

## [Charging orders: Contents](#)

- [Charging Order Overview](#)
  - [Charging Order Process Overview](#)
  - [Charging Order Decision Making Guide](#)
- 

### [Charging order: overview](#)

[1991/48](#) *Section 36 of the Child Support Act 1991*

[1979/53](#) *The Charging Order Act 1979*

[CPR](#) *Part 73 of the Civil Procedures Rules 1998*

What is a charging order?

A charging order allows a debt to be registered against certain assets owned by a person in England and Wales. When these are sold, the debt can be recovered from the proceeds of the sale and sent to the CMG to satisfy their outstanding debt. The charging order granted to CMG is an equitable charge whereas the mortgage lender has a legal charge over the property. The legal charge will always take priority over an equitable charge.

NOTE: Unless the CMG is able to successfully "force the sale" of these assets, then it could be some time before monies are realised from these proceedings.

- a charging order can be applied for if we have information that the non-resident parent is the sole or joint owner of property (e.g. a house or land)

With effect from 6 April 2016 all charging order applications must be submitted to the County Court Money Claims Centre in Salford, Manchester. Although the minimum level of debt for which a charging order application can be made is usually £1000 this amount is discretionary and an application for a lesser amount can be made if it can be justified. NOTE: the County Court Money Claims Centre may only grant a charging order if they consider this action is proportionate to the level of debt in other words where the debt is for instance approximately £750. Where the debt amount is lower, you may need to wait until a further LO is granted and seek a charging order for the combined debts. If no further debt is going to accrue because the case is closed then alternative methods of enforcement must be considered.

### **Effect of a charging order on property**

A charging order on property does not legally prevent the non-resident parent from selling the property. But a prospective purchaser would not want to take the charge (or restriction when the non-resident parent is the joint owner), so the non-resident

parent would find it difficult to sell or re-mortgage the property while the charge is in place.

Once a final charging order has been granted and registered with HM Land Registry, the CMG may request through the county courts that the property (be it dwelling or asset) is sold to provide monies to satisfy the outstanding debt.

Refer to the guidance on [orders for sale](#) for further information about this.

Return to [Contents](#)

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### [Charging order process: overview](#)

#### Charging order process

This section covers the processes you would need to follow if you decide that charging order action is appropriate, and includes information about:

- the processes to follow if the non-resident parent is going to imminently sell their property
- interim charging orders
- final charging orders
- Land Registry
- registering an interim order with the Land Registry
- registering a final order with the Land Registry.

Refer to the [Decision Making Guidance](#) for further advice about the points you would need to consider if you are trying to decide whether charging order action is appropriate.

#### **Imminent sale of non-resident parent's property**

If you decide that a charging order is appropriate and you find out that the non-resident parent may be imminently selling a property you must take immediate action.

You must:

- consider whether it is appropriate to take freezing order action and if not
- make a charging order application immediately, and
- make the Court Presenting Officer aware of the circumstances

If you know that the non-resident parent is likely to be sell the property (for example: the property is on the market) before the CMG gets an interim charging order, the CMG can register a Unilateral Notice (UN1) with the Land Registry to warn potential purchasers of the CMG's interest. NOTE: the UN1 form must be authorised by a solicitor.

You must send a certified copy of the charging order application when issuing the Unilateral Notice to the Land Registry so that they can establish the link between the debt and the interest in land. The registration will be rejected without the charging order application. The charging order application made to the County Court Money Claims Centre should be marked as "Urgent: Imminent Sale " to ensure that it will be dealt with as a priority by the County Court Money Claims Centre.

NOTE: the non-resident parent or the joint owner can ask the Land Registry to cancel the UN1. If this happens, the CMG will be notified of the cancellation and asked to validate its claim and given 15 working days to object to the cancellation request. If no response is received by Land Registry within the 15 working days the unilateral notice will be cancelled.

Where a property is likely to be transferred, or has already been transferred to another owner and you believe that the aim of the transfer is to prevent the CMG securing a charging order, you can apply for a freezing order (to prevent the transfer) or a setting aside disposition order (to reverse the transfer). For more information see the [Freezing Order](#) or [Setting Aside of Disposition Order](#) guidance.

### **Interim charging order**

The application for a charging order is made to the County Court Money Claims Centre and is considered by a Court Officer without a hearing. The Court Officer will check the contents of section A of the application form against an initial checklist and if it is considered to be inaccurate or incomplete the application will be returned to the applicant for amendment and resubmission.

