

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2013- 31st March 2014

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1. INTRODUCTION

- 1.1 Three Independent Adjudicators, Dame Elizabeth Neville, Mr Leslie Cuthbert and Mrs Jessica Pacey are retained by Companies House. Our principal role is to deal with appeals against late filing penalties once they have passed through the first two stages of the appeals process which are internal to Companies House. If an appeal is not upheld by an Independent Adjudicator, the appellant may ask for the case to be referred to the Registrar who is the final arbiter in the appeals process.
- 1.2 The Independent Adjudicators also investigate complaints about delay, discourtesy and mistakes and the way in which complaints have been handled by Companies House. Again, there are two internal stages for consideration of a complaint. If the complainant is dissatisfied with the outcome of the internal consideration of the complaint, he or she may ask for the matter to be referred to a Companies House Independent Adjudicator. If a complainant remains dissatisfied after a case has been considered by an Independent Adjudicator, he or she may approach a Member of Parliament and ask for the case to be referred to the Parliamentary and Health Service Ombudsman.
- 1.3 As our title indicates, we are entirely independent of Companies House. A brief outline of our professional profiles may be found on the Companies House website by following this link: <http://www.companieshouse.gov.uk/about/complaintsAdjudicator.shtml>. Our cases, whether appeals against late filing penalties or complaints, are allocated strictly by rotation to ensure distribution is random.
- 1.4 Our recommendations are summarised in Appendix A.

2. APPEALS

VOLUME AND TYPE OF COMPANY

- 2.1 We dealt with 391 appeals during the year between 1st April 2013 and 31st March 2014, a decrease of 75 (16%) from 2012/13 when we considered 466 appeals. This continues the decline since the peak years of 2010 to 2013 which followed the changes introduced by the Companies Act 2006 and brings us closer to the level of 2009-10. See Table 1. We upheld 19 (4.86%) appeals.

TABLE 1 NUMBERS OF APPEALS

	2008-9	2009-10	2010-11	2011-12	2012-13	2013-14
TOTAL	105	325	467	583	466	391

- 2.2 About a quarter of the appeals we receive are from directors of newly incorporated companies filing their first accounts. We continue to receive a high number of appeals from dormant companies (about 30%) Some of these are also new companies. See Table 2 below. The filing

failures often stem from directors not knowing what is required and because their companies, being inactive, are not at the forefront of their mind. Property management companies and companies with a charitable purpose continue to figure (each making up about 7.5% of our cases), often because the directors are not as focussed on their roles or aware of their responsibilities in the way that directors of trading companies are.

TABLE 2 APPEALS TO ADJUDICATOR FROM A DORMANT COMPANY

2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
29	67	79	131	118	120

- 2.3 Companies House is working to improve the understanding of new directors. Since 1st October 2013, a 'First Directors' letter has been sent out to all newly appointed directors of a company approximately one month after appointment. This applies to the directors of a newly incorporated company and also to any newly appointed directors of an existing company. Where a new company has been incorporated using an incorporation agent, the interval of a month allows time for the Companies House record of the directors of the company to be updated, which reduces the likelihood of the 'First Directors' letter being sent to the incorporation agent. The letter tells directors what is required of them and specifically advises that the company's accounts and annual return must be filed every year.
- 2.4 The compliance rate for companies filing accounts is at a new record high and is believed to be the highest in the world at 99.19%. The percentage of accounts filed on time continues to rise and is now 94.27% (94% in 2012/13).

REFERRALS TO THE REGISTRAR

- 2.5 The fourth stage of the appeals process is an appeal to the Registrar. Companies House received 28,888 appeals against late filing penalties in 2013/14. 1.35% of all appeals were referred to the Independent Adjudicators. 21% (85) of the appeals considered by the Independent Adjudicators were referred to the Registrar, See Table 3 below.

