

complaint

Mr G complains that Erudio Student Loans Limited unfairly refused to defer repayment of his student loan and wrongly terminated his loan agreement.

background

Mr G has a student loan that he took out with a previous provider and that is now being administered by Erudio Student Loans Limited. He says he has successfully deferred making payment on the loan for 16 years (13 years with his previous provider and 3 years with Erudio) on the basis of his gross income not meeting the payment threshold. He relies on financial support from a third party that is not paid through a bank account.

Around mid-May 2017 Mr G phoned Erudio because he'd not yet received a hard copy of the Deferment Application Form (DAF), and his existing deferral period was soon to expire. Erudio told him it was in the post. And he received it around the end of May.

Mr G says he completed the DAF for Erudio in the same way he had every year. And he sent it back to them along with supporting evidence. He was not anticipating any problems.

Around the end of November 2017 Mr G received five letters from Erudio at the same time. These were:

- (a) A letter dated 11th November informing him that the loan agreement had been terminated because he'd failed to remedy arrears
- (b) Three letters dated 14th November that were notices of sums in arrears and offered a chance to work out a solution
- (c) A letter dated 21st November repeating that the agreement was terminated on the grounds of missed payments.

Mr G says he'd not been aware of there being any issue with his deferment application until this point. His circumstances met the deferment criteria. So he felt it was unfair that his application had been refused and that Erudio had terminated the loan agreement in this way. So he complained to them about it.

Erudio say that Mr G's deferment application was not successful because it did not contain sufficient information. They say they wrote to him between June and October 2017 (29th June, 20th July, 9th August, 29th August and 13th October), but Mr G did not reply. They also say they tried to call him but had no answer.

Erudio say that as they had not heard from Mr G - and the additional information requested was still outstanding - the deferral application was unsuccessful. Repayments on the loan became due and arrears accrued. Erudio say they'd told Mr G that he was in default of his loan agreement in their letter of 13th October 2017 so they did not terminate the loan agreement unlawfully in November 2017.

Our adjudicator thought that Erudio had dealt with Mr G fairly. Although Mr G's deferment applications had previously been successful, the information provided on this occasion wasn't sufficient. While he'd provided documentation confirming the amount of financial support that he received from a third party, Erudio wanted to see bank account statements. They'd not received this additional information. And our adjudicator thought Erudio had taken reasonable steps to contact and inform Mr G that they required further information.

Mr G does not agree. He says that Erudio unfairly refused his deferment application because he'd done all that was required of him to show he met the deferment criteria. And they'd wrongly terminated the loan agreement.

And so this case was passed to me for review.

my provisional decision and findings

I issued a provisional decision on 25th June 2018 where I indicated that I was minded to uphold Mr G's complaint.

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

And I said that while I appreciated that there were some outstanding issues relating to Mr G's 2014 deferment, my provisional decision dealt with Mr G's complaint about his 2017 deferment application.

I understood that Mr G felt strongly about what had happened and he'd given a detailed response to our adjudicator's view. He raised several points and directed me to a range of material. But I hoped he would understand when I concentrated on the things that I considered most relevant to the outcome of this complaint.

On the evidence that I'd seen at that point, my provisional view was that Erudio had not dealt with Mr G fairly. I thought a number of things concerning Mr G's 2017 application should've gone better than they did. And I addressed each of these in turn.

Erudio's supply of hard copy deferment application form

Mr G says that Erudio sent him a hard copy DAF late. In fact he called them around mid-May because he was concerned he hadn't yet received it and was conscious that his existing deferment period was coming to an end. His understanding was this ended on 9th June 2017. Erudio say it ended 9th July 2017. And Mr G says he did not receive the hard copy DAF until around the end of May 2017.

So, on either account this left less than eight weeks for the deferment application to be made, sent, received, considered and processed. In fact the evidence shows that Erudio received Mr G's application on 7th June 2017 but that they didn't send him any correspondence until a letter dated 29th June 2017. Given it would take time for any letter to actually reach Mr G, I thought this was cutting it fine - even on a deferment period expiry date of 9th July 2017.

