



Scottish Affairs Committee

Oral evidence: [Land Reform in Scotland](#), HC 877-II Tuesday 21 January 2014

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Members present: Mr Ian Davidson (Chair); Mike Crockart; Jim McGovern; Graeme Morrice; Sir James Paice; Mr Alan Reid; Lindsay Roy
Questions 137 - 290

Witnesses: **Andrew Leaver**, Aigas Community Forest, **Rory Dutton**, Development Officer, Development Trusts Association Scotland, **Eric Samuel**, Senior Policy and Learning Manager, Big Lottery Fund, **Neil Ritch**, Deputy Director, Big Lottery Fund, **Rachael McCormack**, Strengthening Communities Director, Highlands and Islands Enterprise, and **Sandra Dunbar**, Head of Business Improvement and Internal Audit, Highlands and Islands Enterprise, gave evidence.

Q137 Chair: Welcome to this meeting of the Scottish Affairs Committee. As you are aware, we are conducting an inquiry into land reform in Scotland. We anticipated having two separate panels, but because of travel difficulties we have merged them together. We will take questions to Andrew Leaver of Aigas Community Forest first, and then swing on to the more general issues and the other questions as and when. Would the members of the panel introduce themselves for the record and indicate to us who they work for?

Andrew Leaver: I am Andrew Leaver. I am the Secretary of Aigas Community Forest, which is a community group based about 16 miles from Inverness. We are attempting to purchase or take control of Forestry Commission land surrounding our village and community.

Rachael McCormack: I am Rachael McCormack, Director of Highlands and Islands Enterprise.

Sandra Dunbar: I am Sandra Dunbar, Head of Business Improvement and Internal Audit at Highlands and Islands Enterprise.

Eric Samuel: I am Eric Samuel, Senior Policy and Learning Manager at the Big Lottery Fund in Scotland.

Neil Ritch: I am Neil Ritch, the Deputy Director of the Big Lottery Fund in Scotland.

Q138 Chair: We want to start off by looking at one particular example of a situation which developed where there were some difficulties about the use of state aid. Andrew, I wonder whether you could tell us a little bit about your organisation and the experience you

have had to date with trying to obtain state aid, which I understand has not gone quite as smoothly as you might have hoped.

Andrew Leaver: Our group is attempting to purchase a parcel of land or forest that the Forestry Commission deemed surplus. We started that process five years ago. At that point in time there was no Scottish Land Fund, but we were encouraged to attempt to do something on the basis that legislation and policy may change.

About two years ago—I lose track of time—we had been trying different activities. The Scottish Land Fund was relaunched, and we had a meeting with a member of staff from Highlands and Islands Enterprise, which was very encouraging. I cannot hold the guy to it—it is not his fault—but he suggested that we could get a large sum of money, in the region of potentially £500,000, which was a big sum in the £700,000 purchase price, and that we should make an application. It was very good.

Q139 Chair: Which organisation gave you that impression?

Andrew Leaver: A guy from Highlands and Islands Enterprise. Unfortunately what then happened, and I do not know how, is that about two weeks later or shortly afterwards—this is about two years ago now—we were informed by Highlands and Islands Enterprise that there could be some issues or problems with the allocation of funds from the Scottish Land Fund for the purchase of forestry by community groups. This related to application of the European Union state aid regulations. When we went in for a meeting it was made clear to us that the state aid regulations were being applied such that the maximum grant could be 20% of the value of the forest, or €200,000, whatever that equivalent may be.

At that time we were attempting to buy a £700,000 forest, and the grant that we might have been able to obtain was nowhere near enough to get us toward that £700,000 figure. In the last two years, we have had to spend more time identifying other potential ways of taking control of the forest. The biggest problem was the sudden—to us—apparent application of state aid regulations to the Scottish Land Fund.

Q140 Sir James Paice: Thank you very much for that, Mr Leaver. Can we be clear to start with? The £700,000 is the full open market valuation.

Andrew Leaver: Yes. It is a valuation undertaken by the district valuer.

Q141 Sir James Paice: There was no question of a discount on the price; this was purely to enable you to fund the purchase at market price.

Andrew Leaver: It was actually £690,000, to be fair. It was provided by the district valuation service in Inverness as the full market value.

Q142 Sir James Paice: I thought that was the case. I just wanted to get that clear, because there has been some confusion. When Highlands and Islands Enterprise later produced this European rule of 20% or €200,000, apart from the inevitable heart attack, shock and all that side of it, what did you do? Did you seek further clarification on that, or did you go for any other interpretation of the rules?

Andrew Leaver: We do not have the right to appeal. There is nowhere we can go for alternative interpretation. I did write to the person here next to me, Rachael McCormack, asking for further information or some explanation. I probably wrote a letter saying, “I can’t believe this. It is an unbelievable occurrence.” Being a community member, you do that. I got a very bald answer just saying, “These are the rules; live with them.” At least that was my interpretation of the letter. We have no other recourse.

What was more promising perhaps—I lose track of time but it was probably summer 2011, so maybe 18 months ago—was that there was talk of trying to get some kind of block exemption for forestry. Different Highlands and Islands Enterprise staff talked about ideas that they were having and approaches they would make to try and improve things. There were some very good conversations, but that has led nowhere over this period. We have seen no progress in trying to overcome this interpretation of the state aid rules.

Q143 Sir James Paice: Tell us about your plans for the forestry. Were you going to operate it in any commercial way? Would there be any form of trading involved? What were your plans?

Andrew Leaver: There is a story too. When we launched our campaign—let’s call it—our attempt to buy the forest in 2009 we were supported by Highlands and Islands Enterprise. We were told that we needed to be a social enterprise; we needed to be an organisation that was run by the community, which was commercially viable and which would generate income that could be reinvested in the community. We put together a business plan that was about making money and reinvestment. Of course that made us commercial, and therefore you have to apply the state aid regulations. That was a problem for us.

In one of the conversations we had with HIE, it was actually suggested to us that if communities were aiming to buy the land for social and environmental reasons and not economic ones, maybe they would not have to apply the state aid rules—maybe. But that was a complete reversal of the advice we had received three years previously, which was to be a social enterprise and to make money. We were getting contradictory information. I have to say that that one conversation never went anywhere, so I don’t think much of it. To us as a community group, it was a sign of the confusion that was going on within Highlands and Islands Enterprise at that time.

Q144 Sir James Paice: Just for clarity, before moving on to the wider issue, I asked you the question about open market value, but if you had been able to persuade the Forestry Commission to sell it to you for less than market value, that too would have fallen foul of state aid, or didn’t this arise?

Andrew Leaver: That did not arise. My understanding of the Forestry Commission is another issue, but the phrase they used was “protecting the taxpayers’ interest” and “getting best value for the taxpayer”, which is about the open market value. I have a whole rake of things to say about how the open market value is come to, but we will save that.

Q145 Sir James Paice: I am about to open that up for you, because my next question is from your evidence. You say that if the public benefits that could come from community ownership were incorporated in the process, the market value might be lower. I think that is what you are suggesting. Basically that is an open question to answer as you wish.

Andrew Leaver: There are two things. On the open market value for forestry, I have evidence, should I want to read it out, from the DV, who clearly states in our valuation, and in valuations for other forests which I have received, that the value placed on forestry does not relate to the economic returns that can be gained from harvesting the woodland. It is about the value that is placed on it because of the tax benefits to a private owner, and also sometimes—not with our particular forest but in other areas of the highlands—because of the personal satisfaction and kudos of owning a piece of land on the west coast of Scotland. This adds a much inflated market value.

Community groups do not have the same interest in owning a piece of land for vanity reasons, and certainly do not have the same tax benefits in terms of inheritance and capital

gains tax. The inflated value that the market puts on it is a problem for us. It is created by the tax regime that surrounds forestry.

Going back to your point about a reduced price from the Forestry Commission, it is something we would be very interested in talking to them about, but their interpretation of protecting the taxpayers' interest and in the public interest purely comes down to how much money they can take back into the coffers. They interpret the Treasury rules such that there has to be a financial benefit—a financial value. Although we are talking about providing social and environmental benefits, they do not come into any calculation in relation to the public interest by the Forestry Commission when they are looking at the value of the land.

Q146 Chair: I do not know if you are familiar with it, but that is a bit like the Crown Estate's response to these sorts of issues. I see all the members of the panel nodding, but unfortunately that does not get recorded, therefore you have to say something.

Andrew Leaver: I am aware of the Crown Estate's response, but not in detail.

Q147 Sir James Paice: With your permission Chairman, I would like to take in some of the other witnesses. I would like to turn to Rachael. On this issue, sticking to forestry before we move to wider issues, what made HIE change its position? Was it new rules, new interpretation of rules or individual misunderstanding of rules? What happened?

Rachael McCormack: When the Scottish Land Fund was launched in 2012, we identified a possible maximum intervention rate of 95%, together with colleagues in the Big Lottery and the Scottish Government. When we are talking with communities, whether it is around a Scottish Land Fund application that might be coming forward or an application in relation to any other fund—indeed an application to HIE for support—we would be at pains not to stifle their ambition. It would not be for HIE at an early stage of the conversation to be talking to a community group about whether or not they ought to aspire to a maximum intervention rate. We were also not sighted in those early parts of the conversation on some of the detail, which we would need to start to look at when we had a clear idea about the nature of the proposal coming forward.

As all of the Committee will be aware, forestry is a primary activity under the legislation. As such, the state aid rules that apply are pretty clear and pretty well set out. Having said that, those rules apply to commercial forestry. If an application were to come forward from a community organisation with an emphasis, for instance, on amenity, on education or on biodiversity and nature conservation, there are other potential routes that we can consider. Rather than preclude the community from being innovative and looking at what it needs and wants to put forward to a funder, HIE works with community organisations across the region supporting applications to a range of different sources of funding. It is not for us to direct the community in terms of its areas of focus. Therefore we would not say “go for this intervention rate or that intervention rate,” other than to say that there is a maximum intervention rate available and it is ultimately predicated on exactly what constitutes not just the parcel of land or assets that you would like to bring forward but the nature of the activity that you intend to take forward on that asset.

Q148 Sir James Paice: You said just now that there may be other ways forward. I think those were your precise words.

Rachael McCormack: Depending on the nature of the activity that the applicant is intending.

Q149 Sir James Paice: Are you therefore talking outside the Scottish Land Fund?

Rachael McCormack: No. For clarity, in terms of the activity—whether it is economically or educationally focused or biodiversity, nature conservation or general amenity focused—the state aid rules apply to the pure economic activity. It is that commercial issue that presents the challenge. When we are clear on that, we then interpret the legislation. It is there to be interpreted, and I have said on a number of occasions in arenas not dissimilar to this one that the regulation is there and we work jolly hard to navigate a path through that supports the level of ambition within our communities.

A similar example in terms of a large-scale commercial forestry application that came forward to HIE, initially in anticipation of a 95% intervention rate from the Scottish Land Fund, was the Colintrave and Glendaruel community group looking at over 600 acres of land that they were looking to acquire with a view to a degree of commercial activity, but actually the primary focus for the community organisation was around social benefit. It was around potential woodland crofts and housing and places for local employment, perhaps looking at low-carbon, locally supplied wood fuel; but in order to be able to resource that, there was a commercial component that they needed to extract from the asset. In discussion with ourselves and my expert staff in our community assets team, they approached a private developer with a view to a deal that was brokered with the private developer who took rights to the timber, and the intervention rate from the public purse on a £1.55 million asset acquisition was very low indeed.

