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**MONEY BOX**

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**TRANSMISSION: 7<sup>th</sup> APRIL 2007 12.00-12.30 RADIO 4**

LEWIS: Hello. In today's programme, live this Saturday lunchtime, a high street bank will have to justify its penalty charges in court if a young barrister wins a test case on Friday. If he does, millions could benefit; but if he loses, he could go bankrupt. We're given a tour round shark country with a government backed scheme in Birmingham to haul in the loan sharks. Why is Tesco refusing to let some disabled and low income people buy their groceries online?

DICKSON: There must be tens of thousands of people stuck with a basic bank account. If they're in my position with no car, miles away from the nearest supermarket, they need to get a delivery but they can't do it.

LEWIS: And a major financial scandal may have been averted. Phew!

But first, a high street bank may have to justify its penalty charges in court for the first time this week. So far no court has ruled on whether charging £30 or more to bounce a direct debit payment is legal or not. Consumer bodies claim the charge can only cover the actual cost of bouncing the payment. The banks disagree, but they have always refunded the charges to customers who've complained rather than have the legality tested in court. Well now a newly qualified barrister says he's found a way to make a bank appear in court. If he wins, it could settle the matter for everyone. Tom Brennan has rejected a full refund and a further offer of £4,000 to stop his action.

Now he's suing the bank for damages and says he'll stop at nothing to get the bank to defend its charges in court. Why?

BRENNAN: It's the principle of it. The principle is that these charges are unfair. I think about all the other people in this situation, particularly those who have responsibilities like a mortgage, like a family, and I think the principle is far too important for me to abandon it at this stage.

LEWIS: How are you pursuing it to stop it being settled?

BRENNAN: Well first of all I'm saying no to the amount they've offered. And the second thing is I'm getting them into court by arguing a special type of damages. These are called 'exemplary damages'. What they call in the United States: punitive damages. What I'm going to be suggesting to the judge is that I should get an award of these type of damages, which is either equal to or somewhere between half and equal to my claim. And if that's approved, then that means that anybody else who's had these charges will also be entitled to half or equal to the damages.

LEWIS: The risk is that if you lose this case, you could end up paying their costs, which could be very high indeed if they're employing barristers.

BRENNAN: Yes, they are employing more senior barristers. It will bankrupt me.

LEWIS: Isn't that a big risk to take at this stage in your career because, as I understand it, if you go bankrupt that damages your chances of being a practising barrister, doesn't it?

BRENNAN: Well it *prevents* you from being a practising barrister or transferring and being a solicitor.

LEWIS: So you're putting your career on the line?

BRENNAN: Yes, it is a risk, but I think two things. First of all, my case is fairly strong and I have evidence to support that. And the second point is that this case has now gathered a momentum of its own and I think it's too important for me to walk away at this stage.

LEWIS: What happens on Friday?

BRENNAN: On Friday two things happen. The first is that they've applied to throw out my case, the reason being that they forced the money into my account and they're closing my account next week, therefore there's no case to be heard. I'll obviously be objecting to that. The other thing that will be decided is whether these special type of damages are recoverable. So this is the legal argument just about whether this special type of damage is allowed and also whether I'm entitled to bring in my expert witnesses along to give evidence. The actual hearing itself on whether the charges are lawful or not will come at a later date, assuming that it's not thrown out on Friday.

LEWIS: The banks are very clear they *are* lawful. Why are you so convinced they're not?

BRENNAN: Well they fall foul of the consumer protection regulations, which state quite clearly that you can't charge a disproportionate level of charges for any breach of contract. That's exactly what they're doing here. The information that I have, the evidence from my experts, is that it will cost £2.50 or thereabouts for a bank to bounce a direct debit. They charged me £38.

LEWIS: So if you win on Friday and then you win at the next stage, what will that mean for the (we're told) certainly over a million, maybe millions of people who are trying to get these penalty charges back?

BRENNAN: Well it will be a legal ruling, which will certainly apply to NatWest and to all customers of NatWest, that those charges - if I'm successful - are unlawful.

LEWIS: Will it apply to the other banks?