Whilst I appreciated that the application could've been made online, Mr G was given the option of applying for the deferment in hard copy form. So this needed to have been sent to him in a timely manner which is not what happened here.

submission of deferment application

Once the hard copy DAF was received, Mr G reacted promptly. He says he completed the DAF in the same way he always completed it. He set out that his income was below the payment threshold. And he says he provided Erudio with the same evidence on third party support as before - a letter from the third party and a typed note that said that this third party financial support was not provided via a bank account. His previous applications had been accepted.

Erudio say that they'd received the 2017 DAF and the third party letter. But not a note on how third party support wasn't supplied via a bank account

When evidence is conflicting - as it is here - I have to consider what is most likely to have happened. And on balance I thought it was most likely that Mr G did provide this note. It was clear that he was anxious about his deferment, as evidenced by the fact he'd called Erudio to find out when they'd be sending him the hard copy DAF. And he'd included the same note with previous applications to Erudio. So I didn't consider it likely he would omit to include it in his application on this occasion. It may well be that it went astray when his application arrived at Erudio. But I didn't think that Mr G could be held responsible for how Erudio managed paperwork once received.

Erudio's communication with Mr G.

As Erudio had apparently not seen the note on third party support, they say they wrote to Mr G on 29th June 2017 to ask for more information. And they say they went on to send him a further four letters. But Mr G says that none of these letters reached him.

I explained that normally I would say that if five letters have been sent to the address a business has on file for a consumer, then it's most likely they'd have been received. But on balance, I accepted what Mr G says here. I couldn't say why the letters hadn't reached him, but I thought that if they had, he would've responded because it was in his interests to do so.

And I was most persuaded by the fact that he had successfully deferred his loan every year for 16 years and was concerned enough about the 2017 deferment application that he called in May 2017 to chase up the hard copy DAF. He wanted his application to defer to be granted. So I can see no reason why he wouldn't respond to any of the letters, if they'd reached him. And when five letters did arrive in November 2017, Mr G acted promptly and got in touch with Erudio.

I also said that I was not confident of Erudio's correspondence processes because letters on arrears, default, and termination of his loan agreement seemed to have been sent in the wrong order. This suggested Erudio's processes were not running as well as they should have been when dealing with Mr G.

And while Erudio say they also called Mr G, their records show they only phoned him twice. And there was no reference to a message being left, unlike on another occasion. So I thought Erudio could've done more to contact Mr G when he hadn't responded to so many of their letters.

termination of the loan agreement

And it's because they'd had no contact with Mr G that Erudio say the deferment application remained incomplete and repayments of £130.76 became due on the 10th of each month. Arrears accrued, which Erudio say meant they were entitled to terminate the loan agreement.

But in order for termination to take place, a certain process has to be followed. And in fact in two of the letters Erudio say were sent to Mr G (20th July and 9th August 2017) they set this out. They state that if his account falls two contractual payments behind, a notice of sums in arrears will be sent. And the next stage is a default notice which is necessary before a creditor is entitled to terminate the agreement

But the evidence provided did not show that this is what happened here. The letter that terminated the contract (11th November 2017) appeared to come before any notices of sums in arrears (14th November 2017). And the default notice was apparently sent the month before on 13th October 2017 (although Mr G says he did not receive it).

So I'd not seen evidence that Erudio had followed the correct procedure. And the process is there for a reason. It couldn't be fair that Mr G's loan agreement was terminated before he'd had opportunity to respond to notices in arrears. And I didn't think the evidence showed that he'd been aware that there was any problem with his deferment application at all until November 2017.

how to put things right

So on balance I was minded to conclude that Erudio hadn't dealt with Mr G fairly. And so I considered how to put Mr G in the position he would've been in if Erudio had had the information they'd needed at the time he'd submitted his 2017 deferment application.

It seemed to me that if Erudio had seen Mr G's note on how his third party support was not provided via a bank account, his application would have met the deferment criteria. He declared that his income was below the payment threshold. And he stated he was reliant on a third party and had supplied Erudio with a letter in support of this.

