

Debt Collection: Bankruptcy

When should a creditor consider bankruptcy

In appropriate cases the threat of bankruptcy (by serving a statutory demand) or the laying a bankruptcy petition can be a swift and forceful method of debt collection. While bankruptcy may have lost much of its historic stigma, it still can have profound effects on the Debtor's personal and business life.

Bankruptcy is not a step that should be taken lightly or where you wish to maintain a commercial relationship with the Debtor. It is not appropriate where the debt is disputed or security for the debt is held. Further where the Debtor is truly impecunious, proceeding to bankruptcy may just leave you as one of many unsecured creditors.

Bankruptcy can also be considered where the Debtor may be hiding assets to avoid judgment. The Official Receiver or Trustee in Bankruptcy has extensive powers to investigate the Debtor's accounts backed up by criminal sanctions.

This leaflet details the process of making a person domiciled in England or Wales bankrupt.

We can advise you on the bankruptcy process, prepare the statutory demand, arrange for service by a process server, draft the petition and represent you at any subsequent court hearing.

For companies, please see our separate leaflet on corporate insolvency.

The Statutory Demand

When to serve a statutory demand

Debt must equal or exceed bankruptcy level

Currently £5,000

Be a liquidated sum

A sum payable either immediately or at some certain future time and unsecured (you cannot petition for bankruptcy where you hold security)

Not be disputed on substantial grounds

Debtor unable to pay

Debt which Debtor appears either unable to pay or has no reasonable prospect of being able to pay

Before issuing a bankruptcy petition at court, the creditor must prove to the court that the Debtor is unable to pay their debts. This is usually achieved by serving a Statutory Demand on the Debtor.

This is a prescribed form which sets out the terms of the debt and advises the Debtor that a bankruptcy petition may be served.

The Debtor has 21 clear days from the date of service to comply with the Statutory Demand by either paying the debt or within 18 days applying to set it aside. Service of a statutory demand is often sufficient to secure a response.

Save in exceptional circumstances a statutory demand must be personally served on the Debtor. Service is usually proved by way of witness statement or affidavit. We advise engaging a process server to effect service (this typically costs between £100 and £200).

Responding to a Statutory Demand

Debtor makes payment in full

Debtor accepts the debt and seeks to negotiate a settlement

Debtor ignores the demand

Debtor disputes the demand

The creditor may proceed to issue the bankruptcy petition. If the Debtor only raises a valid dispute to the debt following the petition being issued, the court will likely order the creditor's costs be paid due to the Debtor's failure to respond to the statutory demand.

If the demand is validly disputed, the creditor should withdraw the demand and can then proceed to commence a standard debt action in the County Court. If the demand is not withdrawn the creditor can apply to the court to set it aside (see below)

Application to Set Aside the Statutory Demand

The Debtor may apply to court to have the Statutory Demand set aside. The court can grant this application on a number of grounds:

- 1 If the Debtor has a counterclaim or right of set off against the Creditor
- 2 If the debt is disputed on substantial grounds
- 3 If the Creditor holds sufficient security for the debt

If the statutory demand is set aside the Creditor is usually ordered to pay the Debtor's costs.

The Petition

If the statutory demand is not set aside and the debt not satisfied the Creditor may proceed to petition the court for the Debtor's bankruptcy.

Prior to filing the petition the creditor must carry out searches of the High Court, Central London County Court and the Debtor's local court to check if there are any prior petitions. The cheapest and swiftest option is usually instruct a London agent to carry out in person the search of the London courts. The local court search can be conducted by post.

The sealed petition and accompanying documents must then be personally served on the Debtor. We again suggest engaging a process server for this.

Any substantial delay (over 4 months) between service of the statutory demand and the petition should be avoided and must be explained to the court.

The Petition must be accompanied by:

- 1 A copy of the statutory demand
- 2 The process server's witness statement as to service of the demand
- 3 A witness statement from the Creditor verifying that the contents of the petition are true.
- 4 Court Fee of £280 and Official Receiver's deposit of £990

Bankruptcy Hearing

The court will list the petition for a hearing on the first available date after 14 days. There will usually be some delay before the petition is heard. Once filed the petition may not be withdrawn without the court's permission.

If the Debtor opposes the petition, he must file his grounds for doing so 7 days before the hearing. The Creditor files with the court on the day of the hearing a Certificate of Debt confirming that the debt has not been paid or compounded together with a list of creditors.

The bankruptcy order will not be made where:

- 1 The Debtor has made an offer to secure or compound the debt
- 2 The acceptance of that offer would have required the dismissal of the petition, and
- 3 The offer has been unreasonably refused

It is not unusual for the Debtor to offer staged payments to avoid bankruptcy. Should these payments not be met, the matter can be brought back to court for the matter to be reconsidered.

Costs

Typical Disbursements

Statutory Demand

£100-200 Process Server to serve demand

Bankruptcy Petition

£100-200 Process Server to serve petition

£280 Court Issue fee

£990 Official Receiver's Deposit (returned if order not made)

£100 Searches of Court Registers

Where the Bankruptcy Order is made and if the bankrupt has sufficient money, it is usual for the petitioning Creditor's costs to be paid or a contribution ordered.

If the petition is dismissed the Creditor usually has to meet the Debtor's costs.

Bankruptcy Order Made

Upon the bankruptcy order being made the majority of the Debtor's assets vest in his trustee in bankruptcy.

Depending on the value of the Bankrupt's assets, either a local insolvency practitioner or the Official Receiver will be appointed by the court as Trustee in Bankruptcy to investigate the Bankrupt's affairs, sell their assets and distribute any proceeds to the creditors.

For more advice contact Matthew Knight on 01722 410664 or email
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