1 November 2024

Senator Andrew Bragg
Chair
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Bragg,

Senate Economics Reference Committee Inquiry into Wealth Management Companies

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to submit to the Senate Economics References Committee inquiry into Wealth Management Companies and the impact on the Compensation Scheme of Last Resort (CSLR).

Our members help empower Australians to build a better financial future. Financial advice delivers great benefits to those who are fortunate enough to have access to it. Financial advice delivers a plan for the future, a sense of confidence that delivers peace of mind and helps to guide financial behaviours to enhance the prospect for success and to avoid bad decisions.

Financial advice is also a profession that is under pressure, having declined significantly in numbers over recent years. Further pressure, such as the significant contingent liability posed by the poor conduct of wealth management companies and the impact this has on the CSLR will only make this situation worse. It will also serve to further increase the cost of financial advice, putting it out of reach of more Australians.

In our attached submission, we have made a number of recommendations and addressed a number of key relevant considerations that we suggest are worthy of focus by the committee including:

- The deep flaws in the Dixon Advisory business model, enabling the placement of expensive in-house products to clients on a large scale.
- The substantial extent of fees that were being generated by the Dixon business group from the URF product and how this conflict of interested evidently impacted the strategies and investment decisions of the URF.
- The extent to which the regulatory focus on the financial advice provided to Dixon Advisory clients ignored the serious failings in the product manufacturing and investment management arms of the group.
- The inadequacy of the regulatory response to the Dixon Advisory and URF matter.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

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- The ability of parent entities to remove assets and extinguish intercompany debt in the lead up to advice subsidiaries being placed into administration, and the lack of oversight or regulatory action in response to this.
- Serious flaws in the design of the CSLR, that need to be addressed to ensure that this scheme achieves its policy intention in a manner that is sustainable for those sectors who are forced to pay for the cost of claims.

At the end of this submission we have set out a number of key recommendations in response to the Dixon Advisory matter and the broader issues with respect to the design and implementation of the CSLR.

As we will make plain over the subsequent submission, we are firmly of the belief that the poor consumer outcomes evidenced at Dixon Advisory were more directly a result of poor investment management decisions than bad advice. If the in-house investment products had not been managed so poorly, consumers would not have suffered such losses that led to the material number of complaints that will end up in the CSLR. Equally, the performance of the products exposed the systemic conflicts in the business model and how these appeared to benefit the business rather than Dixon Advisory's clients. This is evidenced by feedback we have received from our members, some of which we include here (refer to Appendix 4 for more detail):

> *"[I] dealt with one of their clients and she completely had her hands tied as she was sitting on major unrealised losses with their investments. ... She is unable to retire as she is about 10 years behind on her original projected retirement as her investments have been wiped out by Dixon investments."*
>
> *"Dixons - reviewed portfolio for a former Dixon's advice client about 10 years ago and I highlighted the conflict of interests and extortionate fees. The client was completely unaware. This is a highly educated individual with a high level of comfort with numbers and documentation."*
>
> *"I am aware that senior E&P staff voiced concerns about Dixons' practices before the merger was even finalised. The poor investment practices of Dixons were well known by a lot of people in the industry. How did ASIC not know this or investigate or intervene?"*[2]

Our members are extremely proud of the services they provide the businesses they work for and the role of the financial advice profession. Our members were some of the first to raise awareness of some of the problems at Dixon Advisory with ASIC. The information presented below is testament to the concerns that our members have had for many years about the above-mentioned business practices and, eventually, the impact that it will have on the CSLR that they pay for.

Our submission raises many questions about things that we do not know or have not been privy to. We encourage the Inquiry to ask these questions of those relevant on behalf of all financial advisers and their clients.

We would welcome the opportunity to discuss the matters raised in our submission with the Committee and to appear as a witness at a hearing of the Inquiry. If you have any questions about our submission, please

[2] Appendix 4: FAAA Member Survey Feedback on the implementation of the CSLR, October 2024

do not hesitate to contact either myself on [redacted] or [redacted], or George John, Senior Manager, Government Relations & Policy on [redacted] or [redacted].

Yours sincerely,

Sarah Abood
Chief Executive Officer
Financial Advice Association of Australia

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Senate Economics References Committee Inquiry into Wealth Management Companies

Effective date: 1/11/2024

Submitted to: Senate Economics References Committee

FINANCIAL ADVICE ASSOCIATION AUSTRALIA
GPO BOX 4285 SYDNEY NSW 2001

CONTACT@FAAA.AU
WWW.FAAA.AU

T 1300 337 301
ABN 62 054 174 453

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Introduction

The Senate Economics References Committee has committed to undertake an inquiry into "*The reasons for the collapse of wealth management companies, and the implications for the establishment of the Compensation Scheme of Last Resort (CSLR) and challenges to its ongoing sustainability, with particular reference to Dixon Advisory & Superannuation Services Pty Limited (Dixon Advisory) as an example*". The FAAA is committed to supporting this inquiry in any way that it can and notes the importance of this inquiry in ensuring that the CSLR can deliver on its objectives without creating unacceptable risk and unfair cost for other parties, including the many good advisers who have done nothing wrong, and their clients who will pay more as a result.

We would like to make clear that the FAAA and our members support the right for consumers to be fairly compensated for detriment suffered as a result of wrongdoing when the company in question no longer exists. The establishment of the scheme was supported in principle by all major players in financial services including the FAAA. There is broad agreement that the CSLR is an important mechanism to ensure consumers who have suffered a loss have recourse, and it gives consumers greater confidence in engaging with the financial services sector.

The CSLR is designed as a sector-pays model, and the largest proportion of its funding is expected to be provided by the financial advice sector. From the very early days of consultation on the implementation of a CSLR, the advice profession has been very concerned about the likely implications in the context of a "black swan" event. This black swan event occurred in the form of the Dixon Advisory matter. Even though the issues at Dixon Advisory occurred well before the scheme had commenced, as a result of the retrospective nature of the design of the scheme, the conduct of this company alone will likely have a huge impact on all financial advisers who are left to cover the compensation payable to Dixon Advisory clients.

For this reason, the FAAA has been calling for a public inquiry into the Dixon Advisory collapse and the consequences for the CSLR. We strongly welcome this inquiry. It is critical to the advice profession to ensure that there is a deep understanding of the Dixon Advisory matter. Whilst the responsibility for post CSLR complaints is being met by the advice profession, the client losses arose as a result of the in-house investment product design and decision making within the broader Dixon business group. Regrettably, there has been no regulatory, legal or broader focus on what went wrong with the product and investment management at the Dixon business group. Now is the time to elucidate the conduct within the broader Group that ultimately led to such poor outcomes for clients, and the most appropriate regulatory response to protect consumers in the future.

Whilst there are reports of significant client losses involved in other Dixon business group related investment products such as New Energy Solar, Asian Masters Fund, Cordish Dixon Private Equity Funds and Fort Street Real Estate Capital Funds, the primary focus of attention, including by the administrator of Dixon Advisory and much of the media activity has been on the US Masters Residential Property Fund (URF). We have therefore directed much of our focus on what happened at the URF.

Our submission presents an analysis of the facts that are publicly available and we felt relevant. There are still significant outstanding questions that we do not have the answers to and require further investigation. We recognise that the Inquiry provides the means to have those questions answered.

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Addressing the Terms of Reference

(a) the underlying cause of the collapse of wealth management companies such as Dixon Advisory, including the business model and influence of the sale of related party products, for example the US Master Residential Property Fund

The following is based on publicly available information garnered from a variety of reliable public sources. However, it does not provide the full picture of the Dixon Advisory business model, given the lack of publicly available analysis on what happened and the difficulty in accessing detailed information on the business group prior to its public listing in 2018. We encourage the Committee to investigate the issues we raise in more detail.

In responding to this Terms of Reference item, our primary focus is on the business model Dixon Advisory operated within, and the URF product – the failure of which is key to the consumer detriment.

The Corporations Act already includes responsibilities with respect to the management of conflicts of interest (Section 912A(1)(aa)), and financial advisers have an additional obligation to prioritise the interests of clients where there is a conflict (Section 961J and the Financial Adviser Code of Ethics). In the normal course of business, these obligations are sufficient to protect the interests of financial advice clients.

In the case of Dixon Advisory, clearly the law was not adhered to, which is evidenced by the following:

- An investment committee that made investment decisions on behalf of individual clients, effectively pushing clients to invest in in-house products, independent of their goals, objectives and personal circumstances.
- Substantial conflicts of interest, resulting from a huge flow of fees from in-house products to various entities within the Dixon business group, based upon gross assets, not net assets.
- A substantial overexposure to an investment option (URF) that was unlisted, very narrowly focussed (NY/NJ residential property), highly geared, employed and paid payments to multiple related parties, and high risk.
- A lack of independent research and inadequate flow of information to the advisers on the underlying performance of the fund.
- A fund that substantially moved away from its original intended purpose, becoming overleveraged and moved into the area of property renovations, presumably driven by the flow of fees to the Dixon business group.

This type of business model and level of conflicts represents poor business practices, would not be supported by the financial advice profession, and is highly likely to be in breach of the current legal framework. We would argue that it is not an inadequacy in the legal obligations placed on AFSL holders that has caused this consumer detriment.

There remain significant gaps in the information about Dixon Advisory's conduct, and the related investigations, actions and settlements. We suggest that there are key underlying causes to the detriment Dixon Advisory clients suffered, that were seemingly not investigated. It is also our position that there are

provisions within the law that require fixing to ensure parties that neglect their obligations to clients and under the law, are held accountable and responsible for compensating consumers who suffer detriment.

What is a responsible entity

To understand the Dixon Advisory business model, it is important to know what a Responsible Entity of a financial product is and the responsibilities of this function. A Responsible Entity must be an Australian public company, hold an AFS licence and comply with their AFS licensee and Responsible Entity obligations under the Corporations Act. It can be 'internal' or 'external' to the fund it is acting for, and performs, amongst other duties, the role of trustee and manager.

In summary, a Responsible Entity must:

- act honestly
- exercise the degree of care and diligence that a reasonable person would exercise if they were in the Responsible Entity's position
- act in the best interests of members of the fund and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests
- treat all members with interests in the same class equally and members in different classes fairly
- ensure the fund has a constitution and compliance plan that meet regulatory and legal requirements
- establish and provide oversight of risk management systems for the fund
- ensure all scheme property is held separately from Responsible Entity Property and property of any other fund
- Report any breach of the Corporations Act relating to their scheme to ASIC.

A Responsible Entity's services and responsibilities can include (for example):

- issuing the product disclosure statement
- complying with annual financial reporting and auditing obligations
- reporting obligations to investors
- dealing with investor's inquiries
- Engaging service providers such as investment managers

The Business Model

Dixon Advisory was founded in 1986. Dixon Advisory provided administration services and financial advice to more than 4,500 Self-Managed Super Funds (SMSFs) with an estimated combined invested asset value of $4 billion.

In 2011, Dixon Advisory started creating its own products to sell to its clients, particularly its flagship product, US Masters Residential Property Fund (URF). Dixon Advisory operated a conflicted business model that enabled it to direct its clients' investments towards in-house products while collecting fees from both advice clients and its products.

It is difficult to illustrate the business structure and model of Dixon Advisory and its related entities based on the information available, particularly given the 2017 merger with Evans & Partners and the name changes within the broader business group. The following includes some of the entities named in public documents and court filings as either the parent company or related entity of the business group, however we suggest a more detailed examination of the business model is required:

- Evans Dixon – formed from the merger of Dixon Advisory Group with Evans & Partners in 2017. Evans Dixon was publicly listed in 2018 and changed its name to E&P Financial Group (E&P) in 2020.
- Evans and Partners, which is a separate advice AFSL holder in the E&P Group.
- Dixon Advisory Group, which was the holding company of Dixon Advisory and later changed its name to E&P Operations.
- Dixon Advisory & Superannuation Services (DASS), which we refer to in this submission as Dixon Advisory.
  - Dixon Advisory was the Responsible Entity of the URF from inception until June 2015.
  - all financial advisers acting under the Dixon Advisory AFSL were salaried.
- Walsh & Co – the Responsible Entity of the URF from June 2015, which later changed its name to E&P Investments.
- US Masters Residential Property Fund (URF).
- URF Investment – the investment manager of URF.

The merger and numerous name changes during Dixon Advisory's 20 plus years of operation, make it challenging to clearly attribute the business activity, actions and responsibility relevant to this scandal to the appropriate party. In this submission:

- "Dixon Advisory" - refers to Dixon Advisory & Superannuation Services (DASS)
- "The Dixon business group" – refers to the broader group that is now part of the merged entity E&P Financial Group.

As was highlighted by the judgement in the action that ASIC took against Dixon Advisory, the recommendations for clients to invest in the URF and related products were driven by the Dixon Advisory Investment Committee. This committee made the decision on how much each client would invest in related party products. Then it was the job of the advisers to present these recommendations to their clients and get them to agree. The URF was certainly not the only in-house product that was recommended to Dixon Advisory clients, however it was the most significant. In fact, the URF became known as the group's Flagship product. It was responsible for a huge percentage of the overall business' revenue – reported as close to two thirds of revenue around the time of the 2018 float.

The URF paid fees to Dixon Advisory related companies as set out in the table in Appendix 1. This information is from the first AFCA case (716627) released in February 2024. This table shows the extent of the fees that were paid whenever the URF issued units, borrowed money, purchased properties, sold properties, leased a property, managed a property or renovated a property. Importantly, these fees were also paid on the basis of the gross assets of the fund, not the net assets, so when the URF was geared, and as

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we demonstrate below it was significantly geared, this served to grow the fees the Dixon business group received.

The 2018 float of Evans Dixon made it public just how reliant the group was on the fees from one single internal investment product, the URF. As mentioned above it has been reported that URF accounted for two-thirds of group revenues. However, as discussed below, there had been numerous complaints raised with ASIC about the business practices at Dixon Advisory for more than a decade.

As discussed under Terms of Reference (b), certain directors held positions in all these entities at the same time resulting in systemic conflict of interests. Dixon Advisory operated a salaried (employed) adviser only business model.

In-house product - US Master's Residential Property Fund (URF)

What caused the problem at Dixon Advisory was a deeply conflicted business model that resulted in the interests of the business taking priority over the interests of clients. One thing stands out as the key driver of the substantial client losses, and that is the poor performance of related party products, and most particularly the URF. The following chart shows the share price performance of the URF.

The September 2020 Statement of Filing in the action that ASIC took against Dixon Advisory, highlights the approximate $134 million in fees that Dixon Advisory and related entities earned from the URF over a three and a half year period between 1 January 2015 and 30 June 2018. However our own analysis, suggests that this number could have been much higher. There is no suggestion that any of this will be returned for the benefit of Dixon Advisory clients who lost so much money on the URF Fund. The $4 million that E&P contributed to the class action settlement is a tiny fraction of the fees that this business received from this fund. It is the story of how this substantial stream of fees influenced the investment decisions and other decisions within the Dixon business group that needs to be understood.