If the Court Officer is satisfied with the information in the application they will electronically register the application and then consider the information in section B of the application form (N379) against a further checklist. If all the criteria is satisfied the Court Officer will make an interim charging order, this imposes a charge over the debtor's interest in the assets to which the application relates.

If the Court Officer considers that section B of the charging order application form is not satisfactorily completed the application will be passed to the District Judge for determination. The District Judge may decide to either:

- issue the interim charging order, or
- make the interim order but transfer the case to the Home Court within the County Court Money Claims Centre for hearing, or

- make an order transferring the case to the NRP's local County Court to either issue directions or make the interim order and arrange a final hearing date

Once granted the interim charging order will be returned to the SSST for service on the non-resident parent, any other creditors and joint owners within 21 days of the date of the order.

It is the responsibility of the CMG to register the interim order with Land Registry. This action must be taken as soon as possible, once the interim order has been granted.

If the order cannot be served within 21 days of the date of the order an extension can be requested from the County Court Money Claims Centre using the general application form N244. A fee currently £100 will be payable for this extension application.

A certificate of service for each interested party must be filed with the County Court Money Claims Centre within 28 days of service of the interim order upon the NRP and any other interested parties

Once the interim charging order is served CMG, the non-resident parent or other interested party have 14 days from the date of the interim charging order being served to ask the Court Officer to reconsider their decision. Any request for reconsideration must be lodged in the County Court Money Claims Centre within 14 days of the date of the interim order.

#### **Interim order – no objections lodged with County Court Money Claims Centre**

If no objections are lodged then the County Court Money Claims Centre District Judge will make the final charging order and there will be no need for a hearing. The final charging order will be issued to SSST for service to the NRP and any other interested parties such as joint owners.

The NRP or joint owner may however make a further application to have the final charging order varied or discharged. If such an application is made the matter will be transferred to the NRP's local County Court for hearing.

#### **Interim order – objections lodged with County Court Money Claims Centre**

If the NRP or any interested party wishes to lodge objections contesting the making of the interim charging order they must do so within 28 days of service of the interim order. If objections are lodged then the District Judge within the County Court Money Claim Centre will transfer the case to the relevant court (NRP's local County Court) to list for a hearing about the objections. The court will serve all notices of the hearing.

The Court Presenting Officer will attend this hearing and will notify the case officer of the outcome of the hearing. The action to take would then depend on the type of asset / land or property the non-resident parent has.

It is the responsibility of the CMG to register the interim order with Land Registry. This action must be taken as soon as possible, once the interim order has been granted.

### **Final hearing**

If the NRP, joint owner or other interested party has raised objections to the making of the interim charging order then the Court Presenting Officer and the non-resident parent, if present, will be called into court when the judge is ready to hear the case. If any interested parties such as a joint owner or mortgage provider attend, they will also be called into the court.

If the non-resident parent fails to attend the hearing, the Court Presenting Officer will be required, if asked, to refer to service of the interim order and the certificate of service filed with the court, prior to presenting the case.

They will assure the judge that it has not been returned and that no new address has been notified and will ask the judge to proceed and hear the case in the non-resident parent's absence.

It is the responsibility of the CMG to register the final order with Land Registry, if the interim order has not already been registered.

### **Land Registry services**

Note: Land Registry practice guides are useful reference material and can be accessed via the Land Registry website. Land Registry [Practice Guide 19: Notices, Restrictions and Protection of Third Party Interests in the Register](#) provides guidance on all notices used by CMG.

The following Land Registry services are requested by using the online Land Registry Portal to:

- request official copies (to determine proprietorship)
- register an Agreed Notice (AN1)
- cancel a Notice (CN1)
- register a Restriction (RX1)
- withdraw a Restriction (RX4)
- remove a Unilateral Notice (UN2)

To register a Unilateral Notice (UN1) the application must be sent by post.

## **Register interim order with Land Registry**

When the interim order is granted, it must be registered as soon as possible. This will prevent the non-resident parent selling, transferring or re-mortgaging the property, and will ensure that the debt is secured.

The action taken will depend on whether the non-resident parent is the sole or joint owner.

### **Non-resident parent is a sole owner:**

The charge can be registered as an Agreed Notice (form AN1). An Agreed Notice is attached to the property, and whilst it doesn't prevent the non-resident parent from selling the property, it will transfer to any potential new owners if it is not satisfied first, so in effect it will make it very difficult for the non-resident parent to sell.

