DRN-3797657

The complaint

Mr M complains that Oplo HL Ltd ("Oplo") lent to him irresponsibly as he experienced financial difficulties during the repayment of the four loans he took out.

What happened

Mr M says that he purchased a property to renovate in 2016 and many unforeseen problems arose. He took out various credit cards and loans which he says 'snowballed' and he ended up with two secured loans against his property (with Oplo and another company) in addition to his first charge mortgage. Mr M says that his debt was increasing but there was no support from Oplo and that when he had conversations with the lender it explained that it was trying to save him money by consolidating the debt. He took out four loans with Oplo between March 2016 and September 2018, the last two of which were to consolidate the previous loan with Oplo.

Once Mr M was able to sell the property in 2020, he realised that the loans weren't affordable and says that he shouldn't have been given them. He had not planned to sell the property at this stage but he felt that he had no choice as he got deeper into debt. Mr M says that he does not believe the loans were well managed and that, although he was able to keep on top of payments until towards the end of this period, he struggled for the last year and a half and defaulted on his credit card and was late with a lot of payments. He felt overwhelmed and was diagnosed with depression.

Oplo says that at the time of these four loans, it spoke to Mr M, taking him through questions to ensure it was lending responsibly. It says it conducted full income and expenditure assessments and verified Mr M's income using payslips provided. It also conducted full affordability assessments and considered his other borrowing as part of this to ensure the loans were affordable and carried out stress tests to ensure the loan remained affordable if interest rates rose.

Oplo says it used government guidelines to estimate basic household expenses and living costs unless advised that they were higher or it found evidence of them being higher. Bank statements covering 30 days were obtained and no further outgoings were determined. It also carried out creditworthiness assessments to highlight how Mr M had managed his existing and previous debts to see whether this was acceptable for it to lend. Overall, Oplo says that it took Mr M through a robust underwriting process with all the loans, which demonstrated it lent responsibly.

Our investigator looked at this case and found that the first and second loans appeared to be affordable and sustainable and therefore she didn't think these were mis-sold. However, the investigator found that Oplo failed to carry out appropriate checks and lent irresponsibly in relation to the third and fourth loans, which were unaffordable for Mr M. In order to put things right, she asked Oplo to refund all interest and charges for the third and fourth loan in addition to paying Mr M £800 for the distress and inconvenience caused.

Oplo disagreed with this so the case came to me to make a decision.

In relation to the third loan, Oplo said that Mr M advised that the four short-term loans taken shortly before this loan were for building costs for home improvements pending completion of his re-mortgage. It believes it was fair to rely on what Mr M told it and this did not give it cause to probe further into his finances and, based on what it saw, there was no reason for it to have concerns regarding his ability to sustainably afford the loan.

Oplo said unexpected costs due to the property being listed resulted in the increase in Mr M's external debt and adverse data on his credit file. It was apparent he was funding the home improvements on an ad-hoc basis rather than taking a more structured approach. It believes it acted responsibly by clarifying the reason behind the additional borrowing and does not agree more checks were required. Oplo believes it was reasonable for it to consider that the loan was affordable and sustainable.

In relation to the fourth loan, Oplo said that it told Mr M this was the final time it would consolidate his debt in this way. It said the reason for the loan was to fund the continued home improvements, there was no indication of financial difficulty and affordability was evident. It said that Mr M appeared to be "guilty of funding his home improvements in the wrong manner" and the short-term loans were not for living expenses. Oplo believes that it was reasonable for it to consider this loan was affordable and it does not agree that it lent irresponsibly.

I set out in my provisional decision dated 12 October 2022 (reproduced below) why I was minded to uphold Mr M's complaint in respect of all four loans. I invited both parties to let me have any further comments and evidence by 9 November 2022.

Mr M confirmed that he was happy with the provisional decision. Oplo responded with further submissions as to why the complaint should not be upheld in respect of any of the four loans. It says that it is evident from Mr M's bank statements that he was completing home improvements, therefore it says that it was not unreasonable to expect further borrowing – especially as he was taking the property from a one-bed to a three-bed. It says that it has no reason to doubt the information provided by Mr M as all explanations were plausible and consistent with the property renovation work being carried out. Oplo also says that although it may look at this type of borrowing request differently today, this doesn't mean that it lent irresponsibly at the time. It has made specific submissions in respect of the four loans individually and I have addressed these points further 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.

Having carefully considered Oplo's response to my provisional decision dated 12 October 2022, I remain of the view that all four loans were irresponsibly lent and I've explained my reasons further below in relation to each loan in turn.

<u>Loan 1</u>

In my provisional decision I set out the following in respect of loan 1:

> *"This loan was taken out on 31 March 2016 for £9,000 over a term of 96 months. It was to clear credit cards and for home improvements. The monthly repayment was £250.05, with the total repayable being £24,004.80. It was on a variable rate of 27% plus a £795 fee, meaning the APRC was 34.9%. This was the third ranking loan secured against his property.*
>
> *The loan was settled on 22 August 2016 with a credit card.*
>
> *Oplo says that the income and expenditure check it carried out demonstrates that this loan was affordable and says that Mr M had £145.86 disposable income a month after all outgoings (including cost of living, existing credit and the new loan repayment). Oplo also says that Mr M's credit file indicated he was up to date with all active creditors, his mortgage was well-maintained, unsecured credit was well paid, a secured loan was well paid, there were no County Court judgments (CCJs) and all*

debt repayments were declared and included in the affordability assessment and there were no signs of financial difficulty. It said that although there were payday loans, there were none since 2014. Oplo says that all payments were made on time and in full since the start of the loan so there was no evidence of financial difficulty during the period of the loan.

Whilst Oplo says that this loan meant Mr M was consolidating five monthly payments into one, I note that Oplo did not make payment direct to the creditors, and the documentation shows that Mr M wanted to pay off the loan and credit cards himself (the credit reports for subsequent loans indicate that some of these were not in fact paid off). As this lending was, in part, for debt consolidation I would have expected Oplo to have paid the creditors itself – or, if that was not possible, made repayment a condition of the lending. In saying that I've taken account of what the regulator says in MCOB 11.6.16 R and 11.6.17 G.

Mr M had taken out a first-charge mortgage with a building society and a second charge loan with a separate firm, both in August 2015. When he took this third charge loan out seven months later the credit report held by Oplo showed that there was £66,782 remaining on the mortgage and £60,733 remaining on the second charge loan. The property was given a value of £83,500 in the loan agreement so this originally gave a loan to value (LTV) of 164.4% including the new loan (and fee). Oplo's product matrix for Mr M's loan indicates that the maximum LTV it would accept would be 120%.

However, I understand that the second charge lender had reported the total amount repayable over the life of the loan, rather than the current balance, to Mr M's credit file. The amount borrowed was £12,000 (plus fees). I can see that Oplo has amended the balance of the second charge loan to £12,000 in its calculations, which brought the LTV down to 106.1%.

Firstly, I don't think this accurately reflects the charges already registered over the property as the lower amount used for the second charge loan doesn't include any fees or interest – or repayments – up to that point, therefore it is not an accurate reflection of what was owed at the time. In my view Oplo should have used the balance as at the date of underwriting, not the initial amount borrowed net of fees.

In any event, even using the lower figure of £12,000 rather than £60,733, it is clear that the loans secured over the property were significant and that the loan from Oplo would have meant that these would have outweighed the value of the property. Whilst this alone would not have been a bar to lending under Oplo's lending criteria at the time, it was towards the upper limit of the LTV acceptable to Oplo. And Oplo was aware that there was already a relatively recent second charge against the property, in combination with other unsecured indebtedness – not all of which was being consolidated into this loan.

I think that this should have indicated to Oplo that Mr M was already heavily indebted and that a further loan which meant the amount secured against his property exceeded its value presented a significant risk. And that Mr M was contemplating securing debt in excess of his property's value potentially showed that he was borrowing beyond his capacity to sustain the lending. But Oplo does not seem to have considered these factors in its lending assessment. It noted that Mr M came within its maximum LTV of 120%, but it doesn't seem to have considered whether, in his particular circumstances, it was responsible to lend at that level.

