

# WJM contact

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Investing:  
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Welcome to Contact. In this issue we look at how the clouds in the housing market might have a silver lining for some; announce two new appointments and a promotion and look at how data protection laws are being misinterpreted. We're also celebrating our successes at the Law Awards of Scotland.

## From the Chief Executive, David Bone



*John Grant*



*Ian Ody*

In amongst the gloom and despondency prompted by the wider economic situation, there is still good news and I am delighted to announce new appointments and a promotion within the Firm.

On 1st October John Grant was promoted to Associate within the Commercial Dispute Resolution Team. John started with WJM as a trainee and, after completing his traineeship, chose to specialise in employment and dispute resolution. He has become a key member of the Team working with his clients to help them solve their problems in a commercial and pragmatic manner. He has supported and assisted the expansion of the Team over the last few years and provides valuable support to cross-disciplinary groups such as the WJM Franchising Group.

The Firm has also made two senior appointments.

First, Andy McFarlane joined WJM as an Associate to work for me in the Renewable Energy Team. His appointment will further bolster our market leading team in this growing area of work.

Secondly, Ian Ody has joined us to head up our Financial Planning Team. He joins the team at a time of rapid change in the world of financial services and we are confident that



*Andy McFarlane*

his experience and expertise will help guide our clients through the maelstrom in the markets. Ian has commented on the current state of the markets elsewhere in Contact.

Both of these appointments are consistent with WJM's strategy of pushing forward in those areas which are most important to our clients and getting the right people in place to help us do that.

**More information from David Bone: [djbone@wjm.co.uk](mailto:djbone@wjm.co.uk)**

## Licensing – Transitional Traumas?

Previous Contacts have documented the dramatic regime changes to the Scottish Licensing System following the introduction of The Licensing (Scotland) Act 2005.

The Act comes fully into force on 1st September 2009 (“the effective date”), replacing previous legislation from 1976. We are now well into the 18-month transitional period between the two Acts which started on 1st February 2008.

Licences held under the 1976 Act will continue in force until 5am on the effective date, when they will fall. After that time, it will be necessary for licensees to hold a Premises Licence and a Personal Licence if they wish to continue to sell alcohol.

The transitional period was designed to allow licensees to take advantage of “Grandfather

Rights”. This means that an application received for a Premises Licence during the transitional period allows licensees to i) continue to trade under their existing licence until the effective date, ii) to avoid being subject to the new over provision assessment which the 2005 Act introduces; and iii) to avoid the need to submit certificates in relation to building control, environmental health, and planning.

There are benefits for licensees taking advantage of Grandfather Rights. However as with all regime changes, there have been some teething issues as the new legislation came into practice.

In the main, these relate to licensing boards allowing objections which have resulted in licensees having to carry out upgrading works

which had not previously been envisaged, e.g. putting in additional toilets. There have also been issues surrounding capacity, where the calculations of licensees and of Building Control have differed significantly, resulting in licensed premises having a reduced capacity in comparison to that which they enjoyed under the old regime.

The WJM Licensing Team are well versed in the new legislation and can assist you to navigate any hurdles which the new regime may throw in your path.

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## Law Awards of Scotland Winners

In the September issue of Contact, Colin Brass announced that we had received a number of nominations in the Law Awards of Scotland.

At a glittering ceremony, WJM’s lawyers won awards in two categories.

The Awards, described as “the Oscars for the profession” by no less a person than Helena

Kennedy QC, are judged by a distinguished panel of experts based on submissions from both clients and the individual firms.

Angus MacLeod’s work in the technology sector was recognised by the IP/IT Lawyer of the Year Award and WJM’s Employment Team won the prestigious Employment Firm of the Year Award.

Martin Stephen, Head of Employment said “This Award was won against tough competition on the basis of a concerted effort by the WJM Employment Team”. Martin praised the efforts of Andrew Wilson, Liam Entwistle, Fraser Gillies, John Grant, Fiona Robertson, Laura Kelman and Julia MacDonald who make up the core team.

