

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 2 AUGUST 2000**

SESSION 2 OF 2

Members

Hon Ken Travers (Chairman)

Hon G.T. Giffard

Hon Ray Halligan

DURBIN, MR JOHN,
residing at 237 Dampier Avenue,
Kallaroo, examined:

The CHAIRMAN: Good afternoon. I will open the hearing. On behalf of the committee can I welcome you along, Mr Durbin. You have just met myself and the Honourable Graham Giffard and this is the Honourable Ray Halligan, who is the third member of the Select Committee. To begin with, could I ask you to please state your full name, contact address and the capacity in which you appear before the committee.

Mr Durbin: My name is John Thomas Durbin and my address is 237 Dampier Avenue, Kallaroo. I am a victim, if that is a sufficient description for you.

The CHAIRMAN: Okay, that is sufficient. You will have signed a document entitled, "Information for witnesses." Have you read and understood that document?

Mr Durbin: Is that the one I signed this morning? Yes.

The CHAIRMAN: Yes, headed, "Committee hearing's information for witnesses."

Mr Durbin: Yes.

The CHAIRMAN: So you have read and understood that document?

Mr Durbin: Yes, I have.

The CHAIRMAN: Thank you. These proceedings are being recorded by Hansard and to assist the committee and Hansard, if you quote from any document would you please quote the full title of the document referred to during the course of this hearing for the record. I will also add that a transcript of your evidence will be provided to you, and I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that that evidence be taken in closed session before speaking about the matter. Further, the committee, of its own motion, may resolve to take evidence in closed session. The taking of evidence in closed session may be relevant where, for example, the committee believes that the evidence may breach our term of reference (3), which states -

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) Australian Securities and Investments Commission; or

(e) any prosecution.

However, even if evidence is given to the committee in closed session, that evidence will become public when the committee reports on the item of business to the Legislative Council unless the Legislative Council grants an ongoing suppression order at the time that the committee tables its report.

Do you understand that? I know it is a bit sort of complicated.

Mr Durbin: Yes. I mean, something I say may be libellous but I would claim privilege anyway.

The CHAIRMAN: I guess so long as you believe something to be true, you can tell us that. I guess it is just if you think that it may interfere with those inquiries, if you could ask us before you start talking about it to go into private session. I guess to commence with, you have obviously provided us with some fairly detailed information by way of two submissions that you have given us.

Mr Durbin: Yes.

The CHAIRMAN: If you would like to commence by making some introductory comments to us. If I can just make a comment for those in the public gallery that only accredited media may take notes of today's proceedings. Mr Durbin, if you would like to commence by just making some introductory comments to us and then I suspect the members of the committee may like to go through and ask you some questions about the submissions that you have provided to us.

Mr Durbin: Thank you. Initially I would like to state that mortgagees of fair mortgages are in the invidious position in which they find themselves because they believed it was safe to invest in an industry that was supervised by two boards that came under the auspices of the Ministry of Fair Trading and under that umbrella, how could anything go wrong? This is what we thought. That it did go wrong was totally the fault of the government agencies in failing to exercise due care in issuing valuer's licenses and supervising finance brokers. I would like to refer to the brochure that was - there is a brochure by First Charter Mortgage Services about frequently asked questions and this is to give you an idea of what you are going to invest in and how safe it is. Section 1(b) of this brochure says -

The value is established by an expert licensed property valuer.

It goes on to state -

If the borrower fails to make payments within seven days of the due date, he or she must then pay a premium -

and they said that a default notice would be issued if they are more than 30 days late by First Charter Mortgage Services' solicitor, who will issue a default notice. They said -

It is prudent to start default procedures to save time and protect your investment in the event that the borrower continues to default and if a borrower ignores the default notice, First

Charter Mortgage Services will immediately commence procedures to sell the security property. Once the property is sold, you are then paid your original investment plus any default interest that you are owed. All legal expenses are then deducted from the remainder of the sales procedure.

Later the question is, "How do I know the borrower can pay?" It says -

First Charter's highly experienced mortgage managers will assess a borrower's serviceability and security and we will submit to you recommended proposals.

Later on they say, question, "Can I trust First Charter Mortgage Services?" It says -

First Charter Mortgage Services was established in 1995. Its policy is to provide a service which is of the highest professional standard and it is timely and reliable.

"Who is First Charter Mortgage Services?" They say they are a specialist mortgage provision, and then they stress -

The division is licensed as a finance broker with the Ministry of Fair Trading and specialises in private and commercial mortgages.

Those were the assurances that we got, but what happened was - - -

The CHAIRMAN: Mr Durbin, sorry to interrupt. Would you be able to table a copy of that document before us today?

Mr Durbin: Yes, well, it is the only one I have, but yes.

The CHAIRMAN: We can take a copy of it, but if you could provide it to the committee clerk if we can get a copy of that, that would be useful. Thanks. Sorry to interrupt.

Mr Durbin: I would have given you the paragraphs. Unfortunately I needed that.

The CHAIRMAN: We will get it back to you very quickly.

Mr Durbin: Yes, I was going to comment on those things. Paragraph 1(b) was that we were having an expert licensed valuer. Now, I have said any reasonable person would consider that a valuer licensed by the Ministry of Fair Trading would be adequate. I notice that a couple of days ago Mr O'Connor said that he felt we should have got an independent valuation, but as far as we were concerned, this was a valuation by a valuer who was licensed by the Ministry of Fair Trading and the information was supplied to us by a finance broker who was also licensed and supervised, we thought, by the Ministry of Fair Trading, so I do not see why he should stress that an independent valuation should have been done. Then in paragraph 7, which I have not got, they outline the procedure that would be followed, which I have just stated; they would serve default notices, etcetera. What happened with us was the borrower defaulted in July 99 and First Charter Mortgage Services threatened them with default notices but at the same time recommended that we do not serve them, expressing confidence in the borrower to trade out of his problems. Chapter of verse of all the assurances they gave are contained in the statement that

I made to the fraud squad and the Gunning inquiry and I have already given you copies of that, but that was extracts from all the letters which caused us not to insist on a notice of default being served. Although they defaulted in July, the notices were not served until January, February 2000 and First Charter Mortgage Services have done nothing since. All the action in the brochure that they said they would take, taking over the property, selling it, they have done of that. We, the mortgagees, engaged a solicitor to sell the property by auction. This was to cost some \$5000. The borrower offered to finance the auction and this took place on 11 May. There were no bidders and no bids and we think in hindsight this could have been a delaying tactic, which is what they have done all along. There are two years' rates, water rates and land tax, outstanding, and the insurance due soon. These will all have first call on the sale proceeds if and when it is sold or leased. Paragraph 14 said that they were highly experienced mortgage managers. Well, these highly experienced mortgage managers have been arrested and charged with fraud - not in relation to our mortgage. Hopefully that is to come.

