

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 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 majority view was that 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?

Level should be fixed with reference to minimum wage or a Social Security Benefit

- 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?

Simply looking at gross income as at the date of application would not be appropriate. 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. It should be borne in mind however that if the debtor's difficulties were the result of a change of circumstances, e.g. loss of employment, (a common cause of financial difficulty), even this might not give a true reflection of the debtor's position e.g. if there was a relatively high income for a period prior to the change of circumstances, this could cause an average weekly income for the relevant period to be over the prescribed limit but would not reflect the reality of the debtor's current situation. The point to determine is whether the current position was likely to be permanent or long-term and any formula should be flexible enough to take this into account.

It is considered that a period of 12 months would be too long and that it could be difficult for supporting vouching to be produced for such a long period.

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

Yes No

As noted above, 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, 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

A reasonable although somewhat arbitrary 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

Consistency is important.

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

2f If not, why?

A debtor may have a house or other property but also have a low income (perhaps as a result of a change of circumstances) and therefore not be able to pay debts as they fall due. Also a debtor could, (although unusual in the current market), have a house with negative equity. Such debtors might equally be stuck in a debt trap even though they own property.

There may be benefit in excluding such debtors from the scheme for the sake of simplicity and it is arguable that such debtors have other options such as realising property themselves to pay off their debts or granting a trust deed for creditors. (These options may of course be limited in the future by reforms to trust deed legislation.) However, provided that any non-exempt property of the debtors is realised and made available to the creditors in the sequestration, there is arguably no reason in principle why such debtors should continue to be excluded from sequestration simply because they cannot establish apparent insolvency to allow them to be sequestrated.

The proposed changes are just giving debtors who could not previously be sequestrated a new route into bankruptcy and it is understood that once bankrupt the same provisions will apply.

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

Yes No

As mentioned above consistency is important.

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

Although there would be benefits of online applications in terms of simplicity and cost there are also difficulties with this approach. Online applications would be open to possible abuse and would require stringent safeguards to prevent this. The accessibility of such a process would also have to be considered and appropriate provision would need to be made for applications in other forms e.g. by completing a pro forma.

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

See 4a .

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

Yes No

The debtor should have to pay a fee and it is simpler if there is 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 4c.

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

Yes No

Particularly if an online process is adopted which will not require the debtor to physically sign an application, there would be too high a risk of abuse and as already mentioned safeguards are essential.

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

Debtors should be required to produce supporting evidence of their income at least – it is accepted that it is more difficult to produce evidence that the debtor does not own property – and checks should be carried out in a percentage of cases to deter possible abuse. Debtors should also be asked to produce proof of identity.

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, unless a caveat has been lodged, and provided the provisions of the legislation have been satisfied, sequestration is granted forthwith without any delay. This should continue to be the case when applications are made to the Accountant in Bankruptcy in non-LILA cases. It is unclear why debtors in LILA cases should be treated any differently. If creditors are to be able to object, some form of publicity of the application would have to take place and this would of course add to the cost for the debtor or the AIB

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

Yes No

N/A

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

If a delay is considered necessary as short a period as possible would be appropriate as the date of sequestration will still be the date of the application and delay is generally undesirable in sequestration proceedings.

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

As already mentioned a creditor would not normally have an opportunity to object to a debtor petition for sequestration at present, (unless the creditor had lodged a caveat) and it is suggested that LILA cases are dealt with in the same way as consistency is important

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?

6 Do you have any other comments?

No.