From my point of view—perhaps this is a particular opinion—that demonstrates the innovation that can be brought about when we look outside the box and think about best use of public moneys, how we can bring innovation and new opportunities and actually challenge the basis on which we come forward to the public purse from an additionality point of view. There were other avenues for that community and they will not be replicable everywhere else, I am quite sure, but it is a good exemplar of the nature of the opportunity that can derive.

Q150 Sir James Paice: I am sure it is and I would dearly love to follow it up, but first can I challenge you? Perhaps I have misunderstood, but you seem to be almost contradicting what you said a few minutes ago. With regard to the Aigas issue, you used words to the effect of “It is not for us to advise community groups what to be doing.” I think that is what you said, or that is what you implied.

Rachael McCormack: It is not for us to stifle ambition. It is not for us to put parameters around the nature of the focus for that community, and the activity that it wants to pursue. What we will be consistent in—Andrew was right inasmuch as he talked about organisations having a commercial focus—is that the language we would use is organisations being sustainable and organisations not creating a position where they become dependent on public sector subsidy or repeat asks to the public sector purse. A land undertaking is not something that communities take lightly and it is not something that we take lightly. Looking at long-term sustainability is really very key.

Chair: Lindsay is desperate to come in on an additional point.

Q151 Lindsay Roy: You said, understandably, that your role is not to stifle ambition. It is not to create unrealistic aspirations either.

Rachael McCormack: No; you are quite right.

Q152 Lindsay Roy: How do you get that balance?

Rachael McCormack: We make practical assessment at the earliest opportunity when information is provided. You are absolutely right to draw it out as a difficult line to tread. We have many years’ experience of working with communities, and we recognise

absolutely that daft expectations is a painful place to be, without doubt; but we have expert staff—I mentioned our assets team—and strengthening community staff in our eight area teams across the highlands and islands. One of the defining factors about relationships that organisations such as Aigas have with HIE is a long-term relationship. We would hope that over time that is a trusted relationship, where we are realistic and challenging but we are also very encouraging to ensure that communities come forward with confidence and ambition.

Q153 Lindsay Roy: I get the impression from Andrew that disillusion would be a euphemism. Would that be correct?

Andrew Leaver: Yes.

Q154 Lindsay Roy: What barriers have you faced and what level of trust do you have in HIE?

Andrew Leaver: We have had some very solid and strong working relationships with different members of staff at HIE, some of whom have left. We have had different assessors and different contact managers given to us, and they are very good, but we have felt that in the last few years HIE as an organisation have not given clear and succinct advice; they have not given consistent advice. As a community group that has links with other community groups and gets feedback informally from other people, this is a pattern that we seem to be seeing.

We can talk about HIE, but I have to say that one of the issues is how we apply state aid and whether we should be applying it at all, rather than whether the advice from HIE was good or bad. That could be “He said, she said” all day. There is an issue surrounding whether state aid should be applied at all.

Q155 Sir James Paice: That is the point we are really trying to get to here. It is not just for, in your case, the forestry example that you represent, but for the wider issues as well. I appreciate that we have now been joined by Mr Dutton from DTAS and Mr Ritch from the Lottery—he introduced himself earlier. Perhaps others would want to answer this, but the first point has to be, from information we have already had, has there been any change in the actual regulations on state aid over the last decade or so? Is anybody aware of that?

Neil Ritch: This is my second Land Fund, as it were. When operating Land Fund and Lottery schemes, and investing assets as well, we have sought to navigate that territory. While the fundamental regulation has not changed, what does change a little is the interpretation of that regulation. That is the business that we are in as grant-makers, and I would say that is the situation Rachael was describing. You need a certain amount of information about a project in order to try to reach a judgment. It is a really difficult balance to strike, between, “This is really exciting and you should do it” and “There will be some bumps in the road and there may be state aid or other regulatory challenges.”

What we have sought to do in every case we have dealt with is support the community to work as effectively as they can to put together the best funding package they can within whatever regulatory framework affects it. Where there are buildings and capital projects involved there is a whole bunch of regulatory stuff we work through, through capital experts and support contracts. In relation to state aid, we look to structure project funding as effectively as we can to work within the rules as we understand them, based on the advice we have, to support those communities as best we can.

Q156 Sir James Paice: Where has this reinterpretation come from that you imply has taken place?

Neil Ritch: I do not think I would go as far as to say it is a reinterpretation. What we try and do is make some difficult judgments.

Q157 Chair: I want to be clear. If this is not a reinterpretation, why is it that things that were previously acceptable are no longer acceptable?

Neil Ritch: I do not think it is the case that things that were previously acceptable are no longer acceptable. It is the case that we have had to structure the package in slightly different ways throughout the life of our investment in these things.

Q158 Jim McGovern: That is a reinterpretation.

Neil Ritch: I suppose what I am trying to say is that we have not seen a particular new set of rules that said, “Do things differently”. We have sought to act as effectively as we can within the advice we have. To that extent, we have always been aware of the basic state aid tests, and we apply them to the cases that we need to fund. We then need to react to what the answers to those questions tell us. Sometimes the judgments you make in relation to those questions are different because case law emerges in relation to state aid. It is not always a precise area. It is not a piece of regulation that is well designed for the kind of business we are in, in terms of supporting communities to buy land, so it does become pretty challenging to try and walk a very straight line on it.

Sir James Paice: Mr Dutton wants to come in.

Q159 Chair: Mr Dutton, since this is the first time you will have spoken, perhaps you could introduce yourself. Tell us who you are and what organisation you are working for.

Rory Dutton: I am Rory Dutton and I work for the Development Trusts Association of Scotland. We are a charitable company with a membership of over 200 community development trusts, which are community organisations that lead their own regeneration, including some land trusts and other community groups.

We have obviously come across this issue through our membership. My role as a development officer for the north of Scotland is quite often answering queries such as these from members. The general point I would make in connection with that is that I would not say there has been a change. I have in a previous incarnation been involved in the public sector. In the last few years, a lot more agencies, public sector organisations and local authorities have become aware of the state aid rules, whereas before they perhaps were not, or they thought it was not really relevant to them. They become aware of it at the time, and there is not the knowledge within their organisations about what the state aid rules are, certainly at an operating level. They will tend to be pretty risk averse—whether it is a local authority, an agency or whoever—and there are very few points of reference or people they can go and speak to in order to get an opinion on that. The Scottish Government’s own state aid unit has traditionally also been quite conservative and risk averse in its interpretation. Even if agency or local authority staff went somewhere else to get opinions, they have all tended to be quite risk averse in their interpretation. Another point is that a lot of the staff do not have the time to do a detailed state aid analysis of each and every application that comes forward. That is partly against the backdrop of not knowing the ins and outs of it.

We have two contracts from the Scottish Government, one of which is to do with asset transfer—

Q160 Chair: Just to be clear, when you said that staff did not have the time and so on, I am not quite clear whose staff you are referring to. Is that the staff of the individual projects?

Rory Dutton: For example, there is a fund called the Enterprise Ready Fund that the Scottish Government launched. It is run through contractors. They have deemed all assistance granted through that to be state aid, because that saves them having to spend time analysing whether each case constitutes state aid or not, and whether it needs to be taken into account by the rules or whether it falls outwith the rules. That is my point.

Q161 Chair: Which organisation is that?

Rory Dutton: The Enterprise Ready Fund. Going to the promotional event for that, the point we picked up on was that everything was going to be treated as state aid. There were some groups within the presentation there who were talking about enterprises where there was no local market, far less any involvement of international trading, yet any assistance forthcoming was going to be deemed state aid and subject to the rules. That is the point I am making. There is lack of awareness as to what might and might not be state aids. There is not the knowledge or expertise at an operational level within a lot of organisations now.

Q162 Sir James Paice: Are you talking about at the applicant level or are you talking about whoever is providing public funds?

Rory Dutton: The grantor of the funding. The onus is on them to tell the applicant whether or not this is state aid and whether it will be done through—

Q163 Sir James Paice: And your contention is that these different grantor organisations do not all have the skills and knowledge to do that?

Rory Dutton: That is right. We work with a lot of local authorities. Asset transfer from local authorities to community groups is not something that people have been doing for a long time. It is a new level of activity. Staff are coming in to do that who have not been doing this sort of thing before, so they are obviously not familiar with the rules. There is a big awareness issue.

Q164 Sir James Paice: Before we go too far down that road, and I am sure colleagues will want to come back to it, I would like to stick to the wider issue of forest and land purchase, which is the main area the inquiry is looking into. I think, Rachael, that you wanted to come back on what has already been said, but from your perspective has there been any change in the interpretation? Have you had new legal guidance? Has anything changed in the way that you scrutinise applications for money, vis-à-vis state aid?

Rachael McCormack: Our position assessing an application coming forward for support for commercial forestry, whatever the source of funding, has not changed. In terms of the legislation, I am sure the Committee is aware that it is a significant field of legislation that comprises state aid and it is dynamic, in as much as it is responsive in terms of case law. As cases are tested and found by the Commission, it is that case law which forms a platform going forward in terms of the contemporary interpretation. As with any significant legislation, there are reference points along the way, as a treaty is interpreted over time and as contemporary interpretation is made by the Commission.

What we are aware of is the programme of reform that the Commission has under way from 2012, and information circulated as recently as last spring that is looking at the ways in which the state aid legislation can be more readily interpreted, more readily supportive of a growth agenda and more readily strengthening local economic markets. We welcome the

reform and the trajectory of that. I do not know whether there is anything that Sandra would like to add.

Sandra Dunbar: To supplement what both Neil and Rachael have said, we have been quite active within HIE to look at emerging case law to help our understanding of how best to interpret the individual activities that take place. As a principle, we try to maximise the no aid argument because we are very conscious that, for example, de minimis levels are very precious to communities. We do not want to unnecessarily use that, so we have a principle of trying, as far as possible, within the regulations and the interpretation that is sound, to maximise the no aid argument. Conscious of Rory's point in particular, we do not take a position that all assistance is by default aid. We try and look at activities on a case-by-case basis, using the state aid tests, with a point of reference in terms of emerging case law.

As Rachael said, the modernisation agenda, particularly the notion of aid, and the Commission's consultation that came out last week give us some opportunities. There is a reference there to marginal impact, and that is perhaps an area of opportunity.

Q165 Lindsay Roy: How many of these case law interpretations have applied to developments in Scotland?

Sandra Dunbar: I cannot answer that. As a point of principle, in terms of the case law that occurs in another member state, there are enough cases that establish case law that would also apply within other member states.

Q166 Chair: Both HIE and the Big Lottery Fund spokespeople have referred to taking advice—"advice we have had". Both of you referred to that. I am not clear from whom you are getting this advice. Is there a guru somewhere that sits in St Andrew's House or somewhere else who is the dispenser of advice? Rachael, you are claiming it is you.