Mr G provided a copy of guidance from Erudio on deferment but it looked like this may have been an old version from previous applications. And Erudio provided a brief extract that they said was from their guidance on deferment. But the wording wasn't the same as the guidance which is currently on their website which is dated March 2017. And this would've been the applicable guidance at the time of Mr G's 2017 deferment application. It said on page 11 (my emphasis in bold added):

*If you are being supported financially by a third party, for example a parent, spouse or partner, we require a signed and dated letter from this person confirming the level of support they are providing you with. We would require a copy of your most recent bank statement, **if this is how the support is received**. Please ensure they are clearly identified with the full income column visible with no information edited or blanked out.*

Mr G supplied Erudio with a letter from the third party confirming that their level of support is below the payment threshold figure. And as support was not received via a bank account bank statements were not provided. Instead a note was supplied which explained this. I didn't think it would be reasonable to expect Mr G to provide bank statements to show third party support if this was not how it was paid. And I'd not seen any requirement that third party support had to be provided in this way.

So I thought that all that needed to happen was for Erudio to see this note on third party support. I thought Mr G only needed to supply it again if Erudio told him it was necessary, as a copy would be sent with the provisional decision. So my initial view was that Mr G's account should be reinstated. And once the note is received, Erudio should assess his application as they would've done had they seen the note when his application had been originally submitted - bearing in mind Mr G had done this in good time and as soon as he'd received the hard copy DAF from Erudio.

Given that Mr G had previously been able to defer payment in his circumstances, I said that I'd be very surprised if the deferment was not granted now as his circumstances have not changed. And if Erudio did not grant Mr G's 2017 deferment application, I said he could raise a new complaint which our service would consider.

I thought Erudio should also remove any arrears accrued as a result of Mr G's 2017 application being considered incomplete, as well as any negative entries on his credit file arising out of this.

And I also thought that Mr G had been caused a considerable amount of distress and inconvenience by what had happened. It looked like Erudio had got a number of things wrong which had led to a great deal of confusion. And Mr G had had this matter hanging over him for some time which must have been very stressful, particularly as he says he doesn't have the funds to pay the loan amount Erudio are demanding. So I'd considered compensation in the sum of £300 reasonable in the circumstances.

responses to my provisional decision

Mr G agreed with my provisional decision. In summary, he made some further comments about how Erudio had not followed the proper procedure in relation to issuing notices of sums in arrears (NOSIAs) and on the time it took for correspondence from Erudio to reach him.

Erudio did not agree with my provisional decision. In summary, they said that:

- the chronology of events in the provisional decision was not accurate;
- they had followed the correct process on NOSIAs, default notice, and termination of Mr G's agreement;
- they'd taken sufficient steps to make contact with Mr G and provided a schedule of phone calls made to him;
- Mr G had not made contact with them after 19th May 2017 and the fact that he'd not received a deferment acceptance letter should've alerted him to there being a problem;
- Mr G's deferment application had not contained a note on third party support.

my further findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In particular I have carefully reviewed the response of the parties to my provisional decision. However, my view remains unchanged. I don't think that Erudio have treated Mr G fairly for the reasons I have previously given. And I shall address the key points raised in response to my provisional decision here.

Erudio's supply of hard copy deferment application form

This was sent less than two months before Mr G's current deferment period was due to expire. This is the case even on Erudio's date of his deferment expiring on 9th July 2017 (in their email in response to my provisional decision they say 9th July 2018, but they must mean 2017 as they've said previously).

Further, they say in their recently supplied chronology that they sent Mr G the hard copy DAF on 12th May 2017. But in their final response letter they say this was on 16th May 2017. And indeed the copy of the letter I've seen that encloses the DAF says the latter date.

In any event, Erudio do not dispute that Mr G telephoned about it on 19th May 2017 - so he clearly hadn't received it at that point. And whilst the online portal had been open from April 2017, if Erudio give customers the option of making the application in hard copy form, sufficient time needs to be allowed for this. I don't think the evidence shows that sufficient time was given here.

submission of deferment application

Erudio maintain that Mr G's deferment application did not contain a note explaining that third party support wasn't paid via a bank account. Mr G says he did submit a note. I've seen the paperwork Erudio say was received. But as I said in my provisional decision, on balance, I accept what Mr G says. He was dealing with one application that was important to him. I consider it unlikely that he would not include the note with it, as he had on previous applications. I can't say what happened to the note when Mr G's paperwork was received by Erudio, but this doesn't mean Mr G didn't include it in the first place. Neither is it fair or reasonable to hold Mr G responsible for Erudio not being able to locate the note that I find it likely he sent.