We were not told that the one highly recommended borrower was an ex-bankrupt and that their asset base was a joke that had been utilised over and over again in a variety of mortgages. In other words, these fellows, I think they would have borrowed 19, 20 million dollars on the strength of one asset base that was dubious, but it was only \$4m in total. Nor were we told that one highly experienced mortgage manager had left another finance broker after a string of failed mortgages in that company, and that was as late as 97, I understand. Then these highly professional mortgage brokers, on 1 July, without notice, First Charter Mortgage Services, closed their doors. So much for their professional standards and licensing by a Supervisory Board. The borrowers that they assessed and recommended have also been arrested and charged with fraud, again not in relation to our mortgage and again hopefully that will come.

That is in relation to the brochure that convinced us that they were suitable people to supervise the mortgage. I then turn to the initial complaint, which is confidential and privileged, to the Honourable D.J. Shave. This was on 23 March and the final paragraph there I said -

It is our opinion your ministry has a responsibility to assist us. A judicial inquiry should be held. Ideally your government, who is neglecting their duties via the Department of Fair Trading, should take over all the failed mortgages and pay us out. It is no consolation to us to know that you have closed the stable door. Our horse has bolted.

I got an acknowledgment of that on 28 March that said, "The minister will respond. Thank you," and then on 28 April I got a more detailed letter where inter alia he says -

However, based on the information provided to me, the actions taken by the Ministry of Fair Trading and the Finance Brokers Supervisory Board in relation to these two firms in my view have been appropriate.

So I wrote him a letter on 7 June and said -

In your third paragraph you state "based on information provided the actions taken in relation to these two firms". Would you please state which firms you are referring to by name. Thank you.

I got a letter of acknowledgment to that. That was undated, and then on 17 July I received a

reply and in the third paragraph the minister says -

In the third paragraph of my letter I stated that based on the information provided to me the actions taken by the Ministry of Fair Trading and the Finance Brokers Supervisory Board in relation to these two firms in my view have been appropriate. The statement "these two firms" refers to Global Finance and Graeme Grubb Finance Broker -

who are absolutely nothing whatsoever to do with my complaint. I complained about First Charter Mortgage Services and Rancher Enterprises Private Ltd, so I wrote back to the minister and I said -

I was astounded at the content of the letter but it confirmed my suspicions that you are disinterested in our problems, to the extent that you are not even aware of the true nature of them. On 7 June I asked a question. Nearly six weeks later your reply indicates that you are not even aware of the substance of my complaint made in great detail on 23 March. To refresh your memory, I wrote complaining of Rancher Enterprises Private Ltd and First Charter Mortgage Services. On 28 April you replied, "Based on the information," etcetera, "Global Finance and Graeme Grubb Finance Broker." I think this is evidence of the continuing inefficiency of your ministry and is shameful. It makes one doubt the sincerity of your ultimate paragraph.

The ultimate paragraphs were nearly always the same -

John, please be assured it is the Government's intention to recover the maximum amount of money for investors and vigorously pursue any persons who have engaged in inappropriate or criminal conduct in relation to pooled mortgages. Yours sincerely.

I think you will have copies of those. There is one other letter here which I wrote saying -

I should like to add to my complaint about First Charter Mortgage Services the fact that they have closed their doors and ceased to operate on 1 July. I have two failed mortgages with this company to the value of 182 000. There are many other mortgagees in a similar situation. Since July 99 we have had no return on these investments and we now have no one to represent us or to turn to, no legal representation. We are in this position because of the abysmal failure of the Valuers Licensing Board and the Mortgage Brokers Supervisory Board's incompetence, failure in its duty of care, being reckless and negligent in this action. First Charter have given no written notice to us, their clients. They closed shop and just faded away. They do not reply to letters or telephone calls. We are left in limbo.

I say at least one of First Charter's directors have been arrested. Two of them now, and charged with fraud, and the borrowers recommended by them, and that was Rancher. I have asked -

What is your Supervisory Board doing about this? What provision in your act is there for such a contingency? What advice do you now give us? What are your responsibilities to us now that a broker that you licensed has behaved in this manner?

I got an acknowledgment to say, "The minister will respond," ultimately. I gave evidence to the Gunning Committee of Inquiry and you have got a copy of that. Also I was asked to give my

thoughts as to what should have happened and I did that in a separate document and you have a copy of that. The big thing is that until this select committee, there was no committee or inquiry existing to assist us to recover capital or interest. We are literally helpless. We are just milling around wondering what to do, and as I say, legal representation - in our case we used a solicitor for a short while. The sum total of two letters and a number of phone calls produced an account for \$931.50 and we had not even started and I withdrew my retainer from that solicitor. Because of the Government's indifference a fund has now been started to raise money for representative action. I am told that this was otherwise known as a class action. I have written to the Premier for legal assistance with no success. I have written to the University of WA Law School requesting that they assist us as they do convicted criminals with appeals. There is special provision for this. I have asked that special provision be made for us. I have written to the chief justice, who, inter alia, in his reply suggested I approach the Gunning inquiry. I did this at the end of my evidence and I do not know how or if they will react. In your terms of reference I note it includes inquiring into the reasons for the losses associated with the finance-broking industry and it goes without saying that the reasons have been highlighted over and over again. The blame lies with the Ministry of Fair Trading and the two boards, and another term, avenues for legal redress.

It is in my opinion a very important part of the terms of reference. It is one that all mortgagees will be waiting with abated breath to find out whether we will get some assistance with direction. We have said it would be desirable for Government to take over the responsibilities for the various properties involved, pay out the mortgagees and deal with the properties themselves. People talk of millions at risk but they are talking about the total. They are also many overvalued properties that still have some value. Some like our mortgage is a completed property ready to be utilised is worth the mortgage figure, but it is difficult to lease or sell because of the over-development in the area, but Government could use it for storage or whatever because it is quite close to Naval Base. My fear is if the Government picks up the legal accounts that a section of the community could benefit out of all proportion. Government would have very little control over the fees charged. I have indicated that they are, in my opinion, excessive. If the Government were to take over the properties, they would have full control.

As far as legal assistance, the legislation for criminal appeals is something that could possibly be copied for us. Apparently what happens is UWA with their law students take on criminal appeals and go right through it. I mean, all we want to do is to get a judgment against the borrowers for the money that they owe us, but we have investigated. We found that their houses are in their wives' names, their cars are in their wives' names and, no doubt, all the furniture and every one of their assets. The assets that they declared to us, when they borrowed the money, have been used over and over again. They have borrowed money from so many people and this is the fraud that we have alleged to the major fraud squad. So I have said if necessary, we need retrospective legislation to assist us because even if we were to get a judgment, the only thing we would have is the satisfaction of having a judgment against a person. If they just say, "Well, you know, I'm a bankrupt. I haven't got anything," then we do not get anything out of it but it costs us a small fortune to get that far. Of interest was - I thought this was going to be our saving grace - the ASIC and Government introduced legislation in 98 to protect pooled mortgages.