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The URF origins

The URF, which is a listed managed investment scheme, was launched in April 2011. At that time (and until June 2015) the Responsible Entity was Dixon Advisory, and Dixon Advisory clients represented more than 80% of the investor base. The initial investment proposition was to launch a fund that was focused on the New York and New Jersey residential property markets, to take advantage of the GFC-related decline in property prices and the strong Australian dollar. The investment manager was another Dixon Advisory related company called URF Investment.

- The initial offering in April 2011, at a price of $1.60 raised approximately $69m. At that stage there was no debt held within the fund.
- A further issue in October 2011 raised $31.1m.
- A third issue of units in May 2012 raised $65.8m at $1.63.
- A further $100m was raised in December 2012 at a unit price of $1.61.
- $87.3m was raised through a rights issue in February 2014 at a price of $1.80.
- The URF raised a further $20m in August 2015 under a unit purchase plan at a price of $2.
- In September 2016, a further $102.9m was raised through a placement of $64.5m and a unit purchase plan for $38.4m, both at a price of $1.95 per unit.

Across all of these issues and placements, a total of approximately $475m had been raised, although this did not include other funds raised through the dividend reinvestment plan (DRP), which was evidently a significant amount with $9.4m being retained in February 2017 alone from the December 2016 quarter DRP. It was predominately Dixon Advisory clients who owned these URF units.

URF Responsible Entity

As mentioned above, in addition to the fees it collected from the in-house funds, Dixon Advisory provided other services to the URF including the Responsible Entity function from April 2011 – June 2015. At the time of ASIC's 2015 surveillance of Dixon Advisory (discussed below), the Responsible Entity was seemingly transferred to a related entity, Walsh & Co. At a later date, Walsh & Co was renamed E&P Investments Limited under the E&P Group brand.

Other URF Related Products

The URF was the initial and primary in-house product, however a series of URF related products followed including the following:

- URF Notes I – initially offered in December 2014, raising $150m, being an unsecured note paying 7.75% interest.
- URF Notes II – offered in September 2015, raising $90m, being an unsecured note paying 7.75% interest.
- URF Notes III – offered in January 2017, raising $175m, being an unsecured note paying 7.75% interest.

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- URF Convertible Preference Units (CPUs)[3] – offered in December 2017, being a convertible preference unit that could be converted into URF units at a time of the companies choosing.

It is important to note that the clients of the three notes issues got their money back at the maturity dates. The URF Convertible Preference Units were ultimately converted to URF units in 2023, however the conversion rate would suggest that these clients only got around 70% of the face value of their investment (suffering a 30% loss). Those who had received dividends in the form of reinvesting into URF units (not the CPU units) along the way, will have lost a greater amount as a result.

URF product and promotion issues

Even though these were public offers, the Statement of Agreed facts in the ASIC case against Dixon Advisory indicates that for the URF Notes II, 95.1% were held by Dixon Advisory clients at the time of issue; and for URF Notes III, 87% were held by Dixon Advisory clients at the time of issue. In the case of the CPUs, 92.6% of investors were Dixon Advisory clients at the time of issue. These are remarkably high allocations to just one licensee.

This has very material implications that need to be considered, such as the consequences of the licensee recommending to clients to sell their units. This would create a huge problem for those clients who did not move immediately. It is our assessment that in the event of a sell recommendation from the licensee, there simply would not be sufficient buyers available to meet the needs of sellers. This would likely have resulted in a substantial fall in the unit price. In practice it would have made it virtually impossible for Dixon Advisory to have ever recommended that clients sell the URF, as large losses would have been caused to clients. The Dixon Advisory clients were stuck in a Hotel California scenario. This is a risk that should have been understood and carefully considered as the scale of the URF operation grew, including the level of leverage, as discussed further below.

URF product analysis

An analysis of the URF financial statements as set out in the following table, for five years across the period 2012 – 2020 demonstrates a drastic growth in the investment in property and a substantial increase in debt.

	2012	2014	2016	2018	2020
Property Assets	116,149,363	543,058,098	1,049,977,873	1,238,514,815	917,371,669
Debt	5,607,591	282,795,323	540,116,329	669,523,204	547,560,316
Debt to property ratio	4.8%	52.1%	51.4%	54.1%	59.7%

This highlights the substantial growth in debt from a relatively ungeared level in 2012 to nearly 60% of property assets by 2020. This needs to be contrasted against the gearing policy in the 2011 Product Disclosure Statement (PDS), which stated the following:

[3] Convertible Preference Units (CPUs) are a type of financial instrument that can be converted into a different form of security, typically common stock, at a predetermined conversion rate. They offer investors the benefits of both fixed-income securities and the potential for capital appreciation.

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Will the Fund undertake borrowings?	The Fund intends to obtain US dollar denominated borrowings indirectly via the US REIT and wholly owned entities after it commences investing. These borrowings will be secured against the assets of the US REIT. The consolidated gearing or leverage ratio of the Fund is expected to be no greater than 50%, however, the Fund may exceed such levels for a short period. Should the US REIT and its wholly owned entities be unable to obtain borrowings on acceptable terms, they will remain ungeared. The Fund does not intend to undertake any borrowings directly, though it may borrow up to 10% of its gross asset value for capital management purposes.	Section 6.7

The fund has clearly failed to comply with this gearing policy, in that the level of gearing was above 50% on an ongoing basis from 2014 to 2020, and much of the debt was unsecured notes issued by the URF in Australia (largely to Dixon Advisory clients), as opposed to being secured against the assets of the US REIT. Given that the URF Notes were paying 7.75% per annum, it would be interesting to contemplate whether this would be assessed as 'on acceptable terms', as originally proposed in this policy statement in 2011. Finally, the fund itself (as opposed to the US REIT), did in fact undertake gearing by issuing the three tranches of unsecured notes and the CPUs, at a level well above the 10% limit.

The consequences of this high level of debt, was a very high level of interest expense. This is set out in the following table, which shows the rental income, interest expense, profit(loss) and interest expense to rental income ratio.

	2012	2014	2016	2018	2020
Rental Income	4,161,261	13,843,113	30,437,880	37,396,617	45,155,666
Interest Expense	113,780	183,967	21,522,977	37,106,290	36,470,372
Profit/ (loss)	-1,497,881	-3,889,598	-45,127,626	-28,135,040	-95,519,724
Interest to Rental Income ratio	2.7%	1.3%	70.7%	99.2%	80.8%

It is important to understand that interest expense, whilst the most significant expense from 2015 through to 2020, was not the only expense. There were in fact many other substantial expenses, including all the related party expenses. An analysis of the related party expenses disclosed in the financial statements for the years 2016, 2017 and 2018 includes those listed in the table below. By 2018, the (then named) Evans Dixon business group had made the decision to cut back on the investment management fee and some other fees, which resulted in a significant reduction in that year:

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Related Party Expenses	2016	2017	2018
Responsible Entity	3,859,565	4,480,124	4,933,550
Investment Management	12,658,953	7,286,922	
Leasing Fees	1,206,569	1,092,434	688,788
Asset Disposal Fee	2,037,526	528,784	1,121,509
Asset Acquisition Fee	2,019,411	1,250,953	422,868
Debt Arranging Fee	3,811,968	3,176,293	1,201,529
Recharge by DA USA	17,597,956	16,340,390	8,889,192
Structuring and handling fee - RE	968,432		
Structuring and handling fee - DASS	905,125		
Fund Administration fee	120,000	120,000	120,000
Architectural Design and Construction	66,000,000	72,262,914	68,593,930
Total	**111,185,505**	**106,538,814**	**85,971,366**

The Dixon business group was charging the URF significant on-costs on all construction and renovation activity, which is part of the numbers set out above. What is interesting to note is that the 2011 PDS included no reference to a strategy of renovating properties in order to increase the value of the properties. It would be interesting to understand the justification for this change of strategy, particularly in the context of the additional fees that were being generated from the renovations and the prospect that renovations could enable property revaluations, which might result in the payment of higher fees to the Responsible Entity and the investment manager.

Financial implications

An observer of the URF financial statements would not be surprised to learn that this fund eventually suffered a significant decline in its unit price, for the following reasons:

- It was overgeared, resulting in a very high interest expense.
- The operating costs were far too expensive with much of this cost resulting from interest and related party fees.
- Rental income was reduced as a result of the renovation work that was being done on many properties.
- Substantial property fees continued to be paid to the Dixon business group during this renovation period, despite the lower rental income generated.
- The fees being paid to the Dixon business group were being paid on gross assets, providing an incentive to maximise the level of gearing. Equally, given the payment of fees for both the purchase and sale of properties, there was an incentive to churn properties.

The fact that the URF generated a loss in each of 2012, 2014, 2016, 2018 and 2020 (excluding below-the-line currency exchange gains) is evident that the fund was underperforming. The ongoing support of Dixon Advisory and the lack of any redemption pressure helped to increase fees to the group, and defer (but not avoid) the eventual collapse of the unit price.

Much of this would have been evident at the time if independent research on the URF had been conducted by an independent external research house. Arguably the unit price was kept up for a number of years by artificial means. The lack of independent research on the URF was a very substantial warning sign, and it

would be interesting to understand how the Dixon Advisory Investment Committee initially formed the view to promote the fund and to put it on their approved product list and why it was kept on the list throughout.

The important question to emerge from this is why ASIC did not appear to investigate whether the Responsible Entity or the investment manager had breached any obligations to URF investors. In the context of all of the evidence above, we find it concerning that ASIC did not look at this. The failure has been assessed as a failure of financial advice. And yet, to our knowledge, no financial adviser has been sanctioned in this matter. There appears to have been no attempt to investigate the many failures of the product that led to consumer harm. At a minimum, there were clearly breaches of the gearing policy as published in the 2011 PDS, as set out above. If the actions we have raised above are not a breach of any law by the RE, the investment manager and or the parent company, we would suggest that the law needs to change to ensure that they are.

Analysis of Dixon Advisory AFCA Determinations

Whilst AFCA has only processed a small percentage of the Dixon Advisory complaints, there are already more than 50 determinations that have been published on the AFCA website and it is possible to reflect on the common themes:

- Almost all of the complaints are being awarded in the clients' favour, on the grounds of failure to comply with the Best Interests Duty, inappropriate advice and failing to prioritise the interests of the client.
- Substantial exposure to related party investment products that have grown over time.
- Increasing exposure to growth assets beyond the level originally recommended.
- Excessive exposure to property, and specifically to the URF.
- Treating property as both a defensive and a growth asset, which is not the normal practice in the advice profession.

All of this is expressed in the context that these clients were recommended to invest on multiple occasions in separate offerings/issues of URF and URF related products, which meant that their exposure increased materially over time.

We have contemplated this in the context of what the judge said in the September 2022 judgement; that the Dixon Advisory Investment Committee determined the recommendations according to *standard parameters* and the client's risk profile. Arguably a change in the *standard parameters* or the client's risk profile would enable them to invest additional money in the URF and URF related products.

In our view, this consistent feedback from the determinations, warrants an investigation of the following:

- Whether Dixon Advisory deliberately classified property as partly growth and partly defensive in order to enable clients to invest more in the URF and URF related products. It would be necessary to investigate when this practice commenced, and whether this arose after the launch of the URF.
- Whether Dixon Advisory changed the asset allocation for their risk profile categories over time to enable clients to invest more money in growth assets.

We have no evidence of the above, however we think that it is worthy of investigation, and would require a careful consideration of the actions of the Dixon Advisory Investment Committee and what motivated them.

Other financial services entity failures

Other failures that we have become aware of since the emergence of the CSLR are Libertas Financial Planning Pty Ltd (Libertas), United Global Capital, and Next Generation Advice.

Libertas seems to be a matter of the winding down of an advice subsidiary by the parent company Sequoia, with some overhang of complaints, whilst at the same time transitioning remaining advisers and clients to another operating subsidiary. It appears to have been a business restructuring, where liquidation was used as a means of neutralising all outstanding liabilities (including potential future claims related liabilities), whilst also extracting as much value as possible. We have more to say about this under Terms of Reference item (d).

The United Global Capital and the related Global Capital Property Fund collapse is a matter that has developed during the course of 2024, and will most probably be a material contributor to demand for payments from the CSLR in the coming years. It is relatively early in the emergence of this issue, however it appears to be another case of a vertically integrated business where an advice firm recommended a related party property fund that was investing in development property loans. This is often a cause of problems for funds of this nature. It may well be a good test case for this inquiry.

On 24 October 2024, ASIC issued a media release about Next Generation Advice Pty Ltd, which is now in liquidation. The release indicates that the representatives of this advice licensee may have been actively involved in recommending investments in Global Capital Property Fund and the Shield Master Fund, both of which are now in liquidation. This is a subject that may be worthy of consideration by this inquiry. We note this is an ongoing matter with action currently pending in relation to these entities, and the impact on clients and the CSLR is currently unclear.

It is notable that other recent collapses such as Mayfair 101, and Sterling Group, are likely to have minimal impact on the CSLR. This is because little or no retail financial advice was provided in these cases, with the product promoters largely relying on Wholesale and Sophisticated investor exemptions to sell the products. As a result, consumers who have lost money in these failures appear unlikely to receive any compensation.

(b) how the actions of directors of wealth management companies and related entities, senior management and the individual advisers contribute to the collapse of these companies

As discussed above, this type of business model and conflicts are not supported by the financial advice profession and the current legal framework should not permit this type of heavily conflicted business activity. On the basis of what we know, in our view it is not an inadequacy in the legal obligations placed on advice AFSL holders that has caused this consumer detriment.

Conflicts of Interest

The extent to which conflicts of interest were disregarded at Dixon Advisory can be illustrated by reference to the multiple roles held by one individual, Alan Dixon. He was the CEO. He was also on the Dixon Advisory

Investment Committee for almost all this time, and a long-time director of Dixon Advisory, including during the time that Dixon Advisory was the Responsible Entity of the URF. He was also a director of the investment manager – URF Investment - and a director of the ultimate holding company of all these firms. This generates obvious questions:

- When one person has such broad responsibilities, how can they possibly manage the conflicts to ensure that the priority is placed on their clients' best interest?
- What policies and governance procedures did Dixon Advisory have in place during this period to address these conflicts of interest, and were they adhered to?

Dixon Advisory Investment Committee

In the case of Dixon Advisory, the issue is much more serious and the problem is much more obvious. This was not a case of individual advisers making their own decisions to recommend in-house products to their clients, but instead an investment committee that comprised people from across the different parts of the business who made over-arching decisions with respect to how much individual clients would invest in each of the various URF related product issues. This is a case of a top-down decision for clients to invest, with the full knowledge of the related party benefits that would flow from increasing the amount of money invested in the URF.

