

complaint

Mr F complains because Erudio Student Loans Limited have kept information about a loan that was taken out in his name. He also complains that Erudio have passed this information to credit reference agencies.

background

In the mid to late 1990's, three separate student loans were taken out in Mr F's name. The lender was a third party, associated with a government scheme for student borrowing, who I'll call 'A'. Repayment for the loans could be deferred if the borrower completed a form, showing their earnings to be below a specified threshold. Erudio's research with A led them to say the deferral process wasn't completed in 2002, so the loans became payable from that year.

The loans went unpaid and Erudio say A spoke with Mr F in 2005 and arranged for a deferral form to be sent to him. Erudio also say that the deferral form wasn't returned to A, so Mr F was pursued for repayment. Mr F says he didn't make contact with A and disputed that he ever took out the borrowing.

Many years later, in March 2014, Erudio sent Mr F a letter to say that the loans had been reassigned to them from A, and he should contact them to make repayment arrangements. A also sent Mr F a letter on the same day, outlining a refund of interest, due to an error they'd made.

Erudio didn't hear back from Mr F and in November 2016, passed the outstanding debt to a debt recovery agent. But, by September 2018 Erudio had taken the debt back and after tracing Mr F, wrote to him. Mr F wasn't happy and complained to Erudio about them contacting him about the loans, and that they still held information about him.

In their final response, Erudio said that the debt from the loans was now statute barred, which meant they were no longer pursuing Mr F for repayment. But, a record would be kept showing that the loans were unpaid. They also said the debt was assigned to them correctly from A, in line with the terms and conditions of the loans. Furthermore, Erudio explained that as the deferral process was not continued, the repayment of the loan would still be due, despite a borrower passing 50 years of age.

Mr F didn't accept this and referred his complaint to us. One of our investigators looked into the matter and concluded that Mr F took out the loans, and that it was reasonable for Erudio to keep a record of the debt. A different investigator reached a similar conclusion, but added that the debt was transferred to Erudio correctly. He said, Erudio were no longer pursuing Mr F for the debt. So, he didn't think it necessary to ask them to make further concessions because of Mr F's, and his father's, ill health. The investigator didn't find that Mr F had been bullied by Erudio, or that the debt should have been deleted because of his age.

Mr F didn't agree and said as the debt is statute barred, there should be no record of it. He also said he didn't speak with A in 2005. Mr F wanted A's error with the interest in 2014, and the bullying he says he received from Erudio, looked into further.

The investigator didn't change his conclusions, but he explained more about the wording used in A's loan account statements to Mr F. He said if the wording wasn't correct in those statements, then the interest charged, needed to be refunded. The investigator said that this

was the likely reason for the refund. Mr F didn't accept this, and his case has now been passed to me to make a 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.

the loan agreement forms and debt reassignment to Erudio

Erudio have provided us with copies of the three original loan agreement forms. They are signed using either Mr F's first initial and his surname, or his full name. They also include direct debit details to an account in the same name. In addition, I've seen that the addresses used by A match the addresses on the loan agreement forms. Also, I think Mr F has indicated to us that he shouldn't be connected anymore to the debt, due to his age and his health circumstances. Mr F has subsequently brought concerns to us about the refund applied by A, when the debt was transferred to Erudio.

I think the information on the loan agreement forms and the process the borrower had to go through to defer the loans in 1998, 1999 and 2001 means it's unlikely anyone except Mr F, agreed to the borrowing. I think Mr F has told us about other issues to do with the administration of the loans and several reasons why he thinks Erudio should delete the information they hold about him.

I'm not persuaded that this would be the case, if Mr F's concerns were simply about someone else taking out the loans in his name. Taking everything into consideration, on balance, I think it's fair for Erudio to conclude Mr F took out the borrowing from A.

The debt from the loans was reassigned to Erudio in March 2014. Mr F says he's unhappy with A's decision to do this and that he didn't consent to it. Our role is to consider if Erudio treated Mr F fairly when the debt was reassigned, rather than to look into negotiations A had with them about the sale of multiple accounts.

The terms and conditions of the loan agreements say that A could transfer their rights under the agreement to another party without Mr F's consent. I've also considered that when Erudio began to administer the loans, they sent a pack to Mr F to set out their revised terms and conditions and what Mr F should do to make arrangements for the debt. Included in the pack was a letter from A to say that they'd arranged for the reassignment of the debt.

So, in all the circumstances, I think A was able to transfer the debt to Erudio. I also think Erudio treated Mr F fairly by looking to make contact with him about the future of the loans.

the keeping of records after Erudio classed the debt being statute barred

Mr F says the information kept about the loans by Erudio, stopped him from getting finance elsewhere. He says this has prevented him from studying further. I agree that evidence of an unpaid loan, may impact another lender's decision to allow further borrowing. And I sympathise with Mr F, in light of the effect he says this will have on his future plans to study.

