



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Good Practice Casework and Enquiries

2020-2023



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Foreword

Scotland's Land Rights and Responsibilities Statement sets out clear principles for responsible land ownership, use and management. Implementation of the Statement can bring significant benefits for all types of landowners and communities, helping to improve relationships, bringing new opportunities, and ensuring that the benefits from land are shared fairly.

Our Good Practice Programme provides advice and guidance on the practical application of the Statement. We have published a suite of nine protocols, and a range of further guidance, setting out expectations for responsible practice, supported by our Good Practice Advisory Group.

Landowners and managers can – and do – contact us proactively for advice on implementing these protocols, which is to be encouraged and commended. Other interested parties, usually community representatives, contact us if they have concerns that the protocols are not being implemented. Unfortunately, good practice is not yet universal, and the implications of poor practice can be wide-ranging and substantial.

Reviewing these contacts over the last three years demonstrates that the principles of the Land Rights and Responsibilities Statement are both useful and practical across a wide range of different land ownership types and scenarios. Our partners in the Good Practice Advisory Group have led the way in encouraging their members to demonstrate what can be done, and they are joined by an increasing number of influential membership and professional bodies who also recognise the importance of responsible landownership.

It is clear from this report that if the Land Rights and Responsibilities Statement was universally implemented, we would see significant progress towards a Scotland which meets the needs of all its citizens. In support of this aim, we share our learning here and recommendations to inform both policy and practice.



Dr Sally Reynolds,
Scottish Land Commissioner

Background

Our **Good Practice Programme** aims to promote and support change and good practice in the way land is owned and used in both urban and rural Scotland. We have created a series of protocols, tools, and guidance to encourage and enable those with an interest in land to recognise and fulfil their rights and responsibilities.

Our Good Practice Programme is underpinned by the Scottish Government's **Land Rights and Responsibilities Statement** (LRRS), which sets out principles for good practice in land ownership, management and use. The LRRS applies to everyone who owns, manages or uses land in Scotland – whether they are a private individual, a company, charity, community group, or public body.

Our Good Practice Team provides advice in response to enquiries and cases relating to the LRRS – giving guidance on how to apply the principles in practice and helping people to find solutions when they have concerns about whether and how the principles are being applied by those with decision-making powers over land.

This report reviews three years of enquiries and cases to identify common themes and to help us understand any lessons or implications for policy and practice in implementing the LRRS.



Our approach to enquiries and cases

Our series of protocols, based on the LRRS, sets out practical advice on how landowners, land managers and communities can work together to make better – and fairer – decisions about land use.

We encourage people to get in touch with us when they have enquiries about the protocols and how to use them, or when they encounter a situation that differs significantly from the expectations we have set out, which may require further action (we call these cases).

Our aims in dealing with cases and enquiries are:



To build capacity and confidence in issues related to land ownership, use and management.



To enable and empower landowners and communities to build, improve or mend relationships so that they can identify solutions that suit them and resolve issues in ways that benefit everyone.



To identify common and recurring issues that require further investigation and intervention.



To understand the real-world applicability of the Land Rights and Responsibilities Statement to inform the further development of advice on policy and practice.

What constitutes good practice may vary for different contexts and scales of land use and ownership and we are often asked for guidance and clarification relating to good practice in different situations. These requests come from a wide range of groups and individuals, including members of the public, community groups, landowners or managers, and tenant farmers. We are committed to responding to everyone who contacts us, in a way that is welcoming, transparent, and fair. We are clear about where we can help, and what is outside our remit. We do not share information about enquiries or cases without the express permission of those involved; however, as a public body, we are subject to Freedom of Information requests, so we cannot guarantee complete confidentiality.

Definitions



Cases

Cases are when we are notified of a situation that does not appear to meet protocol expectations, or where we become aware of a situation that does not align with LRRS principles. We will carry out further investigation or additional action, including speaking with landowners, communities and other stakeholders.



Enquiries

Enquiries are when someone contacts us for information or clarification, or to ask a question about a land matter, and we respond by providing information or signposting to another organisation. These include when people get in touch proactively for advice and support to implement protocols and good practice.



Contacts

Contacts are people who get in touch with us or who we reach out to about both cases and enquiries.



