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The future viability of bailiffs – summary

Commissioned by Research and
Data Centre (WODC)

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May 2026





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Final editing

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Summary

Background and policy context

Bailiffs perform a public function, namely the enforcement of the law. This is a crucial role within the legal system. However, there are many developments affecting the profession of bailiffs which raise questions about the structure and funding of the office and its future viability. It is important that these questions are answered and, where necessary, acted upon, in order to safeguard the functioning of the rule of law.

Various developments are taking place concerning (the market for) bailiffs that affect their work and funding. These include the shrinking profession, the consolidation of various existing regulations into the Bailiffs Regulation (Gerechtsdeurwaardersverordening), and the strengthening of debtor protection in recent years. In the (near) future, changes to the work of bailiffs are expected with the introduction of a (social) duty of care or an alternative approach to the commencement of proceedings.

The impact of the developments above on the profession is unclear. This leads to uncertainty and raises the question of whether the future viability of the profession is at risk. This also raises the question of how many bailiffs and what types of bailiffs are needed to prevent the legal system (the effective enforcement of the right to the performance of contracts) from being jeopardised.

Objective and research questions

The policy objective for which this study was initiated is threefold:

1. To gain insight into the current market and funding structure (based on both statutory and non-statutory activities) of bailiffs;
2. To determine exactly what developments are taking place in and around the market for bailiffs;
3. To assess how future-proof the current market and funding structure is, given the developments affecting the profession.

The resulting research questions (as formulated in Chapter 1) successively address the structure of the market and financing, requirements for the profession, (recent and future) developments occurring around the market and their impact on the market and financing structure, the future-proofing of these structures (in light of developments), and the course of action for the government.

Research design

We answer the research questions using the following research methods:

1. Desk research (research questions 1, 2 and 3): offers insight in how the current legislation and regulations governing bailiffs came about, what the current market for bailiffs looks like in figures, an overview of recent and expected future developments around the market, and how the duties of bailiffs are assigned and funded in various neighbouring countries.
2. Surveys (research questions 1, 4 and 5): through two surveys distributed via the Royal Professional Organisation of Bailiffs (hereafter: KBvG) among bailiff-entrepreneurs and bailiff-employees, we map out the situation of the profession (including workload, the nature and scope of work, fee agreements and future expectations).
3. Interviews and focus groups (all research questions): for this study, we spoke with representatives of the professional association KBvG, the interest group DB.NU, individual bailiffs, the Financial Supervision Agency (hereafter: BFT), various clients/creditors, consumer organisations, (practical and academic) experts, ministries and local authorities, and bailiffs involved in the '*Chain Detection of Problematic Debts*' (*ketensignalering problematische schulden*) pilot scheme.
4. Qualitative economic analysis (all research questions): offers an analysis of the structure of and actors in the market, forms of market failure, public interests, instruments for government intervention, and possible future developments and their impact on public interests.

Findings of the study

Market and financing structure of bailiffs

In the bailiff market, demand is determined by clients, with the scale of demand partly dependent on other actors, such as debt collection agencies, debt counselling services and the government. Supply consists of bailiffs (and their firms). Clients and bailiffs agree on a price for the bailiff's services, with the government having set maximum and fixed rates (for debt collection activities and official duties respectively) that may be charged to the debtor. The government has also established a statutory monopoly on official duties.

Various market segments can be distinguished here, with the size of the client, the assignment and the bailiff's office playing a role, as well as the type of assignment and the region in which the assignment is to be carried out. Different prices may be agreed upon in the various market segments, partly depending on differences in supply and demand and

market conditions. Various phases (desk research, surveys, interviews and economic analysis) of this study appear to indicate that the size of the client, the assignment and the firm are particularly important in these market conditions. Larger clients with bulk assignments have a stronger negotiating position vis-à-vis bailiffs than smaller clients.

In the market segment where smaller bailiffs serve smaller clients, bailiffs appear to hold a stronger negotiating position. This enables them to negotiate better terms. There is no evidence that smaller clients consequently have poor(er) access to justice.

