MONEY BOX

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TRANSMISSION: 11th JULY 2009 12.00-12.30 RADIO 4

LEWIS: Hello. In today's programme, new rules for banks may give customers a better deal - but not just yet. Are mortgage lenders making profits out of customers who are in arrears? Bob Howard's been looking into share scams.

HOWARD: Would you be fooled by a call like this?

PHONE CALL: I finally received the go-ahead on that recommendation we were speaking about. Grab yourself a pen and paper and I'll give you all the details.

LEWIS: And the return of the 125% mortgage. It's supposed to be helpful, but does it store up problems for the future?

But, first, reform the banks but not a lot and not just yet. The government's plans for reforming financial services won't happen this side of an election, now less than a year away. Even some of the consultation announced this week won't finish until after the next government has been chosen. But buried in the white paper, a number of ideas are put forward to help customers, and it's those we want to look at today. They include the idea of colour coding financial products red, amber and green; a national money guidance service to start in April; and an expectation that the banks would set aside enough money to pay full compensation to savers if another bank went bust. Well live now to Angela Knight of the British Bankers' Association. Angela Knight, are you happy with the change to the compensation scheme, so you will have to prefund it with billions of pounds upfront?

KNIGHT: Well I think that that is one of the, going to be one of the key issues to discuss actually because at the moment, as you probably know Paul, some of the interventions - Bradford & Bingley and the Dunfermline Building Society, for example, they have left a cost that the banks have to pick up of over £20 billion. So that is something that we need to work out how to pay back first.

LEWIS: Yes, but initially the government paid that, didn't they?

KNIGHT: No, it didn't actually.

LEWIS: They've lent it to the scheme …

KNIGHT: Correct.

LEWIS: … and you've got to pay them back.

KNIGHT: That's correct. Well we pay it as we go at the moment in terms of interest, but then - you're absolutely right and this is the point: that's a large sum of money which of course the banks have got to find and need to pay back. So at the same time as we are looking at what the current position is for the scheme, we need to look at the forward nature of the Deposit Protection Scheme. We've got to put them both together because they're not isolated. And it's been something actually that's been talked about right across Europe as well, and certainly what we'd like from the banking industry here in the UK is that we find a proper way of addressing deposit protection and we actually make sure that Europe does it in a very similar manner. Otherwise whatever we do here can be overridden by the EU.

LEWIS: Well indeed. And moving onto more consumer matters, one idea is a traffic light system for warning people about risky or expensive products. Which products would *you* colour red?

KNIGHT: I think that this is probably one of the hardest things. As you know, it's been looked at several times before by FSA, by Treasury Select Committee and others because something that can be easy and if you like not risky one year can become risky another, such as if the stock market goes down and you're in an equity ISA.

LEWIS: So it would be hard to know what colour to paint them. Stay with us, Angela …

KNIGHT: But I think you can do it possibly better on simplicity, and that may be the way that we need to look.

LEWIS: So making products simpler rather than labelling them …

KNIGHT: Well a lot of products are simple. Some of the things that people want, which is, you know, where you get a fixed interest for a long period of time, that can be quite complicated underneath, so it's hard to explain the transparency aspect as well. It's probably the two together.

LEWIS: With me also is Anthony Elliot, who's Director of the research based charity Fair Banking. Anthony Elliot, we'll talk about traffic lights in a minute, but what's gone wrong first in the way banks treat customers?

ELLIOT: Well I think over the last few years, it's become apparent that the banks have not really been acting in the interests of the customer. What we're seeing - and to some extent that's been mentioned by the Chancellor in the white paper …

LEWIS: In what way though?

ELLIOT: … we're looking for cultural change. Well what our research has shown is that we can identify what improves the well-being of customers. There are certain things like enabling the customer to have greater control over their money, ensuring the customer doesn't have more debt than they need, than is good for them. And the banks really, and other financial institutions, could play a big role in ensuring the customer is not in that position.

LEWIS: And do you think this traffic light system or something like it - the Treasury was playing down the idea of actually red, amber and green last night - but something like it would work?

ELLIOT: I think it is a useful step in the right direction. It's clearly only a first step. The Treasury itself has said that there's a lot more to be done in this area. And we can find examples where you could traffic light things, specifically when it comes to managing your money better - certain things like say the minimum payment on a credit card is an issue that could be traffic lighted. We've recently seen an example where the minimum payment has been reduced from say 2.5% to 1.5%. This means a young person going out for dinner, pays for their dinner - it's now going to take them 98 years to pay that off, and we would argue that's a red traffic light.

