



## Charging orders in the county court

### **What is a charging order?**

Charging Orders are a potential method of securing a Housing Benefit Overpayment debt which is in excess of £1,000. The Order must be secured against the same property to which the liability order has already been obtained for the outstanding debt.

Charging Orders can be considered as an alternative to bankruptcy in some cases. Therefore this option must be considered carefully.

A charging order gives the Council security for the debt; in other words, the debt would become 'secured' like a mortgage on your house, or land.

There must be a hearing in the county court before a charging order can be made.

### **When can the Council apply for a charging order?**

If the Council has obtained an Order for Recovery against for an outstanding Housing Benefit Overpayment, it may be able to apply to the court for a charging order to enforce the judgment if you do not pay and if the Council's enforcement agents have been unsuccessful in recovering the outstanding sums from you.

### **How is an application made?**

The application for a charging order always has two stages.

#### **Stage one – the interim order**

The Council makes an application for a charging order and the court will make what is called an interim charging order if it is satisfied that you own, or have a part share (an interest), in the property in question. An interim charging order is usually made automatically without a hearing and a date for a full hearing is set. A copy of the interim order will be sent to you at least 21 days before the hearing date set by the district judge.

The hearing is for the court to decide whether or not to make the charging order permanent - Final. This hearing is likely to be held in the district judge's private rooms.

The Council will also register the interim charging order as a 'caution' on your property with the Land Registry who should inform you of this in writing. This means you cannot sell the property before the hearing.

### **Stage two – the final charging order**

The second stage is the court hearing in front of the district judge. At this hearing the court will decide whether to make a permanent charge on the property. This is called a final charging order. If you object to a charging order being made final then you should send the Council and the court written evidence stating why you object. You should do this at least seven days before the hearing. This could be in the form of a letter of objection outlining all the arguments you have for why the charging order should not be made. This should be sent by registered post to both the Council and the court. The court must consider whether it is reasonable to make a charging order and will consider your personal circumstances.

### **The house is in joint names but the debt is in my name**

If a charging order is made by the court then it will only apply to your share of the property.

### **Interest**

If the Council has taken the debt to the county court, we may be able to add interest once a charging order is made.

### **What does a charging order affect?**

A charging order may be made against any item in which you have 'an interest'. This usually means property that you own (or part own) and will usually be your home. If you own your home in your sole name, then the house will be covered by the final charging order. If you own your home in joint names with someone else then the charging order will cover your share or 'beneficial interest' in the property.

### **Can the Council sell my home?**

Technically, yes. If the Council has a final charging order, it could apply to sell your home to pay the debt although it is up to the court to decide whether to make an order for sale or not.

### **The court can order a sale where:**

- the debt is in your sole name and you are the sole owner; **or**
- the debt is in both names of the joint owners of the house;
- if the debt is in your sole name and the house is in joint names, the Council gets an 'interest' in the house once the charging order is made

final. This means the Council can apply to the court for an order for sale to realise their 'interest' in your house. All joint owners (or a married person who is not a joint owner but has an 'interest' in the property) should be part of the court proceedings so they can explain their case to the court as well. They would be sent notice of the hearing and be allowed to attend.

### **Paying off a charging order**

If you pay off the amount you owe under the charging order, you can apply to the court for the order to be discharged. The amount you have to pay will include court fees and costs that have been added to the debt. Ask the court for a certificate of satisfaction on your county court judgment and include evidence of payment. It is usual for the Council to inform the Land Registry that the interim and final charging order have been removed.

We only enforce charging order action to collect a Housing Benefit Overpayment when we have to. If you are having difficulty paying, please contact us immediately. We can discuss your situation, and try to stop any more action being taken against you.

*This document is a guide only and you should seek independent advice.*