It does not apply to us as it only covers mortgages in excess of \$2m with 20-plus mortgages. We have \$440 000 at risk with 13 mortgages and I just wondered if they are going to legislate for pooled mortgages, why did they stress those figures? I mean, a pooled mortgage is a pooled

mortgage and to have it for \$2m and 20-plus mortgagees leaves the majority of pooled mortgages out in the cold, I would say. Trust in government agencies has got us into this mess and I believe that Government must get us out of it. Out of 13 mortgages in one mortgage we have 80-year-old, and he is a very sick man, one 78-year-old in hospital with a fractured hip and he is unlikely to walk again, we have got an elderly widow, an elderly couple who invested their money on behalf of a disabled son and with one exception the rest are elderly people relying on interest that stopped over one year ago and some of these are now being assisted by Centrelink, but that is another issue that is being taken up because apparently in their wisdom Senator Newman has only given the names of, I think, two mortgage brokers and they are the only people who are being assisted.

As I said, these people - and I am talking now about our 13 mortgages and everybody else, for that matter - are victims of unscrupulous, unsupervised and dishonest persons. I made the point again that both directors of the borrowing company and two directors of First Charter, the brokers, have been arrested and charged with fraud in relation to other cases and there are quite a few in the pipeline. You have all of this, the representations that I have made to the fraud squad and to Gunning inquiry, and the final thing that I said to them was that when one looks at how everything has gone wrong - this is the letter that I wrote to the Gunning inquiry on 24 May. I have suggested here some of the things because the member, Diana Newman, asked me what steps I thought should have been taken and that is giving my thoughts on the subject. I do not know if you want me to go into them. I have said here I was asked what steps should the board have taken -

The CHAIRMAN: Sorry, is this a document you have provided to us, Mr Durbin?

Mr Durbin: Yes, you have this.

The CHAIRMAN: Can you just give us an idea of what it is headed so I can just try and find it?

Mr Durbin: Gunning Committee of Inquiry. It is at the end of the Gunning committee evidence. It is dated 24 May.

The CHAIRMAN: All right. Sorry, yes, go on.

Mr Durbin: I asked a member of the Ministry of Fair Trading, a civil servant there, how could they have given O'Connor, who has convictions of dishonesty and fraud in a real estate matter - they took his real estate licence away and then gave him a valuer's licence. I said, "Why do you think they did that?" and he said, "Well, maybe they felt sorry for him." I think they should have felt sorry for everybody it was going to affect and not for his career. They said it was hinted they may have compassion on him. I have said here when someone is involved with failed mortgages, as the director of this company was, John Ward - he was with Gamel Ward. They had a load of failed mortgages. He left them, came to First Charter and just sailed serenely and nobody seems to have worried. So I said it should be obligatory for a failed mortgage to be reported to the Supervisory Board and another function of the Supervisory Board should be to ensure that assets are only sold or utilised once and not used as a guarantee against a series of mortgages far in excess of the asset value. Maybe a register of mortgages against assets could be devised and be audited regularly and an offence could be created for brokers exceeding the approved ratio of 70 per cent, otherwise they are committing fraud. One of the things in here says, "Why do

people go to finance brokers?" They say the system is faster than the banking system and it avoids extra charges on the bank account each month and security grabs by the bank often requiring all the borrower's available security far in excess of the value of the loan. I have put my footnote there, and very wisely too, because it is great pity that we had not been involved with something of that nature.

Yes, I did say I wrote to the University of Western Australia and I read an article they were assisting criminal appeals. The article concluded, "In future, the program would try to help unrepresented civil litigants," and then I sent them a letter of my complaint to the ministry and I have said -

We desperately require assistance to obtain the judgment as soon as possible against the mortgagor and guarantors. We have all suffered from a lack of income since July 99. It seems likely we will be losing a large percentage of our capital so cost is the essence. We have been advised that it would cost up to \$3000 to obtain a judgment. The facts are plain and that is basically throwing good money after bad. If you can assist us -

and they replied that the unrepresented criminal appellants scheme would obviously not apply to us. I wrote to the chief justice and he says -

The committee is currently examining the extent of the problems of unrepresented litigants in civil proceedings and the work is continued. You may wish to take steps to have this matter included in the inquiry which is being conducted by retired District Court Judge Gunning.

I did mention that to Mr Gunning and I said, "I don't know whether he was handballing you something but I have raised the matter." From the Premier, he just wrote back and said, "Let me know how you get on." I wrote back to him and said, "It is not for me to tell you. I was hoping that you would tell me what was going to happen."

The CHAIRMAN: All right. Is that - - -

Mr Durbin: Yes, thank you.

The CHAIRMAN: All right. I certainly have a couple of questions to kick off with. Just in terms of your letter that you have provided to us to the Ministry of Fair Trading, you are saying that First Charter Mortgage Service ceased to operation on 1 July 2000.

Mr Durbin: Yes.

The CHAIRMAN: You still have two mortgages with that company?

Mr Durbin: Yes.

The CHAIRMAN: Who is managing those mortgages now?

Mr Durbin: Nobody. We are on our own. I mean, there was just nobody to turn to, then we said, well, we would have to become mortgagee in possession and we are in the process of giving it to one of the local agents in Rockingham, that particular mortgage where there are 13 of us.

The CHAIRMAN: As I understand it, certainly with Grubb and Global they have had a supervisor appointed by them. Has the ministry in your conversations with the ministry - and I think this letter - in fact can I just clarify, is it the Ministry of Fair Trading you have sent that letter to or the Minister for Fair Trading? Because the heading at the top says Ministry of Fair Trading and gives their former address, I think, at 231 Hay Street and you obviously in there indicate you have given a statement to Mr Willers, but the letter is then addressed, "Dear minister," and also I note a CC to Rob Johnson MLA. Do you remember who you sent that to exactly, precisely?

Mr Durbin: I sent it to the Ministry of Fair Trading but I wrote to the minister, "Dear minister".

The CHAIRMAN: Right.

Mr Durbin: This is where I say, "What is your Supervisory Board doing? What provision in their act is for such a contingency? What advice do you now give us? What are your responsibilities to us now? That broker you have licensed has behaved in this matter," and I believe all I got for that was an acknowledgment.

The CHAIRMAN: Do you know who you got the acknowledgment from? Was it from the ministry or the minister?

Mr Durbin: The Minister for Fair Trading. "Thank you for your letter of 14 July," and it is from the minister and it is signed by Julie Rae, executive officer.

The CHAIRMAN: I just want to clarify. Prior to them closing their doors there were no conversations with you and, as you understood it, First Charter Mortgage Services was still managing your investments?

Mr Durbin: Yes. When I say "managing the investment", they were managing the fact that nothing was happening.

The CHAIRMAN: Yes.

Mr Durbin: That nothing was coming in and nothing - - -

The CHAIRMAN: But they were still your agents, as they had been in the previous - - -

Mr Durbin: Yes.

