

Complaints Adjudicator for Companies House

W H Thomas Annual Report 2003

1 My ninth Annual Report covers the period from 1 April 2002 to 31 March 2003. Although the table below will show that I have received fewer cases, several have raised difficult issues which have revealed some short-comings at Companies House. I shall deal with these matters in detail.

Table of new cases in 2002/2003 and adjudications issued

Month and year	New Cases accepted		Adjudications issued	
	Number of cases	Late filing / other	Complaints upheld	Complaint rejected
April 2002	13	2 services/11 LFP	0	7
May 2002	3	all LFP	1	5
June 2002	6	all LFP	1	4
July 2002	8	all LFP	0	10
August 2002	9	1 service / 9 LFP	3	9
September 2002	10	1 service / 7 LFP	1	6
October 2002	8	1 service / 12 LFP	1	13
November 2002	10	all LFP	0	7
December 2002	8	all LFP	0	3
January 2003	5	1 service / 6 LFP	2	3
February 2003	9	all LFP	2	7
March 2003	7	all LFP	1	7
Totals	96		12	81

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

Letters thrown away

2 I have had to deal with a series of cases raising a point which, although it may seem trivial, causes a great deal of irritation to members of the public. Many presenters send annual accounts with a covering letter. Most of the time, this simply says, in effect, "here are the accounts". Such letters accompany the accounts to Document Examination Branch where they are, quite rightly, thrown away.

However, a significant minority say "here are the accounts" but go on to ask for information, seek advice or offer comments on aspects of the work of Companies House. Document examiners are supposed to retain this sort of letter so that appropriate action can be taken. It is clear to me that some examiners are both failing to read covering letters and are throwing them away. The consequences of such action are considerable in time and work for the presenter and for Companies House. The former, understandably irritated at not receiving a reply, writes again - often enclosing a copy of the original letter. He receives a reply in which Companies House apologises but says either that the letter was never received, or that it cannot be traced or, more honestly, that it was thrown away. If, as so often the case, there is a dispute about the date of arrival of a set of accounts, the fact that the agency denies receipt of a letter which the presenter knows must have arrived, because it was with the accounts, or

admits receipt but then says it was discarded, makes the presenter extremely sceptical about claims that Companies House has complete confidence in the integrity of its receipting systems.

That there have been, relatively, so many cases coming to me means that there must be a large number of incidents within the Document Examination Branch. I understand that plans are in hand for the segregation and random sampling of all covering letters. This is a start, but I understand that at Companies House Edinburgh, senior staff go through each day's covering letters to ensure that any supplementary questions are dealt with. Edinburgh also retains all covering letters for three months. I would have thought that this sort of good practice could be followed at Cardiff. I accept that the volumes are much greater, but so are the staff levels.

3 There have been other cases where letters were sent by complainants but were never answered. Sometimes, there was an apparent reason for the non-reply. The letter may have asked for a document to be sent. It was and no one at Companies House thought it necessary to write. I understand that the volume of such requests would make it impractical to send formal letters every time.

However, other letters, asking for information, have simply been ignored. There is a tendency within Companies House to assume that such letters never arrived, but, often, they are correctly addressed to a named person or the appropriate section. While one has much scepticism about the Royal Mail these days, they do not lose every letter which cannot be accounted for and some complainants have a suspicion, which I from time to time share, that letters are just disregarded in the hope that the matter will go away. I hope that all staff will see that ignoring letters is, at the very least, bad manners.

Striking off new companies

4 Every company has to file two documents at Companies House every year, an annual return (or "shuttle") and annual accounts. If a company fails to deliver either document, default letters are sent. If the company remains in default, action is started to strike it from the register.

A company does not have to file its first set of accounts until a maximum of 22 months from the date of its incorporation (19 months for a PLC). The first shuttle, however, is due 28 days after the first anniversary of incorporation.

I had two cases where companies had been struck off without the directors knowing. In the first case, the pre-printed shuttle was sent to the registered office as recorded

on the database. It was completed by the company's accountant and returned to Companies House. Advantage was taken of the form to change the address of the registered office. The form arrived at Companies House, was examined but rejected because the SIC Code was missing. The registered office address was not altered. The rejected form was sent, quite properly, to the accountant's office but never reached him.

