

Companies House

A Hampton Implementation Review Report

November 2009

Companies House

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a review team drawn from the Better Regulation Executive, from the Drinking Water Inspectorate and Natural England, in June 2009.

Further information about the reviews can be found at:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementingprinciples/reviewing-regulators/page44054.html>

EXECUTIVE SUMMARY AND CONCLUSIONS

Key findings from the review: In general, the review team found that Companies House has set a good standard of Hampton compliance, and offers examples of best practice in a number of areas.

Key findings are:

- Companies House is exceptionally focussed on 'maintaining the integrity of the Register' by ensuring that companies file information on time and in the correct manner. All aspects of its business from the mail-room to the call centre are designed and work towards ensuring that they have an up-to date and accurate register. The regulator has an extremely clear sense of purpose and the outcomes it is working to achieve.
- Companies House is probably a leader in terms of the provision of clear, accessible, authoritative and user-friendly advice and guidance. It provides advice and guidance in a range of formats including call centres, website and through numerous regional visits and seminars, often in conjunction with other agencies.
- Companies House does not seem to request data without a clear reason and collects only that information that is necessary for the smooth operation of the market.
- Companies House is a highly transparent organisation that has governance systems and targets in place to oversee its work and its progress in meeting its objectives. It also oversees a highly (and intentionally) transparent system for its customers: it publicises penalties, rates and produces annual reports that are easily accessible on its website.
- When a company is in breach of the rules, it is apparent to the company, stakeholders (analysts, credit agencies etc) and other parties, because its lack of compliance is registered on the register. Its customers state that 'they know where they stand with Companies House'. Only 7 appeals against Companies House were upheld in the financial year 2008/09.
- Companies Act 2006 (CA2006) has removed a number of burdens from business and a risk-based and proportionate approach is evidenced by the fact that small and non-trading entities are able to take

advantage of data exemptions in respect to their annual account filing.

It should also be noted that this Hampton Review has closely followed a report by the Business and Enterprise Committee¹, as part of one of its key tasks to monitor the work of executive agencies of the business department.

Issues for follow-up identified during the review:

One key criticism tends to repeatedly emerge in relation to Companies House and this relates to the 'accuracy' of the register. Companies House's definition of 'accuracy' only extends as far as being the accurate transposition of data, not the accuracy of the data itself. Because it simply records company data but provides no guarantee of accuracy, Companies House is often accused of running a 'toothless' organisation that leaves the entire limited liability system open to fraud. The legislation, for example, states that you must provide an address but there is nothing to ensure that it is correct. However, the validation of material submitted by businesses and their agents is not a role that is granted to Companies House by statute.

The reviewers identified a number of issues where there may be scope for further development:

- Companies House should do more to ensure that users understand that the register is only a record of information provided by companies and that content is not checked for accuracy or validity by Companies House. This suggestion was made by The House of Commons Business and Enterprise Committee in November 2008². Companies House has already done a lot to promote this issue, but the message is still not prominent on the website (having it in a 'disclaimers' page on the site almost ensures that it will not be read).
- Companies House could look to introduce mechanisms which could make it easier for users to quickly see whether a company has a strong record of filing documents on time, and ideally including some mechanism to signal whether accounts were professionally compiled or whether they were audited accounts. Some accountants have also suggested

¹ House of Commons Business and Enterprise Committee: Companies House. Thirteenth Report of Session 2007-08, November 2008.

² Thirteenth Report of Session 2007-08. *op cit*.

that the name of the accountancy firm or accountant should be noted as this would help accountants identify whether their name is being fraudulently used.

- Although, Companies House targets and performance measures are focused on achieving measurable outcomes and its performance is highly transparent, its Framework document states that Companies House works to PSA targets (1, Better Regulation; 2, Competition and consumers) but their performance in this respect is not noted in its Annual report.
- We are pleased to note that Companies House will shortly be re-naming their forms (e.g. for Annual Returns) so that their labelling is more intuitive and easy to understand. Forms were previously classified by the section of legislation to which they related. After October 2009, forms will have new names and numbers and these are being designed according to feedback from consultations.

INTRODUCTION

Introductory background information about the regulator such as the rationale for establishing it:

As stated in the framework document³ for Companies House from the responsible Minister, the business of Companies House is the registration and provision of company information. This involves:

- The incorporation and re-registration of new companies and changes of company name;
- The dissolution of companies and striking off the register of defunct companies;
- Ensuring that companies comply with the statutory information disclosure requirements of the Companies Acts and any other relevant legislation;
- Registering and retaining company information; and
- Making the information available for public inspection and use.

Companies House sees itself as an information management or information exchange organisation — it facilitates the collection and dissemination of information from companies in the UK. It does not verify, guarantee or endorse information. As a register of corporate information, Companies House does not qualify or validate the information provided to them— that function is performed by the market.

Companies House was established under the Companies Act 1844. Before this companies could only be established by Royal Charter. Without the protection of company status, investors were deterred from business because of their full liability for any debt. The Act gave company directors limited liability in return for a requirement to register their company's details, reports and accounts at Companies House for public scrutiny.

Companies House became an Executive Agency of the then Department of Trade and Industry, now the Department for Business, Innovation and Skills (“the Department”) on 3 October 1988 and was granted Trading Fund status on 1 October 1991.

