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MONEY BOX

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LEWIS: Hello. In today's programme victory in the High Court over lost pensions, but will the judgement lead to more compensation for the 125,000 people who've lost out? A fiver on their wages costs some carers nearly £50 in lost allowances. Bob Howard's been looking at the dangers of running a local club.

HOWARD: If your club closes with debts, could you be held personally liable for them?

KETTLE: It was just a tiny, little club and it's made me very wary. I would never join another club or anything – no, never.

LEWIS: And as more than a million letters are printed off to reclaim bank penalty charges, the banks answer back.

The government suffered a major defeat in the High Court this week when a judge found it *had* misled people over the safety of company pensions and it *was* guilty of maladministration. I was outside the court on Wednesday as the smiling claimants came out, brandishing copies of the judgement for the waiting cameras.

Well there is some excitement here outside the High Court in London as photographers and TV crews crowd round the people who've been campaigning over their lost pensions for 4 years. We've just come out. Inside Mr Justice Bean quashed

the rejection by the Secretary of State John Hutton of the key finding by the Ombudsman that the government had been guilty of misleading people in their official publicity. He went on to order the Secretary of State, John Hutton, to reconsider his rejection of the Ombudsman's recommendation that compensation should be paid. Well with me is Andrew Parr, one of the people who's been campaigning from the start to try to get his pension back. Andrew, you've just left the court. What's your reaction?

PARR: Well pleasure that the court has found in our favour and found the government was guilty of maladministration, which is what we've always said.

LEWIS: What do you think this will lead to though? Will it lead to better pensions for you and people who've been campaigning?

PARR: Hard to say really. I mean I'm slightly cynical. The Ombudsman found in our favour, the Select Committee found in our favour, the European Court found that pensions in this country weren't protected. Now the High Court has found in our favour and the last thing that's happened is the government has asked for leave to appeal. So with four strikes and the government are saying they're not out, it's very hard to think that we'll reach the end.

LEWIS: Well also with me is Marlene Cheshire whose husband sadly died during this campaign. Marlene, what's your reaction?

CHESHIRE: Well quite hopeful.

LEWIS: And thinking of your husband, no doubt?

CHESHIRE: Oh yes. It's been a long, long hard fight, battling with cancer and fighting for the pension. I think he'd be proud of me.

LEWIS: I'm sure he would. It may go further. Will you be carrying on the fight?

CHESHIRE: Oh I definitely will. I will not go away. That's what I tell the government every time. I'll be there till we win.

LEWIS: Well also in the court was Ros Altmann. Ros of course has been campaigning with the people for their pensions for the last 4 years. Ros, how important is this victory?

ALTMANN: Well it is very important because it has upheld the previous two significant judgements that we've had from the Parliamentary Ombudsman herself and the Public Administration Select Committee, which told the government that its information campaign was "misleading" and that it has therefore got to compensate people who *were* misled. I sincerely hope that the government won't waste even more taxpayers' money on paying lawyers to defend the indefensible, which is what it's been doing so far. And rather than that, let's just sort this out properly and arrange compensation.

LEWIS: Ros Altmann outside the court. So does the government now accept official information on the safety of company pensions was misleading? James Purnell is the Minister for Pension Reform.

PURNELL: Well we're studying the judgement. It was a complex judgement which found against us on that particular issue, but found for us on some other ones, and I think it is right on a serious issue like that for us to look at it in detail.

LEWIS: Yes, but the judge said the information was plainly inaccurate and misleading and accepted that you were guilty of maladministration. Do *you* accept that?

PURNELL: As I say - and I can't say any more than that - you know we will look at the judgement in detail and we said we're going to come back as quickly as possible with our views on that.

LEWIS: And will you appeal against the judgement?

PURNELL: We haven't yet decided the grounds for any appeal.

LEWIS: No, you haven't decided the grounds, but have you decided you're going to appeal?

PURNELL: Paul, I have to be fairly careful on this because it is a legal case. All that we can say is we have not yet decided the grounds on which we could appeal.

LEWIS: The judge also ordered the government to reconsider restoring the pensions that had been lost by these people because of maladministration. Will you do that?

