



The Office of the
Committee for
Economic Development

CONSULTATION ON LOW VALUE DEBT RELIEF FOR GUERNSEY RESPONSE DOCUMENT

24 April 2017

Purpose and Type of Consultation

The Committee *for* Economic Development (the “**Committee**”) has sought feedback, comments and suggestions from businesses, stakeholders, consumers, industry associations, practitioners and any other interested parties on the introduction of Low Value Debt Relief (LVDR) for Guernsey.

The consultation closed on 31 October 2016.

The Committee invited comments from all interested stakeholders, financial services businesses, customers, consumers and consumer representatives about the Proposals and now aims to work closely with stakeholders and industry to ensure that the most appropriate changes to support industry and the general public are adopted.

Overview of Responses

In total 17 responses were received from:

A Member of the Association of Guernsey Banks
Citizens Advice Guernsey
A Debt Collection Company
Guernsey Loan Companies
Members of The Guernsey Private Residential Landlords’ Association
Primary Care
Members of the Sark Chamber of Commerce
A States of Guernsey Committee
A Utility Company

In general the responses can be categorised as 4 being broadly supportive, 3 supportive subject to appropriate controls and 9 being generally unsupportive and suggesting controls that would need to be introduced to ensure that creditors would not be disproportionately disadvantaged.

Executive Summary

In 2013, the Commerce and Employment Department (C&E) established a working group of insolvency practitioners that was responsible for advising on the reform of Guernsey's insolvency regime. As well as officers from C&E, the working group consisted of representatives from the legal and accounting professions, representatives from HM Sheriff's office and the GFSC (the "**Working Group**").

Following input from the Working Group, C&E issued a consultation paper on 24 October 2014 on various options for reforming Guernsey's insolvency regime. This consultation closed on 31 December 2014.

In June 2015 a qualified Insolvency Practitioner commenced a secondment with the FSD who was instructed to produce a report as a reply to the responses received in respect of the Consultation Paper. On 24 September 2015, the "**Report**" was presented to the C&E Board. The Response Document contained FSD's recommendations to the Board with regard to which proposals should be taken forward for the reform of Guernsey's insolvency regime and an order of priority. The Response Document was approved by the Board on 4th February 2016.

FSD identified two projects as Phase One of the Response Document. These were:-

1. the introduction of a process equivalent to the UK Low Value Debt Relief Order in respect of personal insolvency; and
 2. a series of amendments to the Companies Law in respect of corporate insolvency,
- (together the above referred to as the "**Phase One Proposals**").

This consultation paper seeks to explore the introduction of the first project, giving due regard to the required drafting of legislation and ensuring a practical implementation of LVDR.

Background

Low Value Debt Relief Concepts

When Guernsey's insolvency regime was consulted on in 2014 there was a clear consensus among respondents to this initial consultation that there is a need for a process, in Guernsey, similar to the UK's Low Value Debt Relief Order (the "**UK Order**") and the Viscount's Remission Order in Jersey (the "**Jersey Order**"), whereby a person of very limited means could apply, probably to HM Sheriff, to have debts (up to a certain limit) put into abeyance and then written off after a period of time (probably 1 year).

The view of the Citizens Advice Guernsey (CAG) was that this proposal *"addresses the heart of the problem area and where the need is greatest"*. Whilst CAG estimates that the number of eligible clients to benefit from such protection is low (no more than 100 in first 2 – 3 years) and that the numbers involved would subsequently reduce year on year, the process will offer some form of rehabilitation for debtors, rather than them facing the prospect of repeated *désastre* applications in relation to relatively small debts.

It was proposed that individuals would only be able to apply subject to a qualifying period of residence in Guernsey, and applications must be made in good faith and that there would be strict limits on the amount of assets and income a person may have before becoming eligible to apply for an order.

Consultation Question Responses

Question 1

Do you consider that individuals will be able to apply if:

- their debts do not exceed £25,000;
- they do not own a motor vehicle worth more than £2,000;
- they do not possess other assets exceeding £5,000; and
- their disposable income does not exceed £100 a month (after deduction of tax, social security contributions and normal household expenses).

Would you recommend any other criteria?

Of those broadly in favour and those seeking some control suggestions were made that the limit be £20,000, which is consistent with the Jersey Debt Relief Order.

Those strongly against the proposals were suggesting limits of between £5,000 and £15,000.

It was suggested that any relief would be possible once only, with any car value being considered and the value of household assets being a consideration.

Lower disposable income limits were proposed, given concern as to the definition of “normal household expenses”.

Committee Response:

Given that British Bankers’ Association Standard Assessment criteria will be used, confirmation that assets have not been disposed of to connected parties will be obtained and creditors will have a right to appeal the order, individuals should be able to apply for a Low Value Debt Relief Order if:

- **their debts do not exceed £20,000;**
- **they do not own a motor vehicle worth more than £2,000;**
- **they do not possess other assets exceeding £5,000; and**
- **their disposable income does not exceed £100 a month (after deduction of tax, social security contributions and normal household expenses).**

Question 2

It is proposed that applicants must be able to demonstrate that they are in their predicament through an adverse set of life changing circumstances, i.e. long-term illness, loss of employment, death of a partner etc.

Do you consider this adversity test to be appropriate?

If not, what adversity test would you recommend?

Most responses to this question considered the adversity test to be appropriate.

A number of comments were made that temporary unemployment should not be a factor and circumstances around poor life choices and weak lending judgements should be excluded. Citizens Advice Guernsey consider that in practice a guideline of adversity being the main cause, i.e. >50%, of the individuals' financial difficulties being caused by an adverse set of life changing circumstances, would be an appropriate guideline to follow.

