**complaint**

Mrs A's main complaint is that a fixed sum loan agreement with Hitachi Capital (UK) Plc ("Hitachi") was mis-sold to her.

**background**

Mrs A took out the loan to fund the purchase of a mandibular device, which was to be supplied and fitted by a dental practitioner.

The dental practice also arranged the loan. Mrs A says she first visited the practice in August 2014 when the loan application was completed.

She says she was measured for the device before the loan was approved and the dentist also took impressions before she was told the cost, which was more than she'd expected to pay. She says she went back in September to sign the agreement, which she believed was with the dental practice. She didn't know Hitachi was the creditor until she began receiving text messages.

Hitachi says it is not responsible for any mis-sale because the dental practice arranged the loan.

In my provisional decision, I said that I didn't think the loan had been mis-sold. But, I did think that Mrs A's loan repayments should have started in December rather than October 2014.

Hitachi has accepted my findings. Mrs A hasn't and has made further representations.

**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 have taken into account Mrs A's further representations and the information she's provided, but it doesn't change my opinion. I have repeated my findings below, commenting on Mrs A's further representations where relevant.

*mis-sale of the credit agreement*

In response to my provisional decision, Mrs A says she wasn't given any cost break down, or invoice by the dentist. Nor was she told whether additional fees would be payable because the device had to be returned on three occasions for adjusting. She feels this is tantamount to writing an open cheque. She says this is a breach of the General Dental Council's standards.

I will say at the beginning that this service is not responsible for regulating dentists. Therefore, if Mrs A feels the dentist has breached professional standards, I suggest she takes this up with the Council.

This service is concerned with whether she has been treated fairly by the finance provider, Hitachi, against which she's brought her complaint.

If the loan was mis-sold to her then Hitachi would be responsible for this under the Consumer Credit Act 1974. This is because the Act says the finance provider is responsible for anything said or done by the credit broker, in this case, the dentist, before a loan agreement is signed.

As I said in my provisional decision, I have taken into account that Mrs A was in discomfort and distress at the time she visited the dentist. But, she knew she was applying for a loan on her first visit because she couldn't otherwise afford to pay for the treatment.

I find no evidence that Mrs A was misled about the cost when she took out the loan. I don't think the gap between completing the application and signing the agreement is relevant. Based on Mrs A's own earlier account of events, she was told the cost by the practice before she signed the loan agreement. Although she was surprised and unhappy that it was more than the manufacturer had indicated, she agreed to go ahead with it.

She says she felt she had little option, but I haven't found any evidence that she was put under any pressure to sign, even though the dentist might already have taken measurements and impressions.

Also, Mrs A wasn't asked to pay any more because the device was returned three times. So I don't agree with her comment that she was writing an open cheque. The amount of the loan didn't change from what she'd agreed to pay by signing the agreement.

Mrs A says she feels she was 'ripped off' because the device manufacturer had led her to believe the treatment would cost less. She has explained that the manufacturer gave her the details and ratings of dentists in her area who were qualified to deliver the treatment. She then chose the lowest-rated practice because the manufacturer told her it might be cheaper. This might have been the manufacturer's assumption, but there's no evidence that she was mis-led about the cost by the dentist.

Mrs A also says she didn't realise the loan was with Hitachi until she began to receive texts from them. She believed the credit was being provided by the dentist because she'd previously had a similar credit arrangement with another dentist. But the agreement she signed is clearly between Hitachi and herself. She says she was extremely distressed and tired at the time. Therefore it's possible she overlooked this information.

In summary, I find that Mrs A knew she was applying for credit. According to her own account of events, she was told how much it would cost in total to supply and fit the device and how much she would have to pay each month before she signed. And, she agreed to these terms by signing the loan agreement, which clearly says it's with Hitachi.

In the circumstances, I don't agree she was misled in any way or mis-sold the loan by the dentist. Therefore Hitachi is not liable. For this reason, the agency agreement she has provided does not add anything to her complaint.

*start of payments*

Mrs A has also complained that Hitachi attempted to collect payment before she got her device, instead of one month after she received it.

Hitachi says it tried to collect the first payment one month after Mrs A signed the agreement. It says it has no information about when the device was delivered.

We asked Mrs A to send proof of when she received her device. She has sent a copy of a packaging label dated 14 November. She says she collected it from the dentist on 19 November. I accept that this is date Mrs A got her device.

The agreement says-

"Under this agreement you will pay 36 consecutive monthly payments of £41.66 commencing one month after either the date of this agreement, or, if later, the date of supply of the goods/services…."

Therefore, Mrs A's payments should have started around 19 December 2014, not in October 2014.

Because Mrs A's bank (and address) details were incorrectly filled in, Hitachi's attempt to take payment would have failed anyway. It isn't clear who was responsible for the error, but Hitachi has agreed to waive all charges, including the charge of £25 it applied in November. Therefore Mrs A now hasn't suffered any financial loss because of the mistake.

Hitachi has also agreed to start Mrs A's payments from 19 December 2014 and has re-calculated Mrs A's arrears from that date. Hitachi says Mrs A will need to bring her account up to date and set up her direct debit correctly.

**my final decision**

For the reasons I've given above, I do not uphold Mrs A's complaint against Hitachi Capital (UK) Plc that the agreement was mis-sold.

As Hitachi has now agreed to waive all charges and start her payments from December 2014, it doesn't have to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 15 February 2016

Athena Pavlou
**ombudsman**