

complaint

Mrs P complains about the way Erudio Student Loans Limited has handled her application to defer repayment of her loans. She also says that it failed to provide the level of customer services that it should have.

background

Mrs P took out three student loans taken with the original owner between 1990 and 1993. The loans were sold to Erudio in 2013. Mrs P is unhappy with Erudio's deferral process, in summary she says;

- Erudio is not entitled to report her deferral information to the credit reference agencies. It does not have her consent as required by the Data Protection Act 1998 (DPA) to report her deferred loans or search her credit file.
- Erudio incorrectly told her that she was in breach of the terms and conditions, if she did not have a direct debit arrangement set up with it, during deferral.
- Erudio gave her incorrect information about when her deferment would start.
- Erudio have not provided her with a legible copy of the original agreement.

Erudio apologised for providing Mrs P with the wrong information about her deferment date and the requirement to have a direct debit mandate in place.

Our adjudicator looked at the complaint; he agreed that Erudio had given Mrs P incorrect information about having a direct debit arrangement in place and when her deferral would start. He did not uphold her other complaints. He suggested that Erudio pay Mrs P £150 to reflect the distress caused.

Erudio accepts the adjudicator's recommendation, Mrs P does not. She maintains her stance that Erudio cannot legitimately search or report to her credit file. In addition she says that as Erudio has been unable to provide her with a true copy of the original agreement, the loan agreement is unenforceable. She says that Erudio has caused her unnecessary stress by not explaining that it intends to record deferrals as 'no payment due', which is unlikely to have a negative impact on her credit rating.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done this, I partly uphold the complaint and have increased her compensation award.

Mrs P provided a detailed response to the adjudicator's view. I hope she does not think I'm being dismissive, if I do not respond to every point or answer every query raised. My role is to make a final decision based on all of the evidence available, looking at the complaint as a whole.

Erudio is entitled to report Mrs P's deferral to credit reference agencies

Mrs P considers that Erudio is acting unfairly because it takes a different approach from other companies. She says it is not right that borrowers will be treated differently depending on when they took out their loans. In addition she tells us that the relevant legislation prohibits Erudio from sharing her deferral information with the credit reference agencies.

But I do not think that Erudio has to follow the operational practices of other companies. And I think it is entitled to share her deferral information.

As Mrs P's loans were taken out before 1998, I do not think that the fair processing notice applies, as from what I have seen the loan agreement gives it the right to report her student loans to the credit reference agencies. I don't think there is anything in the agreement which would have stopped the original loan company from providing information about deferrals to the credit reference agencies; it's just that it chose not to.

In recent years it has become accepted that credit files should reflect a full picture of someone's financial commitments, to support responsible lending and borrowing. Whilst I appreciate that Mrs P is unhappy with Erudio's change in approach to the deferral process, based on what I've seen I think that Erudio is entitled to report Mrs P's deferred loans to the credit reference agencies; although, Mrs P may wish to challenge this interpretation in the courts.

Mrs P is unhappy that Erudio has not told her when it will report her deferrals. Erudio has informed us that it intends to start reporting information to the credit reference agencies at the end of 2015.

Mrs P also raises several data protection issues, in particular she does not feel that Erudio's plan to carry out credit searches and report her deferrals complies with the fair processing requirements of the DPA. This service is unable to determine these issues, which should be raised with the Information Commissioners Office.

Erudio explained that it did not intend to record a deferral status in a way that would negatively impact future borrowing

Erudio has confirmed that it intends to start reporting deferred loans as payment holidays, under the option of 'no payment due'. We have also spoken to the credit reference agencies who have told us that it is unlikely that lenders will view this negatively.

Mrs P says it is misleading for Erudio to use the term 'holiday payment' to describe the deferral status, because from her research the only reference she could find to this relates to financial difficulties, which would be viewed negatively by lenders. She says that she would have avoided a lot of stress and worry about the impact on her credit score, if Erudio had told her that deferred loans would be reported as 'no payment due'.

In Erudio's final response July 2014 it states "your loans in deferment will not appear as a default, arrears or as a payment arrangement in place, all of which may impact your ability to obtain further credit. Typically a deferred loan will appear as a 'payment holiday' which indicates the account is up to date but repayments are deferred for a set period of time".

I think that Erudio were quite clear in telling Mrs P that deferrals would not be recorded in a negative way. Whilst I accept that Mrs P has been worried about the impact on her credit score, I think this resulted from her own independent research, rather than what Erudio told her. The credit reference agencies have confirmed that 'no payment due' is a type of 'payment holiday', so I don't think it was misleading to say that deferred loans will be recorded as a 'payment holiday'. It follows that I don't uphold this part of the complaint.

failure to provide legible copy of the loan agreement

Erudio says that it has been unable to provide clearer copies of the agreements to Mrs P because the original agreements are with the previous owners and it only has the scanned copies on its system. It appears that the most recent copies provided to Mrs P are not true copies of the original, as they do not share the same amount of clauses. I don't think it is fair that Erudio has delayed providing Mrs P with true copies of the loan agreements. So I think that Erudio should now make arrangements with the original owner to get better copies of the loan agreements or provide reconstituted copies of the loan agreements.

I note what Mrs P says about the loan agreements being unenforceable, because she has not been provided with true copies. However, I do not have the power to declare credit agreements unenforceable, only a court can decide this. Our approach however is where a customer has had the benefit of money supplied through a loan, it is reasonable for the business to exercise its rights under that agreement.

Mrs P did not receive the customer services that she should have expected from Erudio

There is no dispute that Erudio did not provide Mrs P with the customer services that it should have. I think that Mrs P has been caused some distress by Erudio giving her incorrect information and the delay in providing her with true copies of her loan agreements. In the circumstances, I think that it is fair and reasonable for Erudio to pay Mrs P £200 compensation to reflect the distress caused.

my final decision

My final decision is I partly uphold the complaint and instruct Erudio Student Loans Limited to:

- pay Mrs P £200 compensation for the distress caused.
- arrange with the previous owner to provide Mrs P with clearer copies of her loan agreements or provide her with reconstituted copies of her agreements.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs P to accept or reject my decision before 27 July 2015.

Karen Dennis-Barry
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