

## **complaint**

Mr G complains about how Erudio Student Loans Limited is dealing with his loan account.

He considers he's provided it with enough information for it to assess his request to defer his repayments.

Further he considers it has given him inconsistent information about its intention to register information on his credit file about the deferral.

## **our initial conclusions**

Our adjudicator looked at how Erudio had treated Mr G. He concluded it had not responded to Mr G's concerns quickly enough. And when it did respond it should have been clearer. In particular, it should have explained its approach to reporting information to credit reference agencies.

But our adjudicator considered Mr G ought to fairly fill in the deferment application form ("DAF"). He said once Erudio had received the completed DAF, it should back date the deferment period to 3 months before the date that the application is accepted. But only if Mr G meets the deferment criteria.

Further, our adjudicator said that Mr G's credit file should be amended to remove any adverse information that may have been registered because of the gap between the application to defer and its acceptance. In particular he told Erudio it had to remove any arrears information it may have registered on Mr G's credit file after Mr G's previous deferment period had come to an end.

Finally our adjudicator said it was likely Erudio's actions caused Mr G distress and inconvenience. He said £75 was an appropriate award for this.

Erudio accepted these conclusions. Mr G did not. He reiterated his previous stance. He outlined again why he considered he should not have to fill in the DAF. He said that;

- Erudio had breached its contract with him,
- it was not entitled to insist he fill in the DAF,
- and it was also trying to surreptitiously change the terms of his contract with him.

He suggested if Erudio registered the deferral on his credit file this could make it more difficult to get borrowing for both business and personal use in future.

Mr G told us he'd already reversed the payments Erudio had taken from him when his deferral period ran out.

Mr G then raised new points.

He said that Erudio was in breach of relevant data protection legislation.

He also suggested that *"the way that Erudio is exercising its rights under the agreement amounts an unfair relationship under section 140A of the Consumer Credit Act 1974"*. He

indicated that Erudio had accepted this point in a recent case with a third party. As a result he said *“if my deferment is not granted now, in the light of this case, then we have a two tier deferment system where you can get a deferment without completion of a DAF if you have the resources to employ a lawyer.”*

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

#### *what's the situation with the DAF?*

Mr G is not the only consumer who considers that the goal posts have moved since he initially took out his loan. He has strong opinions about this which he tells us about. He makes points about how Erudio has interpreted legislation. It seems that he's suggesting that nothing in the relevant legislation entitles Erudio to insist he fills in the DAF. Moreover he says he's now in a worse position than he was before Erudio became the lender which was not meant to happen.

In addition he says *“the account is neither in arrears or default, and it is in fact Erudio that has breached my contract by not granting the deferment”*.

Erudio says it is entitled to insist that Mr G fill in the DAF in order to apply for a deferment. It says that the previous lender had the same requirements.

Mr G tells us that he may be prepared to go to court to test some of his points. I consider the question of whether Erudio has an imperfect understanding of the relevant legislation is a matter better suited to court.

That said Erudio's policy is that a DAF must be filled in to apply for a deferral. I have no power to tell Erudio it has to change its policy. So on this basis I cannot oblige it to consider Mr G's deferral request if he does not comply with its policy.

#### *can we tell Erudio it can't register information about the deferral on Mr G's credit file?*

I can see that Mr G has grave misgivings regarding Erudio's policy towards registering a deferral on his credit file. He tells us when he took out the loan he was told that deferrals would not be reported to credit reference agencies. It seems that the previous lender always had the power to register deferrals but chose to exercise it differently from Erudio. This is not quite the same thing as agreeing never to register deferrals. And in the circumstances, I am not persuaded that the previous lender made any such promises or that Erudio is obliged to follow suit. In other words from everything I've seen Erudio does have the power to take the actions its proposing.

Further, we've asked Erudio about what information it wants to register. We've then talked to a credit reference agency. It told us that lenders ought not to draw a negative inference from the information that Erudio intends to register.

Mr G is concerned – about the negative impact the registration might have on his future borrowing. But it seems that no such negative impact is likely. And I cannot take account of potential rather than actual financial losses.

For all of these reasons I consider that it's fair to say that Erudio is entitled to register the information it has suggested it wants to register on Mr G's credit file about the deferral.

*did Erudio provide the level of customer service that Mr G might fairly have expected to receive?*

I can see that Mr G has spent a great deal of time dealing with this complaint. Erudio could have provided better customer service. Its responses have sometimes been less clear than I might have expected. And it seemed to take too long to deal with straightforward questions.

Mr G says he meets the deferral criteria. He wants to defer. I consider he might have complied with the DAF requirements sooner if Erudio had given him clearer and quicker answers. So it's only fair that Erudio put him in the position he would have been in if it had done what it should've done in the first place.

Erudio should amend its records to show that a new loan deferral was agreed immediately after the previous deferment period ended. But Erudio need only do this if two conditions are met these are;

- it receives a correctly filled in DAF from Mr G within 28 days from the date on which Mr G accepts this final decision.
- And he fulfils the deferment criteria as assessed by Erudio in line with its own policy.

If the deferral request is accepted Erudio should also remove any information it may have registered on Mr G's credit file about late or missed payments or arrears during the period after the previous deferral came to an end.

For all these reasons it's also appropriate that I should make an award for distress and inconvenience. I realise that Erudio has already agreed to an award of £75. I think Erudio did not provide the level of customer service Mr G was entitled to expect, I say that £75 is an appropriate award for this.

*what happens now in relation to the new issues?*

Mr G has raised new matters, concerning data protection and section 140A of the CCA 1974. Erudio has not had a chance to look at these issues. As a result we've not investigated them within this complaint. It follows that I am unable to look at these matters in this final decision. Should Mr G want to get Erudio's stance on these questions he needs to raise the issues directly with Erudio.

### **my final decision**

My final decision is that Erudio Student Loans Limited should amend its records to show that a new loan deferral was agreed immediately after the previous deferment period ended. But it need only do this if two conditions are met these are;

- it receives a correctly filled in DAF from Mr G within 28 days from the date on which Mr G accepts this final decision.
- And he fulfils the deferment criteria as assessed by Erudio in line with its own policy.

If the deferral request is accepted it should also remove any information it may have registered on Mr G's credit file about late or missed payments or arrears that it registered after the old deferral period came to an end.

Erudio must also pay Mr G £75 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 29 June 2015.

Joyce Gordon  
**ombudsman**