LRRS

The Land Rights and Responsibilities Statement (LRRS) is a policy document developed by Scottish Government. It sets out a vision and principles for the way land is owned, used and managed in Scotland. It is informed by public and stakeholder consultation.



Protocol

A protocol is a document developed by the Commission and underpinned by the principles of the LRRS, that sets out reasonable expectations in relation to the way land is owned, used and managed. The protocols cover different topics relating to land and are intended to provide a clear and helpful guide for communities, landowners and land managers so that they can understand what is expected in terms of good practice.

Cases and enquiries

We used software called 'Microsoft Dynamics 365' to record information about cases and enquiries since 2020. We use the information recorded to produce reports on a quarterly and annual basis. We have collated the reports produced across these years and analysed the contacts we have had over the last three years.

Number and frequency of contacts

From 1st April 2020 to 31st March 2023, we recorded 263 contacts. On average we get around 22 contacts per quarter, but this can vary depending on time of year, and tends to increase when the Commission is actively communicating about a particular issue or in a particular geographical area. For example, we have seen increased contacts from some areas immediately following a public meeting, and we have seen increased contacts about certain subjects following publications on that topic (for example, after we publish a protocol or guidance document).

The most noticeable spike in activity is in November 2020, which relates to follow up from contacts we made about long-term vacant and derelict sites, and to hosting a 1:1 clinic to discuss issues with community groups at a conference.



Cases and enquiries from 1st April 2020 to April 2023

Subjects raised

We have nine LRRS protocols covering a wide range of issues, along with supplementary guidance and templates. We use the protocol subjects as the basis for recording topics we are contacted about, but we have also added in some frequently raised issues which are not covered by a specific protocol. There are sometimes overlaps in the topics that are raised with us or new issues raised, so contacts are recorded against the subject that fits best.

Subjects of cases and enquiries from 1st April 2020 to 31st March 2023

Subjects raised	2020	2021	2022	2023	Total
Community Engagement	15	21	23	9	68
Vacant and Derelict Land	23	14	7	2	46
Diversification of Ownership and Tenure	9	15	16	6	46
Good Stewardship	6	12	4	4	26
Negotiated Transfer to Communities	8	3	10	1	22
Common Good	4	9	5	2	20
Natural Capital			10	2	12
Transparency	5	3	2	1	11
Asset Transfer	5	2			7
Tax and Fiscal			3	2	5
Grand Total	75	79	80	29	263



Community engagement was the topic we received the most contact about from 2020 to 2023

The topic that we were most contacted about from 2020 to 2023 was community engagement, which was raised by 68 of the 263 contacts (26% of all contacts). These contacts came from a range of people – including individuals, community organisations and community councils. Those who got in touch raised issues about engagement (or a lack of engagement) by those with decision-making powers. We were also contacted by landowners, public bodies, agents and other intermediaries asking for support and advice to engage with communities.

68

contacts about
community
engagement

Community engagement Enquiry



We were contacted by a private landowner who had recently purchased an estate. They were looking for advice and guidance on how to engage with the local community about their plans and aspirations. We shared our protocol and guidance documents and provided advice on engagement. We had a number of follow up conversations to discuss progress and challenges, and we provided further advice as needed. We welcome proactive engagement from landowners who are seeking to implement good practice.



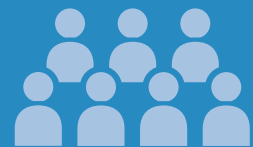
Other issues that have been raised often in the last three years include diversification of ownership and tenure (46 contacts) and negotiated transfer of land to communities (22 contacts).

Diversification of ownership and tenure has been raised as an issue fairly consistently across the three years of contacts. Contacts about diversification have most commonly come from individuals and community organisations who have raised issues that include difficulty in obtaining land to run businesses or grow food. Diversification is considered separately to negotiated transfer of land to communities, which covers contacts about community acquisition and different routes to ownership.

Contacts about transfer of land to communities have raised issues about processes for communities to take ownership of land and buildings, with some frustrated by a lack of clarity or lack of response. We have also recorded several enquiries about Community Asset Transfer processes, however, as the Community Ownership Support Service (COSS) provides advice on this for communities and relevant authorities, we would expect most of those with enquiries to contact COSS rather than the Commission.



