

**Charging Orders:
Priorities, protection, and providing relief**

David Nicholls

Priorities



Section 3(4), Charging Orders Act 1979

... a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand

Priorities



At law:

- Title
- Nemo dat quod non habet
- You can't give what you haven't got

In equity:

- Time
- Qui prior est tempore potior est jure
- First come, first served
- Where the equities are equal and neither claimant has the legal estate, the first in time prevails

Land Registration Act 2002: the Basic Rule



Section 28:

- (1) Except as provided by sections 29 and 30, the priority of an interest affecting a registered estate or charge is not affected by a disposition of the estate or charge.*
- (2) It makes no difference for the purposes of this section whether the interest or disposition is registered.*

In other words, the priority of an interest is determined according to the order of creation.

Land Registration Act 2002: the More Complex Rule



Section 29 (registered estates)

(1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.

(2) Protection..

Section 30 (registered charges)

Basic Rule and the More Complex Rule

- Basic Rule – interest created first have priority over later interests
- More Complex Rule – some transactions get priority over earlier interest
 - This happens by the earlier interests having their priority **postponed**
 - It applies to registrable dispositions of a registered estate or charge for valuable consideration
 - But some interests may be **protected** and they retain their priority

Examples

- Charging order 1, charging order 2
- Charging order, declaration of trust
- Declaration of trust, charging order

See *Hughmans v Central Stream Services* [2012] EWHC 1222 (Ch)

- Charging order, sale of the property
- Date is creation of interim charging order

See *Ropaigealach v Allied Irish Bank plc* [2001] EWCA Civ 1790 at pa. 11

Protection



Section 3(2), Charging Orders Act 1979

The Land Charges Act 1979 and the Land Registration Act 2002 shall apply in relation to charging orders as they apply in relation to other orders or writs issued or made for the purposes of enforcing judgments.

Section 87, Land Registration Act 2002

Section 32, Land Registration Act 2002

Section 42, Land Registration Act 2002

Protection

- Notice
 - If the charging order is over the property
 - Confers priority (section 29)
- Restriction
 - If the charging order is over a beneficial interest in the property
 - Intended to prevent future dispositions unless specified conditions met



Standard Restriction in Form K

No disposition of the registered estate, other than a disposition by the proprietor of any registered charge registered before the entry of this restriction

...

Is to be registered without a certificate signed by the applicant for registration or their conveyancer that written notice of the disposition was given to [name of person with the benefit of the charging order] at [address for service], being the person with the benefit of [an interim or a final] charging order on the beneficial interest of [name of judgment debtor] ...

- Not effective
- Seek a non-standard restriction

Providing relief



Section 3(5), Charging Orders Act 1979

CPR 73.10B

Special circumstances

Discretion

Circumstances

Discharge:

- Debt paid
- Judgment set aside
- New evidence to show charging order should not have been granted
- Rectification

No discharge

- If the argument or evidence was made (or could have been made) at the time the charging order was made final

Variation – to correct an error