

Dilemma's and solutions in Dutch Consumer Debt Support

Consumer debts and legal aid are closely connected. Many legal conflicts result in financial damage and debts often result in additional legal procedures. Handling those two social phenomena benefits from coherence. This article presents some of the dilemma's from both domains in the Dutch situation and lines out some of the solutions the Legal Aid Board developed to tackle them.

¹There is no doubt to the fact that consumer debts have an enormous impact on the wellbeing of citizens, but also cause damage to the society. In 2014 the renowned Nibud² calculated that the costs of consumer debts rise up to € 10.000, per year per household and for a period of 10 years on average³. These costs consist of extensive use of unemployment benefits or welfare, the demand for professional support and more frequent illness. Furthermore there is an apparent relation between debts and the appeal on legal aid.⁴ An enquiry by the Legal Aid Board showed that 50% of all people who were admitted to the debt restructuring scheme in a certain period, also had required legal assistance, on average 2,5 times per person. This is substantially higher than the average of all citizens who are allowed to make use of legal aid provisions. Also often the relation became obvious, looking closer at the data. Dismissal or divorce appeared to result in debts and citizens with debts needed legal counseling to prevent evictions, defend against seizures, to solve problems with social provisions or to support a divorce.

Consume

Besides the personal and social damage, that go along with debts, the economy is damaged. Debtors hardly consume. If their volume is limited, the impact on the entire economy is negligible. However, in the Netherlands meanwhile every third household already has problems with paying all bills⁵. Especially in times of limited or negative economic growth, it is desirable and important to solve consumer debts and allow people to participate in the economy in a healthy manner. It is amongst others for this reason that countries like Taiwan and Croatia have provided an opportunity for a relatively easy financial amnesty.

Approach consumer debts

The Netherlands have been developing more subtle mechanisms to prevent and deal with consumer debt for several decades. The national governments as well as professional debt workers have taken numerous measures to take control over the ongoing expansion of these problems and to enhance the efficiency of efforts taken. Legislation has been established to provide access to debt aid for all citizens⁶. This is a legal responsibility of municipalities. The most important product is debt mediation: a

¹ Since all sources to support this article are written and only available in Dutch, the author has chosen to use the original citation titles. Additional information can be requested at jhmvdendehoff@bureauwsnp.nl

² The Dutch Institute for Budget Education (Nederlands Instituut voor Budgetvoorlichting) is a private organization that performs to income and financial behavior of Dutch households, calculates the effects of government measures on these households and offers civilians as well as professional organizations support in controlling expenditures.

³ Overkoepelende blik op de omvang en preventie van schulden in Nederland, Oktober 2014

⁴ Monitor Wsnp, derde meting, Universiteit van Tilburg, 2007

⁵ Monitor betalingsachterstanden, Panteia, 2014

⁶ Wet gemeentelijke schuldhulpverlening, 2013

specialized debt mediator tries to reach an agreement on partial payback of debts between a debtor and all of the creditors. The debtor has to live on a minimum income for three years. During this period all other income and possessions are made available to creditors. In the end the creditors that agree to the mediation proposal, relieve the debtor from all remaining debts. If mediation is not successful, the Act on debt relief for natural persons⁷ offers an opportunity for a court verdict on a possible fresh start. The Legal Aid Board is responsible for the execution of this legal debt restructuring scheme.

Successful

This legal scheme is in itself very successful. Annual reports show that⁸:

- Over 80% of all request for admission to the scheme, are being granted;
- 80% of all admitted debtors gets a clean shed, on average after three years;
- And that less than 20% meets new financial problems within three years after completion of the scheme.

Limited overall result

However, the contribution of the legal procedures to the entire approach of consumer debts appears to be limited. Compared to appr. 100.000 new households with serious debts per year, the 10.000 fresh starts given by the courts are not very substantial.

Furthermore the implementation of the legislation in 1998 lead to a enormous decrease of the amount of successful debt mediations⁹. Although this negative curve has meanwhile bent back to some extend, in the end we do not succeed to help a higher percentage of debtors than in 1998. And despite the success of the legal scheme and the growing amount of households with large debts, over the last few years the number of applications for the legal debt restructuring has even decreased.

No access

Research shows that this has been caused by the debt policies of municipalities¹⁰. These local governments appear to make more and more use of their competence to refuse access to debt services. This is amongst others the result in a change of profile of debtors.

Traditionally people with a longtime low income and/or limited financial competences fell into debts. Meanwhile the target group consist mainly of debtors who suffered a sudden decline of income, caused by a life event. Until that event they showed a very sensible and responsible pattern of expenditures. After the decline of income they were not able to adapt their spendings soon enough. In the Dutch system cost of recovery and interest can amount very fast and households are being pushed over the proverbial cliff very easily.

⁷ Wijziging van de faillissementswet ter bevordering van de sanering van schulden van natuurlijke personen (Wsnp), 1998

⁸ Annual report on the operation and effect of the act on consumer debt restructuring by Tilburg University, central Bureau of Statistics and the research department of the Legal Aid Board.

⁹ Van Schuld naar schone lei, WODC 2001

¹⁰ Monitor Wsnp, tiende meting CBS, Raad voor Rechtsbijstand 2014 and Onoplosbare Schuldsituatie, Hogeschool van Utrecht, 2015

Mortgages

This mechanism was enforced by the fact that the current economic recession hit many house owners with mortgages. A decline of income disabled them to fulfill their monthly payments (30% of all fixed costs). Up to a few years ago people in that situation would simply sell their house, use the obvious overvalue to pay back their debts and move to cheaper housing. Then the balance between income and spendings would be restored. But nowadays many houses are unmarketable, prices have dropped with dozens of percent's¹¹ and cheaper accommodations are simply not available. The result is that many debts appear to be unsolvable as soon as a private owned house is concerned. And that is why municipalities exclude e.g. house owners from debt mediation schemes on a large scale. They are only given access after having sold their house, which is almost impossible. This fact is especially frustrating since mortgage problems can be solved in most cases during the legal debt restructuring scheme. Without getting access to debt mediation, access to this second scheme is almost impossible.

