



Mr Peter Kemp MARLA, MNAEA

Partner,

Peter Kemp & Jane Kemp t/a

Property@Kemp & Co

Disciplinary Tribunal Decision

March 2023

Disciplinary Tribunal Decision

Member: Mr Peter Kemp MARLA, MNAEA

Position: Partner

Company/Employer: Peter Kemp & Jane Kemp t/a Property@Kemp and Co

Address: 350 Skircoat Green Road, Halifax, HX3 ORR

Complainant: Propertymark

Reference: X0059926

Date: 23 March 2023

A. INTRODUCTION

A Disciplinary Tribunal of Propertymark Limited was convened on 23 March 2023 to consider the case against Mr Peter Kemp.

The panel members were Mr Jim Atkins PPNAEA (Honoured) (member panellist acting as the Chairperson for the Tribunal), Ms Jacqueline Stone FNAEA (member panellist) and Mr Noel Hunter OBE (lay panellist).

The presenting Case Officer for Propertymark was Mr Ali Haider.

Mr Kemp was in attendance in the hearing.

The hearing took place in private and was recorded.

B. ALLEGATIONS

The Tribunal considered the allegations set out in the case summary sent to Mr Kemp.

It was alleged that Mr Kemp had acted in contravention of the requirements of the following Propertymark Conduct and Membership Rules.

1.7. Access to, or availability of, Client Money

A member must ensure that, at all times, all Client Money is held in Client Bank Accounts and is available on demand to Clients without undue delay or penalty. (For the avoidance of doubt, Client Money must not be placed or held in off-shore accounts or fixed/variable rate term bonds or similar funds or arrangements, unless the bank or building society falls within the definitions in **1.2**, funds are available on demand and any penalty for withdrawal is paid by the member's firm.)

Note: Any penalty for withdrawal of Client Money must be limited to interest earned.

1.13. Payments into a Client (Bank) Account

Payment of money into a Client Bank Account is restricted to the following:

- 1.13.1. The minimum sum required to open or maintain the Client Bank Account;
- 1.13.2. Clients' Money (see clause 1.10);
- 1.13.3. An amount required to be paid by a member's firm to restore in whole or part any money paid out, or withdrawn, in contravention of this Rule;
- 1.13.4. A cheque or bank draft that includes Clients' Money as well as other money.

1.14. Payments out of a Client (Bank) Account

A member's firm should withdraw, transfer or make a payment from a Client Bank Account only in the following circumstances:

- 1.14.1. Money paid in to open or maintain the account in accordance with clause **1.13.1** of this Rule and where it is no longer required.
- 1.14.2. Money paid into the account in accordance with clause **1.13.4** of this Rule, which does not belong to the Client, for payment to the person lawfully entitled to it.
- 1.14.3. Within three working days of becoming aware of a relevant contravention, money paid into the account in contravention of this Rule.
- 1.14.4. Money payable to a Client, or, to an appropriate person suitably authorised (in writing) to receive such payments on that Client's behalf.
- 1.14.5. Money being paid directly into another Client Bank Account.
- 1.14.6. Reimbursement of money to the member's firm for money expended by the member's firm on behalf of the Client.
- 1.14.7. Money lawfully and contractually due, in respect of a PPD member's firm's fees and charges.
- 1.14.8. Legitimate disbursements, e.g. amounts subject to invoices, costs or demands incurred or received on behalf of the Client.
- 1.14.9. Provided that in the case of money drawn under sub-clauses **1.14.6** and **1.14.7** above:
 - (a) The payment is in accordance with lawful and contractual written arrangements (for example via terms of business, pre-contract/tenancy

application documents, tenancy agreement, letter of engagement), previously agreed between the parties; or

- (b) The Client, or an authorised representative, has been notified or invoiced in writing by the member's firm of the amount and purpose for which the money is being withdrawn and no objection has been raised within a reasonable timescale.

1.14.10. Provided always that, under Rule **1.14**, no payment shall be made for or on behalf of an individual Client that exceeds the total amount held on behalf of that particular Client.