LEWIS: Yes, so that would be red and higher repayments might be green. And, Angela Knight, Anthony Elliot making the point he thinks banks haven't treated customers fairly. And indeed the Conservative opposition - who may well be the government in a year's time, who knows - want a powerful consumer regulator to what George Osborne, the Shadow Chancellor, said stamp out unfair practices like mis-sold payment protection insurance and excessive bank charges. So they're going to be even tougher on you.

KNIGHT: Well we are actually quite supportive of putting a lot more of the consumer protection in one place.

LEWIS: What, stamping out excessive bank charges?

KNIGHT: We don't think that splitting credit out with the Office of Fair Trading and the, you know, the deposit taking activities with the FSA makes sense. But just looking at, you know, your specific point - bank charges and insurance - I mean that's … generally I can comment on that, and that's this: is that you know there is a huge amount of available services that you get from your bank for which you don't pay any extra. We've got one of the most competitive banking industries actually in the world for individuals. So yes, I quite accept that sometimes things do go wrong - if you've got as many millions of customers as our banks have got, mistakes can be made - but there is absolutely no desire, no intention to be unfair at all, and possibly one of the most un-fairest things is if it's made so difficult by the rules and requirements that people can't get insurance cover in the times when they need it. So we've got to be careful, look at both sides of these arguments.

LEWIS: As we always do on Money Box. Angela Knight, thank you very much …

KNIGHT: Thank you.

LEWIS: … and Anthony Elliot of Fair Banking.

Now as investors struggle to get a good return in the current economic climate, there are fears that more people will fall victim to criminal gangs offering to sell them what they call shares at bargain prices to make a good return. Police and regulators estimate that up to 20,000 people a year in the UK could be losing hundreds of millions of pounds. Bob Howard reports.

PHONECALL: There's fantastic news. I finally received the go-ahead on that recommendation we were speaking about. Grab yourself a pen and paper and I'll give you all the details. Okay … *(fades under)*

HOWARD: The caller's friendly, knowledgeable and persuasive, and he says he can sell you shares at a knockdown price. The problem is it's a scam and this is the sort of script used to perpetrate it. It's been provided to me here by police officers at Operation Archway, set up specifically to tackle this sort of fraud.

PHONECALL: This company is trading live at the price of two dollars eighty. I've got it today at the institutional discount of two dollars twenty per share, putting you straight into a profit situation from the offset.

HOWARD: Officers say calls like this persuade victims to part with tens of thousands of pounds and they get about a hundred calls a week from victims. Detective Superintendent Bob Wishart says the current economic climate is tempting more people to get sucked in; and the fraudsters, whose operations are known as ‘boiler rooms’, are both patient and highly convincing.

WISHART: We actually see the boiler rooms at the moment really playing on low interest rate by offering potential investors a significant return on their capital. It might be over a number of weeks, even months, before any demand for money is made; and by the time they part with their cash, they have utmost faith and confidence in the individual that they’re dealing with.

HOWARD: The fraudsters are constantly changing their identities, but some names keep appearing. Money Box has been contacted by a listener worried about a family friend who’s invested in a firm called Cantwell International. When I spoke to him, he told me how he had initially invested a small sum in one lot of shares earlier this year. Within a couple of months, the fraudster said he’d made a good profit; would he like to invest a much bigger sum in another company? He ended up investing a total of £20,000 and is supposed to get his money next month. The firm gives its contact details as the Caribbean island of Grenada. I tried to contact Stephen Bradshaw, believed to be its Managing Director.

FX: PHONE RINGING

RECEPTIONIST: Good morning, Cantwell International. How can I help you?

HOWARD: Hello, I was trying to contact Stephen Bradshaw.

RECEPTIONIST: I’m sorry, Mr Bradshaw is not available at this moment. Would you like leaving him a message?

HOWARD: I left my details, but he never did get back to me. Not surprising, perhaps, as the company appears on a warning list of hundreds of firms published by the Financial Services Authority. The FSA believes they pose a high degree of risk to investors. But despite speaking to the FSA and the police, the investor I spoke to still believes there's a good chance he will get his profit. And even if he realises that the money's lost, Operation Archway's Karen Woodfield says the conmen could still take more money from him.

