


CONSULTATION QUESTIONNAIRE (Page One)
Low Income, Low Assets – a new route into Bankruptcy

The deadline for responses is **25 June 2007**

Your details

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For the purpose of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire, please tick as appropriate.

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|-------------------------|--------------------------|---|-------------------------------------|
| Advice Sector | <input type="checkbox"/> | Legal Body | <input type="checkbox"/> |
| Business | <input type="checkbox"/> | Professional Body | <input type="checkbox"/> |
| Individual | <input type="checkbox"/> | Statutory Body | <input type="checkbox"/> |
| Insolvency Practitioner | <input type="checkbox"/> | Other (Please Specify) Other government department | <input checked="" type="checkbox"/> |

Questions for Consultation

1a Do you agree with the proposal to treat someone in receipt of an income based Social Security benefit as having no income for the LILA scheme?

Yes No Providing that is their only source of income. That is income which could not be claimed by a trustee in bankruptcy.

1b Do you think £100 (gross) is the appropriate level for the purposes of calculating low income?

Yes No

Whilst gross income provides a clear objective measure of an individual's income, it takes no account of their particular circumstances. An individual living with relatives and with no housing or housekeeping costs could have considerably more disposable income than someone who has more than the specified limit, and thus would not qualify for entry to the system, but who has a family and household expenditure to maintain.

If a measure of gross income is to be used, it would be useful to know what the average incomes of the target group is. However, £100 seems reasonable on the basis that they will also be in receipt of income based benefit.

- 1c If not, please state what you would consider to be the appropriate level e.g. £150, £200 and why?

N/A

- 1d How should the level determined be calculated, e.g. gross income at date of application or gross weekly income averaged over 6 month or 12 month period?

Income at the date of the application would be more straightforward. The type of people who would need to seek a LILA are unlikely to have the skills or the records to enable an average income for the preceding months to be calculated easily, particularly if they are not accessing the system via a money adviser. It also would fail to take account of someone who had an unforeseen change in circumstances that triggered the bankruptcy in the first place –e.g. loss of a partner, accident. Anyone whose circumstances were likely to be improve would be a “temporary” LILA debtor and therefore presumably still able to access the system.

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- 1e Should Child Tax Credit be disregarded in the calculation of income?

Yes X No

Guidance to official receivers in England and Wales is to disregard this benefit when considering whether or not a debtor is able to make payments out of income to his creditors, and it seems logical from our perspective to do the same in this instance.

- 1f Should any other benefits or tax credits be disregarded in the calculation of income?

Yes X No

- 1g If so which benefits or tax credits should be disregarded?

Benefits which would not ordinarily be claimed by a trustee in bankruptcy should be disregarded –for example child benefit, disability living allowance.

- 2a Do you think £1,000 is the appropriate level for the purposes of calculating assets?

Yes No

If the £1000 is in addition to assets excluded from bankruptcy, which includes a car, as set out in Annex D, then it seems rather generous. Whilst there are significant differences between your proposals and our debt relief scheme, both are aimed at low income/low asset debtors. At present the intention is to limit total assets for DRO debtors to £300. We consulted on this figure and although a fair number felt £300 was too low, that amount was the most popular choice.

2b If not, please state what you would consider to be the appropriate level, and why (for example, linking to other limits in use in diligence).

2c Should excluded assets only be those which would be excluded from bankruptcy?

Yes —especially if you are proposing an additional £1000 No

2d If not, which other types of assets should be included or excluded?

N/A

2e Do you agree that anyone who owns their own house or other property should be excluded from the LILA scheme?

Yes X No

2f If not, why?

N/A

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3a Should there be a different debt threshold for LILA applications?

Yes No

One could argue that if the policy is simply to provide a different route into bankruptcy then why change the level. However, since these people have low income and low assets, then they are likely to have lower levels of debt. To place the barrier too high will either continue to exclude those who are most vulnerable or encourage them to incur further debt simply to obtain access to the system. The consultation paper does not offer any data that would indicate what the average level of debt of the target group is so it is not possible to be definitive about whether the levels should be lower or not.

There might be an argument for having a maximum debt level in cases where there is to be no investigation into the debtor's affairs.

3b If so, at what level should it be set?

N/A

4a Do you agree that a simple on-line process should be the usual means of applying for bankruptcy through the LILA scheme?

Yes No

This would make the system cheaper and easier to operate, although care needs to be taken to ensure that debtors who cannot easily access a computer are not excluded.

4b If not, what forms of applications should be allowed and why?

Initially at least the debtor ought also be able to apply by post.

4c Do you think that the proposed £50 fee is reasonable?

Yes No

4d If not, what kind of fee structure would be appropriate? (please consider issues such as deterrence, consistency with other applications, waivers for specific groups of debtors, higher costs of administering hard copy applications)

N/A

4e Do you agree that a Statutory Declaration by a debtor should be sufficient for a debtor's application?

Yes No see below

4f If not, what else should be required and why?

If the process is to be online it is not clear how the statutory declaration will be matched with the application. Although it would not be sensible to make excessive checks in low level cases such as this, it seems that there will be no independent verification/checking of the information supplied and this could lead to the risk of dishonest applications. However, since anyone with assets or the ability to pay is far more likely to have a creditor take the trouble to show apparent insolvency, and be able to access bankruptcy by an alternative route, it is probably a low risk.

4g Do you have any other suggestions for the LILA process which you would like us to consider?

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5a Do you agree that there should be a delay between the date of application and an award of bankruptcy?

Yes No X

5b If no, why not?

The consultation paper is silent on the question of what would happen to the debtor should he be untruthful in his application. However, if the issue is that the debtor has failed to disclose assets or income, then presumably once the creditor draws that the AIBs attention, there would be a facility to deal with those for the benefit of the creditors. It is not clear why a creditor would object to the fact of the bankruptcy itself. Presumably there is no facility to object if another creditor takes proceedings that would demonstrate apparent insolvency?

If creditors are given the opportunity to object before the award of bankruptcy then it is likely they will do so –and the paper does not indicate what would happen if an objection were made but not fully investigated before the 5 week expiry period.

5c If yes, is 5 weeks a reasonable period of delay?

Yes No

5d If you do not agree that 5 weeks is a reasonable period, what alternative would you suggest and why?

No delay.

5e Should the debtor be able to withdraw their application during this period?

Yes No X

It is not clear why a debtor would wish to withdraw their application. If the debtor's circumstances change during the bankruptcy then presumably there will be provision to account for windfalls as with normal bankruptcy, up to and including annulment.

5f Should the creditor be entitled to object to an application during this period?

Yes No X

See above

5g If so, should grounds for objection be restricted to the accuracy/honesty of the debtor's averment of low income and low assets?

Yes No

5h If not, what other grounds for objection be considered?

N/A

6 Do you have any other comments?

The policy issue seems to be that some people are currently unable to access bankruptcy because they have low levels of income and assets and creditors are therefore unwilling to take proceedings that would enable the debtor to demonstrate apparent insolvency. The paper states that the intention is to provide an alternative route into bankruptcy rather than a new debt relief scheme.

On that basis, it would seem more straightforward to simply to alter the "apparent insolvency" requirement rather than devise a more complicated structure that requires the debtor to meet certain financial criteria and will mean that those at the margins are still unable to access the system.