TABLE 3 REFERRALS TO THE REGISTRAR

	Number of Cases Escalated to Registrar	% of Total Cases Dealt with by Adjudicators
2007/8	22	37
2008/9	27	23
2009/10	68	20
2010/11	109	22
2011/12	120	21
2012/13	112	24
2013/14	85	21

- 2.6 The Registrar upheld three appeals which had been rejected by an Independent Adjudicator. In the first case, the accounts had been put through the letterbox of the former London address of Companies House. The Registrar accepted that the appellant would not have known that it was the wrong address because there was no notice on the building and the letterbox was not

blocked. In the second case, the accounts had been rejected and amended accounts had not been filed until the deadline had passed. The Registrar decided to give the appellant the benefit of the doubt that the accounts had been wrongly rejected. In a third similar case, the Registrar decided that the rejected accounts could have been accepted.

- 2.7 The Registrar had rejected an appeal against the imposition of a double penalty made on the grounds that the penalty for the late filing of the accounts the previous year had not been collected. A double penalty is imposed if the previous year's accounts were filed late, irrespective of whether the penalty was collect or not and Companies House had warned that if the accounts were late in the following year, a double penalty would be imposed. When the matter went to court, the judge ordered that a single rather than double penalty should be paid.
- 2.8 On one occasion, an Independent Adjudicator identified a matter which should properly have been dealt with earlier in the appeals process which resulted in Companies House deciding not to collect a penalty without further reference to the Independent Adjudicators.

UPHELD APPEALS

- 2.9 During the year 2013/14, the Independent Adjudicators upheld nineteen appeals. Details are given below.

Director of Company Experiencing Catastrophe Shortly Before Deadline

- 2.10 The greatest number of appeals (25%) were wholly or in part on the grounds of an exceptional circumstance such as the director suffering a serious illness or a catastrophe befalling a company shortly before the filing deadline. The Adjudicators upheld four such appeals.
- 2.11 In two cases, further information was provided to the Independent Adjudicators which led to the appeal being upheld. In the first case, it was not until the appellant wrote to the Independent Adjudicators that he disclosed that his chronic health condition had unexpectedly become acute and incapacitating not long before the filing deadline. At that stage he also disclosed the details of a distressing bereavement shortly before the filing deadline.
- 2.12 A second appeal was upheld because the director provided more information about his health problems when he wrote to the Independent Adjudicators.
- 2.13 In a third case, a husband and wife were two of the three directors of a company, the third director being abroad. The couple's young son became seriously ill just before the deadline and the wife had a breakdown as a result. The directors tried, nevertheless, to file the accounts by the filing deadline, posting them by recorded delivery but there was a delay in delivery. It was accepted that the combination of events amounted to an exceptional circumstance.
- 2.14 The Adjudicators upheld an appeal by the directors of a small company in a fourth case who failed to file the accounts because of a severe and unexpected crisis affecting another family business.

WebFiling

- 2.15 Users are filing their accounts electronically with much greater frequency, using either the Companies House WebFiling system or the HMRC/Companies House joint filing system. Appeals relating to electronic filing make up the second largest category of appeals (23%).
- 2.16 No appeals relating to Joint Filing were upheld. The process is not very user friendly and on 21st October 2013 an improved version went live which also addresses an earlier recommendation

by the Independent Adjudicators who identified that it is not clear that the user of the joint filing system should expect to receive emails confirming receipt and acceptance of the accounts. A further upgrade is expected to be installed in October 2014. The Adjudicators have seen test screens which appear to be much more intuitive and user friendly.