Community Asset Transfer Case

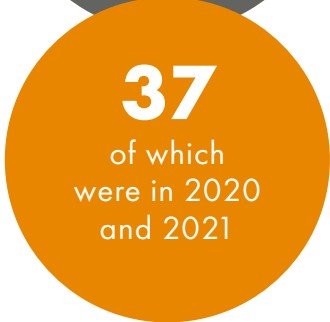


We were contacted by a community organisation that had submitted a Community Asset Transfer (CAT) request to a local health board. The organisation had not received a decision on their request within the timeframe set out in the Community Empowerment (Scotland) Act 2015 and was experiencing difficulties in communicating with the health board. It was not clear to them what the decision-making process looked like or how long they might have to wait for a decision.

We contacted the health board to discuss the situation and learned that they were having some difficulty with the process as they were not experienced in dealing with CAT requests, and there had been some recent changes in staffing. We explained the need for regular communication with the community and for transparency around decision-making processes and timescales. Following our contact, the health board reached out to the community organisation and set a date for making a decision on the request.

We received 46 contacts about vacant and derelict land (VDL) across the three years. However, VDL was mostly raised in 2020 and 2021, with many of the recorded contacts relating to our work on long-term derelict urban sites. We contacted a number of site owners with information on our work and resources for bringing sites back into use and received a number of responses asking for additional information and advice. Of the 46 contacts about VDL, 37 were received in 2020 and 2021.

We believe that the reduction in contacts about VDL in recent years may be as a result of better information being available about the subject now or due to the Commission’s current programme of work being less focussed on VDL. Recent contacts have mainly been from those who do not own vacant sites but would like to see action taken to bring them back into productive use.



Vacant and Derelict Land Enquiry



We were contacted by a charity that was looking to acquire a vacant and derelict site to develop a community sports facility. We shared information about our Communities Impact Tool, along with information about funding to bring sites back into use and case studies of successful projects. We signposted to other support organisations.

Vacant and Derelict Land Case

We were contacted by a community group who wanted to buy land from an organisation but had been told that there would be a title condition applied to the sale that would require the community to invest a large sum of money for the land to be made suitable for their use. We contacted the landowner who explained the reasons why the title condition and works were required. These related to health and safety and were reasonable considering the context. The organisation agreed to provide more detail about their reasoning to the community to aid their understanding.

In the last 18 months we have had enquiries and cases relating to new topics, including Natural Capital (12) and Tax & Fiscal (5) issues. We are taking forward further work on these areas so may see more cases and enquiries on these subjects in future.

Natural Capital Enquiries and advice



We have been contacted by several investors who were looking for advice on delivering community benefits as part of a natural capital project. We helped them to consider the potential impact on local communities, to understand the benefits of engaging with community members early-on and involving them in decision making, and to think about how to share information about their plans and decision-making processes.