Outstanding questions include:

- What governance arrangements were in place for the Investment Committee?
- What policies did the Investment Committee use to guide its decision making?
- Which other businesses within the Group were represented on the Investment Committee?
- What qualifications and experience did the members bring to the Investment Committee?
- Did the parent entity exercise effective control over the Investment Committee, and if so were directors of the parent entity acting as shadow directors of Dixon Advisory?

Financial advisers

Under the AFS licensing regime in the Corporations Act, financial advisers must be licensed by an AFS licence holder (known as a licensee). Today, the large majority of financial advisers are authorised representatives of licensees and operate their own businesses separately to the legal entity that holds the AFSL. Dixon Advisory was a salaried adviser business model and directly employed its financial advisers.

As discussed under Terms of Reference (g) below, the 19 September 2022 court judgement handed down in relation to Dixon Advisory found that ASIC had concluded that:

> *ii. the DASS Investment Committee determined the recommendations according to standard parameters and a client's DASS risk profile;*
>
> *iii. the representatives were only given a limited time to review the recommendations determined by the DASS Investment Committee and decide whether they should be overridden;*

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iv. DASS did not provide the representatives with the relevant documentation to assist with deciding whether or not the recommendation was appropriate to the client and whether or not to override it, or did so only shortly before this decision was due;" [4]

This clearly indicates the Dixon Advisory Investment Committee 'called the shots' and decided the recommendations that should be put to each client, and that the financial adviser delivered these recommendations to the client. There are a number of unanswered questions that require further investigation:

- What were the 'standard parameters' the Investment Committee used to determine the recommendations?
- How were financial advisers informed about:
  - the conflicts of interest for Dixon Advisory?
  - the conflicts of interest within the broader Dixon business group?
  - and the apparent role these conflicts played in influencing the decisions of the Investment Committee?
- Why did each financial adviser agree to present these recommendations to clients?
- Did the financial advisers believe the recommendations were in each client's best interest?
- What level of detail did financial advisers have about the URF, its operations and its risks?
- Were advisers permitted to seek independent research on the products?
- Did any financial advisers raise concerns (internally) about the:
  - recommendation decisions being made by the Investment Committee?
  - apparent conflicts of interest within the organisation?
- Were any incentives offered, or potential repercussions spoken about, to encourage financial advisers to present the recommendations to clients?
- Were there any clauses in staff contracts that influenced financial advisers' decisions?

We believe that the role of the Dixon Advisory Investment Committee is critical in this overall matter and suggest that the questions above would be an important starting point to get to the bottom of this.

Accountability for systemic conflicts in the business model

It is our view that the directors and management should be subject to a thorough investigation about the business model and the client losses that were sustained as a result. Their motives appear to have been invariably to generate increased fees for the group as a whole. This seems to have been done in a manner that was entirely indifferent to the interests of clients, many of whom ended up substantially overexposed to a highly geared residential property business in one small part of the world that should never have been more than a small part of any investment portfolio. This resulted in substantial detriment to the clients.

[4] Clause 29(a)(ii)

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Poor investment management decisions by other entities within the Dixon business group were core to the eventual collapse of Dixon Advisory. If the investment products had not performed so poorly, consumers would not have suffered the losses that led to the material number of complaints that will end up in the CSLR. Equally, the performance of the products exposed the systemic conflicts in the business model and how these benefitted the business, not Dixon Advisory's clients. The fact that the recommendations to clients, which were directed by conflicted key management personnel, were to invest in related party products, which generated fees for Dixon Advisory and returns for related parties, when it was likely to be evident to the Investment Committee that this advice was not in the best interests of clients and did not prioritise the clients' interest, and the failings of the product itself, are at the core of the issue.

(c) the role of the financial services regulatory regime in the context of how matters involving the collapse of an investment product promoted by a vertically integrated business are assessed and how fault is attributed

As described above, Dixon Advisory was part of a vertically integrated business, which later operated under the parent company Evans Dixon (now named E&P). The group seemingly did just about everything in the wealth management value chain from product manufacturing, administration, investment management, responsible entity and advice. As previously detailed, there were systemic issues across all these parts of the business group that combined to cause catastrophic consumer detriment.

ASIC action and the law

It is evident from all the publicly released information, that ASIC focussed their regulatory attention almost entirely on the financial advice activity at Dixon Advisory and seemingly ignored what happened in the product manufacturing side of the business or the role of the parent company. As is demonstrated by ASIC's response to questions on Notice from the June 2024 Senate Estimates hearings (Appendix 2), ASIC admitted that "*The product manufacturing side of DASS' business was not core to ASIC's investigation scope*". In that same response they went as far as to suggest that *"There was insufficient evidence or grounds arising from the investigation to take action against DASS management and directors*". ASIC chose to focus almost exclusively on the advice side of the business, reducing the prospect of finding evidence that might have enabled action against further directors and management. We believe that this approach failed consumers. It also highlights a flaw in the relevant legislation as it demonstrates that it is much easier to achieve success in action taken against a financial adviser on the basis of inappropriate advice, than it is to take action against directors and managers of a financial advice operation that designs and operates a business model that is fundamentally wrong and detrimental to consumers. It also highlights that it is very difficult for ASIC to take action against an entity, including the Responsible Entity and the investment manager, for failings in the management of a fund.

ASIC's initial proceedings against Dixon Advisory in September 2020, included action against Dixon Advisory for breaches of the client priority rule (Section 961J of the Corporations Act). This action specifically recognised the prospect that the advice was being delivered in a manner that prioritised the interests of Dixon Advisory and related entities above the interests of clients. The notice of filings states:

> *Further, in providing those URF Recommendations to each of the Sample Clients which involved a recommendation to buy or buy more URF Products, the representatives of DASS failed to give priority to the client's interests when giving the advice in circumstances where the representative knew or ought reasonably to have known, that by reason of the various fees paid to DASS and/or*

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the DASS Associates (see paragraph 6 above), there was a conflict between the interests of the client and the interests of DASS and/or one or more of the DASS Associates. Therefore, the representatives contravened s 961J(1) on those occasions (as specified in the Schedule)

Given what is well known about the manner in which decisions were made by the Dixon Advisory Investment Committee in determining how much each client would invest in each of the URF and URF related product issues, the dominant overlay of conflicts is quite evidently the case. The fact that it was an investment committee making these decisions clearly highlights the systemic nature of this. We believe that it would be appropriate to investigate whether any advisers left or were disciplined within the Dixon Advisory business for refusing to follow these directions.

It is quite obvious that senior management, who were on the Dixon Advisory Investment Committee, were integrally involved in prioritising the interests of Dixon Advisory and related entities above the interests of clients. However, Dixon Advisory did not concede this action in their negotiations with ASIC (2021) and as a result it was dropped in the ultimate settlement (2022). This further highlights questions about ASIC's decision making in this case, including not investigating product manufacturing issues, not pursuing actions against directors and senior management and removing the original conflict priority action that was at the core of this business model – conflicts of interest. At least the class action commenced with a view to pursue the management of the business, however this ultimately was dropped as part of the negotiations over the settlement of the class action. It seems remarkable to us that, it is only the conduct of the individual financial advisers who were thoroughly investigated and deemed at fault – and yet to our knowledge no individual adviser of the group has been prosecuted.

AFCA's approach and the law

The attribution of loss is another issue that we see as being problematic. AFCA undertook consultation in late 2023 on their approach to determining compensation in complaints against advice firms where the Responsible Entity of a MIS has become insolvent. Whilst this scenario does not relate directly to Dixon Advisory, the consultation was important in respect to how AFCA addresses the issue of the apportionment of loss. As part of this consultation, they stated that "Under AFCA's Rules, we also cannot consider issues relating to the management of a fund as a whole, or complaints solely about poorly or under-performing funds (Rules C.1.5 (a) and (b))". In their response to the consultation they provided an explanation of the positions that they took and made the following two statements:

"We clarified that many claims against financial advisers are "non-apportionable" at law and also that we are unable to apportion liability to a firm that is not a member of AFCA, because, for example, it has failed."

"However, for completeness, we confirm that breaches of the best interests duty and failure to give appropriate advice are classified as "non-apportionable" claims under the proportionate liability statutes and that this is consistent with how AFCA has always determined financial advice complaints, where there is more than one financial firm that has contributed to the loss."

As an outcome of this legal framework, what it means is that if there are grounds to consider any failure of the financial advice best interests duty or the appropriate advice obligation, the full client loss (however calculated by AFCA) will be attributed to the financial adviser, no matter what other failings there may have been with respect to the operation of the fund that the adviser recommended the client invest in. For example, if in providing advice that included recommending an investment option, the adviser has failed to

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appropriately select the risk profile and asset allocation that was appropriate for that client, or if they had neglected to consider a client's circumstance that would suggest a different strategy may have been more appropriate, they will be held fully responsible for any loss that the client suffered. Normally this might not have a huge impact if the selected investment had performed as expected. In the case of Dixon Advisory, the URF investment did not perform as expected.

In the Dixon Advisory cases released by AFCA so far, the advice has been considered to be inappropriate as the client was invested too heavily in Dixon Advisory related-party products and this illustrated a breach of the client priority rule. We are not disputing that this was poor advice, however we believe that the regulatory regime needs to have the ability to recognise the contribution of product failings to the client loss, which in normal circumstances it would not be fair to fully attribute to the financial adviser.

This is relevant to the Dixon Advisory cases as the issuer of the URF product (from June 2015) which was at the core of the client losses, Walsh & Co (renamed E&P Investments Limited) was also a member of AFCA. However, AFCA did not consider the product failure issues as part of its consideration of the complaints it received. We believe that the actions of Walsh & Co, whilst the Responsible Entity of the URF, should be investigated. If held to be at fault, or partly responsible, then they should also be required to contribute to the client compensation.

(d) evaluation of the placement of wealth management companies into administration and the related insolvency issues, including with respect to the appropriateness of actions by directors and senior management and the transfer of advisers and clients to a related party entity for no consideration

E&P Financial Group (E&P) put its subsidiary Dixon Advisory into administration on 19 January 2022 following an influx of complaints. It was evident that ASIC's action and focus on financial advice files meant that these complaints would end up as 'financial advice' External Dispute Resolution (EDR) claims if Dixon Advisory remained a member of AFCA. In this case, it was clear that ASIC and AFCA were focussing their attentions on financial advice issues. This provided an attractive 'way out' for E&P to avoid payment of client compensation.

The fact that E&P Financial Group simply put its subsidiary Dixon Advisory into administration in full knowledge of the consequence for clients and the rest of the financial advice profession, and in the context of the expected establishment of the CSLR, is very concerning. In their announcement of the appointment of an administrator on 19 January 2022, E&P said that they were aiming to:

> *"propose a Deed of Company Arrangement (DOCA) which provides for the comprehensive settlement of all DASS and related claims (including the representative proceedings) in a manner which provides for equitable treatment of all DASS clients/creditors".*

In the context of a likely distribution from the administrators of Dixon Advisory in the range of 5 cents in the dollar, it is difficult to see how the clients of Dixon Advisory would consider that the settlement was equitable. The remainder of the financial advice profession who were not involved in this matter, are facing a bill of as much as $135 million to compensate these clients. Nothing about this is equitable.

As part of the closure of Dixon Advisory, E&P appointed 36 of the 45 Dixon Advisory advisers around the time of the business going into administration to another subsidiary (Evans & Partners). The company's

FY22 Results Briefing shows that the business also transitioned 78% of Dixon Advisory clients to Evans & Partners. According to the Administrator, this was all done at no cost to Evans & Partners and at no benefit to the creditors of Dixon Advisory.

Dixon Advisory had ongoing fee arrangements with these clients. These contracts were seemingly transferred to a new entity, Evans & Partners, allowing these fees to continue to flow into the E&P group. These contracts are valuable to a business in two ways – the direct fees generated and the market value of the business. There is a clearly defined market for financial advice businesses. It would not be uncommon for a business to be valued at 2.5 times the fees being generated, or more. The transfer of the advisers and the clients to Evans and Partners should have resulted in a payment to Dixon Advisory to reflect the market value of the business. This did not happen and has seemingly not been challenged by anyone.

In August 2023, ASIC took action against a director of Dixon Advisory [Paul Ryan] for allegedly changing the Constitution of Dixon Advisory and executing a deed of acknowledgement of debt just prior to Dixon Advisory going into administration. ASIC alleges that the Director took these steps to avoid the repayment of a $19m debt owed to Dixon Advisory by E&P Operations (the parent of Dixon Advisory). This matter is still before the Courts at time of writing. However if true, this alleged conduct is hardly consistent with an entity seeking to achieve an equitable settlement. It appears that E&P contributed only $4m to the settlement of the Shine Lawyers class action, with a further $12m coming from the PI Insurer.

The debt which Dixon Advisory sought to extinguish as part of the actions that were taken in the lead up to the placement of Dixon Advisory into administration in January 2022, involved an intercompany debt of $19,608,267. Ultimately as part of the Deed of Company Arrangement, E&P agreed to the payment of '$17,662,489 (less settlement adjustments of $2,836,853) to settle the intercompany receivable'. That is not the full story however, as the Committee of Inspection (selected creditors) for Dixon Advisory refused to support the DOCA at the creditors meeting in December 2022 on the grounds that it was not a full and unconditional settlement of the intercompany debt. So, not only did E&P try to avoid the payment of the intercompany debt, when it was called out by the Administrators and the Committee of Inspection, they sought to underpay the full debt. The Administrators recommended that the creditors accept the DOCA, as litigation would be costly and may not succeed. It was ultimately approved by creditors, however not on the basis of the full payment of this debt.

The 19 April 2022 ASIC Media Release on suspending the AFS license of Dixon Advisory included a statement that "*ASIC is also undertaking inquiries in relation to the transition of former clients of Dixon Advisory to Evans & Partners Pty Ltd, a related entity*". In response to a question on notice at the June 2024 Senate Estimates hearing (Appendix 2), ASIC seems to have dropped this issue as well, accepting E&P's statement that the arrangements were not exclusively with Dixon Advisory and were with multiple entities within the group providing services. This does not take into account that it was Dixon Advisory who had ongoing fee arrangements with these clients, which are contracts that can be transferred for a payment. Once again E&P were allowed to extract value from the Dixon Advisory business in the full knowledge of ASIC, who are the regulators of both financial advisers and administrators/liquidators, without any obvious action being taken. The only insolvency related action was with respect to the efforts to extinguish a debt, for which ASIC took action against just one individual director and not the parent company, whom he was seemingly working on behalf of.

Given the financial advisers were employees of Dixon Advisory, it is not surprising that a large percentage remained within the group. Equally, the long-standing relationship financial advisers often share with their

clients offers a potential explanation as to why approximately 78% of Dixon Advisory clients chose to remain with their financial adviser. Noting the confidentiality of client-financial adviser communications, we are curious as to how the demise of Dixon Advisory, and the reasons for that demise, were explained to clients and why, despite the scale of the losses, so many decided to stay with the E&P group.

