

**THIS TRANSCRIPT IS ISSUED ON THE UNDERSTANDING THAT IT IS TAKEN FROM A LIVE PROGRAMME AS IT WAS BROADCAST. THE NATURE OF LIVE BROADCASTING MEANS THAT NEITHER THE BBC NOR THE PARTICIPANTS IN THE PROGRAMME CAN GUARANTEE THE ACCURACY OF THE INFORMATION HERE.**

## **MONEY BOX**

**Presenter: PAUL LEWIS**

**TRANSMISSION: 28<sup>th</sup> NOVEMBER 2009 12.00-12.30 RADIO 4**

**LEWIS:** Hello. In today's programme, the judgement that ended a million claims.

**LORD PHILLIPS:** The Supreme Court did not agree with this approach. For these reasons, the appeal is allowed. The order will be in the terms agreed by counsel.

**LEWIS:** Or did it? Bob Howard's been booking flights.

**HOWARD:** Why are some airlines getting away with charging such high fees to pay by debit or credit card?

**VIC:** I paid £5 per passenger per leg of the journey. I think they are actually coining it in.

**LEWIS:** We find out where the million pound salaries in the City come from.

**KAY:** All the money that is taken out of the City has to come from you and me.

**LEWIS:** And should you put your money on the man who wrote this.

## **MUSIC EXTRACT:**

**LEWIS:** But we start with eight banks versus the Office of Fair Trading. Do overdraft charges have to be fair? It's the biggest personal finance court case for many years, and the decision was to be given by the new Supreme Court. Naturally, I went along on Wednesday to witness this event. The Supreme Court was packed for this decision and when Lord Phillips came in, there was a hush in the court. And then, within a few moments, he delivered this surprising and, to the campaigners, devastating judgement: the banks had won.

**LORD PHILLIPS:** We have held that overdraft charges form part of the price or remuneration for the package of services that the banks provide to their current account customers. This means that the OFT cannot consider whether in imposing those charges, the banks are giving fair value for money.

**LEWIS:** I'm outside the Supreme Court now with Marc Gander, who's been one of the leaders of this campaign and has been on Money Box many times. Marc, is this the end of the road?

**GANDER:** We'll have to see. We'll have to have a look at the judgement and see if there is any hope or see exactly what his reasoning is. But I mean it is staggering. I mean these are consumer protection regulations. Why do we have consumer protection regulations if not to deal with exactly this kind of thing? Everybody thinks that these charges are excessive. They cause so much damage to ordinary consumers.

**LEWIS:** There was similar shock, disappointment, even outrage from many of the campaigners outside the court. But some had been encouraged by these brief words towards the end of Lord Phillips' statement.

**LORD PHILLIPS:** It may still be open to the OFT to assess the fairness of the charges by other criteria.

**LEWIS:** And in his written judgement, Lord Phillips expanded on those other criteria and he repeated that the case "will not close the door" on the OFT's investigations, and added it "may well not resolve the myriad cases currently stayed in which

customers have challenged charges.” Well that hasn’t stopped the Principal Financial Ombudsman, Tony Boorman, warning the 15,000 people who’ve been waiting for an Ombudsman ruling that they are likely to be disappointed.

**BOORMAN:** My initial reaction is that the overwhelming majority of those 15,000 cases that we’ve had on hold over the last 2 years awaiting this judgement are cases that we’re going to have to say those customers I’m sorry, we can’t take your case any further.

**LEWIS:** Campaigners though are taking a different view. Mike Dailly is principal solicitor at Govan Law Centre, who first raised the issue of legality of some overdraft charges on Money Box in February 2006. He says that far from stopping these claims, the Supreme Court actually gives them the means to be successful, but they’ll have to be resubmitted under a different part of the Consumer Contracts Regulations.

**DAILLY:** The Supreme Court itself made it quite clear that the fairness of bank charges could still be looked at in terms of Regulation 5. It seems to me and many other campaigners that the Supreme Court was giving us more than a hint and really the door is very wide open for bank charges to be challenged under Regulation 5.