Rachael McCormack: No, absolutely not. We have an in-house expert, who is sitting behind me. That is what I was gesturing, Mr Davidson. In the course of the last 12 months, we have also—

Q167 Chair: Sorry. I just want to be clear about the "in-house expert" and "advice we have had." If you say "we", I presume you mean HIE. Therefore if you are getting your expertise in-house, that is not "we have had," because "we have had" implies that it is coming externally.

Rachael McCormack: May I clarify?

Chair: Yes.

Rachael McCormack: We have also, in the last 12 months, been working with a number of specialist legal advisers, looking at the case law that is out there and looking at the opportunities that we might be able to induce as a result of precedent that is set elsewhere in other member states, and how we might apply that to the bespoke circumstances that communities come forward to us with. I would stress and reiterate a point that Sandra made about our consistency of approach over time. I can be confident of that in as much as we look at every single case that comes to us in the context of the parameters that are pressing at that point in time. It is a very bespoke proposal that any community brings to us. No two are the same.

Q168 Chair: You are saying that your advice has been consistent.

Rachael McCormack: Yes.

Q169 Chair: At the very beginning, you told us that when Andrew Leaver's group had approached you, you were "not sighted on the detail," which I take it is a euphemism for not knowing how the thing worked. What else does not sighted mean? That is management-speak for what, exactly?

Rachael McCormack: It is management-speak for a comprehensive plan, in terms of the community—

Chair: No, no. You were not sighted on the detail: what does that mean?

Rachael McCormack: It means that we were not presented, at the point in time of the early discussion—

Chair: No, no. You referred to yourselves as not being sighted on the detail of the scheme.

Rachael McCormack: No, not at all. I apologise if I have not been clear on that point, Mr Davidson. My point was that we were fully sighted, having worked with colleagues to devise some of the parameters that informed the shape of the Land Fund. What we were not sighted on at the time of early discussions with Aigas was exactly what their proposals would be. Would it be overt commercial? Would it be nature conservation?

Q170 Chair: Okay. I will check the record and clarify what you said. You are saying that the advice you have had internally, and have applied, has always been consistent and has been changed only as a result of case law which has been drawn to your attention.

Rachael McCormack: Consistent, absolutely, in the process that we go through, which is to look at every individual case that comes forward.

Q171 Chair: No, no. Sorry. Consistent in the process is not the same thing as consistent in the application. I want to be clear about whether or not you believe you have been consistent in the application.

Rachael McCormack: I mentioned the nature of community proposals coming forward. Because they are unique in terms of their location, in terms of their focus and in terms of their emphasis, the process that we go through—

Q172 Chair: Okay. That's a no then. I understand that. Can I turn to the Big Lottery? Where do you get advice from?

Neil Ritch: Advice to the Big Lottery as a corporate body comes through our legal team, from BIS and Treasury colleagues. In Scotland, we are also advised by the state aid unit of the Scottish Government.

Q173 Chair: Andrew, I can see that you are bursting to come in on this. We are a bit hesitant about discussing too much detail about one particular project. I understand the reservations that officers of other organisations might have about discussing your project, so maybe you could bear that in mind.

Andrew Leaver: It is difficult because I am here to represent a project and a typical community example. However, I find that the information Rachael is presenting difficult to sit and stay quiet with. We had had a good relationship with HIE right up to the point of

the conversation where they said it was a strong application to the Land Fund. The people we were working with understood our project.

In addition to that, when we were asked to come in for a meeting and it was explained to us in detail that state aid would be applied, we were not told it was being applied to our project. We were told it was applied to all forestry applications under the Scottish Land Fund—all, as in a blanket approach to forestry applications in the application of state aid. That was the conversation I had in the autumn of 2012 with members of HIE staff—not with Rachael, but with members of HIE staff—and that does not balance with the information that she has now provided to you. I am not saying that we are not both telling the truth—I’m not getting at that—but this is the first I have heard that they would apply it on an individual basis to individual applications.

Chair: Jim, did you want to come in?

Q174 Sir James Paice: I think you are right: we are at risk of going down a very narrow avenue on Aigas, important as it is. There are a couple of points on the broader spectrum that I would like to cover before we perhaps drill down further.

Moving away from forestry to land estate—there have been a number of such community purchases—are there any differences in the way that either of you apply the state aid rules to something like that, as opposed to forestry? There is the forestry 20% rule. You used the word “primary” industry earlier on, Rachael. Does the 20% rule apply to the rest of the whole sphere of farming and agricultural estate?

Sandra Dunbar: Perhaps I can give an example.

Sir James Paice: Please.

Sandra Dunbar: I will not give the name of the organisation. It is an example of a Land Fund transaction where we looked at the component activities. That might help to give the Committee some clarity in terms of how we approach the state aid tests as they apply to the activities.

In this instance, there were four core components of the activity that was assessed as going to take place. One was the potential location of a wind turbine, which had the potential to have an economic activity element to it and be commercial. That was assessed to fall under the state aid characteristics, and therefore we could not give it a no aid assessment. That was pursued down a private funding route.

There was a dilapidated steading which was zoned for development. Therefore the potential for state aid around an economic activity was present. We took the view that a 20% SME general block exemption assistance was appropriate in that case.

There was an element of land, which was the most significant in terms of acreage, which was a tenanted agricultural farm. The view was taken that there was no proposal within a significant period of time for any change to that, so a no aid argument was taken in respect of that element, and up to 95% funding was potentially available for that element.

Q175 Sir James Paice: You decided that letting land to a sitting tenant, having land let was not—

Sandra Dunbar: It was already tenanted.

Sir James Paice: But you are saying that is not a commercial activity.

Sandra Dunbar: It was already tenanted, and the transaction was just to secure the right to that lease. There was no additional economic activity. I think the term is around “fruits of

ownership”, which has come out by way of guidance from the Commission and case law. That was the rationale for taking a position of no aid in terms of that strand.

There was also a potential care farm, which was going to be accessible to individuals with learning difficulties, so there was an educational objective attached to that. That did not get pursued, but we would have taken a no aid argument on that aspect of activity in terms of no economic activity. It would have been cost-neutral.

Q176 Sir James Paice: So you broke the whole project down into different bits and decided that some bits were exempt, for one reason or another, from state aid and some bits might not be.

Sandra Dunbar: Yes.

Q177 Sir James Paice: Therefore you could provide or organise funding for bits of it, but not for other bits? Have I put that simply?

Sandra Dunbar: Yes. We looked at the component activities and applied, in an evidence-based way, the state aid tests that are given to us through the Commission.

Neil Ritch: The aim is to get a funding package that works for that project.

Sir James Paice: Right.

Rachael McCormack: Quite importantly there, it was a combination of public lottery and private sector finance that came together to enable that as a basket asset acquisition.

Chair: We started by focusing solely on you, Andrew, because you had the great advantage of being here, but many of our initial questions were originally intended for Rory, so perhaps we could go back to the running order that we devised when we were talking about you all. I will ask Alan Reid to lead off on some of these.

Q178 Mr Reid: The first question is mainly for Rory. What are the main routes for communities who want to take ownership of land and other assets within their community?

Rory Dutton: There is obviously the Scottish Land Fund and the Big Lottery. What we are increasingly involved in is the idea of transfer from the public sector and from local authorities, which hold quite a lot of assets, not all of which are being fully utilised for their primary purposes. In our role, we have not tended to get too involved in forestry or agriculture-type cases, but we do a lot of work with groups who are taking on assets from the public sector. When you are getting an asset for less than what is called best consideration, because of the wider benefits—which local authorities certainly can do—that is deemed to be assistance, because it is a discount on the value, and therefore that can be considered against the backdrop of state aid.

On your first point, yes, the main funding if you want to acquire assets such as estates, forestry, etc., would be the sort of things we were discussing before, but there are other options for smaller assets. Quite a lot of our members will be involved in taking on smaller blocks of land, quite often small buildings, etc.

Q179 Mr Reid: As we are finding out, this is all very complicated. Do you find that organisations in communities, particularly in the voluntary sector, have adequate financial legal back-up to navigate their way through all these difficulties?

Rory Dutton: No, generally not. If they are lucky, if they are in the highlands and islands maybe, and they have some resources for a development officer, that helps a lot. If they are lucky and get through phase one of a Lottery or Land Fund-type application and they

get funding for development, then that helps a lot. But generally speaking, you are talking about people in their spare time, and they do need to seek professional advice on the legal and the property side, with surveyors, valuations and all these sorts of things. There is a lack of places they can go for little bits of funding to investigate the feasibility of something, to investigate its condition or its market value.

Q180 Chair: I understand the difficulties about ordinary community representatives learning the language that bureaucracies utilise. Do you think that a lot of the rules and so on are unnecessarily complicated?

Rory Dutton: They are not as complicated as they are made to seem; that is true. As far as the broad principles of the state aids debate are concerned, we took time last year to produce our own guide to state aids, so that hopefully if any groups were looking to take on an asset, they could have their own opinion as to what they think it may or may not be and therefore be in a better negotiating position. We are not a legal authority on it by any means, but we can explain the basics of the European regulation and give groups a better basis to negotiate or discuss with a potential donor or transferor of the asset, or with a grant-awarding body or something like that. Giving organisations a bit of knowledge and confidence in their own knowledge of the topic does not necessarily mean that they can make progress in the negotiations.

Q181 Chair: Why can they not make progress?

Rory Dutton: I probably came in a bit heavy-handed right at the beginning, when I had just joined you. In our experience, quite often—I am not speaking about HIE here in particular or the Lottery; I am talking quite generally—in the public sector there is not an awareness as to the criteria that make something subject to the state aid rules or not. Therefore, they will not be able to engage in that deep level of detail in the discussion, and therefore you—

Q182 Chair: Sorry. I am not clear whether you are suggesting that they do not understand the rules themselves and/or whether they understand the rules a bit but they are essentially risk averse and therefore always err on the side of caution. Presumably nobody ever got fired for turning things down, whereas accepting something that may turn out later on to have been beyond the rules might be a cause for rebuke.

Rory Dutton: I think it is risk aversion because they are not confident on the ground. They are not confident on what the rules say and do not say, because they have heard lots of stories about court cases. A lot of hearsay is going around as to what might happen if they make a decision.

Q183 Chair: Have there been any court cases in Scotland about this?

Rory Dutton: Not that I am aware of, no. What we are trying to do is give people a bit of confidence to say, “If it is not an economic activity, the state aids don’t apply. If it is not subject to local competition in the marketplace, if it’s not subject to international trade, then it is not subject to the state aid rules.” We are trying to give people the confidence to argue their case.

I keep going back to the advice to the public sector from the state aid unit within the Scottish Government. Things are changing there now. We have done quite a lot of work with them recently, and they are revising their interpretation. I hope it is followed likewise by an awareness throughout the public sector.

Q184 Chair: They are getting less restrictive than they were.

Rory Dutton: My understanding is that at the senior level within the Scottish Government they are keen to have a more enabling role and a more mature attitude to risk and managing risk, etc.

Q185 Chair: But that is not necessarily replicated by the other organisations.

Rory Dutton: I am saying that is a bit down the road.

Chair: There is a time lag.

Rory Dutton: There is a time lag. We are in the here and now. What we are talking about is something that hopefully will come—

Q186 Chair: It is not often that you find that the guru in the small office, either in Whitehall or in St Andrew's House, is more progressive than the people on the ground. It is usually the case that it is the people in the centre that are holding things back. Here you are suggesting that it is possibly going to be the other way round.

