

ANNUAL REPORT BY THE INDEPENDENT ADJUDICATOR TO COMPANIES HOUSE (1st April 2008- 31st March 2009)

1. INTRODUCTION

- 1.1 My principal role is to deal with appeals against late filing penalties once they have passed through the first two stages which are internal to Companies House. If the Senior Appeals Manager upholds a late filing penalty at the second stage of the process, the appellant may ask the Independent Adjudicator to consider the case. As the Companies Acts define precisely the powers of the Registrar of Companies and are backed up by case law, the scope for him to exercise his discretion not to collect a penalty is limited. If I reject an appeal, the appellant may ask the case to be referred to the Registrar who is the final arbiter in the appeals process.
- 1.2 I also investigate complaints about delay, discourtesy and mistakes and the way in which complaints have been handled by Companies House. Again, there are two internal stages for consideration of a complaint, the second one being referral to the Director of Customer Delivery. If the complainant remains dissatisfied, he or she may ask the matter to be referred to me. After I have considered a case, if the complainant wishes to escalate the complaint, he or she may approach a Member of Parliament and ask for the case to be referred to the Parliamentary and Health Service Ombudsman.
- 1.3 For ease of reference, I have summarised my comments and recommendations in Appendix A.

2. APPEALS

VOLUME

- 2.1 I dealt with 105 appeals during the year between 1st April 2008 and 31st March 2009 and upheld seven. In some cases, a single appeal related to more than one company, particularly where an accountant had incurred late filing penalties for a number of companies. This was an average of 8.8 cases a month, compared to an average of 4.8 for the eight months from my appointment on 1st August 2007 to 31st March 2008. See Table 1 overleaf.
- 2.2 Companies House anticipated that appeals would increase following the higher late filing penalties and shorter penalty bands introduced on 1st February 2009 by the Companies Act 2006 for all accounts filed late after that date, irrespective of when they became overdue. See Table 2 overleaf. These changes are designed to reduce the amount of time a company is in default. They did not apply to any cases I received prior to end of the relevant period for this Annual Report. It is believed that the increase in appeals over the last twelve months results from the difficult economic climate making people less willing simply to pay a penalty without challenging it. Another factor may be that the increased use of email makes it easier to pursue an appeal through the various stages, compared to sending letters through the post.

TABLE 1 NUMBERS OF APPEALS

| | 2007-8 | 2008-9 |
|-------------------|--------|--------|
| April | | 15 |
| May | | 11 |
| June | | 1 |
| July | | 13 |
| August | 5 | 3 |
| September | 3 | 7 |
| October | 7 | 3 |
| November | 5 | 10 |
| December | 2 | 3 |
| January | 3 | 14 |
| February | 9 | 14 |
| March | 1 | 11 |
| Average Per Month | 4.4 | 8.8 |
| TOTAL | 35 | 105 |

TABLE 2 AMOUNTS OF PENALTIES

| How late the accounts are delivered | Penalty Private Company | | Penalty PLC | |
|-------------------------------------|-------------------------|-----------------|-------------------|-----------------|
| | Before 01/02/2009 | From 01/02/2009 | Before 01/02/2009 | From 01/02/2009 |
| ≤ 1 Month | | £150 | | £750 |
| > 1 Month ≤ 3 Months | £100 | £375 | £500 | £1500 |
| > 3 Months ≤ 6 Months | £250 | £750 | £1000 | £3000 |
| > 6 Months ≤ 12 Months | £500 | £1500 | £2000 | £7500 |
| > 12 Months | £1000 | | £5000 | |

- 2.3 The number of appeals is expected to continue to increase as the impact of the new late filing penalty regime makes itself felt. Further increases are expected in 2010 when the period allowed after the year end to file accounts reduces from ten months to nine for private companies and from seven to six months for PLCs, for accounting reference periods beginning on or after 6th April 2008. Although Companies House has publicised the change, and reminder letters will be sent correspondingly earlier, it is likely that significant numbers of accounts will be filed late by people who have not realised that the timescales have shortened which will produce a corresponding increase in appeals. This will start to have an impact from November 2009 for PLCs and February 2010 for private companies. (In the last year, I received only one appeal from a PLC.)

