

Mercian Law

Commercial Debt Recovery Specialists

Charging Orders

Are you considering a Charging Order as a way of securing your CCJ?

Charging Orders are becoming an increasingly popular method of enforcement. In 2010 the Office of Fair Trading (OFT) stated that the number of Charging Orders granted in the UK courts has risen from 45,000 to 164,00 over the previous 5 years.

What is a Charging Order?

- Charging Orders do not extract payment from your debtor, but are a means of securing a judgment debt. The debt is discharged when your debtor's property is sold. The Charging Order bites and you will be paid off before any equity in the property is paid to your debtor. Therefore, depending upon other debts that may be secured against the property, which may take priority, your debt may not be discharged in full, if at all. This is why Mercian Law recommends you obtain from the Land Registry up to date Title information. This can be done online, or via Mercian Law, for a small fee of £4. Once you have this information you can make a more informed decision on whether to proceed or not, as you can see what other debts are already secured against the debtor's property.
- You will need an Order for Sale in order to enforce a Charging Order, and force the sale of your debtor's property. Without an Order for Sale, there is no guarantee when your debtor's property might be sold. You should see a Charging Order as a long term solution. However, it is not appropriate if you require payment quickly. Effectiveness depends on the housing market and what equity is in the property. Therefore, the more information you can obtain about your debtor's property, the better informed you will be when making a decision on what to do next, if anything.
- You can use a single Charging Order to secure more than one Judgment or Order against the same debtor.
- A Charging Order over your debtor's home is a relatively painless way to secure your Judgment and the compensation for waiting until sale of the property is that you gain interest at 8%.
- An Application for a Charging Order is likely to be refused by the Court if it would be oppressive against your debtor. For example, if the debt appears too small to justify the remedy. We will tell you if your debt is too small and a Charging Order isn't appropriate.

The 4 stage process

Stage 1 - Interim Order

- If you instruct Mercian Law to make an Application for a Charging Order, upon receipt of the Application the Court makes an Interim Order, this is awarded without notice to your debtor by a District Judge without a hearing.
- The Interim Order provides details of when the Final Charging Order hearing will take place, giving your debtor the opportunity to attend and put their case to the court. However, it is almost unheard of that a Final Order isn't awarded.
- Mercian Law will serve the Interim Charging Order upon your debtor, and any other interested party, such as any mortgage lender or other creditors that already have a charge. This will happen at least 21 days before the Final Charging Order hearing.

Stage 2 - Registration of Interim Order

- Mercian Law recommends that your Interim Charging Order is registered at the Land Registry as soon as it is obtained and prior to the Final Charging Order hearing. This will prevent the Interim Charging Order being defeated by a sale prior to Final Order.
- If your debtor is the sole owner of their property the charge will be over the entire legal and beneficial interest in the property.
- If you have joint debtors who are co-owners, the entire legal but not beneficial interest is charged.
- Where there are co-owners and only one is your debtor, only your debtor's beneficial interest is charged.

Stage 3 - Final Hearing

- If your debtor wants to object to a Final Charging Order, they must file at court and serve upon us written evidence of their objection at least a week before the final hearing.
- At the final hearing the Court will check that the Interim Charging Order was validly served by us and will then consider evidence of both sides. The Court may:
 - Make a final Charging Order
 - Discharge the Interim Charging Order and dismiss our application
 - Decide any issues or direct a trial of any issues, but this only happens in exceptional circumstances
- Mercian Law can arrange for an Advocate to attend any Court in the UK, and you don't have to be inconvenienced in attending the hearing, unless you want to attend.
- The Court will consider all the circumstances, evidence as to the personal circumstances of your debtor and whether another creditor of your debtor would be unduly prejudiced. The Court will not make a Final Charging Order if Bankruptcy proceedings are imminent, as the Order would give us priority over other creditors.

Stage 4 - Registration of Final Order

- This is the same process as registering the Interim Order. It's another Land Registry fee, but it's essential.

