

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2014 - 31st March 2015

TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. APPEALS.....	3
VOLUME AND TYPE OF COMPANY.....	3
REFERRALS TO THE REGISTRAR.....	4
UPHELD APPEALS.....	5
OTHER OBSERVATIONS AND RECOMMENDATIONS.....	8
3. COMPLAINTS.....	9
4. CONCLUSION.....	11
APPENDIX A.....	13
SUMMARY OF RECOMMENDATIONS	
APPENDIX B.....	14
OUTSTANDING RECOMMENDATIONS AND OBSERVATIONS FROM 2013/14	

LIST OF TABLES

TABLE 1	NUMBER OF APPEALS.....	3
TABLE 2	APPEALS TO ADJUDICATOR FROM DORMANT COMPANIES.....	4
TABLE 3	REFERRALS TO THE REGISTRAR	4

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1st April 2014- 31st March 2015)

1. INTRODUCTION

- 1.1 Three Independent Adjudicators, Dame Elizabeth Neville, Mr Leslie Cuthbert and Mrs Jessica Pacey are retained by Companies House. Our principal role is to deal with appeals against late filing penalties once they have passed through the first two stages of the appeals process which are internal to Companies House. If an appeal is not upheld by an Independent Adjudicator, the appellant may ask for the case to be referred to the Registrar who is the final arbiter in the appeals process.
- 1.2 The Independent Adjudicators also investigate complaints made against Companies House. Again, there are two internal stages for consideration of a complaint. If the complainant is dissatisfied with the outcome of the internal consideration of the complaint, he or she may ask for the matter to be referred to an Independent Adjudicator. A complainant who remains dissatisfied after consideration of their case by an Independent Adjudicator may approach a Member of Parliament and ask for the matter to be referred to the Parliamentary and Health Service Ombudsman.
- 1.3 As our title indicates, we are entirely independent of Companies House. A brief outline of our professional profiles may be found on the Companies House website by following this link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/392904/Independent_adjudicators.pdf our cases, whether appeals against late filing penalties or complaints, are allocated by rotation to ensure distribution is random.
- 1.4 Our recommendations are summarised in Appendix A.

2. APPEALS

VOLUME AND TYPE OF COMPANY

- 2.1 We completed 305 appeals during the year between 1st April 2014 and 31st March 2015, a decrease of 86 (22%) from 2013/14 when we considered 391 appeals. This continues the decline since the peak years of 2010 to 2013 following the changes introduced by the Companies Act 2006 and the numbers are now below the level for 2009-10. See Table 1. We upheld 16 (5.2%) appeals, a similar percentage to the previous year (4.9%).

TABLE 1 NUMBERS OF APPEALS

	2008-9	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
TOTAL	105	325	467	583	466	391	305

- 2.2 Over 20% of the appeals we receive are from directors of newly incorporated companies filing their first accounts. It is evident that directors frequently do not know what is required of them so we look forward to seeing the effect of the process whereby Companies House now sends the directors of newly incorporated companies and also all new directors a 'First Directors letter' to improve their understanding of their responsibilities, including the need to file accounts by the filing deadline. These letters have been sent since 1st October 2013 so we expect to notice an effect at the time of the first filing deadlines for the new companies from June 2015.
- 2.3 We continue to receive a high number of appeals from dormant companies (about 30%). See Table 2 below. New companies are frequently initially dormant and property management companies are usually dormant. Our observation is that directors of dormant companies are more likely not to know what is required of them. They do not always realise that they must file accounts even if not trading or they struggle to file the very simple accounts required of them due to lack of expertise. Property management companies and companies with a charitable purpose continue to figure in the appeals (making up about 6.6% and 9.2% of our cases respectively). The directors of these companies usually undertake the role voluntarily and the companies appear not to be central in their minds or seen as companies in any conventional sense.

TABLE 2 APPEALS TO ADJUDICATOR FROM A DORMANT COMPANY

2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
29	67	79	131	118	120	92

- 2.4 The compliance rate for companies filing remains at over 99%. The percentage of accounts filed on time continues to rise and is now 94.47% (94.27% in 2013/14).

REFERRALS TO THE REGISTRAR

- 2.5 The fourth and final stage of the appeals process is an appeal to the Registrar. Companies House received 31,993 appeals against late filing penalties in 2014/15. 0.95% of all appeals were referred to the Independent Adjudicators. 22% (68) of the appeals considered by the Independent Adjudicators were referred to the Registrar (see Table 2 below).

TABLE 3 REFERRALS TO THE REGISTRAR

	Number of Cases Escalated to Registrar	% of Total Cases Dealt with by Adjudicators
2007/8	22	37
2008/9	27	23
2009/10	68	20
2010/11	109	22
2011/12	120	21
2012/13	112	24
2013/14	85	21
2014/15	68	22

- 2.6 The Registrar upheld four appeals which had been rejected by an Independent Adjudicator. In one case the accounts for the following year had been accepted with the same error in the company name which had led to the rejection and ensuing penalty which had given rise to the

appeal. The Registrar decided that the penalty should not be collected in a second case because the director did not receive a copy of a court order confirming that he had been reinstated as director until shortly before the filing deadline. In the third case, the issue was over the sending of an acknowledgement email for submission and acceptance of the accounts. Further investigation by Companies House confirmed that, although the annual return was the only document filed by the company that day, the acknowledgement email incorrectly referred to the accounts, so the accounts were date credited with the earlier receipt date and the penalty cancelled.

- 2.7 In a fourth case, the Registrar decided that the penalty should not be collected as HMRC had confirmed that there had been an error with the joint filing template. The Adjudicators reviewed the appeals they had considered and identified one similar case where the appeal had been rejected as there had been no confirmation that there was a system fault. Companies House has agreed that the penalty should not be collected and arranged to refund it.
- 2.8 In a fifth case, the directors of a large number of companies had been in dispute with each other and the Adjudicator recommended that the penalties imposed for the late filing of their accounts should not be collected. The Registrar disagreed with the recommendation and correspondence is continuing.

UPHELD APPEALS

- 2.9 During the year 2014/15, the Independent Adjudicators upheld or partly upheld sixteen appeals in addition to the case referred to in para 2.7 where the appeal was rejected but this has now been reversed. Details are given below.

Director of Company Experiencing Catastrophe Shortly Before Deadline

- 2.10 The greatest number of appeals (85 or 28%) were wholly or in part on the grounds of an exceptional circumstance such as the director suffering a serious illness or a catastrophe befalling a company shortly before the filing deadline. The Adjudicators upheld three such appeals.
- 2.11 A dormant company suffered a catastrophic computer failure a month before the filing deadline and lost its reminder systems which were not restored until after the deadline. This was compounded by the fact that the company's registered office was at its accountants who failed to forward the reminder letter sent by Companies House. The accounts were filed as soon as it was realised that they were required.
- 2.12 The accounts for a dormant flat management company were filed late for five out of six years because the director had undiagnosed early onset dementia. Neither she nor anyone else knew that she was ill or the impact the illness had on her ability to manage her affairs. Although there had been another director who shared responsibility for ensuring accounts were filed, she had sold her flat and ceased to be a director and walked away from the problem. The condition of the remaining director had seriously deteriorated. She was now unable to care for herself or understand the reason for the penalties. The burden of paying the penalties from her benefits was having an impact on the quality of her care.
- 2.13 A major dispute within the 117 companies subject to another appeal prevented their accounts being filed on time, resulting in the imposition of late filing penalties. The Adjudicator accepted that the hostility between the parties meant that the chances of their co-operating to discharge the statutory duty to file the accounts were minimal and there were complicated financial issues to be resolved. The dispute had gone to the High Court and an arbitrator had been appointed.

The Adjudicator concluded that this was an exceptional case and it had not been possible for the accounts to be filed on time. She upheld the appeal for all 117 companies. The Registrar disagreed with the Adjudicator's recommendation (see para 2.8).

WebFiling

- 2.14 An almost equal number of appeals (27%) were from users who experienced some problem with WebFiling or the HMRC/Companies House joint filing system. The joint filing system is to be upgraded in the summer of 2015 and is intended to be more user friendly.
- 2.15 In some cases, users tried to file accounts close to the deadline, only to find that they did not have the authentication code which, for security reasons, has to be sent by post. If it was too late to send the accounts in paper form or it was not realised that this was possible, this caused the deadline to be missed. In these cases, the problem was not with electronic filing as such, but leaving the filing of the accounts until very close to the deadline.
- 2.16 In addition, as pointed out in para 2.6, the Registrar upheld one appeal which had been rejected by the Independent Adjudicator when it was established that there had been a fault with the Joint Filing template.

Wrong or Misleading Advice or Information from Companies House

- 2.17 In a substantial number of cases, the appellant's grounds for appeal are that Companies House caused or contributed to the delay. Three such appeals were upheld.
- 2.18 A company's accounts were filed after the filing deadline. The director accepted that a penalty was payable but contended that the overdue accounts notice which was sent when the deadline passed was misleading and led him to believe that he had a further 28 days to file the accounts. This led to a further delay and the penalty rose to the next penalty band. The Adjudicators have previously observed that the notice could be clearer and recommended that it be reworded. The Adjudicator accepted that the misunderstanding of the overdue accounts notice led to a further delay in filing the accounts which caused it to rise to the next penalty band.
- 2.19 The Independent Adjudicators recommended in 2013-14 and Companies House accepted that the first overdue accounts notice (DEFSTAT) should be reworded as it is sometimes misunderstood. It was suggested that it be brought in line with other Companies House standard letters which make it clear that the filing deadline has already passed, that a late filing penalty will be imposed when the accounts are filed and that the amount will increase with the period of delay. It was agreed that the notice should be revised and the revised version was brought into use in May 2015.
- 2.20 In a second case, the appellant sent an email to Companies House seeking information about how to file the accounts by the deadline which was that day. The response did not address the question and the accounts were filed late. Because Companies House had contributed to the delay, the appeal was upheld.
- 2.21 There is no information on the Companies House website which explains the issues affecting the electronic filing of charities' accounts. Charities sometimes experience real difficulties in trying to file their accounts electronically as the accounts format required by the Charity Commissioners is not suitable for WebFiling. Charities must either file their accounts in paper form, or reformat their accounts. An appeal by a charity was partially upheld because the accounts, which would have been late in any case, were further delayed when an unsuccessful attempt was made to file online, which led to the imposition of a penalty in a higher penalty band.

- 2.22 In another appeal, which was not upheld, the same problem was experienced. It is recommended that Companies House provides further information on its website about the filing of charities' accounts. It is expected that this will happen in late July or August 2015.

Rejected Accounts

- 2.23 In 51 cases (16,7%) considered by the Independent Adjudicators, accounts, mostly in paper form, were rejected and by the time amended accounts were returned, either the deadline had passed resulting in the imposition of a penalty, or the penalty had risen to a higher penalty band.
- 2.24 Seven such appeals were upheld by the Independent Adjudicators.
- 2.25 A company's accounts were late when first received and were rejected. The directors accepted that a penalty was payable for the initial late submission. There was a delay before amended accounts were returned and the penalty rose by two bands. The accounts for the previous year had been accepted in the same format as the rejected accounts. The previous year's accounts should have been rejected but their acceptance led the directors to believe that the format was acceptable.
- 2.26 The appeal was upheld in a case where a director telephoned Companies House before filing dormant company accounts but was given incorrect advice because the operator did not bring the record of the company up on the screen. As a result, the accounts, which were received at Companies House a week before the filing deadline, were rejected. Amended accounts were not returned until the filing deadline had passed, and a late filing penalty was imposed on the company.
- 2.27 In two cases accounts were received at Companies House before the filing deadline and rejected because a director had not signed the balance sheet. By the time the accounts were returned, the filing deadline had passed and late filing penalties were imposed on the companies. The companies appealed on the grounds that the accounts should not have been rejected as the director's signature had been present when they were first submitted. The circumstances and explanations were such that in each case the Adjudicator gave the company the benefit of the doubt and upheld the appeal.
- 2.28 In the fifth case, dormant company accounts, which were received the day before the filing deadline, were rejected due to an incomplete field on the Dormant Company Accounts form AA02 and a late filing penalty was imposed on the company. Companies House accepts dormant company accounts in free format which do not contain this information and there is no legal requirement for it to be provided. Therefore, the omission of the information should not have led to the rejection of the accounts and the appeal was upheld. Companies House has aligned the examination policy for the form AA02 with the policy for free format dormant accounts and advised examiners of the change.
- 2.29 In two cases where accounts had been properly rejected, the Adjudicator partially upheld the appeals because Companies House had not sent overdue accounts notices while the penalty was in the first penalty band. This is because overdue accounts notices were sent 28 days after rejection, to allow an extra period for the accounts to be amended and returned. The directors were unaware that the accounts had been rejected until they received the overdue accounts notices. The Adjudicator accepted that the delay in sending out the overdue accounts notice contributed to the penalty rising to the next band and upheld that element of the appeals.

