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MONEY BOX

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TRANSMISSION: 13th FEBRUARY 2010 12.00-12.30 RADIO 4

LEWIS: Hello. In today's programme, hundreds of firms are encouraging people to pay them fees to get their debts written off. But we expose one firm's misleading sales calls.

SALES ADVISER: Barclaycard is 98% success rate. And then you've got HSBC, 88%, which the chances of losing would be like jumping over your own house.

LEWIS: Interest rates may be frozen, but why does money in a cash ISA travel at glacial speeds when you want to move it from one bank to another? And there are welcome signs of competition in the mortgage market as rates begin to fall.

But first, a Money Box investigation has discovered that a company saying it can write people's debts off has been misleading potential customers. Beneficial Claims boasts high success rates while neglecting to tell customers they risk damaging their credit record if they follow its advice. Money Box first became suspicious when this anonymous text was sent to our reporter, Ruth Alexander.

ALEXANDER: 'Hi, Miss Alexander. If you have loans, cards, finance pre-April 07, they could be written off. Call 0845 ...' That was the text I got. It didn't say who it was from and that breaks the marketing industry's code of practice and European regulations. So we got permission to secretly record and rang the number to find out who was behind the text.

TELEPHONE RECORDED MESSAGE: Thank you for calling Beneficial Claims. Your call may be recorded or monitored for training and quality purposes.

ALEXANDER: The recorded message tells us immediately who this company is. And Beneficial Claims, we discover later in the call, is part of the Yes Loans group, a company which Money Box has investigated before.

LEWIS: Only this time, Ruth, we didn't have to look for the story. They sent it directly to your mobile phone.

ALEXANDER: Yes. And here's the sales pitch you get when you ring up.

SALES PITCH: There are literally millions upon millions of credit agreements in existence now - loans, credit cards, higher purchases, all types of rubbish, okay? The fact is millions of these agreements now simply do not comply with the Consumer Credit Act of 1974. These are called Unenforceable Credit Agreements or UCAs. So if you have a loan or a credit card and the agreement wasn't drawn up properly - because there are millions that weren't - it's then possible to have the whole thing written off and the balance completely reduced to zero. Okay?

LEWIS: Now, Ruth, this company says it can help you get out of your debt through a loophole in the law.

ALEXANDER: Yes, and there are many other companies doing the same. It might sound like a dream come true, but is it? Here's how it works. By law consumer credit agreements have to have certain details present and correct like the amount of credit or the interest charged; and if they're not and you took out the loan or card before April 2007, the agreement can be unenforceable.

LEWIS: And just to be clear, Ruth: unenforceable means that although you owe them money, the bank or creditor can't actually make you pay. If it goes to court, the court will throw it out?

ALEXANDER: Yes. Now if the errors are serious enough, no court would make you pay. Companies like Beneficial Claims say they'll take your lender on and get your agreement declared unenforceable. Many of them say they'll do it through the courts. But Beneficial Claims says it rarely has to take legal action.

LEWIS: So how *does* it do it?

ALEXANDER: Well it says its experts will get your credit agreement from your lender and review it for potential fatal flaws. They charge an upfront fee for this and that starts at £245. If they find the flaws, the company moves you to the second stage of the process where for 15% of your debt (minus the initial charge) you can choose to have Beneficial Claims take on your unenforceability claim. We've made a number of calls to this company, and in all of them the sales advisers boasted about the company's success rates.

SALES ADVISER: Success rates are through the roof at the moment. It's possible we've got a 93% success rate.

ALEXANDER: Right.

SALES ADVISER: All credit cards and loans. The majority are 100%, apart from a few we've got like Barclays is 98%. Majority are 100%.

ALEXANDER: And, what, you get the debt com...

SALES ADVISER: Completely written off, yeah.

SALES ADVISER 2: Barclaycard is 98% success rate. So Barclaycard is literally stone-clad. And then you've got HSBC 88%, which the chances of losing would be like jumping over your own house or something stupid.

