

The Board of Directors and the Executive Leadership Team of  
Danske Bank A/S  
Holmens Kanal 2-12  
DK-1092 København K

Sent digitally to Danske Bank A/S by secure email

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Ref. Consumer Affairs and Financial Intermediaries Division/Legal Division

File no. 6252-0359

## **Order for an impartial investigation of Danske Bank A/S**

### **Decision**

The Danish Financial Supervisory Authority (the FSA) orders Danske Bank A/S (Danske Bank or the bank) to arrange for and bear the costs of an impartial investigation of the measures taken and to be taken by the bank to correct the errors in the bank's debt collection process and of the bank's IT systems for debt collection (see section 347b of the Danish Financial Business Act).

The decision was made after submission of the matter to the FSA's Governing Board (see section 345(12)(iv) and (v) of the Danish Financial Business Act).

### **Background**

In its decision of 21 September 2020, the FSA issued four orders to Danske Bank in regard to the bank's handling of the errors in its debt collection process, including its debt collection systems, in particular.

The FSA found that the bank had not complied with the rules on good business practice by, at least since 2004, having used flawed debt collection systems, the consequence being that money to which the bank was not entitled had been collected from a large number of customers. In its decision, the FSA considered it important that the fundamental issues in the bank's debt collection process were not addressed until 2019.

The bank's failure to stop collecting amounts to which it was not entitled was also contrary to good business practice. Furthermore, the bank should have notified the customers who could potentially be affected by the errors in its debt collection as soon as the bank became aware that the individual customer belonged to the group of potentially affected customers.

As a result of the identified debt collection problems, Danske Bank has taken number of measures to prevent any future collection of amounts from customers to which the bank is not entitled.

In its consultation response of 19 November 2020, the bank states that it will cleanse the data currently stored in its debt collection systems: Debt Collection System (DCS) and Personlige Fordringer (PF). Moreover, the bank will strengthen the controls for uploading data into these systems. The bank expects this process to be completed in September 2021. The bank will also implement a new IT system (PCC) to supplement the other systems. In this context, the FSA notes that the bank, in its account of 10 September 2020, stated that it had purchased a new IT system to replace DCS. The bank also stated this in its notification of 31 October 2019.

Pursuant to the FSA's decision of 21 September 2020, Danske Bank was to inform the FSA of its compliance with the orders within one month. On 20 October 2020, Danske Bank submitted its account of its work on compliance with the four orders.

In regard to order 1, the bank states that, on the basis of a data analysis, it has made a segmentation of the affected customers based on an assessment of the risk of overcollection. In regard to the customers having repaid an amount higher or equal to 60% of the registered principal, the bank is of the opinion that a not-insignificant risk of overcollection exists. All debt collection has been suspended for these customers (currently about 17,000 customers) until their cases have been corrected. The bank has offered customers exposed to an insignificant risk of overcollection to suspend repayment of debt until their cases have been corrected.

Interest accrual has been suspended for all customers. All customers have the possibility of requesting continuation of debt repayment, and if they do so they accept a risk of overcollection until their cases have been finally corrected.

According to the bank, there are 89,000 customers with suspended debt collection cases. This number comprises 28,000 customers whose cases have in fact been suspended and 61,000 customers who have been offered to suspend debt repayment. The cases of 9,000 customers have been manually corrected, and the debt repayment therefore continues as usual.

The bank also states that, as from 17 June 2019, all new debt collection cases are corrected prior to the commencement of debt collection and that no cases are brought before the courts without prior recalculation of the cases.

In regard to order 2, the bank states that it forwards individual letters to all affected debt collection customers, including customers whose cases are handled by external debt collection agencies. According to the information provided by the bank, a total of 194,000 customers are to be individually notified. The bank's account of 20 October 2020 states that 153,000 customers have been notified of wrongful debt collection, including receiving a plan for the handling of all of the cases. As a result of special circumstances, the notification process is still ongoing for 41,000 customers. This applies to debt relief cases, bankruptcies with closed CVR numbers, estate cases, closed debt cases of Realkredit Danmark or cases with outdated contact details. Danske Bank notes that, in future, there will be no risk of overcollection as all cases will have been closed.