These remaining clients are undoubtedly continuing to pay fees to Evans & Partners and other entities in the E&P group. It would be interesting to understand the extent to which Evans & Partners or any other entity in the E&P group has encouraged clients to complain to AFCA and seek compensation through the CSLR. In our view, this would involve certain ethical challenges, given that the actions that they have taken to avoid compensating clients. The payment of compensation from the CSLR would potentially result in additional funds for the E&P group to manage and earn fees on, which is a further conflict playing out in the Dixon Advisory debacle.

Professional indemnity insurance

AFS licensees are required to hold professional indemnity insurance under s912B of the Corporations Act if they provide financial services to retail clients. As stated above, Dixon Advisory's insurer paid $12 million towards the settlement of the Shine Lawyers class action. While this is a sizeable payment from a PI insurer for a financial advice claim that will likely have flow-on impacts for all licensees seeking to renew their PI cover, the implications for the broader AFSL PI market will also likely be impacted by the CSLR levy. However, given this class action settlement was only approved by the court in April 2024, and the future compensation payments to Dixon Advisory clients made by the CSLR and resulting advice levies are not fully known, the true impact of the Dixon Advisory fallout may not have been felt in the PI market at this stage.

ASIC's 2022 version of Regulatory Guide 126 – Compensation and insurance arrangements for AFSLs raises concerns about the availability of run-off cover "*for a period of 12 months, where ideally seven years of run-off cover would be desirable. Accordingly, we do not currently require AFS licensees to obtain automatic run-off cover.*"[5] The Regulatory Guide states:

> *For the avoidance of doubt, the policy is not required to include automatic run-off cover as it is not currently available in the market. We will continue to monitor the availability of automatic run-off cover and may reassess our position should automatic run-off cover become available*

This issue again places the responsibility for paying compensation to impacted consumers, not at the hands of the wrongdoer, but on the broader financial advice profession via the CSLR. The CSLR is 'plugging this gap' to the detriment of innocent parties, and impacting the cost of advice for consumers.

We believe that the Government should undertake a review of the PI market to ensure that the product better meets the needs of protecting consumers. In the context of the collapse of an advice licensee where the parent company is putting advice subsidiaries into administration, the parent should be required to pay for run-off cover for at least three years.

[5] RG126.40

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Libertas Financial Planning Pty Ltd

There is another entity that we are concerned about with respect to their handling of the placement of a financial advice subsidiary into administration. That matter is Libertas Financial Planning Pty Ltd and their parent company Sequoia. Libertas, which was a self-employed financial advice licensee, was placed into administration in May 2023. Once again, the operating assets of the business appear to have been transferred to another subsidiary within the Sequoia Group. Evidently, the vast bulk of Libertas advisers were transferred to Interprac Financial Planning Pty Ltd just prior to Libertas going into administration. The 2023 Sequoia Annual Report even refers to the transfer of operations and customers to another entity within the Group.

- consolidation of AFS licences where management made the decision to transfer the operations and customers of Libertas Financial Planning Pty Ltd to Interprac Financial Planning Pty Ltd and Sequoia Wealth Management Pty Ltd, to achieve operational and cost synergies. The intention is to liquidate Libertas Financial Planning Pty Ltd and cancel the AFS licence.

We have seen no evidence to suggest that there was any compensation paid for the transfer of the business operations from Liberta to Interprac.

Similarly to Dixon Advisory, the Libertas case also presents concerns with respect to the cancellation of an intercompany loan. The 2 February 2024 Libertas Creditors report reveals concerns about the disappearance of an intercompany loan of $793,008 owed by Sequoia to Libertas. This loan was clearly in the June 2022 Libertas Balance Sheet as shown in the following:

(ii) Current assets as at FY22 comprised of the following:

Account Description	Balance
Cash and cash equivalents	$ 82,541
Trade and other receivables	$ 17,894
Advances to related parties	$ 793,008
Prepayments	$ 189,639
TOTAL	**$ 1,083,082**

The Libertas liquidator's February 2024 report to creditors includes the following statement:

8.3 Loan Account

As noted in section 7.2 of this report, the 'Advances to related parties' loan account had an opening balance of $793,008 for FY23, however, this amount had been settled in full. It has been stated in the financial statements that all outstanding balances between the Company and Sequoia had settled during FY23. It is also mentioned that the related party transactions were incurred during operating activities and cash management transactions.

I am currently conducting investigations into the transactions of the loan account during the FY23 period in order to confirm the veracity of this statement. Further enquiries in respect to the loan account will be undertaken and commentary will be provided in my next report to creditors.

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There has been no further report from the liquidator at the time of writing this submission, however there is reason to have doubts about the statement in relation to the extinguishment of this debt, given the fact that despite a profit of $139,681 for Libertas in the 2022/23 year, the value of net assets declined by $884,160 between 30 June 2022 and 30 June 2024. The following tables have been extracted from the liquidator's February 2024 report.

7.1 Comparative Statement of Financial Performance

	30 June 2020	30 June 2021	30 June 2022	30 June 2023
Revenue	$9,330,632	$7,102,399	$7,476,921	$5,667,642
Operating Expenses	$8,701,351	$6,700,609	$7,059,682	$5,527,961
Gross Profit	**$629,281**	**$401,790**	**$417,239**	**$139,681**
Tax expense	$207,640	$120,578	$125,262	$0
Net Profit / (Loss)	**$421,641**	**$281,212**	**$291,977**	**$139,681**

7.2 Comparative Statement of Financial Position

	30 June 2020	30 June 2021	30 June 2022	30 June 2023
Assets				
Current Assets	$714,485	$959,930	$1,083,082	$129,235
Non-Current Assets	$0	$0	$0	$0
Total Assets	**$714,485**	**$959,930**	**$1,083,082**	**$129,235**
Liabilities				
Current Liabilities	$274,279	$238,512	$69,687	$0
Non-Current Liabilities	$0	$0	$0	$0
Total Liabilities	**$274,279**	**$238,512**	**$69,687**	**$0**
Net Assets	**$440,206**	**$721,418**	**$1,013,395**	**$129,235**

This would suggest that $1,023,841, which should have been available within Libertas to pay outstanding client complaints, has disappeared. Whilst the above analysis does indicate the possibility of conduct that would be detrimental to the interests of creditors, we do not have any further evidence of this and recommend that an investigation be undertaken by the inquiry.

We are very concerned by what we have seen in the cases of Dixon Advisory and Libertas in respect to the transfer of operations and assets for no consideration by the acquiring party and the extinguishment of debts. We are also very concerned about the lack of action from administrators and regulators. To have confidence in the CSLR, financial advisers need to know that any firm which seeks to avoid its obligation to compensate clients by being placed into administration, will be subject to very careful oversight and action where there is any misconduct that is evident. Based upon what we have seen so far with Dixon Advisory and Libertas, we certainly do not believe that adequate action has yet been taken.

(e) assessment of the period for which wealth management companies can remain a member of the Australian Financial Complaints Authority

Dixon Advisory went into administration in January 2022. On 19 April 2022, ASIC issued a media release addressing the suspension of the Dixon Advisory AFSL and stating that under the terms of the suspension of Dixon Advisory's licence, they would "*require the maintenance of dispute resolution arrangements including*

Australian Financial Complaints Authority membership until 8 April 2023". It also stated that the terms of the suspension were to allow Dixon Advisory's AFS licence to continue to operate until 9 May 2022 so that existing clients who have not yet transitioned to an alternate provider could continue to access financial services.

However, an editor's note was added to that media release (at a future unknown date) that stated "*ASIC cancelled the AFS licence held by Dixon Advisory, effective 5 April 2023. The terms of the cancellation require Dixon Advisory to maintain membership of Australian Financial Complaints Authority until 8 April 2024*". This editors note with no reasons given:

- Delayed the cancellation of the Dixon Advisory AFSL until 5 April 2023, and
- Extended Dixon Advisory' AFCA membership for an additional 12 months from 8 April 2023 to 8 April 2024.

This action was taken by ASIC in the full knowledge that Dixon Advisory, as the liable entity under the AFCA membership, would not be capable of paying any of the compensation awarded by the External Dispute Resolution (EDR) scheme to complainants. And that any unpaid AFCA determinations would be submitted to the CSLR for the Dixon Advisory clients to be compensated by the remainder of the advice profession.

ASIC had also in August 2022 issued a media release and written directly to all Dixon Advisory clients encouraging them to complain to AFCA in order to ensure that complaints were submitted before Dixon Advisory's membership of AFCA had ceased. They were told that this was a matter of urgency as Dixon Advisory's membership of AFCA would cease shortly and it would no longer be possible to submit a complaint after the membership had ended. This was based on the end date of 8 April 2023. ASIC later extended that timeframe to 8 April 2024.

That was when we had assumed the Dixon Advisory membership of AFCA would cease, however in April 2024 AFCA then argued that this was only the minimum timeframe for them to remain a member and that Dixon Advisory had not otherwise triggered a condition that would warrant the termination of their membership. They expressed the view that Dixon Advisory had not sought voluntary cessation, was not in liquidation and did not have unpaid fees and charges. The FAAA argued that under Clause 3.4 of the AFCA Constitution they only require that a business *"…ceases to be duly authorised, licensed or to carry on business in the Industry"* or *"becomes Insolvent*". We argued that it was clear that they were no longer authorised, licensed or carrying on a business and had been insolvent from some time in 2022.

AFCA then put in place a process to terminate the membership of Dixon Advisory from the EDR scheme with effect from 30 June 2024. In the period between 15 February 2024 and 30 June 2024, the number of Dixon Advisory complaints increased by 825 to 2,773. We accept that this may include some genuine complainants who had been delayed in submitting their complaint. We fear however that it might also include others who have less basis and are doing it as it is free to them and may derive some benefit via the CSLR. The complication for the advice profession is that we need to pay the AFCA fee of around $12,000 to process each complaint, irrespective of whether they are found in favour of the complainant, the AFCA member, or do not proceed to a Determination.

Just as is the case with complainants having 12 months after the receipt of an AFCA Determination to provide notice to AFCA about an unpaid claim, we would also argue that clients should have 12 months from the date a licence is cancelled to make a complaint to AFCA. However, the cancellation of the license should not be unreasonably extended. The two years and five months that was allowed for Dixon Advisory clients to

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complain was excessive. There needs to be a standard approach and clients need to understand that there is a limited window. We suggest specific questions should be asked of ASIC and AFCA to understand the timeline and the reasons for the decisions made in relation to Dixon Advisory's AFCA membership.

CSLR legislation

This chain of events, and ASIC decisions regarding Dixon Advisory's AFCA membership, must be examined alongside the tabling and passage through Parliament of the Bill to establish the CSLR.

Recommendations to establish a CSLR go back as far as the Ramsay Review (in 2017), and the proposal was supported by the Hayne Banking Royal Commission in 2019. Legislation was introduced by the former Coalition government in October 2021, but not passed. After the change of government in 2022, legislation enabling the scheme was eventually passed in June 2023 after multiple delays. The CSLR was launched in April 2024.

In January 2022, Dixon Advisory (Dixons) went into administration. A total of 2,773 complaints about Dixon Advisory have now been lodged. All of these complaints will fall within the CSLR, despite the fact the wrongdoing took place before the CSLR was officially established. The overall timeline is set out below:

The CSLR was designed to be applied prospectively and was specifically called a "last resort" for consumer compensation. <u>However, as the timeline clearly demonstrates, the CSLR is being applied retrospectively in relation to Dixon Advisory complaints.</u>

(f) the role of Australian Securities and Investments Commission (ASIC), including providing consumer information to investors affected by corporate collapse and consideration of the most appropriate arrangements for future cases of insolvency

As stated above, ASIC provided a 12 month extension of Dixon Advisory's membership of AFCA from 8 April 2023 to 8 April 2024, which was not explained. As is evident in Appendix 2, they explained to the Senate Estimates Committee that the purpose of extending Dixon Advisory's AFCA membership was to "*preserve the rights of clients to make claims to AFCA".* However, this is an open-ended statement and could seemingly lead to an outcome where no end-date was stipulated. We do not believe that it is appropriate for the Regulator to take this open-ended approach.

Analysis of the Financial Adviser Register shows that all the Dixon Advisory advisers had been removed from the licence by the end of June 2022, with 34 finishing up on 24 June 2022. The legal judgement in the case of ASIC v's Dixon Advisory dated 19 September 2022 states "*The administrators have since applied to*

have DASS's AFSL cancelled, which application is still pending"[6]. It is not clear when this application was made, however it appears before a reference to action by ASIC on 2 August 2022[7]. This raises the question:

- Why did ASIC extend the Dixon advisory licence until 5 April 2023, if all the advisers were removed by the end of June 2022 and the administrator had applied for the licence to be cancelled some time before 19 September 2022 (but presumably in late June or July 2022)?

There are recent examples of ASIC cancelling the licence of an advice business in liquidation/administration much more quickly.

It is clear that ASIC has played an active role in this matter. There are also further statements in a Treasury FOI paper on the CSLR that highlight the extent to which ASIC sought to engage with Dixon Advisory clients:

> - ASIC has previously engaged with the Administrators about writing to clients about lodging complaints with AFCA, so as to preserve potential claims to compensation under a prospective CSLR. The Administrators have refused to do so.
> - Following the Administrator's decision, ASIC has decided that it is appropriate that ASIC communicate to DASS clients—noting both the complexity and the uncertainty of outcomes.

In the media release that ASIC issued on 3 August 2022 about clients lodging complaints, they included the following statement that led many to believe that it was their intention that the Dixon Advisory membership of AFCA would end soon.

> *As complaints may only be made against firms who are members of AFCA, complaints against Dixon Advisory should be made as soon as possible. If Dixon Advisory's AFCA membership ceases then no further complaints can be accepted.*

The August 2022 media release also included a statement that *"Lodging a complaint with AFCA is a necessary step for clients to preserve their possible eligibility under a potential future CSLR*". We would assume that it is unusual for ASIC, or any independent regulatory agency, to communicate with specific clients about potential future legislation.

What happened following this is unclear to us, however the extension of membership of Dixon Advisory with AFCA has come with a $100 million plus price tag for the financial advice profession.

ASIC has an important role to protect the interests of consumers of financial services, including taking action against those who are responsible for misconduct. This includes an obligation to provide information to consumers. However we would suggest that it would be more appropriate for them to limit their action to media releases and website disclosure.