Companies House is currently facing a challenging time: as it is ensuring that staff, systems and procedures are ready

³ <http://www.companieshouse.gov.uk/about/corporateDocuments/frameworkDocument.pdf> (February 2008)

for the full implementation of the new Companies Act 2006 (CA2006) by October 2009. The full operational implications of the application of the new powers granted to the Registrar by CA2006, especially in relation to rectification, are yet to be fully understood.

Prior to the Act, Companies House had no scope to apply discretion in terms of document content and had little, if any decision making powers. The Act introduces the ability to make a limited number of decisions in terms of the documents submitted and this poses a number of unprecedented legal and operational ambiguities on the organisation.

The legislation establishing the regulator:

The Companies Act 2006 received Royal Assent on 8th November 2006 and effectively replaced existing company legislation by re-writing, updating and modernising company law. It is designed to ensure that company law reflected modern business needs and aimed to make it easier to set up a company and to give companies greater flexibility in the way they operate.

The changes in the Act will be implemented in a number of phases and complete by October 2009. Key modifications in respect to company governance and filing requirements, with a bearing on the operations of Companies House, are as follows:

- Reduced deadlines for filing annual accounts;
- Companies House now has some limited rectification and additional notification powers;
- Powers in relation to the form and manner in which companies must deliver documents;
- Power to make information unavailable for public inspection; and
- Late filing penalties have been increased and perverse incentives removed.

Key operating constraints on Companies House include:

- Limits on their statutory duties and powers, noted in previous section, particularly restrictions around what information they can request and restrictions on their ability to remove or modify data; and
- Statutory constraints on the amount of money they are able to charge for their services and restrictions on 'cross subsidisation'. In particular, Companies House charges must relate to the costs of performing particular services, costs and charges for data gathering can not be subsidised by its publication or information provision charges and fees for information

requests can not subsidise fees for submitting material.

The regulator's statutory remit or objectives: The regulatory functions of Companies House are not comprehensive as they do not design regulations and are not responsible for aspects of the enforcement regime. The Department for Business, Innovation and Skills (BIS) designs the regulations and enforcement components lie with BIS and the judicial system.

The regulator's budget: Companies House has generated an income of £69.7 million to year end 31 March 2008. Income is primarily derived from fees and charges but a proportion is recovered from BIS for running costs incurred in respect of charging, administration and collection of penalties raised on companies as the result of the late filing of accounts.

Companies House has trading fund status, which effectively allows the organisation to manage its own finances. It is expected to cover its costs, rather than to make a profit, although it pays a dividend of 3.5% to Treasury each year.

Number of staff: Staff costs account for around 48% of income. Around 80% of Companies House staff can be considered to be 'frontline' staff as their daily work relates to managing and dealing with their clients.

The sectors and number of businesses regulated either directly or indirectly: The economic impact of Companies House is related to the extent to which a current and reliable Register is maintained. The Register helps underpin the smooth flow of markets in the UK by providing business with information about the standing of their suppliers, business partners or prospective debtors.

All limited companies in England, Wales and Scotland are registered at Companies House. There are currently more than 2.5 million limited companies registered in Great Britain, and more than 300,000 new companies are incorporated each year. In 2007/2008 the companies register grew at a rate of 8%.

Companies House customers are primarily:

- Those companies and company directors that register and maintain records with Companies House;
- Accountants and other intermediaries; and
- Data companies and credit reference agencies.

Other customers include incorporation agents, individuals and lobby groups who access Company House information at various times.

THE HAMPTON VISION

Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

Any findings relevant to whether the regulator is risk-based:

Companies House is a risk-based organisation, at least in terms of the narrow functions that it fulfils. It understands that the value of the Register is dependent on it containing timely returns and an up to date, accurate reflection of the material that companies and directors are required to provide to it. Ensuring that the register is up to date is the key focus of Companies House's activities. Its targets reflect its focus on ensuring these outcomes.

There is evidence that suggests that the organisation does seek to target areas or customers where there may be higher than average levels of non-compliance through its extensive annual series of forms, workshops and education sessions. It also seeks to promote clarity and promote its message to wider markets by holding many such sessions in conjunction with organisations, such as HM Revenue and Customs (HMRC), that have parallel interests.

Because it is a register of company information, Companies House does not make distinctions between its customers except where required by statute. Customers are only distinguished by the type of company they are.

The concept of proportionality has been built in to the Companies Act 2006. More than half of new companies no longer appoint a company secretary, following the removal of the requirement for private companies to have a company secretary in April 2008, and since October 2008 private companies have been able to use the new solvency statement route to reduce their share capital without the need to go to court.

Any findings relevant to whether the regulator is transparent and accountable:

Companies House is a highly transparent organisation that has governance systems and targets in place to oversee its work and its progress in meeting its objectives and targets.

Companies House oversees a highly (and intentionally) transparent system: it publicises penalties, rates and produces annual reports that are easily accessible on its website. When a company is in breach of the rules, it is

apparent to the company, stakeholders (analysts, credit agencies etc) and other parties because its non-compliance is registered on the website.

Companies House produces annual accounts which are good indicators of transparency and accountability, breaking down its costs. In these accounts, the agency also publishes the salaries of its board members and senior executives.

