

## **complaint**

Ms T complains Erudio Student Loans Limited (Erudio) has unfairly defaulted her account and passed it to a debt collector. She wants collection activity to cease and for Erudio to keep managing her account.

## **background**

Ms T tells us she has a student loan account on which she'd been deferring payments - as she'd lost her job due to poor health. She says she notified Erudio of two separate address changes - in June 2014 and on 6 September 2014. And she'd heard nothing from Erudio until she was contacted by debt collectors in 2017. She says she hasn't defaulted on her account and kept Erudio informed of address changes. She feels she's been unfairly treated as she suffers from serious medical problems which have affected many aspects of her life and prevents her from working.

Erudio told us it had received a letter from Ms T in June 2014 notifying a change of address. Ms T's last deferment period ended on 24 July 2014 and no payment plan or new deferral was put in place. Subsequently arrears letters were sent to this address - and also annual statements. As no replies were received the account was terminated in August 2016. This meant the whole debt became repayable. Erudio said it had not been aware of a further change of address and so correspondence had been sent to the address on record. It also said it had tried to contact Ms T by phone - but the numbers proved to be incorrect. It wasn't upholding her complaint and suggested she contact the collection agents to arrange suitable repayment plan.

Since the complaint was referred to an ombudsman Erudio has been provided with the additional medical evidence. But it's not changed its view. It says as it didn't do anything wrong at the time as it wasn't aware of Ms T's medical problems. And as it hasn't received a deferment application or payments it can't legally reinstate the account.

I issued a provisional decision on 10<sup>th</sup> July 2018 upholding this complaint. Since then Ms T has replied accepting the provisional decision. Erudio has not responded despite the period for replies being extended. In those circumstances I see no reason to change my provisional view which is largely repeated in my final decision below.

## **my findings**

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

I think it's important to note that I've had the advantage of seeing up to date medical evidence which wasn't available to Erudio at the time of default - or to our investigator when he gave his view. In my opinion this significantly alters the situation and allows for a decision based on more complete evidence to be taken. I can see Ms T has experienced considerable personal and health difficulties over several years. I'm sorry she's had to go through such a distressing time but happy to note she's receiving treatment which hopefully will alleviate her problems.

The start of the difficulties leading to this complaint date back to the latter half of 2014 and two address changes in a short period. I imagine this was a particularly stressful period for Ms T. The first address change was received by Erudio and properly recorded. Ms T has provided a copy of the letter which details the second change of address - which Erudio says it didn't receive. Up to this time the account seems to have been managed appropriately by Ms T.

Our general policy in dealing with "lost" mail - it's usually the consumer who claims not to have received it - is to seek evidence it was sent and if confirmed to find on a balance of probabilities it was delivered. Or that the sending party can't be blamed for the failures of the delivery service. I see no reason to depart from this just because it's a business which is saying mail wasn't received. It's also more likely a large business will lose track of a letter which has been delivered than an individual - purely by virtue of the number of items received.

On a balance of probabilities I find that Ms T did send the letter and that it was delivered to Erudio.

In the ordinary course of events it would still be reasonable to expect Ms T to make enquiries or make further payment deferment applications. It was around three years before contact was re-established - only after debt collection activity commenced. But Ms T's circumstances aren't "ordinary". I've now seen two separate opinions from medical professionals attending Ms T. In summary both conclude her condition affects both her memory and her ability to deal with daily living issues.

I accept Erudio was not at fault at the time it commenced the default and collection activity. It hadn't been provided with the medical evidence which is available and which it is now able to consider. Whilst it appears to accept this sheds a different light on the situation - it hasn't felt able to alter its stance.

Where it seems likely the actions of a consumer have been adversely affected by a serious medical condition it seems only proper a business should take this into account - even if it means reconsidering decisions taken at an earlier date.

It seems probable Ms T's failure to complete further applications for deferral is as a direct result of her disability. As far as I can see - if this information had been available there's no reason to suppose the periods of deferment would not have continued until the present time - given Ms T's not in employment. So she wouldn't be facing the prospect of being caused financial hardship by having to make repayment arrangements.

Put another way if the decision to default and start debt collection isn't altered it appears probable Ms T's being penalised as the result of her omissions caused by her disability. That's not fair and reasonable.

So whilst I'm not finding Erudio was at fault in its original decision, I do think it should reconsider its position in the light of the medical evidence now available. I'd expect Erudio to assist Ms T through the process of considering her applications and take into account some evidence may no longer be available in the form it would prefer. Ms T is concerned she may no longer have old salary slips - although she says she is able to supply bank statements showing the relevant entries.

In summary, I think it's fair and reasonable for Ms T to have the chance to submit her applications for deferments of payment to be backdated. And for those applications to be considered in the light of the new evidence. So I'm upholding the complaint.

### **my final decision**

For the reasons given above my final decision is I'm upholding this complaint. I'm ordering Erudio Student Loans Limited to:

1. Arrange for return of the account to Erudio and send Ms T any necessary application forms to enable her to apply for deferment of payments backdated to 24 July 2014.
2. Consider any applications for deferral of repayments by Ms T in the light of new information supplied. These should be backdated to the expiry of the previous period of deferral on 24 July 2014.
3. Cease collection activity from the date of being notified of this decision - until the outcome of any applications\*\* she makes is notified to Ms T.
4. Subject to her applications being successful make arrangements to remove the default and any other adverse information recorded on Ms T's credit file in relation to this account from July 2014.

\*\*Should Ms T not make the necessary applications within 60 days of Erudio complying with 1. above then Erudio can proceed with such collection activity it considers appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 15 September 2018.

Stephen D. Ross  
**ombudsman**