The company was therefore treated as being in default. Letters warning of strike off were sent to the registered office address which was no longer used by the director, and, although she had forwarding arrangements with the Royal Mail, they never reached her. The company was dissolved 22 months to the day from incorporation.

5 The second case was a much simpler situation, although no less complicated for the director. At the time of incorporation, the form 10 containing the address of the registered office was muddled with that of another company and the wrong address was entered on the database. Thus the company's official "home" was wrong from the start. None of the letters and documents sent from Companies House reached the company and it was struck off, again just over 22 months from incorporation. The director knew nothing about it until after the event.

6 In the first case, the argument was put to me that the company had barely reached the stage of having to file its first accounts. Indeed, it was the arrival of the accounts and their rejection because of strike off that first alerted the director to the situation.

I have no difficulty with the Registrar's policy of striking companies from the register when default occurs. It has been clear to me for years that many companies should never have been incorporated in the first place. However, it does trouble me that companies can be dissolved without the directors' knowledge. The Registrar has introduced a new stage in the process which has helped in some cases. The letters warning of strike off go to the company's registered office. If the last one is returned by the Royal Mail as "undelivered", a letter is then sent to the director at his home address. This has enabled some companies to be saved. The Registrar told me that to send a final letter warning of imminent strike off to all directors at their home addresses would mean an additional 282,000 letters a year at a cost of £54,000.

Where Companies House was at fault, the agency meets the legal costs of restoration. I understand that in the year just ended, 29 companies were restored because their strike off had been caused by some act or omission at Companies House. The legal costs involved were approximately £43,000.

Sending a letter to every director whose company is about to be struck off might well save some companies from being struck off in error, and reveal that there was a problem with the registered office or documentation. In this Report, I do no more than draw the Registrar's attention to the possible set-off in cost by adopting a more customer-friendly approach to striking off.

7 At the other end of the scale, I have always been disturbed that so many companies are more than one year in default with their annual accounts while, at the same time, no action is taken to prosecute their directors. It seems

manifestly unjust to me to strike off a company which has inadvertently made a slip or whose correspondence has gone astray, while allowing companies with shocking histories of default - sometimes, I believe, quite deliberate - to remain alive and their directors unscathed.

The Registrar has told me that she has put in hand a review of prosecution cases outstanding and is applying for both an increase in court time and additional staff to try to accelerate the clearance of the backlog I shall watch how this progresses during the next year.

8 In the two cases, aggrieved directors claimed damages in addition to the payment of the company's legal costs for restoration. Successive Registrars have always maintained that Companies House is under no obligation to pay damages to a company struck off in error or to any third party. The solicitor for one company put it to me that Companies House knew it was in the wrong and that the Registrar ought to pay. Given that the Registrar has always declined to do so, my reply was that there is no rule that a defendant must admit liability, even when the facts all seem to point one way. The court might be critical, in due course, but that is a risk any defendant takes when choosing to put a claimant to proof. My hope is that the point can be tested in court; then the matter will be resolved one way or the other.

Barcode errors

9 I have had several cases where there have been problems with barcodes. The procedures for dating in-coming mail are crucial to the integrity of the processing system and to the statutory sanctions for late filing penalties. In principle it is simple. All mail - except envelopes addressed to certain named staff - are opened in the Post Room and every document has an adhesive, unique barcode applied.

I should make it clear that for the vast majority of the many millions of letters and documents received, the system works extremely well. However, I have come across instances where documents have not been barcoded in the Post Room. If a document is found without a barcode, there is an immediate doubt about its date of arrival. Several sections have their own barcodes which are applied to documents found with no barcode or evidence of date of arrival.

Despite explanations justifying this state of affairs, I do not find it satisfactory. I believe that barcodes should only be applied in the Post Room - because that is where by far the largest number of documents are so treated. If any document is later found anywhere in Companies House without a barcode, I believe it should be taken by hand to the Post Room where a special barcode - indicating uncertainty as to the actual date of arrival - should be applied. I can see no reason for any other section to have barcodes. The apparent determination to maintain the status quo looks to me rather like a refusal to accept any change in procedure.