- 2.17 Three appeals relating to WebFiling were upheld. In one case, an attempt to WebFile prior to the deadline was unsuccessful because the director had not changed the Adobe security settings. The advice at the start of the filing process to change the Adobe security settings said: ***'IMPORTANT ADOBE INFORMATION: if you are using the accounts template for the first time, you will be required to change Adobe settings in order to submit the template.'*** The appellant thought this did not apply to him as he had used the accounts template the previous year. When he was unable to submit the accounts he telephoned the Companies House Contact Centre and outlined the nature of the problem. He was not advised that he might need to change the Adobe settings, and he was advised to wait for the confirmation email which he was told incorrectly could take 24 hours. They usually arrive within minutes and if he had been told this, he would have known almost immediately that his submission had been unsuccessful. The appeal was not well handled, the telephone recording was not retrieved and requests for information ignored. There was a long delay in responding to the appeal. Companies House has given feedback to Contact Centre staff and case officers, and refresher training has been provided where appropriate.
- 2.18 In order to log onto WebFiling, users must enter a password and an authentication code. Companies House previously used the term 'security code' but changed the terminology to the word 'password'. In a second case, the director of a company asked a member of staff to file the accounts over a weekend who, when asked to enter the password, did not know that he should enter the security code. The Contact Centre was closed and the link on the Companies House website explaining the change had been archived. By the time the confusion was resolved, the filing deadline had passed.
- 2.19 Companies House actively promotes the message to companies to use electronic filing. Whilst WebFiling is available to the most common types of companies, it is not yet available to all companies. The insert sent with the Companies House reminder letter (COMP1) does not make it clear that not all companies (in particular Limited Liability Partnerships (LLPs) and Community Interest Companies (CICs)) can file accounts electronically. In a third upheld appeal, the partner of an LLP only realised that he could not file the accounts electronically very late in the day. He then posted them but there was a postal delay and they did not arrive until after the deadline. The Adjudicators recommended in October 2012 that the wording of the COMP1 be revised to make it clear that not all companies can file their accounts electronically. This revision is now in final draft form and it is expected that it will be issued shortly.

Rejected Accounts

- 2.20 A company's accounts were filed electronically using software filing (proprietary software used by accountants and other larger organisations) and rejected on the grounds that the company's name had been abbreviated. The company disputed this, producing a copy of the accounts with the company name in full. A Companies House internal printout showed the name appearing in abbreviated form during the validation process. The appellant pointed out that the accounts for the previous year had been filed in a similar manner and accepted by Companies House. The appeal was accepted as the company name may have been abbreviated during the filing process in a way of which the company could not have been aware.

Wrong or Misleading Advice or Information from Companies House

- 2.21 Six such cases were upheld. In two cases, the appellant had misunderstood the overdue accounts notice (Defstat) to mean that the filing deadline had been extended by 28 days. The Adjudicators have recommended that **the wording of the letter be amended to bring it in line with other letters to make it clear that the filing deadline has already passed, that a late filing penalty will be imposed when the accounts are filed and that the amount will increase with the period of delay.**
- 2.22 When a company has a very long address, it was possible that the address on automatically generated letters would not include the postcode. In one of the two cases described above, the reminder letter and the overdue accounts notice were both sent without the postcode. The former was not received by the company and the latter only received after a delay. This appeal was upheld. The same issue arose in another appeal which was not upheld. **In response to the recommendation of the Independent Adjudicator, Companies House changed its automated system for addressing letters so that the postcode is automatically included, irrespective of the length of the address.**
- 2.23 The circumstances of a third upheld appeal were that the accounts for three companies which were not in a sealed envelope were handed in at the London office of Companies House. Staff looked at them, which led the presenter to believe that they were acceptable. However, they were rejected and amended accounts were filed after the deadline.
- 2.24 The accounts for a fourth company were rejected and returned eleven days before the filing deadline but were not received. The director made repeated checks and efforts to ensure that acceptable accounts reached Companies House by the deadline. The Contact Centre advised him that the accounts had been rejected but did not provide the detailed information contained in the rejection letter which would have allowed the accounts to be amended and returned to Companies House by the deadline.
- 2.25 The Adjudicators upheld another case where the appellant was advised incorrectly by a member of Contact Centre staff that the accounts would be received more quickly at the Companies House Cardiff office than at the London office. This is incorrect because the date of receipt of the accounts is the date on which they arrive at either office. As a result the appellant changed his intended course of action and the accounts arrived after the filing deadline.
- 2.26 In another upheld appeal, the accounts for the company were already overdue. Companies House was asked by letter to issue an authentication code but failed to do so. The company's accountant knew that the request had been received and waited for the code to arrive but eventually posted the accounts which were delayed in the post. As a result the penalty rose to the next band. The failure of Companies House to respond to the request for the authentication code contributed to the further delay and the increase in the penalty.

