

Third party debt orders and charging orders - How do I apply for an order? - How do I respond to an order?

This leaflet provides information for both judgment creditors seeking to recover money by a Third Party Debt Order or Charging Order (pages 1-8) and judgment debtors who are served with a Third Party Debt Order or Interim Charging Order (pages 8-11).

Before applying for an order

Before reading this leaflet, you should have read the leaflet '**EX321 - I have a judgment but the defendant hasn't paid - what do I do?**'. It explains:

- what is available to help get your money for you (called 'enforcing your judgment'); and
- which of the methods of enforcement available is likely to be most successful in differing circumstances.

Remember, the aim of this leaflet is to give you a general idea of the processes (Third Party Debt Orders and Charging Orders), it deals with. It cannot explain everything about court rules and procedures. If you are unsure about the procedures set out in the leaflet or any procedural matters which arise once you have issued your application, ask a member of staff at any county court. If a legal issue arises you must ask for help from an advice agency, law centre or a solicitor.

If you receive any payments from the defendant during the course of enforcement proceedings, you must let the court know immediately. This is especially important if payment is made before a hearing is due to take place.

What is a Third Party Debt Order?

It is an order of the court that freezes money held by a person, organisation or institution, such as a bank or building society, which might otherwise be paid to the defendant against whom you have a judgment. The organisation or person that is holding the money is referred to as the 'third party'. A third party debt order will prevent the defendant having access to the money until the court makes a decision about whether or not the money should be paid to you. In these proceedings the person who owes you the money is referred to as the 'judgment debtor'; you are referred to as the 'judgment creditor'.

The money held by the third party must be held solely for the debtor. You cannot, for example, apply for a third party debt order against a joint bank account unless the judgment debt is owed by all the account holders.

When can I apply for a Third Party Debt Order?

You can make an application for an order at any time after you have obtained judgment. However, the judge who considers your application will not make an order unless the judgment debtor:

- has failed to pay the amount of the judgment when it was due; or
- has failed to pay one or more of the instalments due under the terms of the judgment.

You should consider carefully when to make your application. The court order which is initially sent to the third party will only 'freeze' money held in an account on the day it is received by (served on) the third party. So if, for example, the order is received a couple of days before the debtor's salary is paid into the account, you are likely to receive little or nothing since the 'freeze' will not be applied to any money paid into the account after the court's order was received.

What do I have to do to apply for an order?

You must complete Form N349 (Application for a third party debt order). You can obtain a copy of the form free from any county court office. It is also on our website at www.hmcourts-service.gov.uk. Take or send your application when completed to the court where your claim is proceeding.

What information will I need to complete Form N349?

You will need to state:

- the judgment debtor's name and address;
- the total amount of the judgment, the amount still owing including any costs and interest, and, if the judgment was payable by instalments, what the total amount of the instalments that are in arrears is;
- the name and address of the third party; the address must be in England or Wales;

If the third party is a bank or building society you must give its name and the address of its Head Office. If you know them, you should also give the name of the branch where the account is held, the branch address, the bank's sort code, if appropriate, and the debtor's account number.

- whether or not you know if there is anyone else who has an interest in the same money (with details if there is); and
- whether or not you have made any other applications for third party debt orders in respect of the same judgment.

The application form contains a statement of truth. You will have to sign it to confirm that the facts set out in your application are true. Remember that proceedings for contempt of court can be brought against you if you sign a statement of truth without an honest belief in its truth.

Will I have to pay a fee for the application?

You may have to pay a court fee. Please ask the court staff for a copy of the leaflet **EX50 - County Court Fees**. It is also available on our website www.hmcourts-service.gov.uk.

You can pay the fee by cash, postal order or cheque. Make your cheque or postal order payable to HMCS. Please note that courts cannot accept payment by debit or credit cards.

Your financial situation may mean that you do not have to pay a fee. The combined booklet and application form **EX160A - Court Fees - do I have to pay them?** provides further information on this.

