

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 9 OCTOBER 2000**

SESSION 3 OF 5

Members

**Hon Ken Travers (Chairman)
Hon G.T. Giffard
Hon Ray Halligan
Hon Greg Smith
Hon Norm Kelly**

O'BRIEN, MR KENNETH FRANCIS,
residing at 115 Highclere Boulevard,
Marangaroo, examined:

The CHAIRMAN: On behalf of the committee I welcome you to today's hearing. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr O'Brien: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. To assist the committee and Hansard, please quote the full title of any document to which you refer during this hearing for the record. A transcript of your evidence will be provided to you. 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 the evidence be taken in closed session before speaking about the matter. Further, the committee may of its own motion resolve to take evidence in closed session. The taking of evidence in closed session may be relevant if, for example, the committee believes that the evidence may breach term of reference (3) of its inquiry, 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) the 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 Legislative Council reports on the item of business to the Legislative Council, unless the Legislative Council grants an ongoing suppression order at the time the committee tables its report.

If members ask you any questions that you believe may impact on any prosecution or other inquiry, please indicate that to us and we will ask those questions in private session at the end of the public hearing. If you want to raise anything with us that may impact on a prosecution or public hearing, please indicate that you would like to make private comments before speaking about it. Do you wish to make an opening statement?

Mr O'Brien: No.

The CHAIRMAN: Will you outline your role in Blackburne and Dixon and advise whether you still have a role there?

Mr O'Brien: I do not have a role there. I retired at the end of last February. I worked for Blackburne and Dixon for approximately 12 years, initially as a settlement agent and then as a finance broker when the business was under the control of Owen Blackburne and after his death under Kaye Blackburne. My title was general manager and, as such, I largely managed office procedures and reported to Mrs Blackburne.

The CHAIRMAN: What did the management of office procedures entail?

Mr O'Brien: At various times we had a staff of eight or 10 who prepared all the necessary letters to the investors and borrowers. In the main, the staff answered to me and I answered to Mrs Blackburne.

The CHAIRMAN: Who was in control of arranging the finance broking deals?

Mr O'Brien: Usually the borrower would approach Blackburne and Dixon's office. I usually interviewed the borrower initially and took the application and whatever details we needed. Mrs Blackburne, the other finance managers and I discussed the application and decided whether we would proceed with it.

The CHAIRMAN: Who made the final decision about whether you lent money to someone?

Mr O'Brien: That was ultimately Mrs Blackburne's decision. However, she relied on me and the finance managers to put together the propositions.

Hon GREG SMITH: How many loans did you broker monthly, weekly or annually?

Mr O'Brien: It varied a great deal. In the early 1990s we wrote - at a very rough guess because I do not have any supporting figures - approximately 20 or 30 loans a month. That tapered off in the latter part of 1999.

Hon GREG SMITH: What was the value of the total "book" of Blackburne and Dixon?

Mr O'Brien: Do you mean total loans outstanding?

Hon GREG SMITH: Yes.

Mr O'Brien: Once again it escalated from approximately \$30m to approximately \$70m or \$80m. Those figures are approximate because I do not have any records.

The CHAIRMAN: Obviously once you met with the borrower, the usual procedure was to send out a proposal to prospective lenders?

Mr O'Brien: Initially we took the application from the borrower and gathered all the supporting information so that we could assess the loan, such as valuations, borrower's statement of position and financial standing and how we would service the loan - all the information we needed to assess the loan. A letter was then prepared and written to investors on our books who we knew wanted to invest.

The CHAIRMAN: Who checked the accuracy of the information provided by borrowers?

Mr O'Brien: Initially I went through it, but the finance managers, of whom we had several while I was there, went through it and where possible we obtained financial statements from companies and valuations from licensed valuers. All those facts were combined and we discussed the proposal at staff meetings. Sometimes a person had another look at it and a decision was made about whether we would proceed with the loan application.

Hon GREG SMITH: Were many applications rejected?

Mr O'Brien: Roughly speaking, we rejected as many as we approved.

Hon GREG SMITH: Did you tell people at that time that you did not believe their loan could be serviced?

Mr O'Brien: We decided that we did not like a loan for whatever reason.

Hon GREG SMITH: Did loans attract different interest rates? For example, if the team felt a deal was good, but it was not as secure as deals the company usually brokered, was the interest rate made higher?

Mr O'Brien: A higher rate was charged in very few cases. Usually if we brokered a loan, it would be at the rate we were advertising to our investors.

Hon GREG SMITH: To some extent is Blackburne and Dixon a victim of dishonest valuers? Allegations have been made that the finance broking industry has been party to problems in the industry. This is an opportunity for you to put on the record whether you are a victim of dishonest conduct by others.

