

Title:

Credit Repair- Charging Orders In the County Court

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Charging orders are filed at the courts by a creditor in order to secure a money judgement ordering the debtor to repay what he owes.

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DEFINITION OF A CHARGING ORDER

Charging orders are filed at the courts by a creditor in order to secure a money judgement ordering the debtor to repay what he owes.

Whenever a charging order is filed, it automatically acts as a safeguard for the debt. That is to say, it becomes a "security" for the debt, much as a mortgage acts as a security for the house or the land.

Before a charging order can be issued, a hearing must take place in court. There are several ways to can prevent a charging order from coming into being.

In this report, you will find a description of country court procedures on charging orders, and the steps you can take when creditors file a petition to serve you with a charging order after suing you in High Court. This report will tell you what to do if you suspect a charging order has been filed against you and you are unsure of the next move you should make.

A CREDITOR CAN PETITION THE COURTS FOR A CHARGING ORDER WHEN...

There are two instances when a creditor can request the court to issue a charging order. One of these is when they already have a county court decision against the you, the debtor, where you are compelled by the court to pay the debt in what is known as a "forthwith" judgement. This means payment of the debt must be made in full straight away, or at a particular date set by the court.

Another case is when there is a previous judgement against you for payment of

the debt in instalments, and you have defaulted on one or more of them.

However, if you are currently paying your debt in instalments as ordered by the court, and you have not missed a single one, the court cannot issue a charging order. This is based on the decision in the 1997 landmark case of Mercantile Credit Co Ltd versus Ellis involving debt payments and charging orders.

THE PROCEDURE FOR FILING A CHARGING ORDER APPLICATION

There are two stages in the filing of an application for a charging order:

FIRST STAGE: THE INTERIM CHARGING ORDER

Whenever a creditor applies for the issuance of a charging order against you, the court shall first establish that you partly own or have an interest in the property that is the subject of the charging order. After ascertaining this fact, the court shall release an interim charging order.

Please note that this is NOT the final charging order itself. The court can give this order, with a duplicate sent to you, even without a hearing. A date is then set for a full hearing after the interim order has been issued.

After approximately 21 days, the District Judge should be able to set the hearing to decide on the the issue of whether to make the interim charging order permanent or final. This hearing normally takes place within the private rooms of the District Judge.

Apart from this, the Land Registry will be furnished with a copy of the interim charging order against you. This will serve as a "caution" on your property preventing you from disposing of it prior to the hearing. The Land Registry will likewise inform you of this "caution" in writing.

SECOND STAGE: WHEN THE CHARGING ORDER BECOMES FINAL

At this point, a hearing is set before the District Judge, and the court is tasked to decide whether or not the interim charging order should be made final on the property in question. This is also known as the final charging order. Any objections you might have against the final charging order should be set in writing and sent to both the court and the creditor at least 7 days before the hearing.

The objection letter must be sent through registered mail and should state all

of your reasons and present evidence of why a final charging order should not be issued against you and your property.

Sending a letter of objection to the creditor and the courts will allow your explanation to be taken into consideration during the hearing presided over by the District Judge. It is important that you attend the hearing, even if you have sent a written objection. It is even more important for you to be present if you have not submitted any written evidence at all.

The court has the discretion to withhold the charging order, which is why it is necessary for you to serve notice that you will be attending the hearing. If the hearing date is inconvenient for you, you must immediately inform the court so another date can be set. Absenting yourself from the hearing may have a negative impact on your case, as the court can rule in favour of the creditor by making the charging order final and irrevocable.

If the reason you cannot attend a hearing is because it has been filed in another court, you have every right to request that it be heard at a court within your area. There is a form required for this called the N244 application which, for a fee, allows you to fill out your reasons for the transfer, be it the travel time involved, the considerable distance, or the costs you are likely to incur for childcare.

HALTING A CHARGING ORDER IN ITS TRACKS

The court has the responsibility to decide whether or not to issue the charging order. Based on The Charging Orders Act of 1979, there are several considerations that the court has to look into before making its final decision. Among these conditions are:

1.) The "debtor's" personal situation

The court has to take into consideration that you may have other creditors whose rights may be prejudiced with the issuance of a charging order. This means the court will have to look into your personal circumstances - your other outstanding debts, your mortgage, any equity on your house, and if you have sole or joint ownership of your home - before making its decision.

Assuming you have quite a number of outstanding debts with several creditors, issuing a charging order in favour of one creditor will unduly prejudice the rights of the others. It may be a good idea to show evidence that you already

have a payment schedule in place with your other creditors to forestall the charging order from being released.

It would be an advantage on your part to present a summary of your debts, including the amount of each, and whether some of the creditors have held out on interest charges.

