

**ANNUAL REPORT BY THE INDEPENDENT ADJUDICATOR TO  
COMPANIES HOUSE (1<sup>st</sup> August 2007- 31<sup>st</sup> March 2008)**

**1. Introduction**

1.1 On 1<sup>st</sup> August 2007 I was appointed to be the Independent Adjudicator for Companies House, following the departure of my predecessor, Mr W H Thomas. My report covers the eight month period from 1<sup>st</sup> August 2007 to 31<sup>st</sup> March 2008.

1.2 My role is to deal with appeals against late filing penalties once they have passed through the first two stages which are internal to Companies House. If the Senior Appeals Manager upholds a late filing penalty then I can be asked to review the case. As Parliament has laid down exactly what the Registrar of Companies can and cannot do, the scope for discretion not to collect a penalty is limited. I also investigate complaints about delay, discourtesy and mistakes and the way in which these complaints have been handled by Companies House.

**2. Appeals**

2.1 I dealt with thirty five appeals during the 8 months between 1<sup>st</sup> August 2007 and 31<sup>st</sup> March 2008. In some cases, a single appeal related to more than one company, particularly where an accountant had incurred late filing penalties for more than one company.

<b>REASONS FOR APPEAL</b>	<b>NUMBER OF CASES</b>	<b>REJECTE D</b>	<b>UPHELD</b>
<b>TOTAL</b>	<b>35</b>	<b>34</b>	<b>1</b>
<b>Postal Delay</b>	9	9	
<b>Director/Company Secretary Ill, Bereaved, or Catastrophe Occurred (not Sole Director)</b>	7	7	
<b>Missing in the Post</b>	6	6	
<b>Accounts not correct, need to be resubmitted</b>	5	5	

<b>Change of Registered Address or Director's Address not Notified so Correspondence not Received</b>	4	4	
<b>Accountant or Member of Staff Ill or Died</b>	4	4	
<b>Incompetence by Person Submitting Accounts</b>	3	3	
<b>Alleged Companies House Computer Malfunction</b>	2	2	
<b>Alleged Wrong Advice from Companies House</b>	2	2	
<b>Reminder not Received</b>	3	3	
<b>Accounts Handed in to London Office but Lost</b>	1	1	
<b>Obstruction by Previous Directors</b>	1		1

NB The number of reasons for appeal exceeds the number of cases because in a number of cases there was more than one reason for appeal.

- 2.2 There were a number of cases (9) where company directors or accountants submitted their accounts only a few days before the due date and, due to the vagaries of the post, they did not arrive in time. In some cases (6) accounts did not arrive at all. There were well publicised postal strikes during the summer and autumn of 2007, which made it surprising that people trusted the postal service to deliver their accounts when there was considerable disruption to deliveries.
- 2.3 In the period before accounts are due, Companies House sends reminders with an insert which states 'We cannot accept delays or losses in transit as a reason for delivering accounts late.' The insert also recommends the use of a guaranteed delivery service with consequential loss cover, if the accounts are being filed close to the deadline.

- 2.4 The Companies House leaflet entitled 'Late Filing Penalties: Appeals' lists some of the reasons that would **not** be regarded as justifying non-collection of a penalty. The first of this is accounts being delayed or lost in the post. Thus appeals based on the fact that the accounts were posted before the due date but did not arrive are destined to fail.
- 2.5 In some cases, accountants or directors had submitted their accounts in good time, but did not become aware that they had not arrived at Companies House until they received a late filing penalty. In one case, it was claimed that the accounts had been handed in at the Companies House London office. Companies House had no record of this, the appellant had no evidence and had previously appealed for the same reason. It is sensible to check that accounts have been received by Companies House, by enclosing a stamped addressed envelope with a copy letter or an acknowledgement card which can be returned as proof of delivery or, alternatively, the website can be checked free of charge to see if the accounts have been received. If accounts are hand delivered, a receipt can also be provided.
- 2.6 Dormant company accounts (DCA) and Audit Exempt Abbreviated Accounts may be filed online, which eliminates any problem with postal delivery. If accounts are filed on line, then an email is sent on receipt, and a further email once the accounts have been accepted. Companies House should continue to encourage the use of all the web filing services.
- 2.7 In a number of other cases (5), the accounts were submitted close to the filing deadline, but were not correct. By the time they were resubmitted, the due date had passed and a late filing penalty had been incurred. It is not wise to submit accounts close to the due date, as it leaves no margin if things go wrong.
- 2.8 There were seven cases where directors experienced some serious problem which delayed the submission of the accounts. These included bereavement, and illness. However, in none of these cases was the