David Bone, Chief Executive, said “I am delighted for the Employment Team and for Angus. Their awards are fully justified and well deserved. It was a terrific achievement for them and the whole Firm rejoiced in their success. As a Firm we have now won a considerable number of awards which publicly demonstrate the breadth and depth of our expertise.”

*The winners with their awards L to R:  
 Julia MacDonald, Martin Stephen  
 (Head of Employment), John Grant,  
 Angus MacLeod, Laura Kelman.*



**More information from**  
**David Bone:** [djbone@wjm.co.uk](mailto:djbone@wjm.co.uk)

# Financial Markets in Turmoil

As I write the US Government's Bill to provide US Treasury Secretary Hank Paulson with \$700bn to save the USA's financial system has been passed, the Irish, Greek and German Governments have promised to guarantee their banks' deposits and our own Chancellor of the Exchequer has promised to take "serious steps" to safeguard the financial system in the UK. Despite all of that reassuring news stockmarkets around the world have slumped to new lows in 2008.

With this backdrop we have inflation creeping up, petrol prices still high, energy prices increasing and more countries around the world heading for recession.

The final link in this gloomy chain is that residential property prices have been predicted to continue to fall throughout the UK in 2009. Headlines of only some 1,170 mortgages being transacted in August have done little to help confidence.

The volatility being seen in stockmarkets worldwide is a symptom of the nervousness that we are all feeling. Many people are concerned about whether their bank deposits are safe and fleeing from banks whose capital base appears weak. Investors are selling equities and seeking to invest in safe havens. These safe havens have previously been cash or bonds but now, increasingly, it is gold.

The sensible view right now, however, is to hold fire. If you are worried and have significant deposits, spread them around the larger banks and building societies. There are plenty of comparison websites available to find out rates but don't overlook the fact that National Savings and Premium Bonds also come with a full Government guarantee.

Investing is a little cloudier right now but do not invest unless you can commit the funds for at least five years. Ideally you should further dilute your risk by choosing well-diversified investment funds, rather than the stocks and shares of individual companies.

It is worth remembering that the last time the economy looked at its bleakest, in March 2003, the FTSE 100 index was some 25% lower than it is today and since then, it peaked in July 2007 some 42% higher than it is now.

Naturally, the Financial Planning Team at Wright, Johnston & Mackenzie can guide you through the myriad choices and work with you to come up with a financial plan to suit your circumstances.

More information from Ian Ody: [irwo@wjm.co.uk](mailto:irwo@wjm.co.uk)

## Can't Sell? – then Rent

As we are all only too aware, there has been a very rapid downturn in the property market in Scotland in recent months.

While it is not quite true to say every cloud has a silver lining, this has led to a substantial amount of movement in the rental market. The number of properties being put on the market for rental because someone cannot sell their property and decides to rent it out instead has increased. There is also a parallel increase in the number of people looking for a rented property – including those who do not want to commit to a purchase in the current climate and those who have completed a sale before they look to buy.

We have received a number of enquiries from clients who have properties they are considering renting, normally on a short-term basis of perhaps a year or so, in the hope that the property market may pick up in that time.

It is important to be aware that this is a highly regulated area, and there are a number of steps which must be taken, before a tenancy can be entered into. These break down into, firstly, those required to comply with the regulations and ensure a landlord is not committing an offence and, secondly, those required to ensure that the property can be recovered at the end of the lease.

Under the first heading, prospective landlords require to register with their local Council. Each individual rental property must also be notified to the local Council. The registration process is part of a package of measures aimed at setting minimum standards for the sector and, thereby, doing away with the worst landlords. In order to become registered, the landlord must be found to be a fit and proper person. It is an offence to let out a property without having applied for consent from your local Council.

If there is a mortgage over the property, the consent of the lender will be required as, for most mortgages, lending out the property is a breach of the mortgage conditions. There may also be other parties from whom consent is required.

Once the property can be offered for rental, care is needed to ensure that leases and any other agreements put in place, allow landlords to recover property at the end of a lease or in cases of default. During the rental process, certain Notices require to be served on the tenant and we can help you with this process.