In my view, had it done so it ought fairly to have considered that there were grounds for concern – bearing in mind that this was a third charge loan taken out in quick succession to a second charge loan, that Mr M had significant other debts, and that he appeared to be borrowing to fund a renovation project that was running into *difficulties (and which might therefore need further unbudgeted expenditure as well as affecting the value or saleability of the property over which the lending was secured).*

I note from Oplo's affordability checklist that its lending threshold is a debt to income ratio (DTI) of 75% with the requirement for director approval for a DTI of above 60%. Oplo's file indicates that the DTI for this loan is 59%. This appears to have been calculated using Mr M's gross monthly income of £3,123.61 and his monthly outgoings of £1,105.85 expenditure plus £748.93 credit commitments. However, this doesn't take into account the monthly repayment for this loan of £250.05; if this is included then it equates to a DTI of 67.4%.

Again, whilst this alone would not have been a bar to lending, this was near to the upper threshold of Oplo's lending criteria in terms of DTI. So, in combination with the other information available to Oplo, it should have been another indicator that this loan may not have been affordable for Mr M or that it was not responsible to lend.

I've looked at the income and expenditure (I&E) check carried out by Oplo for this loan. This shows that Mr M's verified net income was £2,250.67, his expenditure was £1,105.83, credit commitments were £748.93 and repayment for this loan was £250.05. This left 'free cash' of £145.86, which represented only 6.5% of his net monthly income.

However, when the repayment was increased following an interest rate stress test, based on what the I&E states are the 'verified figures', there was a deficit of £104.30. As this loan was taken out on 31 March 2016, it was a regulated mortgage contract, to which the MCOB section of the Financial Conduct Authority Handbook applies. MCOB 11.6.18 R (2) requires a firm to have regard to a stress test as part of the affordability assessment. So I can't say that this loan was affordable for Mr M based on these verified figures when taking into account the stress test.

I note that there is a further I&E check in Oplo's file which appears to have been for the purposes of a stress test. On this document, the verified figures have been amended on the basis that Mr M could either cancel or reduce various outgoings. However, there's no evidence that Mr M had agreed to reduce his outgoings in this way, or that it was practical for him to do so. It is my view that the stress test should have been based on whether any change to the loan repayments was affordable based on Mr M's actual outgoings, as opposed to reducing the amount of outgoings on a hypothetical basis.

I also note that on the stress test I&E the figure for Mr M's credit commitments had also been decreased by removing the cost of four of the credit cards which were due to be consolidated. In this context, I bear in mind MCOB 11.6.16 R – which says that where a debt consolidation loan is being lent to a credit-impaired customer, and the loan would not be affordable if the debts were not to be consolidated, the firm must either take reasonable steps to ensure the debts are consolidated (for example, by paying them off itself), or assume they will not be repaid and include them in the affordability calculation. I've said above that Oplo didn't repay these debts directly, or require Mr M to give an undertaking to do so himself as a condition of lending. So I don't think it was appropriate for Oplo not to include these debts in the affordability assessment.

It is also unclear how the verified figures on the I&E have been produced as some do not appear to match up with the direct debits on the bank statements Oplo has on file for this loan. For example, the I&E says that the verified payment for one credit card is £15.27 compared to £60.00 shown as the direct debit on Mr M's bank statement, the I&E for another credit card says £17.67 but the bank statement shows £69.02, *and for a third credit card the I&E shows £58.41 when the most recent statement shows £68.89.*

The bank statements also show other payments which would appear to be for credit, but which were not taken into account on the I&E. These include a direct debit for a credit card for £35 (returned unpaid), a payment to a credit card provider for £65.00 and a payment to a high cost personal loan lender for £110, none of which appear on the I&E. Despite Oplo saying that there had been no payday loans since 2014, the bank statement and credit report on file for this loan clearly show that a payday loan was taken out in February 2016, the month before this loan. This is also not on the I&E.

The I&E also disclosed a personal loan for £4,000 and a credit card balance of £509 which didn't appear on the credit report, so would appear to have been new. This is in addition to the other payments which appear to be for credit on the bank statements which are not in the I&E. The bank statements also show a returned direct debit and (on a different account) an unpaid transaction fee.

In light of the above, I don't think the I&E accurately reflects Mr M's outgoings for credit commitments. It significantly underestimates his credit commitments as shown on his bank statements. But even on the outgoings which were included in the I&E, the loan appears to be unaffordable when stress tested as set out above.

I'm therefore satisfied, on the evidence before me, that Oplo didn't take full account of Mr M's existing credit commitments. As a result, it significantly underestimated his committed expenditure. It also underestimated his other expenditure when applying the stress test. And I think this is sufficient to show that the loan was unaffordable for him.

Oplo has said that there were no signs of financial difficulty but, having looked at Mr M's credit report which Oplo had at the time, I disagree. Mr M's credit score was 530 and Oplo's lending threshold appears to have been a minimum score of 500 for Mr M's loan. Again, this alone would not be a bar to lending but, in conjunction with all of the other factors outlined above, it should have led Oplo to consider whether this loan was sustainable for Mr M.

Additionally, the credit report showed numerous credit cards up to or over their limit, a payday loan the previous month, one delinquent account in the last 12 months, three accounts opened in the last six months, 27 searches in the last 12 months, and a second charge loan with another lender taken out only seven months earlier.

Oplo says that there was no evidence of financial difficulty as all payments were made on time and in full. Whilst it's correct that the payments were maintained, in my view it is evident from the credit reports in Oplo's possession that Mr M was only able to do this by taking out further loans and credit elsewhere.

I've set out that Oplo lent on a secured basis at over 100% loan to value, with a third charge loan taken out just a few months after a second charge loan. Its assessment of affordability was inaccurate because it didn't take into account all the credit commitments shown on the bank statements which were in its possession. Even on the expenditure it did take into account, the lending failed the stress test. And his credit history showed a pattern of increasing debt.

In all the circumstances, it is my view that the information available to Oplo should clearly have indicated that the loan was not affordable or sustainable for Mr M and in all the circumstances I think it lent irresponsibly.

As an aside, it is also noted that the loan agreement shows that the maximum early repayment charge (ERC) payable by Mr M for this loan would be £457.98. However, the statement for the loan account shows that Mr M paid an ERC of £1,097.05 when *this loan was redeemed. As I have found that this loan was mis-sold in its entirety it is not necessary for me to address this issue separately as this will already be accounted for in the redress ordered."*

In response to my provisional decision, Oplo has made a number of further submissions in relation to loan 1 which I will address here.

Firstly, Oplo has pointed out that this loan was settled with a debit card rather than a credit card when Mr M had re-mortgaged. Whilst I accept this correction, it has no bearing on the outcome of my provisional decision.

Oplo refers to the fact that MCOB 11.6.16 R sets out that the requirement to take reasonable steps to ensure the debts are repaid does not apply if it has assumed they will not be repaid and included them as expenditure in the affordability assessment. It states that its I&E assessment made allowance for the continued payment of Mr M's existing credit commitments so direct consolidation was not required.

As set out in the provisional decision, I have taken account of MCOB 11.6.16 R and am aware that the existing credit commitments were included on the original I&E and therefore have made no observations about this in terms of the affordability, in the way that I have with loan 4. However, they were not included for the purposes of the stress test I&E as set out in my provisional decision – as they ought to have been, since the purpose of the stress test is to ascertain whether the loan would still be affordable were interest rates to rise. Clearly the same information regarding income and expenditure should be used for both assessments.

In relation to the LTV figure, Oplo says that using the original amount borrowed for the second charge loan was fairer and more accurate than using the total amount payable over the full term.

As set out in my provisional decision, (and whilst I accept that the total amount repayable over the full term was also not accurate), the figure of £12,000 was not an accurate reflection of what was owed at the time loan 1 was taken out as it did not include any fees or interest. So Oplo should have used the figure of the loan balance as at the date of underwriting.