Committee Response:

Given the length of time that will be taken to reach the stage where a LVDRO would be sought, short term unemployment will not generally be a factor. It is considered that an adversity test that takes account of the prospects for the circumstances to improve e.g. adjustments to living expenses would be appropriate, however it is acknowledged that in practice a guideline of adversity being the main cause, i.e. >50%, of the individuals' financial difficulties being caused by an adverse set of life changing circumstances, would be an appropriate guideline to follow.

Question 3

It is proposed that the Citizens Advice Guernsey be appointed as the authorised intermediary to analyse income and expenditure, ensure that the adversity test is passed and draw conclusions to make a referral to HM Sheriff, who will have the final decision on whether or not a LVDRO is granted.

Do you consider it appropriate for CAG to vet and forward individual applications, along with the initial assessment of their specialist money advisers, to HM Sherriff?

If not, how should individuals apply?

Responses to this question were broadly in favour however there was mention of a presumption of bias towards the debtor and recommendation that the impact on the creditor would also need to be considered.

Comments were received as to the ability of HM Sheriff's Office to collect debts and the need for publicity to ensure potential creditors were on notice.

Committee Response:

The Office of HM Sheriff and HM Sergeant has been made aware of general feedback submitted as part of this consultation paper. A review of services, currently provided by HM Sheriff and HM Sergeant, is already underway and the feedback will be considered as part of this review.

It is proposed that Citizens Advice Guernsey be appointed as the authorised intermediary to make a referral to HM Sheriff, having taken account of the criteria and the impact on the creditor.

Question 4

Do you agree that there should be a straightforward appeals process before CAG take forward an application? And what would an appeal be based on e.g. the application for credit was made in bad faith? Belief that there are hidden assets?

Are there any other criteria on which you believe an appeal might be lodged?

The vast majority of responses agreed that a straightforward appeals process would be appropriate. There was concern that there would be insufficient publicity and that the creditor would not have access information that would inform an appeal. There was also concern that the impact on the creditor would not have been appropriately considered and that sufficient time e.g. 3 months would need to be allowed for the appeals process.

Committee Response:

Given the stringent criteria of assessment and that the penalties for abusing the scheme would be severe, it is considered that a straightforward, fact based, appeals process would be appropriate, with the creditor being provided with information on how the decision to apply for an order has been reached.

It is considered reasonable to expect that there would be a level of publicity surrounding LVDRs, however it will be appropriate to ensure there would be no publicity where the individuals concerned are considered to be a vulnerable.

Question 5

Whilst it would be desirable, it is assumed that it will not be imminently possible that off Island creditors (particularly UK credit card debt, and pay-day loans) will be bound under UK Law. Should LVDR be introduced if it is only limited to debts under Guernsey Law?

Respondents were split on this. It was suggested that UK debts should not be ignored and that an amount should be discounted from the eligibility to account for off-island debt. In other words the amount of the debt relief order should be proportionally reduced by the percentage of off-island debt.

E.g

Amount of Guernsey Debt £20,000

Amount of UK Debt £20,000

Amount eligible for Debt Relief £10,000 (being only the Guernsey debt and equalling half of the amount that would be eligible if the amount of off-island debts were not taken into consideration).

Committee Response:

Acknowledging that the Order will only provide relief against debts in Guernsey, an order will be made on consideration of a percentage of total debt regardless of where the debt is based, in a manner that does not discriminate against local creditors.

Question 6

Should Utility bills be excluded from LVDR?

Comment was made that Utilities should only be included if there was a termination of service and debt should not be relieved if the service was to continue.

It was also suggested that if Utilities were to be excluded rent should be excluded also.

Committee Response:

Given the requirement for utilities to provide on-going services, it is proposed that Utilities will be excluded from LVDR.

Question 7

Once LVDR is granted, it is proposed that a 12 month 'moratorium' period is put in place when creditors cannot make further attempts to recover the debts, after the 12 month period the debts are effectively 'written off'. Once a LVDR has been granted it is proposed that the debtor be prevented from obtaining further credit of more than £500, for the time that the moratorium is in place.

Do you consider this to be appropriate?

If not, what other proposals would you make?

There was concern over perpetuating a debt cycle by allowing future debt.

Proposals were made that the LVDR order should be invalidated if further debt were accrued. A tenant that has obtained LVDR should subject to an immediate eviction for rent arrears and fast-track court orders for future debt default.

Committee Response:

A Twelve month moratorium will be put in place when creditors cannot make further attempts to recover the debts and after which time the debt will be unrecoverable. As some services are only available on a credit basis, once a GLVDRO has been granted, the debtor will be prevented from obtaining further credit of more than £500 and must not default on their debts during the moratorium period.

Question 8

Do you have any other comments, observations and recommendations to make on these proposals?

Suggestions not already considered in the Response Paper were for:

The States of Guernsey to compensate the creditor for the relief of debt.
A limit of One on the number of times a person can apply.
The penalties for breaching a LVDR order to be persuasive.

Concern was raised over an unintended consequence to the rental market, with rents potentially having to rise and/or deposit requirements significantly increasing to protect the landlord from the impact of LVDR.

Committee Response:

The Committee has considered the potential impact on creditors and, whilst not minded to introduce a compensation scheme, is satisfied that appropriate mitigations will be in place to ensure the impact of the legislation is appropriately limited and that penalties for abusing the scheme will be persuasive.