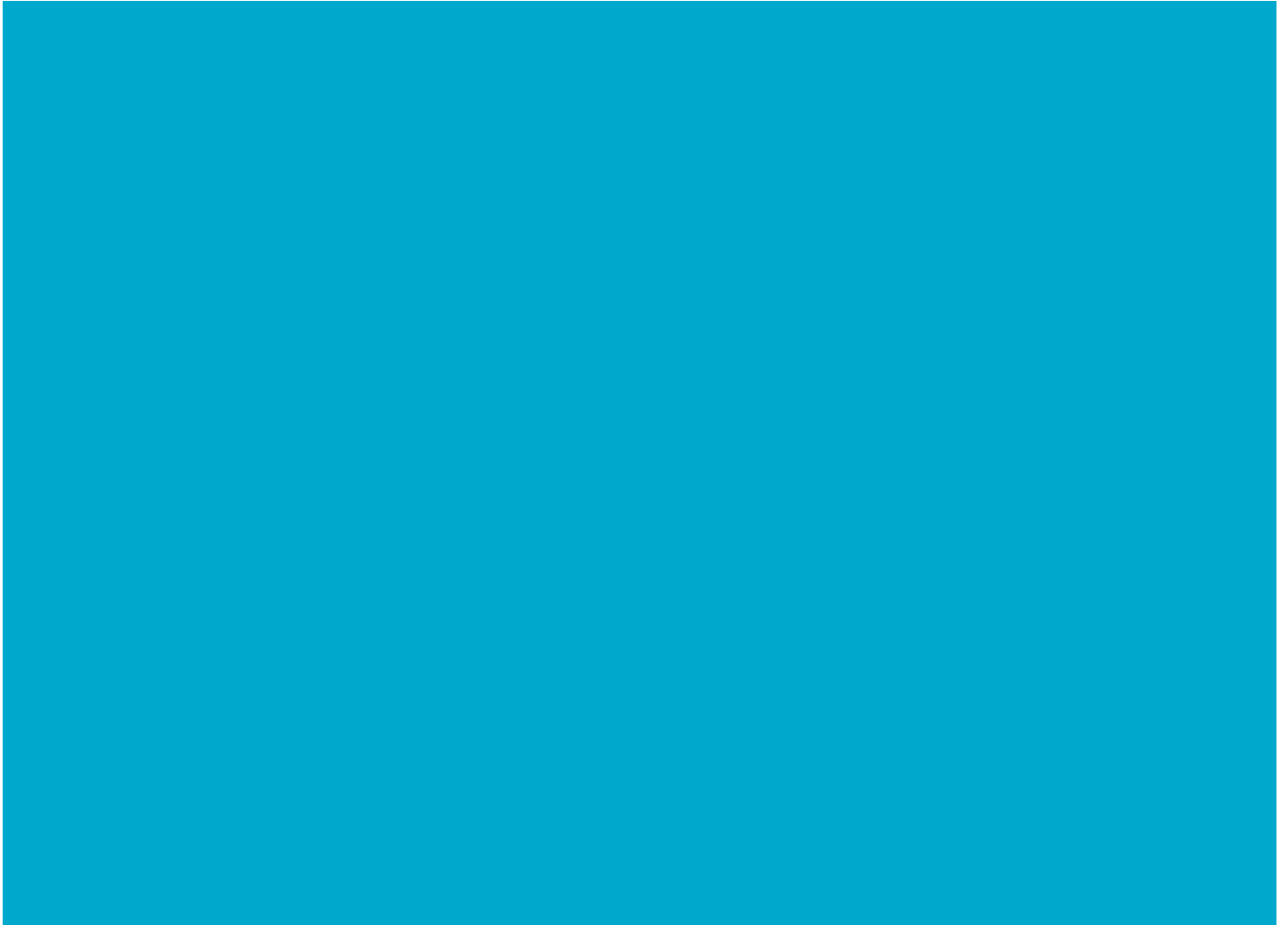




Companies House

# Late Filing Penalties

## Appeals



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# Chapter 1 – Introduction

For the purposes of this manual a private limited company, a public limited company and a limited liability partnership will be generically referred to as a “company”, unless this is inappropriate. Similarly, a director or a designated member will be referred to as an “officer” unless this is inappropriate.

## 1. Background to Late Filing Penalties

**Legislative Background:** The late filing penalty legislation was introduced in 1992 because of increasing public concern about the number of companies that were failing to deliver their accounts within the statutory time allowed by the Companies Act 1985 (subsequently replaced by the Companies Act 2006). The provisions of the Act were introduced with effect from 1 July 1992 under Statutory Instrument 1991 No 2945 (C.92).

The legislation under which a penalty is now levied is section 453 (1) of the Companies Act 2006. The 2006 Act sets out the level of penalties to be levied and is specified in regulations i.e. Statutory Instrument 2008 No. 497. These regulations came in to force on 6 April 2008 and were enacted on 1 February 2009 and apply to all companies filing accounts late on or after this date.

**Policy Background:** In return for limited liability the law requires officers to provide information about their company to the public. The law clearly states that it is the personal responsibility of the officers to ensure that accounts are delivered to Companies House within the specified time allowed [section 441(1)] and where accounts are delivered late, the company will be liable to a civil penalty [section 453].

The parameters for the late filing legislation were set by Parliament which decided that the penalties should apply to all companies, irrespective of the size of the company or the nature of its business, whether trading or not. The sole aim of the legislation is to encourage timely filing with the ultimate goal being that the revenue generated from penalties is nil because all companies will file on time. The amount of the penalty is determined by the regulations (SI 2008/497) by referring to the delay between the filing

deadline and the date the accounts are delivered to Companies House [section 453(2) of the Companies Act 2006].

## 2. Time allowed for the delivery of accounts

Private limited companies and limited liability companies are given 9 months from the end of the accounting reference period to deliver their accounts to the Registrar. Public limited companies are given 6 months from the end of the accounting reference period to deliver their accounts to the Registrar.

If however a company’s first accounts cover a period of more than twelve months, they must be delivered to the Registrar within 21 months of the incorporation date. Similarly, public limited companies whose first accounts cover a period of more than twelve months must deliver them to the Registrar within 18 months of incorporation.

The requirement in section 441(1) of the Companies Act 2006 to “deliver to the registrar” means that the accounts must be received by the Registrar within the time allowed for filing. Delivery therefore means the actual handing over (which is legally defined in rule 7 volume 2 of Registrar’s rules) of a document at Companies House, not the posting or handing of a package to a courier. Delivery is defined in the Act in s.1071(1), which states that: “A document is not delivered to the registrar until it is received by the registrar.” Furthermore, a document is only considered as properly delivered once it complies with the requirements under s 1072 of the Act.

### 3. Provisions for extending the time allowed for filing

There is provision in the Companies Act for the period of delivery for accounts to be extended. Upon application, the Secretary of State may extend the time allowed for filing by whatever period is appropriate if he thinks fit [Section 442(5)] of the Companies Act 2006. Such applications must be in writing and received at Companies House prior to the expiry of the period normally allowed for filing.

