



# Welsh Language Tribunal Annual Report 2017 – 2018

February 2019



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 fourth annual report.

I outlined in the previous reports the process for establishing the Tribunal, including the challenging work of creating a brand new judicial body – the first in history to be created under Welsh legislation (the Welsh Language (Wales) Measure 2011). The Tribunal is also the first judicial body in these islands with the specific function of interpreting and protecting linguistic rights. By 2016-17, the Tribunal had begun to deal with cases and show itself as an accessible and effective body. The Tribunal continued to develop during the year.

Although the Tribunal received very few cases during 2017-18 (4 new cases), they raised important issues regarding the interpretation and implementation of the Welsh Language Measure. The Tribunal issued important determinations in two cases during the year. These are summarised later in this Report and the full determinations are available online on the Tribunal's website. In the first determination, guidance was provided on the relevant principles when the Commissioner uses her discretion not to investigate a complaint that a public body has failed to comply with a Welsh Language Standard. The second discussed the correct interpretation of the duty under some Standards not to treat the Welsh language less favourably than the English language.

In considering these cases (and the others received by the Tribunal during the year) the Tribunal exercised two functions. One was to resolve a dispute between the Commissioner and a member of the public or public body in relation to Standards. Natural justice requires such disputes to be resolved by an independent judicial body. But the Tribunal has a wider function, namely to assist members of the public, public bodies and the Commissioner to implement the Standards regime in the most effective way possible. When the Tribunal interprets the Measure or individual Standards for a case, this doesn't only affect that particular case. The decision of the Tribunal also ensures that all who implement the Act and the Standards are able to do so correctly and consistently. The purpose of an administrative justice system, like the Welsh Language Tribunal, in a specialist administrative regime is to ensure that the regime is question is administered as fairly and effectively as possible. The Tribunal should be seen as a key and constructive part of the Standards regime.

The appointment of the President of Welsh Tribunals during the year, which is a new post created as a result of statutory revisions made by the Wales Act 2017, will have a positive influence on the effectiveness of administrative justice in Wales. Sir Wyn Williams was appointed as the first holder of this post. His role is to be a judicial leader for all devolved tribunals in Wales ensuring cohesion in terms of procedures, training and disciplinary matters. He will also represent the Welsh administrative judiciary in its relationship with the Welsh Government and other jurisdictions in the UK. I am confident that this development will lead to further action to develop Welsh Tribunals as an increasingly important and effective part of the justice system in Wales.

A handwritten signature in black ink that reads "Keith Bush". The signature is written in a cursive, slightly slanted style.

**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
- Training
- Contacting 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 ('the Commissioner')'s 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 by a person, against whom a complaint has been made, 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, against whom a complaint had been made, 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 discontinue an investigation without reaching a decision).

## 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 outline 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. 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 each 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 the Rules and give effect to the Tribunal's procedures in accordance with Rule 6.

In accordance with Rule 4(4), the contents of this Direction are subject to any instructions given by 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.

### Practice Direction 3 – Exercising the functions of the Tribunal

This Practice Direction describes the arrangements as to fixing who is normally to take decisions in the name of the Tribunal. It provides, for example, that the President of the Tribunal (or another legally-qualified member of the Tribunal) will deal with preparatory questions, before a case reaches a hearing, whilst the hearing, and the final decision on the case, will be in the hands of a panel of three Tribunal members.

### Practice Direction 4 – Applications to the Tribunal to cancel an evidence notice

This Practice Direction applies the Tribunal's procedures to a particular class of appeals which can arise out of an investigation by the Commissioner into a complaint, namely appeals to the Tribunal against an evidence notice given by the Commissioner under paragraph 5 of Schedule 10 to the Measure.