Court staff can provide you with a copy of the EX160A. It is also available on-line on our website. You will have to make a separate application for each fee that you would otherwise have to pay.

What will the court do with my application?

Court staff will issue your application and refer it to a judge. If the judge is satisfied with the information you have provided, the judge will make an interim third party debt order. The order will be in Form N84 (Interim third party debt order). A copy will be sent to you and the third party by first class post. A copy is not sent to the judgment debtor until 7 days after it has been sent to the third party. This is to ensure that the third party 'freezes' the money before the debtor becomes aware of the order.

If you want the third party debt order to reach the recipient on a certain date you have the option to serve it yourself. You must file the form N215 certificate of service not less than 2 days before the hearing or produce a certificate of service at the hearing.

The order will include a hearing date at which the judge will decide whether or not the money that has been frozen should be paid to you. **You must attend that hearing, otherwise the judge may dismiss your application.**

If the judge is not satisfied with the information you have given in your application, the court will let you know.

What do third parties do when they receive form N84 (Interim third party debt order)?

If the third party is **not** a bank or a building society - within 7 days of being served with the interim order, the third party must let you and the court know if:

- the third party claims not to owe the judgment debtor any money; or
- the third party claims to owe the judgment debtor less than the amount being claimed in the interim order.

If the third party claims not to owe money to the judgment debtor and you wish to dispute this, you must file your written evidence with the court **not less than 3 days before the hearing**. You must at the same time send a copy to the third party and to the judgment debtor. Your evidence should be in the form of a witness statement. Court staff will be able to tell you the wording you must use to verify what you have written in your statement.

If the third party is a bank or building society - within 7 days of being served with the interim order, the bank or building society must carry out a search to identify all accounts held in the sole name of the judgment debtor. In respect of each account identified they must tell you and the court:

- the account number;
- if the account is in credit; and, if it is,
- whether the balance of the account(s) is sufficient to cover the amount being claimed in the interim order; and
- if it is not sufficient the balance in the account at the time it was served with the interim order; and
- whether the bank or building society is entitled to retain some of the credit balance to offset debit balances or other amounts.

The bank or building society will make a charge for making the search. The charge will be deducted from out of any money standing to the credit of the judgment debtor.

What will happen if the judgment debtor or the third party objects to my application for a final third party order?

They must file their written evidence setting out their objections not less than 3 days before the hearing is due to take place. They must send copies to you and to each other. If they have raised objections, the judge will expect them to attend the hearing.

You should note that both the third party, and the judgment debtor, may apply to the court for the hearing to take place at a court nearer to their home, or place of business. If an application is made, the court will let you know.

Can the judgment debtor do anything else which will prevent me getting my money?

Where the judgment debtor is an individual, that is, not a firm, company or corporation, and the third party is a bank or building society, an application for a hardship payment order may be made.

What is a hardship payment order?

It is an order made by a judge. It tells the third party to release some of the money frozen as a result of the interim third party debt order to the judgment debtor or some other named person. The order will be in Form N37 (Hardship payment order).

The judge will only make this kind of order if the judgment debtor is able to prove that the judgment debtor and the judgment debtor's family, is suffering hardship in not being able to meet day to day living expenses as a result of an amount, or amounts being frozen.

The judgment debtor can make an application at any court - it does not have to be the court where you made your application for a third party debt order. If an application is made, a judge will decide how and when you are to be told about it. For example, the court may try to telephone you, or send you a fax message, since, from the judgment debtor's point of view, the situation will be urgent. A hardship payment order may allow the release of a single amount of money, but could allow the release of specific sums over a period of weeks until the hearing.

What will happen at the hearing when the judge considers whether to make a final order?

The judge will consider your application and any other evidence you, the third party, or the judgment debtor has filed. If the judge is satisfied that a final order should be made, an order will be drawn in Form N85 (Final third party debt order). If there is sufficient money, the final order will allow the third party to pay to you the judgment debt and costs and your costs of making the application. If the final order is for a lesser amount, the costs of making the application will be treated as being paid first and part of the judgment debt will remain outstanding.