- 2.30 **It was recommended that in cases where rejected accounts have been returned to a company and amended accounts are not received, an overdue accounts notice is sent in time to allow the amended accounts to be filed before the penalty rises to the next penalty band.** This was implemented in December 2014 and a notice is now sent 14 days after rejection.

Accounts Lost at Companies House

- 2.31 The appellant in two cases said that the accounts had been in an envelope with other documents which had been received prior to the filing deadline. For the reasons provided by the appellant, the Adjudicator accepted that this was more than likely the case and that the accounts may have been mislaid at Companies House.

Other Cases

- 2.32 A complicated restoration case related to a company which ceased to operate in 1995 and was struck off. When the company was restored to the register, it was advised that its record should be brought up to date. Penalties were imposed for the late filing of the accounts for the period 1992-1994 and 1996-2003. Companies House could not show that reminder notices had been sent to file the accounts for the period prior to the company's dissolution (1992-1994) so the Adjudicator found that the penalties imposed for the late filing of those accounts should not be collected. He did not uphold the appeal against the penalties imposed for the late filing of the accounts for the subsequent post restoration period.
- 2.33 In the course of this case, correspondence from the company was not passed to the Restoration Section but dealt with by Compliance, which caused some confusion. **The Adjudicator recommended that in future Companies House ensures that any documentation received from any company which is subject to dissolution or a 'restoration stop' goes to the Restoration Section at Companies House and is not subject to normal compliance requests.** This is now the normal procedure when a restoration stop is in place.

Reminder not received

- 2.34 In 10% (32) cases, appellants said that they had not received the reminder which Companies House sends, either by letter or email, to advise that the filing deadline for the accounts is approaching. We did not uphold any appeals made on this basis. Companies House encourages companies to register for E reminders and up to four email addresses may be provided. In some cases, the emails are not received because the recipient's email system treats them as spam. It is important for directors to have their own reminder systems in place and not to rely on receiving reminders from Companies House.
- 2.35 **When Companies House responds to such appeals, staff sometimes assume that the reminder was sent by post. If the appellant has registered for E reminders, this can cause confusion as the content is different and the appellant may think a letter was sent which was not received. We recommend that care is taken to check the medium used for sending the reminder before commenting on this in an appeal.** Staff have been advised accordingly.

OTHER OBSERVATIONS AND RECOMMENDATIONS

- 2.36 A company's accountant believed that he would be notified if the accounts were rejected and was unaware that with software filing, it is necessary to 'poll' to check the status of documents. The Adjudicator recommended that **Companies House considers amending the guidance contained within the Late Filing Penalties Appeals Manual and the Companies House website to refer to the use of third party software and the need to 'poll' to check the**

status of documents. A revised appeals manual issued in June 2015 incorporates this amendment.

- 2.37 The director of a company filed a form AA01 to change the company's accounting reference date (ARD). She was unaware that the form had been rejected and the ARD unchanged, as she did not open the rejection email which had a generic heading and she thought it related to other matters and was unimportant. Companies House accepts that **the email heading for a rejected form AA01 is uninformative and that it should be changed to bring it in line with the headings for rejected accounts.** Companies House intends to make the recommended change.
- 2.38 The Independent Adjudicators have previously observed that **appeals contained in covering letters enclosed with accounts are sometimes not recognised as such and have recommended that staff are appropriately advised to take more care.** The Adjudicators continue to identify this in a small number of cases and the recommendation is repeated.
- 2.39 In a number of cases, staff responding to appeals either failed to respond to the points made in the appeal, sometimes using irrelevant standard paragraphs, gave incorrect information or made careless replies containing errors. In such cases we ask for feedback to be given to the member of staff. For instance, an appellant attempted to file the accounts by email and received a response which did not make it clear that accounts cannot be filed in this way. In one case, the appellant was twice advised that an application for an extension to the filing deadline could have been made, when an application had been made and turned down. In another appeal, the appellant was advised to use WebFiling in future, when the accounts in question had been filed electronically. In a few cases where it would have been appropriate to do so, appellants were not advised of the option to dissolve the company, in which case the Registrar will not generally pursue any outstanding penalty. **We recommend that staff take more care to avoid errors and to respond to the content of the appeal.**
- 2.40 In cases where the appellant has telephoned Companies House, we have observed a real improvement in staff seeking the information needed to retrieve the recording of the telephone conversation.
- 2.41 The Appeals Manual sets out a list of scenarios, saying that the majority of appeals will fall into those categories and that case managers should make consistent decisions. It adds that they 'should always be ready to take account of any other exceptional factors' referring to 'cases of individual merit'. Staff adhere closely to the scenarios in the Appeals Manual to ensure consistency of approach but we remind them that they can and should take account of the circumstances of unusual and exceptional individual cases. A revised version of the Appeals Manual is to be issued shortly.

3. COMPLAINTS

- 3.1 The Independent Adjudicators considered three complaints, none of which were upheld. They also dealt with complaints which were made in the course of an appeal.
- 3.2 A long running complaint about the validity of liquidation action taken against the complainant's four companies was not upheld by the Adjudicator who found that the Companies House records showed that the correct process had been followed and that the complainant had not produced any evidence to support his numerous allegations.

- 3.3 A second complaint was that Companies House had not prosecuted the directors of a company following a breach of the Companies Act 2006 in that he had not been allowed to see a copy of the members' register within the statutory period or been allowed to inspect the register. Since he had subsequently been provided with a copy and arrangements had been made for him to view the register, Companies House did not consider a prosecution in the public interest. Once compliance is achieved, prosecution is not generally viewed as proportionate. The complaint was not upheld.
- 3.4 The third complaint considered by the Adjudicators was that Companies House had taken considerable time to resolve an issue regarding the changing of addresses for an annual return and a payment was requested for the additional time spent. The Adjudicator did not accept that Companies House was responsible for the problems experienced and found that Companies House staff had been helpful in resolving the problem and that the complaint had been dealt with courteously and correctly.

Other Complaints

- 3.5 Nine appeals also contained one or more complaints, none of which were upheld. In one case, the accountant for two companies complained that he had not been advised how to pursue his appeal against their late filing penalties. Information on how to appeal was enclosed with the penalty notices sent to the companies. His second complaint was that the Companies House system for updating companies' public records is not fit for purpose because it takes some days to update the record after accounts have been received at Companies House. The public record is not updated until a document is processed and it is not possible to process all documents on the date of receipt.
- 3.6 In a second case, the appellant complained about the tone of a letter sent in response to her appeal and that the response was delayed. It had been explained at the time that there would be a delay pending the response from another department and there was no intention to give offence. The Adjudicator found that there had been delays in subsequent communications although this was not the subject of a specific complaint. The complaint was not upheld but an apology was offered for the subsequent delays.
- 3.7 The Accountants for another company complained that the consequences of extending the Accounting Reference Date (ARD) had not been made clear by Companies House. This complaint was not upheld.
- 3.8 In a fourth case, the appellant complained that a reply to his Freedom of Information request had not been sent within 20 days. The service standard is to reply within 20 **working** days and this target was met.
- 3.9 Another appellant's complaint related to a decree (Northern Ireland equivalent of a county court judgment) which was obtained by Companies House in order to secure payment of the penalty. He said that (1) he had not been given guidance which he had requested from Companies House, (2) he had not known the date of the court hearing and (3) had been unable to obtain confirmation that the penalty and costs had now been paid. The complaints were not upheld. Companies House has no record of receiving the request for guidance (1). Complaint (2) was a matter for the court and Companies House had provided the information referred to in (3).
- 3.10 A complaint by an appellant that he received communications from the debt collection agency retained by Companies House was not upheld. The agents were instructed because there had been a delay before the first appeal was made and further delays in subsequent responses from

the appellant. Companies House was also pursuing the collection of a penalty imposed for late filing of accounts in a previous year.

- 3.11 Another appellant complained that Companies House did not inform him of what he described as 'the escalation steps and court timing' and had ignored his request to make his case to the court. The complaint was not upheld as he had been advised of possible court action on three occasions. Issues about representation and hearing dates were between the appellant and the court. He also complained that Companies House had not responded to him in the course of his appeal when he had declared to them that the matter was closed.
- 3.12 Another appellant made three complaints. (1) Companies House told him his appeal had been successful due to the omission of the word 'not' in their letter although the rest of the letter indicated that the appeal had not been upheld. This error was remedied six days later. (2) Companies House also sent an email to the wrong email address, for which they have apologised. (3) The appellant complained that he was prevented from sending his medical records by post. In fact, he was invited to do just that.
- 3.13 Another appellant made a number of complaints:
- 1) He had not been properly advised about changing his company's name. Companies House had apologised and refunded the fee.
 - 2) He had received a further letter demanding payment when he had appealed against the late filing penalty. Companies House had not received this appeal.
 - 3) Companies House staff had not treated him properly, possibly due to his ethnicity, and had lied in a telephone call and a meeting. There was evidence that the appellant had been at the very least excitable, Companies House staff had behaved correctly and there was no evidence to support his view that he had been treated differently due to his ethnicity or that staff at Companies House had lied.
 - 4) He complained about two matters which are standard Companies House procedure (a) the provision of a generic email address for the appeal, (b) the offer of the Registrar of Companies for Northern Ireland to meet him which ruled out discussion of his appeal. This was because the Registrar will not consider an appeal until the earlier stages have been exhausted.
 - 5) That redacted documents contained derogatory information about him. An examination of the unredacted documents by the Adjudicator found that no reference was made to him in the redacted sections.

4. CONCLUSION

- 4.1 During the course of the year, the Companies House website migrated to the Direct Gov website which caused some problems. The information about the Independent Adjudicators remained in place but ceased to be visible except through the complaints section of the website. The link can be accessed through the area on the website dealing with the Complaints Procedure so is not likely to be found by appellants. Staff dealing with appeals provide the link on request but this is not ideal. It seems that, as Companies House does not control the format of the website, this cannot be changed. We know from the communications we receive from appellants that they not infrequently try to find out more about us and what we do, so the lack of ready access to the information is disappointing.
- 4.2 Overall, the quality of the work done by Companies House staff considering appeals and complaints remains high. If a mistake has been made, this is readily acknowledged and an apology made. We find that Companies House staff strive to be fair.

- 4.3 Constant changes are made by Companies House to improve processes and documentation and make them more user friendly but these updates are not collated in any systematic way. It is important that we, the Adjudicators, are kept up to date with what was applicable at the time of the events giving rise to the appeal. The Senior Casework Unit strives to keep us up to date with changes as they occur but the task is not easy.
- 4.4 We again thank the Senior Casework Unit for the responsive, knowledgeable and thoughtful way in which they support us in carrying out our task.



Dame Elizabeth Neville DBE QPM DL

19th July 2015

APPENDIX A

SUMMARY OF RECOMMENDATIONS 2014-2015

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

- 2.22 It is recommended that Companies House provides further information on its website about the filing of charities' accounts. It is expected that this will happen in late July or August 2015.
- 2.30 It was recommended that in cases where rejected accounts have been returned to a company and amended accounts are not received, an overdue accounts notice is sent in time to allow the amended accounts to be filed before the penalty rises to the next penalty band. This was implemented in December 2014 and a notice is now sent 14 days after rejection.
- 2.33 The Adjudicator recommended that in future Companies House ensures that any documentation received from any company which is subject to dissolution or a 'restoration stop' goes to the Restoration Section at Companies House and is not subject to normal compliance requests. This is now the normal procedure when a restoration stop is in place.
- 2.35 When Companies House responds to appeals based on non receipt of a reminder to file the accounts, staff sometimes assume that the reminder was sent by post. If the appellant has registered for E reminders, this can cause confusion as the content is different and the appellant may think a letter was sent which was not received. We recommend that care is taken to check the medium used for sending the reminder before commenting on this in an appeal. Staff have been advised accordingly.
- 2.36 It is recommended that Companies House considers amending the guidance contained within the Late Filing Penalties Appeals Manual and the Companies House website to refer to the use of third party software and the need to 'poll' to check the status of documents. A revised appeals manual issued in June 2015 incorporates this amendment.
- 2.37 The email heading for a rejected form AA01 is uninformative and Companies House intends that it should be changed to bring it in line with the headings for rejected accounts. Companies House intends to make the recommended change.
- 2.38 Appeals contained in covering letters enclosed with accounts are sometimes not recognised as such and it is again recommended that staff are appropriately advised to take more care.
- 2.39 We recommend that staff take more care to avoid errors and to respond to the content of the appeal.

**APPENDIX B
OUTSTANDING RECOMMENDATIONS AND OBSERVATIONS FROM
2011/12**

1. **We ask that staff dealing with appeals be asked again to take more care over their responses.** We repeat this recommendation in the current Annual Report.
2. In certain circumstances, a hold is put on the Companies House computer system for a specific purpose which freezes all automatically generated notices for the a company. This means that reminder letters and overdue accounts notices are not sent until the hold is lifted. This is an ongoing problem of which Companies House is aware and which it intends to remedy, but has not yet done so. **We recommend that the problem be resolved so that a hold placed on a company's record for a specified purpose does not result in a hold on all automatically generated notices.** A system change was made in June 2014 which allows reminder letters to be sent when a hold is in place freezing automatically generated letters. This should go some way to addressing the issue and we have not received any appeals in the last year where this issue arose.