Order for Sale

- Once we have registered the Final Order you may want to consider applying for an Order for Sale. This would involve issuing a new claim for which we would charge you at the hourly rate. But we can discuss whether this is appropriate or not, most of our clients do not proceed with an Order for Sale, due to the costs involved unless the money outstanding is significant.
- The written evidence required to be provided to the Court is extensive and includes property valuations, other creditor information (including outstanding balance) and who is in occupation. This information can be expensive for you to obtain.
- The Court is required to balance the interests of you against your debtor and any joint owners.
- The Court can Order a Suspended Order for Sale, which means that so long as the terms of the suspension are maintained the Order cannot be enforced. Throughout the proceedings interest on the debt remains payable.

Securities and Funds in Court

- It is unusual to make an Application for a charge over securities or funds in court, the vast majority are over property. However, if you are aware that your debtor owns shares in a company this might be worth considering.
- Once an Interim Charging Order is obtained against securities, if your debtor then dispenses of their interest in these securities once the Interim Charging Order has been served, the sale will not be valid and we can still enforce against the securities.
- When served with an Interim Charging Order, your debtor must not permit any transfer; pay any dividend, interest or redemption payment without the Court's permission. If they do, your debtor will have to pay us the value of the securities transferred or the amount of the payment made to satisfy the Interim Charging Order.

Stop Orders

A Stop Order is made when a final Charging Order is granted over your debtor's funds held in Court or securities. It stops:

- The registration of any transfer of the securities
- Funds in Court, it stops the transfer, sale or delivery out payment or other dealing with the funds or of the income; or
- Making payment of a dividend, or interest in the securities
- With regards to unit trusts, it will stop any acquisition of or other dealing of the units by anyone exercising functions under the trust

Stop Notices

- Any person claiming to be beneficially entitled to an interest in your debtor's securities, can request notice be given to them, will be included in the Final Charging Order.
- The application must be supported by written evidence of the interested party and validly served upon you. The notice remains in force unless withdrawn or discharged by the interested party.

- Cannot register a transfer of the securities detailed in the Notice without first giving 14 days notice to you.
- A Charging Order cannot be obtained on legal costs that have yet to be assessed by the court or agreed with the debtor.
- A Charge cannot be imposed on the land of your debtor for an unascertained sum.
- An unscrupulous debtor after losing at trial, if not ordered to pay an interim amount in relation to costs, may dispose of their property in an attempt to avoid payment of a costs liability to you. Therefore, if Mercian Law is instructed to represent you in defended litigation we will discuss this potential with you in advance, and request an Interim Costs Order in any event if you are successful at trial.
- The debtor could attempt to delay paying you your costs, in order to gain time to sell their property, by seeking that the bill of costs be assessed by the court. Unless we have evidence that this is your debtor's intention, an injunction preventing the sale of their property wouldn't be possible and applying to the court for the transaction to be set-aside post completion isn't guaranteed. Therefore, if you have these concerns it is important that you discuss matters with us as a matter of urgency.

Costs Breakdown

- To make Application - £100 Court Fee, Mercian Law Fee £110 + VAT. Both fees payable in advance, but added to the claim balance.
- Service of Interim Order - £17.40 + VAT per letter to interested parties and certificates of service to the Court.
- Registration of Interim Charging Order - £50 Land Registry Fee, £50 + VAT Mercian Law Fee
- Final Charging Order Hearing - £100 + VAT for Advocate to attend any Court in the UK
- Registration of Final Charging Order - £50 Land Registry Fee & £50 + VAT Mercian Law Fee
- **Total** (assuming only one debtor and mortgage lender to be served) = **£579.60 + VAT**
= £655.52 inc VAT

We appreciate that the fees involved in making an Application for a Charging Order are extensive. However, if other enforcement methods are not possible, securing your Judgment against your debtor's property is better than taking no action at all.

Please call on 0844 736 1980 to discuss further if you require additional guidance and assistance.