



Companies House

Late Filing Penalties

Appeals

Version 13

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Introduction

For the purposes of this manual we will refer to a private limited company, a public limited company and a limited liability partnership generically as a “company”, unless this is inappropriate. Similarly, we will refer to a director or a designated member 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 – see Appendix 1.2. This section creates a penalty where a company delivers its accounts late. The regulations specify the level of penalties - Statutory Instrument 2008 No. 497 (see section 8 on page 6). These regulations, which were enacted on 1 February 2008 and came in to force on 6 April 2008, apply to all companies that deliver accounts to the registrar 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 they deliver accounts to the registrar within the specified time allowed (section 441(1)) and where they deliver accounts late, the company will be liable to a civil penalty (section 453).

Parliament set the parameters for the late filing legislation who decided that the penalties should apply to all companies, irrespective of the size of the company or the nature of its business and whether it was trading or not. The 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 deliver their accounts on time. The regulations (SI 2008/497) determine the amount of the penalty by referring to the delay between the filing deadline and the date the company delivers the accounts to the registrar (section 453(2) of the Companies Act 2006).

2. Time allowed for the delivery of accounts

Private limited companies and limited liability partnerships have 9 months from the end of the accounting reference period to deliver their accounts to the registrar. Public limited companies have 6 months from the end of the accounting reference period to deliver their accounts to the registrar.

However, if a company’s first accounts cover a period of more than twelve months, the company must deliver them to the registrar within 21 months of the incorporation date. 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 registrar must receive the accounts within the time allowed for delivery. Delivery therefore means the actual handing over (which is legally defined in rule 7 volume 2 of Registrar’s Rules) of a document to the registrar, 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 Secretary of State to extend the period of delivery for accounts. 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 before the expiry of the period normally allowed for filing.

4. Payment by instalments

In exceptional circumstances, if it is clear that the company will have difficulty paying the penalty, you may offer it the option of paying by instalments.

5. Standard paragraph about benefits of e-filing

In many cases it may be helpful to refer to the benefits of e-filing in your correspondence with the company. The standard paragraph is as follows:

Some documents can be filed online, which is faster and more reliable. Our service checks for technical errors, allowing you to correct them before submission, reducing the risk of documents being rejected.

To find out if your company can file documents online, visit our website www.gov.uk/companieshouse

You can also ask to receive reminder letters automatically.

6. Documentary evidence

In some cases, it may be appropriate to ask for documentary evidence to support an appeal against a penalty e.g. we could ask for an invoice for the work done to fix:

- A computer failure
- Fire and flood damage

There may also be other circumstances where it is appropriate to seek such evidence.

7. Fraudulent appeals

If you consider that an appeal may be on fraudulent grounds (e.g. where there is a repeat pattern of an appellant using the same circumstances as grounds for the appeal) you should escalate the case to a senior officer for consideration. There may be scope for referring the matter to the presenter’s governing body or another regulatory authority.

8. Civil penalty for the failure to deliver 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 acceptable accounts are when they are delivered to the registrar. 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 delivering 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 which delivers its accounts late.

For companies who deliver 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 double where the company delivers its accounts late in consecutive years.

9. 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 a company is due to deliver its accounts 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 deliver its accounts not later than 30 November to avoid a late filing penalty. If the company delivers its accounts late, the amount of

penalty levied will be 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, a private company with an accounting reference date of 15 March must deliver its accounts nine months later or before 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).

10. Registrar's discretion

The registrar has no discretion not to levy a penalty when a company delivers its accounts late. All companies that deliver accounts late will automatically incur a late filing penalty. 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)" confirmed this interpretation.

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 whether to collect the penalty. The registrar can only apply discretion in 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 company delivered the accounts outside the filing time. If it is the case that the company delivered its accounts 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 the registrar has not applied discretion correctly as a result. You can find further information regarding the Ombudsman on the Parliamentary and Health Service Ombudsman's website (www.ombudsman.org.uk).

11. Civil penalty differs from criminal offence

It is the duty of the company's officers to prepare and deliver accounts to the registrar, and section 451 of the Companies Act 2006 states that it is a criminal offence to deliver accounts late and directors may be personally liable for a fine. Where a company delivers accounts late it is 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.

12. Companies that apply for strike off

The registrar will not normally collect the penalty if the company makes an application 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.