It has an independent adjudicator who deals with appeals against late filing penalties, once they have passed through two internal appeals stages. The adjudicator reports each year on appeals and decisions made in respect to them. This report is published in a prominent way on the website.

Companies House is less transparent in terms of some aspects of its enforcement and sanctions regime. Its penalties and the way in which they apply them is transparent but there is uncertainty in terms of when, and under what conditions, Companies House will pursue legal action. Lack of transparency in this area is understandable because Companies House is not responsible for most aspects of legal routes and full disclosure of processes and conditions may benefit non-compliant companies.

Any findings relative to whether the regulator encourages economic progress:

Companies House promotes the smooth functioning of markets in the UK in two key ways: it enables trading enterprises to incorporate in ways that are beneficial to them; and it promotes the smooth function of markets by publicising information about companies so that other businesses or operators in the market can start to form decisions about them.

The Register helps underpin the smooth flow of markets in the UK by providing business with information about the standing of their suppliers, business partners or prospective debtors. The role of Companies House is to publish the information supplied to it by companies so that other organisations can take this information and make decisions about the business. Companies House plays no role in the qualification or validation of information about businesses or their directors, but functions as the starting point to the creation of a business identity and presence within the commercial market place.

There are several aspects that can work to promote or threaten the economic impact of Companies House:

- Misunderstanding of the nature and limitations of the register, i.e. when users assume the Register reflected accurate data rather than data accurately recorded by Companies House. The extent to which users understand the nature of the Register is unclear.

Companies House makes reference to its 'up to date and accurate registry' but in fact it means the accuracy of its transposition and recording of data, not the accuracy of the data itself. The Business and Enterprise Committee saw this as a risk because users of the register may assume that all data is accurate and that they may make commercial decisions based on data supplied by businesses that reflect a more positive impression of their standing than is actually the case.

Companies House was requested to make disclaimers about accuracy more prominent on their website. To date, the website site has a 'disclaimer' section but it is unlikely that users would read this section of the site and this information should be more prominently displayed on the site.

Companies House maintains that due to the sheer volume of information it handles on a daily basis, it would be impractical for them to validate the accuracy of data. There is also a danger if only partial checks were made, users of the data could be given false confidence in its reliability, rather than knowing (as now) that Companies House simply acted as publisher.

Ultimately this issue of accuracy is a policy and resourcing question — Companies House is clear about what its role is and where its statutory limitations lie. If the Government wanted to ensure that all data was correct, it could amend legislation and ensure that Companies House is funded to do the additional, extensive, due diligence.

- Systematic defrauding of the register or register used to commit fraud, could lead to a lack of confidence in the integrity of the register. Companies House actively works to prevent fraudulent use of the site (e.g. new PROOF system) and actively works with the Insolvency Service and others to maintain a live register of disqualified Directors.
- Failure to enforce reporting requirements. The currency of the information on the site is important to end-users and although a business' failure to submit annual returns in time does tend to work against them in the market, there is a risk that companies will game the system if they think that the benefits from not submitting returns outweighs the risks.

The revised penalty regime (CA2006) has removed perverse incentives associated with earlier penalty regimes by introducing penalties that compound rates for each infringement. However, the market appears to

be broadly aware that Companies House will usually cease legal action in cases where a company brings its documentation up to date, even if this is just before court hearings.

Companies House is aware that the market knows that its appetite to take companies to court is low and Companies House itself states that its interest is primarily in ensuring that the register is updated, rather than in penalising or prosecuting businesses. This means that a small proportion of companies and directors will pursue non-compliant behaviours. However, instances are not widespread and Companies House is generally thought to have got the balance right when weighing the public interest in pursuing legal action.

The economic effect of Companies House is also reliant on the ability of BIS and the Insolvency Service to enforce and investigate fraudulent behaviour.

DESIGN OF REGULATIONS

Hampton principles

All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.

When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.

Key findings on
Design of
Regulations:

- Companies House is not the policy lead but *influences* the design of regulations and engages with BIS in terms of, and responses to, the national and European regulatory environment. Companies House works closely with BIS and has an appropriate ongoing involvement in the way regulations are interpreted and enforced.
- Companies House recognises that there is a balance to be struck between burden reduction and the utility of the Register for enabling users to make informed business decisions based on it. The regulations relating to the activities of Companies House are proportionate to the economic role that it plays and given the importance of the data they publish to the functioning of markets, and the benefits that individual businesses accrue from the limited liability vehicle, the actual data and reporting burden on businesses is considered minimal.

Background
information such
as the
regulator's role
in developing
regulations:

Companies House does not design company law or regulations as BIS has overall responsibility for this. BIS does consult with Companies House on issues relating to company law and its administration and most recently did so with the reform of the Companies Act 2006.

Although Companies House has been given greater autonomy to run its own affairs, Companies House is still an executive agency of BIS with the intention that it may *influence* this area.

The Company Law Reform White Paper acknowledged the law in this area was very complex, particularly for smaller businesses and as a result, certain regulatory burdens have or are in the process of being removed through the 2006 Act. It was accepted that the amount of regulation,

should in part be determined by the size of a company and whether it is a private or public company.

Review findings: Regulations are designed not to perform any significant validation or interpretive functions on the data; being targeted at compliance with the data reporting requirements rather than validation and approval of the data.

