

# **ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE**

**1<sup>st</sup> April 2015 - 31<sup>st</sup> March 2016**

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# ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1<sup>st</sup> April 2015 - 31<sup>st</sup> March 2016)

## 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](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

### NUMBERS OF CASES AND TYPES OF COMPANY

- 2.1 We considered 306 appeals during the year between 1<sup>st</sup> April 2015 and 31<sup>st</sup> March 2016, 1% of the total number of appeals received by Companies House and almost exactly the same number as the previous year. The number of appeals to us has now dropped and stabilised after the increase which followed the changes introduced by the Companies Act 2006. See Table 1. We upheld 18 (5.8%) appeals, compared to 16 (5.2%) last year.

**TABLE 1      NUMBERS OF APPEALS**

|       | 2008-9 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|-------|--------|---------|---------|---------|---------|---------|---------|---------|
| TOTAL | 105    | 325     | 467     | 583     | 466     | 391     | 305     | 306     |

- 2.2 In 2014/15 over 20% of the appeals we received were from directors of newly incorporated companies filing their first accounts. It was evident that directors frequently do not know what is required of them. In 2015/16, the percentage has fallen to around 15%. Since 1<sup>st</sup> October 2013 Companies House has been sending first time directors of newly incorporated companies and also all first time directors appointed to existing companies a 'First Directors letter' to improve their understanding of their responsibilities, including the need to file accounts by the filing deadline. This will have started to have an effect from the first filing deadlines for the new companies from June 2015. Since October 2015, Companies House has been sending letters to all newly appointed directors, whether they have previously been directors or not (the New Director Letter), which should further improve compliance. Any effect will start following the filing deadline for the first accounts for the new companies from June 2017.
- 2.3 **The Adjudicators suggested that the New Director Letter could give more information about the statutory requirement to file accounts and annual returns and refer explicitly to the guidance document GP2 Life of a Company – Annual Requirements, an important and informative document with which they should familiarise themselves. They have also suggested that a similar letter should be sent to members of new LLPs,** which is not currently done. The letter has now been amended and issued from 30<sup>th</sup> June 2016. Companies House does not plan to send a similar letter to members of LLPs. We have been advised that the success of the New Director Letter will be reviewed and, if compliance by new companies improves, consideration will be given to sending similar letters to new members of LLPs. Any effect of the revised letter will not commence until 1<sup>st</sup> April 2018, when the first of the new companies will reach the filing deadline for their first accounts.
- 2.4 As in previous years, we continue to receive a high number of appeals from dormant companies (about 28%). 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 are often not central in their minds or seen as companies in a 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 | 2015/16 |
|--------|---------|---------|---------|---------|---------|---------|---------|
| 29     | 67      | 79      | 131     | 118     | 120     | 92      | 87      |

- 2.5 The compliance rate for companies filing their accounts remains very high at over 99%. The percentage of accounts filed on time has stabilised at the very high figure of 94.4%. In over 20% (63) of the appeals we considered in this last year, the company had incurred a double penalty, which means that its accounts had been filed late the previous year. We encountered a number of cases where companies filed after the deadline year after year, without altering their behaviour following the imposition of penalties, which were often unpaid, resulting in a county court judgment against the companies. Although compliance overall is exceptionally high, there are a small number of companies which repeatedly fail to meet the statutory requirement to file accounts by the deadline.

## REFERRALS TO THE REGISTRAR

- 2.6 The fourth and final stage of the appeals process is an appeal to the Registrar. Companies House received 29090 appeals against late filing penalties in 2015/16. 1% of all appeals were referred to the Independent Adjudicators. 20% (62) 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  |
| 2014/15 | 68                                     | 22  |
| 2015/16 | 62                                     | 20  |

- 2.7 The Registrar upheld four appeals which had been rejected by an Independent Adjudicator, three of which had been determined during the previous year, 2014/15, and one in the current year. In one case, one of the two directors, who were husband and wife, was under house arrest in the United States at the time of the filing deadline. In the appeal to the Registrar, it was disclosed that records held at the company's registered office had been destroyed. In a second case, the company provided evidence to the Registrar that, despite repeated requests, documents were not returned by the police. In the third case, one director had died and the remaining director's wife was ill. The Registrar considered that the circumstances were exceptional. The fourth appeal upheld by the Registrar related to an intermittent problem experienced by a small number of users of Google Chrome when using WebFiling. Companies House staff have been made aware of the issue so they can assist users and take the problem into account when considering appeals.

