

complaint

Mr P complains Erudio Student Loans Limited ("Erudio") won't cancel a loan or repay him money he says he's overpaid.

background

Mr P complained to Erudio when he found his bank had been making payments, against his wishes, for student loans taken out between 25 January 1995 and 27 November 1996. Mr P said he thought he'd stopped his bank making payments when he reached 50 in 2014, as it was his understanding the loan was cancelled at that age.

Erudio didn't uphold his complaint. They said they'd taken over administration of Mr P's loan in March 2014 but their predecessor had obtained a County Court Judgement ("CCJ") on 13 December 1999. This was due to the lack of any deferment or payment on the account and arrears accruing. Erudio said under the terms of the loan once a CCJ was issued the balance became due in full and the deferment and cancellation rights of the loan no longer applied. They said the last payment they'd received was on 19 October 2016. And they didn't agree that the contact they'd had with Mr P since then about payment was either excessive or aggressive as Mr P had said. Mr P brought his complaint to us.

Our investigator didn't uphold the complaint. He said although the loan did have an option to defer payment his understanding was there was no deferral agreement in place so Mr P was expected to make payments on the loan. As payments weren't made arrears accrued and it appeared Mr P was unable to cancel or write off the loan due to his age if there were arrears.

Mr P didn't agree. He said his account was never in arrears as far as he was aware and decisions had been made by Erudio's predecessor with no attempt to contact him. He said during that time he was on a very low income and below the threshold required to make payments. Mr P said once he made arrangements to pay he's never missed any, even during a lengthy period of unemployment in 2012. He said he'd stuck to the terms of the loan and had no evidence of the actions of Erudio's predecessor from Erudio.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the conclusion that this isn't a complaint which I can properly uphold. I'll explain why.

Mr P's loan was for 60 equal repayments over a term of five years. The income threshold that triggers repayment is when the person earns more than 85% of the national average full-time salary and is set annually by the government. It's the responsibility of Mr P as borrower to make the required payments each month to the loan administrator - they aren't deducted automatically through salary. Repayments *can be deferred* while the borrower is earning less than the threshold income. But *deferral isn't automatic*, and needs to be applied for each year.

If the borrower is earning below the income threshold it's their responsibility make a deferment application to the loan administrator, which would mean they don't have to repay

anything for the next 12 months. And each year the borrower wants to defer, they need to complete a new application form and submit it within the required timescale. I don't doubt what Mr P's told us about his employment situation round the time of the CCJ. And I think it's very likely that, had he applied for deferment(s) around that time, he would've been successful. But there's no evidence Mr P did so.

The term of the loan allowing the remaining balance to be eligible for cancellation when the borrower get to 50 applies only if there have been *no arrears* on the account. But here the cancellation wasn't available as the loan was *in arrears*. And I'm satisfied that was the case as without evidence of arrears the court wouldn't have granted Erudio's predecessor the CCJ. I know Mr P doesn't think that's correct and says he has no knowledge if the CCJ. But as the investigators explained we can't go behind that CCJ. And, although I note Mr P's concerns about the limitation period it's not for this service to say whether or not a debt is legally enforceable – only the courts can do that. So I can't comment on the technical issue of whether Erudio are entitled to recover payment of the debt from Mr P, or if it's now statute barred.

Given how strongly Mr P feels about what's happened he may want to pursue the matter further through other routes. But my decision brings to an end what we – in trying to resolve his dispute with Erudio informally – can do for him. I'm sorry if this disappoints Mr P.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 April 2019.

Annabel O'Sullivan
ombudsman