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MONEY BOX

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LEWIS: Hello. In today's programme, the Court of Appeal says bank overdraft charges do have to be fair. Where now for the bank charges campaign? One listener tells us of his struggle to get warnings from Barclaycard stopped. Samantha Washington's here today.

WASHINGTON: Yes, Paul. I've been talking to a teaching assistant who may have lost her £31,000 nest egg that she was told was "capital secure".

ALISON: Gordon Brown is quoted as saying, "I think people can see from our actions so far that depositors have been protected. No UK depositor has actually lost money". Well I feel like shouting out and saying that's really not true.

LEWIS: The Government says it's ensuring £325 billion of toxic debts, but is it insurance and what will it really cost us? And just how much is Sir Fred Goodwin's £693,000 pension worth?

But, first, the high street banks have announced they will try to appeal against a ruling by the courts this week that the Office of Fair Trading can judge whether overdraft charges are fair. The banks had gone to the court to prevent the OFT considering whether its charges breach strict legal rules on fairness, but three Court of Appeal judges this week confirmed an earlier High Court ruling that overdraft charges do come under the fairness rules. The court refused leave to appeal to the Lords, but the banks say they will ask the Lords to consider it anyway.

Well this is just the latest step in a tortuous legal battle. BBC personal finance reporter, Ian Pollock, has followed the twists and turns. He was in court on Thursday. Ian, what did the court actually say?

POLLOCK: Well two important things came out of the Appeal Court this week. The first was that the three Appeal Court judges pretty emphatically supported the decision of the High Court Judge Mr Justice Andrew Smith last year that the relevant law here, the 1999 Unfair Terms In Consumer Contract Regulations, did apply or do apply to bank overdraft charges. The banks had argued that because of the nature of the charges, they fell outside the scope of the regulations and therefore the courts or rather the OFT can't interfere in the matter and the Appeal Court said no, you're wrong. If you care to browse the Appeal Court decision on the judiciary website, it's pretty clear over the more than forty pages of the decision that there's not much scope for argument in the view, in the minds of the Appeal Court judges.

LEWIS: And what about the appeal because they didn't let them appeal, did they?

POLLOCK: No. This I thought was the other very interesting thing. The Appeal Court judges were led by Sir Anthony Clarke. He's the Master of the Rolls. That makes him the third most senior judge in the English judiciary. And he told the banks to their faces that really they were wasting their time trying to pursue the issue of the OFT's jurisdiction to the House of Lords. He pointed out that the issue that they were appealing on has now been considered by four High Court judges - one in the High Court, three in the Appeal Court. They'd all come to the same decision and that really they should now get on and just engage with the OFT on the central issue of fairness itself. Therefore he refused leave to appeal. But they do have the right to appeal for the right to appeal to the House of Lords themselves.

LEWIS: And briefly, Ian, if it does go to a Lords appeal and the Lords do say that they would like to hear this important case - if the banks win, that's the end of it, presumably, that they can charge what they like; but if they lose, it carries on?

POLLOCK: Well not quite. Certainly if the banks were to win at the House of Lords, it would certainly pull the rug from under the feet of the OFT and the various campaigners on

this issue. But the OFT might then say well we'll go to the European Court to pursue the issue further, an option which of course the banks would have if they lost you know for a third time.

LEWIS: Ian Pollock, thanks very much for that. Well none of the six banks and the one building society would come on Money Box. They referred us to the British Bankers' Association. Its Chief Executive Angela Knight is waiting to talk to us. Angela Knight, why appeal? The court made it fairly clear you haven't got a chance. Why not just let the OFT judge if your charges are fair?

KNIGHT: Actually the person who judges it will be the courts anyway, not the OFT. And actually, as Ian has so rightly ...

LEWIS: (*over*) Well let the courts judge it then.

KNIGHT: ... as Ian has so rightly pointed out, the case is actually a complicated one and the judgement was a complicated one. Now he's read out some part of the judgement. Another part of it was this: that it says 'the court concluded, albeit not without hesitation'. And that was an interesting ...

LEWIS: You're pinning your hopes on that. Let me ask ...

KNIGHT: No, I'm not, no I'm not.

LEWIS: ... let me ask ...

KNIGHT: Can I just tell you ...

LEWIS: Yes.

KNIGHT: Please just let me go a little further because actually when one gets into the technicalities of the appeal and you compare it with the technicalities of the first part of the

case, there are actually ... there's a lot of technical details there which are not in keeping with each other. And I would say to you that whatever had been the case at this point, the situation at this point, because of the differences there is unfortunately that kind of clarification that's required and that is the reason why the banks are considering whether to ask the House of Lords to look at it further.