- 2.4 A further provision of the Companies Act 2006 will introduce a double penalty for repeated late filing into the regime. This will apply to companies with accounting periods that begin on or after 6th April 2008 that file two consecutive sets of accounts late. The aim is to deter the worst offenders, as currently 26% of companies receiving late filing penalties also filed late in the previous year. The effect will start to be felt from February 2011 and will inevitably increase the number of late filing penalty appeals.
- 2.5 In anticipation of an increase in penalties and, consequently, appeals, Companies House increased the number of staff dealing with late filing penalties and created a panel of three independent adjudicators from 1st April 2009. My two new colleagues are Mr Leslie Cuthbert and Mrs Jessica Pacey.

REFERRALS TO THE REGISTRAR

- 2.6 The fourth stage of the appeals process is an appeal to the Registrar. Table 3 below shows the number and percentage of cases where the appellant has sought a review of my decision by the Registrar. The Registrar did not overturn any of my findings in the period in question.

TABLE 3 REFERRALS TO THE REGISTRAR

| | 2007/8 | | | 2008/9 | | |
|--------------|-----------------------|------------------------|-------------|----------------------|------------------------|-------------|
| | Cases to Adjudicator | Escalated to Registrar | % | Cases to Adjudicator | Escalated to Registrar | % |
| April | 9 | 2 | 22.22 | 13 | 5 | 38.5 |
| May | 7 | 1 | 14.3 | 9 | 5 | 55.6 |
| June | 7 | 2 | 3.5 | 4 | 0 | 0 |
| July | No Adjudicator | | | 13 | 2 | 15.4 |
| August | 6 | 1 | 16.7 | 6 | 0 | 0 |
| September | 6 | 2 | 33.3 | 6 | 3 | 50.0 |
| October | 5 | 2 | 40.0 | 9 | 3 | 33.3 |
| November | 6 | 3 | 50.0 | 8 | 0 | 0 |
| December | 1 | 1 | 100.0 | 10 | 0 | 0 |
| January | 3 | 1 | 33.3 | 12 | 2 | 16.7 |
| February | 9 | 5 | 55.6 | 17 | 1 | 5.9 |
| March | 6 | 2 | 33.3 | 12 | | |
| TOTAL | 65 | 22 | 33.8 | 119 | 21 | 17.6 |

NB The figures vary from Table 1 as the column 'Cases to Adjudicator' includes complaints. The figures for cases escalated to the Registrar for 2008/9 may increase as appeals to him for cases concluded in February and March may be received after completion of this report.

- 2.7 It can be seen that the percentage of appellants who ask the Registrar to consider their case after they have received my finding fell in 2008/9 compared to 2007/8. Since June 2008 I have been advising appellants that they should not appeal to the Registrar merely because they disagree with my conclusions but should have a further reason for appealing him which may account for reduction since that date.

ANALYSIS OF APPEALS

- 2.8 I have carried out an analysis of the grounds for appeal which is set out in Table 4 below. Appellants often give more than one reason for appealing and sometimes give alternatives. For instance, an appellant will often say that either the accounts were lost in the post or they were lost at Companies House. An equally common alternative is that either the accounts were delayed in the post or Companies House did not bar code them with the correct date. Multiple grounds for appeal mean that the figures in Table 4 total much more than the 105 cases. In 30 cases, the penalty could have been avoided or reduced had the recipient reacted to communications from Companies House.

