

The complaint

Ms M complains that Erudio Student Loans Limited didn't defer repayments on her loan accounts.

What happened

Ms M had three student loans. She took out the first loan in 1994 and then a further loan in each of the two subsequent years. She says she was entitled to defer repayments on the loans because her income was below the threshold set out in the loan agreements.

Ms M says she first experienced difficulties in 2015 which was shortly after the loans were taken over by Erudio. She says that Erudio failed to send out the deferment forms to her at the address she was living at. She says she was earning below the threshold set out in the agreement, so she was entitled to defer repayments. But she says that Erudio has placed her account in the hands of debt collection agencies. She says she has experienced a lot of stress because of what's happened.

She complained to Erudio. It said it had taken over the administration of the loans in March 2014. It said Ms M's loan had been in deferment until October 2014. It said it had issued a deferment form to her after it took over the loans and she'd returned this in August 2014, but it was incomplete. It said it had returned the form to her and there'd been subsequent emails and telephone conversations with Ms M where she'd questioned Erudio's requests for security information. But it said she hadn't returned the completed form.

Erudio said Ms M hadn't made any payments to the loans and it had defaulted the loans in May 2016. It had sent a notice of default to her at the address where she was currently living but she hadn't responded. Erudio said that just because her earnings were below the threshold, that didn't mean she was guaranteed a deferment. So, it said she would still have needed to apply for the deferment. But, she hadn't returned the form.

Erudio acknowledged that its service hadn't been as good as it should have been. It had sent some letters to an incorrect address in October 2016 and it hadn't returned a call to her after it had agreed to. It offered to pay her £150 by way of compensation for the distress and inconvenience she'd experienced. It also said there was nothing on its file about any health issues she had. But, if she provided further details, it would consider this further.

Ms M wasn't satisfied. She complained to our service. Our investigator looked into her complaint. She thought Ms M had notified Erudio that she was earning below the threshold. And she'd offered to provide further evidence to support this, as soon as it became available. She didn't think Erudio had acted reasonably when it had requested repayments before Ms M had the opportunity to provide the additional information.

Our investigator also noted that Erudio didn't send any further correspondence to Ms M in the period after December 2014 until June 2016. So, she thought it was reasonable for Ms M to have concluded that her application to defer had been successful. She also thought it

wasn't fair or reasonable for Erudio to have defaulted the account when it knew on the balance of probabilities that Ms M was eligible to defer.

So, she said Erudio should reconstruct the account as if the deferral in 2014 had been successful and then consider whether deferral should also have been offered in subsequent years. Any default or negative marker in Ms M's credit file should be removed. She didn't think Erudio should have to pay Ms M any further compensation, other than the £150 it had already offered.

Erudio didn't agree. It said Ms M's bank had recalled a direct debit Erudio requested in December 2014. It said this meant she knew that the deferral hadn't been granted. It said Ms M hadn't co-operated with its attempts to get additional information to support her application for deferral. Erudio had sent letters to Ms M in 2016 including a notice of default and other important letters at that time. She hadn't responded to those letters. In these circumstances it said it had acted appropriately, in line with the terms and conditions and the relevant regulations, when it had defaulted the account.

Our investigator didn't change her view. So, the complaint was passed to me to decide. I issued a provisional decision in which I said:

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.

Ms M provided information to our service which includes details about her income during the period since 2014. Having looked at this information, I can see that it appears to support her argument that her income fell below the threshold that would've applied to her deferment application in 2014. But, that doesn't, on its own, guarantee that loan repayments would be deferred. I say this because of what the terms of the loan agreement were.

The loan agreement included the following provision:

“The applicable regulations provide for (a) deferment of repayments (from a date and for a period determined by us under the applicable regulations) if you satisfy us that your gross income (ignoring certain disability-related benefits) for a month does not exceed a sum prescribed by the applicable regulations and that your gross average monthly income during the three succeeding months will not, or is unlikely to, exceed that sum - details of these arrangements being available from us after you cease to attend your course and (b) (at our discretion) later commencement or deferment of repayments, or an increased number of payments of lesser amount, if you receive certain types of disability-related benefits. In such cases we may vary the amounts of monthly repayments and/ or the dates on which those amounts are repayable, and will notify such variations to you.”