Other Cases

- 2.27 When accounts are not filed, and no response is received to overdue accounts notices nor does the company show any sign of life, Companies House will generally initiate the process to strike the company from the register. Whilst the dissolution is ongoing, a hold is put on any collection action of previously incurred penalties. If a company then files its accounts, or otherwise gives an indication that the company is required, the strike off process is halted, but the hold placed on the finance system is not automatically removed, meaning that no further action is taken to recover the previously incurred penalties. This also means that if new penalties are incurred, although a late filing penalty invoice is issued and sent to the company, no further collection action is taken. This glitch can be overridden manually but, initially, this was not done in

Scotland. When the problem was realised, the Companies House office in Edinburgh took steps to pursue the penalties for companies in this category which had not been paid. The Independent Adjudicators received two appeals where steps to recover the penalties were re-initiated two to three and a half years after the imposition of the penalty. The Adjudicators took the view that it was wrong to try to collect these penalties after such a long period of inactivity. The Edinburgh office now ensures that the manual override is actioned at the appropriate time..

- 2.28 In another case, the former directors of a company used electronic filing to name new directors without their consent or knowledge, shortly before the filing deadline. The new directors were unaware that accounts needed to be filed until they received the reminder notice but they did not have the company's financial information so the accounts were filed late. This was considered to be an exceptional circumstance and the appeal was upheld.
- 2.29 A fourth appeal was upheld when the Companies House record showed that accounts had been delivered to the Companies House London office on a Sunday, one day after a month had elapsed since the deadline, which meant that the penalty rose to the next penalty band. The appellant said that the accounts were put through the letter box before midnight, when the penalty would have been in the lower band. There is a system to identify whether a document has been put through the letter box before or after midnight but appellant was given the benefit of the doubt.
- 2.30 An unusual situation occurred where a company filing its first accounts first shortened its accounting period and then extended it by two days. When the accounting period was shortened, the filing deadline was extended by three months. When the accounting period was extended, this shortened the period allowed to file the accounts to the original date which had already passed. The directors could not be expected to have anticipated the unintended consequence of their actions and the appeal was upheld.

OTHER OBSERVATIONS AND RECOMMENDATIONS

- 2.31 During the course of the year, various improvements have been implemented by Companies House, arising from in year and previous year's recommendations by the Adjudicators. As well as recommendations made in some cases where an appeal was upheld, the Independent Adjudicators made a number of further recommendations in cases where they did not uphold the appeal. These additional recommendations are listed below.
- 2.32 For the last two years, the Adjudicators have observed that in some cases replies to appeals rely on standard paragraphs, may not address the actual grounds for appeal or completely miss the point being made by the appellant. We asked for staff dealing with appeals to be asked to take more care over their responses. In our view, the situation has not improved and we are still seeing poor responses which make some appellants feel that their appeals are not being given proper consideration. In more than one case, a reply to an appellant included irrelevant and incorrect elements which had been pasted from a reply to a different appeal. Sometimes, staff refer to obsolete wording in notices or to incorrect links or wording on screens on the Companies House website. When we identify cases where in our view a response has been inadequate (about 10% of all appeals referred to us), we draw it to the attention of Companies House so it can be fed back into the training and staff development processes. **We again request that staff dealing with appeals be asked again to take more care over their responses.**