Rory Dutton: The local groups and ourselves do not go leafing through case law in Europe or things like that. We look at the regulations and say, "Common sense would suggest this" or "Common sense would suggest that." That is the approach our groups will have, which is a negotiating discussion point. We would not expect our members or any other groups to be up on all the case law. That is the approach they are taking. We would hope that the groups could have this two-way discussion about whether there is an established local market in this activity; is that product or service subject to international trade between member states? Quite a lot of the assets you are talking about are not blatantly or clearly commercial in international trade, with a commodity. There are a lot of other areas that also fall foul of the rules.

Chair: It is always difficult to construct arguments based on common sense if you are trying to persuade Government agencies or public sector bodies. Alan, do you want to continue?

Q187 Mr Reid: Is there anywhere you can go for independent legal advice if you find that the Government agency is saying, "No, we don't want to take the risk here"? Other than the expensive business of paying for your own lawyers, are there any sources you can go to for independent advice without paying a fortune for it?

Rory Dutton: The default is basically the state aid unit of the Scottish Government. That is the centre of authority, if you like, within Scotland. You will not find many legal practitioners around the country who are familiar with the ins and outs of it. As I said at the beginning, the state aid rules were not seen as being particularly relevant; they were not really noticed for many, many years—decades. It is only now that people have started to say, "Hold fire, we do have to take account of these." There has not been that long build-up of case law.

Q188 Chair: When people did not pay any attention to them there was not a problem. Now that people are paying more attention to them, they are a problem.

Rory Dutton: It is that people are now more aware of the existence of these rules and the potential downside where a decision is wrong and they were to be challenged. As you say, people will want to play safe and will want to be a bit risk averse.

Q189 Chair: How many of your organisations have been in a situation where a challenge has been made to any state aid that was proposed?

Rory Dutton: I am not aware of any formal challenge.

Q190 Chair: So we are operating in an environment where no state aid challenge has ever been made to anything in Scotland.

Rory Dutton: I could not say that.

Andrew Leaver: My understanding in terms of community purchase in forestry and land is that there has been no state aid objection and no state aid challenge. I could not say about other economic activity. Therefore the application of state aid did come as a surprise to community groups. You have spoken to Community Land Scotland, and they have already told you that.

Q191 Lindsay Roy: In effect, in Scotland we are not testing the boundaries.

Andrew Leaver: No. That is the risk averse comment that Rory has made, and that I know has been provided to you previously in different evidence. The feeling is that somebody has cottoned on to this and thought, “Oh, oh, it might be a problem so let’s dial it back and take no risk,” and then takes it forward. The trouble is that we are not seeing it being taken forward. As community groups we are still seeing a no-risk approach.

Q192 Mr Reid: Who would have the locus to challenge a decision? Would it be a private company that was seen as a competitor, for example?

Rory Dutton: Absolutely; a competitor. Even now when discussing a project, if somebody sees a community group as having an unfair advantage over their commercial activities, they will try and have a word with, for example, the local authority who may be transferring the asset. I can think of an example where the community was told, “It is against state aid rules.” They were only talking about local competition in a village about their café. It was not anything to do with international trade whatsoever. It is even debatable whether there was any competition, or whether the market would be big enough easily to have two or three cafés anyway, but the local authority in question said, “No, that is against the state rules and you cannot have a community café.”

Q193 Mr Reid: Was there not a de minimis of €200,000 where the state aid rules did not apply. Am I correct in that?

Rory Dutton: They could choose to do that, but quite often, if you are talking for example about a large old building with some land or something, it does not take long for a community to start cranking—building it up cumulatively. It is a rolling average over three years.

Q194 Mr Reid: It is €200,000 over three years.

Rory Dutton: It is a rolling total over three years. It is about £167,000 or something like that, and you can soon get that. If you get a building for £10,000 that was valued at something much higher than that, it’s immediately making it huge. As somebody said earlier, people regard de minimis entitlement as a key community asset. They do not want to squander that at all.

Andrew Leaver: On the interpretation of state aid, I am not an expert by any means, but we have spoken to other people who have looked into this in more detail, such as the representative bodies of Community Woodlands Association and Community Land

Scotland. Their understanding as presented to me, and my understanding from Wikipedia, is that EU state aids require distortion of the international market and require something that will affect international trade. You could argue that by introducing a new player to the forestry market there would be a problem, but here we are talking about community forests, who are harvesting purely to reinvest income into their own activity. Even at Aigas forest, which is 700 acres, we are lucky if we are producing £120,000 worth of timber. Most of that income is then spent on restocking and re-fencing. The amount of money and trade in the European timber market as affected by a community-owned forest is just a drop in the ocean. We just don't even touch it. That is why we don't understand why you would apply state aid rules if it is meant to affect trade between member states and to distort the market. We are just not there.

Q195 Mr Reid: Would your trees be going to a saw mill within Scotland?

Andrew Leaver: Yes.

Q196 Mr Reid: Do any other members of the panel have a comment on what Andrew said; that it should only apply when it is distorting international trade? Do the other members of the panel have a view on that?

Eric Samuel: I was going to come back to the previous point. The big investment area that we operate as the Big Lottery Fund is Growing Community Assets, which is about transferring assets over to communities. We do have to take state aid into account there as well. Where we run into most problems, and we have to do quite a bit of negotiation in some cases, is where there is purely local competition. If there is a community café being set up, we need to make sure that any other competitors in that area are quite happy with that. Rather than state aid, these are the sort of problems we run up against more often.

Another UK programme we operated was Village SOS, which was all about trying to boost social enterprise in rural communities throughout the UK. There was a challenge there in terms of broadband. One of the projects wanted to introduce broadband and there was a challenge. We had to go down to de minimis in that case.

Q197 Mr Reid: That was not a telecommunications company that was objecting. Was it a competitor of the person or a company in the community?

Eric Samuel: It was in England. I seem to remember it could have been another community company that complained that they were getting unfair advantage with lottery funding.

Neil Ritch: The risk is where people perceive displacement. The state aid complaint process is a really useful step if you want to create that dispute. The question of interference with international markets is a problematic judgment. The guidance from Government states that it is quite a low bar and that you must take cognisance of the potential to impact international markets in making your judgment. You find yourself in that rather strange position of asking yourself, "Will a forest of the scale of Aigas really queer the market?" That is the bar at which you need to make the judgment.

Andrew Leaver: I live in a rural community, and we can understand displacement and local competition. I understand that. If you have a thriving business and HIE were to give a grant to a second thriving business and the first one goes out of business and people lose employment, I can understand arguments against that and why HIE would have to consider that. But EU state aid is nothing to do with that. People are using the hammer of EU state aid to crack a nut.

Q198 Chair: We have had briefings on this and we understand the point about a café opening next to another café.

Andrew Leaver: But they are applying the rules to forestry.

Chair: We understand that is a greyer area.

Q199 Mr Reid: I have one further question. If a rival company successfully challenged a transfer, what penalties are then open to the court? Who would the penalty be against? Would it be against the body that awarded the grant? Would it be against the community group that received the grant? What penalties are available to the court?

Eric Samuel: My understanding is that it is the project itself. The money would be taken from them. Again, we have an expert here. They have the right to impose interest conditions on that as well. We are very conscious of that. The rules are that the onus is on the group to make sure that they are not contravening state aid. We do not accept that—

Q200 Mr Reid: If you make a mistake, it is not you that suffers, but the project.

Eric Samuel: It is the project, and that is why we try to get the thing right as much as we can. Fine, Big Lottery Fund could be made to look stupid, but it is the project that suffers at the end of the day and that is what we don't want.

Q201 Chair: To what extent is that a judgment for them to make rather than you policing it?

Eric Samuel: For who to make? The project?

Chair: Yes.

Eric Samuel: It is a difficult one. As I say, the onus is on them and as you have rightly mentioned, they would have the right to go and get legal advice. It's asking a bit much though. That is why we try and get it right on this side, and make sure they do not have to do that.

Q202 Chair: That's right, but if you say to them, "Look, there is an arguable case here that says that would be state aid and if this proceeds you run the risk that somebody will complain and you will be hit with not only having to pay the money back, in which case you would be no worse off than you were before, but you'd also have to pay interest" and they say, "Yes, okay then, we'll take that risk", what do you then do? Do you say, "Well, no, we are going to decide and we are not going to give you the money anyway"?

Neil Ritch: There is also a risk to the scheme. Your grant scheme can then be closed down.

Q203 Chair: Who would close the grant scheme down?

Neil Ritch: There is a requirement of the European Commission that you can close the scheme.

Q204 Chair: Is it one hit and you're out?

Neil Ritch: It depends on the judgment of the Commission. Not every case that is found to be illegal aid results in the scheme closing down, but it can.

Q205 Chair: How many examples are you aware of where schemes have been closed down throughout the UK?

Neil Ritch: I am not aware of any within the UK.

Q206 Chair: Throughout Europe as a whole then?

Rachael McCormack: We could certainly provide that information.

Q207 Chair: But you are operating on the basis of a sanction which you are totally unaware has ever been applied anywhere in Europe, and you are substituting your judgment for the judgment of the community groups by saying, “We are protecting you against the possibility that you might end up having to pay interest on this and we are also safeguarding our own position by not taking the risk that by getting one judgment wrong the whole scheme might be shut down.”

Neil Ritch: I suppose our caution is in relation to the other organisations who could benefit from the scheme. If a scheme is closed down, we operate other grant schemes. It is a big problem but it is not the end of our organisation. But if that fund is closed down, then every other organisation—

Q208 Chair: Yes, that’s right, but this is a sanction that has never been applied in the UK as far as you are aware. In fact, you are not aware of any occasion when it has ever been applied in Europe. Yet you are quoting it to us as being a reason why you do not take any risk.

Neil Ritch: The nature of the advice to us in making our judgments about that risk is that is what could happen. You are right; I do not have that awareness.

Q209 Chair: Who has given you that advice about the sanctions that can be applied? Is that the Scotland Office?

Neil Ritch: The potential sanctions are advised by both the state aid unit of the Scottish Government and by BIS.

Sandra Dunbar: To endorse what has been said by my colleagues in terms of the potential penalties, they extend beyond the recovery of the aid plus interest from the recipient; there is also the threat of legal action being taken by a competitor, and of damages, so there is potentially a further penalty on the recipient in challenges to the scheme.

We can come back further on this, but I think there was a case in Shetland where the allocation of resources was initially deemed not to be state resources. It was to do with funding that came from oil revenues. It was deemed initially not to be state resources but then found to be state resources. That resulted in a recovery of the element that was deemed to be illegal aid.

Q210 Chair: What then happened to the organisation involved?

Sandra Dunbar: I couldn’t comment on that, but we will try and get some further information.

Q211 Chair: What do you mean by “couldn’t comment”?

Sandra Dunbar: I am not aware of the details, but the issue was around the initial assessment that the resources were not state resources and therefore not aid. They were subsequently deemed to be state resources because the allocation was under the control of a state organisation. We can provide further information, but my understanding was that there was a recovery from the recipients.

Q212 Chair: That would be helpful to clarify it. We have now identified one case in Scotland—ever—where there has been recovery. Is that correct?