The CHAIRMAN: Then you started making inquiries, I assume, after 1 July and could not find anyone?

Mr Durbin: The thing is that that was when I turned to the minister and said, "What do we do now?"

The CHAIRMAN: You have had no-one contact you at all to say, "We are appointing a supervisor to take over those loans," or anything like that?

Mr Durbin: No, nothing.

Hon G.T. GIFFARD: What was the date of that letter?

The CHAIRMAN: 14 July.

Hon G.T. GIFFARD: Of last year?

The CHAIRMAN: No, this year.

Hon G.T. GIFFARD: This year? That was the response. Is that right?

The CHAIRMAN: No, it is this one here in 15A, the supplementary.

Hon G.T. GIFFARD: Okay.

The CHAIRMAN: There was some supplementary information that Mr Durbin provided to us.

Mr Durbin: Do you want a copy of that minister's reply?

The CHAIRMAN: Yes, we might as well just get it for the record.

Mr Durbin: It got a bit wet in the letterbox but it is still legible.

The CHAIRMAN: No, that is all right. So basically there is no-one. You are now having, as the mortgagees, to find someone else to manage those without any assistance.

Mr Durbin: I have emailed the office and one of the directors. I also emailed the solicitor that drew up the mortgage and I got that as failed mail, so whether he has gone out of business as well, I do not know, but that was Clairs Keely. They were the ones that drew up the mortgage and I wrote asking him for advice and did not get it.

The CHAIRMAN: Was there a particular solicitor at Clairs Keely?

Mr Durbin: Ian.

The CHAIRMAN: Ian Clairs?

Mr Durbin: Yes.

The CHAIRMAN: They were the solicitors for First Charter Mortgage?

Mr Durbin: Yes, that was the firm that drew up the mortgage. In the mortgage it says, "There will be no second mortgage without our approval." They registered a second mortgage on the same day that they registered the first mortgage.

The CHAIRMAN: Who has the title deed at the moment?

Mr Durbin: Solomon Bros. I collected them from - because that is who we were going to use to sell the property.

The CHAIRMAN: When did you collect those?

Mr Durbin: In February.

The CHAIRMAN: Can I just check when you went into the loan?

Mr Durbin: In April 99.

The CHAIRMAN: April 1999?

Mr Durbin: It was being negotiated between December 98 and April 99, but April 99 was the date that the first - I think the mortgage was registered in February. The first repayment was due on 11 April, the first repayment was due. That was late. The May one was late. The June one was late. The July one was late, then was the last one that we had. So they defaulted right from the very beginning.

The CHAIRMAN: Yes. As I go through the documents, you have a note at the bottom of - - -

Mr Durbin: The history of the mortgage, was it?

The CHAIRMAN: Yes, the history of the mortgage -

Mr Willers, following my discussion with you I spoke with Mr Gamel. He denies that they went into liquidation but do not trade as Gamel Ward and only deal in single, not joint, mortgages. He was non-committal why J. Ward left.

Can you just explain a bit more about that sort of addition?

Mr Durbin: I was submitting this, and you will notice that I have been quite careful to put that they are confidential and privileged. I got that information from a document that was issued by Denise Brailey. She has an organisation representing - - -

The CHAIRMAN: Yes, RECA.

Mr Durbin: Real Estate Consumers Association, RECA. It was in there, the information that I put in here, which I subsequently crossed out because I thought, "Well, I'm not 100 per cent sure of that." That was becoming insolvent and when I phoned Mr Gamel, he said, "No, we have never ever gone insolvent." Now, whether he was telling me the truth or not I do not know, but I thought I would cross it out of there just in case. I crossed that out and to explain it I - that was when I was sending this to Mr Willers. At the Gunning inquiry they asked me, "Have you complained to the Ministry of Fair Trading?" and I said, "No, because I think it's a waste of time." He implied that I should complain because I am making a complaint about the Ministry of

Fair Trading to him in the Gunning inquiry and I should also complain to the ministry that I was complaining about, so I did that, and because I was sending it to Mr Willers who is looking after it, I put that little footnote there explaining why I crossed that out.

The CHAIRMAN: All right.. You have, I guess, two complaints in that respect, one against the problems that you are faced with, our investment or the mortgages you are involved in, and I guess the second one, reading this, is that you are basically complaining about the fact that the Finance Brokers Supervisory Board did not properly investigate some earlier matters, particularly with respect to Mr Ward, that would have highlighted -

Mr Durbin: Yes.

The CHAIRMAN: Your second problem would never have occurred if they had done the first.

Mr Durbin: When there are failed mortgages - I have said "failed mortgage" in that recommendation to the Gunning inquiry. If there are failed mortgages, they should automatically be reported to the Supervisory Board and an inspector should look into it and find out why they have failed. If they had done that - I mean, as far as I am concerned, John Ward should never be a finance broker. He has just been arrested and charged with fraud. I know that I would not have invested this money had he not come to my house and sat down and assured me that these people were a very good investment and that they had these assets. He convinced me that there was basically no risk because of the asset base they had. Now, he has been selling that asset base to all sorts of other people on other mortgages. This is in March 99 and in April 99 they defaulted on the very first payment and three more payments and then stopped paying altogether. They were in the business. They should have known that O'Connor was a convicted thief.

The CHAIRMAN: I will need to go through some of the other submissions. You may be able to answer or you may not.

Hon G.T. GIFFARD: Can I just ask a question on that issue that he just identified?

The CHAIRMAN: Yes.

Hon G.T. GIFFARD: Could I just ask you: what was the basis on which - the time that Mr Ward convinced you to invest you said he came round to your house and assured you that these people were of standing, solid, reliable and all that.

Mr Durbin: Yes.

Hon G.T. GIFFARD: Your contention is that he should not have been in a position to be providing you with that sort of advice and actually acting as a broker at that point, is that right. or are you saying that now he should not be?

Mr Durbin: I am saying that with his history he should not have been doing that job, no.

Hon G.T. GIFFARD: Even at that point; regardless of what has happened since then, but at that point when he was advising you.

Mr Durbin: Yes, because he had already been associated with failed mortgages and nothing had been done about it.

Hon G.T. GIFFARD: So your view is that at that entry point he should not have actually been -

Mr Durbin: No, I do not think he is a man that should have been dealing with me at all.

Hon G.T. GIFFARD: Okay.

Hon RAY HALLIGAN: Can I just explore that just a little more?

The CHAIRMAN: Yes.

Hon RAY HALLIGAN: Mr Durbin, I hear what you say, but in your submission you did say that you were dubious about loaning any more money to Rancher as you already had a mortgage of \$80 000 with them on another property.

Mr Durbin: Yes.

Hon RAY HALLIGAN: What I just heard you mention there was you were concerned about Ward at that point in time.

Mr Durbin: No, I was concerned that I should spread my risk. He had brought a thing to me from Rancher. I already had \$80 000 with Rancher so I would rather he had presented me with something else, thinking at the time that he was a reliable, honourable finance broker, but I did not know about Rancher.