- 2.33 Additionally, we see cases where at the early stages of an appeal members of Companies House staff fail to seek information which would allow an attempt to be made to trace the recording of a telephone call, even though it is clear that a call was made to Companies House. As recordings are deleted after eighteen months, on occasion this can mean that by the time the situation has been remedied, it is too late to retrieve the recording. **Companies House has now advised staff dealing with appeals to request the information needed to retrieve call at the earliest opportunity.**
- 2.34 Callers to the Companies House Contact Centre are advised that calls are recorded which gives them an expectation that it will be possible to retrieve a recording of the call. However, due to the volume of calls, recordings of calls from withheld numbers and made via switchboards cannot be retrieved unless the caller can provide other information such as the exact time of the call and the name of the operator. **The Adjudicators have suggested that in appeals which refer to a call being made to Companies House, initial responses make it clear to appellants the circumstances under which call recordings cannot be retrieved, so they have a realistic expectation of what is possible.**
- 2.35 If a company is dissolved and removed from the register, the Registrar will generally not pursue any outstanding penalty. It was agreed that Companies House will provide this information during the appeals process in appropriate cases, usually to dormant companies, or companies which appear not to be required. Last year we observed a number of cases where this was not done and again asked that staff provide this information. The information was still not being routinely provided during the first six months of 2013/2014 but has now been largely remedied.
- 2.36 In certain circumstances, and not just those described in para 2.27, a hold is put on the Companies House computer system for a specific purpose which freezes all automatically generated notices for the company. This means that reminder letters and overdue accounts notices are not sent until the hold is lifted. We dealt with two such cases in 2013/14 as well as two cases in the previous year. Companies House is aware of the problem and intends to remedy the problem but, due to competing priorities, the change remains to be addressed. **We recommend that the problem be resolved so that a hold placed on a company's record for a specified purpose does not result in a hold on all automatically generated notices.** This change was implemented on 20th June 2014.

3. COMPLAINTS

- 3.1 The Independent Adjudicators considered four complaints, none of which was upheld. They also dealt with complaints which were made in the course of an appeal.
- 3.2 A complaint was received from a Northern Ireland company which related to the transition from Companies Registry Northern Ireland (CRNI) and action taken to collect an unpaid penalty imposed for the late filing of the company's 2005 accounts. The complaint was fundamentally about the wrong postcode having been used in some notices which allegedly were not received. The complaint was not upheld.
- 3.3 A second complaint was about how Companies House had handled an objection to the dissolution of a Scottish company. An objection can only be accepted whilst action is being taken against the company. If no action is being taken, Companies House has no power to halt the dissolution. The complainant was not taking action against the company and his complaint that Companies House would not halt its dissolution was not upheld.

- 3.4 A third complaint was that Companies House should have enforced the removal from third party websites of details of the former director and of the company which had been dissolved. This complaint was not upheld as the Registrar must provide information for the public record, including information about dissolved companies. The Registrar has no power to prevent use by third parties of company information or to require them to remove information from their websites.
- 3.5 The Adjudicators dealt with a fourth complaint where Companies House sent a duplicate late filing penalty notice, when the original had been paid. The error was acknowledged and an ex gratia payment of £50 offered. The company's accountant requested compensation of £150. The complaint was not upheld but comments were made about the quality of the Companies House response and the failure twice to answer a specific question about how the complaint could be taken further.

Other Complaints

- 3.6 Eight appeals also contained one or more complaints, none of which were upheld. In one case, the appellant had received a response in which the member of Companies House staff had confused two cases. Other appellants have commented on inadequate responses including replies which contain elements from other appeals, without going as far as complaining. See the recommendation made at para 2.32.
- 3.7 In another case, the appellant is a prolific sender of emails and made a range of complaints, including complaints about the dissolution of her company, how her complaint about its dissolution had been handled, failures to respond promptly to her numerous emails and telephone calls which followed each other in close succession, and a number of other complaints about Companies House administration. She said there was a conspiracy to ensure her accounts were filed late. None of the complaints were upheld.
- 3.8 A complaint was made of being treated with rudeness and aggression during a call to Companies House. The Adjudicator asked the appellant to provide details of the call so an attempt could be made to trace the recording. He has not done so but Companies House has established that calls to the extension which he called are not recorded. The appellant also complained that the matter had been passed to an Independent Adjudicator without his approval, although he had been advised that this was the next stage of the process and had continued to argue that the penalty had been incorrectly levied. The complaint was not upheld.
- 3.9 A complaint about the issuing of an authentication code was not upheld. Companies House gave the appellant an incorrect email address so did not receive the initial emails of complaint. The complainant made a second complaint that the Companies House WebFiling system is unclear and misleading which was also not upheld.
- 3.10 A number of complaints related to how appeals and complaints had been handled. One appellant complained about the number of people who have dealt with his appeal. This occurred principally because, as the appeal moved through the different stages, it was dealt with by more senior staff, and the complaint was not upheld. A further complaint that the Senior Appeals Manager had not personally dealt with an appeal was not upheld as the Senior Appeals Manager reviews all appeals at the second stage of the appeals process, but letters are sent on her behalf. Another complaint which was not upheld was of delays in handling the complaint, delays in attempting to trace the recording of a telephone call and the failure to retrieve the recording.

