

complaint

Mr B complains that Erudio Student Loans Limited didn't process his deferment application for his two student loans. And he is unhappy with what it said about sharing his data.

background

Mr B was unhappy with Erudio during a previous deferment year. But that was all sorted out. This complaint centres on his application to defer for 2015-2016. He says Erudio wouldn't accept his application. And because of this he has arrears which led to Erudio issuing him with a default notice.

Erudio says it didn't accept the application because Mr B wrote on the form that he didn't want his information shared with Credit Reference Agencies ('CRAs'). Erudio says that it told Mr B he needed to send it a new application without this comment – or he wouldn't get a deferment.

Mr B isn't happy with this. He says that Erudio should have processed his deferment form anyway. He also says that what Erudio put on the form goes against the original terms of his loans. So it should also give him an assurance that it won't share his data with CRAs,

Our adjudicator didn't uphold the complaint. He didn't think Erudio had done anything wrong.

Mr B disagrees with this. He has asked for the case to be looked at again.

I issued my provisional findings on this case on 25 July 2016 which said:

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

After looking at this case I think Erudio does need to do something to put things right. I will explain why:

Erudio and Mr B disagree on what data Erudio can share about the loans. Mr B wrote on his deferment form to make it clear he didn't accept what Erudio said it could do. But I think it is crucial to point out that:

- *the terms and conditions of each loan are governed by the original loan documents – not by Erudio's deferment form or Mr B's comments*
- *Erudio hasn't yet shared information with CRAs about Mr B's loans*

From reading each loan agreement it is clear that Erudio can share some data about the loans in certain cases. But because it hasn't shared any information with CRAs yet it is hard for me to say if Erudio has done anything wrong or whether that has negatively affected Mr B in any event.

It is not for me to give general guidance about what Erudio can and can't do with Mr B's personal data. This sort of thing comes from the Information Commissioners Office. I can't ask Erudio to give Mr B general assurances about data sharing either. If, in the future, Erudio does report to CRAs about his loans then we could look at a complaint about that specific case. But it would be based on the individual facts and with reference to the terms and conditions of the original loans, relevant guidance and law.

For me the main issue here is whether Erudio should have accepted Mr B's deferment application. I can see that he filled out the form and provided all the supporting evidence. He also signed the form to verify that what he had provided was accurate. Overall, I don't see why Erudio couldn't have processed it.

Erudio says that Mr B 'defaced' the form with his comment about data sharing. But Mr B can't alter the original terms of his loans with this handwritten comment– and Erudio accepts that it isn't trying to change or add extra terms during the deferment process. So I'm not sure why it would refuse a signed form because Mr B added a comment. Erudio could've written to him to say that it didn't agree with his view on data sharing. But it still could've processed the application.

I think that Erudio needs to put Mr B back in a position as if it had accepted his deferment form dated 28 June 2015. It appears Mr B was eligible for deferment so Erudio needs to re-work the account to remove any arrears or charges which wouldn't have come about had it been granted at the time.

Mr B has also said that his request for loan forgiveness was declined. I'm sorry to hear about his medical condition but based on the law that covers the loans I don't think he is eligible. And it doesn't look like he can have the 36 month deferment either as he doesn't get the relevant benefits.

Mr B has also said he had problems getting the forms for his latest deferment. I am sorry to hear that but it appears these issues were sorted out in the end. Erudio hasn't really had a chance to comment on the issue – so it is probably better dealt with as a separate complaint.

my provisional decision

My provisional decision is to direct Erudio to re-work Mr B's account as if it had accepted his deferment dated 28 June 2015. It should remove any arrears and charges that wouldn't have been added. And stop any recovery action that wouldn't have occurred had it accepted the deferment.

I asked the parties for their comments:

Erudio disagreed with my decision. In summary, it said that its business process is not to accept 'defaced' deferment application forms. It says that Mr B didn't agree with the original terms of the loans, and if it had accepted the form it would look as if it had agreed to a change in the terms and conditions.

Erudio also adds that Mr B had sent in a signed form for the previous 14/15 year and current 16/17 year that he hadn't written anything extra on. It also says that he recently sent in another form (albeit too late) for the 15/16 year where he hadn't done that either.

Mr B broadly agrees with my provisional decision. However, he wants to be sure that Erudio will roll back the arrears to the date the previous deferment year ended. And he would like compensation for all the time he has spent complaining about this.

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 considered what Erudio has said. But I'm not convinced that it's fair to change my initial findings. I will explain why:

Firstly, while Erudio has its own policy, it's for me to decide what is a fair and reasonable outcome. In this case I've already gone into some detail about why I think it would've been fair for Erudio to process the deferment despite what Mr B wrote on the form. And my reasoning for this (as detailed earlier in this decision) hasn't changed. I maintain that the terms and conditions of each loan are governed by the original signed loan documents – and any later disagreement about the interpretation of the data sharing provisions is a separate matter to Mr B's right to defer.

Mr B had signed the form and provided all the details needed for deferment. I know Erudio has said it was concerned about the impact of accepting the form with Mr B's extra comments on it. But I don't think what Mr B wrote on the form meant he lost his right to defer. And it is the same opinion he had expressed in a complaint the year before when Erudio wrote back to say it didn't agree with him (but it still processed his deferment). I don't think what Mr B wrote can alter the terms of the original loan agreements he signed. But if Erudio was concerned at looking as if it had agreed with Mr B's opinion it could've written back to say it didn't agree, and still processed the deferment.

I know Erudio has pointed out that at other times Mr B has sent it deferment forms without extra comments about data sharing. But I don't think that in itself means Erudio was acting fairly when it refused to process his 15/16 application.

I agree that it wasn't helpful that this time Mr B chose to write on his deferment form rather than under separate cover. It just muddled matters. After all Mr B has also said that the disagreement over data sharing should be treated separately to his right to defer. But ultimately I don't think it should've prevented Erudio from moving forward with the deferment.

I've considered what Mr B has said about compensation. I think Erudio could've done things better. Specifically it wrote to him to say his 15/16 deferment had been approved when it hadn't been. And it also wrote to say he hadn't signed the form when he had done (it later clarified that it was refusing the form based on his handwritten comment). So it should compensate him for this confusion.

I know Mr B says he spent a lot of time complaining and wants compensation for that. But I think he could've helped things by keeping his argument about data sharing separate to his deferment application. After all, he knew from his prior complaint that no data had yet been shared by Erudio. And he had already made his opinion about the matter known outside of his comments on the 15/16 deferment form.

All in all I think Erudio should pay Mr B £100 compensation in addition to what I have already said it needs to do.

Mr B is concerned that as part of my recommendation Erudio won't roll back the arrears to the date the previous deferment year ended. To be clear my decision is that Erudio re-work the account as if it had accepted his deferment form dated 28 June 2015. This will take into account the comments Erudio made in its final response letter to Mr B's prior complaint (dated 22 May 2015). In which it agreed to move Mr B's deferment start date to 10 May 2015, and backdate any deferment by six months.

my final decision

My final decision is to direct Erudio Student Loans Limited to re-work Mr B's account as if it had accepted his deferment dated 28 June 2015. It should remove any arrears and charges that wouldn't have been added. And stop any recovery action that wouldn't have occurred had it accepted the deferment. It should also pay him £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 August 2016.

Mark Lancod
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