### UPHELD APPEALS

- 2.8 During the year 2015/16, the Independent Adjudicators upheld or partly upheld eighteen appeals.

#### **Director of Company Experiencing Catastrophe Shortly Before Deadline Four Appeals Upheld**

- 2.9 The greatest number of appeals to the Adjudicators (96 or 31%) 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. The Registrar generally allows such appeals only if the event occurred shortly before the filing deadline and made it impossible or unrealistic either to file the accounts on time or to seek an extension to the filing deadline. The Adjudicators upheld four such appeals.

- 2.10 Two of the four members of an LLP were engaged in a legal dispute with the other two members who held all the information needed to prepare the accounts. This made it impossible for the first two members, whose legal action was ultimately successful, to file accounts of any kind for three years, even qualified accounts using estimated figures. It was agreed that this was an exceptional situation.
- 2.11 The sole director of a second company suffered a catastrophic head injury eight months before the deadline and was not able to work for nine months. He was unable either to deal with business matters or delegate them throughout that period.
- 2.12 In the third case, the sole director had been suffering from a serious illness for some time, of which one of the symptoms is memory loss. This became much more severe immediately before the filing deadline, and she did not receive the reminder to file the accounts as it was sent to the accountants who did not prompt her to file them.
- 2.13 One of three directors of a dormant company was in Kazakhstan with his terminally ill wife. He believed that he had successfully filed the accounts on line and failed to check that the filing had been successful due to the condition of his wife, who died a few days later. It was accepted that the circumstances were exceptional.

### **WebFiling One Appeal Upheld**

- 2.14 The second most common ground for appeals to the Adjudicators (75 or 24%) is users experiencing some problem with WebFiling or the HMRC/Companies House joint filing system. In some cases, (14) users encountered a problem with the joint filing system. Although the Adobe software in use was updated in the summer of 2015 users continue to experience problems. When users access corporation tax on HMRC Online Services, they are offered CATO software as an alternative to Adobe. This is proving to be an improvement, and is quicker with a higher satisfaction rate. The Adobe product will be available until the end of 2016 when the system will migrate to CATO.
- 2.15 In 2011 the Adjudicators identified that the penultimate and the final Companies House screens in the Joint Filing system lack clarity. Furthermore, the information that following submission, Companies House will send an email to confirm receipt and another to confirm if the accounts have been accepted or rejected is only found by following a link on the front page entitled 'How Joint Filing Works'. This means that users may not realize that their accounts have not been submitted. Companies House accepted that improvements could be made but this needed to be done in conjunction with HMRC as the owners of the system. It seems that due to an oversight this did not occur at the scheduled time in 2014.
- 2.16 Companies House intends to make changes to the front page in September 2016 so that the user is provided with the information at the start of the filing process, pending the migration to CATO. CATO has a progress bar and which leaves the user in no doubt whether the accounts have been submitted or not. The final screen advises that two emails will be sent, one to confirm successful submission and the other to advise if the accounts have been accepted or rejected.
- 2.17 In 11 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, is sent by post to the company's registered

office. If it was too late to send the accounts in paper form or it was not realised that this was possible, this resulted in the deadline being missed.

- 2.18 The Adjudicators upheld one appeal where the Companies House computer system showed that the accounts had been delivered after midnight but the appellant produced evidence from their computer and server to show that the accounts had been delivered shortly before midnight on the day of the deadline. Companies House identified that not all its servers were set to the same time following a power outage. It is now ensured that the server times are all synchronized when systems are reset.