New insights

New insights, provided by Sendhil Mullainathan and Eldar Sharif in their book 'Why having too little means so much' emphasizes the necessity to break this deadlock¹².

In short the authors pose the theory that having debts requires a lot of attention, time and energy, which can not be spent on other positive and/or more fruitful activities. Furthermore the risk on bad, ill-considered decisions is growing demonstrably.

However, is a person in those circumstances given the opportunity to escape from this permanent pressure, he can focus entirely on and use his intellectual competences for 'normal' behavior. Therefore he will make sensible decisions more often. This person can take full responsibility for solving his financial problems. And after having solved them, he will be able to remain acting responsibly, having learned important lessons.

The forementioned success of the legal debt restructuring scheme appears to support this theory. Within the scheme the debtor remains entirely responsible for not only fulfilling all (severe) obligations, but also for his own expenditures. A court appointed administrator is merely supervising, but does not offer actual support. Nonetheless 80% of all citizens succeeds in meeting all demands and is granted a fresh start. Furthermore the change in financial behavior appears to be sustainable. This result is suspected to be caused by the elimination of all existing measures, threats and other negative impulses at the beginning of the scheme. Seizures and collection measures stop, bailiffs no longer batter the debtor and foreclosures or ending electricity, gas or water deliveries no longer are threats to the households concerned. The civilians can focus entirely on regular financial behavior in which monthly payments of redemption in favor of creditors are an simply one of all fixed costs.

Conclusions

The content of this article so far, at first shows an somewhat gloomy picture:

- The number of households with financial problems in the Netherlands, has increased over the last two decades;

¹¹ Between 2008 and 2014 the prices of houses have been decreased on average by 20-40% , CBS 2015

¹² Scharste, Sendhil Mullainathan & Eldar Shafir, 2013

- Accordingly the social damage has grown;
- The Dutch government has created numerous instruments to get control of this problem, amongst which the legal debt restructuring scheme (Wsnp);
- This scheme in itself is successful, but the results were neutralized by the failure of other instruments;
- The accessibility of the most important instruments as been declining.

A closer look however leads to additional conclusions and shows some useful connections:

- Consumer debts are often caused by life events. Households experience a sudden decline of income caused by a life event and are not able to adapt their expenditure pattern soon enough;
- The impact of these events paralyzes people to some extent, makes them take wrong decisions more often;
- Thus the life events are the beginning of a domino-effect. One problem leads to another, pressure is rising after which more mistakes are being made, etc;
- Many of those life events can not be prevented. However, the domino-effect afterwards, can be stopped in an early stage. In that case the total damage following the event can be limited as well;
- The self-reliance of most people in itself is not the biggest problem. The degree in which they are able to address this competence in difficult circumstances however, is;
- Besides that many civilians lack specific knowledge and competences to deal in particular with consumer debts;
- Handing over useful tools, relevant knowledge and tailor made support can make a difference. For the civilian as well as for society.

Chances

The Legal Aid Board has recognized several opportunities for new solutions and contemporary instruments to meet this challenge and has undertaken several initiatives to utilize these opportunities.

Multiproblems

Recently he prepared and executed a pilot-project concerning multiproblems. During a first assessments of a reported legal conflict, professionals of the Legal Service Counter (Loket) selected cases where there was a apparent coherence between the legal conflict and consumer debts. In stead of providing traditional legal aid by a lawyer, the clients were assigned a legal case manager. This person not only tried to solve the conflict itself, but also gave attention to the underlying debt situation. During the period of a year the case manager could provide additional support to the client. The target was to improve the financial situation in order to prevent new legal conflicts.

The pilot project was executed on a small scale and lasted a limited period of time. Therefore the long term effect could not be established. However, an evaluation showed enough progress to convince the Legal Aid Board of the promise in the approach. Currently it is looking for means to continue the project. Apart from debts, the Legal Aid Board considers to determine other frequent triggers for multiproblems, like divorces or dismissals.

Signpost of Justice (Rechtwijzer)

The approach is also being applied in the Signpost of Justice, which has been presented to Ilag-members before. The first module of this innovative instrument was aimed at divorce. Through this interactive website civilians are given access to tools which enable them to manufacture important products related to their proceedings themselves. Apart from a divorce plan with or without visitation agreements for children, alimony or division of inventory, additional attention will be given to the financial consequences of the divorce. Often two households should be managed with the same income instead of one. There is a large necessity to prepare both parties for these new circumstances to avoid large financial problems.

When extending Rechtwijzer with a module on housing/rents, the Legal Aid Board aims for a similar approach.

Signpost of debts (Schuldenwijzer)

Furthermore the Legal Aid Board within Rechtwijzer develops a separate module on consumer debts. This will provide civilians with information that helps understand the nature of their financial problems, will offer possible solutions but also contain tools to take matters in their own hands and undertake action to solve the debt problems. In the end the debtor might even gain access through this tool to the legal debt restructuring scheme without having to pass the debt mediation scheme.

Because the matter concerned is complex and debtors often are temporarily not able to collect the necessary information or take the proper steps themselves, the Legal Aid Board explores the availability of expert support.

The module on debts (Schuldenwijzer) is expected to be available at the end of 2015.