*Translation from Danish by Danske Bank of a decision dated 21 September 2020 from the Danish Financial Supervisory Authority (*Finanstilsynet*). In case of discrepancies, the Danish version prevails.*

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

21 September 2020
Ref. AAF
File no. 6252-0349

Orders for errors in debt collection systems

Decision
The Danish Financial Supervisory Authority (the FSA) assesses that the Danske Bank Group (Danske Bank or the bank) has not complied with good practice standards 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 an unknown number of customers. The FSA regards this matter as a gross violation of the rules on good practice. It applies in particular to the fact that the fundamental issues were not addressed until 2019.

The FSA assesses that the issues confirm some of the observations made by the FSA in connection with both its ongoing supervision and the large cases on Estonia and Flexinvest Fri in terms of inadequate data quality and governance as well as, historically, the bank's handling of issues. In these areas, the bank has received a number of orders and it is in the process of complying with them.

Furthermore, the FSA assesses that the bank did not comply with good practice standards by having failed to take measures to ensure that it stopped collecting amounts to which it was not entitled. The FSA also assesses that the bank was not in compliance with good practice standards by having failed to notify customers who could have been affected by the errors in its debt collection system. Such notification should have been made as soon as the bank became aware that a customer belonged to the group of potentially affected customers.

Against this background, the FSA orders Danske Bank as follows in order to comply with the requirement to conduct business in accordance with honest business principles and good practice standards in the banking area and the requirement to act fairly and loyally towards its customers (see section 43 of the Danish Financial Business Act and the Danish Executive Order on Good Practice for Financial Undertakings):

1. to stop collecting debt from all existing customers of the bank's debt collection department unless an insignificant risk exists that money will be collected from the customer that the customer does not owe and to ensure that this takes place at no cost to the customer and to allow these customers to suspend the repayment of their debt at no additional cost to the customers

2. to notify all customers who may have been affected by wrongful debt collection by means of individual communication

The orders are effective immediately.

In its response, the bank states that it is investigating a number of other matters where the bank may wrongfully have collected money from customers or where the customers may otherwise have suffered a loss. The FSA orders Danske Bank to

3. take measures to ensure that the risk of any incorrect collection stops or is limited to an acceptable level as soon as the error has been identified

4. notify affected customers by means of individual communication as soon as the bank has established with a sufficient degree of certainty that the customer belongs to a group that may be affected by the errors identified

Within one month from today, Danske Bank must notify the FSA how it has complied with the orders. Relevant documentation must be enclosed with the notification.

Background
On 31 October 2019, Danske Bank followed up on a previous notification from June 2019 to the FSA to the effect that the bank had identified an issue in relation to its debt collection systems, including in particular the bank's Debt Collection System (DCS).

According to these notifications, the bank, once it became aware that systemic errors existed in its debt collection systems, had launched an investigation with a view to finding the causes of and remediating the issues. Furthermore, the notifications stated that the bank aimed at ensuring that the affected customers would be identified and adequately compensated.

On the basis of these notifications and a subsequent dialogue with the bank, the FSA assessed that the measures that the bank had taken and subsequently took did not provide any grounds for launching a good practice case as the FSA was of the opinion that the bank had ensured that the errors identified had been remediated.

On 31 August 2020, various media reported information that raised doubt about the bank's handling of the issues in its debt collection system.

On 31 August 2020, at the request of the Danish Minister for Industry, Business and Financial Affairs, the FSA therefore requested that Danske Bank account for the process relating to the errors in the bank's debt collection system.

Danske Bank submitted its response to the FSA on 10 September 2020.

Danske Bank's response
Danske Bank stated that it currently operates two debt collection systems:

1) The Debt Collection System (DCS), which is used for payment defaults under regular banking products
2) *Personlige Fordringer* (PF), where the registered debt arises from customers' personal debt originating from not fully covered mortgage loans granted by Realkredit Danmark A/S. The vast majority of cases with overcollection of debt concern debt collected via the DCS.

Re 1)
The DCS was implemented in 2004 for the purpose of centralising the debt collection processes across the bank. Before then, debt collection was undertaken by the individual branches, supported by the PF system and supplementary systems (Lotus Notes, paper repositories and Excel spreadsheets). However, the various systems had some systemic weaknesses – inherent flaws – and manual processes had been set up to mitigate the effect of these weaknesses. Systemic issues had also been transferred in connection with the takeover of BG Bank's debt collection system in 2001.

When the bank started using the new system, existing data in relation to all overdue debt was to be migrated from the legacy system to the DCS system. The incorrect data existing in relation to

outstanding amounts owed by certain customers was also migrated to the DCS. At the same time, new errors emerged in the registration as a result of the coding of the DCS.

