

Complaints Adjudicator for Companies House

W H Thomas

Annual Report 2002

- 1 My eighth Annual Report covers the period from 1 April 2001 to 31 March 2002. During the past year, during which the total number of cases referred to me reached 495, further steps have been taken to improve the quality of work within Companies House. Recommendations in my adjudications will be implemented more quickly and more directly.
- 2 The table below shows that this year the number of new complaints has increased very considerably, from 76 to 110. All but four concerned late filing penalties; brief details of the others will be given later.

Table of new cases in 2001/2002 and adjudications issued

Month and year	New Cases accepted		Adjudications issued	
	Number of cases	Late filing / other	Complaints upheld	Complaint rejected
April 2001	12	all LFP	0	10
May 2001	4	all LFP	0	5
June 2001	11	all LFP	2	7
July 2001	16	all LFP	0	8
August 2001	10	1 service / 9 LFP	3	18
September 2001	8	1 service / 7 LFP	1	6
October 2001	13	1 service / 12 LFP	1	9
November 2001	10	all LFP	0	12
December 2001	7	all LFP	0	6
January 2002	5	1 service / 6 LFP	2	5
February 2002	7	all LFP	0	3
March 2002	7	all LFP	0	10
Totals	110		9	99

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

Mail delivery

- 3 There is no doubt that the large increase in cases referred to my office is directly attributable to three things. First, the withdrawal of the so-called "3-day concession" from October 2000. It was apparent to me that many company directors, and their advisers, took this concession into account and treated the statutory filing period as being three days longer. Now, all accounts which arrive after the deadline will be penalised. No concession will be granted. Thus, in the present year, I had many cases where accounts had been delayed in the post and had arrived after time ran out. A penalty was inevitable, as was a protest.

Secondly, there has been an increase in complaints where accounts have gone missing. A change in practice by the Registrar has meant that discretion is no longer exercised when accounts, duly posted by a company, do not arrive at Companies House.

- 4 The third, and most significant, reason has been a marked deterioration in the ordinary postal service offered by the Royal Mail. It is surprising to me that so

many people remain faithful, not only to the post, but believe that a letter put in a letterbox at 5 pm one afternoon will be in the Post Room at Companies House the next morning. Complainants understandably argue that it is unreasonable to doubt the efficiency of the Royal Mail but the facts and figures speak for themselves. I recommend that everyone who has dealings with the Royal Mail obtain that organisation's "How are we doing?" leaflet. This is produced every quarter and shows the percentage of first class mail delivered next working day to destinations within the postcode area, within 100 miles and over 100 miles distant. Obviously, the measure of success varies considerably but in parts of north and east London, for example, only 75% of such mail would have reached Cardiff the next day.

In many cases, people tell me that it is quite wrong for them to be penalised by one Government Department because of the inefficiency of another. It may seem to an outsider that Companies House is playing a game with the company by saying that the Registrar cannot take any account of delays in the post. This does look as though one Government department is taking refuge behind another - but that is not how the two bodies are actually organised. The days when the whole of the Civil Service was inter-dependent and staff moved between the departments of state have gone. An agency such as Companies House is now treated as a separate, "stand-alone" body and it has no links with the Royal Mail - except that it is a customer of its services.

- 5 In previous years I have drawn attention to the availability of other mail delivery systems, such as Hays DX. Although these companies do not provide a guaranteed delivery service, they have been able to avoid the sort of difficulties which everyone has to face from time to time with postal strikes and the annual delays at Christmas. Although not perfect, their services are rather more reliable than the Royal Mail. The cost per item is similar. It seems odd that so many firms of accountants do not subscribe to such services. Delivery by hand to the satellite offices in London, Edinburgh, Manchester, Birmingham and Leeds is also possible and, for those leaving delivery until the last minute, can ensure safe and timely compliance.



Companies House
— for the record —

Recommendations

6 There follows a summary of those recommendations made during the current year.

- (a) A complainant raised an issue about the lack of clear information about the technical legal duties to “lay accounts” before a general meeting of a company and to “deliver accounts” to the Registrar. One of the Guidance Notes issued by Companies House GBA3 (Accounts and Accounting Reference Dates) was clear. The current edition contains the highlighted statement:

You *do not* have to lay the accounts before a general meeting of the company, or have them agreed by the Inland Revenue, before sending them to Companies House.

However, this simple and helpful statement was not repeated in the Flat Management Company booklet (and in any separate booklet on Dormant Companies). I recommended that the Registrar includes this in future editions of latter booklets, and, more importantly, forthwith on the Companies House website.