PURNELL: I'm sorry to sound like a stuck record, but we have to look at the judgement in detail. It is a complex judgement and we will do exactly that. But one thing that I've always said throughout this is that it's not a question of whether we have sympathy for the people who've been caught up in this. We do and that's exactly why we brought in the Financial Assistance Scheme. And what John Hutton made very clear is that we need to look at that in the context of both this judgement but also the ECJ judgement.

LEWIS: The European Court of Justice, which of course found that the Financial Assistance Scheme wasn't adequate.

PURNELL: Well it was actually the scheme before it was extended to the current more than £2 billion, which it provides, so it was actually a finding about an old scheme. But we need to look at this and the ECJ judgement and we said that we will come back to the Commons as quickly as we can.

LEWIS: When can these 125,000 people who've been waiting more than 4 years expect to hear something more about your intentions?

PURNELL: We want to come back before the Pensions Bill completes its passage through the Commons. We would hope to get that through before the summer, but we want to come back as quickly as we can and, if possible, well before that.

LEWIS: Pensions Minister James Purnell. Well live now to John Halford. He's the solicitor from Bindman & Partners who took the test case to court. John, James Purnell promising some news by the summer. What do you expect that news to be?

HALFORD: Well it's hard to speculate, as Mr Parr himself said, but what the news *should* be if the government is going to commit itself to taking responsibility is the news of a compensation scheme that's going to restore their lost pensions. I mean nothing short of that will really do.

LEWIS: So you want full compensation? Not just an improvement in the Financial Assistance Scheme, but full compensation, 100%, everything they've lost?

HALFORD: That's what these people have been campaigning for – what they've lost essentially. And the Financial Assistance Scheme is very inadequate in many respects, as the European Court itself has said, but even on the government's figures it will only benefit around a third of those who've lost money and the extent of that benefit is extremely limited. It's a white elephant essentially.

LEWIS: Yes, it caps the pension they're paid at, what is it, £12,000, and then doesn't increase it with inflation, does it, over the years, so it's worth less and less in effect? The problem is though that the judge can't order compensation. I mean he did say the government was guilty of maladministration, he did say the leaflets were misleading, but he only could order the Secretary of State to reconsider.

HALFORD: Yes, that's right. I mean that's the nature of most judicial review cases and that's the legal proceedings which we brought.

LEWIS: Sure, but he did say, didn't he, he actually said in his judgement the result may be the same, but will not necessarily be the same? So after all this and after what was seen as you know a lot of celebration on Wednesday, a great victory, you may get nothing out of it.

HALFORD: Well if that were to happen, it would be completely unprecedented because historically – and I know on occasion it's taken some time – governments have accepted that the Ombudsman is right and where she or her predecessors have identified a serious injustice, governments have acted to address that. There's never been an exception to that general principle.

LEWIS: No and of course we did have the other finding that the Ombudsman's findings on maladministration were binding on the government. Do you think the government's going to appeal because there's that important constitutional issue and the other issues? It's said it's considering grounds for appeal. Do you expect an appeal?

HALFORD: Well it will be a real shame if the government feels the need to put up its lawyers yet again to argue that those leaflets were not misleading and likewise the statements that were made to the public in relation to occupational pensions because, frankly, no lawyer can successfully argue that however skilled they might be. So from our perspective, the only point of a government appeal really would be to drag things out as far as the Ombudsman's first finding of maladministration. That said, the government can still do the right thing. If it wants to pursue an appeal to resolve the issues of legal principles at a higher level, that's one thing, but there's absolutely nothing to stop it from doing the morally right thing in the mean time.

LEWIS: And of course some urgency about that. We heard earlier from Marlene Cheshire whose husband had died during the proceedings. Other people will, won't they?

HALFORD: People have died; people are seriously ill, struggling with extreme financial pressures. I mean it's a daily tragedy for them.

LEWIS: John Halford from Bindman & Partners, thanks very much.