Although regulations concerning price agreements have been tightened in recent years, almost half of the bailiff-entrepreneurs in the survey indicate that they have not experienced any difference in the price agreements made since this tightening.

Minimum requirements to ensure law enforcement

The study has shown that the question regarding minimum requirements is incomplete and that there are two public interests that must be safeguarded: the enforcement of the law (access to and enforcement of the law) and debtor protection. To determine which requirements the profession must meet to safeguard these public interests, the government must establish the minimum level at which these public interests are adequately realised. A concrete example of this: does the government believe that everyone in every region should be able to engage a bailiff at the same rate? Or is some price differentiation acceptable? And if so, to what extent? It can then be determined what minimum requirements the profession must meet to safeguard these interests.

In principle, there appears to be no lower limit on the number of bailiffs. Of greater importance is that supply and demand are aligned (the decline in the number of bailiffs in recent years goes hand in hand with a decline in demand for bailiffs' services) and can respond to each other swiftly. The supply of bailiffs should be able to respond swiftly to an increase in the number of debtors (and thus an increase in demand for their services). A number of market characteristics, such as entry barriers in the form of strict requirements for new firms and high training costs, currently make this more difficult, but the government has instruments at its disposal to address this.

Furthermore, it seems important to distinguish between the various market segments and to monitor whether the individual market segments are functioning sufficiently to safeguard the public interest, or whether it is desirable for the government to intervene in one or more sub-markets. Regional differences appear to be the most significant distinguishing

factor here, with sparsely populated areas being more likely to face a risk that law enforcement will be compromised. Furthermore – given the decline in small firms – the market segment in which small bailiff firms serve smaller clients should be monitored. The interviews indicate that there are currently no bottlenecks here, but this could change in the future.

Recent and future developments in the bailiff market and their impact on the market and financing structure

Developments in legislation and regulations

With the introduction of the Bailiffs Act (Gerechtsdeurwaarderswet), a number of changes have been implemented that have affected the financing structure of bailiffs. As bailiffs have had nationwide jurisdiction since the Act's introduction (with a duty to act within their own district) and price competition has become possible, various stakeholders indicated in the interviews that (particularly large) clients have gained a stronger negotiating position.

In addition, legislative changes have been introduced in recent years, many of which are intended to protect the debtor, such as the introduction of ex officio review of agreements, the introduction of the protected income threshold, and the restriction of attachment and enforcement rights. Various stakeholders indicate that bailiffs have fewer and fewer means at their disposal to collect a debt and that, as a result, the threat of the ultimate consequence of a debt – namely attachment and enforcement – is becoming increasingly less credible.

Less directly relevant legislation and regulations also affect the bailiff's work. For instance, privacy rules mean that bailiffs are not always permitted to share indications of wider issues with municipalities or social services without the debtor's consent. An increase in court fees means that clients are less likely to take legal action, which may result in reduced access to justice. At the same time, this quicker write-off of small debts provides better protection for debtors.

Developments in public opinion

Society is shifting towards a more socially minded approach to people in debt. Under the current funding structure and legal framework, there is little scope for bailiffs to take on a broader, more socially oriented role. For instance, a bailiff may currently advise the client to write off a claim if there are signs of mounting difficulties, but the client is not obliged to follow this advice. Furthermore, bailiffs receive no direct remuneration for social work (though

there is an implicit expectation that this forms part of their official duties). Consequently, whether debt is collected in a socially responsible manner depends heavily on both the client and the bailiff. Although the expectations that bailiffs must meet are changing, the legal and financial framework (and thus the bailiffs' ability to meet those expectations) is not changing accordingly. This may contribute to the high workload that many bailiffs report experiencing in the survey.

Trends in the number of bailiffs

The number of bailiffs has declined in recent years. This is in line with a reduction in the volume of work for bailiffs (supply and demand appear to have remained in balance). The interviews reveal concerns that this – particularly in regional sub-markets – could lead to reduced access to justice. The interviews indicate that this reduced access has not yet materialised.

