

Factsheet Charging Orders

A charging order has the effect of turning a non-priority debt into a priority debt by securing the amount owed. This is usually against the interest in a property, for example, your home, but it is also possible to obtain a charging order against some types of investments, for example, shares.

A creditor cannot apply for a charging order unless there is a County Court Judgement in place and the client has defaulted on the court judgment.

If a creditor sends a letter threatening a charging order, do not worry if you do not have a county court judgement.

If the original court judgment was to pay the amount owed immediately (forthwith), the application for a charging order can be made immediately. But if the order was to pay by instalments, an application for a charging order can be made only once the client has defaulted on payments. Some creditors routinely request forthwith orders so that they can apply for a charging order straightaway. In this case, if the client wishes to avoid a charging order, s/he will need to follow the admissions procedure. As soon as you receive a summons (blue court papers) and you aren't disputing the debt, you must fill in the Admission form and return within the time limit.

A charging order prevents the client from selling her/his property without paying the money owed to the creditor

Once a charging order has been obtained, the creditor can either wait for the property to be sold, or apply to the court for an order for sale. If the debtor sells the property, the debt will be paid out of the proceeds of the sale after payment of the mortgage and any prior secured loans. A creditor with a charge may be able to ask the court for an order for sale to force the debtor to sell the property. Because the mortgage lender and any prior secured creditors have first call on the proceeds of sale, it is important for a creditor to know the debtor's full financial circumstances before applying for a charging order. This could be obtained by making an application for an order to obtain information from the judgement debtor and/or a land registry search. The court can make a charging order on a jointly-owned property but this is more complicated.

The court can suspend a charging order on terms, for example, payment by instalments, or attach conditions to the charging order. If this is not done at the time the final charging order is made, the client will need to apply to the court to have the order varied. Once the debt is paid the order will be removed.

These cases can be complex and specialist advice will be required.

If you receive any papers or letters from your creditors referring to a Charging Order please make an appointment to come back to the bureau to see a debt case worker.