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2013- 31st March 2014

TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. APPEALS.....	3
VOLUME AND TYPE OF COMPANY.....	3
REFERRALS TO THE REGISTRAR.....	4
UPHELD APPEALS.....	5
OTHER OBSERVATIONS AND RECOMMENDATIONS.....	8
3. COMPLAINTS	9
4. CONCLUSION.....	11
APPENDIX A	12
SUMMARY OF RECOMMENDATIONS	

LIST OF TABLES

TABLE 1	NUMBER OF APPEALS.....	3
TABLE 2	APPEALS TO ADJUDICATOR FROM DORMANT COMPANIES.....	4
TABLE 3	REFERRALS TO THE REGISTRAR	4

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1st April 2013- 31st March 2014)

1. INTRODUCTION

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

2. APPEALS

VOLUME AND TYPE OF COMPANY

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

TABLE 1 NUMBERS OF APPEALS

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

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

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

TABLE 2 APPEALS TO ADJUDICATOR FROM A DORMANT COMPANY

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

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

REFERRALS TO THE REGISTRAR

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

TABLE 3 REFERRALS TO THE REGISTRAR

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

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

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

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

UPHELD APPEALS

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

Director of Company Experiencing Catastrophe Shortly Before Deadline

- 2.10 The greatest number of appeals (25%) were wholly or in part on the grounds of an exceptional circumstance such as the director suffering a serious illness or a catastrophe befalling a company shortly before the filing deadline. The Adjudicators upheld four such appeals.
- 2.11 In two cases, further information was provided to the Independent Adjudicators which led to the appeal being upheld. In the first case, it was not until the appellant wrote to the Independent Adjudicators that he disclosed that his chronic health condition had unexpectedly become acute and incapacitating not long before the filing deadline. At that stage he also disclosed the details of a distressing bereavement shortly before the filing deadline.
- 2.12 A second appeal was upheld because the director provided more information about his health problems when he wrote to the Independent Adjudicators.
- 2.13 In a third case, a husband and wife were two of the three directors of a company, the third director being abroad. The couple's young son became seriously ill just before the deadline and the wife had a breakdown as a result. The directors tried, nevertheless, to file the accounts by the filing deadline, posting them by recorded delivery but there was a delay in delivery. It was accepted that the combination of events amounted to an exceptional circumstance.
- 2.14 The Adjudicators upheld an appeal by the directors of a small company in a fourth case who failed to file the accounts because of a severe and unexpected crisis affecting another family business.
- #### **WebFiling**
- 2.15 Users are filing their accounts electronically with much greater frequency, using either the Companies House WebFiling system or the HMRC/Companies House joint filing system. Appeals relating to electronic filing make up the second largest category of appeals (23%).
- 2.16 No appeals relating to Joint Filing were upheld. The process is not very user friendly and on 21st October 2013 an improved version went live which also addresses an earlier recommendation

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

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

Rejected Accounts

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

Wrong or Misleading Advice or Information from Companies House

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

Other Cases

- 2:27 When accounts are not filed, and no response is received to overdue accounts notices nor does the company show any sign of life, Companies House will generally initiate the process to strike the company from the register. Whilst the dissolution is ongoing, a hold is put on any collection action of previously incurred penalties. If a company then files its accounts, or otherwise gives an indication that the company is required, the strike off process is halted, but the hold placed on the finance system is not automatically removed, meaning that no further action is taken to recover the previously incurred penalties. This also means that if new penalties are incurred, although a late filing penalty invoice is issued and sent to the company, no further collection action is taken. This glitch can be overridden manually but, initially, this was not done in

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

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

OTHER OBSERVATIONS AND RECOMMENDATIONS

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

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

3. COMPLAINTS

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

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

Other Complaints

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

4. CONCLUSION

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



Dame Elizabeth Neville DBE QPM DL
7th July 2014

APPENDIX A SUMMARY OF RECOMMENDATIONS

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

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

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2012- 31st March 2013

TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. APPEALS.....	3
VOLUME.....	3
REFERRALS TO THE REGISTRAR.....	4
GROUNDS FOR APPEAL AND SUCCESSFUL APPEALS.....	5
3. COMPLAINTS	8
4. CONCLUSION.....	10
APPENDIX A	11
SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS	
APPENDIX B	12
OUTSTANDING RECOMMENDATIONS AND OBSERVATIONS FROM 2011/12	

LIST OF TABLES

TABLE 1	APPEALS FROM DORMANT COMPANIES.....	4
TABLE 2	REFERRALS TO THE REGISTRAR	4

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1st April 2012- 31st March 2013)

1. INTRODUCTION

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

2. APPEALS

VOLUME

- 2.1 The number of appeals which we dealt with fell during 2012/13, having previously been steadily increasing year on year. They have dropped back to the 2010/11 level. During the year between 1st April 2012 and 31st March 2013, the Independent Adjudicators dealt with 466 appeals, a decrease of 117 (20%) on the previous year when we received 583 appeals. Much of the increase had been caused by the implementation of the Companies Act 2006 which is now well embedded.
- 2.2 Many small companies appeal because they do not see how they can pay a substantial penalty when they are struggling to survive in difficult circumstances. Double penalties, which are imposed for any company which files late having also filed late the previous year, came as a shock when they first started to be imposed in 2011, in spite of the information having been widely disseminated by Companies House, but are now largely understood. Where companies have incurred large penalties, whether a double penalty or not, their appeals frequently spell out the hardship caused by their imposition.

2.3 We have observed that we receive many appeals from directors of companies filing their first accounts, where they seem not to have known what was required of them. Many of these companies are dormant and the numbers of appeals from dormant companies remain high (25% of all appeals referred to us). See Table 1 below. We are pleased that Companies House is working to improve the understanding of new directors. A small pilot to send out important information to first time directors has taken place and a larger trial is planned. Seminars are also held aimed at new directors and more information can be found at <http://www.companieshouse.gov.uk/about/chEvents.shtml>.

TABLE 1 APPEALS TO ADJUDICATOR FROM A DORMANT COMPANY

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

2.4 Companies are increasingly using WebFiling. In previous years, we have received numerous appeals where companies trustingly posted their accounts in during the week of Christmas and were surprised that they did not reach Companies House by the deadline of 31st December, leading them to appeal against the subsequent penalty. The switch to WebFiling has reduced the number of appeals we receive where accounts are either delayed or lost in the post. Companies House also advises presenters to allow more time when filing in the holiday period.

2.5 The compliance rate for companies filing accounts is believed to be the highest in the world at 99%. The percentage of accounts filed on time continues to rise and is now 94.0% (2012/13).

REFERRALS TO THE REGISTRAR

2.6 The fourth stage of the appeals process is an appeal to the Registrar. Companies House received 30,915 appeals against late filing penalties in 2012/13. About 1.5% of all appeals are referred to the Independent Adjudicators. The percentage of appeals to the Registrar has increased slightly to 24% of the appeals considered by the Independent Adjudicators, although the actual numbers have decreased. See Table 2 below.

TABLE 2 REFERRALS TO THE REGISTRAR

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

2.7 The Registrar upheld eight appeals which had been rejected by an Independent Adjudicator. In three cases, additional information was provided. In two other cases, although call recordings of telephone calls to the Companies House contact centre could not be traced, the appellants provided the Registrar, in one case with itemised phone bills proving that the calls had been made and in the other, with a detailed account of the content of the call which was accepted.

- 2.8 In early April 2013, a new call recording system went live which records calls to all customer facing lines and which allows much improved tracing of recordings of calls. Previously, a considerable number of incoming calls could not be traced.
- 2.9 In the sixth case, the Registrar took the view that the appellant had a reasonable expectation that his accounts would receive a date credit because this had been done for one of his other companies. In a seventh case, it was not clear whether the rejection of the accounts was correct. The Registrar decided to give the benefit of the doubt and the accounts were credited with the original receipt date. The final appeal which was upheld by the Registrar was because the advice that CICs cannot file on line is not shown prominently on the Companies House website. This has been largely remedied as the information appears in the help screens <https://ewf.companieshouse.gov.uk/help/en/stdwf/faqHelp.html> and the exceptions guidance <https://ewf.companieshouse.gov.uk/help/en/stdwf/accountsExceptions.html>. It is about to be added to the guidance booklets and the insert sent out with the reminder letter.
- 2.10 One other appeal which had been rejected by the Independent Adjudicators was upheld in error, as Companies House did not realise that the appellant had been referring to dealings with Her Majesty's Revenue and Customs and not Companies House.
- 2.11 Occasionally, an Independent Adjudicator will also raise a query or identify a matter which should properly have been dealt with earlier in the appeals process which will result in Companies House deciding not to collect a penalty without further reference to the Independent Adjudicators.
- 2.12 During the year 2011/12, the Independent Adjudicators upheld 15 appeals. Details are given below.

GROUNDINGS FOR APPEAL AND SUCCESSFUL APPEALS

Director Suffering Serious Illness or Catastrophe Shortly Before Deadline

- 2.13 A large number of appeals (96) were wholly or in part on the grounds of an exceptional circumstance such as the director suffering a serious illness or a catastrophe befalling a company shortly before the filing deadline. The Adjudicators upheld three such appeals.
- 2.14 In the first case, the sole director of a property management company became ill immediately before the filing deadline. A new director was appointed but it was already too late to file the accounts on time. Companies House had rejected the appeal because it had been given an incorrect date of appointment for the new director which was prior to the deadline, whereas he had not taken up his appointment until it was too late to file the accounts in time.
- 2.15 The small new company in the second case lost a critical member of staff unexpectedly just before the deadline and the directors had to step in to ensure customers were not let down, leading to an oversight on the accounts.
- 2.16 In another case, the director could not access data kept on an external hard drive and could not retrieve it from the backup copy in time as it was at a different location. The Adjudicator accepted that this was a computer failure as set out in the Companies House Appeals Manual which states that the penalty will not usually be collected in such circumstances.

Problems with WebFiling

- 2.17 As users are getting used to WebFiling, we are receiving fewer appeals relating to its use. Some related to joint filing, which is an online service provided by HMRC and Companies House, which allows companies to submit their accounts to both bodies using a single online service. No appeals relating to joint filing were upheld.
- 2.18 Four appeals relating to WebFiling were upheld. In one case, the appellant when filing dormant company accounts had not understood that he or she would reach a final screen with a unique submission reference number, receive a confirmation email and that the submission could not be considered to be successful without them. In previous similar appeals which have been upheld the Adjudicators had recommended that Companies House clarifies the instructions to users filing dormant company accounts. This was done on 14th February 2012 but had not happened at the time that the appellant attempted to file the accounts.
- 2.19 In a second case, the director was attempting to file the accounts electronically just before midnight on the day of the filing deadline and it appears that there was a system failure at the critical time.
- 2.20 Companies House actively promotes the message to companies to use electronic filing. Whilst WebFiling is available to the most common types of companies, it is not yet available to all companies. The tenor of the Companies House publicity material was such that it was not apparent that WebFiling is not universally available and limited prominent information was provided for companies and LLPs which cannot WebFile. The lists of excluded companies were inconsistent and inaccurate. Disappointingly, in spite of a recommendation made in April 2011, screens were not updated to show that companies limited by guarantee could not file their accounts electronically before that facility became available to them in February 2013.
- 2.21 The Adjudicators dealt with a number of cases where companies limited by guarantee, Community Interest Companies (CICs) and Limited Liability Partnerships (LLPs) had attempted to file their accounts electronically, being unaware that they could not do so. In one case the partner of the LLP emailed the accounts to Companies House but they were rejected because statutory documents cannot be filed in this way. This appeal was upheld and the company given a date credit for the date of the email as the information that companies cannot file their accounts by email or fax was not readily available. Companies House has now amended the entry in guidance booklet GP2 'Life of a Company – Part 1 Annual Requirements' to show that statutory documents cannot be sent by fax or email or filed in PDF format.
- 2.22 In another appeal, the directors had not known that a CIC cannot file accounts electronically. The information that WebFiling cannot be used for such accounts was not readily apparent on the Companies House website. As a result of our recommendations, Companies House is in the process of revising the wording in leaflet GP2 to make it clear that the accounts and the form CIC34 must be delivered together and that currently this cannot be done electronically.
- 2.23 Companies House has now corrected the previous inconsistencies in the guidance about exceptions and is revising the wording on the insert enclosed with the reminder letter to convey the same information. The links in the electronic reminder have also been amended. Companies House uses a sophisticated Customer Experience programme, which the Independent Adjudicators have observed, in a continual effort to improve the user's experience of the system. There has been a major overhaul of WebFiling for abbreviated accounts which was relaunched and extended to all companies limited by guarantee on 11th February 2013.