1.23. Reconciliation(s) – format and frequency

1.23.1. Every member's firm shall:

- (a) Ensure all monies due to member firm are removed prior to final reconciliations being undertaken.
- (b) At least once every two calendar months (and within no later than ten weeks of a previous reconciliation), reconcile the balance on their Client's cash book(s):
 - (i) With the balance in their Client Bank Account(s) using the bank/building society statement(s); and
 - (ii) With the total of each Client's balance in the Clients' ledger; and
- (c) Ensure that such documents necessary to support the reconciliation so produced have been kept safe, complete and readily available in the cash book or other appropriate place.

1.23.2. All such reconciliations should be checked and signed by the PPD member of the company, or by such person formally appointed by the PPD, who shall not be the person responsible for the preparation of such reconciliation. (This could be a member of staff of the appointed reporting Accountant, provided this is carried out within ten working days of the reconciliation.)

1.23.3. Reconciliations must be stored so as to be readily available at audit or inspection, in accordance with **1.21**.

13. General duty to uphold high standards of ethical and professional behaviour

13.1. No member shall do any act (whether in business or otherwise) which:

13.1.1. Involves dishonesty, deceitful behaviour, or misrepresentation; and/or

13.1.2. Involves other unprofessional practice or practice that is unfair to members of the public; and/or

13.1.3. In any other way brings Propertymark or any of its divisions or subsidiaries into disrepute.

21. Continuing Professional Development (CPD)

21.1. CPD is mandatory for all ARLA, ARLA Inventories, NAEA, NAEA Commercial and NAVA members except for Affiliate, Deferred, Retired grade members.

21.2. Members are required to undertake at least twelve hours' CPD activity per year. At least four of the twelve hours must be obtained by attendance at relevant educational events and up to eight hours by relevant private study (except for those studying for Propertymark Qualifications relevant to their specialism). All CPD should be relevant to the membership specialism and/or relevant to business needs.

21.3. The CPD year runs from 1 January to 31 December and the twelve hours should be submitted by 31 January of the following year, listing the learning outcomes.

21.4. CPD must be provided annually for membership to continue.

21.5. If members belong to more than one division, they are required to submit twelve hours' CPD for each division demonstrating a relevant learning outcome.

Mr Kemp entered a plea admitting the alleged breaches of Rules 1.13, 1.14, 1.23 and 21 but denied the alleged breaches of Rules 1.7 and 13.

After consideration of the evidence presented, the Tribunal announced the following findings:

C. DECISION

Rule 1.7	-	Proven
Rule 1.13	-	Admitted
Rule 1.14	-	Admitted
Rule 1.23	-	Admitted
Rule 13	-	Proven
Rule 21	-	Admitted

D. SANCTIONS

Rule 1.7	-	£250
Rule 1.13	-	£200

Rule 1.14	-	£200
Rule 1.23	-	£200
Rule 13	-	£200
Rule 21	-	£200

In addition, the costs of this hearing of £457 were imposed against Mr Kemp in favour of Propertymark.

E. PUBLICATION

The outcome of the case fell within the Propertymark publication policy.

F. CLOSING STATEMENT

The Tribunal made the following statement:

“Mr Kemp, we thank you for attending today’s Tribunal. It greatly assists us in our deliberations when the member is present. It is clear from the evidence we have read and heard that your client account has not been correctly operated for a number of years. Your admittance of certain breaches has been taken into account when deciding penalties. However, we take poor management of your client account most seriously and you must take appropriate steps to ensure that the procedures you use are fully compliant.

It is essential that you invest in a recognised letting and accounting programme in order that you can satisfy yourself and Propertymark of adherence to the appropriate accounting regulation. You should discuss the timeframes for this with Propertymark compliance department within the next four weeks and agree and longstop date. In the circumstances, the Tribunal directs that you submit an Accountant’s Report or HealthCheck Report within three months of today’s date demonstrating that you are fully compliant.

Despite being a member of this association for over 30 years you have never submitted or recorded evidence of your CPD hours. Propertymark have strenuously advertised the need for members to record. Once again, we thank you for attending here today, we hope you reflect that you will reflect on the serious ness of the breaches”.