WOODFIELD: If they're aware that they've been a victim of a boiler room the first time round, it doesn't mean that they're less likely to fall for it a second time.

HOWARD: To crack down on this type of fraud, some of the biggest high street banks now use the FSA warning list to suspend transactions to these companies whilst the customer confirms if they really want them to go through. HSBC says it's been doing this for about 3 years. Barclays begun in February and says it has suspended around 150 payments so far whilst it contacts the customer. And although 90% of those contacted did not proceed, 10% decided to go ahead anyway. Jonathan Phelan, the FSA's Head of Retail Enforcement, says it shows the limits to how successful screening by banks alone can be.

PHELAN: A member of the public was so convinced that they were getting into a good thing. The Economic Crime Unit even asked some of their police colleagues to pay a visit and some policemen knocked on his door, tried to explain things to him. He was still insistent on investing. There's only so much that can be policed, and of course it would be nanny state to go any further and nobody's going to ask for that.

HOWARD: The FSA says it's got back almost £3 million of investors' money from four boiler room operations. But with estimated losses each year put at £300 million, that's just the tip of the iceberg.

LEWIS: And, Bob, if you get one of these calls, what should you do?

HOWARD: Well basically put the phone down. The FSA says it's completely against the law for any broker here or abroad to cold call customers.

LEWIS: Thanks very much for that, Bob.

Now more than 260,000 people are at least 3 months behind with their mortgage payments. That's one mortgage in every 42, and almost double the number in arrears a year ago. As we've reported before on Money Box, lenders charge people in arrears extra fees, often putting them in worse debt, and this week Treasury Minister Lord Myners told a parliamentary committee that the Financial Services Authority should look into the problem.

LORD MYNERS: I do have a concern that there is a risk that charges could be excessive and the FSA needs to give that very serious attention.

LEWIS: The consumer organisation Which? also addressed the committee and presented it with a survey of the arrears charges. I asked Principal Policy Adviser Dominic Lindley why he thought they were excessive.

LINDLEY: There's no evidence that these fees are a reasonable reflection of the costs involved, and they can be charged regardless of whether you've entered into an agreement to pay off those arrears and are sticking to it. So for some people, they're making their financial situation worse and they're not helping them resolve their difficulties.

HOWARD: But why shouldn't the people who've missed the payments bear the cost of those missed payments and those arrears?

LINDLEY: Well they *should* bear the costs, but it's got to be a reasonable reflection of the cost involved and it can't be excessive. They shouldn't be profiting from people in financial difficulty.

HOWARD: And has Which? got examples of unfair charges? Which banks are involved?

LINDLEY: It's a number of banks and building societies, but it's also some of the sub-prime lenders like GMAC was charging a flat rate fee of £50 a month; Kensington Mortgages charging a fee of £50 a month; Capstone - they're charging £60 a month when someone is in arrears.

HOWARD: Now those are what you call sub-prime lenders. They're perhaps not some of the big high street banks and building societies we all know. Are there any examples from them that you've got?

LINDLEY: Barclays charge £40 a month, Northern Rock charges £25 a month if you're two months behind and then £55 a month if you're more than three months behind. But some lenders charge much less. I mean Nationwide charge £20 a month for someone in arrears. And there's a real discrepancy between some firms charging £20 a month for someone in arrears and some firms charging £60 a month, and that's why we're onto the FSA to really clamp down on these lenders, to tell us who they are rather than trying to protect the lenders' commercial interest and to actually think more about the consumers who are being unfairly threatened with eviction from their homes.

LEWIS: And although the FSA won't tell you who these lenders are, are they taking quiet action against them without telling anyone?

LINDLEY: They won't say. But I think the FSA should learn that this quiet word in your ear approach to regulation just isn't working and lenders will only start treating customers fairly when they see strong action and very high fines. And the revenue from those fines should be used to help consumers rather than in the current situation where it's passed back to the industry in lower regulatory fees the next year.

LEWIS: What would you like the Select Committee to do because they were the ones you were giving evidence to this week?

LINDLEY: Well we'd like the Select Committee to ask lenders to open up their books. We'd like the Select Committee to recommend that a rule is introduced which means that if a consumer has entered into an agreement to pay off their arrears, then all charges are suspended. We'd also like to see a 90 day charge free window for people who are in arrears, so they can negotiate an agreement using an independent debt counsellor such as someone from the Citizens Advice Bureau.

