

## **complaint**

Mrs S complains about the handling of her student loan deferment applications by Erudio Student Loans Limited ("ESL").

## **background**

Mrs S says she applied to have her loan deferred in September 2017. She says she didn't receive a response so she resubmitted her application in November 2017, but she says it was declined on the basis that her income was over the relevant threshold.

Mrs S also says she works on a freelance basis, so her income differs from week to week. She says there are some weeks when she doesn't work and therefore has no income. But she says her annual income's below the relevant threshold.

In addition, Mrs S says ESL is requiring her to pay arrears on her loan for the period between September and December 2017. But she says she didn't earn above the threshold during that time, so she believes she shouldn't have to pay these arrears.

ESL says a third party organisation, which I'll call Business A, is responsible for processing student loan deferment applications. It says once Business A receives and processes a deferment application, it notifies ESL of the deferment outcome. And it says for a deferment to be granted, it looks for the evidence provided to show the applicant earns under the deferment threshold.

ESL also says if the applicant's last payslip shows they're over the threshold, Business A looks for evidence to confirm it's not a wage increase and that the applicant's future income will remain under the threshold. And it says Business A has confirmed only one of the wage slips Mrs S provided with her deferment application showed income under the deferment threshold, so it was unable to grant a deferment on her account.

Mrs S complained to ESL about this matter. And, being unhappy with its response, she complained to this service.

Our investigator thought Mrs S's complaint should be upheld. She said Mrs S's P60 for the relevant tax year showed her total gross earnings were substantially under the deferment threshold. So, the investigator said Mrs S was entitled to have her student loan deferred and she shouldn't owe any arrears for the relevant period. She also said ESL should pay Mrs S £150 compensation for the distress and inconvenience she'd experienced.

ESL disagreed with the investigator's conclusions. It said it had corresponded about the matter with Business A, which makes the deferment decisions. And it had advised that as Mrs S's most recent payslip submitted with her application would've been over the threshold, this would show her ability to repay the loan, going forward.

So, the matter's been referred to me to make a final decision.

I recently issued my provisional findings on this complaint. I said I understand Mrs S's argument that her annual income's below the annual maximum figure to qualify for deferment of her student loans. And I've some sympathy for her.

But I also said the regulations governing the deferment of student loan repayments are secondary legislation created by the Government under the authority of Parliament. And they clearly state that to qualify for deferment of student loan payments an applicant must demonstrate that her gross income for a month doesn't exceed the relevant threshold and that her gross average monthly income during the three succeeding months will not, or is unlikely to exceed that sum.

And I said the regulations don't provide for deferment decisions to be made by reference to an applicant's income over the previous year.

In addition, I said the information I've seen indicates Mrs S didn't satisfy these requirements in the deferment applications she submitted to ESL that she's complained about. I also said I think it's significant that ESL has no control over decisions about deferment applications, as these are made solely by Business A. And this means it wouldn't be fair for me to hold ESL responsible for Business A's decisions.

So, for these reasons, I concluded it wouldn't be reasonable for me to require ESL to backdate Mrs S's loan deferment to September 2017 or to require it to pay her any compensation for what has happened in this case. Which means I wasn't able to uphold Mrs S's complaint.

This was different from the investigator's opinion, so I invited both parties to comment and provide any additional evidence for me to consider.

A copy of my provisional decision is attached and forms part of this final decision.

### **my findings**

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In response to my provisional decision Mrs S says if her original application made in September 2017 had been duly processed, she would've been granted deferment. She says it's clear that, on average, her income is considerably less than the relevant threshold. And she's given us evidence of her income between July 2017 and January 2018 in support of her argument.

Mrs S also says when she signed for the loan 20 years ago the terms clearly stated that to be eligible for repayment her annual income had to be below the threshold. She says ESL may choose to calculate her income on a monthly or weekly basis but the fact remains that over the tax year her income was significantly below the threshold. She questions how it can be legal that the deferment rules have changed over time. And she says ESL's methods of calculation are biased to support itself and its procedures have no grounds in law.

In addition, Mrs S says it's wrong to say ESL's bound by the decisions of Business A and its criteria for deferment. She says she's spoken with Business A and it's advised her ESL can make its own decisions whether or not to seek deferment.

