



CHARGING ORDERS



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CHARGING ORDERS

FLA members are committed to dealing with cases of financial difficulty sympathetically and positively. This is a requirement of the FLA Lending Code.

Any creditor can apply for a Charging Order; for example, local authorities, utility companies, finance companies or private individuals.

A Charging Order cannot be made until a court judgment has already been obtained against a debtor, and the amount still has not been paid.

The court will consider whether it is reasonable to award a Charging Order, taking into account all the circumstances of the case and the personal circumstances of the debtor.

It is very rare for a Charging Order to result in the sale of a debtor's home. Where a Charging Order has been awarded, it allows the creditor to take a more flexible and long-term approach to the repayment of a debt.

What is a Charging Order?

If a customer fails to repay a debt, the creditor can apply to the court for a judgment ordering them to do so. If the debt remains



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unpaid, the creditor may then apply to the court for a Charging Order. The Order gives the creditor security for the debt, by placing a charge over the debtor's property.

Charging Orders can be used by any creditor including finance companies, local authorities, utility companies and private individuals.

The Charging Order regime is not new. It is set out in UK law under the Charging Orders Act 1979, (formerly the Judgment Acts 1838 and 1840). The regime was subject to an extensive review in 2003.

The Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC) also makes reference to the circumstances in which a Charging Order can be used.

When can a creditor apply for a Charging Order?

A creditor may only apply for a Charging Order if they already have a judgment against a debtor. A judgment is only sought against a borrower if they have been unable to agree a repayment plan with the creditor for the outstanding debt.



Will a Charging Order be awarded automatically?

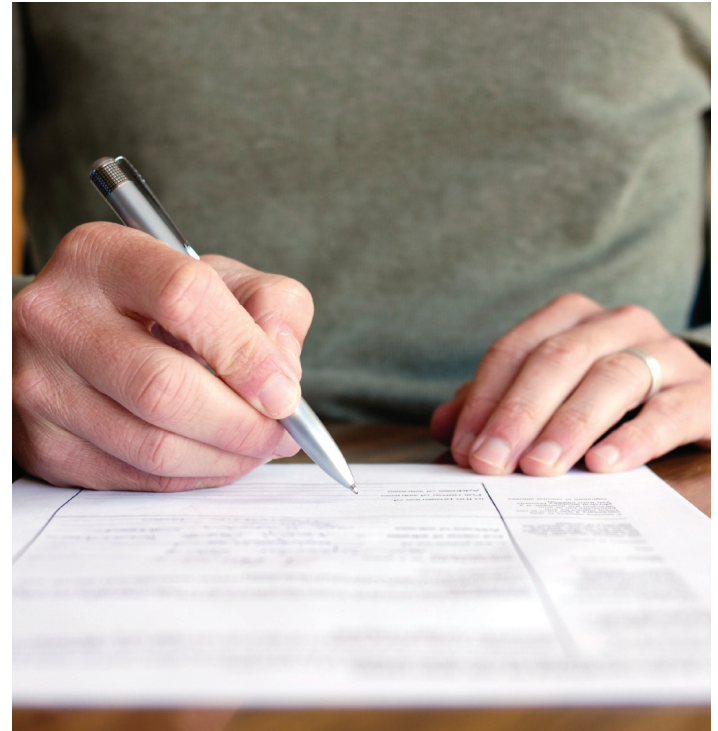
No. The court will consider whether it is reasonable to make a Charging Order.

The Charging Orders Act 1979 (section 1(5)) requires the court to consider all the circumstances of the case, prior to granting a Charging Order. This would include details of the borrower's personal situation – for example, family circumstances and the value of the debt in comparison to the amount of equity in the property. If the property is in negative equity, it is unlikely that a Charging Order would be awarded.

The court would also look at whether any other creditor would be unduly prejudiced by the making of the Order.

An application for a Charging Order comprises two stages: an interim Charging Order and a final Charging Order. The debtor therefore has an opportunity to object to an Order on several occasions.

If a borrower's loan is covered by the Consumer Credit Act 1974 (as amended), the customer may also apply for a Time Order before a final Charging Order is made. This would allow the customer additional time to meet any repayments.



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Will the creditor take possession of a borrower's home?

It is extremely rare for a creditor to seek possession of a borrower's home. In the majority of cases, creditors would wait for a borrower to sell their home at some point in the future and would be paid out of the proceeds of that sale.

If possession is sought, the creditor would need to apply to the court for an Order for Sale.

In these cases, the court would again consider a range of factors. These may include the welfare of the residents (including any children) and whether the equity in the property is sufficient to cover any mortgages as well as the Charging Order debt. If a property is jointly owned, the Charging Order will only apply to the debtor's share in the property. The sale of a property cannot be forced if the joint owner is not also subject to the Order.

A Charging Order would generally be a second or third charge over a property. The order of creditor payment after a sale starts with the first

charge lender, then covers the expenses of the sale, and only then would a subsequent charge be paid. This means that, commercially, repossession is also very unlikely as a direct result of a Charging Order.

Where a Charging Order has been made, it allows the creditor to take a more flexible and long-term approach to the repayment of the judgment debt by the customer. This position is reinforced by the fact that possession action is rarely taken.

If creditors were unable to make use of the Charging Order regime, it could lead to an increased use of bankruptcy proceedings. In such cases the loss of any property, such as the family home, would become virtually automatic rather than discretionary.

How did the Tribunals, Courts and Enforcement Act 2007 change the Charging Order regime?

The Tribunals, Courts and Enforcement Act 2007 introduced further reforms to the current Charging Order procedure. The Act allows a creditor to



apply for a Charging Order where a debtor has not missed instalment payments on their judgment. This change was aimed at dealing with the situation where a debtor with large judgment debts, who is meeting his regular instalments, can benefit from the sale of a property without paying off the debt.

Enforcing a Charging Order

The Government has set a financial threshold of £1,000 below which an application for an Order for Sale cannot be made by a creditor for an unsecured debt. This means that if your lender has a Charging Order over your property and your unsecured debt to that creditor is less than £1000, they would not be permitted to seek to recover the sum owed by applying to the Court for an Order for Sale.

The Government specifically considered, during its consultation on the changes, whether access to Charging Orders should be restricted. They concluded that there were sound policy and economic reasons for not doing so, including

the continued availability of unsecured credit at relatively low interest rates and more flexibility for debtors to arrange repayment proposals.

FLA members and Charging Orders

FLA members comply with the FLA Lending Code requirement to treat customers in financial difficulty sympathetically and positively. Further details about the Code can be found at www.fla.org.uk

All FLA consumer credit providers are also authorised and regulated by the FCA, and follow the rules contained within CONC in relation to treatment of customers that are in default, arrears, subject to charging orders or repossessions. The FCA took over the regulation of consumer credit from the Office of Fair Trading (OFT) on 1 April 2014.



About FLA

We are the biggest UK representative organisation for the UK consumer credit and asset finance sectors. Our members include banks, subsidiaries of banks and building societies, the finance sections of leading retailers and manufacturing companies, and a range of independent firms. They provide a wide range of facilities, including finance leasing, operating leasing, hire purchase, conditional sale, personal contract purchase plans, personal lease plans, secured and unsecured personal loans, credit cards and store-card facilities.



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