

## **complaint**

Mrs W complains that Erudio Student Loans Limited is asking her to pay off the arrears on her Student Loan accounts. She says that she wasn't told about her deferment period ending. And it didn't send her deferment form ("DAF") in time. As a result she was unable to defer her loan repayments, and, worse, unknown to her she began to run up arrears.

Further she considers that the loans may be unenforceable as she didn't receive the notices of arrears when she should've done.

She says if she had received these notices of arrears, at the correct time, she would've done something about it.

## **background**

Mrs W had been deferring her loans for a number of years. Unfortunately, due to a mistake perhaps on the part of Erudio, or perhaps on her part, it's unclear; she didn't receive her DAF in June 2014. So that when her deferral period ran out in late July 2014 she began to rack up arrears.

She said, she knew nothing about this because she didn't receive any notices of arrears. But she did receive an annual statement in September 2014. The first she knew that anything was up, was in March 2016 when, belatedly, Erudio told her about the arrears, by sending her the relevant notices.

Erudio said, Mrs W had been told when her deferral period ran out. It pointed out she was responsible for asking for the DAF. And if she chose not to ask for it and fill it in, it was entitled to think she didn't want to defer. Further it suggested it was reasonable to expect her to contact it if the DAF hadn't turned up in time, to find out what was going on.

Finally it accepted it hadn't sent her notices of arrears in 2014 and 215. But the annual statements, which it sent to her, did show she was in arrears.

Our adjudicator thought both Mrs W and Erudio had played a part in things going wrong here. So he thought it fair and reasonable that Erudio should write off half of the arrears and ask Mrs W to pay the other half. However, both Erudio and Mrs W didn't agree to this. It wanted to write off nothing other than the three months of arrears, as it had already agreed to do. She wanted the whole lot written off.

Therefore, the complaint was passed to me for review.

## **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've finished my review. I think it's fair and reasonable to partially uphold Mrs W's complaint. I explain, below, why I've reached this conclusion.

Mrs W and Erudio have two different versions of the same events. So I've got to decide which is the most likely.

*should Mrs W have realised that her deferral period ended in July 2014?*

There's no disagreement that Mrs W had deferred her loan repayments, regular as clockwork for a number of years. It is also agreed that at all relevant times she was under the income threshold that allowed her to defer her loan repayments.

When she deferred in 2013 Erudio says she'd have been told when that deferment period would end i.e. July 2014. Plus its records show that Mrs W had been deferring around this time for a number of years. Mrs W doesn't say this is incorrect.

Mrs W complains that Erudio didn't tell her about her deferment ending. But given the points I've mentioned above, I don't agree.

Mrs W didn't have an absolute right to defer her loan payments. She had the right to do this only subject to showing each year that she was under the relevant income threshold. She had to demonstrate this by filling in the DAF. I think, in the circumstances, she knew all of this or ought to reasonably have done so. She agreed to these terms and conditions when she took out the loans. I don't think therefore it's unfair that she should be asked to stick to them now.

*the DAF - what should Mrs W and Erudio have done about this?*

That said, I think Mrs W had absolutely no intention of trying to avoid her obligation to fill in the DAF. She's told us some things about her circumstances at the time and I can well understand why filling in the DAF wasn't at the forefront of her mind at that point.

It's not entirely clear why she didn't get the DAF. She'd changed address. But I'm not entirely sure when this was. But both she and Erudio agree she told it about her change of address in July 2014 and it acknowledged this.

Erudio says that it sent Mrs W a deferment form some 8 weeks before the deferment end date in July 2014. But it got returned mail which I think may have been the DAF. It didn't send any further notification to Mrs W but it says that it was Mrs W's responsibility to keep an eye on when her deferment was ending. I agree with this.

But I also think given it agreed to send the DAF in advance. It should've done so. And when it got the returned mail, which was likely the DAF it should've done something about this too. I would've expected it to have put two and two together and realised that Mrs W may not have received the DAF, particularly when she contacted it to change her address. Whilst I accept that Mrs W should have kept a note of her deferment end date, I don't think it was fair for Erudio to simply rely on her to have remembered it in these particular circumstances. Given that Mrs W had told Erudio about her change of address and also that it had received returned mail. Because of this, I think Erudio could have done more for her – e.g. at least resent the DAF.

*who is responsible for Mrs W running up arrears?*

Mrs W says she had no idea she was in arrears until March 2016. I don't see how this can be since she knew she'd not deferred so her repayments had become due. Or I think she should've realised this. After all she knew what the approach was for deferring her repayment, she'd been following it for years.

Further, she tells us she received the 2014 annual statement that mentions arrears. She says that the 2014 annual statement says nothing about arrears. But I've looked at the copy that it seems she sent us, and it does mention "*total arrears*". So I'm not persuaded by what she says about this. But I do accept that due to her very particular personal circumstances at this time, she may, have overlooked this.

However, I can see that Erudio chose not to send out notices of arrears for two years. That was its choice to make. But I think had it done so this would've possibly nudged Mrs W into taking action. I say this because it seems as soon as she did get the notices in March 2016 she did then get on with asking for the DAF and filled it out.

This is an unfortunate situation, a lot of opportunities to put things right were missed, and neither Mrs W nor Erudio is entirely blameless here. In fact I think they are equally to blame. So I think asking Erudio to write off 50% of the arrears – including the three months it has already written off, and amending her credit file, is a fair and reasonable award.

*I've made no decision about whether the agreements are enforceable*

Only a court can decide about whether an agreement is enforceable or not. I've not got that power.

Mrs W doesn't have to accept my decision. If she rejects it, then any rights she has to go to court and raise the issue of enforceability will still be available to her.

### **my final decision**

My final decision is that Erudio Student Loans Limited should remove half of the arrears and only hold Mrs W liable for the remaining arrears. And it should amend any information it has registered on her credit file to reflect this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 October 2016.

Joyce Gordon  
**ombudsman**