

**SELECT COMMITTEE INTO THE
FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 6 SEPTEMBER 2000**

Members

Hon Ken Travers (Chairman)

Hon G.T. Giffard

Hon Ray Halligan

Hon Greg Smith

Hon Norm Kelly

Committee met at 10.55 am.

McEVOY, MR PETER,
Retiree,
residing at 23 Coral Tree Avenue,
Subiaco, examined:

LENNON, MR MICHAEL,
Power of Attorney for Mortgagee,
residing at 11 Orana Crescent,
City Beach, examined:

Van STOKKUM, MR BEN,
Mortgagee Committee Member,
residing at 40 McKirdy Way,
Marmion, examined:

COOKSEY, MR PETER,
Mortgagee,
PO Box 1332,
Mandurah, examined:

The CHAIRMAN: Welcome on behalf of the committee. Please state the capacity in which you appear before the committee.

Mr Lennon: I appear as the power of attorney for my son David, who is a mortgagee to a Blackburne and Dixon mortgage. David is currently interstate. He was also overseas when this matter blew up. I was involved with the fraud squad and other such matters all the way through, so I know a lot about it.

Mr Cooksey: I am a mortgagee.

Mr Van Stokkum: I am a mortgagee as well.

Mr McEvoy: I appear for my wife, Anne McEvoy.

The CHAIRMAN: You signed a document called "Information for Witnesses". Have you read and understood that document?

All Witnesses: Yes.

The CHAIRMAN: This hearing is being reported by Hansard. To assist the committee and Hansard, and so the record is clear, please quote the full title of any document to which you refer during the hearing. A transcript of your evidence will be provided to you, and this transcript will become public. If for some reason you want to make a confidential statement during the proceedings, you should ask that the information be taken in private session before you speak about the matter. The committee may also decide that your evidence should be taken in private. This could happen if the committee believes the evidence might breach the inquiry's term of reference (3), which reads -

The committee in its proceedings avoid interfering with or obstructing any inquiry being conducted into related matters and in particular inquiries by -

- (a) the police;
- (b) any liquidator or supervisor of any company;
- (c) the Gunning inquiry;
- (d) the Australian Securities and Investments Commission; or
- (e) any prosecution.

Even if your evidence is taken in private, the evidence will become public when the committee reports to the Legislative Council. If you want your evidence to remain private, the committee can apply to the Legislative Council for a suppression order when the final report is presented to the Council.

For the benefit of those in the gallery, only accredited media representatives can take notes during the hearing. Second, the committee is aware that charges have been laid against some participants in one of the deals on which you have provided a submission,. We ask that you speak only in general terms about problems in the finance broking industry, and not the specific detail which may affect the prosecution of those people. If you wish to raise specific details with the committee, we suggest that the evidence be taken in private session at the conclusion of your public evidence. The committee would not like to take evidence that could be used in some way to avoid a prosecution reaching its conclusion. If you have any concerns, raise them as we proceed.

Mr Van Stokkum: We are concerned. Basically, we are here to talk about Blackburne and Dixon. We are the mortgagees over property in Geraldton. The borrowers have been charged with fraud, and Ken O'Brien of Blackburne and Dixon has also been charged with fraud. Kaye Blackburne, the licensee, and Jason Blackburne have not been charged. We want to talk about this dealing and about Blackburne and Dixon, the licensee and the investment manager and director, Jason Blackburne. We do not need to mention Ken O'Brien or the borrowers. Basically, it is about this dealing where people have been charged.

The CHAIRMAN: Does the evidence you want to give relate to the failure of others involved?

Mr Van Stokkum: We want to go through the dealing to show you the way that Blackburne and Dixon's proposal was completely false, negligent and fraudulent. We will commence that in a minute. We will work from there. Peter Cooksey has something on the Ministry of Fair Trading, as does Michael Lennon. It does not matter who was the borrower. It was the case that the proposal was false. That is not my submission; do you have my submission there?

The CHAIRMAN: Yes, we are aware of it. The committee needs to have a quick discussion on the matter, and I ask you to leave the room for a moment.

Committee suspended from 11.05 to 11.22 am.

The CHAIRMAN: My apologies for the delay. It is important that the committee be very careful. I am sure that you would agree that the last thing we want is for the committee to act in a way that may impact on prosecutions in the court system. The committee has a list of questions to ask in public session. It would then like to go into private session to discuss the specifics of the deal outlined in your submission. The reason for that course of action is the potential impact the evidence may have on police investigations or ongoing prosecutions. It is in your interests as much as the committee's to do this. Also if you have documents to submit, the committee will receive them in private session. The committee may make them public later. They will automatically become public if we receive them in public session, and we want to ensure that they will not have an impact on agencies involved as public documents.

In your involvement with the finance broking industry, your submission referred to some research you conducted into this area of the industry in 1997-98. Will you provide some background to the information acquired in the research you carried out into the industry?

Mr Cooksey: Yes, I did. I originally contacted my accountant, who recommended Blackburne and Dixon as a good company to deal with. I made various inquiries with people who were dealing with them and had dealt with them for a number of years. They put it to me that they had not lost a cent. I spent about six months checking on these people, and I could find nothing wrong.

The CHAIRMAN: That was with the other investors?

Mr Cooksey: Yes.

The CHAIRMAN: What was the name of your accountant?

Mr Cooksey: Can I say that? I do not particularly want to do that.