I hope the Registrar will think again about this policy.

Recommendations

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

- (a) When completing its first shuttle, every company has to supply, for the first time, the SIC code. This information is a statutory requirement - by section 364(4) Companies Act 1985 (as inserted in 1989). I understand that a number of first shuttles are rejected simply because the four figure code is omitted.

In one case, the rejected shuttle was sent to a registered office which was incorrectly recorded at Companies House. It was never received and the company was eventually struck off the register. Although the document examiner was acting entirely within legislative requirements, I do not believe that it is reasonable, in terms of an effective customer service, to reject an otherwise perfectly acceptable shuttle simply because the code number is missing. I would have thought that it would have been possible for the first shuttle - containing vitally important details such as the change of registered office - to be accepted. To cure the defect, a simple letter could be sent to the company pointing out that the statutory code number was not given and that it was required within 14 days. If the information was not given, the next year's shuttle would still show the details blank, and then it would have been reasonable to reject it, with the rejection letter explaining that the details had been requested the previous year.

Despite the fact that the Companies Act makes it clear that these details must be supplied, to strike a company from the register for the want of four figures seems unreasonable to me.

- (b) In another case, the handling of accounts and shuttles for two companies was poor and the complainant justified in asking me to investigate. My findings showed a series of errors which culminated in my asking the Registrar to initiate enquiries as follows;
- (i) Why was the default letter DEF1AC not sent until five weeks after the accounts should have been filed instead of the usual fortnight?
- (ii) Why was a duplicate shuttle for 2001 sent out when that required was for 2002?
- (iii) Why was it not possible for one senior officer to deal with all the correspondence, rather than having it handled piecemeal - and why could not the "wrong" shuttle have been amended by a senior member of staff in order to avoid this protracted, time-consuming and frustrating correspondence
- (iv) Why does correspondence in an open and "live" file suddenly disappear?
- (c) A mistake was made in a letter when Companies House offered to accept outstanding penalties of £1,250 by "payment by way of four monthly instalments of £125". The complainant replied saying that he would pay the penalty to the best of his ability but that he could not pay at present. He asked to pay over 18-24 months.

I believe that the complainant would have been on very strong ground had he replied saying "Yes, I accept your offer, here is the first cheque for £125." The Registrar would have found it extremely difficult to argue against an assertion that she was stopped from demanding the full penalty. The wording in the Companies House letter was unequivocal. It might be argued for the Registrar that the law of estoppel does not apply against the imposition of statutory charges;

the Privy Council so held, for example, in *Maritime Electric Company Limited v General Dairies Limited* [1937] AC 610 when considering a mistake in the calculation of charges for the supply of electricity. More recent cases have also decided against estoppel when planning officers gave misleading advice upon which developers relied only, later, to find that enforcement proceedings were taken against them.

It might also be argued that to reduce the penalty in this way would be ultra vires the Registrar but, again, I do not agree. The Registrar is given a discretion by Parliament whether or not to collect a penalty. Such a power is quite different from a statutory undertaker whose charges are either right or wrong (*as in Maritime Electric*), or a planning department whose officers give wrong advice.

The language used was straightforward and clear. The officer writing the letter was saying, in effect: "£1,250 is due but I will accept four payments of £125 if you accept within 30 days".

I concluded that Companies House had made a simple offer - by way of the exercise of discretion - to accept a lower penalty of £500 on condition that it was accepted within 30 days. In the event, the complainant did not pay anything and applied to have the company dissolved. However, the case showed the need for the greatest care in checking correspondence before it leaves Companies House.

- (d) I have already referred to letters being thrown away.

The worst example this year was a case where an accountant had written for three successive years asking for incorrect information in the list of shareholders for two companies to be corrected. The letters had clearly arrived. They were sent with the shuttles which had been examined and registered. But the letters were never answered. The complainant turned to me in despair in an effort to show that Companies House could make mistakes and then deny them.