Neil Ritch: The judgment in relation to Shetland Council's charitable trust and Shetland Leasing and Property company was to do with the purchase of fisheries quota.

Q213 Chair: Sorry, is this the same one?

Neil Ritch: Yes. There was a further judgment around the purchase of a failing fish factory which did not lead to—

Q214 Chair: But it all comes back to the one question of whether or not this was state aid and whether or not it was controlled by the state. I can see that that is a slightly different issue. I want to explore this question and ask Rory about it. It does seem to me that the organisations who are dealing with the distribution of the money are substituting their judgment; they are making a judgment on your behalf, as it were, to avoid you being in danger of having the money taken off you and sanctions applied. Would your organisations, in some circumstances, be willing to take that risk?

Jim McGovern: Chair, just before we move on, in response to the answers from previous witnesses, are you holding up the fact that no sanctions have ever been applied as evidence that it has been a huge success?

Neil Ritch: You can attribute anything to it, but I think what most people advising in the field would say is that it is evidence of the success of the cautionary approach, but there is an opportunity cost of that, without a doubt, in terms of the restriction you create by being cautious in that way. I am aware of that.

Q215 Jim McGovern: The threat of sanctions prevents anybody from doing anything that might attract sanctions.

Neil Ritch: It fetters how you make the judgments.

Q216 Chair: There is a balance to be struck, and that is the issue I want Rory to clarify. Do you feel, on behalf of your organisations, that they are being hyper-cautious, and that there is an element of risk that some of your organisations would be willing to bear? Sorry, nodding doesn't get recorded.

Rory Dutton: No, we forget. Absolutely. I have not seen all the case law, but the communities will have thought about it. That is the thing about communities; when they do something they have researched it. They have thought about it and worked it out in a lot of detail in their own and volunteers' time. Communities will often say, "There is no way that will ever be challenged. There is no way that concerns international and there is no way that should be state aid." They are clearly prepared to take the risk that is seen by the awarding agency.

There is a fair point that the gentleman on the end made about the risk to others if the thing is closed down. That is worth bearing in mind. I would say that most communities who have a big issue with a state aid decision are pretty confident that it is not an issue, and they would be taking a risk.

Going back a wee bit to the responsibilities, I may be wrong but I seem to remember that there is an onus on the people giving financial assistance to let the community know it is being done through de minimis, so that they know to add it to their rolling total. I have heard—I have not researched it to check if it is true—that there have been some retrospectives: "Oh, by the way, the money you got at such and such a time was de minimis too," and groups suddenly find that this precious asset of a de minimis entitlement is fuller

than they thought it was. That is something I hope is not happening, but I have heard reports that that may have been happening.

The buck does stop with the community group. They lose the money and they may get interest, but there is an onus on the awarding agency, I think, to notify the community group that it is being awarded under *de minimis* rules. That may have been happening for the likes of HIE but—

Chair: There are practicalities. I am conscious that some of this is certainly devolved anyway. Therefore the detailed operations, about informing and so on, do not seem to me to be one of the strategic issues we want to address ourselves to unduly here. It is this question of who bears the risk, and then potentially the penalty. I want to explore that a little more.

Q217 Mr Reid: There is one area I wanted to pursue on forestry. It was either Andrew or Rory who said earlier that there are tax benefits to a private owner that do not apply to a community group. When working out whether state aid applies, is the awarding body allowed to take into account the fact that the community group is not getting the state aid of tax benefits and subtract that from the state aid that you do get? Is that a possible route?

Andrew Leaver: I will make a comment although, to be fair, somebody else needs to answer the question. One thing that struck me on that tax benefit thing is that the reason that forestry prices are inflated, apart from the value of tax benefits to private owners in particular, but even to commercial owners, what we found that it is also a different interpretation—I'm looking for the words.

What we are also confused about is where there is transfer of ownership of a forest. The amount of timber you take out will not be altered by the transfer of ownership. It will grow at the rate it grows, and it will be harvested when it is due to be harvested. The value of the market at the time will pay that value. The transfer of ownership itself will not affect the amount of timber extracted or the value of that timber, which is where it hits the market—the extractive market. There is a double issue. One is, do they take into account the fact that we do not have the same tax benefits and therefore we are paying over what we would pay? Also, because the timber does not change in value just because the ownership is transferred, why again is that affecting the market?

Q218 Chair: There are two issues there.

Andrew Leaver: There are, I'm afraid. I was bringing in something.

Chair: I had not quite thought of looking at the question of tax benefits to private owners in the context of state aid and therefore maybe ruling them out on that basis. That is certainly something that we will explore further. On the point about forestry, I had thought, maybe mistakenly, that much of the thrust behind community ownership was to utilise potential assets which were not presently being harvested, marketed or developed and so on. Therefore there was the creation of economic activity rather than just simply a transfer of ownership from one to the other. Presumably if it is a transfer of ownership from the public sector to a community group, then that, if it is viable, could be funded commercially and need not require funding from HIE or the lottery or anybody else.

Andrew Leaver: Aigas is slightly different from some other forestry groups, but the principle is the same. The trees were planted 50 years ago and they are near maturity. Somebody will need to harvest them, whether it is the Forestry Commission or whoever. They have deemed the land surplus so the Forestry Commission are unlikely to be the

harvesting body. If we do not buy it, they will sell it on the private market. The private owner, whether it is a commercial forestry or a private owner, will need to harvest those trees. You cannot leave them; they will fall down. Somebody will harvest those trees, whether it is us or somebody else.

The transfer of ownership itself will not affect the value of the timber that is taken out. All it is doing by giving us the grant to purchase it is providing the community with the opportunity to make some money out of that forest instead of a private owner. Somebody is going to make the same amount of money. It is going to hit the market at roughly the same time and give roughly the same value of timber, regardless of the owner. Again that goes back to why apply state aid to that particular transaction.

Chair: I think I understand why.

Q219 Mr Reid: Could we have a comment from the Lottery? We have heard that there are tax advantages to the private sector that do not apply to the community sector. Are you allowed to take the tax disadvantages that the community group has into account when working out if the grant is state aid?

Eric Samuel: We would not fund the private sector under the Land Fund or—

Q220 Mr Reid: No; you would not fund the private sector, but we have heard that the private sector has tax advantages and the community group has tax disadvantages, but they get a grant. Are you allowed to subtract the tax advantage that a private owner would have from the grant when working out whether this is state aid or not?

Neil Ritch: To work out a balance?

Mr Reid: Yes.

Neil Ritch: It would depend on a whole range of factors. In essence, we would have to make a judgment on the amount of money we are paying and is it within de minimis or not. You cannot net off the pros and cons, as far as we understand it, and we do not do that.

Q221 Mr Reid: Have you had legal advice to that effect?

Neil Ritch: No, but we could seek advice on that.

Q222 Mr Reid: Could you seek that and write to us, please?

Neil Ritch: We will certainly raise that with our legal people.

Q223 Chair: You have not done that before? I am just surprised that that question should be asked and you responded by saying, “Look, we have not thought of that” or “We have not considered that previously.”

Neil Ritch: If there were a very obvious option there, our legal team would have identified it, but at this point they have not.

Q224 Mr Reid: The point has been made that the reason the community group need a grant is the tax benefits to the private sector. If those tax benefits were not there for the private sector, the value would be a lot lower and the community group probably would not need a grant. They only need a grant because of the tax advantages. It seems that everything is stacked in favour of the private sector here.

Neil Ritch: The majority of grants that we make to communities to buy property are relatively small on average. The original Scottish Land Fund made 117 grants. If you take

out four very large ones, the average size is £35,000 so you are well below that kind of level. It is not a particularly common situation for us.

Chair: To be fair to ourselves, I think we understand that; there is a difference between helping a community to buy a hut to turn it into something, which is very small, and a rural community who want to buy a big chunk of land. Given that our inquiry is on land reform, we are focusing on the land reform elements of it. I will move on to Mike to pick up the third question. That's the third out of about 97. I've got another meeting at 11.

Q225 Mike Crockart: Before I move on to the third question, I want to back up the question Alan was asking. Various different assistances are available to private owners that would form state aid, like feed-in tariffs, renewable obligation certificates, forestry grants and farming subsidies. Are all of these things ever looked at in the calculation of whether it is possible to move across to community ownership rather than a private ownership when you are considering the applications?

Neil Ritch: A range of those benefits are available to community owners too. If you take assistance to renewable energy projects, for example, we have had situations where communities have been funded, and they chose then to change their funding arrangements from a grant from us to feed-in tariffs, because that offered them a better long-term income stream. It depends on the project and the organisation and what they are trying to do.

Q226 Mike Crockart: But you can understand where the question is coming from. We are looking at why state aid is a barrier, or seems to be a barrier, for communities to buy up land when, at the same time, the private landowner is already able to access funds that are effectively state aid.

Rachael McCormack: May I contextualise? Since 1997, HIE has supported 167 community asset acquisitions, and over 311,000 acres of land is in the ownership of communities during that same period. I want to put those numbers on the table as balancing statistics. The barrier is the extent to which the land or asset has the potential to affect international trade. When we are talking about commercial forestry in isolation, as opposed to any other sort of land acquisition, it is very specifically prescribed within the treaty. There are very clear guidelines in terms of what can and cannot be done.

Our starting point in any state aid discussion is to maximise a no aid position. There are a number of examples, and I am happy to give the Committee a specific example which might illustrate the rationale of an individual bespoke approach to the assessment. An activity supporting development of industrial units for local employment, which if we were to do it in Oban or in Inverness would demonstrably create displacement, would have an impact and would not be eligible for aid. We have supported a community in West Harris to the tune of £154,000, based on a no aid argument that looks at the history of land ownership, the availability of land and the activity within the market. We have taken advice from property specialists, and made a strong and robust no aid argument to support that community to drive forward its ambition.

Q227 Chair: I'm sorry; I don't quite understand the wording. What does a "no aid argument" mean?

Rachael McCormack: That we have looked at every angle of the project, we have looked at every angle of the proposal and we have satisfied ourselves, based on the evidence-

based approach which HIE takes, that we can fund that but it would not constitute a state aid.

Chair: We have to vote and we will be back as quickly as we can. I have been told that there are two votes, so if you don't mind talking among yourselves, we'll be back as soon as we can.

Sitting suspended for Divisions in the House.

On resuming—

Chair: I understand that some of you have to leave early, so we will try and rattle through some of the other questions and answers, if you do not mind. If there are other issues that we want to explore, we may write to you about some of them. We appreciate that we often have a difficulty with people coming down from Scotland. We do not have facilities available to us in Scotland with broadcasting opportunities. This will go on the internet for those who wish to watch it late at night and then send comments at 3 in the morning, which we often get.

Q228 Mike Crockart: You will be glad to hear that we are moving away from state aid for a short while, and looking more at the general community right to buy. I would like to ask Rory first of all because it generates from the evidence that you submitted, which really dealt with the community right to buy. It only allows communities in Scotland with a population of 10,000 to apply to register an interest in land—effectively rural areas. For example, in the constituency that I represent, the vast majority of it would not fall within the map; I have had a look at the map. Yet there are issues involved in urban areas where community right to buy might provide quite a good solution. Why was community right to buy limited to rural areas, and what impact do you think it would have if it was made universal?