LEWIS: Ruth, did that guy just say you're as likely to fail to get a HSBC debt written

off as “jumping over your own house”?

ALEXANDER: He did, yes. Now we asked Beneficial Claims to provide evidence of its successful cases. It gave a breakdown of the number of agreements from one particular bank, which were deemed ‘unenforceable’ by a company Beneficial Claims commissions to carry out such reviews. But Beneficial Claims acknowledged that the figures are yet to be accepted by the lender and agreed by a court.

LEWIS: So success means that Beneficial Claims has paid another company to look at the agreement, and that other company says there are breaches of the Consumer Credit Act. It doesn’t mean that a lender or a court has actually said the agreement is flawed?

ALEXANDER: Correct. This industry is regulated by the Ministry of Justice, so I asked the man in charge, Kevin Rousell, whether if he heard those success rate claims being made, he would think they referred to the proportion of agreements conclusively declared unenforceable.

ROUSELL: Yes I would, yes. And that’s not acceptable.

ALEXANDER: It’s malpractice, it’s a breach of your regulations?

ROUSELL: Yes, anything which is misleading is a breach. The more that happens, the more likely it is the business will have their authorisation cancelled.

ALEXANDER: And the Ministry of Justice has already closed down more than 100 of these companies. What’s more, all the advisers we spoke to at Beneficial Claims said your debts could be written off completely. But that is wrong. Although an unenforceable debt is one you don’t have to pay back, it still exists. And as barrister Paul Brant explains, that matters.

BRANT: The High Court judge has held that the creditor is entitled to register the

debt with a third party, in particular the credit reference agencies. So a debtor may find that although the lender cannot get a judgement against them in respect of the debt, their credit worthiness is significantly impaired and they may well not be able to get credit elsewhere.

LEWIS: So even if you do succeed in getting your debt declared unenforceable, Ruth, you risk damaging your credit rating?

ALEXANDER: Yes, you do. But ringing Beneficial Claims, every adviser we asked about credit history said it *wouldn't* be affected. Here's a sample of the calls. *(to sales adviser)* Would this affect my credit rating?

SALES ADVISER 1: Well as long as you do everything our legal team tell you to do, then no.

ALEXANDER: It won't?

SALES ADVISER 1: No.

SALES ADVISER 2: And it doesn't affect your credit because it was their mistake, not yours.

SALES ADVISER 3: Let me say it again. They're prohibited from putting any negative entry on there.

ALEXANDER: I put it to the regulator, Kevin Rousell, that that advice is dangerously wrong.

ROUSELL: It is. No-one, certainly now, should be suggesting that your credit rating cannot be affected. It can and we pick it up, we instruct them to change their practice; and if they don't, we can take formal enforcement action against the business.

LEWIS: So, Ruth, just stepping back to look at the bigger picture. What are your chances of having your debt at least declared unenforceable?

ALEXANDER: Well it does happen. Sales reps at Beneficial Claims say millions of agreements are unenforceable, but really no-one knows the actual number. There have been only a small number of successes at court, although thousands more cases are said to be with solicitors and an unknown number have been settled out of court and the banks aren't exactly forthcoming about that. It could well be that they have a huge number of potentially unenforceable debts on their books. But trying to get yours declared unenforceable not only comes with risks. It could be far from straightforward. Beneficial Claims says there are 26 fatal flaws to look for in credit agreements, but Paul Brant, the barrister we heard from before who's won some high profile unenforceable agreement cases for consumers, says only a very few of these errors are definitely fatal and most of the potential breaches are actually far from clear cut. And he says people turning to these claims management companies should be properly advised that they are not in as strong a position as they might think.

BRANT: I believe that many people who have seen the advertisements have been led into a false assumption that they have easily successful and clear cut claims. They've paid up money upfront on an inflated prospectus. There is a real risk that we are going to see a very vulnerable section of the population out of pocket with an impaired position in terms of future credit ratings. In that respect, this is a real consumer catastrophe waiting to happen.