The extent to which the review team believes the regulator is acting in line with the Hampton principles:

Given the actual importance of the data they publish to the functioning of markets, and the benefits that individual businesses accrue from the limited liability vehicle, the actual data and reporting burden on businesses is reasonable and proportionate. For example:

- The data requested at incorporation is not very onerous and requirements have been reduced with CA2006;
- Because a set of accurate and current accounts are a vital management tool, and most businesses will have to prepare annual returns for tax purposes or for banking and lending purposes, the requirement to file them with Companies House is a small additional burden.
- Likewise, the requirement to provide directors details and notification of material changes to core business information is minimal and is important for a businesses trading and commercial relationships.

The reforms of the CA2006 have simplified key elements of Companies Law and slightly lowered the regulatory burden in terms of Companies House's role and demand on individual companies. CA2006 has removed a number of burdens from business, including the removal of the requirement that companies have a secretary and submission of shareholder details.

Companies House considers the proportionality of its regulatory burden in influencing the design of regulations. For example, Companies House and BIS have considered and debated alternate regulatory approaches in relation to CA2006 but these have not been adopted at present (e.g. mandating of online submission or returns and forms). Given the narrow remit of the organisation, it is appropriate that they do not consider a wide range of alternative approaches to regulation.

Companies House is not the policy lead on regulation but is clearly fully engaged with BIS, who do have that policy development role, and it influences the design of regulations. Companies House works particularly closely with industry bodies, professional groups and others to

seek advice on new regulatory changes and to consider issues of implementation and usage.

ADVICE AND GUIDANCE

Hampton principle

Regulators should provide authoritative, accessible advice easily and cheaply.

Key findings on Advice and Guidance:

- Companies House is probably a leader in terms of the provision of clear, accessible, authoritative and user-friendly advice and guidance. It provides advice and guidance in a range of formats including call centres, website and through numerous regional visits and seminars, often in conjunction with other agencies. It regularly monitors the effectiveness of its advice and guidance with customer surveys and continuous improvement systems within the organisation (e.g. systems within the call centres to update scripts).
- Its guides are extremely user friendly, being written in straight-forward language, usually focused on the key questions users would be asking. Because of the clarity and accessibility of its guidance, the Reviewers are convinced that Companies House is promoting the ability of new companies to incorporate and comply with regulations in an efficient and effective manner.
- There is only one area where the Reviewers felt that Companies House could do more and this is in relation to the naming and classification of guidance and forms. The labelling of many forms and the reference numbers to booklets are categorised and known by the sections of legislation, which is not particularly user-friendly.

Background information such as the means by which the regulator provides advice and guidance:

Companies House organises several information days throughout the year and also attends a number of exhibitions.

Companies House not only actively promotes its own guidance but it makes it available on Business Link and it encourages its clients to access guidance and advice from Business Link on other business-related matters. For example, it actively promotes tax services and HMRC requirements to start up companies, along with Business Link support services.

Companies House has a strong web optimisation strategy and practice: its site is extremely prominent, when typing “company” into key search engines the site receives over 40 million hits a month, and is easy to navigate.

Companies House also provides a telephone and email inquiry service. There is an online customer satisfaction survey to make complaints or suggestions. It also publishes information on the agency in their customer magazine, ‘Register’.

Any examples of significant good regulatory practice:

Providing practical solution-oriented advice

Between 50-100 cases of Corporate Identity Fraud occur every month. To reduce opportunities for fraud and to protect its customers, Companies House has an excellent online solution to combat corporate identity fraud. Its PROtected Online Filing (PROOF) service allows companies that file online to opt-in to a service which means that if a paper filing is submitted, it is rejected by Companies House and the company is alerted.

Companies House also offers a ‘Monitor’ service that allows customers to keep an eye on competitors, business collaborators and their own company and ‘monitor’ which documents have been filed with Companies House.

Review findings:

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

Companies House does not provide advice on what the law means, but does provide advice on what companies need to do to comply with the law.

Companies House focuses a great deal of effort on ensuring that they provide clear, concise guidance. It devotes considerable resources to promoting obligations and requirements across delivery channels. They also test market needs and perceptions with regular consultation and interactions with customers.

Companies House regularly monitors the effectiveness of its advice and guidance with customer surveys and continuous improvement systems within the organisation.

In practice much of Companies House’s interactions are with expert users, intermediaries and agents and Companies House actively works with them to clarify issues and its requirements. It also supports initiatives to make it easier for their customers to transact with Companies House and they supported measures to

allow citizens to incorporate online.

Companies House has been actively promoting changes related to CA2006 through workshops and other means.

It is extremely proactive in working with other agencies and through other channels to promote content and services to business. It is an active participant in the Business Link website programme and makes its guidance and requirements available in a short, readable format for Business Link customers.

Companies House can do more — although its guides are extremely user friendly, being written in straight-forward language, usually focused on the key questions users would be asking —many forms are categorised and known by the sections of legislation from which they derive (e.g. 288a for appointment of new directors or form 363 for Annual Returns). This is not particularly user-friendly and Companies House is working to re-name forms.

DATA REQUESTS

Hampton principle

Businesses should not have to give unnecessary information or give the same piece of information twice.