### 4. Civil penalty for the failure to file accounts on time

When the officers of a company fail to deliver accounts within the time allowed under the Companies Act, the company becomes liable for a civil penalty, the amount of which depends on how late the accounts are when they are delivered to Companies House. Section 453(2) of the Companies Act 2006 is clear that the amount of penalty incurred by a company who delivers accounts late is determined by:

The length of time between the due date for filing and the date the accounts are delivered to Companies House.

Whether the company is a private or a public company. (Limited liability Partnerships are subject to the same penalty scales as private companies).

This is expanded on in SI 2008 No 497, the amount of penalty levied is determined by “Whether a company is a public company or a private company depends upon its status at the end of the financial year in question” It also specifies the level of penalty to be levied on a company who files its accounts late.

For companies who file their accounts late, the amount of penalty levied is shown in the following table:

How late are the accounts delivered	Private Company / LLP	PLC/ SE Company
Not more than 1 month	£150	£750
More than 1 month but not more than 3 months	£375	£1,500
More than 3 months but not more than 6 months	£750	£3,000
More than 6 months	£1,500	£7,500

The amounts set in the table will be doubled where the accounts are filed late under the Companies Act 2006 and previous year’s accounts under the Act were not filed on time.

### 5. Calculation of time for delivery of accounts for companies with accounting periods starting on or after 6 April 2008 (1 October 2008 for LLPs)

The calculation of when accounts are due to be filed and when an increase in a penalty band occurs is based on a standard calendar month. Therefore a company with an accounting reference date of 28 February should be filed not later than 30 November to avoid a late filing penalty. If the accounts are filed late, increases in the amount of penalty levied will follow as set out in the tables above.

Where a company chooses an accounting reference date that falls on a date other than the end of the month, the due date for delivery corresponds to the accounting reference date. Therefore accounts for a private company with an accounting reference date of 15 March would be due to be filed nine months later on 15 December. (A company will often have an accounting reference date on a date other than the end of the month when they have extended their accounting reference period and to extend to the end of the month would have exceeded 18 months (Section 392(5) Companies Act 2006).

### 6. Registrar’s Discretion

The Registrar has no discretion not to levy a penalty when accounts are delivered late. All companies that deliver accounts late will automatically incur a late filing penalty. This view was confirmed in the case of *The Queen on the application of (1) POW Trust Limited and (2) Al’s Bar and Restaurant Limited v Chief Executive and Registrar of Companies and the Secretary of State for Trade and Industry* (2002) EWHC 72783 (Admin).

However, Section 453(3) of the Companies Act 2006 states that “the penalty may be recovered by the Registrar” which implies the Registrar has discretion as to whether or not payment of the penalty should be collected. Discretion can only be applied where the late filing was caused by exceptional circumstances, for example, where an error by Companies House has contributed to the late filing or where an unforeseen

catastrophe strikes the company immediately before the filing deadline.

Discretion rests with the Registrar, whose decision marks the end of the appeals process. In cases that are subject to a county court claim (or a summons issued by the sheriff court in Scotland) the only issue for the court to determine is whether or not the accounts were delivered outside the filing time. If it is found that the accounts were delivered late, then the court will have no alternative but to find in favour of the Registrar.

The Ombudsman is not part of the appeals process but may choose to review a case if he or she believes that maladministration is involved and discretion has not been applied correctly as a result.

## 7. Civil Penalty differs from Criminal Offence

It is the legal responsibility of the company's officers to ensure that accounts are prepared and delivered to Companies House, and Section 451 of the Companies Act 2006 states that it is a criminal offence to file accounts late and directors may be personally liable for a fine. Where accounts are filed late it is then the company and not the individual officers who will incur a late filing penalty. This is a civil penalty that is levied pursuant to Section 453 of the Companies Act 2006.

Section 451(2) of the Companies Act 2006 gives the officers an opportunity to provide a defence against Section 451 but there is no equivalent defence available to a company that has incurred a late filing penalty.

## 8. Companies that apply for strike off

The penalty will not normally be collected if an application is made to remove (strike off) the company from the register. Where a claim form or court summons has been issued, the company will be expected to pay any legal costs that have been incurred. However, if the strike off action is withdrawn for any reason, then action to recover the penalty (and any remaining costs if applicable) will recommence.

## 9. Restored Companies

The introduction of the 2006 Companies Act has meant that since 1 October 2009 there are two ways by which a company can be restored. It can be restored via the Courts or it can apply to administratively restore.

Companies that were dissolved following their application to do so must apply to the Courts to be restored. It is normally a condition of restoration that the company records are brought up to date in respect of accounts and annual returns. Penalties will only be levied on accounts that were overdue at the time the company was dissolved and the amount of penalty levied is calculated from the filing deadline to the dissolution date. These must be paid together with any penalties that were outstanding at the time of dissolution. Accounts that become outstanding while the company is dissolved up to the date when it is restored to the register will not incur any late filing penalties.

Companies that were dissolved by the Registrar may choose to administratively restore. To do this the company must file a form RT01 accompanied by the appropriate filing fee. It must also bring itself up to date in respect of annual returns and accounts. Penalties must be paid prior to the restoration for accounts that were overdue at the time the company was struck off and the amount of penalty levied is calculated from the filing deadline to the strike off date. These must be paid together with any penalties that were outstanding at the time of dissolution. Accounts that become outstanding while the company is dissolved up to the date when it is restored to the register will not incur any late filing penalties.

# Chapter 2 – Guidance on how to deal with the most common appeals

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## 1. Principles In Applying Discretion

Every appeal received at Companies House requesting the use of the Registrar's discretion not to collect is different. Consequently, it is important that the case manager considers all the relevant facts and merits of the case application. However, there are principles that can be applied and these should be applied in all cases.

When considering an appeal against a penalty a case manager should be fair, independent and objective. Personal views must not influence decision making. Case managers must not be affected by improper or undue pressure from any source. Discretion should only be applied if the appeal falls into a situation where it would be appropriate for the Registrar to use discretion. The majority of appeals will fall into the categories set out on the following pages and these guidelines are designed to help case managers make consistent decisions in all types of appeals. The guidelines for each category assume that the situation described was the principal cause of the late filing in the case under consideration. However, there may be aspects of an appeal that fall into more than one category and you should always be ready to take account of any other exceptional factors that may change your decision.

None of the categories set out in the following pages is intended to create an indefinite exemption from the consequences of late filing. A company that misses the filing deadline for a reason that would usually justify the use of discretion is still expected to deliver the overdue accounts as soon as it is able. Every case must be considered on its own merits but if the reason given for not filing on time does not explain the length of time that the accounts were overdue it may not be appropriate to treat it as the principal cause of the late filing.

The Equality Act 2010 requires all public authorities (of which we are one) to have due regard to the need to take steps to take account of disabled persons' disabilities, or in effect to have due regard to the need

to take steps to overcome the effects of disabilities. This underlines that 'equality of opportunity' cannot be simply achieved by treating disabled and non-disabled alike, but that it is probably sometimes necessary to take positive steps to overcome any barriers faced by disabled people.

