

Low Income, Low Assets: A New Route into Bankruptcy

A response from Citizens Advice Scotland



Based on the evidence of
Citizens Advice Bureaux
clients across Scotland

by **Beccy Reilly**
Money Advice Co-ordinator

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Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



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Citizens Advice Scotland and its 76 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 208 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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Introduction and Context

The scale of the Scottish debt problem

1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 76 CAB offices. These bureaux deliver frontline advice services throughout the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.
2. In 2005/06 Scottish bureaux dealt with 61,597 **new** consumer debt enquiries – totalling £212 million. From our 2004 research, *On the Cards*¹, we know that Scottish CAB clients have an average of five debts so, from this, we can estimate that we have consistently seen between 12,000 and 13,000 new debt clients each year for the last three years.
3. However, while the number of new clients we see continues to be relatively static, the total debt level relating to these clients has continued to increase exponentially. Last year, the £212 million total debt dealt with by the Scottish CAB service represented a 25% increase on the previous year.
4. In February 2004, CAS published research on the profile of the Scottish CAB debt client. Examining the extent of, and reasons for, client debt, *On the Cards* produced the following findings:
 - Between 2001 and 2003, there had been a dramatic increase in the number of consumer debt problems brought to bureaux in Scotland and a significant increase in personal debt levels. In 2003, the average client debt was £13,380 – a 64% increase on the 2001 level.²
 - Over one in five debt clients had debts of more than £20,000.
 - Nine out of ten debt clients had some form of consumer debt.
 - Four in every five debt clients had multiple debts. The average number of debts was five, with one in every five clients servicing eight or more debts.
 - High interest rates, credit charges and easy access to credit were all contributing factors to debt. More than half of clients faced regular charges for being in arrears, which exacerbate the problem.
 - On average, for every £1 of monthly income, clients owed almost £22 of debt, excluding mortgages. This level of debt stress had nearly doubled in two years between the publication of our 2001 and 2004 reports.

¹ *On the Cards*: Citizens Advice Scotland's research on the debt crisis facing Scottish CAB clients, Cathy Sharp, January 2004.

² 2001 figures are from *In too deep, CAB clients' experience of debt*; Joint research, Citizens Advice and Citizens Advice Scotland, May 2003.

CAB Low Income, Low Assets debtors

5. CAS has long argued that the existing rules on debtor-led access to bankruptcy are inadequate in enabling poorer debtors to access debt relief. The requirement to prove apparent insolvency creates a significant barrier to debtor-led bankruptcy because it generally relies on formal recovery action by the creditor. We know from our *On the cards* research that formal debt recovery action is very rare unless there are significant assets (only just over a fifth of our debt clients' creditors had taken formal action) and debtors who are unable to constitute apparent insolvency are left in indefinite limbo. We know from the same research that debtors in this situation are subjected to contact and often harassment from their creditors, while being unable to remedy the situation.
6. We welcomed the Scottish Executive's move to examine the extent of this problem as part of the bankruptcy and diligence reform programme and in 2004-05, CAS sat on the Scottish Executive Working Group on Debt Relief that looked specifically at this problem for poorer debtors. The Working Group's remit was to explore the issues affecting no income, no asset (NINA) debtors, who were defined as having less than £20 per month disposable income to service their debt.
7. Through our involvement in the Working Group, Scottish Citizens Advice Bureaux were asked to take part in a "rough and ready" survey to help us ascertain and evidence the size of the NINA client group and the issues affecting them. The findings of this research were published in CAS evidence report *NINA debt clients*³, in 2005.
8. While the findings of this report were based on a different income definition, it should be borne in mind that a low income debtor under the proposed £100 per month definition is quite likely, after essential and necessary discretionary expenditure, to fall into the category of the £20 per month disposable income, NINA debtor. (There are further examples below to explain this assertion). The findings do, therefore, enable us to draw some general conclusions about the scale of the client group under the new proposed criteria.
9. The research showed that between one third and one half of new CAB debt clients fell into the NINA category. Extrapolating across the service, this provided us with a figure of between 4350 and 6450 new NINA clients each year. We also have evidence that these debtors are unable to access bankruptcy because of the apparent insolvency rules.