TABLE 4 ANALYSIS OF APPEALS

| Grounds For Appeal | Number of Cases | Rejected | Upheld |
|---|-----------------|-----------|----------|
| TOTAL | 105 | 99 | 7 |
| Director Ill, Bereaved, or Catastrophe Occurred | 32 | 31 | 1 |
| Postal Delay | 20 | 20 | |
| Lost in the Post | 14 | 14 | |
| Companies House did not show Correct Date of Receipt | 14 | 14 | |
| Companies House Lost the Accounts | 17 | 14 | 3 |
| Accounts not Correct, Needed to be Resubmitted, not Done by Deadline or Extended Deadline | 11 | 11 | |
| Web Filing not Available or did not Work | 10 | 10 | |
| Accountant or Member of Staff Ill or Died | 8 | 7 | 1 |
| Ineffective Registered Office Address | 5 | 5 | |
| Incompetence by Person Submitting Accounts | 4 | 4 | |
| Reminder not Received | 5 | 5 | |
| Wrong Advice from Companies House | 4 | 3 | 1 |
| Thought did not Need to Submit Accounts as Dormant (First Accounts, New Company) | 4 | 4 | |
| Mistake over Due Date | 3 | 3 | |
| Oversight/Breakdown in Communications between Directors or Company Secretary | 3 | 3 | |
| Did not Submit Accounts as did not have all Information | 2 | 2 | |
| Disagreed with Amount of Penalty | 2 | 1 | 1 |
| Confusion over Companies Act 2006 | 1 | 1 | |
| Thought Obligation Discharged by Submitting Accounts to HMRC | 1 | 1 | |
| Failure to React to Communications from Companies House, or say not Received | 30 | | |

NB The number of reasons for appeal exceeds the number of cases because in many cases there was more than one reason for appeal.

Director Suffering Serious Illness or Catastrophe Shortly Before Deadline

- 2.9 The greatest number of appeals were on the grounds that the director had been ill or had suffered a catastrophe. Such appeals can only be entertained for a sole director or where all directors are affected, and where the event occurred shortly before the filing deadline. In 21 of the 32 cases, the appellant was not the sole director and there was no impediment to other director or directors dealing with the accounts. As I observed in my last annual report, often only one director has the skills or information to be able to exercise their legal responsibilities, and other directors are that in name only and are unable or unwilling to act when it becomes necessary. In many cases, either the event had not happened shortly before the filing deadline, should not have prevented filing, or the illness was chronic or not serious.
- 2.10 When something happens which means that it is unlikely that accounts can be filed by the due date, an application in writing may be made to Companies House for a short extension as long as it is made before the deadline. In many of these cases, had that been done, the late filing penalty could have been avoided. However, even though this advice appears in the reminder letter which is usually sent shortly before the deadline for filing the accounts, appellants did not communicate with Companies House until their accounts were overdue, and a late filing penalty inevitable, often not until many months had elapsed and several overdue accounts notices had been sent.
- 2.11 I upheld one appeal in the case of a property management company where the four directors owned the four flats in the building. The director who usually prepared the accounts died. Two of the other directors were aged 94 and 88, and suffered from various illnesses and disabilities. The fourth director was receiving treatment for cancer. The correspondence was sent to the address of the deceased director and the other directors had no access to it. The combination of events, no single one of which would have been sufficient, led to me upholding the appeal.

Accounts Delayed or Lost in the Post

- 2.12 The next two largest categories related to accounts which were delivered after the deadline due to a delay in the post, followed by accounts which were lost in the post. Companies House advises directors not leave it until the last minute to send accounts or, if they do, to use a guaranteed delivery service with consequential loss cover. In some cases, directors or accountants were unaware that accounts had not been received at Companies House until they received an overdue accounts notice. It is good practice to check if accounts have been received at Companies House and accepted for filing. This can be done online, by telephone, or by enclosing an acknowledgement slip and a stamped addressed envelope with the accounts which can be returned to the sender to confirm receipt.

Accounts Mislaid or Wrongly Dated at Companies House

- 2.13 In a substantial number of cases, the appeal was based on the assertion that the accounts were not delayed in the post, but given the wrong bar code date at Companies House. This applied particularly to Saturday postal deliveries to Companies House, when the post may not be processed until the Monday. However, such post is segregated and, when the items are processed, they receive a bar code showing the date of arrival at Companies House and not the date of processing. In the absence of any evidence, such appeals must fail, as there is no reason for supposing that the document was mishandled at Companies House rather than delayed in the post.

A number of cases related to accounts posted over the Christmas period, where the Post Office warns that there are likely to be delays.