*(Note: Practice Directions 3 and 4 were made during the period of this report – they were approved by the First Minister on 9 October 2017 and made by the President on 17 October 2017.)*

### 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**

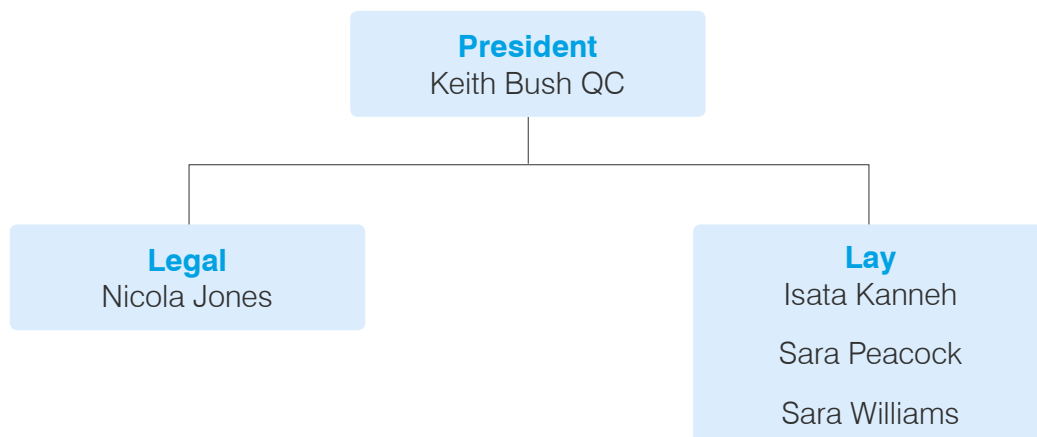
Lay members have a wide range of knowledge and experience relevant to the Tribunal's work. They play a full part, with an equal voice to that of the other Members (including Legal Members) in the decision-making of the Tribunal.

#### **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 before the hearing, 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

No appointments were made to the Tribunal during 2017-18.



## Training

The President of the Welsh Language Tribunal has a statutory duty under section 133 of the Welsh Language (Wales) Measure 2011 to maintain appropriate arrangements for the training of Tribunal Members. As part of those arrangements, a training day was held for Members during October 2017 in Aberystwyth.

Presentations were given by Sir Wyn Williams (President elect of Welsh Tribunals), Dr Catrin Fflur Hughes (Aberystwyth University) and a member of the Welsh Language Bill team (in relation to the Welsh Government's proposed revisions to the Welsh Language Measure). A discussion was also held on the Tribunal's record so far in terms of cases, with a view to ensuring and improving the accessibility and effectiveness of the Tribunal's procedures.

## Contacting the Tribunal

Here are the Welsh Language Tribunal's contact details:

<b>Address:</b>	Welsh Language Tribunal First Floor, West Wing Southgate House Wood Street Cardiff CF10 1EW
<b>Tribunal Helpline:</b>	03000 256702
<b>Tribunal E-mail:</b>	<a href="mailto:tyg@gov.wales">tyg@gov.wales</a>
<b>Tribunal Website:</b>	<a href="http://welshlanguagetribunal.gov.wales">welshlanguagetribunal.gov.wales</a>

## The Tribunal's Accessibility

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

- that the Welsh and English 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 discontinue an investigation).

## Applications

4 new applications were received during 2017-18; 1 case was carried over from 2016-17; and 1 case received during the year was carried over to 2018-19:

Type of application	Number received in 2017-18	Carried over from 2016-17	Carried over to 2018-19	Accepted	Rejected	Withdrawn
Section 58	-	-		-	-	-
Section 95(2)	-	-		-	-	-
Section 95(4)	-	-		-	-	-
Section 99(2)	-	-		-	-	-
Section 103	4	1	1	2	2	0

(Note: One case (TyG/WLT/16/5) in the statistics of the 2016-17 report was considered resolved in 2016-17 as it was determined during that year, even though the decision was issued a few days after the end of the year.)

