

Complaints Adjudicator for Companies House

W H Thomas Annual Report 2006

1. My eleventh Annual Report covers the period from 1 April 2005 to 31 March 2006. As usual, I will give details of a number of issues which arose during the year.

Table of new cases in 2005/2006 and adjudications issued				
Month and year	New Cases accepted		Adjudications issued	
	Number of cases	Late filing /other	Complaints upheld	Complaint rejected
April 2005	5	all LFP	0	6
May 2005	7	all LFP	1	5
June 2005	6	all LFP	1	4
July 2005	5	1 service / 4 LFP	1	5
August 2005	5	all LFP	2	4
September 2005	4	1 service / 3 LFP	1	2
October 2005	3	all LFP	1	3
November 2005	8	all LFP	1	6
December 2005	4	all LFP	0	2
January 2004	4	all LFP	0	7
February 2004	3	all LFP	0	3
March 2004	10	all LFP	2	4
Totals	64		10	51

(note: the figures do not tally exactly because unfinished cases are carried forward)

That there are far fewer cases than in previous years does not surprise me. It is one of the consequences of the judgment in *POW Trust* and another v Chief Executive and Registrar of Companies House and another [2002] EWHC 2783. The tightening of the exercise of the Registrar's discretion combined with firmness in rejecting appeals against late filing penalties has meant that directors realise that it is fruitless to continue to complain. I only wish that this attitude could be applied to ensuring that accounts are filed on time. It is disappointing that nearly fifteen years after the introduction of penalties, as many as 10% of all companies - which means nearly 200,000 - are at any time in default. The late filing penalty regime was meant to act as a tough tool to encourage timely filing. It seems that many companies regard the penalty as just another business expense. Changes in behaviour are required, as I will explain in the next paragraph.

Company Law Reform Bill

2. This very long Bill is making its way through Parliament and is likely to be implemented within the next couple of years. Two aspects of the new law should be clearly understood by companies, their directors and their accountants.

First, the period allowed for filing accounts for a private company will be reduced from the present ten months to nine months. For PLCs, the new period will be six months. So those who have been prepared to leave the delivery of accounts to the last minute will need to alter their ways.

Secondly, at some stage after implementation, late filing penalties may well be changed. The final levels have yet to be decided, and will be set out in regulations to be made by the Secretary of State (and approved by Parliament) after the Act comes into force. However, anyone who is more than a few weeks late may notice an increase in the penalty demanded. A couple of other helpful changes will be made. First, the present "corresponding date" rule for determining when accounts have to be filed, and which causes some

people problems every year, will be modified. When the Act is implemented, accounts made up to the last day of a month will have to be delivered within the period ending on the last day of the ninth month, not the corresponding date. So, for accounts made up to 28 February, the last day will be 30 November; for those to 30 April, 31 January. There is no change for companies which choose an accounting date during a month. Accounts made up to 5 April will still need to be filed by 5 January.

Secondly, there will be a provision that "delivery" of any document does not occur until it is received by the Registrar. Both these straightforward administrative changes will help the public and reduce work within Companies House.

Post Room

3. During the year, I have made several unannounced visits to Companies House and the Post Room in particular. One internal change of procedure has disappointed me. The system of "indexing" accounts, which I described in my reports for 2004 and 2005, has been stopped. The Registrar was good enough to explain the reasons to me. Resources were to be directed at making electronic filing more accessible and attractive, and there has been a considerable take up of the electronic services offered by Companies House, although it is not yet possible to file accounts other than on paper. However, indexing in the post room was an additional and very useful crosscheck that accounts had arrived within Companies House. Its reliability was such that one was satisfied that if there was an entry on the index, accounts had reached the agency; the absence of one meant that they had not. This enabled many complaints to be disposed of rapidly. I regret that indexing of accounts has been ended before it was possible for accounts to be filed electronically more widely than at present. I fear that short-term costs saving will be offset by an increase in complaints and work and thus expense.

I should add that indexing will continue for all documents sent by recorded or registered post, and that a note will be made of the contents of each package. This is important, because people often omit to put enclosures in an envelope but, when some time later, a penalty notice arrives, they convince themselves that there was no fault their end.

Evidence

4. Every year there are arguments about whether accounts arrived at Companies House before time ran out, and complainants are asked to supply "evidence" that they had been delivered. Many fall back on the contract law provision that "delivery to a carrier is delivery to the addressee". Others say that their word, or a copy of their letter or a photocopy of a page in their post book, is sufficient.