This makes clear that there was a right to defer repayments, but it was dependent on satisfying the lender about certain matters including gross average monthly income in the three succeeding months.

So, I think Erudio was entitled to ask Ms M to provide information to it about this matter. It sent her a deferment application form in August 2014. She filled this in. I've looked at the form Ms M completed. Sections 4 - 7 asked her to provide information about her income from employment, savings, benefits and other sources. She mentioned temporary employment in Section 4 – including details of her employer. She indicated she had no other income.

Section 9 of the form required her to certify and warrant her total gross monthly income from sections 4 to 7 of the form. Ms M didn't do this. Instead she inserted additional wording to say that the information about her income wasn't available yet as her contract was in the process of being finalised.

The declaration at the end of the form included the following wording:

"I understand that Erudio Student Loans will rely on the certificate and on the information provided in this form and accompanying evidence to support it in considering my application to defer repayments."

The form was dated 11 October 2014.

Having considered the information on the form, I don't think it was unreasonable for Erudio to decide not to immediately agree to defer the loan repayments until it received additional information to support the application.

The previous loan deferment had ended on 19 October 2014. So, payment would've been required in November 2014 unless the deferment application was successful. No payment was made, and a letter was sent to Ms M to inform her about the arrears.

Ms M appears to have contacted Erudio. It says it needed her to answer certain security questions before it could respond. She wasn't willing to do that because she says she was concerned about how safe it would be to provide this sort of information over email. Ms M subsequently told Erudio the reason for this was because her computer security had been compromised at that time. So, I can understand why she was reluctant to answer the security questions.

There is a note on Erudio's files stating that it needed further information to process the deferment application. There's also a note about Ms M's reluctance to answer security questions. But, it doesn't appear Ms M was informed about Erudio's requirements for further information to be sent to it to support her deferment application. No formal correspondence was sent to Ms M about the outcome of her deferral application.

A further payment was missed in December 2014 and another letter was sent to Ms M. She again contacted Erudio but again wasn't willing to answer the security questions. Ms M says she didn't hear anything further after this date.

Ms M says she contacted Erudio about making an annual deferment application in 2015. Erudio has no record of this and I've not been provided with any evidence to support what Ms M has said.

At this stage (December 2014), in light of what happened, I would've expected Erudio to have sent Ms M a letter to explain what it needed her to provide to

support her deferment application. And, I would've expected it to clearly inform her that her deferment application was unsuccessful in the meantime. So, I understand why Ms M says she thought her deferment application had been successful and why she didn't make any payments. I'll comment further about this below.

It is the case that Erudio didn't send any further letters to Ms M until December 2015 – almost a year later. Further letters were sent in May 2016 to confirm that the account was in arrears and a formal default notice was sent later that same month.

I can see Erudio did try to contact Ms M in April and May 2016 – but this wasn't successful. It appears that Erudio didn't have an up to date telephone number for Ms M.

As mentioned above, after December 2014, the next correspondence to Ms M was dated December 2015. There was then a further gap until May 2016 when arrears letters were sent and very soon after that a notice of default was issued. So, there's no evidence to indicate that Erudio provided regular updates to Ms M to inform her about the arrears. There's also nothing to indicate that Erudio tried to find out anything further about Ms M's circumstances. It didn't follow up on her 2014 deferment application.

Erudio has provided evidence to show that the notice of default was sent to Ms M at the correct address. The notice of default is a formal notice. It made clear to Ms M the situation regarding the arrears on her loans and the action she needed to take to avoid the accounts being defaulted and reported to credit reference agencies. Ms M didn't respond to that notice. Further letters were issued on 1 June 2016, 25 June 2016 and 5 August 2016, to confirm the sum in arrears and to terminate the loan agreements. Those letters were also sent to Ms M's correct address. But, she didn't take any action.

It wasn't until the account was passed to debt collection agents that Ms M contacted Erudio to explain that she was having financial difficulties. That contact was November 2016. Ms M explained that the address the debt collection agents had for her was incorrect. Erudio was able to check the address and updated all of its systems accordingly. But it's confirmed that the correspondence sent in 2016 – the default notice, the notice of sums in arrears and the termination letter- had been correctly addressed.

