

## The complaint

Mr F and Mrs F complain that the actions of Danske Limited trading as Danske Bank caused them to miss out on a favourable fixed term interest rate product for their rental property.

## What happened

Mr F and Mrs F had a capital and interest repayment mortgage with Danske Limited trading as Danske Bank (Danske), which was secured over their residential property (Property 1). Family circumstances meant they wanted to move house. They planned to keep and let Property 1 and to buy a new house to live in themselves (Property 2). In December 2021 Mr F went through two applications with Danske by phone. The first was for consent to lease Property 1, which Danske told Mr F involved converting the mortgage to a consumer buy to let mortgage (CBTL). The second was for a new residential mortgage for Property 2.

In April 2022 Danske reminded Mr F and Mrs F their fixed term interest rate product on the Property 1 mortgage was coming to an end at the beginning of July. On around 30 May 2022 Mr F approached Danske about getting a new interest rate deal and reducing the mortgage term. Danske's adviser said there was a two-year deal that would allow a term reduction of five years. But to arrange the term reduction, Mr F would have to attend an appointment with a Danske mortgage consultant rather than applying on-line.

The earliest suitable appointment was on 20 July 2022. By then the existing product would have come to an end and the Property 1 mortgage would have gone onto Danske's standard variable rate (SVR). But Mr F felt the benefits of changing the mortgage term outweighed the additional interest they'd pay in the meantime. So, he waited for the appointment.

In mid-July a Danske mortgage consultant reviewed the application Mr F and Mrs F were planning to make. On 19 July she contacted Mr F to let him know he and Mrs F couldn't change the terms of the Property 1 mortgage given it had consent to lease. And she said he should apply on-line for a fixed rate straight away. Mr F made an application. He secured a fixed rate of 2.81% over a term of two years. That was more expensive than the 2.1% he said he could have got in May.

Mr F and Mrs F complained. They said Danske should have told them in May they weren't eligible for a term extension. If they'd done that, they would have re-mortgaged at a more favourable rate than the one they got. And Danske should reimburse their additional costs of borrowing.

Danske didn't uphold the complaint. They said, in summary:

- They'd told Mr F in December 2021 that it wouldn't be possible to make changes to the Property 1 mortgage once they'd given consent to lease.
- He'd failed to send in details of the tenancy agreement as Danske had asked.
- That meant their system hadn't updated to show the mortgage was classed as consent to lease and that no changes could be made to the term.
- The adviser Mr F spoke to in May wasn't expected to review all the system notes for their account. She couldn't see the Property 1 mortgage was consent to lease from the information visible to her. She hadn't been wrong to arrange the appointment in July 2022.
- Danske's mortgage consultant contacted Mr F and Mrs F on 19 July 2022 to let them know they couldn't make changes to the Property 1 mortgage. She advised them to apply on-line straight away.

Mr F and Mrs F didn't accept Danske's response. They said Danske hadn't sent any correspondence about the Property 1 mortgage following the December 2021 call. Mr F wasn't aware any information was outstanding when he rang Danske in May 2022. Danske hadn't chased them for an agreement. It wasn't fair to blame Mr F and Mrs F's failure to send in a tenancy agreement for what had happened. Danske were to blame for them losing out on a more favourable fixed term interest rate product and should compensate them for their additional borrowing costs.

Our investigator didn't think Danske had done anything wrong. She said Danske don't allow changes to mortgages once a mortgage has consent to lease. They'd told Mr F in December 2021 he'd need to send in the tenancy agreement to show he had rental income for consent to lease to be granted. Since he hadn't done that, Property 1 hadn't been classified on Danske's system as consent to lease, and the adviser he spoke to in May 2022 wasn't aware it was. It was reasonable for the adviser to have arranged the July 2022 appointment.

Since Mr F and Mrs F didn't agree, their complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

***"What I've provisionally decided – and why***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Based on what I've seen so far, and the additional information the parties have provided since our investigator issued her view, I've come to a different outcome to our investigator. So, I'm issuing a provisional decision to give the parties the chance to make further comments before I come to a final decision.*

*We expect information a lender provides to its customers to be clear, fair and not misleading in line with Financial Conduct Authority principles. I've considered this complaint bearing that in mind.*

*I've listened to the December 2021 call. Danske said they'd do a consent to lease application for Property 1 alongside the application for the new mortgage for Property 2. It would be subject to a tenancy agreement being provided. Mr F and Mrs F would be treated as "accidental landlords". They'd have a regulated mortgage, also known as a CBTL mortgage. It wouldn't be possible to make any changes to the mortgage contract such as shortening the term when the existing rate expired.*

*The December 2021 conversation was lengthy and focused largely on the new mortgage application. But I've noted Mr F's professional background. And I'd expect him to have*

*understood at the time the consequences of the changes he and Mrs F were making to the Property 1 mortgage, including that they'd be unable to make any changes to its term.*

*However, it's clear from what happened in May, he'd forgotten that by then. I don't think that's unreasonable. Five months had gone by. And Danske failed to follow up in writing. To make things sufficiently clear I think Danske ought to have written to Mr F and Mrs F following the December 2021 call to confirm the impact of arranging consent to lease on the terms and conditions of the mortgage.*