- 2.14 When Companies House has no record of receiving accounts which appellants say they have posted, appeals are often based on Companies House having lost the accounts. Such appeals must fail in the absence of proof of delivery or some other evidence which demonstrates that the accounts were delivered to Companies House. I upheld three such appeals. In one, the director said that the accounts had been contained in an envelope with a covering letter which said that a cheque and the accounts were enclosed. Companies House had processed the cheque before the deadline for filing the accounts. If the accounts had not been enclosed, the person processing the letter ought to have contacted the director to advise him of the oversight. Alternatively, the accounts may have been enclosed and mislaid.
- 2.15 I upheld a second appeal where the accountants' computerised records showed that the accounts had been sent by courier to Companies House's London office on the day of the filing deadline and the courier's records showed that the accounts had been signed for along with four other items. In a third case, I upheld an appeal because the appellant said that the accounts had been in the same envelope as other accounts which records showed had been received at the Companies House Edinburgh office before the filing deadline.

Web Filing

- 2.16 Although I did not uphold any appeals relating to web filing, I noted that the website does not have any information about availability on a Bank Holiday and suggested that this be amended¹.

Accountant Died

- 2.17 In another case, the company's accountant had died. When the reminder that the accounts would soon be due was received by the director, it was sent back before the filing deadline with an explanatory note written on it. This might have been construed as a written request for an extension, but Companies House did not react to this communication. I upheld this appeal.

Amount of Penalty Disputed

- 2.18 In two cases, the appellant disputed the amount of the penalty. I upheld one case as the appellant had been told on the telephone by a member of Companies House staff that, because there had been a delay in sending out an overdue accounts letter due to the introduction of a new computer system, a penalty of £100 rather than £250 would be collected. I concluded that, having given this assurance, Companies House should collect the lower amount.
- 2.19 The other appeal, which I did not uphold, was based in part on a challenge to the corresponding date rule and in part on the assertion that the date of delivery should not be counted for calculation of penalty. The corresponding date rule is established by way of stated case and I rejected this leg of the appeal. The other argument which the appellant put forward related to the use of the word between in section 242A Companies Act 1985 (the relevant section for the imposition of a late filing penalty) and two court

¹ See Appendix A

cases where it was determined that the neither the due date nor the date of delivery should be counted in calculating how late the accounts were. Neither of these judgments is binding and the Registrar has not followed them. He takes the view that the date of delivery does count, as to do otherwise has the perverse consequence that a late filing penalty could not be imposed if accounts were delivered a day late. I concluded that if the appellant wished to challenge the meaning of the wording of section 242A, he would have to do so in a court of law.

- 2.20 The corresponding date rule is set out in the relevant guidance booklet, Accounts and Accounting Reference Dates, and on the website. The rule is that a period of months after a given date ends on the corresponding date in the appropriate month. For instance, three months from 30th September is 30th December and not 31st December. The corresponding date rule, which many found counter-intuitive and difficult to understand, will not apply for the purpose of filing accounts for accounting periods starting from 6th April 2008, when the period allowed for filing accounts will end with the **last** day of the appropriate month. For example a private company with an accounting reference date of 30th April will have until midnight on 31st January of the following year to deliver its accounts, not 30th January.

Wrong Advice from Companies House

- 2.21 The final appeal which I upheld related to advice given by Companies House. The director had dissolved his company in 2001 but his accountants had failed to transfer all the assets to his other company beforehand, necessitating an application to restore the company to the register in order to transfer the assets. The Court Order made in 2002 for the company's restoration required it to be dissolved again as soon as the assets were transferred. It proved impossible to transfer one of the assets and, eventually in 2008, the director applied for the original company to be fully restored to the register in order to retain the asset.
- 2.22 Accounts had not been filed since 2001 and had to be brought up to date prior to the company's full restoration to the register. Because Companies House had expected the company to be dissolved as soon as the transfer of assets was complete, they had not taken any of the normal steps of sending reminders shortly before accounts were due, or sending late filing notices, or otherwise pursuing the failure to file accounts. When the director first intimated to Companies House in July 2007 that he would apply for full reinstatement of the company, he was given advice about bringing the record up to date in respect of the accounts, but there is no evidence that he was told that if penalties were applicable they would be levied. When the director sought the full restoration of his company, he was unaware that late filing penalties would be incurred. The information was not given until the application for full restoration was initiated. As all the accounts for the period 2002 to 2007 were overdue, when they were filed, late filing penalties totalling £4500 were incurred.
- 2.23 I considered that the director should have been given a fuller understanding of his position at the time that the conditional restoration to the register was made and again when he indicated that he would seek permanent restoration of his company. It should also have been made clear to the director at the time of the conditional restoration that he was expected to act expeditiously and dissolve his company again and the matter should not have been allowed to stretch out over a period of years without comment from Companies House.