Companies House Mislaid the Accounts

- 2.24 Companies House had confirmed receipt of a document from the company which it did not require. The appellant said that the accounts had been enclosed in the same envelope. It was clear that the accounts had been prepared prior to the deadline and the Adjudicator was willing to accept that they may have been contained in the envelope which was known to have arrived at Companies House.

Rejected Accounts

- 2.25 The Independent Adjudicators upheld two appeals over rejected accounts. In one case, it was accepted that the accounts which had been received before the filing deadline should not have been rejected. In another case, the error which led to a second rejection of the accounts should have been identified when the accounts were first rejected. The resultant delay in filing led to the imposition of a higher penalty and the Adjudicator found Companies House was responsible for the increase.

Overdue Accounts Notices Not Sent

- 2.26 A first overdue accounts notice is normally sent to a company within a few days of the filing deadline. This means that if the company acts promptly, it can file its accounts while a penalty in the first penalty band is payable. There is no legal obligation for the Registrar to send overdue notices. In one case, the directors forgot to file the accounts. No overdue notices were sent until about five months after the filing deadline, which meant that the company was disadvantaged compared to others by not receiving an earlier prompt that the accounts had not been filed.
- 2.27 In a second case, the notice was sent late so that a penalty in the next band was inevitable by the time the accounts were filed. The Adjudicator found that Companies House had contributed to the higher penalty. Other events sometimes cause a hold to be put on the company record with an unintended consequence that notices are not sent out until the hold is lifted. Companies House is looking into how this might be remedied.

Wrong or Misleading Advice or Information from Companies House

- 2.28 A company was restored to the register for the purpose of taking legal action. Companies House advised the company that it did not require any accounts or annual returns to be filed and did not send any reminder letters or overdue notices. A new company secretary filed a set of accounts seven months after what would have been the filing deadline and a late filing penalty was imposed. The Adjudicator upheld the appeal against the penalty, taking the view that it was unfair to specify that filing is not required, and then to impose a penalty for doing so.
- 2.29 The software used by another company's accountants for electronic filing did not provide enough space for the company's full name. The accountants said that they telephoned Companies House for advice and were told that the accounts would be acceptable if accompanied by a covering letter with the full company name. This was incorrect and the accounts were rejected. Although it was not possible to trace the call, the Adjudicator accepted that the call had been made and misleading advice given.
- 2.30 Extending the accounting reference date (ARD) of a company does not extend the filing deadline for its first accounts. If the change is made on paper, a DEB79 letter is sent advising the company of the consequences of the change. However, no such notification is sent when the change is made electronically. This will be remedied by June 2013. Companies House had rejected an appeal by a company's accountants on the grounds that the consequences of extending the ARD had previously been explained to them. The Adjudicator upheld the appeal because the failure to send the DEB79 to the company's directors on whom the legal responsibility to file the accounts rested had placed them at a disadvantage.

Other Observations and Recommendations

- 2.31 If a company is dissolved and removed from the register, the Registrar will generally not pursue any outstanding penalty. It has been agreed that Companies House will provide this information during the appeals process in appropriate cases, usually to dormant companies. On a number of occasions this has not been done and the Independent Adjudicators have drawn this to the attention of Companies House. Staff dealing with appeals have been reminded twice during the year to provide this information. **We ask that Companies House monitors the advice given in appeals about dissolution.**
- 2.32 As last year, the Adjudicators observed that although most appellants receive a full and clear reply, in some cases the replies contain errors, rely on standard paragraphs and sometimes do not address the appeal or completely miss the point being made. This makes the appellants feel that their letters are not fully read and that their appeal is not being given proper consideration. We provide feedback in such cases which we ask to be drawn to the attention of the individuals concerned. **We ask that staff dealing with appeals be asked again to take more care over their responses.** It might assist them to set out their understanding of the appellant's grounds for appeal at the start of their reply and then to deal with them in the body of the response, thus ensuring that key points are identified and dealt with.

3. COMPLAINTS

- 3.1 The Independent Adjudicators considered four complaints, one of which was partly upheld. They also dealt with complaints which were made in the course of an appeal.
- 3.2 The partially upheld complaint related to how Companies House had dealt with a request for a company's change of name. In this case, two companies both sought to change their names at the same time. The first company sought to take on an entirely new name whilst the second company wished to take over the name the first company was relinquishing. The document examiner dealt with the applications sequentially, the result being that the transaction for the first company was effected but the second transaction could not be, as the first company's original name was too similar to the name of another company currently on the register. Thus the original name of the first company was lost. As a result of recommendations made by the Adjudicator, specific guidance has been provided to all examiners who handle this type of name change to check both sides of the requested transaction before initiating the steps. Guidance has also been made available to examiners for cross jurisdictional name changes which are now done at the Companies House Cardiff offices to ensure that the change proposed is acceptable and to prevent time delays. Applicants for multiple name changes are now asked to present their application as a package rather than as separate requests.
- 3.3 In a second complaint, a company director applied for voluntary dissolution of the company of which he was now the sole director without notifying the creditors who included the two former directors and the company's accountant. One of the former directors complained about how Companies House had handled the application for voluntary dissolution and that Companies House had decided not to prosecute the director. A further complaint was that he had been forced to take legal action against the company as otherwise Companies House would have allowed its voluntary dissolution. A final element of the complaint was that Companies House had disclosed the identity of the accountant as an objector to the dissolution to the director. However, the accountant had authorised the disclosure. Companies House has explained the reasons why it did not advise the director that voluntary dissolution was inappropriate and to follow the liquidation route. It has also explained that the dissolution had been halted to allow the creditors to pursue what they were owed but could not be stopped indefinitely. The Registrar

could not refuse to dissolve the company unless its continued existence was required, for instance because it was the subject of legal action to recover money owing. The Adjudicator accepted that the decision not to prosecute the director was correct because it was not in the public interest to prosecute. The complaint was not upheld.

- 3.4 A third complaint related to a director who had experienced problems accessing his Companies House online account and obtaining an authentication code. Companies House had sent correspondence to an address to which he no longer had access and had eventually dissolved the company. The director complained that Companies House had acknowledged receipt of two emails and then denied that they had been received. His complaints were not upheld.
- 3.5 In the fourth complaint, the director of a company complained that she had been unable to file the company's annual return online and that it was inequitable that a higher fee should have to be paid for filing in paper form. She complained that the annual return had not been accepted by Companies House despite having been sent to them five times. She also complained that she had not been provided with details of the Companies House complaints procedure or about the Independent Adjudicators. None of her complaints were upheld.

Other Complaints

- 3.6 Ten appeals also contained one or more complaints, none of which were upheld. Four complaints were about how the appeal had been handled. In one case errors had been made such as failing to enclose a letter and a complaint was made of excessive delays which was not upheld. In two other cases, a complaint that the appeal had not been well handled was found to be without foundation. One of those cases included a complaint that the Senior Appeals Manager had not dealt with the appeal personally at the second stage of the process. She reviews all cases but, due to the volume of work, other staff respond on her behalf. The complaint was not upheld. In a fourth case, the first response to the appeal addressed the wrong grounds for appeal, the second response was addressed to the wrong company and the wrong individual. Companies House apologised for these errors.
- 3.7 Two complaints were made that a county court claim had been issued while the appeal was still being considered. Neither complaint was upheld. Two appellants complained that they had not been advised of the appeal process. A leaflet explaining the process is enclosed with the penalty notice and the information may readily be found on the Companies House website. The complaints were not upheld. One appellant complained that Companies House had instructed its debt recovery agents when he had written to appeal further, but his letter had not been received. He also complained about a delay in relation to a delay in removing an order under section 243 of the Companies Act 2006 for protected information not to be disclosed to credit reference agencies.
- 3.8 Companies House had apologised following a complaint that a letter of appeal enclosed with accounts had not been dealt with as such. Covering letters are separated from accounts and sometimes not recognised as requiring action. Reminders are regularly issued to staff to look carefully at covering letters before disposing of them.
- 3.9 In another case, the appellant paid the penalty in monthly instalments but had failed to follow the advice from Companies House to provide a reference, so Companies House had no way of knowing where to allocate the payment which was placed in a suspense account. As Companies House was unaware that the penalty was being paid, a letter was sent to the appellant advising that the penalty was outstanding and that if nothing was heard in a month, debt collection agents would be instructed. No reply was received and action to collect the debt

was taken. The complaint that debt collection agents had pursued payment of a penalty which had been paid was not upheld.

- 3.10 Another complaint was made that the appellant had been sent repeated letters to file the accounts when they had already been filed. The appellant had failed to understand the difference between the accounts and the annual return and the letters had been sent pursuing an overdue annual return.

4. CONCLUSION

- 4.1 Overall, the quality of the work done by Companies House staff considering appeals is very high. When a mistake is made, this is readily acknowledged and an apology made. We consider that Companies House staff strive to be fair and uphold appeals when it is appropriate to do so. Some of the appeals upheld by the Independent Adjudicators were as a result of information which had not been provided in the earlier appeals process.
- 4.2 There is usually a quick response to any recommendations we make and many of them are implemented without delay.
- 4.3 We would also like to comment again on the efficient and courteous support which we continue to receive from the Senior Appeals Manager and the team which assists us greatly in carrying out our task.



Dame Elizabeth Neville DBE QPM DL
29th May 2013

APPENDIX A

SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS

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

- 2.20 Our recommendations that the Companies House website makes it clearer which types of company cannot file their accounts electronically have been taken up in year. WebFiling has undergone a major overhaul and was relaunched on 11th February 2013. The inconsistencies in the exceptions pages have been remedied and guidance has been or is being updated.
- 2.21 The information that companies cannot file their accounts by email or fax was not readily available. Companies House has now amended the entry in guidance booklet GP2 'Life of a Company – Part 1 Annual Requirements' to show that statutory documents cannot be sent by fax or email or filed in PDF format.
- 2.22 The information that WebFiling cannot be used for CIC (Community Interest Company) accounts is not readily apparent on the Companies House website. As a result of our recommendations, Companies House is in the process of revising the wording in leaflet GP2 to make it clear that the accounts and the form CIC34 must be delivered together and that currently this cannot be done electronically. The information is provided on e reminder link and on the exceptions page.
- 2.28 If a company is dissolved and removed from the register, the Registrar will generally not pursue any outstanding penalty. It has been agreed that Companies House will provide this information during the appeals process in appropriate cases, usually to dormant companies. On a number of occasions this has not been done and the Independent Adjudicators have drawn this to the attention of Companies House. Staff dealing with appeals have been reminded twice during the year to provide this information. **We ask that Companies House monitors the advice given in appeals about dissolution.**
- 2.29 As last year, the Adjudicators observed that although most appellants receive a full and clear reply, in some cases the replies contain errors, rely on standard paragraphs and sometimes do not address the appeal or completely miss the point being made. **We ask that staff dealing with appeals be asked again to take more care over their responses.**

Recommendation from Complaint

- 3.2 Following a recommendation in a case where problems had arisen where an application had been made for simultaneous changes to company names, specific guidance has been provided to all examiners who handle this type of name change to check both sides of the requested transaction before initiating the steps. Guidance has also been made available to examiners for cross jurisdictional name changes which are now done at the Companies House Cardiff offices to ensure that the change proposed is acceptable and to prevent time delays. Applicants for multiple name changes are now asked to present their application as a package rather than as separate requests.

APPENDIX B OUTSTANDING RECOMMENDATIONS AND OBSERVATIONS FROM 2011/12

1. **Companies House is in the process of reviewing the WebFiling screens and instructions to make further improvements and have assured us that they will incorporate our view that the screens and instructions should make it explicitly clear that if a submission reference number has not been received, the submission may not have been successful.**
*As WebFiling screens have been altered and updated over the last year this issue has been highlighted and factored in. As Companies House moves away from filers needing to download a template for the dormant and abbreviated WebFiling options, the significance of a submission number in disputes over filing in the future may not be so acute.
A change is required to the joint filing template to make it clear that two confirmation emails will be sent, one to confirm receipt and another to confirm acceptance or rejection of the accounts. Such changes can only be made when HMRC makes changes and is not scheduled to take place before April 2014.*

2. **The Companies House pages on Webfiling make no mention that companies limited by guarantee cannot file their accounts online. It is recommended that Companies House advises staff in the Contact Centre to confirm the nature of a company and whether it can file its accounts electronically before giving advice on Webfiling. It is also recommended that companies limited by guarantee are added to the list of companies in the Webfiling section of the website which cannot file their accounts electronically.**
Companies limited by guarantee have been able to file dormant company accounts electronically since 9th July 2012 and abbreviated accounts from 11th February 2013. It is disappointing that the list was not amended in the intervening period as this recommendation was first made in April 2011.

3. **In a small number of appeals, the Independent Adjudicators observed that correspondence had either relied excessively on a formulaic reply, failed to address all the points made by the appellant, or contained errors which could either cause offence or give the impression that the appeal had not been properly considered. The staff dealing with appeals have been asked to take more care over their responses.**
Several training initiatives, quality monitoring and some continuous improvement workshops held during this period have focussed on improving the quality and consistency of replies.

