



DISPUTE RESOLUTION FOR BUSINESSES

Statutory Demands

WHAT IS A STATUTORY DEMAND?

A statutory demand is a formal written document from an individual or company to an individual or company, demanding payment of an outstanding debt from that individual or company within 21 days.

Statutory demands are not Court documents and you do not need to issue Court proceedings to serve a statutory demand on a debtor. Similarly, there is no Court fee to pay to issue a statutory demand. However, if you do not act following receipt of the statutory demand, or wish to dispute the statutory demand, then it is likely the Court will become involved and proceedings commenced.

A statutory demand is often the first step in a creditor commencing either bankruptcy proceedings against an individual or winding up proceedings against a company.

If an individual who owes more than £5,000 fails to repay the debt within 21 days of being served with the statutory demand, the creditor is in a position to commence bankruptcy proceedings against that debtor, as the debtor is treated as being unable to pay his debts.

Similarly, if a company who owes more than £750 fails to repay the debt within the 21-day period, the creditor is in a position to commence winding up proceedings against that company.

There is, however, no obligation on a creditor to commence bankruptcy or winding up proceedings against the debtor if they have served a statutory demand. However, due to the relatively straightforward process of serving the statutory demand, most creditors will serve a statutory demand before commencing bankruptcy or winding up proceedings.

Serving a statutory demand on a debtor is quite an aggressive step to take to recover a debt. It is perhaps advisable to serve a letter first before taking action on the debtor, and if they fail to respond or pay, the statutory demand can then be considered. However, if there is an ongoing commercial relationship with the debtor, serving a statutory demand could affect such a relationship going forward.

Statutory demands should only be served where the debt is not disputed. If the debt is disputed, the debtor may seek to issue an application to set aside the statutory demand (where it is served on an individual), or an application to for an injunction

injunction to restrain the presentation or advertisement of a winding up petition (where it is served on a company). In these instances, if such an application is successful by the debtor, the creditor is likely to be ordered to pay the costs of the debtor's successful application.

DRAFTING A STATUTORY DEMAND

Depending on whether you are serving a statutory demand on an individual or a company, it is important that you use the correct form of statutory demand. The government's website (<https://www.gov.uk/statutory-demands/forms-to-issue-a-statutory-demand>) sets out the details of which form to use, depending on the nature of the debt and the nature of the debtor.

At present, Form SD1 should be used when making a demand against a company and either Form SD2, SD3 or SD4 should be used when making a demand against an individual.

The statutory demand should identify the names and addresses of both the creditor and the debtor and should then set out (in as much detail as possible) the circumstances in which the debt arose, details of the debt itself and any interest that is being claimed. The creditor also needs to include details of the debtor's home Court, where, if disputed, they would need to make an application to set aside the statutory demand (if the demand is served on an individual) or make an application for an injunction to prevent presentation of a winding up petition (if the demand is served on a company).

The statutory demand needs to be signed by the creditor (or an authorised representative, such as their solicitor).

SERVICE OF A STATUTORY DEMAND

As it is not a Court document, the rules on service of documents as set out in the Civil Procedure Rules do not apply to statutory demands. However, it is important that the statutory demand is served properly on the debtor and a record of that service taken, in order to prevent the debtor raising arguments that they were not served correctly or not served at all.

Creditors will therefore often use the services of a process server to serve statutory demands.

Not only does this avoid the creditor having to serve the statutory demand themselves, but the process server will also usually provide a report or formal statement of service, which can then be provided to the Court in any later insolvency proceedings.

SERVICE OF A STATUTORY DEMAND ON AN INDIVIDUAL

In the first instance, an attempt to personally serve the statutory demand on an individual debtor should be made. If this is not possible, then the rules state that the creditor should do everything that is reasonably practicable to bring the statutory demand to the debtor's attention. This could mean posting it through the debtor's letterbox, posting it via first class post or recorded post, or sending it to them electronically, where the creditor has a valid up to date email address that the debtor is known to check. The Courts have also previously determined that service on social media, such as Facebook and Twitter, can be deemed to be good service.