2.24 I suggested that Companies House may wish to consider making some changes to its procedures when dealing with restorations which are intended to be temporary, to ensure directors are fully aware of the consequences if dissolution does not follow within a short period².

Other Grounds for Appeal

2.25 Appellants frequently ask for their appeals to be considered on a range of other grounds such as that the penalty is disproportionate for a small company, or for a new company, or for one which is not trading or has no assets. Inability to pay is often quoted, as is the current economic situation and the hardship caused by the penalty. However, the legislation applies equally to all companies, large or small, trading or not, whether or not they are able to pay. The Registrar cannot exercise his discretion on any of these grounds. It is also not uncommon to assert that Companies House deliberately loses or bar codes documents with a date later than the date of receipt or uses other tactics to ensure accounts are delivered late, in order to generate income by imposing late filing penalties.

Ancillary Matters

2.26 In the course of dealing with the appeals, I identified a number of ancillary issues. On more than one occasion, a letter of appeal had been sent in with a duplicate copy of the accounts, but had been overlooked. I suggested that the Register Maintenance Team might be advised to scrutinise covering letters accompanying overdue accounts more carefully³.

2.27 In another case, I drew attention to the fact that there appeared to be some problems with correspondence in the Enforcement Unit at Companies House which had no record of two letters and an email which they should have received⁴.

2.28 Companies House advises directors of dormant companies that if they apply for their company to be dissolved, the penalty will not be collected. It would be inadvisable for to do this if the company owns assets (such as a property management company which owns a freehold) which, if they were not transferred to a new company prior to dissolution, would revert to the Crown. I suggested that when case managers give such advice, it should have a caveat placed on it⁵.

Categories of Company

2.29 I have given some consideration to the frequencies of appeals from different classifications of companies. See Table 5 overleaf.

2.30 Only 2.9% of the appeals I received were from Scottish companies which constitute only 5.5% of the total number of companies in Great Britain. The figures are too small to draw any meaningful conclusion.

² See Appendix A

³ See Appendix A

⁴ See Appendix A

⁵ See Appendix A

TABLE 5 BREAKDOWN BY TYPE OF COMPANY

| | Number of Appeals to Adjudicator | % of Appeals to Adjudicator | % of Total Number of Companies |
|--------------------------------------|---|------------------------------------|---------------------------------------|
| Scottish Companies | 3 | 2.9 | 5.5 |
| Dormant Companies | 29 | 27.6 | 13.3 |
| Property Management Companies | 14 | 13.3 | 2.4 |

NB Figures are for England, Wales and Scotland

- 2.31 The majority of the companies which appeal to me are small companies, many either not trading or with a low turnover or making little profit. The impact of a late filing penalty on such companies can be considerable. Equally, without the infrastructure of bigger companies, some directors struggle to deal with the various compliance issues such as filing accounts with Companies House. Dormant companies make up 13.3% of the total number of companies in Great Britain, but over 27% of the appeals I dealt with in the last year came from such companies.
- 2.32 Most property management companies are dormant and they constitute nearly half of the appeals from dormant companies. Property management companies typically exist to own the freehold of a block of flats or common land on a housing estate and to manage common parts of the building or estate. They have a higher than average compliance rate, with 98.5% (March 2009 figures) having an up to date set of accounts on the register, compared to an average for Great Britain of 94.9% (figures for 2008/9 April to March). However, they are represented disproportionately highly in asking for their appeals to be referred to me. Such companies usually have a number of directors, but often one takes responsibility for complying with Companies House requirements. When something happens, for instance that person becomes ill, in many cases I have seen, the other directors are either unaware or feel unable to step into the breach. This may explain the fact that, on the one hand, the levels of compliance for such companies are higher but, on the other, the number of appeals which reach me is disproportionately high.