The letters forwarded to the customers state that their debts are subject to further investigation and will possibly be corrected and that they will receive compensation in the event of overcollection. The bank states that all customers subject to wrongful debt collection will have the wrongfully collected amount refunded and have any losses covered. This applies regardless of whether the customer's claim is time-barred. Customers with confirmed correct or corrected cases have been informed that their cases are correct and that the debt collection will continue.

In regard to order 3, the bank has stated that it is still in the process of investigating the issues set out in appendix 2.5 of the bank's account of 10 September 2020. The bank continuously assesses whether the issues require that debt collection be suspended if the risk of wrongful debt collection cannot be limited to an acceptable level. In this context, the FSA notes that the order entails an obligation for the bank to take measures to ensure that practices contrary to the bank's obligation to act fairly and loyally must be discontinued immediately. The bank states that the affected customers will be notified and receive compensation for the losses that the errors may have caused the individual customers.

In regard to order 4, the bank states that, as soon as the investigation into an additional issue establishes with a sufficient degree of certainty that a customer has been affected by errors, it will notify the customer by means of appropriate individual communication.

According to the bank's consultation response of 19 November 2020, the bank has drawn up a plan for how to remedy the four root causes identified. The remediation plan will continue into 2021, and the process is currently scheduled to be completed in July 2021. On 25 November 2020, the bank informed the FSA that the bank's remediation plan covers the handling of all customers affected by the four root causes and thus covered by orders 1 and 2. For the issues set out in appendix 2.5 to the bank's account

of 10 September 2020 and thus covered by orders 3 and 4, a detailed analysis will be required, and that analysis is expected to be completed in July 2021. These additional issues therefore follow separate timetables.

### **Legal basis**

The FSA may order a financial undertaking to arrange for and bear the costs of conducting an impartial investigation of one or more aspects of the financial undertaking if the FSA deems that this is significant for supervising the undertaking and this is not a routine investigation for the FSA. This follows from section 347b(1) of the Danish Financial Business Act.

According to the legislative history of section 347b of the Danish Financial Business Act, the FSA's order must be based on a specific assessment. Hence, a situation must exist in which the FSA deems it expedient to conduct an impartial investigation of one or more aspects of large significance to the supervision of the undertaking in question.

The investigation may not be a routine investigation for the FSA. Consequently, the provision does not apply to investigations falling within the scope of the FSA's normal activities and area of competence.

As a bank, Danske Bank is a financial undertaking (see section 5(1)(i)(a) of the Danish Financial Business Act). The bank is therefore covered by section 347b of the Danish Financial Business Act.

### **The FSA's assessment**

It is important for the trust shown in Danske Bank that the bank is in control of its debt collection process and that the systems supporting the debt collection process ensure that debt collection takes place in accordance with the relevant civil law rules and use correct data on customer debt so that the bank does not collect incorrect amounts from its customers. For a number of years, Danske Bank has had significant errors in its debt collection that have not been handled satisfactorily, the result being collection of amounts from customers to which the bank was not entitled. This has raised doubt about the bank's ability to collect debt correctly.

In its decision of 21 September 2020, the FSA establishes that Danske Bank failed to fulfil its obligation to act fairly and loyally towards its customers by having used flawed debt collection systems for a number of years, thus leading to incorrect collection. Against this background, the FSA issued two orders to the bank, stating that the bank must make sure to stop the wrongful debt collection and notify the affected customers of the errors. Moreover, the bank received two orders to ensure that it handles the other errors detected and that the affected customers are informed.

Danske Bank submitted an account dated 20 October 2020 to the FSA for the purposes of the bank's compliance with the four orders issued by the FSA. This account states that the bank has taken a number of measures to comply with the four orders. Moreover, the bank plans to cleanse the data stored in its debt collection systems and to strengthen the controls for uploading data into the systems. In addition, a new IT system is to support the bank's other debt collection systems.

In order to ensure future trust in the bank's handling of the debt collection process, the FSA finds it necessary to clarify and assess the various measures taken and to be taken by Danske Bank to correct the errors in its debt collection system, including clarifying and assessing whether debt collection takes place in accordance with civil law rules on the basis of correct and adequate data. The FSA also finds it necessary to investigate and assess the bank's IT systems for debt collection. The purpose of the investigation is to ensure that the measures taken and the system changes can in fact correct the errors in the bank's debt collection process.