Key findings on
Data Requests:

- Companies House almost exclusively collects only that information that it is required to do so by law. A risk-based and proportionate approach is evidenced by the fact that small and non-trading entities are able to take advantage of data exemptions in respect to their annual account filing.
- It publishes an 'Information Charter' that states how they treat data about individuals and companies.
- Companies are required to input the same data year on year but in the future, new electronic systems should seek to minimise the need for data re-entry. Across government, Companies House is probably one of the foremost, enthusiastic, early-adopters of the Hampton principle that businesses should not have to give unnecessary information or to give it twice. It is looking to introduce joint filing with HMRC which would significantly reduce administrative burdens on business.

Background information such as the data required by the regulator; the means by which business can return data, etc:

'Data requests' relates primarily to that information that companies have to provide to Companies House in order to be legally compliant. Companies House requires that businesses lodge certain information at various times and it also responds to information requests. It produces guidance in certain areas about why certain information is needed and the statutory reasons for it.

Many of the reforms which led to the CA2006 were targeted at reducing the amount of information that needed to be filed to lessen the overall burden to business.

Companies House publishes an 'Information Charter' that states how they treat data about individuals and companies. It states that for non-public data, Companies House promises:

- To make sure that clients know why they need it;
- To only ask for what Companies House need, and not to collect too much or irrelevant information;

- To protect it and make sure nobody has access to it who shouldn't; and
- To make sure Companies House don't keep it any longer that necessary.

Any examples of significant good regulatory practice:

Companies House is a leader in using the internet to reduce data requests.

Companies House aims to have a 100% online service and at present 83% of requirements can be submitted online, 90% of returns, 17% of accounts and 92% of incorporations are completed online.

The use of online technologies is benefiting businesses and its own organisation because it helps cut down rejections from inaccurate or omitted data.

Review findings:

Looking at a number of key Companies House data requests or transactions, it is clear that the information requested, is that required under law.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

The requirement to file accounts is probably the most time consuming data request that Companies House makes. Every company has a duty to keep accounting records and must prepare annual accounts that report on the performance and activities of the company during the year. All limited and unlimited companies, whether or not they are trading, must keep accounting records.

However, the principle of proportionality and risk is embedded within the requirements for submitting accounts: certain information may be omitted from the accounts of medium-sized and small (including very small and dormant) companies prepared under the special provisions of the Act. These companies may further abbreviate the accounts they file at Companies House and very small companies and dormant companies may also be exempt from audit.

Companies are required to input the same data year on year, but in the future new electronic systems should seek to minimise the need for data re-entry. Across government, Companies House is probably one of the foremost, enthusiastic, early-adopters of this Hampton principle, for example:

- Companies House have already introduced some degree of pre-population functionality and they are using this advantage to incentivize all companies to take up online lodgement modes; and
- Companies Houses' adoption and use of online pre-

population technologies is part of their strategy to increase online use and it is benefiting businesses and its own organisation because it helps cut down rejections from inaccurate or omitted data.

Across government there are duplications in data requests- much of the same information is collected by Companies House and HMRC and different filing times means that there is no single accurate record across government of company details.

Companies House is actively engaged with debates across government in data sharing and business identity solutions and under certain circumstances share data with partners such as HMRC and law enforcement where required, and allowed by law. Joint filing initiatives are being explored with HMRC, along with a single business incorporation process – which will seek to resolve this issue over time. All parties recognise there is scope for introducing mechanisms for introducing systems which allow companies to enter data once. Indeed Companies House has the ambition that businesses themselves will manage their public profile themselves in the future.

INSPECTIONS

Hampton principle

No inspection should take place without a reason.

Key findings on
Inspections:

- Companies House does not carry out inspections but does check that all required material is submitted to it in the correct format.
- They do not check the accuracy of companies' accounts and the reviewers felt that Companies House could make the 'reporting history' more evident than it currently is by providing a visual summary or table of filing records and the history of filing data that would allow users to get a quick impression of a company's history. At present users can see what material has been submitted by a company for free but bringing this information together in an easy-to-read table or visual indicator could help users save time and get a quick impression of a company's filing history.
- Likewise, Companies House could look to introduce mechanisms that would help identify whether the accounts (especially electronically-submitted) were professionally compiled or if they are actual audited accounts.
- Companies House's view is that while they can work to help reduce fraud and non-compliance, their role is specifically to maintain the register. However Companies House could do more to identify where and when there are non-compliance 'hot spots' and to target these in terms of education, consultation and data sharing with enforcement agencies. Companies House reports that it is looking at this issue and has provided a paper to its Executive Board on the subject.

Any relevant background information such as the number of inspections and the number of businesses inspected; the regulator's risk

Companies House has no powers of inspection or investigation. The statutory duty of Companies House is to check that the required information is provided and to prevent or minimise fraudulent use of the system.

Other public authorities that work with Companies House have statutory powers of inspection, often conferred to them by statute. They include (but are not limited to): the Police; the Serious Fraud Office; Companies Investigation

model etc

Branch; and the Financial Services Authority.