I've thought about the fact that Ms M didn't respond to any of these formal notices until around November 2016 after she'd been contacted by debt collection agents appointed by Erudio. But, I don't think, despite getting the default notice, Ms M fully appreciated the seriousness of the situation until that time. And, although Erudio has shown that it sent a notice of default to her, I'm not satisfied, taking everything into account that sending a formal default notice was enough to fully inform her about the outcome of her deferment application and the consequences of not having made payments.

In reaching that view, I've taken into account the limited correspondence she received in the period since December 2014. I'm also mindful that, having looked at the information Ms M provided to us, it's likely she would've qualified for deferment of her loan repayments throughout this period. So, I think she believed, albeit mistakenly, that her loan repayments had been deferred and she didn't owe anything on the loans.

Having considered all of the information provided to me, I'm currently not persuaded, on balance, that Erudio has acted fairly and reasonably in this case. I say this for mainly the following reasons:

- *Erudio could have done more to let Ms M know the outcome of her deferment application in 2014. I would've expected it to have formally written to her to tell her the application was unsuccessful, clearly inform her what she needed to provide to support the application and warn her about the consequences of not providing that information. It didn't do this.*

She tried to contact it but was concerned about the need to answer security questions. The fact that she'd tried to contact it but was unwilling to answer security questions was recorded on Erudio's systems – but no action was taken to make Ms M aware of what she needed to do. In these circumstances, I think the onus was on Erudio to contact her by letter and formally set out its decision.

- *Erudio could have done more itself to try to verify the information she provided on her 2014 deferment application – she'd provided details of her employment. It doesn't appear to have tried to verify the information with the employers listed. The deferment application declaration, which Ms M signed, gave it the right to make enquiries of this nature when considering the application. And, if it had verified the information Ms M provided on the form it was likely she would've qualified for the deferment. I think it's fair and reasonable to have expected Erudio to have looked again at everything it had on its file – to see if it needed to make further checks of Ms M's status - before taking formal action in May 2016. It didn't do that.*
- *During the call in November 2016 Ms M told Erudio about certain undiagnosed health issues she had which affected her daily routine. She said she'd already notified Erudio about these issues previously.*

Erudio has provided a copy of its file which shows that there was a marker on Ms M's file to indicate that her account was under "care" since 2011. This supports what Ms M said during the telephone call. She said she'd made Erudio aware some time previously about her health issues.

In these circumstances, where a marker such as this was present on her file, I would've expected Erudio to do more to try to make contact with Ms M, to find out about her current circumstances, before defaulting her account.

- *Erudio's contact with Ms M, after December 2014 was very limited. It sent a letter in December 2015 and then took formal action in May 2016 after sending two further letters at the start of that month.*

We expect a business to treat a customer experiencing financial difficulties positively and sympathetically. That would've required Erudio to have done more than send limited correspondence, with significant periods of no correspondence being sent, before taking formal action.

- *After it defaulted the account, Erudio appointed debt collection agents. It provided them with an incorrect address. It's acknowledged its error*

regarding this. So, it was November 2016 before Ms M spoke to Erudio. I've listened carefully to that call. Ms M explained that she had undiagnosed health issues which affected her daily routine and could've impacted on her following up issues with her loans. I can see that there was a marker on Ms M's file to show that her account was marked as "under care" since 2011.

During the call Erudio told her on several occasions that her loans had been terminated and so deferment wasn't an option. It told her if she wanted to raise a dispute about not having been given the option to defer, she'd have to contact the debt collection agents.

Erudio said it would look into the matter further to see if it could do anything for her. But, after doing so, it said any dispute about her option to defer would have to be progressed through the debt collection agency. It reiterated that deferment was not an option as the account was already terminated.

At this time, November 2016, Erudio brought the account back under its own administration. But, it doesn't appear to have spoken to Ms M further about her circumstances at that time or investigated what she said about her deferment application. There's also no record that it sent her any further correspondence until some two years later – in November 2018. I don't think that was fair or reasonable.

What should be done to put things right?

In these circumstances, I think Erudio should put the loans back into the position they would have been in at 19 October 2014 when the last deferment ended.

It should then work through each subsequent year by assessing whether Ms M qualifies for deferment under the relevant regulations. Ms M should provide it with whatever information it reasonably requires to enable it to consider her applications for deferral during this period. And, Erudio should remove any adverse markers, including any default, it has registered with credit reference agencies in the period since October 2014.

