



Welsh Language Tribunal Annual Report 2016 – 2017

March 2018



Tribiwnlys y Gymraeg
Welsh Language Tribunal

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Foreword



This is the Welsh Language Tribunal's third annual report.

For the periods of the previous reports, the Tribunal's task was to prepare itself to exercise its functions under the Welsh Language Measure 2011. The Welsh Language Standards and the related regime were not yet fully in force, and the possibility of appealing to the Tribunal against the Welsh Language Commissioner's rulings had yet to develop in practice.

By the year 2016/17, the period of this report, the situation had changed. The Tribunal had begun to receive cases. Our main task, therefore, was to begin to apply the procedures and skills that had been developed during the preparatory period.

Nine cases were received during the year. Although two were resolved after the end of the reporting year, the summary of the Tribunal's judicial activities in this report refer to the results of those cases in order to give a more complete and accurate picture.

The number of cases received by the Tribunal was limited, and even fewer required a ruling by the Tribunal. This was because a number of applications were withdrawn following further discussions between the Applicant and the Commissioner. However, the Tribunal's influence should not be judged solely on the number of cases determined. The existence of the Tribunal, and the knowledge that the function of the Standards regime is ultimately subject to the Tribunal's supervision ensures the general integrity and fairness of that regime.

Also, the Tribunal's decisions, in those cases which conclude with a formal ruling, can be important guidelines, useful for everybody involved in the regime's operation. This point underlines the core purpose of the Tribunal. The Tribunal was not established to criticise nor punish public authorities, including the Commissioner, who are responsible for implementing the Welsh Language Standards. Rather, the Tribunal is there to help them with that task. The Tribunal's success will ultimately be measured not in terms of the number of cases it presides over but rather in terms of the effectiveness of the Standards regime in relation to the aim of the Measure, which is to promote and facilitate the use of Welsh.

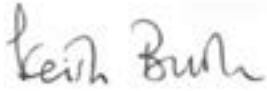
Although it is too early to assess the Tribunal's effectiveness as a means of resolving disputes, the early evidence is promising. Cases were dealt with in a timely and effective manner. The Tribunal's procedures worked successfully, and this despite the fact that the Tribunal's Rules were designed for a newly-created body to deal with disputes unique to Wales. It is the Tribunal's aim, once we have more practical experience of following the procedures in accordance with the Rules, to review them with the aim of simplifying them somewhat.

A central element of the Tribunal's procedures and of its work in general, is that it is a completely bilingual body, which operates naturally and effectively in both Welsh and English.

The Tribunal's main preparatory work, including the drawing up of procedural Rules and Practice Directions, the appointment of members and training them to deal with cases has now come to an end, and indeed is bearing fruit. However, naturally, we are still refining the members' skills with continuous training, which now has the added benefit of the Tribunal's experience of dealing with cases.

We look forward, as a Tribunal, to playing an increasingly influential role in the crucial work of ensuring the successful operation of the Welsh Language Standards.

I welcome any comments, or suggestions, in connection with this report or any other matter relating to the Tribunal's work. The Tribunal's contact details are on page 9.

A handwritten signature in black ink that reads "Keith Bush". The signature is written in a cursive style with a large initial 'K'.

Keith Bush QC
President of the Welsh Language Tribunal

Section 1: About Us

In this section:

- Background
- The Tribunal's Functions
- The Tribunal's Rules
- Practice Directions
- The Tribunal's Members
- Appointments
- Training
- Contact the Tribunal
- The Tribunal's Accessibility

Background

The Welsh Language Tribunal is a statutory tribunal established under section 120 of the Welsh Language (Wales) Measure 2011 ('the Measure'). The Tribunal's function is to decide on appeals against the Welsh Language Commissioner's ('the Commissioner') decisions in relation to Welsh Language Standards.