BRENNAN: Not necessarily. I would argue yes and most people in commonsense would say yes, but the other banks will argue we charge a different level and we have different processes in place and our charges are still fair and reasonable. I don't believe that for a minute, so I've been gathering a collection of like-minded people and if I'm successful on Friday then we'll be bringing claims against all the major high street banks in order to bring this claim against them to make sure they do not wriggle off the hook.

LEWIS: Given what's ranged against you, how do you rate your chance of success?

BRENNAN: I would say that I have a good prospect of surviving next Friday's challenge, I have a good prospect of going to the trial to decide whether these charges are unlawful. And, provided I keep winning and I'm able to avoid paying the costs the other side, then I'm quite happy to go on and on and on.

LEWIS: But the moment you lose - that's it, you're bankrupt, you can't practice, case closed?

BRENNAN: Only if the judge awards costs and he may not. He may decide that I'm bringing this for good reasons in the public interest and therefore I shouldn't pay the costs in any event.

LEWIS: Barrister Tom Brennan. Well we asked NatWest for an interview, but the bank refused. In a statement it confirmed that Tom Brennan has brought a claim against it, but because it's the subject of ongoing defended court proceedings 'it would be inappropriate to comment further.' Well let's go live now to Mark Gander to talk about this. He's one of the founders of Consumer Action Group. He's been campaigning on bank charges for some time. Mark, when we told you about this case this week, what did you think how significant it was?

GANDER: Well I must say, I think it's extremely significant. I mean it's very, very good to find somebody who's obviously got a good legal knowledge, a good legal basis because he's a barrister who's worked out a way of forcing the banks finally into court because of course this is where they've always refused to go so far.

LEWIS: But some people would say, wouldn't they, that Tom and others have taken money without permission from the bank? Why *shouldn't* they pay a penalty?

GANDER: Well some people might say that, but of course they've got it completely the wrong way round: the banks have taken money without permission from their customers. Many customers may only have initially gone over their agreed limit by about £200 and as a result of that the banks have gone on to fine them, to punish them, taking *hundreds* of pounds. You'll find in fact that the initial debt in favour of the bank would have been only a small amount. After that, it's the banks who are taking and taking and taking. They're taking unlawfully. And you know what Tom says about the rule of penalty charges is absolutely true - that is the law; the banks are operating outside the law. We've got some confidential information - or it was confidential information - from the Yorkshire Bank and from the Clydesdale Bank to show in fact that their charges are far less than even Tom is saying - £2 at the outside and probably much less than £1 - and I'm looking forward to sharing that information with Tom.

LEWIS: Doesn't he put himself in a slightly weak position though? He's refused £4,000, far more than he was actually charged. The judge could say he was just wasting the court's time; he's got his money back. We've been tantalisingly close to this kind of court ruling before, haven't we, and it's fallen at the last fence?

GANDER: Yes we have and I mean this is the way that the banks have always managed to escape you know the final sort of test of litigation, by offering exactly what's claimed. What's interesting here to me is that Tom is now asking for an additional award, exemplary damages - in other words, if you like, a reward which

shows the disapproval of the court and also I think you know underlines the rather poor way in which the banks are behaving. That's the interesting way that Tom is using to actually force this into court. We'll have to see. I have to say that he says he's found you know like-minded people. On our group, there'll be at least 130,000 fans of him who are waiting to hear what's happening.

LEWIS: Marks Gander, thanks very much. And that case will be heard on Friday morning and of course we'll let you know what happens here on Money Box.

For some people it can be difficult to borrow money from banks or any sort of properly licensed lender. Instead they go to loan sharks, illegal lenders who charge exorbitant rates of interest and often turn violent when payments are missed. Now a campaign to fight illegal lending is being rolled out across the country. One project has already had significant successes. Bob Howard reports.

HOWARD: I'm being driven through one of Birmingham's inner city estates by Jacqui Kennedy. Since 2004, Jacqui's been the project manager for a team who are trying to expose loan sharks working across the West Midlands. This area's been blighted by them. They're ruthless and very effective individuals.

KENNEDY: This particular estate was one of the estates which was operated by Mark Johnson. He'd lent out £280,000 of loans upon which he was expecting a return of about £802,000, which is quite a mark up in one year. His levels of interest rates were anything from 1500% up to 8000%, and in some instances 15000%. If you missed a payment, he would just apply an indiscriminate charge to your debt.

