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

MONEY BOX

Presenter: PAUL LEWIS

TRANSMISSION: 28th APRIL 2012 12.00-12.30 RADIO 4

LEWIS: Hello. In today's programme, some banks are getting the law wrong on cancelling continuous payments on debit or credit cards. You can cancel them with your bank or card provider. Can a monkey with a pin really pick shares better than most professionals? The debate. More than 75,000 people are on a list of victims which is being shared by fraudulent investment schemes.

ANDREW: Someone's sending my information on to other companies. We keep getting phone calls every day now, and I'm getting now that I'm frightened to pick the phone up.

LEWIS: People with money are lending it to people without, but is unregulated peer-to-peer lending a good idea?

First though, at least two of Britain's biggest banks have failed to give some of their customers their legal right to cancel recurring payments set up to pay for services like gym membership, internet security, club subscriptions, payday loans. The admission came after Money Box raised the issue with Lloyds Bank and Santander, which both confirmed they had not always abided by the law. Lloyds also admitted that more than 2 years since the law came into force, it has not updated the terms and conditions on all of its accounts. Bob Howard's here reporting.

HOWARD: Paul, recurring payments - also known as continuous payment authorities - have been the focus of countless complaints from Money Box listeners. We've featured stories on their use by the AA, payday loan and computer security firms. That's because (unlike direct debits) when they first started, once you'd signed up to pay by this method only the service provider themselves could cancel it. The 2009 Payment Services Regulations changed all that, but many of the banks don't seem to have noticed. Mike Dailly is a consumer lawyer at the Govan Law Centre who also sits on the FSA's Consumer Panel.

DAILLY: You have the right to cancel one of these continuous payment authorities, and you can go to your bank, they can't put up any hurdles. They should have a simple procedure for you to do that and you don't have to get the permission of the payee. It's really just down to you saying I want to cancel this future series of transactions, thank you very much.

HOWARD: But in practice some bank customers are being denied this right. Howard Fisher from Surrey heard about the new rules and checked the terms and conditions of his bank account with Lloyds TSB.

FISHER: It basically said that it was my problem and I had to contact the supplier and they would not act. So I phoned up the standard customer services helpline. They said the only way they could deal with this was to treat it as a complaint. So I said could they please write to me and let me know what Lloyds Bank's policy was, in particular with reference to the Financial Services Authority's website and their comments there.

HOWARD: A month later Howard received this reply: 'We cannot comment on the Financial Services Authority's policies. However, we can provide advice on our own policy. Any payment of this nature will be authorised unless cancelled by the merchant. Any dispute should be taken up with the merchant.' In the light of the new law, Howard felt this response was extraordinary. He's now considering appealing to the Financial Ombudsman. And Money Box has been told that Bank of Scotland, also part of Lloyds Banking Group, has sometimes failed to comply. Mike Dailly says that had serious consequences for one of his clients.

DAILLY: I can think of a case involving a payday loan company where the consumer was paying that through one of the government schemes, yet the payday loan company was still taking money from the person's account. Now that person went to the Bank of Scotland and asked for them to cancel the continuous payment authority and they said you can't do it; you need to get the permission of the payday loan company. Now that's wrong in law. This kind of idea of it wasn't me, governor, it's somebody else's responsibility isn't really good enough. It's very worrying indeed that banks are telling consumers throughout the UK that they can't do something which the law says that they can.

HOWARD: Nobody from Lloyds TSB would be interviewed, but they did send us this statement.

LLOYDS TSB STATEMENT: We can confirm that it is our policy to cancel a recurring transaction if a customer requests us to. We apologise that there have been occasions recently where the guidance we have given customers has not reflected our policy. We will be communicating the correct procedures to all colleagues as a matter of urgency. We are aware that the current terms and conditions for a number of our products do not reflect our policy on recurring transactions. However, we can confirm that these will be updated in due course.

HOWARD: Barclays and RBS NatWest also say it's their policy to allow customers to cancel continuous payment authorities. HSBC initially told Money Box customers could not, but then clarified their position to say customers could. They deal with requests on a case by case basis. Santander's admitted some of its customers have been wrongly advised that they can't, but the bank told us in a statement it had taken steps to rectify this.