### **Wrong or Misleading Advice or Information from Companies House Five Appeals Upheld**

- 2.19 In a substantial number of appeals to the Adjudicators (68 or 22%), the appellant said that Companies House caused or contributed to the delay. Five such appeals were upheld or partially upheld.
- 2.20 In two cases, a company's accounts were filed after the filing deadline. In both cases, the director accepted that a penalty was payable but contended that the overdue accounts notice (DEFSTAT) which was sent when the deadline passed was misleading and caused him to believe that he had a further 28 days to file the accounts. This resulted in a further delay during which time the penalty rose to the next penalty band. The Adjudicators have previously observed that the notice could be clearer and it has now been reworded. The Adjudicator accepted that the misunderstanding of the overdue accounts notice was the reason for company incurring a penalty in the higher penalty band.
- 2.21 The Independent Adjudicators recommended in their 2013-14 and 2014-15 Annual Reports, and Companies House accepted, that the DEFSTAT should be reworded as it may be misunderstood. The change took over two years from when it was first recommended because it formed part of a wider review. In May 2015 the new notice was issued which brings it in line with other Companies House standard letters and 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.
- 2.22 The Adjudicators consider that it is unfair for Companies House staff to continue to reject appeals on grounds which have previously been accepted by the Adjudicators. The misunderstanding of the meaning of the DEFSTAT was such an example. We make the following recommendation:  
**It would promote fairness if staff considering appeals were made aware of accepted appeals and recommendations by the Adjudicators, which may affect future appeals, as appeals on similar grounds should be favourably considered.** This is particularly important if there is a long delay, in this case two years, before a recommendation is implemented. Companies House has acted on this recommendation, reviewing the outcomes of cases monthly and providing the relevant information to staff dealing with appeals, updating guidance and providing appropriate training.
- 2.23 In a further three cases, the advice or information provided by Companies House led to the penalty rising to the next band. In one case, the director thought he had successfully submitted the accounts using the joint filing system. On receipt of the overdue accounts notice, he telephoned Companies House and was given advice which led to a further delay and the

penalty rising to the next band. The Adjudicator agreed that the advice led to the penalty rising to the next band.

- 2.24 The other two cases related to accounts which were rejected. In one case, not all the reasons were given for the accounts having been rejected and the amended accounts were again rejected, resulting in the penalty rising to the next band. In the other case, the accounts were late when first presented and rejected. The accountant asked Companies House for advice on how to present the accounts and was not sent a reply. As a result, there was a delay in submitting acceptable accounts and the penalty increased.

### **Rejected Accounts One Appeal Upheld**

- 2.25 In 29 cases (9%) 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.
- 2.26 In addition to the two appeals described in para 2.24, one further such appeal was upheld by the Independent Adjudicators. The company was liable to a penalty in the first penalty band but there was a delay in sending the rejection letter which prevented the director from rectifying the error in the accounts before the penalty rose to the next band.
- 2.27 A number of appeals which we considered related to a company which was liable to a penalty because the accounts were late when first received at Companies House, but some action by Companies House caused a further delay and the penalty rose to the next band. When such appeals are upheld, the company should not have to pay the increased amount. Because the Registrar does not have the power to reduce a penalty, Companies House does not have a straightforward mechanism for handling such cases and deals with them by requiring payment of the penalty in full and making an ex gratia payment for the difference between the two amounts. Companies House accepts that this is not a customer friendly process, particularly when it has been responsible for the increase in the amount of the penalty. It is developing a more customer friendly mechanism. We set out our recommendation as follows:  
**We recommend that Companies House develops a simple mechanism for dealing with cases where a company is liable to a penalty but Companies House has contributed to it increasing to a higher band.**
- 2.28 Because of the difficulty such cases cause, we have observed that Companies House staff dealing with appeals persist in insisting that the full amount must be paid, even when this is plainly unfair.  
**We recommend that staff handling appeals where the company is liable to a penalty, but Companies House has contributed to it increasing to a higher band, should be able to acknowledge this and invoke a simple process for collecting the lower amount, instead of relying on the appeal proceeding to the next stages to be dealt with by the Adjudicators.** Companies House has already advised staff dealing with appeals to implement this principle, while awaiting the development of a customer friendly process for handling such cases.