13. 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 to the register. It can be restored via the Courts or it can apply to be restored to the register administratively.

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 brings its records up to date in respect of accounts and annual returns / confirmation statements. 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 strike off date. The company must pay these 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 be restored to the register administratively. To do this, the company must deliver a form RT01 with the appropriate filing fee. It must also bring its records up to date in respect of annual returns / confirmation statements and accounts. It must pay penalties before 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. It must pay these 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.

Guidance on how to deal with the most common appeals

1. Principles in applying discretion

Appeals received by the registrar requesting the use of the registrar's discretion not to collect a penalty are different. Consequently, it is important that the case manager considers all the relevant facts and merits of the case. However, there are principles that we can apply, and we should apply them 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. We should only apply discretion 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 will 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 should still deliver the overdue accounts as soon as it is able. You must consider every case 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 Companies House is one) 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 know that someone is disabled, we should act in a way which is consistent with The Equality Act 2010. That is by simply spelling out options and ensuring we confirm that we have considered needs etc. It is a case manager's duty to ensure that he or she is in possession of the full facts behind an appeal. This will enable them 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.

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 we sent a reminder 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 they could make a claim for damages, which could include the penalty. 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 we sent a reminder 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 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 they meet important deadlines if some disaster should occur.

Point out that we sent a reminder 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.

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

In exceptional circumstances, you may consider applying discretion if an accountant who is a sole practitioner became seriously ill immediately before the filing deadline.

3. Companies House Service – Code CS

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

Decision:

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

Reason for decision:

Although you can apply discretion where an error by Companies House 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 deliver accounts. Point out that we sent a reminder 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.

If there is additional information, such as details of the telephone call, that would allow us to make further investigations, 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 we incorrectly advised them. Explain that the registrar does have discretion in the collection of late filing penalties and confirm that we will not collect the penalty on this occasion.

Point out that any decision not to collect a penalty is exceptional and that we will consider any future case 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—The company did not receive a reminder notice.

Decision:

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

Reason for decision:

It is not the role of the registrar to remind directors of their legal obligations.

Suggested approach:

Point out that as we are under no obligation to issue reminder notices, not receiving a reminder notice is not a reason for the registrar to use discretion. The company should have its own internal reminder system in place to ensure all legal obligations are complied with on time.

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

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 must 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 duty to ensure that they deliver accounts within the statutory time allowed.

Point out that we sent a reminder 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.

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 must 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 duty to ensure that they deliver accounts within the statutory time allowed.

Point out that we sent a reminder 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.

As the company is dormant, explain that they may wish to apply for strike off. However, you must not suggest strike off 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 must 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 duty to ensure that they deliver accounts within the statutory time allowed.

Point out that we sent a reminder 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.

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

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 they deliver accounts 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. If one officer was unable to deal with them then the remainder should have ensured that the company met the filing deadline.

Point out that we sent a reminder 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 – 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 they deliver accounts within the time allowed.

Suggested approach:

Explain that all officers are legally responsible for the delivery of accounts and new officers should know what they are taking on and should 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 we sent a reminder 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 – 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 they deliver accounts 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 they should have taken that into consideration knowing that they needed to prepare accounts.

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 duty to ensure that this deadline is met.

Point out that we sent a reminder 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 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 we sent a reminder 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 we would have advised them 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.

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 we will not collect the penalty 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 delivered 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 it needed more time. Point out that we sent a reminder 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:

- A If the computer failure happened within 5 working days of the deadline we would not normally collect.
- B If the compute failure happened longer than 5 working days we would collect. You should ask the company to provide evidence of the computer failure to support their appeal.

Reason for decision:

- A The registrar has discretion for disasters that occur shortly before the deadline.
- B The company had more than 5 days to apply 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 we will not collect the penalty 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 delivered 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 backup system in place.

Explain that it is the officers’ responsibility to ensure that they deliver accounts within the time allowed. Point out that if firm figures were unavailable, they could have considered filing qualified accounts.

Point out that we sent a reminder 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 we would have advised them 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.

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 deliver 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 duty to ensure that this deadline is met.

Point out that we sent a reminder 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 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 must prepare and deliver accounts to the registrar. Point out that all companies are liable for late filing penalty regardless of them being subject to informal insolvency proceedings.