This week the government launched a £33 million initiative to help carers, the army of 6 million people who look after elderly or disabled people at home. Launched by the Chancellor and the Health Minister, Ivan Lewis, it seemed a good example of joined up government. But Money Box has learned that some carers face a catastrophic loss of income due to a complete lack of coordination between three government departments. One carer who's affected is Sarah from Liverpool. She cares for her mother, has a 14 year old son, and does a part-time job in her local chemist.

SARAH: I work 16 hours a week and earn the minimum wage, but when the minimum wage went up to £5.35 an hour, I was no longer entitled to claim Carer's Allowance. You know I was over the threshold; I was £1.60 over the threshold. It's just a catch-22 situation because you can't work any longer because you're caring for somebody; you can't work any less because if you're claiming tax credit, you've got to work the 16 hours a week, so there's nothing that you can do. I just don't understand the way the system works. I really, really don't. I mean £45 mightn't seem an awful lot to some people, but I can't begin to tell you what a difference it did make when we had it and how miserable it has made everyone now that it's been taken away.

LEWIS: One person affected there. Well Emily Holtzhausen is Head of Policy at Carers UK. She explained how the rules worked.

HOLTZHAUSEN: It's great that the minimum wage has gone up because it's a really important thing for lowly paid people, but they're out of sync. That goes up in October and then the earnings limit for Carer's Allowance, which now rises in line with earnings, doesn't go up until April. So unfortunately we've got this situation where people have had to come *off* Carer's Allowance and then when April comes round again they'll go back on. The problem of course will continue. If the national minimum wage rises in line with earnings again in October, they'll come off, and then

April they'll come on again, so really it's a very difficult situation for carers at the moment.

LEWIS: And how has this arisen, that these different departments have these different rules?

HOLTZHAUSEN: Well what has happened is that in essence one department has been working but with not actually necessarily talking to another department about what the knock on effects would be, and unfortunately carers have been the losers in this where life has become, as Sarah's just told us, incredibly complex for them having to apply and then reapply. But most worryingly, they're losing vital income. £46.95 a week is a very heavy penalty to pay.

LEWIS: And of course from what we've heard from Sarah, she can't be working less than 16 hours because that will affect other parts of her finances.

HOLTZHAUSEN: Her whole funding income will just crumble. She's getting tax credits and the threshold for that is 16 hours. If you work 15 hours, you don't get tax credits and that's an incredibly important top up. So she has really no option but to lose the Carer's Allowance for this period.

LEWIS: Have you any idea how many carers will be affected by this anomaly?

HOLTZHAUSEN: Well we know that there around 40,000 carers who have earnings who also get Carer's Allowance. We just don't know how many of those 40,000 it will affect, but definitely several thousand of them I would say. But we have been surprised by the volume of calls that we've been getting.

LEWIS: Now you've raised this with the Department for Work and Pensions. What response did *you* get?

HOLTZHAUSEN: They've said that they will be looking into it and I think that this is a golden opportunity really. The Minister for Care Services, Ivan Lewis, and Gordon Brown launched a review of the National Carers Strategy, which is basically going to be a cross departmental and cross government look at really how different departments impact on carers. And I would say that this is one of those perfect opportunities where we can look at the system and where we can look at how it actually mitigates against somebody like Sarah trying to juggle work and of course caring for her mum, which is an incredibly valuable role not only to that family but to our economy because the help that people like Sarah provide is worth a staggering £57 billion a year.

LEWIS: The Department for Work and Pensions has told us though that the earnings threshold has gone up considerably over the last few years and in a sense wherever you draw the line some people will fall the wrong side of it.

HOLTZHAUSEN: That is true, it has gone up, but where I think this is important is that government wants people like Sarah on the national minimum wage to benefit. They don't want to be making people worse off as a result of changes that they've made to the national minimum wage. And actually the solution to this could be fairly simple. You could just change the time when you up-rate the earnings threshold for Carer's Allowance and synchronise it with the national minimum wage. If you did that, we would resolve this problem in one.

LEWIS: Emily Holtzhausen of Carers UK. And if you have views on carers or the government support they get, you can join in the debate on our website and have your say. The website: bbc.co.uk/moneybox.