### **Accounts Lost at Companies House Five Appeals Upheld**



- 2.29 In three cases, there was evidence that other items contained in the envelope with the accounts had been received at Companies House prior to the deadline. In one case, a cheque had been mistakenly enclosed and had been returned to the presenter. In another two cases, accounts and papers relating to another company had been enclosed and received at Companies House prior to the deadline. In all three cases, the Adjudicator accepted that it was likely that the accounts had been in the envelopes and had been mislaid.
- 2.30 In two other cases, accounts for a Community Interest Company (CIC) were rejected because the filing fee was not enclosed. The Adjudicator accepted in both cases that it was likely that in one case a cheque and in the other a postal order had been contained in the envelope but had been mislaid by Companies House. In one case, the accounts were late when first received but the rejection led to the penalty rising to the next band.
- 2.31 Companies House staff working in Document Management Services are expected to open envelopes on three sides to ensure that nothing is missed, in particular small items like cheques. One of the Adjudicators observed on a visit that this process was not always followed by one member of staff. This was drawn to the attention of the manager and appropriate advice was given.

### **Other Cases**

#### **Two Appeals Upheld**

- 2.32 The Adjudicators upheld an appeal from an accountant who had been suffering from severe depression immediately prior to the deadline. She lacked insight into her condition and her inability to discharge her responsibilities. She had assured the director that all was well. It was accepted that the director had taken action to ensure the accounts were filed on time but had been misled.
- 2.33 The final case related to the late filing of a company's first and second accounts. A double penalty was imposed for the late filing of the company's second accounts because the first accounts had been filed the day after the filing deadline specified by Companies House. Nine months are allowed from the anniversary of the date of incorporation to file a company's first accounts. The company was incorporated on 30<sup>th</sup> November 2011. Companies House said that the filing deadline was 30<sup>th</sup> August 2013 but the appellant contended that because the anniversary of the date of incorporation of the company was on the last day of November, the filing deadline should have been the last day of the month, 31<sup>st</sup> August 2013 which was the date on which the accounts were filed, and not the corresponding day. The Adjudicator agreed.
- 2.34 As the Adjudicator found that the company's first accounts had not been filed late, it followed that a double penalty should not have been imposed for the late filing of the following year's accounts.
- 2.35 The Adjudicator's finding was based on section 443 of the Companies Act 2006 which deals with how a period expressed as a specified number of months from a specified date is calculated. If the specified date is the last day of the month, the period ends with the last day of the appropriate month. Companies House had identified and accepted that section 443 of the Act is applicable to the filing deadline of a company's first accounts, though it only affects companies incorporated on the last day of a month with fewer than 31 days where the month nine months after the anniversary of incorporation has a greater number of days. The error in the filing deadline shown on the Companies House system for such companies was remedied in

May 2012 so companies incorporated thereafter are unaffected. Companies House is contacting any companies incorporated prior to that date which may have been affected.

### **Reminder not received**

- 2.36 In 12% (37) 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. As more and more companies sign up for e reminders, they sometimes fail to receive them because the email address is no longer valid or the email is treated as spam.
- 2.37 In last year's annual report, we made the following recommendation:  
**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 were advised and the situation has much improved this year but the error is still made on occasion, so the recommendation is repeated. We are advised that a further reminder has been issued to staff.