Companies House's role is to accept and publish material sent to it and they generally accept this 'in good faith'. Companies House carries out basic checks to make sure that documents have been fully completed and signed, but they do not have the statutory power or capability to verify the accuracy of the information. They:

- Check data for internal consistency with previous submissions which is useful for anti fraud and accuracy;
- Check that disqualified directors are not 'slipping through the net'; and
- Share data with law enforcement organisations to help prevent crime and fraud.

Further checks are only carried out if somebody contacts Companies House about information in the register and this happens with approximately 50 of the 600,000 documents it receives each month. The new CA2006 introduces greater powers for Companies House to rectify any inaccurate data.

Maintaining the 'integrity of the register' is of paramount importance to Companies House. In one way this integrity is maintained when all information is provided on time and it is accurately transcribed by Companies House.

To ensure timely delivery of data, Companies House writes to directors and companies in advance of deadlines and it has recently started to leverage some of its additional powers under the CA2006 to write to companies that are in breach to say that given the failure to submit returns on time, Companies House assumes that the company is no longer trading. This 'default' assumption is helping to stimulate companies to respond more quickly.

'Inspection' of company directors

A key area where Companies House is active is in relation to company directors. In respect to disqualified directors, Companies House works with the Insolvency Service to ensure that companies are made aware if a director of their company is actually disqualified. Companies House is notified of disqualification orders by the Insolvency Service in about 90% of cases and by the courts for the remainder. The Insolvency Service also notifies Companies House of people who are disqualified but have not yet appeared on the register of disqualified directors and who are still appointed.

Companies House does check to see if new director

appointments are on the register of disqualified directors. But occasionally ones with slightly amended names do slip through. It contacts companies where disqualified people are still appointed as directors, to ensure a resignation is placed on the register. If Companies House does detect that a newly appointed director was subject to a disqualification order, it has no powers to simply remove them but writes to the director asking them to resign and if the director does not resign, the case is referred to the enforcement service in the Insolvency Service. This can lead to a prosecution under the Company Directors Disqualification Act 1986. Companies House refuses to incorporate new companies if any of the proposed directors are disqualified.

The Insolvency Service operates an enforcement hotline which enables members of the public to report evidence of misconduct on the part of directors and undischarged bankrupts who deliberately disregard the disqualification orders made against them. The hotline is available 24 hours a day and is an important tool in helping the Insolvency Service to enforce court orders and undertakings.

The issue of whether or not there should be more checks on directors has been raised before. The Finance and Leasing Association has wanted a more thorough vetting process because of the importance of a director's identity and background in lending decisions. Also, the British Bankers' Association has wanted Companies House to check directors' details against other government held data.

In the Government Response to the Business and Enterprise Committee, it stated that 'Companies House has already started an internal review to look at increasing checks in the data it receives, which will include a cost-benefit analysis of checks on directors' details'⁴.

'Inspection' of company accounts

The other area of concern relating to the reliability of the register was in relation to Company Accounts. They do not check the accuracy of companies' accounts, which was criticised by the Business Enterprise Committee. Companies House maintains that when companies are late submitting accounts, this tells the business community something.

It is possible to see from paper files if an account was

⁴ Companies House: Government Response to the Committee's Thirteenth Report of Session 2007-08, paragraph 20.

prepared by a qualified accountant and the name of that accountant. This is not possible with electronic files.

The Professional Oversight Board (POB), which oversees the regulation of accountants and actuaries by their respective professional bodies, suggested to the Business and Enterprise Committee that this should be introduced for electronic filing. The POB was concerned about the variable quality of accounts filed and argues that electronically filed accounts, which indicate the accountant responsible for preparing them, would increase transparency and therefore indirectly improve quality. Companies House responded to say that it was being actively encouraged by BIS to work towards '*providing companies and their advisors with opportunities to include [...] as wide a range of options as possible for additional disclosure, in addition to the statutory minimum*'.

Companies House has said that it will continue to pursue fully the work it is already doing with the Metropolitan Police, the City of London Police, the Serious Organised Crime Agency and the National Fraud Strategic Authority to support the National Fraud Strategy and the Treasury's anti-money laundering strategy.

Review findings: Processes to identify and address disqualified directors are strong and efficient.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

Although a company's filing history can already be viewed free of charge on the Companies House website, reviewers felt that Companies House could make the 'reporting history' of companies more evident. This could be done, for example, by bringing timeliness data onto a single indicator. And greater decision-making utility for the market would be achieved if this indicator also signalled whether the accounts were professionally compiled or if they are actual audited accounts.

Similarly, Companies House could work to ensure that electronic returns indicate whether accounts have been prepared by accountants, and which accountants they were prepared by.

Beyond this, the reviewers found some evidence of efforts to identify and target 'high risk' enterprises — Companies House tends to do training and awareness sessions where they think that higher levels of non-compliance may be present but it does not mine its own data to identify sectors, locations or clusters of high risk businesses. However, Companies House has trained and does provide data to police entities which use it as part of their anti-fraud and criminal investigations.

Companies House's view is that while they can work to help reduce fraud and non-compliance, their role is specifically to maintain the register — rules are clear and non-compliance hurts the business itself when the market makes commercial decisions on the basis of this.

SANCTIONS

Hampton & Macrory principles

The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

Regulators should be transparent in the way in which they apply and determine administrative penalties.

Regulators should avoid perverse incentives that might influence the choice of sanctioning response.

Regulators should follow up enforcement actions where appropriate.