I've also considered the distress and inconvenience Ms M has experienced. Erudio offered to pay her M £150 because it sent some letters to an incorrect address. Our investigator didn't think it should be asked to increase this amount. And having considered the actions I'm requiring Erudio to take to restructure the loans from October 2014, I don't intend to require it to have to pay her any further compensation to resolve this complaint.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint about Erudio Student Loans Limited. I intend to require it to take the following actions to resolve this complaint:

First

- put the loans back in the position they were in at 19 October 2014;
- ask Ms M to submit deferment applications for each year since that date and determine whether, under the relevant regulations, such applications should be successful; and

- *restructure the loans based on the outcome of the determination of the deferment applications for each year since October 2014.*

Second

- *remove any adverse information, including any defaults, it has registered at credit reference agencies about Ms M's accounts with it.*

Third

- *if it has not done so already, pay Ms M £150 for the distress and inconvenience she experienced when it sent letters to an incorrect address.*

Erudio responded to my provisional decision. It said there were a few aspects of the provisional decision which it wanted to query before issuing a full response. It raised a number of queries which I will summarise below:

1. The provisional decision had stated that no payments were received. Erudio said this was incorrect since Ms M did make a payment in December 2014 but recalled it and then cancelled her direct debit. It said this was important because only Ms M could've done this. This meant she knew her account was in arrears and her deferment application had been unsuccessful.
2. It said it had responded by email to Ms M to tell her that it could not proceed with the deferral application until she answered certain data protection questions. It said this was a further indication she was aware the deferment application had not been processed.
3. Ms M had told our service she made a deferment application in 2015. Erudio said this showed she was aware her account was not in deferment.
4. Erudio said that even if the account had been placed in deferment in 2014 it was likely it would have terminated in 2015 as no deferment contact or payment was received.

I provided responses by way of clarification to the queries Erudio had raised. Erudio made no further comment about those clarifications.

Erudio did raise a further query regarding the complaint. It said the deferment ended on 19 October 2014, but Ms M hadn't raised her complaint until 11 August 2020. She'd contacted it in 2014 and again in 2016. So, Erudio asked whether the complaint was time barred under the rules that apply to us. They referenced part of these rules which say that a complaint has to be referred to us within six years of the event being complained about, or, if later, three years from the date of when a complainant became aware (or ought to have become aware) they had cause for complaint.

Our investigator responded to this query. She said that Ms M's complaint had been received by our service on 30 December 2019. The deferral on the loan had ended on 19 October 2014. So, Ms M had brought her complaint within six years of the event complained of. This meant it was within the six year period set out in our Rules and our service was able to consider it.

Ms M also responded to my provisional decision. She said she'd been caused a great deal of hardship as a result of Erudio's action. This included being turned down for a loan because of the adverse information on her credit file. She thought Erudio should provide a statement she could supply to the lender so that it could reprocess the loan application.

So, I now have to make a 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.

Before issuing my provisional decision I had considered all the evidence and arguments that'd been made available to me and even though I didn't specifically comment on everything, I had taken all of that information into account.

In response to my provisional decision, Erudio asked for clarifications. I'll comment on each of the points it raised:

1. *The provisional decision had stated that no payments were received. Erudio said this was incorrect since Ms M did make a payment in December 2014 but recalled it and then cancelled her direct debit. It said this was important because only Ms M could've done this. This meant she knew her account was in arrears and her deferment application had been unsuccessful.*

I remain satisfied that no payments were applied to the account in December 2014. The direct debit referred to was recalled by Ms M.

The payment in December 2014 was received as a result of a direct debit collection arranged by Erudio. It was a condition of the loans that it held Ms M's bank details and it would collect payments by direct debit.

Ms M did recall the direct debit. But I don't think that meant she knew or accepted the outcome of the deferment application. She was simply not agreeing that the payment should be made.

In my provisional decision, I said I'd have expected Erudio to send Ms M a letter setting out the outcome of her deferral application. I don't think that she should've been asked to infer the outcome of that formal application by noting that a direct debit collection had been attempted. The fact that the direct debit collection was recalled by Ms M doesn't change my view about that. And, when the direct debit collection was recalled in December 2014, Erudio didn't send any further correspondence to Ms M until December 2015 – a year later. It was this failure by Erudio to do enough to let Ms M know the outcome of the deferment application and the fact that it only sent limited correspondence to her about her arrears after December 2014 which was part of the reasoning why I provisionally decided to uphold her complaint.

