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MONEY BOX

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LEWIS: Hello. In today's programme - bank charges. The Lords decide and the banks make major admissions. Bob Howard's here. He's been talking to people afraid of falling behind with their mortgages.

HOWARD: Does alerting your lender early to potential problems really have the desired effect?

GARY: I would have expected a bit more compassion and understanding and support. It seems that when you're up against the wall, they're not very supportive.

LEWIS: Barclaycard cuts the amount some customers have to repay each month, but that will actually cost them more. And billions of pounds that people over 60 simply don't claim.

But, first, the banks have put up the stakes in their battle over whether their overdraft charges are fair or not. They've been appealing this week to the House of Lords, trying to overturn a ruling by lower courts that their charges *do* have to be fair. And the banks' barrister made some remarkable admissions in court and warned of a "doomsday scenario" if they lost. Well in court this week, as he has been for every stage of this case, BBC Personal Finance Reporter Ian Pollock. Ian, this is the final appeal now. What were the banks saying?

POLLOCK: Well the banks put up a very vigorous defence of the whole business of charging people large sums of money when they go overdrawn without permission. This is

round three of the legal saga that's now gone on for two years, and what they argued, well the point they made to the five Appeal Lords was that it really doesn't matter, as far as this decision is concerned, whether or not overdraft charges are in anybody's view unfair or indeed even extortionate. They argued that as a matter of plain English, as a matter of the words on the page, that the unfair terms in consumer contract regulations - which are the regulations the OFT is trying to enforce - simply do not apply to bank charges because of exclusion clauses explicitly within those regulations. And, therefore, they said to the Law Lords look, it's pretty much ... - you know I'm paraphrasing here - pretty much an open and shut case. The rules don't apply. Therefore the OFT is fundamentally barking up the wrong legal tree.

LEWIS: What did their barrister though, Jonathan Sumption, say would be the consequences if they lost because although they made a strong argument, they then went on to say that if we lose, it'll be pretty disastrous?

POLLOCK: Indeed, he laid it on very thick for the Law Lords that there would be disastrous consequences - as he saw it - for the banks. He said that if the OFT was ultimately given the power to scrutinise the unfairness of overdraft charges and then decided that they were indeed unfair, that automatically this would mean that the banks would have to repay all the overdraft charges they've levied not just for the past 6 years or so, which has been the common belief, but right back to 1995 when these regulations first came into being in UK law as a result of a European directive. And you know you don't have to think too long to realise that this could be an awful lot of money.

LEWIS: Yes, the end of banking as we know it. He also said it would be the end of free current accounts because he was quite open about the fact that these charges are *far* more than it actually costs the banks.

POLLOCK: Yes, I thought this was fascinating. He was very frank about the whole business of how the overdraft charges are far more than is actually needed to just deal with a customer when they go overdrawn accidentally or indeed even deliberately but without permission, and that the money that is derived from this is used to subsidise the cost of running bank accounts for people who stay in the black. The banks haven't really said this quite as explicitly before,

but in the past week's hearing he really came out with it and said, yes, the amounts charged are far more than is actually needed.

LEWIS: Stay with us, Ian. But listening to that is Marc Gander of the Consumer Action Group, who's been campaigning against these high charges for more than 3 years now, Marc, I think. What did you make of this doomsday scenario painted by the banks' barrister?

GANDER: Yes, well I found it very extraordinary. I haven't been at the court hearing, but I've spoken with your correspondent there, Ian Pollock, and also read reports on the Internet. And quite frankly the impression I came away with is that the banks basically have given up. I think that they know that they're going to lose here and what they're trying to do, I think, is to paint such a gloomy picture of life after charges that they're hoping that the Lords will express their judgement in a way that maybe will help to cushion the effect. But I think the banks are basically dead men walking.

LEWIS: He made it very clear, didn't he the barrister, that it would be the end of free banking for the majority of customers? And when I say free, I mean you run your current account in credit and you never get charged. Now that's the great majority of people and many of those email us and say well we'll be pretty annoyed if banking gets more expensive because overdraft charges are in fact ruled to be unlawful.