³ *NINA debt clients: A report based on the evidence of Citizens Advice Bureaux across Scotland*, Susan McPhee, 2005.

A South of Scotland CAB reports a client is in his 50's who will never work again due to ill health. His only income is Incapacity Benefit, Income Support and Disability Living Allowance. He is receiving all the benefits he is entitled to therefore his financial circumstances will not improve. The client has no funds available for non-priority debts, which total £14,300. This case was started in November 2001 but no action has yet been taken by creditors.

Client is a single parent with one child. She has debts totaling £4,400. She is working and receives WTC, but has no funds available for non-priority debts. Client's only option at present is to wait for court action to show apparent insolvency. This case has been ongoing since November 2002 and as yet no action has been taken by any of the creditors.

10. The proposed scheme is intended to form part of the Scottish Executive's integrated debt management framework, emerging from the recent and ongoing programme of legislative reform. The policy underpinning the framework is that every debtor in crisis should have access to some remedy providing a step out of their otherwise interminable situation.
11. CAS welcomed the enabling provision within the Bankruptcy and Diligence etc. (Scotland) Act 2007, to make Regulations for a LILA access route to bankruptcy, the very essence of which is to provide access to debt relief for those who cannot meet the existing legal criteria. However, we do have some serious concerns over the proposed eligibility criteria. It is crucial that the scheme is designed to ensure access to all who need it and we welcome the opportunity to be able to contribute to this process.

Income

(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?

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

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

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

12. We agree that any income based Social Security benefit should automatically be disregarded as income for the purpose of establishing eligibility to bankruptcy through the new LILA scheme. Entitlement to income based state support means that, by definition, the debtor has no income above that which is required for basic subsistence at the level determined by their personal and family circumstances. Any income designed to meet this basic subsistence level should be protected as such. In order to apply a consistent approach to this fundamental principle, protection should extend beyond income-based job seekers allowance (JSA) and income support (IS) to other means tested benefits such as housing benefit (HB) and council tax benefit (CTB). For the same reason, we believe that tax credits should also be disregarded. Tax credits are discussed further, below.
13. Provided a consistent approach is taken, and the exemption from categorisation as income is extended to all income-based benefits, we do not see a need to automatically categorise income-based benefit claimants as LILA purely by virtue of their entitlement.

Non means-tested Social Security benefits and Tax credits

14. A less straightforward argument arises around other income sources that should be discounted from the income calculation.
15. Our system of state financial support is complex and is administered by three separate state bodies.⁴ Benefits & tax credits systems form a complex interactive system where the right to claim one form of support may give rise to a secondary claim to another. Equally, entitlement to one may be offset against the amount that can be claimed through another – for example, working tax credit (WTC) will be treated as income when calculating income support entitlement.
16. Complex rules can often mean that clients are not actually getting the full amount of benefit that they are entitled to. An example of this is the

⁴ Social security benefits are administered by the Department for Work and Pensions, tax credits by Her Majesty's Revenue & Customs and housing benefit and council tax benefit by Local Government.

interaction between tax credits and HB. Tax credit claimants who are repaying earlier overpayments will not receive the full amount of their entitlement. However, some local authorities do not take this into account when calculating HB entitlement, but instead base the HB on the tax credit entitlement rather than the actual amount received. This reduces the amount of the HB entitlement.

17. Furthermore, administrative error can cause huge problems where multiple benefit entitlement exists.

A south of Scotland bureaux reports the following case: Client has been with the bureau since 07/08/2006. She came for help after she was widowed when her husband committed suicide whilst she was expecting her child. During her pregnancy she was incapable of work and received Income Support which included disability premium. After the child was born she received Child Tax Credit and Widowed parents Allowance which took her out of Income Support level. Therefore Housing Benefit was claimed on the grounds of low income.

Client was then notified that she was due to pay back HB and CTB as she had been overpaid, due to her Widowed Parents Allowance which had put her above entitlement for Income Support.

Initially she was assessed as receiving the enhanced family element of Child Tax Credit beyond the one year award period but this was rectified and the revised decision reduced her alleged housing benefit overpayment. Client did however still satisfy the grounds for receiving incapacity credits as she was assessed as being incapable of work making a disability premium appropriate.

In January 07, the client received eight separate HB and CTB award decision letters – some advising of an underpayment and others, of an overpayment.