Thousands of people sit on the committees of different sorts of local clubs, but what happens if the club runs into financial trouble? Members may not realise that in many cases they could all be held personally liable for the debts. Bob Howard's been speaking to a club member who's learnt the rules the hard way.

KETTLE: It was just a tiny, little club that we tried everything possible to keep it going. That was the total shock when all this started.

HOWARD: Kay Kettle was the treasurer of a social club in Ascot in Berkshire. Five years ago the members borrowed £15,000 from Young's Brewery to refurbish it. When the club closed in 2005, Kay didn't realise that she and the other members would be personally liable to pay back the outstanding debt.

KETTLE: We went to court and the judge said what we had to do. And we sent out letters that everybody was liable, and there was 183 members and it worked out about £55 per person.

HOWARD: The problem for Kay was that the club (over 100 years old) was unincorporated. That means instead of a creditor going after the club's assets alone, it could sue the individual members. Young's solicitors are trying to get all the members to contribute, but because Kay was a homeowner and had signed on the dotted line a charge has now been put on her house. That means if the other members don't help pay back what's outstanding on the loan, the remaining money – around £3,000 – will be taken from Kay when her property is sold. Young's told Money Box their duty is to their shareholders and this should serve as a warning to other clubs, but Kay thinks that's unjust.

KETTLE: A lot of the people that haven't paid were friends who even went to our wedding and we had the reception at the club. This is how they've paid you back. And it's made me very wary. I would never join another club or anything. No, never.

HOWARD: What happened to Kay and her club is happening to other clubs too. Robert Thomas is a partner at RH Jeffs & Rowe, which specialises in doing the accounts for sports and social clubs. He says by the time the members realise there's a problem, it's often too late.

THOMAS: The problem with many members clubs is that they were set up as a group of friends as unincorporated clubs, which means they've got no legal status, there's no proper constitution, so that if somebody wishes to sue the club it can't go against the club as a legal entity; it has to sue the individual officers or members. And they say well the club has been in existence for you know fifty, sixty

years, there's never been a problem in the past; we're not changing now. It's only when something goes wrong that people say oh I wish I had done something earlier.

HOWARD: Money Box has discovered that one former club treasurer in the Midlands is being pursued for almost £40,000. This has caused such concern amongst the working men's clubs umbrella organisation that last month it wrote to more than 1,000 members urging them to become incorporated. Kevin Smyth is the General Secretary of the Working Men's Club and Institute Union.

SMYTH: We are concerned. We have written to all our clubs alerting them of the problem and encouraging them to switch. I think there were five or six clubs came in today and said yes, could you help change our rules? Probably the same yesterday, and I imagine this will happen more and more.

HOWARD: Sports clubs are also at risk of being sued. The Rugby Football Union estimates that of its 1200 senior clubs, only around a quarter are incorporated. It's also about to write to its clubs advising them to consider changing their status. The RFU's Finance Director Nick Eastwood says the biggest danger facing sports clubs at the moment is not debt but personal injury claims.

EASTWOOD: We have had a small number where clubs have been sued or people are trying to hold them responsible for actions that have happened on the pitch; and in those cases the clubs are unincorporated entities, those individuals involved will be going through a very uncomfortable time at the moment.

HOWARD: It may seem shocking that club members who take on positions of authority on a voluntary basis are leaving themselves open to being sued in this way. Unless they make their clubs incorporated, it's likely that more could get caught out.

[Robert Thomas, partner at club accountants RH Jeffs and Rowe says: "Clubs should always seek professional advice before they decide on whether to incorporate and if so what sort of form it should take. Many clubs decide to become Industrial and Provident Societies because there are governing or 'sponsoring bodies' with 'model

charge the customer £30, as many banks do. Well live now to Brighton to talk to Eric Leenders, Executive Director of Retail Banking at the British Bankers' Association. Eric Leenders, what does it cost to bounce a payment?

LEENDERS: I think that's less the issue. I think what we need to establish first of course is that an unarranged overdraft is clearly a service. There's a service when you're stuck on the motorway and you have no petrol in your car and you have no money in your account but you can still use your debit card to fill up your car and get yourself home. Very valuable indeed!

