

complaint

Miss P complains that Erudio Student Loans Limited didn't agree to defer repayment of her student loan when it should have done. She was, she says, earning less than the threshold required for repayment. Erudio took payments anyway, by direct debit. When Miss P stopped the direct debit, Erudio defaulted her loan and logged adverse information with credit reference agencies.

background

Miss P took out a student loan some years ago, with the Student Loans Company Limited. Later, Erudio took on the loan (along with others) and told borrowers, including Miss P, that it had done so. In the course of this complaint, Miss P suggested that the transfer wasn't valid, but appears now to accept that it was.

Both Erudio and Miss P accept that she wouldn't have to make repayments if her income was below a certain level, set by government. If it was, she could apply for payments to be deferred – which she would need to do each year.

In 2014 Miss P's income was such that she wasn't required to make loan payments. Erudio had agreed a deferment until October of that year. In August it wrote to her to, reminding her that arrangement would expire in October. She would need to complete a further application if she wanted to defer payments beyond that time. The application said that Miss P would need to include proof of her income – by including a copy of any employment contract, 12 weeks consecutive payslips or a P11 form.

Miss P says she had difficulty getting supporting documents. She was in temporary employment at the time (which in the event lasted from the end of July until December), and couldn't provide enough payslips. And she had trouble getting a P11 form from her employer. She says she provided a contract from her employment agency, but Erudio didn't accept it as sufficient proof of income. Both Miss P and Erudio say it was difficult to get in touch with the other to deal with those difficulties.

Erudio didn't agree to a further deferment and in December 2014 took a payment by direct debit. Miss P cancelled the direct debit instruction with her bank, so Erudio added (and continued to add) arrears to her account.

Miss P complained about what had happened, but Erudio didn't think it had done anything wrong. It said that Miss P hadn't provided the information and evidence necessary for it to agree a further deferment, and so it was within its rights to seek loan payments. When those weren't made, it was appropriate to put the account into arrears.

When Miss P referred the matter to us, one of our adjudicators considered it. She was broadly in agreement with Erudio. It was, she said, for Miss P to make sure Erudio had the documents it needed to agree a deferment. Miss P didn't agree and asked that an ombudsman look at the case. I did that, but reached a different conclusion, which I set out in a provisional decision.

my provisional decision

My provisional decision explained that I was minded to agree with Miss P that Erudio should have agreed to continue the deferment. My reasons were, in summary:

- There was no disagreement that Miss P was entitled to defer loan repayments if her income was below a certain level. Former students only have to repay student loans once their income reaches a certain level.
- Erudio was entitled to check whether borrowers applying for deferment of payments were doing so legitimately.
- It was understandable that Erudio would want to see evidence of income. In Miss P's case, however, it seemed more concerned about getting specific paperwork than about considering what it knew about her income.
- I thought that was rather too rigid an approach for the circumstances here, and one that led to an unfair outcome.
- Miss P's income indicated that her income was below the necessary level for deferment.

I said that Erudio should re-work Miss P's account as if it had agreed to a deferment from 9 October 2014 and pay Miss P a further £300 in recognition of the distress its actions had caused.

Miss P accepted my provisional findings, but Erudio didn't. It said that Miss P hadn't completed the deferment application for 2104/2015 and had made no application at all for the years 2015/2016 or 2016/2017. Miss P accepted she hadn't applied for deferment after October 2015, but explained she didn't think it was worth it, given the way Erudio had handled the 2014/2015 application. As Miss P and Erudio are still in dispute, I've looked at the case again – in the light of the new arguments and evidence they've now put forward.

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'll deal first with the application to defer payments from 9 October 2014. Erudio says it didn't approve that application because Miss P didn't provide it with the detailed evidence it required. It says now that it wasn't convinced that Miss P's income was below the deferment threshold.

I don't agree with Erudio on this issue though. All the evidence Miss P provided indicated an income well below the deferment threshold – as it had been up to October 2014. There's nothing to suggest a sudden (or any significant) increase since the previous deferment had been agreed. Logically, Erudio's position must be that it thought Miss P's income had increased significantly since October 2013; but it's not explained why it's taken that view or supported it with any evidence. On balance, I think it's likely that Miss P's income was – as she said – below the threshold.

Erudio says too that Miss P didn't follow the terms and conditions about providing evidence of her entitlement to a deferment. But the conditions she signed didn't set out in detail what she needed to provide. (Given that they might have to cover changing circumstances over many years, I wouldn't expect them to.) They were far less specific than Erudio has suggested. The detailed requirements are Erudio's own, not something agreed with Miss P at the outset. But, whatever the strict legal position here, I think it would have been fair for her to be treated as someone who demonstrated an income below the deferment threshold.

The position from October 2015 is rather different though. There was no application for deferment – even one that Erudio felt was incomplete. So I don't think it would be fair – at least in the context of this complaint – to require Erudio to treat Miss P as if she had made applications for the years 2015/2016 and 2016/2017. But, if she now wishes to make retrospective applications for those years, I would expect Erudio to give them proper and fair consideration. But, to be clear, I'm not making any formal direction about that, or telling Erudio what decision it should make about any future deferment applications.

my final decision

My final decision is that Erudio Student Loans Limited didn't treat Miss P fairly in respect of her application for deferment from 9 October 2014. To put things right, it should re-work her account as if it had agreed to a deferment for the year from 9 October 2014. That means it needs to:

- refund any payments taken in that period – by returning them to Miss P, together with interest at 8% a year from the date of payment to the date of the refund;
- refund any arrears added to the account in that period, by removing them from the account – backdated to the date on which they were added;
- arrange for the removal of any negative data it's registered with credit reference agencies and which was generated in the year from 9 October 2014;
- confirm to Miss P in writing that the account wasn't in default in that period; and
- pay Miss P £300 in recognition of the distress its actions have caused and the inconvenience to which she's been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 7 December 2016.

Michael Ingram
ombudsman