ALEXANDER: And the Claims Standards Council, which is the trade body for these sorts of companies, agrees there's a section of this industry which is causing a lot of problems. Policy Director Andrew Wigmore says he sees hundreds of complaints every week from people who have paid large upfront fees to various companies and haven't heard anything for months. And he says exaggerated, misleading claims are common.

WIGMORE: If you are struggling and someone phones you up and offers you an olive branch to get out of this situation, you'd probably take that gamble. But the

reality is that you cannot write off your debts. They will be registered on your credit report and you'd probably end up not being able to get credit again. And the banks and the lenders do have the ability to come after you if you do not have a case. So if you have any issues, there are a number of organisations that can help you in debt. And those are pretty well publicised, but if you have any issues surrounding these kind of companies double check. Call the Office of Fair Trading. Call the regulator. Have a look on the Internet and you will find out whether or not what they're saying is true or not.

LEWIS: Well that was Andrew Wigmore of the Claims Standards Council talking to Ruth Alexander. Live now to Cardiff to talk to Keith Chorlton who's Chief Executive of Beneficial Claims. Keith Chorlton, why do you let your sales staff claim that debts can be written off when they can't?

CHORLTON: We never guarantee a debt will be written off, but it is one possible outcome.

LEWIS: No forty-seven times in the calls we made, your people said "legally wiping off that debt", "it's possible to wipe off debts", "get the debts written off", "get the whole thing written off." I could go on.

CHORLTON: Well you may, but this morning we've heard two tapes. You've refused to give us the evidence of that. In any event, our solicitors issue all of our customers with a legal indemnity guarantee ...

LEWIS: Yeah, but that's after they've agreed to the business, isn't it?

CHORLTON: No, backed by an insurance that ... You've been selective in what you've played this morning. As I said ...

LEWIS: Alright. Let me ask another question. How many clients who've come to you *have* had their debts written off?

DANIEL WILMOT: To date, our solicitors have had ... Well I can't give you the exact number, Paul. A number of our solicitors clients have achieved that result in court.

LEWIS: So just to be clear, some of your clients who have come to you have had their debts written off?

WILMOT: That's correct, yes.

LEWIS: Because you have told us in the past none of them had. But you're now saying some have, but you can't give us the number.

WILMOT: I can't give you the exact number, no, but our solicitors have achieved that result through negotiation with lenders in the past, yes.

LEWIS: Right, that's negotiation. Debts have been written off. In other words, there isn't a debt. It's no longer owed. It's not just unenforceable?

WILMOT: That's correct.

LEWIS: And in most cases though, the best you can hope for is to get the debt made unenforceable, isn't it? Why do your staff mislead people by saying that an unenforceable debt won't affect your credit rating when it will?

CHORLTON: Well our staff don't. We have a rigorous training programme ...

LEWIS: Alright, it doesn't do anything to your credit file. Lenders are prohibited in law from putting any negative entries on your credit. It wouldn't affect your credit file, sir.

CHORLTON: First of all ...

LEWIS: Three claims made to our researchers.

CHORLTON: At the early stages of the review, when we are trying to ascertain whether the contract is unenforceable, it does not affect your credit file. When it gets to the legal stage where we've ascertained that the client has a claim, they're advised in no uncertain terms that we advise them not to ... to maintain paying the minimum payment of which somewhere in the region of 80% of our clients do so.

LEWIS: But once that's been done, once they stop paying, then that makes a negative effect on their credit report, doesn't it?

CHORLTON: Well it doesn't. The only evidence we've seen ...

LEWIS: Yes it does because Mr Justice Flaux said in October the continued reporting to credit reference agencies is legitimate. It's going on.

CHORLTON: Well the only evidence we're seeing now are lenders removing the actual contract from the credit file and they're not putting flags on it and they're not marking it negatively. That is incorrect.

