



## House of Lords Case Outcome Awaited

**Scotland's Social Housing Sector is closely monitoring the now high profile 'Mitchell' case recently appealed to the House of Lords and the outcome of which could have far reaching implications for the management and liability of Housing Associations across Scotland.**

A final hearing on the case took place in December, with a judgement expected from the Law Lords in the New Year.

The case is based on a claim for £150,000 compensation against Glasgow City Council by the family of James Mitchell, who was killed by his neighbour. The Council is being accused of failing in its duty of care on the premise that it did not evict the killer, James Drummond, despite

complaints regarding his behaviour and arrests for threatening his neighbours. It has also been said that the Council should have warned Mr Mitchell about threats made by James Drummond in the hours before the attack which led to his death. James Drummond was subsequently convicted of culpable homicide and sentenced to eight years in prison.

Eight Registered Social Landlords (RSLs) have sought to have their views heard under the 'Intervention Procedure', which enables interested parties to explain how a change in the law arising out of a specific case will affect a particular interest group. Graham Craik, Partner of McClure Naismith, represents the RSLs.

The RSLs have intervened because the

decision by the Law Lords will have a major impact on the sector. It will affect the way in which anti-social behaviour is managed, and if approved will impose a significant liability on RSLs.

As well as having implications for the RSL sector, the case as it currently stands represents a substantial extension of the duties of care recognised by the law. The decision, if approved by the House of Lords, will have implications for the provision of Health Care, Education, Social Work and other public and privately provided services.

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## Public Sector Remains Active in Difficult Commercial Property Landscape



It is widely documented that the property sector is probably suffering its worst downturn for over 30 years, if not more.

The contraction in Commercial Property has been sudden, with private sector development and investment in particular at its lowest ebb since the 1970's. Until June it was generally business as usual, however the rising toll of job losses since then reflects the speed with which the brakes have been applied.

Developers that once were able to secure bank lending at 90% of development value are now being asked for 60% or more equity. For aspirant or even established property entrepreneurs, it is a pledge too far. And for those seeking further funding to advance an established development, lending criteria are being changed, forcing some projects to stop, or be liquidated.

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## New Code of Conduct Tough on Directors

**George Frier, Partner, Corporate Unit**



**An onerous new code of duties is now fully in force under the Companies Act.**

The principle underlying the new code – ‘Enlightened Shareholder Value’ – requires Directors to take into account in their decisions and actions the interests of a much wider group of stakeholders, including employees, customers, suppliers and the wider community. They could ultimately face the prospect of litigation should they fail in their duties and obligations.

The new code requires Directors to promote the success of the company in

such a way that it generates success in the widest sense for all members and consider the likely long term consequences of their decisions to such stakeholders.

The potential impact on the management of every business is immense. Directors’ responsibilities are going to be in the spotlight and their decisions and actions will be under more scrutiny than ever before by such stakeholders.

It would be tragic if these new duties could deter businesses from taking risks and being entrepreneurial. While compliance with the new code could dilute the appeal of a Directorship, no

one would want it to paralyse directors from making the right decisions.

The administration of the company and the commercial interests of individual Directors will also be under scrutiny.

The new code extends the responsibilities and liabilities of directors, just at the start of a recession. The timing could not have been worse and companies should make sure they get good advice particularly if considering actions which might be controversial with hindsight.

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## Full Consultation Essential If Implementing Employment Cost Savings

**Karen Coleman, Associate, Employment Unit**



**It is likely that the vast majority of employers are either already affected by the credit crunch or at least concerned about how their business may be impacted by the difficult economic climate.**

Businesses that built for growth over the course of the last 2 years now have surplus staff and may not be able to ride out the economic slow down with these overheads in place.

Cost control is a key factor to maintaining healthy profit and, cutting employment costs are a means to achieve this quickly.

Redundancies are an obvious option and often the only method considered for making cost savings however redundancies should only be viewed as a last resort. Alternative options such as lay off & short-time working, changes to working practices or contracts of employment and contracting in/out arrangements may be available.

If any cost saving methods are to stand a chance of being successfully implemented, a full consultation process will be required.

The aim of consultation is to reach agreement i.e. to a temporary pay cut, reduction in working hours or, where redundancies are inevitable, the basis for selection.

Negotiation will form a part of this process, however, in the absence of agreement, an employer is entitled to implement redundancy procedures that it considers necessary to secure the profitability, and sometimes the very future, of its business.

These will indeed be difficult times for many employers. It will be all too easy for the fear surrounding job losses to invade and destroy a positive culture within an organisation. Employers should keep in mind that these difficult times will pass and that the commitment of employees will be vital during this time and when growing the business in the future. Genuine involvement and consultation with employees can help ensure that good staff are retained and that the long term future of the business is secured.

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## Public Sector Remains Active in Difficult Commercial Property Landscape

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However, whilst conditions are tough, according to Mark Cowie, Construction Partner with commercial law firm McClure Naismith, the public sector remains relatively active.