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2011- 31st March 2012

TABLE OF CONTENTS

1. INTRODUCTION	3
2. APPEALS	3
VOLUME.....	3
REFERRALS TO THE REGISTRAR.....	4
GROUNDS FOR APPEAL AND SUCCESSFUL APPEALS.....	5
3. COMPLAINTS	8
4. CONCLUSION.....	10
APPENDIX A	11
SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS	
APPENDIX B	13
RESPONSE TO LAST YEAR'S RECOMMENDATIONS AND OBSERVATIONS	

LIST OF TABLES

TABLE 1	APPEALS FROM DORMANT COMPANIES.....	4
TABLE 2	REFERRALS TO THE REGISTRAR	4

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1st April 2011- 31st March 2012)

1. INTRODUCTION

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

2. APPEALS

VOLUME

- 2.1 The number of appeals increased again in 2011/12. The Independent Adjudicators dealt with 583 appeals during the year between 1st April 2011 and 31st March 2012, an increase of 116 over the previous year when we received 467 appeals. The number of appeals to the Independent Adjudicators has been increasing year on year. Rejections of accounts due to failing to incorporate the changes brought about by the implementation of the Companies Act 2006 increased considerably in the second half of 2010/11 and continued to have an impact in the early part of 2011/12, increasing the number of appeals. By 31st December 2010, all companies should have filed at least one set of accounts under the new legislation, reducing the number of rejections and appeals for this reason.
- 2.2 Small companies continue to appeal on the grounds that the penalties are very substantial and unaffordable, particularly in difficult economic times. Double penalties are now imposed for any company which files late, having also filed late the previous year. A private company filing more than six months late which has filed late the previous year will incur a penalty of £3000. Even though double penalties are explained and the penalty scales set out in the reminder letter and

insert sent to companies when the filing deadline is approaching, directors are often shocked by the amount when they receive a late filing penalty which gives rise to an appeal.

- 2.3 The numbers of appeals to the Independent Adjudicators from Dormant Companies continues to rise. See Table 1 below.

TABLE 1 APPEALS TO ADJUDICATOR FROM A DORMANT COMPANY

2008/9	2009/10	2010/11	2011/12
29	67	79	131

- 2.4 The larger penalties and the risk of incurring a double penalty are having the desired effect and compliance rates are improving, with a 99% compliance rate for the filing of accounts, 93.2% having been filed on time, the highest rates ever recorded. Compliance rates in the United Kingdom are believed to be higher than anywhere else in the world.

REFERRALS TO THE REGISTRAR

- 2.5 The fourth stage of the appeals process is an appeal to the Registrar. Companies House received 38,708 appeals against late filing penalties in 2011/12. About 1.5% of all appeals are referred to the Independent Adjudicators. Of those, to date 21% have been referred to the Registrar. See Table 2 below.

TABLE 2 REFERRALS TO THE REGISTRAR

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

- 2.6 The Registrar upheld three appeals which had been rejected by one of the Independent Adjudicators. In one case, when appealing to the Registrar, the director provided details of a telephone call to the Contact Centre. On listening to the recording, it became clear that she had been given an expectation that the penalty would not be collected.
- 2.7 The Registrar overturned the Independent Adjudicator's finding in a case where he felt that the combination of a computer crash and the discovery that two back up copies of the company's financial information had failed shortly before the deadline amounted to an exceptional circumstance. He also upheld the appeal in a case where the directors did not receive the company's authentication code and Companies House could not confirm that it had been sent, as no such record was kept at the time. A record of the date of posting of an authentication code is now kept.
- 2.8 From time to time, an Independent Adjudicator will also raise a query or identify a matter which should properly have been dealt with earlier in the appeals process which will result in

Companies House deciding not to collect a penalty without further reference to the Independent Adjudicators.

- 2.9 During the year 2011/12, the Independent Adjudicators upheld 26 appeals. Details are given below.

GROUNDS FOR APPEAL AND SUCCESSFUL APPEALS

Director Suffering Serious Illness or Catastrophe Shortly Before Deadline

- 2.10 A large number of appeals (113) were on the grounds that the director had been ill or had suffered a catastrophe. Such appeals can only be entertained for a sole director or where all directors are affected, and where the event occurred shortly before the filing deadline. The Adjudicators upheld six such appeals.
- 2.11 In one case, the Registrar had agreed not to collect the penalty for the 2008 accounts due to the illness of the sole director. The 2009 accounts were filed only two months later and the Adjudicator considered that the same reasoning should apply in both cases. In a second case, the sole director's illness had been of some duration but it had been misdiagnosed and not properly treated and he had been unaware of his inability to manage his affairs until its correct diagnosis.
- 2.12 In a third case, the appellant had taken the company in a divorce settlement made on the day in court and had no opportunity to ascertain its liabilities. In the fourth case, the company's second director had resigned and deleted the company's financial records shortly before the filing deadline. The company in the fifth case had suffered an irrevocable computer failure two days before the filing deadline. In the sixth case, the police had seized all the company's accounting information. Following a recommendation in the 2009/10 annual report, it had been agreed that Companies House would contact the body which had seized the information to ascertain whether or not the directors had sought or been allowed access to the company's accounting information. That had not been done in this case.

Problems with Webfiling

- 2.13 We received 97 appeals where the appellant had experienced problems with Webfiling. Some related to joint filing, which is an online service provided by HMRC and Companies House, which allows companies to submit their accounts to both bodies using a single online service.
- 2.14 Four of these appeals were upheld. In one case, there were response problems with the Companies House Webfiling system at the time that the appellant attempted to file the accounts. In two other cases, one for dormant accounts on the Companies House Webfiling system, and the other using the joint filing system, the appellants had not understood that they would reach a final screen with a unique submission reference number, receive a confirmation email and that their submission could not be considered to be successful without them.
- 2.15 Following our recommendation, the dormant company accounts screens were changed on 14th February 2012. However, the joint filing template can only be changed when HMRC makes changes. The user may believe that an email will only be sent in the event of a query about the accounts and not understand that two emails will be sent, one to confirm receipt and another to confirm acceptance or rejection of the document. No reference is made to the fact that a unique submission reference number will be received until the final screen. If the user does not reach the final screen, he or she may not realise that the submission has been unsuccessful. **Companies House is in the process of reviewing the WebFiling screens and instructions**

to make further improvements and have assured us that they will incorporate our view that the screens and instructions should make it explicitly clear that if a submission reference number has not been received, the submission may not have been successful.

- 2.16 In the fourth case, the accounts were filed at around midnight on the day of the filing deadline. The confirmation email was timed at one minute past midnight. The Companies House website says that the confirmation email should be received within a few minutes of submission. It was concluded that the timing of the confirmation email is not necessarily the same as the time of receipt and that the accounts may have arrived before midnight.

Companies House Mislaid the Accounts

- 2.17 In this successful appeal, Companies House had no record of having received the accounts by the deadline. It was accepted that the accounts had, more likely than not, been enclosed within the same envelope as another company's accounts which were received by the filing deadline.

Rejected Accounts

- 2.18 The Independent Adjudicators upheld four appeals where accounts had arrived at Companies House shortly before the filing deadline and been rejected, and amended accounts were not received until the deadline had passed. It was accepted in these four cases that the accounts may have been wrongly rejected. As Companies House does not retain a copy of rejected accounts, it is not always possible to ascertain with certainty whether the rejection was correct or not and in some cases, the appellant has been given the benefit of the doubt.

Death of Accountant

- 2.19 Generally, the death of an accountant cannot be accepted as a reason for not collecting a penalty as, although it is accepted that directors may secure the services of accountancy professionals, the legal responsibility to file accounts at Companies House rests with the directors and cannot be devolved. An appeal was upheld in one exceptional case, where the directors had done all that might be expected of them and the circumstances of the accountant's illness and death had frustrated their efforts.

Overdue Accounts Notices not Sent

- 2.20 For a period of some months, when accounts were received, rejected and amended accounts were not received at Companies House by the filing deadline, a fault in the computer system meant that overdue accounts notices were not sent. Some companies were unaware that their accounts were outstanding until they received the reminder letter for the following year's accounts. We upheld four appeals where this had happened. This fault was rectified on 13th July 2011.

Wrong or Misleading Advice or Information from Companies House

- 2.21 The Adjudicators are greatly assisted in dealing with appeals based on what appellants have been told when they have telephoned the Companies House Contact Centre by recordings of the conversations which are retained for a year. Calls to other numbers are not currently recorded, although plans are in hand to do so. If the appellant cannot give sufficiently precise information, such as the number called from and the time and date of the call, it is not always possible to trace a recording due to the volume of calls received.
- 2.22 We upheld five appeals based on the likelihood either of wrong or unclear advice having been given or callers having misinterpreted what they have been told. In one case, the caller thought he had been given the surprising advice to send his accounts to any tax office. It may be that he had become confused and was describing a telephone call to HMRC (Her Majesty's Revenue and Customs) but he was given the benefit of the doubt.

- 2.23 A second appeal was upheld because confusion arose which led to the caller thinking that the accounts he had sent by email had been accepted for filing. Accounts cannot be filed by email. In another appeal, the accounts had been made up to the wrong date and were rejected. The appellant was advised that he could change the ARD but was not told that he would have to file the rejected accounts again. In a fourth case, the advice on how to file dormant company accounts electronically was not completely clear and was misunderstood by the appellant.
- 2.24 On more than one occasion, callers from companies limited by guarantee have been advised by the Companies House Contact Centre that they can file their accounts online, a facility not yet available to such companies. If presenters do not discover this until very close to the deadline there may be no time to file a paper copy by the deadline. One such appeal was upheld.
- 2.25 The Companies House website's pages on Webfiling explain that Community Interest Companies and Limited Liability Partnerships cannot file their annual accounts online but make no mention of companies limited by guarantee. It does not become apparent that the accounts cannot be filed electronically until a user has logged on to commence the filing process. **It is recommended that Companies House advises staff in the Contact Centre to confirm the nature of a company and whether it can file its accounts electronically before giving advice on Webfiling. It is also recommended that companies limited by guarantee are added to the list of companies in the Webfiling section of the website which cannot file their accounts electronically.**

Delay

- 2.26 A dispute arose over whether accounts had been delivered by the filing deadline in January 2009, or were not delivered until nearly three months later, when a late filing penalty was imposed. The normal processes for collecting a penalty were not followed and there was a delay of over two and a half years before Companies House contacted the appellant about the unpaid penalty. This appeal was upheld because of the delay in pursuing the matter by which time the appellant no longer had the evidence which she said would have supported her appeal.

Postal Delay

- 2.27 The most common Accounting Reference Date (ARD) is 31st March, consequently the most common filing deadline is 31st December. Many companies leave it until the last minute to send their accounts to Companies House, failing to take into account the postal delays which occur over the Christmas period and the number of days on which there is no postal delivery due to the two Bank Holidays. Appeals on this basis are invariably unsuccessful.

Other Observations and Recommendations

- 2.28 In a number of cases, although the Adjudicators did not uphold an appeal, they made observations and suggestions which are summarised below. Companies House responds to these recommendations at the time that they are made and many have already been implemented.
- 2.29 **It appears that on occasion guidance leaflets are not enclosed with penalty notices. It was recommended that Companies House look into this.** The subcontractors who carry this out on behalf of Companies House have introduced an additional quality check to ensure guidance leaflets are always enclosed.
- 2.30 **The Independent Adjudicators made a recommendation about an inconsistency in the Late Filing Penalties Appeals Manual.** A new version of the Manual has been produced and the recommendation incorporated.

