

CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

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73.1 Scope of this Part and interpretation

- (1) This Part contains rules which provide for a judgment creditor to enforce a judgment by obtaining –
 - (a) a charging order (Section I);
 - (b) a stop order (Section II); or
 - (c) a stop notice (Section III),
 over or against the judgment debtor's interest in an asset.
- (2) In this Part –

- (a) 'the 1979 Act' means the Charging Orders Act 1979;
- (b) 'the 1992 Regulations' means the Council Tax (Administration & Enforcement) Regulations 1992;
- (c) 'funds in court' includes securities held in court; and
- (d) 'securities' means securities of any of the kinds specified in section 2(2)(b) of the 1979 Act.

SECTION I CHARGING ORDERS

73.2 Scope of this Section

This Section applies to an application by a judgment creditor for a charging order under –

- (a) section 1 of the 1979 Act; or
- (b) regulation 50 of the 1992 Regulations.

73.3 Application for charging order

- (1) An application for a charging order may be made without notice.
- (2) An application for a charging order must be issued in the court which made the judgment or order which it is sought to enforce, unless –
 - (a) the proceedings have since been transferred to a different court, in which case the application must be issued in that court;
 - (b) the application is made under the 1992 Regulations, in which case it must be issued in the county court for the district in which the relevant dwelling (as defined in regulation 50(3)(b) of those Regulations) is situated;
 - (c) the application is for a charging order over an interest in a fund in court, in which case it must be issued in the court in which the claim relating to that fund is or was proceeding; or
 - (d) the application is to enforce a judgment or order of the High Court and it is required by section 1(2) of the 1979 Act to be made to a county court.
- (3) Subject to paragraph (2), a judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.
- (4) The application notice must –
 - (a) (i) be in the form; and
 - (ii) contain the information, required by Practice Direction 73; and
 - (b) be verified by a statement of truth.

73.4 Interim charging order

- (1) An application for a charging order will initially be dealt with by a judge without a hearing.
- (2) The judge may make an order (an 'interim charging order') –
 - (a) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and
 - (b) fixing a hearing to consider whether to make a final charging order as provided by rule 73.8(2)(a).

73.5 Service of interim order

- (1)** Copies of the interim charging order, the application notice and any documents filed in support of it must, not less than 21 days before the hearing, be served on the following persons –
 - (a) the judgment debtor;
 - (b) such other creditors as the court directs;
 - (c) if the order relates to an interest under a trust, on such of the trustees as the court directs;
 - (d) if the interest charged is in securities other than securities held in court, then –
 - (i) in the case of stock for which the Bank of England keeps the register, the Bank of England;
 - (ii) in the case of government stock to which (i) does not apply, the keeper of the register;
 - (iii) in the case of stock of any body incorporated within England and Wales, that body;
 - (iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, which is registered in a register kept in England and Wales, the keeper of that register;
 - (v) in the case of units of any unit trust in respect of which a register of the unit holders is kept in England and Wales, the keeper of that register; and
 - (e) if the interest charged is in funds in court, the Accountant General at the Court Funds Office.
- (2)** If the judgment creditor serves the order, he must either –
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

73.6 Effect of interim order in relation to securities

- (1)** If a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.
- (2)** A person served under rule 73.5(1)(d) with an interim charging order relating to securities must not, unless the court gives permission –
 - (a) permit any transfer of any of the securities; or
 - (b) pay any dividend, interest or redemption payment relating to them.
- (3)** If a person acts in breach of paragraph (2), he will be liable to pay to the judgment creditor –
 - (a) the value of the securities transferred or the amount of the payment made (as the case may be); or
 - (b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

73.7 Effect of interim order in relation to funds in court

If a judgment debtor disposes of his interest in funds in court while they are subject to an interim charging order which has been served on him and on the Accountant General in accordance with rule 73.5(1), that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

73.8 Further consideration of the application

- (1)** If any person objects to the court making a final charging order, he must –
 - (a) file; and

- (b) serve on the applicant;
written evidence stating the grounds of his objections, not less than 7 days before the hearing.
- (2) At the hearing the court may –
 - (a) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;
 - (b) discharge the interim charging order and dismiss the application;
 - (c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or
 - (d) direct a trial of any such issues, and if necessary give directions.
- (3) If the court makes a final charging order which charges securities other than securities held in court, the order will include a stop notice unless the court otherwise orders.

(Section III of this Part contains provisions about stop notices.)
- (4) Any order made at the hearing must be served on all the persons on whom the interim charging order was required to be served.

73.9 Discharge or variation of order

- (1) Any application to discharge or vary a charging order must be made to the court which made the charging order.

(Section 3(5) of the 1979 Act and regulation 51(4) of the 1992 Regulations provide that the court may at any time, on the application of the debtor, or of any person interested in any property to which the order relates, or (where the 1992 Regulations apply) of the authority, make an order discharging or varying the charging order.)
- (2) The court may direct that –
 - (a) any interested person should be joined as a party to such an application; or
 - (b) the application should be served on any such person.
- (3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

73.10 Enforcement of charging order by sale

- (1) Subject to the provisions of any enactment, the court may, upon a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.
- (2) A claim for an order for sale under this rule should be made to the court which made the charging order, unless that court does not have jurisdiction to make an order for sale.