He said: "Although the private sector is taking the brunt of the contraction, and is undoubtedly undergoing major restructuring, there is an encouraging level of activity in the public sector. At McClures' for example, we are currently advising on a number of projects across the UK in the education, healthcare and housing sectors."

"There is major investment in further education colleges in England at the moment, and we are fortunate to be advising the design team on seven such colleges" added Mark Cowie. "Furthermore, investment in new hospitals and social housing continues apace, where we have won a number of



commissions on the strength of our experience and our network of offices in Scotland and London"

"Looking ahead to 2009, Government spending is clearly going to be the major driver of activity. McClure Naismith has continued to invest in our construction business, which has helped ensure that our team has had a busy year and is ready for 2009" he concluded.

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## Autumn/Winter Seminar Programme 2008–2009

To help clients stay ahead of changes in law and practice, lunchtime seminars will take place at our Edinburgh and Glasgow offices between January and March 2009.

Dates	Venue	Topic
Wednesday 21 January	Glasgow	Intellectual Property: Employer, Employees and Consultants
Thursday 22 January	Edinburgh	
Wednesday 25 February	Glasgow	Credit Crunch Update
Thursday 26 February	Edinburgh	
Wednesday 25 March	Glasgow	Dilapidation Issues
Thursday 26 March	Edinburgh	

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*We are also delivering a series of "legally minded" marketing events, a programme of employment seminars and a number of legal workshops for business in association with Stirling University Innovation Park and LINC. Details on all our events can be viewed and downloaded from the events section of our website.*

# Legal Workshops for Next Generation of Innovative Companies

Leading commercial law firm **McClure Naismith** is delivering a new series of workshops that address four key issues commonly affecting new and innovative businesses.

The topics to be covered include funding and finance strategies; protection and commercialisation of intellectual property; managing staff and employment relationships; and strategies for further funding and exiting.

McClure Naismith is partnering with Stirling University Innovation Park and LINC Scotland to deliver the workshop series. The workshops are free and run for a half day, including a buffet lunch and networking. They will all be held at Stirling University Innovation Park, with the first event on 27th January and running monthly thereafter, concluding on 28th April. The course leaders will also be available for one to one consultations at the close of each workshop.

David Gourlay, IP and IT Partner with McClure Naismith, said: "Scotland has

always had a reputation for producing great entrepreneurs and innovative businesses. However, often many potentially sound businesses are thwarted by legal issues related to funding, IP, employment and exiting. These workshops are designed to help the next generation of entrepreneurs avoid these pitfalls so that they are well-placed to develop and grow when the recovery comes."

Companies wishing to register can log on to: [www.suip.co.uk/Events.aspx](http://www.suip.co.uk/Events.aspx) or call **Lynn Blaikie** on 01786 448333.

## Tuesday 27th January 2009

"Seconds Out: Round 1"

## Tuesday 24th February 2009

Understanding your intellectual property

## Tuesday 24th March 2009

Key Employment Issues

## Tuesday 28th April 2009

Exiting your business

FREEDOM OF INFORMATION  
HEALTH & SAFETY  
INFORMATION TECHNOLOGY  
INSOLVENCY  
INTELLECTUAL PROPERTY  
LICENSING  
LITIGATION  
MEDIATION  
PENSIONS  
PPP/PFI/PROJECTS  
PRIVATE CLIENT  
PUBLIC SECTOR  
SOCIAL HOUSING  
SPORT  
TELECOMMUNICATIONS  
TRUSTS/PERSONAL TAX  
WEALTH MANAGEMENT  
WILLS



# The Eternal Snows of Kilimanjaro

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Head of Corporate George Frier had an overnight Completion with a difference at the end of October when he reached the summit of Mt Kilimanjaro, one of the world's highest "seven summits" at 19,563ft.

The trek took six days overall with the final summit push taking place overnight from a midnight start in temperatures as low as -10°C.

"It was an incredible trip. For four days we had worked our way gradually up and across the face of the mountain to acclimatise. A direct ascent would have been impossible as our bodies would not have adapted to it. As it was, by 15,000 feet the air was noticeably thinner and our pace noticeably slower. The final pull was the worst: in pitch black, freezing cold, picking our way up an incredible steep and uneven rocky path to

the summit plateau, but it was worth it for the views at the top. We were blessed with the sunrise at 5am and reached the edge of the summit volcano crater around 7am and the summit proper at 8am". Unfortunately his T-shirt showing sponsor names was covered up by about six fleeces! So apologies to JR Dalziel Ltd, Scottish Sea Farms, Whyte and Mackay, and others for that.

George was one of 28 trekkers (14 of whom made it to the top) and raised sponsorship for the Prince and Princess of Wales Hospice in Glasgow from clients, contacts and friends – a total of £12,700.



To find more about the work of the Hospice, visit [www.ppwh.org.uk](http://www.ppwh.org.uk).