The CHAIRMAN: That is fine. You can do it in private session.

Mr Cooksey: Yes.

Hon NORM KELLY: Was this your first experience with the finance broking industry?

Mr Cooksey: Yes.

The CHAIRMAN: Did any of the other witnesses conduct any research prior to becoming involved with finance brokers?

Mr Van Stokkum: No research. You would have the proposal of Blackburne and Dixon Pty Ltd in front of you. When you get a proposal from a licensed finance broker with a sworn valuation by a sworn valuer which mentions the assets of the borrowers, you presume the investment is safe. The only research I did when I started investing with Blackburne and Dixon indicated they had been in business for approximately 15 years and had a good record.

Hon NORM KELLY: How did Blackburne and Dixon initially come in contact with you? Did they contact you?

Mr Van Stokkum: No, I first saw an advertisement in the *Sunday Times* in about 1997 stating that it was advisable for retired people who were receiving very low interest from the bank to invest in real estate as the money invested would be loaned only to a maximum of 70 per cent of the valuations which they called "as safe as houses". That is why I invested with Blackburne and Dixon, which went perfectly with no problems at all. I just turned over my money and went into the next two investments with the same borrowers.

Hon GREG SMITH: At what interest rate was that money loaned?

Mr Van Stokkum: At 9 per cent. We often hear comments about greed and that we were expecting far too much interest but it was 9 per cent. There were proposals for 12 per cent or 13 per cent but when I looked at them I knew I would be taking a risk. For example, I am talking about vineyards where the land was bought inglobo and subdivided into smaller individual blocks with separate titles and then one would get a share in an individual title. However, if that went wrong it would be very messy to try to sell all these individual blocks. My investments were basically in real estate with one title, a loan of up to 70 per cent of the valuation, most lower, and borrowers recommended by Blackburne and Dixon as having good track records, assets and personal guarantors if anything went wrong.

Hon NORM KELLY: You consider proposals of 12 per cent or 13 per cent interest as being very risky when the banks are offering 5 per cent or 6 per cent. When you are presented with a proposal of 9 per cent interest, how do you assess that as a reasonable risk given that it is higher than the bank rate? What risks are you willing to take for an investment?

Mr Van Stokkum: The answer is really no risk at all. We were told the reason we would be getting 9 per cent was because it was a very short-term commercial loan. If a developer wants to do something short-term and goes to a bank or finance company related to a bank, he or she would be looking at that sort of interest too. Therefore, 9 per cent was not ridiculous. However, there was the "no risk" factor in the proposals. As I said, there was a sworn valuation of \$1.8m on this particular investment and if we were to lend \$1m over a period of only six months to set up the deal to build a motel eventually, it looked very safe to me.

Hon GREG SMITH: Have your friends, or people who knew about Blackburne and Dixon who recommended them to you, subsequently lost their money as well?

Mr Van Stokkum: I had no friends who dealt with Blackburne and Dixon. As I said, I saw an article in the *Sunday Times*. I contacted Blackburne and Dixon who sent out some information to me. As I said, I worked basically on the fact that sworn valuers were involved and I presumed those people were capable of giving proper valuations.

Mr Cooksey: I can answer that question. A friend originally spent a lot of time talking to me. I was very sceptical in the beginning. The guy's name will not be mentioned as he recommended Blackburne and Dixon to me as a friend and at that time he was trying to do me a favour. To this day he considers he was doing me a favour and I believe him. That fellow was a senior police officer who knew Blackburne and Dixon, had dealt with Ken O'Brien for nine years and had not lost a cent. He recommended them to me and in the end I thought this would solve some of my problems. Obviously, I contacted him originally when things started to unravel, not to complain to him but to let him know what was going on to protect his own investments. He told me the other day that he has since been paid out in full and he even received his penalty payments. He feels pretty bad about what happened to me. His name will go unmentioned but I could not have had a better recommendation. He was not just a plug on the street. That is the reason I went into it and I do not blame him nor do I want his name mentioned as he thought he was doing me a good turn. I dare say that this has occurred in many cases.

Mr McEvoy: I made inquiries. I asked a party well known to the Blackburnes, well known in the city and prominent in real estate activities about what he knew about them. He said he had very detailed information. Owen Blackburne had died some three years previously. As the proprietor, he had bought out Dixons some years before. He told me that the fellow managing it now is the fellow whose name was not mentioned a moment ago. He is an ex-bank manager of the National Bank, I believe, and he is right on the button. He was Owen Blackburne's chief assistant up to Owen's death; then Kay Blackburne relied on that ex-bank manager to take over management of the company. He became the general manager and the one with whom we all dealt. I asked who handled the trust account and he said Kay Blackburne had her hands very firmly on the trust account. I must say there have been no major blips on the trust account in the past few months of the debacle compared with the two other major ones that have hit the headlines. That is one matter that has not been broken into to any great degree. However, he gave me all that reassuring information about the ex-bank manager - I used to have a lot of faith in bank managers - and in I went. A couple of the parties - no names mentioned - I dealt with in my first introduction are now up on charges.

Hon RAY HALLIGAN: Mr Van Stokkum, are you aware how valuations are undertaken?

Mr Van Stokkum: Yes, I am very well aware of that; I am a real estate agent by trade.

Hon RAY HALLIGAN: Do you believe the valuation certificate is a guarantee of a market price?