### **Non-resident parent is a joint owner:**

Where the property is under joint ownership, it should be registered as a Restriction (form RX1). A Restriction is on the non-resident parent's beneficial interest in the property. Again, it does not prevent the non-resident parent from selling the property, but it does put a duty on the seller to notify us of the transfer before it takes place (they will need to send a certificate to Land Registry to confirm that we have been notified before the property can be transferred).

Where a Unilateral Notice has been registered due to an imminent sale, once the interim charging order is granted, the Unilateral Notice must be cancelled and replaced with an Agreed Notice for Sole Ownership or a Restriction for a jointly owned property.

## **Register final order with Land Registry**

The final order must be registered with Land Registry if the interim order has not already been registered. This will prevent the non-resident parent selling or re-mortgaging the property, and will ensure that the debt is secured. If the interim charging order has been previously registered with the Land Registry, there is no need to register the final order when granted and indeed to incur the cost of registering the charge with Land Registry again.

Where a Unilateral Notice (see Commence Charging Order Action and Pack Preparation for information on how and when to register a Unilateral Notice) has been registered due to an imminent sale, and not removed at the interim stage, this must be cancelled and replaced with either the Agreed Notice (AN1) or the Restriction (RX1).

To cancel the Unilateral Notice and replace it with an Agreed Notice or a Restriction see Land Registry Portal.

Return to [Contents](#)

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## [Charging Order: Decision Making Guidance](#)

### Charging order

A charging order allows a debt to be registered against certain assets owned by a person in England and Wales and can be applied for if a non-resident parent is the sole or joint owner of property (e.g. a house or land).

Note: where the non-resident parent is registered as the proprietor but has no beneficial interest in the property for example there is a deed of trust demonstrating that the property is held on trust for another party, a charging order application would not be applicable. However, where a Trust Deed gives the non-resident parent a % interest in the property, a charging order application may be made.

A charging order can only be considered if the non-resident parent owns a property of this type and if you proceed with an application, you would need to provide evidence to the court confirming this.

### **Multiple properties / Orders for Recovery:**

- a single charging order application may be made in respect of more than one property. However, the court should be asked how they would want this application to be made as each county court may have different practices
- a single charging order application can be made where there are multiple orders for recovery

### **Evidence of ownership: address(es) of the property are known**

Where there is an indication that the non-resident parent may own property / land and the address details are known, ownership of the property can be confirmed by requesting Land Registry official copies. Official copies will show the property's Title Deed number, proprietor(s) details and any charges which are registered against the property / land.

Official copies should be requested from the Land Registry, who holds proprietorship details for all registered land in England and Wales. These documents will form the proprietorship evidence presented to the court within the charging order application. If Land Registry official copies are already held, but are over three months old, you should request new official copies.

However, the Land registry has only been maintained since the 1970s and if the property is not registered, the Land Registry will not be able to confirm ownership

details. Refer to the drop down below for advice about obtaining evidence of ownership in cases where property is unregistered.

### **Evidence of ownership: unregistered property / land**

Charging order (and order for sale) action can still be taken against unregistered property, but you should obtain alternative evidence confirming ownership before making a charging order application.

Suitable evidence may already be available: for example, we may have a statement from the non-resident parent confirming that they own a specific property on the Maintenance Enquiry Form, or the parent with care may have reported that the non-resident parent owns property.

If there is no suitable evidence immediately available, you will need to obtain this before proceeding. In these circumstances you should write to the non-resident parent asking if they own the property and including details of our criminal compliance sanctions. Enquiries can also be made to the Local Authority to see if the NRP is registered at this address on the electoral roll. If the non-resident parent fails to respond, then criminal proceedings can be considered under Section 14(A)3 Failure to provide information.

NOTE: if it is known that a mortgage is held in respect of a property, then if all other enquiries (see [Information Gathering](#)) have been exhausted, information regarding ownership can be sought from the appropriate lender by making a request as prescribed in Regulation 4 (2) (i) of the Child Support Information Regulations 2008.

### **Evidence where address(es) of the potential property are not known**

If we have information to indicate that the non-resident parent owns property / land, but the address details of the potential property are not known, then evidence of ownership cannot be confirmed by requesting Land Registry Official Copies. In these circumstances, it may be appropriate to request a search of the Index of Proprietors Names (IOPN). This search cannot be used as a way of seeing what information we can get, but should only be considered where:

- there is sufficient information for us to have good reason to believe the non-resident parent owns properties (e.g. we are aware he / she has rental income), and
- we have been unable to confirm the address details through any other method (e.g. the parent with care has been unable to provide this information and the non-resident parent has failed to do so)

### **Deciding to conduct an IOPN search: overview**

You must discuss with your line manager the reason why you feel an IOPN search is necessary to move the case forward. This needs to include:



- confirmation that all other options for gathering information have been exhausted, and
- agreement on the names on which the search will be conducted, and therefore agreement on how many searches will be requested and the cost that will be incurred (see the note below for further details)

The line manager's decision to submit the request for a search must be documented on the case papers. This decision must also include details of all other information gathering options that have been attempted and exhausted.

