



## Statutory demands

Fact sheet no. 36

October 2015

### What this fact sheet covers

This fact sheet is about how to deal with, and set aside, a statutory demand that a creditor sends you on or after **1 October 2015**.

**This fact sheet cannot cover everything about setting aside a statutory demand. If you need more help, contact us for advice.**

The rules about statutory demands for limited companies and partnerships are different. Contact **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 at least **£5,000**. You have up to **18** or **21 days** to reply to the statutory demand, depending on what you want to do.

#### Warning:



#### dealing with a statutory demand

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.

### 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 usually classed as the date the advert appears. If the demand is posted to you, the date of service is usually **two days** after the date of posting.



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## Dealing with a statutory demand when you agree you owe the money

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

Bankruptcy can impact on your job and home. Some creditors use statutory demands as a cheap tool to persuade you to pay your debts. However, they may never have had any intention of actually making you bankrupt.

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. Our self-help pack contains guidance on completing a budget and working out what you can afford to pay. **Contact us for a copy.**
- 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, if you are thinking about taking out further credit, and for information about seeking financial advice.
- 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, 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). 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 cannot take further steps to make you bankrupt.

### Warning:



#### deal with the statutory demand

Whatever the situation, you must 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.

### Extra advice:



#### be careful about guarantees

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.



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- 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).

**See our fact sheet:**  
**Individual voluntary arrangements.**



## 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 you should apply to set it aside. This is normally in the same court that you would apply to for your own bankruptcy. If the creditor that has sent you the statutory demand is a government department, and the statutory demand says that the petition will be presented in the High Court, you should apply to the High Court.
- To set aside the demand, you must do the following within **18 days** of it being served.
- Complete an application using **FORM 6.4**.
- Complete a witness statement in support of your application using **FORM 6.5**.
- Provide **three copies** of each form to the court when you make your application.

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 petitioned for your bankruptcy. If you think this applies to you, **contact us for advice**.

### Information:

INFO

#### sample forms

Look at **FORMS 6.4** and **6.5** so you can see how to fill them in. These forms are available from [www.gov.uk](http://www.gov.uk) by searching for 'form 6.4' or 'form 6.5', or from any legal stationer.

### Extra advice:



#### applying late

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.....'



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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, 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 **£5,000**.

- 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 by the **Consumer Credit Act 1974** and there is no signed agreement.

**See our fact sheet:**   
**Time limits for recovering debts and the Limitation Act.**

- You can apply for a time order if the debt is regulated by the **Consumer Credit Act 1974**. A time order is a court order which gives you more time to pay a debt.

**See our fact sheet:**   
**Time order on an unsecured credit agreement.**

- 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.

The court will only set aside the statutory demand if they think that one of these grounds applies. If you think that you have grounds to dispute the debt and apply to set aside the statutory demand, **contact us for advice**.



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## 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 if the amount claimed is slightly wrong.

## What if court action has already been taken?

If your creditor already has a county court judgment against you for the debt, you will not usually be able to set aside the statutory demand on the grounds that you dispute the debt. 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, 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.

### Extra advice:



#### keeping up with payments on a court judgment

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

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

**No**, it is **not** always necessary to have a statutory demand before being made bankrupt. If a creditor has a county court judgment or other court order which they have been unable to enforce, for example by using bailiffs, 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 now failed, the insolvency practitioner or creditors can make you bankrupt without sending you a statutory demand.

## Forms used in statutory demand

### Form 6.1

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

### Form 6.2

Statutory demand for a debt you owe where 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.



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## Form 6.5

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. 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, or not.

If you have missed an opportunity to set aside your statutory demand, or otherwise deal with it, 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 and creditor at least **seven days** before your hearing. The form may be available from your local court, online from [www.gov.uk](http://www.gov.uk) by searching for 'form 6.19' 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.

- You are able to pay off all your debts.
- You have made a reasonable repayment offer that the creditor has refused.
- You have a county 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.**



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## Extra advice:



### creditor refusing offer

It may not be easy to show that the creditor has unreasonably refused your offer. **Contact us for advice.**

## Extra advice:



### reusing a defence

The court may reject your grounds if they are ones that you have already used unsuccessfully when trying to set aside the statutory demand. **Contact us for advice.**

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 down your application.

## What if I am made bankrupt?

If you want to know more about what happens if you are made bankrupt, **contact us for advice.**

See our fact sheet:

Bankruptcy.



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