

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

**1<sup>st</sup> April 2016 - 31<sup>st</sup> March 2017**

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# ANNUAL REPORT BY THE INDEPENDENT ADJUDICATORS TO COMPANIES HOUSE (1<sup>st</sup> April 2016 - 31<sup>st</sup> March 2017)

## 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 imposed on companies and limited liability partnerships which have filed their accounts after the filing deadline 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 consider 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 their random distribution. We do not give out our personal postal or email addresses. We use the Companies House for postal communications which are forwarded to us and we each have a Companies House email address.
- 1.4 Our recommendations are summarised in Appendix A. They were all acted upon promptly at the time they were made.

## 2. APPEALS

### NUMBERS OF CASES AND TYPES OF COMPANY

- 2.1 Companies House imposed 208,980 late filing penalties between 1<sup>st</sup> April 2016 and 31<sup>st</sup> March 2017. Of the 31,897 appeals received, 329 were considered by the Independent Adjudicators. Although this appears to be an increase on the previous year, the underlying trend of numbers of appeals referred to us has reduced and the higher figure is the result of a backlog of cases carried into April 2016 and a shortening of the timescales for referring cases to us. See Table 1. We upheld 9 (2.7%) appeals, compared to 18 (5.8%) last year.

**TABLE 1**      **NUMBERS OF APPEALS**

	2008-9	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
TOTAL	105	325	467	583	466	391	305	306	329

- 2.2 Companies House has made a number of changes in order to improve its decision making in the appeals process and we believe that this is reflected in the lower number of appeals which we have upheld in the last year. The improved processes have had other benefits, such as identifying potentially fraudulent appeals and Companies House is making further investigations into these appellants.
- 2.3 Nearly a quarter (24%) of our appeals were from directors of newly incorporated companies filing their first accounts. 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. 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.
- 2.4 Following a recommendation by the Independent Adjudicators last year, a new version of this letter with improved wording was issued from 30<sup>th</sup> June 2016. It is disappointing that so many directors of new companies fail to appreciate what is required of them and the consequences of late filing, in spite of the advice from Companies House on what they need to do. 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.
- 2.5 This year 116 (35%) appeals were from dormant companies. New companies are frequently initially dormant and directors of dormant companies do not always know what is required of them. In spite of clear communications from Companies House to the contrary, directors may not realise that they must file accounts even if the company is not trading or they struggle to file the very simple accounts required of them due to a lack of expertise. The companies frequently have no funds with which to pay the penalty and the directors fail to see why the failure to file accounts of a company which is not trading is important. It does matter because Companies House maintains a register of all companies which must be kept up to date. The Registrar has no way of knowing if a company is dormant or trading until the accounts are filed.

## REFERRALS TO THE REGISTRAR

- 2.6 The fourth and final stage of the appeals process is an appeal to the Registrar. Of the 31,897 appeals against late filing penalties in 2015/16, 1% of all appeals were considered by the Independent Adjudicators and 19% (64) of the appeals considered by the Independent Adjudicators 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	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
2016/17	64	16

- 2.7 The Registrar upheld two appeals and partially upheld a third. In the first case, the director had had to travel abroad due to the serious illness of his mother. His wife, the second director, remained in the UK but she suffers from a chronic illness.
- 2.8 In the second case which the Registrar upheld, the appellant had contacted Companies House prior to filing the accounts and was advised that the penalty would be £150. He filed the accounts more than a month after the deadline and a penalty in the second penalty band of £375 was imposed on the company. The Registrar determined that the amount payable by the company should be the lesser amount.
- 2.9 In the third case, the company's 2013 and 2014 accounts had been filed late. The appellant said that he had not been able to approve the 2013 accounts as he had been declared bankrupt five days before the filing deadline and so was not allowed to act as a director. When the bankruptcy was annulled, the company record was brought up to date. The Registrar decided that the penalty for the late filing of the 2013 accounts should not be collected but upheld the double penalty imposed for the late filing of the 2014 accounts.

## **UPHELD APPEALS**

- 2.10 During the year 2016/17, the Independent Adjudicators upheld or partially upheld nine appeals.

