

DEALING WITH A STATUTORY DEMAND

FACTSHEET 9 (2019)

This factsheet is about how to deal with, and set aside, a statutory demand. This factsheet contains information for statutory demands when you are personally liable for the debt, but not if the debt is owed by a limited company or partnership.

This factsheet cannot cover everything about setting aside a statutory demand so you may need specific advice, **please contact us.**

What is a Statutory Demand?

A statutory demand is a formal demand made by a creditor for payment of a debt of more than **£750**. You have **18 or 21 days** to reply to the statutory demand, depending on what you want to do.

When was the demand served?

The **18 or 21 days** start from the date the demand was served on you. When a document is 'served', it means that it has been delivered in the correct way. The creditor should try to serve a statutory demand on you personally. If this is not possible, the statutory demand may be sent to you by first class post or by putting it through your letter box. In certain limited situations, the statutory demand may be advertised in a newspaper.

If the demand is advertised in the newspaper, the date of service is classed as the date the advert appears. If the demand is posted to you, the date of service is **seven days** after the date of posting.

Dealing with a statutory demand if you agree you owe the money

If you agree that you owe the money, try to negotiate with the creditor. However, always be aware that even if the creditor comes to an agreement with you to repay the debt, the Statutory Demand proceedings usually still complete and the Statutory Demand will be registered against you, unless you pay in full.

Bankruptcy can impact on your home and make it more difficult to run your business. Some creditors use statutory demands as a way of persuading you to pay your debts. They may never have had any intention to actually make you bankrupt, and are unable to if the debt owed is below £5,000.

Whatever the situation, deal with a statutory demand urgently and treat it as a priority. Remember, you have **21 days** to come to an arrangement with the creditor about the debt. If you do not do this, the creditor may try to make you bankrupt if the debt is **above £5,000**.

The rules about statutory demands for limited companies and partnerships are different.

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If you do not deal with a statutory demand within **21 days** of

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receiving it, the creditor will take this as proof that you are unable to pay the debt and can then make you bankrupt but **ONLY** if the debt is above **£5,000**.

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If you receive a statutory demand, get in touch with the creditor, or solicitor, that sent it as soon as you can. Try to negotiate with them within the **21 day** time limit using one of the following options:

- Offer to pay in instalments. These should be based on what you can realistically afford. Remember, the creditor does not have to accept your offer. We can help you complete a business and household budget sheet and work out what you can afford to pay. **Contact us for advice.**
- Look at refinancing. This means taking out a loan, which you can afford, to pay this and possibly other debts. Seek independent financial advice if you are thinking about doing this. **Contact us for advice** about things to consider about if you are considering taking out further credit.
- Offer a voluntary charge against your property. This would mean the debt is then 'secured' (like a secured loan or mortgage). You could offer this with conditions attached. For example, that the house cannot be sold by the creditor (so that they only get their money when you decide to sell the house yourself). You could also ask that interest on the debt is frozen. **Contact us for advice.**
- Get a personal guarantee for the debt from another person such as a friend or relative.
- Reduce the debt to below **£5,000**. This will mean that the creditor can no longer make you bankrupt. However, the creditor does not have to accept if you only offer a part payment.
- Apply for an individual voluntary arrangement (IVA). This is a formal arrangement to pay all or part of your debts to your creditors by instalments over time, usually **five years**. You need to arrange an IVA through an insolvency practitioner (IP).

Be careful if you are thinking about getting a personal guarantee. It could mean that your guarantor will be asked to pay some or all of the debt themselves if you are not in a position to pay the debt yourself.

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We have a fact sheet on **Individual Voluntary Arrangements**, which may be of assistance to you.

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Disputing a Statutory Demand

If you cannot come to an agreement with the creditor or there is a dispute, you can apply to the court to set aside the statutory demand following our instructions below:

- Once you have applied to set aside a statutory demand, the **21 day** time limit for dealing with the demand stops until the court has decided whether to grant your application.
- The statutory demand should tell you how and where to set it aside.
- To set aside the demand you must do the following within **18 days** of it being served on you:
 - Complete an application using **FORM 6.04**.
 - Make a witness statement in support of your application using **FORM 6.05**.

These forms are available online at: www.economy-ni.gov.uk/publications/bankruptcy-statutory-forms or from calling the Insolvency Service on **02890 251441**.

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If you have missed the **18 day** time limit, you may still be able to apply to set aside the statutory demand if you can give good reasons for your delay and the creditor has not petitioned for your bankruptcy. If you think this applies to you, **contact us for advice**.

When applying to set aside a statutory demand you should:

- state when the statutory demand was served on you;
- explain which grounds you are using; **and**
- include a copy of the demand.

The court may dismiss the application without a hearing if you have not shown that there is a good reason for your application. Otherwise the court will set a date and time for a hearing giving at least **seven days'** notice to you and the creditor.