Hon RAY HALLIGAN: You went against your own good judgment about spreading the risk.

Mr Durbin: Yes, I explained that I was not happy about it and he convinced me that their asset base was such, and at that time I was naive. I did not realise how often that asset base had been utilised to convince people to lend them money. I did not know how many other mortgages Rancher might have had. You do not get that information. It turns out that there were, I think, 32 other investments that they had.

Hon RAY HALLIGAN: Have you had any legal training?

Mr Durbin: I was in the police in the UK for a while.

Hon RAY HALLIGAN: So it gave you some understanding of the law.

Mr Durbin: Yes.

Hon RAY HALLIGAN: But no professional legal training.

Mr Durbin: No, I passed by civil service law exams in Rhodesia when I wanted to become a member of the bureaucracy there.

Hon RAY HALLIGAN: Had you had any previous investments prior to this first one of \$80 000 that you mention in your submission?

Mr Durbin: Yes, but they had been rolled over. In other words, the people who Rancher bought this off - I had a mortgage with them for \$66 000. That was with the people called MacLou. Rancher bought the properties from them and that \$66 000 was rolled over and there was another mortgage of \$36 000 that had been paid out in December and was in the Clairs Keely trust account, that money, \$36 000, and that added to the \$66 000 made the \$102 000. As I say, he came there and he totally convinced me that I would not be risking the thing by putting all my eggs in the one basket.

Hon RAY HALLIGAN: The reason I asked whether you had had any previous investments was to continue with the questioning as to what checks and balances firstly you believed you should undertake to protect your investment and in fact what did you in fact do to try to protect your investment prior to handing over your cheque.

Mr Durbin: We took into account the valuation that was done by O'Connor. I mean, we knew nothing about O'Connor except that he was a licensed valuer and he had been licensed by the Ministry of Fair Trading. It is that Fair Trading that gets you every time. You think if he is licensed by them, he must be kosher.

Hon RAY HALLIGAN: Do you know of any other professions that are licensed in a similar manner?

Mr Durbin: What, with the ministry, you mean?

Hon RAY HALLIGAN: Anywhere.

Mr Durbin: Anywhere. I know that electricians are licensed and other tradespeople and I imagine that plumbers are licensed or have some form of professional - - -

Hon RAY HALLIGAN: All I am suggesting is there are many trades and professions whereby you need to be licensed to operate, but in a lot of instances that does not mean that the organisation that licenses those people looks into their background, as you have suggested, and continues to do so whilst we have our normal commercial arrangements.

Mr Durbin: I would imagine - I mean, real estate people are licensed and I know that on the odd occasion you read that one of them is fined or loses his licence, etcetera, and had I been aware that O'Connor was in that category, then obviously I would not have accepted his recommendation. I did look into the costs of commercial properties. I made a couple of phone calls. I looked into the cost of per square metre, the cost to build this type of construction, which is tilt slab, and the value seemed reasonable. We knew that the buildings had been up, that they were constructed, that they had been approved by the Rockingham City Council or Shire or whatever they are, so that I did not have - what I did not know was the over-production of that type of unit in that area. I mean, we are trying to sell or lease them now and there are at least 60 or 70 newly built buildings and they are still issuing licences for more to be built down there. The slack will be taken up one day, but a lot of us have not got the time for that slack, particularly the type of - and I do know that - I have spoken to the elderly widow, the chappie

that is in his eighties, and I asked him if he had looked at the properties or been down there, and he said, "No," he said, "I trusted Mr Ward."

Hon RAY HALLIGAN: In your proposal to the Gunning committee you said it should be obligatory for a failed mortgage to be reported. Can you explain just a little more what you mean there, because I am wondering whether the failure is on the part of the borrower or on the part of the finance broker?

Mr Durbin: Yes, well, that is what would be established. You see, we are of the opinion that this is a very widespread racket that has gone on between valuers, borrowers, finance brokers and possibly their legal advisers. We don't know, but we think because of the volume of this that this is what has been going on, and as I said, every one of us was, we believe now, naive. We had too much faith in the fact that they were licensed by the Ministry of Fair Trading, supervised by the Ministry of Fair Trading, you know, and I mean, in their blurb, their brochure, this is what they emphasise, "Look," you know, "expert licensed valuers. We are professional finance brokers," and that one there where, "We investigate the background of these people thoroughly before we recommend them to you." I mean, Ward came and told me he had done that and yet within a month our problems started and I do not believe that he did not know that those problems were there.

The CHAIRMAN: In March 1999 there had been discussion in the Parliament about finance brokers already at that stage. Were you aware of those discussions at all?

Mr Durbin: No, I do not take a newspaper at all and if it is not on the Channel 2 news then I do not know what is going on, quite honestly.

The CHAIRMAN: Right. So at that stage you were not aware of the problems in the finance-broking industry at all?

Mr Durbin: No, I mean, I would never have put this forward, because, I mean, this has been a big thing for us and one of our chappies, an elderly man down at Mandurah, he is in a worse position than I, in that he is in this mortgage and he has also got three other mortgages with the same people, the same broker, up near Greenough and, I mean, he is just getting nowhere.

Hon RAY HALLIGAN: Mr Durbin, I understand that a higher than bank interest rate was offered.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Did you believe that there was any risk therefore associated with the lending of these moneys?

Mr Durbin: No, because we believed the valuation that we were given and, I mean, they stress all the way through that there is not a risk because you are only lending 68 per cent of the expert licensed valuer's valuation.

Hon RAY HALLIGAN: But you did say yourself that even when you checked, you found out the cost per square metre of constructing something of the type that your moneys were going to

be invested in -

Mr Durbin: Yes; yes.

Hon RAY HALLIGAN: - that you believed the valuation appeared to be reasonable.

Mr Durbin: Yes. I knew and I still believe that what we loaned would - well, it will not be recoverable, because we have just had another valuation and we are wrong. The thing is that what I did not take into account - I took into account the building costs. I did not take into account the location, the number of properties that were on offer in the area and the fact that there was a surplus in the area. I just - tunnel vision. I was just looking at what it would cost to build those properties.

Hon RAY HALLIGAN: Construct something of that nature.

Mr Durbin: Yes.

Hon RAY HALLIGAN: That I understand, but I think what was going through my mind then was at least you felt that you had need to at least make that check in your own mind.

Mr Durbin: Yes.

Hon RAY HALLIGAN: And I am just wondering, you still could not see any risk, even though you were getting apparently well and above bank interest rates.

Mr Durbin: No.

Hon G.T. GIFFARD: I am just interested, Mr Durbin, why did you do that extra check? If your view was that the valuation was something that you could or should rely on, why did you do that extra check?

Mr Durbin: At one stage I was involved with the building industry and it was just - I wanted to know what the average cost per square metre of a commercial building was. I do not think it was so much to query the valuation that had been presented.