HOWARD: How many customers did he have?

KENNEDY: He had about 700 customers.

HOWARD: One person, one loan shark had 700 customers?

KENNEDY: Yeah, he did. He had over 700 loans out.

HOWARD: Loan shark Mark Johnson was sent to prison for almost 4 years. He died whilst serving his sentence. A short drive away, we come to another estate. There's a parade of shops here, but none of the high street banks are present. Regular doorstep lenders working for legal companies are too scared to operate in some tower blocks. Jacqui says this leaves the field clear for the loan sharks.

KENNEDY: They're people who've needed money to buy a pram or children's uniforms for school and they've borrowed it from somebody they think is a friend as such. Loan sharks access their clients and victims through word of mouth from friends and family. And, yes, when they are lending them money and they're repaying, they *are* very friendly. As soon as you can't pay them back, that's when they change their attitude.

HOWARD: Why isn't the word more on the street don't go to these people; they're going to charge you exorbitant rates or even attack you?

KENNEDY: People who have been intimidated or threatened or even assaulted by loan sharks are often too frightened to actually say that's happened to them.

HOWARD: No-one I spoke to on the estate admitted dealing with loan sharks, although we know Mark Johnson certainly operated there. Here an actress reads an account as it was read in court by one of the victims of Mark Johnson, or Arnie as he was known to this customer. He was friendly enough to start with.

ACTRESS: I knew this man called Arnie. He'd be at my friend's house a lot and when I saw him, he used to say stuff to me like you know, "When are you going to come to me for a loan?" and I just used to laugh it off really. And he used to say to me like you know when was I was going to go out with him and this was openly in front of everybody. I just used to say, "He's crazy" and I'd laugh it off.

HOWARD: But when the victim did take a loan, borrowing several

hundred pounds from Arnie, she ran into trouble when he refused to accept she had repaid the debt.

ACTRESS: He grabbed me round the throat and he lifted me up off the sofa. He started to squeeze my neck harder and harder. He threw me against the corner unit and I hit my left side and I landed on the floor in like a crouched position. And Arnie was walking over towards me and when he heard my friend on the phone, he walked back over and he ripped the phone out of the wall. Arnie left. The police came and I gave a statement.

KENNEDY: We're based at a secret location in Birmingham and this is where all the ... (*voices fades under*)

HOWARD: Back at the anti-loan shark office, project manager Jacqui Kennedy shows me some of the weapons taken from illegal money lenders across the West Midlands. They include more than half a dozen handguns, along with a baseball bat and a machete. She also has another crucial piece of evidence used in the trial of Mark Johnson. She shows me his accounts book where all his loans and repayments were written down.

KENNEDY: There's some addresses here that are from the areas that we visited earlier today. In this one instance, somebody had a loan of £400 and they were due to pay him back £750. They'd made several payments - £40, £40, £40. They obviously had a problem then and missed a payment, ended up with a debt of £1,250. That started as a £400 loan.

RADIO CAMPAIGN: (*knocking on door*) "Tracy! I know you're in there. Open the door!" Loan sharks are now operating in your area.

HOWARD: As part of the fight against illegal money lenders, the team's running a media campaign on local radio stations and elsewhere to warn people about the danger. They offer a 24 hour confidential hotline which victims can use to report loan sharks. Jacqui Kennedy says it's been a big success.

KENNEDY: Every time we get calls through, they are good quality calls. They're providing us with information and intelligence. And often by the time somebody's actually that desperate that they call us, they need to speak to somebody. Some of these matters have gone before juries and the people have been found guilty. So it's testament really to the team in terms of the quality of the investigation that they carried out, the evidence that's been put forward. But more importantly, or equally as important, is the braveness and courageousness of some of the victims who've come forward and actually managed to remove the blight on their communities of these illegal money lenders.

HOWARD: The team estimates since 2004 they've helped over 1,000 loan shark victims and written off more than a million pounds which they owed in debt to the criminals. But they know there must be a legal, affordable alternative for people wanting loans who can't just go to a bank. One alternative is the Credit Union, a community bank which doesn't have shareholders and is often prepared to lend to people on low incomes and with poor credit histories. I'm at the City Save Credit Union in Central Birmingham. Paul Collin, the union's business development manager, says they're trying to go out into estates so people know there's an alternative to loan sharks.