We also note that whilst it is important that clients were appraised of their rights and options, the role that ASIC played in this and the interdependency in the number of complaints that were received by AFCA before

[6] Paragraph 9 of the Reasons for the Judgement
[7] Paragraph 10 of the Reasons for the Judgement

the legislated cut-off date for pre-CSLR complaints of 7 September 2022 was pivotal. There was clearly a huge rush of complaints between the date of ASIC's media release on 3 August 2022 and the 7 September 2022 cut-off date. This cut-off date was critical, as all complaints received by this date were the responsibility of the 10 largest financial institutions, no matter when they are processed. These institutions might have grounds for grievance in how ASIC influenced this outcome. Equally, given that the Government only ended up paying for one Dixon Advisory complaint for the period between 8 September 2022 and 30 June 2024 due to the delay in processing complaints by AFCA, with the advice profession responsible for the rest, the actions of ASIC in encouraging complaints in the lead up to 7 September 2022, served to significantly reduce the financial exposure for the advice profession. ASIC's intervention likely meant that many clients complained earlier than they otherwise would have and as result they became pre-CSLR complaints (by 7 September 2022), who were ultimately to be paid for by the 10 largest financial institutions, rather than the advice profession. The nature of this intervention had quite significant consequences and it does raise genuine questions as to what the role of ASIC should be in these circumstances.

(g) ASIC's role investigating corporate collapse and the appropriateness of any regulatory intervention that may reduce scale of loss for consumers

It is the view of the FAAA that ASIC did not do enough to investigate the actions of Dixon Advisory and related entities, or respond quickly enough; and when they did take action, it was flawed and inadequate. Our specific concerns are as follows:

- ASIC were slow to investigate Dixon Advisory, despite multiple reports of concern. As has been set out in ASIC's response to question 2 in Appendix 2, between October 2008 and September 2022, ASIC received 60 reports of misconduct in relation to Dixon Advisory. Our members tell us that the issues with the business model were well known and that in some cases they personally reported.
- The apparent failure to investigate the product (URF) related issues
- The decision to drop actions related to the client priority rule.
- The lack of action against the directors and management of Dixon Advisory related entities.
- The undisclosed intention not to collect any fines and costs awarded against Dixon Advisory, despite the fact that it was the financial advice profession who were paying for the regulatory action through the ASIC Funding Levy, and would have benefited through a reduction in the ASIC Funding Levy if the $800,000 is costs that were awarded was collected.
- The apparent agreement not to take any further action against Dixon Advisory.
- An exclusive focus upon the financial advice related matters and lack of action in relation to the product failures.
- Apparent lack of investigation into broader accountability within the E&P Group, for the systemic conflicts of interest and potential misconduct at Dixon Advisory and related entities that caused such consumer detriment.
- The lack of publicly available information on what actually happened at Dixon Advisory.

All of the above are matters that we encourage the inquiry to consider.

The timeline of ASIC's action and other action against Dixon Advisory is set out below.

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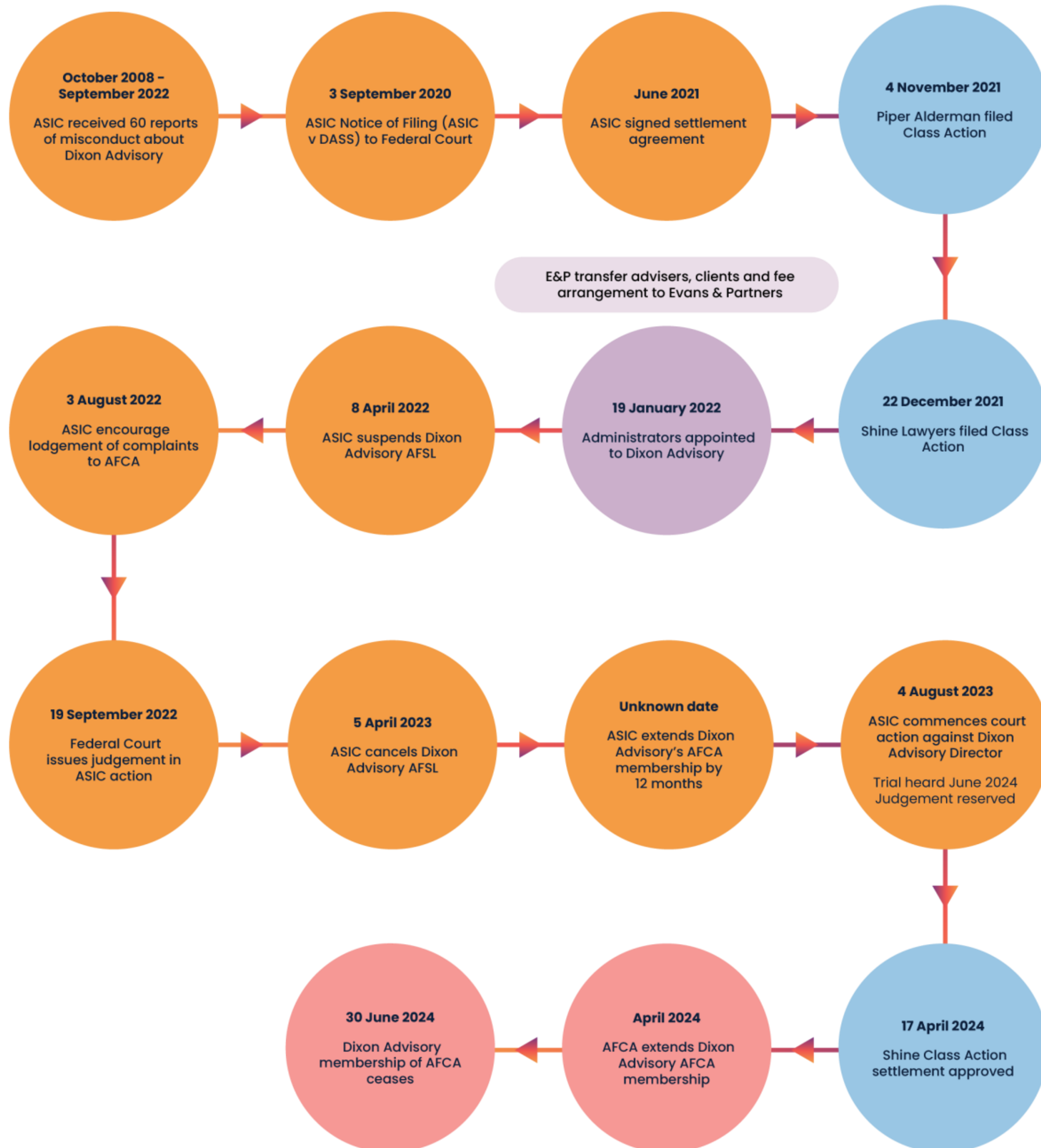

ASIC investigation

There has been a long history of complaints about Dixon Advisory. We have been advised that ASIC undertook a significant surveillance review of Dixon Advisory in 2015. As part of that exercise, Dixon Advisory appointed a major consulting firm to review client files and to provide advice to ASIC on its findings. They also appointed a legal firm to engage with ASIC. We understand that ASIC obtained copies of many client files at that time. What we don't understand is why the extent of the problems were not obvious to ASIC at that time, and why they did not take enforcement action to correct the poor practices that were

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seemingly present. It seems that things only got worse from that point. What we did see in 2015, is a change of Responsible Entity for the URF, and some changes in directorships. It would be interesting to understand:

- What were the findings of ASIC's 2015 surveillance review of Dixon Advisory?
- Did ASIC request Dixon Advisory make changes to its practices in relation to URF, its Investment Committee governance, or to address any conflicts of interest within the business, as a result of its 2015 review of the business?
- Were the change of the URF Responsible Entity in 2015, and changes in Dixon Advisory directors, a result of actions related to the 2015 surveillance undertaken by ASIC?
- Did ASIC continue to monitor the operations at Dixon Advisory as a result of the findings of its 2015 review of the business?

As mentioned under Terms of Reference (a), Dixon Advisory raised significant additional funds, including through the URF dividend reinvestment scheme, between ASIC's 2015 surveillance review and its later 2019 investigation that ultimately resulted in the prosecution action.

The answer that ASIC provided to questions by the Senate Committee about the delay in the action taken against Dixon Advisory suggests that they commenced a further investigation in 2019 that ultimately led to the action that they took in 2020. Unfortunately, by then it was far too late and the losses within the URF had been crystalised.

ASIC Investigation and Focus

In the Senate Estimates Questions on Notice in Appendix 2, when ASIC were asked about their Dixon Advisory court case and why they didn't take action against the directors and management, ASIC responded saying *"there was insufficient evidence or grounds arising from the investigation to take action against DASS management and directors*", however they also acknowledged:

- *Dixon Advisory research into the URF was not a focus of their investigation.*
- *ASIC had limited interaction with the advisers and did not properly interview them.*
- *The product manufacturing side of the business (that built the URF fund) was not core to ASIC's investigation scope.*

They did not appear to answer questions on:

- What they discovered with respect to sales practices and the related party URF Fund.
- The extent to which senior managers were involved across both the advice and product manufacturing sides of the business and how conflicts of interest were managed.

In the absence of undertaking a comprehensive investigation of this nature, it is not overly surprising that they were unable to obtain sufficient evidence. Given the scale of the losses and the close interdependency between Dixon Advisory and the URF, it is remarkable that ASIC did not do more to investigate. To us it clearly appears that ASIC were solely focused on the financial advice files and not the business practices and management actions that promoted and facilitated the advice that was provided.

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ASIC prosecution of Dixon Advisory

ASIC took court action against Dixon Advisory for breaches of the Corporations Act and issued a media release on 19 September 2022, to announce that the Federal Court had awarded a penalty of $7.2 million against Dixon Advisory plus $800,000 in costs. The media release framed this outcome entirely as a financial advice issue and wrongdoing by financial advisers, noting that "*six representatives failed to act in their clients' best interests and failed to provide advice appropriate to their clients' circumstances*".

Further, it noted: *"In handing down judgment, Justice McEvoy remarked, 'There is no evidence that the (Dixon Advisory) representatives conducted the necessary reasonable investigations into the recommended financial products or any alternative financial products, nor is there evidence that they considered the personal circumstances of the clients.*"

The background section to the media release provides important context. It says:

> "*ASIC commenced proceedings in September 2020 (20-207MR), and on 8 July 2021, ASIC and Dixon Advisory entered into a heads of agreement to resolve ASIC's civil penalty proceedings. Dixon Advisory admitted to a number of allegations on 15 October 2021*".

The Dixon Advisory matter is so much more than just an advice issue, and only pursuing the advice related issues seems like a miscarriage of justice. ASIC never took action against any individuals - not the financial advisers, nor the directors and executives, who were ultimately responsible for running the business.

That "*Dixon Advisory was also ordered to pay ASIC's legal costs of $800,000*" is an important element of the announcement for the financial advice profession. Under the ASIC Funding Levy model, it is the financial advice profession that pays for any enforcement action that ASIC takes, however any cost recovery awarded by the Court is applied as a credit to the ASIC Funding Levy. This $800,000 should have been available to offset the ASIC Funding Levy to be charged to the financial advice profession in that year.

There are a number of questions about the actions of the Regulator and the courts in this case that warrant further consideration, as outlined below.

The Federal Court judgement in the Dixon Advisory case

The judgement in the Dixon Advisory case makes very interesting reading. The first order is a provision that "*The plaintiff must not seek to enforce any orders for pecuniary penalties, or any costs order, made against the defendant, without first obtaining leave of the Court to do so*".

ASIC has publicly acknowledged on a number of occasions since, that they do not expect this penalty to be paid. Financial advisers paid for the action, and yet stood no chance of the $800,000 in costs that were awarded ever being recovered to offset the ASIC Funding Levy. In our view this is particularly unfair to the advice profession. It also resulted in court costs being incurred by Dixon Advisory, reducing the funds available for compensating clients. Ultimately this increased the amount that needed to be recovered from the advice profession under the CSLR Levy. This is in addition to the costs financial advisers will incur through the compensation to be paid to Dixon Advisory clients via the CSLR. ASIC's persistence with the court action against Dixon Advisory at that point in time, raises the following questions:

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- Why did ASIC complete an agreed settlement without the intention of enforcing the penalty and collecting the costs order, as set out in the court judgement?
- Why wasn't it made clear in ASIC's media release on 19 September 2022 that it did not intend to collect against the costs order or enforce the fine?
- Why was this court action continued after Dixon Advisory was placed into administration?
- What did proceeding with the case prove?
- What other options were available to ASIC at that time?

The original action and what changed

The ASIC action against Dixon Advisory started some two years earlier, when ASIC issued a media release on 4 September 2020, to advise that they had commenced proceedings against Dixon Advisory on the grounds that "*Dixon Advisory representatives failed to act in their clients' best interests and to provide advice that was appropriate to the clients' circumstances*". It also included a further leg of the action based upon the following:

> *"ASIC also alleges that, in giving the relevant advice, Dixon Advisory representatives knew or ought to have known that there was a conflict between their clients' interests and the interests of entities associated with Dixon Advisory within the Evans Dixon group, and failed to give priority to the clients' interests."*

It is this statement and the detail set out in the Notice of Filing, that makes it clear that ASIC initially thought that this was bigger than just a pure advice related matter. The Notice of Filing sets out in detail that Dixon Advisory and related entities received a substantial amount of fees from the US Masters Residential Property Fund (URF). The Notice of Filings suggested that this amounted to approximately $134 million in the three and a half years from 1 January 2015 to 30 June 2018, however our numbers, based upon the URF financial statements, as set out above in Terms of Reference (a), would suggest that the actual number was much more. In any case, this was an incredible amount of fees. The coverage of these fees, and what each entity received, made up a significant proportion of this document.

However, the failure to prioritise the interests of the client was strangely dropped from the ultimate outcome. In fact, the 19 September 2022 judgement included the statement that:

> "Dixon Advisory *denied any contraventions of s 961J of the Act. ASIC does not press any of the allegations of breach which DASS denies*".

It is obvious that the fees from the URF were a critical contributing factor. It is hard not to surmise that, for ASIC, it was easier to focus on the financial advice issues and not what was at the core of what really went on in Dixon Advisory and the broader group.

- Why did ASIC drop "failure to prioritise the interests of the client", a critically important part of the case that goes a long way to explain the reasons for why Dixon Advisory operated this way, given the $134 million in fees (or more) that the Dixon business group received from the URF between 2015 and 2018?

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The decision to settle

On a separate point, the decision to settle with Dixon Advisory was set out in a media release by ASIC on 9 July 2021. This relatively brief statement does not provide any context for the decision to drop the pursuit of the breaches of the client priority obligation, and largely focuses on the decision to settle for an amount of $7.2 million, plus $1 million in costs (which was later reduced to $800,000, to the detriment of the financial advice profession, who may have benefited through a reduction in the ASIC Funding Levy as a result).

This ASIC media release included a link to an E&P Financial Group media release of the same day (Evans Dixon changed their name in November 2020 to E&P Financial Group). E&P, however, included the statement that "*ASIC agrees to seek no further declaration of contravention in the proceedings*". There was no reference to this in the ASIC media release, and it seems to have been a huge commitment to make given that the scale of the consumer loss from the Dixon Advisory scandal, that was becoming much more apparent by that time. The question must be asked:

- Why was no action ever taken against the people in charge at Dixon Advisory and related entities, and why did ASIC provide a commitment to "*seek no further declaration of contravention in the proceedings*"?

