

ASIC rejects promissory fault
Paddy Manning and Anthony Klan
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AFTER meeting with more than 60 angry investors in Sydney last week, Australian Securities & Investments Commission chairman Jeffrey Lucy has defended the role of the corporate regulator in the \$300 million-plus collapse of Perth-based developer Westpoint Corporation.

More than 3000 investors in debt-like "promissory notes" issued by Westpoint appear likely to lose their capital, with two-thirds of the company's development projects around the country now in administration or receivership and the parent company itself in liquidation, owing more than \$451 million.

Rod Norgate invested about \$180,000 in one of Westpoint's Brisbane projects and is now a member of a Westpoint victims action group and a participant in a class action being launched by lawyers Slater & Gordon.

Mr Norgate attended the meeting at ASIC's Sydney offices and said afterwards: "We had a lot of hard questions to ask them because we felt that ASIC has been negligent with what they've been doing in regard to regulating the financial services industry and also with their policing of the financial planners out there.

"ASIC was alerted to the use of promissory notes and what Westpoint were doing back in 2000 (by consumer advocate Denise Brailey) and they did nothing about it.

"They say in 2003 they put out a warning for people to be aware that some of these companies were using promissory notes, but they can't tell us who they gave that warning to and where it was posted.

"We are saying ASIC is responsible, they have to make good the shortfall that the investors are going to suffer and we're also calling for a royal commission into ASIC because it's not only the Westpoint debacle but they seem to fail everyone over and over again."

Mr Lucy said last week that any calls for a royal commission were a matter for the Government, not ASIC, to decide.

He rejected the notion that ASIC had been negligent and should compensate.

"As to whether or not the regulator is negligent, the law provides that we're a government agency and as long as we act within the bounds of our responsibility, negligence is not something that automatically triggers."

Mr Lucy said he did not believe ASIC had acted negligently. He said although concerns were raised about Westpoint's use of promissory notes, there were no concerns about its financial solvency in 2001 and 2003.

He said ASIC had tested the limit of its jurisdiction in 2004 by taking court action against Westpoint over the use of promissory notes, and lost. The appeal process was continuing, Mr Lucy said.

On Friday ASIC said it had written to all investors in promissory notes issued by two Westpoint companies in June 2004, alerting them to proceedings in the Supreme Court of WA.

Mr Lucy denied last week that ASIC should have taken away Westpoint's financial services licence.

"I don't think that by itself would have been sufficient. In fairness to Westpoint, promissory notes continue to be a lawful and legitimate way of raising money. While we may not like them and while we may have concerns about them, that's the law ... which is what we appealed. You can't do more than that."

At the meeting with investors, Mr Lucy said, "most gave us the clear impression they'd relied on financial advisers".

"Essentially they feel very let down, both as to whether or not there was a proper assessment of the risk, and whether or not there was a proper communication of what the product was all about.

"Many of them were quite categoric: they were told the investment was secure," Mr Lucy said.

Slater & Gordon's class action over Westpoint is likely to target 75 to 100 financial planners -- with the aim that investors will be able to recover from the planners' insurers.

Mr Lucy said it was too early to say whether financial planners had breached licence requirements, including the so-called "know your product" and "know your client" rules.

"There would appear to be instances where that is very clearly the case," he said.

Among investor accusations that financial planners did not disclose they were receiving commissions from Westpoint of 10-12 per cent, Mr Lucy said there was "no doubt that's the case in a number of instances. But the law requires that there is disclosure, and to the extent that there isn't, the adviser has broken the law".

Mr Lucy said he did not believe payment of commissions for investment advice should be banned. "I think there is a lot more merit in capping them, than there is banning them."

Mr Lucy said consumers found it hard to understand ongoing or "trail" commissions and in situations where financial planners were receiving them without providing any service to the client. "If you were going down the path of banning and or capping then that's exactly the sort of thing you'd start to look at."