Key findings on Sanctions:

- Companies House's application of late filing sanctions has been found by an independent reviewer to be accurate and appropriate.
- Companies House is actively working to reduce fraud, both through innovations such as the PROOF system and through its work with legal authorities and other key bodies.

Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:

The primary aim of Companies House sanctions regime is to drive up compliance. It tends to use financial penalties for late filing in order to achieve compliance and views legal action as a last resort.

Companies House has been afforded extended sanctioning powers under the CA2006, which are similar in nature to the extended suite of enforcement powers available under the Regulatory Enforcement and Sanctions Act 2008 ('Macrory powers'). Examples include: revised late filing penalties, issuing penalties and notices.

Most of the sanctions available to Companies House appear to be issuing of late filing penalties and notices. This is geared towards ensuring companies file information within specified time frames in accordance with the CA2006. In cases where companies do not respond or reply to Companies House, the ultimate sanction available to the Registrar is to remove a company from the Register of limited companies and to refer cases of fraud or criminal behaviour to the correct legal authorities.

Currently, on average Companies House prosecutes more than 1,600 directors each year for failing to deliver accounts and returns to Companies House on time.

Persistent failure to deliver statutory documents on time may also lead to the court disqualifying a director from taking part in the management of a company for a specified period.

From 1st October 2009, Part 35 of the Companies Act 2006 will give the registrar of companies a range of powers. These include powers to decide on the form and manner in which companies must deliver documents, what is needed for a document to be properly delivered, provision of electronic delivery for certain documents, and amendments to the register.

Striking Companies off the register

Companies are removed from the register when they are dissolved either compulsorily or voluntarily. Before the Registrar strikes a company off the register, he must inquire whether it is still in business or operation. If he is satisfied that it is not, he will publish a notice in the London Gazette that he intends to strike the company off. The company's bank account will be frozen and any credit balance in the account will be passed to the Crown.

The aim of this process is to create a balance between the right of a company to dissolve and the right of an objector to resolve outstanding issues, such as unsettled payments. Disputes are resolved by the courts, not Companies House.

Companies House has recently started to 'assume' that companies are no longer operating if they are late with filing deadlines and will pro-actively write to them to query the company's status. This approach tends to stimulate companies into action.

Late filing

Section 453 of the Companies Act 2006 (February 2009: 6th implementation) deals with the penalties Companies House is able to apply when a limited company fails to deliver its annual accounts to Companies House/ the Registrar of Companies by the due date. Updated penalties came into force on 1st February 2009. If accounts are delivered late, an invoice is issued automatically to a company's registered office address and a penalty will be referred to collection agents. If it remains unpaid, legal action may be taken which could result in a County Court judgement. Companies House is not involved in the process of recovery of unpaid penalties.

Fraud

On fraud, Companies House website states:

“Whilst we are able to advise on issues of fraudulent filings sent to Companies House, we do not have any specific investigatory powers. Any allegations of fraud arising from the use of false filing should be reported to the police as they are the appropriate authority to deal with such matters”.

The All Party Parliamentary Group (APPG) on Identity Fraud and the British Bankers Association (BBA) warned that information registered at Companies House could be used for criminal activities:

- It gives fraudsters information to commit identity fraud- i.e. around a Directors details; and
- Fraudsters can ‘hijack’ companies by changing details on the Register, especially addresses and then ordering goods to the new address.

The Metropolitan Police estimate that each successful crime of this type via Companies House can net over £100,000 and (all fraud) costs the economy in excess of £50m per year. Companies House does work with police to reduce fraud and protect companies and directors.

Companies House has introduced ways to help companies protect themselves when using the register. There are three methods which they refer to as their ‘three point plan’:

- E-filing- electronic filings are protected by authentication codes;
- PROTECTED Online Filing (PROOF) where companies agree to file only electronically and Companies House then queries any data submitted on paper; and
- Monitor- copies of any document filed for a particular company are sent to Monitor users, alerting them to the filing, at a cost of 50p per company per year.

Uptake of PROOF has not been strong and the Institute of Chartered Secretaries and Administrators said that PROOF should be made compulsory. Companies House is reluctant to do so and its legal advice states that it does not have the power to mandate the use of the PROOF system. However, this is an issue that Companies House is monitoring.

Companies House also informs individuals that they can contact the Companies Investigations Branch about investigating fraud, which is part of the Insolvency Service (also an executive agency of BIS).

Review findings: The new Companies Act has removed perverse incentives relating to sanctions and it now means that companies are unable to fail to submit accounts year on year but will face cumulative penalties and sanctions. The reviewers noted the steps taken by Companies House to change enforcement processes to assume that defaulting companies are defunct. This encourages live companies to contact Companies House to arrange filing. If arrangements are not complied with, in agreed time limits, the case may progress to legal action. This progressive action uses better regulation principles to bring enforcement focus on the relatively small number of non-compliant companies in this area.