**LEWIS:** Explain to me then what Regulation 5 says.

**DAILLY:** What Regulation 5 does is it comes along and it says if there is a significant imbalance in the parties rights and obligations under the contract and that’s to the detriment of the consumer, then the court can hold that term of contract as unfair. And of course if it was unfair, it would be unenforceable. So it’s an entirely different type of fairness and I think there’s very, very strong evidence that bank charges *are* unfair under Regulation 5.

**LEWIS:** You say there’s this potential for an imbalance of power between the banks and their customers, and this is really at the heart of these unfair terms, regulations anyway, isn’t it - that you have no choice but accept the whole 98 pages of terms and conditions or just don’t have the bank account?

**DAILLY:** Yes. I mean I think the way a Regulation 5 challenge is going to develop is that what you've got is a charging structure which requires 12 million customers in the UK to cross-subsidise 42 million other customers, so that they will effectively have their banking costs paid for by a minority of customers. Now when you entered into your banking contract, I think it's fair to say, Paul, the banks did not explain to people that this is what charges we're actually paying for. And of course Money Box listeners will be well aware that over the years the banks have been very evasive about what bank charges are about, and I think we've got a situation now where there's quite clearly an imbalance. And the fact that the banks never explained to customers that they would be paying for everyone else's services is quite important, I think.

**LEWIS:** Don't you have a problem though that you've been fighting for this for many years, you've been on Money Box for the last 4 years practically, you've lost on the key point in the Supreme Court, a million people are going to have their complaints rejected? Haven't you lost all credibility now to say to people oh well we got that wrong, but 4 years on, come back on another point and you might win?

**DAILLY:** No, I don't think that's fair. Something in the order of £1 billion has been paid back to consumers across the UK, and if it wasn't for bank charge campaigners then people wouldn't have got their money back.

**LEWIS:** So what should people do? We've got possibly a million people with claims that will almost now be rejected; we've got many millions more who've been waiting for this outcome before they took action. What can those people practically do?

**DAILLY:** Well Govan Law Centre has been engaged by Martin Lewis, Moneysavingexpert.com. We've instructed a top team of barristers in London and over the next few days we're going to produce a set of template letters and template changes to people's claims. So what will happen is consumers in the UK will be able to go into Moneysavingexpert.com and other websites, because this information's going to be made available for free, and get guidance and materials where they can change their complaints and their cases to base their case on a Regulation 5 case - as

the Supreme Court has told us to do - and that way, they will not have their cases dismissed. We are not going to allow one million claims in the UK to be put into the bin. We're not going to allow that to happen.

**LEWIS:** Solicitor Mike Dailly. Well live now to talk to Angela Knight, Chief Executive of the British Bankers' Association. Angela Knight, on Wednesday you felt it was all over. Now you face a new fairness challenge. How do you respond to that?

**KNIGHT:** The first thing is I do think that everybody actually needs to read the case itself. They need to read what it is that the judge said. And it is a very comprehensive document. I can't obviously summarise it in a few short words, but he did in fact cover most of the points that had been made earlier in your programme, Paul. He did talk about the current account customers receiving a package of services. He did talk about the fact that the terms and conditions are in plain, intelligible language and so can't be assessed for fairness on the basis of the charges. In fact that was confirming earlier decisions. And he did talk about the fact that pricing has now actually been settled.

**LEWIS:** Yes, he did say all that, but he also said - and I quote - "the case may not resolve the myriad cases that are currently stayed." That's the million that are with the banks. It may not resolve them. That surely is encouraging people to either try again or make it in a different way?

**KNIGHT:** Well it doesn't necessarily resolve them because now how we deal with those complaints and those cases we're in discussion with the Financial Services Authority and with the Ombudsman. And that is the next step, if you like, for the banks and we've undertaken to have those cases dealt with in about 8 weeks. So what it is is these cases are now not for the courts. These cases are now for being handled by the banks with the FSA and the FOS. If you like, the usual process.

**LEWIS:** Yes, I understand that. But if people do send in these supplementary letters that Mike Dailly says he's now preparing, citing the Supreme Court ruling under Regulation 5, which says things do have to be fair ...

**KNIGHT:** Yes.

**LEWIS:** ... will you take them seriously or will they just all be getting a computer generated letter saying tough, we won; no claim?