Mr O'Brien: Not at all. I was on a salary. It did not matter to me whether a loan was approved. I got no reward if it was approved. As far as I was concerned, I assessed loans impartially. In latter years, valuations became more difficult to establish, particularly for development projects; therefore we brought together a panel of well-known valuers from around the city to get as accurate valuations as we could. We did not want to rely on valuers who operated on their own. That was due to some of the valuations prepared by Mr O'Connor that were very difficult to substantiate at a later date. We decided that we needed a panel of valuers so that we could be seen to be giving the investors the best information we could.

The CHAIRMAN: Who was on the panel of valuers?

Mr O'Brien: From memory there were six or seven, including Hegney Property Valuations, JLW Advisory Services and Frank Knight (WA) Pty Ltd. O'Connor did many valuations for us in the early to mid 1990s and earlier we used Owen Griffiths Valuation Services due to a long-standing relationship he had with Owen Blackburne. I cannot remember who else was on the panel.

The CHAIRMAN: When did you stop using Mr O'Connor as a valuer?

Mr O'Brien: We did not stop using him altogether. However, we sought other valuations rather than relying solely on him. If somebody said he was going to get O'Connor to value something we suggested he get somebody else from the panel.

The CHAIRMAN: If he did not use someone else, did you proceed with the loan?

Mr O'Brien: Unless we had very strong supporting evidence we did not accept O'Connor's valuations.

The CHAIRMAN: When was that decision made?

Mr O'Brien: We ceased business in February. That decision was made approximately two years ago.

The CHAIRMAN: Was that because his valuations were unreliable?

Mr O'Brien: We found that some were difficult to substantiate.

The CHAIRMAN: What do you mean by "some were difficult to substantiate"?

Mr O'Brien: Other valuers gave different assessments. Some properties were sold for less than valuation.

The CHAIRMAN: Basically you came to distrust the valuations.

Mr O'Brien: We doubted them.

The CHAIRMAN: They were unreliable valuations on which to base an investment decision.

Mr O'Brien: Yes. As far as we could see, many of his valuations were accurate. However, as time went on, not only did O'Connor's valuations appear to be difficult to substantiate, but also across-the-board valuations were difficult to pin down.

Hon GREG SMITH: Mainly valuations on development?

Mr O'Brien: Yes, and there were a lot of development loans in the latter part of Blackburne and Dixon's business.

Hon GREG SMITH: If a loan went into default, how often per annum would it be necessary to liquidate the assets and distribute them?

Mr O'Brien: Until a couple of years ago we liquidated loans only on rare occasions. Usually if a borrower could not meet his commitments, the loan was either refinanced or we arranged for the sale of the property. At all times we tried to persuade the borrower to sell the property rather than have a mortgagee sale.

Hon GREG SMITH: You would be aware of an allegation that has been made about the conduct of the Ministry of Fair Trading towards Blackburne and Dixon regarding a loan that a Mr Turton had with Blackburne and Dixon?

Mr O'Brien: Yes.

Hon GREG SMITH: Is there any truth to that allegation?

Mr O'Brien: I consider it to be absolute rubbish.

Hon GREG SMITH: For the record, the allegation I refer to is that the Ministry of Fair Trading had some influence over Blackburne and Dixon's realising or repaying a loan specifically to Mr Turton.

Mr O'Brien: Yes, which is not correct.

Hon GREG SMITH: That is not correct?

Mr O'Brien: It is not correct.

Hon GREG SMITH: Do you recall Mr Turton's loan?

Mr O'Brien: I cannot remember the borrower; in fact, I have been trying to remember for some days. However, Mr Turton and a number of other lenders were involved in a mortgage, which was about to expire. In line with our normal practice, we wrote to or contacted the borrower to ascertain whether he would be in a position to pay out the loan on expiry and he said he wanted it renewed. We then wrote to the existing mortgagees, including Mr Turton, and offered them reinvestment. Mr Turton chose not to reinvest and in the meantime the loan expired. From memory, the borrower continued to service the interest for a month, or however long it took, but it took us a little while to gather the funds together to pay out the loan. Mr Turton made several phone calls and wrote letters about his funds, and became quite irate that he had not received them at the expiry date. We explained to him that it was taking a little longer than we expected but he would receive his funds, as we were arranging the payout. He threatened to go to the Minister for Fair Trading, who was his ex-son-in-law. We informed him that he should go ahead if he wanted to do that but it would not make any difference because the loan would be repaid anyway. As it turned out, the loan was settled and refinanced the day before a representative from the Ministry of Fair Trading and a representative from Mr Shave's office came to our office. We were able to show them a settlement statement and we produced a cheque for Mr Turton's funds. That would have happened, regardless of what Mr Turton, Mr Shave or anybody else did.