Non means-tested benefits

18. Based on our clients' experiences it is our view that, for the purpose of LILA access to bankruptcy, the distinction between income based and non-income based benefits is artificial and inappropriate and that to incorporate this division into the eligibility criteria risks excluding those who most need access to debt relief.
19. The proposed LILA scheme is designed to circumvent the requirement to establish apparent insolvency, because it is so heavily reliant on formal recovery action. Assuming no assets exist, a debtor's low income renders formal recovery action worthless for the creditor. It is therefore imperative that

the LILA scheme criteria take account of the full range of circumstances in which a debtor would have insufficient income to attract formal recovery action. It is our view that this extends well beyond the receipt of means-tested benefits.

20. When we talk about income for the purpose of voluntary payments in bankruptcy, social security benefits are disregarded (it is common practice for trustees to discount benefit and tax credit income when establishing capacity to make contributions in bankruptcy and protected trust deeds). Furthermore, it is a shared view across the money advice and commercial lending sectors that social security benefits should be excluded from income calculation – or at least offset against their corresponding specific purpose.
21. All social security benefits are designed to meet the minimum acceptable standard of existence as determined by the claimant's specific, individual circumstances; each non-means tested benefit is claimed for its corresponding personal requirement. For example, disability living allowance (DLA) for care and additional mobility needs, carer's allowance (CA) for the additional financial burden of caring for a claimant of DLA, incapacity benefit (IB) for those who are unable to work through incapacity, and others such as bereavement benefit and maternity allowance, for obvious reasons.
22. An extension of this principle is the argument that certain benefits paid to a debtor are actually debts due to a third party. For example, that HB/local housing allowance and CTB allowance are actually monies due to the landlord and/or local authority; child benefit and CTC are monies owed by the claimant to his/her children.
23. We have particular concerns over sickness and disability benefits. It is not uncommon for IB claimants subsequently to become entitled to DLA where their condition has worsened or become chronic. We know that illness and disability are common triggers for manageable credit becoming problem debt - in CAS' research report *On the cards*, 33% of CAB debt clients gave illness or disability as a reason for their debt problem. We also know that sick or disabled people are disproportionately more likely to be in debt. From our 2006 research into the impact of illness and disability on Scottish CAB clients, we know that people with an illness or disability are over five times more likely (than the general population) to experience some form of financial difficulty.⁵
24. Claimants on the highest rates of IB and DLA would automatically be debarred from LILA access to debt relief because they would exceed the proposed income threshold of £100, as would claimants of industrial injuries disablement benefit where 80-100% disablement had been sustained by an industrial injury. This would, for example, include someone who has incurred total loss of hearing.
25. Other non-means tested benefit claimants excluded from definition as a LILA debtor would include pensioners claiming graduated retirement benefit, additional state pension or other pension additions (to the basic state pension rate) and debtors in receipt of maternity allowance or statutory maternity, paternity and adoption pay (for the claiming period).

⁵ Citizens Advice Scotland research, *Paying the price: the real cost of illness and disability for CAB clients*, Clare Lardner, 2006.

26. Claimants of other non-means tested benefits will be excluded where they are also in receipt of income from other sources and where the combined income pushes them over the threshold. This is a particular problem where tax credits are claimed on top of a defined-purpose benefit (many of which are disregarded as income for tax credit entitlement calculation). Debtors in this situation would be over the threshold, and yet all income received would be deemed by the state as necessary for that person's basic level subsistence.
27. Exclusion of non-means tested benefits will also create indefensible anomalies. For example, a claimant of income based JSA will not have their benefit treated as income, but a claimant of contribution based JSA will. Consideration should also be given to circumstances where a debtor is the principal claimant and is claiming benefits and/or tax credits for other family members potentially including adult dependants.

