



**In the matter of
Case No. X0055838
PropertyMark v Mr. S Jackson MARLA & Mr. L Howes MNAEA**

**Disciplinary Tribunal Hearing held on
Tuesday 24th April 2018**

Case of

**Mr. Stephen Jackson MARLA, a partner of Jackson Howes, 1a London End,
Beaconsfield, HP9 2HN**

A member of ARLA

And

**Mr. Lawrence Howes MNAEA, a partner of Jackson Howes, 1a London End,
Beaconsfield, HP9 2HN**

A member of NAEA

at

PropertyMark, Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

Alleged breaches as set out by the Disciplinary Case Manager:

Conduct Rule 1.12

Interest on Clients' money

1.12.1. A member's firm may enter into an arrangement, which must be in writing (for example via terms of business, tenancy agreement, letter of engagement, pre-tenancy application documents or similar), with a Client (landlord or tenant) that allows the member's firm to retain interest earned on money held on a Client's behalf. (Such written arrangements/documents shall constitute part of the records as defined in this Rule.) Where no such arrangement exists, any interest earned belongs to the relevant Client.

1.12.2. Subject to clause **1.12.1** above, where interest is credited to Client Bank Accounts of a member's firm, the Client Account(s) should be organised in such a way that the member's firm is able to account to each individual Client for the amount of interest earned or due to them.

1.12.3. A member's firm holding Clients' Money (in this context, tenancy deposit bonds) as stakeholder during a tenancy, is entitled to retain any interest that may accrue to such money (Potters vs. Loppert 1973), providing this entitlement is made known to the relevant Client(s), in writing, from commencement; i.e. in line with clause **1.12.1** of this Rule.

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.

Conduct Rule 1.23

Reconciliation(s) – format and frequency

1.23.1. Every member's firm shall:

- (a) 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

(b) 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**.

Conduct Rule 1.42

Old or dormant Client balances

1.42.1. If a member's firm has credit balances in its Client (Bank) Account(s) that represent money previously held for Clients who cannot now be traced or which cannot now be attributed to or identified as belonging to a particular Client, the member's firm is not entitled to take that money, as it can never belong to the member's firm. It represents funds entrusted to the member's firm and would thus be a breach of trust to take a Client's Money even where the member's firm has tried and failed to trace and/or identify the relevant Client.

1.42.2. Such old/dormant funds should be transferred to and recorded in a suitably designated Client Suspense Account Ledger. (For the avoidance of doubt, any such account remains within the scope of this Rule and still subject to regular reconciliation and the year-end audit.)

Conduct Rule 1.43

Identifying ownership of old or dormant funds

1.43.1. A member's firm must take reasonable steps to identify to whom the money belongs through their accounting and other records and this should include carrying out an extensive investigation of the audit trail; and,

1.43.2. In the case of an old or ex-Client for whom the member's firm no longer acts; reasonable steps must be taken by the Principal Agent(s) to trace the Client, and this might include writing to: the last known place of residence; to the Client's professional advisers (Solicitors, Accountants etc.); to the Client's Bank or any other contacts (referees, guarantors, next of kin, employers etc.) provided within their file.

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

| Alleged Breach | Findings | Sanction |
|-----------------------|-----------------|-------------------------------------|
| Rule 1.12 | Admitted | Mr Howes -£500 Mr Jackson - £500 |

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| Rule 1.14 | Not proven | N/A |
| Rule 1.23 Rule 1.23.2 | Admitted Admitted | Mr Howes - £500 Mr Jackson - £500 Mr Howes - £500 Mr Jackson - £500 |
| Rule 1.42.1 Rule 1.42.2 | Not proven Proven | N/A Mr Howes - £500 Mr Jackson - £500 |
| Rule 1.43 | Proven | Mr Howes - £500 Mr Jackson - £500 |

The sum of £100 was imposed on each member towards the cost of the hearing.

The case falls within the Propertymark Publications Policy.

The Tribunal issued the following statement:

“We are disappointed that the evidence in this matter goes back to 2011/12 and that 6+ years on the discrepancies have not yet been fully resolved. This suggests a lack of attention to your office procedures.

We consider that the partners of Jackson Howes should have taken urgent steps to rectify the situation long before this time. We have received your assurances and trust that the accountant’s report for the last financial period to 31 March 2018 will be clear and unqualified.

These are serious breaches, but we have taken into account the improvements that appear to have taken place in arriving at the sanctions that we have imposed.”