According to its response, the bank was aware of the inherent flaws of the data migrated to the DCS already at the time of implementation of the DCS.

Following the implementation of the DCS, the debt collection process was characterised by a large number of manual processes in which data from the system was checked against physical customer files. Furthermore, in 2007, a "correction team" was established for the purpose of manually correcting incorrect cases in the DCS on a continuous basis.

Concurrently with these initiatives, the bank launched a LEAN initiative in 2009, however. LEAN aimed to streamline existing business processes in an attempt to become more efficient in case handling.

The bank's focus on LEAN meant that the employees in the debt collection area were under increasing pressure to rely on DCS data when carrying out debt collection rather than spending time looking at physical files.

The increased reliance on data in the DCS meant that the manual controls of the flawed data in the DCS were carried out to a much lesser degree. To some extent, the manual controls reduced the risk that the flawed data would ultimately affect the customers.

The bank closed down the correction team in 2016 because it was thought to have completed correcting old cases. In 2016 and 2017, new errors, including in new cases, were identified.

During the period from March to September 2018, the new management at the legal function of the debt collection department became aware that a number of debt collection cases continued to require manual correction, and the bank considered possible IT solutions.

In January 2019, the management of the debt collection department concluded that the data quality issues in the DCS system required escalation. The management of the COO organisation was informed, and, on the basis of a risk assessment on 24 May 2019, a report was registered in the bank's Operational Risk Information System – a so-called ORIS incident. Such an incident results in escalation in the form of information being submitted to the bank's Executive Leadership Team and Board of Directors. They were informed on 6 June 2019 at the same time as the ORIS incident was notified to the FSA. According to the notification from the bank, the bank had only to a limited extent collected debt to which it was not entitled.

The bank stated that a project – the Data Quality Project – had been established to find the causes of the errors with a view to ensuring that they were not repeated in new cases. Furthermore, the bank wanted to clean up data in the portfolio, implement a new debt collection system and inform and repay the customers as soon as possible.

The project, labelled Programme Athens in November 2019, showed that the identified data flaws were more systematic and had a more severe impact than what had first been assumed in May 2019.

Re 2)
On 4 July 2019, the bank's debt collection department detected a nonfinancial incident in the PF system. The incident was raised in the bank's Operational Risk Information System (ORIS) as an ORIS incident. It was discovered that the known data quality issues to some extent were system-driven and that the system had inadequate capabilities resulting in poor data quality.

The bank has informed the FSA that the PF system has been in place since 1979 and that issues have arisen over a long period of time, but that the systemic data flaws were detected on 4 July 2019.

The flaws and the resulting risks related to the PF system are handled via the Data Quality Project (later Programme Athens).

Description of the errors and the impact on customers
Danske Bank has informed the FSA that the systemic data flaws are based on incorrect migration of data, misalignment and incorrect use of the debt collection systems.

An investigation conducted by external lawyers in the course of autumn 2019 showed that the flaws can be categorised into four types:

1. Principal, interest and fees were collapsed into one amount.
2. Incorrect registration of the debt origination date.
3. Guarantors and co-debtors were treated alike.
4. Co-debtors were each charged the full principal.

Re 1) Principal, interest and fees were collapsed into one amount.
The DCS and PF systems incorrectly aggregated accrued interest, fees and costs on debt into a single amount, which was then registered as the principal. The implications of this were that the systems could not distinguish between the different types of claims despite principal amounts, interest, fees and costs being subject to different time-barring periods.

This flaw resulted in collection of time-barred claims, incorrect tax reporting in relation to tax relief on interest, and customers overpaying their debt.

Re 2) Incorrect registration of the debt origination date.
The statutory limitation period starts counting from the date on which a specific debt falls due. When a debt was transferred to the DCS, however, the statutory limitation period was effectively reset to the date of the transfer. This made the statutory limitation period appear longer than it actually was.

According to the bank, this flaw may have resulted in the bank collecting debt that was time-barred because the limitation period started before the time at which the claim was transferred to the DCS. This may also have resulted in unlawful court proceedings against customers, just as customers may have entered into settlement agreements regarding debt that was time-barred in whole or in part.

Re 3) Guarantors and co-debtors were treated alike.
In 2001 when Danske Bank acquired BG Bank, it also acquired BG Bank's debt portfolio. BG Bank's debt collection system had problems with distinguishing between guarantors and co-debtors,[1] however, manual procedures had been established to handle this. When the data from BG Bank was migrated to DCS in 2004, the issues were also transferred, and all debtors, co-debtors and guarantors were consequently treated alike.