individual a sole director. All directors have equal responsibility to ensure that accounts are submitted on time. Where one director has primary responsibility for submitting accounts and some catastrophe overwhelms him or her, other directors must be prepared to step into the breach. It is apparent that some directors are that in name only, and are either unable or unwilling to act when it becomes necessary.

- 2.9 In four other cases, either a key member of staff or the accountant became ill or died. The Registrar cannot exercise his discretion in such cases, as the legal responsibility for the submission of accounts rests with the directors. It is evident that some accountants working alone make no contingency plans for dealing with their clients' affairs if something goes badly wrong.
- 2.10 In most cases where something has gone badly wrong for either a director or an accountant resulting in the accounts being submitted late, the problem was compounded by the fact that submission of the accounts had been left until late in the day. Ten months are allowed from year end until the due date for filing of accounts. It is sensible not to leave the filing of accounts until shortly before the due date, as this leaves no margin if things go wrong. It is particularly surprising that the filing of accounts for dormant companies, which is a very simple affair, is sometimes left for so long.
- 2.11 In four cases, changes to the company's registered office address or to directors' addresses had not been notified to Companies House, resulting in important correspondence not being received. On occasions this led to County Court judgments being entered against companies or to companies being removed from the Register because they are unaware of what has gone wrong. Although companies should not rely on the reminder letter which Companies House sends as the trigger to submit accounts, it is helpful if there has been an oversight. If addresses are ineffective, then the reminder letter will not be received.

- 2.12 In two cases, appellants said that they had tried to file accounts online. In one case, it seemed likely that what the appellant said was not true. In the other, the appellant had become confused between his accounts for different years.
- 2.13 In another two cases, the appellants said that they had been given wrong advice by Companies House. In the first case, the advice was correct at the time it was given, well before the accounts were due, when the appellant was advised to ensure his accounts were correct before he submitted them. In the second case, the appellant said he was given the wrong due date for his accounts. Calls are recorded in the Contact Centre and kept for a year, and a search was made, but there was no trace of a call from him in the period in question.
- 2.14 In three cases, the appellants simply did not seem competent to manage their dealings with Companies House. In one case, the accountant was appealing in relation to seven companies and, worryingly, seemed unable to handle his clients' affairs with Companies House.
- 2.15 Sometimes accountants simply fail to do their work on time, accounts are filed late and a penalty is incurred. Where the Registered Office address of a company is the accountant's address, and directors have delegated responsibility for the registered office to their accountant, they may not know that their accountant has let them down, resulting in a late filing penalty being incurred. Indeed, in one case, the accountant appealed and told me that his client was unaware of the problem.
- 2.16 I upheld one appeal. In this case, property developers had been the directors of a property management company. They had managed it so badly that Companies House had dissolved it. The residents of the property development were obliged to apply for the company to be reinstated because of restrictive covenants on their properties,

incurring the late filing penalties of the previous directors. Whilst supporting the policy of Companies House that outstanding late filing penalties must stand when a dissolved company is reinstated, notwithstanding a change of directors, I considered the circumstances of this case to be exceptional as the residents had no choice but to reinstate the company, had been ill treated by the property developer, and had already incurred considerable expense.

### **3. Complaints**

- 3.1 I dealt with two complaints over the eight month period. A number of appeals also contained elements of complaint or led to me making suggestions for improvement.
  