COLLIN: We do what we can in terms of getting the message out to people in communities. We go to neighbourhood offices, we try and do as much marketing as we can and we're also looking at ways to work on a project in conjunction with the council on door to door service so that people are aware that they are eligible to apply.

HOWARD: One small step perhaps, but the government's allocated £36 million over 3 years to help fund the so-called third sector lenders like Credit Unions. In the meantime, it's also extending its anti-loan shark operation from Birmingham and Glasgow to include Liverpool, Bradford, Leeds and Sheffield.

LEWIS: Bob Howard. And there's lots of advice on borrowing safely and at reasonable cost on our website and with the helpline. Details later.

A financial scandal similar to the one involving 'split cap' investment trusts may have been averted. We reported on the concerns a month ago that the Financial Services Authority was planning to allow foreign investment companies a much lighter regulation than the tough rules it imposed on UK based firms. Those rules were brought in after the splits scandal, which cost tens of thousands of investors hundreds of millions of pounds. But the Association of Investment Companies and some MPs feared that the FSA was putting smaller investors at risk by moving too far to encourage overseas financial firms to come to UK markets. This week though, the FSA said it wouldn't proceed in the way it had planned. I asked FSA Managing Director Hector Sants why there'd been an about turn.

SANTS: Well I don't think we've changed our mind. We laid out a couple of ideas, one of which was a tiered regime where you would have a more basic approach to listing and one with a higher level of investor protection, or alternatively we said we could try to design a single regime for all. We've now consulted widely, we were delighted with the response we got - over 125 responses - and it's clear the majority, not all actually, but the majority would like us to try and design a single regime which is the same for both overseas and UK companies and that's what we're proposing to do.

LEWIS: So you're just going to have one regime. Will we have the high level of protection that people were afraid you *wouldn't* have under the minimum European rules?

SANTS: That's our intention. What we're actually going to do is consult a second time around on the detail, which is designed to deliver what you've just said, so we'll have a second discussion with the community to make sure we're achieving that. But we're setting off with the belief we can achieve the right level of investor protection as well as allow access to these newer types of investment vehicles.

LEWIS: Is there a danger this will discourage foreign companies from

listing in London because that was what you were accused of, wasn't it - you were trying to get business to London at the expense of protecting investors? Now you're going to protect investors, could that drive business away?

SANTS: Our challenging job as it were is to try to reconcile the fact that we have a twin objective - one, investor protection; and the other maintaining competitiveness of the UK. And you're absolutely right to say it's a judgment. It's a challenge for us to get the right mix between those two objectives. I think what we're concluding as a result of very good industry feedback, which includes us going to talk to some hedge funds and private equity firms you might list, that we can achieve the right result here.

LEWIS: Hector Sants of the FSA. But while some critics like the Association of Investment Companies welcomed the news, others like John Howard, Chairman of the FSA's own consumer panel, believes some risk of another scandal remains.

HOWARD: There are a couple of things still to bear in mind. For the next 10 to 12 months, it will be possible for overseas investment companies to list in London under the lighter regime because that is in existence at the moment, whilst UK based companies will still have to go through a more rigorous process. So there is the potential for consumers to be confused about which sort of company they're dealing with and perhaps thinking they've got more protection than they really have. The other point to bear in mind of course is that it's still up for grabs as to what the final listing regime will look like. It's looking at the moment as if it will be a compromise between the lighter obligations of the overseas companies and the tougher regime that the UK based companies have to comply with at the moment, and if there is some sort of compromise I just hope that it doesn't mean that there will be any dilution of the protection of investors in the UK.

LEWIS: John Howard, Chairman of the Financial Service's Consumer Panel.

People on low incomes are still being stopped from doing their grocery shopping

online by some major supermarkets, including Tesco, Britain's largest retailer. Money Box's Chris A'Court has more on this. Chris?

A'COURT: Yes, Paul. 3 years after Money Box first highlighted the problems for those who can only get the Visa Electron payment card with their basic bank account, Tesco.com and a few others still adamantly refuse to accept it. And among those who are infuriated by that is Money Box listener Bill Dickson.

