



FACT SHEET NO. 14

DEALING WITH A STATUTORY DEMAND

This fact sheet is about how to deal with and set aside a statutory demand. You should read this if the statutory demand is for personal debt, but not if the debt is for a limited company or partnership.



HELP

This fact sheet cannot cover everything to do with setting aside a statutory demand so if you need more help, phone **Business Debtline on 0800 197 6026**.



WARNING

Statutory demands for limited companies have different procedures. Phone **Business Debtline on 0800 197 6026** for help.

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 **21 days** to reply to the statutory demand.



WARNING

If you do not deal with a statutory demand within 21 days of receiving it, **the creditor will take this as proof that you are unable to pay the debt and can then make you bankrupt.**

What date did you receive the demand?

The 21 days start from the date you received the demand. The date you receive the demand is classed as the same day the demand is delivered to you if it is before 4:00pm. If it is delivered after 4:00pm, you will be classed as having received it the next day.

If the demand is advertised in the newspaper the date of service is classed as the date the advert appears.

HOW DO I REPLY TO A STATUTORY DEMAND?

If you agree that you owe the money you should try to negotiate with the creditor.

Bankruptcy can have serious implications for your family and home. Some creditors use statutory demands as an inexpensive tool to persuade you to pay your debts. They may never have had any intention to actually make you bankrupt.



WARNING

Whatever the situation, you must deal with a statutory demand urgently and treat it as a priority (please see below).

If you receive a statutory demand you should get in touch with the creditor, or solicitor, that sent it as soon as you can. You should try to negotiate with them 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.
- Look at refinancing. This means taking out a loan, which you can afford, to pay this and possibly other debts. You should seek independent financial advice if you are thinking about doing this.

- Offer a charge against your property. This would mean the debt is then ‘secured’ (that is like a secured loan or mortgage). You could offer this with conditions attached such as that the house cannot be sold by the creditor (so that they only get their money when you decide to sell the house yourself).
- Get a personal guarantee for the debt from another person such as a friend or relative.



WARNING

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.

- Reduce the debt to below £750. This will mean that the creditor can no longer make you bankrupt.
- Apply for an Individual Voluntary Arrangement (IVA). This is 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).



ADVICE

If you need further advice on IVAs, **phone Business Debtline on 0800 197 6026** or contact an insolvency practitioner.



FACT SHEET

For a fact sheet on ‘Individual voluntary arrangements’, phone **Business Debtline on 0800 197 6026**.

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 or not.
- The statutory demand should tell you how and where you should apply to set it aside. This is normally in the same court that you would apply for your own bankruptcy.
- To set aside the demand you must do the following within 18 days of receipt:
 - prepare and file an application using **FORM 6.4**;
 - submit a sworn statement in support of your application using **FORM 6.5**.



INFORMATION

Look at the sample forms at the end of the fact sheet, so you can see how to fill them in.

These forms are available from the Insolvency Service website www.insolvency.gov.uk.

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 yet filed a bankruptcy petition against you. If you think this applies to you, phone **Business Debtline on 0800 197 6026**.



ADVICE

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 6.5**:

‘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.....’

When applying to set aside a statutory demand you should:

- state when you received the statutory demand;
- 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, time and place 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 may be able to argue that you can apply for a time order under the **Consumer Credit Act 1974** instead.

- The court is satisfied on some **other grounds** that the demand ought to be set aside. This is a discretionary measure but 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.



ADVICE

Phone **Business Debtline on 0800 197 6026** for further advice if you believe you have grounds to dispute the debt.



FACT SHEET

We have a fact sheet on the 'Limitation Act 1980', phone **Business Debtline on 0800 197 6026**.



FACT SHEET

We have a fact sheet on 'Time orders', phone **Business Debtline on 0800 197 6026**.



INFORMATION

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

MISTAKES ON THE FORM

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.

WHAT IF COURT ACTION HAS ALREADY BEEN TAKEN?

If your creditor has already taken you to court and you have a judgment against you for the debt, you will not usually be able to set aside the statutory demand. 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 the debt that you do not admit you owe. If you have put in a defence to the claim, then 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.

REMEMBER

If you have a court judgment and are keeping up with the instalments, this may be a ground for getting the statutory demand set aside. Phone **Business Debtline on 0800 197 6026**.

IS A STATUTORY DEMAND ALWAYS NEEDED BEFORE A CREDITOR CAN MAKE ME BANKRUPT?