- (b) Agents sent a letter to Companies House with the accounts but it was either lost, or, more likely thrown away, in the Document Examination Branch. That was a mistake and I have pointed out on previous occasions that document examiners must read accompanying letters and not assume that they are simply covering notes. I therefore recommended once more that staff in the Document Examination Branch are reminded of the need to treat all correspondence properly and forward it to the relevant section.
- (c) In a Scottish mail delay case, Companies House, Edinburgh told the complainant that strike action “was well publicised at the time” ; however the Registrar for Scotland told me that “the public only became aware of the action after it had started”. The complainant had posted the accounts unaware that industrial action was under way. I recommended that the penalty was waived to make the practice in Scotland consistent with that at Cardiff.
- (d) In another case, I recommended that, although it was out of the normal way of working in the Document Examination Branch, a phone call to try to resolve what was a continuing problem of non delivery of correct accounts might have saved time and effort.
- (e) In April 2000, a customer posted his 2000 accounts (due by the end of the following January). They were lost in the post. He later telephoned to ask whether his accounts were up to date. A spokesman for Companies House, seeing that the 1999 accounts, which were at the time the latest ones, had been registered, told him that they were. The customer therefore ignored the reminder letter,

because he “knew” that the accounts were at Companies House. He had been told that. What he did not know was that the 2000 accounts had never arrived. It seemed to me reasonable for the customer to rely on what he was told, because there was a mutual misunderstanding.

- (f) I recommended that when the leaflet dealing with the calculation of filing dates was re-printed, its text was re-aligned so that a paragraph headed “Important” was above the table of dates.
- (g) In a late filing case, Companies House staff failed in three respects to handle correspondence properly. A second penalty notice was sent out when the matter was under review; a copy of a judgment, said in a letter to be enclosed, was omitted; the Charter was broken when it took longer than 10 working days to reply to correspondence.
- (h) A document examiner rejected a set of accounts because “a profit and loss or income and expenditure account was absent”. However, I was told that the accounts should have been accepted as originally presented. The accounts are headed “Abbreviated Financial Statements” and contain the relevant exemption statements required by the Companies Act 1985. This means that a profit and loss sheet was not required. I concluded that, exceptionally, there had been a failure of a pretty basic kind in the Document Examination Branch, and recommended that the penalty was waived.
- (j) A sole director decided that, because his accounts were overdue, he would leave them until the following year. None of the material then produced by Companies House spelled out what financial risk he (or, more accurately, the company) faced. The director knew that he would incur a penalty but had no need to contact Companies House. I concluded that Companies House was in breach of its Charter Standard Statement in that it did not, in the particular case, “provide up-to-date information ...accurately”; “provide guidance... which is easy to understand”; or “treat the company fairly”.
- (k) An accountant for a public limited company who contacted Companies House late on the last day for filing accounts was given misleading advice. The officer in question failed to use initiative or common-sense. A form was incorrectly entered on the database and further misleading letters sent. When a complaint was made, the company was told that Companies House was under no obligation to give advice. I recommended that the inevitable penalty should be waived.
- (l) A complainant said that no one told him of the complaints machinery but that court action was taken while he was still trying to appeal against a penalty. There was no conclusive evidence to show that the complainant had been given the correct advice and I recommended that court action be stayed and legal costs should not be collected.

Complaints other than late filing penalties

7 There were three complaints about service.

- (a) The first concerned the way in which Companies House dealt with a complaint that a director of a large PLC had given his business address and not his private address when particulars of his appointment were filed. The Agency took an inordinate time to reply, and then to indicate what action it would take. The complainant became increasingly angry at the apparent refusal to deal with a perfectly proper complaint.

I made recommendations about better ways of approaching such matters, although I explained to the complainant that new legislation would come into force at the end of 2001 and would enable those who can make out a case to apply to the Registrar for leave to give a service address for the public record, while their usual residential address is given but held in secret. One consequence of this would make the whole of the correspondence between the complainant and Companies House seem rather pointless.

- (b) An accountant complained that a member of Companies House staff had been very rude to him during a telephone call; and that the offender had never apologised personally. I found that the notes made at the time made no reference to any anger or irritation during the call, although, a month later, the officer told a supervisor that he had terminated the call as he felt no progress was being made. A fuller note might have thrown more light on what was said. Telephone calls are not recorded. As to the second point, I concluded that it was standard practice throughout the Government Service for senior staff to reply to complaints about individual staff members. Indeed, I believed that that is common in industry and commerce. It is for managers to take responsibility for their staff and to apologise to outsiders; and then to discipline anyone who has fallen below the standards expected. I came to the conclusion that the procedure followed by Companies House, and the relatively swift apology from the Director of Operations - five weeks after the complaint - was appropriate.

- (c) The third case concerned the misreading at Companies House of a form 287 which had been completed by an accountant (to change the location of registered office). The consequence of the wrong address being registered led to the company being struck off, as none of the statutory notices or letters ever reached the company.

Not knowing the significance of any number I looked at the form and assumed that the number in the address box was "71". When I had read the files and realised that the company was trying to register that number I had another look at the original and it then became easy to see that what was written in the box could be read as "7

comma". That was merely my view with hindsight and, placing myself in the position of a document examiner confronted with a pile of perhaps 200 documents to be processed in one day, it was reasonable that he decided that the number in the address box was "7". Other people have come to the same conclusion; I carried out a small sample and asked fourteen people chosen at random. Eight said it was "7" - six that it was "71". That variation satisfied me that the decision of the document examiner was not capricious or careless but a genuine attempt to identify the number. It could not by any stretch of the imagination be regarded as negligence. There was no confusion over the address on the form 287; the examiner read it as "7" and was entitled to do so.