- 2.31 **A recommendation was made to amend the wording in Guidance Booklet GP6 (Registrar's Rules and Powers) about the Registrar's powers to accept non compliant documents.** The change was made on 25th October 2011.
- 2.32 **Companies House referred an appellant to a website which is no longer active.** Companies House has now placed that information on its own website and case officers have been advised to direct customers to the new link.
- 2.33 **It was recommended that the 'Get in Touch' page of the website should be amended to clarify that only the Belfast office of Companies House does not have a mailbox for after hours delivery.** This has been done.
- 2.34 In response to a recommendation made in the 2009/10 annual report, revised letters have been introduced which make the distinction clear between the criminal prosecution of directors for not filing their accounts and the late filing penalty imposed on the company when accounts are filed late. When prosecution action is deferred for 28 days, the letters now make it explicitly clear that the filing deadline has not been extended. However, in one appeal a letter had been sent which said that action would be deferred when it should have said that prosecution action would be deferred. This led the recipient to believe that the filing deadline had been extended. Companies House has advised its Compliance Teams to use greater precision in future.
- 2.35 **In a small number of appeals, the Independent Adjudicators observed that correspondence had either relied excessively on a formulaic reply, failed to address all the points made by the appellant, or contained errors which could either cause offence or give the impression that the appeal had not been properly considered. The staff dealing with appeals have been asked to take more care over their responses.**

3. COMPLAINTS

- 3.1 The Independent Adjudicators were asked to consider three complaints, one of which was partly upheld. They also dealt with complaints which were made in the course of an appeal.
- 3.2 A computer problem led to 1600 penalty reminder notices being sent in error. Within 48 hours, a letter of apology was sent to all the recipients. The complainant was the accountant of one of the companies which received the letter, even though the penalty had been paid following an unsuccessful appeal. He said that the error had caused his client to question whether the penalty had been paid which cast an aspersion on his integrity. This complaint was not upheld.
- 3.3 A second complaint related to a victim of fraud who had paid for a plane ticket which never materialised. She has since been unable to trace either the company or the person who sold her the ticket and the company has since been dissolved. She complained that Companies House did not verify the details provided by the company at the time of its registration or after the fraud took place. *The complaint was not upheld but the Independent Adjudicator identified that Companies House, when communicating with the complainant, failed to advise her that an application had been made to dissolve the company, depriving her of the opportunity to object to the dissolution and failing to protect her as a creditor of the company. Companies House made an ex gratia payment to the complainant.*
- 3.4 In a third case, the complainant complained that a company had been improperly dissolved in 1993 and that copies could not be provided of all the documentation at the time. This complaint was not upheld.

Other Complaints

- 3.5 Fifteen complaints were contained within appeals, two of which were upheld. One was a complaint about the computer problem which gave rise to the complaint at para 3.2. Another appellant complained about the handling of his appeal. This was not upheld.
- 3.6 In another case, the appellant complained that Companies House does not provide clear and accurate information, that he had not been informed how the company's ARD was determined and that he did not know about the changes in the requirements of the Companies Act 2006. He did not understand why the company was not exempt from the requirement to provide accounts, as it did not trade. The complaint was not upheld since Companies House had acknowledged its failure to give clear information.
- 3.7 A complaint about the attitude of Companies House staff in relation to overdue accounts and to their approach to the appellant's objection to the dissolution of another company was not upheld.
- 3.8 The appellant in another case complained about a number of other matters, none of which were upheld:
- that it is possible to file annual returns for the same period twice within a few minutes and be charged twice. This is correct. There is nothing to prevent a company filing its annual return more than once. The appellant said that he had been charged for more annual returns than he had filed. It was impossible to establish what had gone wrong.
 - The appellant also complained that he had received email confirmations intended for unconnected companies. Companies House has been unable to ascertain how this could have happened as emails are sent to the email address associated with the company's security and authentication codes.
 - He complained that Companies House did not post letters on the day on which they are produced. It was not possible to verify this.
 - He also complained that the Companies House systems are not infallible. This is not disputed but he did not provide any further information.
- 3.9 Another complaint was of a failure by Companies House to provide requested information and not using email to communicate reminders. This was not upheld. It is now possible to register for electronic reminders that accounts and annual return filing deadlines are approaching. Overdue accounts notices are still sent by post.
- 3.10 Complaints in another appeal asserted that Companies House had failed to meet its published timescale for processing the appeal, that the quality of its responses was poor, and that it investigates complaints made against itself. The complaints were not upheld.
- 3.11 A further complaint that letters were sent on behalf of the head of department who did not reply personally was not upheld. This is standard practice in many organisations and the volume of correspondence precludes the head of department writing to every correspondent.
- 3.12 A complaint that the appeal was dealt with at first and second stage by the same person was upheld. The appeal should have been considered by a different person at the second stage.
- 3.13 The final reminder to pay the penalty was sent while the appeal was still in progress. This happened while the appeal was being processed for the Independent Adjudicator and the complaint was not upheld.

- 3.14 A complaint was made that the form to record a new director should not have been sent to the company because it could not be accepted in paper form as the company was registered for PROOF (Protected online filing). The complaint was not upheld.
- 3.15 A further complaint related to where a company's accounts for the previous year had been wrongly accepted. The reasons for the rejection of the following year's accounts were not fully spelled out in the rejection letter. Incomplete advice was given about whether the previous year's accounts needed to be amended and filed again. The complaint was not well handled. This complaint was upheld and an apology was given.
- 3.16 The following complaints were also made in the course of an appeal. The reply to the appellant's first letter was sent to the wrong email address. A confirmation email was not received when the annual return was filed. The appellant was not advised that he could check on the company's filing status using WebCheck. The Independent Adjudicator apologised for the email address error but the remainder of complaint was not upheld.
- 3.17 Companies House mishandled correspondence which resulted in debt collection resuming. Companies House had already apologised which the Independent Adjudicator considered sufficient.
- 3.18 The appellant complained that she had not been treated sensitively in relation to a bereavement. It was found that she had been treated with sensitivity and her complaint was not upheld.

4. CONCLUSION

- 4.1 The Independent Adjudicators continue to be impressed by the quality of the work done by Companies House staff considering appeals, even when working under considerable pressure. New staff quickly reach that high standard. Mistakes happen from time to time but are readily acknowledged and an appropriate apology given. We consider that the culture of the staff considering appeals is one of fairness, and they are upheld if a case is made out. For that reason, the Independent Adjudicators have only upheld a small number of the appeals which were referred to them.
- 4.2 We would also like to comment on the efficient and courteous support which we receive from the Senior Appeals Manager and the team which assists us greatly in carrying out our task.



Dame Elizabeth Neville DBE QPM DL
28th June 2012

APPENDIX A SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS

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

Webfiling

- 2.15 **Companies House is in the process of reviewing the WebFiling screens and instructions to make further improvements and have assured us that they will incorporate our view that the screens and instructions should make it explicitly clear that if a submission reference number has not been received, the submission may not have been successful.**
- 2.25 The Companies House pages on Webfiling explain that Community Interest Companies and Limited Liability Partnerships cannot file their annual accounts online but make no mention of companies limited by guarantee. It does not become apparent that the accounts cannot be filed electronically until a user has logged on to commence the filing process. **It is recommended that Companies House advises staff in the Contact Centre to confirm the nature of a company and whether it can file its accounts electronically before giving advice on Webfiling. It is also recommended that companies limited by guarantee are added to the list of companies in the Webfiling section of the website which cannot file their accounts electronically.**

Other Recommendations

- 2.29 **It appears that on occasion guidance leaflets are not enclosed with penalty notices. It was recommended that Companies House look into this.** The subcontractors who carry this out on behalf of Companies House have introduced an additional quality check to ensure guidance leaflets are always enclosed.
- 2.30 **The Independent Adjudicators made a recommendation about an inconsistency in the Late Filing Penalties Appeals Manual.** A new version of the Manual has been produced and the recommendation incorporated.
- 2.31 **A recommendation was made to amend the wording in Guidance Booklet GP6 (Registrar's Rules and Powers) about the Registrar's powers to accept non compliant documents.** The change was made on 25th October 2011.
- 2.32 **Companies House referred an appellant to a website which is no longer active.** Companies House has now placed that information on its own website and case officers have been advised to direct customers to the new link.
- 2.33 **It was recommended that the 'Get in Touch' page of the website should be amended to clarify that only the Belfast office of Companies House does not have a mailbox for after hours delivery.** This has been done.
- 2.34 In response to a recommendation made in the 2009/10 annual report, revised letters have been introduced which make the distinction clear between the criminal prosecution of directors for not filing their accounts and the late filing penalty imposed on the company when accounts are filed late. When prosecution action is deferred for 28 days, the letters now make it explicitly clear that the filing deadline has not been extended. However, in one appeal a letter had been sent which said that action would be deferred when it should have said that prosecution action would be deferred. This led the recipient to believe that the filing deadline had been extended. Companies House has advised its Compliance Teams to use greater precision in future.

2.35 In a small number of appeals, the Independent Adjudicators observed that correspondence had either relied excessively on a formulaic reply, failed to address all the points made by the appellant, or contained errors which could either cause offence or give the impression that the appeal had not been properly considered. The staff dealing with appeals have been asked to take more care over their responses.

APPENDIX B

RESPONSE TO LAST YEAR'S RECOMMENDATIONS AND OBSERVATIONS

1. There have been a number of cases where appellants have reported conversations taking place with staff in customer facing teams where calls are not presently recorded, and it has been impossible to verify what has been said. **It is recommended that Companies House considers extending the recording of calls to all telephone numbers used by staff dealing with the public.** *Companies House intends to extend call recording to all customer facing teams in the current financial year.*
2. A rejection letter sent very close to the end of the period when a penalty in the first penalty band would be payable said: 'Please submit acceptable accounts without delay or the penalty may increase'. The appellant did so but by the time the accounts were received, a penalty in the second penalty band was payable. The appellant said he had understood the rejection letter to mean that the penalty would not increase if the accounts were returned promptly. The Independent Adjudicator agreed that the letter could have been interpreted in that way and upheld the appeal. The wording of this letter had caused confusion in other cases considered by the Adjudicators. **It was recommended that Companies House reviews the wording used in its rejection letters to ensure that there is no confusion over the penalty which will be payable when amended accounts are returned.** *The independent Adjudicators dealt with some similar cases in the early part of the current year but the change to the letters was implemented in May 2011.*
3. **The Adjudicators have asked Companies House to look at how often the system is working at full capacity and the plans to expand its capacity, given that users are being encouraged to file their accounts online rather than in paper form and that Companies House expects to mandate digital filing of the majority of filing services including accounts in a few years time. If presenters are expected or required to file their accounts online, wait until the last day which will be a day of peak usage, and then cannot access the system because it is busy, it could be argued that Companies House has played a part in any delay in filing the accounts. Server capacity has been much enlarged and should rarely reach capacity. The number of unsuccessful attempts to connect to webfiling at any given time can now be identified.**
4. Some directory enquiries services give obsolete telephone numbers and addresses for Companies House. This includes 192.com and the BT site 118500. They obtain their information through 'spider trawling' of the internet, which may produce out of date information. **It has been recommended that contact be made with the BT and 192 Directory Enquiries, to establish how they obtain their numbers and whether their entry can be made accurate.** *It is not possible to resolve this issue with the companies which use spider trawling. Most users obtain their contact information from the Companies House website and not by using directory enquiries.*
5. **On occasions when accounts are not acceptable for filing and are rejected on or after the filing deadline, a company is sent the wrong version of a standard rejection letter which gives the date of the deadline and says that for a penalty to be avoided the accounts must be returned by that date, when it is plainly impossible. It is intended to develop automated letters so that this mistake cannot happen, but it is recommended that in the meanwhile, staff take greater care in choosing which form of the rejection letter to send. Staff are taking extra care although the wrong wording is still used occasionally.**

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE

1st April 2010- 31st March 2011

TABLE OF CONTENTS

1. INTRODUCTION	3
2. APPEALS	3
VOLUME	3
REFERRALS TO THE REGISTRAR	4
GROUND FOR APPEAL AND SUCCESSFUL APPEALS	5
Implementation of the Companies Act 2006.....	5
Wrong or Misleading Advice or Information from Companies House/Legitimate Expectation.....	6
Problems with Webfiling	7
Director Suffering Serious Illness or Catastrophe Shortly Before Deadline	8
Ineffective Registered Office Address	8
Accounts Delayed or Lost in the Post.....	9
Penalty Disproportionate	9
Other Observations and Recommendations.....	9
3. COMPLAINTS	10
Other Complaints	10
4. CONCLUSION.....	11
APPENDIX A	12
SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS	12
APPENDIX B	13
RESPONSE TO LAST YEAR'S RECOMMENDATIONS AND OBSERVATIONS ..	13
Seizure of Material Needed to Prepare Accounts by Police or Other Investigative Body	13
Postal Strikes	13
Confusion over Deferment of Prosecution and Extension of Filing Deadline	13
Change to Accounting Reference Date (ARD)	13
Late Filing Appeals Manual	13
Covering Letter Enclosed with Accounts not Recognised as Appeal	14

LIST OF TABLES

TABLE 1	BREAKDOWN BY TYPE OF COMPANY .Error! Bookmark not defined.
TABLE 2	REFERRALS TO THE REGISTRAR Error! Bookmark not defined.

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1st April 2010- 31st March 2011)

1. INTRODUCTION

- 1.1 Three Independent Adjudicators, Dame Elizabeth Neville, Mr Leslie Cuthbert and Mrs Jessica Pacey are retained by Companies House. Our principal role is to deal with appeals against late filing penalties once they have passed through the first two stages which are internal to Companies House. If an appeal is not upheld by an Independent Adjudicator, the appellant may ask for the case to be referred to the Registrar who is the final arbiter in the appeals process.
- 1.2 The Independent Adjudicators also investigate complaints about delay, discourtesy and mistakes and the way in which complaints have been handled by Companies House. Again, there are two internal stages for consideration of a complaint. If the complainant remains dissatisfied, he or she may ask for the matter to be referred to one of us. If a complainant remains dissatisfied after a case has been considered by an Independent Adjudicator, he or she may approach a Member of Parliament and ask for the case to be referred to the Parliamentary and Health Service Ombudsman.
- 1.3 As our title indicates, we are entirely independent of Companies House. A brief outline of our professional profile may be found on the Companies House website. Our cases, whether appeals against late filing penalties or complaints, are allocated strictly by rotation to ensure distribution is random.
- 1.4 For ease of reference, our comments and recommendations are summarised in Appendix A. Appendix B contains an update on the comments and recommendations made in last year's annual report.