Nature of the cases brought to the Tribunal during 2017-18:

Nature of the case	Number of cases
Applications for a review of the Commissioner's decision to not investigate a complaint (section 103 of the Measure)	4 (100%)
<b>Total</b>	<b>4</b>

How cases were resolved (cases received in 2017-18 and the case carried over from 2016-17):

Nature of the resolution	Number
Withdrawn	0 (0%)
Permission to make an application was refused (cases under section 103)	2 (50%)
Accepted	2 (50%)
<b>Total</b>	<b>4</b>

Time Between Receipt of an Application and Resolution	
Number of working days between receiving the application and resolution	How the application was resolved
9	Permission to make an application was refused
134	Application accepted following a hearing
137	Application accepted following a hearing
7	Permission to make an application was refused
72	Number of working days between receipt of application and resolution, on average

## Hearings

The Tribunal held two full hearings during 2017-18.

## 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 to the High Court 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.

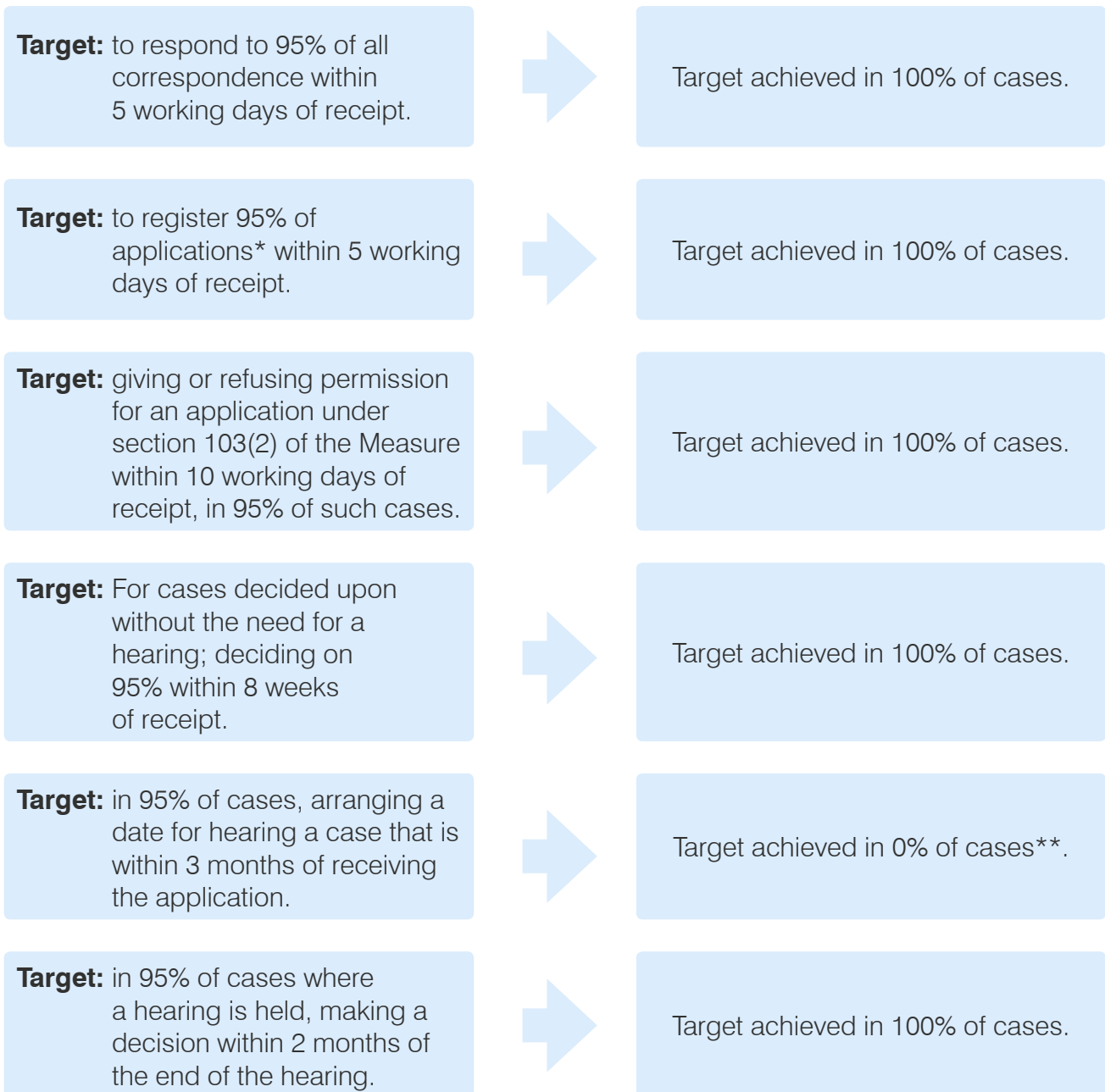
During the period of this report, no applications for permission to appeal were received.