I've noted Mrs S's comments. And I understand she feels strongly about this matter. But loans of the kind she's complained about aren't governed solely by a contract between her and the lender. As I indicated in my provisional decision, they're also governed by regulations which are secondary legislation created by the Government under the authority

of Parliament. And they state that to qualify for deferment of student loan payments an applicant must demonstrate that her gross income for a month doesn't exceed the relevant threshold and that her gross average monthly income during the three succeeding months will not, or is unlikely to exceed that sum.

Importantly, the regulations don't provide for deferment decisions to be made by reference to an applicant's income over the previous year or by any method other than as I've described.

The information I've seen, including the new information Mrs S has given us, shows she didn't satisfy these requirements in the deferment applications she submitted to ESL between September and November 2017.

Notwithstanding Mrs S's comments, the position is that ESL has no control over decisions about deferment applications, as these are made solely by Business A. And this means it wouldn't be fair for me to hold ESL responsible for Business A's decisions about whether or not to grant Mrs S's applications.

So, for the reasons set out in my provisional decision, I can't uphold Mrs S's complaint.

### **my final decision**

I don't uphold Mrs S's complaint against Erudio Student Loans Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 21 December 2018.

Robert Collinson  
**ombudsman**

### **copy of my provisional decision**

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In addition, Mrs S says ESL is requiring her to pay arrears on her loan for the period between September and December 2017. But she says she didn't earn above the threshold during that time, so she believes she shouldn't have to pay these arrears.

ESL says a third party organisation, which I'll call Business A, is responsible for processing student loan deferment applications. It says once Business A receives and processes a deferment application, it notifies ESL of the deferment outcome. And it says for a deferment to be granted, it looks for the evidence provided to show the applicant earns under the deferment threshold.

ESL also says if the applicant's last payslip shows they're over the threshold, Business A looks for evidence to confirm it's not a wage increase and that the applicant's future income will remain under the threshold. And it says Business A has confirmed only one of the wage slips Mrs S provided with her deferment application showed income under the deferment threshold, so it was unable to grant a deferment on her account.

Mrs S complained to ESL about this matter. And, being unhappy with its response, she complained to this service.

Our investigator thought Mrs S's complaint should be upheld. She said Mrs S's P60 for the relevant tax year showed her total gross earnings were substantially under the deferment threshold. So, the investigator said Mrs S was entitled to have her student loan deferred and she shouldn't owe any arrears for the relevant period. She also said ESL should pay Mrs S £150 compensation for the distress and inconvenience she'd experienced.

ESL disagreed with the investigator's conclusions. It said it had corresponded about the matter with Business A, which makes the deferment decisions. And it had advised that as Mrs S's most recent payslip submitted with her application would've been over the threshold, this would show her ability to repay the loan, going forward.

As the parties can't agree, the matter's been referred to me to make a decision.

## **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm currently minded not to uphold Mrs S's complaint and I'll explain why.

I understand Mrs S's argument that her annual income's below the annual maximum figure to qualify for deferment of her student loans. And I've some sympathy for her.

But the regulations governing the deferment of student loan repayments are secondary legislation created by the Government under the authority of Parliament. And I see they clearly state that to qualify for deferment of student loan payments an applicant must demonstrate that her gross income for a month doesn't exceed the relevant threshold and that her gross average monthly income during the three succeeding months will not, or is unlikely to exceed that sum.

I also see the regulations don't provide for deferment decisions to be made by reference to an applicant's income over the previous year.

The information I've seen indicates Mrs S didn't satisfy these requirements in the deferment applications she submitted to ESL that she's complained about. I also think it's significant that ESL has no control over decisions about deferment applications, as these are made solely by Business A. And this means it wouldn't be fair for me to hold ESL responsible for Business A's decisions.

So, for these reasons, I've concluded it wouldn't be reasonable for me to require ESL to backdate Mrs S's loan deferment to September 2017 or to require it to pay her any compensation for what has happened in this case. Which means I'm not going to uphold Mrs S's complaint.

**my provisional decision**

For the reasons set out above but subject to both parties' responses to this provisional decision I'm not going to uphold Mrs S's complaint against Erudio Student Loans Limited.

Robert Collinson  
**ombudsman**