Hon GREG SMITH: Can you recall how many people were involved in that loan with Mr Turton?

Mr O'Brien: No, I would be guessing. I cannot remember the details of loans because there were a lot of loans there.

Hon GREG SMITH: Were all parties to that loan paid out or asked whether they wanted to be paid out?

Mr O'Brien: The normal procedure, which was followed in this case, was that we would write to the borrower and ask if he would pay it out on the due date or if he wanted it refinanced. We would also write to the investors. Usually, if we ascertained from the borrower that he wanted to renew, we would offer the existing investors the option of a renewal or seek funds for any investor who wanted his funds returned.

Hon GREG SMITH: Every person therefore who was involved in that loan was either given the option or paid out?

Mr O'Brien: Correct.

Hon GREG SMITH: Was that done prior to any meeting with Fair Trading?

Mr O'Brien: Absolutely. As I said, the settlement took place the day before Fair Trading arrived at our office.

Hon GREG SMITH: And that was purely coincidental?

Mr O'Brien: Purely coincidental.

Hon NORM KELLY: How soon after the settlement was a cheque provided to Mr Turton?

Mr O'Brien: The normal procedure is to settle one day through our solicitors and the cheques are drawn the next day after the settlement has been confirmed. That is what happened in this case.

The CHAIRMAN: Who was dealing with Mr Turton on that matter?

Mr O'Brien: It started off with me and I believe he ended up talking to Mrs Blackburne because he would not accept our word that it would be repaid.

The CHAIRMAN: Was Mr Turton the only person you dealt with on his loan or did other people contact you concerning the repayment of the loan?

Mr O'Brien: I do not quite follow you; do you mean from our office or from the investors?

The CHAIRMAN: No, did anyone else speak to you or your office about repaying Mr Turton's loan or was Mr Turton the only person who spoke to you about that prior to the ministry's visiting you?

Mr O'Brien: I cannot recall anybody else speaking to us.

The CHAIRMAN: Do you recollect his son-in-law, or anyone like that, talking to you?

Mr O'Brien: I do not know. I would have to study the file because if somebody else contacted us, unless that person had Mr Turton's authority, we would not have talked to that person.

The CHAIRMAN: Your only recollection is of dealing with Mr Turton?

Mr O'Brien: That is right.

The CHAIRMAN: Do you know whether Mr Turton made the claim to you or Mrs Blackburne about visiting the minister who was his former son-in-law?

Mr O'Brien: I cannot recall. The claim might have been made in a letter. I am unsure about that because there were correspondence and phone calls and I cannot remember which one contained that information.

Hon GREG SMITH: Was he the only person involved in that loan who contacted your office or were a few people starting to get agitated?

Mr O'Brien: We wrote to everybody and told them what would happen and that the interest would be paid. We might have had phone calls from others but nobody got as agitated as Mr Turton did.

The CHAIRMAN: Can you recollect when he mentioned that his former son-in-law was the Minister for Fair Trading and he would visit him?

Mr O'Brien: I cannot recall his exact words. When I spoke to him he was very excited and strident in his phone call. He did not want to accept what I said which is why he spoke to Mrs Blackburne.

The CHAIRMAN: Did you put him straight through on the phone to Mrs Blackburne?

Mr O'Brien: No, I do not believe that happened. I believe I spoke to him one day and a day or two later he spoke to Mrs Blackburne.

The CHAIRMAN: Did you ever raise with Mrs Blackburne the fact that his former son-in-law was the Minister for Fair Trading?

Mr O'Brien: We discussed the whole matter. We did not like being under pressure from somebody having a threat of -

The CHAIRMAN: - a minister coming down on you?

Mr O'Brien: No.

The CHAIRMAN: Absolutely!

Hon G.T. GIFFARD: Did he threaten to go and see the minister or at any stage did you become aware that he had been to see him, or both?

Mr O'Brien: I cannot remember precisely; it is now almost two years ago. All I know is he threatened to go to the minister and mentioned that he was his former son-in-law.

Hon G.T. GIFFARD: Is it your evidence that you were unaware prior to his loan settlement that he had gone to the minister?

Mr O'Brien: He threatened to and I presumed he had gone to the minister.

Hon G.T. GIFFARD: Did the ministry or the minister's office give you advance notice of the ministry's visit to your office?

Mr O'Brien: Usually the ministry just phoned and said it would be there at whatever hour. You got very short notice if somebody was coming to see you from the ministry.

Hon G.T. GIFFARD: On that occasion did you get advance notice of a visit from the ministry or the minister's office?

Mr O'Brien: I could not tell you. We received a phone call probably that day or the day before.