2. APPEALS

VOLUME

- 2.1 The number of appeals has continued to increase in 2010/11. The Independent Adjudicators dealt with 467 appeals during the year between 1st April 2010 and 31st March 2011, and upheld 10. This was an average of 38.9 cases a month, compared to an average of 27.8 for 2009/10, 8.8 for 2008/9 and 4.4 2007/8. We experienced a 44% increase on the previous year when 325 cases were referred to the Independent Adjudicators. .
- 2.2 The number of appeals had increased in 2009/10 following the higher late filing penalties and shorter penalty bands introduced on 1st February 2009 by the Companies Act 2006 for all accounts filed late after that date. They continued to increase rapidly following the full implementation of the Companies Act 2006. This was because companies failed to appreciate that the period allowed after the year end to file accounts had been reduced by a month, rejections of accounts increased considerably due to failure to comply with the requirements of the new legislation, and the fourteen day concessionary period previously

allowed to amend and return rejected accounts received shortly before the filing deadline had been withdrawn.

- 2.3 Now that most companies have filed one set of accounts under the Companies Act 2006, the number of rejected accounts has started to fall, and it is expected that the number of appeals should also reduce. However, this may be offset to some extent by the impact of a provision of the Companies Act 2006 which doubles the penalty for any company which files late having also filed late in the previous year. This takes effect in the second year that companies file their accounts under the Companies Act 2006, and double penalties have now started to be imposed.
- 2.4 The continuing difficult economic climate makes it more likely that companies receiving late filing penalties will appeal.
- 2.5 The objective of the late filing penalty regime is compliance and the changes seem to be achieving this result, with a 98.5% compliance rate for the filing of accounts, 91.5% having been filed on time, the highest rates ever recorded.
- 2.6 For the first time this year, appeals were received from companies in Northern Ireland, as they are now subject to the same legislation as the rest of the United Kingdom. The Independent Adjudicators considered 11 cases from companies registered in Northern Ireland and 33 from Scottish Companies.
- 2.7 The numbers of appeals to the Independent Adjudicators from Dormant Companies and Property Management Companies continues to rise. See Table 1 below.

TABLE 1 BREAKDOWN BY TYPE OF COMPANY

Number of Appeals to Adjudicator	2008/9	2009/10	2010/11
Dormant Companies	29	67	79
Property Management Companies	14	27	56

REFERRALS TO THE REGISTRAR

- 2.8 The fourth stage of the appeals process is an appeal to the Registrar. Companies House received approximately 44,000 appeals against late filing penalties in 2010/11. 93% were concluded at the first level. About 1% of appeals are referred to the Independent Adjudicators. Of those, 17% were referred to the Registrar. See Table 2 below.

TABLE 2 REFERRALS TO THE REGISTRAR

	Number of Cases Escalated to Registrar	% of Total Cases Dealt with by Adjudicators
2007/8	22	37
2008/9	21	20
2009/10	36	11
2010/11	78	17

- 2.9 The Registrar upheld one appeal which had been rejected by the Independent Adjudicator. This was a case where a company had suffered a severe flood at the director's home which was also the company premises, in which records were either destroyed or had to go into storage and the family had to move out. The flood occurred 17 days after the beginning of the accounting period and over 21 months before the filing deadline. The director and his family experienced various other difficulties in the intervening period. The Independent Adjudicator rejected the appeal but the Registrar accepted that the catastrophe had led to the late filing of the accounts and was a reason for not collecting the penalty.

GROUNDINGS FOR APPEAL AND SUCCESSFUL APPEALS

Implementation of the Companies Act 2006

- 2.10 The changes introduced by the Companies Act 2006 had a dramatic impact on the number of accounts which were rejected, as companies continued to file their accounts in the same format as the previous year. If accounts were received at Companies House close to the deadline and rejected, and amended accounts were not returned until the filing deadline had passed, a late filing penalty was imposed on the company, as the fourteen day concessionary period previously allowed to amend and return accounts had also been abolished. This accounted for almost the entire increase in appeals considered by the Independent Adjudicators, who considered 145 cases of this nature, but did not uphold any.
- 2.11 Companies House had sent a small leaflet (called a Z-card) to every company in the summer of 2009 which said: *'The Companies Act 2006 is changing the law for companies. These changes affect every company operating in the United Kingdom.'* The Z-card went on to outline some of the key changes and prompted companies to check the Companies House website. The new legislation made wide ranging changes of which Companies House chose what it considered the most important to include on the Z-card, whilst directing recipients to the website for further information. It did not refer specifically to the changes which would be required to companies' accounts. The Companies House website was formatted to ensure users were directed to the relevant legislation. Users were encouraged at every opportunity to use webfiling which would not allow accounts to be submitted which referred to the wrong legislation.
- 2.12 As the rejection rates for accounts were so high, part way through the year, from 16th August 2010, an amended insert was enclosed with the reminder letter which gave the four main reasons for accounts being rejected, in an effort to help companies prevent the rejection of their accounts. This did not point out that these were changes from the previous year, or that they resulted from the implementation of the new Companies Act. With the benefit of hindsight, the Adjudicators observe that if the insert had been amended sooner and been more specific, and if the reminder letter had highlighted the changes very visibly, some companies might have avoided a penalty.
- 2.13 The penalties imposed as a result of the many accounts which were filed close to the deadline and rejected because they continued to refer to the Companies Act 1985 when the 2006 Act was applicable caused much ill feeling, as the presenters had not had any intention of filing after the due date. Many presenters complained that Companies House had not telephoned or emailed them to let them know that the accounts had been rejected, or that their accounts had not been processed on the day of receipt. It is not possible for Companies House to do any of these things, due to the volume of documents (about 39,000) received for processing every working day.

- 2.14 Many presenters claimed to have had no knowledge that new legislation had been introduced or that the fourteen day concessionary period had been abolished. It was apparent that often the Z-card had not been read or understood, neither had the reminder letter or the insert. Many of those who incurred penalties were small or dormant companies, preparing their own accounts. However, a surprising number of accountants made mistakes, particularly in the early stages, in spite of the efforts made by Companies House to ensure that professionals who were likely to be preparing accounts were informed, for instance by advertising in professional journals.

Wrong or Misleading Advice or Information from Companies House/Legitimate Expectation

- 2.15 During the course of the year consideration was given to the public law issue of legitimate expectation. The particular cases involved staff at Companies House erroneously informing presenters who had telephoned for advice that even though the filing deadline had passed, a penalty would not be collected if the accounts were filed without delay.
- 2.16 The fundamental question in each case was whether Companies House had done or said something which has created a legitimate expectation that it would act in a certain way in a given set of circumstances. Customers are entitled to assume that the person to whom they are speaking on the telephone has the necessary authority to agree to waive the collection of the penalty. It is not acceptable for a public body to raise expectations that a penalty will not be collected provided accounts are promptly filed, then for it to change its mind after the customer has done what is requested.
- 2.17 Previous practice at Companies House had been to apologise for the wrong advice, but uphold the penalty. Companies House has now amended its procedures and staff have been reminded not to comment on whether a penalty will not be collected.
- 2.18 The Adjudicators upheld five appeals based on the likelihood either of wrong advice having been given or callers having been given a legitimate expectation that a penalty would not be collected.
- 2.19 In one case, accounts had been posted but not received. The filing deadline passed and an overdue accounts notice was sent. The director posted the accounts at once and said he twice phoned the telephone number on the notice and probably spoke to the person in the Compliance Section whose name appeared on it who said that no penalty would be collected. Calls to the Compliance Section are not recorded, but Companies House did not make any enquiry of the person to whom the director probably spoke. By the time the Independent Adjudicators received the appeal, too much time had elapsed for it to be likely that the conversation would be remembered, so the appellant was given the benefit of the doubt.
- 2.20 In another case, an appeal was also upheld because the appellants gave a convincing account of a telephone conversation with a member of Companies House staff backed up with some evidence, in which they said they had been told that the penalty would not be collected. Whilst that advice may not have been accurate or appropriate, as it was likely that the statement was made and had been relied on by the company, it was held that Companies House could not renege on the expectation which had been created and that the payment should not be collected.

- 2.21 There have been a number of cases where appellants have reported conversations taking place with staff in customer facing teams where calls are not presently recorded, and it has been impossible to verify what has been said. **It is recommended that Companies House considers extending the recording of calls to all telephone numbers used by staff dealing with the public.** Companies House is considering the feasibility of this suggestion.
- 2.22 The accounts for a property management company were received at Companies House after the filing deadline and when a penalty in the first penalty band was payable. They were rejected as they were not acceptable for filing. By this time, it was very close to the end of the period when a penalty in the first penalty band would be payable. The rejection letter said: 'Please submit acceptable accounts without delay or the penalty may increase'. The appellant did so but by the time the accounts were received, a penalty in the second penalty band was payable. The appellant said he had understood the rejection letter to mean that the penalty would not increase if the accounts were returned promptly. The Independent Adjudicator agreed that the letter could have been interpreted in that way and upheld the appeal. The wording of this letter had caused confusion in other cases considered by the Adjudicators. **It was recommended that Companies House reviews the wording used in its rejection letters to ensure that there is no confusion over the penalty which will be payable when amended accounts are returned.** This was implemented in May 2011.
- 2.23 In last year's annual report, the Independent Adjudicators commented on another standard letter sent by the Compliance Department which led some recipients to believe that the filing deadline had been extended, when it was prosecution action which had been deferred. This letter was amended and its meaning clarified, but the Adjudicators continued to receive appeals before it was brought into use in October 2010, two of which were upheld.
- 2.24 The appeal was upheld in a case where repeated attempts had been made to file the accounts online on the date of the deadline which is usually the last day of the month. Demand is much higher on those days, and it seems that the system can be busy, making it difficult for presenters to gain access in order to file the accounts. In this case, the appellant had tried repeatedly without success. The appeal was allowed because it was accepted that the director had been told by a member of Companies House staff that, as she had been unable to file the accounts due to server incapacity, the company would not be penalised. It was found that she was given a legitimate expectation that the volume of traffic on the server would be a justification for the late submission of the accounts. Companies House has been asked to check on server capacity, both current and future, as demand increases with greater use of webfiling. This issue is referred to in para 2.27.

Problems with Webfiling

- 2.25 The appellant in this case believed that she had successfully filed her accounts online, as she received an email acknowledgement. However, she had made some other electronic transactions, and the acknowledgement referred to one of those. The acknowledgement email did not specify the nature of the transaction to which it had referred although it bore the submission number provided to the user at the completion of the transaction. The appeal was upheld as the failure of the acknowledgement to specify the type of document to which the submission number referred could lead to confusion. Companies House has now changed the wording on its confirmation emails.
- 2.26 The Independent Adjudicators have dealt with a number of cases where appellants have complained that they tried to file their accounts online on the day of the deadline and were unable to access the system (see para 2.24). Companies House says that the system can be busy at times of peak use and that users should keep trying. Companies House may

allow an appeal if the webfiling system is down, but does not allow appeals when the system is functioning normally but experiencing high demand.

- 2.27 **The Adjudicators have asked Companies House to look at how often the system is working at full capacity and the plans to expand its capacity, given that users are being encouraged to file their accounts online rather than in paper form and that Companies House expects to become a fully electronic registry within the next few years. If presenters are expected or required to file their accounts online, wait until the last day which will be a day of peak usage, and then cannot access the system because it is busy, it could be argued that Companies House has played a part in any delay in filing the accounts.** This work was initiated in May 2011 and is in train.

Director Suffering Serious Illness or Catastrophe Shortly Before Deadline

- 2.28 A large number of appeals (81) were on the grounds that the director had been ill or had suffered a catastrophe. Such appeals can only be entertained for a sole director or where all directors are affected, and where the event occurred shortly before the filing deadline.
- 2.29 The Adjudicators upheld the appeal in a case of a property management company where the delay in submission was not the fault of the directors but of the developer, which went into administration without transferring the company to the director and without filing the accounts.
- 2.30 A director of three dormant companies, who was the sole director of two of them, also looked after the affairs of the holding company. The companies' offices were at his home address. He died suddenly and unexpectedly. Companies House decided not to collect the penalties for the two companies where the deceased had been the sole director. His widow and one of the other directors who was also a close friend made strenuous efforts to file the accounts. One of the letters sent by Companies House was very unclear and gave rise to the belief that the filing deadline for one of the companies had been extended. The Independent Adjudicators took the view that although the deceased man had not been a director of the holding company, the reasons for the late filing were the same for all four companies and none of the penalties should be collected.
- 2.31 In another case, a company had a perfect record of filing its accounts since 1963. The 86 year old director who habitually took responsibility for the running of the company and the filing of the accounts had a serious accident. The company had four other directors but one was his wife on whom the accident had an impact and a combination of events meant that none of the others were able to step in. The appeal was upheld but the directors were advised to improve their contingency planning in the event of one director being incapacitated.
- 2.32 Another company had filed its accounts late because the director had been overwhelmed by the breakdown of his marriage, the struggle to obtain the funds to pay the divorce settlement and the burden of running his business single handed following a reduction of staff. This was compounded by his dyslexia which appeared to adversely affect how he understood the correspondence he received.