No is not always necessary to have a statutory demand. If a creditor has a county court judgment or other court order which they have been unable to enforce, for example using bailiffs, they can make you bankrupt without sending you a statutory demand first.

FORMS USED IN STATUTORY DEMANDS

Form 6.1

Statutory demand for a debt that you owe, which has not already got a county court judgment or order.

Form 6.2

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

Form 6.3

Statutory demand for a debt due in the future.

Form 6.4

Application to set aside a statutory demand. Please see the sample application form at the end of this fact sheet.

Form 6.5

Affidavit in support of an application to set aside a statutory demand. Please see the example application form at the end of this fact sheet.

IF YOU ALREADY HAVE A BANKRUPTCY HEARING DATE

If you have missed an opportunity to set aside, or otherwise deal with your statutory demand you may now have a hearing date. There is still a way to try to stop the bankruptcy going ahead.

You will need to send a notice to the court where your hearing will be held. You should have the details on the letter that told you about the court hearing.

This notice should be on a form called **FORM 6.19** and you must send it to the court at least seven days before your hearing. The form may be available from your local court, on-line or from a legal stationer.

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 and can include the following:

- there is a substantial dispute about the money claimed;
- you have a cross-claim against the creditor which is the same or more than the debt;
- the debt is secured against property that is worth the same or more than the debt;
- you have made a reasonable repayment offer that the creditor has refused.

You should send a copy of the notice to your creditor and their solicitor and make sure you go to the hearing. Phone **Business Debtline on 0800 197 6026**.



REMEMBER

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.

The time limit for a creditor to act on a statutory demand is four months from the date of service. The creditor can still present a bankruptcy petition but the court may ask them to explain why there has been a delay.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0800 197 6026 Website www.bdl.org.uk

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Application to Set Aside a Statutory Demand

- (a) Insert name and address of person to attend hearing
- Let (a) *This is the name of the person/organisation that issued the Statutory Demand. Normally the name on the Statutory Demand.*

attend before the Registrar as follows:

Date *This section filled in by the court*

Time *This section filled in by the court* hours

Place *This section filled in by the court*

- (b) Insert name of debtor

on hearing of an application by (b) *Your name*

the applicant for an order that the statutory demand dated to be set aside. *Date on the Statutory Demand*

- (c) Insert date
- The grounds on which the applicant claims to be entitled to the order are set out in the affidavit of the applicant sworn on (c) *Date when the affidavit was a copy of which affidavit accompanies this application. sworn at court (Form 6.5)*

- (d) State the names and addresses of persons to be served

The names and address of the persons upon whom this application should be served are:

(d) *The creditor who has served the Statutory Demand, or their representative.*

- (e) State the applicant's address for service

The applicant's address for service is: (e)

Your name and address

Dated _____

Signed _____

(Solicitor for the) Applicant

If you do not attend, the Court may make such order as it thinks fit

Affidavit in Support of Application to Set Aside Statutory Demand

(a) insert name address and description of person making the oath

I (a) *Your name and address.*

make oath and say as follows:

(b) Insert date

1. That on (b) *Date when the Statutory Demand was received (see the fact sheet)*
The statutory demand exhibited hereto and marked "A" came into my hands

(c) Insert one of the 8 following alternatives or if none of them are applicable state grounds on which you consider the statutory demand should be set aside

2. That I (c)

Here you state the grounds for setting aside the Statutory Demand. See the fact sheet and 1 - 8 at the side of the form for guidance.

(1) "Do not admit the debt because..." [here state grounds] or

REMEMBER: *to attach a copy of the Statutory Demand to this form.*

(2) "Admit the debt but not that it is payable immediately" [state reason], or

When you have filled in your parts of Forms 6.4 and 6.5 take them to the court named on the Statutory Demand to be completed by the court.

(3) Admit the debt as to £ , and that this is payable but that the remainder is not immediately payable. I am prepared to pay the amount of £ immediately" [state reason], or

You then make a 'sworn' statement to the court of the truth of the forms.

This is FREE in the county court.

(4) "Admit the debt and am prepared to secure or compound for it to the creditor's satisfaction by ..." [state nature of satisfaction], or

(5) "Say that the debt is a secured debt"[give full details of security and its value], or

(6) " Have a counter claim (or set-off or cross demand) for £ being a sum equal to (or exceeding) the claim in respect of" [here state grounds of counterclaim etc.], or