FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32UD/HNA/2022/0085** **MAN/32UD/HNA/2022/0086**
Property	**:**	**79 Ripon Street, Lincoln, LN5 7NH**
Applicants	**:**	**(1) Spericle Ltd t/a Properties on the Market** **(2) Sathavahana Reddy Vaddaram**
Respondent	**:**	**City of Lincoln Council**
Type of Application	**:**	**Appeal against financial penalty: section 249A, Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member P Mountain**
Date of Decision	**:**	**20 November 2023**
Date of Determination	**:**	**27 November 2023**

DECISION

The Final Notices Imposing a Financial Penalty issued by the Respondent to each of the Applicants on 28 September 2022 in relation to 79 Ripon Street, Lincoln are cancelled.

REASONS

1. The First Applicant has a large portfolio of managed properties and holds an HMO licence for 79 Ripon Street, Lincoln. The Second Applicant is a director of the First Applicant and therefore liable to financial penalties in the circumstances set out in section 251 of the Housing Act 2004 ("the Act").

2. The Respondent is the licensing housing authority responsible among other things for ensuring that all its licensed HMOs have the benefit of annual gas safety certificates. The HMO licences it issues are subject to the following condition: "If gas is supplied to the house, the licence holder is to produce to the City of Lincoln Council annually for their inspection a gas safety certificate obtained in respect of the house within the last 12 months."

3. On 26 July 2022 the Respondent wrote by post to each of the Applicants, advising them of its intention to apply a financial penalty of £1069.52 for breach of the regulation 6(1) Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations") which reads: "The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate it has received in relation to the testing of any gas appliance at the HMO by a recognized engineer." The same Notice of Intention was subsequently sent to each of the Applicants by email dated 1 September 2022.

4. After considering representations received from the Applicants on 9 September 2022 the Respondent issued Final Notices of Penalty which reduced both penalties to £534.76. The Respondent decided to reduce the penalties because there had been a gas safety certificate for the property continuously through 2021 to 2023 and therefore there was in practice no appreciable danger from the gas supply to the occupants of the property.

5. The Applicants denied that they were liable for these penalties and appealed to the Tribunal.

THE LAW

6. Section 234(3) of the Act creates an offence where a person managing an HMO fails to comply with the Management Regulations.

7. Section 249A of the Act provides an alternative to prosecution as follows: "*The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England*." An offence under section 234 is a relevant housing offence. The level of proof required before a financial penalty can be imposed is similar to the proof required for a criminal conviction.

8. On an appeal against a financial penalty, this tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the council when the Final Notice of Penalty was issued. The tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

THE HEARING

9. The Applicant's case was heard by video link on 20 November 2023. Mr Vaddaram represented both Applicants. The Respondent was represented by Ms Ward, its in-house solicitor. The Tribunal was provided with a comprehensive hearing bundle.

THE APPLICANTS' CASE

10. Mr Robertson, the First Applicant's construction manager, gave evidence that in advance of expiry of the existing gas safety certificate he arranged for a plumber to check 79 Ripon Street and issue a new certificate. On 28 March 2022 he collected an envelope containing this new certificate from Ms Cyktor at the First Applicant's office and posted it to the Respondent. He was able to confirm the date by checking the records kept by the company. He said that he "normally" did this with gas safety records if they were received in paper form from the plumber. This evidence was not challenged although it conflicted with hearsay evidence given later by Mr King for the Respondent. Mr King said that his colleague Alex Hill had told him that he never received gas safety certificates by post from the First Applicant, but that they were

always sent by email. However Mr Hill had not provided a witness statement and was not present to confirm this to the Tribunal. Mr Robertson's evidence is preferred.

11. Ms Cyktor is the First Applicant's executive manager. She confirmed from her records that she received a gas safety certificate from the plumber on 28 March 2022 and wrote to the Respondent enclosing a copy of it. She gave the letter to Mr Robertson to post. She produced an archived copy of her letter to the Respondent. Mr Vaddaram confirmed that if a certificate is received by email from the contractor it is forwarded to the Respondent by email, but if it is received on paper it is forwarded by post.

12. The Respondent said that it had no record of having received the 2022 gas safety certificate and that therefore reminder emails were sent by Alex Hill to the First Applicant on 6 May and 20 May. The Applicants denied having received these, despite the fact that "read receipts" had been requested by Mr Hill and received by the Respondent. Copies were produced to the Tribunal. The Applicant said that the "read receipts" did not emanate from the First Applicant's office and must have been created by a glitch in the Google cloud transmission system. Alternatively, Mr Vaddaram said that they could be forgeries. He noted that the "read receipts" indicate that they were sent from info@spericle.com whereas Mr Hill's emails were said to have been sent to cs@propertiesonthemarket.com. Both are email addresses of the First Applicant, but he would expect a "read receipt" to emanate from the address that the original email had been sent to. The Tribunal discounts this argument, on the understanding that an email can be forwarded automatically to a different address within an organisation, and that the address to which it was forwarded would issue any delivery or "read receipt".

