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Kostprijzen, tarieven en prijsafspraken voor ambtshandelingen gerechtsdeurwaarders

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www.pro-facto.nl

Ossenmarkt 5
9712 NZ Groningen

profacta@pro-facto.nl
050 313 98 53

Summary

Introduction

As a public official, the bailiff is authorized to perform tasks assigned to him under the Bailiffs Act. The bailiff performs so-called official acts on the basis of the Bailiffs Act. Bailiffs can also perform ancillary activities that are in line with their core task, such as the collection of claims. The bailiff performs his duties on behalf of his client, the creditor. In addition to being a public official, a bailiff is also an entrepreneur.

With the introduction of the Bailiffs Act in 2001, fixed rates have been set for the costs that can be recovered from the debtor (Btag fees). The amounts charged by the bailiff to his client have been free since 2001. The release of the fixed rates between the client and bailiff is intended to stimulate more market forces and more competition in the sector. However, this free rate based on price agreements also entails certain risks. The prices that bailiffs agree with creditors are established through supply and demand. In practice, in their competition with other parties in the sector, bailiffs may be forced to apply low rates to creditors that are sometimes below (nominal) cost.

In a survey conducted by Cebeon in 2016, it was concluded that although the Btag fees have been indexed since 2001, they have nevertheless generally not kept pace with the development of the integral cost price.¹ In 2017, the *Commission to review the fees charged by bailiffs for performing official acts* was set up, which was requested by the Scientific Research and Documentation Centre (WODC) to investigate the cost prices charged for official acts, the price agreements between creditors and bailiffs and the influence these have on the management of bailiffs' offices. Pro Facto conducted this research.

Sub-studies

The research report reports on two sub-studies. Sub-study A examines the integral cost prices of official acts performed by bailiffs, any dispersion in these and the causes of that dispersion. Sub-study B concerns the consequences of making price agreements between creditors and bailiffs for the business operations and the business model of bailiffs and for the financial position of debtors, bailiffs and creditors.

Conducting sub-study A: cost prices

In order to obtain a picture of the integral cost prices of the various official acts, a case study was carried out at twelve bailiffs' offices of different sizes and in different work areas. Within the framework of this case study, a number of sources have been explored:

- Discussions with a bailiff/owner and other persons involved in the performance of official acts. These discussions provided a picture of the operational management of the office and the way in which work processes are organized.
- A number of documents were requested from the offices, namely a specification of the gross wage costs per job level for 2016 and 2017, the 2016 and 2017 annual reports and, if possible, a specification of the official acts performed during that period and the associated official turnover.
- Each office was asked to make an estimate of the average time spent in minutes per official act per process step on the basis of a pre-prepared table.

¹ R. Boogaard, W. Nijhof en J. Kuipers, *Tarieven ambtshandelingen gerechtsdeurwaarders: toetsend onderzoek tarieven van een aantal producten*, Cebeon, 2016.

As a double-check to the case studies, a digital survey conducted among all bailiffs' offices asked about the estimated time spent on three official acts and two process steps (for all official acts where they are performed). The response rate for this part of the survey was 20% (32 bailiffs' offices). In addition, a panel meeting was organized where representatives from six bailiffs' offices commented on the research findings.

Findings of sub-study A

A cost price calculation was performed based on the data collected from the case studies. Not all offices supplied the requested data. In some cases, the data that was supplied was insufficiently usable because it was incomplete. The number of observations is therefore limited. The cost price calculation is based on estimates of eleven offices for common official acts and nine offices for less common official acts. Partly because of this, it cannot be excluded that the cost prices present a different picture than if more data had been obtained. This has been partly overcome by mirroring the outcomes of the case studies with those of the survey.

We found the cost price in fifteen cases to be higher than the current applicable Btag fee. In eight cases the cost price is below the current fee. For four common official acts², the time spent according to this measurement has increased by 92%, whereas in recent research by Cebeon in 2016³ only an increase of 10% in time spent was observed. The time spent on all official acts shows a more moderate but still substantial average increase of 46%. For two official acts for which the *Commission to review the fees charged by bailiffs for performing official acts* had requested additional research⁴, the results of the case studies indicate an increase in the time spent of 34%. The results of the survey seem to support these increases.

Generally speaking, according to this study the average time spent per official act has increased. As a result, the integral cost price of most official acts has also increased. The differences in the calculated cost prices and the current Btag fees create the impression that the participating bailiffs' offices are unable to perform official acts within the assumed time allocation. Although there is efficiency gain through automation, this only concerns part of the process steps. Moreover, the vast majority of the offices have to deal with customized writs, in respect of which the profit from automation is small.

When interpreting these results, the researchers warn that the results are not fully proven as there is only a very small number of observations. The use of different calculation methods or a different selection strategy in the case studies could produce a completely different picture. Moreover, it is unavoidable that such research involves strategic answers to questions or strategic behaviour when performing measurements. It has not been possible to verify data on the basis of file investigation or administrative investigation.