### **OTHER OBSERVATIONS AND RECOMMENDATIONS**

- 2.38 The Adjudicators made a number of observations and recommendations, some relating to cases where the appeal was not upheld. Many of our comments related to poorly worded responses to appeals. Some replies, particularly to first stage appeals, failed to address the grounds for appeal or relied on standard paragraphs which were sometimes irrelevant or not applicable. Examples of slapdash replies include a case where an appellant was consistently addressed as 'Mr' when a check of the company's record would have shown the she is female. In another case, the letters from compliance were relevant to the appeal but were not considered. Some staff were unaware that the wording of the advice (Comp1) enclosed with the reminder letter sent to companies reminding them to file their accounts has changed and continued to refer to advice which the appellants had not received. References were made to the content of the reminder letter when an email reminder with different content had been sent. We repeat what was said last year which applies as much if not more this year.  
**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.**
- 2.39 The managers of the appeals process have put in place a number of initiatives to improve the quality of responses, ensure that they address the actual grounds of appeal and do not include extraneous material. A feedback process has been introduced to advise staff where responses are not up to standard. Our own observations on unsatisfactory responses feed into this process.
- 2.40 The Registrar has the discretion not to collect a penalty in exceptional circumstances. The Late Filing Penalties Appeals Manual contains helpful examples of the more common grounds for appeal but makes it clear that it is not an exhaustive list. The Adjudicators have noticed that appeals staff sometimes do not feel comfortable departing from the examples in the manual and

very occasionally rely on the Adjudicators to uphold an appeal which they think has merit but have rejected. This is unfair on appellants who have not pursued their appeal and we have discussed how this may be overcome with senior managers.

- 2.41 We noted that it is not uncommon for presenters of Community Interest Company (CIC) accounts to fail to enclose the fee.  
**We recommended that the form CIC 34 be amended by repositioning the information about the need to enclose the fee and making it more prominent.** The recommendation was passed to the CIC Regulator who implemented the recommendation almost immediately.
- 2.42 We also noticed that Companies House was taking longer to process CIC accounts than other accounts. Because they include a form CIC34 and the payment of a fee, they are processed separately from other accounts and a referral has to be made to the CIC Regulator before they can be accepted for filing. Although this should only introduce a 24-hour delay, Companies House had adopted a practice of placing a priority on clearing the main work stream first, which introduced a further delay for CIC accounts. In more than one case, the accounts were received more than a month before they were processed. If they had been submitted close to the deadline and were then rejected, the company could not return amended accounts before the penalty rose to the second penalty band.  
**The Adjudicators recommended that Companies House cease the practice of prioritising other accounts over CIC accounts, particularly because they take longer to process in any case, due to the need to refer them to the CIC Regulator.**  
A process change to remove the delay was implemented on 1<sup>st</sup> February 2016. The processing time of CIC accounts is now monitored as a separate classification. Currently, CIC accounts cannot be filed electronically, but it is intended that this should be introduced as part of the forthcoming digitisation of forms.
- 2.43 The staff in the Senior Casework Unit which processes appeals to the Independent Adjudicators work extremely hard. However, during August 2015 and March 2016, due to staffing problems which placed additional pressure on remaining staff, there were delays of up to or more than a month in referring cases to us. In one delayed case, the vulnerable appellant had provided independent evidence of her fragile state of mind, exacerbated by the worry over the penalty.  
**The Adjudicators observed that the Senior Casework Unit should improve its identification of cases where the handling of the appeal should be expedited and draw them to the attention of the Adjudicator.**  
Management has made strenuous efforts to address the backlogs which arose due to loss of staff members and has reorganised the staffing arrangements with a view to preventing a recurrence. The need to identify cases requiring early attention and to flag this to the Adjudicators has been accepted and disseminated.

### 3. COMPLAINTS

- 3.1 The Independent Adjudicators considered five complaints and also dealt with six complaints which were made in the course of an appeal. We upheld one complaint and partly upheld another. No recommendations arose from any of the complaints which we considered.
- 3.2 One complaint was over the refusal of the Registrar to remove personal details of two former directors of a dissolved company. The Registrar is obliged to place the details of company officers on the public record and this includes dissolved companies. The complaint was not upheld.