SANTANDER STATEMENT: We are aware that there have been instances when customers have contacted us to request a cancellation of a continuous payment authority on their account and they've been asked to contact the company they are paying. As a result, staff across the business have received guidance about Financial Services Authority regulations pertaining to continuous payment authorities.

LEWIS: So why is it that nearly two and a half years after the new law came into force, the banks are still confused about what it means. Mark Bowerman is from the UK Cards Association which represents the banks.

BOWERMAN: Unfortunately the wording was not as black and white as it could be and it has taken the interpretation by the FSA to make it clear to card issuers that the responsibility does now lie with them.

LEWIS: But it says, 'the payer may withdraw its consent to a payment transaction at any time before the point at which the payment can no longer be revoked'. That's clear.

BOWERMAN: Well that's something that the card issuers challenged at the time and it has taken this FSA interpretation, as I say, to make it clearer that that is what the Payment Services Regulations actually mean.

LEWIS: Because even in 2010, your office came on Money Box and told us that the banks couldn't do it; that you had to go to the supplier.

BOWERMAN: Well that's correct. And part of the issue here is that these payments are incredibly difficult for card issuers to spot and still no technical mechanism exists that enables card issuers to stop them automatically. That's something that is still being worked on.

LEWIS: It's still being worked on two and a half years after the law came in. But if someone told their bank then to cancel one of these and the bank didn't, they can now claim compensation right back to that date, can't they?

BOWERMAN: That's something they're going to have to take up with their bank on an individual basis and obviously there's a clearly defined mechanism in place. You make that complaint via that bank's official complaints procedure, and if you're still not happy then you escalate that to the Financial Ombudsman Service.

LEWIS: Now that the Financial Services Authority has decided what it thinks the law means, are there any grounds now for banks not to be obeying this law?

BOWERMAN: Obviously they're going to have their own individual policies set up.

LEWIS: But a policy can't override the law. If this is the law and it's what the FSA says - they must do it, mustn't they?

BOWERMAN: Well indeed. And if any of them aren't, then that's something that the FSA will have to take up with them on an individual basis.

LEWIS: Mark Bowerman from the UK Cards Association. Now I have to say we've had emails today from dozens of people whose bank or card issuer has wrongly told them they couldn't cancel a continuous payment authority. The banks that got it wrong include Nationwide, Barclays, MBNA, HSBC, Co-op, First Direct, RBS, Halifax, Amex, Santander, NatWest, M&S and Lloyds. I think I've got the whole set there. And even this morning people had been given the wrong information, but when they quoted Money Box on Breakfast Television it's been resolved. And the FSA has told us that a customer can get payments refunded after a request to stop them if they were made within the last 13 months, so that's April 2011. But a lawyer tells me still try for older payments back to November 2009. If the bank says no, go to the Ombudsman who can look at whether the bank has treated you fairly. And you can join others, letting us know your experiences, and read what other people's experiences are through Have Your Say: bbc.co.uk/moneybox.

Now the big question: how does best at picking shares? Is it an expert or a monkey with a pin? In a recent UK share picking contest, the monkey with the pin came in the top 10% - but, don't worry, no animals were harmed or even used; it is in fact all done by computer simulation. But the phrase "monkey with a pin" has been adapted by amateur investor Pete Comley for his new self-published free book in which he challenges many of the firmly held views of the investment industry. He debated his views with Mark Dampier, Head of Research at financial services provider Hargreaves Lansdown.

COMLEY: The industry has been telling us for a long time that investing in equities and shares will get you a return of about 5% above inflation, but in reality that is just a theoretical return and it doesn't include a number of things like charges and factoring in the average skill of the investor and a few other things as well. So all of those, when you take them into account, the average investor just doesn't get any return at all above inflation.

LEWIS: And when you're talking about the average investor, you're talking about individuals, I think, but you're also critical of professional investors, fund managers who manage most people's money for them?

COMLEY: Correct. In fact the reason I got round to writing the book in the first place was I'd heard that 85% of professional fund managers can't beat the FTSE and that struck me as just being an unbelievable fact. But I checked that it's true and it sort of set me on a trail really to try and understand what were the returns for a private investor.

LEWIS: Also with us is Mark Dampier of Hargreaves Lansdown. It's a pretty damning indictment of your whole business, isn't it?