The bank has informed the FSA that this flaw may have caused the bank to collect the full debt or parts thereof more than once, since it attempted to collect the debt from certain debtors, co-debtors and guarantors.

Re 4) Co-debtors were each charged the full principal.
Prior to implementation of the DCS, separate accounts were opened for the principal debtor and the related guarantor(s), and the full debt was consequently recorded on more than one account. This is similarly a consequence of the incorrect migration of the data from the BG Bank debt portfolio to DCS in 2004.

[1] The difference between a co-debtor and a guarantor is that the guarantor has a full right of recourse against the debtor, whereas a co-debtor's right of recourse covers only half the amount overdue.

The bank's procedures required debtor accounts to be adjusted manually following debtor payments and accrual of interest, costs, and the like. A similar adjustment would then need to be made to the accounts of any co-debtors or guarantors.

When existing accounts were transferred to the DCS, guarantors and co-debtors became untraceable in the systems. The effect was that if a debtor paid a debt or entered into a voluntary settlement agreement, a corresponding adjustment would not be made on the account of the relevant guarantor and/or co-debtor.

This flaw means that the bank may have collected the same debt more than once from each guarantor, co-debtor and principal debtor. For example, a customer may already have repaid their debt in full, but the debt is still registered as owed by the co-debtor and/or guarantor, so the bank may also have collected the amount from the co-debtor or guarantor.

Additional issues
Furthermore, during the course of Project Data Quality and Programme Athens, the bank has identified additional actual or potential issues as set out in appendix 2.5 to the bank's response. The bank has informed the FSA that it is currently investigating these issues and will take appropriate remediating action.

Measures and initiatives taken to prevent new flaws and errors
On 17 June 2019, the bank decided as mitigating actions to introduce a number of new manual controls:

1. No new debt collection cases were to be initiated with effect from that date without prior manual calculation having been made.
2. No new cases were to be brought before a court without prior manual calculation having been made.
3. No ongoing cases (that is, cases already registered in the DCS prior to 17 June 2019) would be finally closed by the bank, for example, in case of a request for extraordinary repayment, without the case being manually recalculated to ensure that the customer has not paid the bank more than the bank was owed.

In its consultation response of 17 September 2020 to the FSA, the bank stated that, based on the mitigating actions as formulated above and the intention, as set out in the ORIS report as of 6 June 2019, to compensate overcollected customers, the bank continued collecting debt, recognising the general wish of customers to reduce their debt.

On 17 June, 2019, the bank put in place a correction team to correct data in all new cases. The Ernst & Young (EY) audit firm was also engaged to assist with the recalculation of the cases.

In July 2019, a system change was made in the DCS to ensure that dunning fees were no longer inserted into a data field in the DCS without the limitation period being correct. This was done to prevent this system flaw from resulting in wrongful debt collection in new cases.

In addition to the new manual controls implemented to stop new cases being brought before a court before recalculation had been made, it was, with respect to court cases within GRDM, decided on 17 December 2019 to withdraw all current court cases or to recalculate and correct them. With regard to court cases, this may impact cases pending before the bailiff court and cases involving debt relief and bankruptcy estates. Furthermore, cases that had been handed over to collection agencies were withdrawn.

The correction team has recalculated most of the current cases, and all current cases in which the courts had not yet reached a decision were withdrawn from the courts in February 2020.

Moreover, the bank has informed the FSA, including in its consultation response of 17 September 2020, that in February 2020, the steering committee of Project Athens formalised the remediation principles and that all customers would be compensated for losses resulting from the identified root causes.

To further minimise the risk of overcollection of debt, the bank decided on 10 September 2020 to suspend approximately 17,000 debt collection cases until they have been recalculated.[2]

The cases in question are cases in which the customer is currently repaying and 60% or more of the principal amount has been repaid. The bank estimates that in these cases, there is a higher risk that overcollection will take place before the cases can be reviewed. Collection will be resumed when each case has been reviewed and potential errors corrected. Furthermore, no interest will accrue in these cases while collection is suspended.

Collection will continue for the 35,000 customers who have started repayment but have paid less than 60% of the principal amount and for whom the risk of overcollection is therefore very low. Despite continued collection, no interest will accrue in these cases until they have been reviewed.

Customers whose debt collection cases have been suspended can choose to continue to repay their debt. Likewise, in cases where collection continues, customers can choose to suspend payments until recalculation has been made.

The bank is also currently implementing a number of technical safeguards for and improvements of the IT systems in question in order to enhance existing controls and set up additional controls.