Other recent developments identified

Finally, the interview with the ministries reveals that the bailiff is increasingly taking on the role of an information broker, with access to data streams, verifying facts and data, and unlocking data systems. The profession is also expected to take on an increasingly strong European dimension, with a rise in cross-border information requests and proceedings. In neither case were the potential implications for the market or funding structure discussed. It is conceivable that this will make the work more complex and may necessitate higher fees.

Expected future developments

The two most significant developments expected in the near future are the introduction of a statutory duty of care (with a social tariff) / social ministry duty and the introduction of a Collective Repayment Plan. Neither of these plans has yet taken sufficient shape to allow definitive conclusions to be drawn regarding their impact on the market for bailiffs. It stands to reason that the volume of official duties will decrease if there is better coordination in the event of multiple claims against the same debtor. As a result of the introduction of a statutory duty of care, we see the possibility of both a decrease and an increase in the volume of work. In both cases, we expect the measures to lead to better safeguarding of the public interest.

Finally, bailiffs themselves – as the survey shows – expect that digitalisation and artificial intelligence will change the nature of their work, with opinions divided as to whether this constitutes an improvement or a threat. In particular, the potential introduction of digital

service raises the question of how a social assessment can be made if the bailiff no longer physically visit debtors.

Future-proofing of the market and financing structure

We consider the current market and financing structure to be future-proof. Various parts of this study show that public interests are still safeguarded in the distinct segments of the bailiff market.

Should a situation arise (in certain market segments) in which these public interests are compromised, the government has a number of options at its disposal to intervene in the market. These include the government promoting the work of bailiffs (by extending their territorial monopoly or by, as a creditor, using only private bailiffs), subsidising training costs and publicly funding the supervision of bailiffs.

One example of a market segment where stakeholders anticipate that public interests may no longer be adequately safeguarded in the future is the provision of official services in sparsely populated areas. Specifically for this, the Committee of Experts (Commissie van Deskundigen) could steer the supply through the assessment of business plans. The government could opt to subsidise travel costs and prohibit the passing on of travel costs to the creditor. More far-reaching measures the government could take include imposing a contractual obligation and employing bailiffs directly as civil servants.

The study identifies two possible future developments that are reasonably concrete, namely the introduction of a Collective Repayment Plan and the introduction of a statutory duty of social care and/or a statutory duty of social ministry. Based on the public interests currently identified and the current market structure, we anticipate that both developments will contribute to the public interest. Furthermore, these developments will not lead to problems that the government cannot counter with measures. In the case of the social duty of care / social duty of assistance, the study indicates that it is important that, should this result in additional work for the bailiff, this is matched by a (to be determined) form of funding.

Policy action plan

Funding structure

No measures currently appear to be necessary with regard to the funding structure for bailiffs. However, there are indications that society's expectations of bailiffs are changing,

with the expectation that they will take on a more social role. There is currently no funding to cover this, and the legal framework is not geared towards it either.

If this social role is formalised (for example, through the introduction of a Collective Repayment Plan or a social duty of care / social ministerial duty), and this leads to additional work for the bailiff, then this should be matched by some form of funding. What such a form of funding might look like falls outside the scope of this study.

Options for government intervention in the event of market failure

At present, bailiffs in the various market segments appear capable of safeguarding the public interest (including law enforcement). However, there are indications that in certain regional sub-markets, access to justice may be at risk in the (near) future due to a decline in the number of bailiffs.

If the government decides, for example, that regional differences in the costs of engaging a bailiff are undesirable (and that some regional markets are failing), then measures are required. To this end, the government has various options at its disposal:

- Firstly, the Committee of Experts can provide guidance on the establishment of bailiffs through the assessment of business plans – whereby a bailiff cannot be forced to establish themselves in sparsely populated areas.
- The government may also prohibit price differentiation through the passing on of travel costs and offer bailiffs a travel allowance via a subsidy to operate in sparsely populated areas. Without compensation, a ban could lead to bailiffs in sparsely populated areas refusing to provide services.
- In addition, the government could impose a contractual obligation on top of the statutory duty, at rates agreed or not agreed between the client and the bailiff – for example, a maximum percentage of the Btag rates charged to debtors. As with a ban on passing on travel costs without compensation, this measure is likely to have unintended adverse effects: bailiffs may, for example, decide no longer to establish themselves in sparsely populated districts.
- The most far-reaching form of government intervention is for the government itself to employ a limited number of bailiffs as civil servants. The court locations in the relevant sparsely populated areas could, for example, be chosen as their place of work. The fees charged by the bailiff in government service could, for example, be based on what the CJIB, as a government organisation, pays private bailiffs for

comparable services. The government would then assume a contractual obligation itself and would not refuse assignments in sparsely populated areas.

