

Overseas borrower liable for student loan debt when IR unable to contact them

Legislation	Ombudsmen Act 1975; Student Loan Scheme Act 2011
Agency	Inland Revenue Department
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	527737
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Complaint about the administration of a student loan of an overseas borrower – Inland Revenue Department (IR) unable to notify borrower about interest and penalties on student loan – Ombudsman found that IR did not act unreasonably – legislation does not prevent interest and penalties accruing in the event that IR is unable to contact the borrower

Background

The Chief Ombudsman received a complaint from an overseas borrower about the way the Inland Revenue Department (IR) administered their student loan and the addition of interest and penalties that they were required to pay.

The borrower travelled to New Zealand in 2006 to undertake tertiary study and remained in the country until 2008. During this time they obtained two separate student loans, one for \$10,135 and another for \$10,683 to cover course fees and course-related costs. The borrower made no payments towards these loans after leaving New Zealand nor did the borrower keep IR updated with their contact details.

Since 2019, IR has dedicated specific resources to contacting overseas borrowers. This is because non-payment of their loans is a significant financial issue for New Zealand. This means that IR is better equipped to locate overseas-based borrowers who had otherwise disengaged with IR, and to advise them of their repayment obligations for their student loans.

In 2019, IR contacted the borrower. IR posted a letter on their personal online “myIR” account confirming that interest and penalties had been accruing on their student loans and that the

outstanding amount owing was around \$47,500.¹ Attempts to negotiate repayment of this debt failed and IR's offer of remission (of around \$6,500) was not accepted by the borrower.

The borrower complained to the Ombudsman that IR had failed in its statutory obligation to notify borrowers and therefore was not able to place interest and penalties on the student loan. They also complained that the remission offers from IR were unreasonable when all circumstances of these loans were considered.

Investigation

The Ombudsman investigated whether IR had acted unreasonably in its administration of the student loan and whether the IR's offer of remission was unreasonable.

Student Loan Scheme

IR has a responsibility to administer the student loan of a borrower until the loan is paid off in accordance with the Student Loan Scheme Act 2011 (the Act).² The Act requires IR to notify the borrower when interest or penalties have been applied to a student loan.³ The Act also requires the borrower to notify IR when they have left New Zealand and to keep IR informed of any changes in circumstances and addresses.⁴

The legislation makes it mandatory for IR to contact a borrower when interest or penalties are accrued. However, this is qualified by the use of '*as soon as practicable*'. This recognises that there may be some situations, particularly when a borrower has not kept up with their obligations to notify IR of their contact details, where notifying the borrower may not be possible.

Section 134(1) of the Act requires that interest is charged to the student loans of all overseas-based borrowers. Once a borrower leaves New Zealand, they become an overseas borrower.⁵ Section 139 of the Act creates a liability for borrowers to pay late payment interest (also referred to as penalty interest) on unpaid amounts, irrespective of whether IR has been able to contact them.

There is no ability for IR to remove interest that has been applied pursuant to the legislation. However, sections 146 and 146A of the Act allow the Commissioner to grant relief (on application) from *late* payment interest and penalties that have accrued on a student loan, having regard to the circumstances of the case and when it is equitable to do so. Also relevant is section 176 of the Tax Administration Act, which requires IR to both maximise the recovery

¹ When an overseas borrower's assessment comes due, the assessment portion ceases to attract loan interest, but if it is unpaid it will attract late payment interest.

² The initial loan was made under the Student Loan Scheme Act 1992. This Act was replaced by the Student Loan Scheme Act 2011 and the outstanding balances are now subject to the 2011 Act.

³ Section 43 Student Loan Scheme Act 1992; sections 136 and 140 Student Loan Act 2011.

⁴ Section 37 Student Loan Scheme Act 1992; section 28 Student Loan Act 2011.

⁵ Section 23 Student Loan Scheme Act 2011.

of outstanding debt and consider whether recovery would place the taxpayer in serious hardship.

IR has developed internal policies and a calculator to determine the amount of remission offers provided for in the legislation. The calculator provides a “*standard remission offer*” amount, which adjusts for interests and penalty amounts that IR may remove from the loan. IR may also give consideration to other factors when making a remission offer, such as previous compliance history, where in the world the borrower is, what the core debt was, and whether there are any special circumstances regarding the borrower’s situation.

Administration of student loan

The Ombudsman accepted that the sheer volume of overseas borrowers meant it was not possible for IR to find and contact each individual borrower living overseas, particularly where the borrower has not updated their contact details.⁶ The Act recognises the importance of this contact information because it enables IR to correctly apply interest to the loan and ensure that the borrower’s repayment obligations are complied with.

While IR was not in a position to advise the borrower of the interest and penalties accruing on their loan due to the lack of contact details, the Ombudsman accepted that IR correctly applied the relevant interest and penalty sections of the Act. In addition, IR contacted the overseas borrower soon after obtaining the contact details.

The Ombudsman also considered that the remission offer made to the borrower was not unreasonable. The offer made to the borrower was calculated using the IR remission calculator. No special circumstances were identified and the offer was consistent with other offers that were made to borrowers in similar situations.

Outcome

The Ombudsman formed the final opinion that IR’s administration of the student loan and its remission offer was not unreasonable. IR correctly applied the interest provision of the Act. The Ombudsman considered it was difficult to be critical of IR as it had not been in a position to contact the borrower at an earlier juncture.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.

⁶ On 31 March 2020, there were around 100,000 overseas-based borrowers and around 70,000 of these had overdue payments.