I have endeavoured to make it clear over the years that a document cannot be regarded as delivered to the Registrar unless and until it is in her hands. I understand the frustration that honest directors and accountants feel when a letter goes astray in the post or arrives late, but neither I nor, more importantly, the staff at Companies House are moved by any evidence offered except for a formal receipt from Companies House or the London Information Centre. I suggested to the Late Filing Penalty Section that they might clarify what they meant when they asked a complainant to produce evidence in support of a claim that accounts were sent in good time, and am pleased to note that this was accepted.

5. I noted above that electronic filing is becoming popular. So far nearly 300,000 companies have subscribed. It will be some time before all forms of company accounts can be filed in this way, and so delivery by conventional means will remain necessary. I do not wish to be drawn into the continuing argument about the reliability of the Royal Mail. Everyone will have their own experience and views and will have read what the newspapers have to say. The only point I would make is that if accounts arrive one day late, there is a minimum penalty of £100 which will almost always be upheld and collected. I continue to be amazed that directors and accountants leave the signing of accounts until the last few days of the filing period and then expect that a letter posted to catch the last post will be in Cardiff the next morning.

In my report for 2004, I referred to the advantages of the Royal Mail's "Special delivery with compensation" service. I repeat that this service will help companies ensure that their accounts reach Companies House and provide a mechanism for recovery of any penalty if the accounts are lost or late. While the Royal Mail do not deliver Special Delivery letters on Saturdays, Sundays or Bank Holidays, the fee is far less than the minimum penalty. When the delivery period is reduced, the requirement for a reliable service to ensure that the Registrar received accounts will become even more important. I should add that there are other reliable courier services available.

Any document can be delivered by hand at Companies House, Cardiff, 24 hours a day, seven days a week, including bank and religious holidays.

Good faith

6. The Registrar receives some five million documents each year. Each is examined, but only to see whether, on the face of it, the document meets relevant statutory requirements. This policy has been in existence for many years, and I have no quarrel with it. There have been arguments that a document which contains details which are incorrect - most commonly, when warring directors file forms to remove or appoint a rival - should be rejected. The Registrar continues to hold the line that she assumes that a form contains accurate information.

With the rise in fraud and identity theft, I know that the Registrar is concerned about how to meet her statutory duties without causing problems. For example, if the detail in every form notifying a new registered office or a change in directors had to be checked, the system would come to a halt. That is one of the reasons why companies are being urged to make use of the electronic filing facilities. It is possible that competent criminals may be able to gain access to the various codes which companies are given, but that is a risk everyone faces now when using any electronic service. The good faith principle continues but the risks are reduced.

It is also possible for companies to register themselves electronically and be supplied with authentication codes to give protection against unauthorised filing of changes of registered office and appointment or resignation of directors. Details of the PROOF service are available on the Companies House website. I share the Registrar's disappointment that only some 66,000 companies have subscribed to a service which could offer considerable protection against the risk of a company being hi-jacked.

Recommendations

7. In addition to the matters discussed above, during the year I made a number of other recommendations which are summarised as follows

(a) Mrs P is a volunteer director of a flat management company. The company was penalised for filing accounts for 2004 late. The file showed that Mrs P was confused by the difference between the annual return and the annual accounts and she believed that both documents had to be returned by the same date. This was wrong. The accounts were due earlier, as the accounts reminder letter had shown. When the accounts arrived, late, they were rejected because the balance sheet had not been signed by a director.

Mrs P argued that the previous year's accounts had not been signed and that she had never been told of this requirement. It was true that the 2003 accounts, although rejected twice, and eventually accepted and registered, were never signed. That was a mistake by Companies House.

The 2004 accounts were rejected for want of signature but nowhere in the rejection letter was there any suggestion that the accounts (or any other document required) be signed. I recommended that the standard wording be amended to add the words underlined as follows:

"You have not presented a balance sheet with these accounts. A balance sheet is essential with every set of accounts. Please ensure the balance sheet is attached and is signed by a director."

The penalty had to be paid, because the accounts arrived one day late but the case showed that rejected appeals could still bring about improvements in Companies House procedure.

The recommendation could not be implemented at the time, because fundamental changes to the database will be made later this year. Then, rejection letters will make the requirement clear. In the meantime, document examiners were asked to be more helpful.

(b) Mr H complained about being penalised when the accounts were one day late. He was a victim of the corresponding date rule. The accounts were made up to 28 February and so had to be delivered not later than 28 December. They arrived on 29 December, due, in part, to the Christmas holiday period.

Throughout his appeal to Companies House, Mr H very properly relied on the date issue alone. However, in his letter to me, he described very difficult circumstances he had faced from the previous year following the death of his brother.

Had Companies House known about this, I have little doubt that the Registrar would have exercised her limited discretion not to collect the penalty. I therefore recommended that that course be taken.

