

The complaint

Mr C complains that NIIB group Limited gave him incorrect information about how the balance under his loan agreement would be calculated when he handed back his car.

What happened

In February 2019 Mr C was supplied with a car and entered into a hire purchase agreement with NIIB.

In October/November 2019 Mr C experienced some financial difficulties and fell behind with his payments under the agreement. In July 2020 Mr C contacted NIIB and advised that he could no longer afford to make payments. He agreed to hand the car back. The car was collected and sold at auction in August 2020.

Mr C says that when he contacted NIIB in July 2020, it told him that his balance under the agreement would be calculated in the following way: the amount to pay would be drawn down to the voluntary termination amount (£7,871.39) and the sale proceeds would be added to what he'd paid so far leaving nothing further to pay if this cleared the balance.

Mr C was subsequently told that he owed £2,145.11 under the agreement. He thinks the balance should have been cleared when the car was sold, given its expected value. Mr C says he hasn't been told what the car sold for at auction.

In response to Mr C's complaint, NIIB said that Mr C chose to voluntarily terminate his agreement and that it had explained the likely remaining balance to him.

Mr C wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. He looked at the account notes and said it wasn't clear whether the agreement was ended early by voluntary termination or voluntary surrender. The investigator said that although NIIB had said that the agreement was voluntarily terminated, the amount on the account statement didn't show this. The investigator said it was likely that Mr C was given contradictory or incorrect information during the call in July 2020, which left him with an expectation which wasn't in line with how NIIB would settle the agreement. The investigator said NIIB should pay £125 compensation to Mr C for the loss of expectation and the distress and inconvenience caused.

Mr C didn't agree. He said if he'd been given correct information about how NIIB would settle the agreement, he would've kept the car. Mr C said NIIB should be bound by what it said during the call as to how the agreement would be settled.

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 C has said that he was told the agreement would be settled by reducing the balance to half of the total due under the agreement, and for the sale proceeds to be applied to the

remaining balance. He's also said that based on his estimated value of the car, he expected to be left with nothing to pay under the agreement.

A credit agreement can be ended early by voluntary termination or voluntary surrender. In a voluntary termination, the car is handed back and there will be nothing left to pay provided that at least half the total amount payable under the agreement, plus any overdue payments, have been paid. Under Mr C's agreement, half of the total amount payable under the agreement is £7,871.39.

In a voluntary surrender, a rebate on interest due under the agreement is applied. This amount varies depending on how early the agreement is being settled. The car is then sold, and the net proceeds are applied to the remaining balance under the agreement, leaving the consumer responsible for any shortfall.

Mr C's description of how he thought the agreement would be settled is a combination of voluntary termination and voluntary surrender. I've reviewed the account notes and the account statements to see what actually happened.

Based on what I've seen, the agreement was voluntary terminated, although there are some items which I would expect to see on a voluntary surrender, such as an interest rebate. This service asked NIIB for further information about some of the reductions applied to Mr C's account, but the explanation provided didn't resolve the inconsistencies. That said, I'm satisfied that Mr C was put in a better position than he would have been under a voluntary termination, because the reductions applied reduced the outstanding balance to a lower figure than it otherwise would have been.

Mr C has said that he only agreed to hand back the car because of the information given to him about how the agreement would be settled. He says that because the information doesn't accurately reflect what happened, NIIB should be held to what it said to him over the phone in July 2020.

This service asked NIIB for the call recording dated July 2020 and for the call notes. Neither has been provided. Because I wasn't present when the call took place, I can't be certain of exactly what was discussed. Even if Mr C was told that his agreement would be settled in the way that he described, this isn't what has actually happened. Bearing in mind what I've said about the two ways in which an agreement can end early, I think it's more likely that there's been a miscommunication here by NIIB when it explained to Mr C how the agreement would be settled.

I appreciate that Mr C feels that NIIB should be held to what he says it told him over the phone. However, even if NIIB miscommunicated things to Mr C, this is an error and doesn't mean that NIIB can be held to this in a contractually binding way. Because of this, I don't think it would be fair to ask NIIB to do anything other than a voluntary termination or a voluntary surrender. As I've already explained, the account shows that the balance is less than I'd expect to see under either method because of the additional deductions made by NIIB.

Based on everything I've seen, I think it's likely that NIIB provided inaccurate information to Mr C about how the agreement would be settled. I don't agree that this miscommunication becomes contractually binding on NIIB.

Putting things right

It's clear that Mr C has found the experience of ending his agreement early frustrating and distressing. I appreciate that Mr C's decision to end the agreement early was made against a

background of financial difficulties. In the circumstances, I'd expect NIIB to agree an affordable repayment plan with Mr C so that he can pay off the outstanding balance. I also think it's fair to ask NIIB to pay compensation to Mr C for his loss of expectation and the distress he's been caused.

I've taken into account Mr C's comments that he wouldn't have ended the agreement early if he'd been given correct information. However, I'm not persuaded that Mr C would have done anything different. He'd already advised NIIB that he could no longer afford the payments on the car. If he'd been in a position to continue to make payments (even with the assistance of a third party), I don't think he would've contacted NIIB about ending the agreement early in the first place.

My final decision

My final decision is that I uphold the complaint. NIIB Group Limited must pay compensation of £125 to Mr C for distress and inconvenience. It should agree an affordable repayment plan with Mr C for the balance under the agreement and remove any negative credit information which has been reported since this complaint was raised.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 June 2022.

Emma Davy
Ombudsman