A new demand in the rental process will be Energy Performance Certificates (EPC). All properties which are rented out after 4th January 2009, will require an EPC. The EPC is prepared by a qualified party (normally a surveyor) and will give information about the energy efficiency and environmental impact of the property being rented. Existing tenancies will not be affected and an EPC will not be required until there is a new tenant.

The steps we have outlined are not mere formalities and it is essential that they are carried out properly. Otherwise you, as the landlord, may incur penalties for not complying with the regulations and/or your property may not be recoverable at the end of the term.

Private rental of property has become an increasingly complex area and advice should be sought to ensure that you do not fall foul of the law. WJM's team can help you seek a silver lining in the property cloud.

More information from Aileen McInnes: [ajm@wjm.co.uk](mailto:ajm@wjm.co.uk) or Hilary Denholm: [hdd@wjm.co.uk](mailto:hdd@wjm.co.uk)



## Monthly v Quarterly Rent: Should you buck the trend?

In the midst of turbulent times for those involved in the world of commercial property, many British retailers are urging landlords to offer their tenants the opportunity to pay rents on a monthly basis, rather than the quarterly payment of rents in advance. The practice of paying rents quarterly has become an industry standard over the years, but has now been condemned by the Scottish Retail Consortium as an “ancient and costly practice”.

It has been reported that having to pay rent quarterly in advance instead of monthly adds £145 million per year to retail costs and, while monthly terms have become the norm over the last couple of years, many landlords are still holding on to the practice of receiving rent on a quarterly basis.

The Scottish Retail Consortium has advised that asking for three months rent in advance is at odds with modern business practices. Clearly, it is in a landlord’s interest to see a thriving retail sector and, at a time when the sector is being squeezed by rising rents, rates, service charges and utility bills and by falling shop prices, this centuries old practice requires a degree of justification. Ultimately,

landlords lose when retailers are driven out of business by excessive costs.

From a landlord’s perspective, quarterly payments have their positives and it may well be the case that landlords will not willingly alter existing leases. Quarterly payments are a solid financial instrument and one of the positive sides of property. However, at a time when a number of national names have been driven out of business and many smaller retailers have folded, monthly payments may help struggling retailers by easing cash-flow pressures.

Hermes has recently offered its tenants the chance to pay rents monthly and the British Retail Consortium has called on all commercial property landlords to emulate Hermes and offer their tenants the same deal. The Consortium has advised that it is stepping up its campaign on the issue. Hermes has offered all 2,000 offices, retail and industrial tenants in its £10billion property portfolio the chance to change the frequency of rent payments. In return it has asked its tenants to pay their rent electronically, and to pay a slightly higher rent to account for the “time value of money”.

It may be difficult for landlords to change their existing leases and it may be the case that in any event it does not ‘fit’ with their business model. However, non-traditional rental packages could be negotiated as part of the overall package of a new lease and any retailers who are facing financial difficulties should consider contacting their landlords to see what could be done.

The WJM Commercial Property Team advise both landlords and tenants on leases and commercial terms. For a tenant, it may be worth enquiring whether your landlord will consider monthly payments.

**More information from**  
Jacqueline Mitchell: [jzm@wjm.co.uk](mailto:jzm@wjm.co.uk)

# Data Protection 25 years on: ICO struggles to dispel common myths

Data protection legislation has been with us in the UK for nearly 25 years. Its most recent embodiment is the Data Protection Act 1998 (DPA), and the first was the eerily Orwellian sounding Data Protection Act 1984. Yet the Information Commissioner's Office (ICO) continues to struggle against a lack of understanding of the law shown by many UK businesses, and the more reproachable practice of companies who "hide behind" or misapply the law.

Over the years the ICO has worked to dispel myths about the DPA such as:

- **"the DPA stops parents from taking photographs of their children in schools"** – when, in fact, if the photographs are taken purely for personal use, they will be exempt from the DPA; and
- **"the DPA means you can't process my data unless I say so"** – in fact, obtaining

the individual's consent is only one of six ways to legitimise data processing under the DPA.