(c) Mr B sent in a set of accounts for a client company. They were rejected because the document examiner said that they were not acceptable for scanning. Mr B appealed against the penalty and argued that the accounts had been scanned to and from his client and were perfectly legible when they left his office.

I had assumed that there would have been a formal test of legibility, a British Standard, perhaps, or reference to a Code of Practice in the printing industry, but there is none. Documents have to meet the requirements laid down in the "Accounts and Accounting Reference Dates" guidance notes, which specify size, paper colour, weight and finish and that the text should "be black, clear, legible and of uniform density". The test is wholly subjective, as Mr B said in his letters. The officer in the Document Examination Branch, trained as to the basic legibility requirements, applies his own judgement.

I looked at the filed documents and noticed that the cover page for the second copy bore two barcodes, one for 11 January 2005, the date the first, rejected, set arrived and the other for 9 March 2005. That satisfied me that the cover was legible on both occasions. The third page looked identical to the cover - there were matching holes on each page. The balance sheet, which was the page which caused the rejection, had no holes in it, but there was no way of knowing whether the second set of accounts, which was accepted was in any material way different from the rejected set.

I recommended that the present policy be reviewed and that an approved, publicly acceptable standard for document legibility be introduced. I further recommended that an article should be written for The Register magazine that specifically detailed the requirements for document quality; that guidance booklets should be updated to highlight the areas of the most frequent rejection; and the website should contain the same information; and that document examiners be encouraged to seek advice from senior managers whenever they are uncertain whether a document meets the required quality.

An article appeared in issue number 64 of the Register in March 2006, and the relevant part of the guidance notes (GBA3) was re-written.

A further point arose. Mr B argued in his correspondence that Companies House staff were missing the point. Officers kept repeating that the accounts - which they, of course, had not seen - did not meet the standards and had been correctly rejected. I regretted that no one was able at an early stage to realise what Mr B was getting at and apply his mind to the most important point, that the legibility test was subjective.

(d) Mr H, an accountant, wrote to Companies House in February 2005 asking for a Certificate of Good Standing - a formal document that has to be signed on the Registrar's behalf. He sent a cheque for £25 - an overpayment of £10 because the fee had been reduced on 1 February 2005. The cheque was cleared and a refund of £10 quickly made by cheque payable to Mr H which was sent to the company's registered office and was cleared three months later. That was an error.

I was told that documents requested are returned "to the address specified" and that, in the case of a letter from an accountant, they should be sent to the accountant's address.

The Certificate of Good Standing was sent within a few days to the company's registered office. That was also an error.

In March 2005, Mr H wrote about a penalty for another company and at the end of his letter said that he was still waiting for Certificate of requested on 2 February 2005. A copy of that letter was sent to the Certified Copies Section which prepared a further copy of the Certificate of Good Standing and posted it, again to the registered office, on 14 March 2005. This was another error.

In May 2005, Mr H complained that he had still not received the Certificate of Good Standing. A further copy was prepared, and, dated 9 February 2005, was sent to Mr H at his office. He then wrote, on 19 May 2005, to complain bitterly that his two previous requests had been ignored and that the document finally supplied did not contain details of the Secretary (as had been requested) and was of no use. He asked for his money back.

I agreed that Companies House was careless three times, and had left out a material detail. The explanations given did not seem to me to

be adequate. On the other hand, two correct copies of the Certificate of Good standing were sent to the company's registered office. Mr H said in his letter of 30 May 2005 that there had been "failings by that office on earlier matters". Over the years I have emphasised in my Annual Report that the registered office is a company's "home" and that all directors owe it to themselves and their shareholders to ensure that the address is effective and that mail is collected every day. If that had been the case here, the first certified copy would have been in Mr H's hands quickly.

I disagreed with Mr H's argument that Companies House should not assume that certificates should be sent to a company's registered office. In his first letter Mr H did not specify in unequivocal terms that the certified copy should be sent to his office. The letter was neutral, and although Companies House ought to have sent it to him, it was not a mortal sin to send it to the registered office. In any case, as Mr H knew that the registered office was unreliable, the onus was on him to make it clear in his letter ordering the certified copy, that it should be returned to his office.

I recommended that the Registrar refund the fee of £15 and made a payment of £50 to Mr H (who had asked for £200) as compensation for his wasted time.

(e) Mr H, a sole practitioner accountant, faced with nursing his father through his final illness, found that the competing pressures of work and family could not be met. Work was the loser.