DAMPIER: Well actually I agree with a lot of it. Actually 85% - I think it's more like 95% and I've said so many, many times. You have to really search out to find good active fund managers, and in my own system here on my own recommendation list are about 120 funds; and that's been going down, not up, and I wouldn't be surprised if that went below 100 over the next couple of years. So I would make the point that no, many active funds and active managers are totally useless. And I'd make one other point. I'm not quite sure where you get this 5% above inflation. It's nothing I've used ever before.

COMLEY: Mark, if you look at the Barclays equity gilt study, if you look at their returns since 1900, the average return of equities is 5% above inflation, so that's where the figure comes from.

DAMPIER: Oh right, yes.

COMLEY: In the last decade …

DAMPIER: *(over)* But it's not a figure that's used by the industry all the time. That's just a study by Barclays.

COMLEY: But what the industry does normally do is make projections on about 7% a year.

DAMPIER: Well you're right, but it's asked to. I mean I always thought the projections are nonsense and I've always said to investors don't take any notice of them.

LEWIS: And what about index trackers because very often when people are a bit afraid of the stock market themselves, they don't want to go through an actively managed fund because it's more expensive, they just track the index. Now, Pete, you have some views on that?

COMLEY: Yeah, well I actually think that's a very good idea, and the main reason for it is that the charges on them are so much lower than using a fund and also you have taken out the element of poor skill. I mean the key problem with buying a fund or an index tracker is your own ability not to buy and sell at the wrong time. I mean in fact your own skill or lack of it is …

DAMPIER: *(over)* That's by far the biggest part of it actually, Paul. That's what it really comes down to. I mean Peter Lynch, who's a famous fund manager who ran the Fidelity Megallan Fund for many years, made something like 17% per annum, but he said that his investors only made about 3% because they constantly bought and sold the fund. And our emotions are probably the worst thing because people won't buy funds in my view when markets have fallen because clearly the news is bad, but they do tend to start buying funds when the news is better. And clients often say to me, "Well I won't buy right now. I'm just going to, Mark … I'm just going to wait until things stabilise." And of course once things have stabilised, the market's already risen and anticipated that.

LEWIS: But Mark, your whole business depends on people investing in the stock market, and yet you seem to be saying it is very difficult, if not impossible, to get a return above cash.

DAMPIER: No, I didn't say that. What I said was there are very few good fund managers and I've invested my own money in people like Neil Woodford and have been very pleased.

LEWIS: But picking on Neil Woodford, you have chosen the one man who has outperformed the market consistently for a long time. But …

DAMPIER: Am I not allowed to choose someone who's done that? *(laughs)*

LEWIS: Absolutely, but if it was that easy we'd all just invest in his fund and ignore all the rest, wouldn't we?

DAMPIER: He does have £22 billion under management, which suggests that he's not ignored. And he's not the only one. Nigel Thomas, Tom Dobell, Hugh Young in emerging markets - there are some very good fund managers out there. Now I'm not suggesting that you should put all your money there. I'm suggesting that actually some of Peter's points are fine. Do use some index tracking if you want to, but there you have got guaranteed under performance because of costs and charges involved in that as well.

COMLEY: Yes, but the point I was making about cash really is that if you actually go back and model what would have happened over like the last 20 years, if somebody put £2,000 in a year into a PEP and then an ISA and you model in the effects of their charges, they would have probably got back from their £40,000 they put in, they'd have probably got about £44,000 back. If they'd have put that money in a TESSA or a cash ISA, they'd have got £72,000 back. That's a big under performance of shares versus cash.

DAMPIER: You can use data from all times to prove all sorts of things.

COMLEY: No …

DAMPIER: Over the last 10 years, taking your tracker point, you would have beaten cash by quite some way.

LEWIS: Where would you say people should put their money and how?

COMLEY: I think it's important that people don't give up on investing. I certainly didn't write this book with a view to sort of people giving up on it because they think the returns are poorer than cash. They needn't be. I think if you understand the way the system works, you can invest much more profitably; and the key things I think to do are to try and cut down on the amount you trade - your portfolio turnover is quite a key thing.

DAMPIER: Absolutely.

COMLEY: And the other one is to probably act in a way where you don't rush out and invest all at one time. You wait for the market to get low and then invest.

LEWIS: Mark Dampier and Pete Comley. And links to Pete Comley's free book are on our website: bbc.co.uk/moneybox.