Erudio say that the debt from the loans is now statute barred. This means Erudio have decided not to pursue Mr F for the debt. Our role is not to decide whether or not the debt is

statute barred, as that is for Erudio or a court to say. We will look into the fairness of Erudio's decision to retain records of the loans.

The terms and conditions of the loans and the subsequent revised terms sent by Erudio, say that relevant loan information will be kept and if appropriate, passed on to third parties. So, from looking at the terms Mr F agreed to, and Erudio's revised terms, I think there is a provision for Erudio to keep and provide information to parties like credit reference agencies.

I've considered Mr F's wish to take out further borrowing to allow him to study further, and if this means Erudio shouldn't rely on the terms I've looked at. I've concluded that it's likely Mr F did take out the borrowing and that it wasn't repaid. So, I think it's fair that an accurate reflection of what happened is available, so other lenders can use that information in their decision making. Whilst I know Mr F will be disappointed, I think it's fair for Erudio to retain a record of the previous loans. And I don't think what Mr F has told us about his study plans, means Erudio should make an exception.

In all the circumstances, I think it's fair for Erudio to keep information about Mr F's loans and to share that information with the credit reference agencies they use.

Erudio's communication with Mr F

I've considered Mr F's comments where he says Erudio bullied him during a telephone call. He also says Erudio's internal contact notes about him, show they are unprofessional. We don't have a record of the call Mr F refers to. But, I accept he wasn't happy with the content of the call, since any contact with Erudio around the time it happened, was likely to have been about the recovery of the loans.

I've also thought about the communication in general from Erudio to Mr F, and the nature of his responses. Whilst I can see that there were disagreements between them, I think Erudio's tone was reasonable and how they explained things to Mr F was fair. Taking everything into consideration, on balance, I don't think Erudio's communication with Mr F was bullying in nature. I can understand why Mr F would say a very small sample of the internal contact notes were unprofessional. An email between two staff members did contain an 'emoji' picture. But, I think they were friendly messages between colleagues, rather than any kind of hurtful message about Mr F.

Mr F's health and his age

During his discussions with Erudio, Mr F said they should consider his health in their decision to retain information about the loans. Erudio's responsibility is to think about Mr F's circumstances and the arrears with the loans, with forbearance and due consideration. This means Erudio should look at any financial difficulty Mr F may be experiencing and suggest a reasonable solution.

However, Erudio have said they're not pursuing Mr F for repayments, albeit because they say the debt is statute barred. So, I think Erudio have already taken appropriate steps to consider Mr F's health and are treating him positively and sympathetically.

I've concluded that Erudio is able to retain information about the loans and pass on any repayment information to credit reference agencies. I sympathise with Mr F's personal circumstances and I've considered them very carefully. But, I don't think Mr F's health

means Erudio should stop in their duty to accurately reflect the information they hold, or pass on to a credit reference agency.

Mr F has also said the information about the loans should be removed from any record, as he is now over fifty years of age. I have looked at the terms and conditions about deferral and age, on the loan agreements. I can see that a repayment deferral needed to be agreed in each year, up to the age of fifty. No deferral application was received for the loans from 2002 onwards, and Mr F has said that he didn't ask for any deferrals in this timeframe. So, I think it's fair and reasonable for Erudio to say that this term no longer applies to the loans taken out in Mr F's name.

the refund of interest by A

Mr F says he doesn't know where the refund of interest has come from. We don't audit accounts for the people who need to use us. Rather, we rely on what evidence each side shows us to support their argument.

I've looked at all the information available to me. On balance, I think the refund is for the interest charged on the loans by A, when they were in the period of non-compliance. But, Mr F disputes the amount calculated by A. I think the calculation of the interest refund forms part of a separate matter against A, rather than the actions of Erudio. Mr F may be able to contact them separately, to pursue this further if he wishes.

This complaint is about the information kept by Erudio and Mr F's doubts that the refund was ever applied to the outstanding balance of the loans. So, I've looked at the annual statements and the letters sent to Mr F.

In A's letter to Mr F on 31 March 2014, they told him that the balance of his loans would reduce by £1,069.18. In their letter to Mr F, of the same date, Erudio summarised the outstanding balances of the three loans, which totalled £7,183.51. The following year, Erudio sent an annual statement to Mr F which showed the outstanding balance of the loans to be £5,946.46.

I can see that the overall balance of the three loans, had been reduced by slightly more than the refund suggested by A. Whilst I do find it unclear why the refund was more than what Mr F was expecting, I think a refund has been completed. So, having considered everything, I don't think Erudio need to take further action with the refund.

Mr F's subject access request (SAR) to Erudio

Our investigator told Mr F that we cannot consider Erudio's handling of his subject access request. More recently, Mr F has asked us to comment further on this. I don't think it's our role to look into a business' responsibilities to provide information under a SAR. Mr F may wish to take his concerns about Erudio's handling of his request, to the Information Commissioner's Office.

my final decision

For the reasons I've explained, 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 F to accept or reject my decision before 26 June 2020.

Sam Wedderburn
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