Ineffective Registered Office Address

- 2.33 The appeal was upheld in a case where a property management company changed agents and updated its registered office address to the address of its new agents. Shortly afterwards, a further notification which bore a date which predated the first change of registered office address notification was received at Companies House and processed,

which changed the address back to the address of the former agents. Companies House correspondence was sent to the former agents and was not received by the company or its new agents. In due course a notice was received by the directors but, as it did not specify what document was overdue, it was mistakenly thought to refer to the Annual Return which was due at that time. Whilst it was understandable that Companies House staff should not have noticed that the second notification predated the first, its acceptance had led to the late filing and the appeal was upheld.

Accounts Delayed or Lost in the Post

- 2.34 Accounts continue to go astray in the post, and companies appeal, even though the insert enclosed with the reminder letter says that delays or losses in transit cannot be accepted as a reason for late filing. The insert previously reminded companies to check that their accounts had been received and accepted for filing, but this has now been replaced by other information considered more important. As an increasing number of companies file their accounts online, this should become less of a problem.

Penalty Disproportionate

- 2.35 The impact of the penalty prompts many small and dormant companies and companies which are charities or operate for public benefit to appeal. They view the penalty as disproportionate and unfair, frequently referring to the current economic situation.

Other Observations and Recommendations

- 2.36 In a number of cases, although the Adjudicators did not uphold the appeal, they made observations and suggestions which are summarised below.
- 2.37 In several cases, it became apparent that the appellant was dyslexic. Companies House has now taken advice from the Dyslexia Association. When such appeals are received, the case managers and the Independent Adjudicators now present their correspondence in a format which may be more easily read.
- 2.38 The Independent Adjudicators considered a case where the appellant said that he had been given a wrong number for Companies House by directory enquiries. It was established that the telephone number on Yell.com, which is a subscriber service for which Companies House pays, is correct. A search on 118118 also produces the correct telephone number and address. The obsolete number and an incorrect postal address were found when a search was made on 192.com and on the BT site 118500. The Companies House Communications Department has explained that when a directory enquiry site obtains information through 'spider trawling' of the internet, information may be obtained from old entries which will produce an out of date telephone number. Because there is no control of old data on the internet, there is little Companies House can do about this. **It has been recommended that contact be made with the BT and 192 Directory Enquiries, to establish how they obtain their numbers and whether their entry can be made accurate.**
- 2.39 **On occasions when accounts are not acceptable for filing and are rejected on or after the filing deadline, a company is sent the wrong version of a standard rejection letter which gives the date of the deadline and says that for a penalty to be avoided the accounts must be returned by that date, when it is plainly impossible. It is intended to develop automated letters so that this mistake cannot happen, but it is recommended that in the meanwhile, staff take greater care in choosing which form of the rejection letter to send.**

3. COMPLAINTS

- 3.1 The Independent Adjudicators were asked to consider four complaints, one of which was upheld and another partly upheld. They also dealt with a number of complaints which were made in the course of an appeal.
- 3.2 Two complaints related to the submission of annual returns. The first complainant also complained about how his complaint had been processed. His complaints were not upheld.
- 3.3 The second complaint stemmed from the initial losing by Companies House of the 2009 annual returns for two companies and the request for further copies to be supplied. The complainant had declined to do so without an assurance that further filing fees would not be charged and sought an ex gratia payment for his trouble. Companies House lost sight of the fact that the annual returns had been filed and the companies' legal obligations discharged, even though the record was not up to date and told the complainant that he risked prosecution if he did not file the returns. The complaint was upheld.
- 3.4 A further complaint was by a liquidator who complained that Companies House struck the company from the register, despite having been notified of his appointment as liquidator. The liquidation documents were received two working days before the company was struck off. They were processed four working days after receipt, but by then the company had been struck off. The complaint was not upheld.
- 3.5 A complaint was upheld where Companies House stated that they had sent a letter of dissolution by recorded delivery to a company which was not received. Companies House said that the company should take the matter of delivery of the letter up with the postal service but, despite requests, never provided the details of the recorded delivery to enable the company to be able to do so.
- Other Complaints**
- 3.6 The following complaints were contained within appeals of which one was upheld.
- 3.7 One case was upheld because Companies House had failed to address the points made in the complainant's letter, standard letters had been sent, and letters from Companies House continued to address her as Mr, even though she had made her gender clear.
- 3.8 In another appeal, the complaint was that the appeals booklet had not been enclosed with the late filing penalty invoice, and that a request for the date of receipt of a letter was not responded to. This complaint was not upheld.
- 3.9 Two complaints involved deaf appellants. In the first case, a profoundly deaf appellant complained that he was not permitted an oral hearing of his appeal, explaining that his literacy was affected by his deafness. This case was not upheld as the procedure for dealing with appeals is conducted only in writing to provide an audit trail and there is no option to have an oral hearing for any appellant. The second case was along similar lines. In both cases, the Adjudicator determined that the appellants had not suffered any disadvantage by only having the opportunity to make written representations
- 3.10 A further complaint was about poor service from the Contact Centre and was not upheld.
- 3.11 Another appellant complained that he had not received a copy of a guidance booklet he had asked for, that he had requested an authentication code but had not received it, that he had

been subject to systematic abuse by Companies House for which he was entitled to compensation. It was found that he may not have been sent the leaflet but this was not considered a matter worthy of any formal finding, that failure to provide an authentication code had not prevented the filing of the accounts, and that there was no evidence of abuse or any reason to pay compensation. The complaint was not upheld.

- 3.12 In another case, the appellant complained that he had not been made aware that lengthening the accounting reference date would not change the filing deadline and none of the correspondence accepting the change to the ARD had reminded him of the filing deadline. The complaint was not upheld as on receipt of the reminder letter, the complainant had wrongly assumed that Companies House had made a mistake in keeping the same filing deadline.

4. CONCLUSION

- 4.1 The Independent Adjudicators continue to find the staff at Companies House unfailingly thorough, accurate and helpful, even under the enormous pressure caused by the volume of work in the last year. Companies House monitors work volumes and takes steps to manage it without any diminution of quality. The Adjudicators have only upheld a small number of cases because, where something goes wrong, in most cases, Companies House is quick to recognise it and take steps to put it right.

Elizabeth Neville DBE QPM

15th July 2011

APPENDIX A

SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS

- 2.21 There have been a number of cases where appellants have reported conversations taking place with staff in customer facing teams where calls are not presently recorded, and it has been impossible to verify what has been said. **It is recommended that Companies House considers extending the recording of calls to all telephone numbers used by staff dealing with the public.** Companies House is considering the feasibility of this suggestion
- 2.22 A rejection letter sent very close to the end of the period when a penalty in the first penalty band would be payable said: 'Please submit acceptable accounts without delay or the penalty may increase'. The appellant did so but by the time the accounts were received, a penalty in the second penalty band was payable. The appellant said he had understood the rejection letter to mean that the penalty would not increase if the accounts were returned promptly. The Independent Adjudicator agreed that the letter could have been interpreted in that way and upheld the appeal. The wording of this letter had caused confusion in other cases considered by the Adjudicators. **It was recommended that Companies House reviews the wording used in its rejection letters to ensure that there is no confusion over the penalty which will be payable when amended accounts are returned.** This was implemented in May 2011.
- 2.27 **The Adjudicators have asked Companies House to look at how often the system is working at full capacity and the plans to expand its capacity, given that users are being encouraged to file their accounts online rather than in paper form and that Companies House expects to become a fully electronic registry within the next few years. If presenters are expected or required to file their accounts online, wait until the last day which will be a day of peak usage, and then cannot access the system because it is busy, it could be argued that Companies House has played a part in any delay in filing the accounts.** This work was initiated in May 2011 and is in train.
- 2.38 Some directory enquiries services give obsolete telephone numbers and addresses for Companies House. This includes 192.com and the BT site 118500. They obtain their information through 'spider trawling' of the internet, which may produce out of date information. **It has been recommended that contact be made with the BT and 192 Directory Enquiries, to establish how they obtain their numbers and whether their entry can be made accurate.**
- 2.39 **On occasions when accounts are not acceptable for filing and are rejected on or after the filing deadline, a company is sent the wrong version of a standard rejection letter which gives the date of the deadline and says that for a penalty to be avoided the accounts must be returned by that date, when it is plainly impossible. It is intended to develop automated letters so that this mistake cannot happen, but it is recommended that in the meanwhile, staff take greater care in choosing which form of the rejection letter to send.**

APPENDIX B RESPONSE TO LAST YEAR'S RECOMMENDATIONS AND OBSERVATIONS

Seizure of Material Needed to Prepare Accounts by Police or Other Investigative Body

- 2.12 The Companies House stance has been to reject such appeals on the grounds that the police or other enforcement/investigative body will always allow access or provide copies to allow accounts to be prepared. It is by no means certain that this is the case and the Adjudicators asked Companies House to look at this issue again.

When an appeal of this type is received, Companies House contacts the body which has seized the material to ascertain the position.

Postal Strikes

- 2.17 In the event of another postal strike, if the Registrar should again decide that appeals based on a postal delay caused by the strike should be allowed, it is suggested that this should be extended to accounts which have been lost in the post in the same circumstances. *Companies House has accepted this recommendation.*

Confusion over Deferment of Prosecution and Extension of Filing Deadline

- 2.23 Commonly, appellants fail to understand the distinction between the criminal prosecution of directors for not filing their accounts and the late filing penalty imposed on the company when accounts are filed late. If they enter into communication with Companies House about when they are going to file their overdue accounts, they will be sent a letter which tells them that prosecution will be deferred for 28 days to allow the accounts to be submitted, but that a late filing penalty will be imposed when the accounts are filed. It is not uncommon for them to think that they have been given another 28 days to file their accounts, resulting in appeals against the late filing penalty which is later imposed. Although the letters are clear, the Adjudicators suggested that the wording could be improved to make it explicitly clear that the filing deadline has not been extended.

These letters have now been more clearly worded and the revised letters came into use in October 2010.

Change to Accounting Reference Date (ARD)

- 2.24 When accounts are rejected because they are made up to the wrong date, the covering letter points this out, and also gives advice on changing the ARD if it is wished to do so, together with the relevant form (form 225 or AA01), giving the date by which it must be done, which is the filing deadline. It is not helpful to introduce the option of changing the ARD and enclosing a form to do so in cases when it is not possible as the filing deadline has already passed or will have passed by the time the letter is received, and has caused confusion and further delay in some cases. It was suggested that a different rejection letter should be sent in such cases.

This forms part of the Companies House Query Handling and Validation Improvement Project, which is looking at all current rejection letters and steps are now being taken to change the letter formats.

Late Filing Appeals Manual

- 2.27 It was suggested that Companies House review whether the Late Filing Appeals Manual is still required and if so, how it can be accessed on its website. A search on the website for 'Late Filing Appeals Manual' brings up guidance leaflet GBA11 (Late Filing Penalty Appeals) which relates to the 1985 Act and has a link to the manual in para 10. Leaflet GP5 which

refers to the 2006 Act and is entitled 'Late Filing Penalties' makes no reference to the Late Filing Penalty Appeals Manual.' If the Manual is still required, it should be dated, as currently it is an undated document. Scenario 9.3 (illness of a sole director's immediate family member) of the Late Filing Appeals Manual makes no mention of the fact that the illness should have occurred shortly before a filing deadline for a penalty not to be collected. It was suggested that the wording be reviewed. Companies House has advised the Adjudicators that this will be rectified and that the new version of the Manual will be placed on the website under Frequently Asked Questions (FAQ).

The Late Filing Appeals Manual has been updated, is now dated and can be accessed through guidance leaflet GP51 (Late Filing Penalties) and via Frequently Asked Questions. The former Scenario 9.3 is now to be found in Chapter 4, Section 10, Scenario 4, and has been updated to show that the illness should have occurred shortly before the filing deadline.

Covering Letter Enclosed with Accounts not Recognised as Appeal

- 3.13 In last year's annual report, comment was made that on occasion the covering letter sent with the accounts is not recognised as an appeal against the late filing penalty by the document examiners. Companies House has taken steps to reduce the number of occasions when this occurs, but the Adjudicators are still seeing instances of this. It is recognised that oversights will occur, but it is suggested that Companies House looks again at how this can be kept to a minimum.

The Independent Adjudicators have only seen a small number of these cases in the last year.