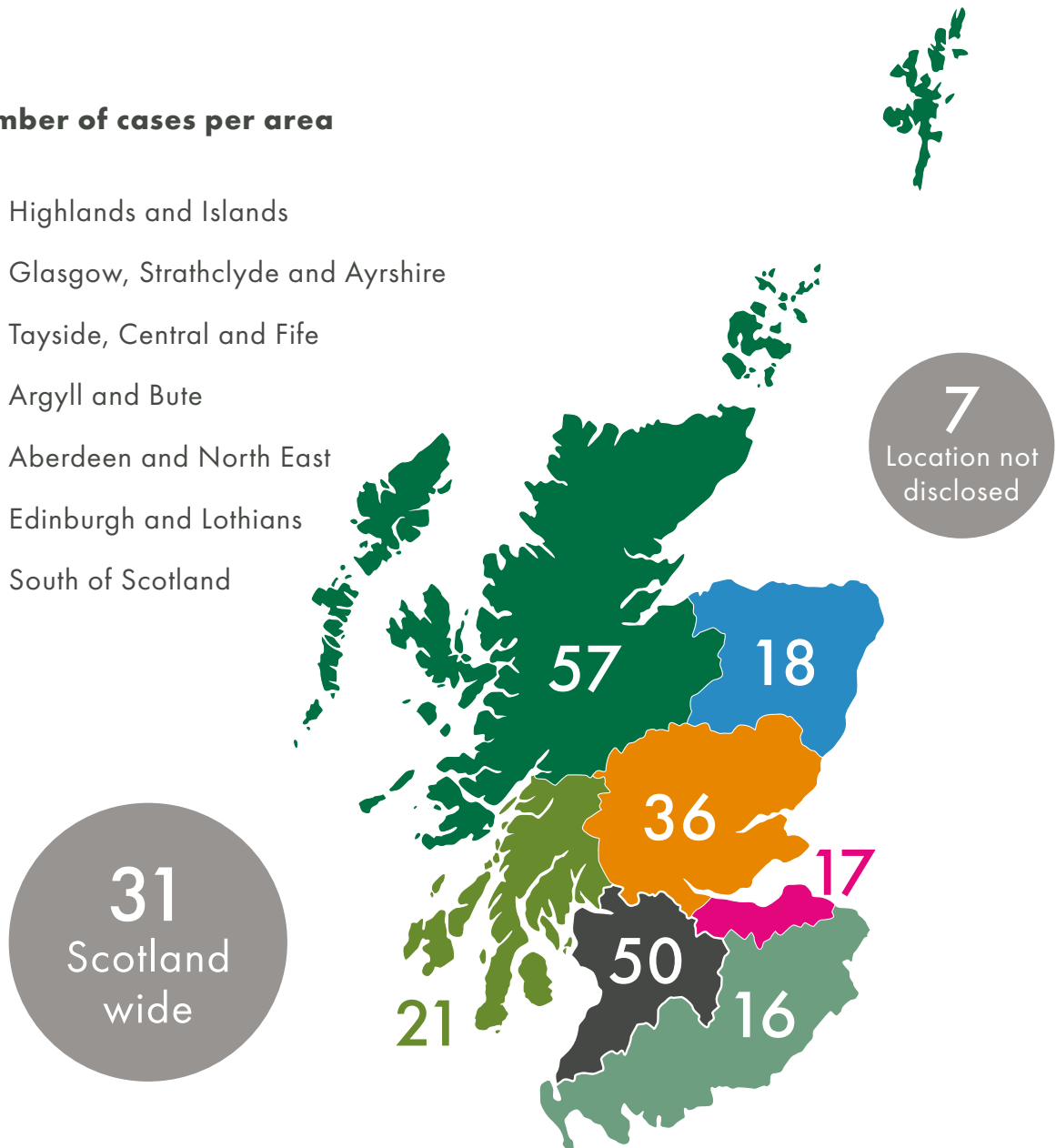
As a result of the contacts we have had, we decided to work with interested parties to develop guidance on delivering social and economic benefits for local communities. This guidance will make it easier for investors and others to understand how they can benefit local communities.



Locality

The majority of cases and enquiries over the last three years have come from the Highlands (57 contacts). The next most common local authority areas that we received contacts from were Argyll & Bute (21) and Aberdeenshire (16). No cases or enquiries were received from Clackmannanshire, Falkirk, Inverclyde or Aberdeen City, however 31 cases were listed as Scotland wide (applying to a larger area / general enquiries) and 7 were listed as location not disclosed (about a particular place which was not identified).

Number of cases per area



Contacts from the Highlands related to a number of topics, the most common of which were community engagement (21), diversification of ownership and tenure (14) and good stewardship of land (8). The most commonly raised Scotland-wide issues were natural capital (10) and community engagement (9). In Glasgow, Strathclyde and Ayrshire and in Edinburgh and the Lothians the most commonly raised topic was vacant and derelict land, while across Tayside, Central and Fife, and in South of Scotland and Aberdeen and North East, it was community engagement.

Who has contacted us, and what have they contacted us about


What constitutes good practice varies in different contexts. Therefore, we are often asked for guidance and clarification relating to good practice. These requests come from a wide range of groups and individuals, including members of the public, community groups, landowners or managers, and tenant farmers. We are committed to responding to everyone who contacts us, in a way that is welcoming, transparent, and fair.

