

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 23RD MAY 2017**

Question

Further to a response given on 14th June 2016 to a question regarding the rôle of the Jurats in a *remise des biens*, will H.M. Attorney General provide members with the details of the rôle of Jurats, from the time of their appointment by the Court to the final payment of creditors, including their interaction with the subjects of the *remise*; and will he further explain the meaning of the term ‘*bon père*’ in the context of a *remise*?

Answer

The Deputy’s question differs little in substance from the first part of the question on 14 June 2016 to which the Deputy refers, which was as follows: “Will Her Majesty’s Attorney General advise what the role of the Viscount’s office and the Jurats is in a *remise des biens*”. The following answer therefore inevitably repeats much of the answer that was given on that occasion.

Remise des biens is an insolvency remedy available to a debtor who owns Jersey land which, if sold, may be sufficient to repay in full the debts due to his or her secured creditors. It is a process by which the debtor may obtain permission to remit (entrust) his or her property into the hands of the hands of the Court. Only a debtor can apply for permission, and the Court has a discretion whether or not to grant the remedy. The advantage for the debtor who obtains permission is the chance of avoiding the potentially harsher consequences of a declaration of *désastre* or the ordering of a *dégrévement*.

The first stage of an application is that the Court appoints two Jurats to investigate the debtor’s assets and liabilities. The Jurats then have 15 days within which to report back on whether a *remise* would be worthwhile, in other words, whether the value of the property would exceed the secured claims on it. It is on the strength of this report that the Court decides whether or not to grant permission.

If the Court does grant permission, two other Jurats are appointed by the Court to sell the property and distribute the sale proceeds to the creditors. This process normally takes six months but can be extended to one year. Part of the reason for the relatively short timescale is that interest will accrue against secured debts which may erode or even exhaust any surplus. The six month period is not intended to effect a fire sale but a sensible period of time to achieve a realistic price in the context of increasing debts and creditors. The Jurats will aim to achieve the best sale price they can for the property, normally by sale on the open market. They must ensure, however, that the sale proceeds are enough to pay the secured creditors. If they cannot, the *remise* will fail and (as mentioned already) another insolvency procedure like a *désastre* or *dégrévement* may follow. While the Jurats are responsible for the sale of a property and distributing the proceeds to the creditors, they are assisted by a member of the Viscount’s insolvency team who provide support.

In terms of the Jurats’ ‘interaction with the subjects of the *remise*’, the Loi (1839) sur les remises de biens (Article 5) provides that whoever has obtained permission to remit his or her property into the hands of the Court may not act other than according to the advice and counsel of the Jurats authorised to examine the said property. The debtor has a duty to assist the Viscount and the Jurats. The precise extent of communications and dealings with the debtor will depend on the circumstances and the nature of the property or properties concerned.

In terms of the duty to act *en bon père de famille*, this expression encapsulates the duty in Jersey law on any trustee or administrator of another’s property to discharge his or her functions diligently and prudently.

The obligation is common to fiduciary offices in Jersey law, in which guardians *ad litem* and *tuteurs* are under the same obligation to act *en bon père de famille*.

At the end of the process, if the *remise* is successful, then a debtor will be discharged from all his or her debts, including those of unsecured creditors who may not have been paid.

Therefore, a *remise* can be a beneficial procedure for a debtor.