Conducting sub-study B: price agreements

In the context of sub-study B, interviews with the creditor, the debtor and the bailiff were conducted to obtain a picture of the creditor, the debtor and the bailiff's perspective in order to understand what the consequences of the different types of price agreements are, for example for the business operations and the earnings model of the bailiffs' offices and

² This regards the official acts of serving a summons (Btag art. 2a), serving an enforcement title (2b), serving notice of diverse attachments (2d) and seizure of periodic payments (wage attachment, 2j).

³ R. Boogaard, W. Nijhof and J. Kuipers, *Tarieven ambtshandelingen gerechtsdeurwaarders: toetsend onderzoek tarieven van een aantal producten*, Cebeon, 2016.

⁴ This concerns the seizure of bank accounts (2i) and the seizure of household effects (2e).

for the financial position of the debtor. In this context, in-depth interviews were conducted at the twelve bailiffs' offices where a case study was conducted. In addition to this, interviews were held at the other four bailiffs' offices, which are among the top five largest offices.⁵ Interviews were also conducted with twelve major clients of bailiffs. To take the perspective of debtors into account, discussions were held with the National Ombudsman and the National Organization of Social Counselors. A survey was also conducted to get a picture of the common price agreements in the sector and the relationship with the type of client with whom the agreements are made. The response rate for this survey was 28% (45 bailiffs' offices). A panel meeting was also organized for sub-study B.

Findings of sub-study B

During the research it became apparent that price agreements, other than the payment of Btag fees, are not common at relatively small offices (up to 20 FTEs). Medium-sized and large offices (more than 150 FTEs) work more often with price agreements other than Btag fees, in particular in the form of cost maximization.⁶ Smaller offices have a relatively large number of clients who require customization, such as clients from small and medium-sized businesses and law firms. Clients with bulk orders are mainly served by the large (and partly medium-sized) offices. Offices that work more with bulk-related price agreements also prove to be more profitable. It has been found that price agreements such as no cure no pay and negative settlement only occur for orders that are supplied in large volumes.

In cases where there are price agreements like that, the client has the option to select based on the most favourable financial conditions. However, clients indicate in the interviews that financial considerations are not the most important. In the selection of offices aspects such as national coverage, good communication and coordination of activities and quality of service to the debtor play an important role.

Regarding the treatment of debtors by bailiffs, very limited (concrete) insight has been obtained. The two organizations that have been approached to highlight the debtor's perspective have a limited view of what is happening in the market. They observe that the number of abuses seems to have increased, but cannot say whether there is a causal link between such abuses and the price agreements applied. An analysis of judgments by the Chamber of Bailiffs shows an increase in the total number of complaints, although the number of complaints that have been declared founded has remained roughly the same. At the same time, the number of complaints per year in relation to the number of files handled annually is very limited.

The advantages of price agreements based on Btag fees are primarily that the bailiff receives a reasonable fee for the proper execution of the work (provided that these fees are in line with the actual cost prices) and that there are therefore minimal incentives to perform unnecessary official acts. Other price agreements, which turn out to be financially advantageous for clients (who can also pass on these benefits to their clients), put more pressure on the bailiff and can increase the incentive to generate income on the debtor's side. A shift of risks compared to situations in which Btag fees are charged can be observed in particular where there are bulk orders with accompanying price agreements. The exact distribution of risks may differ per specific form of price agreement, but due to a strong negotiating position of clients, they can place risks to a very large extent with the bailiff. The debtor is also

⁵ One of the twelve bailiffs' offices where a case study has been conducted is one of the top five largest bailiffs' offices in the Netherlands.

⁶Cost maximization means that no more than a certain amount of costs will be charged in the case of no or incomplete collection of the principal amount.

at risk if the client and bailiff do not make agreements on the debtor strategy. Only from the debtor can the bailiff generate additional income.

The offices interviewed have acknowledged that in the event of deviating price agreements, there is an incentive to adopt a different debtor strategy. If part of the collected debtor fee has to be paid to the client, there is an incentive to perform more official acts than necessary per claim. Nevertheless, discussion partners indicate that they comply with professional codes and feel responsibility towards the (treatment of the) debtor. No new indications were found in this investigation with regard to improper treatment of debtors or excesses on the part of bailiffs. This may be due to socially desirable behaviour and strategic responses on the part of respondents and discussion partners. It is also possible that from the perspective of the debtors there is a sharp increase in unwanted acts, without these being recognized by clients or bailiffs as problematic acts. However, it may also be that the alerts being heard in the social and scientific debate with regard to (large-scale) problems regarding debtor strategy mainly concern incidents.

Various possible solutions are conceivable to remove incentives to unnecessarily perform official acts:

- In the agreement between bailiff and client, financial incentives can be built in which reward the finding of amicable solutions.
- Regulations can stipulate that certain price agreements that are now experienced as undesirable, such as agreements with *kickback fees*⁷, are no longer permitted.
- Coalitions that aim to promote socially responsible collection could be set up and/or further expanded

⁷ With a kickback fee, the bailiff not only pays the collected debts to the client, but also a certain percentage of the proceeds of the relevant official act is paid to the client.



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