

**In the matter of
Case No. X0057230
Propertymark v Mr. C. Travers & Mr E Foley**

**Disciplinary Tribunal Hearing held on
Wednesday 7th November 2018**

Case of

**Mr. Charles Travers MNAEA & Mr. Edward Foley MNAEA MARLA, Directors of ECS
(Wimbledon) Limited t/a Winkworth, 37 Church Road, London, SW19 5DQ**

Mr Travers is a member of NAEA and Mr Foley is a member of ARLA and NAEA
at
Propertymark, Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

Alleged breaches as set out by the Case Officer:

Conduct Rule

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has been notified or invoiced in writing by the member's firm of the amount and purpose for which the money is being withdrawn and no objection has been raised within a reasonable timescale.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.

20. Continuing professional development (CPD) rules

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

20.2. 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.

20.3. 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.

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

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

After consideration of the facts and submissions the Tribunal found as follows:

Mr C Travers

Alleged Breach	Findings	Sanction
Rule 1.14	Proven	£2000
Rule 1.18	Not proven	N/A
Rule 1.19	Not proven	N/A
Rule 20	Proven	Caution

Mr E Foley

Alleged Breach	Findings	Sanction
Rule 1.14	Proven	No penalty
Rule 1.18	Not proven	N/A
Rule 1.19	Not proven	N/A
Rule 20	Proven	Caution

The sum of £194 was imposed on the member towards the costs of the hearing.

The case falls within the Propertymark Publications Policy.

The Tribunal issued the following statement:

“After consideration of this matter we feel that there is a serious breach of Rule 1.14 which is one of the most important rules within our organisation’s disciplinary procedures. The use of client’s money is a very serious matter.

We have taken into consideration that there is no prior disciplinary record as this is the first case that has been brought to us.

We have looked into the matter of the two members and have decided that there is a very good reason why Mr. Foley may not have been aware of the breach of Rule 1.14 and Mr. Travers has indicated that he has not informed his partner of this matter, so we have decided that we will not take any action against Mr. Foley in this matter even though he is jointly and severally liable.

We are sorry that the members have not been able to attend today for us to cross-examine but we would also like to send our best wishes to Mr Foley and hope that there is an improvement in his health and that of his family.”