In the opinion of the FSA, the FSA does not have the expertise needed to determine whether the analyses, contemplations, assessments, etc., underlying the bank's measures and the correction of data and strengthened controls in IT systems have addressed all the causes of the errors and their derived consequences. This requires the involvement of experts who, on the basis of their special expertise, are

able to track and assess the bank's analyses and assessments etc., including whether sufficient allowance has been made for the rules applicable to interest collection, limitation rules and debt collection rules; these are rules that fall outside the scope of the FSA's core area of expertise.

The FSA also notes that it is not standard practice for the FSA, in its order follow-up, to conduct a review to check whether all affected customers have been properly compensated in practice since this requires an assessment of the undertaking's fulfilment of civil law obligations. However, the FSA finds that, in this matter, it will be crucial – in order to restore trust in the legality of the bank's debt collection – to make an assessment of whether the bank, as required by the order, has identified and notified affected customers. In order to make such assessment, the FSA finds it necessary to consider the bank's method and principles for identifying affected customers.

Furthermore, the FSA finds that there is a need to review and verify the bank's IT systems for debt collection for the purpose of ensuring that debt collection takes place in accordance with civil law rules on the basis of correct and adequate data. In the opinion of the FSA, the matter, also in this respect, involves an assessment of unusual risks that the FSA is not used to handling, but which are essential for the FSA to clarify. In particular, this includes the question of whether the bank's IT systems for debt collection can handle and process the various types of data and thus work as intended when the bank transfers new data to the systems.

The investigation must also include a detailed analysis of whether the cleansing of data to be carried out by the bank will effectively remedy the problems experienced so far. In addition, it is also essential that the FSA can be certain that no incorrect data is transferred to the systems so that future debt handling will take place on a correct and adequate basis in the systems and handled by means of appropriate controls established by the bank to prevent data errors. In regard to the bank's new IT system, it is important to clarify whether the system, as from the implementation date, can support the other IT systems and thus the bank's debt collection process.

Overall, the FSA finds that the matter in question is not a routine investigation since the elements of the investigation fall outside the scope of the FSA's normal activities and area of competence. This should be seen in the context of the FSA's not supervising compliance with the relevant civil law rules in relation to debt collection but rather with the rules of good business practice. Furthermore, the FSA has no experience in reviewing the functionality of IT systems or systems support of debt collection processes since checking specific IT systems does not form part of normal supervisory activities.

In the specific matter about wrongful debt collection, Danske Bank failed to take customers into account by not correcting the debt collection errors identified, by collecting debt to which the bank was not entitled, and by not notifying the affected customers of the errors. As a result, it is important to decide whether the measures taken and to be taken by the bank to comply with the orders are sufficient to restore e in the bank. It is also important that the bank's IT systems for debt collection, in future, are designed so that collection is based on valid information and that the systems ensure that the calculations are made in accordance with the relevant civil law rules. The fact that Danske Bank does not at present have a timetable for the implementation of the new system is, in the opinion of the FSA, of no significance to the decision, but will have to be taken into account in the more detailed planning of the task.

On this basis, the FSA overall finds that there are sufficient grounds for ordering Danske Bank to arrange for and bear the costs of an impartial investigation (see section 347b(1) of the Danish Financial Business Act).

### **Focus and scope of the investigation**

The purpose of the impartial investigation is to investigate and assess the following:

- 1) Whether the measures taken and to be taken by Danske Bank to correct the errors in its debt collection process are sufficient and thus will address the causes of the errors and the derived

consequences. This includes making an assessment of the effectiveness of the bank's method and principles for identifying the affected customers. It also includes making a decision about the issues set out in appendix 2.5 of the bank's account of 10 September 2020 and the steps taken by the bank to resolve these issues. The investigation will require regular notification to the experts about the choices and progress made by the bank in its work to comply with the orders. This is to ensure that the experts can notify the FSA if they find that the bank's work does not meet the requirements set out in the FSA's orders. It is also to ensure that the bank completes the follow-up towards the affected customers in the summer of 2021.