LEWIS: And just answer this briefly, Angela, if you would because it's a point people have asked me a lot.

KNIIGHT: Yes.

LEWIS: If the banks are sure their charges are fair, why on earth are they afraid of them being judged as to whether they're fair or not?

KNIIGHT: Well, I think ...

LEWIS: Because you're going to court to try and stop the OFT judging if they're fair.

KNIIGHT: (*over*) No, we're not. Do you know, we're not. As you remember, I'm sure Paul, but some of the listeners might not, it goes back a long way, this, and it was in fact the banks themselves who approached the Office of Fair Trading and said we need to go to the court together for the purposes of clarifying what is this European legislation. And it actually is a legal point and it is how the UTCCCL, the Unfair Terms In Consumer Contracts Legislation, actually applies to an unarranged overdraft.

LEWIS: Alright. And that ...

KNIIGHT: Because if you look, it comes from Europe. And if you look right across Europe, it doesn't seem to be put in law in the same way there. So we're not talking ...

LEWIS: Okay, it's an important point.

KNIGHT: It is because we're not talking about ...

LEWIS: Let's, let's move on, Angela, because ...

KNIGHT: ... fairness and unfairness of a particular charge or particular construct of a relationship; we're looking to see how the law applies. And because it all started through the courts, you know it was in the County Courts, that is why it has to be completed in this way.

LEWIS: (*over*) Sure, I understand.

KNIGHT: (*over*) I'm sorry about the delay, but we will try and conclude it as quickly as possible. And we are still waiting for the Office of Fair Trading to go to the court themselves with *their* view of fairness ...

LEWIS: Well they can't do that until this appeal is decided.

KNIGHT: Well they can conclude their own inquiry and that has not been concluded.

LEWIS: Listening to that is Marc Gander who was an early campaigner against bank charges and runs the Consumer Action Group. Marc Gander, what's the effect of the banks losing but then well considering, as we've heard, an appeal?

GANDER: Well the effect of the banks losing an appeal would mean in theory that the way is now open for I think at least a half a million cases which are on hold so far to continue to get their refunds and of course all the other people who are waiting in line and haven't yet disclosed their claims. I have to take issue with Angela Knight there. She's plucked this quote from the judgement completely out of context and says that the judge has said "not without hesitation". Well I read the judgement this morning. I'm not sure if Angela Knight *has* actually read it all. I didn't notice any hesitation at all. I agree completely with Ian Pollock that the judges are completely emphatic, in fact they embrace the idea of the OFT jurisdiction over these regulations even more than the High Court judge did.

LEWIS: But, Marc, you say that this should lead to people being paid, but we know it won't, don't we, because they've been pended by the courts and they've been pended by the banks thanks to the FSA's ruling on that, so no-one's going to get any money. What practical advice do you have to people who've got claims or *think* they have claims?

GANDER: Yes, well you're quite right - I mean all it does is really brings us a step closer - but I think that we are going to get to that destination. Practical advice, well I think people should begin their claims. I think that they should start getting into the queue and begin their claims - not to the Ombudsman's Office but in fact to the County Court, which has been far more effective and far more open and far more transparent. The other thing I have to say, and as you pointed out, all claims have been pended. In other words, they're all subject to a waiver; nobody can make their claim so far. But for the banks, it's business as usual. The banks are continuing to charge, but more to my concern is that they're also continuing to bring enforcement action and it seems to me now very reasonable to call for a modification of the waiver. Yes the banks can continue to be permitted to continue charging, complaints can be pended, but I think now that banks should be prevented from enforcement action and particularly should stop now entering defaults on people's credit files, which is a shocking thing to do when we now pretty well are all certain that these charges are completely unfair and will have to be repaid.

LEWIS: Marc Gander, thanks.

KNIGHT: Could I ...

LEWIS: Angela, you'll have to say in one word will you do that or not?

KNIGHT: Yes, I will. One word on ...

GANDER: Is that yes I will ...

LEWIS: You'll stop them?

KNIGHT: Let me give you one word. As far as dealing with those in financial difficulties, of course we're doing everything we can. As far as the actual charge ...

GANDER: (*over*) I'm very sorry, Angela ...

KNIGHT: As far as the actual ...

GANDER: ... I've got enormous direct experience of this ...

KNIGHT: As far as the actual ...

GANDER: ... and I don't think that you have ...

KNIGHT: As far as ...

GANDER: ... because we're dealing with hardship cases all the time ...

KNIGHT: We are ...