The Tribunal's Functions

The Measure enables the Tribunal to hear the following:

1. Appeals against the Commissioner's decisions in terms of imposing Standards on bodies and officers exercising functions or providing public services in Wales.
2. Appeals against determinations by the Commissioner, at the end of an investigation, regarding failure to comply with the requirement of a Standard.
3. Appeals by a complainant against a determination by the Commissioner, at the end of an investigation, that a person had not failed to comply with a standard.
4. Appeals against enforcement actions taken by the Commissioner.
5. Appeals against evidence notices issued by the Commissioner during the investigation.
6. Reviews of decisions on behalf of the Commissioner not to investigate a complaint (or to bring an investigation to an end).

The Tribunal's Rules

The Tribunal operates according to its procedural rules – **The Welsh Language Tribunal Rules 2015**. The purpose of these Rules is to ensure that all cases heard by the Tribunal are treated fairly, consistently and promptly. They ensure that everyone who comes before the Tribunal understands precisely the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Tribunal. They also ensure that every party in the case understands the arguments of the other parties and can respond to them.

According to section 123 of the Measure, there is a duty on the President to produce Tribunal Rules on the practices and procedures to be followed in the Tribunal.

The Tribunal's Rules outlines the following:

- overarching rules – which deal with some basic overarching principles and define the specialist terms used in the Rules
- provisions in connection with selecting the Tribunal Members who will hear individual cases
- how to commence an application to the Tribunal
- the practical actions that must be taken to prepare a case for a hearing
- the powers which the Tribunal has to manage cases, including the directions the Tribunal may give to parties on the actions which they must take before a hearing
- the process followed for hearings and formal decisions made by the Tribunal
- what happens after a decision has been reached, including arrangements for reviewing the Tribunal's decisions or appealing to the High Court
- various other provisions, including: administrative rules regarding the recording of decisions, submission of documents and considering and setting deadlines.

Practice Directions

The President is authorised, under section 124 of the Measure and Rule 4 of the Rules, to issue Practice Directions to provide practical advice on how to interpret and implement the Rules.

Practice Direction 1 – Commencing a Case

Rule 10 of the Rules provides that an application to the Tribunal must be started by submitting to the Tribunal a written document (notice of application). Rule 12 prescribes the information that must be included in, and with, a notice of application.

The purpose of this Practice Direction is to publish a form which, when used by an applicant will assist the applicant (or the applicant's representative) to conform with the requirements of Rule 12. That form should be used to submit a notice of application.

It is not a legal requirement to use this form. An applicant may supply the information prescribed under Rule 12 by some other means. However, the use of this form will:

- ensure that all the required information is given
- assist the Tribunal to consider that information in the most consistent and effective way possible.

Practice Direction 2 – The use of the Tribunal's languages

Rule 6 of the Rules provides:

- that the English and Welsh languages shall be the languages of the Tribunal
- that every party or witness shall have the right to use either language in the proceedings of the Tribunal.

The purpose of this Practice Direction is to provide practical advice on how to interpret and apply the Rules in accordance with Rule 6.

In accordance with Rule 4(4), the contents of this Direction are subject to any instructions given to the Tribunal in relation to a specific case.

This Practice Direction deals only with communications which form part of the Tribunal transactions, in relation to a specific case, and which are governed by the provisions of the Rules.

The Tribunal's Members

The Welsh Ministers are responsible for appointing and reappointing the Tribunal's President, Legal Members and Lay Members. The Members were appointed after the vacancies were advertised and following a competitive interview before a panel convened by the Welsh Government. The President and the Tribunal's other Members were appointed for a 5-year term.

President

The President has judicial responsibility over the Tribunal and its Members.

Legal Members

The legal members are Lawyers (Barristers or Solicitors) and they are responsible for presiding over hearings and for exercising functions in relation to preliminary steps – e.g. issuing directions in relation to the evidence presented by parties.

