

The complaint

Mr J has complained that Erudio Student Loans Limited defaulted his accounts after writing to the wrong address.

What happened

Mr J had student loans with Erudio. He deferred repayment each year, as his income didn't meet the threshold to begin making payments. Erudio had been contacting him by email.

In 2020, Mr J told Erudio that they had an old address on file where he was not residing. He was happy for them to continue writing to that address for the moment as it was a family member's address, so he knew his mail was getting sent somewhere. But he was moving soon, so he'd need to update them with his correct address. However, Mr J forgot to update Erudio, and in the meantime the family member's property was sold on.

In 2021, Erudio wrote to the old address about deferment. It didn't hear back and the deferment period ended. The new residents returned Erudio's post to it as Mr J did not live there, but Erudio continued to write to that address. It did not perform any checks or traces to see where Mr J really lived, nor contact Mr J by phone or email. It sent the default notice to the address it had been informed Mr J was not contactable at, and defaulted the accounts.

Eventually, Mr J found out what had happened and complained. Erudio said it was Mr J's responsibility to update his address, and it was now its process to communicate by post.

Our investigator didn't uphold the complaint. Mr J asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

I sent Mr J and Erudio a provisional decision on 17 August 2023, to explain why I thought the complaint should be upheld. In that decision, I said:

My role here is to look at not just the letter of the law and regulations, but also at what is good industry practice and what I consider to be fair and reasonable in the circumstances.

It seems that both sides share some responsibility for what happened here. I accept Mr J made an oversight and forgot to update his address. It's an understandable mistake – one might not remember every single company in one's life when moving home. But it did cause Erudio to write to the wrong address.

Mr J received correspondence about deferment by email for some years, so it seems he was expecting to hear from Erudio the same way in 2021. But Erudio sent things by post instead. I accept that if the address had been correct, Mr J would've most likely got the letters. But I also accept Mr J made a reasonable assumption that he would be contacted by email as he had in previous years, whereas Erudio didn't communicate in the expected manner. I think that Erudio's unannounced change in communication method also factored into Mr J's deferment being missed.

Erudio did not take any reasonable steps to check that it was writing to the correct address, or that Mr J had actually received its correspondence. Indeed, Mr J has provided a recording of his call with Erudio from the previous year, where he explained that the address on file wasn't the right one, he was moving shortly, and he was only keeping it on file for now so he knew his post was going somewhere until he'd moved. Erudio's notes also reflect that the address needed updating once he'd moved.

But even when Erudio hadn't had any reply from Mr J and critical deadlines were looming, it continued to send letters without checking things. Mr J had deferred every year and this was most unusual, and Erudio knew it was in its customer's best interests to fulfil his deferment. Erudio could have checked Mr J's address – a standard industry practice, or spoken to Mr J by email – as it had done successfully in previous years, or called him. Erudio may not be strictly required to use contact methods other than post. But I don't think its actions or inactions here constituted good industry practice or a reasonable approach to the situation, not least when it knew the address on file was not up to date. It would've been much more reasonable for Erudio to check Mr J's address or try to reach him by email or phone.

Perhaps most importantly, the new residents returned Erudio's post multiple times, so Erudio reasonably knew it had been writing to the wrong address. Yet it went on to write to there and there only, even sending the default notice to that wrong address and going on to terminate the accounts, while knowing that Mr J most likely didn't know what was going on and hadn't been given the proper opportunity to get things back on track. It follows that this default was unfair.

I acknowledge that Erudio did send Mr J a couple of text messages around the start of the deferment period. But these mostly just set out that Erudio had an online portal. And given how serious the situation became – not least when the accounts were approaching a default and Erudio knew its key correspondence had been going to the wrong address – Erudio should have done more to make Mr J aware of what was going on.

So while I agree that Mr J should've updated his address, I accept that was a genuine oversight. And I think Erudio also caused things to go wrong – especially when it knowingly sent key correspondence to the wrong address. The question, then, is what I think might have happened differently had things gone right.

Mr J has provided evidence showing that his income was below the threshold in 2021 and afterwards. And he successfully deferred every year before this incident. So I think that had Mr J received Erudio's key correspondence, he would have applied for deferment.

Since both sides share some responsibility for things going wrong, I think the fair way to resolve this is to treat the situation as if things had gone right – i.e. to put the accounts in the position they would've been in had Mr J been aware of their status and been able to apply for deferment.

Another way to think about this is that a key tenet of these student loans is that Mr J would be able to defer repayments until he had a certain income. I must consider whether it would be fair for Mr J to be made to repay his loans before he had the appropriate income to do so, just because of a potential oversight on his part, compounded by Erudio's lack of reasonable care or forbearance. I don't think that would be fair in this case. I think it's much fairer to try to put things back to the way they should've been.