NOTE: re client names and IOPN Searches

When you are completing the IOPN search forms, it is important to remember that:

- a search can only be made on the name in which the property title was registered, and
- only one name is permitted per search request

If a person with multiple forenames has registered their property in only one or a combination of their forenames, there may therefore be a need to make multiple searches on each name or combination of names or initials that the individual may have used.

The usefulness of the search will depend on how unusual or common the client's name is and an assessment of how much other information is held against which the search results returned by Land Registry can be checked.

Note: the parent with care may be able to advise how the non-resident parent would be likely to have completed his name for official documents.

### **Submitting an IOPN search request**

When the IOPN search forms have been completed, they must be submitted to a line manager for checking before onward submission to Land Registry. This is to ensure that:

- the decision that the case is suitable for an IOPN search has been documented and the manager is satisfied that access is appropriate, proportionate and legitimate
- the forms have been completed correctly

If the line manager is satisfied that all documentation has been correctly completed, the request can be issued to the Land Registry. If not, it should be returned to the caseworker for amendment and re-submission.

### **IOPN search results**

A full list of properties may be returned by Land Registry which covers the whole country as it is a full register search but the CMG must only pursue a detailed search on those properties in the geographical areas known to the CMG as a result of other information gathered e.g. from the parent with care. Each search attracts a separate charge so a business decision needs to be made on whether a search is requested.

You need to be aware that some of the information returned as a result of an IOPN search may not, following investigation, refer to the client whose property details they are trying to obtain. This is information that the CMG has no on-going need for and no right to retain. Search results returned by Land Registry that are not relevant to the non-resident parent must be disposed of using CMG-approved secure methods i.e. confidential waste.

Note: information should never be held for individuals who have no connection with the CMG is a clear breach of Data Protection rules. It is important that any information is destroyed quickly once office copies have been obtained.

Extreme care must be taken to isolate out the address that may relate to the non-resident parent. Only once the case manager is absolutely certain should they seek office copies for confirmation.

There is no requirement to hold on to any of the information returned under an IOPN search. Once the names on the list have been used to search the Land Registry Portal to obtain the relevant Official Copies, then the IOPN search results must be destroyed.

- If the search has provided the information required based on the information supplied then consider requesting an Official Copy.
- If the search has been unsuccessful and there are no further options then proceed to saving any documentary information gathered thus far

Deciding whether to take Charging Order action

When deciding whether to take charging order action you will need to consider how effective a charging order is likely to be. You will need to consider all of the aspects of the case and come to a reasoned conclusion, which you can fully support with documentary evidence.

You should take the following factors into account:

### **Amount of debt**

Consider if the debt is sufficiently high to justify seeking a charging order. The County Court Money Claims Centre expects the minimum debt included in the charging order application to be at least £1000 as it is expected that other less stringent measures such as enforcement agency (bailiff) action or deduction orders will achieve payment of the lower sums.

The £1000 de minimis level is however discretionary and where it can be justified applications can be made for lesser sums of at least £750. Where there are multiple orders for recovery for lower amounts of arrears these can be added together and one charging order application made for the accumulated total.

### **How much equity is in the property?**

If there is very little equity in the property and it is currently up for sale, there may not be enough equity to repay the debt and so you may consider that charging order action is not appropriate.

If the house is not currently up for sale and it could be some time before the property is sold, then when the house is put on the market the equity could have increased (and so the CMG's charge could be fulfilled).

### **Are there any other charges registered against the property?**

If the non-resident parent already has other charges against their property, these charges will be satisfied before the CMG's entry. Depending on the level of equity in the property it may mean that charging order action is not appropriate.

Charges on a property are met in the order they are registered, other than a legal charge (i.e. the mortgage lender) who will receive their money first.

### **The welfare of any children involved in the case**

You must give consideration to any child likely to be affected by your decision. The presence of children in the non-resident parent's household should not deter the CMG from considering proceedings. The non-resident parent should be made aware of the enforcement proceedings, the consequences for their family and the considerations that have been made.

