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# Point allocation in subsidised legal assistance

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*Changing times*



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**Summary**

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## S Summary

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### S.1 Policy context

Subsidised legal assistance enables individuals to receive legal assistance, who cannot otherwise afford it.

Legal aid providers (rbv's) receive compensation for the assistance they provide on the basis of a system of points, where one point corresponds to one hour. The various forms of legal assistance have been divided into 177 different types of cases, whereby each case type has been given a code. A fixed number of points has been allocated to each case code. This number of points has been determined on the basis of the average time spent on such cases. Total compensation is calculated by multiplying the number of points per case by a standard amount.

The current allocation of points per case is based on the average time expenditure on such cases, found in a study of the Maan commission, conducted more than twenty years ago.<sup>1</sup> In 2015, the Wolfsen commission<sup>2</sup> observed that this system requires maintenance:

*"The current system of allocating points is largely based on the report of the Maan commission and on time tracking data of twenty years ago. Developments in laws and regulations and jurisprudence are often not taken into account in the current way of allocating points. After a period of twenty years, it would be good to study in depth which "wrong" incentives are in place. (...) The allocation of points must be evaluated (and, if necessary, recalibrated). This also applies to the limit for 'extra hours'. Finally, we recommend organising a periodic time tracking study, for example once every three years, as is customary in jurisdiction".*

In response, the "Commissie evaluatie puntentoekenning gesubsidieerde rechtsbijstand"<sup>3</sup>, chaired by Mr. H. Th. Van der Meer, was established, which will evaluate the point allocation system.<sup>4</sup> Cebeon was invited to support this commission by examining to what extent these points per case still reflect the average time spent on those cases by lawyers and mediators today.

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### S.2 Research methods

#### ***time tracking data from registrations of the Legal Aid Board***

Applications for subsidised legal assistance must be submitted to the 'raad voor rechtsbijstand' (rvr) (Legal Aid Board). The rvr registers, evaluates and approves applications for subsidised legal assistance. One of the data items that must be entered during application, is the total time spent on a case. These time registration data form the basis of this study.

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<sup>1</sup> Commission to recalibrate legal assistance reimbursement

<sup>2</sup> Commission to study causes of cost increases in the subsidised legal assistance system and renewal of the system

<sup>3</sup> Commission to evaluate point allocation in subsidised legal assistance

<sup>4</sup> Parliamentary Papers II 2015/16, 31753, no 118.

### ***doubts about of the reliability of time tracking data***

Doubts have been raised as to what extent the hours provided to the rvr are always a good reflection of the actual hours spent. Careful time tracking requires an effort. And in many cases, the time tracking data are not actually used to determine the amount of compensation. This may limit the importance that rbv's attribute to the hours they submit and hence their accuracy.

### ***selecting reliable hour tracking data***

In order to address these reliability doubts, this study was set up to separate, as well as possible, reliable from less reliable time tracking data. Current time expenditure was then determined by using the reliable time tracking data.

The separation between reliable and unreliable data has been achieved primarily by individually asking rbv's to estimate the extent to which the hours they entered correspond to the actual time spent on these cases. To this end, a web survey was held among rbv's. The survey was sent to all rbv's who had declared a case in the past three years. Of these rbv's, 40% responded. Based on the answers about reliability in the survey, the reliable time registrations of more than 2,000 rbv's could then be used. Further investigation into possible differences between the response group and the non-response group, did not show systematic (significant) deviations. Finally, a limited number of sample checks were carried out. These checks did not raise any doubts as to the usefulness of the time registration data of the (net used) sample.

With the objective of raising the reliability (robustness) of the results, the average time expenditure was determined on the basis of time registrations of the three most recent years: 2014, 2015 and 2016.

### ***variations: standard cases, increments, cuts and additional hours***

Compensation for subsidised legal assistance is based on the number of points per case code. This number of points used to correspond to the average time spent on a 'standard case'; a case without 'incidental' time-prolonging elements.

In practice, a number of incidental time-prolonging deviations from the 'standard case' may occur. The system takes this into account by allocating increments (or cuts) on top of the 'standard points'. One or more increments or cuts occur in more than half of all cases. Because different deviations can lead to different time expenditures, increments and cuts occur in different numbers of points.

In addition to these increments, if a case turns out to be extremely time-consuming (through sheer complexity or other exogenous factors), an rbv may request to be compensated for so-called 'extra hours'. A case is eligible for extra hours if the number of hours spent exceeds three times the fixed number of points of a standard case.

Apart from evaluating the contrast between current time expenditures and current point allocation of standard cases, the study also evaluates the contrast between current time expenditures and current point allocations of these 'deviant' cases. In this summary, however, the focus is on the standard cases.

### S.3 Current time expenditure

The table below shows the current point allocation and the current average time expenditure of 'standard cases' for the most used case codes<sup>5</sup> (representing 71% of all cases).