Erudio's communication with Mr G.

Erudio now say that in addition to the five letters they sent Mr G between June and October 2017 (which he says he did not receive), they also called him numerous times between September and November 2017.

I don't know why none of these calls were listed in the 'contact notes' document initially provided. But in any event no messages were left when these calls were unanswered. Erudio say it's their policy not to leave messages. I'm not sure how strict this policy is because the 'contact notes' document appears to show a message being left in May 2016 for example. But if Erudio did not leave any messages when they phoned, then it wouldn't be reasonable to expect these calls to be returned.

Erudio say that Mr G did not contact them after 19th May 2017. And they say he should have been alerted to there being an issue because he hadn't received a letter confirming his deferment application had been accepted. While it would be fair to say that he could've called them, he wasn't expecting there to be a problem with his application. And whether he could have called or not does not absolve Erudio of their responsibilities in any event.

termination of the loan agreement

I've found the evidence Erudio have provided on this unclear. In their final response letter to Mr G they say that because they'd had no contact with him, the deferment application remained incomplete and repayments of £130.76 became due on the 10th of each month. Arrears accrued which meant they were entitled to terminate the loan agreement.

In response to my provisional decision, Erudio directed me to NOSIAs dated 13th June 2017 to show that they had followed the correct process before issuing a default notice and terminating the loan agreement as a result of Mr G's incomplete deferment application.

But the June 2017 NOSIAs pre-date what Erudio say was the end of the deferment period of 9th July 2017. And they make no reference to payments of £130.76 a month. And they do not show that Mr G had fallen behind by two monthly contractual payments, which is what we'd expect before a default notice is issued.

The chronology of events that Erudio supplied in response to my provisional decision is also at odds with the other evidence I've seen in this matter. They say the notice of default was sent on 11th October 2017 but the letter is dated the 13th October 2017. They say a demand in full was sent on 9th November 2017 but I've seen the letter terminating the loan agreement and asking for repayment of the loan and it is dated 11th November 2017. They say the agreement was terminated on 19th November, but a letter dated 21st November 2017 instead confirms the termination. They omit to mention that further NOSIAs were sent on 14th November 2017, after the default notice had been sent and the loan agreement terminated. This does not give me confidence in their paperwork in this case.

I can only make a decision based on the information that has been put forward by the parties. So on balance, I am not persuaded by Erudio's assertion that they have followed the correct procedure in terminating Mr G's loan on the basis of an incomplete deferment application and consequent arrears.

So my conclusions in this case remain unchanged. I don't think Erudio have dealt with Mr G fairly. And they need to take the steps I suggested in my provisional decision to put things right. If there is an outstanding issue relating to Mr G's 2014 application, this can be dealt with as a separate matter.

my final decision

So I uphold this complaint and direct Erudio Student Loans Limited to:

- Reinstate Mr G's account and reconsider his 2017 deferral application on receipt of a copy of the note on how his third party support is not received via a bank account – a copy was provided with the provisional decision and will also be provided with this final decision (and can also be supplied by Mr G if required);
- Remove any arrears accrued connected to Mr G's 2017 deferment application;
- Remove any negative entries on his credit file arising out of this;
- Pay £300 compensation to Mr G for the distress and inconvenience caused.

Erudio Student Loans Limited must pay the total compensation within 28 days of the date on which Mr G accepts my final decision. If they pay later than this they must also pay interest on the £300 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If they consider they are legally required to deduct income tax from that interest, they must send a tax deduction certificate with the payment so that Mr G can reclaim the tax if he is able to.

Mr G should refer back to Erudio Students Loans Limited if he is unsure of the approach they have taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 October 2018.

Sonia Kalsi
ombudsman