
13. The caution was in relation to an incident of theft by Mr Hussain in a [Company A] store. Mr Hussain was a [Company A] employee from 8 January 2006 to 25 April 2010. On 21 April 2010, whilst acting as a customer assistant in the Foods Department at one of its stores, Mr Hussain was found stealing a total of £22 from the till. He was arrested by the Police on the same day. He confessed to the offence during the police interview, and was cautioned for the offence. As noted in paragraph 6(2), there was more than one instance of Mr Hussain stealing money from his assigned till.
14. In section 6 (Supplementary Information) of the PSD Individual Form, it says:

"Full details must be provided here if there were any issues that could affect the Fitness and Propriety of the individual that arose when leaving an employer listed in section 4 or if any question has been answered 'yes' in section 5."
15. In response, and in relation to the questions in section 5 directed to receiving a caution or being arrested, Mr Hussain said:

*"Received caution
Reason: dispute with management in [Company A] [B] branch)
Date: August 2010.. at snowhill Police station [sic]"*
16. When asked for further details about the circumstances of leaving [Company A], Mr Hussain said in his letter dated 6 June 2012 to the FSA :

"On 23rd April 2010, [Company A] made an allegation to the police that I took money from the till. I attended the police station on that date and confirmed that I had taken £32 [sic]. I resigned from [Company A] on 24 April. I received a caution from the police on 17th August 2010.

I can only explain my actions by saying that I was in dispute with my section manager, [C], because she was so difficult to work for. As a result, I became so angry, I took money from the till. I was sorry for what I did, and apologised to [C] the next day. [Company A] never requested that I pay back

the £32 [sic]. I should say I worked for [Company A] for 5 years without any problem. What happened was an isolated incident, and, I feel, uncharacteristic of my period as an employee.”

17. HM Revenue & Customs (“HMRC”) supervises Kapook’s compliance with Money Laundering Regulations as a small payment institution. The FSA noted that HMRC visited the firm’s premises in 2010 and issued a warning letter in relation to its anti-money laundering controls vulnerabilities. As a result of this visit, Kapook was the subject of a second visit by HMRC in 2011. On this occasion, HMRC found that Kapook’s anti-money laundering controls were satisfactory.

REGULATORY PROVISIONS

18. The principal statutory and FSA Handbook provisions relevant to this decision are set out or summarised in the Annex to this notice. The conditions in regulation 6(6)(a) and (b)) are set out in paragraph 4.

REPRESENTATIONS

19. Kapook made written representations on 16 November 2012 and a supplementary representation on 4 January 2013. Although what follows is a brief summary of the key representations relevant to this decision, the FSA has taken into account all of the representations, whether or not set out below.
20. If Kapook were to become an authorised payment institution, it would bring significant benefits to consumers because client funds would be properly segregated and subject to regular reporting to the FSA thus reducing the risk of mismanagement through error or intent. Capital adequacy requirements and vetting of the management team and business infrastructure would provide further assurance that the business was sustainable and a safe haven for client money.
21. If the fact that Mr Hussain was a sole director of Kapook was relied on in determining the application, all sole director businesses would be placed at an automatic disadvantage simply by virtue of their corporate structure.
22. Mr Hussain immediately admitted the allegation to the police upon arrest and he has subsequently made a full and frank disclosure of the caution.
23. This was a one-off incident entirely out of character in support of which he provided character references. He has expressed remorse and deep regret for his actions.
24. The business has a weekly turnover of between £160,000 and £200,000. However, there is no suggestion that Mr Hussain has ever misappropriated customer monies during his running of Kapook and he has never received a complaint from a customer in respect of the service it provides.
25. Mr Hussain runs a thriving business with five employees. This success reflects the fact that he is a competent director and is fit to conduct the affairs of an authorised payment institution. This more recent activity should be the focus of the FSA when determining the Application not the one off error of judgement by him which occurred over two and half years ago.

FINDINGS AND CONCLUSION

26. The FSA takes a serious view of offences of dishonesty involving money, particularly in the context of an application to become a money transmitter as an authorised payment institution. When the only individual who would be responsible for the management of the business has stolen money out of the till of his employer within two years of making an application for authorisation, this demands a very clear explanation. The explanation needs to dispel any doubt preventing the FSA from being satisfied on the conditions identified in regulation 6(6)(a) and (b) of the PSRs.
27. Mr Hussain's explanation given in paragraphs 15 and 16 above does not dispel those doubts. It does not, for example, explain the circumstances of the dispute or why the anger should manifest itself in theft. It prompts questions rather than dispels doubts.
28. Mr Hussain is the 100% controller of Kapook which, as small payment institution, provides a money transmission service to a large number of people, many of whom are likely to be unsophisticated in financial matters. It has a considerable weekly turnover. In these circumstances, the need for him to be a fit and proper person having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution is particularly high. The FSA is not satisfied that Mr Hussain is a fit and proper person in this respect.
29. Mr Hussain is the sole director of Kapook. In these circumstances of this application, the need for him to be of good repute is particularly high. His repute with his customers, potential customers, principals, bankers, enforcement agencies, regulatory bodies and any other person with an interest in his affairs will clearly be affected by knowledge of the caution he received from the police for theft from the till and the circumstances of it. The FSA has had regard to the character references provided in support of Mr Hussain but, when considering the wider context, it is not satisfied that Mr Hussain is a person of good repute.
30. The FSA has considered whether there would be benefits to consumers if this application was granted (see paragraph 20). Although it is the case that any authorised institution would be subject to the regulatory provisions applying to it, and that this would bring benefits to consumers in the form of a number of protections, the legislation lays down clear and distinct conditions for authorisation in the first place. The FSA must apply, and has applied, those tests to the Application.
31. The FSA is not basing its decision on the governance arrangements of Kapook (see paragraph 21).
32. In reaching its decision, the FSA has taken into account the size of the weekly turnover, the absence of any suggestion of misappropriation of funds, the absence of complaints and the success and size of the business (see paragraphs 24 and 25). The activities of Kapook as a small payment institution are relevant to the circumstances as a whole but, whatever weight may be put on them, they would be insufficient in themselves to displace the statutory conditions for authorisation.
33. The FSA has seen no evidence of Mr Hussain's "deep regret" for his actions other than the assertion in his written representations that this is the case. The remorse that

he has shown, for example to the police, has been in reaction to the circumstances in which he has found himself.