GANDER: Yes, well I think that this is a threat that the banks have been making for a long time - that it would be the end of free banking. But of course there's no free banking. I think everybody knows that - the OFT has said there's no free banking, Which? magazine has said it - so what we're looking at really is that banking is going to be maybe more expensive. But if competition works properly in the high street, then one would hope that the effect of that would be limited and it would settle down very quickly. But surely the most important thing is that the banks act fairly and they act lawfully towards their customers. And also it seems to me very unfair that the poor should be subsidising the rich. And if I could just go on one other aspect ...

LEWIS: Very briefly, if you could.

GANDER: I'm sorry?

LEWIS: Very briefly.

GANDER: Yes, one other aspect of the judgement which hasn't been referred to yet is that Jonathan Sumption ...

LEWIS: The barrister.

GANDER: I'm sorry?

LEWIS: The barrister.

GANDER: The barrister ... even said to the Lords that if you find against us, they may even have to make restitution. Well for most people restitution means that they simply have to give back the charges.

LEWIS: Marc, I'll cut you off there, if I may. And Ian, in ten seconds, when might we get a judgement?

POLLOCK: Well the OFT say they believe they'll get a judgement from the Law Lords this autumn. But it was openly discussed in court as to whether or not some of these issues may be referred upwards to the European Court of Justice, so the saga may well roll on further.

LEWIS: And I'm sure you'll be there too. Ian Pollock, thanks, and also Marc Gander who spoke to us a few moments ago.

Now could lenders be doing more to advise their mortgage customers who fear they may slip into arrears? Citizens Advice says requests for mortgage help are growing across the UK. The biggest increase is in the East Midlands where it's up 70% on last year, and more people on higher incomes are now seeking help. Bob Howard's been to Northampton where the problem is particularly severe.

HOWARD: This is Fish Street in the centre of Northampton - a town, which like many others across the UK, has been hit by the recession. The Citizens Advice Bureau round the corner here used to help mainly people on modest incomes, but Martin Lord, its Chief Executive, says he's now seeing more and more people who are earning much higher salaries.

LORD: The bureaux are beginning to encounter a different profile of clients than historically has been the case, with more if you like middle class and middle income clients using the service. We've had to skill ourselves in areas which we haven't had to do a lot of work in before.

HOWARD: Gary is one. He was on a very good salary until he lost his job 6 months ago. He's some way off being in arrears, but even so he thought it sensible to do what every bank tells customers to do: to contact them early if you think you may have future problems. But he wasn't impressed with his lender's response.

GARY: I've come in to the Citizens Advice Bureau today to try and get some steps of what I can take to try and prevent repossession. I think I've probably got about another 4 months' savings left to survive and then that'll be it. I was working in manufacturing as a General Manager, but obviously they have been affected by some of the downturn in business as well, so they made me redundant and obviously that dropped my income quite considerably. I suppose the overall gross earnings was probably around about £85,000 with benefits.

HOWARD: And what's your income now?

GARY: £14,000 on my wife's earnings and my jobseeker's is £2,000.

HOWARD: And do you have prospects of getting back into work? I mean how do you do that now?

GARY: This year to date, from January till now, I've applied for 500 jobs. 2 interviews. I'll just have to keep plugging away and keep applying.

HOWARD: And in terms of the mortgage, have you applied for a mortgage holiday or anything like that?

GARY: We were on a capital repayment. We changed to an interest only to reduce the payments, but the mortgage lender wasn't able to offer any other advice. They said they don't do mortgage holidays.

HOWARD: How big is your mortgage?

GARY: (*laughing*) £258,000. Yeah, a lot. I have been looking at downsizing as an option, but you know obviously I need to have a job before I can get a mortgage, reapply. They've not allowed me to extend the mortgage or anything like that. They just say as soon as you default and go into arrears, they'll just start legal proceedings. I certainly would have expected a bit more compassion and understanding and support from them. It seems that when you're up against the wall, they're not very supportive.

HOWARD: But there is at least one scheme that might benefit Gary: the Homeowner Mortgage Support Scheme. It allows customers to defer paying up to 70% of their mortgage interest to the lender and is underwritten by the Government. It was announced with some fanfare in April, but not only did Gary's bank not mention it. Martin Lord admits it wasn't spoken about at Gary's first CAB consultation either.

LORD: We are both delighted and bewildered by the range of government initiatives that have been introduced. They've come thick and fast and it's been a challenge to this bureau and also to the wider CAB service to ensure that all bureaux are familiar.

HOWARD: His big complaint to me was, "I did what I was instructed to do with the lender - get in touch with them - in plenty of time".