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

- 2.11 As always, the greatest number of appeals to Adjudicators, (105 or 32%) was wholly or in part on the grounds of exceptional circumstances, such as the director suffering a serious illness or a catastrophe befalling a company. If a sole director has a long-term illness, debilitating or distressing as this may well be, he or she has the opportunity in the nine months between the year end and the filing deadline to make an arrangement to ensure the accounts are filed on time or to communicate with Companies House and perhaps obtain an extension to the filing deadline. Being unwell of itself is not an acceptable reason for late filing. The Registrar will allow appeals on health grounds only if the appellant's health problem was unexpected and occurred shortly before the filing deadline, making it impossible or unrealistic either to file the accounts on time or to seek an extension to the filing deadline. Appellants frequently fail to understand that suffering a disaster, whether health related or otherwise, is not of itself a reason for late filing of accounts. By its nature and timing, it must have made the timely filing of the accounts not possible.
- 2.12 In two cases, the Adjudicators were called upon to make a judgement about whether the sole director's ill health was ongoing or whether unpredicted developments close to the deadline affected their ability to file the accounts on time. In both cases, we considered that the latter had occurred and we allowed both appeals. In both of these cases, the Independent Adjudicator advised that there was no need to wait for the filing deadline to be approaching to file future accounts and both companies filed their next accounts well before the deadline.

### **WebFiling One Appeal Upheld**

- 2.13 The second most common ground for appeals to the Adjudicators (93 or 28%) is users experiencing a problem with WebFiling or the HMRC/Companies House joint filing system. In some cases, (14) users encountered a problem with the joint filing system. New joint filing software (CATO) which is more user friendly has now been rolled out.

- 2.14 In 2011 the Adjudicators identified that the penultimate and the final Companies House screens in the Joint Filing system do not make it clear that following submission, Companies House will send an email to confirm receipt and another to confirm if the accounts have been accepted or rejected. 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. The recommendation was not implemented which is disappointing as we continued to receive a small number of appeals on these grounds every year. We upheld one such appeal this year where the user did not realize that non-receipt of the emails meant that the submission had not been successful. Recently, a change was made so that the user was advised on the introductory page for joint filing on the Companies House website that two emails would be sent.
- 2.15 Our recommendation has been overtaken by events as the system has now been replaced by CATO 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.

### **Companies House Contributed to the Delay in Filing Two Appeals Upheld**

- 2.16 In a number of appeals to the Adjudicators (45 or 14%), the appellant said that Companies House caused or contributed to the delay in filing the accounts. Two such appeals were upheld.
- 2.17 In the first case, the company secretary tried to file the accounts before the deadline using WebFiling but did not realize that the submission was unsuccessful. He contacted Companies House after the deadline and was given incorrect advice, which resulted in the penalty rising to the next band. The Adjudicator recommended that the amount payable by the company should be the lesser amount.
- 2.18 The second appeal related to the unavailability of WebFiling as the system was offline for pre-planned maintenance on the weekend of the company's filing deadline. A notice advising that the website would not be available had been placed on the Companies House website approximately two weeks earlier but no longer appeared on the front page as it had been supplanted by later articles. **The Adjudicator recommended that Companies House improve its communications so that presenters are properly informed when WebFiling is not available and advised what to do.**
- 2.19 Following the Adjudicator's recommendations, Companies House has improved the visibility of the notification of pre-planned downtime, ensuring that it is visible on the website and on the WebFiling pages right up to and while the systems are taken offline. Advice is now given to users that they can apply for an extension to the filing deadline as long as this is done prior to the deadline. This can be done by email and the application will be considered even if it is not dealt with until after the deadline.

### **Rejected Accounts Two Appeals Upheld**

- 2.20 The Adjudicators upheld two appeals where accounts were submitted after the deadline and were rejected by Companies House. By the time amended accounts were returned, the penalty had risen to a higher penalty band.

- 2.21 In the first case, the Adjudicator accepted that the accounts may have been acceptable when first presented and the lesser penalty was payable.
- 2.22 In a second case, the accounts were filed late and were rejected because the company name was incorrect, even though the accounts had been accepted with the same error for the four previous years. Companies House accepted that the rejection should not result in an increase in the penalty but at that time had no mechanism for collecting the lesser amount. It required the penalty to be paid in full before consideration could be given to reimbursing the increased amount. The Adjudicator found that the company should not have to pay the increased amount.
- 2.23 For a number of years, the Adjudicators have expressed their view that where a company is liable to a penalty but Companies House has contributed to it increasing to a higher penalty band, a less cumbersome process should be adopted, so that the company only pays the amount for which it would have been liable. We are very pleased that a new process is now in place and cases such as this one should no longer arise.