Tax Credits

28. Tax credits are essentially income-based state-provided subsistence supplements. Working tax credit (WTC) is an income-based credit for low-income working adults and is counted as income in assessing income support entitlement. It should, therefore, be treated in the same way as income support for the purpose of the LILA income definition. Child tax credit (CTC) has a dual function of supplementing income and supporting a child. It is claimable by low and middle income families.
29. Importantly, while CTC can be claimed by relatively high earners, those claimants would be outwith the scope of the LILA definition because of their earned income. Low income claimants of CTC will receive a purely income-related element and an element that takes account of the existence of a child and additional costs incurred. Again, this is state support either to supplement low income or for a specific purpose and to include it in the income definition would deny low income tax credit claimants access to debt relief. Despite the higher income anomaly with CTC, it would be fairer to implement a blanket exclusion on all tax credits.
30. In summary, we believe that because all state benefits and tax credits are designed to provide subsistence level income, either alimentary in nature or for a specific purpose, there is a fundamental justification for excluding them *all* from the income calculation. To do otherwise would be to incorrectly assert that they constitute spare income and to ignore the corresponding need, recognised by our social security system, to which they are designated. This view is supported by the provisions in their respective governing Acts of Parliament⁶ that they are inalienable and are thus intended only for the purpose for which they were designed. This ethical rationale is also reflected in the common practice of trustees in bankruptcy, where alimentary income is disregarded in assessing voluntary contribution capacity.
31. Deeming non-means tested benefits and tax credits less essential for debtors' needs than those that are means tested should not be the function of the LILA scheme. In order to make the LILA access route accessible to the most

⁶ S.187 of the Social Security Administration Act 1992 and s.45 of the Tax Credits Act 2002.

vulnerable debtors who may desperately need access to debt relief, we believe that a blanket income disregard for all benefit and tax credit income (including those that are local authority administered) is the most appropriate method of identifying the other sources of income that should be defined as such.

Other income

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

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

(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?

32. We have assumed that the income figure is for an individual. Exactly how income is established for co-habiting, civil partner and married couples where income may be pooled will need to be considered further before Regulations are drafted.
33. It is critical that the low-income threshold is set at the right level to ensure access for those who need it most. We do not think that £100 is an appropriate level for this purpose.
34. The National Minimum Wage (NMW) for workers aged 22 and over is £5.35 per hour. A weekly LILA threshold of £100 gross income would exclude anyone working over 18.7 hours per week on NMW from the low income definition. Fifty per cent of CAB debt clients have a monthly net income of £8,000 or lower and, with average debts of £13,380, would require a disposable income of £223 per month to repay the debt in full over five years.⁷ We know, then, that there is a large client group unable to repay its debts within five years. For this group, LILA access to bankruptcy is the only way of dealing with their debt but with an income threshold of £100, they will be excluded.
35. For example, a single debtor working a full time week (at 37 hours) in receipt of NMW will only earn £197 gross, per week. Even if WTC is discounted, the debtor would be far in excess of the £100 threshold on earnings alone and yet would only be earning £857 per month before tax and NI. A debtor in these circumstances would be entitled to approximately £3,361 WTC per annum. A rough deduction from income of 22% for tax and NI would leave a monthly net income of £668.45 resulting in a total monthly net income (including WTC) of around £948.53.

⁷ The five year period reflects the DAS administrator's policy on the definition of 'reasonable period of time' in determining a Debt Payment Programme application where creditors have withheld consent. This period also reflects the well established cross-sector view that rescheduled repayment over a five year period is likely to be unsustainable.

36. Using the Money Advice Trust/British Bankers Association Common Financial Statement (CFS) trigger figures,⁸ this debtor could reasonably be spending £541 per month on subsistence, leaving a figure of £407.53 for rent/mortgage payment, council tax and other critical expenditure. (NB: The CFS does not include rent/mortgage, council tax, other secured debts, pension, life insurance, TV licence, court fines, maintenance other generally static expenditure items that the client would have little or no control over).
37. These figures show how a single debtor working full time on NMW would, in reality, have little or no money to pay towards their debt but would be denied access to debt relief under the proposed LILA income rules. It is unlikely that their creditors would raise formal recovery action against them unless they had assets and thus they would continue to be stuck in limbo with no remedy. Given that fifty per cent of CAB debt clients in 2003 had income from employment, we know that there is a large group that would be excluded if the threshold is set at the wrong level.⁹
38. On this basis, we consider that the income threshold should be increased to £250 gross income per week not including benefits or tax credits. There must also be provision for annual up-rating of the income figure.

Maintenance

39. We would add that income for child maintenance, whether court ordered or claimed through the Child Support Agency, must be excluded from the income definition. These monies are fundamentally for the support and maintenance of a child and should not be treated as disposable income belonging to the debtor.

