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MONEY BOX

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LEWIS: Hello. In today's programme, some banks are flouting the law that says they must cancel a debit card payment even to a payday lender if the customer asks them to. Should retired people with ill health be allowed to take more money out of their pension fund because they won't live as long? HSBC is ordered by the Court of Appeal to pay more than £100,0000 to a couple it mis-advised. And we answer listeners' worries about the new universal credit which replaces half a dozen benefits starting next year.

But first Money Box has learned that some banks are refusing to cancel payments to payday loan firms despite their legal obligation to do so. Customers are often advised to cancel payday loan repayments by debt charities, so they can concentrate on paying priority debts like their rent. But nearly 3 years after the law to give them this right came into force, some banks have still been saying some payments can't be cancelled. Bob Howard reports.

HOWARD: Paul, Money Box was contacted by Lee from Norfolk. In June he borrowed £250 from a payday lender, which he agreed to pay back in a month's time. But shortly afterwards his finances were in crisis, so he contacted the charity National Debtline. It told him he should postpone the payment to the payday lender while he concentrated on his priority debts like council tax, so Lee tried to do that.

LEE: They advised me to get in touch with Barclays and cancel the continuous payment, which obviously I did. Told they would do that. I then received a letter saying they had sent a letter off to the company to tell them to cancel the payments. Since then, they took two payments totalling £150. When I went and spoke to Barclays again, I spoke to about three or four different people and they all told me the same thing. It's a financial company; they cannot cancel it.

HOWARD: Lee sent a letter to the payday lender saying he has to concentrate on his priority debts, but he's worried money he can't afford will be taken out of his account again to settle the debt when he's paid this month. And it's not just Barclays customers who are facing these problems. Martin from Dorset took out a similar loan to Lee, which he was unable to repay. He asked his bank NatWest to cancel the payment while he rearranged his finances, but, like Barclays, NatWest told him it couldn't cancel a payment to a payday lender. The right to tell your bank to cancel payments is enshrined in law by the 2009 Payment Services Regulations, so I asked the Financial Services Authority whether this applied to payday lenders and it told me this.

FSA STATEMENT: Customers have the right to stop any payment leaving their account. No distinction whatsoever has been made for payday lenders or indeed any other group. If the customer withdraws their permission for money to be taken, any further payment would be unauthorised and would have to be reimbursed to the customer by the bank.

HOWARD: But some banks have decided they'll make their own interpretation. HSBC said there were some circumstances where they might not be able to cancel payments and it was in negotiation with the Government and regulators about the practical problems of doing so. Barclays said customers could normally cancel, but in the case of Lee it had failed to meet its usual high standards and would refund him the £150 and reverse any charges. Laura Wale, an adviser with the charity National Debtline, says other customers who failed to get a payment cancelled can also act.

WALE: If the client had correctly cancelled the authority in writing to the bank, in writing to the payday lender, and the bank then released money to that payday lender, the bank is under responsibility to refund the client in full, plus any interest and charges they may have occurred through it, so that that should get them back on track with any priority arrangements we need to get in place.

HOWARD: That may be a recourse for Martin from Dorset who told us NatWest refused to cancel his continuous payment authority. But RBS NatWest's position on cancelling has been changing. On Thursday it told us:

RBS NATWEST STATEMENT: Payday loans are not recurring or continuous payment authorities. We would be prepared to cancel a CPA, but these are not CPAs.

HOWARD: But within 24 hours, they decided that at least some payments to payday lenders could be cancelled but not all of them.

RBS NATWEST STATEMENT: If a payday lending arrangement results in the generation of a recurring payment or continuous payment authority, then we can accept instructions to cancel. If it's a single payment or an instalment payment, then it can't be cancelled.

LEWIS: Thanks, Bob. Well to get some clarity, I spoke to Mike Dailly. He's a lawyer who also sits on the Financial Service Authority's Consumer Panel. I asked him how clear the rules were for banks cancelling payments.

DAILLY: The Payment Services Regulations have been around since 2009, so the banks have had 3 years to get this right and they're still getting it wrong. You have the right as a consumer to cancel any debit from your account, so in terms of for example payday loan debits, you are perfectly entitled to cancel that.

