



**Mr David Westgate
Former Director,
Andrews Letting and Management
Limited t/a Andrews Letting and
Management**

Disciplinary Tribunal Decision

June 2023

Disciplinary Tribunal Decision

Member:	Mr David Westgate, formerly MARLA
Position:	Former Director
Company/Employer:	Andrews Letting and Management Limited
Address:	The Clockhouse, Bristol, BS31 1HL
Complainant:	Propertymark
Reference:	Y0001632
Date:	20 June 2023

A. INTRODUCTION

A Disciplinary Tribunal of Propertymark Limited was convened on 20 June 2023 to consider the case against Mr David Westgate.

The panel members were Mr Neville Pedersen MARLA (Honoured), FNAEA (Honoured) (member panellist acting as the Chairperson for the Tribunal); Mrs Janine Hytch FARLA, FNAEA, FNAVA (member panellist); and Mr Steven Shaw (lay panellist).

The presenting Case Officer for Propertymark was Mr Ali Haider.

Mr Westgate attended 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 Westgate.

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

1.17. Signatories to payments from a Client (Bank) Account:

- 1.17.1 To avoid undue delays or inconvenience to Clients or others entitled to receive payments, during any absence from the business, the principal, partner, or director member must make adequate provision for designated personnel to be able to authorise and/or make appropriate payments.

1.17.2. A member's firm has a duty of care to ensure that appropriate controls exist around the ability of any individual(s) to make payments from a Client Bank Account, including making online payments, and must maintain an up-to-date and accurate record listing, as a minimum:

(a) The full names of such persons; and

(b) Any limits or restrictions governing the amounts for which that individual is authorised either exclusively or, jointly with others; and

(c) An example or specimen signature of each person.

1.17.3. The original of such a list or schedule should be lodged with the relevant bank or building society used by the member's firm and a copy retained within the records of the member's firm.

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

Each member's firm must keep 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.

1.21. 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.

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.

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.)

1.44. Donation of dormant funds to charity

Under exceptional circumstances, and following written explanation of:

- The actions taken by the Principal Agent(s), and
- The current situation and status of any investigations, and
- Disclosure of the amount involved, and
- Sufficient time (usually at least six years) having elapsed from last contact from the Client or activity on the relevant Client Ledger Account,

Propertymark may allow the old or dormant Client funds to be donated by the Principal Agent(s) to a suitable registered charity; subject to an undertaking that any valid proven claim subsequently received by the Principal Agent(s) from the beneficial or legal owner would immediately be met by the member's firm from its own resources. The transfer of such funds to a charity may require a note to the Principal Agent(s) business accounts of a potential liability to a future claim. Any such sums dealt with in this manner should form part of any disclosure to a future potential purchaser of the business.

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, 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.

Mr Westgate entered a plea denying the alleged breaches of Rules 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.42, 1.44 and 13.1.2.

After consideration of the evidence presented and submissions by the parties, the Tribunal announced the following findings:

C. DECISION

Rule 1.17	-	Proven
Rule 1.18	-	Proven
Rule 1.19	-	Proven
Rule 1.20	-	Proven
Rule 1.21	-	Proven
Rule 1.22	-	Proven
Rule 1.42	-	Proven
Rule 1.44	-	Not Proven
Rule 13.1.2	-	Not Proven

D. SANCTIONS

Rule 1.17	-	Formal Warning
Rules 1.18, 1.19, 1.20, 1.21, 1.22	-	£250
Rule 1.42	-	£250

In addition, the costs of this hearing of £574.35 were imposed against Mr Westgate in favour of Propertymark.

E. PUBLICATION

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

F. CLOSING STATEMENT

'The Tribunal thanks Mr Westgate for his attendance at today's hearing. We do understand the difficulties faced by Mr Westgate in so far that he is receiving no support from his previous employer in relation to the charges as presented. The evidence we have seen presented at Tribunal shows that significant progress has been made in resolving many of the breaches noted above'.