- 3.3 The creditor of a company complained that the director had not been prosecuted for failing to notify him that an application had been made for the company to be struck off. The creditor became aware of the application by other means, and made an objection to the strike off which was halted. Generally, in cases where creditors have not been deprived of the opportunity to pursue their claims, the Regulator does not consider it to be in the public interest to prosecute. The complaint was not upheld.
- 3.4 The creditor made a number of other complaints: that Companies House had not complied with the Home Office counting rules (for counting numbers of crimes), that it had not followed its internal guidance, that the complaints procedure had not been followed and an attempt made to block its proper consideration. No part of the complaint was upheld.
- 3.5 In a third case the complaint was that Companies House had refused to remove the accounts of an unlimited company from the public record which had been delivered in error. Companies House has no legal authority to do so without a Court order. The complaint was not upheld.
- 3.6 Due to an administrative error, Companies House dissolved a company in 2010 even though a High Court Order had been made a month earlier. In 2014, solicitors sought the restoration of the company as it should not have been dissolved. An ex gratia payment was offered and it was agreed to waive the £300 restoration fee. The solicitors complained that their representations had not been properly handled and had been subject to excessive delay. The Adjudicator upheld the complaint as no substantive response was sent to the solicitors for four months. Further complaints that one of the letters sent was a draft and that there had been a delay in referring the complaint to the Independent Adjudicators were not upheld.
- 3.7 A firm of solicitors complained and sought compensation for the additional time spent when difficulty was experienced in changing an address in a company's annual return. Companies House staff assisted on the day but it took some time. The complaint was not upheld.
- 3.8 Six appeals against late filing penalties also contained complaints. One was upheld (para 3.9), and in another, the Registrar agreed to review a Companies House policy (3.10).
- 3.9 In one appeal, a number of complaints were made of which five were upheld:
- Unacceptable delays in responding to the complainant
  - Inadequate explanation of Companies House procedures
  - A request for the matter to be escalated to the next stage in the process was not acted upon
  - No response was made to a request for a copy of an email
  - Failure to keep recovery action on hold while the appeal was being considered
- The Adjudicator noted that one of the letters from Companies House advised incorrectly that Companies House does not have a record of logins to WebFiling and asked for the member of staff to be advised accordingly.
- 3.10 An appellant complained that the Companies House late filing penalty invoice gives a seven-day deadline for response when it may not be received in that time, particularly over the Christmas period. The Registrar advised that he would review Companies House policy in this regard. This has now been done and the first penalty notice no longer requires a response within a specified number of days. If the penalty is not paid, a second penalty notice is sent fourteen days after the first. It is accepted that there may be occasions when there are delays in the post but the company will receive two notices before the matter is referred to a debt recovery agent. Companies House considers that a company has sufficient notice of the penalty before this occurs.

- 3.11 A complaint was made that no action was taken on receipt of the first appeal, but Companies House had no record of receiving the first appeal. Four complaints were over how the appeal had been handled. Two appellants objected to the sending of a second penalty invoice, when an appeal had been made. In each case, the second invoice crossed with the initiation of the appeal.
- 3.12 An appellant made twelve complaints, most of which were about the manner in which Companies House staff had dealt with him and suggested that it might be due to his ethnicity. He also complained about the handling of a change of company name and advice on adding a director. These complaints were not upheld.
- 3.13 Two complaints were that a generic email address for pursuing appeals had been provided and not a direct email address. Companies House provides generic email addresses to ensure that incoming emails are dealt with as individual members of staff may be unable to deal with replies due to absence or for other reasons.
- 3.14 Overall, the number of complaints referred to us is low, and the number upheld very small in the context of the huge volume and range of interactions carried out by Companies House.

#### **4. CONCLUSION**

- 4.1 We are impressed with the response of Companies House to our observations and recommendations. They are taken seriously and, with a few exceptions, action is taken expeditiously.
- 4.2 Because our annual report is largely an account of what did not go well, there is a risk of overlooking the good work by Companies House staff considering appeals and complaints. Overall appeals are dealt thoughtfully and professionally, and appellants are treated with courtesy and empathy. Staff apologise where mistakes have been made. The ethos to treat the appellant and complainant fairly is very apparent.
- 4.3 We expressed our concern last year that we, the Adjudicators, struggle to keep up to date with the constant changes made by Companies House to improve processes and documentation and make them more user friendly. It is important that we are kept up to date with what was applicable at the time of the events giving rise to the appeal. The Senior Casework Unit is making strenuous efforts to keep us up to date with changes as they occur.
- 4.4 We are very appreciative in the support we receive from the Senior Casework Unit and their line managers, and the proactive, prompt and considerate way in which manage our relationship.