LEWIS: Dominic Lindley from Which? Well with me is Sue Anderson from the Council of Mortgage Lenders. Sue Anderson, do you accept now that some of your members do charge more than it actually costs when people are in arrears?

ANDERSON: I don't think we actually know that yet. I mean that's what the FSA is looking to find out and they're looking to find out whether these charges from these four lenders that they're taking enforcement action against is reasonable or not.

LEWIS: But it can't cost 40 quid a month just because somebody's in arrears. It can't cost £35 to bounce a payment, which is what Halifax does. I mean banks admitted in the House of Lords earlier this year that those charges for overdrafts were more than they cost, so it must cost more than it costs for mortgage arrears?

ANDERSON: Well in terms of the mortgage arrears charges, I mean there's a lot of stuff that we've done, that the industry has done to embed good practice, and one of the examples is very much that if you're in an arrangement with your lender, you shouldn't then be being charged an ongoing arrears management fee. One problem lenders do face actually is getting borrowers to contact them, be in touch with them at an early point.

LEWIS: Yes, I think we'd all accept that - it's important not to throw those letters away and to get in touch - but these are charges made to people who have been in touch, and, you know, I mean sending someone round to help with your arrears and then billing you for £95, as Nationwide does, seems a bit odd.

ANDERSON: But, again, I don't think we're hearing the full story here. I mean the full story is that you are given a chance before that debt counsellor comes round to take free advice from another source and to reject that visit if you want to. I mean this is again where borrowers haven't really been engaging at an earlier stage.

LEWIS: And what guidance are you sending to your members because you're the trade body that they belong to. Are you helping them to get things right as you would see it?

ANDERSON: We very much hope that we are. What we've done is we've put together a good guide bringing together the requirements from the FSA both in a rules basis and a treating customers fairly basis. We've made that very available and we're continuing to work very closely with the FSA and members to make sure it happens in practice.

LEWIS: And the FSA rules do say … its guidance, I know, but they do say the charges should reflect a reasonable assessment of the cost of dealing with the customer, so they shouldn't be a profit stream as they seem to be.

ANDERSON: Absolutely they shouldn't be a profit stream. That's entirely clear within the regulation. I think though we shouldn't assume that because a charge is cited at a certain level that it is a profit stream. We need to know whether that does reflect the lenders' costs. They do have to employ staff, have computer systems, all the overheads that go with that, so it's wrong to assume that these charges are automatically unfair.

LEWIS: And just briefly. If you do find members where you think they are charging more than it actually costs, will you have a quiet word with them?

ANDERSON: Possibly. I mean we are, as you know, not an industry regulator. That is the FSA's job. That is the job of enforcement. In the meantime, a borrower in this situation should look at the Ombudsman Service if they are concerned.

LEWIS: Sue Anderson, thanks very much, from the Council of Mortgage Lenders. And you can tell us your experience of mortgage arrears and what your lender charged if you've been in that position on Have Your Say on our website: bbc.co.uk/moneybox.

Some of the 100,000 people who took out variable rate loans secured on their homes with First Plus, which is now owned by Barclays, haven't seen a cut in their interest rates since 2007 despite the record fall in the Bank of England rate over the last couple of years. Some customers are getting together to complain of being treated unfairly. Samantha Washington reports.

FIRST PLUS AD: A First Plus home owner loan can help you get your finances back on track by rearranging any existing credit into one lone monthly repayment.

WASHINGTON: That was Carol Vorderman offering what she claimed to be a low cost answer to your debt problems. First Plus offered second charge mortgages or loans typically for large amounts secured against the borrower's home. It was the market leader when it closed to new business, a credit crunch victim, at the end of last year. And now some customers say the loans have been anything but cheap. Mark Wilson took his loan out in 2003. He saw his rates go up with base rates, as he expected, but when base rates came down dramatically from September he was left disappointed.

WILSON: If during the periods of increase my payments go up and during the periods of decrease, they don't come down, then this loan is just going to increase and increase in cost and not be the low cost debt solution it was sold to me as. Now that the market has changed, options to remortgage or to pay the loan off from other sources is drastically changed. So, I like many, am pretty well trapped.

WASHINGTON: And that rate he feels trapped on by First Plus is 12.1%, which he's been on since 2007. In that time, the Bank of England rate has fallen from 5.75 to just half a percent. Now the small print of the contract Mark signed does allow First Plus to do this. Specifically it says: 'We may from time to time vary our interest rate.