Hon G.T. GIFFARD: You do not recall whether it was that day or the day before?

Mr O'Brien: I cannot recall the precise way in which it was conveyed to us.

Hon G.T. GIFFARD: Was the whole question of the ministry's office coming to see you a matter that you took seriously?

Mr O'Brien: We certainly did not like the minister coming to investigate loans. However, in view of the fact that Mr Turton would not accept what we said, we came to regard it as inevitable that he would talk to the minister.

Hon G.T. GIFFARD: I would have thought you would have remembered that sequence of events, given that it was a serious matter.

Mr O'Brien: At any given time we were probably managing 300 or 400 files.

Hon G.T. GIFFARD: How many of them involved the minister's office?

Mr O'Brien: I do not know; very few.

Hon G.T. GIFFARD: How many others to your knowledge?

Mr O'Brien: I do not recall that there were any others at the time of Mr Turton's inquiries.

Hon G.T. GIFFARD: So that is one, and a fairly significant one in your mind at the time?

Mr O'Brien: That is right.

Hon G.T. GIFFARD: But you do not recall when the minister's office or the ministry contacted you to say they were coming to see you about it?

Mr O'Brien: No, I do not, but it would have been, on their normal pattern, one day or on that day.

Hon G.T. GIFFARD: I know what you mean by the normal pattern. However, I am asking you in your evidence to try to remember what actually happened, not to tell us the normal pattern because the ministry or the minister's office might have given you a week's notice on that occasion.

Mr O'Brien: I cannot remember. They would never give you a week's notice.

Hon G.T. GIFFARD: And they did not on that occasion?

Mr O'Brien: No.

Hon GREG SMITH: The ministry's visit to Blackburne and Dixon on that occasion, according to the Gunning inquiry, was not relevant to that particular loan.

The CHAIRMAN: I think Hon Greg Smith means the ministry visited you on the basis that there were two loans, one for a Mr Gaunt and one for Mr Turton.

Mr O'Brien: I see what you mean; that could well have been the case.

The CHAIRMAN: Going back to Mr Turton's threat of going to the minister, his former son-in-law, how long before you made the payout did that occur?

Mr O'Brien: I would have to refer to the file. We made file notes about it and wrote letters to Mr Turton but I cannot recall the dates.

The CHAIRMAN: The payout was due on or about 10 August and I believe you paid it out around 19 August. The ministry saw you on 20 August. Therefore can you recollect approximately when he would have made the threat that he would visit the minister?

Mr O'Brien: No, I cannot say precisely. It would have been shortly before the expiry date because we would have asked him to sign a discharge.

The CHAIRMAN: Before the 10th or before the date you paid it out?

Mr O'Brien: No, it would have been before the 10th because a number of people had to sign the discharge of mortgage and it had to be circulated among those lenders to be signed and ready for settlement, hopefully, on the day it expired.

The CHAIRMAN: When you say you discussed the matter with Mrs Blackburne, can you recall the discussions you had?

Mr O'Brien: They were along the lines that we wanted to get it sorted out because we did not want a visit from the Minister for Fair Trading.

The CHAIRMAN: Do you recollect talking about Mr Turton, that he was the minister's former son-in-law and obviously had a close relationship with him?

Mr O'Brien: Yes.

The CHAIRMAN: Can you understand why Mrs Blackburne was able to give evidence to the Gunning Inquiry that she was not aware of the relationship between Mr Turton and the minister?

Mr O'Brien: I cannot understand how she did that.

The CHAIRMAN: You are clearly of the view that, to your knowledge, she was aware of the relationship between them?

Mr O'Brien: I think the file, with the file notes on it, would show that.

The CHAIRMAN: The file notes would show that?

Mr O'Brien: I believe so.

The CHAIRMAN: You would have recorded that on the file notes?

Mr O'Brien: I reported the visit from the minister's office.

The CHAIRMAN: At that time, when they came to see you, did they mention anything about the minister's interest in the loan?

Mr O'Brien: This is how I remember the interview: The investigator from the Ministry of Fair Trading said he had come to look at the file and, as you have reminded me, there was another one in the name of Gaunt. He introduced the other gentleman - I cannot remember his name - as being from Mr Shave's office, and he said he was there to see how we handled situations where loans were not repaid and what we were doing about it. That was the extent of any discussion, and the man from Mr Shave's office said very little. We were then able to show them the file and that the settlement had taken place.

The CHAIRMAN: What happened at that point?

Mr O'Brien: They said "case finished, it is all done, he is getting his money".

The CHAIRMAN: What about the Gaunt matter?

Mr O'Brien: I cannot remember what happened with Mr Gaunt's matter.

The CHAIRMAN: Did the interview go on much longer after they were advised that Mr Turton had been repaid his money, or did they continue?