For the purposes of this manual it means that once we have been informed that someone is disabled, we should act in a way which is not inconsistent with The Equality Act 2010. That is by simply spelling out options and ensuring we confirm that we have given consideration to needs etc. It is a case manager's duty to ensure that he is in possession of the full facts behind an appeal. This will enable him to apply the law properly and in accordance with the principles set out in this document. Case managers must balance all issues for and against whether to collect a penalty carefully and fairly.

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## 2. Third Party – Code 3D

### Scenario 1 – Accountants'/Bookkeepers' error.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reasons:** for decision The Companies Act 2006 clearly states that the officers of the company are responsible for the delivery of accounts.

**Suggested approach:** Explain that while companies may rely on accountants to prepare accounts, the legal responsibility to deliver accounts within the time allowed rests solely with the officers.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.



## Scenario 2 – Former accountants refused to release books to new accountants.

**Decision:** Subject to cases of individual merit, the penalty is usually collected

**Reason for decision:** The Companies Act 2006 clearly states that officers are responsible for the delivery of accounts.

**Suggested approach:** Explain that while you recognise the difficulties they have had with their accountants, they are not an excuse for late delivery. The officers are legally responsible for the delivery of accounts and any problems they have had with their former accountant are between the parties concerned. The company could have sought advice from a professional to discuss any options available to them to satisfy their filing obligations.

If they feel that their former accountants are directly responsible for the late delivery, explain that they may want to seek legal advice to establish whether a claim for damages, which could include the penalty, could be made against them. They may also want to report the matter to the Institute of Chartered Accountants for England and Wales (or whichever professional body to which the accountants may belong).

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery. Explain that the reminder also mentions the option of applying for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

## Scenario 3 – Accountant was ill or has died

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that officers are responsible for the delivery of accounts.

**Suggested approach:** Sympathise with their

accountant's illness or death but explain that the officers are legally responsible for the delivery of accounts. Advise that the accountant should have a fall back procedure in place to ensure that important deadlines are met if some disaster should occur.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that this also mentions that they can apply for an extension to the filing time under Section 442(5) of the Companies Act 2006 and we could have reminded them of this option if the company had contacted us to explain that they were having difficulty in meeting the deadline.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

**Footnote** – Consideration may be made if an accountant who is a sole practitioner became seriously ill immediately before the filing deadline

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## 3. CH Service – Code CS

### Scenario 1 – Company claims incorrect advice given by CH but there is no evidence to substantiate this.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** Although discretion can be used where an error by CH has contributed to the late filing, there is no evidence that this is what happened in this case.

**Suggested approach:** Explain that while there may have been a misunderstanding, Companies House staff are fully aware that all companies are required to file accounts. Point out that a reminder was sent to the company shortly before the filing deadline, which explains that accounts are required whether the company has traded or not, the last date for filing and the consequences of late filing.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.



(If there might be additional information, such as details of the telephone call, that would allow further investigations to be made, invite the appellant to provide this. Please remember that Companies House Contact Centre only retain call recordings for a limited time.)

### Scenario 2 – Incorrect advice given by Companies House supported by evidence.

**Decision:** The penalty should not usually be collected.

**Reason for Decision:** Companies House has contributed to the late filing.

**Suggested Approach:** Explain that after considering the circumstances, we are willing to accept that they were incorrectly advised. Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected on this occasion.

Point out that any decision not to collect a penalty is exceptional and any future case will be considered on its individual merits. Explain that the decision does not alter the fact that the accounts were late and that the company will incur a double penalty if its next accounts are also late.

### Scenario 3 – No reminder sent by Companies House.

**Decision:** The penalty should not usually be collected.

**Reason for Decision:** Company has been disadvantaged by an error or oversight by Companies House.

**Suggested Approach:** Explain that while the Registrar is under no statutory duty to send a reminder, we appreciate that the company has been disadvantaged by not being sent one.

Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected on this occasion.

Point out that any decision not to collect a penalty is exceptional and any future case will be considered

on its individual merits. Explain that the decision does not alter the fact that the accounts were late and that the company will incur a double penalty if its next accounts are also late.

N.B.. This does not apply where there is a legitimate reason for not sending a reminder, such as where the company was in the process of being removed from the register or where it has amended its accounting reference date in such a way that there was no time for a reminder to be sent before the new deadline.

### Scenario 4 – A reminder was sent to the company but never received.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** While the company may have been disadvantaged this was not due to an error or oversight by Companies House.

**Suggested Approach:** Confirm that a reminder was sent to the company and confirm the date. Non receipt of the reminder is not a reason for the registrar to use discretion, as we are under no obligation to send them. The company should have its own internal reminder system.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

If the company has not registered for e-reminders, explain that this may be an aide to the company in the future. If the company is already registered but has only given one email address, explain that they can register up to four separate addresses.

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## 4. Charity – Code CY

### Scenario 1 - Company is a charity.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies are liable for civil penalties and charities are not exempt.

**Suggested approach:** Explain that while you appreciate that the company is a charity, all companies are required to prepare and deliver accounts to the Registrar and all companies that deliver accounts late are liable for a civil penalty.

Explain that all officers have a legal responsibility to ensure that accounts are delivered within the statutory time allowed.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

As the company is dormant, explain that they may wish to apply for strike off. However, strike off must not be suggested where the company is a Flat Management Company.

## Scenario 2 – No public interest in dormant accounts.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies are liable for civil penalties and the public are entitled to inspect the accounts of all companies. Companies House has an obligation under the law to provide up to date information about the company to anyone who may need it.

**Suggested approach:** Explain that while you appreciate that the company is dormant, all companies are required to prepare and deliver accounts to the Registrar and all companies that deliver accounts late are liable for a civil penalty. Point out that the public have a right to view the accounts of all limited companies.

Explain that all officers have a legal responsibility to ensure that accounts are delivered within the statutory time allowed.

Point out that a reminder was sent, which explains that accounts are required whether the company has traded or not, the last date for filing and the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

As the company is dormant, explain that they may wish to apply for strike off. However, strike off must not be suggested where the company is a flat management company.

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## 5. Dormant – Code DO

### Scenario 1 – Company is dormant.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies are liable for civil penalties.

**Suggested approach:** Explain that while you appreciate that the company is dormant, all companies are required to prepare and deliver accounts to the Registrar and all companies that deliver accounts late are liable for a civil penalty.

Explain that all officers have a legal responsibility to ensure that accounts are delivered within the statutory time allowed.

Point out that a reminder was sent, which explains that accounts are required whether the company has traded or not, the last date for filing and the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 6. Officers' responsibility – Code DR

### Scenario 1 – Officer is ill but there are other officers.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that all officers are equally responsible for ensuring that accounts are prepared and delivered within the time allowed.