And certainly, by the time the matter was finalised in September 2022 (as discussed above), the enormous scale of the Dixon Advisory debacle was plain for ASIC to see. As previously mentioned, ASIC had in fact issued a media release on 3 August 2022 encouraging Dixon Advisory clients to complain to AFCA as a matter of urgency. This call was particularly successful, so much so that by 7 September 2022, AFCA had received a total of 1,638 complaints from Dixon Advisory clients. However, ASIC had seemingly given up the opportunity to take further action.

What the Judgement said

The 19 September 2022 judgement was based on the six advisers and eight example cases, not the full list of impacted clients. Some of the facts of the case were set out in Clause 29 of the judgement, which included the following:

> *"ASIC concluded that reasonable investigations into the recommended financial products or any alternatives to them were not conducted, and that the clients' relevant personal circumstances were not considered, on the basis of the following findings:*
>
> *(a) in relation to the advice that contained recommendations to acquire or roll over products:*
>
> *i. there were no records indicating that any reasonable investigations into the financial products or any alternatives to them were conducted or that the relevant personal circumstances of the clients were considered;*
> *ii. the DASS Investment Committee determined the recommendations according to standard parameters and a client's DASS risk profile;*
> *iii. the representatives were only given a limited time to review the recommendations determined by the DASS Investment Committee and decide whether they should be overridden;*

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iv. *DASS did not provide the representatives with the relevant documentation to assist with deciding whether or not the recommendation was appropriate to the client and whether or not to override it, or did so only shortly before this decision was due;"*

It was the Dixon Advisory Investment Committee that decided how much each client would invest in each of the URF products and it was the advisers who were directed to implement it. This is certainly not the advice model that we are familiar with and not one that is consistent with the obligations that financial advisers have under the Corporations Act and the Financial Adviser Code of Ethics, or ASIC's own Regulatory Guidance. Clearly this was a business model with deep flaws. However ASIC has not taken any action against those responsible for the business model.

The judgement devoted a lot of pages to the amount of the penalty. With a total of 53 contraventions, the maximum penalty was $110 million, however the judge agreed to the $7.2 million negotiated between ASIC and Dixon Advisory, which was just 6.5% of the maximum. This was based upon only eight clients, when there were thousands who were impacted.

The Judge however based this outcome on a few critical conclusions:

- *54(b) – "However, the conduct also did not involve dishonesty or wilful contravention of the law".*
- *54(c) - "While the contraventions had the potential to cause serious adverse financial impacts to the clients, **all the entitlements have since been paid out in full, and there is no evidence of any detriment arising to any of the clients from the conduct.**"*
- *63 – "Further, a significant reduction from the prescribed maximum is warranted due to the fact that the contravening conduct did not involve any dishonesty or wilful contravention of the law by either DASS or the representatives. **If the conduct were to be considered on a spectrum, it would not be at the most serious end.**"*
- *66 – "I have considered the changes made to the senior personnel in the Evans Dixon Group, and **the steps already taken to facilitate future compliance with the civil penalty provisions**."*

In the context of one of the biggest financial scandals in Australia in the past decade, with total losses in the multiple hundreds of millions of dollars, we draw a somewhat different conclusion. The business model did facilitate wilful contraventions of the law. It was the investment committee that circumvented the obligations of the adviser. To suggest that there is no evidence of client detriment is remarkable, however maybe Dixon Advisory compensated the eight sample clients, but then ignored the rest.

For one of the biggest financial scandals in a decade, it is difficult to see how it was possible to conclude that it was not at the serious end of the spectrum. And finally:

- If this was just an advice issue, as the September 2022 contraventions suggest, then why was the change of senior personnel in the Evans Dixon Group relevant?
- If the senior personnel in the Evans Dixon Group did the wrong thing, then why wasn't action taken against them?

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- When were the changes made to senior personnel in the Evans Dixon Group that "*facilitated future compliance with the civil penalty provisions*" as referenced in the September 2022 judgement?

This is not a criticism of the Judge who made these statements, however he should have been better advised by the participants to the action, and most particularly the Regulator who pursued this case. By mid-2022, the scale of this issue was obvious, and certainly should have been to ASIC who had been investigating Dixon Advisory from as early as 2015.

Class actions against Dixon Advisory and others

Whilst we have very serious reservations about the action that ASIC took against Dixon Advisory and those who were responsible, ultimately the class action proceeding was no more successful. On 4 November 2021, E&P Financial Group issued a media release to advise that a representative proceeding had been commenced against Dixon Advisory, E&P Financial Group and Alan Dixon. This action was being undertaken by the legal firm Piper Alderman. The media release went on to say:

"In the Statement of Claim, the Applicants make certain allegations including that:

- *the DASS representative failed to act in the best interests of the Applicants and the group members and therefore contravened section 961B(1) of the Corporations Act;*
- *DASS failed to ensure that its representatives complied with s 961B;*
- *DASS and its representatives owed the Applicants and the group members a fiduciary duty to avoid a conflict of interest and not to improperly use their position to gain an advantage for themselves or other group companies;*
- *DASS and the representatives engaged in misleading or deceptive conduct; and*
- *the knowledge and actions of certain former executives of the group in their roles within the group is imputed to EP1 and that EP1 knowingly induced or procured DASS to breach its fiduciary duty to the Applicants and the group members and was involved in DASS's alleged failures as described above."*

This Statement of Claim provided recognition of some of the underlying issues. This appears to suggest that they really wanted to get to the bottom of what happened at Dixon Advisory and the involvement of other parts of the group and the executives within the business. A court action of this nature was evidently more likely to get to the bottom of what happened.

Subsequently on 22 December 2021, Shine Lawyers filed a competing Class Action against Dixon Advisory, E&P Financial Group, Mr Alan Dixon and an additional director of Dixon Advisory, Mr Christopher Brown. The Court later ordered that the Piper Alderman's Class Action be stayed until the resolution of Shine's Class Action.

Unfortunately, we did not get to see the Shine Class action play out in the court either and instead it was settled. On 17 April 2024, the Federal Court of Australia made orders approving the settlement sum of no less than $16 million in the Dixon Advisory Class Action. The Court concluded that the proposed settlement was fair and reasonable for all Group Members. This equated to compensation of only approximately 5 cents

in the dollar for clients and was made in the full knowledge that the CSLR would be forced to step in to provide real remediation for these clients, diverting the cost payable to the advice profession.

In a media release on 14 November 2023, to acknowledge the conditional settlement of the representative proceeding filed by Shine Lawyers, E&P made the statement that:

> "*If the settlement is approved by the Federal Court, the Shine Proceeding will be dismissed against E&P, Mr Alan Dixon and Mr Christopher Brown, and permanently stayed against DASS, without admission of any liability.*"

In that same statement the E&P Financial Group revealed that $12 million of this settlement came from the PI insurer, and the cost to the E&P Financial Group was just $4 million, which they had already provided for back in 2022. E&P escaped from all these proceedings with very little damage and made the claim in their 2023/24 full year results announcement that they had "*put the entire matter behind them*".

It is very evident that appropriate action has not been taken against those involved in this matter. No fine has been paid by anyone and E&P have only contributed $4m to the class action settlement. This does not suggest that justice has been done in any way. The clients of Dixon Advisory, the Australian population and the financial advice profession look to ASIC to ensure that justice is done in these matters.

We would expect this inquiry to investigate what stopped ASIC pursuing justice and true compensation for client of Dixon Advisory.

(h) options for enforcement action, including litigation, that ASIC has available to it in relation to wealth management companies following collapse

ASIC as the regulator of corporations, financial services and insolvency practitioners has a substantial capacity to investigate and take action with respect to these matters. ASIC also has significant powers to obtain information from corporations. It has the capacity to take administrative action against individuals, including banning and disqualification action. These powers were made clearer and stronger following the 2018 Royal Commission.

However, it is not evident that ASIC has used these powers to their full capacity in relation to Dixon Advisory. It is also apparent from ASIC's response to questions at Senate Estimates that they inappropriately narrowed their focus of investigation related to misconduct at Dixon Advisory. Seemingly their focus has been limited to financial advice and director's duties (with respect to the insolvency matter). The reasons for this are unclear, however it might suggest a lack of understanding of how financial services businesses operate and the interconnected nature of certain core elements of this matter.

The true extent to ASIC's investigations is unknown. For example, it is unknown if ASIC:

- examined the Board minutes of Dixon Advisory and E&P and the minutes of the Dixon Advisory investment committee meetings.
- interviewed the people who know what really happened, including directors, members of the investment committee, management at the URF and advisers themselves.
- focussed on what went wrong at the URF,

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- investigated why so much money was lost by investors in the URF.
- has taken adequate action with respect to compliance with insolvency laws, other than the action against the one Dixon Advisory director for seeking to extinguish the $19m intercompany debt.

ASIC have taken action against Dixon Advisory and one director, however this was clearly too late to influence the losses sustained by investors. Their action has not led to anyone being banned or disciplined in any way. It is difficult for us to understand, why they narrowed the scope of their investigation, why they decided to settle with Dixon Advisory, why they took no action against any individuals in Dixon Advisory's management, and they seemingly agreed to discontinue any further action against Dixon Advisory and associated individuals with respect to the financial advice issues and related matters. For consumer detriment to be experienced at this scale, this is all very difficult for us to comprehend.

We do not believe that ASIC lacks the powers to deal with financial advice matters like those related to the Dixon Advisory matter. We do not believe that the solution here is more powers. We do not believe that the issue is more funding - as it is the financial advice profession who paid for ASIC's action against Dixon Advisory. It would have been the MIS sector that would have paid for their investigation of the URF, if they had done this properly. We can only conclude that where this went wrong was a lack of understanding and poor decision making.

Given that it has evidently not been tested, we are uncertain as to whether the law is clear enough and ASIC has the power to pursue matters involving misconduct on the part of a funds management business such as the URF, or where there are systemic conduct issues that are encouraged and condoned by directors and senior management.

Neither are we able to comment on the adequacy of the insolvency laws and ASIC's powers in that space, as they do not seem to have been appropriately utilised or tested. We do however question the ability of a listed parent company to put a subsidiary company into administration and transfer the advisers, their clients and the associated ongoing fee arrangements to a new entity within the business group without any consideration/payment.

These are issues that we encourage the Committee to consider as part of this inquiry.

(i) the implications of the collapse of wealth management companies on the establishment of the CSLR, including with respect to design considerations and the potential implications for future matters

The objective of the CSLR is sound and the intent in the original recommendation by the Ramsay Inquiry is both understandable and supportable. Where this has gone wrong is in the implementation. The FAAA has been very critical of the implementation for the following reasons:

- The original intent and commitment was to establish a prospective scheme, however in reality financial advisers are paying for legacy matters.

- The Government originally committed to paying for the first 12 months of the scheme, however ended out paying for just three months and due to delays in the commencement and processing of complaints, will only pay for one Dixon Advisory case.

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- The legislation and particularly the Explanatory Memorandum to the 2023 Bill, failed to even acknowledge the existence of the Dixon Advisory matter, which was well understood at that stage, and failed to include a regulatory burden estimate table despite the huge potential exposure faced by the financial advice profession.

- The manner in which the Dixon Advisory membership of AFCA was extended excessively leading to a substantial jump in cases that will be paid for by industry.

We were specific in the original consultation on the CSLR that we were very concerned about the prospect of a black swan event and the diabolical impact this could have on the financial advice profession. In reality, this black swan event was unfolding in front of us and there was no consultation with us about the implications this would have on the CSLR and the decisions that were being made in full knowledge of the size of the losses from Dixon Advisory's actions. The financial advice profession, which is predominantly small businesses, has every reason to be very angry about how they have been treated by the Government and a range of other stakeholders.

We recognise that the legislation with respect to the CSLR has been enacted and the resulting problems that we face as a profession, in large part, cannot be solved in the absence of law change. However, there is one important power that the Minister has which we would like him to confirm he intends to use in a manner that would ameliorate the extent of the exposure that the advice profession faces. In this respect, we would like a commitment that the Minister will not levy the advice profession for more than the $20m annual sector cap going forward, but particularly in the period that we are subject to the fallout from the Dixon Advisory matter. We ask that any excess be charged to other sectors. Impacted clients would not miss out, however the funding load would be shared more fairly.

We would argue that the CSLR has been designed and implemented without due consideration of the broader implications and building the necessary compensating controls to ensure that this could not operate to the substantial detriment of a small business sector like financial advice. To this end, we make the following points:

- There are insufficient obstacles to prevent a listed company from 'phoenixing' an advice subsidiary and distancing itself from responsibility to compensate consumers for wrongdoing. The design of the CSLR, by default, defers the cost of such compensation to the rest of the financial advice sector to pay for the cost of unpaid AFCA determinations.
- there are inadequate mechanisms and focus upon the investigation of the actions taken by these companies in the process of placing subsidiaries into administration. The existence of the CSLR, to some degree, creates a moral hazard in this regard. We would argue that Dixon Advisory and Libertas are key examples of this.
- We are very disappointed that it has come down to the profession to identify the issues that occurred at Dixon Advisory and to push for these to be thoroughly investigated and prosecuted. There should be a greater role for ASIC, the CSLR Operator and even potentially a parliamentary committee to have oversight of these firms and the potential moral hazard created by the existence of the CSLR.
- There is no party to defend complaints against Dixon Advisory, as the entity is in administration and the administrator will not play this role. The role of the administrator is to act in the best interests of the creditors, and has no interest in defending complaints lodged with AFCA. This significantly increases the risk of the payment of compensation in circumstances where it may not be warranted

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or on the basis of a flawed calculation of the loss attributable to the firm, and is inconsistent with the principle of natural justice that exists in Australia. We understand that the administrator of Dixon Advisory has never even had access to the Dixon Advisory client files, which we find concerning.

- There is evidently no means to offset the proceeds of a class action against the payments by the CSLR. The Minister has the power to make a regulation to address this.
- The definition of 'person' in Section 1067 of the Corporations Act needs to ensure that the $150,000 cap is applied in an appropriate manner to avoid the risk of this being applied in multiple capacities (such as both a trustee and member of an SMSF) resulting in claims splitting. For example, a couple is treated as one client by the financial adviser; so a resulting complaint should not be split into two distinct compensation claims for the one piece of advice. We understand that this could be fixed by regulation.
- We would like to see an amendment to the legislation with respect to the setting of the CSLR levy to allow a penalty of some form to be applied against the parent entity of a subsidiary that is placed into administration. This penalty should be attributed against the total levy payable for the relevant sector. This penalty should not be paid into consolidated revenue.
- We would like to see more sectors captured by the CSLR and included in the levy regime. The experience with Dixon Advisory and the URF, which is where the investor losses were generated, provides another clear example of why the MIS sector should be included in the CSLR.
- The law also needs to be reviewed to consider how AFCA can better attribute loss in situations such as Dixon Advisory, where advice was only one of the contributors to the loss that clients sustained.
- We seek greater visibility and accountability for how ASIC responds to reports of misconduct that ultimately ends up with the matter being compensated by the CSLR. This should require annual reporting covering what was discovered and what regulatory action was taken.

