

OUR GUIDE TO STATUTORY DEMANDS

NOTE This advice applies to England and Wales only. There are different Court processes in Northern Ireland and Scotland. Please seek advice relevant to your location.

What is a Statutory Demand?

A Statutory Demand is a formal request for payment of an overdue debt. The person or company you owe a debt to (called your "Creditor"), or that thinks that you owe a debt, will have issued the Demand. Anyone can make a statutory demand against a company or an individual and you do not need a lawyer to do so.

The Statutory Demand will confirm the amount that is claimed and the circumstances in which it is claimed the debt was incurred.

When can a Statutory Demand be issued?

When a debt remains unpaid. However, Statutory Demands usually may only be served for debts that are less than six years old.

What is the effect of a Statutory Demand?

You have 21 days to settle the debt that is being claimed or negotiate a payment plan with the creditor. If you dispute the debt then you may issue an application to *set aside* or *restrain* the Demand. But if you do not respond after receiving a Statutory Demand then the creditor may take further action, including issuing a Bankruptcy or Winding Up petition, as appropriate.

Does a creditor have to serve a Statutory Demand before issuing a Bankruptcy petition against an individual, or a Winding Up petition against a company?

No. However, an unpaid Statutory Demand strengthens the creditor's case.

What does a Statutory Demand look like?

There are four different versions of a Statutory Demand depending upon the nature of the debt being claimed and the identity of the debtor.

For debts owed by a company it is: *SD1 – Statutory demand against a company for a debt over £750*

For debts owed by an individual or a partnership there are three different forms. If the Demand is against a partnership then there should be a Statutory Demand for each partner:

SD2 – Statutory Demand against an individual for a debt that is payable immediately;

SD3 – Statutory demand against an individual for a debt that is payable at a future date; and

SD4 – Statutory demand against an individual for a debt that is payable immediately following a Judgment or Order of the Court.

How is a Statutory Demand delivered to the debtor?

A Statutory Demand form must be *served* by:

- giving it personally to the individual who owes the money (by trying all their known addresses); or
- leaving it at the registered office of the company or partnership that owes money (or the main place of business if they do not have a registered office); or
- giving it to the company's director, company secretary, manager or principal officer; or

- having a *process server* serve it.

The Demand can only be sent by registered post or be put through a letterbox if it cannot reasonably be delivered in person.

A record should be kept confirming the time and date that the Statutory Demand was served or posted so that if the debt remains unpaid it can be used as evidence of when the time period commenced.

What happens next if a Statutory Demand is not settled in full or an agreement cannot be reached between the debtor and creditor?

If a debtor does not pay the debt in full or come to an agreement to repay the debt over time then, after 21 days from the Statutory Demand being served, the creditor can:

- start Bankruptcy proceedings against any individual who owes £5,000 or more / or
- Wind Up a company that owes £750 or more.

The creditor has four months to issue a petition for Bankruptcy or Winding Up against the debtor, otherwise they must provide an explanation as to why they are late to the Court named on the Statutory Demand, or issue another Demand and start the process again.

The debt I am owed is owed by a foreign company or individual

The Statutory Demand should be delivered in accordance with both the local and United Kingdom rules of service.

I do not agree that the debt that is claimed on a Statutory Demand is due

An individual (but not a company) can apply to challenge or *set aside* the Statutory Demand.

The application to set aside should be made to the Court stated on the Statutory Demand and be issued within eighteen days of being served if you were in the United Kingdom or 21 to 34 days if you were abroad. If the deadline falls on a weekend or bank holiday then an extra day is given and in some circumstances an extension to these time limits may be allowed if you can give good reasons for the delay and the creditor has not already petitioned for your Bankruptcy.

How do I make an application to set aside a Statutory Demand?

Form IAA (Insolvency Act Application notice) should be completed and three copies delivered to the relevant Court.

You should receive a reply within ten working days of the application being lodged, confirming that the Court:

- agrees with the application and that the matter will be passed on to a Bankruptcy Registrar to look at the issues and arrange a hearing; or
- does not agree with the application and giving the creditor permission to issue a Bankruptcy petition.

What happens at a hearing to set aside a Statutory Demand?

Both parties will present their case to a Bankruptcy Registrar or Judge. They can make a decision on the day or arrange another hearing for either the debtor, creditor or both parties to give more evidence in support of their case.

If the debtor wins, they will get an Order from the Court setting aside the Statutory Demand and the deadline for paying the debt is suspended.

If the creditor wins then the debtor has to pay back the debt within the 21 day time limit, failing which the creditor can issue a petition for the debtor's Bankruptcy if the debt is £5,000 or more.

What are the prospects of a successful application to set aside a Statutory Demand?

An application to set aside a Statutory Demand can be made on one or more of the following grounds:

- there is a counter-claim against the creditor which is equal to or more than the debt stated on the Statutory Demand;
- the debt is already secured against property that is worth the same or more than the debt;
- the debt is disputed and the Court believes there are reasonable grounds for the dispute; or
- the Court is satisfied on some other grounds that the Statutory Demand ought to be set aside.

It could also be argued, if the unsecured debt is below £5,000 and, therefore, a Bankruptcy petition cannot be issued, that the Statutory Demand should be set aside. However, the creditor could intend to apply jointly with other creditors to issue a Bankruptcy petition and, therefore, such an application would not succeed.

If there is an active dispute in respect of a Court claim for the debt that the Statutory Demand is also claiming, then the Court may delay considering an application to set aside a Statutory Demand until a decision is made in the other proceedings.

If a creditor already has a County Court Judgment for the debt being claimed, then that Court Judgment will usually be taken as proof that the debt is owed and the Statutory Demand will not be set aside by raising a dispute at this stage.

I dispute the debt that is being claimed against my company

A director can apply to Court to *restrain* a creditor from issuing a Winding Up petition within 21 days of the Statutory Demand being served.

Form IAA (Insolvency Act Application notice) should be completed and three copies delivered to the relevant Court.

If the company's share capital is less than £120,000 then the Court local to the company's registered office address should be used, otherwise the application must be made to the High Court.

Our conclusion

If you believe you are owed a debt then it is important to take clear, practical advice before issuing a Statutory Demand to avoid the cost consequences of losing an application to set it aside at a later date. In the right circumstances, however, a Statutory Demand is very useful to show a debtor you mean business.

If you are in receipt of a Statutory Demand in your own name or that of your company then the clock is ticking to take positive actions, which will prevent the creditor issuing a Bankruptcy or Winding Up petition, respectively. Act immediately and do not wait to the end of the three weeks after being served before taking advice.

If you would like specific guidance, talk to Sadlers today.