**Suggested approach:** Sympathise with the officer's ill health but explain that all officers share an equal responsibility for the delivery of accounts and if one officer was unable to deal with them then the remainder should have ensured that the filing deadline was met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 2 – New Officers (including flat management companies).

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that all officers are equally responsible for ensuring that accounts are prepared and delivered within the time allowed.

**Suggested approach:** Explain that all officers are legally responsible for the delivery of accounts and new officers are assumed to know what they are taking on and to have checked the company's filing position before becoming a director. Point out that civil late filing penalties are levied on companies and not individual officers.

Point out that a reminder was sent, which explains

that accounts are required whether the company has traded or not, the last date for filing and the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 3 – Officers reside or travel overseas.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that all officers are equally responsible for ensuring that accounts are prepared and delivered within the time allowed.

**Suggested approach:** Explain that while the officers may reside or travel overseas, this is not an excuse for late filing, as this should be taken into consideration when accounts are being prepared.

Explain that the Companies Act 2006 allows companies nine months (public companies – six months) in which to prepare and deliver accounts and officers have a legal responsibility to ensure that this deadline is met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 4 – Problems affecting the company secretary.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that directors (or designated members for an LLP) are responsible for the delivery of accounts, not company secretaries.

**Suggested Approach:** Sympathise with the problems but explain that the legal responsibility to

deliver accounts within the time allowed rests solely with the directors/designated members.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that if the company had contacted us to explain that they were having difficulty in meeting the deadline they would have been advised that they could apply for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 7. Disaster – Code DS

### Scenario 1 – Records needed for the accounts were lost when the company suffered fire/ flood/burglary shortly before the filing deadline leaving no time to make contingency plans.

**Decision:** The penalty should not usually be collected.

**Reason for decision:** The Registrar is able to apply discretion where the company suffers a catastrophe shortly before the filing deadline.

**Suggested Approach:** Sympathise with their circumstances and accept that it would have made the delivery of accounts within the time allowed very difficult.

Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected on this occasion.

Point out that any decision not to collect a penalty is exceptional and any future appeal against a late filing penalty will be treated on its individual merits.

Explain that the decision not to collect the penalty does not alter the fact that the accounts were filed late and that the double penalty requirement will still apply if the next accounts are also late.

### Scenario 2 – Company suffered fire/ flood/burglary many weeks before filing deadline.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Registrar is only able to apply discretion where the company suffers a catastrophe shortly before the filing deadline.

**Suggested Approach:** Sympathise with their circumstances but point out that they occurred too long before the filing deadline to justify the use of discretion, as the company still had sufficient time in which to prepare and deliver accounts. Explain that the company could have applied for a filing extension if more time was needed.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 3 – Company has suffered from a severe computer failure and records needed for the accounts were lost.

**Decision:** The decision will depend upon when the computer failure occurred. (a) If it happened within 5 working days of the deadline we would not normally collect. (b) if it happened longer than 5 working days we would collect.

**Reason for Decision:**

- a. The registrar has discretion for disasters that occur shortly before the deadline.
- b. The company had sufficient time to have applied to the Secretary of State for an extension to the filing time.

**Suggested Approach:**

- a. Sympathise with their circumstances and accept that it would have made the delivery of accounts within the time allowed very difficult.

Explain that the Registrar does have discretion in the

collection of late filing penalties and confirm that the penalty will not be collected on this occasion.

Emphasise the need to back up computer records in order to minimise the risk of this re-occurring. Point out that any decision not to collect a penalty is exceptional and any future appeal against a late filing penalty will be treated on its individual merits.

Explain that the decision not to collect the penalty does not alter the fact that the accounts were filed late and that the double penalty requirement will still apply if the next accounts are also late.

b. Sympathise with the company's computer problems but explain that they should have a back up system in place. Explain that it is the officers' responsibility to ensure that accounts are prepared and delivered with the time allowed. Point out that if firm figures were unavailable, they could have considered filing qualified accounts.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that if the company had contacted us to explain that they were having difficulty in meeting the deadline they would have been advised that they could apply for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 8. Financial – Code F

### Scenario 1 – The company has no funds to pay the penalty.

**Decision:** If this is the sole reason for appeal, the penalty is usually collected.

**Reason for Decision:** The Companies Act 2006 states that all companies are liable for civil penalties.

**Suggested Approach:** Explain that the company having no funds does not release it from the statutory requirement to file accounts and that late filing penalties apply to all companies.

Explain that the Companies Act 2006 allows private limited companies and limited liability partnerships nine months (public companies – six months) in which to prepare and deliver accounts and officers have a legal responsibility to ensure that this deadline is met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments.

If the company is dormant, explain that they may wish to apply for strike off.

### Scenario 2 – Company goes into Company Voluntary Arrangement (CVA) before the penalty is levied.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Registrar did not become a creditor of the company until after the CVA was approved and therefore is not a party to that agreement.

**Suggested Approach:** Explain that although the company is subject to a CVA, all companies are required to prepare and deliver accounts to Companies House. Point out that all companies are liable for late filing penalty regardless of them being subject to informal insolvency proceedings.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion but point out that this cannot be applied on the grounds of financial difficulty.

Offer to accept payment by monthly instalments.



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## 9. Flat Management – Code FM

### Scenario 1 – The company only exists to manage the freehold

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies are liable for civil penalties

**Suggested Approach:** Explain that all companies are required to prepare and deliver accounts to the Registrar and all companies that deliver accounts late will incur are liable to a civil penalty.

Explain that the Companies Act allows private limited companies and limited liability partnerships nine months in which to prepare and deliver accounts and officers have a legal responsibility to ensure that this deadline is met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company would have difficulty in paying.

### Scenario 2 – Company unaware of the requirement to file accounts or does not consider itself to be a company

**Decision:** Subject to individual merit, the penalty is usually collected

**Reason for decision:** The Companies Act 2006 states that all companies irrespective of whether they are trading or not should deliver accounts and will be liable to a civil penalty if they are filed late.

**Suggested Approach:** Explain that the company has been incorporated as a limited company and as such it is subject to statutory requirements. Explain

that all limited companies are required to prepare and deliver accounts to the Registrar and all companies that deliver accounts late are liable for a civil penalty.

Explain that the Companies Act allows limited liability companies and private limited companies nine months in which to prepare and deliver accounts and directors have a legal responsibility to ensure that this deadline is met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company would have difficulty in paying.

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## 10. Health – Code HE

### Scenario 1 – The sole director of a limited company falls ill shortly before the filing deadline, and the illness prevents the company from filing its accounts or making suitable provisions to meet its statutory obligations.

**Decision:** The penalty should not be collected.

**Reason for decision:** The Registrar is able to apply discretion where the company suffers a catastrophe shortly before the filing deadline.

**Suggested Approach:** Sympathise with the director's ill health and explain that the Registrar is able to apply discretion in such circumstances. Confirm that the penalty will not be collected.

Explain that this decision may not be repeated in the event of any subsequent late filing of accounts as all cases are treated on their individual merits. Suggest that they may wish to appoint another director if their health problems are continuing.