**KNIGHT:** Any legitimate complaint, obviously we will look at it. We're not in the position of taking that sort of attitude that you've outlined at all, Paul. What though I think is important, and I would hate people to believe that there is some sort of other route when there's not necessarily another route - because you see as far as this what they call 5 is concerned, Regulation 5, a lot of that has already been taken into account and considered during the course of the process. Because you see you can't do price again under 5 because that has already been done. You can't ... (*Lewis tries to interject*) Hang on a second. You can't do fairness of terms and conditions under 5 because that has already been decided at earlier stages in the court. What there *is* a need to do now is to handle as quickly as possible the million complaints, and to handle them in a way that is as clear as we possibly can.

**LEWIS:** Let me move onto another point then. During the court case, we learned two important figures I think. One is that the banks made in 1 year 2.6 billion out of unauthorised overdraft charges. But they made even more, didn't they, out of the good customers who stay in credit? £4.1 billion by lending out *their* money to profit. Now that is a charge, isn't it, on people who *don't* go overdrawn?

**KNIGHT:** Well I don't think that anybody either in those numbers, Paul, thinks that the costs have been included. I mean you know the overall way in which banking operates is people have a bank account. Their money goes into their current account, their savings account or whatever, and they also borrow money back for the purposes of say buying a house on a mortgage, buying a car or whatever. Of course there are costs involved in that, and the process and the procedure I do understand is quite complex. And when we see these big numbers out in the public domain - I think a lot of them have come via the Office of Fair Trading - nowhere do we see anything there about the costs, about the people who are employed, about the systems, the process, and in fact the amount of money that gets written off because people *don't* pay back

some of the money they've borrowed. It is much more complicated than just those one number figures, and we as a banking industry, we need to be fair to all our customers - both those who keep in credit, those who use savings accounts, those who borrow - and we would urge those who *do* want to borrow, make the arrangements first.

**LEWIS:** Angela Knight, thank you very much.

Many Money Box listeners have learned some airlines are bumping up the charges for paying on credit or debit cards, so they become a significant part of the overall cost. The one card that doesn't attract the fee is the Visa Electron card, aimed mainly at students or people with bad credit records. But it's now being phased out, so why are airlines favouring a payment method which may soon cease to exist? Bob Howard's been investigating.

**HOWARD:** Paul, as you say, several airlines now make a transaction charge per person for each journey when you pay by debit or credit card. It can add up to a substantial part of the overall cost. Ryanair is one. It charges £5 per person per flight even if all the passengers are paid for at the same time on the one card. Vic from Hertfordshire contacted Money Box to complain after Ryanair charged him £20 just to pay by credit card for return flights to Italy for himself and his wife.

**VIC:** I paid £5 per passenger per leg of the journey, which for the two of us was a total of £20 for the use of a credit card transaction. And it is - I emphasise - one transaction. I think they are actually coining it in actually on that basis.

**LEWIS:** So how much is it actually costing airlines like Ryanair to process these payments? I asked Sandra Quinn from the UK Cardholders Association.

**QUINN:** In the case of debit cards, it's a matter of pence. It's a flat fee, so regardless of how much the transaction is. On a credit card, they average around 1.5 to 2.5% of the cost of the transaction.

**HOWARD:** The other costs of Vic's flights came to £166. So if he was paying purely what the cards industry estimates the banks charge airlines, he should have paid around £3.50 in charges - less than a fifth of the £20 he actually paid. And the mark-up for debit cards is even more dramatic. A family of four on a return journey paying on one debit card should pay about 30 pence to just cover the costs, but would be charged £40 by Ryanair. And customers generally don't know how high the charges are until it's time to pay, unless they go to the charges page of the website. I asked Ryanair's Stephen McNamara how much extra profit his airline was making from the card transactions.

**McNAMARA:** Irrespective of whether we make a profit or not - I don't know if we do - what I would say is that from the point of view of the passenger, it's irrelevant on what part of an airline fee or an airline seat that the person pays without actually allocating the profit to the airline. What's really important to the passenger is that they get the lowest fare.