Mr Van Stokkum: It should be. If you are a sworn valuer, you have a commerce degree. The valuation you sign should be proper and you should be responsible for it. That is why I relied on that valuation. In addition to that, we were told of two valuations by two sworn valuers in a particular deal. We found out eventually there was only one valuation, and one appraisal which was ridiculous. The appraisal was by a company called Century 21 Commercial Pty Ltd in Como, which was involved with the two people who borrowed the money and as far as I know, those people owned the company.

Mr McEvoy: They were in the same office building.

Hon RAY HALLIGAN: Do you know the difference between a sworn valuation and a market appraisal?

Mr Van Stokkum: Yes, there is no comparison whatsoever. You cannot rely legally on a market appraisal. A sworn valuation must be done by a sworn valuer. A real estate agent cannot do a valuation. He can do only an appraisal as he is not a sworn valuer.

Hon RAY HALLIGAN: I am thinking of the future as well as the past. You just mentioned that a sworn valuation should be guaranteed. That does not appear to have been the case in the past. Do you believe it should be the case in the future?

Mr Van Stokkum: Yes. It is like going to a doctor for an opinion of your health. If the doctor gives you a wrong opinion, the doctor is at fault. There was an article on the Internet about sworn valuers in England where the law is virtually the same. According to the law there, a sworn valuer is responsible for a valuation he puts his name to, regardless of whether the economic climate changes. However, in this case the valuation is obviously ridiculous. The property was purchased in May 1998 for \$380 000. The valuer was well aware of that and valued it at \$1.8m two months later.

Mr McEvoy: I have to differ slightly with Mr Van Stokkum. I do not believe there is an absolute watertight guarantee that a sworn valuation is the actual sale price. We do not accept that; that is Disneyland. However, a sworn valuation must be a fair and reasonable estimate of market value. When you are putting money into a proposition that represents only 55 per cent of the land value, that allows for the non-guarantee but a very realistic price being put on it by the valuer. Surely within 55 per cent it would not be valued at twice its value. There is therefore no point in pinning us down to the fact that we expected a written guarantee that the land must be worth \$1.8m. However, surely it had to be worth something like \$950 000 or \$1m, even if the valuer only doubled the actual value.

The CHAIRMAN: You are saying its valuation should be somewhere close to the actual value.

Mr McEvoy: It appears there was a great margin for error on this valuation. A few of us have a bit of experience in real estate; not as much as we needed to counter what was happening in the finance broking world. Trust is something we should never have had.

The CHAIRMAN: The next question goes particularly to Mr Cooksey's submission. In it you make a comment about rumours circulating that the Finance Brokers Supervisory Board was totally inactive. Can you explain that statement? Anyone else can add his or her views about the board. You indicated you did a range of things but one thing you did not do was go to the Finance Brokers Supervisory Board as rumours were circulating that it was completely inactive. Can you explain that statement to us?

Mr Cooksey: I cannot bring to mind specific people who said anything to me. However, I was away and when I came back, I started ringing around.

The CHAIRMAN: What period are you talking about?

Mr Cooksey: October 1999. I made a few phone calls to alert people. I did not have to do much in this case as Mr Van Stokkum already had things under way. I wanted to get people together before the event. In ringing some of those people I found they had already started the wheels in motion and they all seemed to come up with the same statement: They were not doing any good with the Finance Brokers Supervisory Board. That is what I based that comment on in the letter. Mr Van Stokkum may be able to say how far he got with the Finance Brokers Supervisory Board with this deal.

Mr Van Stokkum: When this deal defaulted in May 1998, I started to inquire about what to do. I contacted Doug Solomon of Solomon Brothers and asked him about complaints to the Finance Brokers Supervisory Board and the Ministry of Fair Trading. I do not believe he would mind my telling you that he said I was wasting my time. Mr Lennon noticed that too and in about August 1999, Blackburne and Dixon, under the name of

Blackburne Finance Limited, applied for a new finance brokers licence and anybody who had any comments against it object to the Finance Brokers Supervisory Board. We did that through Doug Solomon. I have letters with me on that matter, including a letter to the Ombudsman. Doug Solomon was ignored by the Finance Brokers Supervisory Board. It would not even allow him into the hearing and made him wait for an hour. Then at the end of the hearing, Kay Blackburne handed in her licence and was told to stop trading. However, I have not made complaints to the Ministry of Fair Trading and to the Finance Brokers Supervisory Board.

Mr Lennon: I should correct something. Mr Van Stokkum said that Blackburne and Dixon applied for a new licence under the name of Blackburne Finance. It was not under that name. It was actually Kay Blackburne who applied for a licence.

Mr Van Stokkum: That is right. The same people from Blackburne and Dixon.

Mr McEvoy: Could I make another very relevant point which we have not referred to? We are talking about this valuation of \$1.8m. When the offer was put out by Blackburne and Dixon, no copy of the valuation was submitted to us. It was not until the loan had gone bad some 12 months later that we discovered the valuation was not a valuation of vacant land on which we were lending money but, rather, the anticipated land content value of a fully-developed motel unit with 60 units, a manager's unit and office and a reception.

The CHAIRMAN: We may come back to the specifics of the valuation but can you deal with general comments about the problems with the valuations?

Hon RAY HALLIGAN: You said the valuation was not presented; did you ask for it?

Mr McEvoy: No.

Hon RAY HALLIGAN: Is there any reason for that?