Lay Members

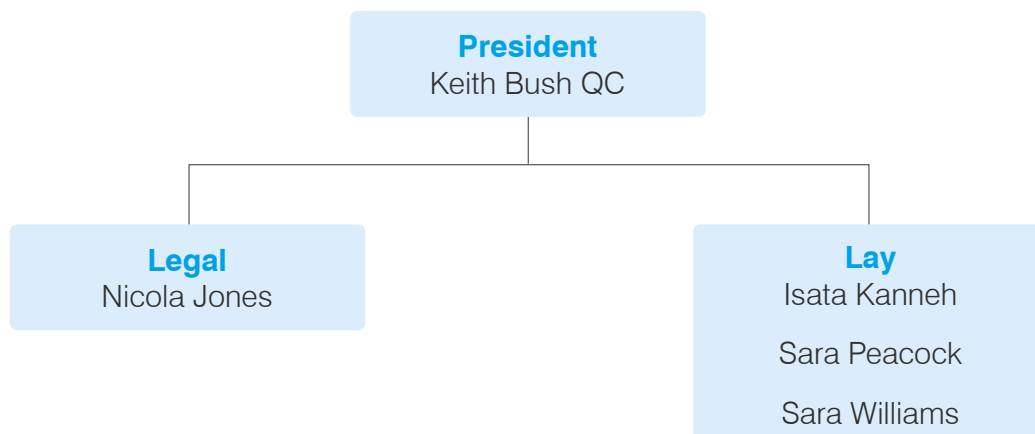
Lay members have a wide range of knowledge and experience relevant to the Tribunal's work. They play a full part, with an equal voice to that of the other Members (including Legal Members) in the decision-making of the Tribunal.

Secretariat

The day-to-day administration of the Tribunal is delegated to the Tribunal's secretariat, which deals with the preliminary work and the work of processing applications to the Tribunal. The secretariat will consult with the President and/or the Legal Member who will be chairing a particular hearing on any legal matters which may arise in the preliminary stages of cases, and will send any written rulings or directions to the parties in question. The secretariat is a contact point for the Tribunal's members and customers. The administration is provided, under section 127 of the Measure, by the Welsh Government.

Appointments

During 2016-17, no appointments were made to the Tribunal.



Training

A training day was held for Members in April 2016. Presentations were made by Judge Meleri Tudur, Dr Sarah Nason (Bangor University) and the Welsh Government's Welsh Language Unit. It was also an opportunity for the members to discuss and agree a mock ruling.

A second training day was held in November 2016. This session was built around cases that were based on facts from a number of cases presented to the tribunal but which were concluded without the need for a hearing.

Contact the Tribunal

Here are the Welsh Language Tribunal's contact details:

Address:	Welsh Language Tribunal First Floor, West Wing Southgate House Wood Street Cardiff CF10 1EW
Tribunal Helpline:	03000 256702
Tribunal E-mail:	tyg@gov.wales
Tribunal Website:	welshlanguagetribunal.gov.wales

The Tribunal's Accessibility

You are welcome to communicate with the Tribunal in Welsh or English. Rule 6 of the Rules provides:

- that the English and Welsh languages shall be the languages of the Tribunal
- that each party or witness shall have the right to use either language in the proceedings of the Tribunal.

Practice Direction 2 provides practical advice on how to interpret and apply the Rules in accordance with Rule 6.

Please make sure that you give details of any additional needs you, or your representative, have when you send your notice of application to us. For instance, if you need a signer or interpreter during the hearing, or if you require any additional arrangements to be made for the hearing, we will take the necessary steps.

Section 2 – Performance and Development

This section discusses:

- Numbers and statistics
- Internal reviews and appeals to the High Court
- Complaints
- Effectiveness of our service

Numbers and statistics

The Measure enables an individual or an organisation to appeal to the Tribunal on the following matters:

- Section 58 – Determination by the Commissioner that the requirement to comply with a standard (or to comply with it in a particular respect) is not unreasonable or disproportionate.
- Section 95(2) – Determination by the Commissioner that there has been a failure to comply with the requirement of a standard.
- Schedule 10, paragraphs 9 and 10 – appeals against evidence notices issued by the Commissioner during an investigation.
- Section 95(4) – Enforcement action taken by the Commissioner.
- Section 99(2) – Determination by the Commissioner that there has not been a failure to comply with a standard.
- Section 103 – Determination by the Commissioner not to carry out an investigation into a complaint (or to cease an investigation).