LEWIS: The problem I suppose from the payday loan company though is that you do the deal over the phone, they put the money in your bank so you've got your 200 quid, and then 20 days later you're supposed to pay them £240 and they go to take the money and it's not there. And I suppose they're worried that you could do the deal and then cancel it immediately and they're not going to get their money.

DAILLY: There's two separate things. The first thing is that as regards you and your bank, you're entitled to cancel any authorisation that you give permission for. And it's quite separate in terms of a payday loan. I mean your relationship with a payday loan company - if you decide to cancel that, then you potentially might be in breach of contract with that company, but that's not the business of the bank; that's a matter for you. And so the position is so clear - that you are entitled to cancel any debit from your account.

LEWIS: So what's your message to the banks who have either been confused about this or (in the case of one of them at the moment as we speak) is saying that it doesn't have to cancel these payments?

DAILLY: The banks must respect the right of consumers to cancel any debit from their account, and if they don't do that, they're breaking the law.

LEWIS: And what rights does the consumer have? They tell the bank to cancel it. The money still disappears from their account. What can they do then?

DAILLY: If the bank does not respect the consumer's instruction to cancel any one of these debits, then the bank is liable in law to refund the consumer, and the law is very simple on that.

LEWIS: The law is clear. The banks are not quite so clear. Somebody tries to impose the law on the banks and the bank just refuses to do it. What's the redress?

DAILLY: The consumer should then complain to the bank and the bank should refund them if the banks fail to follow their instruction. And if the bank doesn't do that, then they should take the matter to the Financial Ombudsman Service and they will get redress.

LEWIS: You're right that the FSA has clear guidance, but we also know that the banks are not always obeying it, and indeed one of them seems to think it's wrong. Why is the FSA letting them get away with it?

DAILLY: I don't think the FSA is letting them get away with it. I think the problem is that the banks have failed to make sure that their frontline staff are aware of the Payment Services Regulations. I mean Money Box covered this issue not that long ago and the banks said that yes we have a problem, we're going to get things right. It hasn't happened. At the end of the day if banks are 3 years down the line still not implementing the Payment Services Regulation, that is a conduct issue and we would certainly be wanting to see the FSA taking action here.

LEWIS: Lawyer Mike Dailly of the Financial Services Consumer Panel. And you can let us know your experiences of cancelling payments to payday lenders on our website: bbc.co.uk/moneybox. Many of you already are. One listener says she deals with crisis loans at Job Centre Plus and gets phone calls every day from customers who've taken out payday loans and are unable to repay them. In her experience, she says none of the banks stop the payments. More comments later.

If you've saved up for your old age and then find you're ill, you might expect to be able to draw more of your pension fund for the time you do have left. If you use your funds to use an income for life, an annuity, then you will get more if you have what the insurance calls 'an impaired life'. But not everyone buys an annuity; they prefer to keep their fund and draw money from it. But the rules about this so-called income drawdown limit what you can take out. The Government's afraid you'll spend it all and then turn to the state for help, and last year the amount you could take out was cut and no concession was made for those with poor health who will die sooner. Tony Ellis has serious heart problems and got a shock when he was told he could draw less now than he could a few years ago.

ELLIS: I was allowed to draw up to £37,000. I then continued doing some consultancy work and only ever took the minimum amount for about 8 years, which was £7,000. Eventually, at the end of last year, I eventually retired. When I got my pension review in May this year, they dropped the top limit that I can get now to £24,000 from £37,000, which was you know a terrible blow.

LEWIS: If you bought an annuity, what could you get on an annuity with your health problems?

ELLIS: The best one is Liverpool Victoria and that would roughly pay £37,000 a year.

LEWIS: So why not take an annuity? Why don't you want to do that given that it would improve your income?

ELLIS: I've got serious health problems. I'm not going to get a letter from the Queen, yeah, and I don't want to get tied up with annuity.

LEWIS: So what would you like the Government to do? I know you've written to the Pensions Minister. What would you like the Government to do about this problem?

