

Charging orders in the County Court.

What is a Charging Order?

- A method of enforcing a county court judgment if you have failed to repay your debt.
- The CCJ meant you had to pay off the debt by a particular date.
- The order can be applied for if you have missed a payment required through installments.
- The order ensures the debt becomes secured for the creditor.
- A hearing will take place before the order is granted.

How do you apply for a charging order?

- A creditor will apply for the order and at first stance the court will grant an interim order if they view as having any beneficial interest in a property.
- The interim order can be granted without a hearing.
- A date will be set after the interim order for a full hearing.
- The interim order is set as a caution on the property and you may not sell your property prior to a hearing.
- You should receive a copy of the order, which should give you at least 21 days before the full hearing.
- At the hearing, a decision will be made whether to grant the full charging order.
- The district judge will hold the hearing in a private room.

The hearing for the charging order:

- It will be decided at this hearing whether a final and permanent charge will be placed on the property.
- If you want to reject the order you must write to the court and creditors giving your reasons and evidence why you want to reject it.
- Your letter will be taken into account by the district judge overseeing the hearing.
- It is essential you attend the hearing even if you have written a rejection letter.
- A form N244 can be used to say why you may not be able to attend and can request a change to a local court. A charge will be applicable for the change.

Is there a way to prevent the charging order?

- The court must consider all situations including the personal situation of the debtor.
- The court must look at whether other creditors would be at a disadvantage by the order.
- Arguments you could use potentially would be dependent on amount of debts, any equity in the property or joint ownership in the property.
- Other factors for the court to look into are: disabilities or serious illness, favoritism to any creditors, any payment plans already in place for other debts that would be affected through the order.
- Within the interim order the creditors should show all other creditors that are aware of the application. Other creditors may well object to the order.
- The court must look at the possibility of a monthly payment plan being put in place that you can afford or an attachment of earnings that means money will be deducted from your income as payments.
- A time order could be an option, which would alter the monthly payment plan and the period of time in which you are responsible for paying the debts.
- In the case of your debts totaling under £5000, you could potentially ask for an administration order instead of the charging order.
- With your property being in negative equity, it could be an argument to say a charging order is not worthwhile and the creditor would receive no benefit.
- Be sure to point out all the negatives to your family if a charging order was granted and your home was sold and how the debt is yours and not your partners.

What if the debt is mine but the house is jointly owned?

- The individual not involved in the debt can tell the court their circumstances and the affect the charging order will have.
- They should attend the hearing and voice their concerns.
- You should be able to communicate who is in charge of mortgage payments, which individual paid the deposit and if there are children involved can the order be suspended.
- The individual will need to send a written rejection letter at least seven days prior to the hearing.
- If a charging order is submitted, it should only affect the debtors' share of the property.

I already have an installment order; can they still grant a charging order?

- The court should not grant a charge order if the payments for the installment order (county court judgment) are up to date.
- If you already have an interim order, you should attend the hearing with evidence portraying the details of your payments for the CCJ.
- The creditor can then ask the court to alter the agreement for the installment order to a forthwith judgment.
- If this is then agreed to, the creditor will find it easier for the application of a charging order.

Do divorce proceedings have an impact on the charge order?

- The charging order may be put on hold during the proceedings.
- This is dependant upon what stage the divorce is at.

Can interest be added on top of the debt?

- Further interest may be added once the charging order has been made.
- If the debt is an agreement in regulation with the Consumer Credit Act regarding a credit arrangement or a bank overdraft, interest cannot be added.
- In addition if the money owed is lower than £5000 interest will not be added.
- The court will decide interest, as a standard rate, if the debt is in excess of £5000 and is not covered by the Consumer Credit Act.

What are the effects of a Charging Order?

- The affects are on any possession you have -an interest.ø
- In most cases this is a property.
- The property if in your name will have the order placed against it.
- In joint names the charge will cover only your -beneficial interestø

Can a creditor simply sell my home?

- The majority of creditors will allow you to sell your own home and will expect to be paid through the moneys gained from the sell.
- The court to sell your home must submit an application via the court for an order of sale.



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What conditions will the court then grant an order of sale?

- If the debt is in your name and you independently own the property.
- If the debt is responsible by both joint owners of the house.
- The creditor gets an interest in the property if you are the only named debtor and the house is jointly owned.
- The creditor to realize the interest in the property must submit the application for an order of sale from the court.
- Any individual with an interest in the property should attend the hearing and be allowed to explain their circumstance to the court.

What will the court be looking for?

- Who is residing in the home, the purpose of the home and if there is an elderly person living there for potentially their lifetime.
- The question of child welfare and whether moving property could have an adverse effect on stability at school, age or illness a child may have.
- Will the equity in the property be enough for the mortgage plus the charging order arrears?
- Fairness of affecting other people when the debt is only belonging to one individual.
- Family interest over a creditor's interest can be argued.
- Even at this point at the hearing, you will still be able to offer to repay the debt through installments, as long as you keep up with the payments, the court can withdraw the order for sale or suspend the order subject to payments.

Can I have the order discharged?

- This can be done through paying off the debts that are included in the order.
- An application can then be made to the court for discharge.
- A certificate of satisfaction can be given from the court and this can show the evidence of the debt paid.
- In most cases, the creditors will then tell the Land Registry that all orders have ended.