Explain that the decision not to collect the penalty does not alter the fact that the accounts were filed late

and that the double penalty requirement will still apply if the next accounts are also late.

### Scenario 2 – A director falls seriously ill shortly before the filing deadline but the company has one or more other directors.

**Decision:** Subject to individual merit, the penalty should be collected.

**Reason for decision:** All directors have the same legal responsibility to ensure accounts are filed on time and if one director was unable to do the other(s) should take over the task.

**Suggested Approach:** Sympathise with the director's ill health but explain that it did not release the other directors from their own responsibilities.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that if the company had contacted us to explain that they were having difficulty in meeting the deadline they would have been advised that they could apply for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 3 – Sole director of a limited company has been ill for a prolonged period of time and their illness is not unforeseen.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Registrar can only apply discretion where the company suffers a catastrophe shortly before the filing deadline.

**Suggested Approach:** Sympathise with the director's continuing ill health but point out that the Registrar can only apply discretion where the company suffers a catastrophe shortly before the filing deadline and their illness cannot be considered as occurring shortly before the filing deadline.

If a previous penalty has not been collected on the grounds of ill health explain that they were informed on that occasion that this decision might not be repeated and to consider appointing another director if their health problems were continuing.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

### Scenario 4 – Sole designated member of an LLP falls ill shortly before the filing deadline.

**Decision:** The penalty should be collected.

**Reason for decision:** The Registrar is unable to apply discretion where an LLP suffers a catastrophe of this nature shortly before the filing deadline as the company chose to be in the position of having a sole designated member.

**Suggested Approach:** Sympathise with the designated member's ill health but explain that LLPs must have two designated members. If a designated member resigned for whatever reason the situation can only exist for six months. As the company chose to be in this position it must bear the consequences. Point out that the Registrar can only apply discretion where the company as a whole suffers a catastrophe shortly before the filing deadline and the illness to a sole designated member cannot be considered as a catastrophe to the company.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

### Scenario 5 – Sole designated member of an LLP dies shortly before the filing deadline.

**Decision:** The penalty should be collected.

**Reason for decision:** The Registrar is unable to apply discretion where a sole designated member dies shortly before the deadline as the members of the company are expected to take over its running.

**Suggested Approach:** Sympathise with the correspondent but explain that LLPs must have



two designated members. If a designated member resigned for whatever reason the situation can only exist for six months. As the company chose to be in this position it must bear the consequences. Point out that when an LLP has no designated members the members are expected to take over its running. Point out that the Registrar can only apply discretion where the company as a whole suffers a catastrophe shortly before the filing deadline and the death of a sole designated member, whilst tragic, do not meet the required tests for discretion to be used.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

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## 11. Legislation – Code LG

### Scenario 1 – Company unaware of 21/18 month rule (as the case may be) (section 442(3) of the Companies Act 2006) for first accounts.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies who deliver accounts late are liable to a civil penalty accounts delivered late are liable for a civil penalty

**Suggested Approach:** Explain the 21/18 month rule (as the case may be) applies for filing first accounts and point out that officers have a legal responsibility to ensure this deadline is met.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 2 – Company confused between criminal prosecution action and civil late filing penalties.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** Criminal prosecution against directors for the failure to file accounts is a separate matter from civil late filing penalties. All companies who deliver accounts late are liable to a civil penalty.

**Suggested Approach:** Explain that a decision by our Compliance section to defer possible prosecution action against the directors for the failure to file accounts does mean that those accounts cease to be late. Point out that all Compliance letters clearly explain that the company will incur an automatic financial penalty when overdue accounts are filed.

Point out that a reminder notice was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 3 – HM Revenue & Customs (HMRC) have agreed not to collect a penalty but the circumstances do not meet the criteria for the Registrar's discretion not to collect a late filing penalty.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** Companies House is a completely separate government department from HMRC.

**Suggested Approach:** Explain that Companies House is governed by the Companies Act 2006, which states that all accounts that are delivered late will automatically incur a late filing penalty. Point out that while HMRC may have agreed not to collect their penalty, they are a completely separate government department and are allowed wider powers of discretion.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

**Scenario 4 – A company has re-registered and a penalty has been levied in accordance with the status of the company for the period that the accounts covered. The company suggests that the amount of the penalty should be in line with the company’s new status.**

**Decision:** If this is the sole reason for appeal the penalty will be collected at the amount levied in accordance with the status of the company for the period that the accounts covered

**Reason for decision:** Section 453 (2) of the Companies Act 2006 states that “(a) the amount of penalty shall be determined by the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements are complied with. (b) Whether the company is a private or public company.”

This is expanded on in Statutory Instrument 2008 No 497; the amount of penalty levied is determined by “Whether a company is a public company or a private company depends upon its status at the end of the financial year in question”

**Suggested Approach:** Explain that while you appreciate that the company has re-registered the amount of penalty levied is determined by the status of the company for the period that the accounts covered.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

**Scenario 5 – The company appeals stating that they believe their penalty is too high.**

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that all companies are required to prepare and deliver accounts to the Registrar, and that all companies are liable for civil penalties if the accounts are filed late.

The amount of penalty is not negotiable and is determined by how late the accounts are when they are delivered for filing, and whether the previous accounts were also late.

**Suggested Approach:** Explain that the Companies Act 2006 states that all accounts delivered late are liable for a civil penalty.

Explain that the amounts levied are set in legislation and are not negotiable.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

**Scenario 6 – Accounts were made up to a date seven days either side of the accounting reference date (ARD) and the company assumed the filing period would be based on the date that it used.**

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 states that accounts for companies must be filed within nine months (or six months for public companies) of the accounting reference date (or within 21 or 18 months of incorporation, as the case may be, for first accounts).

**Suggested Approach:** Explain that the company has taken advantage of Section 390(2) (b) of the Companies Act 2006, which allows it to prepare accounts to a date up to 7 days either side of the

ARD. Point out however that the Companies Act 2006 states that the period allowed for laying and delivering accounts is 9 / 6 months (as the case may be) after the ARD, and not 9 / 6 months (as the case may be) after the made-up date of the accounts.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date by which the accounts should be filed and outlines the consequences of late delivery.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 12. Related Documents – Code OA

**Scenario 1 – A company submitted a form AA01 but it was not received at Companies House, resulting in the company’s Accounting Reference Date (ARD) not being changed. Subsequent accounts are then rejected as they would not be made up to the correct ARD.**

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** Companies House can only act upon receipt of a document.

**Suggested Approach:** Explain that there is no record of the form AA01 being received and delivery means the actual arrival of a document at Companies House. Explain that the officers are legally responsible for the delivery of documents and the Registrar can only act when a document arrives at Companies House. They should not assume that the ARD had been changed without obtaining confirmation. The ARD was not changed and the accounts have been correctly rejected.

Point out that the accounts reminder would have clearly stated the ARD and the filing deadline of the accounts.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

**Scenario 2 – A company submitted a form AA01 but it was rejected and the ARD remained unchanged. The company was unaware of this and subsequently submitted accounts that were rejected because they were made up to an incorrect ARD.**

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The accounts were correctly rejected.