Mr O'Brien: It was a very short interview.

The CHAIRMAN: Once they found out that Mr Turton had had his money refunded -

Mr O'Brien: All they wanted to know was whether his cheque was available.

The CHAIRMAN: Mr Gaunt's matter had not been finalised at that stage?

Mr O'Brien: I cannot remember the details of Mr Gaunt's complaint.

The CHAIRMAN: From your recollection of the meeting, once they were advised that Mr Turton had been paid out, did they seem to have much interest in pursuing the other matters at the stage?

Mr O'Brien: They asked some questions about the Gaunt matter. I cannot recall what was said at that time because I could not even remember that the Gaunt matter was there. No doubt I made file notes on that as well.

The CHAIRMAN: They should all still be on the files, if we were to see those files?

Mr O'Brien: They should be.

The CHAIRMAN: Who has those files now?

Mr O'Brien: They are still under the control of Mr Blackburne. There is a large quantity of files that go back six years.

The CHAIRMAN: Prior to the visit, were you expecting someone from the minister's office to accompany the investigator from the ministry, or was that a surprise for you?

Mr O'Brien: That was a surprise to us.

The CHAIRMAN: Prior to that you had not had any contact with anyone else, other than the ministry officials?

Mr O'Brien: Not that I can recall. We did not have any contact with Mr Shave's office. The only contact we had was with the Ministry of Fair Trading.

Hon NORM KELLY: With visits by somebody from the Ministry of Fair Trading, had it ever occurred before, or after that meeting, that the officer would also be accompanied by one of the minister's staff or someone from the minister's office?

Mr O'Brien: It had never happened before. Usually, one or two investigators came to the office if they had some inquiries.

Hon NORM KELLY: After that meeting of 20 August, did any of the minister's own staff attend meetings at Blackburne and Dixon with ministry investigators?

Mr O'Brien: In the latter part of 1999 we had a number of visits from the office of the Minister for Fair Trading.

The CHAIRMAN: Let me get that clear: Did you have visits from the ministry or the minister's office?

Mr O'Brien: The minister's office. It was investigating it.

The CHAIRMAN: We need to be careful here because you have the Ministry of Fair Trading, which has the investigators, then there is the minister himself, Mr Shave, and then there are people like Mr Mitchell and Mr Skepper who are staff in the minister's office. The people who visited you were Ministry of Fair Trading investigators?

Mr O'Brien: Correct.

The CHAIRMAN: Did you ever have a visit from anyone from Mr Shave's personal office, like Mr Skepper or Mr Mitchell?

Mr O'Brien: Only that gentleman who was there on that particular occasion.

Hon NORM KELLY: That was the only occasion?

Mr O'Brien: That is right.

The CHAIRMAN: To the best of your knowledge, is Mr Shave known to either you or Mrs Blackburne?

Mr O'Brien: I have never met him.

The CHAIRMAN: Do you know if that is the case for Mrs Blackburne?

Mr O'Brien: I could not say. I do not know whether she knows him.

The CHAIRMAN: You are not aware of her having any -

Mr O'Brien: No.

Hon GREG SMITH: Were you aware that one of the two gentlemen who came to see you was from Fair Trading and one was from the minister's office, or was it an assumption?

Mr O'Brien: No. The investigator introduced the other gentleman as someone from Mr Shave's office.

The CHAIRMAN: Was Mrs Blackburne at that meeting?

Mr O'Brien: I do not know that she was at the meeting. She was in the office because we discussed the matter prior to their coming. I cannot recall whether she was in the boardroom with me at the time.

The CHAIRMAN: Did the Gunning inquiry ever approach you and ask you to appear before it?

Mr O'Brien: Yes.

The CHAIRMAN: Did you?

Mr O'Brien: No.

The CHAIRMAN: Was it your decision not to appear?

Mr O'Brien: Yes.

Hon G.T. GIFFARD: Mrs Blackburne was handling the matter at that stage? She was handling it by the time that meeting took place? You said that originally it was under your care.

Mr O'Brien: I referred it to Mrs Blackburne but I still -

Hon G.T. GIFFARD: Were you still the primary person in the office -

Mr O'Brien: To control the file and get it sent? Yes.

The CHAIRMAN: You were organising the refinancing of it?

Mr O'Brien: That is right.

The CHAIRMAN: What was involved in the refinancing? I believe the borrower was Mr Rossi. I do not know whether that helps you at all because I remember you had some difficulty.

Mr O'Brien: I could not remember who the borrower was. I have been trying for a week to remember who it was.

The CHAIRMAN: We can assist you. I think, if I am not mistaken, that Lenmac Holdings was the name of the company.

