



The Office of the
Committee for
Economic Development

CONSULTATION ON LOW VALUE DEBT RELIEF FOR GUERNSEY

12 September 2016

Purpose and Type of Consultation

The Committee *for* Economic Development (the “**Committee**”) is seeking 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 intention is that responses will be considered by the Committee, which will in turn produce a Policy Paper for presentation to the States of Guernsey.

Closing date: **31 October 2016.**

The Committee *for* Economic Development:-

1. would like to invite comments from all interested stakeholders, financial services businesses, customers, consumers and consumer representatives about the Proposals; and
2. aims to work closely with stakeholders and industry to ensure that the most appropriate changes to support industry and the general public are adopted.

This consultation paper is a working document and does not prejudge any final decision to be made by the Committee.

Please refer to section 3 “responding to this consultation” for full details of how to respond to this consultation paper.

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 are 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.

The consultation closes on 31 October 2016.

Background

Low Value Debt Relief Concepts

There was a clear consensus among respondents to the 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**"). It is envisaged that this would be a process 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).

A review of similar legislation on other jurisdictions and informal consultation has taken place, with companies that offer consumer credit, to inform the next stage consultation with regards to introducing a new procedure for stand-alone legislation and operations. This would greatly improve the position of those debtors of very limited means who fulfil the proposed criteria. Details of the Jersey Debt Remission Order can be found on the attached link.

https://www.cab.org.je/index.php?option=com_content&view=article&id=911:debt-remission-individuals-jersey-law&catid=77&Itemid=64

The view of Citizens Advice Guernsey (CAG) is 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 is 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. There would be strict limits on the amount of assets and income a person may have before becoming eligible to apply for an order. Respondents to the original Consultation Paper agreed that the four specified requirements for the Jersey Order seemed sensible given the similar demographics between the islands, with the project progressing on the basis that similar eligibility requirements would be consulted further on.

Consultation Questions

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?

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?

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 the 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?

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?

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?

Question 6

Should Utility bills 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?

Question 8

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

Consultees

This is a public consultation and responses are invited from all interested parties.

The consultation paper has been sent to:

- The Association of Guernsey Banks
- The Bar Council
- The Chamber of Commerce
- Citizens Advice Guernsey
- The Confederation of Guernsey Industry
- The Guernsey Dental Association
- The Guernsey Financial Services Commission
- Guernsey Housing Association
- Guernsey Loan Companies
- The Guernsey Private Residential Landlords' Association
- The Institute of Directors
- Medical Practices
- Utility Companies
- Veterinary Practices

Responding to the Consultation

Please provide your comments by 31 October 2016, in writing and preferably in a format that can be read by Microsoft Word. The Committee prefers responses to be made by email to the following address:

Email: alan.bougourd@gov.gg

Alternatively they may be posted to:

Consultation on Low Value Debt Relief

Attention: Alan Bougourd
c/o Guernsey Registry
Market Building, PO Box 451
Fountain Street
St Peter Port
Guernsey
GY1 3GX

The consultation closes on 31 October 2016.

1. When submitting your views please indicate whether you are responding on behalf of an organisation.
2. The Committee is also interested in receiving general comments and feedback on the Proposals. Please feel free to respond to all, or some, of the questions.
3. Additional copies of the consultation document can be obtained from the address as above.
4. Unless **specifically requested otherwise**, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
5. The purpose of the consultation is to gather information, views and evidence which will allow an informed decision to be made regarding the Proposals. As in any consultation exercise the responses received do not guarantee changes will be made to what has been proposed and any views indicative of an approach the Committee may take, are not its final policy position nor do they constitute any formal proposal.