Mr H had many company clients and, for five of them, whose accounts were due on 31 January 2005, he applied for and obtained an extension under s.244(5) Companies Act 1989 to 28 February 2005. Mr H applied for a few days' further extension, because of the risk of postal delay, but was refused and those five accounts arrived one day late. Penalties inevitably arose but, after discussion with the Companies Administration Department, it was decided not to collect them.

Mr Howard's case is that the same facts apply to the four companies about which he wrote to me. He applied for an extension for M C Limited (which was originally due to file on 31 January 2005) but failed to do so for the other three. The Registrar refused to exercise discretion on the familiar ground that she may only do so when difficulties afflict a director (or where Companies House has contributed to the late filing). I have always agreed with this principle, because, once breached, the proverbial tide of similar complaints will arise and the public will expect leniency. However, in this case, I took a different line. By deciding not to collect the five penalties for the other group of companies, the Registrar has demonstrated that she will allow humanitarian values to prevail. She should either have enforced all the penalties or used discretion for all.

I therefore recommended, quite exceptionally, that the four penalties should not be collected.

(f) Mr C raised the first formal complaint to me relating to electronic filing. As a company secretary, Mr C had registered to file documents using the website at Companies House. He was supplied with a security code and a company authentication code in July 2005. Shortly afterwards, Mr C attempted to file an annual return using the website. He received an on-screen message telling him that "an electronic annual return is not available as this company has more than 20 shareholders. Please submit the paper form 363s". Later that month, Mr C sent a paper annual return and a fee of £15 and the company's annual accounts. His covering letter also

described what had happened, including pointing out that his e-mailed enquiry had not be answered.

I tried to do what Mr C had done. To make use of the webfiling service, one starts at the main menu on the Companies House website. On the left hand side of the page is a box headed WebFiling with an invitation to "click here" for the service. If one clicks on that box, the next image is a "welcome" page.

The first three sentences are quite clear. The next heading indicates the limits on what documents can be webfiled. Clearly, an annual return is included - and there is a carrot of a reduced filing fee of £15 (as opposed to the usual £30 for the paper version). Important information is included in the next sentence: "For further information on the Annual Return submission, and a list of filing exceptions click here."

To me, this suggests that anyone wanting to file an annual return should be aware that there are circumstances in which it will be impossible to file an annual return electronically, and had Mr C accepted the invitation and clicked on the last two words, he would have seen a pop-up box setting out when electronic annual returns are not accepted.

If Mr C done this, he would have seen at once that his company was ineligible. My conclusion was that the "welcome page", combined with the pop-up box, provides clear information to would be users of the webfiling service, including Mr C. It is a pity that he did not look at both pages before clicking on the "continue" button which took him to the registration process.

I also concluded that most systems can be improved, but that this does not mean that they were deficient, merely that operational experience suggests that information can be provided in a different way. I therefore recommended three improvements. First, that on the welcome page, the sentence "For further information on the Annual Return submission, and a list of filing exceptions click here." the word "exceptions" be in bold type. Secondly, that the first exception in the list in the pop-up box be clarified. These two changes were implemented

I also suggested that, to ensure that all would-be users do read the pop-up box, there should be a box at the end of the "welcome page" which must be ticked as a condition to allow the "continue" button to be activated. My recommendation was that a tick box should be added with the words "I confirm I have read this page and the list of exceptions". The Registrar did not accept this suggestion

Mr C also raised a subsidiary issue. Having registered for webfiling, and having tried to file the annual return electronically but been refused, he should not have to pay the higher fee to file a paper annual return. I did not agree with this argument. The information was available to him had he followed the instructions.

(g) A company sent in late a photocopied set of accounts. Although photocopies are now permitted, they have to meet the legibility requirements. This set did not; and they were made up to the wrong date. They should have been rejected. Instead, they were placed on the register and a penalty notice sent to the company. The director argued that he had sent the accounts in time and they must have been lost within Companies House. The barcode and indexing record satisfied me that the accounts had arrived after time ran out, but I was concerned that the accounts should not be on the register. I recommended that the company be helped to correct the accounts and to file the current year's accounts and that, although the penalty

was right, the company's reasonable costs incurred in putting things right should be met.

(h) A finance director tried to deliver thirteen sets of accounts at the London Information Centre on 28 December 2005, the filing deadline. He wanted a receipt but to his surprise, the Centre was closed and there was no notice about Cardiff being open or that accounts could be put through the letter box. He returned the next day, left the accounts and later received thirteen penalty notices. He thought it was unreasonable for the London Centre to be closed when most other businesses were working normally. I agreed and recommended that the penalties should not be collected and that steps should taken to make sure that clear information is provided at the Bloomsbury Street office so that anyone delivering documents when that office is closed - or at holiday periods - should be given greater assistance to enable them to ensure timely filing.

