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**HUGH JAMES**

Banking and Finance  
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# BANKING AND FINANCE NEWSLETTER

Welcome to the October issue of the Hugh James  
Banking and Finance newsletter

Welcome to the autumn edition of the Hugh James Banking and Finance Newsletter. I hope you find it a helpful commentary on the current issues in our sector and a useful insight into our team and activities at Hugh James.

For further information about Hugh James please get in touch.



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## Hugh James Exchange debates the future of social housing

Peter Griffiths, Chief Executive of Principality Building Society, addressed Wales' premier business networking event, the Hugh James Exchange, on the major challenges for the social housing sector from both government and markets

Social housing in Wales has had important news recently as the Wales Office has said that it will introduce the Housing and Local Government LCO to Parliament without amendment to its form as approved by the National Assembly for Wales.

However, despite legislative good intentions, Peter Griffiths said in his speech at the Hugh James Exchange that the housing recovery is stalling with upstream indicators suggesting that we will see flat demand – while the market is up from the lows of 2009, it faces an uncertain future.

Peter Griffiths set out his view that a major cause of these difficulties is incoherent and contradictory regulatory and government policy regarding capital and liquidity requirements for Banks and Building Societies. These requirements are limiting the availability of cash in mortgage markets and slowing economic recovery.

He added that tax and benefit cuts announced under recent austerity measures by the new Westminster government will affect the affordability of housing and have a knock-on effect on the social housing market. Lenders' heavy emphasis on low loan-to-value lending could imply significantly fewer new loans especially in the first-time-buyer market. This could have a negative impact on accessibility of private housing and in turn bolster a growing need for social housing at a time when that sector faces its own funding difficulties.

Additionally, the Principality's Chief Executive described how the housing market will face a significant threat as UK Government funding schemes expire in 2011-2014.

As well as a keynote speech by Peter Griffiths, a lively panel discussion and audience Question and Answer session took place, with the panel members being:

Nick Bennett, Chief Executive of Community Housing Cymru

Bob Phillips, Development Director at Barratt Homes

David Roberts, Partner at Hugh James

Chris O'Meara, Chief Executive at Cadwyn Housing Association





Questions ranged from investor behaviour, to the impact of sustainable policy, demographic changes having implications for social housing provision, funding and the planning process.

The overriding view, with a degree of consensus from the panel, was that while the climate is undoubtedly a tough one, there are opportunities for new ways of working.

In his presentation, Peter Griffiths had raised

the question – ‘Where is housing’s white knight?’ The clear answer was, simply, that there isn’t one. ‘Social landlords can’t solve the problem on their own,” he said. And the panel, from their different perspectives, agreed that greater collaboration across the sectors is vital. Chair Noreen Bray took a straw poll of the 125-strong audience at the end of the session – with votes being cast under ‘optimistic’ and ‘realistic’ banners rather than pessimistic.



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## Hugh James healthcare head joins lively Barclays panel debate

Greg Williams, head of healthcare at Hugh James, joined a panel of experts at a recent care conference run by Barclays to examine the challenges faced by the care sector and the strategies to deal with them. The debate was chaired by Tony Robinson (Blackadder and Time Team fame), who now campaigns for better standard of care after his well documented issues and concerns of having to put his elderly mother who suffered from dementia into care.

The panel of experts made up of Greg Williams (head of healthcare at Hugh James), Steve Milson (Head of Division (Acting) Older People and Long-term Care Policy), Mario Kreft

(chairman of Care Forum Wales) and Rob Kinsman (Christie and Co) considered the issues in an open floor with a number of care home operators.

The resounding message from the conference was that the Welsh Assembly Government, local authorities and the private sector need to collaborate to ensure that the current strategies for dealing with future care (such as those provided in the fulfilled lives; supportive communities policy and the Wales dementia action plan) are put in place in a way that best suits the community to which the strategy relates. It was also clear that these issues need to be addressed sooner rather than later.



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## Hugh James named property law firm of the year

Hugh James has been named Property Law Firm of the Year at the Insider Wales Property Awards 2010. The firm was presented with the title at a ceremony attended by property professionals at the Mercure Holland House Hotel in Cardiff.

Organised by Insider Media Ltd, an independent publisher of business information, the awards, now in their fifth year in Wales, recognise excellence and ingenuity in the property sector.

Praised by the judges for being a dynamic practice, Hugh James received the accolade for its achievements against a continuing difficult economic background.