## Complaints

No formal complaints were received by the Tribunal during the period of this report.

## 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. In the Tribunal's experience it takes around 6 months to resolve such a case (see above) including 5 months between receiving the case and holding a hearing and an extra month to prepare and issue the decision. 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

### Case TyG/WLT/2016/8: JK v Welsh Language Commissioner

The Applicant had complained to the Commissioner that his local council had put signs around a Christmas tree erected in a public place by the Council, and that the English wording had been placed above the Welsh in those signs. He complained that this contravened the Welsh Language Standards. The Commissioner decided not to conduct an investigation into the complaint as the sign was “seasonal” and would be taken down after Christmas. Therefore, the Commissioner believed that conducting an investigation into the situation would be disproportionate. The Tribunal accepted that the Commissioner has a discretion as to whether or not to conduct an investigation after she has received a complaint about a failure to comply with a standard. But as shown by the judgement of the House of Lords in the case of *Padfield v Minister for Agriculture* [1968] UKHL 1, that discretion must be exercised in a rational way, taking account of all relevant factors, and in accordance with the objectives of the Welsh Language Measure and the Standards made under the Measure. Basing a decision not to investigate the Applicant’s complaint solely on the ‘seasonal’ nature of the signs does not comply with these principles, especially as the relevant Standard refers to temporary as well as permanent signs. The Tribunal annulled the Commissioner’s decision and directed her to reconsider the matter in accordance with the Tribunal’s guidance.

### Case TyG/WLT/2017/2: PR v Welsh Language Commissioner

The Applicant complained to the Commissioner that his local council had placed English text above Welsh text in posts on one of their Facebook pages. He claimed that this contravened the Council’s duty under the Welsh Language Standards not to treat the Welsh language less favourably than the English language on social media. The Commissioner decided not to conduct an investigation into the complaint arguing that placing the English text above the Welsh text could not be considered as treating Welsh less favourably than English under the relevant Standard. She based her argument on the fact that other Standards, for example those relating to signs, specifically require both languages to be placed in a way that ensures the Welsh text is likely to be read first. She argued that the difference between the two rules meant that she wasn’t permitted to consider the order in which both languages appear when considering whether the Welsh language was being treated less favourably than the English language. The Tribunal agreed that the two rules placed different duties but that there was no reason why the Commissioner was not permitted to consider, as a relevant factor, the position of both languages when considering whether Welsh had been treated less favourably than English in the message in question. It is a matter for the ‘evaluatory judgment’ of the Commissioner after considering all the circumstances, including the location of both languages, whether the Welsh language was being treated less favourably than the English language. As the Commissioner had incorrectly interpreted the relevant Standard and as a result had decided not to consider a relevant factor, namely the order of the languages, the Tribunal had to annul the Commissioner’s decision not to investigate the complaint and direct her to reconsider the matter in accordance with the Tribunal’s guidance.

## Section 4 – 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.

## Section 6 – Expenditure

In this section, our:

- Expenditure in 2017-2018

### Expenditure in 2017-2018

Content	Expenditure*
Members' fees and expenses	£28,200
Costs of training sessions	£200
Translation costs for casework	£3,600
<b>Total</b>	<b>£32,000</b>

\*rounded off to the nearest £100