4. CONCLUSION

- 4.1 Overall, the quality of the work done by Companies House staff considering appeals is very high. When a mistake is made, this is readily acknowledged and an apology made. We consider that Companies House staff strive to be fair and uphold appeals when it is appropriate to do so. Some of the appeals upheld by the Independent Adjudicators were as a result of information which had not been provided in the earlier appeals process. Some of the appellants have faced difficult, distressing and, on occasion, tragic circumstances and the Companies House responses are tactful and sympathetic.
- 4.2 Recommendations we make are often implemented without delay. Some recommendations, such as those for changes to standard letters, are incorporated into the regular reviews of their content, rather than being done piecemeal. Changes involving IT systems take longer, and we are kept up to date on progress.
- 4.3 We are impressed by the constant focus by Companies House on the customer perspective and the regular implementation of improvements which make things clearer and easier for directors and other system users.
- 4.4 We would like to comment again on the efficient and courteous support which we continue to receive from the Senior Casework Unit which assists us greatly in carrying out our task.



Dame Elizabeth Neville DBE QPM DL
7th July 2014

APPENDIX A

SUMMARY OF RECOMMENDATIONS

(The paragraph number of the relevant section in the main report is shown.)

- 2.21 In two cases considered by the Independent Adjudicators, the appellant had misunderstood the overdue accounts notice (Defstat) to mean that the filing deadline had been extended by 28 days. The Adjudicators have recommended that **the wording of the letter be amended to bring it in line with other letters to make it clear that the filing deadline has already passed, that a late filing penalty will be imposed when the accounts are filed and that the amount will increase with the period of delay.**
- 2.22 Companies House has acted promptly to resolve the problem with companies with long addresses where it was possible that the address on automatically generated letters would not include the postcode. **In response to the recommendation of the Independent Adjudicator, Companies House changed its automated system for addressing letters so that the postcode is automatically included, irrespective of the length of the address.**
- 2.32 The Adjudicators repeat a recommendation made both last year and the year before. We observe that in some cases the replies to appellants contain errors, rely on standard paragraphs and sometimes do not address the appeal or completely miss the point being made. **We ask that staff dealing with appeals be asked again to take more care over their responses.**
- 2.33 Additionally, we see cases where at the early stages of an appeal, members of Companies House staff fail to seek information which would allow an attempt to be made to trace the recording of a telephone call, even though it is clear that a call was made to Companies House. As recordings are deleted after a year, this sometimes means that by the time the situation has been remedied, it is too late to retrieve the recording. **Companies House has now advised staff dealing with appeals to request the information to retrieve call recordings at the earliest opportunity.**
- 2.34 Callers to the Companies House Contact Centre are advised that calls are recorded which gives them an expectation that it will be possible to retrieve a recording of the call. However, due to the volume of calls, recordings of calls from withheld numbers and made via switchboards cannot be retrieved unless the caller can provide other information such as the exact time of the call and the name of the operator. **The Adjudicators have suggested that in appeals which refer to a call being made to Companies House, initial responses make it clear to appellants the circumstances under which call recordings cannot be retrieved, so they have a realistic expectation of what is possible.**
- 2.36 In certain circumstances, a hold is put on the Companies House computer system for a specific purpose which freezes all automatically generated notices for the a company. This means that reminder letters and overdue accounts notices are not sent until the hold is lifted. This is an ongoing problem of which Companies House is aware and which it intends to remedy, but has not yet done so. **We recommend that the problem be resolved so that a hold placed on a company's record for a specified purpose does not result in a hold on all automatically generated notices.** This change was implemented on 20th June 2014.