Application

9 applications were received during 2016-17:

Type of application	Number received	Accepted	Rejected	Withdrawn	Carried over to 2017/18
Section 58	3	0	1	2	0
Section 95(2)	0	0	0	0	0
Section 95(4)	0	0	0	0	0
Section 99(2)	1	0	0	1	0
Section 103	5	0	3	1	1

Nature of the cases brought to the Tribunal during 2016/17:

Nature of the case	Number of cases
Applications challenging a decision to enforce a standard, on the basis that it is unreasonable or disproportionate (section 58 of the Measure)	3 (33%)
Applications for a review of the Commissioner's decision to not investigate a complaint (section 103 of the Measure)	5 (56%)
An appeal by a complainant against the Commissioner's determination that there was no failure to comply with a standard (section 99 of the Measure)	1 (11%)
Total	9

How cases were resolved (cases received in 2016/17):

Nature of the resolution	Number
Withdrawn	4 (45%)
Permission to apply rejected (cases under section 103)	3 (33%)
Determination by the Tribunal without a hearing (at the behest of the parties)	1 (11%)
Carried over to 17/18	1 (11%)
Total	9

Time Between Receipt of an Application and Resolution	
Number of working days between receiving the application and resolution	How the application was resolved
1	Permission to make an application was refused
3	Permission to make an application was refused
3	Permission to make an application was refused
35	Application withdrawn after agreement with the Commissioner
51	Application withdrawn after agreement with the Commissioner
55	Application withdrawn after agreement with the Commissioner
65	Application withdrawn after agreement with the Commissioner
125	Application rejected (without a hearing)
44	Number of working days between receipt of application and resolution, on average

Section 103 Applications

If someone complains to the Commissioner about an alleged failure to conform to a Standard, and if the Commissioner decides not to investigate the complaint (or decides, after commencing an investigation, to cease said investigation) the complainant can, within 28 days, make an application to the Tribunal for a review of the Commissioner's decision.

The Tribunal will deal with the application "as if it were an application for judicial review made to the High Court", that is to say by considering whether the Commissioner has used the discretion not to investigate in a legitimate manner.

The Tribunal must first decide whether to give permission for a case to be brought. Permission will be given by the Tribunal if:

- there is reasonable prospect of it succeeding; or
- if there is another firm reason why the application should be heard.

During 2016-17:

- 5 applications were received under section 103 of the Measure.
- Of the 5 applications, 2 applications were accepted and 3 rejected.
- Of the 2 which were given permission to bring a case, 1 was withdrawn and the other was carried over to 2017-18.

Hearings data

During 2016 – 2017, no full hearing was held but 1 case under Section 58 of the Measure led to a decision without a hearing (i.e. on the basis of the case papers only).

Internal reviews and appeals to the High Court

Internal review of the Tribunal's determination

A party can apply to the Tribunal to review its decision on the basis:

- a) that the decision made is incorrect due to a significant error by the Tribunal's administration,
- b) that a party who had the right to be heard in the hearing, but who failed to attend or be represented, had a good and sufficient reason for not attending, or
- c) that there is an obvious and important error in the decision.

An application for a review of the Tribunal's determination must be made in writing, stating the grounds, no later than 28 days after the date that the decision was sent to the parties.

During the period of this report, no applications for a review were received.

Appeals to the High Court

A party, with the permission of the Tribunal or the High Court, can appeal to the High Court on a legal point arising from a determination of the Tribunal.

We must receive your application for permission to appeal within 28 calendar days from the date you were notified of the Tribunal's decision. It is up to the person considering an appeal to take their own legal advice.