Mr McEvoy: This crowd had been dealing for about 15 to 20 years and to our knowledge had not been subjected to all the various checks on their trust account and/or their valuations. Little snippets are appearing in the Gunning inquiry and other matters that popped up in the last 12 months. However, until then we had no reason to doubt that Blackburne and Dixon were not fully-accredited, honourable finance brokers of the highest integrity.

Hon GREG SMITH: By the sound of it, they had conducted themselves in that way for 10 years previously.

Mr McEvoy: Well beyond that. In fact, Kay Blackburne said in one of her letters, "Don't panic. Three loans have gone bad but we have had a good name for 20 years."

Hon RAY HALLIGAN: Having worked for a bank for a number of years, I would say it would be prudent for any lender to ask for a valuation. Do you agree with that?

Mr McEvoy: I know there is a subtle difference. However, if I were to take out a bank bill with your bank for \$100 000, I would not need to know the detail of who that money would go to and what security the bank had obtained from the borrower because I know you are guaranteeing me. However, that is much the same thing, I am afraid. I am putting in the money on the bank bill. I do not ask, "Who is this going to? What is the security there? How good is this deal?" I just took the person's word that there was a \$100 000 bank bill and I would get X dollars for six months.

Hon RAY HALLIGAN: Look at it the other way. When a banker is lending money, even if he has a customer who has been very good for the past 25 years, if that customer wants to borrow money, I can assure you that the bank will ask for a valuation. It will ask for everything.

Mr McEvoy: It would revisit his assets, sure.

Hon RAY HALLIGAN: The bank would want all the documentation as well.

Mr McEvoy: I agree. I understand that it would. However, we are coming way down the pecking order from the bank manager lending the money. We are dealing through the bank - in effect, Blackburne and Dixon - in which, at the time, we had faith. The bank manager was the general manager. That was what sold me.

Hon RAY HALLIGAN: No, you had taken the place of the bank, because it was your money rather than the bank's that was being lent.

The CHAIRMAN: Peter has put the view that he sees Blackburne and Dixon as the bank.

Hon RAY HALLIGAN: He sees it somewhat differently.

Mr McEvoy: Yes, I see it as the one doing the credit checking and so forth, which we found was quite inept.

Mr Lennon: We were dealing with people who were licensed by a government agency; therefore, we expected them to be qualified and competent to do their job, otherwise they would not have been given a licence. For

many years a finance broking course was run through TAFE, I think. One would expect that those people would have been taught how to do things properly, and one would expect that they would have been taught how to read a valuation and to know whether it was a valuation of a virgin block of land or whether it was a feasibility study of an end product. Therefore, we relied on them because they had been licensed and were supposed to be educated.

The CHAIRMAN: On that point, Michael, I noticed from a business card that you attached that you are a licensed finance broker.

Mr Lennon: Yes.

The CHAIRMAN: Do you have one of the restrictions of dealing only with credit providers, or is it an open -

Mr Lennon: No, my main occupation at the moment is a property settlement agent. I have kept my finance broker's licence current, but I do not have the annual certificate. Until I crank that up again, I cannot lend money for people. My father did mortgage broking from 1950 until I joined him in 1968. We continued to do mortgage broking until the Finance Brokers Control Act came into being in 1974, and then we became known as finance brokers. I continued finance broking until some date in the 1980s. At that time my settlement agency and real estate agency was getting so big that I did not have the time to concentrate on the finance broking side, so I did not bother renewing my finance broker's annual certificate. However, in all the years that my father and I lent clients money, we treated the money as though it was our own. We were very careful, and not once did we have to foreclose on a mortgage. Every one was repaid.

The CHAIRMAN: Therefore, you did pooled mortgages.

Mr Lennon: Not large ones like this. We might have put two clients into a joint mortgage, but nothing to the extent that has been going on in the past few years.

The CHAIRMAN: It was mainly single mortgage arranging for someone who needed a private mortgage.

Mr Lennon: Yes, 99 per cent would have been single mortgages, but occasionally somebody would want more money than one client had on his own, so we would combine them.

Hon GREG SMITH: For whom did you believe Blackburne and Dixon were operating? Did you believe it was servicing you or the borrower? Whom did you think was its primary client, I suppose?

Mr Lennon: As a finance broker, I have here a copy of the code of conduct under the Finance Brokers Control Act which was in force at the time. Rule 7 says -

Brokers shall take all reasonable precautions to protect their clients against fraud misrepresentation and other unethical practice and to ascertain and communicate to them all available relevant facts relating to a property offered as security to a lender.

That says clearly that brokers are to relate to their clients. Therefore, I believe that a lender is entitled to believe that he is the client.

Hon GREG SMITH: The reason I asked the question is that the way the system operates, I understand, is that the borrower pays the fee for service, not the lender.

Mr Van Stokkum: We paid a fee as well - not as much as the borrower, of course. Out of our interest, a certain percentage went to Blackburne and Dixon - administration fees or whatever one calls it. Michael raised the code of conduct. The committee has a copy of the Finance Brokers Control Act, and several paragraphs mention that -

The CHAIRMAN: Are you talking about the code of conduct or the Act?

Mr Van Stokkum: The code of conduct under the Finance Brokers Control Act. For example, No. 4 says -

Brokers shall at all times act in the interests of their clients and shall not place a lender or borrower to disadvantage for the Brokers own benefit.