More than 75,000 people will get a letter in the next few weeks warning them that they're on a "suckers" list. That's the term used by the Financial Services Authority for the names, addresses, phone numbers and emails of thousands of individuals which it found during investigations into investment fraud. Once someone has been defrauded, their name can be sold to other criminals who try to con them out of more money. Money Box listener Andrew contacted us after he was conned and conned again.

ANDREW: One afternoon a bloke rang me up and said, "Would you like to invest some money in this land in Tonbridge Wells?" and said, "Would you like to invest £25,000 in this scheme?" So I said, "Okay". I put the money into that. One night, the phone rang again and he said, "We're developing, building houses in Bulgaria", so another £25,000 went to them. Then one Thursday afternoon, I got another phone call from a firm in London to invest money in grand projects out in Papua New Guinea and I'd make a lot of money out of it over 3 years. I said, "Okay, how much?" £21,000 would be okay. So first I sent a cheque off for £6,000, then another £15,000. I got a call from another company about investing in wine. Somehow they got hold of my mobile phone number and also my home address. And I got suspicious and thought something's happening, someone's sending my information on to other companies, and I said I'm getting a bit fed up with it. And we keep getting phone calls every day now and I'm getting now where I'm frightened to pick the phone up.

LEWIS: Altogether Andrew's lost £71,000 - and yes he does realise he's been very foolish. The warning letters are signed by Jonathan Phelan. He's Head of Unauthorised Business at the Financial Services Authority.

PHELAN: We've done it four times before, but much, much smaller numbers. The feedback we got was very positive indeed. There are a couple of letters that stick in my head - one from a gentleman who the very day that he got the letter had written a cheque. I forget the exact amount, but it was tens of thousands of pounds and he was about to post it, but he got our letter first and that stopped him from posting the letter. So it has an absolute and very meaningful monetary effect.

LEWIS: Do you think the letter's strong enough though? It says be 'especially wary' if you're called out of the blue and offered investment advice. Wouldn't it be better just to say to them if you get a call out of the blue with investment advice, just say no?

PHELAN: We agonised over what to put into the letter. It's similar to what the criminals do. They're cold calling. We're writing to people without them inviting us to, so we're intruding on people's lives a little here. To good effect though, but we don't want to be scaremongering. We want to give them the facts, so that they can understand what an investment scam is and learn how to avoid it.

LEWIS: You also say check our register, but you've also issued warnings in the last couple of weeks saying that these crooks use what you call "cloned firms". They appear to be coming from a regulated entity that you could look up on your website and find it really was there, and so checking the register isn't enough, is it?

PHELAN: It's a problem. Cloning has tripled in the last few months and we need to make people aware that when they check on the register, they should also just look for the switchboard number of the firm that they think they're dealing with. Phone that firm back on its switchboard number and ask for the person they've been dealing with. So if it's a cloned firm, they won't get that person.

LEWIS: And finally Jonathan, I understand what you put in writing in the letter, but would you on air join me in saying to listeners if you get a cold call about an investment, the safest thing to do is just put the phone down and say no?

PHELAN: That's what I'd do.

LEWIS: Jonathan Phelan of the FSA. And, please, if you do get such a cold call, do what Jonathan does: say no, hang up. It could save you thousands. If you think you've been a victim of an investment scam, you'll find the details of who to contact on the Money Box website.

The website called Encash that connects individuals willing to lend money with others who want to borrow it has cut the maximum rate of interest that lenders can ask, and that's prompted some of the lenders who put up the money to go on a lending strike and withdraw their funds. They say by cutting the rate, Encash - which used to trade as YES-secure - has stopped them getting a decent return for the risks involved. Money Box listener Paul is one of them.

PAUL: Encash are advertising theirself as the social site. 'The social way' I believe is the motto that they've got. Well it's not particularly social when they don't consult with the lenders before they actually put these things in place and they just say well this is what we're going to do, like it or lump it. These people have put their money in, stood by YES-secure through thick and thin, and are now basically being kicked in the teeth with rates that have been cut by about a third when they're still suffering losses.

LEWIS: Encash is just one of a number of what are called peer-to-peer lending sites. Individuals with money choose who they want to lend to and set the rate depending on the risk involved. Lenders then bid between themselves to secure the deal, a bit like eBay. The maximum lending rate was 27%. Earlier this month it was cut to 18%. Chandra Patni is Director and Founder of Encash - which, as I said, used to be called YES-secure. He explains why they cut the rate.