Rory Dutton: Obviously, I cannot speak as to why it was limited to rural in the first place. Certainly, we do a lot with urban, as well as with rural. To have a universal community right to buy—whether it is rural or urban, public or private land—whatever the community size, would make a lot of sense. I am not talking about vast tracts of land, but there are a lot of key small bits of land, perhaps a building or whatever, which would make a huge difference to urban communities. My understanding is that if you look at the latest discussion paper coming out from the Scottish Government on the Community Empowerment Bill, there is a strong hint on the universality of the community right to buy. They are certainly looking at using that mechanism to have an appropriate community right to buy for urban as well as rural areas.

There are other issues of course. Even with a population of 9,000 in a town, to get 10% in a ballot is a huge challenge. That would be amplified more and more as you went into larger population centres. It is not a question of simply opening it up; you would have to tune it as well.

Q229 Mike Crockart: I would be interested in knowing if the others, as the funding mechanism for that, see any problems with making that more universal.

Eric Samuel: We have been funding urban communities as well as rural communities since 2006. The thing with Growing Community Assets is that it is not reliant on people making use of community right to buy. The vast majority, as happened in the Land Fund, are negotiated settlements between the buyer and seller.

Neil Ritch: Roughly £60 million has been invested through the phases of the GCA; about 65% is in rural Scotland and 35% in urban Scotland. You are talking in the range of £25 million since 2006 invested in urban assets. As Rory mentioned, they are usually fairly strategic small parcels of land.

The challenge is often around things like valuation and the relative value of urban land in some settings. As Rory said, the idea of how you measure community support does need tuning in that context. With a larger population base, a 10% threshold becomes a much greater challenge. In a more dispersed population, it is sometimes a harder thing to put together. We find that communities are able to do that, because within our funding programme we can be more flexible and less prescriptive.

Q230 Chair: Am I right in thinking that the south of Scotland, right across the country, has been less active in pursuing the opportunities than the north of Scotland? You tend to associate the highlands and islands and so on with the idea of community land buy-outs rather than the south of Scotland.

Eric Samuel: Through the Land Fund certainly, but not in terms of GCA. Dumfries and Galloway got quite a few awards through going—

Q231 Chair: Sorry; GCA?

Eric Samuel: Growing Community Assets. That is the Big Lottery Fund programme for transferring assets. It depends what you are talking about. When you say “land”, are you talking purely land? In terms of assets—

Q232 Chair: This is an inquiry into land reform rather than an inquiry into you.

Eric Samuel: But we need to get that clear when we are talking about these things.

Neil Ritch: It is fair to say that it originates in the north-west and the west highlands. In the west highlands, you see the bigger areas of land bought—the more iconic areas of land—and some of the real trailblazers were there. We have seen that ripple out a bit. Particularly in this iteration of the Land Fund, we have seen significant activity starting to happen in the south of Scotland, right down in the Isle of Whithorn, for example, Johnstonebridge. We have had quite a few in Dumfries and Galloway of late. Yes, there has been less activity in the borders across Dumfries and Galloway, south Lanarkshire and up into Fife than you would see in the highlands and islands, without a doubt. You have strong variety within the highlands and islands as well, so the Western Isles are hugely active, and Orkney and Shetland much less so. There is a range of factors.

Q233 Mike Crockart: I want to press Rory on what he has heard about the possibility of this universal right to buy coming in. Having looked at the consultation that was issued for the Community Empowerment Bill, it certainly has a section on measures to streamline and extend, but it refers to the rural community right to buy. I do not see any pointer in there heading towards a more universal right to buy.

Rory Dutton: I will come back on that. I thought it was mentioned in the latest discussion papers but I will have a look at it. It is certainly being talked about and we are very hopeful that it will be considered. On the rural versus urban, the issues in urban are different in as much as there is the whole issue of dereliction and not being used—of land banking. I can think of loads of examples where a key asset in a community has been lying idle and has deteriorated. It would be a phenomenal asset for the community, but somebody is banking it and waiting for the good times to come again; they might develop it and sell it on. I would say that in an urban context the whole issue of land banking for

housing—waiting until things pick up and renovating a hotel into flats—is a bigger issue than it is in rural areas. It would make a big difference if it was extended to an urban situation.

As somebody said earlier, community right to buy has not resulted in a lot of direct transactions using the legislation that is there in the background. We would hope that an improved community right to buy would be more useful, whether it is in the urban circumstance of a key asset with a lot of potential being derelict, or whether it is the absolute right to buy that people talk about to force a sale. That would be part of the evolution.

Q234 Mike Crockart: It is also sometimes the removal of blight in urban situations, where an area is being allowed to go to rack and ruin. The community around about it would love to buy it, just to cut the grass.

Rory Dutton: Currently, if it was modelled on the current right to buy, they would have to wait until it came on the market. It is not going to come on the market. You can think of examples where it is just sitting there deteriorating and going to rack and ruin. That is both in public sector and in private sector assets.

Q235 Chair: We want to explore what could be done to prevent state aid rules from impeding increased community ownership. We have already covered quite a lot of that. Rory and Andrew, is it fair to say there should be greater clarity, that we want a more permissive system of community development and that those involved in administering this scheme could be greatly less risk averse? Is that a fair synopsis or is there anything else you think we should add?

Rory Dutton: There is a further aspect I want to raise. Community enterprises and groups are lumped in with the private sector as commercial enterprises, whereas a lot of communities see themselves as very local and small scale—public sector; it is just public ownership on a very small local scale. Yet in all their transactions vis-à-vis state aids and other things they are seen to be just like any other private operator.

A couple of years ago, we suggested that there might be scope for having a new approved scheme. The European Union can approve schemes; for example, the particular project we were involved in at the time for asset transfers from local authorities to community groups, etc. It is just to explore it a bit further—that's the public sector, that's the private sector and the community sector is in the middle. A lot of people in the communities see themselves as being the local public sector.

Q236 Chair: Greater recognition of the community development aspect of all this: is that a fair way of putting it?

Rory Dutton: Yes. And there would be scope therefore to have specific schemes drawn up so you would not have to go through de minimis. If it was state aid, that is fine and it could go through that scheme. It would have to be quite tightly drawn up, but we believe there is scope to have new schemes as well.

Q237 Chair: We have obviously been critical of other organisations in terms of being risk averse and the like. Given what we are trying to achieve and what could be done to prevent state aid rules from impeding increased community ownership, the sort of points that I mentioned in terms of greater clarity, more recognition of community development and guidance being given to organisations like yourselves to be less risk averse—that's right isn't it? Yes. Less risk averse.

Jim McGovern: To be more risky.

Chair: Yes. That is the sort of thing I want to avoid saying. Are there other recommendations that you think we should be making about how this is handled? Perhaps you could consider it and come back to us about it, because I am conscious that you want to get away.

Neil Ritch: There are a couple of important points to make on that. We have been trying to be clear on this for a long time and trying to find ways of supporting communities to buy assets. Between us, we have invested about £75 million in over 300,000 acres of land coming into community ownership. That has largely been through willing sellers and negotiated sales at market value. To that extent, anything that helps us do that, we would thoroughly welcome, because that is the business we are in. We are always trying to balance a whole range of factors, which we have previously discussed.

Q238 Chair: Do you accept the point that was made earlier about the aids and assistance given to the private sector having lifted the market value of land quite considerably?

Neil Ritch: I do not know enough about land valuation to give you a worthwhile view on that.

Q239 Chair: Having looked at international comparisons, certainly I am aware of some circumstances in Africa where it is willing buyer and willing seller, but because few of the sellers are willing—nobody wants to let go of the land—the price of anything that is available just rockets up because of scarcity, as well as the question of artificial financial assistance. Andrew, do you want to add to that?

Andrew Leaver: I will not quote all the stuff, but we have district valuer reports on our purchase and another purchase on the west coast, which clearly state that the value of the forestry land is inflated above its economic value because of the tax benefits and the perceived ownership—the vanity benefits of ownership. That is in a report produced by a valuer.

Q240 Chair: If we do not already have that, then maybe we could have it. I spot a possible witness. Could I have some further clarification from you? It is about this question of whether or not the risk of the state aid rules being invoked could be minimised by one community organisation buying the land and a different community organisation then financially developing it. If that can be done, that looks like a pretty obvious way of dealing with this. Rory, is that something that you have been exploring?

Rory Dutton: I am not familiar enough with the detail. There is quite a complicated thing about whether it is different organisations or whether it can be trading subsidiaries. Quite a lot of the community organisations will have a charitable parent company that will own the asset, and then there will be trading subsidiaries—wholly owned companies—who will run the trading activities on that. I am not knowledgeable enough to know how it relates to that.

Q241 Chair: I will ask those who look at these things more closely than us, meaning Rachael and Neil. Is that a way forward?

Rachael McCormack: Rory has mentioned how that might be interpreted. You would have to look at it through the lens of whether or not there is a relationship and whether it is an overt way to manipulate the legislation and find a route through to get to an end, to circumnavigate or take a particular interpretation of the legislation to get to where you want to go. It is certainly something that we would be happy to take away and look at.

Q242 Chair: Has nobody ever thought of this before?

Rachael McCormack: Yes.

Q243 Chair: We have come to this relatively recently, and it has occurred to us. Surely you must have considered this. Are there examples where you have one community-structured organisation buying the land or owning the land and then something else operating it in order to avoid the state aid rules? Avoid as distinct from evade, you understand, since avoidance is legal and evasion is not. Your adviser in the background is nodding, so that is obviously a point of which the organisation is aware.

Neil Ritch: Historically, some of those structural solutions have been used and in particular cases they may be helpful, but as Rachael is saying, in the end the overt gaming of the rules is just that and not appropriate in that sense.

Q244 Chair: Who decides it is not appropriate?

Neil Ritch: In the sense that if you are completely overtly seeking to game the rules, that seems excessively risky.

Q245 Chair: To whom?

Neil Ritch: Ultimately to the organisation.

Q246 Chair: No; who decides that that is too risky?

Neil Ritch: I suppose we decide that, because in the end we have to be comfortable with the structural solutions that—

Q247 Chair: It comes back to you being too risk averse.

Neil Ritch: That would be one interpretation.

Q248 Chair: But on something like that you have not gone off to consult the wee man in St Andrew's House or anything; you have made that decision yourselves.

Neil Ritch: I think a number of organisations have sought advice on that and have looked at those structural solutions. They have not come back to us saying that that is what they want to do. It is a wee while since we have had a case that sought to go down that route, to be honest.

Q249 Chair: It strikes me that both organisations are insufficiently entrepreneurial. I get the impression that you are not trying to find ways of helping the community to achieve the things they want to do. You have retreated behind an assumption that if you do something wrong, somebody somewhere is going to jump on your head. Is that unfair? You can understand, having listened to what you have said today, how I could come to that conclusion.

Neil Ritch: What I would say is that in the past 10 years, we have managed to achieve substantial investment in a large number of organisations. We have not done that by trying not to help people.

Q250 Chair: Your job is essentially to give money away, as I understand it.

Neil Ritch: Yes.

Q251 Chair: Right. I would have thought that you would be able to manage that. The question then is whether or not that should be the criteria by which you get judged. I am sure you get more requests for your money than you have money to give away.

Neil Ritch: Yes.