We may increase or reduce our interest rate for one or more of the following reasons - mainly to reflect a change which has occurred or which we reasonably expect to occur in interest rates generally or to ensure that our business is carried on prudently, efficiently and competitively'. But it's exactly this clause that Mark has a problem with.

WILSON: Within their terms, I believe there is an unfairness because they are now making this a one-sided bargain. We are at the bottom of the current interest rate cycle and you know my view is that over the next couple of years interest rates will go back to the levels that they were previously. The worry is that because they can do what they like and won't reassure me in any way that they won't continue to do what they like, I don't know where the level of increase could stop.

WASHINGTON: And he's not alone. A website has been set up by other customers who are unhappy with what's been happening with First Plus interest rates. There's an electronic petition about it at No. 10 and a growing number of complaints in consumer message boards. I had compliance expert Adam Samuel take a look at Mark's contract to see if he thought the terms and conditions were fair.

SAMUEL: These terms appear to give the lender an almost unfettered discretion as to whether to increase or decrease the rate of interest charged, and that in itself unbalances the contract. I suppose the simplest way of looking at it is it just gives so much power to the lender to charge what it likes to the consumer, and that inherently strikes me as being unfair.

WASHINGTON: Alright. And if it's unfair, is it enforceable?

SAMUEL: No. Article 8 of the Unfair Contract Terms in Consumer Contracts Regulations say that a term that is unfair under the regulations is void or is not enforceable against the consumer.

WASHINGTON: The appropriate watchdog may take enforcement action if those unfair contract regulations are breached. At the moment the job of overseeing secured loans rests with the Office of Fair Trading. Adam Samuel thinks the OFT should get involved with this one.

SAMUEL: I think this is exactly the sort of clause that the regulations were designed to prohibit and therefore the OFT should be investigating this and raising these points with the lender and suggesting to the lender that they should not be relying on them in this contract and they should not include them in other contracts. The OFT could say consumers have been paying too much money to this particular lender.

WASHINGTON: So would any of those consumers have a case if they wanted some of that money back?

SAMUEL: They certainly have a case that's well worth arguing.

WASHINGTON: Well Barclays didn't want to be interviewed, but its spokesperson told us that its terms and conditions are "clear, legal and fair". And it said, "customers know exactly what they're facing when they sign the contract".

LEWIS: Samantha Washington. And the Office of Fair Trading told us yesterday it has recently started an investigation into some secured lenders - it wouldn't say which - and contract terms will form part of its probe.

Nationwide Building Society has defended itself this week after it emerged it was offering some existing customers a mortgage of up to 125% of the value of the home. It said the loans were for a very few people whose property value had fallen and their loan was now bigger than that value, and the new mortgage was designed to help people like this in negative equity when they wanted to move house. Sue Anderson from the Council of Mortgage Lenders is still with me. Sue, briefly this 125% figure reminds us of the famous Northern Rock mortgage, doesn't it, but is it a good solution?

ANDERSON: It absolutely is. These are people who are already in the market.

They’ve already got negative equity. If anything, this reduces their risk and reduces Nationwide’s.

LEWIS: And, briefly, if it is a good idea, as you say, will other lenders offer something similar?

ANDERSON: I’d like to think they would. Let’s hope they’re not put off by the negative coverage that people are seeing.

LEWIS: Sue Anderson, thanks very much. And, Bob, an important court decision for people who choose to sell their home and then rent it back from the buyer?

HOWARD: That’s right. There’s been a lot of concern that people who do this are promised they can stay indefinitely in their home only to find they’re evicted shortly afterwards. But now Birmingham County Court has allowed a couple from Shropshire to stay in their property even though the firm they sold their home to has stopped paying the mortgage. The judge ruled they could stay there for life either by taking out a new mortgage and becoming the owners or through renting it from the mortgage lender who had repossessed it.

LEWIS: Thanks for that, Bob. Well that’s it for today. You can find out more from the BBC Action Line - 0800 044 044 - and of course our website, bbc.co.uk/moneybox, where you can do all sorts of exciting things: watch videos, sign up to my weekly newsletter, download a podcast, listen again, and of course have your say on those mortgage arrears - as some of you already are. Personal finance stories Working Lunch, BBC2 weekday lunchtimes. I’m back on Wednesday with Money Box Live, this week taking your questions on employment rights. Back next weekend with Money Box as usual. Today the reporter was Bob Howard, the producer Richard Vadon, and I’m Paul Lewis.