

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 15th MARCH 2021
ANSWER TO BE TABLED ON MONDAY 22nd MARCH 2021**

Question

Will H.M. Attorney General explain, in respect of *dégrévement* and *remise de biens* proceedings –

- (a) what the role of the Viscount's Department is, what detailed steps it must take in each such action, and what its duties are to the creditors and debtors;
- (b) what the role of Jurats is, what steps they must take in each action, and what their duties are to the creditors and debtors;
- (c) what duty there is for the Viscount's Department and the Jurats to avoid conflicts of interest;
- (d) once the court determines a *dégrévement* should take place, what the hierarchy of creditors is, how this is normally determined and how it may be changed or varied;
- (e) under what circumstances, and by what process, a person who is not an original creditor to the *dégrévement* can acquire the property; and
- (f) once the court takes possession of the property under a *dégrévement* what the liabilities are of the creditor if the proceeds from the *dégrévement* are less than the debt outstanding and one of the creditors seeks to recover additional sums?

Answer

- (a) The Judicial Greffe and the Viscount's Department have issued helpful guides for litigants in person in relation to *remise* and *dégrévement* which set out what stages the Viscount might be involved with and what her responsibilities are.

In summary, the Viscount does not have a legally defined role in *remise* matters but may, and as a matter of practice normally does, assist the Jurats if requested to do so. This is because she is the court's executive officer, has expertise in insolvency and because the Jurats do not have any administrative support of their own to assist them in carrying this function.

In respect of *dégrévement*, once judgment has been obtained against the debtor, the Viscount's Department may be instructed by the creditor to enforce the judgment, distrain the debtor's assets or make a wage arrest. If the debtor has not repaid the debt one month after the judgment, the creditor can make an application to the Royal Court for an *Acte Vicomte chargé d'écrire*. Once the order has been made, the Enforcement Officers of the Viscount's Department will be instructed by the creditor to serve notice on the debtor. In respect of *dégrévement* process, the Viscount has no role, although creditors must notify the Viscount of the application (and all evidence relied upon) at the same time as notice of the application is provided to the debtor. After the hearing, if an order for eviction is granted, the Viscount's Department will be ordered to carry out the eviction process if the debtor does not vacate the property.

- (b) The aforementioned guides also set out the roles and duties of the Jurats in relation to *remise* and *dégrévement*. The duties of the Jurats in respect of *remise* are also set out in the *Loi (1989) sur les remises de biens*.

In summary, the role of the Jurats is to value the property and prepare a report for the Court giving their opinion on whether the value is sufficient to allow the debts (in particular, the secured debts) to be paid in full if the *remise* is granted. If the *remise* is granted by the Court, the debtor is taken to have authorised the Jurats to sell or otherwise deal with the debtor's assets as required. The Jurats must consider the views of the debtor but they retain an unqualified authority to deal with the debtor's property. The debtor can only deal with their property during the *remise* on the advice of the Jurats. The Jurats will pay the creditors with the proceeds of sale and return any surplus funds to the debtor. The Jurats will then return the matter to Court to end the *remise*.

- (c) The Viscount's Department and the Jurats are subject to the [code of conduct](#) for members of the Judiciary and will have internal policies regarding avoiding conflicts of interest.
- (d) The hierarchy of creditors is determined at the *dégrévement* hearing to which all interested parties will be summoned (Article 92 and Article 100 of the Loi 1880). The Greffier calls all of the summoned creditors in reverse date order of the creation of their security, starting with the unsecured creditors as a collective body and ending with the first secured creditor, and asks if they accept to take the property on the basis that they will discharge all earlier charges secured against the property. The creditor which accepts is known as the *tenant après dégrévement*. If a creditor declines, then they lose their claim against the property.

After the hearing, the Greffier will prepare a record stating the claims that have been renounced and listing all prior-ranking claims and *protêts* (i.e. priority claims) which are to be paid before the *tenant après dégrévement*'s own claim. The *tenant après dégrévement* will need to approve the record before the Court. The *tenant après dégrévement* will then need to repay each of the creditors starting with the first secured creditor and ending with the *tenant* themselves. After payment of the creditors and its own claim, the *tenant après dégrévement* is not bound to account to any creditors who have renounced their claims or to the debtor for any surplus arising from the sale of the property.

- (e) It is not possible for a creditor who was not owed monies by the debtor prior to the *dégrévement* to acquire the property. In certain circumstances, a creditor may seek to assign its debt and the security held against a property to a third party. In so doing, the third party acquires the benefit of the debt and the security on the same terms as the assignor.
- (f) This question is not entirely clear. The Court does not take possession of the property. The *tenant après dégrévement* takes possession and has a personal responsibility to discharge the security of the secured creditors who rank as priority creditors to the *tenant*. The process contemplates the disencumbering of the property and is not the means by which the *tenant après dégrévement* meets the obligations undertaken. If a prior-ranking creditor is not paid what is due to it by the *tenant après dégrévement*, it would need to begin proceedings to recover the sum owed to it by the *tenant* in the usual way, i.e. by obtaining summary judgment for the sums due and the protection of a *hypothec judiciaire* over the property. Failure to discharge would potentially result in a *désastre* or a *dégrévement* of the property of the *tenant après dégrévement*. If the tenant does not recover the full amount of its debt by realising the property, it cannot proceed against the debtor for any shortfall. However, the unpaid debts of the unsecured creditors remain enforceable against the debtor, in cases where the creditor instigated the *dégrévement* process as described above.