Contacts received have mainly been from individuals (84) and community organisations (52) who have been in touch about a wide range of issues.


Cases raised by individuals were mostly about common good, community engagement and diversification of ownership. We also had a number of contacts from individuals about VDL and how to bring sites back into use.

Community organisations mostly brought cases and enquiries to us about community engagement, diversification, and transfer of ownership to communities, while community councils mostly contacted us about common good and community engagement.

We were contacted by 34 private landowners, many of whom were seeking advice about their own practice particularly around engagement. We had 20 contacts from public bodies, 15 of which were about their own land, mainly in relation to community engagement and diversification of ownership and tenure.

Contact from 	Most raised topic	Second most raised topic	Third most raised topic
Individuals and community organisations (including community councils)	Community engagement	Diversification of ownership and tenure	Vacant and Derelict Land
Private landowners (existing and aspiring) and agents	Vacant and derelict land	Community engagement	Natural Capital
Public bodies	Community engagement	Diversification of ownership and tenure	Good stewardship

Who has contacted us, and what kind of landowner have they contacted us about

Contact about 	Most raised topic	Second most raised topic	Third most raised topic
Private landowners	Community engagement	Vacant and derelict land	Diversification of ownership and tenure
Public bodies	Common good	Community engagement	Diversification of ownership and tenure
Unknown / mixed landowners	Vacant and derelict land	Community engagement	Diversification of ownership and tenure

The contacts we have had have mainly been about privately owned land (119) followed by publicly owned land (61). Issues raised about private landowners commonly related to community engagement and diversification of ownership. Many of our enquiries about private landowners related to VDL, although a lot of these contacts were from landowners themselves in response to our contact about DUSTE sites. Of the 61 cases and enquiries relating to publicly owned land and buildings, 19 were about Common Good assets.

Community engagement Case (private landowner)



A community group contacted us about a landholding that surrounds their village. There had been several significant developments on the estate impacting on the community over the last few years. They were unsure whether there would be future developments and enquiries to the factor had not provided them with answers. They felt more engagement with the community would be beneficial and could lead to collaborations and improved understanding for all parties.

We spoke with the factor who confirmed that the landowner themselves lived in another country and was not concerned with the views of the community. The factor acknowledged that some mistakes had been made in the past in terms of community engagement and agreed to meet with community representatives to discuss their concerns. Ultimately however, the factor could not confirm if there would be further development because that would be determined by the owner.

Community organisations contacted us most often about private landowners (21) and public bodies (14). Similarly, individuals contacted us most often about private landowners (32) and public bodies (17). Individuals were also more likely to not specify who they were contacting us about (13 contacts).

21
contacts from
community
organisations
about private
landowners

Community engagement Case (public body)



We were approached by a community group who had concerns about a perceived lack of engagement by a public body relating to the sale of an important building in the area. After speaking to the community and understanding the situation from their perspective, we contacted the public body to hear about their experience. After our initial conversations, we facilitated meetings between the parties involved to help them build an understanding of each other's aims and priorities. The parties were able to agree a way to work together, making sure the community's voice would be heard and they could find a mutually agreeable resolution.



Neidpath Castle, Peeblesshire

Outcomes

For some of the issues raised with us, we have taken them forward as cases. These typically involve looking into the issue further, making contact with other parties, and trying to help those involved to find a way forward. This approach has been particularly successful in cases where there have been issues around communication and understanding, and we have been able to help those involved.

Community Engagement Case (private landowner)



We were contacted by a representative from a rural community who was concerned about land use changes being made by a new landowner with little engagement with the local community. The community had concerns about houses that had provided long-term housing for residents being converted to holiday lets, new woodland creation near homes, and plans for business development and construction that would have an impact on traffic levels. We agreed that we would contact the estate to discuss their plans and raise awareness of expectations around community engagement.

We discovered that the landowner was nervous about engaging after planning applications they had submitted had attracted negative comments from some residents. We discussed the community's concerns and the benefits that early engagement can have for landowners – it can help raise awareness of plans and priorities, foster relationships and understanding, and identify and address any potential issues at an early stage.