Oplo says that the LTV met its lending criteria and it does not agree that it failed to consider Mr M's indebtedness, including a relatively recent second charge loan and the fact that the secured lending against the property exceeded its value, and whether Mr M was borrowing beyond his capacity to sustain the lending. In relation to whether it was responsible to lend at this level, it says Mr M signed its 'Consolidation Information & Risk Warning' form to acknowledge the benefits and risks and chose to proceed with the loan.

In relation to this, I note that the form doesn't specify the LTV and in any event the fact that Mr M has signed a form about the benefits and risks of consolidating debts doesn't absolve Oplo of the requirement for it to lend responsibly.

Oplo has explained that its DTI figure was calculated using Mr M's credit commitment including mortgage and Oplo repayment of £1,322 against his net monthly income of £2,250, which equated to 59%.

It appears from this that only Mr M's loans, credit cards and mortgage were taken into account against his net salary and none of his other monthly outgoings (including utility bills, council tax, insurance and food) in order for Oplo to arrive at its figure for DTI. Whilst I can't comment on how Oplo decides to calculate figures for its internal processes and thresholds, I still note that 59% is at the upper threshold of Oplo's own lending criteria. Moreover, I have included in my provisional decision the figures including all of Mr M's monthly expenditure which indicate that – if all of Mr M's outgoings and credit commitments contained in the I&E are considered – he would be left with £145.86 a month which was only 6.5% of his net monthly income.

In relation to its stress test, Oplo says that this is performed as if the mortgage rates were to increase by 3%. It says MCOB has a minimum requirement of 1% and that basic and essential household expenditure should be considered in the affordability assessment. Oplo says that for the purposes of the stress test, it is reasonable to consider that lottery (£16), Sky TV (£50) and mobile (£80) are a discretionary spend that could be cancelled or reduced significantly in the event of rates rising. However, rates decreased so it is unfair to say the loan would have been deemed unaffordable.

As set out in my provisional decision, there is no evidence on Oplo's file that Mr M had agreed to reduce his outgoings or that it was practical for him to do so – for example, if he was tied into a contract to pay a certain amount a month for the Sky TV and mobile phone. So I maintain that the stress test should have been based on Mr M's actual outgoings as opposed to hypothetical reduced outgoings – unless there was evidence to support this reduction. Given that Mr M was continuing to increase his indebtedness rather than reducing any other outgoings I don't consider that there was any evidence to support this.

In addition, for the stress test Oplo has removed the figures for four of the credit commitments which were due to be consolidated despite the fact that it has not consolidated these directly. Whilst Oplo has made further submissions about the fact that it included the existing credit commitments so direct consolidation was not required, it has not commented any further about the fact that these credit commitments were removed from the stress test I&E despite not being directly consolidated. I remain of the view that it was inappropriate for Oplo not to include these debts in the stress test affordability assessment. In my view, it's appropriate to include all income and expenditure in a stress test affordability assessment, as the purpose of such an assessment is to decide whether the loan would be affordable were rates to rise to the stressed level.

Oplo says that it is unable to explain the unidentified payments for credit (direct debit for credit card of £35, credit card payment of £65 and high-cost loan payment of £110) which are not included on the I&E due to the passage of time but presumes this was an oversight. It has been unable to reconcile these against the credit file but accepts that if they were included in the I&E calculation, it reduces the free disposable income. However, it says that this is offset by the fact that Mr M repaid an unsecured loan (for £135 a month) at the time he took out loan 1 (which is apparent from the credit file for loan 2) which means that there is still a positive figure overall.

The affordability test should have been carried out accurately at the time of the application for loan 1. Whilst Oplo says that the unsecured loan for £135 a month was repaid after loan 1 was taken out (and therefore the credit commitments missing from the I&E are offset), the documentation from loan 2 also shows that Mr M had taken out a new unsecured loan for almost double the amount with a monthly repayment of £320 along with another mortgage with the monthly payment being £150 higher than the mortgage at the time of loan 1. So in my view it is entirely inappropriate to suggest that failure to consider credit commitments which should have been considered at the time is mitigated by something which happened after the decision to lend was made. As Oplo has noted in its further submissions, under MCOB 11.16.6 R it did not have to take reasonable steps to ensure the loan it refers to was repaid because it had included this in the I&E. Therefore, if it wasn't taking steps to ensure the unsecured loan was repaid, both the loan and all other credit commitments should have been included at the time the I&E was completed.

In relation to the discrepancies in the verified figures for the credit card payments and the bank statements, Oplo says that it used 3% of the credit card balance for the purposes of its I&E affordability calculation. It says that Mr M was paying more than 3% of his outstanding balance as evidenced on his bank statements.

I can see that Oplo has used 3% of the figures under 'current balance' for each of the three credit cards on the credit file. However, for one of the cards these figures were two months out of date having been provided in January 2016 and on the two others the figures were a month out of date having been provided in February 2016. One of the credit cards on the I&E did not appear on the credit file at all so it is unclear how the figure of £15.27 was arrived at, particularly given that Oplo had a bank statement showing a direct debit payment of £60 for this card.

Although Oplo asserts that Mr M was paying off more than 3% of the outstanding balance, I don’t think there is sufficient evidence to be able to say this is based on the bank statements alone. It seems just as likely that the reported figures were out of date in terms of the outstanding balance and there is nothing to suggest that Oplo asked about the discrepancies between the figures on the bank statements and what it entered as the ‘verified payment’ on the I&E. I also note that using 3% for the assessment assumes that Mr M will reduce his monthly payments on the credit cards to the minimum payment in each case. It’s well known than paying only the minimum makes credit card borrowing much more expensive in the long term. In my view it’s not fair and reasonable to lend where the only basis on which the loan can be shown to be affordable is by reducing the repayment of other debts to the minimum possible level – prolonging the duration of those debts and making them much more expensive in terms of overall interest charged – especially where that does not reflect what Mr M was actually paying.

Having considered Oplo’s response to the provisional decision, none of the further submissions change my view in relation to the overall picture of loan 1 taking all of the factors into account. I remain of the view that it didn’t take full account of Mr M’s credit commitments and underestimated his expenditure, both in the initial I&E and in the stress test. And I think the loan was unaffordable for him. For the reasons set out in my provisional decision, I am satisfied that the information available to Oplo should have indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly in the circumstances.

Oplo has accepted that the ERC charged to Mr M was incorrect and has offered to refund any resulting overpayment along with interest. Given that I remain of the view that this loan was mis-sold in it’s entirety, it will be unnecessary for Oplo to make a separate payment in relation to the ERC as it will already be accounted for in the redress.

Loan 2

In my provisional decision I set out the following in respect of loan 2:

> *“This loan was taken out on 22 December 2016, a few months after Mr M repaid loan 1, for £15,000 over a term of 120 months. It was to clear credit cards and a loan. The monthly repayment was £386.48, with the total repayable being £46,337.60. It was on a variable rate of 27% plus a £995 fee, meaning the APRC was 33.48%. The loan was settled on 16 October 2017 having been paid off with loan 3.*
>
> *Oplo says that the income and expenditure check it carried out demonstrates that this loan was affordable and says that Mr M had £122.01 disposable income a month after all outgoings (including cost of living, existing credit and the new loan repayment). Oplo also says that Mr M’s credit file indicated he was up to date with all active creditors, his credit agreements were well-maintained, all debt repayments were declared and included in the affordability assessment, there were no negative markers or CCJs and no signs of financial difficulty.*
>
> *It asked about a default from a phone company but says that the account showed as settled and Mr M advised that the default should have been removed as it was an error. It says that the monthly payments on five credit cards and a loan were consolidated which saved Mr M £107.64 a month. Oplo says that all payments were made on time and in full since the start of the loan so there was no evidence of financial difficulty during the period of the loan.*

Again, Oplo's product matrix for Mr M's loan indicates that the maximum LTV it would accept would be 120% and also that £15,000 was the maximum amount Mr M could borrow with this LTV.