Judged by an independent panel, Hugh James won the award for its work on transactions to the value of £1 billion, including Ffos Las Racecourse and Barry Waterfront.

The award was accepted by Hugh James Partner David Roberts, head of the firm's Property and Construction Division.

David said, "This award is recognition of the dedicated work of our commercial property team and would not have been won without the loyalty of our clients for which we thank them. It also demonstrates that we have made a real impact on the property industry in Wales. It is a great honour to be acknowledged for our innovative services within the sector."



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## Did you know....

- Security over accounts - where an account is secured by use of a declaration of trust over the balance, this is tantamount to a charge and must, therefore, be registered with the companies registrar. Failure to do so within 21 days of creation will render the security void against a subsequently appointed liquidator, administrator or creditor (Gray and ors v G-T-P Group Ltd Re F2G Realisations Ltd (in liquidation) [2010] All ER (D) 80 (May))
- Subordination provisions in group guarantees - the Court of Appeal decision in Cattles Plc v Welcome Financial Services Ltd & Anor [2010] EWCA Civ 599 has provided some clarity, in the context of cross-guarantees, over the ability to exclude the cross-claims of the principal and guarantors (as against each other) from competing with those of the creditor under the guarantee. The Court considered the commercial function of the non-competition clause in the transaction and concluded that the clause prevented the competing cross-claims of the principal and guarantors which, if allowed, would have reduced the amount of money available to be claimed by the creditor under the guarantee. However, we must now await the result of the Supreme Court decision in Mills & Ors v HSBC Trustee (C.I) Ltd & Ors [2009] EWHC 3377 (Ch), a conflicting case, in the hope that it will provide a definitive statement on the ability to exclude principals and guarantors from competing with the creditor under the guarantee.
- Court dismisses syndicated loan misrepresentation claim - in Raiffeisen Zentralbank Osterreich AG v Royal Bank of Scotland plc [2010] EWHC 1392 (Comm), the High Court dismissed a misrepresentation claim made against an arranging bank by a member of the lending syndicate. The decision confirms the reluctance of courts to intervene in commercial agreements between sophisticated parties. It also provides comfort that, unless an arranger does not believe that the information provided to the syndicate is true, the established market use of disclaimer language in information memoranda and confidential agreements in relation to syndicated loans is effective.
- End to the Sole Corporate Director Regime for UK - as of 1 October 2010, all companies incorporated in the United Kingdom will be required to have at least one “natural person” as a director (i.e. a human being rather than, for example, a “legal person” such as a corporate body). Any companies incorporated in the UK who do not have a natural person as a director should ensure that they appoint one on or before 30 September 2010, otherwise they will be in default under the Companies Act 2006.



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## Hugh James hosts lively discussion to build better business links between Wales and London



Earlier in the summer Hugh James welcomed Gateway to London to their offices in Cardiff to discuss a variety of issues, challenges and opportunities in their respective regions. Also present were leading representatives from the Welsh business community including Bill Savage, chairman of Cardiff and Co, Robert Lloyd Griffiths, regional director of the Institute of Directors, Tony Watkins, managing director of Monmouth based company Cyclamax who are heavily involved in the Thames Gateway region and Noreen Bray, chair of Good Relations.

Gateway to London is an agency tasked with attracting inward investment into the Thames Gateway region in East London. The group, led by Chief Executive John Williams, is focused on promoting sustainability and clean technology in line with the Mayor of London's pledge for a greener London.

Speaking about the purpose of the discussions, Dominic Marshall, head of banking and finance at Hugh James, said:

“During discussions with John Williams earlier in the year it became very clear that there is a great deal of similarity between the current regeneration of this exciting area of East London and Cardiff's development

over the last decade or so. We felt it would be particularly beneficial to discuss the two regions with leading business figures to identify areas of mutual interest and capitalise on any business opportunities for Welsh companies”.

The discussion itself examined the culture of business in the two geographical locations and how both had tackled challenges such as attracting investment into brownfield sites and working effectively with the public sector.

John Williams introduced his region as one that was “open to companies across the UK and benefited from excellent infrastructure and trade links as well as more than £24 billion of public investment over the next few years”.

All of the delegates enjoyed the afternoon and thought that it resulted in a highly constructive and stimulating discussion. The overwhelming theme for the discussion was to create a “bridge of business opportunity for our two regions” and every delegate left the discussion enthused about the possibilities. Hugh James and Gateway to London will be working together over the course of the year to raise the issues with appropriate public bodies and drive forward business opportunities in both regions.



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