

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

LOW VALUE DEBT RELIEF

The States are asked to decide:-

Whether, after consideration of the policy letter titled 'Low Value Debt Relief' dated 15th August, 2022, they are of the opinion:-

1. To agree to the implementation of Low Value Debt Relief Orders, as described in the Policy Letter titled "Low Value Debt Relief" dated 15th August 2022, of the Committee *for* Economic Development.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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of the
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LOW VALUE DEBT RELIEF

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

15th August, 2022

Dear Sir

1 Executive Summary

- 1.1 This policy letter seeks the approval of the States to the introduction of legislation to allow for the remission of low levels of unsecured personal debt where an individual has no reasonable prospect of being in a position to repay such debts.
- 1.2 Low value debt relief orders (“**LVDROs**”) are intended to help some of the most financially insecure individuals in society make a new start, and improve their well-being, by providing for a resolution when faced with debts which they cannot pay. They provide a fresh start for those trapped in debt, who meet the eligibility criteria, as set out in this policy letter.
- 1.3 The introduction of LVDROs would complement the changing legislative landscape toward increased consumer protection, such as the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 which was approved by the States on 13th July, 2022¹.

2 Background

2.1 Rationale for introduction of LVDROs in Guernsey

- 2.1.1 Citizens Advice Guernsey (“**CAG**”) works with a significant number of people in its debt advisory work who have no prospect of being able to pay their debts. CAG reports that this is often a result of a change of circumstances and/or through no fault of the

¹ [Billet d'État No. XII of 2022, Article 14](#)

individual involved.

- 2.1.2 One of the services offered by CAG is a financial restitution negotiation service (the “RNS”). CAG acts as an intermediary between the client and the client’s creditors to negotiate a repayment plan, manageable by the debtor and acceptable to the creditor. No debts are relieved, so there may be no end to the re-payment period. There is no legal requirement for parties to submit to the process and as such, it is dependent on the good faith of both the debtor and creditor, to be successful. As part of the process CAG assists clients in assessing all income and debts and with creating a reasonable expenses budget.
- 2.1.3 CAG advised the Committee *for* Economic Development (the “Committee”) in 2019 that there were 104 clients of the RNS. Those 104 service users collectively had £4.34 million of unaffordable debt, comprising of £2.7 million of secured debt and £1.64 million of unsecured debt and equated to an average total debt of £42,000 per client, with £16,000 of that debt being unsecured².
- 2.1.4 CAG further reported that it assessed causes of debt amongst those clients as follows:
- (a) Poor budgeting – 24%;
 - (b) Reduced income – 22%;
 - (c) Relationship breakdown – 21%;
 - (d) Job loss – 14%;
 - (e) Health issues – 12%; and
 - (f) Family problems – 7%.
- 2.1.5 The Committee acknowledges the potential impact of unmanageable debt on the mental well-being, and health, of individuals. The Committee has also noted that research into the relationship between debt and health has identified that unsecured debt, such as credit card debt, was linked to a more than 3-fold increased risk of mental health problems. There is also a strong negative relationship with suicide and drug and alcohol abuse.³
- 2.1.6 CAG stated, in response to a consultation undertaken by the Committee⁴, that low value debt relief such as that proposed in this policy letter “*addresses the heart of the problem area and where the need is greatest*”. In addition, a low value debt relief procedure should be ‘stand-alone’ both in terms of legislation and the operation of the process.

² Based on 2018 figures.

³ Richardson, T., Elliott, Peter and Roberts, R. (2013) “The relationship between personal unsecured debt and mental and physical health: a systematic review and meta-analysis.” *Clinical Psychology Review*, 33 (8), 1148-1162.

⁴ In 2014 the Commerce and Employment Department of the States of Guernsey carried out a public consultation on potential changes to Guernsey’s insolvency regime, including both corporate and individual insolvency.