Both parties responded to the provisional decision. I'll talk about their responses below.

What I've decided – and why

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

Mr J agreed with the provisional decision.

Erudio did not. It raised a number of arguments.

Erudio pointed out that it used to send the deferment application by post, too. That may well be, but the fact remains that it stopped sending the emails it used to. It also pointed out that Mr J had been late in the past even when he was sent correspondence by email, so it said we could not argue beyond doubt that the lack of emails was the main cause of him missing the deadline in 2021. But Erudio has misread the provisional decision. I never said that the lack of emails was the main cause of Mr J missing the deadline, let alone beyond doubt. I simply noted that it was likely a factor, which is still the case.

Erudio argued that because Mr J had deferred on time in prior years, it showed he knew what the deferment deadline was in 2021. Its argument is poor. For one thing, it pointed out just above that Mr J was late in the past – which would suggest, by its own reasoning, that he was *not* certain of the deadline every year. And just because he remembered to defer in previous years, it does not follow that he was fully aware of the deadline for 2021. It also does not relieve Erudio of its own obligations, such as in keeping him updated.

Erudio argued that because its initial deferment correspondence was not returned, it suggests Mr J received it. Again, this argument is not logical. That was not Mr J's up-to-date address – which Erudio knew at the time – and Erudio has provided no evidence to show that Mr J actually received that post. It's more likely that the residents of that address simply did not return the post at first. Or it's possible that Erudio failed to log the returned post at first, or that it got lost in the postal system either on the way out or the way back, and so on. I am not satisfied that Mr J received that deferment correspondence. And I find that by the time post started getting returned not long after, Erudio was reasonably aware that he was not getting its letters. So it acted unfairly and unreasonably in continuing to knowingly send all its correspondence to the wrong address and in defaulting the account while it reasonably knew its customer hadn't been getting the proper updates.

Erudio said that the only reason mail failed to reach Mr J is because he failed to update his address. But that is clearly untrue. He'd told Erudio the address was out of date, Erudio failed to take any reasonable measures to get the up-to-date address or to contact Mr J directly by phone or email, and most importantly Erudio did not act when its post was returned and it reasonably knew Mr J couldn't be contacted there.

Erudio argued that its only responsibility was to issue a deferment form. But once again, this is a very poor argument. It still has the other responsibilities and obligations of a financial business, including things like treating customers fairly and sending key correspondence to the right address when it's informed it has been using the wrong one.

Erudio said it's not its process to trace addresses. I am disappointed to see it still trying arguments such as this. As I noted before, it could have called or emailed. And it should be familiar with our service's approach by now, as well as with its obligations to treat customers fairly. It should avoid putting processes over people, and it cannot treat customers unfairly just because its process is to do so. There will be occasions where it must depart from its process in order to treat a customer fairly.

Erudio disagreed with my depiction of these loans, arguing that customers can choose not to defer. But it remains the case that deferment is a key feature of these student loans. Indeed, deferment was even made effectively automatic for newer student loans. And the function of the deferment is such that customers don't have to make repayments until they have the appropriate income. The fact that customers can choose to pay anyway does not change that. And in a case about student loans, it's only right that I take the full context of these loans into account.

Erudio argued the account defaulted because Mr J didn't make payments. But it also defaulted because Erudio knowingly sent the default notice and other key correspondence to the wrong address and didn't take any reasonable efforts to make sure Mr J knew what was happening, in breach of its obligations.

Erudio said it had sent evidence that Mr J knew he didn't have a payment plan in place. This does not appear to be in the evidence it sent. But regardless, I don't see that Mr J needed to have a payment plan in place as he was eligible to defer.

Lastly, Erudio argued that Mr J failed in his obligations. I already accepted that he failed to update his address. But Erudio also failed in its obligations, and in a significant fashion – ultimately, it defaulted an account after knowingly sending the required correspondence to the wrong address. So things need to be put right.

Putting things right

I direct Erudio Student Loans Limited to take such actions as are necessary to rewind the current position and effectively reinstate Mr J's loans. This includes honouring the original terms and conditions (which may involve writing off the loans when Mr J reaches a particular age), unwinding the default and arrears and ceasing any current action to pursue them, and removing any related negative information from Mr J's credit file.

It also means allowing Mr J to make backdated deferment applications covering 2021 to now, with a new deadline starting from at least two months from the date of this final decision. And it means Erudio considering and processing these applications as if they had been made before the original deferment deadlines. I would advise Mr J to make sure that he has given Erudio his latest contact details now, to make sure he applies within the new deadline, and to look out for correspondence about the matter.

My final decision

I uphold Mr J's complaint, and direct Erudio Student Loans Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 September 2023.

Adam Charles
Ombudsman