

STATUTORY DEMAND/ BANKRUPTCY

If you have a debt that has fallen into arrears, a creditor may decide to try and make you bankrupt.

The creditor will send you a Statutory Demand, which is a formal legal document, requiring you to pay off the outstanding debt either by instalments or a lump sum or to secure it against a property.

The Statutory Demand is “served” on you. This means that it has been delivered in the correct way. This may be delivered personally by hand, or via First Class post, or put through your letter box. You may apply within 18 days from the date it was served, to your local County Court to “set aside” the Statutory Demand under the following circumstances:

- there is a dispute regarding the amount of money owed.
- the sum owed is less than £5,000.
- the demand has been issued in error.
- you have the means to repay the debt .
- there is a counterclaim of more than the money owed.

To apply to set aside the Statutory Demand, you will need to complete Forms 6.4 (Application Form) and 6.5 (Witness Statement in support of the Application). Ignoring a Statutory Demand will allow the creditor to present a petition for bankruptcy against you 21 days after the date of the Statutory Demand.

If you have failed to deal with the Statutory Demand – or missed the chance to deal with it because the time has run out – you may still be able to prevent the bankruptcy going ahead. You should write to the court where the bankruptcy hearing is to be held, using Form 6.19 (Notice by Debtor – Intention to Oppose Bankruptcy Petition). This needs to be done at least 5 working days before the hearing date. You must show that you have a reason to defend the bankruptcy claim – as you would have if you had completed the set aside. Some creditors use the issuing of a Statutory Demand as a tactic to frighten debtors but they should always be taken seriously. In particular, a Statutory Demand issued by HMRC for non-payment of income tax or VAT should be treated very seriously, as it’s common for HMRC to follow up a Statutory Demand with a petition for bankruptcy.

APPLYING FOR BANKRUPTCY

You can also apply for your own bankruptcy online. Before you consider this as an option, it’s best to receive some professional advice, so contact your local Citizens Advice Bureau.

Once you have decided that bankruptcy is the best option for you, you will need to apply online at www.gov.uk under ‘Apply for Bankruptcy’.

If you don't have internet access you can contact the **Insolvency Enquiry Line** on 0300 678 0015 between 9am-5pm, Monday to Friday.

There is currently a fee of £680 to go bankrupt (£130 to consider the application, and £550 for managing the bankruptcy). The fee can be paid online and by instalments. The minimum instalment payment is £5. The whole fee must be paid in full before you can complete your application. A third party can also pay on your behalf, and they can do this by credit card if necessary.

There are no exemptions to the bankruptcy fee now, so if you are on low income you will still be required to pay the £680 – but there are a lot of charitable organisations that you can apply to for assistance e.g **www.charisgrants.com**

Once the online application has been completed, it is passed to the Adjudicator at the Insolvency Service. They will check that England or Wales is the correct place for your bankruptcy to be decided, and that the debt is not already included in a bankruptcy.

If the Adjudicator decides to make the Bankruptcy Order, it will be done within 28 days – though usually sooner. Once the order has been made, you will have an appointment to speak to the Official Receiver who will go through all your personal and financial details. This appointment could be face to face or over the phone.

If the Adjudicator decides not to make the Bankruptcy Order, you will receive a Notice of Refusal telling you why the order wasn't made. You can ask for a decision review, but only within 14 days of receiving the Notice of Refusal. You need to supply reasons for asking for the review, but you cannot provide any new information – only the information supplied on the original application can be taken into account.

For further information on Statutory Demands, please contact your local Citizens Advice Bureau (CAB).