DICKSON: I get a regular delivery from Sainsbury because I haven't got a car, but when I tried to place an order with Tesco they said, "Visa Electron - no good, not acceptable". The thing is they won't give me a reason. It's not just some junior finance bloke. This is from the top brass. I got an e-mail from Terry Leahy's office saying, 'We have no plans to accept the use of the Visa Electron cards for online purchases.' This is a decision which has been taken by the main board.

A'COURT: Well Sir Terry Leahy, who Bill wrote to, is of course the top man at Tesco, the Chief Executive. Bill contacted him because he cannot understand why Sir Terry still makes it impossible for him and others with only basic banking to shop online.

DICKSON: There must be tens of thousands of people stuck with a basic bank account with the Electron card. Well that means if they're in my position with no car, miles away from the nearest supermarket, they need to get a delivery and they can't do it if they won't accept the Electron card.

A'COURT: And he's right. Another listener, Sarah, contacted us. She simply cannot go out of her home to buy groceries from Tesco. She does shop online, but is therefore forced to ask others to pay on her behalf. Her sister Mary says that's an indignity that Tesco shouldn't make her suffer.

MARY: My sister at the moment is housebound with a disability. Because she's housebound, she relies on home deliveries actually just to live because she can't go out to the shops. She orders in a home delivery from Tesco's, but has

found that Tesco's won't accept her Visa Electron card and therefore she has to get other people to pay for her when she does the shopping and obviously it's just really robbed her of her independence. It's not an issue of not having the money in the account. The issue is just simply that Tesco's won't accept the Visa Electron.

LEWIS: Well that was Mary. And, Chris, people who have basic bank accounts - and this is something of course the government's encouraging - often find they only get a Visa Electron card with it, so why does Tesco refuse to allow them to buy online?

A'COURT: Well Money Box believes it's because of simple confusion or an unexplained willingness - unwillingness that is of course of the retailers - just like when we last looked at this. Now we know that Tesco chiefs could simply change a few systems and tell their bank they're accepting Visa Electron cards right now. Their rivals Sainsbury's and Asda already do. But when we first spoke with Tesco this week, they still seemed to think that they couldn't accept the Visa Electron card unless the person paying was actually there in front of them. Now that was once true, but it changed 5 years ago. Visa Electron can be accepted online just like other cards and there's less risk for retailers than accepting credit cards. Visa Electron is a debit card, so if the person doesn't have enough money in their bank account to pay, it shows up to the retailer right away. Now we also spoke to the National Consumer Council about Tesco's policy and they said it was another disappointing example of how some retailers aren't doing enough to help people on lower incomes access the range of goods and services that better off people can. Here's the NCC's Nicola O'Reilly.

O'REILLY: Everybody needs to eat. It seems that Tesco's willing to lose out on quite a large customer base. I really think the problem is that they've set their policy and are trying to blame technical difficulties rather than accepting the responsibility for excluding some people from being able to obtain a service that they want to use.

A'COURT: Now when we contacted the banks, they put the ball firmly in the retailers' court saying that the decision whether or not to accept Electron is solely

with Tesco and others. The banks did also point out people could contact them to discuss upgrading to more widely accepted cards if they wanted to. But of course, Paul, if you're on a low income or with a poor credit history, there'd be no guarantee of getting any joy there.

LEWIS: Well quite. And, Chris, given all that, is there any chance of change at Tesco?

A'COURT: Well at least their press people now realise they could accept Visa Electron very easily after we told them this week, but they said Tesco's had had very few complaints about this issue. So if people like Bill, Sarah and Mary were to make their views known directly to Tesco, we guess there might just be change, but Tesco confirmed they've no plans for that at the moment.

LEWIS: Thanks very much, Chris. That's it for today. You can find out more from the BBC Action Line - 0800 044 044 - and of course our website, [bbc.co.uk/moneybox](http://bbc.co.uk/moneybox), where you can listen to the items on the programme again and contact us, as many of you are already, with your thoughts and ideas. If you're planning to buy a home or remortgage, our phone-in Money Box Live on Easter Monday is for you. I'll be here to take your calls on mortgages Monday afternoon. Back same time next week with Money Box, but for now from reporter Bob Howard, producer Chris A'Court and me, Paul Lewis, have a good Easter weekend.