34. The honesty and integrity of a director of a money remittance business is of the utmost importance. Customers must have confidence that their money is in safe hands because they can trust the individual who is responsible for the management of the business. In April 2010 Mr Hussain was handling money and stole it. He was in a position of trust and abused it. He is the sole director and 100% controller of Kapook. In the circumstances of this case, Kapook has failed to satisfy the FSA that the Application should be granted.

PROCEDURAL MATTERS

35. This Final Notice is given to Kapook pursuant to paragraph 7 of Part 1 of Schedule 5 to the PSRs (which incorporates section 390(1) of the Financial Services and Markets Act 2000).

Publication

36. Sections 391(4), 391(6) and 391(7) of the Financial Services and Markets Act 2000 apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which the Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Kapook or prejudicial to the interests of consumers.

FSA contacts

37. For more information concerning this matter generally, contact Nicholas Mears, Manager, Permissions Department at the FSA (direct line: 020 7066 2972 / email: nicholas.mears@fsa.gov.uk).

Lucy McClements
Head of Department, Permissions

ANNEX

(paragraph 18)

REGULATORY PROVISIONS

Statutory provisions

The Payment Services Regulations 2009

1. Regulation 5(1) of the PSR requires an application for authorisation as a payment institution to contain, or be accompanied by, the information specified in Schedule 2. Schedule 2 to the PSRs provides that, amongst other matters, the following information is to be included in or with an application for authorisation:
 - “8 (1) *In relation to each person holding, directly or indirectly, a qualifying holding in the applicant [firm] –*
 - (a) *the size and nature of their qualifying holding; and*
 - (b) *evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution.*
 - 9 (1) *The identity of directors and persons who are or will be responsible for the management of the applicant ...*
 - (2) *Evidence that the person described in sub-paragraph (1) are of good repute and that they possess appropriate knowledge and experience to perform payment services.”*
2. Regulation 5(4) states that, at any time after receiving an application and before determining it, the FSA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
3. Regulation 6(1) states that the FSA may refuse to grant all or part of an application for authorisation as a payment institution only if any of the conditions set out in paragraphs (2) to (8) are not met.
4. Regulation 6(6) states, in part, that the applicant must satisfy the FSA that:
 - (a) any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of an authorised payment institution; and
 - (b) the directors and persons responsible for the management of the institution and, where relevant, the persons responsible for the management of payment services, are of good repute and possess appropriate knowledge and experience to provide payment services.

FSA guidance

“The FSA’s role under the Payment Services Regulations 2009 – Our approach”

5. In exercising its powers in relation to the approval of an application for registration as an authorised payment institution, the FSA must have regard to guidance published in the FSA’s ‘Our approach’ document, including the section titled ‘Authorisation and registration’.
6. The version of the ‘Our approach’ document current at the date of the application was dated January 2012 and the extracts below are taken from that version. The version current at the date of this notice is dated October 2012. There are no differences in the extracts below.
7. Paragraph 3.49 - Whilst it is impossible to list every fact or matter that would be relevant to the fitness and propriety of a controller, the following are examples of factors that we will consider:
 - whether the person has been convicted of any criminal offence particularly of dishonesty, fraud, or financial crime;
 - whether the person has been investigated for any criminal offence. This would include where an individual has been arrested or charged *whether or not* the investigation/arrest/charge led to a conviction; and
 - whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a firm, particularly a PI; ...

Directors and persons responsible for payment services (regulation 6(6)(b), Paragraph 9 of Schedule 2):

8. Paragraph 3.52 – Under regulation 6(6)(b) and Paragraph 9 of Schedule 2, the applicant must satisfy the FSA that its directors and any other persons who are or will be responsible for the management of the PI or its payment services activities, are of good repute and possess appropriate knowledge and experience to perform payment services.

Assessing reputation - fitness and propriety

9. Paragraph 3.56 – The first stage in the assessment process is that completion of the PSD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. **We attach considerable importance to the completeness and accuracy of the PSD Individual form. If the applicant is in any doubt as to whether or not any information is relevant, it should be included.**

10. Paragraph 3.62 - The factors that we will have regard to when making the fit and proper assessment are:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

Honesty, integrity and reputation

11. Paragraph 3.64 - In determining the honesty, integrity and reputation of an individual, the matters that we will have regard to include, but are not limited to:

- relevant convictions or involvement in relevant criminal proceedings or investigations;
- relevant civil or administrative cases;
- relevant disciplinary action (including disqualification as company director or bankruptcy);
- whether the individual has been a director or senior manager in an entity that has been put into liquidation, wound up or is or has been the subject of an investigation by an inspector under company or any other legislation; and
- information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.

12. Paragraph 3.65 - We will consider matters that may have arisen in the UK or elsewhere.

13. Paragraph 3.66 - The 'relevant' matters we refer to above [in Paragraph 3.64] will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.

14. Paragraph 3.67 - The applicant firm should tell us of all relevant matters, but the FSA will consider the circumstances in relation to the requirements and standards of the PSRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account the seriousness of, and the circumstances surrounding, the offence, the explanation offered by the convicted individual, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

15. Paragraph 3.68 - If a firm is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, disclose.