3. COMPLAINTS

- 3.1 During the period 1st April 2008 and 31st March 2009, I dealt with nine complaints and three appeals against late filing penalties which contained complaints which were distinct from the appeal. I upheld one complaint.

Dissolutions

- 3.2 The case which I upheld related to an application for dissolution of a company which had gone into administrative receivership in July 2003 and had not filed accounts since 2001. As long as the company was in existence on 31st March each year, its Pension Scheme had to pay a levy to the Pension Protection Fund. The Pension Scheme was an

unsecured creditor of the company. Its trustees decided that Companies House should be asked to dissolve the company, in order not to have to pay the next levy which would be raised if the company was still in existence on 31st March 2007 and the process was initiated in August 2006.

- 3.3 The Company was struck off but not until after 31st March 2007. As a result, the Pension Scheme incurred a levy from the Pension Protection Fund of £228,645. Companies House had been asked to depart from the standard procedure in order to speed up proceedings whilst still complying with legal time scales. The Companies House staff dealing with the correspondence failed to appreciate that the applicant was a third party and not the company itself and also insisted that standard procedures had to be followed. I found that the solicitors for the Pension Scheme could have done more to drive their case forward but also that Companies House had failed to give proper consideration to the request to expedite the process.
- 3.4 A second complaint relating to the dissolution of a company was that Companies House had accepted an objection from the company's accountants against dissolution on two occasions and suspended the dissolution process as there was a dispute over the accountants' fee. The director of the company said that the objection was malicious and Companies House should not have accepted it and that he was being victimised by Companies House because he was rude to a member of staff on the telephone. (He had apologised and the apology had been accepted.) If the Registrar is advised that there is an outstanding claim against a company, he may decide to delay dissolution. In the absence of evidence that the objection was malicious, it would have been wrong not to suspend the dissolution of the company.
- 3.5 The director of the company complained that the anonymity afforded to the objector runs counter to his right to know his accuser. Companies House policy is only to disclose the identity of those objecting to dissolution on request and with the consent of the person objecting. There are two competing issues here: the right to privacy for the person objecting and the right of the directors of the company to know who is objecting and why. Companies House requires a person objecting to the dissolution of a company to provide supporting evidence. An objection to an application for voluntary dissolution will be held by Companies House for twelve weeks, and then dissolution will proceed unless a further objection is received, in which case the objector will have to demonstrate that the matter is being progressed with the company. Thus for an objection to be sustained, it follows that the company will know the nature of the objection and who is making it. I found no evidence that the director was being victimised and that the complaint was otherwise without merit.
- 3.6 A third complaint related to the loss of a form 652a applying for a company to be dissolved which had been enclosed with a cheque for the fee and the accounts. The accounts were wrongly rejected and returned for amendment. They were not resubmitted until after the filing deadline and a late filing penalty was incurred. It was acknowledged that the accounts should not have been rejected, and the late filing penalty was cancelled. The cheque had been banked but the form 652a was mislaid and not processed. As a result, the striking of the company from the register was delayed. The company secretary sought compensation for time, expense and exhaustion caused by the Companies House errors. She had received an apology for both lapses which she did not accept. Companies House was willing to make an ex-gratia payment to cover the

costs incurred as a direct result of its error and I suggested the complainant submit an itemised list of costs attributable to the errors for consideration. I did not uphold the complaint.

Incorporation of Company

- 3.7 This complaint related to the director's contact by telephone and email with various members of staff at Companies House over her efforts to incorporate her company. She made two attempts at incorporation but the paperwork was incomplete on both occasions. She complained that a returned application and an email which she did not receive had never been sent. She also complained that a member of Companies House staff had been rude to her on the telephone and she made an unspecified complaint against two other members of staff. I found that the complainant had not followed some of the advice she had been given, that there was nothing to substantiate the complaints she had made about staff, and that the responsibility for submitting an application rests with the applicant, who should seek professional advice and not rely on Companies House for the entirety of the process. Companies House could not have done more for the complainant and, arguably, did much more than it needed to. I did not uphold the complaint.