SERVICE OF A STATUTORY DEMAND ON A COMPANY

The statutory demand should be personally served, or left at the company's registered office as listed on Companies House (in the event the company is a limited company). If the company is not a limited company, then it should be served at their trading address or other address from their letterhead. Alternatively, it can be served on a director, secretary or manager of that company. Registered post can be used, if it can be shown that the company received the statutory demand or signed for the post.

PROOF OF SERVICE

Whichever way the statutory demand is served, the process server or creditor should make a note of the same and provide a statement of service, setting out the time, date and method of service and if possible, including photographs or other proof of service (i.e. placing it in the letterbox etc). The statement of service should be sworn by a Statement of Truth, verifying the facts set out in the statement.

WHAT TO DO IF YOU HAVE RECEIVED A STATUTORY DEMAND?

If you or your company have received a statutory demand, you should not delay in responding to it, as there is only a short period of time to act, failing which you could find yourself on the end of bankruptcy or winding up proceedings.

You only have 21 days from the date you were served with the statutory demand to pay the debt set out in the statutory demand.

If you do pay the debt in full, you should request that the creditor formally withdraws the statutory demand. There is no formal process for this, but ideally you should ask the creditor to confirm in writing that the statutory demand is withdrawn.

If the debtor cannot pay all of the debt, then they should seek to pay part of the debt, to reduce the sums owed to the creditor to below the relevant thresholds (£750 for companies and £5,000 for individuals). If the debtor is able to do this, the creditor will not be able to proceed with a winding up petition or bankruptcy petition.

If you are unable to pay the debt, you should contact the creditor or their solicitors to enquire about entering into a form of payment arrangement with the creditor. Often, creditors simply want their debts repaid and it is not necessarily in their interest to make you bankrupt, as they are less likely to recover the monies owed to them. As such, you may be able to negotiate a payment arrangement. You will probably need to provide details of your assets and liabilities to the creditor to show them how much you can afford, and how regularly you can make payments.

If, however, you dispute the debt, you will only have 18 days in which to make an application to set aside the statutory demand or, if you are a company, to make an application for an injunction to restrain the presentation of a winding up petition.

APPLICATION TO SET ASIDE THE 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.

Often in practice, 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.

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 that 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.

Once an application to set aside a statutory demand has been issued, the creditor should not issue a bankruptcy petition until 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), 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.

APPLICATION FOR AN INJUNCTION TO PREVENT THE ISSUING OR ADVERTISEMENT OF A WINDING UP PETITION

As a company cannot seek to set aside a statutory demand, they have to instead seek an injunction to restrain the presentation or advertisement of a winding up petition.

Once a winding up petition is issued by the Court, it can have devastating effects on a company, as often the bank and other creditors will find out that a petition has been issued.

A winding up petition is also formally advertised in the London Gazette, so if creditors were not aware of the petition once it was issued, then the formal advertisement will put them on notice of the same.

A company's bank account will often be frozen by the bank, meaning they may not be able to pay staff, unless they are able to obtain a validation order from the Court, allowing them to use company monies to carry out certain tasks (such as paying wages).

As such, it is therefore very important to a company that the winding up petition is not issued let alone advertised.

As with the application to set aside the statutory demand, if you have time to do so, it is often worth corresponding with the creditor or their solicitors prior to making any application for an injunction. This may provide a debtor with some costs protection if they do have to make an application.

In any event, an application for an injunction to restrain the presentation of a winding up petition should be made promptly and before the time to pay the debt set out in the statutory demand has expired.

A Court may grant the injunction if it can be shown that the company is solvent, and one of the following applies:

- The company has a cross claim or right of set off that exceeds the amount claimed in the statutory demand.
- The company has a reasonable excuse for not paying the debt.
- The debt is genuinely disputed on substantial grounds.

Typically, a debtor needs to provide evidence to the Court that the debt is disputed, and that the dispute should be dealt with in the County Court/High Court rather than via the Insolvency Courts.

The debtor will be required to provide evidence of its solvency (i.e. its ability to pay its debts as and when they fall due) as well as providing evidence as to why the debt is disputed. In such a case, a detailed witness statement will be required together with the application.

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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