*Mr F's acknowledged Danske asked him to send in a tenancy agreement. But he's said they haven't had a tenancy agreement to send since they've been doing renovations, he's been living in the property from time to time and they haven't rented the property out in the way they'd originally planned. Arguably they should have let Danske know about that. Even so, on balance, I don't think it's fair to blame what happened on Mr F and Mrs F.*

*Danske have said that if the tenancy agreement had been received, and their system had been updated, the adviser Mr F spoke to in May 2022 would have been aware of the consent to lease. And she would have advised Mr F at the time to make an on-line application for a new interest rate product.*

*Given the importance of having the tenancy agreement to ensuring Danske's consent to lease process was completed and their records were updated, I'd expect them to have chased it and noted their records appropriately. If they had, it's likely the consent to lease Property 1 would have been visible to the adviser Mr F spoke to in May and she could have let Mr F know he couldn't extend the term when he spoke to her.*

*Even if I'm wrong about that, the adviser ought reasonably to have done more on the May 2022 call. I understand her role was limited. And she made clear to Mr F she couldn't offer advice. But Mr F told her he had two residential mortgages. It's reasonable to expect the adviser to have questioned him about that. If she had, I think it's more likely than not Mr F would have told her about his and Mrs F's intentions to let Property 1. It's reasonable to think she would then have checked the status of the mortgage, appreciated it was subject to consent to lease and that a term extension wasn't possible, and suggested Mr F apply on-line.*

*Mr F and Mrs F applied straight away for a two-year fixed rate deal once they knew Danske's position regarding the term extension on 19 July. They secured an interest rate of 2.81%. I think they would have applied for a two-year fixed rate deal at the end of May if they'd known they couldn't extend the term. Given their application in July was successful, it's reasonable to think an application in May would have succeeded too.*

*In all the circumstances I think it's fair and reasonable for Danske to compensate Mr F and Mrs F for any additional borrowing costs they've incurred from the end of May 2022.*

*From what I currently understand:*

- *Mr F and Mrs F's existing fixed rate deal ended on 1 July 2022;*
- *but for Danske's mistake, they would have taken out a two-year fixed rate product at the end of May effective from 1 July 2022;*
- *they would have avoided paying interest at the SVR between 1 July and 18 July 2022; and*
- *they would have paid interest at a more favourable rate than the 2.81% they secured over a two-year term from 19 July 2022 onwards.*

*To put things right:*

1. *Danske Limited trading as Danske Bank should provide details of the two-year fixed interest rate products Mr F and Mrs F could have taken out if they'd applied at the end of May 2022 and put the rate in place with effect from 1 July 2022.*
2. *Mr F and Mrs F should select the product they would have applied for (the new product).*
3. *Danske Limited trading as Danske Bank should then calculate and pay Mr F and Mrs F*
  - a. *the difference between the interest they would have paid at the new product rate and the interest they did pay at the SVR from 1 July 2022 to 18 July 2022 inclusive; and*
  - b. *the difference between the interest they would have paid at the new product rate and the interest they will pay at the rate of 2.81% for the period 19 July 2022 to 1 July 2024 inclusive.*

*Danske Limited trading as Danske Bank should pay Mr F and Mrs F £250 for the distress and inconvenience they've suffered. I think that fairly reflects the impact on them of Danske's mistake including the initial realisation they'd missed out on a lower rate, Danske's failure to take responsibility and the need for them to complain.*

### ***My provisional decision***

*For the reasons I've explained, I intend to uphold this complaint and direct Danske Limited trading as Danske Bank to put things right on the basis I've set out above."*

### **Developments**

Mr F and Mrs F confirmed they agreed my provisional decision.

Danske didn't agree and made several comments, which I'll summarise:

- Danske don't offer CBTL mortgages but give consent to lease to existing residential customers who wish to let their property to paying tenants. The customer keeps their existing residential - regulated – mortgage with its existing terms and conditions.
- Section 4.1 of Mr F and Mrs F's mortgage deed contains a common restriction against letting Property 1 without consent. They are in breach of that term.
- Mr F approached Danske to discuss consent to lease in December 2021. They told him consent to lease Property 1 was subject to providing a tenancy agreement, which they never received. And they said no changes would be possible to the Property 1 mortgage once it was subject to consent to lease.
- Since Mr F and Mrs F have knowingly breached the mortgage terms, it's not reasonable to hold Danske responsible for any loss they've incurred.
- Danske wouldn't usually write to a customer following an enquiry about consent to lease; they'd deal with it on the call as they did here. They consider that's reasonable.