Mr O'Brien: Mr Rossi was a client of ours for some years and had a number of loans with us. They were correctly serviced. Occasionally his payment was slow, or in this case, I think we required additional information from him for the renewal, but I cannot be sure of that. There was some reason it did not get paid out on the due date. We needed additional information from Rossi, about either his accounts or the valuation. We certainly needed some more information from him to provide to our investors.

The CHAIRMAN: Were you having difficulty finding investors to replace the people who wanted to get out of that loan?

Mr O'Brien: No. I do not believe there was any difficulty.

The CHAIRMAN: Was the loan that was refinanced identical to the loan that stood at that time?

Mr O'Brien: I cannot remember the amounts. There were a number of people in it and I cannot remember the total of the loan.

The CHAIRMAN: If I understand correctly, they had sold one of the units but I do not know at what point that occurred. I think one was owned separately.

Mr O'Brien: Was that the property at Whitford?

The CHAIRMAN: Baltimore Avenue, Merriwa. Go to the end of Marmion Avenue and turn right. It is out there if I remember rightly, opposite the RAAF base. I think that is the one.

Mr O'Brien: That could be the one because that was refinanced. They sold some of the units and then refinanced the rest.

The CHAIRMAN: In those circumstances, what would you have relied on for the valuation - the sale of one of the units?

Mr O'Brien: From memory, the sale of the unit was in line with the valuation.

The CHAIRMAN: Just as a general rule, did you check whether it was sold to a related entity, particularly as you were refinancing a loan?

Mr O'Brien: Are you sure that loan was in the name of Rossi?

The CHAIRMAN: I think Lenmac was the name of the company but I might be wrong. I might be getting them confused.

Mr O'Brien: The one at Merriwa was not one of Rossi's. It was another family. They sold that unit to an investor, who was to put a doctor in there, and they refinanced the others, pending the doctor moving in. I think it was Ravi.

The CHAIRMAN: That is right. You are right. Sorry, I might have the two -

Mr O'Brien: Yes it was Ravi at Merriwa, not Rossi.

The CHAIRMAN: Where was Mr Turton's investment?

Mr O'Brien: Once again, you told me it was Rossi.

The CHAIRMAN: Sorry. There was definitely a Mr Rossi. I will just check that against the Gunning inquiry.

Mr O'Brien: Mr Rossi had some finance on some factory and commercial units in Joondalup and it could well have been one of those, as a similar thing happened there. Some were sold and some were refinanced.

Hon GREG SMITH: You said that it was quite rare for a loan to go into default, prior to a couple of years ago.

Mr O'Brien: It was.

Hon GREG SMITH: To the best of your knowledge, what percentage of the deals brokered through Blackburne and Dixon have gone bad, or look like going into liquidation?

Mr O'Brien: There were several factors that caused that. Some of the loans that matured - for instance the Rossi and Ravi loans - were correctly serviced, but when they matured in late 1999, due to the publicity about Grubb and Global, the source of funds rapidly dried up. Not many investors were prepared to invest in mortgages. This meant that we even had difficulty resetting loans that were correctly serviced and correctly secured. That caused a large number of Blackburne and Dixon loans to go into default.

Hon GREG SMITH: Because you were unable to refinance?

Mr O'Brien: Absolutely. We had one instance where a good client had built a property and operated it, had correctly serviced the loan and one of the major banks had agreed to finance it, until it went before the final board of approval. When it found out it was a broker's loan, the bank declined it - for no other reason.

Hon GREG SMITH: Some of your business would have included brokering loans through some of the banks?

Mr O'Brien: No. All our finance was provided by private investors. On some occasions they would be paid out via bank loans. In the instance I just mentioned, the bank refused to do that when it was a development project. Once the project was finished and the business was up and running and making a profit, the bank was prepared to do it.

The CHAIRMAN: I think I did confuse you earlier. The loan from Mr Turton, according to the Gunning inquiry, was the one for Mr Vince Rossi.

Mr O'Brien: That would have been the properties at Joondalup, not the properties at Merriwa.

The CHAIRMAN: That is right. I was getting mixed up. I apologise for that. Going back, Mr Skepper was introduced to you as being from the minister's office. In light of your knowledge that it was the minister's father-in-law, did that cause you to have any -

Mr O'Brien: I was rather angry to be truthful.

The CHAIRMAN: Why?

Mr O'Brien: I do not think anybody should be bringing pressure to bear like that.

The CHAIRMAN: You felt that you were being pressured with having the minister's staff attend.

Mr O'Brien: The threat of pressure was coming from Mr Turton. We did not get any pressure from Mr Shave's office. It was purely Mr Turton saying he was going to bring the minister into it.

The CHAIRMAN: When Mr Skepper turned up and was introduced to you as being from the minister's office, that was obviously an unusual circumstance?