Hon G.T. GIFFARD: I understand what you are reading to us. However, essentially the question was what you understood and what your view was at the time. I understand the code, but can we put that aside for a moment? What was your understanding when you were dealing with this? It is important for the committee to know that.

Mr McEvoy: I was a client of Blackburne and Dixon. It never entered my head that it was any other way.

Mr Van Stokkum: As far as I was concerned, I was a client of Blackburne and Dixon.

Hon GREG SMITH: You believed it was acting in your best interests to try to place your money -

Mr McEvoy: Absolutely, yes, and it would obtain a commission or procuration fee.

Mr Lennon: As a finance broker, I always considered the lender to be my client.

The CHAIRMAN: The next issue relates again to Mr Cooksey's submission, although I guess all of you can comment on it. In the submission, Mr Cooksey says that it appears to him that Mr Shave and others have either neglected their duty or have a gross conflict of interest. Could you explain to us why you believe that to be the case?

Mr Cooksey: I suppose I must refer back to the Gunning inquiry. The evidence that came out of the inquiry was that they have just shelved all these things. They say they have been overworked, but it seems that all it would have taken was several telephone conversations. As I said earlier in the letter, two areas were open to them. One was to in-house virtually get the industry back on a sound and honest footing by bringing the errant valuers, brokers and borrowers to task. Secondly, they had a duty to warn the public of possible problems with trust funds and particular valuations. As I said earlier, I spent a lot of time researching these people and nothing seemed to come out. It surprises me that some of the investors did not start to spread the word earlier on in the piece. Perth is not a very big place, but apparently the word did not get around. My theory is that if they had made it public - it was virtually, as I said, a pyramid-type situation that we were getting into - there would have been no fresh punters, for want of a better word, and the whole thing would have collapsed probably sooner than it did. However, while people were going to the brokers, the situation continued. That is what happened. I do not think they wanted to do that. I think in a way they wanted to -

The CHAIRMAN: "They" being whom?

Mr Cooksey: The Finance Brokers Supervisory Board and the brokers themselves. They wanted to keep it going as long as they could, at least to get clear their own situations. Of course, they had to collapse eventually, as all pyramid-type selling schemes do. I feel that is what it had degenerated into.

Hon GREG SMITH: When was the mortgage written? When was the money put in?

Mr Cooksey: In November or October 1998. I will be corrected on that.

Mr McEvoy: Yes, November 1998.

Hon GREG SMITH: When did you realise it would go bad?

Mr McEvoy: When six months interest in advance was held back by Blackburne and Dixon. That was paid out regularly for six months. Then the next payment for June did not arrive. That is when the balloon started to go up.

Hon GREG SMITH: Therefore, in June, July and August, alarm bells started to ring.

Mr McEvoy: In the seventh month, if one likes.

Mr Van Stokkum: When we did not get our payment in June, I started to do some searching. I did a title search and discovered that the borrowers had paid only \$380 000 for the block. We lent the money because of the valuation, but the borrowers paid only \$380 000. It was said in the proposal that the block had been rezoned successfully for motel purposes. I checked that with the City of Geraldton.

The CHAIRMAN: I think we are getting into the specifics of the deal.

Mr Van Stokkum: It is basically the same as the valuation.

Hon NORM KELLY: We can come back to that in private session.

The CHAIRMAN: That would probably be safer for all of us, including your interests

Mr Van Stokkum: Basically, in May 1999 we realised that the deal was in default. Most borrowers - this is where the trust in finance brokers comes in - apart from a few, trusted Blackburne and Dixon and believed that the deal would come good. We were stalled and stalled for six months before we realised that the deal had gone wrong. Blackburne and Dixon did not put in a default notice until, I think, January 2000 or something like that.

The CHAIRMAN: In November 1998 you went in to the -

Mr Van Stokkum: Yes. We got the proposal in October 1998 and the deal went ahead in November 1998.

Mr McEvoy: The first payment was 4 December.

The CHAIRMAN: Dealing with the issue of neglect of duty of Mr Shave and others, perhaps you could explain whom you think the others are. What do you think Mr Shave should have done at that time? Do you think he should have been aware of the situation?

Mr Cooksey: Yes, definitely. Basically, the buck stops at the top, does it not? I think he should have been aware, yes. As to the others, I have not listed any names, obviously, but there were a lot of guys in the Gunning inquiry who said that they could not do things for various reasons.

The CHAIRMAN: Are you talking about staff of the ministry and board members?

Mr Cooksey: Yes. For obvious reasons I have not given details of their names. I feel that they had a job to do. Why did they not do it?

Hon GREG SMITH: Did you contact them?

Mr Cooksey: No, I did not contact them. As I said, at that time the only person I contacted was Mr Shave. I wrote him a letter, which the committee does not have yet. Perhaps I could make a comment concerning Hon Ray Halligan's inquiry about why we did not ask about getting a proper valuation. I will draw a rather poor analogy here. When I go to a doctor, I am dealing with a professional. I do not go into a lot of detail. I do not have any medical expertise, so I accept what he tells me in most cases, or I may go to another doctor. He will say this and that, and I accept it. I am virtually in the same position, as a layman, with these people. Can you see the analogy I am drawing?

Hon RAY HALLIGAN: I can, but you also said that you may obtain a second opinion, and I accept that - many people do. However, I suggest that when the doctor says something to you, when he diagnoses and decides on treatment, you will make a judgment in your own mind about whether you believe that that is fair and reasonable. If you believe it is, then you will accept it, as you have said. If you do not believe it is necessarily reasonable, then you will look for a second, or sometimes a third, opinion to confirm that first diagnosis.