Point out that we sent a reminder 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 but point out that we cannot apply it on the grounds of financial difficulty.

Offer to accept payment by monthly instalments.

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 must prepare and deliver accounts to the registrar and all companies that deliver accounts late will incur 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 duty to ensure that they meet this deadline.

Point out that we sent a reminder 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 would have difficulty in paying.

Scenario 2 – Company unaware of the requirement to deliver 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 deliver them 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 must 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 they meet this deadline.

Point out that we sent a reminder 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 would have difficulty in paying.

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 we will not collect the penalty.

Explain that we may not make the same decision in the event of any subsequent late filing of accounts as we treat all cases 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 they delivered the accounts late and that the double penalty requirement will 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 duty to ensure that they deliver accounts on time. If one director was unable to do so, 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 we sent a reminder 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 we would have advised them 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 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 we have not collected a previous penalty on the grounds of ill health, explain that we informed them on that occasion that we may not make the same decision in the future 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 partnership chose to be in this position it must bear the consequences.

Point out that the registrar can only apply discretion where the company 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 should take over its running.

Point out that the registrar can only apply discretion where the LLP as a whole suffers a catastrophe shortly before the filing deadline and the death of a sole designated member, whilst tragic, does not meet the required tests for us to apply discretion.

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

Scenario 6 – Sole director dies a long period of time before the deadline and the company claims accounts not filed due to there being no directors in place to file accounts at the filing deadline. This also covers when the company claims it could not file due to being in probate.

Decision:

Subject to individual merit, the penalty is usually collected.

Reason for decision:

The registrar is unable to apply discretion in these circumstances as it is the responsibility of the other members or personal representative to ensure filing obligations are met.

Suggested approach:

Sympathise with the correspondent but explain the following:

- If the company had one or more other members (also known as shareholders) at the time of the death, explain that the powers exercisable by the director reverted to the members.

Explain they could have chosen to appoint a new director or run the company themselves as 'de facto' directors but either way there was no barrier to filing timely accounts.

- If the sole director was also the sole member, then explain that the Articles of the company normally provide for the personal representative of the last member to die to appoint a director to ensure the company met its statutory obligations and file the accounts.

Alternatively, the personal representative had the option to appoint a new director via the court to ensure statutory obligations were met.

Explain that given the Personal Representatives did not appoint a new director and ran the company without a director they faced the consequence of not being able to file accounts. Explain that the fact that the company filed accounts means that it is a fair assumption that it remained in operation and therefore should have kept accounting records.

Point out that we sent a reminder 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.

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

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.

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 duty to ensure that they meet this deadline.

Point out that we sent a reminder 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 we would have advised them 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 – 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 deliver 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 deliver accounts does not 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 if they deliver their accounts late.

Explain that we sent a reminder 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 – 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 separate government department from HMRC.

Suggested approach:

Explain that Companies House is governed by the Companies Act 2006, which states that all companies that deliver their accounts late will automatically incur a late filing penalty.

Point out that while HMRC may have agreed not to collect their penalty, they are a 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, we will collect the penalty 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 status of the company determines the amount of penalty levied 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 must prepare and deliver accounts to the registrar, and that all companies are liable for civil penalties if they deliver their accounts late.

The amount of penalty is not negotiable and is determined by how late the accounts are when the company delivers them for filing, and whether the previous year's 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 companies must deliver accounts 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 we sent a reminder 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.

12. Related Documents – Code OA

Scenario 1 – A company submitted a form AA01 but the registrar did not receive it, 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 us receiving the form AA01 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 we had changed the ARD without obtaining confirmation. We had not changed the ARD and had correctly rejected the accounts.

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 we rejected it and the ARD remained unchanged. The company was unaware of this and subsequently submitted accounts that we 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:

We correctly rejected the accounts.

Suggested approach:

Explain why we rejected the form AA01 and confirm that we sent notice of the rejection to the company. Explain that the officers are legally responsible for the delivery of documents and they should not assume that we had changed the ARD without obtaining confirmation. We had not changed the ARD and we correctly rejected the accounts.

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 delivered 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 delivered 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.

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 companies must deliver accounts to the registrar 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 company may have sent the accounts on time, there is no record of them being received at Companies House. Point out that officers are legally responsible for ensuring that they deliver accounts 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 approved and signed the accounts to ensure that they posted them before 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 sent with the accounts or a copy of the Royal Mail receipt if they sent them via Recorded or Special delivery. Explain that the penalty must stand unless they can provide proof of delivery by the filing deadline.

