

## **The Council's role with regard to the Wsnp (Debt Rescheduling (Natural Persons) Act)**

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### **Introduction**

The Legal Aid Council 's-Hertogenbosch is an independent authority, established in late 1992. There are a total of five Councils: Amsterdam, Arnhem, The Hague, Leeuwarden, and 's-Hertogenbosch. The Councils are charged with the implementation of the Legal Aid Act. People who have a legal problem but cannot afford a lawyer are eligible for funded legal assistance. This means they have to pay the lawyer a personal contribution, based on their income and assets. The Council will pay the remaining costs for legal assistance. The lawyer receives a flat-rate fee based on the case type.

This payment system is very similar to the payment system devised for Wsnp trustees before the act came into force in 1998. The Ministry of Justice charged the 's-Hertogenbosch Council with the actual execution of the tasks. A mandate was drawn up for that purpose.

### **The Council's primary tasks**

The Council's two main tasks are maintaining the trustees register and paying subsidies.

#### Trustees register

The trustees register distinguishes two types of trustees: lawyers and non-lawyers. Non-lawyers include employees of municipal money-lending institutions, lawyer's offices, or private trustees organisations. In order to qualify for registration in the trustees register, a non-lawyer must comply with the following conditions:

- be employed at a recognized trustees organisation or lawyer's office with a current insolvency practice;
- have successfully completed basic training from Trustee Wsnp for non-lawyers;
- have taken out liability insurance to an amount of not less than € 450 000.- per event and to a total of at least twice that amount per year;
- have a personal and operative e-mail address;
- during ten years prior to the moment of applying for registration, the non-lawyer must not have been subject to bankruptcy, suspension of payment or statutory debt rescheduling. Neither has he/she had to deal with other problematic debts during this period.

Lawyers must comply with the following conditions:

- be employed at a lawyer's office with a current insolvency practice;
- demonstrate to have sufficient experience with the insolvency practice or have followed special training for that purpose;
- have taken out liability insurance to an amount of not less than € 450 000.- per event and to a total of at least twice that amount per year;

- have a personal and operative e-mail address;
- during ten years prior to the moment of applying for registration, the lawyer must not have been subject to bankruptcy, suspension of payment or statutory debt rescheduling. Neither has he/she had to deal with other problematic debts during this period.

Only when the trustee is listed in the trustees register Wsnp and the trustee's payment information has been audited, payments will be made.

#### Paying subsidies

When the Court assigns cases to the trustee, the Council is informed accordingly. The case type is determined on the basis of the Court's information. There are four case types: single private person, double private person, single entrepreneur, and double entrepreneur.

**Single:** a private person, not married in community of property, no registered partnership in community of property.

**Double:** two private persons, married in community of property or a registered partnership in community of property.

**Private person:** not currently or formerly an entrepreneur

**Current or former entrepreneur:** a person who has been active as an independent professional or has had an enterprise during five years previous to the request for statutory debt rescheduling. In addition, at least 20% of the debts can be attributed to the enterprise.

Different subsidy amounts apply for the various case types:

Case type	Subsidy	Postage and other costs	Total subsidy	Advance	Second payment	Final payment
Single private person	€ 910	€ 187	€ 1097	€ 641	€ 228	€ 228
Double private person	€ 1092	€ 216	€ 1308	€ 762	€ 273	€ 273
Single entrepreneur	€ 2019	€ 187	€ 2206	€ 1196	€ 505	€ 505
Double entrepreneur	€ 2421	€ 216	€ 2599	€ 1407	€ 596	€ 596

Most debt re-scheduling schemes last for three years. The subsidy is paid in three instalments: an advance as soon as possible after the appointment of the trustee, a second payment eighteen months after the application of the Wsnp, and a final payment when the trustee has completed the case.

If there are many complaints about a specific trustee, the Council may decide to reduce the subsidy intended for him. Then the trustee receives a lower subsidy amount for this case until the problems are solved. The Council has this power since late 2004, but has not yet seen the need to use it.

## The Council's secondary tasks

In addition to its main tasks, the Council has a number of other responsibilities:

- recognition of trustees organisations
- improving quality
- research
- policy
- information
- supporting the Wsnp chain

### Improving quality

The Council improves quality at two levels: the trustees organisation level and the trustee level.

### Recognition of trustees organisations

An organisation must pass a procedure to be recognized as trustees organisation. The purpose of the procedure is to determine whether an organisation is able and capable of supplying suitable trustees in the framework of the Wsnp. In addition, it is assessed whether there is a reasonable chance that the organisation's trustees will be appointed frequently enough to guarantee the (financial) continuity of the organisation as well as to develop the required knowledge and quality and to justify any investments by the Council. It is important to make sure that the implementation of the Wsnp complies with the applicable quality standard.

The following starting points apply:

- In fact the Court is the trustee's main client. The Court makes its appointments on the basis of the trustees register managed by the Council. The Court must be able to rest assured that the trustees in this register are reliable partners who meet the generally accepted quality criteria for this profession.
- The Council assumes that, in addition to individual qualities, a solid organisation is required for a proper and efficient performance of the trusteeship. Lawyer's offices come under the Dutch Bar Association and as such they are already monitored as regards the necessary quality requirements. Since the activities in the framework of the Wsnp are virtually the same as those in the framework of their other tasks, it is assumed that no special recognition criteria are required. Lawyers do come under the individual rules for the trustees register Wsnp.
- The organisation must enable trustees to promote the interests of debtors and creditors with the aid of the instruments available under the law. Debtors usually belong to a vulnerable group which requires a careful and unambiguous handling of the procedure. Creditors do not have much influence on the way the scheme is arranged, but of course they do have to deal with the consequences. They too have a right to a clear contact person and careful handling of the applicable procedures.
- For that purpose the organisation must comply with requirements as regards professionalism, independence and expertise.
- The organisation's continuity (e.g. financially) must be guaranteed.