Mr Van Stokkum: Do not forget that according to Blackburne and Dixon there was a second opinion. There was two sworn valuations.

Hon RAY HALLIGAN: However, you did not see them, and then you found that there was only one.

Mr Van Stokkum: No. We did not go to Geraldton to see if the block was actually there.

Hon RAY HALLIGAN: I am going down this path because one of our terms of reference concerns legislation for the future. Therefore, we need to find out what transpired to reach this situation and what was in the minds of the people who were investing. It may well be that if there are gaps, some of that legislation, or the code of conduct, will have to insist - I believe the Gunning inquiry has already dealt with some of these matters - that certain other things be put in place.

Mr Van Stokkum: Basically, if a proposal like that had not been false, there would not have been anything wrong with it. However, this proposal was completely false. It was a scam. Everything in the proposal is false.

Hon RAY HALLIGAN: I accept that. However, I return to what Michael said earlier about licensing. We license people to drive motor vehicles and we have laws which we help enact and which say that people will not speed, they will not do this and they will not do something else. Does that mean that everyone abides by the law? Does that mean that the Government is held responsible because it gave those people those licences and they broke the law? I know I am drawing a long bow here, Michael. All I am saying is -

The CHAIRMAN: We are not really here to debate it.

Hon RAY HALLIGAN: The issue came up.

The CHAIRMAN: Michael, I am happy for you to respond to that question if you want to.

Mr Lennon: I think he is drawing too long a bow there.

Mr Van Stokkum: Basically, a driver may get a licence, but if he hits somebody and it is his fault, what happens to him? He gets charged and finishes up in prison or whatever. In this case, we are dealing with a licensed finance broker - we will not go into fraud or anything like that because the committee does not want to discuss that - who basically has handed in her licence, and that is the end of it. If I hit somebody on the street when I was driving under the influence of alcohol, I could not go to the police station and say, "Here is my licence. I will not drive any more." I will not get away with it that way.

Hon RAY HALLIGAN: You can hand in your licence, but you will not get away with the offence.

Mr Van Stokkum: That would not be the finish of it. In this case, as far as -

Hon RAY HALLIGAN: We are now getting into an area that we can talk about later.

The CHAIRMAN: Without reiterating the issue about going into the specifics of the deal, are there any general comments that you wish to make about the problems you are currently facing or have faced and the responses you have had from any agencies which were involved in supervising the situation at the time or are involved in sorting out the problems now? Again, without talking about the specifics of the deal, do you have any general comments about their responses or about any problems that you have now?

Mr Van Stokkum: As I said before, I have not had any dealings with the Ministry of Fair Trading or the Finance Brokers Supervisory Board. Basically, we have had quite a few meetings with all the mortgagees, and the comment that has always been made is that the ministry and the board have been absolutely useless.

The CHAIRMAN: Yes, but what about other agencies which may also have a role in this?

Mr Van Stokkum: Peter Cooksey wrote a letter to the valuers board, and that letter was ignored.

Mr Cooksey: I received a reply. I wrote a letter to the registrar, which is also in those documents.

Hon RAY HALLIGAN: On this issue - this mortgage and the like?

Mr Cooksey: Yes, it was on that issue.

Hon RAY HALLIGAN: We will not go down that path.

Hon NORM KELLY: We can deal with that in private session.

Hon RAY HALLIGAN: Yes, otherwise it becomes a public document at this time because of our term of reference No 3.

Mr Cooksey: Yes, the second letter I wrote was general.

The CHAIRMAN: It was general, and the response was not satisfactory. Are you are happy with responses you have been getting from the Australian Securities and Investments Commission, the police and people like that?

Mr McEvoy: Yes. We met with members of ASIC last week.

Mr Van Stokkum: Yes, we went to see ASIC. Peter and Michael were there too. Basically, ASIC said that Kaye Blackburne had handed in her licence and that any action was really up to the State Government and the fraud squad. The fraud squad - I must be careful now what I say - has done its job on Blackburne and Dixon. Because Ken O'Brien will not talk, it will not charge Kaye Blackburne. Anyway, the fraud squad is overworked at the moment; it has too much to do. It has done its job. It took six months to work on this particular deal with Blackburne and Dixon. It has stockpiles of other deals, so I do not know when this will all be finished. Basically, ASIC wants to stay out of it.

Mr McEvoy: It stepped aside and said that there are other ways - common law, the fraud squad and so on.

Mr Van Stokkum: We saw ASIC because of Blackburne and Dixon. Why have Kaye Blackburne, as licensee, and Jason Blackburne, as director, not been charged under corporate law? We were told by the fraud squad to see ASIC about that.

Mr Cooksey: I will generalise a comment that was made to me by a guy from the valuers board. I kept harking back to the fact that if a property had changed hands for so much, I considered that to be the value of the property because it had been sold for that price. On a couple of occasions he said, "Don't get it into your head that that is the value of the property." He used this analogy and said, "They could have been lucky enough to purchase that property for \$2, but that is not the value of the property, is it?" I said, "No." He said, "They could have got a bargain, so you cannot say that the amount they paid for the property is the value of it. They might have got a really good bargain." That is exactly what he told me. Twice he used the analogy of \$2. He said, "If they bought the property for \$2, it is ridiculous to say that that is the value of the property."