- 2.1.7 The Committee notes that during informal consultation, some local lenders did not consider that the introduction of legislation to provide low value debt relief was necessary. This was on the basis that lenders would be unlikely to pursue debt where it was apparent that an individual was unable to pay and, as such, they would be likely to write the debt off. Nevertheless, the Committee believes that the introduction of legislation is necessary to provide certainty and to protect individuals from less compassionate lenders.
- 2.1.8 The Committee further believes that the disadvantage to lenders of introducing LVDROs would be mitigated by LVDROs only being available, by way of restrictive eligibility criteria, to those who would not realistically be in a position to pay the debts in the present, or the foreseeable future, and where in reality it would not be commercially advantageous for the lender to pursue the debts in any event.
- 2.1.9 The Committee acknowledges that there is a possibility that the introduction of LVDROs in Guernsey may reduce the willingness of some lenders to offer credit in some cases. However, the Committee is of the view that lenders already assess risk on the basis that there will always be a small number of debtors from whom recovery is unlikely as part of the decision to lend process and does not believe that equivalent procedures in other jurisdictions, including England, Scotland, and Jersey⁵, have materially reduced the availability of credit.

2.2 Personal insolvency processes currently available in Guernsey

Current processes available in Guernsey where an individual is unable to pay his, or her, debts include:-

- 2.2.1 **Désastre** and **Saisie** – These are customary law provisions which provide processes for judgment creditors to take a judgment debtor's property⁶ in satisfaction of a judgment debt. They are a means of enforcing a judgment and, as such, whilst they provide creditors with a means of realising assets, they do not include other functions of modern personal insolvency proceedings. Désastre does not ordinarily result in any discharge of the debtor from indebtedness, unless creditors are paid in full and creditors retain the right to institute further proceedings at a later date. Saisie is an enforcement process against real property in the Bailiwick which involves an irrevocable election to proceed against the debtor's realty and thus does not itself touch upon the debtor's personal property.
- 2.2.2 The **Loi ayant rapport aux Débiteurs et à la Renonciation (the "1929 Law")** and **Ordonnance relative à la Renonciation**. The 1929 Law provides creditors with a process to recover monies owed by individual debtors, as well as a process for a debtor to apply

⁵ The Committee notes that no debt remission orders have been issued in Jersey as at the date of this policy letter but has been unable to ascertain why.

⁶ Désastre relates to a debtor's personalty and saisie relates to real property.

to Court to be declared insolvent. An insolvent debtor also has an ability to apply to Court for the benefit of renunciation - a discharge from outstanding debt acquired prior to the declaration of insolvency.

The 1929 Law is the Guernsey equivalent to bankruptcy in the UK but the Committee is advised that it is unpopular and has only been used a handful of times since implementation. The reasons why are not entirely clear, but feedback includes that the procedure under the 1929 Law is expensive, out-dated and time consuming.

3 Proposals for reform

3.1 The Committee has considered legislation implementing the English and Jersey low value debt relief regimes⁷ as a starting point when considering what LVDRO characteristics would be appropriate for Guernsey. The Committee proposes, and asks the States to support, the introduction of LVDROs with the following key features.

3.2 Key features of a LVDRO

3.2.1 *Moratorium*

It is proposed that a Guernsey LVDRO would, in common with Jersey and England, create a moratorium period of a year⁸ where creditors would be prevented from pursuing qualifying debts⁹ that have been included in the LVDRO. If the debtor's situation has failed to improve at the end of the moratorium, the debts would be written off.

3.2.2 *Eligibility criteria*

3.2.2.1 The Committee proposes the following eligibility criteria. Applicants must be unable to pay their debts and:

- (a) have no more than £30,000 qualifying debt¹⁰;
- (b) be at least 18 years old;
- (c) ordinarily have been a Guernsey resident for at least 2 years;
- (d) not had a LVDRO issued, or been the subject of any personal insolvency proceedings, in Guernsey or elsewhere, in the last 5 years;
- (e) have no more than £5,000 in value of assets (excluding a motor vehicle with a value of up to £2,000); and
- (f) have a disposable income of no more than £100 a month after the payment of tax, social insurance, and reasonable household expenses; and
- (g) have acted in good faith.

⁷ For England, see Part 7A of the Insolvency Act 1989 and for Jersey, the Debt Remission (Individuals) (Jersey) Law 2016.

⁸ The Committee envisages the Court would have a power to extend the moratorium period in appropriate circumstances.