**Suggested Approach:** Explain why the form AA01 was rejected and confirm that notice of the rejection was sent to the company. Explain that the officers are legally responsible for the delivery of documents and they should not assume that the ARD had been changed without obtaining confirmation. The ARD was not changed and the accounts have been correctly rejected.

Point out that the accounts reminder would have clearly stated the ARD and the filing deadline of the accounts.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

**Scenario 3 – A company had previously filed an AA01 to shorten its first accounting period and obtained an extended filing period of three months from the date of that notice. It subsequently filed a second AA01 to extend the same filing period, which had the result of restoring the original deadline of 21 months from incorporation and caused the accounts to become overdue.**

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** There has been no error on the part of Companies House and the late filing was the direct consequence of the company’s own decision to amend its ARD. The time allowed for the delivery of accounts is set in section 442 of the Companies Act. Where the company shortens its

accounting period section 442(4)(b) allows a period of three months from the date of the notice (i.e. the filing of the AA01) or the deadline that would otherwise apply, whichever is later. However, there is no equivalent provision if the accounting period is extended and the usual filing deadline (i.e. 21 months from incorporation for first accounts) will apply.

**Suggested Approach:** Accept that the company may not have realised that it would place itself in default by making a further amendment to its ARD but point out that the onus is on officers to make themselves aware of statutory requirements and they should have researched the consequences of amending the ARD.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 13. Missing – Code MA

### Scenario 1 – Accounts were posted before the filing deadline.

**Decision:** Subject to cases of individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that accounts must be delivered to Companies House within the statutory time allowed. Delivery means the actual receipt of a document at Companies House, not merely posting or handing it to a courier.

**Suggested Approach:** Explain that while the accounts may have been sent on time, there is no record of them being received at Companies House. Point out that officers are legally responsible for ensuring that accounts are delivered on time and delivery means the actual receipt of a document at Companies House as set out in section 1071.

Check the date the company signed the accounts off to ensure that they were posted prior to the deadline.

Point out that when sending accounts by post in the future, they may wish to consider sending a SAE with a copy letter or an acknowledgement card. Suggest that they consider webfiling (if appropriate).

Request details of any other documents the accounts were sent with or a copy of the Royal Mail receipt if they were sent Recorded or Special delivery. Explain that the penalty must stand unless proof of delivery prior to the filing deadline can be provided.

### Scenario 2 – It is claimed that the accounts were sent with an annual return (form AR01) that has been received.

- a. if there is no history of filing together
- b. if there is history of filing together

**Decision:**

- a. further evidence should be requested
- b. penalty should not be collected

**Suggested Approach:**

- a. Explain that while you accept the company believes the accounts were sent with the annual return there is no record of them being received at Companies House.

Check the date the company signed the accounts off to ensure that they were posted prior to the deadline.

Explain that the Registrar is only able to apply discretion where evidence can be provided of delivery prior to the filing deadline. Point out that if they can provide any documentary evidence that both documents were sent together, such as a copy of their original covering letter or an entry from their post book, the matter will be reviewed further

- b. Explain that there is no record of the accounts being received with the annual return (form AR01) but taking into account the company's previous filing history, the penalty will not be collected.

Point out that this decision might not be repeated as all cases are treated on their individual merits, so when sending accounts by post in future they may wish to consider sending a SAE with a copy letter or an acknowledgement card. Suggest that they consider webfiling (if appropriate).

### Scenario 3 – Accounts posted before the filing deadline – There is no Companies House record of them being delivered but the company has satisfactory evidence of delivery.

**Decision:** Accounts should be date credited with original date of receipt and penalty should be cancelled.

**Reason for decision:** Companies House has lost the accounts

**Suggested Approach:** Explain that there is no record of the accounts being received but given the evidence provided, arrangements have been made for them to be given the original date of receipt which will cancel the penalty.

Apologise for the inconvenience that has been caused.

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## 14. Official Investigation – Code OF

### Scenario – Company has been subject to HM Revenue and Customs (HMRC)/ Police or other 3rd party investigation.

**Decision:**

- a. The books would be released - the penalty is usually collected.
- b. The books would not be released – the penalty is not usually collected

**Reason for decision:** The Companies Act 2006 states that all companies are required to prepare and deliver accounts to the Registrar and an investigation of this nature does not exempt companies from this. However in some cases the investigating authority may not be in a position to make the books available. Consequently effort must be made to contact the investigating authority, wherever possible.

**Suggested Approach:**

a. Explain that although there has been a HMRC/ Police investigation, this does not exempt the company from filing accounts at Companies House within the time allowed under the Companies Act. Point out that HMRC/Police would rarely refuse access to the records.

Explain that an attempt should have been made to obtain copies of relevant documents. Alternatively, explain that if they did not want to obtain copies, the company could have considered filing accounts that were suitably qualified.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that if the company had contacted us to explain that they were having difficulty in meeting the deadline they would have been advised that they could apply for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

b. If there is evidence that access to the required documentation was not allowed the penalty should not be collected

Sympathise with their circumstances and accept that it would have made the delivery of accounts within the time allowed very difficult.

Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected on this occasion.

Point out that any decision not to collect a penalty is exceptional and any future appeal against a late filing penalty will be treated on its individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also filed late.



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## 15. Postal Delay – Code PD

### Scenario 1 – Accounts were delayed in transit (Royal Mail, DX, courier etc).

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that accounts must be delivered to Companies House within the statutory time allowed. The Registrar cannot be held responsible for delays in transit.

**Suggested Approach:** Explain that while the accounts may have been posted in time, it is the date of delivery at Companies House that is important.

Check the date the company signed the accounts off to ensure that they were posted prior to the deadline.

Explain that officers are legally responsible for ensuring that accounts are delivered and this is only satisfied when the accounts arrive at Companies House as set out in section 1071.

Give details of our receipting procedures if necessary and send a copy of the front page of the accounts to show the delivery date.

Explain the circumstances where the Registrar is able to apply discretion but point out that this cannot be applied where accounts are delayed in transit. Suggest that they consider webfiling (if appropriate).

### Scenario 2 – Accounts delayed by unannounced strike action by the Royal Mail.

**Decision:** The penalty should not be collected.

**Reason for decision** The Registrar is able to apply discretion in these circumstances, as this would be considered to be a catastrophe occurring shortly the filing deadline.

**Suggested Approach:** Explain that while the accounts may have been posted before the due date time, it is the date of delivery to Companies House that is important and in normal circumstances a postal delay would not be grounds where the

Registrar would be able to apply discretion.

Point out that because of the unannounced strike action, the Registrar is able to apply discretion in this case and confirm that the penalty will not be collected.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late. Suggest that they consider webfiling (if appropriate).

### Scenario 3 – Accounts sent Special Delivery but delayed in transit.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that accounts must be delivered to Companies House within the statutory time allowed. The Registrar cannot be held responsible for delays in transit.