Q252 Chair: The question is whether or not you are hiding behind difficulties in order to disadvantage particular sets of applicants. In these circumstances it is those who are applying for community land buy-outs and so on, because you are just saying, “This is difficult. We have somebody else that we can give the money to, so we will meet our target and tick the box in terms of money out the door”, but it is not necessarily to those I suspect either the Scottish Government or ourselves would want to prioritise.

Neil Ritch: If you look at our programmes, our assisted community land and asset purchase, the success rate in those grant programmes is significantly higher than the average grant programme across the board for the Big Lottery Fund. It is something like 80% in the original Scottish Land Fund and upwards of 80% in Growing Community Assets. I do not think it is the case that we are necessarily rejecting large numbers of applicants. We do have a challenge on state aid and we absolutely recognise that. That may mean that some projects that we could either fund more generously or fund in the first place have been disadvantaged, but generally I do not think it is the case that as an organisation we have set out to avoid funding any particular asset class.

Q253 Chair: In the past, the Scottish Land Fund gave millions of pounds to Gigha and the South Uist Estate. How does that comply with state aid rules? Would you allow that now?

Neil Ritch: Yes. We funded the Pairc Estate last week.

Q254 Chair: That took a very long time, did it not?

Neil Ritch: It took a long time to go through the courts in terms of the use of the right legislation and in terms of the community achieving it with the owner.

Q255 Chair: You would say that was not a delay at your end.

Neil Ritch: No.

Q256 Chair: I want to try and clarify this. If Gigha and South Uist came up today, you would do them again, would you?

Neil Ritch: We would fund Gigha and South Uist again, yes. When we funded both Gigha and South Uist we considered whether or not there were state aid issues with those acquisitions.

Q257 Chair: Given the size of them and their fair amount of significance, if anything comes forward from Rory’s organisation or somebody similar that fits the same template, that should proceed quite easily.

Neil Ritch: Subject to all the usual assessment and everything else, but yes.

Chair: In principle.

Neil Ritch: Yes.

Q258 Chair: That is very helpful. Do you want to respond to the points I made about yourselves being insufficiently entrepreneurial and helpful?

Rachael McCormack: I was just going to say that another context for that would be being committed to working within the legislation. We work extremely—

Q259 Chair: But this is within the legislation as you interpret it. Again it comes back to the point about being hyper-cautious. Rory, are your organisations happy with the people you are dealing with and the views that they are applying in these circumstances?

Rory Dutton: We are very unhappy with some decisions. I would say things are moving reasonably fast now, so hopefully things will get better.

Chair: Things can only get better.

Rory Dutton: Our members have not been happy, no; they have been very unhappy in certain examples. That is clearly why we have been involved with Ministers in the Scottish Government, with senior civil servants, with the Local Government and Regeneration Committee and with the Community Empowerment Bill. All these processes we have fed into the issue as well.

Q260 Lindsay Roy: Can you indicate why people have been unhappy?

Rory Dutton: People have been unhappy generally, because this whole issue about state aid has appeared recently and is seen to be an obstacle to them realising their ambitions for their communities. I am not speaking specifically about HIE here. I am just speaking generically about the public sector when they are dealing with state aids and community groups. They do not feel they can have that one-to-one dialogue to progress the issues, talk round them and negotiate an agreed position, or if there is any scope to move. I cannot comment at all on the Aigas case. I am not involved in that at all. Generally there is an increasing number of phone calls I get—put it that way—from people who are frustrated with state aid issues.

I would like to go back to the point we were debating a minute ago vis-à-vis Storas Uibhist and South Uist. That is the trading company. Sealladh na Beinne Moire is the charitable parent that owns the asset. That is well established among development trusts and land trusts. You have a charitable parent and then you have the trading activity done by a non-charitable trading share company. The charity regulator in Scotland, OSCR, is similarly concerned, as HMRC have been, on the tax issues of charities, etc. It is quite a well established thing to have this charitable parent and trading activities, but you do not want to set that up for a relatively small project. As I said, I am not aware of the ins and outs of it as far as it relates to state aids, but it is a well proven principle as far as charitable taxation goes.

I would also say that the likes of the Lottery would be quite familiar with it. Quite often you will find that a charity will make an application for a development project which, in the end, will be run by a different company—a trading subsidiary or something like that. Then they have to have a dialogue with the funders as to how that is going to transfer over into the new thing. These are quite well established structures. I do not know how it fits within the state aid regulations, but it may well be a route, as you suggest.

Q261 Chair: There is a process of modernisation of the rules, to some extent, going on at the moment. I understand that the Scottish Government is looking at this. Are you involved in that in any way? Rachael, do you want to express a view?

Rachael McCormack: Yes, we are involved, and during the periods of consultation we have provided detailed information and suggestions. We welcome that review.

Q262 Chair: Andrew and Rory, you are nodding as well, as are the Big Lottery Fund. Fine. Do you think the Scottish Government can achieve its target of an additional half a million acres in community ownership by 2020?

Andrew Leaver: Not without substantial change to the mechanisms that they are currently implementing, including state aids.

Q263 Chair: Yes, that was the sort of conclusion we were starting to draw. Rory, again you are moving your head, so I think we want to get it on the record.

Rory Dutton: It is not sheer acres under community ownership that is important; it is the impact in terms of community benefit that is important.

Q264 Jim McGovern: What is the target?

Rory Dutton: I do not honestly know.

Andrew Leaver: The anecdotal understanding is that Alex Salmond stood up and said it without consulting his civil servants, but I think that is already on your record, because I was reading it previously. That is the common understanding.

Q265 Jim McGovern: Is it Alex Salmond's target or the Scottish Government's?

Andrew Leaver: But the civil servants are now required to implement it. Again, through knowledge of friends and colleagues, the civil servants are now looking seriously at that target and the ways in which to approach it, including the body we are dealing with, which is the Forestry Commission Scotland. The transfer of land for us is through Forestry Commission Scotland. They have to look at that target.

Q266 Jim McGovern: When you say how to approach it, do you mean how to achieve it?

Andrew Leaver: How to achieve the target.

Q267 Jim McGovern: So it is achievable.

Andrew Leaver: I cannot say whether it is achievable, but I have just read your evidence and I would say what Peter Peacock said. It is a good way forward to make such a statement. Whether it is achievable is another matter.

Q268 Jim McGovern: I detect a hint of doubt in your answer.

Andrew Leaver: I think most people in Scotland avoid Scottish politics at the moment, so I will stay clear of that just now.

Chair: Oh really, you surprise me.

Rory Dutton: We did a baseline study in 2012 on community assets. Of the 436,000 acres, or whatever, that were in community land at that point, most of that was through 17 large estates at that time. In relation to the earlier point about urban land, just 3% of the assets—not acres but just assets—are in the 5% most deprived areas. On the merging of the agendas, I do not think the Scottish Government will necessarily always want to concentrate on that sheer physical area of assets, rather it is on the impact it is having in terms of regeneration, community empowerment and economic activity. I would hope that that target becomes a more added-value target.

Q269 Chair: Ah, the target becomes an aspiration and then it becomes an indicative figure.

Rory Dutton: No, I meant if you had more community ventures and people employed.

Q270 Chair: It needs to be complemented by other targets, doesn't it?

Rory Dutton: Yes.

Chair: Because we are largely looking at the question of land reform, we have tended to look at it in the context of acreages and so on, rather than in terms of small urban developments and the like. We will move on to the Scottish Land Fund.

Q271 Lindsay Roy: According to the information we have, the Scottish Land Fund has supported just 22 projects since 2005. To what extent is it fit for purpose? If we take 10 as excellent and one as unsatisfactory, where does it sit on that spectrum?

Rachael McCormack: I am not certain in terms of the numbers whether you are aggregating the two periods of the original Scottish Land Fund and the recent one. The current Scottish Land Fund started in July 2012 and has a four-year life, supported with £9 million of investment from the Scottish Government. There are about 77 applications or referrals from the Big Lottery to HIE that we are dealing with at the moment. There are a number of approvals that have gone through. The acquisition of assets and land by communities is not an overnight occurrence. Communities take it very seriously, and the due diligence and feasibility work that communities put in up front is not inconsiderable. The arrival and the trading of the Land Fund certainly provided a number of communities with the opportunity to start to think about how they might pursue that as an opportunity. In terms of the earlier Land Fund, perhaps Neil might have more on that than me.

Neil Ritch: I do. The original Land Fund opened for business in 2001. It had funded 117 acquisitions by 2006. When the original Land Fund closed, the Big Lottery Fund opened a different funding programme called Growing Community Assets, which funded most of what the Scottish Land Fund would have funded, but also funded urban assets and asset development. Growing Community Assets, between 2006 and 2010, made 127 awards worth £48 million. I am not quite sure how that 2005 figure has been derived.

The majority of all the original Scottish Land Fund was invested in rural Scotland, which is to say settlements of 10,000 people or fewer. Around £35 million-worth of Growing Community Assets—the first iteration—was invested in rural Scotland. The overall number of projects is nearer to 300.

Q272 Lindsay Roy: And that is for the Scottish Land Fund.

Neil Ritch: The current Scottish Land Fund, which opened in 2012, has funded 11 live grants and has a pipeline of 77 cases.

Q273 Lindsay Roy: On that scale of one to 10, where does it sit?

Neil Ritch: In terms of effectiveness and response to demand, it has a very high success rate for the types of grant programmes we have. I think it scores quite strongly in terms of effectiveness and meeting demand.

Q274 Chair: But you are turning lots of them down. You are refusing lots of them because of state aid rules.

Neil Ritch: No.

Q275 Chair: If you have an operation, patients die and you are looking afterwards at your success rate, it obviously distorts the figures, doesn't it?

Neil Ritch: Yes, absolutely. What we are doing where projects are constrained by state aid rules is trying to find ways of making those projects happen, as we described earlier. Glendaruel is a good example where using de minimis and negotiating with private investors, we have been able to do something.

What we are not doing is saying to groups, “We have a state aid issue here and we can’t talk to you.” We are trying to work through those issues and find ways of enabling those projects to happen. That sometimes means different funding packages. Sometimes it means the project does not quite look like they might have wanted it to look. What we are not doing is holding up our hands in horror, holding our noses and walking away when we think there is a state aid issue with it. We are seeking to find ways of making those projects happen. In the end, we are in the business of trying to fund things. As you pointed out, that is what we are there to do.

Q276 Chair: You can always get money out the door. To be fair, I do not think you all come into work every day saying, “Well, whose aspirations can we crush today?” I do accept that. However, there is the issue about whether or not the groups with whom you are dealing are happy about the way in which you are implementing the rules and the rules you are implementing. We are obviously going to be speaking a bit more to some of the organisations. I am just trying to identify what you think their reaction is likely to be. You think they are likely to give you pretty high scores for general helpfulness.

Neil Ritch: I do. If I look at the evaluations of programmes done in the past and at the work we have done in talking to people about the service they are getting, what they tell us is that satisfaction levels are pretty high. We are a funder. We tend to speak to people we have given money to, so we take that attribution into account. When you look at the way grant-making operates in Scottish Land and at the kind of support communities receive in working up their project and developing their application, whether that is small simple grants to do a lot of the technical work or expert technical advice or support from advisers at HIE, it is a pretty high quality grant-making offer.