⁸ The CFS provides the basis for shared understanding between the money advice and consumer lending sectors over acceptable levels of expenditure. The figures are designed as a framework guide for adviser and creditor and they apply to expenditure items that are necessary, but are discretionary in terms of the actual amount.

⁹ *On the cards*, 2004.

Assets

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

(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?

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

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

(2f) If not, why?

Moveable property

40. We understand that the proposed LILA scheme is intended to provide an alternative route into bankruptcy rather than a new, concurrent, debt relief scheme. However there will be some considerable differences in administrative terms. If it is proposed that there will be no collection and distribution of estate and no creditor claims or dividends then, understandably, the assets threshold has to be as low as possible. That point notwithstanding, we believe that for the main asset types the proposed threshold of £1,000 is too low.
41. The proposed threshold is appropriate for most moveable assets and is consistent with the level set for protected items under the Bankruptcy (Scotland) Act 1985, as amended by the Debt Arrangement and Attachment (Scotland) Act 2002¹⁰ (DAA(S)A 2002). However, it is not realistic for the debtor's car and home (we oppose the idea of ownership of heritable property automatically excluding access through the scheme – this point is discussed further, below). The asset threshold must reflect commercial and customary reality, where different asset types are treated differently because the overall cost of realising a dividend from them will vary. The cost of selling a house, for example, is far greater than the cost of selling tools of the trade.
42. It is important that a flexible approach is taken in considering the asset threshold. The risk of setting it too low is that many low asset debtors will be excluded even though their assets would realise little or no dividend.

¹⁰ Schedule 3, introduced by s.61, Debt Arrangement and Attachment (Scotland) Act 2002, which limits the vesting of a bankrupt debtor's estate by protecting property that is exempt from attachment.

Debtor's car

43. In practice, trustees in bankruptcy and protected trust deeds will allow a debtor to keep a car where it is reasonably required and where the value is between £2,000 and £3,000. This practice more accurately reflects market reality, than the £1,000 threshold in the DAA(S)A 2002. It also takes account of depreciation in value and the limited dividend that a sale would return. On this basis, we would like to see the LILA asset threshold increased to at least £3,000. We do not think that creditors would be disadvantaged by this increase because it reflects current practice in ordinary bankruptcy.
44. We appreciate that this could ostensibly create an anomaly with existing provision but the scheme will fail to meet the needs of many low asset debtors if the threshold is set at £1,000 simply for consistency with other legislation which does not accurately reflect commercial reality and common practice. It would represent a missed opportunity if debtors who met the income threshold were refused debt relief simply because they owned a car worth over £1,000 when in 'ordinary' bankruptcy the car would not be sold unless it was worth much more. We also have to consider that Scotland's geography means that for many debtors a car is not just reasonably required but is an essential requirement.

Heritable property

45. We strongly oppose the idea that homeowners should be automatically excluded from the scheme. The critical factor should be the level of equity in the property rather than its ownership. A debtor's home may have negligible or negative equity and it would therefore make no sense to exclude them purely on the basis of ownership that means very little in terms of potential creditor dividend.
46. We would also argue that for heritable property the asset threshold should, again, reflect commercial reality. It is uncommon for a trustee in bankruptcy or in a protected trust deed to force a sale of the house where the equity is below £4,000 to £5,000, because the cost of the sale would negate any potential benefit.
47. The LILA scheme consultation document at paragraph 6.5 states that mechanisms to realise assets will be in place to deal with any change in circumstances. Should a heritable asset increase in value significantly during the bankruptcy period, it can then be realised for the benefit of creditors. We therefore see no reason why the debtor should automatically be excluded on the basis of home ownership.
48. We agree that owners of second or business properties should be excluded from the scheme.
49. If it is acknowledged that home-ownership should not automatically preclude access to LILA, then there is a strong argument for applying different thresholds to different asset types and we would support a tiered approach to asset value thresholds.
50. Finally, there needs to be provision for the annual up-rating of the asset threshold(s).

