

Translation from Danish by Danske Bank of orders dated 25 April 2022 from the Danish Financial Supervisory Authority (Finanstilsynet). In case of discrepancies, the Danish version prevails.

Danske Bank A/S

For the attention of the Executive Leadership Team and the Board of Directors
Sent digitally to Danske Bank A/S by secure email

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Orders for the registration of correct outstanding debt for customers affected by Danske Bank's debt collection case

Orders

The Danish Financial Supervisory Authority (the Danish FSA) orders Danske Bank A/S to

- take the necessary measures to ensure that the bank reports correct data about interest and outstanding debt to the Danish tax authorities for customers who have received compensation after a recalculation of their debt to correct errors due to the four root causes. This also applies to customers who will receive compensation in future and therefore do not have any outstanding debt to the bank. In addition, the bank must inform these customers individually thereof;
- inform other customers whose debt will expectedly be reported at an incorrect amount to the Danish tax authorities in 2022 and thereafter;
- take the appropriate measures to be able to calculate an estimate of a customer's outstanding debt within a reasonable time if a customer so requests;
- clarify the information published on the bank's website regarding the status on the work in relation to the four root causes.

Background

In a letter dated 31 August 2020, the Danish FSA asked Danske Bank A/S (Danske Bank or the bank) to account for the process relating to the errors in the bank's debt collection system. Danske Bank submitted an explanatory account dated 10 September 2020 to the Danish FSA in which the bank, among other things, stated that it had identified four root causes of wrongful debt collection and a number of additional issues and that the bank was fully committed to reviewing and remediating all cases impacted by the data flaws as soon as possible and to ensuring that the customers are fully compensated for any overcollection or other related losses suffered as a result of the bank's mistakes.

In its decision of 21 September 2020, the Danish FSA issued four orders to Danske Bank in regard to the bank's handling of the errors in its debt collection process. The bank was ordered to stop the wrongful collection of amounts to which it was not entitled and corrected serious errors in its debt collection process. Furthermore, the Danish FSA ordered Danske Bank to ensure that affected customers were notified of the errors as soon as the bank had identified these customers.

The bank followed up on the Danish FSA's orders in its explanatory account dated 20 October 2020.

As a consequence, the Danish FSA made a decision on 26 November 2020 ordering Danske Bank to arrange for and bear the costs of an impartial investigation of its compliance with the four orders concerning, among other things, the four root causes and the additional issues that the bank had identified in connection with its explanatory account to the Danish FSA dated 10 September or would subsequently identify. According to the order, the aim of the impartial reviewers was to investigate and assess whether the measures taken and to be taken by Danske Bank to correct the errors in its debt collection process would sufficiently address the causes of the errors and the derived consequences.

On 31 October 2021, the Danish FSA received the first report from the impartial reviewers regarding Danske Bank's handling of the debt collection case. Among other things, the impartial reviewers

examined Danske Bank's processes for compensating customers identified by the bank as having been affected by the four root causes, including the bank's communication to these customers.

The first report shows that the bank initially focused on identifying and compensating customers potentially affected by one or more of the four root causes. Initially, the bank focused on calculating the repayment amounts attributable, when seen in isolation, to overcollection due to the four root causes, i.e. the customers who are entitled to receive repayment from the bank.

In the report, the impartial reviewers point out that the bank's recalculation of cases and assessment of a customer's claim for repayment and compensation are carried out using data models or via manual processes alongside the bank's debt collection systems and that the calculation models take into account any outstanding debt in the account. However, the registered amount of outstanding debt is not corrected after the recalculation. This means that, after the bank's recalculation of compensation in relation to the four root causes, there will be accounts for which the outstanding debt is still registered in the system even though the bank has decided that the debt no longer exists and that the case can be closed.

The impartial reviewers note that this may lead to errors in the bank's reporting of data to the Danish tax authorities, among others.

This also applies to the other debt collection cases that the bank has not recalculated but where the customers are affected by the four root causes and are expected to have their debt reduced as a result of the additional issues. The outstanding debt of these customers will expectedly have been registered at an incorrect amount and reported at an incorrect amount to the Danish tax authorities.

Customers who have received a letter stating that they will receive compensation have not been informed that they are and will still be registered in the bank's systems with an amount of debt that has not been adjusted for the compensation that the bank has told the customer that he/she is entitled to receive.

In relation to the other customers, Danske Bank has informed the Danish FSA that, in the period from July to October 2021, the bank sent letters to customers who were at risk of overcollection due to the four root causes and/or the additional issues. The letters state that the customer's outstanding debt may be reduced and that the bank cannot inform the customer of the final amount of outstanding debt until the bank has completed its investigations of all identified issues and corrected the data errors in its debt collection systems.