Q277 Chair: We will have to judge some of that. In my constituency, nobody ever complains about being granted asylum because they have the decision they want. That is the issue for yourselves as well.

Rattling on, does anybody else have any other views about the Scottish Land Fund? Rachael, you were giving visual expression.

Rachael McCormack: Was I indeed?

Chair: Yes, you were indeed, and since *Hansard* does not record that, do you have a view on the merits or otherwise of the Scottish Land Fund?

Rachael McCormack: I wanted to give a few more numbers to the Committee. There are 11 Scottish Land Fund approvals that have gone through, only two of which have included an element of state aid. The approach to maximise the no aid argument that HIE takes has been able to be delivered in its entirety in nine out of the 11. To my knowledge, there have been no state aid refusals in the way that you describe—communities going away from the Scottish Land Fund per se absolutely not engaged with us any longer.

Q278 Chair: In relation to the target group of 11 that you are measuring, I am not clear whether or not there were aspirations that were crushed before they got to that stage. People might walk in through your door at the very beginning, but how many of them are just dismissed at that stage? That would be a more realistic assessment of numbers. You might end up with nine out of 1,000 if it was a question of people who had expressed a desire.

Rachael McCormack: The partnership between HIE and the Big Lottery around the Scottish Land Fund is that the Big Lottery undertake an initial appraisal discussion with applicants to determine that they are fit, and then they make a referral on to HIE. We then work very actively with those referred organisations. Those are the 77 that I refer to.

Q279 Chair: Could I come back to the question of Gigha and South Uist? Thinking back to the comparison with Andrew's scheme, both Gigha and South Uist had substantial commercial elements in them, did they not?

Neil Ritch: Gigha is interesting, because it was bought by the community prior to the land reform legislation. It was done on a clock. It was also done with the asset allotted in a way that they had no choice around. When the community bought Gigha, they bought it with a fairly outline plan of what they might do. To a very large extent they were not coming and saying, "We have this very clear commercial vision." They were able to communicate that they saw potential in the island, but they clearly had some severe challenges, not least of which was that almost all the housing was judged unfit for habitation. They clearly had a whole bunch of difficulties to deal with and what they have since done has been pretty fantastic. The funding that went into simply transferring the ownership of that asset to the community was, in our view at that time, a reasonable thing to do and did not create a risk that was unacceptable to us.

Subsequently, over time, they have developed a range of projects. They have financed those in different ways. The straightforward transfer of ownership of that estate at that time did not present a great difficulty.

Q280 Chair: Coming back to Andrew's scheme, I am aware that it is always a bit difficult building too much on the basis of one particular case, but it sounds to me from what you are saying that his mistake is to have a complete package. If he had not got the commercial arm—the business plan—worked out and if it had been much less coherent and less sustainable, he would have had a much greater chance of getting the buying of the location through and then he could work out all the rest of it later on. By then the grant would have been paid and so on.

Neil Ritch: It is partly that, but it is also partly that there is a much clearer set of regulations around the purchase of forestry.

Q281 Chair: This is an issue about forestry in particular. I am just trying to separate these issues. Is it the case that his problem is that he is involved with forestry, and forestry is much more difficult to proceed with? Had it been other things that he was doing, might it have been much easier to put through? Eric is enthusiastically nodding at that point.

Eric Samuel: I think this is where we started this afternoon. There are particular rules around forestry, agriculture and various activities in terms of state aid, and that is when you run into difficulties. The fact that we have funded a heck of a lot of other projects with no difficulties speaks to that.

Neil Ritch: Forestry is different.

Chair: We are drawing to a conclusion. Members have had to go to other things. Two had ministerial meetings, so they did feel they had to leave. Colleagues, are there any final points that you want to raise? I will then ask the witnesses if there is anything you want to get off your chests.

Jim McGovern: I would point out that we are outnumbered, Chair.

Q282 Chair: I am the person who decides whether or not a vote takes place in these circumstances. As I said to you privately before we came in, are there any answers you had prepared to questions that we have not asked? Is there anything you feel that we have not touched on so far that, as part of our inquiry, we ought to be aware of?

Andrew Leaver: You asked earlier about how we could get an extra half a million acres into community ownership. I said that they would need to change approaches. One of the approaches that needs to be looked at—and we have not had a chance to look at it today but it might fall under the remit of your Committee—is the identification of the benefit to the public purse of the sale of the public asset; whether that is a purely financial calculation or whether they should take into account the social and economic benefits.

When we fill in application forms as a community group, whether to get permission to buy or to get the funds to buy, we have to make a point about the economic benefits we produce, the social benefits we produce and the environmental benefits we produce. All three of those are measured equally by the decision makers in our right to buy and in our funders. But when we go to get a valuation on the land, because we are buying from the public purse, they only look at the economic value of that land. They do not look at any of our social or environmental benefits.

What really frustrates me—this is a personal thing—is I get told that they are protecting the taxpayers’ interests, yet the community that wants to buy are taxpayers and it would be in our interest to have it transferred. That interpretation of the Treasury rules is something that needs to be looked at. If they could find a different way of interpreting it to include social and environmental benefits, it would bring down asking prices and increase the transfer opportunity of the land.

Q283 Chair: The Big Lottery Fund mentioned something along the same lines. Do you agree with that?

Neil Ritch: What we measure when we choose to fund a community asset purchase are the outcomes that asset will deliver for the community. We look at those on social, economic and environmental terms. For us, it is a social return on investment.

Q284 Chair: I think we are quite familiar with this general issue. We have had the same thing with the Crown Estate, for example. General Treasury rules fail to distinguish between price and value. That is an ongoing dispute.

Are there any other issues that you wanted to raise with us? I want to pick up one sub-point that has been pointed out to me. This is for the Big Lottery Fund in particular. You state in your evidence that there was a problem with the way in which the Treasury rules are interpreted via the Scottish public finance manual. Do you have examples of that?

Eric Samuel: As we said earlier, and as we explain in the evidence, for purely practical reasons, as we have a finite sum of money, we tend to ask applicants who want to take over assets to try and get a reduced value. What you might get in some cases are local authorities saying that they cannot do that. On the other hand we know, because we have experience of it across the last 10 years or so, that they can get round that when they want to do that, and still comply with the legislation. That is the problem.

Q285 Chair: For the record, you are saying that many of the public bodies, particularly local authorities, would be able to reduce the price if they wished to do so and still be within Treasury guidelines and the Scottish Government’s finance manual.

Eric Samuel: Our experience is that they do it. It is not for us to inquire how they have done that, but as long as they offer these communities a discount we are quite happy with that. It has happened. There are various ways they can do it. They can still charge full value but give the group a grant for the equivalent amount, so it is just a total paper exercise. There are ways they can do it.

Neil Ritch: It links to a concern—a number of communities have said this—that owning the asset is the start of the process for those communities. If you exhaust all of your resources in the purchase of the asset and you do not have capital to then invest in doing things with that asset, that is a difficulty for us. We think we get more return for those communities by investing lottery grant money in developing the asset once you have ownership of it, than just the bare ownership itself. Where we see public bodies, who have interests in communities doing those things too, able to assist with that cost, that feels like a more positive situation for us and for them.

Q286 Chair: I understand that, but arising from what we have said earlier on, and looking at the Gigha example where it was bought as an asset without the funding for the development element at that stage, the state aid rules in terms of international and local competition are less likely to be applied if it is a less sustainable business plan proven scheme that they are putting forward.

Neil Ritch: Development plans are not always just for commercial activities. They can be for social outcomes as well, so it depends. We are always trying to find ways of doing that in a positive way. Gigha did receive development funding when the purchase went through. They employed some very good development managers, and that was key to the success of that project. The point was that when that purchase happened, it had to happen quickly and so there was not a detailed plan, but there was a requirement to develop that detailed plan going forward.

Rory Dutton: There is a big difference between local authorities and agencies. There was a statutory instrument from 2010 passed by the Scottish Parliament about the disposal of land by local authorities, which means that local authorities no longer have to go to the Minister. If they can justify transferring an asset, land or building at a nominal sum because of the wider benefits, they can do that. They do not have to ask anybody; it is within their power. Agencies always get bogged down in these Treasury rules. That is where we really want to see the movement—in the Treasury rules—because there are a lot of other public agencies, other than local authorities, who have surplus assets.

Q287 Chair: Let me clarify this. If the local authorities do not have to seek justification from the Minister, do the other public agencies have to do that, or do they just have to sort it out internally, in which case the Treasury rules are much more likely to be something that are used to hide behind?

Rory Dutton: The Treasury rules did not apply, as I understand it, to local authorities. They used to have to go to the Minister and now they can do it themselves internally. My understanding is that the agencies are more bound by the Treasury rules. I cannot comment as to how—

Q288 Chair: And there is not a mechanism by which they can appeal to the Minister and seek guidance and so on.

Eric Samuel: There is something in the paper that Andy and his colleagues wrote and that John Elvidge has put together, saying that it is not an insurmountable problem for Government Departments.

Q289 Chair: We just wanted to hear some response from you on some of the points. Are there any final, final points that people want to make?

Rory Dutton: I want to come back to a point that was raised earlier, when I was not going to risk looking for a fact in the Scottish Government's consultation paper on the

Community Empowerment Bill. I was asked a question about whether the Scottish Government was indeed minded to make it universal. Would you note that it is on page 18 and in question 17. It follows paragraph 67. It does say that “the Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest.” So they are asking the question and they are saying that they intend doing it; what do you think of it? That answers the question the gentleman asked earlier.

Rachael McCormack: Could I reiterate a point made by Neil? Whilst I appreciate that the Committee is focusing on land reform, the acquisition of land by communities is by no means the end of the journey. Neil referred to it as the start. It is the start perhaps after two or three years of fairly intensive exploration by a community. Community ownership bestows many benefits. Communities fundamentally step forward and take responsibility. They look for new opportunities and plan sustainably. It is innate within their community-owned asset that they are thinking not just about a short-term gain but an inter-generational transfer over time.

They respond to community needs because community organisations are charged, and wish to be charged, with that remit. Very powerfully, communities have a stake in their own future so local people are making decisions about local priorities and local needs. They are able to respond with strong development plans. As Neil has said, they include things that they want to do for their community, for their society but also for the local economy. As you study, as you will, the land reform agenda, I think that is probably the most salient and most powerful agenda for ourselves as HIE.

Q290 Chair: That was a paean of praise for community development, and we appreciate and understand that. That is why we are in favour of this and that is why we are having these hearings. What we are trying to investigate is the extent to which organisations like yourselves, which are there to help community groups, are doing so, and the extent to which you are being hidebound by rules that could perhaps be changed if a more entrepreneurial attitude was applied either by you or by those giving you guidance.

Are there any final, final, final points? This is your last opportunity. There are two minutes before we are due to close.

Rory Dutton: The final point is to do with cultural change. We are saying we want a cultural change vis-à-vis the interpretation of state aids. We are also seeking a cultural change across the public sector as regards trusting communities to lead their own development and do that. It is all part of the same scene, whether it is state aids or whatever you are dealing with.

Chair: On that happy note, let me thank you very much for coming. I appreciate that you have to try and catch a plane. We have finished two minutes early according to the timetable you gave us earlier on.