In September, WJM's iTech Team reported on an M&S employee who told the mother of a seven year old child that the belt missing from her son's Superman costume could only be discussed with her son "because of data protection laws".

Commenting on this case the ICO made the point, amongst others, that Marks & Spencer were not being asked to release any personal data but merely to report a missing belt. As personal data was not involved, the DPA did not apply. The ICO, perhaps a little unfairly, described this incident as a "clear example of a data protection duck out". Whether or not the employee had made a genuine mistake, the end result is that the DPA's reputation as a means of protecting personal data from misuse is devalued, something the ICO is trying to combat.

The DPA requires organisations that process personal data to notify the ICO of this, and thereafter to abide by the Act when dealing with the data to ensure it is handled fairly and lawfully.

Owing to the very broad definition of "processing" and "personal data" under the DPA, the vast majority of UK businesses are subject to the requirement to notify. The notification currently costs an annual fee of £35, and involves giving the ICO details of the types of personal data held by your business and the uses to which it is put.

**A short Briefing Note on data protection legislation is available from WJM's iTech Team – please contact Martin O'Neill for your copy. To subscribe to the iTech newsletter please email [iTech@wjm.co.uk](mailto:iTech@wjm.co.uk) with the heading "Subscribe" .**

**More information from  
Martin O'Neill: [mon@wjm.co.uk](mailto:mon@wjm.co.uk)**



## Home Reports



As from 1st December 2008, every home advertised for sale must, by law, have a Home Report. This report must be ready before your home is advertised, meaning significant changes to the current sales process.

The Home Report is made up of three documents, a Single Survey, an Energy Report and a Property Questionnaire.

The Single Survey is a detailed survey of your home conducted by a qualified surveyor. It will include a valuation as well as a condition report and will list the main features of your home and give an assessment of the condition of each one.

The Energy Report is also prepared by the surveyor and gives your home's energy efficiency rating and its environmental impact in terms of carbon dioxide emissions. It will recommend ways to improve your home's energy efficiency and give contact details for further advice and information about how to make your home more energy efficient and save fuel costs.

Finally, the Property Questionnaire contains information about your home from the owner's own perspective. It asks, for example, if you have made any alterations to your home, asks for details of the type of central

heating in the property, whether or not it is connected to all utilities, what the responsibilities are for shared or common areas, if any specialist works have been carried out and if there any guarantees available. The onus is on the Seller to complete this honestly, otherwise they will be in breach of the Regulations.

Homes which are placed on the market before 1st December 2008, do not require a Home Report. However, as from 4th January 2009, all homes on the market, including those which didn't need a Home Report, will need an Energy Report.

The Scottish Government has said that the reason that they have introduced Home Reports is to give purchasers more information about the property which they are buying. Despite the downturn in the market, they are pressing ahead with the introduction.

This new legislation will be a radical change in the way houses are marketed and sold. Here at WJM we have been working closely with GSPC, ESPC and surveyors to ensure that we are able to guide you through the new system. If you are thinking about selling your house either now or in the future, or if your house is currently on the market, you should contact us for more information.

More information from Hilary Denholm: [hdd@wjm.co.uk](mailto:hdd@wjm.co.uk) or Lesley Elrick: [lme@wjm.co.uk](mailto:lme@wjm.co.uk)

## IN Brief

### An End To Cheap And Easy Mortgages? It Needn't Be Scary!

As Ian Ody has written elsewhere, there are fewer and fewer mortgage deals around as credit tightens up.

Potential home-owners are concerned about whether they can get a mortgage at all, and current home-owners are worried about how they are going to finance their mortgage repayments when their fixed rate mortgage term comes to an end. The cost of fixed rate mortgages has hit a ten-year high and the average arrangement fee for securing a two year fixed rate £150,000 mortgage is now almost double that of 2006. Home owners coming off cheap two year fixes will find themselves faced with higher rates, higher fees and a dramatically smaller choice of products.