PATNI: When we first launched YES-secure, we launched it at relatively high maximum rates, close to 25% or more. And what that meant was that the type of borrowers we were getting were more sub-prime borrowers - i.e. those that were getting an average rate of around 20% APR. With Encash, we wanted to position it much more with the mid-market of lending within the British lending market - the professionals who may be earning between £20,000 to £40,000 or more - and it’s that area of social borrowers that we want to head for.

LEWIS: Since you did your re-launch, I know a number of people - including one which we’ve heard from - have pulled out. How many have pulled out now that you’ve reduced this maximum rate?

PATNI: It’s always going to be a few that unfortunately feel that they haven’t been listened to, but clearly there are also supporters who are saying that they’re wasting a lot of time because too many of the borrowers that are funded are getting rejected because you know they are too high a risk.

LEWIS: So you’ve re-launched, you’ve changed your name. Was this an admission that you got the business model wrong in the first place?

PATNI: Yeah, I think there’s an admission that we did get it slightly wrong in the sense that we positioned the maximum rate too high, which has led to the kind of borrowers being not the right profile.

LEWIS: Chandra Patni of Encash. Well live now to Devon to talk to Ian Gurney. He’s founder of the website p2pmoney.co.uk which compares peer-to-peer lending sites. Ian Gurney, how significant is this for Encash, lenders pulling out?

GURNEY: Well I mean certainly over the years Encash yes did lend quite a bit of money. Obviously peer-to-peer lending is based on lenders actually lending their money to other individuals. A business can only be successful if you know lenders are willing to lend money.

LEWIS: Yes and people who've got money - they will earn a rate of interest, but it will be less after fees and the losses. It's taxed, isn't it, and the tax is taken before the losses, so it's hard to know what you'll really earn if you do engage with one of these peer-to-peer sites?

GURNEY: Exactly right. I mean one of the reasons why p2pmoney was set up was to publicise the rates that lenders could expect to achieve after lending the money with these sites.

LEWIS: That's after losses and after tax?

GURNEY: After losses and after tax. Now just to be clear, bad debt is taken out after tax. So what then happens is you know you might have a headline rate of 10% but when you then take out all your bad debts, your fees, you may only actually be getting a return of you know 5%, for example.

LEWIS: Yes and of course it's not regulated, is it, by the FSA, so if things go horribly wrong and you lose some or all of your money, there's no compensation?

GURNEY: Exactly right. I mean certainly this is one of the reasons also why p2pmoney was set up - so that we can actually publicise historic bad debt rates. And just to be clear, bad debt rates for the industry is actually very, very good. I mean certainly if you look at the major lenders, they're all sub 1% default rates.

LEWIS: Yes and that's because they do assess people properly, perhaps achieve what they intended to do.

GURNEY: Exactly right. And certainly most of the lenders do actually, most of the companies provide statistics on what the bad debt rates should be. Now when lenders set up their rates, they should always take those default rates into account.

LEWIS: That's lenders. What about borrowers? Is it a good deal for borrowers who want to get some money?

GURNEY: I mean certainly if you look at some of the leading tables on you know some of the comparison sites, you will see that the loan rates are actually you know very, very good.

LEWIS: But if they're using credit checks, are they going to lend to more risky customers than a bank might, for example?

GURNEY: Certainly you know peer-to-peer lending will only do well if they keep the default rates down. And certainly you know companies like Zopa, Funding Circle, RateSetter have always ensured that they lend to the lowest risk lenders, lowest risk borrowers.

LEWIS: Ian Gurney of p2pmoney.co.uk, thanks. So go for the big ones and look beyond the headline rate is the advice I think with that.

But that's it for today just about. Remember it's the last chance to buy your stamps, your postage stamps at the old prices before the 30% rise on Monday. There's more on our website, bbc.co.uk/moneybox. Having your say on cancelling continuous payment authorities; they're still coming in. Post Office Cards has been added to the list, giving wrong advice according to one listener. By the way, these are not direct debits; they are continuous payment authorities. I'm back on Wednesday with Money

Box Live taking questions on powers of attorney. Back with Money Box of course next weekend. Today the reporter was Bob Howard, producer Emma Rippon. I'm Paul Lewis.