ELLIS: They've got to allow people the same privilege that's got health problems to take more from the fund.

LEWIS: One listener's experience. Ros Altmann is the Director General of Saga. She's been campaigning for people to be able to draw more of their pension fund if they're ill as those who take out an impaired life or enhanced annuity can. I asked her if Tony's experience was typical.

ALTMANN: It is typical. Several people I've had writing to me now who face a 50% fall in the income that they're allowed to take out of their own pension fund. They in many cases have been living on a higher income and now the Government's changed the rules and the new rules say they are going to suffer a significant cut in their pension income.

LEWIS: Tony Ellis has a particular issue - that he has health problems and he thinks he won't live to draw that income for very long.

ALTMANN: That's why this seems so particularly unfair and stark.

LEWIS: Well with us also is Billy Burrows. He's an annuity specialist from Better Retirement Group. Billy Burrows, why shouldn't people in Tony's situation be able to access more of their pension cash?

BURROWS: Well I don't think it's as simple as that. And I mean clearly he could apply for enhanced annuity, which will provide him with an income that reflects his life expectancy, but the particular point about the drawdown of course is that the Government and the Revenue have always been very concerned that people don't run out of money by taking too much.

LEWIS: Ros, do you think he's likely to run out of money?

ALTMANN: This is somebody who has a significant sum of money in his pension fund and the Government is saying yes you've got your money there, but you are not allowed to get your hands on it. Understandably, he in his position doesn't actually want to buy an annuity and that was exactly what income drawdown was designed for - for people who don't want to annuitise.

BURROWS: The problem is that people in Tony's position, I can understand, but we need to look at what happens to those people who go into drawdown. And there's a very serious risk that if people are allowed to take more money from their pot, they will then run out of money and actually have real problems in retirement.

ALTMANN: Then we could put in a minimum. You know there is a perfectly reasonable argument for saying once you get down to some kind of minimum where you might be in danger of ending up on means testing, then the state might have a right to limit you more. But at the moment I think there is this … You know we're trying to encourage people to put money into pensions right now and here we have people who've done just that - who've taken responsibility for themselves and they've ended up in a position where the state doesn't trust them to spend their own money properly.

BURROWS: Don't forget that most of the people that have come to you complaining that their income has dropped by 50%, part of the reason is that they took too much income in the first place. It's interesting to look at …

ALTMANN: *(over)* No.

BURROWS: … what happens in America where you know they have different rules, and the financial advisers in America are saying to people that you know a 3% or 4% drawdown from a pot is a better idea than you know people over here are drawing up to say 6%.

ALTMANN: It's not the case that people have taken too much in the past. People are coming to me who have actually made more money in their pension fund. Their pension fund has actually gone up, but the Government has changed the rules.

LEWIS: Ros, what would you like the Government to do?

ALTMANN: Well the first thing I would like the Government to do is to recognise that people who have got shorter than average life expectancies shouldn't be limited in the way they currently are; and if they could get an impaired life annuity at a better rate, they should be allowed to take more out of their pension fund. The second thing is for the Government to reconsider revisiting the rules which they only changed last year, which have cut the amount that people can take out of their pension fund.

BURROWS: I wouldn't disagree with that for people who are in real poor health, but of course the average enhanced annuity is based on 3 years shortened life expectancy, so you're not really going to get very much more from a drawdown on that basis. If I was rewriting the rules, then you know I would actually rewrite them in a different way and I can see how unfair it is, but we mustn't lose you know the bigger point that the reason why we have rules is to safeguard people. In times like this, it's really important.

LEWIS: Billy Burrows of Better Retirement Group and Ros Altmann of Saga.

A financial adviser employed by HSBC was negligent and broke clear rules set down by the regulator when he advised a couple where to put the £1.25 million pounds they got selling their home before they bought another. That was the judgement of Lord Justice Rix in the Court of Appeal this week who ordered HSBC to repay more than £100,000, which the couple lost. The solicitor who represented them is Robert Morfee Clarke Willmott.