LEWIS: So you're saying that it's not an issue; that if you want to charge £30 for a service and it costs you a fiver, that's just a big profit margin rather than something that's illegal?

LEENDERS: Well the fees for a service reflect the value and the value is set by the marketplace.

LEWIS: If you're so confident though, if the banks are so confident that this really is a legal way of charging or legal charges to make, why don't you stop all this claiming back and go to court and let the judges sort it out? They're clamouring to do so. They've told us that on Money Box.

LEENDERS: I think there's three good reasons for that. The first is we like to have relations with our customers and I don't think we want to conduct those relations in the courts.

LEWIS: No, but if they've taken you to court, it's only polite to everyone to go to court and argue your corner.

LEENDERS: I think the second point to that would be that actually isn't it about getting the right sort of outcome; and if we can get the right sort of outcome outside the court, that's got to be better all round?

LEWIS: So the right outcome is refunding the charges in every case?

LEENDERS: I don't know that that's necessarily what I'm saying. What I'm saying is ...

LEWIS: (*over*) Well that's what's happened.

LEANDERS: ... the right outcome is to make sure that the customer and the bank concerned resolve the situation to their mutual satisfaction. And of course there is a commercial expedience in this. You know some of the claims are very small and the cost of going to court is very high.

LEWIS: Some are very big though.

LEENDERS: ... lots of considerations to take into account. Yeah, the majority are small. The vast minority of those claims that are being made are larger.

LEWIS: Right, so there's no intention, just to be clear, of the banks to let the courts decide what is legal under the consumer contract regulations?

LEENDERS: Well I think it comes round to my third point, which I've yet to make, and I think that's really that you know we're in a process with the Office of Fair Trading to establish a ... well for the OFT in a fact finding exercise to understand the banks' position and to establish what we see as our view of the service that's being provided. From there and going forward, then we provide a holistic solution rather than a sort of piecemeal individual case in the court type approach.

LEWIS: And if the OFT does say – as it did on credit cards – that you mustn't charge more than a certain amount – say it's £10, £12, whatever it is – will that mean the end of free banking? Will you start charging us for all these other things you do for us?

LEENDERS: Well I tend to use the phrase ‘apocalyptic’. I don’t know that necessarily we will see the end of free banking. I know that a number of chief executives have views and have positions in the major banking groups, but what I think I see is clearly if there’s going to be a change to the way that income is derived then there’s going to be a change to the structure of fees and services. It’ll be for people to shop around to make sure that the fees and services for the particular product that they use is the most appropriate for them.

LEWIS: And they’re split, aren’t they? John Varley, the boss of Barclays, has said he was committed to fee free current accounts this week; whereas Eric Daniels of Lloyds TSB is quoted in today’s papers saying that we’ll have to follow Europe and start charging.

LEENDERS: And that’s what we want, isn’t it? We want these major banking groups competing for customers and considering different perspectives. If they were all to do the same thing, things would start to look a little bit like a utility and that’s clearly not what bank accounts are about.

LEWIS: Eric Leenders from the British Bankers’ Association, thanks very much.

And, Bob, Home Information Packs under fire again and they’re due to be introduced on 1st June.

HOWARD: That’s right, Paul. If you’re buying or selling a house, then you need to know that HIPs or Home Information Packs are just 3 months away, but this week the Council of Mortgage Lenders has called for the government to delay the packs. The CML says the packs are being rushed through and would prefer the government to wait until the pilot trials around the country are completed. Then they can make an informed decision about their likely effectiveness.

LEWIS: Thanks, Bob. And that’s it for today. You can find out more from the BBC Action Line, which is 0800 044 044, and of course our website – bbc.co.uk/moneybox – where you can contact us, listen to items on the programme again and join in that debate on carers, which is starting to liven up. Personal finance

stories, Working Lunch BBC weekday lunchtimes. Our phone-in Money Box Live is on Monday afternoon when I'm here to take your calls on investing in shares. Back next weekend with Money Box. Today the reporter was Bob Howard, the producer Jessica Laugharne, and I'm Paul Lewis.