- A property is not noted on Danske's system as "consent to lease" unless they've had formal confirmation it's been rented out and they've consented to the letting. It would be inaccurate to note the system otherwise. Since Mr F and Mrs F didn't give formal notification or provide a tenancy agreement, Danske's system didn't mark the property as consent to lease.
- Therefore, in May 2022 the adviser would not have looked at Property 1 as a consent to lease mortgage; she would not have reviewed the notes of the December 2021 call; it's reasonable she didn't tell Mr F the term couldn't be reduced; and the information she gave Mr F was correct.
- Mr F and Mrs F should have issued a formal tenancy agreement when Property 1 was let in line with the terms of the mortgage and sought consent to lease. If that had been done, Property 1 would have been marked "consent to lease", the bank's standard process would have been followed, and the adviser would have known the position and let Mr F know a change to the mortgage term wasn't possible.
- When the mortgage consultant reviewed the file in preparation for the July 2022 meeting, they noted Mr F and Mrs F were receiving rental income. That's how Danske knew the property was being rented out. It wasn't because the property was noted as consent to lease.
- When the mortgage consultant realised Property 1 was being let in the absence of a tenancy agreement or formal consent, they contacted Mr F and Mrs F straight away.

In light of Danske's comments, we asked Mr F and Mrs F to clarify the basis on which Property 1 had been let, if at all. Mr F explained he'd been living in the property for work a few nights a week. Property 1 had been let on a short-term basis from time to time. The rental income had helped fund the upgrades Mr F wanted to make. He and Mrs F plan to let Property 1 in the next three to six months and to forward the tenancy agreement to Danske as soon as they have it.

I've considered the parties' responses and will now go on to give my final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr F and Mrs F feel that what happened in relation to their application for a new mortgage is unrelated to the events of December 2021. Danske say there's a chain of events starting with the December 2021 application that led to this complaint.

I think it's fair to consider what happened from the December 2021 application onwards since the events are closely connected. I approached things on that basis in my provisional decision. I've thought carefully about whether the additional information the parties have now provided changes my mind about how this complaint should be resolved on a fair and reasonable basis.

I note Mr F and Mrs F have been letting Property 1 without consent to lease. I'm not aware if Danske were previously aware of that or whether they have taken any steps to address things with Mr F and Mrs F. But Mr F and Mrs F will need to ensure they are no longer in breach of the mortgage terms and seek appropriate consent going forward.

However, despite Mr F and Mrs F's apparent breach of the mortgage terms and conditions, I'm not persuaded to change my mind about the outcome of this complaint as I'll explain.

The information Danske gave Mr F on the December 2021 call and the explanation they've now provided are contradictory. Danske told Mr F on the December 2021 call that he and Mrs F's application for consent to lease would mean they'd have a CBTL mortgage on Property 1; they've now explained it wouldn't have been a CBTL mortgage, the existing terms and conditions of the mortgage remained the same and consent to lease would only be given once a tenancy agreement had been approved. If that's the case, it's unclear why a change to the term couldn't have been made if consent to lease hadn't been agreed.

I've acknowledged Danske told Mr F on the December 2021 call that changes to the terms and conditions of the mortgage wouldn't be possible and he'd need to send the tenancy agreement in. If the restrictions on changing the terms of the mortgage came into effect straight away – whether or not formal consent to lease had been provided - Danske ought to have made that clear at the time.

In any event, for the reasons set out in my provisional decision, Danske ought reasonably to have written to Mr F and Mrs F following the December 2021 call to explain the correct position even if that isn't their usual process. And they should have noted the position on Mr F and Mrs F's records. Even if it wouldn't have been accurate to record that consent to lease had been given until it had, the records could have reflected Mr F and Mrs F were planning to let Property 1. If they had, the adviser could have let Mr F know they couldn't change the term when he rang in May 2022.

I still think the adviser should have done more on the call. Even if the adviser couldn't have established from Danske's records Property 1 was subject to consent to lease until formal consent had been given, she ought reasonably to have found out Mr F and Mrs F planned to let Property 1. If, as it seems, restrictions on making changes to the mortgage term applied in those circumstances, she could have let Mr F know at the time. If that had happened, Mr F and Mrs F could have applied for a new rate in May 2022.

Bearing the above in mind, I'm not persuaded to change my outcome. And for all the reasons I've set out, I uphold this complaint.

### **Putting things right**

I see no reason to change my mind about how to put things right on the basis I set out in my provisional decision.

### **My final decision**

I uphold Mr F and Mrs F's complaint.

To put things right:

1. Danske Limited trading as Danske Bank should provide details of the two-year fixed interest rate products Mr F and Mrs F could have taken out if they'd applied at the end of May 2022 and put the rate in place with effect from 1 July 2022.
2. Mr F and Mrs F should select the product they would have applied for (the new product).
3. Danske Limited trading as Danske Bank should then calculate and pay Mr F and Mrs F

- a. the difference between the interest they would have paid at the new product rate and the interest they did pay at the SVR from 1 July 2022 to 18 July 2022 inclusive; and
- b. the difference between the interest they would have paid at the new product rate and the interest they will pay at the rate of 2.81% for the period 19 July 2022 to 1 July 2024 inclusive.

Danske Limited trading as Danske Bank should pay Mr F and Mrs F £250 for the distress and inconvenience they've suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 27 September 2023.

Julia Wilkinson  
**Ombudsman**