



LUCAS JOHNSON
BUSINESS RECOVERY & INSOLVENCY

Guide to Statutory Demands for those presenting and receiving one

Free Confidential Advice
0330 900 2000



Lucas Johnson Limited Business Recovery Specialists and Licensed Insolvency Practitioners
Website: www.lucasjohnson.co.uk Tel: 0330 900 2000 Email: help@lucasjohnson.co.uk

Head Office 32 Stamford Street, Altrincham, WA14 1EY



What is a statutory demand?

A statutory demand is a prescribed type of written request from a creditor for payment of a debt.

What forms must I use to issue a statutory demand?

If an individual or sole trader owes you money, the forms you need to use are:

- Form 6.1 – for a debt of a specific amount that is payable now.
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>
- Form 6.2 – for a debt of a specific amount that is payable now following a judgment or court order.
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>
- Form 6.3 – for a debt that is payable in the future.
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>

If a registered or unregistered company owes you money:

- Form 4.1
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>

Must I always use a statutory demand to recover debt?

No. If you have previously got a court order that the money must be paid (judgment), you can ask the court to enforce it. Information on enforcement is available in the Courts Service leaflet EX321 'I have a judgment but the defendant hasn't paid – What can I do?'.

You can present a bankruptcy petition without serving a statutory demand if:

- enforcement fails to get some or all of the money; and
- the debt for bankruptcy equals or exceeds £750.

You can present a winding-up petition without serving a statutory demand if:

- enforcement fails to get some or all of the money; or
- you can prove to the court that the company cannot pay its debts as they fall due (for example, non-payment of invoices is enough to prove this); or
- you can prove to the court that the company's total debts exceed its total assets.

How should I serve the demand?

a. If an individual owes you money:

You must do everything you can to bring the statutory demand to the attention of the person concerned and, if possible, serve it personally on them. You should try to serve the demand at all their known addresses. You can employ a process server to do this for you.

If you cannot serve the demand like that because the person is keeping out of the way to avoid service, there are alternatives. You should use them only after:

- you have tried to serve the demand; and
- you have issued a letter of appointment for a second visit so that you can serve it personally.

If you fail to do this:

- the court may refuse to issue a petition; or
- the court may issue a petition and a bankruptcy order but could annul (cancel) the order if you did not serve the demand properly, and order you to pay costs.

The alternatives to personal service are as follows:

- You can send the demand by first-class post or put it through the person's letterbox, but only when you have made all efforts to personally serve it. If you do this yourself and you go on to present a bankruptcy petition against this person, you will need to provide a statement of truth that says how you tried to serve the demand. You will also have to state how you served the demand and on what date you believe the debtor would have seen it.
- You may advertise the demand in any way you think right if:
 - the money is owed under a judgment or order of any court, and you know or believe that the debtor has left their address or is keeping out of your way to avoid service; and
 - you believe you would not be able to recover the money owing to you by enforcing the court order.

See paragraph "Must I always use a statutory demand?" above about how to enforce a judgment.

b. If a registered limited company owes you money:

The statutory demand is served if you leave it at the registered office of the company.

If you are unable to do this, a demand will be properly served if you:

- deliver it to the company's director or company secretary, manager or principal officer; or
- send it by registered post to the company's registered office and the company acknowledges it by signing the Post Office receipt.

c. If an unregistered limited company (a company not registered with the Registrar of Companies) owes you money:

You may serve the statutory demand by:

- leaving it at the company's main place of business; or
- delivering it to the company's director, company secretary, manager or principal officer; or
- serving it in a way that the court may approve or direct.

Do I need proof I have served a statutory demand?

Yes, you will need proof of service if the debtor does not pay the statutory demand and you intend to carry on with debt recovery proceedings. It is usual to employ a process server to provide such proof. You can search for a local process server at the Association of British Investigators (www.theabi.org.uk) or some are listed in directories such as the Yellow Pages under "Detective Agencies".

To start any bankruptcy proceedings (present a petition), the debt has to equal or exceed £750. To start winding-up proceedings (present a petition) using the statutory demand process, the debt has to exceed £750. A number of creditors for smaller amounts can put their claims together to reach this minimum.

If the debtor or company does not pay, secure or agree a settlement, or apply for the demand to be set aside, then after 21 days from the date of serving the demand, you can ask the court to issue a bankruptcy or winding-up petition. You will also have to serve this on the debtor or company. This then leads to a court hearing where a bankruptcy or winding-up order may be made.

If a bankruptcy petition is based on a statutory demand, you must file at court with the petition a certificate of service verified by a statement of truth that gives details of your service of the demand.

The person who verifies the certificate of service and statement of truth must be the person who served the demand, unless the debtor acknowledges service (agrees that they have been served it). If the debtor acknowledges service, then the person who should verify the certificate of service is the creditor or a person acting on their behalf.

What should I do if the statutory demand was not personally served or if the debtor has not acknowledged service?

Someone who knows what was done to serve the statutory demand should verify the certificate of service saying:

- how they served or tried to serve the demand; and
- the date they believe the demand came to the debtor's attention.

You should not ignore a statutory demand as it could lead to you being made bankrupt or to the court winding up your company.

winding up your company.

If you are an Individual

You have 21 days to settle the debt or 18 days to ask the court to set aside (dismiss) the demand

If you are a company

You have 21 days to settle the debt or 18 days to apply to court for an injunction.

