

complaint

Miss H has complained that Erudio Student Loans Limited treated her unfairly regarding her student loan.

Miss H has been represented in bringing her complaint. But for clarity, I'll refer to all submissions made on her behalf as having been made by her directly.

background

Miss H has a student loan account with Erudio. The account had previously been held by a third party, but was later transferred to Erudio. She feels it should've deferred her repayments automatically, as she's explained she was below the income threshold for needing to make them. She'd like her deferment to be backdated and the arrears removed.

Our adjudicator didn't recommend that the complaint should be upheld. She felt it had been reasonable of Erudio to require Miss H to fill in a deferral application form, and provide evidence she was below the threshold. As this didn't happen in time, Erudio has only agreed to backdate the deferment by three months. She felt this was fair.

Miss H disagreed. In particular, she felt legal advice needed to be sought by the adjudicator and/or ombudsman before a decision could be reached. She raised a number of points about the legality of Erudio's actions. She feels it can't apply arrears, if she was below the threshold, so the debt wouldn't have been payable. She also feels the loan agreement wasn't valid between 2014 and 2015, so the debt unenforceable, meaning Erudio couldn't collect any amounts during that period. This is because she feels Erudio didn't send out details of a change in the threshold at that time. She's also explained it didn't get documents from the third party, meaning they had to be provided again. She feels Erudio is seeking to obtain money by threats, and make people pay money before it's due. She also feels Erudio delayed the deferment.

The complaint's now been passed to me for my final decision.

my findings

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

First, I should explain that I'm empowered to make decisions as an ombudsman. This means I take into account the law, relevant industry guidance, and what I think is fair and reasonable. I understand Miss H's strength of feeling, but I'm not required to seek legal advice in order to do so. Further, this service isn't a court. I look at each complaint taking into account what I feel is fair.

I've looked carefully at Miss H's complaint. I understand why she's concerned that arrears have been applied to her account, when she's explained she was below the threshold for making repayments. I also understand that she feels it's unfair that Erudio required her to apply for deferment, but she's explained she hadn't needed to with the third party. She feels her repayments should've been automatically deferred.

Miss H has raised a number of legal points, as she feels Erudio's actions are contrary to the law, and the intentions of Parliament. Although I've carefully looked at the points raised, I

think it reasonable that Erudio wanted evidence that Miss H was below the threshold. Although a person may be eligible one year, that doesn't mean he or she will be the next. I think it was fair of Erudio to want to check Miss H was still eligible for deferment. I accept the third party may not have done so, but I don't think that means Erudio behaved unfairly. Nor do I think it asked for information that would have been difficult for Miss H to supply.

I've looked at Erudio's correspondence. I can see it sent Miss H a deferment application form in 19 May 2015, and her deferment period was due to end on 14 July 2015. So she had two months to return the form and accompanying information, which I think is a reasonable amount of time. I appreciate she was out of the country, but as it doesn't seem she gave Erudio any new contact details, I don't think it's responsible for that. Further, when Miss H later contacted it for it to resend the forms, it explained that it could backdate the deferment by three months, once it was accepted.

I can see that Miss H sent the form back in October 2015, but it didn't have all of the information Erudio had asked for. This meant it wasn't accepted until April 2016, when everything had been received. Erudio then backdated the deferment by three months, but not back to July 2015. This meant arrears had accrued. I accept this is upsetting for Miss H, as she's explained she would've been eligible. But Erudio made it clear that it required the evidence, and gave reasonable deadlines. I don't feel it was threatening, or that it delayed the process by asking for unreasonable evidence. Unfortunately, arrears will accrue if an account isn't deferred, and this is what happened here. I don't think it's onerous to require people to show their eligibility for deferment. If not, arrears accrue. I think backdating the arrears by three months is also reasonable.

Miss H has also explained that she feels the agreement was unenforceable for a period. Regardless of any strict legal position, I don't think I need to look into that further. This is because I don't think there was any detriment to Miss H in not being told the revised threshold. I feel it's my role to put things right where a person has suffered a loss. Here, I don't think the threshold issue caused Miss H any loss, or affected her position.

I know Miss H feels strongly about this matter. But I don't think it unreasonable to be asked to prove you qualify for deferment. In this case, I think Miss H was given ample time to do so, especially as Erudio will backdate deferments by three months. I think it was clear arrears would accrue if the forms and evidence weren't submitted on time, and I think Miss H could reasonably have done so.

I also note that as Miss H's account is now in deferment, Erudio isn't seeking any repayments. But it's advised that if there are arrears on the account that aren't cleared, it affects her eligibility for the loan to be written off for age-related reasons in the future, or possibly affects other cancellation rights. So I don't think Erudio is threatening Miss H to make repayments. It's not requiring any now, but has set out the position for the future.

So regardless of any technical legal issues, I've also considered what I think to be fair and reasonable overall. And I don't think Erudio has acted unfairly.

my final decision

For the reasons given above, it's my final decision not to uphold this complaint. I make no award against Erudio Student Loans Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 28 March 2017.

Elspeth Wood
ombudsman