MORFEE: They asked HSBC for advice as to where they should put the proceeds of the sale of their house to get the best interest rates. The bank put them into an insurance bond, an investment policy, and that in itself was invested in an AIG fund called Enhanced Variable Rate Fund. And that wasn't a deposit account, with the consequence that when the markets crashed in 2008, there was a loss of capital.

LEWIS: And why did they blame HSBC for this?

MORFEE: They specifically asked is there any risk to this product, any risk to capital, and were told that this product was the same as a cash deposit with HSBC, which it plainly was not.

LEWIS: Looking at the judgement, it was quite clear that the adviser was negligent and in breach of the Financial Services Authority rules. What was the outcome for your clients? What did they get?

MORFEE: The parties agreed what the damages were - round terms £113,000 - and there will be some costs to follow as well.

LEWIS: HSBC has told us that this was a case decided on its own very particular facts. Do you think that there is a general message either for HSBC or for banks in general from the decision in the Court of Appeal?

MORFEE: Well the decision of the Court of Appeal simply restored the law to what everybody thought it was beforehand - namely that if you have a legal duty to protect an investor from certain risks, you take the consequences of those risks eventuating. The judge in the High Court, who only ordered the Rubensteins nominal damages, took a new path which the Court of Appeal said was wrong.

LEWIS: He said there were risks that could not possibly have been foreseen?

MORFEE: Yes, he said that the losses were caused by the financial turmoil following the collapse of Lehman Brothers and the Court of Appeal said well that doesn't matter; unexpected things to happen. If the adviser has a duty to protect the client against a certain risk and that risk eventuates, the adviser has to pay no matter how big the loss is.

LEWIS: And do you think that will change the behaviour of banks towards their clients?

MORFEE: Banks I think do have a problem in their relationships with retail customers. There is a problem in the financial services industry of a lack of loyalty to the client and a emphasis on the interests of the adviser, and this is a structural problem with the financial services industry. I don't think this case on its own will change that.

LEWIS: Do you think the Financial Services Authority should be tougher in policing the way that people are advised?

MORFEE: I think the FSA has been very active in looking after consumers and the rules that it makes are perfectly clear. A change in behaviour will come if there's more pressure from the bottom, from the consumer rather than from the top.

LEWIS: But consumers often find it very difficult. They make a complaint and the bank fobs them off. In a sense banks are fairly immune to complaints from customers because it's so hard to get past that initial nothing to do with us approach.

MORFEE: There's a difference in behaviour between the banks and the financial advisers. The financial advisers are usually smaller businesses and under pressure they've cleaned up their act, frankly. They are much better than they used to be 10 years ago. But the banks don't seem to have caught up with that and that is the change I think we need to see.

LEWIS: Robert Morfee. HSBC wouldn't come on Money Box. In a statement it told us: "The bank is carefully considering its position in the light of this decision. The product was appropriate for a 6 to 12 month investment during which time the fund grew."

Now it's been described by the Government as the biggest shake-up in welfare for more than 60 years. From next October, familiar names like housing benefit, income support, tax credits as well as some parts of jobseeker's allowance will be replaced by a new benefit called Universal Credit. The changeover won't happen at once, but it will begin for new claimants in many parts of the country in just over a year's time. It's the big idea of the Secretary of State, Iain Duncan Smith.

DUNCAN SMITH: By creating a simpler benefit system, we will make sure work always pays more than being on benefit. And by reducing complexity, we will reduce the opportunities for fraud and error which currently cost the taxpayer approximately £5 billion a year.

LEWIS: Iain Duncan Smith, the Secretary of State for Work and Pensions, who's said to have refused another job in the cabinet reshuffle so he could see his grand plan through. As he said, Universal Credit is supposed to make things easier for working age people and ensure it always pays to find a job. Here to explain how it will all work, a daunting task, is Phil Agulnik, Director of the online benefits calculator Entitledto.com. Is it going to work? Can you summarise how it will?