Debt Threshold, Applications and Awards

Debt Threshold: Questions (3a) and (3b)

51. CAS' research into the CAB no income no assets (NINA) debtor profile shows us an average debt level of £11,228.38. We are not, therefore, overly concerned that a large client group will be excluded on the basis of a £3,000 debt threshold. However, we are aware that it is not uncommon for debtors with very low incomes and no assets to have debts below £3,000 that cause them the same level of strain as a higher debt level would cause a proportionately higher income debtor. We would therefore support a lower debt threshold level to ensure access to the scheme and believe that, because of the very nature of the LILA scheme, this divergence from the ordinary bankruptcy debt threshold is legitimate.

Length of time as LILA debtor prior to application

52. The NINA working group identified two clear NINA debtor groups; those who were temporarily unable to contribute any income to their debts but whose circumstances were likely to improve, and those who had little or no chance of ever being in a position to make payment to their debts.
53. We think that this distinction is important and that, even with a cooling-off period, the scheme should not be accessible as soon as the debtor meets the criteria. There is a balance to be struck. It benefits no-one if a debtor rushes into bankruptcy when circumstances could improve. Equally, it would not be desirable to force an unnecessary delay where circumstances change and it is clear from the outset that the change is permanent. We would suggest that a debtor should be eligible having met the LILA criteria for a period of six months, either continuously, or for a total period of six months within the preceding 12 months.
54. For the six month waiting period to establish LILA status, we would want to see a statutory protective moratorium on diligence, so that the most vulnerable debtors are not sustaining arrestments on the dependence or in execution while waiting to apply.

Applications: Questions (4a) to (4g)

55. We are not opposed to an online application process but protections need to be in place to ensure that the debtor realises the gravity and full implications of bankruptcy. Perhaps these could be built into the system to prevent the debtor progressing through the application until specific information and warnings have been acknowledged. There should also be a paper application process for those who do not have access to the internet – particularly bearing in mind the debtor group likely to be using the scheme. The paper application should contain a comprehensive information pack and requisite warnings.
56. We do not support the proposal to charge a £50 application fee. While we understand the need to cover administration of the scheme, this is unlikely to generate significant revenue as well as representing a prohibitive expense. If

a fee was chargeable, there would need to be fee exemptions as currently exist for ordinary debtor petitions. However, many applicants would automatically be exempt on the basis of their income source and low income earners would struggle to find the fee. Given the purpose of the scheme, we think that fee charging is untenable.

57. A Statutory Declaration (presumably of eligibility under the income and assets rules) seems logical and mirrors the requirements of the current ordinary petition form. One option could be simply to amend the existing petition form to incorporate the new LILA criteria as an addition to the apparent insolvency sections. There could then be an additional section that allows the debtor to omit the statement of assets. Whatever the design, it is crucial that sufficient warning boxes are incorporated.

Awards

58. We agree that there should be a delay between the date of application and the date of the award, but that this should only be to provide a cooling-off period for the debtor. Accordingly, we would argue that a five week period is excessive and 14 – 21 days is more appropriate. During the cooling-off period, a debtor should be allowed to withdraw their application.
59. We strongly oppose the idea of a creditor right of objection as there is no equivalent right provided for in the current debtor petition process and therefore no justification for introducing it here. The right to object mirrors the process in DAS where in all the circumstances the approval of the DPP must be fair and reasonable. It does not reflect the existing rules for bankruptcy.
60. The LILA scheme is proposed as a parallel means of establishing eligibility for bankruptcy, to sit alongside apparent insolvency. It is effectively a way of establishing absolute insolvency and once statutory eligibility has been established there should be no creditor right of objection. If the debtor has been dishonest about their assets or income, this can be addressed by the existing rules and the new bankruptcy restrictions regime.

Special conditions and additional points

Signposting to advice provision

61. CAS has consistently argued that LILA access to bankruptcy should be through a money advice gateway. The value of free, independent advice cannot be underestimated when a debtor is making decisions with potentially huge implications. We do not think that money advice should be mandatory before the debtor applies through the scheme. This is not currently the case for debtor applications and the sector would need financial support to manage demand. However, we do want to stress that comprehensive information provision and signposting to free, independent advice is absolutely crucial for debtors accessing bankruptcy through the LILA scheme and we would welcome the opportunity to work closely with the Accountant in Bankruptcy (AiB) to make sure that adequate mechanisms are in place.

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