GANDER: ... and I can tell you that there seem to be no clear guidelines on hardship.

KNIGHT: The guidelines ...

GANDER: ... we have an enormous number of people ...

KNIGHT: Mark, hold it.

GANDER: ... who are really in hardship ...

LEWIS: Marc and Angela, we're going to have to stop there because the clock is against us. I'm sorry. I'd love to hear you debate it for twenty minutes, but we can't. Thank you very

much to Marc Gander and Angela Knight. Banks and banking topic for Money Box Live with Vincent Duggleby, Wednesday at three.

Now when Money Box listener Gordon Love got a text message from Barclaycard about his account, he was surprised. He doesn't *have* a Barclaycard. And that was just the start of his problems, as he explained to me earlier this week.

LOVE: It was round about the middle of August I got a text message on my mobile phone which said that my account details could now be checked online, which was a surprise because I've not had a Barclaycard for about 25 years. A few days later, I got another text message on my mobile, which said my account was now overdue and that if I didn't take action my credit rating could be affected. So that of course was a bit worrying, particularly as I have a mobile phone which has texted speech software on it because I'm blind and it reads out a full message in public regardless of what the content is. So it was quite embarrassing.

LEWIS: Now you've actually let us have a recording of this. Can we just hear that now and see what actually they said to you?

TEXT MESSAGE: Your Barclaycard account is overdue. If you do not take action, your credit rating could be at risk. You need to call Barclaycard now - 08445 560058.

LEWIS: So you were having messages read out that said you had problems with your credit card and your credit rating could be affected?

LOVE: That's right. And the very first call came when my mother was visiting, so I had to explain, "No I don't owe Barclaycard any money. I don't have a Barclaycard. It's okay, don't worry". (*laughs*)

LEWIS: Honest, mum. And how often have you had these messages?

LOVE: Well this has been monthly. The text message is followed up a day later by someone phoning from Barclaycard wanting to speak to the customer and they give the customer name.

And I've explained every time, every month since in fact September when they first phoned me, I had to say, "Look, I'm not your customer. You've got the wrong number. Would you delete my number, please?" And this has gone on until in January the person I spoke to told me she was physically deleting my number from the record system, but in February I got the same message again and in fact I got three phone calls this time.

LEWIS: Obviously this is concerning for you, but you just said, I think, that you were given the person's name, so you know the name of the person who has these problems.

LOVE: I know their name, yes indeed. And I've been able to check their name on Google, you know, and it turns out it's the same name as a well-known Bollywood actress. *(laughs)*

LEWIS: Right. So this is a real breach of data security from that customer's point of view, apart from the distress it's causing you.

LOVE: Absolutely.

LEWIS: What do they say when you keep saying to them, "This is not the right number"?

LOVE: Well they're always apologetic and very polite about it and try to hang up as quickly as possible and then I say, "No, wait a minute, I want some action" and they then say, "We'll take some action".

LEWIS: So you'll have to wait and see what your phone says to you on 17th March.

LOVE: That's right. The anticipation each month is very interesting.

LEWIS: I suppose the real problem is you can't even cancel your Barclaycard because you don't have one.

LOVE: That's right. In fact the very first people I spoke to, I contacted them thinking that it might have been someone who had got hold of my details and set up an account. They assured

me it wasn't, but I couldn't do anything because only the customer can delete my number but the customer apparently doesn't know anything about it. This should be a tiny, little problem that gets solved very quickly and easily, but it seems to be par for the course these days for financial consumers. Something is wrong with their system - either the staff are too busy to deal with problems or the system doesn't let them. But in either case, we've got to be really quite concerned about how a financial organisation deals with its customers.

LEWIS: Gordon Love being remarkably good-natured about what must be a very annoying problem. Well Barclaycard wouldn't come on Money Box, but a spokesman told us it had apologised to him and has now resolved the problem.

Thousands of people who put their money into investments that promised their capital was secure face losing some or all of it. Despite promises in the written descriptions that any cash put in would be 100% fully repaid, investors were shocked to find that this guarantee was only as good as the bank which provided it. And they were even more shocked when that bank went bust. Samantha Washington reports.

NEWS HEADLINES: It's 8 o'clock on Monday 15th September. It's been a night of rapid and dramatic developments on Wall Street. One of America's biggest investment banks, Lehman Brothers, has gone bankrupt.

WASHINGTON: The headlines which began the rapid descent into the current economic crisis, but at the time it didn't seem obvious how the average person in the UK would be affected by the collapse of Lehman Brothers. Alison is a part-time teaching assistant from Maidstone and thought she was a long way from Wall Street. She had some savings built up which she wanted to protect to give herself a pension and to put her children through university. In April 2008, she got marketing literature for a product called the Capital Secure Fixed Growth Plan provided by a company called NDFA. Alison decided this plan met her needs and put in over £31,000.