Scenario 2 – Company claims that they sent the accounts with the Confirmation Statement (form CS01) or an annual return (form AR01) that we have received.

- A If there is no history of filing together.
- B If there is history of filing together for 2 or more years.

Decision:

- A The penalty should be upheld, pending further information.
- B The penalty should not be collected

Reason for decision:

- A There is no history of the company filing the documents together.
- B There is a history of the documents being filed together.

Suggested approach:

- A Explain that while you accept the company believes it sent the accounts with the Confirmation Statement (previously the annual return), there is no record of their receipt at Companies House.

Check the date the company approved and signed the accounts to ensure that they posted them before the deadline.

Explain that the registrar is only able to apply discretion where the company provides evidence of delivery by the filing deadline. Point out that if they can provide any documentary evidence that they sent both documents together we will reconsider the matter.

- B Explain that there is no record of us receiving the accounts with the Confirmation Statement (CS01) (previously the Annual Return AR01) but considering the company's previous filing history, we will not collect the penalty.

Point out that we may not make the same decision in the future, as we treat all cases 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). If the company delivers its accounts late next year it may be liable to a double penalty.

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 the penalty should be cancelled.

Reason for decision:

Companies House has lost the accounts.

Suggested approach:

Explain that there is no record of us receiving the accounts but given the evidence provided, we have arranged to give them the original date of receipt which will cancel the penalty.

Apologise for the inconvenience that we have caused.

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 must 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. You should ask the appellant to provide evidence to support their appeal.

Suggested approach:

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

Explain that they should have attempted to obtain copies of relevant documents.

Point out that we sent a reminder 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 we would have advised them 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, we should not collect the penalty.

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 we will not collect the penalty.

Point out that any decision not to collect a penalty is exceptional and we will treat any future appeal against a late filing penalty 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 delivered late.

15. Postal Delay – Code PD

Scenario 1 – Accounts 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 companies must deliver their accounts to the registrar within the statutory time allowed. The registrar is not responsible for delays in transit.

Suggested approach:

Explain that while the company may have posted the accounts 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 posted them before they were approved.

Explain that officers have a duty to ensure that they deliver accounts and they only achieve this when the accounts arrive with the registrar 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 we cannot apply this 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 before the filing deadline.

Suggested approach:

Explain that while the company may have posted its accounts in time, it is the date of delivery to the registrar 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 we will not collect the penalty.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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 companies must deliver accounts to the registrar within the statutory time allowed. The registrar is not responsible for delays in transit.

Suggested approach:

If the company has provided the special delivery reference, check the delivery date shown on the Royal Mail's website, using their 'Track and Trace' service. Explain that while the company may have posted the accounts in time by Special Delivery, it is the date of delivery to the registrar that is all-important.

Explain that officers are legally responsible for ensuring that they deliver accounts and only achieve this when the accounts arrive with the registrar. If the delivery date is in dispute, point out that the company can verify it with the Royal Mail.

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

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 we sent a reminder 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 we would have advised them 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 we will not collect the penalty.

Explain that we may not make the same decision in the event of any subsequent late filing of accounts as we treat all cases on their individual merits. Suggest that they may wish to appoint another director if the family member's health problems are continuing.

Mention that penalties will double if they deliver next year's accounts late.

17. Rejected Accounts – Code RJ

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

Decision:

Subject to individual merit, the penalty is usually collected.

Reason for decision:

It is the responsibility of the company to ensure that accounts have been accepted for filing. Companies can check if a document has been filed using the Companies House Service or subscribe to Follow for updates on documents that have been filed.

Suggested approach:

Check that we were correct to reject the accounts.

Explain that accounts are only delivered when we receive them in an acceptable format. There is no provision in the Companies Act for additional time to be given if accounts are received close to the deadline require amendment. If the company could have delivered the accounts electronically, we should point this out.

Explain that you accept that the company was unaware of the rejection of the accounts until receiving an overdue accounts notice, for example. However, they could have checked if accounts had been accepted for filing using the Companies House Service or Follow. Point out that if they were unable to confirm if the accounts had been accepted for filing, they could have contacted Companies House to check.