It was clear that although things had not started out well, both parties wanted to build a good relationship and explore ways to communicate and work together. We advised both parties to make contact and to look at creating a proactive engagement plan together. As a result, the community contacted the estate to set up a meeting and discuss the best way forward.

Many contacts we had were resolved by providing information or by signposting the person who got in touch to another organisation who could help them with their issue. Common signposting includes to: local authorities for issues relating to planning; Registers of Scotland for those looking for information about land ownership; and to Development Trust Association Scotland, Community Land Scotland and Highlands and Islands Enterprise for communities looking for support to acquire, lease or use land.

Transparency Enquiry



We received an enquiry from a community organisation which submitted a Community Asset Transfer request to a local authority, only to discover that the local authority could not process the request as they did not own the land in question. The community was struggling to find out who owned the land and got in touch with us to ask for advice about how to identify the landowner. We spoke to the organisation to learn a bit more about the land. Following our conversation, we shared a link to our Information Map for Communities and signposted the community to Registers of Scotland to determine if there was title information on the Register of Sasines. We also shared information about the King's and Lord Treasurer's Remembrancer as the land was potentially ownerless.

When we have been approached by those with decision-making power over land, we have provided information, guidance and advice, including practical support where possible. We have commented on strategies and policies, provided feedback on plans, and acted as a sounding board for ideas. We have also signposted people to further sources of information or support.

Management Plan Engagement



A landowner got in touch with us about work they were undertaking to develop a new 10-year management plan. They wanted to engage effectively with local communities and other stakeholders. They were looking for advice on how to identify who they should engage with, what the best way was to seek views of communities and stakeholders, and how to take different views into account. We offered advice and guidance on this and attended a stakeholder engagement meeting to deliver a presentation on community engagement.

Where we have been unable to help

While we have been able to provide information and guidance on many of the issues raised with us, there are times when we have not been able to help those who have contacted us to reach a broader resolution of the issue, or where only a partial resolution was possible. We identified a number of reasons for this, including:

1

The issue raised was not within the remit of the protocols

For example, it was covered by a statutory process such as a planning application; or it was an issue between two individuals.

2

The Commission did not have power to act

In these cases, the actions being taken were not in line with the expectations set out in the protocols, but we could not compel anyone involved to take a particular course of action. These issues commonly related to diversification of ownership.

3

We were contacted so that we were aware of the issue but were asked not to take further action

In some cases, communities asked us not to follow up as they were worried about being identified and facing repercussions from a landowner.

4

We were unable to find any contact details

For the landowner or another suitable person with decision-making powers.

5

We have no power to take further action

In several instances, we made contact with a landowner or intermediary about an issue we had become aware of and did not receive a response.

Findings

What could have made a difference?

There are a number of actions we have identified that could have prevented or moderated the issues raised with us over the last three years. These are:



Better communication between the parties involved, especially at an early stage. This is often the core issue and can be for a number of reasons, including a fear of engaging (for either party), poor communication in the past, or not knowing when to engage or how much information to share.

Steps to address these issues could include training or capacity building tailored to the needs of the different groups involved and could help to build understanding and manage expectations. Our protocols and guidance on community engagement set our fair and reasonable expectations of all parties.



Greater transparency of information, both about who owns and controls land, and about decision-making processes over land. Landowners should make use of Registers of Scotland's processes for **voluntary registration of landholdings**, where appropriate, and ensure the information on the land register is up-to-date, and should submit information to the **Register of Persons Holding a Controlled Interest in Land** where required.

Landowners and managers can also complete our **template** summary on land use and management and then publish it online (if they have a website) and share it with local communities to contribute to greater transparency of information.



Availability of more guidance or advice on different topics.

This could include more tailored practical guidance for specific audiences, for example, advice on early community engagement when investors are seeking to purchase land. In some cases, knowing where to find suitable existing information would be helpful – this could be achieved through better cross-referrals between organisations. We know from our evaluation of our Good Practice Programme that sector-led and membership bodies are particularly valuable, providing tailored information, guidance and training to their members and other stakeholders.