The market for bailiffs is a shrinking market. In recent years, the shrinking profession has been in line with a decline in assignments (and, indirectly, a decline in the debtor population). Given recent technological developments in the finance market (for example, increasing opportunities for instalment and deferred-payment options), it is not inconceivable that the debtor population will grow again in the (near) future. To ensure that the profession can respond more quickly to changes in demand, the government could fund bailiff training so that it can be offered at a cost-covering rate at the statutory tuition fee. This would remove a barrier to entry into the market.

It may also be the case that the market continues to shrink. Currently, the costs of supervising the profession (disciplinary proceedings, membership of the KBvG and the supervisory costs of the BFT) are funded by the profession itself. Stakeholders have indicated that, in a shrinking market, this represents an increasingly significant fixed cost for bailiff's offices. This has a negative impact on the size of the market and, potentially in the future, on access to and the enforcement of the law. The evaluation of the Act on the Passing on of Costs for Supervision and Disciplinary Proceedings in the Legal Professions (Dantzig et al., 2023) recommends making it possible in practice for bailiffs to pass on the costs of supervision and disciplinary proceedings to clients (just as lawyers and notaries do). We endorse the recommendation to consider funding the supervision of bailiffs by the KBvG and the BFT (in part) from public funds, or to facilitate passing these costs on to clients.

It is important that the various market segments all continue to function effectively and that the public interest is safeguarded across all market segments. In addition to regional market segments, market segments can be distinguished based on the size of the client, the assignment, and the office, and specialisation. To keep the market as free as possible, the various segments must be monitored and intervention should only take place when public interests are no longer safeguarded. In doing so, account must be taken of the different types of firms. The market segment in which small bailiff firms serve small clients appears to be the segment where there is the greatest risk that access to justice will be compromised in the future. However, stakeholders do not appear to expect access to justice in this market segment to be compromised in the near future, as is anticipated in certain regional sub-markets.

Conclusion

This study focuses on the future-proofing of the market and financing structure of bailiffs, and the influence that recent and future developments have on this. The study illustrates once again that the Dutch system for bailiffs is a complex market, in which bailiffs have a broad range of duties, there are many market segments, and the market and financing structure may differ per segment.

The heterogeneity of the market makes it difficult to assess the future viability of the market as a whole. The market as a whole is a shrinking market, with a decline in both the demand for and supply of bailiffs. We see a number of short-term risks (such as the provision of services in sparsely populated areas) and other aspects which are not expected to play a role in the short term (such as the servicing of small clients by small bailiff firms).

A key factor in determining the extent to which the market is future-proof is the nature of the developments that are anticipated. Society is increasingly expecting bailiffs to play a more social role, for which there is currently no remuneration, placing bailiffs in a dilemma between societal expectations and the expectations of their clients. Upcoming developments, such as the introduction of a social duty of care / ministerial duty or a Collective Repayment Plan, are not yet sufficiently developed to allow for a proper assessment of how future-proof the entire market and financing structure will be following their introduction, nor whether differences will arise in the future-proofing of the various market segments.

The response to these changes may vary depending on the type of bailiff's office. Do larger offices see more opportunities in a more socially oriented interpretation of the role, or will this lead to a revival in smaller offices? And does a more socially oriented interpretation of the role make the profession's image on the labour market more attractive, thereby leading to renewed growth in the profession?

This study focuses on the future-proofing of the market and financing structure of bailiffs. The findings of this study indicate that the market is resilient to future developments, thanks to the entrepreneurial spirit of bailiffs and the safeguarding of public interests through targeted government intervention.