Human Rights Act

11 In my last Report, I mentioned that arguments about the Human Rights Act 1998 could only be resolved by an application to a "higher court" as defined in the Act. Towards the end of 2002, an application was made for judicial review which culminated in the judgment, on 18 December 2002, by Mr Justice Lightman in *POW Trust and another v Chief Executive and Registrar of Companies House and another* [2002] EWHC 2783

The judge emphasised that the meaning of the words in section 242A "the company is *liable to* a civil penalty" was clear. It was argued that the words could mean either: "exposed to the risk of an obligation arising or being imposed in the future", or "subject to a present obligation to pay the penalty". The judge said that he did not think that the first meaning could be maintained in the context of the section as a whole.

The judge also made it clear that he thought that the regime introduced by Parliament was appropriate, and he went on to say: "The modest civil penalties imposed by the scheme as sanctions for non-compliance with a vital regulatory requirement to secure the public interest are clearly legitimate and proportionate and accordingly the scheme is

Convention compliant”.

This valuable decision confirms that the Registrar is quite right to continue to do what Parliament has required of her - to collect late filing penalties imposed by statute from companies in default. She will, of course, always use her very limited discretion in appropriate cases. The full judgment can be found at the following website:

uk/judgmentsfiles/j1473/pow_trust_v_registrar_companies.htm

Points for companies to ponder

12 There are several matters to which I would refer company directors. During the year some told me that they consider compliance with the Companies Act to be a matter for their accountants and that they should not concern themselves with it. Not only is such an attitude foolish - it leaves them open to prosecution. All company directors have legal duties placed upon them by Parliament. It is in their interests to find out that they understand at least the basic obligation to file annual accounts and annual returns in accordance with the statutory timetable. All companies receive reminders and pre-printed annual returns. Company officers - and their advisers - should realise that they are sent to be read and acted on.

13 Directors who complain about late filing penalties should not allow themselves to believe that errors within Companies House subsequent to a penalty means that the penalty will not be collected. Unless Companies House contributed to the circumstances leading to the late filing, the Registrar will expect the penalty to be paid, because the law so demands. Any later mistakes may give rise to an apology (and an internal investigation) but that is all.

14 It is useful for the public to know that anyone can check the arrival of accounts and other statutory documents by making use of the Companies House website at www.companieshouse.gov.uk. On entry, one should click on “Company Information”, then on “Company Names and Addresses ...”. The screen will ask for company name and/or number. By inserting either, one will see basic details about the company and, in particular, the date of the latest accounts to be filed. One should bear in mind, however, that there can be a delay of up to five days before accounts are examined and that it is not always possible to know whether a set of accounts (or any other document, come to that) has arrived at Companies House until they have been seen by a document examiner.

Conclusions

15 I have avoided being critical about the Royal Mail this year. There is some evidence that delivery times are improving although the public should always use a courier or guaranteed delivery service when time-critical documents are involved. For many years the Royal Mail produced a quarterly leaflet entitled “How Are We Doing” in which basic statistics for each postcode area were supplied about percentage of first class mail delivered the next working day in three categories: “within postcode area”; “within 100 miles” and “over 100 miles”. This leaflet has been withdrawn, and slightly less helpful information is given for deliveries “within the area” and “outside the area”. It is only available on the

Royal Mail’s website. The Royal Mail must still have the figures which were formerly given. It could be that they are being defensive, because performance has got worse. It seems to me, as a user of the postal service, that logic would expect a letter travelling say, 300 miles, to take longer to arrive than one whose destination is 25 miles away. I think it is a pity that the fuller details are no longer available. I used them a lot to explain to complainants why they should post accounts much earlier than they did.

16 Finally, I should make it clear that the criticisms I have made in this Report relate to a tiny handful of cases where things have gone wrong. No one should believe that they mean that Companies House is not efficient. I continue to be impressed at the way the Agency does its work and handles the millions of documents which are sent in every year. It is inevitable in such a large organisation that mistakes happen. What is encouraging to me is the willingness of staff - from the Registrar down - to do their best to learn from mistakes and strive always to improve the service which is given to the public.

W H Thomas
Complaints Adjudicator
30 June 2003



A handwritten signature in black ink, which appears to read "W H Thomas". The signature is written in a cursive, flowing style.