ALISON: I looked at the documents and decided that everything in this looked straightforward. My capital was going to be secure. That was the most important thing of all -

the money was there and safe and couldn't be touched.

WASHINGTON: But she was shocked in September to receive a letter from NDFA to tell her that her money was not so secure after all.

ALISON: I was completely taken aback when a letter arrived on that Saturday and then I read that the securities that my money had been invested in happened to be Lehman Brothers. And not only that, but the guarantee of 100% security for my capital, that guarantee had been provided by Lehman Brothers and that wasn't at all clear in the literature.

WASHINGTON: Products like these were sold directly through the companies or through independent financial advisers. Alan Richardson is an IFA with RBS Associates in Marlow. He put people into the NDFA products and also similar ones marketed by a company which shares an office and some directors with NDFA, Defined Returns. He said he was given wrong information about that crucial guarantee.

RICHARDSON: I telephoned the number in the brochure and it was answered "Lehman" and I asked the simple question what would happen in the event of the bank going bust. I was told, "Well your clients would claim under the Investors Compensation Scheme". I actually wrote to all the clients at that point to reassure them that they *were* protected and then a few days later I received information that clearly stated that they *weren't* protected. Had I been given the appropriate information, of course I would have passed that to the clients and they could have made the decision whether to invest or not invest; or if they had invested to en-cash their investments.

WASHINGTON: Indeed even on page fifteen of the June 2008 Defined Returns plan, it wrongly states that investors can claim compensation in the event of the issuer or guarantor going bust. Well the Financial Services Compensation Scheme have confirmed that compensation only applies if the plan manager - so NDFA or Defined Returns in this case - becomes insolvent, and is not triggered by a third party bankruptcy. But that's not the only problem with the way these products were sold. The marketing literature from both companies talks of 'full repayment of capital' and capital being '100% secure'. Compliance

expert Adam Samuel wouldn't have approved these documents.

SAMUEL: Neither of these two brochures actually complies with the FSA's requirement for advertisements or client communications to be clear, fair and not misleading. It doesn't set out clearly either of the two documents in the early pages that if the issuer (Lehman Brothers) goes under, the product will essentially fail, the customer will not get their capital back. These leaflets have huge numbers of references in the early pages to the fact that your capital is protected. If you take the example of the enhanced returns plan, I've counted seventeen references in the first six pages.

WASHINGTON: And Adam Samuel says the watchdog, the Financial Services Authority, needs to take action.

SAMUEL: The regulator needs to pay these companies a visit. It needs to start enforcement proceedings against them. It needs to find them and ultimately they ought to be requiring these firms to offer compensation in the form of a refund of investment plus interest to anybody that invested on the basis of these brochures.

WASHINGTON: Well NDFA and Defined Returns do not accept Adam Samuel's stance. The Financial Services Authority wouldn't say if it was investigating either company, but it did tell us that it's collecting data on products affected by Lehman's failure and that it's considering the quality of the marketing material of those products. So what do NDFA and Defined Returns, who've sold these products to people like Alison, have to say about it? A spokesperson for both companies told us that they are "satisfied that the literature is clear and FSA compliant". The companies add that "customers always receive appropriate information about the risks involved". But Alison feels that in the bigger picture the plight of people who invested in products like these is being ignored.

ALISON: Gordon Brown is quoted as saying, "I think people can see from our actions so far that depositors have been protected. No UK depositor has actually lost money". Well I feel like shouting out and saying that's really not true.

WASHINGTON: Well there's an anxious time now for Alison as she waits for the administrators to pick over what's left of Lehman and tell her if she can have any of her money back.

LEWIS: Thanks, Sam.

The taxpayer is underwriting the dodgy loans made by Royal Bank of Scotland in a deal which could see 95% of the bank owned by taxpayers. The Treasury is calling it Operation Broom - perhaps because it's supposed to brush all the dirt under the carpet and leave the banking floor looking shiny. But it could be hideously costly. The potential liability is up to £275 billion - just not far short of half the total spent by the Government in a year. And that's just for one bank: RBS. Lloyds is still locked in talks over a similar deal. Even Barclays is said to be testing the water. Well with me is Paul Wilmott who's a mathematician who specialises in quantitative finance. Paul Wilmott, how worried should we be as taxpayers that we're now guaranteeing £325 billion of toxic debt?