**Dame Elizabeth Neville DBE QPM DL**  
14<sup>th</sup> August 2016

## APPENDIX A

### SUMMARY OF RECOMMENDATIONS 2015-2016

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

- 2.3**        **The Adjudicators have suggested that the New Director Letter could give more information about the statutory requirement to file accounts and annual returns and refer explicitly to the guidance document GP2 Life of a Company – Annual Requirements, an important and informative document with which they should familiarise themselves. They have also suggested that a similar letter should be sent to members of new LLPs.**

The New Director Letter was updated on 30<sup>th</sup> June 2016. There are no plans currently to send similar letters to members of new LLPs but this will be reviewed in the light of the success of the New Director Letter.

- 2.22**        **It would promote fairness if staff considering appeals were made aware of accepted appeals and recommendations by the Adjudicators, which may affect future appeals, as appeals on similar grounds should be favourably considered.**

Companies House has acted on this recommendation, reviewing the outcomes of cases passed to us monthly and providing the relevant information to staff dealing with appeals, updating guidance and providing appropriate training.

- 2.27**        **We recommend that Companies House develops a simple mechanism for dealing with cases where a company is liable to a penalty but Companies House has contributed to it increasing to a higher band.**

Proposals for simplifying the handling of such cases are currently being developed.

- 2.28**        **We recommend that staff handling appeals where the company is liable to a penalty, but Companies House has contributed to it increasing to a higher band, should be able to acknowledge this and invoke a simple process for collecting the lower amount, instead of relying on the appeal proceeding to the next stages to be dealt with by the Adjudicators.**

Companies House has advised staff dealing with appeals to implement this principle, while awaiting the development of a customer friendly process for handling such cases.

- 2.37**        **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.**

The situation has much improved this year but the error is still made on occasion. Staff have received a further reminder.

- 2.38**        **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.**

We are aware that strenuous efforts are now being made to improve the quality of responses to appeals and enhanced quality check processes are now in place.

- 2.41 We recommended that the form CIC 34 be amended by repositioning the information about the need to enclose the fee and making it more prominent.**  
The recommendation was passed to the CIC Regulator who implemented the recommendation almost immediately.
- 2.42 The Adjudicators recommended that Companies House cease the practice of prioritising other accounts over CIC accounts, particularly because they take longer to process in any case, due to the need to refer them to the CIC Regulator.**  
A process change to remove the delay was implemented on 1<sup>st</sup> February 2016. The processing time for CIC accounts is now monitored as a separate classification. Currently, CIC accounts cannot be filed electronically, but it is intended that this should be introduced as part of the forthcoming digitisation of forms.
- 2.43 The Adjudicators observed that the Senior Casework Unit should improve its identification of cases where the handling of the appeal should be expedited and draw them to the attention of the Adjudicator.**  
Management has made strenuous efforts to address the backlogs which arose due to loss of staff members and has reorganised the staffing arrangements with a view to preventing a recurrence. The need to identify cases requiring early attention and to flag this to the Adjudicators has been accepted and disseminated.

## APPENDIX B

### OUTSTANDING RECOMMENDATIONS 2014-2015

1. **It is recommended that Companies House provides further information on its website about the filing of charities' accounts.** The website has been updated.
2. **The email heading for a rejected form AA01 (change of accounting reference date (ARD)) is uninformative and Companies House intends that it should be changed to bring it in line with the headings for rejected accounts which convey information about the content of the email.** Companies House intends to make the recommended change which will coincide with the introduction of improved functionality to change the ARD
3. **We recommend that staff take more care to avoid errors and to respond to the content of the appeal.** The situation did not improve during 2015-16 and the recommendation is repeated in this year's annual report. Enhanced action is now being taken.