Strike off

8. In previous years I have pointed out that many companies should never have been incorporated, and I have suggested to people facing penalties (for although the penalty is levied on the company, if it is a one-man company, the director has to pay) that they might consider applying to the Registrar for the company to be dissolved, because unpaid penalties would not be pursued. Two complainants took exception to this proposal. One said that it was up to him how he organised his business affairs. The other told me that it was a very negative suggestion.

I should make is clear that whenever I suggest that a director considers dissolving his company it is because there have been claims that the company does not trade, or claims of financial difficulty, or a lack of funds. I am not trying to influence the way a director chooses to run his company, merely offering a way of avoiding a penalty.

Abuse

9. I was disappointed that three complainants used intemperate or abusive language in cases referred to me.

One said that Companies House had been "wriggling, squirming and deploying sophistry" but my view was that staff were just trying to explain the "corresponding date rule", which causes difficulty for laymen and lawyers alike. He also threatened to go to the press if his complaint was not resolved to his satisfaction. While anyone can do that, the implication left an unpleasant taste.

Another made disparaging and belittling remarks about staff at Companies House, and the third was abusive and offensive in equal measure.

The Registrar also showed me a series of other letters in which members of the public had used appalling language. After forty years as a solicitor little surprises me; but I was shocked that civil servants should be expected to read such correspondence and reply as though nothing unusual had been said. This appears to be a growing tendency, and I recommended to the Registrar that anyone writing in an intemperate or vile way should be told that the letter would be filed and not answered unless or until civil language is used.

W H Thomas
Complaints Adjudicator



30 June 2006

Response to the Annual Report by our Complaints Adjudicator

The Annual Report of the Companies House Independent Complaints Adjudicator, Bill Thomas, for 2005/06 is included in this edition of the Register. Regular readers of the Register will know that we place great value on the work of the Complaints Adjudicator. His work over the last year has been no exception.

Although it can be uncomfortable to have our failings exposed in public, it is very helpful for us to know where we have problems so that we can address them and improve our service to customers. As a result of the Adjudicator's investigations and recommendations we are able to improve the practices and procedures we follow, and our customers feel the benefit in terms of fewer mistakes and better performance. I am grateful to the Adjudicator for his practical suggestions as to how we can improve our service.

The Adjudicator's report sets out clearly and accurately his recommendations and what we have done about them.

The Adjudicator mentions the growing popularity of electronic filing. I am convinced that this will make things easier for our customers and it should mean that fewer customers raise complaints with the Adjudicator. I say that because the vast majority of complaints to the Adjudicator are on the subject of penalties applied to the late delivery of accounts. Any company that files its accounts with us electronically - a service we have introduced only very recently, but that I would strongly recommend - does so in the knowledge that their accounts are certain to arrive and far less likely to be rejected. Of course, that in turn should mean that we have to impose fewer penalties, which would be very good news. As the Adjudicator points out, if companies choose the slower route of filing on paper, it is wise for them to pay the extra for a guaranteed delivery service.

I strongly agree with the Adjudicator's comments about our Protected Online Filing (PROOF) service, which provides built-in security against company identity fraud for those of our electronic customers who subscribe to it. Over time, our intention is to deliver a whole new

package of electronic services to our customers, which will enhance speed, quality and security still further. This will make it much easier for customers to do all their business with us electronically, gaining the security benefits of PROOF automatically. In the meantime, it really does make sense for companies to use PROOF and I encourage you all to do so.

We are clear that we must invest in our electronic services if we are to provide a modern, effective range of services to our customers. That was why we decided, as the Adjudicator mentions, that we would no longer "index" sets of paper accounts in our Post Room. We decided that it was a better to invest in providing the facility for the electronic submission of accounts with all the in-built security and proof of delivery that this provides.

I agree with the Adjudicator that our customers need to be aware of the impact of the Company Law Reform Bill, which is currently being considered by the House of Commons. We have already started to tell our customers about the key issues under discussion and, once the Bill has been agreed, will make sure that all customers understand how the law is going to change and how it will affect them.

I am grateful for the Adjudicator's moral support in our handling of the tiny minority of our customers who subject my staff to verbal abuse. My staff are here to help customers and they are trained to deal with awkward situations, but I agree that they should not have to deal with personal abuse.

We will continue to work closely with the independent Complaints Adjudicator and to respond constructively and actively to his recommendations. We will also continue to look for ways to improve our performance so that customers do not have cause to complain in the first place and receive the service they deserve whenever they deal with Companies House.

Claire Clancy
Chief Executive and Registrar