At the time of this loan, the property was given a value of £122,000 in the loan agreement, which gave an LTV of 108.4% including the new loan (and fee). Whilst I accept that Mr M had converted the property from one to three bedrooms since the last loan, this was an apparent increase in value of 46% over the period of nine months during 2016 and it's not clear if Oplo gave any consideration to whether this was realistic.

In any event, even using the £122,000 valuation figure it is clear that the charges over the property were significant and that the loan from Oplo would have meant that these would again have resulted in a loan to value of over 100%. Whilst this alone would not have been a bar to lending, it was towards the upper limit of the LTV acceptable to Oplo.

And I think the fact that there was also already a second charge against the property, in combination with the other information available to Oplo, should have indicated that Mr M was already heavily indebted and that a further loan – particularly another loan secured against his property exceeding its value – may have been unsustainable for him.

As was the case for the first loan, Oplo's lending threshold is a debt to income ratio (DTI) of 75% with the requirement for director approval for a DTI of above 60%. Oplo's file indicates that the DTI for this loan is again 59%. It is not clear how this has been calculated as Mr M's gross monthly income was £3,329.68 and his monthly outgoings were £2,266.48 (£1,344.06 expenditure plus £535.94 credit commitments plus £386.48 for this loan), which equates to 68.1% DTI.

Again, whilst this alone would not have been a bar to lending, this was near to the upper threshold of Oplo's lending criteria in terms of DTI. So, in combination with the other information available to Oplo, it should have been another indicator that this loan was not affordable for Mr M.

I've looked at the I&E check carried out by Oplo for this loan. This shows that Mr M's verified net income was £2,388.49, his expenditure was £1,344.06, credit commitments were £535.94 and repayment for this loan was £386.48. This left 'free cash' of £122.01, which represented only 5.1% of his net monthly income.

However, the stress test based on what the I&E states are the 'verified figures' meant there was a deficit of £13.32. So I can't say that this loan was affordable for Mr M based on these verified figures when taking into account the stress test Oplo was required to apply.

Oplo has provided a copy of its loan summary and under the section titled 'Reasons for completing the loan' it states 'Affordability looks OK, stress test done for if MTG rates were to rise. Loan payments should be comfortably affordable for term of the loan'.

I'm not persuaded by this assessment. Again, there is a further I&E check in Oplo's file which appears to have been for the purposes of a stress test. On this document, the verified figure for Mr M's phone bill was amended on the basis that Mr M said that he had to make extra payments due to overspending whilst away.

It is not clear whether Oplo sought any information to verify what Mr M's standard phone bill was. As set out above, it is my view that the stress test should be based on whether any change to the loan repayments was affordable based on Mr M's actual outgoings, as opposed to reducing the amount of outgoings on a hypothetical basis.

In any event, the fact that Mr M overspending on a phone bill for one month would make the difference between the loan passing the stress test or not is, in my view, an indication that his free cash was insufficient to sustain the loan repayments and that affordability of the loan could have been an issue.

It is also unclear how the verified figures on the I&E have been produced as some do not appear to match up with the payments on the bank statements Oplo has on file for this loan. For example, the I&E says that the verified payment for one credit card is £26.58 compared to £35.00 shown as the direct debit on Mr M's bank statement, the I&E for another credit card says £30.00 but the bank statement shows £60.01, the I&E for a third credit card says £4.83 but the bank statement shows £10.00, and for another credit card the I&E shows £20.91 when the most recent statement shows £31.66.

I've not seen any evidence that would show the figures on the bank statement were incorrect or from where Oplo obtained the figures used in the I&E. If they were figures it was given by Mr M, in my view it should have questioned those figures having seen the bank statement.

Oplo has said that there were no signs of financial difficulty but, having looked at Mr M's credit report which Oplo had at the time, I disagree. Mr M's credit score had decreased to 502 since the last loan was taken out and repaid, and Oplo's lending threshold appears to have been a minimum score of 450 for Mr M's loan. Again, this alone would not be a bar to lending but, in conjunction with all of the other factors outlined above, it should have led Oplo to consider whether this loan was sustainable for Mr M.

Additionally, the credit report showed numerous credit cards up to or over their limit (some of which were new and some of which hadn't been repaid as they were supposed to be with the last consolidation loan), one delinquent account in the last 12 months, three accounts opened in the last six months, 23 searches in the last 12 months, and a second charge loan with another lender taken out 16 months earlier. Whilst Oplo says that Mr M advised that the default with the phone company was an error, it is unclear whether Oplo sought any further information to verify this. Nor did it question why Mr M had not paid off the debts that he was supposed to have cleared with the previous loan.

On the I&E statements the amount of credit cards held by Mr M had increased to six as opposed to four and the overall total owed to creditors had increased by around £4,000 in the last nine months despite the fact that Mr M had taken out a loan to consolidate debts at that point.

The I&E also disclosed a loan for £7,181 and a credit card balance of £1,000 which didn't appear on the credit report (so would appear to have been new), along with a loan of £5,492 (balance increased from £4,000 on the last loan I&E) which was also not on the credit report. There was also a new mortgage from August 2016 in two parts with a total balance of £98,590 (an increase of almost £32,000 on the first charge mortgage since the last loan) in addition to the second charge loan with another lender.

Oplo says that there was no evidence of financial difficulty as all payments were made on time and in full. Whilst it's correct that the payments were maintained, in my view it is evident from the credit reports in Oplo's possession that Mr M was only able to do this by taking out further loans and credit elsewhere.

He had taken out a previous loan with Oplo to consolidate debt, and not only had he not used those funds to pay off the debts he said he would, he had significantly increased his other indebtedness in the meantime. In my view, this ought to have led Oplo to question whether Mr M really was sustainably managing his debts.

In light of all of the information above, it is my view that the information available to Oplo indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly. Oplo has pointed out that Mr M did not in fact miss any payments. But given his pattern of using debt to re-finance debt, and that this loan itself was replaced with another within nine months, I don't think that affects my conclusion.

As an aside, it is also noted that the loan agreement shows that the maximum early repayment charge (ERC) payable by Mr M for this loan would be £714.17. However, the statement for the loan account shows that Mr M paid an ERC of £793.58 when this loan was redeemed by the third loan. As I have found that this loan was mis-sold in its entirety it is not necessary for me to address this issue separately as this will already be accounted for in the redress ordered."

In response to my provisional decision, Oplo has made a number of further submissions in relation to loan 2 which I will address here.

Oplo refers to its submissions for loan 1 in respect of the discrepancy between the bank statements and the amounts on the I&E being 3% of the credit card balance.

In relation to the valuation figure of £122,000, Oplo says that this was accurate and reflected the work that Mr M had carried out on the property in changing it from a one-bedroom to three-bedroom property. It says that the increased borrowing from the first charge lender was provided against the last known valuation of £125,000 with the additional borrowing used to fund or repay earlier sources of funding for the work undertaken.

As set out in my provisional decision, even using the £122,000 valuation figure the charges over the property exceeded its value.

Oplo refers to its submissions for loan 1 in respect of the minimum requirements under MCOB for the stress test. It says that that Mr M's bank statements showed that he was on holiday in the USA which is why his mobile phone bill was higher than normal at £193.95 and that it nevertheless used this one-off higher payment as if it were the normal monthly payment in the I&E. Oplo says that the figure of £60 was entered into the amended I&E and it does not think this is unreasonable or that it reduced the amount of outgoings on a hypothetical basis. It also says that included £92.01 'discretionary spend' under the heading of other expenditure in the I&E, so if this was discounted, the stress test free cash would increase to £212.64.