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

- 2.24 In the first case, the appellant said that he had hand delivered the accounts to the Companies House London office on the filing deadline which was a Sunday. He provided photographs of the accounts being delivered and asked for Companies House to retain the CCTV footage from its camera covering the letter box. His request was not acted upon and in due course the footage was deleted. The Adjudicator upheld the appeal and the late filing penalty was cancelled. **The Adjudicator recommended that attention be paid to cases where there may be evidence such as CCTV footage and telephone recordings which are only retained for a defined period of time.** Staff are now aware of the need to act quickly in such cases to prevent the loss of such information.
- 2.25 In the second appeal, the company's accountant said that the accounts had been enclosed in a package of twenty accounts which had been sent using a guaranteed delivery service and which had been successfully delivered, the other accounts having been processed at Companies House. The Adjudicator found that on the balance of probabilities the accounts had been enclosed in the package and mislaid at Companies House.

### **OTHER OBSERVATIONS AND RECOMMENDATIONS**

- 2.26 In nine cases where the appeal was not upheld, either the grounds for appeal had not been addressed or a reply to an appeal contained irrelevant or incorrect material. In three cases, very poor service was given in the handling of the appeal. On each occasion, we have asked for appropriate action to be taken, not only by drawing the matter to the attention of the member of staff and his or her supervisor, but by taking steps to improve future quality and reduce errors.
- 2.27 **We recommend that staff take more care to avoid errors and to respond to the content of the appeal.** We note an overall improvement in the quality of decision making on appeals following the introduction of new processes. However, first stage responses to appeals continue to contain errors which may lead the appellant to think his or her appeal has not been properly considered or which cause confusion.

### **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. No recommendations were made. One complaint was upheld but Companies House had already fully accepted that the complaint was justified.
- 3.2 The complaint was over how Companies House had treated the filing of a company's accounts on two successive years. There were problems with the handling of the company's revised 2014 accounts. The 2015 accounts were received at Companies House but were not accepted for filing, as they were referred to the Technical Complaints team where there was an unacceptable delay in processing them. This meant that the company appeared not to have delivered its accounts on time and this triggered the automated process for generating compliance letters which said that the accounts had not been delivered. In addition, the director's communications were not always dealt with in a timely manner. Companies House apologised and indicated its willingness to consider making a payment in compensation. It was accepted that there had been internal breakdowns in communication and unacceptable delays in responding to the director who had been offered conflicting advice. The Adjudicator recommended that an ex gratia payment be made.
- 3.3 A second complaint related to a legal charge which was recorded against a company in error in 1985 but which was not noticed for many years. There was no certainty that Companies House was responsible for the error. Prior to the Court Order being obtained, Companies House made a goodwill offer of £1500 for reasonable legal costs to remove the charge. The costs were higher but Companies House declined to provide more than £1500. The complaint was not upheld.
- 3.4 A complaint was made by a company director who had asked to be sent an authentication code so he could file the company's Confirmation Statement, which was already overdue. Companies House failed to send the authentication code and the Confirmation Statement was not filed. A notice was placed in the London Gazette announcing the Registrar's intention to dissolve the company. When the Confirmation Statement was filed, a further notice was published to say the dissolution would not be pursued. Both notices were placed on the company's public record. The director wanted the notice of intended dissolution to be removed from the company's public record because of its potential detrimental impact. Companies House apologised for the failure to send the authentication code but explained that it is not possible to remove the item from the record as it must be recorded as a company event. The complaint was not upheld.
- 3.5 Two complaints related to personal information about directors of dissolved companies being available on the public register. In one case, the complainant had been the subject of identity fraud. The legislation does not permit the removal of the details of directors of dissolved companies. The Registrar is obliged to retain the details of company officers on the public record and this includes dissolved companies. Since 10<sup>th</sup> October 2015 the day of birth of company officers has been suppressed from newly filed publicly available data which now only shows the month and year of birth. The complaints were not upheld.