The CHAIRMAN: I suspect that you would want the tax office people to check what other things were going if they got it for \$2, but that is another issue.

Mr Cooksey: I know. However, they are his exact words. He said, "You can't use the fact that they purchased the property for that amount to say that that is the value of the property."

Hon RAY HALLIGAN: He did not give you the converse as well: If they paid \$2m for it, it still may not be the value.

Mr Cooksey: No, he did not, but I thought it was rather strange logic.

The CHAIRMAN: The point is that the purchase price would certainly be a starting point, and you would not rely solely on the purchase price.

Mr Cooksey: No. We finished the conversation, and I countered that by saying, "We are going to auction the place." I am getting specific now. My reply was, "When the place is auctioned, we will get a better idea of the value of this property."

The CHAIRMAN: I guess the political analogy is that the only opinion poll that counts is the election.

Mr Cooksey: Yes. That is what I have literally said.

Mr McEvoy: Could I contribute something? We are not arguing for the sake of arguing; we are trying to find something on which to base our recommendations. On valuation, I will make two points, both of which I think came out in the Gunning inquiry. There are two mistakes on our part, if one likes, if we have to take some of the blame. We are in there; we walked willingly into the place. First, we were not given a copy of the valuation - we did not see one and did not ask. Obviously, in future, a broker should present a copy of the valuation to every lender. Secondly, the major thing is that the valuation should be prepared by an independent party, as mentioned by the Gunning inquiry. This so-called valuation was obtained by Elk Cove from a valuer in Geraldton. It was not Blackburne.

The CHAIRMAN: There should be an independent valuation.

Mr McEvoy: Another of the large finance brokers in town is at this stage without blemish. It has a panel of valuers covering quite a large area. For example, one property down in Augusta was valued by a representative of Chesterton International, so we knew we had some credence and some substance then, even though it was in a far-flung area.

The CHAIRMAN: You are talking about the need to get independent valuations.

Mr McEvoy: Not one produced by the borrower which says, "I want to borrow \$1m and I have a valuation from this fellow in Geraldton." Those are the two things on valuations that I was trying to put before the committee.

The CHAIRMAN: Should it be the broker or the actual lender who organises an independent valuation?

Mr McEvoy: The broker. As members can imagine, in some pooled mortgages there are 51 people. I am not in one of those. We are in a pooled mortgage of 15 people. We battled for six months, some of us harder than others, to get everybody to agree that we were in trouble. The word was, "I have dealt with these people for years; there are no worries." When 15, 30 or 50 people in a pooled mortgage are trying to get an independent valuation, it cannot be done.

The CHAIRMAN: To take the next point, the finance broker would clearly be acting as an agent for the people lending the money and not for the borrower?

Mr McEvoy: No. If the borrower comes along and says, "I want to borrow \$1m", the brokers will say, "Let us have a look at your financial background. We will have to get a valuation. We will send our panel of valuers to do the valuation."

The CHAIRMAN: If anyone, whether he is a lawyer, a land valuer, a finance broker or a real estate agent, is acting for two parties, there is obviously a conflict of interest. I mention this because it follows on from the issue about getting the valuation. Effectively, the finance broker should act on behalf of the lenders. The lenders will obviously have dealings with the borrower, who will present his documentation to them. However, is it your view that the broker should act on behalf of the borrower and that the broker's first duty is to the borrower, in the same way as a real estate agent normally acts on behalf of the seller of a property?

Mr McEvoy: No, he should act impartially - right through the middle. If people are dealing with brokers who lack integrity, those brokers just obtain their own tame valuers. I have seen that happen many times over many years. In this case, the borrowers obtained their own assessment. Quite frankly, it was not a valuation of the security on which we were lending money; it was an opinion on developed land content in something that will be worth \$9m maybe if it is built.

Hon GREG SMITH: On a concept.

Mr McEvoy: On a concept, on a dream.

The CHAIRMAN: I understand that the board sent that to brokers and indicated that they should do that. However, clearly that did not happen.

Mr Lennon: Earlier I read part of the finance brokers' code of conduct which was applicable at the time of this mortgage. Has the committee seen the code of conduct which was issued last year - I received it on 9 August last year - after all the publicity came out that everything was falling apart? The rules have now been changed.

The CHAIRMAN: No. In one of the board's newsletters, it sent a notice to finance brokers indicating that independent valuations of the properties should be sought. From what you are suggesting, that was never taken up by the brokers, and obviously there was no enforcement of that requirement.

Mr Cooksey: It did not flow on to the lenders, that is for sure.

Hon RAY HALLIGAN: Mr McEvoy, I again refer to these valuations and the independence thereof. The valuers are professional people. I understand they have their own association. Could you see a running database, crossing off those who were no good and adding those who needed to be added -

Mr McEvoy: Of the valuers?

Hon RAY HALLIGAN: Yes. They must be registered valuers.

Mr McEvoy: No, not until I got involved in this huge debacle.

Hon RAY HALLIGAN: No, I am thinking of the future.

Mr McEvoy: I am not even knocking the valuer in this case in Geraldton, because he did not give a valuation of our security.

Hon RAY HALLIGAN: No, I am thinking of the future, I must admit, and what might be done in the future. I understand what you are saying about the pooled mortgages and the fact that many people may never agree. However, there could be a database, and that professional association could identify a valuer to value the property. Would that possibly be one way around that problem?

