



**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.

- |                         |                                     |                              |                          |
|-------------------------|-------------------------------------|------------------------------|--------------------------|
| 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 checked="" type="checkbox"/> | Other (Please Specify) _____ | <input 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

Individuals who are currently treated as having no available income because of specific benefit dependency should continue to be treated as such under the new LILA scheme.

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

Yes  No

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

The proposal to restrict availability to the scheme is supported, but the imposition of a gross income qualifier of less than £100 per month is overly

restrictive. The advent of an improved welfare benefit system allied to the introduction of both the minimum wage and Tax Credits means that most households, and indeed individuals receiving benefits, would exceed this minimum criterion.

Gross income as a measure is also fundamentally flawed as it takes no account of disposable income. For example, a young single person living at home earning £175 per week will have far more surplus income than someone attempting to support a family on the same income level. Perhaps the introduction of a hybrid access criteria combining an absolute maximum income from remunerative employment of say £200 per week combined with independently certified surplus income of less than £50 per month (a level at which in sequestration contributions would be unlikely to be pursued) might be more appropriate? Separate access criteria could be established for those dependant upon welfare benefits and rebates.

- 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?

Gross income calculated over a 6 month period should give a representative average. Whatever method is chosen, safeguards need to be included to ensure that a debtor cannot manipulate income over a short term period to facilitate qualification for the LILA route to Bankruptcy.

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

Yes  No

Tax credits should be treated as they are treated under the current system.

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

Yes  No

The calculation of income should be based on the system currently in operation.

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

see above

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

Yes  No

Individuals owning houses, or those owning assets exceeding the recognised value of £1,000 should not have ready access to any new system. To grant access to such individuals would be detrimental to creditors who may obtain a dividend from the realisation of such assets in either a Trust Deed or sequestration.

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).

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

Yes ✓      No

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

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

Yes ✓      No

2f If not, why?

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

Yes  No

In the interest of simplicity and understanding, the debt threshold for a LILA application must be the same as that applied to a standard bankruptcy application. To deviate would simply cause unnecessary confusion and create inconsistencies.

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

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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

In this age of modern technology a simple on-line application process should be created for LILA applications. Most people can obtain access to the necessary hardware to apply on-line, with numerous organisations on hand to give support and advice where required. However, this begs the question of the nature and extent of independent verification, and how this could be evidenced in an online application. Our view is that independent verification of gross income and disposable income is vital for creditors to have confidence in the new LILA system and needs to underpin any changes which are introduced.

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

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

Yes  No

The fee for an application should be minimised as much as possible and be set at a level which simply covers the cost of application. The target client group are already identified as having little or no available income to start with. A Statutory Declaration by the debtor should suffice, once information has been confirmed by an advisor, who may be a fee charging IP. The IP will also need to be able to charge a modest fee. Perhaps £50 would also be reasonable? Again, thought needs to be given to how an online statutory declaration can be independently verified and/or witnessed.

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)

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

Yes ✓      No

But see provisos re independent verification noted above

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

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

The administration of the system should be shared between money advisors and the AiB to ensure that a uniform system is introduced in an understandable manner. Lessons must be learned from the introduction of DAS which resulted in retrospective legislation and training, causing ill-feeling within the money advice community and a lack of necessary advisors to operate the system efficiently and resulted in a significant waste of public funds.

Insolvency Practitioners should act as Trustee during the term of bankruptcy and operate a service which minimises expenses. The introduction of "agency units" within an insolvency business, specialising in LILA clients, would develop a specialism and keep costs to a minimum.

Insolvency Practitioners must be appropriately remunerated for the work that will be required to complete a LILA case – a development of the existing Agency scheme could facilitate this.

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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

But **ONLY** if a level of independent verification can be included in the application process which is sufficient to give creditors comfort that the process is not being abused, and that adequate sanctions exist (eg annulment of the bankruptcy) to deal with any abuses of the process by debtors.

5b If no, why not?

There is no delay at present and to introduce a delay would simply serve to confuse. In the interest of simplicity, the new system should mirror the existing system where practicable.

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?

see 5b above

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

Yes  No

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

Yes  No

NOTE: if the route chosen after consultation is to offer a 5 week "cooling off period" which sensibly mirrors the period for creditor objection in Trust Deeds, then the answers to 5e and f are "yes".

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?

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6 Do you have any other comments?

Invocas BRI are particularly supportive of the drive to ensure that legislation strikes the right balance between debtors and creditors, to ensure that creditors receive a fair share of available funds. It is widely accepted that the current system discriminates against those with low income and low realisable assets and that there is a large "reservoir" of such debtors who are unable to constitute Apparent Insolvency and who therefore have no debt relief route open to them.

A change is required in order to relieve the pressure endured by such debtors, but any change should not disadvantage creditors in cases where the debtor clearly can pay, but chooses not to do so.

The current system of establishing Apparent Insolvency must be maintained for the debtor who fails to meet the criteria for a new LILA route into bankruptcy, but such a new route should be created in order to simplify the process for all concerned.

In order to simplify the current system a separate application must be created which can be easily used by debtors with low income and low assets. It also seems sensible to utilise the country's experienced and respected money advisors or insolvency practitioners, although a fee must be incorporated, to help implement and operate the scheme. An independent assessment of the debtor's circumstances must be completed prior to any application being accepted, with strict criteria adopted to ensure that the new scheme is not abused.

The introduction of a new gateway to bankruptcy, whilst welcomed, must not be rushed through without first considering every affect and counter affect. The controversial introduction of the Debt Arrangement Scheme, with its obvious shortcomings must be used as a learning tool to ensure that any future legislation must be introduced only when it is ready to be used.

A concerted effort will need to be made to promote education and awareness of the new system to ensure that potential clients, advisors and practitioners actually understand the concept and the need for honesty and accuracy to avoid unnecessary expenses.

In summary, the removal of stress will impact positively on health issues and both debtor and creditor can embrace a fresh start.

The introduction of the new system should learn from the mistakes of DAS, with appropriate resources and training made available in advance.

Clients, creditors, money advisors, insolvency practitioners and the AiB must co-operate fully in order to make the system a success but the I.P. should not be expected to operate in such cases without appropriate remuneration for the work involved.