

Statutory Demands

A statutory demand requires that the debtor either:

- Pays the relevant amount
- Offers to secure it against property
- Offers to repay the debt in a way that is satisfactory to the creditor. For example, by installments.

Some creditors use statutory demands as a way of persuading debtors to pay off the debt, usually by borrowing elsewhere.

However, statutory demands should be taken seriously. After 21 days the creditor can petition for a bankruptcy order. Therefore, it is usually worth contacting the creditor by telephone and asking them what their next step will be.

Ignoring a statutory demand may encourage the creditor to petition for bankruptcy. It is worth bearing this in mind, particularly if the debtor is contemplating petitioning for his own bankruptcy.

If the debtor wants to avoid bankruptcy he should consider:

- Making payment(s) to reduce the debt to less than £750; or
- Making an offer to pay by installments; or
- Making an offer of a reduced amount in settlement of the debt; or
- Applying to have the statutory demand set aside

Setting aside a statutory demand.

21 days after the serving of the statutory demand, the creditor can petition for the debtor's bankruptcy unless it has been 'set aside'.

An application to set aside the statutory demand can be made if:

- There is a substantial dispute about the money owed;
- There is a counterclaim of more than the money owed;
- The creditor holds security that equals or exceeds the debt in value;
- On 'Other Grounds'. Though not defined, these can include:
 - The demand was issued in error, e.g. for a secured debt or for an amount of less than £750;
 - Execution has been stayed on a judgment;
 - The debtor is complying with an installment order (so the debt is not strictly due); and
 - The creditor failed to comply with the rules and prejudiced the debtor in the process;

An application to set aside must be made with 18 days of the statutory demand being served. Forms 6.4 (application) and 6.5 (affidavit) must be completed and taken to the court. However, the court can dismiss the application if there are no grounds.

If there are grounds, a hearing will be arranged at which the court will decide whether the demand will be set aside.

If the debt falls under the Consumer Credit Act 1974, the court should also consider if any relief is available to the debtor under the Act. This would include a time order application.

It is important that if you have been issued with a statutory demand that you take immediate action otherwise there is a strong risk that the creditor will make you bankrupt. Ashley Park Debt Solutions can assist you in this situation and help defend any action and negotiate with the creditor to agree to accept reduced payments.