- It must have adequate capacity and support (people and means) to be able to carry out the trusteeship efficiently.
- It must be able to interlink with existing networks in the field of integrated debt relief and have access to electronic information exchange.
- The trustees and the organisations must be of unimpeachable conduct and they must not have been in a state of bankruptcy themselves.
- The organisation must be able to make a contribution to realising the objectives of the Wsnp. For that purpose its other activities must to a certain degree link up with the implementation of the Wsnp and the organisation must demonstrate to be involved in the underlying problems.
- The organisation must be prepared to comply with the applicable rules and regulations and to accept the applicable conditions for the implementation of the law.

These starting points are reflected in the applicable quality standards.

### **Trustees quality improvement; refresher courses**

When trustees have completed basic training and are registered in the trustees register Wsnp, they are assigned their first cases. It is mandatory for trustees to attend an annual one-day refresher course to ensure continued high-quality performance. The Council organises these refresher courses. Trustees can indicate in a survey what issues they want to know more about. Based on this survey, a number of subjects are selected for which trustees may enrol.

The refresher courses were started this month and the trustees could choose from the following subjects:

- training: how to cope with aggression
- training: time management
- knowledge course: Handling Wsnp of current or former entrepreneurs
- knowledge course: Financial handling Wsnp
- knowledge course: Sale real estate and movables, and debt novation
- knowledge course: Law of succession

The trustee must pay a personal contribution. The personal contribution for training sessions is € 100.-, for the knowledge courses it is € 60.-.

### **Quality improvement of trustees: maximum policy**

In 2005 the Council introduced the maximum policy. There were trustees with more cases in their name than they could reasonably handle. The Council wanted to structure this through the maximum policy.

Every full-time working trustee may have debt rescheduling cases to a maximum of 250 single private person's cases. A number of points were assigned to every case type:

Single private person	5 points
Double private person	3 points (per case)
Single entrepreneur	10 points
Double entrepreneur	6 points (per case)

The Council periodically monitors the numbers of cases per trustee and per organisation. If the maximum numbers are exceeded or nearly exceeded, the Council contacts the organisation in question to find out whether a number of cases have already been completed. The organisation gets the opportunity to explain why exceeding the maximum should be permitted.

Simultaneously, the Council inquires at the Courts whether there are quality problems that may be the cause of too high numbers of cases.

Subsequently, it is decided in mutual consultation whether measures are necessary and, if so, what measures. Eventually, the individual Courts decide whether the trustees or trustees organisations in question will still be appointed.

### **Quality improvement of trustees organisations: audits**

In addition to recognition of trustees organisations, the Council also periodically assesses whether the organisations still comply with the applicable quality standards. In this context the same quality standards apply as for recognition. Basically the periodic audit takes place once every three years. The Council may also audit sooner (prematurely). That may happen for instance when indications are received from the Courts that things are not proceeding the way they should be.

### **Research**

The Council initiates research. In 2005 a so-called baseline measurement was carried out in the framework of the Monitor Wsnp. The Monitor will be repeated annually. Monitor 2006 has almost been completed and contains among other things a sub-survey into life after the clean slate. What are the experiences of debtors who have successfully completed the Wsnp procedure and got their slate wiped clean. How do they look back on their debt rescheduling and what points for improvements have they identified.

This year the Council also started a survey into the estate account model. What is the best model for the estate account from the statutory, fiscal and practical points of view. This survey is expected to be completed early 2007.

In the framework of graduation assignments the Council also has researches carried out by university and academy students. This year a student of the school for Management, Economy and Law carries out a study into a system of permanent education for trustees. The results of this study will be the basis for the Council to decide whether the refresher courses in their current form must and can be redesigned.

## **Policy**

The Council facilitates trustees and other parties involved in the Wsnp. For that purpose it defines a policy where necessary. In addition, the Council develops new ideas for the design of the Wsnp and it contributes to proposals for amendments to the legislation.

## **Information**

The Council provides information in various ways:

- through the website;
- through folders;
- information on site for instance to bailiffs, companies or employees of the Legal Office, an organisation where people can get advice on legal issues;
- through the helpdesk;
- at conferences and workshops.

## **Supporting the Wsnp chain**

The Council supports the chain in various ways:

- it takes part in a wide variety of consultation structures;
- it supports the use of standard reports by developing and maintaining means for that purpose;
- the Council uses support subsidies for instance for trustee consultations. In various districts, periodic consultation takes place between trustee and chain partners. In this consultation problems during the performance of their task are discussed and information and experiences are exchanged. Because the Council regards these consultations as important, it promotes them through a subsidy which can be used to pay the costs of the consultation;
- promoting the establishment of a branch organisation for trustees;
- participation in the EU network.

## **Miscellaneous**

### Focus group

Because the Council highly appreciates it when the people in the field “think along” on various issues, it has set up a focus group with a number of trustees as members. These trustees have joined the focus group on personal title so they do not represent the entire branch.

### Trustees ID

The Council has made an ID card be developed which trustees can use to identify themselves on house calls and that provides easier access to the courthouse. This ID card is currently being distributed among the trustees.

### **In conclusion**

I have tried to depict the Council's role as clearly as possible. But, as always, you only find out how much you are actually doing as an organisation when you start writing it down. Still I hope I have given you at least a good impression of the Council's role with regard to the Wsnp. I shall be glad to answer any questions you may have.