A copy of the order will be sent to you, the third party and the judgment debtor.

The third party will be told how much to pay you and the date by which it is to be paid. Remember that the court cannot order the third party to pay you an amount that is more than the amount originally frozen. If this is less than you are owed, then you may want to consider other enforcement procedures to recover the balance.

What is a Charging Order?

It is an order of the court placing a 'charge' on the judgment debtor's property, such as a house or a piece of land. The charge will be the amount you are owed. The charging order will not normally get you your money immediately, but it may safeguard your money for the future.

If the judgment debtor owns stocks or shares or has a fund or money in court, the court can also put a charge on these in much the same way as on property.

How does it do that?

A charge on a property means that if the property is sold, the charge usually has to be paid first before any of the proceeds of the sale can be given to the judgment debtor. You should note, however, that a charging order does not compel the judgment debtor to sell the property.

If there are already charges on the property when your charge is registered, for example, arising from a mortgage, then those charges will be paid first.

When can I apply for a charging order?

You can apply at any time after you have obtained judgment. However, the judge who considers your application will not make an order unless the judgment debtor:

- has failed to pay the amount of the judgment when it was due; or
- has failed to pay one or more of the instalments due under the terms of the judgment.

What do I have to do to apply for a charging order?

You must complete Form N379 (Application for charging order on land or property). You can get a copy free from any county court.

If you are seeking a charging order against stocks and shares, or money in court, you must complete Form N380 (Application for a charging order on securities).

What information will I need to complete the application form?

You will need:

- details of the judgment, that is, when it was made, at what court and under what claim number;
- the full name and address of the judgment debtor;
- the amount of the judgment, including any costs and interest; the amount owing at the time of your application, again including any interest, and the total amount of any instalments, if any, which have not been paid;
- the address of the property or land on which you want to impose a charge;
- information as to whether the judgment debtor owns the property solely or jointly with someone else, and evidence to prove it;
- details of any other creditors you know the judgment debtor has, that is, their names and addresses and the nature of their debt;
- details of any other person who has an interest in the property;
- details of any additional reasons, apart from the fact you are owed the money, you want the court to take into account when deciding whether or not to grant your application; and,
- details of sources of information, that is, who within the organisation supplied the necessary information. **But only if you are a company, corporation or firm.**

The application contains a statement of truth. You will have to sign it to confirm that the facts stated in it are true. Remember that proceedings for contempt can be brought against you if you sign the statement without an honest belief in its truth.

Will I have to pay a fee?

You may have to pay a court fee. Please ask the court staff for a copy of the leaflet **EX50 - County Court Fees**.

If you cannot afford the fee, see the information given about this on page 3.

How do I get the evidence about the property and ownership?

Some, but not all, land or property may be registered at HM Land Registry. If there is a registration you should obtain a copy of the entry and attach it to your application.

Information about the procedures and fees charged by the Land Registry can be obtained by ringing their General Enquiry Line Tel. 020 7917 8888 or visiting their website at www.landreg.gov.uk

What will the court do when it receives my application for a charging order?

Court staff will issue your application and refer it to a judge. If the judge is satisfied with the information you have provided, the judge will make an interim charging order. The order will be drawn on Form N86 (Interim charging order). A copy will be sent to you and the judgment debtor.

The order will include the date and time of a hearing at which the judge will decide whether or not to make a final charging order. **You must attend that hearing, otherwise the judge may dismiss your application.**

If the judge is not satisfied with the information you have given in your application the court will let you know.

Is there anything I should do when I receive the interim charging order?

Yes there is. To make sure the charge is effective immediately, you must register it. You can obtain information about how to do this by ringing the Land Registry's General Enquiry Line. Court staff cannot give advice on this procedure, nor undertake registration for you.

What will happen if the judgment debtor objects to the making of a final charging order?

If the judgment debtor (or anyone else who has been served with the interim charging order), wishes to object to the making of a final order that person must file written evidence and serve a copy on you not less than 7 days before the hearing.