**Suggested Approach:** If the special delivery reference has been provided check the delivery date shown on the Royal Mail's website. Explain that while the accounts may have been posted in time by Special Delivery, it is the date of delivery at Companies House that is all-important.

Explain that officers are legally responsible for ensuring that accounts are delivered and this is only satisfied when the accounts arrive at Companies House.

If the delivery date is being disputed, point out that it can be verified by the Royal Mail.

Explain the circumstances where the Registrar is able to apply discretion but point out that this cannot be applied where accounts are delayed in transit. Suggest that they consider webfiling (if appropriate).

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## 16. Personal – Code PE

### Scenario 1 – Married officers are getting divorced and one of them had difficulty in obtaining the information from the other.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act states that all officers are legally responsible for the delivery of accounts. The Registrar cannot become involved in such disputes.

**Suggested Approach:** Explain that the officers' marital difficulties do not excuse the late filing of accounts. Point out that if firm figures were unavailable, they could have considered filing qualified accounts.

Point out that a reminder was sent to the company shortly before the filing deadline, which clearly states the last date for filing and outlines the consequences of late delivery. Explain that if the company had contacted us to explain that they were having difficulty in meeting the deadline they would have been advised that they could apply for an extension to the filing time under Section 442(5) of the Companies Act 2006.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 2 – Sole director's immediate family member (including partners) becomes seriously ill shortly before the deadline.

**Decision:** The penalty should not be collected.

**Reason for decision:** The Registrar is able to apply discretion where the company suffers a catastrophe shortly before the filing deadline.

**Suggested Approach:** Sympathise with the family member's ill health and explain that the Registrar is able to apply discretion in such circumstances. Confirm that the penalty will not be collected.

Explain that this decision may not be repeated in the

event of any subsequent late filing of accounts as all cases are treated on their individual merits. Suggest that they may wish to appoint another director if the family member's health problems are continuing.

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## 17. Rejected Accounts – Code RJ

### Scenario 1 – Accounts rejected but not received back by company or the presenter.

**Decision:**

- a. The accounts were rejected no more than 2 working days before the due date – the penalty is usually collected.
- b. The accounts were returned to the company for amendment in good time for the company to amend them and return them to Companies House – the penalty is not usually collected.

**Reason for decision:** The success of the appeal depends on whether the accounts could have been amended and resubmitted in time if they had been received. If they had been rejected so close to the deadline that there was no realistic possibility of this being done in time, the failure to receive the rejected accounts is not the immediate cause of the late filing.

**Suggested Approach:**

- a. Check that we were correct to reject the accounts.

Explain that accounts are only deemed to be filed when they are received in an acceptable format and there is no provision in the Companies Act for additional time to be given if accounts received close to the deadline are found to require amendment. If the company could have filed the accounts electronically this should be pointed out.

Explain that you accept that the company was unaware of the rejection of the accounts until receiving an overdue accounts notice. However, they had been submitted so close to the deadline that a late filing penalty was inevitable, even if the rejected accounts had been received.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.



b. Explain that you accept that the company was unaware of the rejection of the accounts until receiving an overdue accounts notice. Confirm that the Registrar is able to apply discretion in this case and that the penalty will not be collected on this occasion.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 2 – Accounts received on time but rejected. Amended accounts were returned within the filing time but rejected again for a different reason that should have been pointed out on the first rejection.

**Decision:** The penalty should not be collected.

**Reason for decision:** Companies House has contributed to the late filing.

**Suggested Approach:** Explain that the accounts were rejected on two occasions and as they were not received in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the legal responsibility of the officers to ensure that acceptable accounts are delivered within the time allowed.

Explain that the Registrar does have a degree of discretion and having reviewed the case you accept that had we pointed out all the errors when the accounts were initially rejected, the penalty may have been avoided. Confirm that the penalty will not be collected on this occasion.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 3 – Accounts have been rejected but were accepted in the same format in previous years.

**Decision:** The penalty should not be collected.

**Reason for decision:** Companies House has contributed to the late filing by accepting accounts in an incorrect format in previous years.

**Suggested Approach:** Explain that the accounts were received on time but rejected and as they were not received in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the legal responsibility of the officers to ensure that acceptable accounts are delivered within the time allowed.

Explain that you have checked previous accounts and you can confirm that they had been incorrectly accepted and the format of the latest accounts is correct. Explain that the Registrar does have a degree of discretion in the collection of penalties and having reviewed this case, you accept that the acceptance of the earlier accounts placed the company at a disadvantage. Confirm that the penalty will not be collected on this occasion.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not change the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 4 – CH took longer than five working days to examine and reject the accounts, but they were still rejected in good time for the company to amend them and return them to Companies House.

**Decision:** Subject to cases of individual merit, the penalty is usually collected

**Reason for decision:** The accounts were returned in time for an amendment to be made.

**Suggested Approach:** Check that we were correct to reject the accounts.

Explain that accounts are only deemed to be filed when they are received in an acceptable format and there is no provision in the Companies Act for additional time to be given if accounts received close to the deadline are found to require amendment. Point out that there was still sufficient time for the accounts to be amended and resubmitted. If the company could have filed the accounts electronically this should also be pointed out.

If they could not file electronically explain that there was enough time for the company to arrange for the accounts to be delivered by a guaranteed service, such as by courier.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 5 – CH took longer than five working days to examine and reject accounts that were initially received no more than five days before the filing deadline.

**Decision:** Subject to cases of individual merit, the penalty is usually collected

**Reason for decision:** Even if CH had examined and returned the accounts within five working days, the accounts would still have been late.

**Suggested Approach:** Check that we were correct to reject the accounts.

Explain that accounts are only deemed to be filed when they are received in an acceptable format and there is no provision in the Companies Act for additional time to be given if accounts received close to the deadline are found to require amendment. Point out that the accounts had been submitted too close to the deadline to allow sufficient time for any amendments to be made within the permitted filing period. If the company could have filed the accounts electronically this should be pointed out.

By leaving the filing until the end of the period the company was running a risk that an unforeseen event could cause late filing.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case

### Scenario 6 – CH took longer than five working days to examine and reject the accounts and this made it inevitable that the company would incur a penalty that it might otherwise have avoided.

**Decision:** The penalty should not be collected.

**Reason for Decision:** Companies House service contributed to late filing.

**Suggested Approach:** Explain that the accounts were correctly rejected and as they were not received in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the legal responsibility of the officers to ensure that acceptable accounts are delivered within the time allowed.

Explain that the Registrar does have a degree of discretion and having reviewed the case you accept that the penalty might have been avoided had we not taken longer than usual to examine and reject the original accounts, Confirm that the penalty will not be collected on this occasion.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits.

Explain that the decision not to collect the penalty does not change the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

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## 18. E- Filing (For Information. Please clear cases in relevant category)

### Scenario 1 – General difficulties encountered with web filing (for example the Adobe version used is less than the current one we are recommending)

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that accounts must be delivered to Companies House within the statutory time allowed.