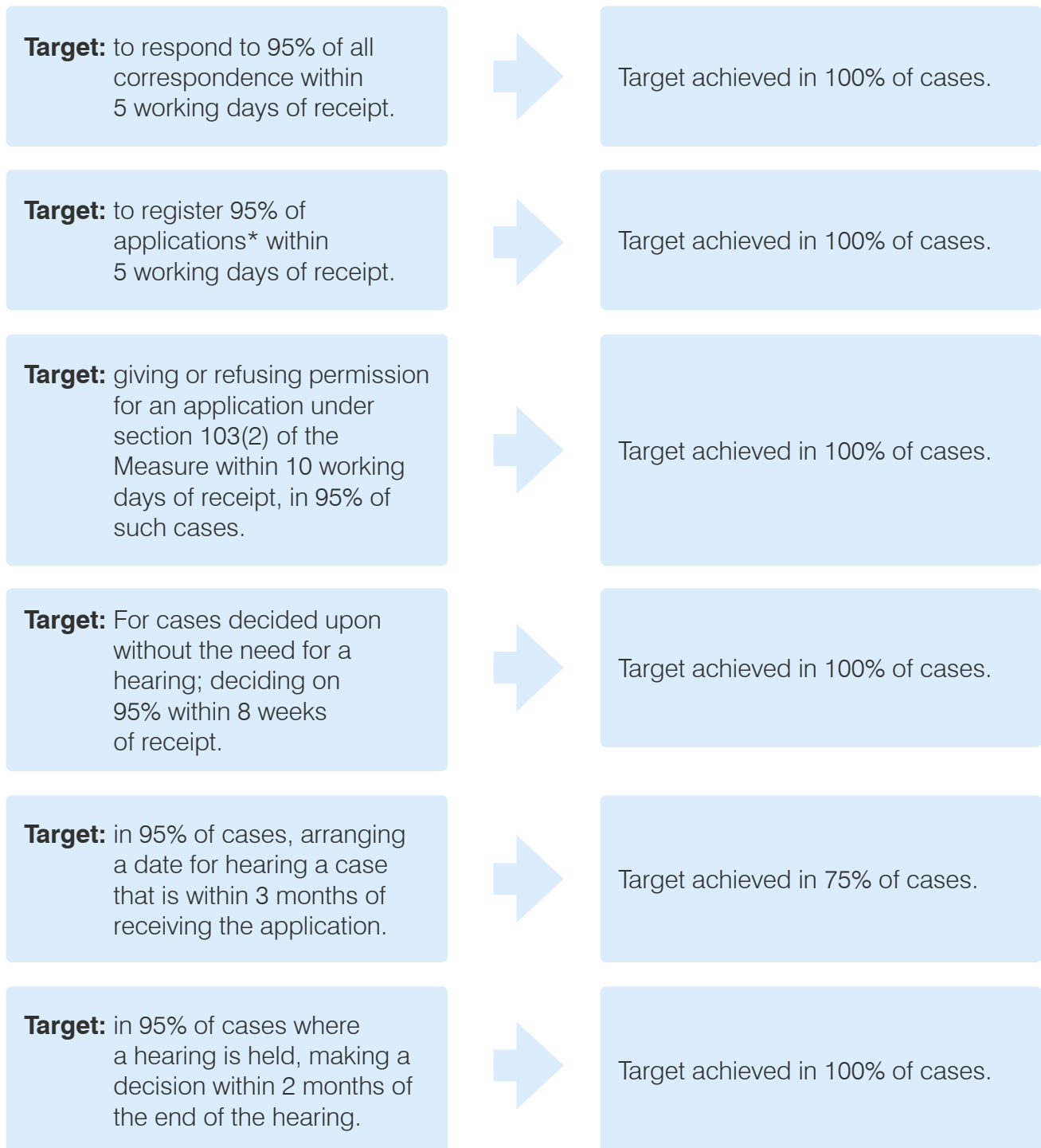
During the period of this report, no applications for permission to appeal were received.