- 2) Whether Danske Bank's IT systems can handle the various types of data and thus ensure correct debt collection. In this connection, the investigation must clarify whether Danske Bank has put in place satisfactory measures to ensure that existing data is cleansed and subjected to strengthened controls and that no incorrect data is transferred in future to the bank's IT systems for debt collection so that future debt collection will take place on a correct and adequate basis and be handled by means of appropriate controls. The investigation must also clarify whether the new IT system can support the other IT systems and the debt collection process as from the implementation date. The detailed planning of this part of the investigation must take place in cooperation between the bank and the experts and be approved by the FSA. The timetable for the implementation of the new supplementary IT system must also be taken into account.

The investigation must be conducted by one or more experts (see section 347b(2) of the Danish Financial Business Act).

The experts must report on an ongoing basis to the FSA on the aspects covered by the investigation during the investigation process.

The investigation of the part that relates to the measures taken by the bank must be completed no later than when the bank has completed the process of providing remedy and compensation to the affected customers in 2021. This also applies in relation to the issues set out in appendix 2.5 of the bank's account of 10 September 2020.

The part of the investigation that relates to the bank's IT systems for debt collection and which must take into account the bank's timetable for implementing a new IT system cannot be completed until the bank has finished cleansing data and strengthening IT system controls. The completion of this part of the investigation is thus related to the bank's implementation process for the new IT system.

The results of the investigation are to be presented in a written report. The experts will provide the FSA with a copy of the written report on the investigation no later than when they submit the report to Danske Bank (see section 347b(4) of the Danish Financial Business Act).

### **Requirements for experts**

The experts must have a thorough professional knowledge of debt collection and the related civil law rules, IT systems and systems support, including management of operational risks in relation to the transfer of data to new IT systems and to the implementation of new IT systems. The experts may consist of a group of several persons with different qualifications.

On or before 15 January 2021, Danske Bank must nominate one or more candidates to act as experts in the investigation for the purposes of approval by the FSA (see section 347b(2) of the Danish Financial Business Act).

In its assessment, the FSA will focus on the qualifications of the experts and whether they are independent persons in relation to the bank. The experts must not be associated with the bank, and there must be no grounds for questioning their impartiality.

Danske Bank must provide the experts who are approved by the FSA with the information necessary for conducting the impartial investigation (see section 347b(3) of the Danish Financial Business Act).

As a consequence, the experts will be bound by a duty of confidentiality in accordance with section 117(2) of the Danish Financial Business Act.

### **Complaints procedure**

Danske Bank may bring the FSA's decision before the Danish Company Appeals Board no later than four weeks after the receipt of the decision. This follows from section 372(1) of the Danish Financial Business Act. The complaint must be forwarded by email to [ean@naevneneshus.dk](mailto:ean@naevneneshus.dk) or by letter to the Danish Company Appeals Board, Toldboden 2, DK-8800 Viborg (tel. +45 72 40 56 00).

The Company Appeals Board charges a fee for considering complaints. For additional information about complaint fees and any suspensive effect, see the website of the Danish Company Appeals Board (<https://naevneneshus.dk/start-din-klage/erhvervsankenaevnet/>) and Danish Executive Order No. 1135 of 13 October 2017 on the Danish Company Appeals Board.

### **Publication**

The impartial investigation of Danske Bank forms part of the follow-up on the orders issued by the FSA to the bank on 21 September 2020 for violation of the rules on good business practice. Accordingly, the investigation will not be subject to the FSA's duty of confidentiality (see section 354(3) of the Danish Financial Business Act).

The FSA's Governing Board has considered the matter, partly in pursuance of section 345(12)(iv) of the Danish Financial Business Act because of its fundamental nature, partly in pursuance of the powers of the Governing Board to make a decision in matters in which an order is made for an impartial investigation in accordance with section 347b(1), cf. section 345(12)(v), of the Danish Financial Business Act. The FSA finds that the decision is of a fundamental nature since it is the first time that the FSA orders an undertaking to arrange for an impartial investigation to be carried out as part of the follow-up on orders issued to the undertaking in question prior to the investigation.

The FSA will publish its decision stating the name of Danske Bank (see section 354a(1) of the Danish Financial Business Act). Danske Bank must also publish the information on its website. The FSA does not find that some of the considerations listed in section 354a(4) of the Danish Financial Business Act on exemptions to publication are applicable in this matter.

Yours faithfully

Jesper Berg  
Director General