⁹ See paragraph 3.2.3 of this policy letter.

¹⁰ See paragraph 3.2.3 of this policy letter.

3.2.2.2 The Committee proposes that there should be a power for the eligibility criteria to be amended, by regulation, to ensure that the criteria remain appropriate to the needs of the community.

3.2.3 *Qualifying debts and excluded debt*

3.2.3.1 Certain debts should be excluded from the scope of an LVDRO¹¹. The Committee proposes that excluded debts should be:

- (a) secured debts;
- (b) criminal fines;
- (c) child maintenance;
- (d) damages for negligence, nuisance, or a breach of duty payable by way of Court order; and
- (e) any other category prescribed, by the Committee, by regulation as being excluded.

3.2.3.2 Only debts listed in the LVDRO will be protected from creditors and subsequently written off at the end of the moratorium period. Any debts not listed, or those acquired after the LVDRO is in place, will not be included in the LVDRO.

3.2.3.3 The Committee notes that although Jersey's legislation specifies, as part of its eligibility criteria, that an applicant may not have more than £20,000 of qualifying debts¹², England increased this figure from £20,000 to £30,000 on 29th June 2021¹³.

3.2.3.4 The Committee was further assisted by updated figures provided by CAG which suggested that setting the qualifying debt figure at £20,000 would mean that approximately one third of CAG clients as at April 2021 might be eligible to apply, whereas setting the amount at £30,000 might mean that nearly half of CAB clients would be eligible to apply¹⁴.

3.3 Proposed process and administration of LVDROs

3.3.1 An advantage of a LVDRO as a personal insolvency process is that it is intended to be a relatively quick and affordable administrative process.

3.3.2 The Committee envisages that an application will be made, in a standard format, and that an intermediary may be appointed to advise and/or assist applicants. CAG have expressed to the Committee a willingness to undertake this role. The Committee further intends that a modest fee should be payable on application and proposes that an ability to prescribe such a fee is included in the implementing legislation.

¹¹ All other debts would be qualifying debts which could be covered by a LVDRO.

¹² Article 4(1)(e) of the Debt Remission (Individuals) (Jersey) Law, 2016.

¹³ The Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021.

¹⁴ Based on clients being assisted by the CAG in April 2020. A total of 12 people may be eligible for a LVDRO if the qualifying debt figure was set at £20,000 and 18 people may be eligible if it was set at £30,000.

3.3.3 In the UK, the application is made to the Official Receiver, and in Jersey the application is made to the Viscount. As neither of these roles, or offices, exist in Guernsey, the Committee considers that issuance of LVDROs would most appropriately be undertaken by a Jurat.

3.3.4 The Committee anticipates that many applications for an LVDRO could be considered by a Jurat on the basis of the documents received and without oral representations by the parties.

3.3.5 If the Jurat was satisfied that the applicant met the eligibility criteria, and that no creditor had submitted a successful objection to the making of the LVDRO having received notice of the application, a Jurat would make a LVDRO.

3.4 Challenging a LVDRO

3.4.1 The Committee considers that it would be appropriate for creditors to have an opportunity to object to the making of the LVDRO, or the inclusion of that creditor's debt in the LVDRO, on receiving notice of the debtor's application for a LVDRO. Objections could only be validly made on the grounds that the applicant did not meet the eligibility criteria, or that the creditor's debt was not a qualifying debt.

3.4.2 A creditor should also have an ability to apply for a LVDRO to be revoked, or amended, if the debtor's circumstances have changed within the moratorium period, such that he or she is no longer unable to pay his or her debts.

3.4.3 The Committee proposes that the legislation makes specific provision for any interested party to make an application to the Court if he or she is dissatisfied by any act or decision of a Jurat in connection with a LVDRO, in addition to an ability for a Jurat to refer any matter to the Court for directions.

3.5 Register of LVDROs

The Committee proposes that a private register of LVDROs should be maintained by the Greffier, with disclosure of information on the Register permitted to parties who have a legitimate interest. Further consideration would be given to the parameters for disclosure and it is proposed that the Committee should have the power to make provision in this regard by regulation.

