

# Setting aside a statutory demand

If an individual receives a statutory demand and they dispute the debt or part of the debt, so as to reduce the undisputed amount to below £5,000, the individual should, within 18 days of being served with the statutory demand, issue an application to set aside the statutory demand.

There is no Court fee to pay for an application to set aside a statutory demand. However, you will need to file an application notice and detailed witness statement in support of any application, setting out the reasons as to why the statutory demand should be set aside.

## STEPS TO TAKE PRIOR TO THE APPLICATION

Often in practice, and if there is time to do so, the debtor may write to the creditor or his solicitor first, setting out the reasons for the dispute and inviting them to withdraw the statutory demand. If the creditor refuses, or does not accept the grounds for dispute, then the debtor will have to make a Court application. If the Court later finds that the debt was genuinely disputed, then the earlier correspondence is likely to assist the debtor in recovering their costs of the application.

It is also worth checking (and if possible agreeing with your opponent) the date upon which the statutory demand was served upon you. This date will then determine the date by when you need to file your set aside application – namely within 18 days of service of the statutory demand.

If you are late in making your application, you will need to make an application for an extension of time to the Court setting out reasons why your application has been made late (for example, you were out of the country when you were served with the statutory demand).

## MAKING THE APPLICATION

The application needs to be made on an Insolvency Act Application, which complies with rule 1.35 of the Insolvency Rules 2016. A normal Court application notice (N244) should not be used.

The application notice should be supported with evidence in the form of a witness statement, and such statement should set out the grounds as to why the statutory demand should be set aside. It is also advisable to exhibit a copy of the statutory demand and any other documents that support your application.

The application can be made to any Court with a bankruptcy jurisdiction, although in practice an applicant will make the application to the nearest Court to their home (or to their solicitors' office), so that in the event of a hearing, less travel costs are incurred.

## GROUNDINGS FOR THE APPLICATION

A Court may grant an application to set aside a statutory demand if any of the following apply:

- The debt is disputed on substantial grounds.
- It appears that the creditor holds security in relation to the debt claimed and the value of that security is equal to or exceeds the value of the debt claimed.
- The debtor has a counterclaim, set-off or cross claim which equals or exceeds the value of the debt in the demand, or reduces it below the £5,000 threshold.
- The Court is satisfied that there are other reasons why the statutory demand should be set aside.

### Debt disputed on substantial grounds

An applicant needs to establish that they dispute the debts on 'substantial grounds'. This means that an applicant cannot simply say they dispute the debt and provide no reasoning. The applicant needs to show that there is a dispute that needs to be considered before a Court and that raises questions as to whether the debt is properly owed by the debtor.

### Creditor holds security for the debt

If a creditor already holds security that would satisfy the debt, they should not need to use the bankruptcy process and should be able to recover the debt by realising that security. If, however, the sum owed exceeds the value of any security held by the creditor, then they can still proceed with the statutory demand, and any subsequent bankruptcy petition. The creditor will however need to provide evidence to the Court as to the value of the security so the Court can assess whether the creditor has full security or not.

### Debtor has a counterclaim, set-off or cross demand

In these instances, the actual sum in the statutory demand is not disputed, but the debtor believes they have a counterclaim, set-off or cross demand which exceeds the value of the statutory demand.

In practice, the debtor needs to be able to show that the counterclaim, cross demand or set-off reduces the sum demanded in the statutory demand below the current bankruptcy level of £5,000. Whilst this would not necessarily mean that the statutory demand would be set aside, it would mean that the creditor could not rely on the statutory demand in any subsequent bankruptcy proceedings as the level of the undisputed debt would be below the £5,000 bankruptcy threshold.

### Other grounds why the demand should be set aside

If none of the other above grounds are applicable, the debtor can still argue that it would be unjust in all the circumstances of the case not to set aside the statutory demand. Obviously the Court has a discretion to decide whether to set aside the statutory demand and each case will be considered on its own facts.

Mistakes in the statutory demand or the validity of the demand itself may not necessarily mean that the Court will set it aside as being defective. The Court will consider whether any mistakes in the demand have caused the debtor any prejudice. If it is established that the debtor still owes money to the creditor (which is above the bankruptcy level), then the Court are unlikely to set aside the statutory demand simply because it contains some errors.

Once an application to set aside a statutory demand has been issued, the creditor should not issue a bankruptcy petition until such time as the application has been considered by the Court.

If a bankruptcy petition has already been issued (due to the application to set aside being filed late), then the Court will not dismiss the petition, but cannot make a bankruptcy order until the set aside application has been heard.

If the set aside application is dismissed, this does not prevent the debtor from defending the bankruptcy petition using the same dispute.

## GET IN TOUCH



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The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

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