Hon G.T. GIFFARD: Okay.

Hon RAY HALLIGAN: Mr Durbin, can you tell me - and I think you may have already mentioned it and I apologise if I am going over old ground, but did you say - well, firstly I might put it this way, if I may: do you have an accountant that you use?

Mr Durbin: Beg your pardon?

Hon RAY HALLIGAN: An accountant. Do you use an accountant for taxation purposes or anything of that nature?

Mr Durbin: No.

Hon RAY HALLIGAN: Do you have a solicitor that you use?

Mr Durbin: No.

Hon RAY HALLIGAN: Okay. A bank manager that you confide in?

Mr Durbin: No.

Hon RAY HALLIGAN: Okay. So presumably prior to making this investment, or these investments, because there are a number of them, there was no-one of that like that you -

Mr Durbin: That I turn to.

Hon RAY HALLIGAN: - that you made contact with.

Mr Durbin: No.

Hon RAY HALLIGAN: Okay. Have you made any further investments subsequent to these problems coming to your attention?

Mr Durbin: No, and if ever I get any of the capital back I will not be going in for private mortgages.

Hon RAY HALLIGAN: Now, can you tell me - I am going down this particular path, by the way, because part of our terms of reference, which you have read, asks us to inquire into and report on the reasons for losses.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Including considering the adequacy of existing legislation to prevent a recurrence and the like.

Mr Durbin: Yes.

Hon RAY HALLIGAN: So could you tell me what your understanding of the word "supervisory" is in the name Finance Brokers Supervisory Board?

Mr Durbin: Yes. They do not call it the Finance Brokers Licensing Board, like the valuers, and I imagine that because these people were dealing with often large sums of money that there would have been investigations into failures. In other words, that they would supervise the brokers and I would have expected that they would have done audits on them and just seen that generally they were living up to their reputation and their professional standards and code of ethics.

Hon RAY HALLIGAN: Have you perchance ever read the Finance Brokers Control Act?

Mr Durbin: I have not.

Hon RAY HALLIGAN: Now, of course, we have this benefit of hindsight. I know that you had presented some - I think, unfortunately, we only have part of your evidence to the Gunning committee - the rest of it was verbal, it would appear - as far as what you believe might be done in the future to overcome some of these problems.

Mr Durbin: Yes. When they asked me that question, I gave a most inadequate reply and that was why I wrote that letter.

Hon RAY HALLIGAN: That is fine, but I am just wondering because you did say, "I consider that my answer was inadequate." We of course are not privy to what it is that you said to them.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Do you want to expand on that or is what you have written on this page sufficient?

Mr Durbin: I think this would cover what I said but expand upon it.

Hon RAY HALLIGAN: That was expanded on what you said?

Mr Durbin: Yes.

Hon G.T. GIFFARD: Mr Durbin, I just refer to your statement of 12 May. At point 42 in "general comments" you say -

During the course of my dealings with John Ward, he always stressed that I was his client and that my interests were paramount.

Are you quite clear that he used to refer to you as his client?

Mr Durbin: Yes, I am. Why that sticks in my mind is because they stressed that they existed for us, not for the borrower. He told me categorically that Clairs Keely represented us, not the borrower. He made that very plain.

Hon G.T. GIFFARD: Was this when he came around to your house?

Mr Durbin: This was when he came around to the house, yes, because I asked him what the position was with the solicitor that was drawing the mortgage up, you know, "Whose side is he on?" and he said, "No, he is representing you. We are here for you, not for the mortgagor." Of course I knew nothing about that alleged legal opinion which I am told - well, I know, I have read in the paper that Mr Gunning did not appear to put too much credence in the fact that we were not clients. In fact I think he said to the man, I think he was a civil servant from the ministry - he asked him if he believed that that legal opinion was correct and he said, "Yes." He said, "Well, I think you are the only person in WA who believes it."

Hon G.T. GIFFARD: I have to be excused for a moment. If you will just excuse me.

The CHAIRMAN: Just on that, in terms of the trust account, were you paying it into a trust account at Clairs Keely or at First Charter Mortgage Services?

Mr Durbin: No, Clairs Keely. The cheque was made out to the Clairs Keely trust account and then when the mortgage was rolled over, the \$36 000, that did not come back to me. That, I am told, went straight into Clairs Keely and it stayed in Clairs Keely and in fact I have written to ask because there is the interest element that we have never received for the period that was in there.

The CHAIRMAN: Do you know if First Charter Mortgage Services ever had their own trust account?

Mr Durbin: Not to my knowledge. They never mentioned it.

The CHAIRMAN: Would it surprise you if I indicated to you that the situation that you faced was very similar to - in fact even to the use of Clairs Keely was the same as the people who had problems with Gamel Ward back in the early eighties or early nineties, even to the use of using Clairs Keely?

Mr Durbin: That would surprise me. I had no idea.

The CHAIRMAN: No, in fact we had similar evidence from a gentleman yesterday along very similar terms to those that - - -

Mr Durbin: Really?

The CHAIRMAN: - - - you are outlining, but he was a client of Mr Ward through Gamel Ward.

Mr Durbin: Yes.

The CHAIRMAN: Also, at the time that you made your investment, did anyone advise you from First Charter that both Rancher and - is it MacLou?

Mr Durbin: Yes.

The CHAIRMAN: Was there any documentation given that indicated that they were also borrowers from Blackburne and Dixon?

Mr Durbin: No.

The CHAIRMAN: For other developments in the Rockingham area?

Mr Durbin: No. In his statement of assets they said that they had land at Collie and a few other places I cannot recall.

The CHAIRMAN: You would not have a copy of that asset statement that they provided to you, would you?

Mr Durbin: Yes.

The CHAIRMAN: The reason I ask is we have a number of other submissions that deal with both Rancher and, I might add, MacLou also dealing with other properties in that area and they seem to be doing a whole range of deals between each other around that same time and I must admit I am getting very confused as to which property we are talking about and they are all in the Naval Base, Rockingham area.

Mr Durbin: Yes, there were lots of Naval Base ones.

The CHAIRMAN: They all involve Rancher and the name MacLou appears in all of them, so I am just at a complete loss.

Mr Durbin: You have the valuation here from O'Connor. In fact it is all here now; statement of Rancher Enterprises, Laurence Peter Ferris and Charles Manton.

The CHAIRMAN: Thank you. Sorry, one last question. I am just trying to check, have we got the official address of these properties?

Mr Durbin: You should have. It is number 7 Cessnock Way. I do not know whether you would like to have a copy of O'Connor's valuation.

The CHAIRMAN: Certainly any of that information, if you are happy to provide it to us, we would appreciate you giving it to us.

Mr Durbin: I was saying that notwithstanding the fact that the mortgage says that no second mortgage should be registered, nonetheless Clairs Keely registered a second mortgage on the same day at the same time.

Hon RAY HALLIGAN: Yes, I was going to query you on that.