Mr McEvoy: That is to say, it would go to the valuers board, which would nominate a valuer for that area?

Hon RAY HALLIGAN: Or the professional association.

Mr McEvoy: The board could say, "The best man for commercial valuations in Geraldton would be so-and-so in Geraldton, or so-and-so down here has had a lot of experience in the north west run." I could see some value in that, where it is totally independent. The board could even nominate a choice of two valuers to the broker. It would bog the board down a little, though, as one can imagine.

Hon GREG SMITH: I understand that there were 15 people involved in the mortgage on this property.

Mr McEvoy: Yes, on this one.

Hon GREG SMITH: How is a percentage of that particular mortgage offered to you as an individual?

Mr Lennon: In my son's case, he had approached Blackburne and Dixon and said, "I have X number of dollars I wish to lend." When Blackburne and Dixon got a proposal - obviously, other people had contacted them in the same way - it wrote and said, "We have this application. We will include your contribution in the overall loan."

Mr Van Stokkum: The committee has a copy of a proposal. That is exactly what it sends.

Hon GREG SMITH: Therefore, you do not get a title?

Mr McEvoy: Some people may be offered \$100 000 involvement, and they may say, "I don't want \$100 000 involvement. I have \$25 000." The brokers will say, "Fine, we'll put down \$25 000." They just cross out the \$100 000 at the top and put down \$25 000.

The CHAIRMAN: Then they collect enough people until they get the amount that they need to lend.

Mr McEvoy: In this case, I crossed off my name, left my wife's name, signed it and sent it back. That is a simple acceptance.

Mr Lennon: Hon Greg Smith asked about a title. The brokers actually send a copy of a couple of the pages of the mortgage which lists all the mortgagees, so a person was able to check that he or she was registered on the title deed. I have the stamped duplicate of the mortgage here.

Hon GREG SMITH: I asked about that because I understand that in some pooled mortgages people do not even have their names on titles.

Mr McEvoy: Absolutely, yes. That has not applied with this particular broker. It has a couple of ticks in comparison with a couple of the major ones out there.

Mr Lennon: You were asking about our recommendations for future legislation. The new code of conduct that is being issued to all brokers says that when the lender requires a valuation of the land to be offered as security for a loan, the broker shall inform the lender by notice in writing that the lender is entitled to choose and appoint an independent valuer. That was never in the previous code of conduct. It also says that in the event that the lender instructs the finance broker to engage a valuer to value the land to be offered as security for a loan, the finance broker shall select an independent licensed valuer and take reasonable steps to ensure that the valuer has no interests whatsoever, financial or otherwise, in the property to be valued or the loan for which the land is required as security. If the valuer is not appointed by the lender, the finance broker must ensure that the valuer's liability for the valuation is extended to the lender.

Hon GREG SMITH: Hindsight is a wonderful thing.

Mr Lennon: The Finance Brokers Supervisory Board has done this in hindsight.

The CHAIRMAN: It is the point at which you do it. That is something we must work out. Before we go into a private session, would anyone like to make any other general comments?

Mr Lennon: On the issue of who is considered the client, the original offer from Blackburne and Dixon said that the interest rate was 9.35 per cent and, in brackets, it was net 9 per cent to you. It took 0.35 per cent as a collection fee for managing the mortgage. I believe that confirmed the agent-client relationship between the broker and the lender.

Mr Van Stokkum: We are mentioned as clients in the code of conduct.

Mr McEvoy: One very prominent valuer has figured in all the publicity during the past year. He lost his licence as a real estate agent.

Hon GREG SMITH: We will be going down that track in the closed session.

Mr McEvoy: I am not mentioning names.

Mr Van Stokkum: It has nothing to do with this.

Mr McEvoy: This valuer lost his licence as a real estate agent for breaches of trust accounts. The valuer's board decided that it did not impinge on his reputation and integrity as a valuer and, therefore, it would not interfere. Of course he went on to make a lot more money out of his valuations. He is up on charges. That body did not see any importance in the fact that he was dishonest enough to play with his trust account as a real estate agent and thought that he was honest enough to be a valuer. He has wreaked havoc.

The CHAIRMAN: Obviously there are issues about the interrelationship between what is an appropriate character and what is a good character. There are numerous examples of people who have been found not to be suitable to hold a licence. For instance, during a royal commission people who have made corrupt payments have had adverse findings against them. The question is whether that should impact on someone's ability to be a finance broker or a real estate agent, for which a level of honesty and trust is required. That is something we will need to look at.

Mr McEvoy: There is a big element of trust in being an accredited, sworn, licensed valuer.

The CHAIRMAN: Anything that involves other people's money and questions a person's honesty and integrity must be looked at. We will need to examine that further, but I take the point about that interrelationship.

Mr Lennon: For all these licences, the various boards approach the commercial agents squad at the Police Department. It investigates a person and puts in a report. That is another reason we feel we can trust the people who are licensed. As Peter alluded to, the gentleman who was guilty of stealing from his trust account still has a licence under one of the other boards.

The CHAIRMAN: We will now move into the private session. Once again, I apologise to the people in the public gallery, but it is important that we do not impact upon anything that would cause the prosecutions against people who are currently before the courts to be hampered.

Proceedings suspended from 12.21 pm to 12.33 pm

[The Committee took evidence in camera.]