We request that the inquiry consider all of these matters.

(j) any other related matters

Auditors

We must make the point that things of the scale of the Dixon Advisory and URF debacle do not happen in isolation. There are a range of participants who have played a role in this, and we think that it is appropriate for the investigation to capture those who were closely involved. Often when a company fails, stakeholders look at the role of the auditor. Deloitte has been the auditor of the URF since the commencement of the fund in 2011. Deloitte were also the independent accountant in the PDS for the offer of the URF CPUs in December 2017 and for the prospectus in the float of Evans Dixon in 2018. They had full visibility of the extent of the fees that were being extracted from the URF by Dixon Advisory and related companies. We would like the inquiry to ask the question about what actions the auditor took in calling out these conflicted fees and other irregularities.

Independent research

Another point of concern that we have held is the fact that evidently Dixon Advisory never sought independent research on the URF. Given the extent to which the URF was almost exclusively sold to the clients of Dixon Advisory, there should be rules to place an obligation on the firm to seek independent

research on in-house products. This research should also consider the potential consequences of a high percentage of the fund being held by the clients of just one licensee.

Licensee powers

It is unclear whether Dixon Advisory's salaried financial advisers had the internal power to reject the recommendations directed to them by the Investment Committee. As discussed above, it was clear advisers were given little opportunity to fully consider the merit of these recommendations for clients. It may be necessary for advisers to have access to the opportunity to report these matters or to have an ethical support line to assist them to work through how best to respond.

Recommendations and key issues to address

Based on the issues the FAAA and our members have presented in this submission, we provide the following recommendations for the consideration of the Senate Economic References Committee.

Dixon Advisory action

1. **Ensure all action possible has been taken to recover funds from Dixon Advisory and the related entities' businesses.**

Dixon Advisory was a subsidiary of the large, listed E&P Financial Group, which reported revenues of $173m in the 2023 financial year. E&P Financial Group is still operating and remains a member of AFCA. When Dixon Advisory was put into administration, a number of advisers and clients were transferred to another entity in the group. Besides ASIC's legal action against one Dixon Advisory Director alleging failures in directors' duties, there has been no other director, senior manager or financial adviser prosecuted or banned by ASIC in relation to the product or advice related issues with this matter. The URF also continues to operate.

CSLR

2. **Remove the retrospectivity from the Compensation Scheme of Last Resort.**

Retrospective laws are flawed in principle. They breach the reasonable expectations of citizens that future laws will not be passed that affect their conduct or obligations today. This principle goes back to Roman times – it is unjust to legislate for the past. However, this is a moral case rather than a legal case as the Australian constitution doesn't prohibit making retrospective laws. We would argue that just because the government technically can do this, it doesn't mean they should.

When originally proposed, the scheme was intended to be prospective.

3. **Legislate to enable a special CSLR cost to be levied against an integrated financial group that has made a subsidiary entity bankrupt to avoid paying compensation to consumers.**

It is deeply unjust that advisers are being asked to fund compensation for the clients of a large listed entity, like E&P Financial Group, that continues to operate and in fact has retained many of the clients under advice

and their associated fees. This equates to allowing phoenixing activity to occur to the detriment of consumers.

While insolvency law might be hard to change, the government has almost unlimited power to expropriate and has used that power already for the CSLR, against the 10 largest financial institutions.

The government could establish a principle in the legislation based on common ownership and/or directorships, that a given proportion of revenue be levied against the parent entity if any subsidiary company has caused its customers to have recourse to the CSLR.

This would be a tangible disincentive to future phoenixing activity.

There is no legal reason the government could not use its power to expropriate now to recover consumer losses against Dixons' parent company, E&P Financial Group.

The CSLR Levy legislation should be amended to allow a penalty of some form to be applied against the parent entity of a subsidiary that is placed into administration. This penalty should be attributed against the total levy payable for the relevant sector. This penalty should not be paid into consolidated revenue.

4. **The government should cover the first year of costs of the CSLR, as was originally promised by government.**

The government is only paying for three months of the scheme's operations, including only one Dixon Advisory claim.

Its contribution to supporting consumers has only been $4.8m in the context of a scheme that has been launched with retrospective impact of what could be over $400m.

This is a broken promise by the government, which is in fact contributing very little to helping consumers who have lost money.

5. **A commitment that the Minister will not levy the advice profession for more than the $20m annual sector cap going forward, but particularly in the period that we are subject to the fallout from the Dixon Advisory matter; and apply the sector cap as a fixed cap for small business sectors that do not have the capacity to pay for large losses.**

Any excess above the sector cap in regard to Dixon Advisory and future significant 'black swan' events should be charged to other sectors of the financial services industry, which benefits from increased consumer confidence in the financial sector. Impacted clients would not miss out on compensation, and the funding load would be shared more fairly.

As adviser numbers have been in steep decline for some time, the cost per adviser risks increasing and leading to a 'vicious cycle' in which fewer advisers pay higher costs, needing to increase their fees charged to consumer by more to cover these extraneous costs. The impact this will likely have on the cost of advice for consumers is counter to the government's agenda to improve the affordability of advice for Australians.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

6. If our sector has reported a financial firm or adviser of concern, and ASIC has chosen not to take any action, or has substantially delayed action, the financial advice sector should be indemnified against having to pay for any future CSLR claims.

The only action advisers can take to protect themselves against future CSLR costs is by promptly reporting any problems they are aware of to ASIC, to minimise any potential consumer loss.

Financial advisers have no control over whether or how quickly ASIC will act on reports of potential wrongdoing. ASIC is only acting on approximately 1% of the reports it receives (Senate Economics Committee report – July 2024).

ASIC has no requirement to report back to the financial advice sector or publicly on how many matters they have been alerted to and whether they have actioned any of those reports. ASIC currently holds no risk in not taking action, or delaying action against wrongdoers. All their costs get paid by each sector via the ASIC Industry Funding Levy, whether or not ASIC takes action, and whether or not that action is successful.

7. Agree that any fines or penalties recovered in actions involving insolvent entities will be paid to the CSLR to fund consumer compensation.

Even though these amounts are unlikely to actually be recovered, if they are, it would be incredibly unjust for these to go into the government's Consolidated Revenue, rather than making good the losses incurred by consumers. This could include any fines or penalties in the five years leading up to the insolvency.

It is inappropriate for the Government to be making a profit out of consumers losing money, as they would be if fines and penalties continue to go to Consolidated Revenue.

8. Ensure that resources are made available to appropriately defend AFCA complaints subject to the CSLR, including Dixon Advisory.

Every complaint should be robustly investigated and defended by an appropriate party as a matter of process and natural justice to determine the most appropriate outcome is reached for each specific case.

Failure to adequately defend each case may result in additional and unnecessary costs being added to the already unreasonable burden being imposed on financial advisers who are doing the right thing.

The Government should make funding available for an entity to serve this purpose.

9. Extend the scope of the CSLR to cover all AFCA members, but particularly Managed Investment Schemes (MISs).

Substantial consumer harm has been caused by product failure rather than advice failure, harm that currently has no recourse (eg Sterling, Mayfair etc). People have lost their homes and life savings.

The current situation encourages inappropriate risk-taking and higher risk products to be launched and sometimes targeting elderly consumers with insufficient financial resilience to withstand losses (as the wholesale limits are too low). These consumers then become entirely dependent on the social security system.

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Without any coverage for product failure, our concern is that all future MIS failures where financial advice was provided, will be defined as advice failures, even though many (including Dixon Advisory) are caused or substantially contributed to by product failures.

10. Ensure the scheme is genuinely a last resort by taking every step to seek recovery from other parties before demanding money from the financial advice profession.

For the advice profession to be confident that the CSLR is genuinely a scheme of last resort, they will need to know that everything has been done to recover the funds for the unpaid determination from the entity who the judgement was made against, including all possible avenues for recovery. This is likely to look at the PI insurance options, efforts of management to transfer assets elsewhere, the avoidance of repayment of intercompany loans by parent companies and the comprehensive pursuit of any individuals who might be liable for the client detriment. Nothing less than a full investigation would suffice. In the case of a parent company that placed an advice subsidiary into administration and where the CSLR made compensation payments to impacted clients, we would expect to see them appear before a hearing to assess their actions.

ASIC

11. Fines and penalties resulting from ASIC action taken against financial firms for wrongdoing causing consumer detriment, should be allocated to cover the cost of the ASIC regulatory action.

Currently the allocation of fines and penalties to Consolidated Revenue, combined with the cost recovery of ASIC's regulatory activity, mean that the government is being paid for the cost of ASIC's operations twice – once through the court system, plus via the ASIC levy.

12. ASIC should be required to report annually on its investigations, findings and regulatory action taken in relation to reports of misconduct that ultimately ends up with insolvent businesses, where clients are being compensated by the CSLR.

We seek greater visibility and accountability for how ASIC responds to reports of misconduct that ultimately ends up with the clients impacted by the matter being compensated via the CSLR. This should require annual reporting covering what was discovered and what regulatory action was taken. ASIC reporting is more than likely to be after the investigation is complete or at least public. Such reporting should focus on what ASIC have done with respect to firms that are the subject of a CSLR payment. Such firms would most likely already be in administration or liquidation. Some reasonable exemptions from the reporting would be required for matters that are still subject to investigation, however only for a limited period.

13. Review ASIC's powers and investigation processes to ensure the Regulator provides appropriate oversight of firms that provide financial advice and financial products. This should include a requirement to look beyond the financial advice client files. Where there is significant consumer detriment impacting a material number of clients, ASIC should be required to investigate the financial advice value chain, include product development, research and performance, the entity's investment committee considerations of in-house products and any associated fees, and potential conflicts arising with related entities.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

There were significant and systematic conflicts of interest evident within the management of Dixon Advisory and related entities, particularly between the advice entity and its related in-house products. Based on publicly available information, these matters were seemingly not investigated by the Regulator. The apparent focus of the ASIC investigation was on the output of the advice – via the client advice files – rather than the business model. This allowed these practices to continue despite ASIC's 2015 surveillance of Dixon Advisory, to the detriment of consumers.

Given that it has evidently not been tested, we are uncertain as to whether the law is clear enough and ASIC has the power to pursue matters involving misconduct on the part of a funds management business such as the URF, or where there are systemic conduct issues that are encouraged and condoned by directors and senior management

14. Provide a dedicated reporting mechanism within ASIC for financial advisers to report matters of concern about their own or another licensee, including product providers, and provide an ethical support line to assist them to work through how best to respond.

It is unclear whether Dixon Advisory's salaried financial advisers had the internal power to reject the recommendations directed to them by the Investment Committee. As discussed above, it was clear advisers were given little opportunity to fully consider the merits of these recommendations for clients, however it is unclear whether the culture of the organisation allowed them to raise concerns.

The Ethi-Call is a free, independent helpline that provides "expert and impartial guidance to help people make their way through life's toughest challenges, when there's nowhere else to turn". While this is an invaluable service, it is generic in nature and does not specialise in ethical dilemmas that are unique to the financial advice profession and the financial services industry. Consideration should be given to extending advice specific assistance to help financial advisers and other individuals in these types of circumstances.

AFCA

15. Amend the "non-apportionable claims" classification under the proportionate liability statutes to allow AFCA to consider and apportion liability of complaints involving financial product failures and financial advice matters, including in circumstances involving potential breaches of the best interests duty and failure to give appropriate advice obligations.

We seek a review of the law with respect to the apportionment of claims, so that the law better enables a fair allocation of responsibility in situations where there are both advice and product failings. We seek this as a broader improvement to the regulatory regime that we operate under and as a mechanism to ensure that the CSLR operates on a fairer basis. It is not reasonable for an adviser to be responsible for the full cost of a product failing, where they could not have reasonably understood the risk of negligent conduct by the product provider, simply because they made a relatively minor error in the provision of financial advice.

16. Review the adequacy of penalties available for entities and directors that refuse to pay compensation under an AFCA determination.

If a firm refuses to pay compensation under an AFCA Determination, and the complaint is eligible under the CSLR Rules, the complainant can lodge a claim with the CSLR for payment. While the firm will lose their AFS licence for refusing to pay the compensation, it is unclear whether this is sufficient to deter such

refusals, in the context of the CSLR. Knowing the CSLR will likely cover unpaid Determinations may incentivise non-payment by some firms.

17. Review the definition of 'person' in s1067 of the Corporations Act to ensure that the CSLR's $150,000 cap is applied in an appropriate manner to any AFCA claim to avoid the risk of duplication of compensation payment by the CSLR.

A couple is treated as one client by the financial adviser – the circumstances and advice relate to the couple as one client who want to achieve one set of shared goals. There is a risk of the CSLR's $150,000 per claim cap being applied in multiple capacities resulting to the one client. For example:

- a complainant's claim being lodged twice – both as a trustee and as a member of an SMSF
- a couple being treated as two separate claims, even though the advice was provided to the couple as one client.

A complaint should not be split into two distinct compensation claims for the one piece of advice. We understand that this could be fixed by regulation.

Product regulation

18. Establish an obligation on the product provider to obtain independent research when distributing in-house products.

It is evident that Dixon Advisory, nor any other entity in the Dixon business group ever sought independent research on its in-house product, the URF (and presumably other in-house products). Given the extent to which the URF was almost exclusively distributed via the in-house advice arm to the clients of Dixon Advisory and the consumer detriment caused by the poor performance of the product, there should be rules to place an obligation on the product provider entity to seek independent research on in-house products. This research should also consider the potential consequences of a high percentage of the fund being held by the clients of just one licensee.

Research should always be the product provider's responsibility. Where a vertically integrated group plans to distribute an in-house product via a related entity advice licensee, independent research must be provided to both the AFSL investment committee and the financial advisers.

Professional Indemnity Insurance

19. Consider the responsibility of parent companies and whether such entities should be required to maintain professional indemnity insurance for related entities that are placed into administration.

As noted above, we believe that a parent entity that places an advice subsidiary into administration should have some responsibility for the clients of that business and as such should be required to purchase run-off cover for at least three years.

20. A formal review of the affordability, availability and adequacy of professional indemnity insurance for AFSLs should inform a policy decision on run-off insurance.