As set out in my provisional decision, it is my view that the stress test should be based on whether a change to the loan repayments would be affordable based on Mr M's actual outgoings as opposed to reducing them on a hypothetical basis. Looking at the bank statements, they show a direct debit of £193.95 with an extra payment of £50 on 31 October 2016 for Mr M's mobile phone with a handwritten note saying 'manual payment – paid extra as overused mobile' – so the payment for that period was actually £243.95. On the bank statement for Mr M's other account in the following month it shows a manual payment of £309.04 on 28 November 2016 for Mr M's mobile phone with the handwritten note 'manual payment went to USA and overspent on the mobile. It seems likely that this would have been in addition to the direct debit on the other bank account for Mr M's phone bill. So it appears that Oplo had evidence that Mr M's phone bills were £243.95 one month and at least £309.04 the next (therefore this was not a one-off) but entered £193.95 as the verified figure and a figure of £60 for the stress-test. So, whilst Oplo says the figures were not hypothetical, there is no evidence that it sought information to verify Mr M's usual phone bill and the information it *did* have showed the phone bills to be higher than it entered in its I&E calculations. So I remain of the view that the stress test should have been, but was not, based on Mr M's actual outgoings.

In relation to the credit report, Oplo says that the default was settled so it had no reason to doubt the explanation given. It says that although it may not have questioned Mr M as to why he didn't repay the debts as intended from the previous loan, it directly consolidated these in loan 2 in accordance with the MCOB rules. Oplo says that although the credit report says three accounts opened in the last six months, there are in fact just two: one being the additional mortgage borrowing of £160 per month and the other a small credit card facility of £200. It also says that the number of searches was reflective of Mr M using multiple sources of funding to make renovations to the property then, once the increased valuation permitted, raising additional funds through secured borrowing to repay these debts. Oplo says that it is not necessarily the case that credit not appearing on the credit file must be new borrowing as not all lenders report to the same credit reference agencies but that this additional borrowing was included in its I&E affordability assessment.

As set out in my provisional decision, it was evident from the credit reports that Mr M was only able to maintain payments by taking out further loans and credit elsewhere. Whether there were two or three accounts opened in the previous six months doesn't change this and – as accepted by Oplo – other accounts may well not have appeared on the credit file it saw depending on which credit reference agencies were used by lenders. In any event, it remains my view that what Oplo *was* able to see should have led it to question whether Mr M was sustainably managing his debts.

Overall, Oplo says that it believes its checks were thorough and satisfactorily suggested that Mr M would have likely been able to sustainably afford the loan. Having considered Oplo's response to the provisional decision, none of the further submissions change my view in relation to the overall picture of loan 2 taking all of the factors into account. I remain of the view that the information available to Oplo should have indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly in the circumstances.

In relation to the ERC for loan 2, Oplo says that this was correct as its system applied the ERC and accrued monthly debit interest as one amount upon settlement – although it appreciates how the narrative 'Early Repayment Charge' for both led to the conclusion that the ERC was incorrect. I have not seen any breakdown of the ERC and interest and I would note that it is confusing if items which are not the ERC are included on the statements as an ERC. However, given that I remain of the view that this loan was mis-sold in it's entirety, it will be unnecessary for me to carry out any further investigation in relation to this aspect.

Loan 3

In my provisional decision I set out the following in respect of loan 3:

> *"This loan was taken out on 16 October 2017 for £21,000 over a term of 108 months. It was for a new boiler and to clear the previous loan (loan 2 above). The monthly repayment was £363.84, with the total repayable being £39,294.72. It was on a variable rate of 15% plus a £495 fee, meaning the APRC was 16.9%. The loan was settled on 28 September 2018 having been paid off with loan 4.*
>
> *Oplo says that the income and expenditure check it carried out demonstrates that this loan was affordable and says that Mr M had £478.05 disposable income a month after all outgoings (including cost of living, existing credit and the new loan repayment). Oplo also says that Mr M's credit file indicated he was up to date with all active creditors, all debt repayments were declared and included in the affordability assessment, there were no negative markers and no signs of financial difficulty. It says it took into account missed credit card payments and that Mr M had taken out payday loans and this was because a re-mortgage was taking time to complete. Oplo says that all payments were made on time and in full since the start of the loan.*
>
> *Since the last loan, Mr M had re-mortgaged his property in September 2017 to the value of £131,965 to consolidate both the first and second charge mortgages (with around an additional £11,500 on top of this to be paid to Mr M). So he had increased*

his secured borrowing one month before applying for this loan – which increased his secured borrowing further.

Due to the increased amount borrowed, Oplo's product matrix indicates that the maximum LTV it would accept for Mr M's loan at this stage would be 90%. On the loan illustration the property was given a value of £122,000. However, this was amended in the loan agreement to be £170,000, which had the effect of giving an LTV of 90.3% including the new loan (and fee).

I note that this was an apparent increase in the value of the property of 36% over the period of ten months during 2017 (and the property had more than doubled in value in the year and seven months since the first loan was taken) and it's not clear if Oplo gave any consideration to whether this was realistic. It is also noted that an actual valuation of the property had provided a value of £165,000 three months earlier. But I also note that the property was valued at £125,000 a year later – see loan 4 below – which casts further doubt on the validity of a valuation of £170,000

It is clear that the charges over the property were still significant and that Mr M's debt secured against the property had already increased less than a month before he applied to increase it even further with this application to Oplo. The LTV was also slightly higher than the maximum threshold which should have applied to this loan. Whilst this alone would not have been a bar to lending, the fact that this loan was above the upper limit of the LTV acceptable to Oplo in combination with the other information available to Oplo, should have indicated that Mr M was already heavily indebted and that a further loan – particularly another loan secured against his property – may have been unsustainable for him.

Again, there are some concerns about how the verified figures on the I&E have been produced as some do not appear to match up with the payments on the bank statements Oplo has on file for this loan. For example, the I&E says that the verified payment for one credit card is £79.68 compared to £156.90 shown as the direct debit on Mr M's bank statement, the I&E for another credit card says £26.91 but the bank statement shows £59.92, the I&E for a third credit card says £30.54 but the bank statement shows £93.13, and for a fourth credit card the I&E shows £58.02 when the most recent statement shows £220.90.

Oplo has said that there were no signs of financial difficulty but, having looked at Mr M's credit report which Oplo had at the time, I disagree. There were numerous payday loans taken out by Mr M between June and September 2017, which were acknowledged by Oplo.

Oplo has also noted that the credit file discloses missed credit card payments. In relation to these, Oplo says that the reason for this was that Mr M's re-mortgage was taking some time to go through and that there were unexpected costs due to the property being listed.

Oplo believes it acted responsibly by clarifying the reason behind the additional borrowing and does not agree more checks were required. The fact that the reason was clarified does not mean the borrowing was sustainable for Mr M. When the re-mortgage went through it was due to provide Mr M with an excess of just over £11,500 to be paid to him once the first and second charge mortgages had been paid off.

It is not clear why he would need to take out numerous payday loans whilst awaiting this payment which would put him in further debt. And it seems to me that the fact he needed to borrow an extra £6,000 from Oplo less than a month later demonstrates that Mr M was getting increasingly further into debt and that the payments were not sustainable for him.

In addition to the numerous payday loans within the preceding four months, Mr M had only just (within the last month) taken out another first charge mortgage which, although it paid off the second charge mortgage with another lender, increased his overall debt against the property by over £12,000 (including the fees).

His credit file shows numerous credit cards close to or over their limit and missed payments in the preceding months and ten accounts opened in the last six months. His bank statement for the previous month shows that he was overdrawn and had incurred unarranged overdraft fees in addition to a returned standing order and returned direct debit. On the I&E statement the amount of credit cards had increased to seven from six.

Oplo says that there was no evidence of financial difficulty as all payments were made on time and in full. Whilst it's correct that the payments were maintained, in my view it is evident from the credit reports in Oplo's possession that Mr M was only able to do this by taking out further loans and credit elsewhere – including not repaying debt that was supposed to be consolidated.

In all the circumstances, it is my view that the information available to Oplo indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly.