(A claim under this rule is a proceeding for the enforcement of a charge, and section 23(c) of the County Courts Act 1984 provides the extent of the county court's jurisdiction to hear and determine such proceedings.)
- (3) The claimant must use the Part 8 procedure.
- (4) A copy of the charging order must be filed with the claim form.
- (5) The claimant's written evidence must include the information required by Practice Direction 73.

SECTION II STOP ORDERS

73.11 Interpretation

In this Section, 'stop order' means an order of the High Court not to take, in relation to funds in court or securities specified in the order, any of the steps listed in section 5(5) of the 1979 Act.

73.12 Application for stop order

- (1) The High Court may make –
 - (a) a stop order relating to funds in court, on the application of any person –
 - (i) who has a mortgage or charge on the interest of any person in the funds; or
 - (ii) to whom that interest has been assigned; or
 - (iii) who is a judgment creditor of the person entitled to that interest; or
 - (b) a stop order relating to securities other than securities held in court, on the application of any person claiming to be beneficially entitled to an interest in the securities.
- (2) An application for a stop order must be made –
 - (a) by application notice in existing proceedings; or
 - (b) by Part 8 claim form if there are no existing proceedings in the High Court.
- (3) The application notice or claim form must be served on –
 - (a) every person whose interest may be affected by the order applied for; and
 - (b) either –
 - (i) the Accountant General at the Court Funds Office, if the application relates to funds in court; or
 - (ii) the person specified in rule 73.5(1)(d), if the application relates to securities other than securities held in court.

73.13 Stop order relating to funds in court

A stop order relating to funds in court shall prohibit the transfer, sale, delivery out, payment or other dealing with –

- (a) the funds or any part of them; or
- (b) any income on the funds.

73.14 Stop order relating to securities

- (1) A stop order relating to securities other than securities held in court may prohibit all or any of the following steps –
 - (a) the registration of any transfer of the securities;
 - (b) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
 - (c) in the case of units of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.
- (2) The order shall specify –
 - (a) the securities to which it relates;
 - (b) the name in which the securities stand;
 - (c) the steps which may not be taken; and
 - (d) whether the prohibition applies to the securities only or to the dividends or interest as well.

73.15 Variation or discharge of order

- (1) The court may, on the application of any person claiming to have a beneficial interest in the funds or securities to which a stop order relates, make an order discharging or varying the order.
- (2) An application notice seeking the variation or discharge of a stop order must be served on the person who obtained the order.

SECTION III STOP NOTICES

73.16 General

In this Section –

- (a) ‘stop notice’ means a notice issued by the court which requires a person or body not to take, in relation to securities specified in the notice, any of the steps listed in section 5(5) of the 1979 Act, without first giving notice to the person who obtained the notice; and
- (b) ‘securities’ does not include securities held in court.

73.17 Request for stop notice

- (1) The High Court may, on the request of any person claiming to be beneficially entitled to an interest in securities, issue a stop notice.

(A stop notice may also be included in a final charging order, by either the High Court or a county court, under rule 73.8(3).)

- (2) A request for a stop notice must be made by filing –
 - (a) a draft stop notice; and
 - (b) written evidence which –
 - (i) identifies the securities in question;
 - (ii) describes the applicant’s interest in the securities; and
 - (iii) gives an address for service for the applicant.

(A sample form of stop notice is annexed to Practice Direction 73.)

- (3) If a court officer considers that the request complies with paragraph (2), he will issue a stop notice.
- (4) The applicant must serve copies of the stop notice and his written evidence on the person to whom the stop notice is addressed.

73.18 Effect of stop notice

- (1) A stop notice –
 - (a) takes effect when it is served in accordance with rule 73.17(4); and
 - (b) remains in force unless it is withdrawn or discharged in accordance with rule 73.20 or 73.21.
- (2) While a stop notice is in force, the person on whom it is served –
 - (a) must not –
 - (i) register a transfer of the securities described in the notice; or
 - (ii) take any other step restrained by the notice,without first giving 14 days’ notice to the person who obtained the stop notice; but

- (b) must not, by reason only of the notice, refuse to register a transfer or to take any other step, after he has given 14 days' notice under paragraph (2)(a) and that period has expired.

73.19 Amendment of stop notice

- (1) If any securities are incorrectly described in a stop notice which has been obtained and served in accordance with rule 73.17, the applicant may request an amended stop notice in accordance with that rule.
- (2) The amended stop notice takes effect when it is served.

73.20 Withdrawal of stop notice

- (1) A person who has obtained a stop notice may withdraw it by serving a request for its withdrawal on –
 - (a) the person or body on whom the stop notice was served; and
 - (b) the court which issued the stop notice.
- (2) The request must be signed by the person who obtained the stop notice, and his signature must be witnessed by a practising solicitor.

73.21 Discharge or variation of stop notice

- (1) The court may, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, make an order discharging or varying the notice.
- (2) An application to discharge or vary a stop notice must be made to the court which issued the notice.
- (3) The application notice must be served on the person who obtained the stop notice.

73.22 Rule 73.22

Practice Direction 73 makes provision for the procedure to be followed when applying for an order under section 23 of the Partnership Act 1890.