Company Names

- 3.8 Two complaints related to company names. In the first, the director complained that he had not been advised that he could change the name of his existing company and did not need to dissolve it and set up a new company. I found no evidence that he had been given wrong advice.
- 3.9 In the second case, the director complained that Companies House should not have allowed him to register his company name because another company of the same name already exists. The other company has a similar but not identical name and is a Canadian company, not a British one. The Companies House guidance notes on company formation and the Companies House website both recommend that customers check the name they have chosen for their company on the Companies House Register before they apply for their company to be incorporated. Companies House will not register two companies of the same name, and it has not done so. I did not uphold the complaint.

Registration of Memorandum and Articles of Association

- 3.10 The complainant believed that the new Memorandum and Articles of Association for the company, which was a community trust, had not been properly adopted and complained that Companies House should not have registered them or should subsequently have removed them. Proceedings at meetings are an internal company matter, governed by the company's Articles of Association. Companies House does not interpret a company's Articles nor does it intervene in any dispute over whether a company has acted in accordance with its Articles, nor does it have the powers to verify or validate information sent to it. As long as documents are sent to it in an acceptable format, then Companies House will comply with its statutory duty to register them. Once information has been placed on the public register, the Registrar has no power to remove it other than following a court ruling. I did not uphold the complaint.

Failure to Issue Share Certificate

- 3.11 The complainant first complained that the directors of the company had not notified Companies House that shares had been allocated to him. He was advised that transfers of shares are shown on the Annual Return which was not yet due. He then complained that he had not been issued with a share certificate contrary to section 185 of the Companies Act 1985 (now section 776 of the Companies Act 2006) which requires companies to have share certificates ready for delivery within two months of the allotment or transfer of shares. However, the company was in dispute with the complainant and said he was not entitled to any shares, in which case there was no share certificate to be prepared. I supported the Companies House position that this was a dispute between the two parties in which they could not intervene.

Fraudulent Accounts

- 3.12 This complaint was made by the victims of a fraud. Fraudulent accounts had been delivered to Companies House and placed on record. Companies House was aware that the company was being investigated by the Companies Investigation Branch of BERR (Department of Business, Enterprise and Regulatory Reform) and had been contacted by a firm of accountants which said they had been misrepresented as having prepared the accounts. The complainant, a finance company, gave credit to a second company on the basis of an invoice from the company which was being investigated and a check on their accounts on the Companies House record. The company under investigation did not exist and the second company defaulted on payment resulting in a loss of over £27,000 by the finance company. The finance company complained that Companies House had not removed the accounts or placed a warning on them.
- 3.13 Companies House is a registry of information supplied by companies. Documentation is given a basic examination to ensure it meets the appropriate standard before acceptance and then placed on the public record. The Registrar has no power or duty to check the accuracy of the information he is given nor does he have any investigative powers. The Companies Act does not give the Registrar any authority to remove documents from the register but he will do so on receipt of a court order. The Companies House website contains a disclaimer which explains that it does not verify the accuracy of the information sent to it by companies.
- 3.14 Whilst I did not uphold the complaint, I had considerable sympathy for the loss incurred by the finance company. Companies House currently has no power to annotate or otherwise place a warning against a record on the company register. It will receive such a power in October this year. However, the Registrar would be unwise simply to place a warning when an allegation is made, as this would have the potential to compromise any investigation and would also have a detrimental affect on a company if it transpired that the allegation was unfounded or malicious. Companies House has no investigative function but refers the information it receives to the appropriate bodies such as the police, advising the complainants to do the same.
- 3.15 As things stand, Companies House has no power in law to remove information from the register on the grounds that it is incorrect. Provisions of the Companies Act 2006, which come into force in October 2009, will give the Registrar powers in some cases to remove material from the register which turns out to be fraudulent. I recommended that Companies House should look at how it might develop policies and procedures so that an independent objective body, such as the Companies Investigation Branch, the

Serious Fraud Office, the Serious and Organised Crime Agency or a police force, could notify the Registrar when they establish that a particular piece of information on the register is false and the Registrar should then be able to act on this information without the necessity of a court order⁶.