Better application of existing legislation. There are opportunities for existing legislation to be better used to support communities. For example, community experiences with Community Asset Transfer processes can vary depending on the relevant authority dealing with the request and their knowledge and experience of applying the legislation. We also know that not all local authorities have created Common Good Registers as required by the Community Empowerment (Scotland) Act 2015. The current review of the Community Empowerment Act legislation being undertaken by Scottish Government is an important opportunity to make processes clearer and easier for communities and public bodies.

Opportunities and areas for further focus

When considering the contacts in relation to the principles in the LRRS and to different aspects of the Commission's work, we have identified the following opportunities to make progress in different areas:



Public bodies leading by example

23% of all contacts were about public bodies who own land. Public bodies can make a big difference and demonstrate leadership in land rights and responsibilities. Public bodies can influence the behaviour of others and set examples to be followed.



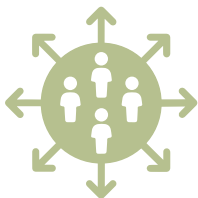
Legislative measures

Not everyone will engage voluntarily or meet standards of good practice. There is a need for a stronger legislative backstop to enable action where good practice approaches are not sufficient. We have made **legislative proposals** to address the impacts of concentrated land ownership which include management plans for significant landholdings, a statutory basis for the Land Rights and Responsibilities Statement, and a public interest test for significant land acquisitions.



Conditionality of public funding

Conditionality of funding, for example in requiring expected standards of community engagement and transparency of ownership and decision-making, would make a difference for communities and improve accountability. Conditions can be used to influence and change behaviour and ensure that minimum standards are being met by those receiving public funding.



Capacity building and support

There is an ongoing need to build capacity and provide support and the Land Commission will continue to develop and deliver the Good Practice Programme. With limited resource we have to prioritise where the Commission's role focuses to have most impact so a collaborative approach in which sector and membership bodies also provide leadership is required. We know from our Good Practice evaluation work that membership organisations – such as those in our **Good Practice Advisory Group** – play a key role in disseminating good practice. We will continue to work with membership organisations to enable them to raise awareness of the Land Rights and Responsibilities Statement, the protocols and to promote good practice.



Common Good Land

The Commission's previous work on Common Good recommended that consideration should be given to Common Good status and management. The casework suggests this should still be considered as 31% of all contacts about public bodies related to Common Good. The Commission intends to progress work on Common Good through working with key stakeholders and making recommendations for change.



Vacant and Derelict Land

Many of the issues raised about vacant and derelict land (VDL) related to knowing where to find information, especially about the VDL register and about funding options. The VDL Taskforce set out actions that could help with some of these issues, including that the Land Register should be fully digitised and accessible and incorporate small sites that are of concern to communities. The Commission is conducting a review of the VDL recommendations to assess progress and identify any further areas for action.



Rural Land Market

The more recent interest in natural capital enquiries and tax and fiscal measures tells us that there is growing interest in these areas. The Commission's wider programme of work addresses recommendations on natural capital and we identify a particular role for good practice guidance, for example on community benefits and for responsible investment, that will complement proposals for reform.



Conclusion

Our Good Practice Programme demonstrates that the principles of the Land Rights and Responsibilities Statement can be implemented by all those with an interest in land. The publication and use of the Statement is supporting a significant shift in culture.

The LRRS principles are often implemented proactively and successfully, as demonstrated by the **case studies** published on our website. However, our experience of dealing with casework and enquiries tells us that this is not always the case. Despite encouragement, not everyone acts in-line with the LRRS principles, nor is our advice on good practice always implemented on a voluntary basis.

We learn from cases and enquiries to inform our approach to providing advice and influence the development of policy, protocols and guidance. We can see that there are opportunities to make more of existing good practice – sharing examples and highlighting the benefits of responsible land ownership and management. There is also more that can be done to build capacity in the land sector so that those in positions of power have the knowledge and confidence to engage, share information, and collaborate.

It is also clear that we cannot rely on goodwill and voluntary approaches alone to change behaviour and culture in how land is owned, used and managed. Further measures are needed to encourage all those with decision-making power over land to act responsibly and follow the good examples already being set by others, and provide backstop measures where necessary.

This review of our Good Practice case experience over three years shows a sustained demand for support and advice in putting the Land Rights and Responsibilities Statement principles into practice and valuable learning to inform policy and practice.





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