



# Corporate Turnaround and Insolvency

## Can multiple debts exceeding £750 constitute a basis for a statutory demand?

**We all know that statutory demand can be issued for undisputed debts in excess of £750, and if not satisfied for 21 days, the stat demand is prima facie evidence of insolvency. What happens where there are multiple debts of less than £750 each however? *Howell v Lerwick Commercial Mortgage Corporation Ltd [2015] EWHC 1177 (Ch)* provides an insight.**

### The background

Mr Howell obtained finance from Lerwick in 2010 to develop a property and paid £2,750 to Lerwick to obtain a valuation. Mr Howell claimed that the valuation provided was sub-standard, and as a result there were delays in the development and its subsequent sale.

Mr Howell claimed against Lerwick for £2,750 plus interest and consequential damages. Mr Howell initially obtained default judgment against Lerwick but this was set aside and Mr Howell was ordered to pay Lerwick's costs of £2,225. Mr Howell unsuccessfully tried to appeal and was ordered to pay further costs of £1,710.

The two costs orders above formed the basis of a statutory demand by Lerwick in 2012, for £3,935.

### The issues

Mr Howell unsuccessfully appealed to set aside the statutory demand. The debt itself was not disputed, but Mr Howell sought to rely on a cross-claim for the return of the £2,750 surveyor fee, plus interest. On the basis that he was not allowed to rely on his claim for consequential damages, but taking account of the cross-claim, Mr Howell argued that his debt to Lerwick was less than the minimum required of £750.

### What did the court decide?

The court assessed the amount of Howell's claim plus interest at £3,145, which reduced the amount payable under Lerwick's statutory demand. Crucially, this meant a debt payable by Howell to Lerwick, but one of less than £750.

Under the Insolvency Rules 1986, Rule 6.5(4)(d), if a cross-claim reduces the debt below the bankruptcy level of £750,

then Mr Howell was entitled to have the statutory demand set aside. However, the court dismissed the appeal and held that the statutory demand should not be set aside even though of the cross-claim would reduce the debt to less than £750. The High Court determined that a statutory demand should not necessarily be set aside just because under Rule 6.5(4)(d) the debt would be less than £750 **if there is a suggestion of any other debts**. In this case, Mr Howell owed Lerwick other debts arising from further subsequent costs orders. For this reason, Mr Howell failed to set aside the statutory demand.

Therefore it is established that whilst a single debt under £750 cannot form the subject of a petition for bankruptcy under s.267(4) of the Insolvency Act 1986, but it **could** be based on multiple debts, as long as together those debts amount to more than £750.

Significantly, prior to this decision it was widely believed that for a statutory demand to be set aside, all a debtor had to do was demonstrate that the debt was disputed or that a cross-claim existed, to reduce the debt demanded to less than £750.

### What does this mean for practitioners?

The case is a helpful reminder to look at **all** available debts when pursuing bankruptcy. It is also worth noting that the debt threshold of £750 under s.267(4) of the Insolvency Act 1986 will increase to £5,000 as of 1 October 2015.

### Contact

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