Refer to the guidance on [Discretionary Decision Making](#) for further advice about making / recording discretionary decisions and welfare of the child consideration.

Charging Order action - Recording the decision

When you have made your decision on whether or not to take charging order action you will need to record your decision in full, with reference to the reasons why you have made your decision.

### **These reasons should include:**

- the welfare of the child
- reference to any evidence obtained (i.e. Land Registry Official Copies / evidence that the non-resident parent owns stocks / shares / interest in a trust fund

- whether the non-resident parent has still failed to make payment or a payment agreement for the principle debt and the amount due or part of the amount on the order for recovery awarded is still due

By fully recording the decision, if it is later disputed or queried, it can be seen to have been made reasonably, giving due regard to the Welfare of any Child/ren.

#### Charging Order: Final Hearing

If the non-resident parent or any other interested party wishes to object to the interim charging order, they must first file and serve a written objection on the County Court Money Claims Centre within 28 days of the interim being served.

The final hearing will be attended by the Court Presenting Officer and:

- the non-resident parent if they wish to give reasons why the final order should not be granted, and
- any other party who may have an interest in the property

Where the case is considered complex or where the non-resident parent is to be legally represented or the non-resident parent is a solicitor or legally qualified and has notified the CMG, an agent solicitor will be instructed to present the case.

#### Final hearing: outcomes

The options open to the district judge at the hearing are:

- to issue further directions or listing
- to draw and dispatch the final charging order for service
- to discharge or modify the interim charging order

It is at the discretion of the district judge (as provided in part 73.8 of the Civil Procedure Rules) whether to grant the final charging order or not. Unless a good and robust reason can be given by the non-resident parent or another interested party, the district judge will usually grant the final order.

The court will notify the CMG, as to whether the final order was granted or not. This notification (N87) will usually be sent to the caseworker's office, but may sometimes be sent by the court directly to the Court Presenting Officer. If no notification has been received within two weeks of the final hearing date, the caseworker must contact the Court Presenting Officer to check if they have received it. If not, they will have to contact the court to find out what has happened.

#### **Final charging order granted**

If the interim order has not already been registered, the final order must be registered with the Land Registry.

The action required will depend on whether the non-resident parent is the sole (register an Agreed Notice) or joint owner (register a Restriction).

Where a Unilateral Notice (UN1) has been registered due to an imminent sale, and not removed at the interim stage, this must be removed and immediately replaced with an Agreed Notice (AN1) or a Restriction (RX1).

If the interim charging order has been previously registered with the Land Registry, there is no need to register the final order when granted, as this would incur the cost of registering the charge with Land Registry again.

### **Final charging order: application dismissed**

If the charging order application is dismissed at the final hearing, you must decide if an appeal is appropriate. In order to do this you must:

- review the file when it is returned from the CPO (if it has not been returned they must request that it is returned immediately)
- consider the reasons why the application was dismissed
- consider the possible grounds for appeal (an appeal must be on a point of law, for example the court made an incorrect decision)
- seek advice from your team leader and Policy colleagues if necessary

The CMG's intention to appeal a decision must be brought to the court's attention at the earliest opportunity. The Court Presenting Officer may advise the court at the final hearing of the CMG's intention to appeal. If this has not been done, the court must be notified if we decide to appeal.

If an appeal is being made, it must be submitted no later than 21 days from the date the decision was made as provided in part 52.4 of the Civil Procedure Rules.

Refer to the guidance on [CMG appeals against enforcement action](#) for further advice.

### **Final charging order: hearing adjourned**

The final charging order hearing may be adjourned for a number of reasons, such as:

- the non-resident parent or another interested party wishes to attend, but they cannot attend on the original hearing date
- the non-resident parent or another interested party has raised an objection to the charging order which may take some time to resolve
- the court has asked the CMG to provide some additional information, e.g. for the non-resident parent to produce evidence of a trust deed showing he will

not receive any financial outcome or benefit if the property is sold. This list is not exhaustive. Any party to the proceedings can request an adjournment, and the court can impose one without a request from one of the parties. It is up to the discretion of the court as to whether they grant an adjournment request

You must take any action as required by the court in preparation for the adjourned hearing date.

Court Costs

[CPR](#) *Part 44 of the Civil Procedure Rules*

If the court awards costs against the non-resident parent, these need to be added to the non-resident parent's debt. The court costs awarded will be shown on the final charging order.

Return to [Contents](#)

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