LORD: Well you see too many people get into a stage where, just as in the case of Gary where they've attempted to resolve matters at an early stage, become very dispirited, have sought advice from the CAB later on and have found that they were options available to them and they were resolvable problems that could have been dealt with.

HOWARD: I put these concerns to Bernard Clarke from the Council of Mortgage Lenders. He insists in many cases a solution workable for both bank and customer is being found.

CLARKE: It might be quite appropriate to offer to switch a borrower to interest only payments to begin with before considering other options at a later stage if the borrower's problems persist. If a case does end up going to court for possession, the court should examine that the lender has gone through every possible option to avoid that. And that is upheld by the court rules now. Even if a borrower does end up going into arrears, in most cases they're able to get back on track.

LEWIS: And Bob - Bob Howard's here with me now. Bob, for anyone interested in the Homeowner Mortgage Support Scheme, who can it help?

HOWARD: Well, Paul, not all the banks have signed up for it and there are many conditions. You have to have had debt advice, you can't have more than £16,000 in savings, and your secured debts must be below £400,000. You must have some income coming in and be able to pay at least 30% of the monthly interest. And it's only for a temporary loss of earnings. You can only defer for a maximum of 2 years.

LEWIS: Thanks, Bob. And over the summer we're going to be looking at the recession and how to protect yourself against its effects. You can tell us your recession worries on our website: bbc.co.uk/moneybox.

Barclaycard is cutting the minimum monthly repayment, which some of its customers must make. It's being reduced from 2.25% a month to just 1.5%. The change will mean lower monthly payments for the selected customers, but it will also mean they end up paying more interest and extend the time it takes to clear the debt. Martin Lewis is the founder of MoneySavingExpert.com. His website has a calculator on it which works out how long a credit card debt will last if you only pay the minimum. He told me the figures it produced for a typical £5,000 debt at 15.9% APR before and after this change by Barclaycard.

M. LEWIS: At the current minimum repayment, it's pretty hideous. It would take 31 years to repay and cost £5,900 in interest. But at the new minimum repayment, it would take 98 years

to repay! That's 67 years more, with an interest cost of £22,300! That's adding £16,000 to Barclaycard's profits. It's quite a *phenomenal* difference. And the reason it works like this, Paul, is because minimum repayments are set as a percentage of what you owe; and the lower the percentage goes in proportion to the interest that's being charged, the less of the debt you're actually clearing, the longer it takes you to repay.

LEWIS: Most people don't use their cards like that though, do they? They don't borrow £5,000 and then just pay it off with the minimum payment over the next, well the next lifetime really. They use a card flexibly. They pay off what they can afford. They pay off a bit more this month, a bit less next month.

M. LEWIS: I think the majority of people behave in exactly the way that you've just explained - and that's fine, I'm not worried for the majority of people. Most people pay their cards off in full at the end of each month. I'm worried for all those people who simply have ticked the minimum repayment box on their direct debit forms and they just think I'll pay as little as I can and get away with it because it's good for me. Sadly we live in a debt illiterate nation. I talked to a class of kids once about credit cards and I taught them about the genius of the credit card minimum repayment system - how you can persuade people they're paying less, so you're being really good to them, but actually you're taking them for every penny. And you know minimum repayments used to be 3%. Now Barclaycard was at 2.25%. Dropping to 1.5%, it virtually means people are perpetually in debt.

LEWIS: The letter they send out though does say in bold letters it's better to pay more than the minimum, otherwise it'll take you longer to pay off the balance and you'll pay more interest. So their view is they do have that warning there.

M. LEWIS: But hold on, this is an unsolicited letter. People have not requested this change. And customers, the people who alerted me to this, don't know why they've got it. They're worried about it. Barclaycard's slightly bolded print at the bottom of its letter - how many people reach the end of a letter like this? If you've got a ticked box minimum repayment direct payment, you're going to be paying less, you're going to be earning them more interest.

LEWIS: What should people who get this letter do?

M. LEWIS: Well it's exactly the same advice for anyone on a Barclaycard as any other card when it comes to minimum repayments. The danger of minimum repayments is that the less you owe, the less you pay. You're never really clearing the interest properly. So what you have to do is pay more. And if it's a fixed amount that you can afford, simply set it up and stick with that.