AGULNIK: Well Universal Credit is part of the Government's overall programme of welfare reform. It's important to remember that there are other changes coming in before Universal Credit, so from April next year you've got three important changes. The first is if you've got a spare room and you're a council or housing association tenant, you might find your housing benefit being reduced. The second is a benefits cap if you've got a large family and you claim more than £500 a week in benefits. And the third is changes to council tax benefit, which will affect lots of people.

LEWIS: Well that's April and of course we've had some cuts already. But we're looking ahead now to next October. Universal Credit is supposed to ensure it always pays to find a job, for example. Is it going to achieve that objective?

AGULNIK: In broad terms, it will always pay to find a job. Whether it will pay a lot more to find a job is a more difficult question and a lot of it depends on what local councils do with this change to council tax benefit.

LEWIS: And of course it will cost more, won't it? Two million people will get less money, but more people will get more or stay the same, so this isn't a money saving exercise.

AGULNIK: That's right. I mean the Government hopes that they will save money through having a more efficient system. For instance, they expect 80% of it to be online and they're also hoping that that will reduce fraud. But the benefit changes, they create winners and they create losers, but broadly they balance out. It's the changes this April which are really going to affect people badly.

LEWIS: Well the new system is complicated. It's replacing another complicated system and, as you've explained, there are yet more changes in April. Money Box listeners have been contacting us with concerns. Here's stay-at-home mum Maddy Coppin from Uckfield.

MADDY: I'm very concerned about one parent being able to support their children. I feel that school can only do half the job and it involves the family to raise and educate the children. I will be expected to seek work and attend jobseeker's interviews and I will have to find work even though my youngest is only 3. So by the time he's 4, I believe that I will be forced to work and I don't want him to go to nursery.

LEWIS: Now at the moment people in a couple, one of them can stay at home to look after children even if they get some benefits. Is that going to change with Universal Credit?

AGULNIK: It's important to remember that the regulations are in draft at the moment. What the Government are saying is that where you've got a couple where both are out of work, both need to look for work. Where one is in work and one is out of work, the situation is a little unclear at the moment, but what they've said in regulations at the moment is if the couple's joint income are above a lower cut-off - and that lower cut-off might be £220 or £250 or £300 a week - then there won't be conditionality. So it may be that Maddy's okay and certainly the age when it will start will be 5.

LEWIS: So a concern anyway for people and we don't know the answer yet. And I suspect this is going to be another one. Lee Stevens from Welwyn Garden City, he's self-employed and he says the changes won't take account of his actual income from self-employment but will assume he's earning the minimum wage - £216 a week.

STEVENS: If I'm assessed on £216 a week and I'm earning a lot less than that, then possibly I won't qualify for Universal Credit, which means that I might as well stop being a self-employed person and sign on and look for work. I'm obviously planning ahead. I can see where my potential is and it's going to take you know longer than a 12 month period to get my income up to a threshold of £216 a week.

LEWIS: So Phil, Lee says you know they assume you get minimum wage. A lot of self-employed people don't earn that much, do they?

AGULNIK: Lee's absolutely correct. The Government are going to say that if you're newly self-employed, they'll give you one year to get your company off the ground and you get that once in your lifetime, but after that they're going to assume that you should have an income of the minimum wage for 35 hours a week.

LEWIS: And very briefly, because we haven't got long, disabled people have been tweeting me a lot, getting in touch. Are they going to be worse off again because they've already had some cuts?

AGULNIK: Many disabled people will be a lot worse off, particularly if you get something called the Severe Disability Premium; and disabled children, they could also be worse off by quite a large extent.

LEWIS: Right, so not much comfort for those people who've tweeted me. Well thanks for those tweets and messages; and Phil Agulnik from Entitledto.com, thanks very much. I'm afraid that is all we have time for today. I'm sure we'll be coming back to Universal Credit and those changes. There's more on our website, bbc.co.uk/moneybox. You can read my newsletter, also have your say on cancelling payments. A lot of you have but, sorry, I have no time to repeat them, but you can read them on our website after the programme. Vincent Duggleby's here on Wednesday with Money Box Live taking questions on student finance. I'm back with Money Box next weekend. Today the reporter was Bob Howard, producer Lesley McAlpine. I'm Paul Lewis.