

The complaint

Miss M complains that Erudio Student Loans Limited has unfairly terminated her loan account and passed the outstanding debt to a third party to collect.

What happened

Miss M had a mortgage-style student loan which Erudio bought from the original lender. Miss M had successfully deferred the student loan for several years. But after Erudio wrote to Miss M in 2021 to remind her about the deferment, Miss M didn't reply.

As Erudio didn't receive any reply, it ended the deferment period and asked Miss M to start repaying the student loan. Erudio sent various letters to the address it held on file, including letters telling her about the arrears and default. Miss M says she didn't see these letters, so the account defaulted and Erudio passed it to a third party which I will refer to as "C" to try and collect the outstanding debt.

Miss M says that in August 2022, she started to receive daily contact from C. She emailed Erudio to say that despite notifying it about a change of address in September 2021, she'd not received any reply. Miss M wanted to continue deferring the loan and thought that Erudio should write the balance off. Miss M says Erudio didn't provide the documents she asked for.

After considering Miss M's complaint, our investigator didn't think Erudio was at fault. In summary she said:

- Erudio stopped sending deferment reminders by email in 2021
- The evidence showed Erudio wrote to Miss M in October 2021 to say that the deferment period had opened
- Erudio sent Miss M further reminders and after it didn't receive any response, it issued a default notice before terminating the account
- Miss M didn't use a valid email address when she emailed Erudio on 10 September 2021 to change her address
- It was reasonable for Miss M to realise that Erudio hadn't responded to her change of address
- Miss M should have been aware of the need to defer given she'd done so several times before
- £50 compensation for Erudio's delay in dealing with her subject access request (SAR) was fair.

Miss M was unhappy with the investigation outcome. Miss M said:

- it was reasonable to use the regularly arriving emails as a reminder of deferment

- there's a precedent for Erudio contacting customers by text message or allowing a grace period in certain circumstances, including when a customer has moved address
- she's not seen any evidence that Erudio sent post to her previous address and had arranged with her landlord to forward post to her current address. Any destruction of mail is a crime
- the email she used for Erudio in September 2021 was saved in her email system as one she'd previously used
- she wrote to Erudio so even if she used the wrong email address, there was no reason why it shouldn't have her current address on file.
- £50 wasn't fair compensation but that as this related to her SAR, it wasn't relevant to her complaint about passing the debt to a debt collection business without her knowledge
- when she first signed her student loan agreement, it was regulated by the Consumer Credit Act but then the 1998 Student Loan Regulations replaced the key terms leading her to think her complaint should be referred to the independent assessor rather than the Financial Ombudsman Service
- The debt is state barred
- The FCA handbook says that if a customer fails to make an occasional payment, the lender should allow these payments to be made within the original term of the agreement

Our investigator sent Miss M a second investigation outcome to deal with the further information she provided. Our investigator said:

- Erudio had shown it sent deferment reminders to the address it held on file and that Erudio wasn't responsible for the delivery of these letters
- Erudio had no record of post being returned as undelivered
- There was no evidence of Erudio giving Miss M the email address she used in September 2021 and that Erudio's records showed Miss M previously used the correct email address
- Given Miss M's concerns about Erudio's poor service, it wouldn't have been unreasonable for Miss M to follow up on her change of address when she didn't receive a response
- The Financial Ombudsman Service doesn't have the power to decide that a debt is statute barred so the investigator couldn't tell Erudio not to pursue repayment of the debt or to not use a third party debt collector.

Miss M remains unhappy with the investigation outcome. She says she tried to access the portal on 1 September 2021 after receiving a letter but couldn't access the portal. Miss M provided a copy of a change of address form which she says she sent to Erudio by post on 2 September 2021.

Miss M says that Erudio has failed to respond to emails over several months in late 2022

and 2023. She thinks this shows that any fault in communication lies with Erudio rather than herself.

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.

In cases like this where the evidence is inconclusive or contradictory, I reach my decision based on the balance of probabilities. That means I'll look at all the available evidence and decide what I think is most likely to have happened.

Although Miss M says Erudio should have known she'd moved, I don't agree. The email that Miss M sent in early September 2021, was sent to a non-existent email address. So, I can't find that Erudio received it and didn't action her request. I appreciate Miss M says the email address was saved in her email system but it isn't one that Erudio has ever used. I also note that Miss M had previously sent emails to the correct address so should have reasonably been aware of where to send the email.

Given the importance of Erudio having an up to date address for Miss M, I also think it would have been reasonable to expect her to follow up on the email of 10 September 2021. Particularly as the email that Miss M sent asked Erudio to confirm it had changed her address on the system or provide information about what else she needed to do.

I can see Miss M has told our investigator that she'd made other attempts to update her address without success. Miss M provided a copy of a change of address form which she says she completed and returned to Erudio on 2 September 2021. Miss M's handwritten comments on the form refer to previous attempts to update her address and an unsuccessful portal log in attempt. She also expresses concern that deferral request forms may have gone to her previous address.

I don't wish to appear disrespectful to Miss M but it seems unlikely that the change of address form was returned to Erudio on 2 September 2021. This is because the form was attached to a statement dated 1 September 2021. Even if the statement had arrived the next day, based on what Miss M says about her landlord forwarding post to her – I can't see how she'd have received the statement on 2 September 2021.

Regardless of what actually happened, Erudio doesn't have any record of receiving the returned address form. It also doesn't have any record of any earlier emails or calls from Miss M about her address. I would also have also reasonably expected Miss M's email of 10 September 2021 to reference the earlier failed attempts to update her address.

If Miss M did complete and return the change of address form in early September 2021, it shows she was aware of the upcoming deferral window. So, I think it reasonable to assume that Miss M would take steps to ensure she completed the deferral process – as she'd done several times previously. Although Erudio previously sent email reminders – I don't think this means it was obliged to continue to do so.

Overall, I don't find it unreasonable that Erudio continued to write to Miss M at the address it held on file. I appreciate Miss M doesn't think Erudio did this as her previous landlord would have forwarded the letters. But the evidence from Erudio is that the letters were sent. It may be the case that Miss M's former landlord didn't forward them on but I don't consider this was the fault of Erudio. It follows that I don't find Erudio made a mistake when it defaulted the loan or when it passed the debt to C.

This service can't declare a debt to be unenforceable or statute barred – this would be for a court to decide. With that said, even if it were to be found that the debt wasn't enforceable, that doesn't mean the debt wouldn't still exist. It's just that Erudio wouldn't be able to take certain legal action to recover it.

As I don't find Erudio made a mistake with the handling of the loan account, I don't require it to write the debt off. As C is now managing collection of the outstanding debt, I recommend that Miss M makes contact if she hasn't already done so to try and work out an appropriate repayment plan.

On the question of jurisdiction, my understanding is that Miss M's loan was a regulated consumer credit fixed term student loan rather than an income contingent student loan. This means that the Financial Ombudsman Service is able to consider Miss M's complaint.

I understand that my decision is likely to disappoint Miss M but for all the reasons outlined above, I don't uphold her complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 9 October 2023.

Gemma Bowen
Ombudsman