



Statutory demands

Fact sheet no. BDL18 EW Statutory demands

April 2017

Use this fact sheet to:

- find out what it means if you are sent a statutory demand and what the consequences may be;
- understand the time limits you have to respond to a statutory demand;
- find out what it means to set aside a statutory demand;
- understand what to do if you agree that you owe the money; and
- understand what to do if you don't agree that you owe the money.

This fact sheet includes some useful links to help you get further information.

Setting aside a statutory demand is complicated and in addition to the information in this fact sheet, you may need advice. If you need more help, **contact us for advice**.If a creditor has tried to make you bankrupt before **1 October 2015**, **contact us for advice**.

What is a statutory demand?

A statutory demand is a formal demand made by a creditor for payment of a debt of **£5,000** or more. Most creditors must send you a statutory demand before trying to make you bankrupt. The demand should contain certain information, such as your details and those of the creditor and information about the debt the creditor is claiming. 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 situations, the statutory demand may be advertised in a newspaper.

Important:

limited companies and partnerships

The information in this fact sheet does not apply if the statutory demand is for a partnership or a limited company. **Contact us for advice**.

Extra advice:

time limit

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 try to make you bankrupt.



If the demand is advertised in the newspaper, the date of service is the date the advert appears. If the demand is posted to you, the date of service is usually **two business days** after the date of posting. Business days do not include weekends and bank holidays.

If 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 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 not intend to actually make 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. See our self-help pack for guidance on completing a budget and working out what you can afford to pay. **Contact us for a copy on 0800 197 6026.**
- Get a personal guarantee for the debt from another person such as a friend or relative.
- 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 think 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.**
- Reduce the debt to below **£5,000**. This will mean that the creditor can no longer make you bankrupt.
- 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).

Important:



urgent action required

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.

Extra advice:



personal guarantee

Be careful if you are thinking about getting a personal guarantee. Your guarantor might be asked to pay some, or all, of the debt themselves.

See our fact sheet:



Individual voluntary arrangements (IVAs).



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. 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 on you.

1. Apply using **form IAA**. You must include certain information in your application. **Contact us for advice.**

2. Complete a witness statement in support of your application. You can find a **sample witness statement** on the Justice website www.justice.gov.uk. **Contact us for advice.**

3. Provide **three copies** of each form to the court when you apply.

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:

- give your own details so that the court can identify you;
- explain that you are asking for a statutory demand to be set aside and state which grounds you are using;
- give the date of the statutory demand and the date you became aware of it;
- include a copy of the demand and any other evidence you are relying on; and
- sign and date your application.

The court may dismiss the application without a hearing if you have not shown that there is a good reason for your application or you have not included all the information required. Otherwise the court will set a date, time and place for a hearing. They will give you and the creditor at least **five business days'** notice of this hearing. Business days do not include weekends and bank holidays.

Information:

INFO

court forms

You can find most court forms using the **court form finder** on the HM Courts and Tribunals Service website, see <http://tinyurl.com/hmctsforms>. You can fill in application forms online and print them off to sign, date and send to court.

Extra advice:



after 18 days

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 complete your witness statement:

'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...'



Grounds 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 under the **Consumer Credit Act 1974** and there is no signed 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.

See our fact sheet:
Time limits for recovering debts.



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

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.

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



Is a statutory demand always needed before bankruptcy?

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 using bailiffs (also known as enforcement agents), 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.

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.

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 where your hearing will be held. You should have the details on the letter that told you about the court hearing.

You should use **form Bank 6** for your notice. You must send it to the court and creditor so that they receive it at least **five business days** before your hearing. Business days do not include weekends and bank holidays.

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.

Information:

INFO

court forms

You can find this court form using the **court form finder** on the HM Courts and Tribunals Service website, see <http://tinyurl.com/hmctsforms>. You can fill in application forms online and print them off to sign, date and send to court.



Extra advice:



creditor refused offer

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

Extra advice:



re-using 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.**

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

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

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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Business Debtline endeavour to keep our fact sheets as up-to-date as possible, however, we cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.

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