In connection with the publication of the impartial reviewers' first report, Danske Bank published a press release on 3 November 2021 describing the status of the bank's work on the four root causes. The press release included the following wording (underlined by the Danish FSA):

"Danske Bank has now reviewed all cases concerning the four original root causes of errors in our debt collection systems and is compensating the affected debt collection customers ...

... the work to clarify the four original root causes of errors in our debt collection systems has now been completed ...

... The conclusion is that 7,800 debt collection customers are eligible to receive total repayments of about DKK 28 million as a result of overcollection and compensation of about DKK 23 million for the time that the money could have been at their disposal. In addition, a large number of debt collection customers will have their debt reduced once the remaining issues have been resolved."

Legal basis

Financial undertakings must be operated in accordance with honest business principles and good practice within their field of activity. This follows from section 43(1) of the Danish Financial Business Act.

The Danish Executive Order on Good Business Practice for Financial Undertakings contains detailed rules, including the requirement that financial undertakings must act fairly and loyally towards their customers (see section 3 of the Executive Order on Good Business Practice).

The rules on good practice are motivated by considerations to be made in relation to customers, competitors and other commercial enterprises as well as public interests. The rules are to ensure that customers of financial undertakings can have faith in the market and the financial undertakings and thus contribute to a well-functioning financial market. These are legal standards to be interpreted in accordance with the practices applying to society at any time.

Consultation

A draft decision was submitted to Danske Bank for consultation purposes. In this connection, Danske Bank has stated that the bank accepts the contents of the order; however, the bank has asked clarifying questions about the understanding of the obligation stated in the order to report data to the Danish tax authorities on an ongoing basis. This has given rise to clarifications in the order to reflect the fact that it also applies to customers whose debt will be recalculated in future with the result that they have no outstanding debt to the bank.

During the consultation process, Danske Bank has also stated that, at present, the bank does not have the data necessary to provide an estimate of current debt to all customers. This also applies in relation to customers who will not receive compensation due to the four root causes but whose total debt will be reduced to an amount lower than the amount of outstanding debt currently registered in the bank's systems. This has given rise to consequential changes in the orders.

In its consultation response, Danske Bank states that, in the period from July to October 2021, the bank sent letters to customers who were at risk of overcollection due to the four root causes and/or the additional issues. The letters state that the customer's outstanding debt may be reduced and that the bank cannot inform the customer of the final amount of outstanding debt until the bank has completed its investigations and corrected the data errors in its debt collection systems. The Danish FSA bases its assessment on the fact that the bank thus has informed all customers that their outstanding debt may be incorrect as a result of partly the four root causes and partly the additional issues.

Subsequently, an updated draft decision was submitted to Danske Bank for consultation purposes. Against this background, the bank submitted a consultation response to the Danish FSA, and this gave rise to a few clarifications of the orders.

The Danish FSA's assessment

Pursuant to the requirement to act in accordance with good business practice, a financial undertaking must provide correct and adequate information and communication to its customers and other authorities. In addition, an undertaking should ensure that undue costs and negative consequences are not inflicted on its customers as a result of the undertaking's transactions and errors. Moreover, in the opinion of the Danish FSA, the rules on good business practice state that a financial institution that has suspended its debt collection must, within a reasonable time, provide the customer with an estimate of his or her outstanding debt, not least when the customer contacts the bank and so requests.

The Danish FSA finds that, in cases in which the bank assesses that the customer is entitled to compensation, the bank's recalculation of cases and assessment of a customer's claim for repayment and compensation have been carried out via manual processes and not through the bank's debt collection systems.

This entails that customers whose debt has been recalculated and who receive compensation are still registered in the bank's systems with an incorrect amount of outstanding debt and that these customers, according to the bank's plans, will not be able to have the correct amount of outstanding debt registered

in the bank's system until the bank has completed its analysis of all issues related to the debt collection case.

In relation to the information provided to customers who have received compensation because of the four root causes, the bank did not inform these customers that they are still registered with an incorrect amount of outstanding debt in the bank's systems in the information letters sent by the bank to the customers informing them that they are entitled to repayment and compensation. Moreover, the impartial reviewers' report shows that, at the date of the first report, the bank had not taken the initiative to correct the information before reporting data to the Danish tax authorities.

The Danish FSA is of the opinion that it may have significant inappropriate and financial consequences for customers to remain registered with an incorrect amount of outstanding debt in the bank's systems because it causes, among other things, the incorrect amount of debt to be reported to the Danish tax authorities. In connection with, for instance, raising a loan or other processes, customers may find it difficult to document their finances when they cannot document their debt to the bank.