The extent to which the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:

Companies House's application of late filing sanctions has been found by an independent reviewer to be accurate and appropriate. The Independent Adjudicator dealt with 105 appeals to late filing penalties between 1st April 2008 and 31st March 2009 and upheld only 7. In all other cases Companies House was found to be correct in the way they interpreted a company's failure to file on time. The reviewers noted evidence of the application of better regulation principles in this approach that combines education with progressive civil penalties, before consideration of legal steps. For example, prior to filing, Companies House seeks to educate companies and directors by:

- sending all new directors a letter that reminds them of their responsibilities and points them to the Companies House website;
- sending all companies a reminder letter just before accounts and annual returns become due;
- holding focus groups with key customers; and
- holding information days around the country that are free for companies to attend.

These steps are then supported by a civil penalty regime for companies that file accounts late. The penalty regime was revised in February 2009 to increase penalties, shorten penalty bands, and impose double penalties on repeat offenders. Proportional application of these powers is provided by limited discretion to not collect penalties within a tight framework following judicial review, and treating minor offences, such as stationary or website contraventions, as educational opportunities rather than to punish directors.

This approach has had a high success rate: the changes

described have contributed significantly to improved accounts compliance rates from 90% in May 2008 to 97% in May 2009.

Companies House believes that the actual levels of penalties to be proportionate— although large businesses can easily pay the penalties their credit ratings may be affected.

However, the reviewers were concerned that sanctions may have a disproportionate effect on small businesses or flat-ownership companies. Companies House does seek to mitigate this by providing advice and by payment periods and options. Also, the data demands on companies are not disproportionate and are minimal in comparison with the benefits that businesses derive from the limited liability company vehicle. Likewise costs to file returns are very modest.

Companies House is actively working to prevent fraud, and the reviewers were satisfied that the difficult balance to be struck between use-ability, transparency and crime prevention did not mitigate against the application of better regulation principles. For example, both through innovations such as the PROOF system and through its work with legal authorities and other key bodies.

FOCUS ON OUTCOMES

Hampton principle

Regulators should measure outcomes and not just outputs.

Key findings on
Focus on
Outcomes:

- The regulator has an extremely clear sense of purpose and the outcomes it is working to achieve. All aspects of its business, from the mail-room to the call centre, are designed to work towards ensuring that they have an up-to date and accurate register. Only 7 appeals against Companies House were upheld in the financial year 2008/09.
- However, its Framework document states that Companies House works to PSA targets (1, Better Regulation; 2, Competition and consumers) but their performance in this respect this is not noted in its Annual report. In reality, Companies House does achieve its two PSA targets: it (or BIS) tackles unnecessary regulation and it promotes fair, competitive markets.

The extent to
which the
review team
believes the
regulator is
acting in line
with the
Hampton
principle:

Companies House has a limited role and the outcomes it seeks to achieve are intentionally focused on achieving these narrow outcomes. Companies House has a very clear sense of purpose – defines itself as an information management company. The outcome that the organisation seeks to achieve is an accurate register of information provided to it by businesses and its directors. Companies House achieves this outcome extremely well.

It publicly articulates its desired objectives in a clear and concise manner on its website. Its 'Code of Compliance' includes a number of standards covering: an up to date and accurate registry; the way they provide company information; value for money; and how they deal with requests for information and complaints.

Its targets and performance measures are focused on achieving measurable outcomes and its performance is highly transparent. Companies House by its nature, as a registry, measures its performance and outputs in achieving outcomes, rather than the outcomes themselves. The reviewers feel that this is appropriate.

It is extremely focussed on delivery against its targets and it sets and works towards internal targets that are often higher than public targets. However its Framework document states that Companies House works to PSA

targets (1, Better Regulation; 2, Competition and consumers) but their performance in this respect this is not noted in its Annual report. In reality, Companies House does achieve its two PSA targets: it tackles unnecessary regulation and it promotes fair, competitive markets.

The economic value of the register is significant — it is the starting point for verifying company identity and trading history in the UK. It is the foundation on which businesses can access credit and investment.

**Appendix 1:
Review team
membership**

Kirstyn Boyle is currently an Assistant Director with the Better Regulation Executive (BRE), a directorate of the Department for Business, Innovation and Skills (BIS), working on projects to improve regulation and its application in the UK. She is a former management consultant with experience in economic development, regeneration and corporate location strategy. She has previously worked for national and state governments in Australia in industry and competitiveness policy, investment attraction and trade roles.

Milo Purcell is Deputy Chief Inspector (Regulations) with the Drinking Water Inspectorate. His responsibilities for regulatory matters include enforcement, risk management and the better regulation agenda. He also leads for the Inspectorate on asset management, the drinking water improvement programmes for England and Wales, DWI input to economic regulation matters including Periodic Reviews, and competition development in the water industry.

Mike Doughty is HIA for Natural England. Mike's original training and work was in the commercial IT industry working for both software houses and end users. The companies included services and process and batch manufacturing companies. A move into computer related audits for GKN (Worldwide, Automotive and Commercial) led to a later appointment in 1992 as the specialist computer auditor to National Rivers Authority. At this point Mike qualified as MIIA by examination and developed internal audit roles in Environment Agency, Countryside Agency and Natural England. Since 1999 Mike has been HIA for first the Countryside Agency and now Natural England. As HIA for Natural England, Mike operates a totally risk based series of reviews and providing assurance to Directors, CEO and Audit and Risk Committee. His team also provide control advice on a wide range of forthcoming issues and help the organisation to understand its total assurance picture. Mike is a qualified OGC Gateway Reviewer.

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