Subsequent to system improvements being implemented, the two systems, the DCS and PF, were assessed by EY and confirmed to calculate properly on the basis of correct data input and correct utilisation of the functionality.

The bank had already before Programme Athens began in the summer of 2019 taken steps to purchase a new IT system to replace the DCS. The bank has informed the FSA that such a system has now been purchased.

Number of affected customers
According to the bank, 402,000 customers (about 600,000 accounts) have been processed by the DCS and PF systems during the period from 2004 until today, and these include both personal and business customers.

Of the total number of 402,000 customers, some 333,000 were processed by the DCS, some 49,000 by the PF system and the remaining customers by both systems.

According to the cohort set out below, a total of 106,000 customers remain as potentially being affected by the errors, and they are at risk of making or having made overpayments on their debt to Danske Bank.

Of the 333,000 customers whose cases were processed exclusively by the DCS, some 152,000 were part of debt portfolios in other jurisdictions (including Norway, Sweden, Finland and the UK). Since the DCS is also used by the bank outside Denmark, an internal investigation was carried out to confirm whether the identified root causes also affected customers subject to debt collection in the other countries. A combination of mitigating measures, including manual reconciliation, implemented software solutions and national rules on limitation, has meant that the identified system flaws affected

[2] The bank has informed the FSA that according to the bank's data, the number of potentially affected customers is 106,000, of which 52,000 are active customers. The remaining 54,000 customers are customers who are not currently repaying their debt but who may potentially have a claim to receive money back.

customers in Denmark only. The PF system was not used for processing customers in countries outside Denmark.

A total of 105,000 of the remaining customers had not made any payments on their debt when they were registered in the DCS/PF systems, that is, they had not made any payments on principal or paid fees or interest prior to the migration to the DCS and PF. Thus, these customers are not in scope for redress.

A total of 24,000 customers were only active for less than 2.5 years in relation to the DCS and for less than three years in relation to the PF system and were not migrated to the DCS or the PF system from a legacy debt collection system. These customers cannot be categorised under root cause 1 and are not at risk of having paid time-barred interest, costs or principal amounts since the statutory period of limitation is three years for interest and costs and ten years for principal amounts and costs awarded by a court.

Finally, a total of 15,000 customer cases have been confirmed by spot checks as having been processed correctly by both the DCS and the PF system. Some cases enter the DCS with the interest amount correctly segregated from the principal amount, unlike those cases otherwise identified as a result of root cause 1, in which interest is incorrectly aggregated with the principal amount.

At present, the bank has reviewed 17,000 customers and identified 900 customers entitled to compensation. On the basis of these results, the bank estimates that 10,000-15,000 customers may be affected financially. Of these customers, some will receive financial compensation once their case has been reviewed. These are customers who have paid off their debt. Customers that have not yet paid off their debit will not receive any compensation. Instead, the amount of the compensation will be offset against other debt owed to Danske Bank, which will therefore be reduced by a similar amount.

Compensation
According to information provided by the bank, the typical amount of compensation – either through set-off against other debt or monetary payout – is in the range of DKK 1,000-2,000. However, amounts may be much higher in some cases. The bank recognises that there are customers (especially in the PF system) who are entitled to a higher amount of compensation, and there will also be customers who are entitled only to smaller amounts.

In addition, a number of customers not having suffered any financial loss (these are non-payers and debt collection customers active for less than three years) will have their cases recalculated with correction of their debt.

Uncertainty and unresolved issues
The FSA notes that a model has been developed by EY on behalf of Danske Bank in relation to the determination of compensation amounts payable to the individual customers. The bank states that the model is based on the bank's principles for compensation by making an estimate that favours the customer when the underlying data quality does not allow a more accurate estimate (conservative estimate of overcollection).

Finally, a number of unresolved issues remain according to appendix 2,5 to the bank's response.

Legal basis
Financial undertakings must conduct business in compliance with honest business principles and good practice standards for the business area. This follows from section 43(1) of the Danish Financial Business Act.

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

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.

The FSA's assessment

The obligation to act fairly and loyally towards customers stipulates that a bank must address errors when it identifies such errors in its systems and discontinue all actions likely to harm customers in future. The bank will also be under an obligation to rectify errors vis-à-vis customers and to compensate customers for any losses suffered as a result of the bank's negligence or wilful conduct in accordance with the general rules of Danish law.

The FSA notes that the bank's central debt collection system (the DCS) has provided flawed data for its debt collection since its implementation in 2004. On an ongoing basis, the bank has established certain mitigating measures in the form of manual post calculations, but this did not take place systematically until 2019, and it has caused the bank to make wrongful debt collection from a number of customers not accurately known at present.