Whilst I note Mr M was still required to pay an ERC on his old loan and a product fee on this loan in order to consolidate the old loan, I accept that this loan would have put Mr M in a better position than loan 2 due to the lower interest rate applied. This meant that, despite the fact that Mr M was borrowing more money, his monthly repayment, the term of the loan and the total amount repayable all decreased.

Although on the face of it I don't think Oplo has shown that this loan was affordable or sustainable for Mr M, I think it did assist Mr M in the financial situation he was in at the time, by replacing loan 2 with a loan at a substantially lower interest rate (though it also increased his overall indebtedness because the balance was higher). And so if I was considering this loan in isolation I might find that it did not (the further borrowing apart) result in any detriment to Mr M notwithstanding those failings.

However, I am not considering this loan in isolation. It is part of a pattern of spiralling debt and – while it might have mitigated the impact of the failures I have identified in loan 2 – I still need to take it into account as part of the overall context. And in any case, it was soon consolidated into loan 4.

Oplo has also pointed out that Mr M did not in fact miss any payments. But, given his pattern of using debt to re-finance debt, and that this loan itself was replaced with another within a year, I don't think that affects my conclusion. For the reasons set out above, I think Oplo lent the second loan irresponsibly so the fact it has subsequently mitigated this to some extent by lending loan 3 does not affect my outcome."

In response to my provisional decision, Oplo has made a number of further submissions in relation to loan 3 which I will address here.

Oplo has reiterated the comments it made in response to the investigator's view in relation to loan 3. I have referred to these at the bottom of the 'What happened' section of this decision (and the provisional decision) and have already taken these into account when coming to my provisional decision so I will not address these aspects any further.

Oplo refers to its submissions for loan 1 in respect of the discrepancy between the bank statements and the amounts on the I&E being 3% of the credit card balance.

In relation to the valuation figure of £170,000, Oplo says that this was accurate and reflected the work that Mr M had carried out on the property. It says that the last known valuation of £165,000 was carried out in July 2017.

I note that the last valuation figure of £165,000 would have given a LTV of 92.7% - above Oplo's maximum LTV of 90% for this loan. As it was, the figure of £170,000 (taken from an estimated 'realtime' valuation) gave a LTV of 90.3%, still marginally above Oplo's lending threshold. Whilst I accept that Mr M had been carrying out work on the property which would increase its value, this doesn't account for the fact that a later valuation was £125,000. And, as set out in my provisional decision, even using the £170,000 valuation figure the charges over the property were still significant and continuing to increase.

I also note that for loan 4 – where the realtime valuation was significantly lower than the last actual valuation at £125,000 – Oplo based its lending on the last actual valuation of £165,000 in July 2017 so it is unclear why it didn't use this figure for loan 3 which was taken four months later but was content to use it for loan 4 which was taken 14 months later. It is not clear why there appears to be a lack of consistency in the approach taken.

Oplo disagrees that the loan was not affordable or sustainable as its I&E affordability assessment showed good free disposable income of £478.05. This was already considered as part of the provisional decision alongside all of the other factors.

Oplo says that the provisional decision acknowledges the considerable unexpected costs incurred on this listed property. It says that the loan was to repay loan 2 and fund a new boiler which is not an unreasonable requirement given the substantial property work undertaken.

It is accepted that Mr M applied for further borrowing on the basis of unforeseen costs of renovating a property. However, the fact that Mr M needed more money to fund this due to costs spiralling out of control doesn't alone have any bearing on whether the lending was affordable or sustainable for him. Mr M had already increased his first charge loan over the property by £11,500 only a month before taking this loan.

In relation to the credit report, Oplo says that although the credit report indicates ten accounts opened in the last six months, there are in fact just six: one being the re-mortgage borrowing of £516 per month and the others low value short term loans. It makes the same observation as for loan 2 in terms of Mr M using multiple sources of funding to make renovations to the property then, once the increased valuation permitted, raising additional funds through secured borrowing to repay these debts.

As set out in my provisional decision, it was evident from the credit reports that Mr M was only able to maintain payments by taking out further loans and credit elsewhere. Whether there were ten or six accounts opened in the previous six months doesn't change this and the overall picture was that Mr M was not sustainably managing his debts.

Oplo says that it has explained that the reason why Mr M needed to take out numerous payday loans whilst awaiting his re-mortgage funds was because he was funding the renovations through numerous channels pending completion of the re-mortgage, which then enabled him to clear that source of borrowing. It says that the payday loans were not taken for the purpose of funding living expenses pending receipt of his next salary. Oplo says that it is clear that the property renovation costs spiralled which resulted in Mr M returning to it for more secured borrowing.

As set out in my provisional decision, the fact that Oplo was aware of the reason for the continuous extra borrowing – both through itself and other channels – does not mean it was sustainable for Mr M.

Overall, Oplo says that it believes its checks were thorough and satisfactorily suggested that Mr M would have likely been able to sustainably afford the loan. Having considered Oplo's response to the provisional decision, none of the further submissions change my view in relation to the overall picture of loan 3 taking all of the factors into account. I remain of the view that the information available to Oplo should have indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly in the circumstances.

Oplo refers to the finding in the provisional decision that loan 3 had put Mr M in a better position than loan 2 due to the lower interest rate applied and the conclusion that – if considering the loan in isolation – I might find that it didn't result in any detriment to Mr M. It argues that each loan does need to be considered in isolation based on the information available to it at the time of each application.

This loan has been considered in isolation in terms of whether it was affordable and sustainable as previously set out. In isolation it did assist Mr M's financial position as the interest rate was lower but it increased his overall indebtedness as he was borrowing more money. Hence my provisional decision found that – in isolation and without the further borrowing – the lending would not have resulted in any detriment *notwithstanding the failure to ensure it was affordable and sustainable.* However, there *was* further borrowing and this loan was one in a chain of spiralling debt. The loan it consolidated (loan 2) as well as the loan it was consolidated into (loan 4) were both unaffordable and unsustainable so the fact loan 3 mitigated loan 2 to some extent does not affect the fact it was unaffordable and unsustainable.

In relation to the ERC for loan 3, Oplo says that this was correct. There is no reference to the ERC charged on loan 3 in my provisional decision as this was not above the maximum amount specified in the loan agreement for this loan so I will not address this point any further.

Loan 4

In my provisional decision I set out the following in respect of loan 4:

> *"This loan was taken out on 26 September 2018 for £35,000 over a term of 240 months. It was to consolidate loan 3 and credit cards to reduce monthly outgoings and for home improvements. The monthly repayment was £580.68, with the total repayable being £139,363.20. It was on a variable rate of 18.9% plus a £995 fee, meaning the APRC was 21.3%. The loan was settled on 17 August 2020 having been paid off with the proceeds of the sale of the property.*
>
> *Oplo says that it assessed the affordability and completed an income and expenditure check which showed that Mr M had £243.43 disposable income a month after the new loan repayment. It says that taking this loan saved him around £427.16 a month. Oplo also says that Mr M's credit file showed no adverse markers or CCJs, all debt repayments were declared and included in the affordability assessment and any payday or short-term loans were seen to be settled. It says that all payments were made on time and in full since the start of the loan so there was no evidence of financial difficulty during this period.*
>
> *Whilst Oplo says that this loan meant Mr M was consolidating debts and getting the majority of his credit into one payment, this loan more than doubled the term of the loan and more than trebled the total amount he would have to repay. Mr M also had to pay an ERC on his old loan and a product fee on this loan in order to consolidate the old loan.*
>
> *In addition to paying off the debts, a further amount of more than £4,600 was going to Mr M once the other debts were paid. I note that again one of the loans was not being consolidated directly. Despite the fact that Mr M signed a declaration to say he would pay it off upon receipt of funds, previous consolidation loans had not been used to pay off the creditors they were intended for.*
>
> *MCOB 11.6.16 R says that where a debt consolidation loan is being lent to a credit-impaired customer, and the loan would not be affordable if the debts were not to be consolidated, the firm must either take reasonable steps to ensure the debts are*

consolidated (for example, by paying them off itself), or assume they will not be repaid and include them in the affordability calculation.

