

The complaint

A company which I'll call 'C' complains that Close Brothers Limited (trading as Close Brothers Property Finance) charged a security release fee when it repaid its loan which it hadn't been made aware of when taking out the facility.

The complaint is brought on C's behalf by one of its directors, Mr B.

What happened

C took out a development loan with Close Brothers in March 2022 which was amended in September 2023.

Mr B told us:

- C built six properties with the loan from Close Brothers and sold three properties to repay the loan in full.
- As part of the loan agreement, C had to pay various fees including solicitors' fees, interest and exit fees. However, when the three properties were sold, Close Brothers charged C a release fee for each of the sold properties.
- The release fee wasn't included in the facility agreement or Close Brothers standard terms. Close Brothers subsequently said the fee was included in its standard terms, but this conflicts the facility agreement.
- Close Brothers had provided C's solicitor with a copy of its release procedures before the loan had been repaid. However, C's solicitor thought this had already been agreed as part of the signed terms so hadn't made him aware of the fees.
- Close Brothers had unfairly charged C the security release fees totaling £1,380 so he wanted this refunded.

Close Brothers told us:

- The fees which were payable by C were explained in the facility letter and standard terms and conditions. The legal fees which C was disputing were included within section C5 and D of the terms and conditions and were different to the other legal release fees which C had paid.
- It used a third-party solicitor to complete the legal work for the release of C's security. C's solicitor had been provided with breakdown of the legal costs to release each of the three plots of land, along with the final release fee before these had been paid.
- C's solicitor hadn't queried the third-party legal costs, so they'd continued releasing the security on C's behalf in line with the lenders processing document.

Our investigator didn't recommend the complaint be upheld. She was satisfied that Close Brothers hadn't made an error in charging C the £1,380 additional legal fees which were paid to ensure that each property had been discharged correctly. She noted that the facility agreement which C had signed, said that the company would be pay any expenses incurred by Close Brothers, and that this included its legal fees. She also noted that Close Brothers solicitor had made C's solicitor aware of its process for releasing any security held by it before the release had taken place, but hadn't queried this. However, the investigator did note that it had taken a long period of time for Close Brothers to provide this information.

Mr B didn't agree and asked for an ombudsman to review C's complaint. He said C's solicitor hadn't queried the security release fee as they'd believed this had already been agreed between C and Close Brothers. He also didn't think the release fee should be treated as an expense, as this was part of the lenders standard terms and hadn't been included in the fees listed within the facility letter. He felt the facility letter should have taken priority as this was the document signed by both parties.

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 done so, I'm sorry to disappoint Mr B but there's not much more that I can add to what our investigator has already said. Mr B has provided a lot of information and testimony in support of C's complaint. I've read and considered everything Mr B has provided, however, in this decision I've not commented on each and every point he's raised. I don't mean this as a discourtesy, this is simply due to the informal nature of this service which allows me to do so.

Firstly, I do want to clarify for Mr B that our role as an ombudsman service is to be a free and informal alternative to the courts. We do consider relevant laws and regulations, but our role is to look at things on a fair and reasonable basis in line with the DISP rules, which is what I have done here. The crux of Mr B's complaint appears to be that Close Brothers charged C a security release fee that he feels wasn't agreed or made clear when the parties signed the agreement. However, based on what I've seen, I'm not persuaded that's the case.

I recognise that Mr B says the facility letter he signed didn't list the security fee and therefore the facility letter should override any other terms. However, I've looked at the facility agreement and it says that the facility letter, the facility, and loan offer were all subject to Close Brothers standard terms and conditions, and that these standard terms formed part of the facility letter. So, whilst I agree that the facility letter doesn't include the fee that Mr B is disputing, I don't think that automatically means the fee wasn't payable. I'm satisfied that the facility agreement was clear that both the facility letter and standard terms should be read in conjunction with each other, not in isolation, and both formed part of C's agreement with Close Brothers.

So, I've then reviewed Close Brothers standard terms and conditions, which reiterate that the facility letter signed by C incorporates these standard terms. The standard terms also say that if there is a capitalised term with these terms and conditions which isn't defined, then it would hold the meaning defined in the facility letter. I recognise why Mr B may have thought the facility letter would be the only document he needed to refer to. However, there is a defined term clearly at the top of the page within the standard terms and conditions for 'Expenses'. This means that facility letter terms would not override Close Brothers standard terms for this section as it has its own definition, nor is there any inconsistency which would therefore require the facility letter terms to override the standard terms. So, I'm satisfied that the 'Expenses' part of the standard terms would be applicable.

Mr B believes that the Expenses section of the standard terms says C would only be responsible for Close Brothers legal costs in setting up the facility, but I don't agree. The 'Expenses' section as defined in the standard terms does say in part one that C will be responsible for Close Brothers legal costs for setting up the facility, but there is also part two and part three which are also part of the same defined section and therefore part one, two and three should be read together, not in isolation. In summary, part two and part three say that C will cover Close Brothers legal costs for any ongoing administration or maintenance of the facility, including paying for any professional or legal fees. So, I'm satisfied that Close Brothers terms are clear that C would be liable for additional fees, in this case legal fees, and I don't think there was an inconsistency in the fees payable by C on the different parts of the facility agreement.

Furthermore, I think it's reasonable that Close Brothers didn't provide C with a defined amount for these fees within the facility letter itself, as they were subject to variable factors which Close Brothers couldn't confirm at the time the agreement was signed. I can see Close Brothers also clarified in its email of 27 September 2023, before C had signed the amended agreement, that its legal fees of around £6,000 (which were included in the initial agreement costs) were only for the release of the land and completion of the loan, and that this didn't include any anticipated or future payments. So, I think C ought reasonably to have been aware that it may be required to pay other fees in the future, which couldn't yet be confirmed by the lender.

As I think Close Brothers made C aware that additional fees would likely be payable, I've then gone on to consider if the fees charged by Close Brothers were correct. From what I can see, Close Brothers has a process document for releasing security which was sent to C's solicitor. The document explains that there are different fees which are applicable, depending on the type of security release. The applicable part of the document says that because C's loan was repaid from the sale of different plots, a DS3 form was required along with a fee of £400 plus VAT for the first plot sale, followed by a fee of £250 plus VAT for each of the subsequent plot sales. Then, when the loan was repaid and the security charge was to be removed, a DS1 form was required along with a final fee of £250 plus VAT. Mr B told us that C had sold three plots and then repaid its loan in full and been charged £1,380. So, I'm satisfied the security release fees paid by C were in line with the costs detailed in Close Brothers process document and I don't think the lender has treated C unfairly here.

I'm sorry to disappoint Mr B as I know he feels strongly about C's complaint. However, based on the evidence available, I'm satisfied that Close Brothers has acted in line with the facility agreement in applying the £1,380 security release fee. Therefore, I won't be asking it to do anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 30 January 2025.

Jenny Lomax
Ombudsman