The FSA also notes that the bank's response states that the bank was in fact aware of the issues in its debt collection system, but also that it did not initiate a thorough and in-depth investigation of the causes and extent of the issues until the new management team of the debt collection departments' legal function, on the basis of experience from the period from March 2018 to September 2018, realised that there continued to be cases that required manual corrections and that it was necessary to look into their causes.

A bank is under an obligation to ensure at all times that financial claims made against its customers are enforceable. Danske Bank failed to do so in this case.

The FSA finds that the bank thus did not comply with the rules on good practice in respect of these customers. The FSA considers the fact that the bank, for many years, did not safeguard the interests of its customers to be highly reprehensible.

As stated in Danske Bank's notification to the FSA on 6 June 2019, the bank had observed systemic errors in its debt collection systems and intended to perform analyses and take action to rectify the errors and compensate its customers.

During the subsequent course of events, the FSA understood that the bank would make manual corrections in order to prevent both new and existing debt collection cases from leading to wrongful debt collection. What the bank had done as of 17 June 2019 was that no new debt collection cases were initiated without prior manual calculation and no existing cases were closed by the bank without final recalculation.

In the opinion of the FSA, the obligation to act fairly and loyally towards customers dictates that the bank, at some point between 6 June 2019 and 31 October 2019, when the bank notified the FSA, should have taken steps to ensure that it did not collect debt from that point onwards to which it was not entitled by discontinuing collection in all active debt collection cases unless it was in a position to set up mitigating measures to eliminate the risk of wrongful collection.

The FSA recognises that in May 2019, the bank made the decision to compensate all affected customers so that customers who during the period of investigation are overpaying will not suffer any financial loss in the long term. The FSA does not find, however, that this approach is adequate and conforms to good practice standards.

The FSA also finds that the bank had an obligation to inform customers who could be affected by wrongful debt collection that the bank had identified flaws in its system and that the individual customer could potentially be paying money to the bank that the customer did not owe as soon as the bank became aware that a customer could potentially be affected. Thus, it did not conform to good practice standards to postpone communicating this to customers until such time as the bank would have a full overview of the identity of those customers who had been subject to overcollection.

Accordingly, it is the opinion of the FSA that the bank has disregarded its obligation to act fairly and loyally towards customers by continuing after 6 June 2019 to collect debt from existing debt collection customers without making sure that overcollection would not occur and by omitting to inform all customers who could be affected by the flaws as soon as the bank knew the identity of these customers.

Against this background, the FSA orders Danske Bank to stop collecting debt for all existing customers of the bank's Debt Collection department unless an insignificant risk exists that money will be collected from the customer that the customer does not owe and also to ensure that this takes place at no cost to the customer and to allow these customers to suspend the collection of their debt at no additional cost to the customer.

The FSA also orders the bank to inform all customers now identified as potentially being affected by the system flaws of the situation individually.

In its response, the bank states that it is investigating a number of other matters where the bank has unjustifiably collected money from customers or where the customers may otherwise have suffered a loss. The FSA orders to the bank to take measures to ensure that any wrongful collection stops as soon as the error has been discovered and to individually inform affected customers as soon as the bank has determined that the customer belongs to a group of customers who may be affected by the error in question.

Moreover, the FSA expects the bank to take steps to ensure that customers are compensated for their losses.

In this decision, the FSA has not considered whether the measures that the bank has taken and will take to remedy the flaws in its systems are adequate. The FSA requests that the bank provides relevant documentation of compliance with the orders and will focus on that documentation in its follow-up on the orders. The follow-up on the orders will not be complete until the bank has completed disbursement of compensation to affected customers.

Complaints procedure
Decisions made by the FSA may be brought before the Danish Company Appeals Board no later than four weeks after the receipt of such decisions. This follows from section 372(1) of the Danish Financial Business Act. Complaints must be forwarded by email to 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 delaying effect, see the website of the Danish Company Appeals Board at https://naevneneshus.dk/start-din-klage/erhvervsankenaevnet/ and Danish Executive Order No. 1135 of 13 October 2017 on the Danish Company Appeals Board.

Publication
It follows from section 354b of the Danish Financial Business Act that the FSA must inform the public about cases that are dealt with by the FSA and which are of public interest. The FSA finds that this case is of public interest, and the decision will therefore be published on the FSA's website. The decision will specify that the orders are directed towards Danske Bank because the bank's practice has caused some of its customers to have a claim for compensation against the bank.

Yours faithfully

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