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

Scenario 2 – Accounts received on time but rejected. We rejected the amended accounts within the filing time but rejected them again for a different reason that we should have 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 we rejected the accounts on two occasions and as we did not receive them in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the duty of the officers to ensure that they deliver acceptable accounts 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 we originally rejected the accounts, there would have been no penalty. Confirm that we will not collect the penalty on this occasion.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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 we received the accounts on time but rejected them and as we did not receive them in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the duty of the officers to ensure that they deliver acceptable accounts within the time allowed.

Explain that you have checked previous accounts and you can confirm that we had incorrectly accepted them, 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 we will not collect the penalty on this occasion.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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 – Companies House took longer than eight 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 delivered when the registrar receives them in an acceptable format and there is no provision in the Companies Act to allow additional time if accounts received close to the deadline require amendment.

Point out that there was still enough time for the company to amend the accounts and resubmit them. If the company could have delivered the accounts electronically, we should point this out. If they could not deliver electronically explain that there was enough time for the company to deliver the accounts via 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 – Companies House took longer than eight working days to examine and reject accounts that were initially received no more than eight working 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 eight 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 delivered when the registrar receives them in an acceptable format and there is no provision in the Companies Act to allow additional time if accounts received close to the deadline require amendment.

Point out that there was still enough time for the company to amend the accounts and resubmit them. If the company could have delivered the accounts electronically, we should point this 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 – Companies House took longer than eight 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:

CH service contributed to late filing.

Suggested approach:

Explain that we correctly rejected the accounts and as we did not receive them in an acceptable format within the time allowed, the company has incurred a late filing penalty. Point out that ultimately it is the duty of the officers to ensure that they deliver acceptable accounts 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 we will not collect the penalty on this occasion.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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.

18. Electronic-Filing

(For information - please clear cases in relevant category)

Scenario 1 – General difficulties encountered with WebFiling (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 companies must deliver accounts to the registrar within the statutory time allowed.

Suggested approach:

Explain that while you appreciate the difficulties the company has encountered; all companies must 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 on our web site.

Point out that if the directors had contacted our web filing department, we would have advised them to download the appropriate version of Adobe Reader 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 at a disadvantage, because we failed to notify them of the cancellation of the auth code.

Suggested approach:

Explain that we cancelled the authentication code 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 at a disadvantage.

Explain that the registrar does have discretion in the collection of late filing penalties and confirm that we will not collect the penalty on this occasion.

Point out that any decision not to collect a penalty is exceptional and that we will consider any future case 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 deliver accounts on the day of the deadline but was unable to deliver 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 with the relevant IT Team 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 at a disadvantage.

Explain that the registrar does have discretion in the collection of late filing penalties and confirm that we will not collect the penalty on this occasion.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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 delivered 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 companies must deliver accounts to the registrar within the statutory time allowed.

Suggested approach:

Explain that while the company may have been logged into our system before midnight, we did not receive and accept the accounts until after midnight. Explain that it is the date of delivery at Companies House that is important.

Scenario 5 – The company delivered 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 must be submitted to each organisation separately. It explains 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 deliver accounts using the HMRC Joint Filing service but were unable to deliver 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 we will not collect the penalty on this occasion.

Point out that we may not make the same decision in the event of any future late filing of accounts as we treat all cases 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.

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

Decision:

Subject to individual merit, the penalty is usually collected.

Reason for decision:

The company would have known that we had rejected the accounts 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 the company (or its agent) should have retrieved it 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 Companies House has approved 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.

19. Double Penalties

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

Decision:

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

Reason for decision:

Companies must deliver accounts to the registrar 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 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.

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:

Companies must deliver accounts to the registrar 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 company delivered the accounts late.

Explain that all companies filing accounts late in consecutive years will have their penalties doubled.

Point out that we sent a reminder 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:

We should date credit the earlier accounts which will reduce the most recent penalty back to a single penalty.

Reason for decision:

We have accepted that we received the earlier accounts in Companies House before the filing deadline and either mishandled or incorrectly bar coded them.

Suggested approach:

Explain that we have reviewed the decision on the earlier accounts and given the evidence provided, we have arranged to give them a date credit, which will show that they delivered them 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 we have caused. As the company delivered the recent accounts late, it will be subject to a double penalty if it delivers 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

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