LEWIS: Right, so you're saying that if you stop making the payments at the moment you say ...

CHORLTON: No, I'm not saying that all. What I'm ...

LEWIS: That doesn't affect your credit file?

CHORLTON: What I'm saying is we recommend to our clients that they maintain their payments.

LEWIS: Well then there's no point in getting the debt written off, is there?

CHORLTON: Well no, they pay their minimum payment until we get a conclusion.

LEWIS: Right. And that ...

CHORLTON: What I'd like to say again ...

LEWIS: And how many cases have you got that conclusion in?

CHORLTON: What ... Many, many.

LEWIS: Many.

CHORLTON: What I would like to say ...

LEWIS: Many hundreds, thousands?

CHORLTON: Are you going to give me the opportunity to say something?

LEWIS: Well I'm trying to get an answer from you.

CHORLTON: Well I'll give you an answer - an answer that is for the consumer to listen to. We are a unique company because we give all of our clients a legal indemnity guarantee issued by our solicitors, which is backed up by an insurance. There is no client dealing with Beneficial that if they do not get the outcome that we have told them they're going to get, they are fully refunded every single penny that they pay to the company. There is no other company in the UK that does that. We are completely unique. And unfortunately your investigation, which was somewhat sparse, didn't take the time to see the whole process through to ascertain that. Now we encourage ...

LEWIS: *(over)* Right, but you've come on the programme and you haven't actually got a number for how many people have been successful in your terms.

CHORLTON: Well we came with the information in response to the questions that you gave us before the programme. Ruth was given ample opportunity two weeks ago ... What I don't understand as a consumer protection programme, why you are trying to inhibit the ability of consumers to get what is rightfully theirs. There are many people ...

LEWIS: *(over)* Well because the Claims Standards Council and indeed the barrister Paul Brant, who's taken on the banks and won, says this is a "consumer catastrophe waiting to happen".

CHORLTON: He hasn't. Well he's agreeing with it then, isn't he?

LEWIS: No, he's talking about your business is a consumer catastrophe waiting to happen.

CHORLTON: *(over)* Well no, he's not. That's rubbish. The only catastrophe waiting to happen is where the banks and the lenders are going to be caught out. There are millions of contracts. And you know the FOS, the FSO agree with our figures. The Financial Ombudsman Service is currently awarding compensation to consumers in 93% of cases. That's the government. They're also recruiting like crazy. I think they're looking for a new financial ombudsman currently because they anticipate nearly a million claims in the next 12 months in this very area. I mean the government realise that there is a problem.

LEWIS: Okay.

CHORLTON: And as a claims company, we give the consumer an opportunity to get what he's entitled to, and I don't understand why this programme this morning is doing all it can, with sparse investigation, to inhibit the opportunity of the consumer to get what is rightfully theirs. I'm astonished.

LEWIS: Keith Chorlton from Beneficial Claims, thanks very much for talking to us.

And you can have your say on companies which offer to wipe out your debt on our website, bbc.co.uk/moneybox. And our subject for Money Box Live on Wednesday is debts and loans.

If you have a cash ISA, you might be considering transferring it in the eternal search for a better rate, but if you do find a better deal with another bank or building society, it could still take longer to make the switch than you really expected. It's been 18 months since the bank and building society guidelines came in to speed up cash ISA transfers, but the problems seem to persist. Money Box listener Robert emailed the programme to say he's been trying to move his cash ISA from NatWest to Investec since last November. Despite repeated requests from Robert, his financial adviser Investec, and a complaint to the Financial Ombudsman Service, NatWest failed to release the cash from his ISA. Just days after Money Box took up his case, a grateful Robert sent us this text: 'NatWest are delivering. Cheque got to Investec and I had letter of apology today. £150 compensation paid last Monday. Loss of interest differential to be paid next Monday. Well done, Money Box. You have unstuck my cash ISA problem. Thank you.'