You should note that the judgment debtor can make an application for the hearing to take place at another court nearer to his home or place of business.

What will happen at the hearing at which the judge considers whether or not to make a final charging order?

The judge will consider your application and any evidence the judgment debtor or any other person served with your application has filed. If objections have been raised, the judge can deal with them there and then, or give directions for a hearing later on. Directions tell you what you must do to prepare for that hearing. If the judge feels that the objections are justified, your application may be dismissed. If that happens you may not be able to recover the fee you paid to issue the application, and you may have to pay the costs of the party who raised the objections.

If your application is successful, any fees you paid are usually recoverable from the judgment debtor by being added to the judgment. An order will be drawn on Form N87 (Final charging order). You and any other party will be sent a copy.

Do I have to contact the Land Registry after the hearing?

Yes, you do. The Land Registry or (the Land Charges Registry) must be made aware of the making of a final charging order. You must also contact them if your application is dismissed to make sure that the interim charging order is removed from the register.

I have been served with a Third Party Debt Order - what is a Third Party Debt Order?

It is an order made by the court that freezes any monies held by an organisation such as a bank or building society on your behalf.

Why have I received this?

You have received this third party debt order because the claimant / creditor has told the court that you have failed to:

- pay the amount of the judgment when it was due; or
- you have failed to pay one or more of the instalments due under the terms of the judgment.

How will the third party debt order affect me?

The order will prevent you from having access to the money in the bank or building society until the court makes a decision about whether or not the money should be paid to the creditor.

Can I oppose the order?

You may file written evidence setting out your objections not less than 3 days before the hearing. You must send copies to the court and the creditor. You will also be expected to attend the hearing.

I need some money now - what can I do?

You may make an application for a hardship payment. An order will only be made if you can prove that you and your family are suffering hardship and are not able to meet day to day living expenses.

If the proceedings are taking place in a county court you may apply to **any** county court. If the proceedings have been issued in the High Court, you may apply to the Royal Courts of Justice or **any** district registry.

The judge may make an order telling the third party (bank or building society) to release some of the money.

Will I have to pay a fee?

You may have to pay a court fee. Please ask the court staff for a copy of the leaflet **EX50 - County Court Fees**. It is also available on our website www.hmcourts-service.gov.uk

You can pay the fee by cash, postal order or cheque. Make your cheque or postal order payable to HMCS. Please note that courts cannot accept payment by debit or credit cards.

Your financial situation may mean that you do not have to pay a fee. The combined booklet and application form **EX160A - Court Fees - do I have to pay them?** provides further information on this.

Court staff can provide you with a copy of the EX160A. It is also available on-line on the Court Service website. You will have to make a separate application for each fee that you would otherwise have to pay.

What happens now?

The judge will consider the creditor's case at the hearing together with any other evidence that you or the creditor have filed. If the judge is satisfied that a final order should be made the court will draw the order. If the judgment creditor is awarded costs the final order may allow the third party (bank or building society) to pay the creditor from the monies held.

I have been served with an interim charging order - what is this?

It is an order of the court placing a 'charge' on your property. The charge will be the amount you owe to the creditor.

Why have I received this?

You have received the interim charging order because the claimant has told the court that you have failed to:

- pay the amount of the judgment when it was due; or
- pay one or more of the instalments due under the terms of the judgment.

How will the interim charging order affect me?

A charge on your property means that if the property is sold, the charge usually has to be paid first before any proceeds of the sale can be given to you. You should note, however, that a charging order does not compel you to sell the property.

Can I oppose the order?

You may file written evidence setting out your objections not less than 7 days before the hearing. You must send copies to the court and the creditor. You will also be expected to attend the hearing.

What happens now?

The judge will consider the creditor's case at the hearing together with any other evidence that you or the creditor have filed. If the judge is satisfied that a final order should be made the court will draw the order.

Can my home be taken from me?

In some cases where a final charging order is made the creditor may apply to the court to force you to sell your property. This is called an 'order for sale'. If an application is made, you will be given an opportunity to attend a hearing before an order is made.