**HOWARD:** Ryanair constantly stressed to me that if Vic had paid with a Visa Electron card, he wouldn't have paid any transaction fee. But Vic says it's not realistic for him to apply for a card which is normally targeted at those not allowed normal bank accounts. So why is Visa Electron, a rather obscure card not many of us have, singled out as the only free payment method? I asked Ryanair's Stephen McNamara to explain.

**McNAMARA:** To encourage people to use the Visa Electron card, we have a promotional agreement with Visa Electron. It's a very simple card to use. It's widely available throughout Europe and I'm very glad to say that about 30% of our passengers are now using it.

**HOWARD:** When I asked Visa about that, they said they didn't have any promotional deal with you.

**McNAMARA:** Maybe not Visa in the UK, but this is a promotional activity that we have undertaken throughout Europe. It allows us to offer Visa Electron for free. That

was the whole purpose of the agreement - if we would increase the users of Visa Electron cards - and we now have almost 30% of people booking with Visa Electron and travelling entirely free.

**HOWARD:** And yet I asked Visa Europe three times to check if it has a special promotional relationship with Ryanair, and each time the answer came back no. In fact, Visa told me the card would in time be phased out altogether. Abbey, which along with HBOS is one of the few banks which still offer it, said it won't be issued to new customers from 14<sup>th</sup> December and Travelex will not be offering Visa Electron and its prepayment card from next year. So why does Ryanair and other airlines like Flybe, Aer Lingus, Easyjet and BMI Baby favour a payment method which is not only obscure, but also now won't be around much longer? People I spoke to within the industry told me having one free payment method allows airlines to advertise cheap rates without having to include charges most customers pay. Rochelle Turner is from Which? Holiday.

**TURNER:** My understanding is that if they didn't have this one free vehicle offer, then they would have to either reduce their rates or have at least one other way in which they would make it free for people to pay for the airline ticket.

**HOWARD:** That theory is backed up by the Advertising Standards Authority rules. They say where an advert shows a price, it should include all non-optional charges. And the Office of Fair Trading says if the charges are unavoidable and foreseeable, they should be included in the headline price. So as long as the Visa Electron card is available, it seems the charges airlines make for using debit and credit cards don't have to be included in that headline price. But, Paul, as the card starts to disappear, that may have to change.

**LEWIS:** Thanks, Bob. And you can have your say on extra charges for using your card online on our website, [bbc.co.uk/moneybox](http://bbc.co.uk/moneybox). Many of you already are.

Well over 1,000 people in UK banks earn a million pounds a year or more. That estimate was given this week by Sir David Walker when he launched his report into

how banks should be governed. One recommendation is that all UK banks should reveal how many employees earned more than one, two and a half and five million pounds a year. But where do these extraordinary salaries come from? Well you actually, and me, says Professor John Kay, an economist and author of a book, *The Long and the Short of It*, where he explains this theory. Money Box's Ruth Alexander asked him about it.

**KAY:** If you draw a circle round the City, then basically all the money that people take away from the City and use to buy their Porsches and yachts, all of that has to go across that circle in the first place. Now how does that happen? Well we contribute it through our savings and our pension funds, and the corporations we work for pay large fees - partly for corporate advice, partly for their merger and acquisition activities, partly in commissions and new issues. And through all these kind of mechanisms, all the money that is taken out of the City you know has to come ultimately from you and me.

**ALEXANDER:** That's something that I think people would find quite hard to believe in a way. I think we think that the City is something separate. They're doing something clever there with a lot of money. We don't realise it's our money. If you've got clever people doing clever things, making a bit of money, they're the winner, there's got to be losers and yet they all seem to do rather well out of it.

**KAY:** Yuh. Essentially people are buying and selling things to each other in effect in the financial community. Now where, you might ask, does the money come from that means that practically all of them make profits or think they're making profits? Now part of it is that these profits are illusory, and that's what we really learnt in 2007/2008. The best way of putting it, I think, is to say that in the 4 or 5 years before 2007 people borrowed money from the future, paid it to themselves, and then in 2007/2008 the future arrived. The depressing thing for all of us is that we actually had then to chip in the money to keep the financial system solvent.

**ALEXANDER:** Do you think the rewards in the City - the high rewards, the salaries, the bonuses and so on - do you think there should be a limit?