- 3.2 In the first complaint, the company's registered office became ineffective and the director's address had been incorrectly entered in the Companies House records by the formation agents. When Companies House tried to contact the company, it was unsuccessful. Therefore, the company was struck off. The company's accountants complained about the dissolution process and the lack of response from Companies House to their subsequent correspondence. I found that the company was the author of its own misfortune in relation to its dissolution. However, there was a serious lapse in dealing with the subsequent correspondence. Five letters and a telephone call produced no response. Two further letters produced holding letters but no substantive reply. A final letter received no reply. I recommended that Companies House looked into what had gone wrong and that it apologise for the lapse and pays the cost incurred for the repeated letters that the company's accountants has had to send. The Registrar wrote a letter of apology and asked for a breakdown of costs incurred, but to date has received no reply.
  
- 3.3 The second complaint was also about the dissolution of a company. Accounts were received by Companies House nearly two weeks before the company was dissolved, but the dissolution was not stopped. The

accounts were not processed within the short timescale which would have been required to stop the company being struck off. Once it was struck off, dissolution was inevitable. The company had failed to communicate with Companies House and simply sent in the accounts with no explanation. I did not find any grounds for criticism of Companies House over the dissolution of the company. Subsequently, three letters were sent to Companies House three times, but only one received a reply. I was concerned about how Companies House handled the correspondence in this case. The company says it asked for a duplicate shuttle return, but one was never received. Companies House has no record of two of the three letters sent after dissolution. The explanation given in the letter which did receive a response was inadequate. The rejected accounts were passed to the Restoration Section to be returned to the company, but the company says they were not received. I recommended that Companies House apologise for the failure to deal with the correspondence. I suggested that they also look into procedures for logging receipt of and responding to incoming correspondence in the Dissolution and Restoration Sections. I am advised that the Registration Services Department in Companies House has reviewed the procedures and made appropriate changes.

- 3.4 A small number of other matters emerged in the course of dealing with the various appeals. In one case, it emerged that there was some confusion about when correspondents might expect a reply. All emails received by the Companies House Contact Centre generate an automatic email to the customer stating that their mail has been passed to a team for a reply within two working days. In this case, the email was forwarded to Late Filing Penalties which sent a holding reply saying that a "full response would be sent shortly". This confused the customer who did not realise that this was the promised reply in two days and that a fuller reply would follow shortly. As a result, the standard Late Filing penalties reply has been amended to acknowledge that the case is being treated as an appeal against the penalty and a reply will be sent in 10 working days, which is the standard for appeals.

3.5 In another case, the complainant made a mistake with the date when seeking to extend the Accounting Reference Date (ARD) for his company using a form 225. This was caused by a failure to understand the definition of a period of months in connection with filing accounts. Whilst it is clearly explained in the Companies House guidance on preparing and filing accounts (Chapter 2 of the booklet Accounts and Accounting Reference Dates), I suggested that it would be helpful to refer to it in the guidance on changing the ARD (Chapter 1 of the same booklet), and on the form 225, as people may not otherwise see it, in order to reduce the kind of error made by the appellant. I am advised that when the guidance is reviewed as a consequence of the new Companies Act, my recommendation will be incorporated.

#### **4. Conclusion**

4.1 I should like to thank the staff at Companies House whom I have found to be very thorough, accurate, speedy and helpful in their dealings with me. I should particularly like to thank the Case Managers and the Senior Appeals Manager in the Late Filing Penalties Department for the help they have given me, especially in some of the more complex cases. I have observed from the files which they have passed to me that appeals are dealt with to a very high standard and in short timescales. Appellants are dealt with courteously and sympathetically and given clear explanations. I only received one appeal where my view of what constituted an exceptional case differed from that of Companies House.

4.2 Turning now to complaints, for the same period covered by this report, Companies House received 6,427 complaints of which the number referred to me in the eight months since my appointment is very small. This says much for the work which is done by Companies House staff at the earlier stages, especially to set things right where something has gone wrong.

Dame Elizabeth Neville

19th May 2008