Mr Durbin: Yes.

Hon RAY HALLIGAN: What date was that registered? Do you have the document there? My next question was going to be: when did you become aware that that had occurred?

Mr Durbin: We got the mortgage documents, I think, possibly two months after the loan had gone through. The mortgage was registered on 11 March 99.

Hon RAY HALLIGAN: Registered on 11 March.

Mr Durbin: Yes, and they registered our mortgage which was H49700 and they registered this other one that we did not know about to Cameron Holdings for H49701 on the same date, same time, even, as I say, though the mortgage says that they should not do that.

Hon RAY HALLIGAN: You mentioned that your moneys went through the broker some time in February 99.

Mr Durbin: Yes, one mortgage was settled either late December or January and that went into the Clairs Keely trust account, that \$36 000, and then the \$66 000 to MacLou was rolled over and the other added on.

Hon RAY HALLIGAN: So the combined amount went through.

Mr Durbin: Yes. That was the other thing about it. I was in the mortgage in this property with MacLou and then when it was suggested it be rolled over to Rancher, that was when I queried it, but he was so good at convincing me that I added the other \$36 000.

Hon RAY HALLIGAN: When you became aware of the second mortgage, did you do anything about it? Did you take it up with Clairs Keely?

Mr Durbin: If I recall, I phoned one of the directors - that was Perry - and he said, "Well, don't worry about it. You've got first call."

Hon RAY HALLIGAN: That allayed your fears.

Mr Durbin: I am afraid that I left it at that.

Hon RAY HALLIGAN: This was a director of -

Mr Durbin: He is a director of First Charter and Mortgage Services.

Hon RAY HALLIGAN: The finance broker First Charter.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Mr Durbin, are you aware of what a balance sheet looks like?

Mr Durbin: Yes, I have an idea of the balance sheet; yes.

Hon RAY HALLIGAN: Of course it purports to show assets and liabilities.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Of course what you were provided with is certainly not a balance sheet.

Mr Durbin: Not it was just a statement of assets and liabilities.

Hon RAY HALLIGAN: But not necessarily all assets and liabilities. What it talks about is certain properties.

Mr Durbin: Yes.

Hon RAY HALLIGAN: And certainly liabilities supposedly associated with those properties.

Mr Durbin: Yes.

Hon RAY HALLIGAN: So if anything is left off - - -

Mr Durbin: Yes, either side you have not got a true picture. No, I have said that we realise now that the true value of the property is the only thing that one can consider when making a loan.

Hon RAY HALLIGAN: Can you define a true value?

Mr Durbin: I would say what it would fetch on the market.

Hon RAY HALLIGAN: What someone would actually pay for it.

Mr Durbin: Yes, what someone would pay.

Hon RAY HALLIGAN: Yes, not what we anticipate.

Mr Durbin: No.

Hon RAY HALLIGAN: That is the trouble. There are any number of valuations. Are you aware of that?

Mr Durbin: No.

Hon RAY HALLIGAN: There is not just one valuation. You could have a dozen valuations.

Mr Durbin: Yes, we had a second valuation on this in November and actually I thought that was dishonest, but it was a - I cannot think of the word - subject valuation. It was, "If this happens and that happens and that happens, then this is worth this," and it was more than O'Connor's valuation. What had happened was that Rancher had said to the valuers, "We're going to form an archive company that will store documents, etcetera, and we are going to lease these properties from ourselves and we are prepared to pay this much," and in the valuation they say, "It was a kerbside valuation," in other words, they never went in and they are assuming that the inside of the property was so-and-so and that if X were prepared to pay so much per square metre in rental, even though this is more than the normal valuation in the area, then we put the valuation at \$690 000. We just had another valuation that comes out just over \$400 000.

Hon RAY HALLIGAN: Right.

The CHAIRMAN: Sorry, can I just interrupt for a very quick question? This valuation that you have just tendered up to us refers to the client being Rylstone Pty Ltd.

Mr Durbin: Yes. There should be another page that transfers the valuation to First Charter. Rylstone, I think - I am told now that it is a wicked web that they wove and it was all so tied up. Suspecting a fiddle, we checked with the Stamp Duty Office to see how much stamp duty they paid and they paid stamp duty on the full valuation.

Hon RAY HALLIGAN: What prompted you to go down that particular path to make that check?

Mr Durbin: This is once everything started to go wrong.

Hon RAY HALLIGAN: Is this on the second valuation?

Mr Durbin: That second valuation - we realised that that was, in our opinion, dishonest. We spoke to the valuers and they said, "If you read it properly, you will see that we are saying if this happens and that happens, then that's what the property's worth."

Hon RAY HALLIGAN: When O'Connor valued the proposal, I take it that was prior to any erection of the buildings.

Mr Durbin: No, I would say they were erected then.

Hon RAY HALLIGAN: They were at that stage.

Mr Durbin: Yes, because that was 10 July 1998 and I think they were built in 97.

Hon RAY HALLIGAN: Yes, you are right. I was looking at the land description. Were your moneys used to refinance this property?

Mr Durbin: I beg your pardon?

Hon RAY HALLIGAN: The moneys that you provided were used to refinance this property.

Mr Durbin: From MacLou.

Hon RAY HALLIGAN: You said it was in December of 98 that your negotiations started and the date of this valuation is July of 98.

Mr Durbin: Yes, December of 98 is, as far as I can recollect, when Ward first spoke to me about - they approached me first of all - Rancher were only going to buy one unit of the four that we financed and then in the subsequent weeks they decided to buy all four.

Hon RAY HALLIGAN: So they were a strata title. There six units in total.

The CHAIRMAN: Whilst you are going through that, Mr Durbin, you do not know what Rylstone's connection to all of this was, do you? Did they originally own it before the MacLous?

Mr Durbin: I think that Rylstone - no, because I have never had anything to do with them, but I think that Rylstone was something to do - I think somebody called Hill, and I think that they are also the ones that built another block of 60-odd shops and commercial properties that are all standing vacant there and they are all now mortgagee in possession and I understand that John Byrne, who I am told is a solicitor, who did not answer my letters, because I have written to him

asking him about the other two properties. There is a block of six and we are interested in the four and I was trying to contact the mortgagees in possession of the two, but he has never replied to my correspondence and nobody answers his telephone.

The CHAIRMAN: No, but looking at this mortgage it looks like Rylstone originally owned the property back in 1998.

Mr Durbin: Yes, I think they might have been the builders.

Hon RAY HALLIGAN: It says in this that the property is registered in the name of Rylstone Pty Ltd.

Mr Durbin: Yes. Now, whether MacLou are part of Rylstone, I do not know. The only name I have heard is a chappie by the name of Hill and I do not even know his Christian names or initials.

The CHAIRMAN: Sorry about this. I am just trying to - I am sure -

Mr Durbin: No, I know. As I said, it is a wicked web.