I think – in view of the fact that Mr M had not repaid the debts that other loans were supposed to consolidate – Oplo ought to have taken steps to ensure that all the debts would be consolidated this time. But it did not do so. And I can also see that the loan which wasn't being paid off directly by Oplo was not included in the affordability calculation as one of Mr M's credit commitments.

For reasons I'll explain, I'm not persuaded that Oplo properly assessed Mr M's affordability, and I don't think this was responsible lending.

For the amount borrowed, Oplo's product matrix indicates that the maximum LTV it would accept for Mr M's loan was 90%. At this stage the borrowing against the property including this loan was £165,048. On the loan illustration the property was given a value of £165,000 and on the I&E the value was £167,000. However, this was amended in the loan agreement to be £125,000 (as per the online valuation obtained), which had the effect of giving an LTV of 132% including the new loan (and fee). In my view, this also casts doubt on the reliability of the higher valuation used for loan 3 above.

Despite this, it appears that the I&E and sign off were based on an LTV of 98.8%. It is not clear why, given the internal lending threshold of 90% (even though the maximum LTV stated in the loan agreement was 120%), Oplo agreed to lend significantly beyond the 90% threshold to Mr M. Whilst this alone would not have been a bar to lending, the fact that it was above the upper limit of the LTV acceptable to Oplo, in combination with the other information available to Oplo, should have indicated that Mr M was already heavily indebted and that a further loan – particularly another loan secured against his property – may have been unsustainable for him.

I also bear in mind that Oplo had by now lent Mr M three secured loans in less than three years, and each time Mr M had returned to Oplo to increase his secured borrowing within months. I think this pattern should have given Oplo cause for concern, but it does not appear to have been considered.

As was the case for the previous loans, Oplo's lending threshold is a debt to income ratio (DTI) of 75% with the requirement for director approval for a DTI of above 60%. Oplo's file indicates that the DTI for this loan is 66%. It is not clear how this has been calculated as Mr M's gross monthly income was £3,520.29 and his monthly outgoings were £2,219.73 (£1,078.89 expenditure plus £580.68 credit commitments plus £560.16 for this loan), which appears to equate to 63% DTI.

Again, whilst this alone would not have been a bar to lending, this was near to the upper threshold of Oplo's lending criteria in terms of DTI. So, in combination with the other information available to Oplo, it should have been another indicator that this loan was not affordable for Mr M.

I've looked at the I&E check carried out by Oplo for this loan. This shows that Mr M's verified net income was £2,463.16, his expenditure was £1,078.89, credit commitments were £560.16 and repayment for this loan was £580.68. This left 'free cash' of £243.43, which represented only 9.9% of his net monthly income. However, the stress test based on what the I&E states are the 'verified figures' meant there was a deficit of £41.96. So I can't say that this loan was affordable for Mr M based on these verified figures, since it failed the stress test required by the regulator.

As set out above, I also note that the monthly repayment for the loan which was not being paid off directly by Oplo as part of the debt consolidation was not included in the figure for Mr M's credit commitments. Had this been included – as I think it should have been in line with MCOB 11.6.16 R – it would have reduced Mr M's 'free cash' *by £163 to £83.43, representing only 3.4% of his net monthly income. Consequently, the stress test based on the verified figures would also have been even further in deficit.*

Again, there is a further I&E check in Oplo's file which appears to have been for the purposes of a stress test. On this document, the verified figure for 'TV licence/ Sky/ Cable' was changed on the basis that Mr M could reduce this. As set out in the context of the other loans, it is my view that the stress test should be based on whether any change to the loan repayments was affordable based on Mr M's actual outgoings, as opposed to reducing the amount of outgoings on a hypothetical basis.

It is not clear that this reduction in outgoings had been discussed with Mr M. And in any case Oplo should have had regard to the fact that this was the same approach taken as in previous stress tests but on those previous occasions Mr M had not reduced the amount for these bills and had instead continually borrowed more money from various sources. This should have led Oplo to question whether it was appropriate to notionally reduce Mr M's outgoings to bring the loan within the stress test.

Oplo has said that there were no signs of financial difficulty but, having looked at Mr M's credit report which Oplo had at the time, I disagree. The credit report showed that Mr M had recently taken out a number of payday loans, in addition to a loan of over £36,000 nine months earlier and a loan of £3,441 the previous month. The report also showed that he had opened six accounts in the last six months, was over an overdraft limit, over or close to credit card limits and had missed payments. On the I&E statement the balance of loans and credit cards (not including the first charge mortgage or this loan) had increased by almost £55,000 (from £15,270 to £69,682) over the preceding 11 months.

In its loan summary, Oplo appears to acknowledge the fact that there are missed credit card payments and says that Mr M cannot recall why. No further investigation into this seems to have taken place. In relation to the payday loans, Oplo has recorded that they were for emergency home repairs and one was for a new boiler. Again, this seems to have simply been taken on face value without considering whether it impacted on the sustainability of the loan, particularly given that the reason for taking the third loan 11 months earlier was also for a new boiler.

Likewise, it is noted that Mr M started doing work on his property and found it was a listed building so the home improvements increased from £15,000 to £50,000. However, whilst Mr M may have given a reason for wanting the funds, this in itself did not mean the loan was affordable or sustainable, particularly bearing in mind the fact that he had already borrowed increasing amounts over the last two years and repeatedly used one form of credit to pay off another.

Oplo says that there was no evidence of financial difficulty as all payments were made on time and in full. Whilst it's correct that the payments were maintained, in my view it is evident from the credit reports in Oplo's possession that Mr M was only able to do this by taking out further loans and credit elsewhere.

In all the circumstances, it is my view that the information available to Oplo indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly.

As an aside, it is also noted that the loan agreement shows that the maximum ERC payable by Mr M for this loan would be £1,161.36. However, the statement for the loan account shows that Mr M paid an ERC of £2,426.52 when this loan was redeemed. As I have found that this loan was mis-sold in its entirety it is not necessary for me to address this issue separately as this will already be accounted for in the redress ordered."

In response to my provisional decision, Oplo has made a number of further submissions in relation to loan 4 which I will address here.

Oplo has reiterated the comments it made in response to the investigator's view in relation to loan 4. I have referred to these at the bottom of the 'What happened' section of this decision (and the provisional decision) and have already taken these into account when coming to my provisional decision so I will not address these aspects any further.

In relation to the doubling of the term of the loan and trebling of the amount Mr M would have to repay, Oplo says that this was to keep the repayments as low as possible and that Mr M was looking to extend the term over the longest term as he was going to re-mortgage in 2021. It said that it made him aware that this was not guaranteed and he could get stuck paying for the full term.

Whilst Mr M may well have wanted to decrease the monthly repayment due to his increased credit commitments elsewhere, this doesn't mean that the lending was responsible in the circumstances – not least because doing so secured that debt over his property in an unsustainable way.

Oplo says that the provisional decision infers that it did not comply with MCOB as one of the loans was not being consolidated directly and it disagrees with this. It says that all but one of the loans were consolidated directly and the lender for this loan did not accept third-party payments. Oplo says that it obtained Mr M's declaration that he would repay the loan from the funds so says that it took reasonable steps in line with MCOB to ensure that the debts were repaid. Therefore it cannot see how it has not complied with MCOB. Oplo says that previous loans not being used to pay off creditors was only relevant for loan 1 with mitigating circumstances.

I accept that the loan 1 was the only previous one from Oplo which did not consolidate Mr M's creditors directly. However, in addition to this Mr M had not paid off credit cards which had been consolidated but had instead continued to use those cards after using the loans to pay the debt off. Whilst I appreciate that Oplo has no control over whether Mr M continued to accrue debt on these credit cards, this should have provided an overall picture that Mr M was not actually consolidating debt in reality, but merely acquiring more debt by using loans to pay off credit cards and then reusing the credit cards. I disagree that obtaining a declaration from Mr M was a reasonable step to ensure the debt was repaid in light of this history, in the particular circumstances of this case, and maintain the view taken in my provisional decision that if Oplo was unable to consolidate this loan directly then it should have been included in the affordability calculation.