If during the 21 day period you do not pay it, or reach an agreement over payment, set aside the demand or obtain an injunction then the creditor may present a petition to court for a:

- bankruptcy order if the debt equals or exceeds £750; or
- winding-up order if the debt that exceeds £750

Therefore you must:

- comply with the demand; or
- take action to stop the creditor presenting a bankruptcy or winding-up petition if you believe that you have good reason to do so.

BUT before taking any action you may wish to get legal and/or Insolvency advice from Lucas Johnson.

Setting aside a statutory demand: someone has served me with a statutory demand, so what can I do if I disagree with it?

Courts can set aside statutory demands but will only do this if there is a genuine dispute about whether the debt exists. A small mistake in the demand about the amount owed will not make it invalid.

Individuals

Within 18 days of the demand being served on you, or within 18 days of the date of the first advertisement (if the demand was advertised), you may apply to the court to set aside the demand. If you live abroad, the time limit for applying to set it aside is 22 days.

You must apply to the court where you would present your own bankruptcy petition, using:

- Form 6.4 Application to Set Aside a Statutory Demand
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>
- Form 6.5 Witness Statement in Support of Application to Set Aside Statutory Demand.
<http://www.bis.gov.uk/insolvency/About-us/forms/england-and-wales>

If the creditor who has filed the bankruptcy petition is a Government department and the demand says the petition will be presented in the High Court, you should apply to the High Court.

If the debt is subject to a judgment and the demand says the petition will be presented in the High Court, you should apply to the High Court.

If the demand is based on an unsatisfied judgment, the court will not normally set aside the demand until you successfully apply to court to have the judgment set aside.

If the deadline for you to apply to have the demand set aside has passed, you may apply for an extension of time to a Judge in the High Court or to a District Judge.

From the time you file the application to set aside the demand, the deadline for you to comply with it stops running.

In Form 6.5 you must say:

- when the demand was served; and
- why you believe it should be set aside.

You must file a copy of the demand with Form 6.4 and Form 6.5.

On receiving your application, the court may:

- dismiss it, without giving notice to the creditor if it believes there is no good reason for setting aside the demand; or
- grant the application to set aside the demand.

If the court dismisses your application, then the deadline for you to pay or secure the debt, which was suspended, will restart. So if there were 12 days to run when it was suspended, there will be 12 days to run now.

If the application to set aside the demand is not dismissed immediately, the court will fix a time for hearing the application and give 5 business days' notice to:

- you or your solicitor;
- the creditor; and
- whoever is named in the demand as the person you should contact about the debt.

The court may grant the application to set aside the demand if:

- the debtor appears to have a counterclaim, set-off or cross-demand that is the same as, or more than, the amount that is in the demand; or
- the debt is disputed on grounds that the court thinks are substantial; or
- it appears that the creditor holds some security, such as a mortgage, that has not been disclosed or the court is satisfied that the value of any security is more than or the same as the amount claimed; or
- the court is satisfied on other grounds that the demand should be set aside.

The court will only set aside the demand if the debtor would suffer injustice from the creditor presenting a bankruptcy petition for the debtor's non-compliance with the demand. So if the court believes the debtor would not suffer injustice, it will not set aside the demand.

The reason for which a bankruptcy petition may be presented is that the debtor has not complied with the terms of a statutory demand.

Technical or factual defects in a demand will not necessarily mean that the court will set it aside.

If the court dismisses the application to set aside the demand, it must make an order authorising the creditor to present a petition immediately or at a specified date.

Companies

Insolvency law does not specifically cover an application by a company to set aside a statutory demand. However, any person has the right to defend legal proceedings, so a company can apply to stop the process.

If the company has a valid defence to the demand, it can apply to the court to stop the creditor presenting a winding-up petition. The company should seek legal advice before applying to the court.

If the company succeeds in its application to stop the creditor presenting a winding-up petition, the creditor will have to pay the hearing costs. If the application fails, the company will have to pay them.

Does a statutory demand expire?

There is no expiry period for a statutory demand. However, if more than 4 months has passed since you served the demand, you will need to explain to the court why you have delayed in presenting a bankruptcy petition. If the delay is too long, you may have to serve a fresh statutory demand. Under the Limitation Act 1980, a debt must generally not be more than 6 years old or based on a default judgment not more than 6 years old. This period can start to run again from any date the debtor agrees the debt exists and may be extended more than once. You may need legal advice if you think the debt is affected by this time limit.

What if the recipient of the demand lives abroad?

A statutory demand is not a court-issued document, so you do not need to ask the court's permission to serve it abroad. However, serving a demand abroad can be complicated. It should be served in the same way as in this country but also in line with local foreign law. If the demand is to be served in a foreign country with which England and Wales has made a civil procedure convention, you must use the procedure set by the Civil Procedure Rules (CPR) Part 6.42 and 6.43. You may need legal assistance to help you.

When a demand is served abroad, the time limit to comply with it is generally 28 days (21 plus 7) but can be more depending on the country. The time limit for applying to set aside the demand is generally 22 days (18 plus 4) but also can be more depending on the country.

There are some restrictions on presenting a bankruptcy petition if a debtor who lives abroad fails to comply with a demand:

- If the debtor lives in one of the European Union (EU) member states (apart from Denmark), you will not be able to present a bankruptcy petition against that person if they carry on business or earn their living in that EU country.
- If the person is retired or unemployed, the court will look at the country where they normally work or live. You would have to make the person bankrupt under the law of that country.
- If the debtor lives in a country that is outside the EU or if they live in Denmark, you will be able to present a bankruptcy petition only if they have lived or had a residence here in England and Wales, or carried on business here, at any time in the 3 years before the date you present the bankruptcy petition.

The only exception is if they are in England and Wales on the day you present it.