

complaint

Mr M complains that Erudio Student Loans Limited has declined to process his request to defer his loan repayments.

Further he complains it acted inappropriately in seeking to recover the debt from him.

He also considers it failed to provide the level of customer service that it should have done.

our initial conclusions

Our adjudicator considered that Erudio had not dealt properly with Mr M's initial queries. He said he expected Erudio to explain why it did not accept the format Mr M's used in when he asked to defer his repayments. And he also thought it should have dealt with Mr M's specific queries. But instead it merely sent him what appeared to be a template letter. In this letter it asked him to fill in a deferral application form ("DAF").

Further our adjudicator considered that Erudio took too long to respond to Mr M.

Our adjudicator considered that if Erudio had acted correctly in the first place Mr M might have filled in the DAF and the deferral might have been approved.

However, he considered that Mr M should fairly have filled in the DAF. So he said if Mr M provided a completed DAF and it was accepted. Then Erudio should;

- backdate the deferment period by three months,
- remove any adverse information it had registered regarding the failure to agree a new deferment after the old deferment period came to an end. He concluded that Erudio should in particular remove any information about arrears that it had registered.
- pay Mr M £75 for distress and inconvenience.

But our adjudicator said he could not tell Erudio that its plans to register the deferral on Mr M's credit file were unfair.

Erudio accepted this recommendation. Mr M did not and he reiterated his stance. He mentioned his intention to raise a complaint with the Information Commissioner's Office. He said that Erudio had no right to insist that he fill in a DAF. And he mentioned a case where he said Erudio had processed a deferment application without a DAF.

Mr M explained that Erudio was not correct to say it could register the deferral on his credit file. He said in any event the original lender had not registered deferrals. Mr M appeared to suggest that this approach was "*custom and practice*" which had varied the agreement. In other words it meant that effectively Erudio was now bound to follow the practices of the original lender.

Mr M asked that an ombudsman review his complaint.

my findings

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

if Mr M wants a deferral he must fill in the DAF

When Mr M first complained it seemed his position was that he did not need to fill in the DAF because it asked for additional unnecessary information. It was enough he seemed to suggest that he provided sufficient information about his income for Erudio to make a deferral decision.

Mr M's complaint now seems to have evolved. He suggests that the original loan terms did not require a DAF to be completed in order to defer. He appears to suggest that by asking him to fill in a DAF Erudio is unilaterally changing the terms and conditions. Mr M's stance seems to be that Erudio cannot do this.

Erudio says it is entitled to decide what format it asks borrowers to use to make deferral requests. It tells us its policy is to ask borrowers to fill in a DAF. This is a policy and commercial decision on the part of Erudio and I have no power to tell it to change either its policy or its commercial approach.

Mr M created his own template deferral form and sent it in to Erudio. He wants Erudio to accept this instead of its own DAF. But for the reasons I've set out I cannot tell Erudio it must accept Mr M's deferral application in its current format. Neither can I oblige it to redesign its DAF to satisfy Mr M's requirements.

the business can register the deferral

Mr M's position appears to be that Erudio cannot register any deferral on his credit record. His stance seems to be either the original lender never had the power to do this. And/or by custom and practice the original contract was varied in such a way that Erudio lost the power (if it ever had it) to register deferrals on borrowers' credit files.

Erudio's view is that both it and the previous debt owner were entitled to register deferrals on customers' credit files. It points to the original agreement to support it what it says.

Based on everything I've seen I'm satisfied that Erudio is entitled to register deferral information although Mr M might choose to test this point in court.

We've spoken to a credit reference agency about Erudio's plans. It says that lenders should not draw a negative inference from the information Erudio says it will register.

In the circumstances I think that the registration should not harm Mr M's credit file. Further I think it would be a true and accurate reflection of how Mr M has managed his account. For these reasons I consider it's fair and reasonable that Erudio should be entitled to register the deferral on Mr M's credit file.

what Erudio must do to put things right

I can understand Mr M's sense of consternation that Erudio pursued him for the debt even whilst he was negotiating with it about the deferral. It's not clear what Erudio hoped to

achieve by doing this as Mr M had made his position clear he was not going to pay until the deferral issue had been sorted. But that said it did not do anything technically wrong. The deferral period had ended, the debt became due and it could take debt recovery actions.

Erudio did make matters worse by failing to engage with Mr M as an individual. It did not initially tell him why it would not accept his application. Neither did it explain why it asked for the information Mr M objected to in the DAF.

If it had answered Mr M's questions it's likely that Mr M would have filled in the DAF. So I think it's only fair that if Mr M fills in the DAF and the application is accepted he should be put back into the position he would have been in if this had happened in the first place. That is if it receives the DAF from Mr M and it grants the deferral it should act as if this new deferral started as soon as the old one ended. It should remove any information about missed and late payments or arrears that it registered on Mr M's credit file for the period between when the old deferral period ended and the new one began.

But it's fair that Mr M should play his part in getting things moving so he needs to send his correctly completed DAF to Erudio within 28 days of accepting my final decision.

I also think it's fair that it pay Mr M £75 for distress and inconvenience.

my final decision

My final decision is that Erudio Student Loans Limited should - provided it receives a correctly completed DAF from Mr M within 28 days of his acceptance of my final decision. And also provided he meets the deferral criteria:

- act as if Mr M's new deferral period had started immediately after the previous deferral period finished and it should amend its records to reflect this.
- remove any adverse information it may have registered on Mr M's credit file between the period when the previous deferral period ended and the new one began ("the relevant period"). In particular it should remove any missed or late payment information or arrears information it registered in the relevant period.
- pay Mr M £75 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 2 July 2015.

Joyce Gordon
ombudsman