Mr O'Brien: It had never happened before, or since.

Hon NORM KELLY: There was a degree of belief on your part that Mr Turton's intervention had resulted in Mr Skepper attending the office?

Mr O'Brien: I do not think there was any doubt. However, I must say that the gentleman did not exert any pressure; he did not have to.

The CHAIRMAN: Because it had already been done - the pressure had already been exerted by the threat.

Mr O'Brien: We did not need any pressure; the loan was always going to be repaid.

The CHAIRMAN: I am trying to work out the relationship in the office between you and Mrs Blackburne, and who was controlling what. Can you explain that to us a bit better?

Mr O'Brien: I should go back to when Owen Blackburne was alive. I was virtually his assistant. I had a banking background and I processed a lot of the applications for him. The relationship grew from there. He would accept the applications, I would vet them and go back to him with my thoughts and then we would decide whether we wanted to do the loan. Mr Blackburne died very suddenly, as you are aware. Once Mrs Blackburne was involved in the business after his death, the same procedure was followed.

The CHAIRMAN: She still signed off on the deals at the end of the day.

Mr O'Brien: Mrs Blackburne was aware of all the loans that were approved in the office.

The CHAIRMAN: With intimate details of the loans.

Mr O'Brien: All the details were provided for her.

The CHAIRMAN: She should have been aware of any problems with overvaluations or anything like that.

Mr O'Brien: We were not aware of any overvaluations at the time we did the loan or we would not have done the loan.

The CHAIRMAN: What about Mr Jason Blackburne? What was his role in the office?

Mr O'Brien: Jason came into the office after his father's death when he left school. Initially, he worked in the computer room learning the business from the ground up. He became conversant with the whole accounting procedures through the computer. I am not computer literate so I never ran the trust account. It was always the controller and Jason, who learnt the business under the controller of the computers. Later on, when one of our investment managers resigned, Jason moved into that position to learn further about the business.

The CHAIRMAN: When an investment adviser signs off on a letter, is that a sign that the adviser will have processed and worked on that particular deal?

Mr O'Brien: No. In most cases I would have prepared the letter, which was then vetted by the others. It was virtually mass-produced for the number of people to whom we thought we needed to send it. Those letters could have been signed by me, Mrs Blackburne, Jason Blackburne or, prior to Jason Blackburne, one of the investment managers.

The CHAIRMAN: Who approved the payments out of the trust account?

Mr O'Brien: What do you mean - interest payments or all payments?

The CHAIRMAN: Any of the payments - either interest payments, progress payments or the initial settlement payments.

Mr O'Brien: The only interest payments that were made out of the trust account were funds that had been set aside in the trust account for that purpose in the name of the borrower. That was automatically debited, just as would be done with a bank account. The interest was paid to the investors. Other repayments of investments to investors, payments of progress and payments on

buildings or developments would have been signed by two signatories. Mrs Blackburne, Jason, the finance managers at various times, the settlement clerk and I were signatories.

The CHAIRMAN: Was it any two of those people or was it an investment person and someone else?

Mr O'Brien: Two people had to sign.

The CHAIRMAN: It could have been any two of those people.

Mr O'Brien: Sometimes it had to be one or the other with a third party. However, it was not always that way. The procedure was that debit vouchers were made out with the details of the cheque – to whom it was payable, how much it was for and what it was for. If the borrower were in the office, he or she would sign that debit voucher. If the borrower had written a letter, that letter would be on the file authorising the payment. To my knowledge no payments were made from the trust account without the correct authority.

The CHAIRMAN: If it was a progress payment, did you check that the work had been carried out?

Mr O'Brien: Yes.

The CHAIRMAN: How was that conducted?

Mr O'Brien: The usual procedure was that we would receive a progress claim from the builder. One of us would inspect the work to see that it had been done to that standard. If an engineer or an architect were involved, we would require that person's approval. Finally, the actual borrower would have to authorise the payment.

The CHAIRMAN: Would you always physically visit the site and check it?

Mr O'Brien: That is right.

The CHAIRMAN: Were you ever aware of any problems in the trust account?

Mr O'Brien: The trust account was audited several times by not only the Ministry of Fair Trading but also the Australian Securities and Investments Commission. There was nothing wrong with the trust account.

The CHAIRMAN: Were you ever aware of any problems?

Mr O'Brien: The only time I was aware of anything was that payment in dispute with Dominic Casella and Owen Blackburne, as Serge Desveaux mentioned earlier.

The CHAIRMAN: Were you ever aware of the arrangements Mr Blackburne had with Mr Pavlinovich and Mr Casella regarding interest in the development proposals?