2. *Erudio said it had responded by email to Ms M to tell her that it could not proceed with the deferral application until she answered certain data protection questions. It said this was further indication that she was aware the deferment application had not been processed.*

I've looked again at the information Erudio sent to our service. There are two notes on Erudio's file about this point.

The first is dated 5 December 2014 which says "DPA email sent following potential contact from C."

The second is dated 16 December 2014 which says “DPA fail. Query regarding why should have to confirm DPA. Advised without confirmation we can’t proceed”

The references to “DPA” are references to data protection legislation.

There are no copy emails on the file – so it’s not clear what the email referred to on 5 December 2014 said. The note doesn’t comment on the deferment application – nor does it say that the email referred to stated the deferment application was unsuccessful.

The note on 16 December 2014 doesn’t refer to an email being sent. It does suggest Ms M was told that without confirmation of “DPA” it couldn’t proceed. But again, it’s not clear whether that meant it couldn’t proceed with the call/correspondence by email, or it couldn’t proceed with the deferment.

In any event, my view remains the same. I would’ve expected Erudio to put the matter beyond doubt and write to Ms M – in December 2014 or shortly thereafter to make clear to her that her application had been unsuccessful. In fact it didn’t write to her again until December 2015 – a year later.

3. *Ms M had told our service she made a deferment application in 2015. Erudio said this showed she was aware her account was not in deferment.*

As I said in my provisional decision, I hadn’t seen any evidence to support what Ms M said about making a deferral application in 2015. But Erudio says the fact that she thinks she may have made such an application supports its view that she was aware her account was not in deferment.

It was the case that deferral applications were made once each year. So, I don’t agree with Erudio when it says that any attempt to make a deferral application shows Ms M was aware the account was not in deferment. Whether the account was in deferral or not – it would’ve been entirely possible for Ms M to make such an application in 2015.

4. *Erudio said that even if the account had been placed in deferment in 2014 it was likely it would have terminated in 2015 as no deferment contact or payment was received.*

I don’t think it does follow that if the account had been placed in deferment in 2014 it’s likely it would’ve terminated in 2015. If the account had been deferred in 2014, it wouldn’t have been in arrears and there’d have been no need for Ms M to make a payment or contact Erudio. It is also the case that Erudio would’ve written to Ms M in 2015 to see if she wanted to make a further deferral application – that’s what had happened in previous years. So, I think that’s what would’ve happened in 2015 too.

I’ve also noted the query about whether the complaint may be time barred. I agree with the clarification our investigator sent to Erudio about this point. The complaint has been brought to our service within six years of the event complained about. So, it is a complaint that our service can investigate.

I’ve noted the hardship Ms M says she’s experienced as a result of Erudio’s actions. I’m very sorry to read about what she’s told us. She says she experienced hardship as a result of a loan application she made in the summer of 2020. She says that application was turned down because of adverse information Erudio had entered on her credit file. In my provisional decision I said that I thought Erudio should remove that adverse information. That won’t

change the decision that was made in the summer of 2020, nor does it mean that any new applications will necessarily be successful – as any applications will have to be considered on their own merits based on a prospective lender’s own criteria. But it may assist Ms M should she wish to ask for her loan application to be reconsidered.

Having considered the points raised by Erudio for clarification, and the responses received from Ms M, I have not changed my view that, for the reasons set out in my provisional decision, this complaint should be upheld. I also remain of the view that the actions I indicated Erudio should be required to take to resolve this complaint are fair and reasonable.

My final decision

For the reasons set out above, I uphold this complaint about Erudio Student Loans Limited. I now require it to take the following actions:

First

- put the loans back in the position they were in at 19 October 2014;
- ask Ms M to submit deferment applications for each year since that date and determine whether, under the relevant regulations, such applications should be successful; and
- restructure the loans based on the outcome of the determination of the deferment applications for each year since October 2014.

Second

- remove any adverse information, including any defaults, it has registered at credit reference agencies about Ms M’s accounts with it.

Third

- if it has not done so already, pay Ms M £150 for the distress and inconvenience she experienced when it sent letters to an incorrect address.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 2 August 2021.

Irene Martin
Ombudsman