LEWIS: Martin Lewis of MoneySavingExpert. Barclaycard confirmed that you *can* pay more than the minimum they set and you *can* make a direct debit payment for a fixed amount - say what you're paying this month, if you want. That will save you a lot of money. Unfortunately, the company refused to do an interview.

Well-qualified, unbiased financial advisers who earn no commission from the products they recommend. That's the dream scenario envisaged by the City Watchdog in its latest plan to revolutionise the way we're sold pensions and investments. It's called the Retail Distribution Review, and under the plans insurance companies and investment funds would be prohibited from paying advisers any commission at all. Independent financial advisers would in future have to be paid by charging their customers a fee. All very well for the big firms and their wealthy clients, but what about people on modest incomes and the small financial advisers they use? Denis Armitt trades in Stockport under his own name as an independent financial adviser.

ARMITT: Those in the greatest need of quality advice are often disinclined to pay fees or are unable to do so. This is just at the time when more people need to be encouraged to invest more in pensions when they're suffering hugely as a result of the banking crisis and the current recession.

LEWIS: Do you think some of your existing clients or people you might expect to get as clients will look at the new system and say I can't afford it, I'm not going to get advice?

ARMITT: I think there is a distinct possibility of that. I think that some people would be disinclined towards it or may not even be able to afford it. Could I also say, by the way, the cost of the change is going to be quite a considerable expense not just for individual IFA's but for the whole of the market. I can't see how these costs can be absorbed without being passed

on in one way or another to the consumer. But it's not just that. It's the cost that the providers will incur. They're going to have to change their systems and procedures because, remember, we're talking about a new structure that abolishes commission, so they'll have to re-price everything. I've not seen anywhere in the report that the FSA are going to really monitor closely the charges and rates used by the product providers to ensure that they adequately reflect the abolition of commission.

LEWIS: So are you saying that some product providers might use this as an opportunity to put their prices up further than they need to under the excuse of the Retail Distribution Review?

ARMITT: I think that is a danger and that's why I think that the FSA should be alert to it.

LEWIS: Dennis Armit. The man behind the Retail Distribution Review is Jon Pain, Managing Director of Retail Markets at the Financial Services Authority. The review says all advisers must be better qualified in future and what counts as independent advice will change.

PAIN: The basic difference for consumers will be the qualification we've talked about and also then the removal of commission bias. This is the end of you know commission as we knew it in the past.

LEWIS: Won't this though put off a lot of members of the public who need advice because in the past although commission could create a bias, it was also a very easy way to pay for financial products? In future, they won't have that choice; they'll have to pay a fee.

PAIN: I think it is an important step, but nevertheless we still give some choice to consumers how they pay their adviser. Some consumers with advisers will look for a long-term relationship where they might well be paying for their fees spread over a period of time, and I think most people have accepted now that this is a step in the right direction.

LEWIS: You don't think it will lead to fewer people seeking financial advice? Because they won't want to pay fees, they'll get less advice?

PAIN: No, I don't think so. I think there is the issue of the fact that actually the advice landscape will take many different forms. It is important to remember that some consumers take their advice both from the independent sector and from what we would now call the restricted advice sector from in-house providers on that basis.

LEWIS: So restricted advice is what you'll get when you go, for example, to your local bank. A bank can only advise you on its own products or limited providers it has a relationship with. How will that restricted advice be controlled?

PAIN: What we're trying to do here is to really make it clear to the consumer what type of advice they're getting, so right up front we make quite clear that they're actually receiving advice from a limited range of products.

LEWIS: We know that banks now set targets for their staff. They say if you sell this many of these products, you will get a bonus. That is like commission bias. Will that still continue?

PAIN: Yeah, but we will also be seeking to ensure that all advisers act in the customers' best interests.

LEWIS: Yes I know, but this is the conflict of interest, isn't it? If that restricted adviser gets paid more if he or she sells a particular product, that is like commission bias.

PAIN: Yeah, no, exactly right, Paul.

LEWIS: So how will that be controlled?

PAIN: So what we will be doing, we'll be consulting a code of practice for remuneration which covers large bank employees of the example you gave. We'll consider whether this extends that code explicitly to address advisers as well.

LEWIS: One of the concerns raised with us was the cost of all this and who's going to pay for that. Customers?

PAIN: When you take this as a percentage of the total value in this marketplace, it actually works out less than 1% of the total. And the issues we're trying to address - lack of confidence, consumer confidence in this marketplace - that's a cost well justified in respect of the moves we're making.