LEWIS: Well one happy listener, though why we had to intervene, I'm not sure. Yesterday I spoke to Kevin Mountford, Head of Banking at the comparison site Moneysupermarket.com. I asked him whether slow cash ISA transfers were still a big problem.

MOUNTFORD: I do sense that over time the process has improved, but there are still enough instances such as the one that Robert's experienced that can unfortunately put people off switching.

LEWIS: I mean we certainly say as journalists, and you say as one of the comparison sites, that the key thing is to keep your eye on the best rates and move it ...

MOUNTFORD: Yeah.

LEWIS: ... but if you're going to have this frustration, that is inevitably going to put

people off. It's anti-competitive, isn't it?

MOUNTFORD: It is. And I think in today's market, we regularly call on the industry, the government, the regulators to create an environment where there is a real open market that allows people to switch with the confidence that they're going to get the service that they should expect.

LEWIS: And if there is a delay, who pays the interest during that period? Are there any rules about that?

MOUNTFORD: If a bank has 30 days to transfer the money, at that date that that money switches over clearly they'll say well their obligation to pay interest ends and it's only when it arrives at the new bank that the new interest rate starts to kick in. So depending on the length of that transfer process, it could have relatively speaking a sizeable impact on your earning potential.

LEWIS: And is there also a problem with fixed rate ISAs? Isn't it the case that they give you the rate that applies when your money gets there and the fixed rate you went for may no longer be available?

MOUNTFORD: Exactly. I mean some of the fixed rate products are available just on limited tranches of money, so effectively not only will you maybe not get the interest rate; the product may disappear.

LEWIS: And bearing all this in mind, bearing these delays and these problems, is it still worth switching?

MOUNTFORD: I think to put into context, if you take the latest inflation figures from RPI, CPI ranging from 2.4 to 2.9, a higher rate taxpayer needs to earn over 4.75% in order to earn a net gain; And so any opportunity you've got as a taxpayer to maximise your return, you need to take it. And there are easy access products, ISA products at 2.75%. There's one year, two year products paying between 3, 3.5%. So if

you take the tax allowance into account, it *is* worth it. You've just got to make sure that the process of switching is a smooth one. Unfortunately that's in the hands of the banks and not the consumer.

LEWIS: Kevin Mountford of Moneysupermarket.com. And those with good memories will recall that in August 2008, Angela Knight of the British Bankers' Association told Money Box that there shouldn't be a "dead period with no interest paid." This week though, we were told that was just an intention; that the guidance says it shouldn't be more than 5 working days after the money has been received before interest is paid, and even that was only guidance.

There are signs that competition is returning to the mortgage market. Rates on tracker mortgages fell to a record low last month. The average interest rate on tracker mortgages dropped from 3.92% to 3.63%, the lowest level since Bank of England records on that product began in 1997. There was also an improvement in the cost of fixed rate mortgages with 2 year loans falling to an average of 3.97%, a level last seen in July 2003. Moneyfacts, the research organisation, says that more than 300 new mortgage products have been launched so far this year. So more competition, prices of mortgages down, but I can already hear the hollow laughs from people trying to buy their first home with a small deposit and a modest income. With me is Ray Boulger, Senior Technical Manager at John Charcol. Ray Boulger, what's driving the cuts in mortgage rates? Is it more competition?

BOULGER: Yes, frankly that is the key driver. We have seen some easing in the wholesale money markets; and also savings rates actually have fallen, particularly fixed rates. So because lenders are funding more of their lending on savings rates, that also has an impact, but I think the biggest factor is more competition.

LEWIS: So poor savers because they're actually funding the mortgages, so they're getting less because mortgages have got to come down because competition's driving them down.

BOULGER: Correct.

LEWIS: Yes, I can imagine half our listeners being very upset at that news. Now although it seems to be picking up, we have seen examples of lenders breaking promises, haven't they? I mean Skipton we looked at a couple of weeks ago. It promised its SVR, its variable rate, would never be more than 3% above the bank rate and now it's gone up.