**KAY:** I don't think what we should do is have legislation to govern what people in the City should be paid. I think that's coping with the symptom of a problem rather than the problem. The real problem is the financial services system has grown too far and too fast. And, as a result of that, it's also become politically very powerful, which is why it's proving difficult - if one's frank, impossible - to get meaningful regulatory responses. I think what we have to do is to aim over a period of years to trim the financial services sector back to something that is focused on the financial services which all of us need, and basically if people want to gamble, they should gamble you know with their own money. That's what I've described as separating the utility from the casino, and I think that's what we need to do going ahead. We need to make sure it's not our money that is being gambled in the casino, and over the last decade or so it has been our money that has been gambled in the casino.

**LEWIS:** John Kay talking to Ruth Alexander.

Prices on most things we buy will rise by more than 2% as the New Year dawns. That's the date when VAT, which was cut to 15% last December, goes back to its old rate of 17.5%. It's the first VAT rise since 1991, but what rate do you pay if you're having some work done now but won't pay for it until next year? Or you pay for something before Christmas, but it's delivered in 2010? Live now to John Whiting, the Tax Policy Director at the Chartered Institute of Taxation. John, what if you are in the middle of building work or your car goes in for a service and it won't be finished till the New Year? What rate do you pay?

**WHITING:** Well the nub of it, Paul, is if you can get an invoice for the thing or of course if you pay in advance, then you as it were nail the VAT rate at the time you get the invoice or pay for it. So for example just before Christmas, that would be 15%. If you wait until the things are finished, after 31<sup>st</sup> December, then 17.5%.

**LEWIS:** So it's that magic word tax point on the bill that determines the rate.

**WHITING:** Indeed, exactly so.

**LEWIS:** So if I get a phone bill in late December but it pays in advance for the rental for the first quarter of next year, that's still charged at 15%?

**WHITING:** Yes, you've got your tax point. There you are, you've been invoiced. Now of course this sounds good, but of course ...

**LEWIS:** It sounds simple, but these things never are, John, are they?

**WHITING:** Well there's always a little twist, isn't there, because people are probably immediately thinking oh I'll rush down to the shops, order lots of things, get them to invoice me, and I'll take the goods and pay for them in a month's time. Well the snag is of course the trader has to hand over the VAT. They might not be so keen to do so when it will be quite a while before they get the money from you. But you never know, it might be worth asking.

**LEWIS:** And when you're out celebrating New Year, Big Ben chimes, do the drinks go up at the bar?

**WHITING:** Nice one. Well they're allowing the Happy Hour as it were to carry on indeed until 6 o'clock not only for the drinks and food at your party, but all those texts that you send saying Happy New Year.

**LEWIS:** Right, well that's good news. And briefly, John, on another subject, the amnesty for people who have funds in tax havens has been extended.

**WHITING:** Well yes. Notifying. If people, I'm sure there's no Money Box listener really listening with money that they haven't declared in an overseas haven, haven't declared it to the Revenue. They had a window until 30<sup>th</sup> November. That's going out until 4<sup>th</sup> January. An unhappy Christmas for one or two.

**LEWIS:** Indeed. John Whiting, thanks very much.

And now just time for one short item of news.

### **MUSIC EXTRACT:**

**LEWIS:** Well that music, composed by Anthony Bolton, better known as Britain's most famous fund manager - now out of retirement and off to Hong Kong to start Fidelity's new China Fund in March next year. Now if you'd put £7,000 into his UK based Special Situation Fund when it launched in 1979, then 28 years later when he retired it would have been worth more than a million. But do remember past performance is no guide to the future.

Well that's it for today. You can find out more from the BBC Action Line - 0800 044 044 - and of course our website. Lots of exciting things to do there, including have your say on charges when you book online. And I have to say some of you are also responding to the bank charges case. Alan writes: 'I applaud the Supreme Court decision. Why should the court favour the feckless who cannot be bothered to run their accounts properly at the expense of those who *do* manage their money properly?' A view several people have expressed. I'm back on Wednesday with Money Box Live, taking your questions on finances of carers and caring. Back with Money Box next weekend. Today reporter Bob Howard, producer Ruth Alexander. I'm Paul Lewis.