LEWIS: Dennis Armitt also made the point that it's quite possible that providers will add a bit on, so they could use the review as an excuse to put up their prices. Will you be policing that?

PAIN: We've never been about regulating the price per se. I think actually these range of measures will drive more competition in the marketplace and will open up more aspects of the marketplace to consumers. I think that can only be a good thing.

LEWIS: So the market will sort it out rather than the regulator?

PAIN: Well I don't think we need to. Market competition and then how consumers behave will actually address some of the issues that you've highlighted.

LEWIS: Jon Pain of the FSA. And those changes won't happen until 2012.

More than £5 billion of help with council tax and general income could be claimed by people over 60, but isn't. New figures out this week also show that more than 2 million over-60s do not claim money off their council tax - it could be cut by £700 a year on average - and nearly as many don't claim extra income, worth on average £31 a week. The new Pensions Minister Angela Eagle told me she was keen to encourage people to claim their rights.

EAGLE: We have done a great deal of re-engineering the benefit. We do our 13,000 home visits a week to try to persuade people to claim what they're entitled to and assist them. We've also simplified the application systems and that means that people can actually claim both council tax benefit, housing benefit and pension credit in the same phone call, so I'm very anxious that we can try to deal with this problem and make claiming as simple as possible. It's not enough, but it's progress.

LEWIS: Well with me is Mervyn Kohler, Special Advisor to Age Concern and Help the Aged. Mervyn, the minister very anxious to do things. Every year though, the figures seem to be much the same. What can be done?

KOHLER: Yes and so the minister should be doing things, Paul. Means-tested benefits is the root the Government have chosen to help the problem of pensioner poverty and she must be, the Government must be disappointed that only two thirds of people entitled to pension credit are actually claiming it; that barely over half the people entitled to council tax rebate are claiming it. These are shocking figures and, as you say, nearly five and half billion quid of money for poor pensioners is still in the Treasury's trousers.

LEWIS: I'm sure people listening though will think an extra £31 a week for pension credit and more than £700 a year off your council tax - why on earth *wouldn't* you claim it if you can?

KOHLER: People need to understand the basics of the benefit system before they can make a claim. They need to know what they have to ask for and they have to take the initiative. Yes Angela Eagle is right - the claiming process has become easier if you make the right phone call to the right people at the right time - but an awful lot of people who are entitled to these benefits don't actually *realise* that they're entitled to it or they sort of ease themselves into eligibility just by growing older and seeing the value of their income falling.

LEWIS: Yes and of course as the rates and conditions change, people who applied last year and couldn't get it may well be able to get it this year.

KOHLER: Very much so. I mean the rate for pension credit is now up to £130 for a single household, which is obviously worthwhile. And in relation to a full state pension of only 95 quid means that if that's all you're looking at in terms of income, you could claim quite a lot of extra money.

LEWIS: Yes and of course once you're 65 it gets even better and you can have an income of, what, up to nearly £180 and still get a little bit of help if you're a single person?

KOHLER: That's right. And the other thing which is important about benefits like pension credit is that it is a route in to further help from the benefits system like help with central heating arrangements and things of that nature.

LEWIS: And just briefly, Mervyn. People are concerned about their savings, aren't they? They think well my income's low, but I have got these savings. That stops me claiming. But it doesn't necessarily.

KOHLER: That's right. The best move that was made in the Budget was to raise what's called the 'savings disregard', so that now people looking for means-tested benefits will have disregarded £10,000 worth of their savings.

LEWIS: And they can have more than that and still get a bit, and that changed in November.

KOHLER: So it's definitely worth looking at your benefit entitlement and making a claim.

LEWIS: Thank you, Mervyn, for that. And the details of how to do that will be on our website. That's it for today. Find out more from the BBC Action Line - 0800 044 044 - and of course our website, bbc.co.uk/moneybox, where you can watch videos, sign up to my weekly newsletter - more like a blog than ever this week - download a podcast, listen again, and of course find out how to claim those benefits. And tell us your recession tales, which we may be able to discuss in our summer series. Back on Wednesday with Money Box Live taking your questions on pensions. Back with Money Box next weekend. Today the reporter was Bob Howard, the producer Caroline Bayley, and I'm Paul Lewis.