WILMOTT: I find this quite frightening, to be honest. The Government, the Treasury now seem to be playing exactly the same game that the banks have been playing because you've probably heard of these collateralised debt obligations.

LEWIS: We've heard of them. Whether we understand them is a different matter. *(laughs)*

WILMOTT: Right, well it's the way banks take in mortgages, shuffle them around and then partition off the different levels of risk - so you have the very risky, the not so risky and the safe. Well this is exactly the same here. The balance sheet of RBS is £2.3 trillion. RBS are liable for the first 90 and a half billion and then we are liable, the taxpayers are liable for 90% of 300 odd.

LEWIS: Yes, so they've got £2.3 trillion of debt and we're taking the risk on the middle bit - the sort of .3 trillion, the 325 billion?

WILMOTT: Exactly.

LEWIS: That's the rubbish bit, presumably?

WILMOTT: Exactly, this is terrible. If you think how much the 2.3 trillion will go up and down just in normal market conditions and the 325 is the worst part of that.

LEWIS: Now we're being paid as taxpayers 6 and a half billion pounds. That's like the insurance premium on it. It's 2% of the total. Is that a fair price?

WILMOTT: Well 6.5 billion used to be you know a decent amount of money. Not so these days. But of course that's 6.5 billion in shares, and if things go wrong then the 6.5 billion is not going to be 6.5 billion anymore. The perfect analogy is that normally if you want to insure company x against going bankrupt, you go to company y for the insurance; but here we're in the strange situation, we've gone to company x to insure company x.

LEWIS: Yes, so we could lose the lot in a sense.

WILMOTT: Very easily.

LEWIS: And is it really insurance because we know this debt is rubbish? Isn't it like insuring a house against burglary once you've come home and found the door open?

WILMOTT: Well the problem is we don't actually know really what's going into this 325. The valuation of these complex, toxic derivative assets is very, very difficult. If you think that a single one of these - of which there may be thousands ... tens of thousands - a single one is twenty pages of legal jargon and mathematical formulae, well Lord Myners couldn't even spot one or two paragraphs of that concerning somebody's pension, Fred Goodwin's pension. How are the Treasury going to be able to cope with thousands of extremely long, complicated documents?

LEWIS: And if I could ask you in a word literally to say is there a chance we'll lose perhaps half this amount?

WILMOTT: Oh very easily, very easily.

LEWIS: Paul Wilmott, thanks very much indeed.

Now Paul mentioned the pension paid to Sir Fred Goodwin and the controversy. He was of course the Chief Executive of Royal Bank of Scotland and the controversy continues to rage in the press this morning. Sam Washington's been looking at the figures. Sam, the pension has been valued at various amounts. What really is it worth?

WASHINGTON: Well, Paul, the pension is said to be £693,000 a year. Now if you had a pension pot and you wanted to buy that pension, it would be very expensive indeed for several reasons. Well, first, Sir Fred is 50 and a pension at that age costs more. Second, the pension will be index-linked. It will rise with inflation and that costs money. Now if you factor those two things in, you need about £24 million to buy a pension of £693,000 a year. And, third, if there is a pension for Sir Fred's widow, that would put the cost up to around 27 or £28 million.

LEWIS: Now Sir Fred got this pension because RBS was rescued by taxpayers, £20 billion of public money. Without that, it could have failed, couldn't it? What if it had? What would he have got then?

WASHINGTON: Well that's very interesting, Paul. If RBS had failed, then the pensions of its staff, including Sir Fred, would have been picked up by the Pension Protection Fund. Now that has strict upper limits on the pension it will pay. At age 65 that limit is just under £28,000 a year, and if Sir Fred had the right to retire at 50 - and that frankly isn't clear - then he could get a pension but it would be cut back even further to just under £22,000 a year. Moreover the index linking would be limited and so would any widow's pension.

LEWIS: Thanks, Sam. So £22,000 if it had failed; £693,000 because we all stepped in to save it. And I worked out earlier, Sam, his pension's equal to the state pension paid to 7,640 pensioners.

Anyway, that's it for today. Find out more from the BBC Action Line - 0800 044 044; our website, bbc.co.uk/moneybox, where you can download a podcast of the programme. 150,000 were downloaded in January. And if you have a problem, putting right a bank's mistake or your own call centre nightmare, you can have your say on the website, bbc.co.uk/moneybox. Vincent Duggleby's here on Wednesday. Money Box Live this week is taking questions on banking. I can hear the phones ringing already. I'm back next weekend. Today - reporter Sam Washington, producer Lesley McAlpine. I'm Paul Lewis.