What grounds can I use to set aside a Statutory Demand

You could try to set aside the statutory demand on one or more of the following grounds:

- You have a claim against the creditor which is equal to or more than the debt.
- The debt is secured against property that is worth the same or more than the debt. (Your creditor does not have to accept an offer to secure the debt.)
- The whole debt or the unsecured part of the debt is below **£750**.
- The debt is disputed and the court believes there are reasonable grounds for dispute. This might include where the creditor has waited too long to pursue the debt, or the debt is regulated under the **Consumer Credit Act 1974** and there is no signed agreement.
- You can apply for a time order if the debt is regulated by the **Consumer Credit Act 1974**. However, some business debts will not come under the **Consumer Credit Act 1974**. **Contact us for advice**.
- The court is satisfied on some other grounds that the demand ought to be set aside. This could include when the debt is subject to a court judgment with instalments and you have kept up with the payments under the instalment order. It is up to the court whether to accept your application if you use this ground.

If you think that you have grounds to dispute the debt and apply to set aside the statutory demand, **contact us for advice**.

You should also note that the courts are unlikely to set aside a statutory demand just because there is a mistake on the form, for example the amount claimed is slightly wrong.

If you have to apply to set aside a statutory demand after the **18 day** period, you will need to add the following wording when you fill in Form 6.05:
 'That to the best of my knowledge and belief, the creditor(s) named in the demand has/have not presented a petition against me. The reason for my failure to apply to set aside the demand within 18 days after service is as follows.....'

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The court will usually only set aside the statutory demand if they think that one of the grounds listed here applies.

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What if court action has already been taken?

If your creditor already has a court judgment against you for the debt, you will not usually be able to set aside the statutory demand on the ground that the debt is disputed. This is because the court judgment will be taken as 'proof' that you owe the debt.

Sometimes the creditor may issue a court claim for a debt that you do not admit you owe. If you have put in a defence to the claim, the creditor will need to show the court a good reason why they have gone ahead and issued a statutory demand on a debt that they know you have disputed.

If you have a court judgment and are keeping up with the instalments, this may be a good ground for getting the statutory demand set aside.

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Is a statutory demand always needed before a creditor can make me bankrupt?

It is not always necessary to have a statutory demand before being made bankrupt; however the court deems it to be best practice. If a creditor has a court judgment or other court order which they have been unable to enforce, they can make you bankrupt without sending you a statutory demand first. Also, if you have set up an individual voluntary arrangement (IVA) to deal with your debts which has failed, the insolvency practitioner or creditors can make you bankrupt without sending you a statutory demand. But remember a creditor can only petition for your bankruptcy if your debt to them is **above £5,000**.

Forms used in statutory demands

Form 6.01

Statutory demand for a debt that you owe, which is not already under a court judgment or order.

Form 6.02

Statutory demand for a debt you owe for which the creditor does have a court judgment.

Form 6.03

Statutory demand for a debt due in the future.

Form 6.04

Application to set aside a statutory demand.

Form 6.05

Witness statement in support of an application to set aside a statutory demand.

What if I cannot set aside the statutory demand?

If your application to set aside the statutory demand is unsuccessful, or if you are unable to apply to set it aside (for example, because the time limit has run out), the creditor may apply to make you bankrupt if the debt owed is **above £5,000**. They can do this at any time after **21 days** have passed since the statutory demand was served on you.

If a creditor petitions for your bankruptcy more than **four months** after they served the statutory demand, they should explain to the court why there has been a delay. The court should take this into account when deciding whether to make you bankrupt.

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If you have missed an opportunity to set aside your statutory demand, or otherwise deal with it, you may now have a hearing date. This might give you the chance to stop the bankruptcy going ahead.

You will need to send a notice to the court before your hearing. This notice is to oppose bankruptcy and you have to complete a form called **FORM 6.20** and you must send it to the court and creditor at least **seven days** before your hearing.

This form is available online at www.economy-ni.gov.uk/publications or from calling the Insolvency Service on **02890 251441**.

You will need to show in your notice that you have grounds to defend the bankruptcy. These grounds are similar to those used when setting aside a statutory demand:

- You are able to pay off all your debts.
- You have made a reasonable repayment offer that the creditor has refused.
- You have a court judgment for the debt which is payable by instalments and you have not missed any payments.
- The amount of the debt stated on the statutory demand was too high and you paid the actual amount you owed within **21 days** of the demand being served on you.

This is not a complete list of grounds that you can use to object to the bankruptcy order being made. **Contact us for advice.**

It may not be easy to show that the creditor has unreasonably refused your offer.

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You should always go to any court hearing to support your application to set aside the statutory demand or defend a bankruptcy petition. Otherwise the court is likely to turn your application down.

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