Although the Registrar agreed to meet the legal costs of restoring the company to the register, the demand by the accountant for payment of his professional fees was rejected and I concluded that the Registrar was correct to follow standard practice in this regard.

- (d) A complaint was made that the public register at Companies House indicated that a person named there still had eight company director/secretary appointment while, in fact, the individual was only a director of one "live" company. I understood the complainant's argument, and had some sympathy with it both from his point of view and that of the Registrar. The latter is obliged to store historical information which may just clog the database. However, the functions of the Registrar are laid down by the Companies Act 1985 (and subsequent amendments). Section 707A requires the Registrar to record and keep information delivered to him provided it is possible to inspect and copy it. Although original written documents are destroyed after ten years, the information gleaned from them - and which was entered on the database when it arrived - remains on the database indefinitely. Section 709(5) says that the Registrar can only withdraw a record with the leave of the court. He is therefore in a bind; all information about companies and their officers arrives, is recorded and entered on the database and stays there unless and until a court orders its removal. The fact that the complainant objected was irrelevant. It is a fact that, historically, he had held eight company posts required to be registered; they were registered and recorded; the fact that five of the companies have been dissolved was also irrelevant.

Human Rights Act 1998

- 8 A handful of complainants, whose companies have received a late filing penalty, have argued that the penalty regime is incompatible with the Human Rights Act 1998, and that this unfairness is compounded by the lack of an impartial appeal mechanism.

It is self-evident that the Companies Act predates the 1998 Act, which incorporated into United Kingdom law the European Convention of Human Rights ("the

Convention"). I understand that the present internal advice to the Department of Trade and Industry is that the penalty regime affects "civil rights" within the meaning of the Convention. That Department considers that the fixed penalty regime is compatible with the Convention. While I accept that my role, as Complaints Adjudicator, is not created by statute and that I lack the power to overturn the Registrar's discretion, the existing arrangements are part of a determination that complaints about Companies House should be subject to an informal, independent review. In the seven years that my office has existed, I have investigated over 500 complaints. The vast majority concern late filing penalties and in most cases I have upheld the Registrar's decision not to exercise discretion.

9 Arguments about the Human Rights Act 1998 can only be resolved by an application to a "higher court" as defined in the Act. Unless and until some strongly motivated pioneer takes a case to court, the Registrar will continue to do what Parliament has directed her to do. In an effort to help complainants, I have come to some conclusions on the impact of the Act, and it may be helpful to make some observations on the penalty regime, taking into account some of the principles revealed in the jurisprudence of the European Court of Human Rights over the years.

- (a) Penalties are intended to ensure compliance with a reasonable legal target - that accounts should be filed on time;
- (b) The penalties are modest in amount;
- (c) They vary depending whether the company is private or public and on the degree of lateness;
- (d) The Registrar has discretion to waive penalties in certain, very narrow, circumstances;
- (e) There is an internal appeal mechanism; this has resulted in over one-third of penalties being waived in a five month period in 2001;
- (f) There is an independent, external moderator - the Complaints Adjudicator;
- (g) Any penalised company has the right to apply to the court for judicial review;
- (h) It is reasonable to have a simple mechanism for imposing fixed penalties for administrative shortcomings;
- (j) The penalties were established by Parliament - what some may still think of as the most independent and impartial of tribunals - and not by any administrative tribunal or the Registrar.

10 The Human Rights Act 1998 does extend to companies as well as private individuals but there is also an argument that a penalty regime for limited companies can be tougher than one which might apply to the man in the street. After all, a person

setting up a business is not compelled to incorporate. He may do so in order to obtain some benefits not available to the sole trader. The effects of a penalty scheme could be regarded as part of the price of the benefits.

I hope that those preparing the new Companies Bill have taken account of both the impact of the Act and the arguments being put forcefully against late filing penalties. It would be most unfortunate if the new penalty regime, when enacted, was later found to be incompatible with the Convention.

Conclusions

11 I have had four cases this year where an appeal against a penalty was based on the illness of an accountant practising alone. Although I understand the position of a sole practitioner very well - for over twenty years I was a solicitor on my own - the greatest drawback to such a way of working is that disaster or illness can cause sudden problems.

Providing professional services means that any accountant should always have fallback arrangements in hand to protect his clients. I understand that the Institute of Chartered Accountants strongly recommends its sole practitioner members to enter into an "alternate" system, so that another accountant is able to take over at short notice. Indeed, the Institute has a pack available containing all the necessary paperwork.

12 I remain concerned that too many dormant companies continue to remain on the register. If directors do not understand their statutory duties, ignore reminders and default letters, file accounts late and then complain that they are victims of bureaucracy, one wonders why they bother to retain the company. Voluntary removal from the register helps reduce the number of companies, saves costs and work.

13 Finally, to ensure that companies know whether accounts (and other documents) have reached the Registrar, I urge them to use the acknowledgement system I outlined in my report last year. The person sending accounts should include:

- (a) a letter setting out full details of each document for each company;
- (b) an exact copy of that letter for Companies House staff to check;
- (c) a stamped self-addressed envelope for the checked copy to be returned to him.



W H Thomas
Complaints Adjudicator

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