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

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

Your details

Name	Insolvency Committee
Job title (if applicable)	
Organisation (if applicable)	Law Society of Scotland
Address	26 Drumsheugh Gardens Edinburgh
Postcode	EH3 7YR
e-mail address	[REDACTED]

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 checked="" type="checkbox"/> |
| Individual | <input type="checkbox"/> | Statutory Body | <input type="checkbox"/> |
| Insolvency Practitioner | <input 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

The Law Society of Scotland ("LSS") considers that if access is to be linked to a prescribed level of income, the debtor's actual circumstances, including all income and benefits, should be looked at in all cases.

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?

LSS considers that any specific figure would be arbitrary and could easily become out of date. LSS would therefore prefer to see the level fixed by reference to an appropriate social security benefit or minimum wage. This

would have the advantage of not requiring updating and create an appropriate linkage with benefit levels.

- 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?

LSS considers that simply looking at gross income at the date of application would not be appropriate because this might not reflect the true position and could also be open to manipulation by an unscrupulous debtor. Averaging income over a period would give a truer picture in most cases and would be less open to manipulation by an unscrupulous debtor. However, if the reason for a debtor's difficulties was a change of circumstances, for example, loss of employment, which is a common cause of financial difficulty, even this might not give a true reflection of the debtor's position – if there was quite high income for a period prior to the change of circumstances, this might result in an average weekly income for the relevant period (whatever it might be) being over the prescribed limit but would not reflect the reality of the debtor's current situation. In LSS's view, the critical factor in such cases would be whether the current position was likely to be permanent or long-term and LSS considers that any formula should be flexible enough to take this into account.

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

Yes No

As noted above, LSS considers that the debtor's actual circumstances should be looked at in all cases.

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

Yes No

As noted above, LSS considers that the debtor's actual circumstances should be looked at in all cases.

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

N/A

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

Yes No

LSS considers this is a reasonable level.

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).

N/A

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

Yes No

LSS considers that this is important for the sake of consistency.

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 No

Not necessarily.

2f If not, why?

A debtor may have a house or other property but a low income (perhaps as a result of a change of circumstances) and therefore not be able to pay debts as they fall due. Or a debtor may, although it is accepted that this would be unusual in the current market, have a house with little or negative equity. Such debtors might equally be stuck in a debt trap even though they have some property. LSS can see the benefit of excluding such debtors from the scheme for the sake of simplicity and it is arguable that such debtors could take other steps to resolve their problems, such as realising property themselves to pay off their debts or granting a trust deed for creditors (although their ability to do so might be affected by any forthcoming reforms to trust deeds, details of which are not yet known). However, provided that any non-exempt property which debtors do have is realised and made available to the creditors in the sequestration, LSS considers that it is arguable that there is no reason in principle why such debtors should continue to be excluded from sequestration simply because they cannot establish apparent insolvency, as creditors might be equally reluctant to take the necessary steps which would allow this in the case of such debtors.

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

Yes No

LSS considers that it is important that consistency should be maintained.

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

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

LSS considers that applications should be in writing because an online application process would be open to abuse. In particular, LSS has concerns about how the identity of the debtor/applicant could be verified, both to prevent applications being made by someone else purporting to be the debtor and to ensure in the case of a genuine application that sequestration is in fact being awarded in relation to the correct person (and not, for example, someone with a similar name and address). In addition, LSS believes that the debtor should have to produce a statutory declaration in written form signed by the debtor and also recommends that an applicant should have to produce supporting evidence with their application. As these items would have to be sent to the Accountant in Bankruptcy separately, there seems little point in having only part of the process online. There is also the question of the accessibility of such a process. If, contrary to LSS's view, online applications were to be permitted, LSS considers that the debtor should still have to produce separately a statutory declaration in written form signed by the debtor and supporting evidence.

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

Yes No

On balance, this seems reasonable. LSS considers that the debtor should have to pay a fee which for the sake of simplicity should be a standard fee, the proposed figure does represent a discount on the normal fee and it seems appropriate that costs should be covered.

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)

See response to previous question.

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

Yes No

See response to 4a.

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

See response to 4a.

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

Appropriate criminal penalties should be introduced for giving false information, concealing assets/income etc in connection with an application.

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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

5b If no, why not?

At present, where a debtor presents a petition for sequestration to the court, provided that the provisions of the legislation have been satisfied, sequestration is granted forthwith without any delay (other than that which might result in practice from a delay in processing the application after it is received by the court). This will presumably continue to be the case when applications are made to the Accountant in Bankruptcy in non-LILA cases. LSS is not therefore sure why there should be a different approach in LILA cases. LSS accepts that, as at present in court applications, there may in practice be some delay in processing applications and/or that there may be a delay where supporting documentation is checked etc, but does not see that this would justify a set period of delay. LSS would also point out that if part of the purpose of any proposed delay is to allow creditors to object, some form of publicity of the application would have to take place in order for creditors to be made aware of it in the first place.

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

Yes No

If, contrary to LSS's view, there is to be a set period of delay before the award of sequestration is made, LSS considers that a period of 5 weeks is not reasonable.

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

If, contrary to LSS's view, there is to be a set period of delay before the award of sequestration is made, LSS would prefer to see as short a period as possible and would suggest no more than 3 weeks.

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

Yes No

If, contrary to LSS's view, there is to be a set period of delay before the award of sequestration is made, LSS can see no reason why the debtor should not be able to withdraw his or her application during this period - a debtor can at present withdraw his or her application at any time before an award of sequestration is actually made and LSS can see no reason to change this.

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

Yes No

A creditor would not normally have an opportunity to object to a debtor petition for sequestration at present and presumably this will continue to be the case in other types of debtor petition and LSS considers that the position should be consistent in LILA and non-LILA cases.

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

N/A

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

N/A

6 Do you have any other comments?

No.