**Suggested Approach:** Explain that while you appreciate the difficulties the company has encountered all companies are required to prepare and deliver accounts to the Registrar not later than the due date for filing.

Explain that the Companies Act 2006 states that all accounts delivered late are liable for a civil penalty.

In the case of the company's Adobe version not being compatible. Explain that the minimum requirements for web filing accounts are given on our web site. Explain that if the directors had contacted our web filing department they would have been advised to download the appropriate version of Adobe Reader required which is free of charge.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 2 – Authentication Code cancelled due to age but the company is not informed.

**Decision:** The penalty should not be collected.

**Reason for decision:** The company is placed at disadvantage, because we failed to notify them of the cancellation of the auth code.

**Suggested Approach:** Explain that the authentication code was cancelled for security reasons which resulted in the company being unable to use our WebFiling facility. Explain that the Companies Act 2006 states that all accounts delivered late are liable to a civil penalty.

Explain that after considering the circumstances, we accept that the company was placed at a disadvantage. Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected.

Point out that any decision not to collect a penalty is exceptional and any future case will be considered on its individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 3 – The company attempted to file accounts on the day of the deadline but was unable to file as Error Code 1 (unable to connect) or Error Code 777 (server busy) kept being regenerated.

**Decision:** The penalty should not be collected.

**Reason for decision:** Error code 1 or 777 is caused by a failure of the Companies House WebFiling system

**Suggested Approach:** Check that the servers were busy at the relevant times. Explain why the company received an error code message. Explain that the Companies Act 2006 states that all accounts delivered late are liable for a civil penalty.

Explain that after considering the circumstances, we accept that the company was placed at a disadvantage. Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 4 – The company filed its accounts electronically but they were not confirmed as received until after midnight.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The Companies Act 2006 clearly states that accounts must be delivered to Companies House within the statutory time allowed.

**Suggested Approach:** Explain that while the company may have been logged into our system before midnight the accounts were not received and accepted until after midnight. Explain that it is the date of delivery at Companies House that is important.

### Scenario 5 – The company filed accounts with HMRC, using the joint filing service and has an email acknowledgement from them but not from Companies House.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The company has misunderstood the joint filing process but this is not due to any error on the part of Companies House.

**Suggested Approach:** Confirm that the receipt is from HMRC for a document delivered to that organisation and that we did not receive accounts at that time. Point out that, although the joint filing service allows documents for HMRC and Companies House to be drawn from a single set of data, the relevant documents still have to be submitted to each organisation separately. It is explained on the site and during the submission process itself that the receipt of accounts by Companies House will generate an email acknowledgement from Companies House. The lack of such an acknowledgement should alert the company to the fact that we have not received the accounts.

Explain that the Companies Act 2006 states that all accounts delivered late are liable for a civil penalty.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

### Scenario 6 – The company attempted to file accounts using the HMRC Joint Filing service but were unable to file due to a problem with the service that had been acknowledged by HMRC.

**Decision:** The penalty should not be collected.

**Reason for decision:** The company should not be penalised for problems with the Joint Filing service given that Companies House promotes the service on our website.

**Suggested Approach:** Check that the company has provided evidence of the various error messages that prevented them filing. If possible, make further investigations to confirm that there were problems with the Joint Filing service at the time stated in the appeal. Explain that the Companies Act 2006 states

that all accounts delivered late are liable for a civil penalty.

Explain that after considering the circumstances, we accept that the company was placed at a disadvantage. Explain that the Registrar does have discretion in the collection of late filing penalties and confirm that the penalty will not be collected.

Point out that this decision might not be repeated in the event of any future late filing of accounts as all cases are treated on their individual merits. Explain that the decision not to collect the penalty does not alter the fact that the accounts were late and that the double penalty provision will still apply if the next accounts are also late.

### Scenario 7 – The company did not realise that accounts submitted using third party software had been rejected.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** The company would have known that the accounts had been rejected if it had polled for their status, as those who choose to submit documents using third party software are expected to do.

**Suggested Approach:** Explain that a message confirming the rejection and the reasons for it was made available on our server and should have been retrieved by the company (or its agent) through the polling process. Confirm that this is the correct procedure for documents submitted using third party software. Point out that all of the packages that have been approved by Companies House for use in software filing must have the facility to poll for results, as this is an essential part of the software filing process, and the responsibility for ensuring that this part of the process is completed rests entirely with the user.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

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## 19. Double Penalties

### Scenario 1 – A company has filed its accounts late and thought that it was going to receive a single penalty but accounts were filed late the previous year

**Decision:** If this is the sole reason for appeal, the penalty is collected.

**Reason for decision:** Accounts must be delivered to Companies House within the statutory time allowed. The scale of penalties is set in legislation that makes it clear that companies failing deliver accounts on time in consecutive years will be subject to a double penalty.

**Suggested Approach:** Explain that the penalty legislation states that all accounts delivered late are liable for a civil penalty and that companies filing accounts late in consecutive years will have their penalties doubled.

Point out that a reminder was sent to the company which clearly gives the last date for filing and warns of the consequences of late delivery, including double penalties.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

### Scenario 2 – The company wants to know why it has received a double penalty even though they suffered a catastrophe the previous year and we decided not to collect the previous year's penalty.

**Decision:** Subject to individual merit, the penalty is usually collected.

**Reason for decision:** Accounts must be delivered to Companies House within the statutory time allowed. The scale of penalties is set in legislation that makes it clear that companies failing to deliver accounts on

time in consecutive years will be subject to a double penalty.

**Suggested Approach:** Explain that the Companies Act 2006 states that all accounts delivered late are liable for a civil penalty. Even though we took a decision not to collect the previous year's penalty the accounts were still filed late. Explain that all companies filing accounts late in consecutive years will have their penalties doubled.

Explain that a reminder was sent to the company which clearly gives the last date for filing and warns of the consequences of late delivery, including double penalties.

Explain the circumstances where the Registrar is able to apply discretion and that they do not apply in this case.

Offer to accept payment by monthly instalments if the appeal indicates that the company will have difficulty in paying.

### Scenario 3 – The company was penalised the previous financial year. The penalty was not collected but nevertheless a double penalty has been levied on the company for the late filing of the current financial year's accounts. After investigation it is decided that the earlier penalty should have been cancelled.

**Decision:** The earlier penalty should be date credited which will reduce the most recent penalty back to a single penalty.

**Reason for Decision:** We have accepted that the earlier accounts were received in Companies House before the filing deadline and were either mishandled or incorrectly bar coded.

**Suggested Approach:** Explain that the decision on the earlier accounts has been reviewed and given the evidence provided, arrangements have been made for them to be given a date credit, which will show that they were filed on time. Explain that this will cancel the penalty for the earlier accounts and that the penalty for the recent accounts will revert to the single amount.

Apologise for the inconvenience that has been caused. As the recent accounts were still filed late the company will be subject to a double penalty if it files the next financial year's accounts late.



## how to contact us

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For the most up to date version of this booklet please visit our website at:

[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)



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