Mr O'Brien: I was not aware of those arrangements initially, but it became apparent that they were involved.

The CHAIRMAN: When did it become apparent?

Mr O'Brien: I cannot be precise. Probably it was a year or so after they commenced, and they would have commenced in 1992 or 1993; I am not sure exactly.

The CHAIRMAN: That was prior to Mr Blackburne's death.

Mr O'Brien: Mr Blackburne controlled those arrangements while he was alive.

The CHAIRMAN: Were you aware of them?

Mr O'Brien: I became aware of them, yes.

The CHAIRMAN: Had those arrangements been disclosed in the proposals that had been sent out?

Mr O'Brien: The property was always in the name of the company and the name of the borrowers - whoever it happened to be; Pavlinovich and Johnson or whomever. Mr Blackburne's name was not mentioned in any of those documents or any of the loan applications.

The CHAIRMAN: Did that concern you?

Mr O'Brien: I believed Mr Blackburne was too closely involved with several of the borrowers.

The CHAIRMAN: Did you do anything about it?

Mr O'Brien: I told him that he should distance himself.

The CHAIRMAN: That was it.

Mr O'Brien: That was his decision.

The CHAIRMAN: You were making representations to clients on his behalf without disclosing an interest of the principal of that company. Surely you had some obligation.

Mr O'Brien: The applications were all in the name of whatever company, with the directors involved putting up their personal covenants.

The CHAIRMAN: Surely Mr Blackburne's having a secret interest would have been of great concern to you.

Mr O'Brien: The security was still there. The project was still valued there.

The CHAIRMAN: You do not think the borrowers would have wanted to know Mr Blackburne's secret involvement in those deals.

Mr O'Brien: I think that if they had, they probably would have put their money in quicker.

The CHAIRMAN: Why would you not declare it then?

Mr O'Brien: Because that was his choice.

The CHAIRMAN: After Mr Blackburne's death, were there any other examples of that sort of arrangement between Mrs Blackburne and anyone else of which you were aware?

Mr O'Brien: No, there was not. Mrs Blackburne did not want to be involved in the dealings with Pavlinovich, Johnson and Casella.

The CHAIRMAN: Were you aware of any kickbacks to anyone?

Mr O'Brien: No. From where I sat it seemed that while Owen Blackburne had been involved, the funds were continuing into different projects.

The CHAIRMAN: Were you aware of any funds going overseas?

Mr O'Brien: Not from the trust account.

The CHAIRMAN: Were funds from Blackburne and Dixon going overseas?

Mr O'Brien: No, not as an investment or anything of that nature.

The CHAIRMAN: Were you aware of any funds from Mr Blackburne going overseas?

Mr O'Brien: At one stage he established a business in Taiwan, which dealt with immigrants, but it did not get off the ground.

The CHAIRMAN: The reason I ask you is that Ms Jones gave us some evidence and I am trying to establish whether you would have known why those payments went overseas.

Mr O'Brien: An office was established in Taiwan with a Taiwanese partner who processed applications from business immigrants. You will recall that at one stage business immigrants with certain sums of money were allowed to come into the country. The object of establishing the business there was to procure those fees for that. I was not involved in that at all. That was something completely separate from Blackburne and Dixon.

Hon NORM KELLY: When was this investment in Taiwan happening?

Mr O'Brien: The early 1990s is about as accurate as I can be.

The CHAIRMAN: Is there anything else you would like to say before we close? Is there nothing you wish to raise with us in private session?

Mr O'Brien: No.

Hon GREG SMITH: I asked a question before and I did not quite get the answer. Of the loans or mortgages that Blackburne and Dixon had outstanding, when you were involved, how many were actually in default as a result of not being able to refinance?

Mr O'Brien: In the latter part of 1999 there were a considerable number that we could not refinance. I could not put a figure on it, but there would have been 10 or 20 or more.

Hon GREG SMITH: Out of how many?

Mr O'Brien: It would be in excess of 300 loans. There might have been more. I do not have any evidence to back that up.

Hon GREG SMITH: I was looking for a percentage figure.

Mr O'Brien: As you are aware, the mortgage finance business fell into disrepute in 1999 and it was very difficult to refinance. In the end, before people's loans expired we told them to get them financed elsewhere, because we were aware that we would have difficulties refinancing, even if the loans had been correctly serviced.

Hon GREG SMITH: Even in that scenario, it would be only 10 per cent of the total loans that were brokered?

Mr O'Brien: In the end it would have amounted to more, because we could not renew them. However, I could not tell you the exact number.

The CHAIRMAN: Thank you very much for your time. Because of the time, I doubt that the committee will require you to appear again. I will leave the summons open at this stage and if we require you again, we will notify you. Thank you very much for your time this afternoon.