



**In the matter of  
Case No. X0055106  
PropertyMark v Mr. G Ball MARLA**

**Disciplinary Tribunal Hearing held on  
Thursday 19th July 2018**

**Case of**

**Mr. Gary Ball MARLA, a Director of Thompsons Property Consultants Limited t/a  
Thompsons, 216 High Street, Hayes, UB3 5DS**

A member of ARLA

at

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

**Alleged breaches as set out by the Case Officer:**

**Conduct Rule 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 An amount required to be paid by a member's firm to restore in whole or part any money paid out, or withdrawn, in contravention of this Rule;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.

**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 1.15.**

##### **Timing of banking**

1.15.1. A member's firm must bank all receipts of Client Money into an appropriate Client bank account within a maximum of two working days from the day on which it was received.

1.15.2. All payments out of a Client bank account should be made promptly, and within not more than twenty-eight days of becoming due.

#### **Conduct Rule 1.18.**

##### **Record keeping**

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.

**Conduct Rule 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.

**Conduct Rule 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.

**Conduct Rule 1.21.**

**Preservation of records**

The records kept for the purpose of complying with this Rule must be preserved for six years from the end of the accounting period to which they relate, or from when the account shows a nil balance following a cessation of the contractual relationship between the parties, whichever is the later. Propertymark recommends that a member's firm consult with their Accountant before disposing of, or destroying, any historic accounting records.

**Conduct Rule 1.22.**

**Computerised recording**

Where a computerised bookkeeping system is in operation, this must be capable of producing printed information to conform to this Rule, which therefore is or can be preserved in a permanent format to comply with clause 1.21.

**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.

## **Conduct Rule 12**

### **General duty to uphold high standards of ethical and professional behaviour**

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

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

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

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

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

<b>Alleged Breach</b>	<b>Findings</b>	<b>Sanction</b>
<b>Rule 1.14</b>	Admitted	£500
<b>Rule 1.15</b>	Admitted	£500
<b>Rule 1.18</b>	Admitted	£500
<b>Rule 1.23</b>	Admitted	£500
<b>Rule 1.43</b>	Admitted	£500

The sum of £142 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:

“Your latest accountant’s report is now due for the financial year ending March 2018. As your bookkeeper has only been with you since after that year-end there appears to be a serious risk of a further qualified report for that period. We understand that since the appointment of your current bookkeeper you have jointly been endeavouring to resolve these discrepancies.

We also note that until very recently you operated hand-written ledgers you have advised the Tribunal that you are migrating to a Sage package.

Rather than wait for the shortly due accountant's report which will only show last years transactions we direct Propertymark to send in a representative client account specialist to your office in order to satisfy ourselves that what you advise has been undertaken is on track to resolve the accounting issues and historic accounting deficiencies in order to provide compliant accounting within the current financial year. You will be required to pay for the cost of that visit."