In relation to the valuation, Oplo says that it used the previous last known valuation of £165,000 from July 2017. It says the first charge lender had advanced £133,000 against the property which confirms this was reliable.

The first charge loan had been taken out shortly after the valuation in September 2017. Loan 4 was taken out a year later and Oplo obtained an estimated 'realtime' valuation of £125,000. It does not seem to me to be appropriate for Oplo to simply disregard this on the basis that there was a higher valuation a year earlier which formed the basis for the lending from the first charge lender. As set out above, for loan 3 Oplo was prepared to lend against the estimated 'realtime' valuation which was higher than the actual valuation carried out four months earlier. Therefore, if the estimated 'realtime' valuation it obtained at the time of loan 4 showed that the value of Mr M's property had reduced, Oplo should have lent against this valuation or at the very least questioned why the valuation was so much lower than a year earlier and assessed whether it was appropriate to lend more money against this, particularly given the debts already secured against the property. In any event, and as set out in my provisional decision, the valuation and high LTV in itself may not have been a bar to lending but in combination with all of the other information available this should have indicated that the loan may have been unsustainable for Mr M.

Oplo had again reiterated how its DTI was calculated. It says that its I&E affordability calculation showed good free disposable income of £243.43 and £9.92 after the stress-test, which considered basic essential and household expenditure in line with MCOB guidance.

As set out previously for loan 1, it appears that the DTI calculation didn't take into account Mr M's monthly outgoings other than his loans, credit cards and mortgages. Whilst I can't comment on how Oplo decides to calculate figures for its internal processes and thresholds, I still note that 66% is at the upper threshold of Oplo's own lending criteria for this loan and required director approval above 60%. Moreover, I have included in my provisional decision the figures including all of Mr M's monthly expenditure which indicate that – if all of Mr M's outgoings and credit commitments contained in the I&E are considered – he would be left with £243.43 a month which was only 9.9% of his net monthly income.

The stress test based on the verified figures left a deficit of £41.96. Had the repayment figure for the loan which was not being directly consolidated been included in the I&E (as I think it should have been under MCOB 11.6.16 R), this would have reduced Mr M's 'free cash' to £83.43 which was only 3.4% of his net monthly income and the stress-test based on actual figures would have been even further in deficit. It was only when the actual figures were hypothetically reduced that the stress test was in credit, albeit only by £9.92. For the reasons set out in both my provisional decision and above for the previous loans, I remain of the view that the stress test should have been based on Mr M's actual outgoings.

Oplo makes the observation that the amount of home improvements needed by Mr M increased from around £15k to £50k which ties in with the increased loan requests seen, culminating with loan 4 at £35,000.

This analysis doesn't appear to take into account that between loan 1 and loan 4 the I&E affordability checklists show that Mr M's secured borrowing had increased from £137,310 to £165,048 and his unsecured lending in terms of loans and credit cards had increased from £12,372 to £69.682. This represents an increase in Mr M's indebtedness of over £85,000 over that period. In any event, as set out above and in my provisional decision, the fact that Oplo was aware of the reason for the continuous extra borrowing – both through itself and other channels – does not mean it was sustainable or affordable for Mr M.

Overall, Oplo says that it believes its checks were thorough and satisfactorily suggested that Mr M would have likely been able to sustainably afford the loan. Having considered Oplo's response to the provisional decision, none of the further submissions change my view in relation to the overall picture of loan 4 taking all of the factors into account. I remain of the view that the information available to Oplo should have indicated that the loan was not affordable or sustainable for Mr M and I think it lent irresponsibly in the circumstances.

In relation to the ERC for loan 2, Oplo says that this was correct as Mr M had had a COVID-related payment holiday and no interest had been charged since May 2020, so deferred interest from May to August 2020 was payable upon settlement along with the ERC. I have seen no breakdown of the ERC and deferred interest and I would note that it is confusing if items which are not the ERC are included on the statements as an ERC. However, given that I remain of the view that this loan was mis-sold in its entirety, it will be unnecessary for me to carry out any further investigation in relation to this aspect.

<u>Conclusion</u>

For the reasons set out above and in my provisional decision, I am of the view that all four of the loans were unaffordable and unsustainable for Mr M and that Oplo lent irresponsibly. Mr M has now sold the property the loans were secured against as he felt he had no choice as he got deeper into debt. Therefore, it is difficult to put him back in precisely the same position he would have been in had the loans not been given.

Whilst I don't think the loans should have been given, Mr M has had the benefit of the money borrowed, so I think it right that he should have to repay the sums borrowed. However, had the loans not been given then he would not have had to pay the fees or interest incurred on these.

Putting things right

In order to put things right, Oplo should calculate the total amount of capital Mr M borrowed across the four loans. It should not include any borrowing for fees and charges, including the ERCs. And where a later loan consolidated an earlier one, it should not 'double-count' the capital (for example, if Mr M borrowed £10,000 on one loan, and then borrowed £20,000 to pay off the first and take further money, the total capital borrowed is not £30,000 but £20,000).

Oplo should also calculate the total amount Mr M has paid to it – taking into account all the monthly repayments and final settlements – and including money he paid towards any fees, charges and ERCs added. Again, it should avoid 'double-counting' of capital moved from one loan to the next.

Oplo should then calculate the difference between the amount of capital it lent and the total amount Mr M has repaid. It should refund the difference to him, adding simple annual interest of 8%. As loan 1 was a stand-alone loan, the figures should be calculated separately and the interest should run from the date of redemption of loan 1. For the remaining loans, as they were consolidated into one another, the interest should run from the date of consolidation of loan 4, when his losses crystallised.

I recognise that this is not an ideal way of putting things right – it doesn't take into account the fact that Mr M did consolidate some (though by no means all) of his existing secured debt, and has therefore, through my award, saved interest on that debt he would otherwise have paid. However, given the high interest rates Oplo charged, and the difficulty of estimating what Mr M would have paid to credit card debts, I think it's reasonable to take a relatively simple approach to resolving this matter by simply saying that Oplo should not retain fees and interest on money it ought not fairly to have lent. I'm satisfied that this is as close to fair compensation as it is reasonably possible to get in this case.

I recognise that there is likely to have been some saving through consolidating high-cost credit card debt into high cost secured lending that was paid off within four years, albeit I don't think I can accurately estimate that saving, and I don't think it's likely to be very substantial. However, my award for financial loss will result in Mr M having paid no interest on any of the consolidated debt. In recognition of the fact that this may, to some extent, leave Mr M over-compensated, I do not intend to award further compensation for his distress and inconvenience in addition to that award.

In light of the above, I require Oplo to do the following:

- For loan 1, Oplo should calculate the amount borrowed without any fees or charges or the ERC (£9,000). It should then calculate any payments made to it by Mr M in respect of loan 1, including monthly repayments and the final settlement figure paid. Oplo should then pay Mr M the difference. In relation to this loan it should pay simple annual interest of 8% on the amount refunded, running from the date of redemption of loan 1.
- For the remaining loans (2, 3 and 4), Oplo should calculate the amount borrowed without any fees and charges or ERCs (£15,000 + (£21,000 less the settlement figure for loan 2) + (£35,000 less the settlement figure for loan 3). It should then calculate any payments made to it by Mr M in respect of loans 2, 3 and 4, including any monthly repayments and the final settlement figure paid for each loan. Oplo should then pay Mr M the difference. In relation to these loans, it should pay simple annual interest of 8% on the amount refunded, running from the date of redemption

of loan 4.

- If Oplo considers that it's required by HM Revenue & Customs to deduct income tax from the interest payments, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained in my provisional decision and above I uphold this complaint against Oplo HL Ltd and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 January 2023.

Rachel Ellis
Ombudsman