



**Mr Michael Foldvari MARLA, MNAEA
Director,
Foldaway Estates Ltd t/a Winkworth**

Disciplinary Tribunal Decision

October 2022

Disciplinary Tribunal Decision

Member:	Mr Michael Foldvari MARLA, MNAEA
Position:	Director
Company/Employer:	Foldaway Estates Ltd t/a Winkworth
Address:	17 Blagrove Street, Reading, RG1 1QB
Complainant:	Propertymark
Reference:	X0060223
Date:	12 October 2022

A. INTRODUCTION

A Disciplinary Tribunal of Propertymark Limited was convened on 12 October 2022 to consider the case against Mr Michael Foldvari.

The panel members were Mr Richard Hair PPNAEA (Honoured) (member panellist acting as the Chairperson for the Tribunal), Miss Jacqueline Stone FNAEA (member panellist) and Mr Steven Shaw (lay panellist).

The presenting Case Officer for Propertymark was Mr Ali Haider.

Mr Foldvari was in attendance in the hearing and accompanied by Mr James Hathaway and Mr Jonathan Hallett.

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 Foldvari.

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

1.3. Using a Client Accounting Service Provider (CASP)

PPD member firms wishing to use a CASP are required to adopt one of the following two options:

- Use a named CASP (see 1.3.1), or

- Use a white label CASP service (see 1.3.2).

1.3.1. Use a named CASP. The following conditions apply:

- (a) The CASP is a PPD member firm (excluding ARLA Inventories) or a RICS regulated firm where Propertymark receives written assurances from RICS that all Client Money is covered.
- (b) All Client Monies are paid direct to the Client Account(s) owned by the CASP.
- (c) All terms of business, landlord and tenancy agreements must clearly identify the legal names of the Principal Agents.
- (d) All terms of business, landlord and tenancy agreements must clearly identify the legal name of the CASP in all references to Client Money.
- (e) The CASP is the only firm to be able to make payments/withdrawals from the Client Account(s).
- (f) The CASP provides Propertymark with a standard annual accountant's report for ALL the Client Money it handles. See Appendix A of the rules.
- (g) Both Principal Agents pay the Propertymark CMP levy.

In this way the CASP has exclusive control of the Client Account, and all Clients know who is handling their money. Liability to Clients remains with the CASP, and not with the firm using the CASP. This then constitutes first party Client Accounting by the CASP.

1.3.2. Use an unnamed CASP service. The following conditions apply:

- (a) The CASP is a PPD member firm or a RICS regulated firm.
- (b) All Client Monies are paid direct to the Client Account(s) owned by the CASP.
- (c) The CASP is not clearly named in terms of business, landlord and tenancy agreements.
- (d) The legal name of the firm using the CASP (the Principal Agent) is clearly stated in terms of business, landlord and tenancy agreements.
- (e) All Client Monies are paid into a separate Client Account(s) designated to the PA PPD member firm, and owned solely by the CASP.
- (f) The CASP is the only firm to be able to make payments/withdrawals from the Client Account.
- (g) The PA and CASP both pay the Propertymark CMP levy.
- (h) The PA maintains records of all Client Monies in accordance with the relevant Propertymark rules. It may rely on schedules and reconciliations from the CASP but these should be kept in paper form.

- (i) The PA PPD member firm provides Propertymark with an Accountant's Report for Client Money Entrusted to an Unnamed Client Accounting Service Provider on joining or on taking up the Client accounting service, and annually thereafter. See Appendix A to the rules. The report may be commissioned by the PA or CASP, but it remains the responsibility of the PA to provide it to Propertymark.
- 1.3.3. Any member's firm acting as a CASP as outlined in 1.3.2 must meet the following requirements:
- (a) Keep any such Client Money in a Client Account specifically designated to each PA for whom it handles Client Money.
 - (b) Supply the PA with a copy bank statement from the Client Bank Account at least monthly.
 - (c) Not limit the liability of the CASP to its PAs, or if there is any limitation it is, as a minimum, at least the amount the PA has entrusted to it.
 - (d) Allow a suitably qualified Accountant to audit the CASP in respect of Client Money held on behalf of the PA.
- 1.3.4. PPDs with member firms using a CASP where the arrangements do not comply with one of the CASP options described in 1.3 must take one of the following actions in order to continue with their divisional membership:
- (a) Change their Client Money-handling arrangements in line with one of the CASP options described in 1.3, or
 - (b) Find another CASP which complies, or
 - (c) The member's firm must handle all of its own Client Money.
- 1.3.5. Client Money subject to the Estate Agents Act 1979 must not be entrusted to a CASP.

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.

1.14. 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.

1.18. Record keeping (firms using a CASP; see also 1.3.2)

Each member's firm must keep properly detailed accounting records, using a bookkeeping system that is adequately designed and operated. Such records need to record:

- 1.18.1. All Clients' Money received, held or paid out by the firm;

- 1.18.2. The amounts, dates, names, property addresses, reference numbers and other relevant details to identify individual transactions;
- 1.18.3. Any other money dealt with through a Client (Bank) Account, attributable to individual Clients;
- 1.18.4. An individual Client's balance of monies held, and a balance of all Clients' Money held.

1.19. Books of record

All dealings referred to in clauses 1.18.1 to 1.18.4 above shall be recorded as appropriate, either:

- 1.19.1. In a Clients' cash book, or in a Client's column of a cash book; or
- 1.19.2. In a journal recording transfers from the ledger account of one Client to that of another;
- 1.19.3. And, in either case, additionally in a Clients' ledger or in a Client's column of a ledger.

1.20. Supporting documentation

Records must include a list of all persons for whom a member's firm is or has been holding Clients' Money, reconciliation documents, and a list of all the bank and building society account(s) in which the money is held and must include counterfoils or duplicate copies of all receipts issued in respect of Clients' Money received, which shall contain the particulars required to be shown in the accounts.

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 Foldvari entered a plea denying the alleged breaches of Rules 1.3, 1.7, 1.14, 1.18, 1.19, 1.20, 1.23 and 13 but admitting a breach of Rule 21.

C. DECISION

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

Rule 1.3 - Proven

Rule 1.7	-	Proven
Rule 1.14	-	Proven
Rule 1.18	-	Proven
Rule 1.19	-	Proven
Rule 1.20	-	Proven
Rule 1.23	-	Proven
Rule 13	-	Proven
Rule 21	-	Admitted

D. SANCTIONS

Rules 1.3, 1.7, 1.14, 1.18, 1.19, 1.20, 1.23 & 13	-	£1000
Rule 21	-	£100

In addition, the costs of this hearing of £369 were imposed against Mr Foldvari 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:

“The collapse of the service provider left many landlords and tenants facing significant loss. It is clear that the member has worked in a very professional and responsible manner to minimise the impact on both clients and tenants”.