3.6 Restrictions on applicant while LVDRO in place

3.6.1 Certain restrictions should be placed on an individual who has been issued with a LVDRO whilst it is in place, such as acting as a director of a Guernsey registered company, without leave of the Court to do so.

3.6.2 The Committee also considers that individuals should be required to notify a potential creditor of the existence of the LVDRO and be prevented from obtaining credit in excess of £500 during the time that a LVDRO is in place, again without leave of the Court to do so.

3.7 Miscellaneous provisions

3.7.1 *Regulations of the Committee*

3.7.1.1 The legislation should include a power for the Committee to make regulations, as set out in this policy letter and also as necessary, or expedient, for carrying into effect the proposals contained in this policy letter.

3.7.2 *Offences*

3.7.2.1 Legislation would need to make appropriate provision for offences.

3.7.3 *Impact of a Guernsey issued LVDRO on foreign debt*

3.7.3.1 The Committee acknowledges that some unsecured personal debt will likely be governed by the law of another jurisdiction (“**foreign debts**”). In particular, the Committee anticipates that issuers of credit and store cards are most likely to be based in England and as such, agreements with those creditors will sometimes be governed by English Law.

3.7.3.2 The Committee understands that the question of the recognition, and effectiveness, of a Guernsey LVDRO in other jurisdictions involves potentially complicated issues of private international law.

3.7.3.3 The effectiveness of a Guernsey LVDRO in respect of foreign debt is not straightforward but the Committee is of the view that it is nonetheless appropriate to proceed given the certainty that could be provided as a matter of Guernsey Law. The Committee proposes that foreign debts should be eligible to be listed in a Guernsey LVDRO, as some creditors may choose to recognise the effect of the order and their inclusion may be recognised by the Courts of another jurisdiction in some circumstances. It will also be important for the debtor to declare all debt, including foreign debts, for the purposes of establishing whether the eligibility criteria threshold is met.

3.7.3.4 The Committee also recommends that the legislation should provide that no legal proceedings may be commenced in the Guernsey Courts against a debtor in respect of a debt listed in a Guernsey LVDRO (including a foreign debt), except with the permission of the Court.

4 Consultation

- 4.1 The Committee was approached by industry in the summer of 2020, with a suggestion that the options and processes available to individuals in Guernsey on becoming insolvent should be reviewed.
- 4.2 The Committee confirmed that it would consider proposals for reform and an industry led working group was established consisting of (i) insolvency practitioners, (ii) advocates specialising in personal insolvency matters (iii) HM Sheriff and (iv) a representative of CAG (the “**Working Group**”).
- 4.3 In recognition of the scope of work involved to implement an entirely new personal insolvency regime in Guernsey, the Working Group fed back that they would report proposals for reform to the Committee in stages.
- 4.4 The Working Group presented its first report to the Committee in June 2021, concerning low value debt relief and is continuing to review options for further reform of personal insolvency in Guernsey, including bankruptcy and individual voluntary arrangements.
- 4.5 The Committee is very grateful for the detailed work undertaken by the Working Group and has carefully considered the proposals submitted in the preparation of the policy proposals contained in this policy letter.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be appended to propositions laid before the States.
- 5.2 In accordance with Rule 4(1):-
 - 5.2.1 the propositions contribute to the States’ objectives and policy plans set out within the Government Work Plan by attempting to alleviate some of the economic after-effects of the Covid pandemic on some of Guernsey’s most financially vulnerable citizens;
 - 5.2.2 the Committee consulted (i) the Working Group, (ii) CAG, (iii) Her Majesty’s Greffier and (iv) the Royal Court in the development of the proposals;
 - 5.2.3 the propositions have been submitted to Her Majesty’s Procureur for advice on any legal, or constitutional, implications.
- 5.3 In accordance with Rule 4(2):-
 - 5.3.1 the propositions relate to the Committee’s purpose and policy responsibilities as they relate to (i) regulation in the economy and (ii) the reputation of the island as a centre

for commerce and industry; and

5.3.2 the propositions are supported unanimously by the members of the Committee.

Yours faithfully

N R Inder
President

S J Falla
Vice-President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members