In these market conditions, turning to a trusted mortgage adviser can be beneficial. They help borrowers consider their options, search the entire market, act quickly when competitive mortgages are launched, and work out the true correlation between reduced rates and increased fees. In a stressful situation ensuring that a trusted adviser is on board at an early stage will help enormously.

At WJM we work with a number of reputable and experienced mortgage advisers who can assist you in securing a mortgage deal, either to finance a new purchase or to re-mortgage an existing property at the end of a fixed rate term.

Our Residential Property Team can discuss your requirements and put you in touch with one of our trusted advisers.

More information from  
Lesley Elrick: [lme@wjm.co.uk](mailto:lme@wjm.co.uk) or  
Hilary Denholm: [hdd@wjm.co.uk](mailto:hdd@wjm.co.uk)

## Beware! The Tax Man Cometh



Over the past few years HMRC have been increasingly hardening their line against UK citizens holding offshore accounts as a device for shielding income and interest from taxman.

Originally HMRC wrote to individual tax payers asking them to voluntarily disclose the necessary information. Not satisfied with the returns generated, they invoked a European Savings Directive requiring European banks and other financial institutions to hand over tax information about the income they are paying to foreign customers.

More recently HMRC paid a £100,000 “bounty” to Henrik Geiber, a former Lichtenstein Bank employee, for a list of clients’ names and bank account details. As a result of this information, HMRC has confirmed that it expects to obtain around £100 Million in tax. This payment to Herr Geiber is a clear indication as to the lengths that HMRC will now take to obtain information about individual taxpayers – information that they will then act on to take steps to recover tax owed.

**More information from Grant Johnston:** [wgj@wjm.co.uk](mailto:wgj@wjm.co.uk) or **Brendan Kelly:** [bjk@wjm.co.uk](mailto:bjk@wjm.co.uk)

It isn’t just high net worth individuals who may have overseas bank accounts.

If you have a holiday home or a timeshare in Europe, you may operate an overseas account both as a general holiday spending fund and as a convenient means to allow you to deal with rent collection and maintenance in connection with your property.

It is essential that full details of these accounts and any interest received are included on your tax return. Often you will already have paid local income tax in the country where the account is held and so it is likely you will benefit from one of the several double taxation agreements which exist between the United Kingdom and other countries. These exist to prevent individuals being taxed twice on the same income. However, to avoid falling foul of HMRC, and incurring penalties and interest, full disclosure of all overseas accounts must be made.

If you have overseas accounts, the WJM Tax Team can help you through the minefield of declaration and taxation.

## IN Brief

### Topical Employment Issues

Two hot topics are keeping WJM’s Human Resource Manager Service busy.

New legislation on retirement ages is causing confusion for employers and many are seeking advice on how to manage the retirement process with those employees approaching 65.

**More information from**  
**Julia MacDonald:** [jmc@wjm.co.uk](mailto:jmc@wjm.co.uk)

As the economy tightens, redundancy is becoming an issue. In a more buoyant economy, those made redundant may mitigate any claims against their former employer, through rapid re-employment. Where jobs are scarcer, there is more incentive to pursue a claim. We can advise you at all stages of the redundancy process to ensure that your procedures are correct and robust thus minimising the possibility of a claim.

**More information from**  
**Martin Stephen:** [mss@wjm.co.uk](mailto:mss@wjm.co.uk)

### Companies Act 2006: more new provisions

New provisions which came into force on 1 October 2008 included:

- Updated duties on company directors to avoid conflicts of interest, not to take benefits from third parties, and to declare an interest in any proposed or existing transaction or arrangement.
- A requirement for each private company to have at least one director who is a “natural person” (meaning a human being, rather than another company).
- Setting the minimum age for company directors at 16.
- The repeal of old restrictions on financial assistance for the acquisition of shares in private companies, including the “whitewash” procedure.
- Updated rules on where a company must display its registered name, and what information must appear on company letterheads, emails, order forms, invoices and websites.
- New rules on objections to company names which are too similar to those of other companies.

**More information from WJM’s Corporate Team:** [corporate@wjm.co.uk](mailto:corporate@wjm.co.uk)



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