BOULGER: Yeah, I mean Skipton of course had what's called an 'exceptional clauses' clause in their mortgage contract.

LEWIS: A get out clause, I think we call it.

BOULGER: Yes, a get out clause. Absolutely. And so what they did was perfectly legal, but of course most borrowers who had a Skipton mortgage would have remembered the guarantee and probably would have forgotten the get out clause.

LEWIS: Probably never read it.

BOULGER: And because that increase was so big, from 3.5% to 4.95%, it was a double whammy.

LEWIS: Now this is fine for people who've got a house, maybe they're remortgaging or they're moving. What about first time buyers? Rates are lower. Is it really any easier to get a mortgage? Lower deposits, lower credit ratings, lower incomes. Is any of that getting better?

BOULGER: Well actually it is beginning to get easier. The average figures that you quoted from Moneyfacts don't actually tell you where the rates are getting easier and the biggest improvement in the rates actually is in the higher loan to values. So although those people who only want to borrow 70 or 75% have seen some small drop in rates, the bigger drop actually, because of competition, has been for people who want 80, 85 and 90%. So it is still difficult, but it is getting easier.

LEWIS: Well again that will be very good news for some of our listeners who do complain about that a great deal. Now repossessions. This obviously is the other end of it. You've taken on a mortgage, you can't meet the payments. Those did go up, didn't they, but not as much as people expected?

BOULGER: Well absolutely. The original forecast by the Council of Mortgage Lenders for repossessions last year - this was a forecast they made at the end of the previous year - was that there would be 75,000. They lowered that twice during the year and the ultimate result was actually 46,000. So whilst that was up on the year, the fourth quarter actually was down on the third quarter, so we're seeing a very different pattern in this situation to what we saw in the early 90s housing recession.

LEWIS: And do you think that is because of action the government and the courts have taken to try and put off the moment of repossession until the very end, really to give everyone, people every chance to meet the debt?

BOULGER: It's a combination of factors, and that is certainly one. I think the biggest single factor is that interest rates are very low. When people come to the end of their initial deal, many of them now actually revert to a lower rate. Nationwide, Cheltenham & Gloucester, Woolwich, all those big lenders have got very low revert to rates of 2.5% or less. So that's making it easier for those people who are under pressure in their own finances - coupled with, as you say, the forbearance from the lenders and the government improving the scheme for people who are unemployed, so now you only have to wait 3 months before you qualify for your mortgage interest to be paid.

LEWIS: Ray Boulger of John Charcol, thanks very much. And Ruth Alexander has come back into the studio with some emails that have been coming in. Quite a lot, Ruth, about these claims management companies.

ALEXANDER: That's right, people who've had dealings with these companies offering to write off their debt. Sam in Sheffield says, 'I signed an agreement with a company through my regular financial adviser and my mother and I have paid almost

£4,000 to write off debts. It'll have been a year in March and we've had no progress at all.' Alison in Perth says, 'I was called several times by a company in Glasgow and was told I could cancel and have a full refund and that it wouldn't affect my credit rating. I had nothing to lose and everything to gain, so I paid £2,000. But since then I have tried to cancel. I never signed any agreement and I cannot contact the company as they don't exist. It was a mailbox address in Glasgow.' And John in Firth says, 'What I don't understand is why people who have borrowed money and signed an agreement should think they can get away without paying the money back.'

LEWIS: A common view, I'm sure. And I should stress that those emails were not about Beneficial Claims who we talked to earlier. They were about other companies. But that is it for today. You can find out more from the BBC Action Line - 0800 044 044, our website, bbc.co.uk/moneybox. Exciting things to do, including let us know about companies that charge a fee to get your debts written off. I'm back on Wednesday with Money Box Live - this week, as I said, taking questions on debt and borrowing. Back with Money Box next weekend. Today investigation by Ruth Alexander and Karen Kiernan, producer Charmaine Cozier, and I'm Paul Lewis.