**Table S.1: Average time spent on 'standard cases' of the 24 most frequently used case-codes in the period between 2014 and 2016**

nr	case code	description	(1) points	(2) curr. time	(2-1) contrast	number of observations (n)	standard deviation (σ)
1	S040	Misdrijven, eenvoudige kamer	6	6.4	0.4	(7,437)	4.0
2	Z020	Bijzondere opname psych.	4	3.6	-0.4	(6,295)	1.6
3	S050	Misdrijven, meervoudige kamer	8	13.7	5.7	(1,057)	8.6
4	S020	Jeugdstrafzaken	6	6.0	0.0	(1,266)	2.9
5	S041	OM-afdoening / strafbeschikking	6	5.4	-0.6	(401)	2.6
6	P010	Echtscheiding met nevenvord.	10	21.5	11.5	(2,303)	14.4
7	P010gt	Echtscheiding m.n. geen tegenspr.	7	11.6	4.6	(2,848)	7.7
8	P030	Alimentatie / levensonderhoud	7	12.2	5.2	(4,304)	7.9
9	P041	Omgangsregeling	7	11.9	4.9	(1,825)	7.9
10	P043	Ondertoezichtstelling/Uithuispl.	7	7.4	0.4	(2,201)	5.7
11	P040	Ouderlijk gezag / voogdij	7	10.5	3.5	(1,212)	6.9
12	P100	P-/familierecht. ov. geschillen	7	11.8	4.8	(1,080)	8.3
13	P020	Echtscheiding op gem. verzoek	7	10.7	3.7	(1,060)	7.5
14	V062	Rechtsbijstand in twee fases	8	6.5	-1.5	(1,773)	2.8
15	V010	Vreemdelingenrecht	8	7.7	-0.3	(3,007)	5.1
16	V042	Beroep asiel	8	9.3	1.3	(390)	6.2
17	C010	Wet werk en bijstand	8	7.9	-0.1	(4,709)	4.3
18	C030	Sociale voorzieningen – ov. zaken	8	8.5	0.5	(1,331)	5.4
19	D020	Arbeidsongeschiktheid	8	9.6	1.6	(2,000)	5.3
20	O030	Geschil verbintenissenrecht	11	15.6	4.6	(1,234)	11.3
21	O010	Geschil onrechtmatige daad	11	18.4	7.4	(396)	12.6
22	M610	Fam.Niet-fin. Echtscheiding (P)	4	9.9	5.9	(2,346)	6.0
23	H010	Beëindiging huurovereenkomst	9	14.2	5.2	(911)	12.8
24	B010	Bestuursrecht	8	8.8	0.8	(1,864)	5.0
<b>Average</b>			7.5	10.4	2.9		
<b>Number higher</b>					19	79%	
<b>Number lower</b>					5	21%	

<sup>5</sup> Case codes with a minimum of 15,000 applications between 2014 and 2016. See annex A of the report for a complete overview.

The table shows that for most of these case codes (79%) the current average time expenditure exceeds the number of points allocated to those cases. In a single case, the average time expenditure exceeds the number of points allocated by a factor of two. On average, the amount of time spent is 2.9 hours higher than the points received.

For most cases, the average is fairly stable over the 3 year period. For some, a trend is visible: 10 case codes show a substantial decrease and 12 case codes indicate a substantial increase in average time expenditure over three years.

#### ***extra hours***

A number of case codes contain a substantial number of cases with ‘extra hours’.<sup>6</sup> This applies in particular to case code S050 Misdrijven, meervoudige kamer’. The average time spent on extra hours is 16.6 hours per case over all cases with this case code. For only the cases with extra hours, the average time spent on this case code is 112 hours.

#### ***time spent on cases with increments and cuts***

A large number of different types (and combinations) of increments and cuts (such as judicial advice, travel time, coherent cases) exist. Further research on the increments and cuts makes it clear that time spent on cases with increments and cuts may differ significantly from the average number of points allocated to these cases. The difference between the time spent and the points allocated, increases on average from approximately 6 hours at one increment to approximately 7½ hours at two increments, and approximately 9 hours at three increments. Differences may be larger or smaller depending on the case code.

#### ***actual time expenditure and experienced time expenditure***

In the web survey rbv’s were also asked about current point allocation in relation to their current time expenditure. They were asked to indicate how the actual time expenditure relates to the allocated points (by percentage).

For almost all jurisdictions a (large) majority of the rbv’s (76% on average) indicate that the current time expenditure is higher than the current point allocation.

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## **S.4 Conclusion**

The Wolfsen commission observed that maintenance of the point allocation system in subsidised legal assistance is overdue. This study confirms this finding. It shows quantitatively, by means of various tables, where and to what extent discrepancies between time expenditure and point allocation occur. These insights provide ingredients for possible changes to the current points allocation system.

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<sup>6</sup> Cases in which the total amount of time spent exceeds three times the number of allocated points. The hours that exceed the limit of three times the allocated points, are reimbursed in addition to the fixed number of points.