In like manner, one of the requirements of the creditor in the filing of a charging order is to include a list of all the other creditors that he is aware you have.

Although creditors may be furnished a copy of the interim order to give them a chance to protest its issuance during the hearing, the court is not obligated to supply them with one. This means that your other creditors are unlikely to be aware of the interim order hearing. If you feel that one or more of them may be "unduly prejudiced" by the charging order, you may include this argument in your written objections, as well.

Loan security can also be used as an argument. Whether or not your creditor offered you a secured or an unsecured loan may have an impact on the rights of your other unsecured creditors if a charging order is issued.

You can also request the court for an instalment order to enable you to pay the debt in affordable monthly instalments. This is one other way the court can order as settlement of the debt. If you are employed, you can petition the court to have the payments taken directly from your salary, as long as your employment is not put at risk.

Examine the type of debt that you have and determine if it has been made under the Consumer Credit Act. This may be a factor you can use in filing an application for a Time Order, which can be more advantageous on your part compared to a charging order. The court may consider looking into this to amend your monthly payment schedule and stretch out the paying period.

Part of your argument may also include appealing for an administration order instead of a charging order. This is only applicable if the sum of your debts to all your creditors comes to less than £5,000.00

If bankruptcy is just around the corner, point out that your other creditors will be disadvantaged by a charging order which will secure debt payment for only one creditor.

Your mortgage can also be used as a condition to parry the creditor's

application for a charging order. This is particularly true if you have negative equity, that is to say, your home is worth less than your mortgage and would not satisfy the your debt to the creditor even if it is sold off or placed on auction.

On the other hand, if your debt is a paltry sum compared to the market value or equity of your home, you can use this argument to emphasize the unfairness of a charging order.

Call attention to the difficult family situation that may arise if your home is sold off to pay your debt. The debt may singularly be in your name, but your home is owned jointly by you and your partner, which means that the issuance of a charging order would prejudice your family's rights, as well.

2.) Serious ailments or disability in the family

If there is anyone in your immediate family who is need of special medical care, or who is terminally ill, point out to the court that disposing of your home to pay off your creditor will prejudice the rights of these disadvantaged family members.

There may be a possibility that all the arguments you use will find no grounds and the court decides to issue a final charging order. You may still petition the court not to have your house sold off, as long as you satisfy the debt by paying monthly instalments. Should the court not take into account this request at the hearing, secure an application called N245 which will allow you to pay your debt in instalments.

SINGULAR DEBT, JOINTLY OWNED HOME

The situation in which you have a debt solely under your name while your home is owned jointly by you and another person, can also be used to your advantage. State this fact in your written argument and bring it forward during the hearing, as well. The co-owner of your home must also be furnished with a copy of the interim order to give them a chance to present their own objections during the hearing. Some of the considerations that may be looked into include:

- 1.) Determining who put down the deposit to purchase the home
- 2.) Identifying the person who pays the mortgage instalments
- 3.) Presence of minor children - you can petition the court to amend the conditions of the charging order to state that the home cannot be sold until the children have reached legal adult age.

To add ground to this argument, have your home's co-owner submit their own written objections to the court at least 7 days before date of the hearing.

In the end, if the court does decide to issue a charging order, then it can only be enforced against your share of the property.

WHERE THERE IS A PREVIOUS INSTALMENT ORDER AND YOU ARE NOT IN DEFAULT

In a 1987 landmark case of *Mercantile Credit Co Ltd vs. Ellis*, it was decided that if a debtor pays his monthly instalments on time and does not miss a single one, the court should not issue a charging order. Charging orders should only be made if the debtor has already been ordered by the court to pay in monthly instalments or the whole amount in a "forthwith" judgement, but fails to do so. If you find yourself in the situation where you were already issued an instalment order and are up-to-date in making payments, remember to bring up this landmark case during the hearing.

SEPARATION OR DIVORCE

When you are in the middle of divorce proceedings, which may include division of the home or property, it will be a good idea to consult your solicitor for legal advice. Depending on which stage you are at in the divorce proceedings, you may be able to halt the issuance of a charging order.

INTEREST

A creditor may actually include extra interest for the debt provided he files his claim for a charging order with the county court. However, interest cannot be added for the following conditions:

- 1.) The debt has been secured under the Consumer Credit Act. Debts of this type include ordinary credit agreements and bank overdrafts.
- 2.) Debt comes to a total of only £5,000, even if not covered by the Consumer Credit Act.

If the two conditions stated above are not present and the debt is over £5,000, the court may set the interest based on the standard rate.

Interest may also be charged only after the county court's final decision

depending on the creditor's arguments.