13. As the Respondent had no record of seeing the gas safety certificate and no response to its reminder emails, a decision was made to impose a financial penalty. The letter enclosing Notice of Intent was addressed to the First Applicant, but the Applicants denied having received it. The first indication they had of a problem relating to the gas safety certificate, Mr Vaddaram said, was an emailed copy Notice of Intent received on 1 September. They responded to it in full on 9 September, explaining that neither the reminder emails nor the posted Notice of Intent had reached them and sending a copy of the gas safety certificate.

14. Asked by Ms Ward why the First Applicant had not expected a receipt from the Respondent if a copy of the gas safety certificate had been sent to it in March 2022, Mr Vaddaram said that the Respondent never acknowledged receipt of certificates, whether they were sent by post or email, for any of his properties.

15. Mr Vaddaram told the Tribunal that it was inconceivable that the First Applicant would fail to file a gas safety certificate since this was a normal management procedure for all the HMOs managed by the company. Further, he said that had either of the reminder emails been received, the First Applicant would have responded to it at once. He said that over some 23 years in the property management business he had corresponded regularly with the Respondent by telephone, email and letter and had always sought to cooperate with the licensing authority. He queried why, if the Respondent had no gas safety certificate and no response to its emails, they had not simply telephoned either himself or Ms Cyktor to find out what the situation was before deciding to impose a fine. He strongly suspected that Mr King and perhaps others at the Respondent's office were conducting a vendetta against him because he had recently been successful in other financial penalty cases brought before the Tribunal.

16. Mr Vaddaram also referred to the wording of regulation 6(1) which only requires a landlord to produce a gas safety certificate within 7 days after a written request has been received. As the First Applicant had not received any request, no offence had been committed. He argued that the wording of the Respondent's HMO licence condition was unclear and could be interpreted to mirror regulation 6(1), and to require production of a gas safety certificate only following receipt of a request. However he accepted that it was the first Applicant's practice to provide annual gas safety certificates without waiting for a request from the Respondent.

THE RESPONDENT'S CASE

17. Mr King gave evidence for the Respondent. He said that he had made enquiries of Alex Hill and that there was no record of the Respondent having received a letter dated 28 March 2022 containing a gas safety certificate. The Respondent had "read receipts" for its emails of 6 and 20 May requesting a copy of the certificate, and had had no response to the request. Therefore the decision to impose a financial penalty was a reasonable one. He said that as an enforcement officer he had not checked the position by telephoning Mr Vaddaram or Ms Cyktor because the Respondent's

resources did not allow for such expenditure. The reminder emails had been sent to the email address given by the First Applicant on its application for an HMO licence, and although he was aware of and had used other email addresses for the First and Second Applicants it was not in his view unreasonable to use the email address which had been officially provided.

18. Mr King denied that he was conducting a vendetta against the Applicants, and said that there was no credible explanation for the "read receipts" other than that they had emanated from the First Applicant's office and someone there had opened the emails and acknowledged receipt of them.

19. After 9 September 2022, when he had received the Applicants' representations against the financial penalties, he and his manager had decided to halve the penalties and to divide them equally between the two Applicants. This, he said, represented the Respondent's acknowledgement that there had been a gas safety certificate in place at all relevant times, but also indicated that they preferred the evidence of the email "read receipts" to the Applicants' claim that no requests for the certificate had been received in their offices in May. They had concluded that the requests had been ignored, and consequently that there had been a breach of the HMO licence conditions and that an offence had been committed.

FINDINGS

20. The Tribunal accepts the evidence of Mr Robertson and Ms Cyktor, that a gas safety certificate was posted to the Respondent's office on 28 March 2022.

21. The Respondent's HMO licence conditions require a licensee to submit a copy of the gas safety certificate for the licensed property annually without waiting for a request or reminder from the housing authority. The mandatory licence condition relating to the gas safety certificate does not say that it must be produced "on demand", although other conditions do specify that documents, such as an appliance safety declaration and a smoke alarm or carbon monoxide declaration, only have to be produced on demand.

22. Although it appears more likely than not that the Respondent's emails of 6 and 20 May 2022 were received and read by the Applicants, the "read receipts" by themselves are not sufficient proof of this. Mr Vaddaram confirmed that the First Applicant uses a cloud-based email system, which could mark a message as read although it had not been opened. The Tribunal considers it possible that something in the Respondent's communication caused the system to send an automatic and misleading "read receipt". It would be reasonable to expect, where the First Applicant was the holder of many HMO licences and managed many properties in Lincoln, that the Respondent would telephone Ms Cyktor to find out why no replies had been received before concluding that an offence had been committed. There was no benefit to be had by the Applicants in ignoring the emails. The First Applicant appears to be conducted efficiently and successfully to manage a large number of licensed properties. As no enquiries were pursued by the Respondent between 20 May 2022 and the issue of the Notices of Intent, the Tribunal finds that there is insufficient evidence to conclude beyond reasonable doubt that the First Applicant received a request to produce a gas safety certificate and failed to comply with it.

Tribunal Judge A Davies
20 November 2023