The CHAIRMAN: It is, and the names keep coming up and you know you have seen them. So many of the same names keep appearing in so many different places. I am just trying to -

Mr Durbin: Yes, and you are trying to - yes.

Hon RAY HALLIGAN: It looks as though it may take quite a bit of unweaving, this particular web.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Mr Durbin, I do not know how to ask this in view of the fact that you are not totally au fait with the act and the requirements of the brokers, supervisors, liquidators, auditors and the like, but there may come a time when the District Court ask that a supervisor take over the role of the finance broker -

Mr Durbin: I see, yes.

Hon RAY HALLIGAN: - as far as certainly elements of work that has yet to be completed, and there is also a situation under the Companies Code where the Supreme Court may place a company into liquidation and therefore a liquidator is appointed.

Mr Durbin: Yes.

Hon RAY HALLIGAN: There may well be times when both those people may be operating at the same time. Would you have any objection to the supervisor and the liquidator coming from the same - it is usually an accounting firm?

Mr Durbin: If they were appointed, for example, on this mortgage that we are concerned with?

Hon RAY HALLIGAN: Well, it could be any finance broker.

Mr Durbin: Yes.

Hon RAY HALLIGAN: The act states that if a broker is unable to conclude something which they obviously started, then a supervisor might be asked to go in and conclude that part of that broker's business.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Usually that - or in a lot of instances that is an accountant.

Mr Durbin: Yes, and you ask if the liquidator should be part of the same company?

Hon RAY HALLIGAN: Would you have any objections to each of those people - and there would be two people, by the way - would not be wearing two hats.

Mr Durbin: Yes.

Hon RAY HALLIGAN: Would you have any objection to both of those people coming from the same accounting firm?

Mr Durbin: I honestly do not know what conflict of interest could arise. You know, if there were to be no conflict of interest I would not see a problem.

Hon RAY HALLIGAN: Yes, I can understand your hesitation there.

Mr Durbin: Yes, well, I know that one of the other mortgagees told me that he has just phoned Ian Clairs and Ian Clairs has said to him, "I cannot give you any advice because of a conflict of interest," and this is the solicitor who drew up the mortgage and had us close to his heart and was -

The CHAIRMAN: I am sorry, when did Mr Clairs say that?

Mr Durbin: Another mortgagee phoned me and said that he had spoken to Ian Clairs and said, "Look," you know, "what are we going to do now?" and he said, "Well, I cannot advise you. There is a conflict of interest."

The CHAIRMAN: So he can draw up the mortgage documents -

Mr Durbin: Yes.

The CHAIRMAN: - he can take your money and hold it in his trust account -

Mr Durbin: Yes, but he cannot advise -

The CHAIRMAN: - and he can deal with you - I mean, we saw a letter yesterday he has

written, talking to someone about their mutual client, but he then has a conflict of interest at the end of the day.

Mr Durbin: One of the directors also told me - bearing in mind that they are going to do this, that and the other thing when a mortgagor defaults - said to me, "Well, if you want any advice from Clairs Keeley, then it is going to cost you," and I mean, this is about a mortgage that they were administering that defaulted. In fact, I think I got an email to that effect somewhere.

The CHAIRMAN: I would not mind, those sort of documents, if you are able to send them in to us. It would be very useful.

Mr Durbin: Yes, I will find another page to that valuation which virtually said, you know, that he had done the valuation for Rylstone and is handing it over - unless it is in somebody's photocopier somewhere, because, you know, so many people - I was not implying yours - because it has gone to the Gunning inquiry and it has gone to the fraud squad and they have all - you know, I have a couple of hours' job every time somebody has them to get it back together again.

The CHAIRMAN: No, I appreciate that and certainly I appreciate you taking the time with us this afternoon too.

Mr Durbin: Well, the thing is that I just hope we are all on the one side.

The CHAIRMAN: Well, I think, yes, we are certainly keen to find out what went wrong and why it went wrong -

Mr Durbin: Yes.

The CHAIRMAN: - so that we can assist in trying to identify the areas for legal redress for people like yourselves, and also I guess the other important role is to come up with legislation and recommendations to make sure that what you have faced will not happen again to somebody else.

Mr Durbin: Yes. One of the things I do feel sad about, I raised earlier on, was that they have brought in legislation for pooled mortgages but only started, you know, at the higher level.

The CHAIRMAN: In other words, someone could be doing today exactly what they have been doing to you. Yes, I take that point and I think that is something that - I mean, in a sense we are almost led to believe that it has all been sorted out because of the ASIC legislation and I think that is a very valuable point that you have made to us and I have made a note of that, that even the ASIC legislation does not fully pick up all of - - -

Mr Durbin: It does not cover it.

The CHAIRMAN: In fact it does not pick up a lot of them.

Mr Durbin: No.

The CHAIRMAN: The majority of people that we are looking at.

Mr Durbin: In fact I was going to say there would be quite a lot that it would not cover.

The CHAIRMAN: We also, I guess, have had evidence in hearings as well that even where it is picked up, there are still problems.

Mr Durbin: Really?

The CHAIRMAN: In fact one of the first witnesses indicated some problems that they had had in similar circumstances. Ray?

Hon RAY HALLIGAN: Mr Durbin, I have no further questions of you and I thank you very much for coming in this afternoon.

Mr Durbin: Thank you for giving me a hearing.

The CHAIRMAN: No, thank you. You have certainly, from my point of view, raised a number of issues that as a committee we will need to go and have a look at. I guess it is probably not much of a benefit to you in hindsight but certainly it is - I mean, just for your benefit, it has highlighted to me this afternoon some of the related - I mean, there have been suggestions of interrelated transactions but I think your evidence has certainly clearly given me an idea of the nature of some of those that we need to - - -

Mr Durbin: Of how they work.

The CHAIRMAN: And this is at a time when people were raising the problems there and nothing was happening.

Mr Durbin: The principal mortgagor, the director, said that he - because we have had several meetings with him, a very plausible man, like John Ward, and he said, "I'll be frank with you." He says, "I'm a wheeler-dealer." You know, this is what he does.

The CHAIRMAN: Who is this, sorry?

Mr Durbin: This is Laurence Ferris. He is the director of Rancher. At one of the meetings somebody put it to him that he might not be honest and he said, "Oh, well, I wouldn't say I was dishonest. I'm a wheeler-dealer."

The CHAIRMAN: I guess we can leave that for us all to determine what that means then, can we not?

Mr Durbin: Yes, well, the wheels came off.

The CHAIRMAN: Yes.

Mr Durbin: Thank you very much.

The CHAIRMAN: No, thank you very much for your time and providing us with so many comprehensive documents. If you find any of those other documents that you think may be of use to us, please, by all means, send them in.

Mr Durbin: Yes, I will send them through, but not by email.

The CHAIRMAN: Yes. All right, thank you.

Mr Durbin: Thank you.

The CHAIRMAN: I will close the hearing.

Committee adjourned at 4.45 pm