Complaints

During the period of this report, no formal complaints were received by the Tribunal.

Effectiveness of our service

In order to monitor the effectiveness of our services, we will aim to have key performance indicators in place to measure customer satisfaction with two key aspects of our work; the effectiveness of our service, and its quality.



* excluding those who need permission under section 103(2) of the Measure and those where further information is required from the applicant before they can be registered.

** It was shown that the time the parties needed, in some cases, to define their formal positions by exchanging case statements was longer than anticipated, making it impossible, in those fairly complex cases, to move on to arrange a hearing as early as anticipated. It is the Tribunal's intention, after having more experience of managing cases, to review its procedures to avoid unnecessary delays.

Section 3 – Tribunal’s Decisions: Highlights

The Tribunal made its first decision since its establishment in connection with a case commenced and resolved during the year of this report.

Case TyG/WLT/2016/5: Pembrokeshire County Council v Welsh Language Commissioner

This is the Tribunal’s first decision on an appeal by a public authority against a standard included by the Commissioner in a compliance notice. The effect of the standard in question was that the council, if it was holding a meeting about an individual’s welfare (for example, a child or elderly person or someone with a personal disadvantage), would need to arrange simultaneous translation, not only from Welsh to English, but also from English to Welsh, if that person wished to speak Welsh in that meeting. The council challenged on the grounds that obligating them to arrange simultaneous translation from English to Welsh is unreasonable and disproportionate, citing a number of practical factors such as cost, availability of translators who could translate from Welsh to English and the effect of the presence of translators on the effectiveness of a private meeting. The Tribunal emphasized that anyone arguing that a standard is unreasonable and disproportionate would have to substantiate the claim. In considering the nature of the alleged difficulties raised by the Council, the Tribunal would have expected to receive evidence confirming the existence and significance of those difficulties. No such evidence was presented; therefore the tribunal rejected the appeal.

The full judgement can be read here: <http://tribiwnllysygymraeg.llyw.cymru/wlt-cases-and-decisions/wlt-decisions/apr17-mar18/pembs-county-council/;jsessionid=BAF0F9A7ACA43CB09CBF74167376FA49?skip=1&lang=en>.

Section 4 – Our Customers

In this section:

- The Tribunal's customer satisfaction survey

The Tribunal's customer satisfaction survey

The Tribunal's secretariat is working to ensure that our customers will be at the heart of everything we do.

The secretariat has created a satisfaction survey for the Tribunal's customers. The survey's results will help us to better understand the needs of our customers, show us what the Tribunal's secretariat does well, as well as those areas where things need to be improved.

A summary of the feedback received will be published in future reports.

Section 5 – Business Priorities

In this section:

- Business Priorities for 2017-2018

It is important that the Tribunal develops in order to provide our customers with the best possible service. This section deals with how the Tribunal will build on its achievements by focusing on business priorities and our commitment to our users.

Business Priorities for 2017-2018:

- To plan and provide training for all members.
- To continue to monitor and update the Welsh Language Tribunal's website.
- To provide a high quality service.
- To fine-tune how the Tribunal works, based on the experiences of dealing with cases, in order to ensure work of the highest quality when considering and deciding on cases.
- To publish Practice Direction 3. This proposed Practice Direction will apportion the Tribunal's functions, in relation to specific cases, to Tribunal panels and the President (or another Legally-qualified Member).
- To publish Practice Direction 4. This proposed Practice Direction will provide guidance about how to make an application to the Tribunal under paragraph 9 or 10 of Schedule 10 to the Measure (application to cancel an evidence notice issued by the Welsh Language Commissioner under paragraph 5 of that Schedule).

Section 6 – Expenditure

In this section, our:

- Expenditure in 2016-2017

Expenditure in 2016-2017

Content	Expenditure*
Members' fees and expenses	£20,000
Costs of training sessions	£1,400
Translation costs for casework	£200
Total	£21,600

*rounded off to the nearest £100