The Danish FSA is of the opinion that Danske Bank is under an obligation to ensure that there is no undue customer detriment as a result of the bank's errors in the debt collection case. In relation to customers who, according to the bank, will have no outstanding debt after a recalculation of their debt, the bank must thus ensure that no incorrect amount of outstanding debt is reported to the Danish tax authorities (see section 3 of the Danish Executive Order on Good Business Practice, cf. section 43 of the Danish Financial Business Act).

In relation to these customers, the Danish FSA orders Danske Bank to

- take the necessary measures to ensure that the bank reports correct data about interest and outstanding debt to the Danish tax authorities for customers who have received compensation after a recalculation of their debt to correct errors due to the four root causes. This also applies to customers who will receive compensation in future and therefore do not have any outstanding debt to the bank. In addition, the bank must inform these customers individually thereof;

This is a continuing obligation, which means that the bank is under an obligation to change the amount of outstanding debt registered with the Danish tax authorities when the bank finds that the customer no longer has any debt to the bank or when the bank has made the final calculation of the customer's debt and thus has a sufficient basis for correcting the remaining amount of outstanding debt.

The Danish FSA also finds that the bank should, in the best possible way, support customers whose outstanding debt, according to the bank's assessment, must be reduced. The Danish FSA therefore orders Danske Bank to ensure that customers who may be affected by the four root causes and have not yet been informed of the amount of the correction to their debt must be able to obtain an estimate of the amount when contacting the bank. In these cases, the bank must make an individual calculation of the expected effect on the relevant customer's debt and provide the customer with an estimate of his or her outstanding debt taking into consideration that the additional issues may lead to a further correction of the debt. The bank must be able to inform the customer of the recalculated estimate of his or her outstanding debt within a reasonable time. The Danish FSA finds that "reasonable time" will be within two weeks unless the case is very complex or the bank receives so many enquiries that it will not be possible to respond to all of them within this time frame.

In addition, the bank must inform this customer group – i.e. customers awaiting recalculation – in clear terms that their outstanding debt registered with the Danish tax authorities in 2022 is not correct. This is a continuing obligation.

Against this background and for these customers, the Danish FSA also orders Danske Bank to

- inform the other customers that their debt has been reported at an incorrect amount to the Danish tax authorities in 2022;

- take the appropriate measures to be able to calculate an estimate of a customer's outstanding debt within a reasonable time if a customer so requests;

Before receiving the bank's first consultation response, it was the Danish FSA's understanding that the bank had recalculated all cases in relation to the four root causes but that it was not possible for the bank to change the registered amount of outstanding debt in its systems. This is also in line with the information published by the bank stating that all cases had been reviewed and that the bank had concluded this part of the process.

In light of the information presented during the consultation process regarding the bank's recalculation in relation to the four root causes, including that the bank has recalculated only the cases in which the bank has assessed that the customer was expected to be entitled to compensation, the Danish FSA finds that the bank's communication in this respect to the Danish FSA and the general public did not provide a complete picture of the situation.

Against this background, the Danish FSA orders Danske Bank, in accordance with section 43 of the Danish Financial Business Act, including the requirement that financial undertakings must be operated in accordance with honest business principles and good practice, to clarify the information published on the bank's website regarding the status on the work in relation to the four root causes so that it clearly states that it is not simply a matter of the debt not being reduced until the additional issues have been clarified but also a matter of the bank not yet having made the calculations for this customer group and that much work in this respect is still pending.

In relation to this matter, the Danish FSA thus orders Danske Bank to

- clarify the information published on the bank's website regarding the status on the work in relation to the four root causes.

Within one month from today, Danske Bank must inform the Danish FSA how it has complied with the orders.

Publication

It follows from section 354b of the Danish Financial Business Act that the Danish FSA must inform the general public about matters that are addressed by the Danish FSA and which are of public interest. The Danish FSA finds that this present case is of public interest, and the decision will therefore be published on the Danish FSA's website.

Complaints procedure

In accordance with section 372(1) of the Danish Financial Business Act, decisions made by the Danish FSA may be brought before the Danish Company Appeals Board by email to ean@naevneneshus.dk or by post to Erhvervsankenævnet, Toldboden 2, DK-8800 Viborg (tel. +45 72 40 56 00) no later than four weeks after the receipt of such decisions. Under section 7 of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs, complaints to the Danish Company Appeals Board are subject to a fee of DKK 4,000. However, if the complaint does not concern the complainant's current or future business matters, the fee is DKK 2,000. Under section 15(4) of the Danish Executive Order, the board or its chairperson on its behalf may decide to refund part of or the whole fee paid if the complainant's claim is upheld wholly or in part. The fee will be refunded if the Danish Company Appeals Board decides not to consider the complaint.

Yours faithfully

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