

complaint

Ms G complains that Erudio Student Loans Limited has terminated her credit agreement.

background

Ms G took out student loans in 1991, 1992 and 1993. Since 1995 she has completed a deferment application every year so that her loan repayments don't start. This is because her income has been below the threshold for repayment.

In 2016, Ms G was moving home at around the time her latest deferment application was due to be submitted. Ms G said she registered for an online account with Erudio in order to update them with her new address. She also paid £500 to Erudio on the understanding that this would cover her loan repayments (as she hadn't completed a deferment application) for a significant time.

In August 2017, the £500 pre-payment had been used up and the loan balance started falling into arrears. Erudio sent letters to Ms G notifying her about the arrears and also attempted several calls which weren't successful. Because Ms G didn't contact Erudio or make any further payments, the account was defaulted and terminated in March 2018. This meant the whole balance became due and Ms G lost the opportunity to have the loan balance written off – which would have happened after the loans had been outstanding for 25 years.

The letters had been going to Ms G's previous address. The new owners of her old home forwarded the letters to Ms G in April 2018. Ms G complained to Erudio about the lack of contact. She said she thought she'd updated her address online, and even if she hadn't Erudio had her email address and they'd never attempted to contact her on that. She thought it was unfair for the loan agreements to be terminated when the loans were due to be written off in December 2018 anyway.

Erudio said post was their primary contact method and didn't send outbound emails (other than to respond to emails they received). It said Ms G hadn't updated her address details or contact number and it was her responsibility to do so. It said Ms G should have known she would need to contact Erudio as she hadn't made any payments for a long time or completed an application to defer.

Our investigator recommended the complaint be upheld. He thought it would have been fair for Erudio to have tried to contact Ms G on her email address before terminating the loan. He said Ms G had shown she had been actively engaging with the debt, by always deferring for the previous 21 years and making a payment of £500 in 2016. So he didn't think Ms G would knowingly avoid engaging with Erudio particularly when the debt would have been written off within a year. He said a fair resolution would be to have Ms G pay the monthly instalments that were due between August 2017 and December 2018 and then for Erudio to write off the remainder as per the original terms of the loan.

Erudio didn't agree. In summary it said:

- Its main point of contact is post and sending emails isn't part of its process. The ombudsman doesn't have the power to change a process it follows.
- It followed the correct process and it was Ms G's responsibility to update her details and arrange for her post to be forwarded. It would have been reasonable for her to

have contacted Erudio sooner because she was aware she hadn't deferred or arranged a payment plan.

- The loan can't now be written off after 25 years because it has arrears and was defaulted and terminated.

The complaint has been passed to me for 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 terms of these types of loan agreements are a little different to a conventional loan from a bank. The key difference is the clause that allows - in certain circumstances - for the loan to be written off after 25 years from the date that the last loan was taken out. As these circumstances applied to Ms G (had she not fallen into arrears), termination of the loan has significant implications for her. This is because she loses the opportunity to have the debt written off.

The date for write off for Ms G's loans was in December 2018 and her loans only started falling into arrears a little more than a year before that. It doesn't seem logical that Ms G would willingly forfeit her right to have the loan written off, given that she'd correctly deferred or made payments towards the loan for the previous 24 years.

I accept Erudio did send a number of letters to the address they held on file for Ms G warning her about the arrears. I can see they also made several calls to the phone number they held but these were all unsuccessful (I believe this was Ms G's old home phone number). So I understand why Erudio says it has followed the correct process and it hasn't done anything wrong. Whilst I think emailing her might have been helpful – particularly because it knew she lived abroad – I accept Erudio weren't obliged to do this. But that isn't the only thing to consider here.

Ms G made a payment of £500 the year before which had covered the loan repayments for a considerable period of time. So she wasn't ignoring her responsibility to repay. Also Ms G says she believes she did update her address through Erudio's online portal. But what appears to have happened is she did this on the wrong form. I've seen she partially completed a deferment application (including her new address details) rather than using the correct form for an address update. So I think this also demonstrates she wasn't trying to ignore her responsibilities and had made attempts (albeit not correctly) to keep Erudio updated with her contact details.

Erudio says that Ms G should have realised she needed to contact Erudio because she hadn't deferred or set up a repayment plan. But Ms G has given a plausible explanation for why she didn't. She says she thought the loans were due to be written off very soon and Erudio would contact her if her £500 pre-payment had been used up and wasn't enough to cover repayments until the write off date. And this is exactly what Erudio did do, but due to Ms G making what I believe to be an honest mistake in how she tried to update her address details, she didn't get their letters. Whilst this doesn't absolve her of all responsibility, I don't think, after taking everything into account, it's fair she loses her right to have the loan balance written off because of what I think was a genuine mistake.

Although I don't think Erudio were unfair to initially default the account, I don't think its treated Ms G fairly since it's become aware of what happened. A default is generally (but not always) recorded when the relationship has broken down. But I don't think that is truly what happened here. Taking into consideration the specific circumstances of this case, I think it would be unfair to treat the loan as terminated and in default.

I believe Ms G has made a genuine mistake in (i) not updating her contact details correctly and (ii) assuming her loans were due to be written off a year sooner than they were. Had she known the true position, I believe she would have either completed a deferment or continued to make payments until the date the loans were written off. This is supported by her actions prior to Erudio losing contact with her, and her actions after she became aware of the status of the loans. And as I said above, although Erudio wasn't obliged to email Ms G, given what it knew of her previous behaviour on the account and the fact that she lived abroad – I do think an email would have been helpful in this specific case.

I think the fairest solution here is for Erudio to reinstate the loan on the same terms as before. If this isn't possible then it should treat the outstanding balance as if the loans were reinstated on their original terms. But arrears have built up since August 2017. I think it's more likely Ms G would have applied to defer if she hadn't made the mistakes she did. Although it's not certain she would have been successful, the arrears have accrued due to her mistake and she has agreed to pay them.

For these reasons, I think Ms G should pay the arrears that have accrued between August 2017 and December 2018 (when the loans would have been written off). Erudio should allow Ms G to pay the arrears back in instalments equivalent to what the normal monthly repayments would have been under the loan agreements. But if Ms G chooses to she can pay it back sooner. Once the repayments have been made Erudio should reinstate the loans, or treat the debt as if the loans had been reinstated, including honouring the original terms and conditions (which may or may not involve writing off the loans).

Lastly, Erudio should ensure it removes any adverse information it may have recorded against Ms G's credit file in relation to these loans since the arrears started accruing in August 2017. Whilst it isn't in dispute the loans were in arrears, I don't think that accurately or fairly demonstrates Ms G's ability or willingness to repay the debt for all the reasons I've set out above.

my final decision

For the reasons given above, I uphold this complaint and direct Erudio Student Loans Limited to:

- Once Ms G has repaid the missed payments between August 2017 and December 2018 Erudio should reinstate the loans, or treat the debt as if the loans had been reinstated including honouring the original terms and conditions (which may or may not involve writing off the loans).

- Erudio should allow Ms G to repay the missed payments in equal instalments equivalent to what they would have been under the loan agreements, unless Ms G wishes to make overpayments.
- Erudio should remove any adverse entries recorded on her credit file from August 2017 onwards in relation to these loan agreements.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 4 May 2019.

Tero Hiltunen
ombudsman