- 3.16 I also suggested that Companies House reviews its policies and arrangements for both passing on and ensuring that it receives information from bodies engaged in investigating fraud, as part of the move being led by the newly formed National Fraud Authority to improve the co-ordination and efficacy of all relevant parties in the fight against fraud⁷. Companies House is currently working with the National Fraud Authority and the City of London Police which is the national lead force for economic crime on their proof of concept for national fraud reporting.

Delay in Making Repayment

- 3.17 In this case there was a delay in paying a late filing penalty of £100. By the time it was paid, debt collection agents had been instructed by Companies House and legal costs of £65 incurred. The Company Secretary then sent £165 which was the amount of the penalty and the costs, and was an overpayment of £100, as he had already paid the penalty. He complained that it took more than six weeks to make the refund. Companies House sent a further £100 to refund the £65 legal costs and make a goodwill payment of £35. He returned the cheques and Companies House withdrew the offer to pay £100. I did not uphold the complaint which was over the penalty, the legal costs, and the delay in the refund. I found that Companies House had acted correctly throughout and supported the withdrawal of the payment of an additional £100 over and above the refund of £100.

Miscellaneous

- 3.18 In two further cases, appellants against late filing penalties also complained, in one case that the way in which the late filing penalty system is administered is unfair, and in another that the substance of his appeal was not addressed and that he was treated in a bullying manner. I did not uphold either complaint.

CONCLUSION

- 4.1 As last year, I have continued to find the staff at Companies House to be very thorough, accurate, speedy and helpful in their dealings with me. I should particularly like to thank the Senior Appeals Manager and all the Case Managers including the new ones in the Late Filing Penalties Department for the help they have given me, especially in some of the more complex cases. I repeat the observation which I made last year that my scrutiny of the files I have been sent reveals that appeals and complaints are dealt with to a very high standard and in short timescales. Appellants and complainants are dealt with courteously and sympathetically and given clear explanations.
- 4.2 Companies House showed considerable forethought in putting measures in place to cope with an expected increase in the number of appeals, which occurred earlier than expected, due probably to the current economic problems. Staff coped with the influx of work, still managing to deal with cases promptly.

⁶ See Appendix A

⁷ See Appendix A

- 4.3 In the period covered by this report, Companies House received 9887 complaints of which the number referred to me (9) is very small by comparison. This says much for the work which is done by Companies House staff at an early stage, especially to set things right where something has gone wrong.

Elizabeth Neville DBE QPM
28th May 2009

APPENDIX A

SUMMARY OF RECOMMENDATIONS AND OBSERVATIONS

- 2.16 I noted that the website does not have any information about availability on a Bank Holiday and suggested that this be amended.
- 2.24 I suggested that Companies House may wish to consider making some changes to its procedures when dealing with restorations which are intended to be temporary, to ensure directors are fully aware of the consequences if dissolution does not follow within a short period.
- 2.26 On more than one occasion, a letter of appeal had been sent in with a duplicate copy of the accounts, but had been overlooked. I suggested that the Register Maintenance Team might be advised to scrutinise covering letters accompanying overdue accounts more carefully.
- 2.27 In another case, I drew attention to the fact that there appeared to be some problems with correspondence in the Enforcement Unit at Companies House which had no record of two letters and an email which they should have received.
- 2.28 Companies House advises directors of dormant companies that if they apply for their company to be dissolved, the penalty will not be collected. It would be inadvisable for to do this if the company owns assets (such as a property management company which owns a freehold) which, if they were not transferred to a new company prior to dissolution, would revert to the Crown. I suggested that when case managers give such advice, it should have a caveat placed on it.
- 3.15 I recommended that Companies House should look at how it might develop policies and procedures so that an independent objective body, such as the Companies Investigation Branch, the Serious Fraud Office, the Serious and Organised Crime Agency or a police force, could notify the Registrar when they establish that a particular piece of information on the register is false and the Registrar should then be able to act on this information without the necessity of a court order.
- 3.16 I also suggested that Companies House reviews its policies and arrangements for both passing on and ensuring that it receives information from bodies engaged in investigating fraud, as part of the move being led by the newly formed National Fraud Strategic Authority to improve the co-ordination and efficacy of all relevant parties in the fight against fraud.