#### **Complaints made with Appeals**

- 3.6 All six complaints were about how the appeal had been handled but also contained other complaints. Elements of two of the complaints about errors and poor quality responses were upheld.



- 3.7 In one case, there was a delay in referring the case to the Independent Adjudicator. An oversight in the review of the correspondence which was rectified in minutes and an apology made. This complaint was not upheld.
- 3.8 A second complaint about the poor quality of the first two responses from Companies House was upheld. Other elements of the complaint about institutional bias in favour of refusing appeals, reluctance to overturn an earlier finding, and staff adopting an entrenched position making it impossible for an appeal to be fairly considered were not upheld.
- 3.9 A third complaint was made that the appeal not well handled, with no response to communications. A complaint was also made about harassment by the debt recovery agents. No part of the complaint was upheld.
- 3.10 In a fourth case, the appellant was simultaneously appealing and complaining about the wording of the standard letter (DEFSTAT) which is sent to a company when accounts are not filed by the deadline. His complaint that he received conflicting advice on how to pursue his appeal and complaint, which led to confusion and caused him to waste time, was not upheld.
- 3.11 A director complained about how his appeal had been handled which he said was at times insensitive, not conducive to the confidentiality of his medical records, and riddled with errors. He also complained that he could not appeal directly to the Independent Adjudicators but that his appeal to them was handled by Companies House. The complaint about errors in the correspondence was partially upheld, as one error was significant and could have caused confusion. No other element of the complaint was upheld.
- 3.12 The sixth complaint related to the handling of the appeal and the recovery action taken by Companies House to secure payment of the penalty by instructing debt recovery agents and taking the matter to County Court. The complaint was not upheld.

#### **4. CONCLUSION**

- 4.1 Overall, given the number of cases referred to us, we find that the Companies House standard of dealing with appeals is very high, and appellants are dealt with fairly, courteously and considerately. Errors do occur but when identified, open and prompt apologies are made.
- 4.2 The Senior Casework Unit and their staff are efficient in their dealings with us and provide us with excellent support. They are responsive to our observations and recommendations.



**Dame Elizabeth Neville DBE QPM DL**  
23<sup>rd</sup> May 2017

## APPENDIX A

### SUMMARY OF RECOMMENDATIONS 2016-2017

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

- 2.18 The Adjudicator recommended that Companies House improve its communications so that presenters are properly informed when WebFiling is not available and advised what to do.** Following the Adjudicator's recommendations, Companies House has improved the visibility of the notification of pre-planned downtime, ensuring the it is visible on the website and on the WebFiling pages immediately before systems are taken offline. Advice is now given to users that they can apply for an extension to the filing deadline as long as this is done prior to the deadline. This can be done by email and it will be considered even if it is not dealt with until after the deadline.
- 2.24 The Adjudicator recommended that attention be paid to cases where there may be evidence such as CCTV footage and telephone recordings which are only retained for a defined period of time.** Staff are now aware of the need to act quickly in such cases to prevent the loss of such information.
- 2.27 We recommend that staff take more care to avoid errors and to respond to the content of the appeal.** We note an overall improvement in the quality of decision making on appeals following the introduction of new processes. However, first stage responses to appeals continue to contain errors which may lead the appellant to think his or her appeal has not been properly considered or which cause confusion.

## APPENDIX B

### OUTSTANDING RECOMMENDATIONS 2015-2016

1. **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 had advised that it intended to make the recommended change with the introduction of improved functionality for changing the ARD. (2014-15 recommendation). As this wider change programme is now not scheduled until 2018/19, Companies House is considering making this standalone change in a shorter timescale.

2. **We recommend that staff take more care to avoid errors and to respond to the content of the appeal.**

We note an overall improvement in the quality of decision making on appeals following the introduction of new processes. However, we note that first stage responses to appeals continue to contain errors which may lead the appellant to think his or her appeal has not been properly considered or which cause confusion. Yet again, this recommendation is repeated in the current year.

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 current plans 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 the effect of which will not be felt until June 2017 and the impact of the amended version which 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.

4. **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.**

A simplified process is now in place.