Financial advice firms are required to have PI insurance, however as has been illustrated many times, it does not always work and serve to protect consumers. The former Government commenced a review of PI insurance arrangements, however this review was never completed. We recommend that further work be done to ensure that PI insurance cover for financial advice firms is fit for purpose.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Appendix 1

AFCA Determination – Dixon Advisory – Case 716627:

3.5 The fees for related entities as illustrated by the URF were high

The fees associated with the URF, which were charged by the financial firm's related entities, were high:

Fee type	Level of fee
Investment management fees	1.24% (plus GST) on gross assets
Administration	0.25% (plus GST) on gross assets
Responsible entity	0.08% (plus GST) on gross assets
Custodian	0.02% (plus GST) on gross assets
Structuring and Arranging fee	2.00% of gross proceeds raised
Handling fee	2.00% of gross proceeds raised
Debt arranging fee	2.00% of gross amount of debt financing arranged
Asset Acquisition fee	1.99% of purchase price of property
Asset Disposal fee	2.49% of sale price of property
Leasing fee	1 month's gross rent
Architecture and Design	at Market based hourly rates
Development (renovation)	5% of the cost of renovations
Property management	Reimbursement of expenses incurred plus administrative Services fee of 9.5% of costs incurred

Source: Product Disclosure Statement, URF website

The panel is of the view that the fees were significantly high compared to alternative investments. While AFCA cannot consider the level of the fee, nor the management of a fund as a whole, it is relevant in determining appropriateness of the advice and considering the materiality of the conflict for the purposes of the Conflicts Priority Rule. The other related entity investments had similar issues.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Appendix 2

June 2024 Questions of ASIC on Dixon Advisory (Ref BET098):

Question 1. The 19 April 2022 ASIC Media Release on suspending the AFS license of Dixon Advisory included a statement that "ASIC is also undertaking inquiries in relation to the transition of former clients of Dixon Advisory to Evans & Partners Pty Ltd, a related entity". What did your investigations reveal? How many of these Dixon Advisory clients moved to other subsidiaries within E&P Financial Group and how many of these clients who moved have submitted complaints to AFCA, which will need to be paid for by the CSLR? Additionally, how many financial advisers transferred from Dixon Advisory to Evans & Partners?

ASIC Answer 1. ASIC's investigation considered many issues and resulted in the litigation currently before the Federal Court alleging a breach of directors' duties by Paul Ryan, former director of Dixon Advisory & Superannuation Services Pty Ltd (DASS).

By May 2022, approximately 3280 of 4100 clients had moved from DASS to Evans & Partners Pty Ltd (E&P), another AFSL holder in the Group. Every DASS client was given a choice, with some choosing to leave and the majority deciding to stay withing the Group.

Most DASS clients already had a standing relationship with other entities within the Group. For instance, clients may have received investment advice from DASS, but the administration of their self-managed superannuation fund was conducted by other entities, or they received broking services from another of the AFSL holders within the Group. The agreements DASS clients entered were generally not exclusive to DASS, with clients authorising services being provided across various entities within the Group.

We do not know how many of the DASS clients that moved within the Group have lodged AFCA claims, nor do we have visibility of how many may ultimately result in claims being made under the Compensation Scheme of Last Resort.

Between 1 January 2021 and 10 May 2022, E&P appointed 39 advisers who were DASS representatives. Of those, 27 were appointed to an E&P role that involved the provision of financial advice.

Some of the advisers were appointed to E&P well before DASS entered administration on 19 January 2022. Since at least 2000, E&P Financial Group Limited (EP1) have made public disclosures about its plans to consolidate the Wealth Management group, which consisted of several entities that provided financial services (including DASS).

Question 2. Financial advisers are saying that the problems with Dixon Advisory have been known for many years and had been reported to ASIC. Can you please advise what reports ASIC had received, when and what action ASIC took in response to those reports?

What was the trigger for ASIC to ultimately take action against Dixon Advisory?

ASIC Answer 2. ASIC provided some information about reports of misconduct concerning this matter in the answer to previous questions (Set 73).

Expanding upon that, between October 2008 and September 2022, ASIC received 60 reports of misconduct in relation to DASS.

As set out in ASIC's prior response in Set 73, most reports were received 2019 or later, being after ASIC had commenced its first investigation.

The earlier reports resulted in ASIC conducting surveillances or were subject to no further action. One such surveillance subsequently led to the commencement of an investigation in July 2019 relating to suspected breaches of best interest duties and conflict of interest.

Question 3. ASIC issued a media release on 19 April 2022 with respect to Dixon Advisory and the suspension of their license. In that media release you stated that Dixon Advisory would need to comply with the client compensation obligations, including membership of AFCA until 8 April 2023. In an editors note at the bottom of that media release, there is a statement that "ASIC cancelled the AFS licence held by Dixon Advisory, effective 5 April 2023. The terms of the cancellation require Dixon Advisory to maintain membership of Australian Financial Complaints Authority until 8 April 2024". Why did ASIC extend this obligation to remain a member of AFCA for a further year?

ASIC may, as occurred in this case, impose conditions as part of administrative decisions.

In the context of a licence suspension or cancellation, this can include a condition to maintain AFCA membership (although the decision to expel or cancel a licensee's AFCA membership is a matter for AFCA).

We have imposed such conditions on regular occasion—including in the case of DASS for a further year after its license cancellation—to preserve the rights of clients to make claims to AFCA. This is because complaints can only be made against entities which are AFCA members; if an entity's AFCA membership ceases, no further complaints can be accepted by AFCA.

Question 4. At the Senate Estimates hearing on 4 June 2024, ASIC confirmed that you were investigating Dixon Advisory between 2015 and 2019, however ultimately decided not to take any action against the financial advisers. With respect to this investigation:

a. Why did it take so long, if the client loss was so great?

b. What did you discover with respect to the sales practices and the related party URF fund, where the client losses were so great?

c. What processes did the licensee take to research the URF fund before it was recommended to clients and how did they monitor its performance?

d. Did you interview financial advisers to understand why they recommended such high allocations to related party products?

e. To what extent were senior managers involved in both the advice and product manufacturing side of the business and how were conflicts of interest managed?

f. Presumably, if you decided not to take action against individual advisers, then you must have decided that the core of the problem was the underlying business model. If this was the case, then why wasn't action taken against management and directors who designed and operated that business model?

ASIC Answer 4. To clarify, ASIC commence in 2019 an investigation into DASS in relation to conduct that occurred between 2015 and 2019.

a. The question may have been posed based on an incorrect assumption that ASIC's investigation was between 2015 and 2019. ASIC's best interests' investigation in relation to DASS commenced in July 2019, with proceedings filed in September 2020, representing a 14-month period. Given the complexity of the subject matter and the need to ensure that the evidence in support of any proceedings would support a favourable court outcome, that investigation duration was not a long one.

At the time ASIC issued proceedings, the extent of possible losses was not known. When DASS entered administration in January 2022 most of the possible losses were contingent liabilities and, as of June 2024, the DOCA administrators had still not determined what dividends will be paid to creditors.

b. ASIC's investigation findings underpinned the best interests' proceedings that ASIC commenced and concluded. We explained those proceedings in responses to previous questions on notice, including Set 72 and 73. In short, there were failings in the financial advice provided to DASS clients to invest in the US Masters Residential Property Fund (URF) and related products, with DASS subsequently subject to ASIC regulatory action.

c. DASS research into the URF was not a focus of ASIC's investigation. URF, being a listed fund, had public disclosure and reporting obligations and it had a dedicated website where half-yearly and final accounts were published and all public announcements released (which included weekly unit price updates).

ASIC understands that DASS' main process for oversight of the URF was via its investment committee, which were responsible for developing, selecting, managing and monitoring all DASS-approved products.

d. Given the focus of the investigation, ASIC had limited interaction with DASS advisers. Intensive interviewing of advisers was unnecessary given that (i) ASIC had sufficient understanding of DASS's business operations and advice provided from ASIC's review of business records and evidence obtained; and (ii) we retained an independent expert to assess each piece of advice provided by a DASS adviser (that was the subject of the allegations presented by ASIC to the Court) to establish advice failings.

e. The product manufacturing side of DASS' business was not core to ASIC's investigation scope. Accordingly, our ability to answer this question is limited.

We are aware that DASS had conflict policies and maintained conflicts registers which broadly aligned with regulatory expectations.

f. As ASIC has confirmed in previous answers to questions on notice, ASIC's investigation in relation to DASS focused upon overall systemic issues involving a business model that ASIC alleged gave rise to best interest contraventions over a number of years. As a result of that investigation, ASIC considered the appropriate response was to take action against DASS for failing to prevent the ongoing advice failures.

There was insufficient evidence or grounds arising from the investigation to take action against DASS management and directors.

Question 5. AFCA have released the first determination with respect to Dixon Advisory cases. The first case shows that the client was invested between 54% and 75% in related party product across a seven year period. Is this a surprisingly high allocation in ASIC's view? Would such a high percentage of related party products normally be an alarm bell for ASIC? What monitoring does ASIC do to oversight this issue of high related party investment allocation for vertically integrated groups in the financial services sector?

ASIC Answer 5. The Federal Court judgment in the best interests case (previously referred to in our response to Set 72) detailed ASIC's concerns with issues of over exposure to the URF within client portfolios. Those concerns formed part of the case ASIC brought before the Federal Court and in which we alleged best interests failures.

Generally, over exposure to related party products can be a red flag. However, each instance of financial advice provided to a client needs to be considered to assess issues such as the clients' objectives and what the client requested.

ASIC does not proactively supervise and oversee all advice provided across the financial planning industry that potentially raises issues of overexposure to particular products. However, ASIC does undertake targeted proactive surveillances on various entities and we will consider conducting investigations where serious advice failures are identified (or otherwise brought to our attention).

Question 6. Would ASIC normally investigate such situations to understand what incentives are being paid or pressure is being applied to the advisers to facilitate such a high allocation to related party investment products?

ASIC Answer 6. Whether or not ASIC will commence a formal investigation into incentive arrangements or investment allocation advice will depend on the circumstances and a great variety of factors (including the best interests of the client). It can be one of the issues considered in our investigations.

Question 7. As part of ASIC's investigation of the Dixon Advisory scandal, did you manage to work out what percentage of the total investment in the US Masters Residential Property Fund came from clients of Dixon Advisory? Evidently it was a very high percentage. To what extent was this a concern for ASIC? Did this suggest a strong level of pressure had been applied from elsewhere in the company to support this product?

ASIC Answer 7. We are generally aware that DASS clients often comprised up to 80% of the total investment in the URF, with the figure fluctuating at different points in time.

The URF was one of a number of integrated products within the EP1 Group that were recommended by DASS to its clients. Given the integrated model, DASS regularly recommended in-house products to their client base.

ASIC held concerns about DASS' recommendation of the URF, and URF-related products, to clients. Accordingly, that aspect was a focus of ASIC's best interest litigation against DASS.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Appendix 3

Outstanding questions and further investigation about Dixon Advisory matters

Below is a list of questions relating to key aspects of Dixon Advisory's operations and collapse, and ASIC's investigation of these matters, that we suggest require further investigation.

About Dixon Advisory

- What governance arrangements were in place for the Dixon Advisory Investment Committee?
- What policies and procedures did Dixon Advisory have in place that should have addressed the conflicts of interest between the investment committee, related entities, and in-house products?
- What policies did the Investment Committee use to guide its decision making?
- Which other businesses within the Group were represented on the Investment Committee?
- What were the 'standard parameters' the Investment Committee used to determine the recommendations it directed its advisers to provide to clients?
- What did the financial advisers know about the conflicts of interest:
  - with Dixon Advisory?
  - within the broader Group?
  - and the apparent role these conflicts played in influencing the decisions of the Investment Committee?
- What analysis was undertaken and what information did the Dixon Advisory Investment Committee rely upon in the decision to promote and recommend the URF (and other in-house products) and what activity was undertaken to continue to review the appropriateness of the product for clients over time?
- Why did each financial adviser agree to present these recommendations to clients?
- Did the financial advisers believe the recommendations were in each client's best interest?
- What level of detail did financial advisers have about the URF, its operations and its risks?
- Were advisers permitted to seek independent research on the products?
- Did any financial advisers raise concerns (internally) about the:
  - recommendation decisions being made by the Investment Committee?
  - apparent conflicts of interest within the organisation?
- Were any incentives offered, or potential repercussions spoken about, to encourage financial advisers to present the recommendations to clients?
- Were there any clauses in staff contracts that influenced financial advisers' decisions?
- How many advisers left or were disciplined within the Dixon Advisory business for refusing to follow the directions of the Investment Committee?

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Dixon Advisory's clients

- How did the Dixon Advisory Risk Profiling methodology change over time and did client's risk exposure seem to increase, despite in many cases them moving into retirement.
- How and why did the Dixon Advisory Investment Committee decide to treating property as both growth and defensive.
- How did the policies of the Dixon Advisory Investment Committee allow the level of client exposure to inhouse products increase over time.
- 80% of Dixon Advisory clients were invested in URF. Approximately 78% of Dixon Advisory clients chose to remain with their financial adviser even after the collapse of Dixon Advisory:
  - How was the demise of Dixon Advisory, and the reasons for that demise, explained to clients?
  - Why, despite the scale of the losses, did so many clients decide to stay with the E&P group?
  - How many of these clients are still with the E&P group?

AFCA membership

- Why did ASIC extend Dixon Advisory's membership of AFCA by a further 12 months from 8 April 2023 to 8 April 2024, knowing Dixon Advisory would be unable to pay any compensation awarded to complainants?
  - ASIC's answer to this question from a June 2024 Senate Estimates Committee hearing was to "*preserve the rights of clients to make claims to AFCA".* This open-ended response is seemingly inadequate, given the entity in question was under administration and unable to pay claims. A direct answer to this question is need.
- When did ASIC extended Dixon Advisory's AFCA membership and why was this done quietly through an editor's note in a previously released media release?
- Why did AFCA refute that Dixon Advisory was insolvent, unlicensed and not operating a business in the industry, and thereby extending its AFCA membership beyond the ASIC deadline of 8 April 2024 to 30 June 2024?
- Did E&P or a related party (or a representative) discuss with ASIC and/or AFCA the matter of Dixon Advisory's AFCA membership? If so, when did these discussions take place?
- Did Evans & Partners or any other entity in the E&P group, encourage clients to complain to AFCA and seek compensation through the CSLR, particularly during the period between 8 September 2022 and 30 June 2024 (ie. when ASIC and AFCA effectively extended Dixon Advisory's AFCA membership)?

ASIC's investigation and findings

- Our members tell us that the issues with the Dixon Advisory business model were well known. What action, if any, did ASIC take in relation to the 60 reports of misconduct in relation to Dixon Advisory it received between October 2008 and September 2022?

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- When one person has such broad responsibilities across a business group (such as Alan Dixon did), how can that person and the business possibly manage the conflicts this creates to ensure that the priority is placed on their clients' best interest?
- How was a listed parent company able to put a subsidiary company into administration and transfer the advisers, their clients and the associated ongoing fee arrangements to a new entity within the business group, and not pay any compensation for consumer loss of this scale?

ASIC's 2015 surveillance

- Was ASIC's 2015 surveillance of Dixon Advisory restricted only to reviewing client files? Did ASIC consider Dixon Advisory's management of conflicts of interest or governance arrangements?
- Why were the extent of the problems at Dixon Advisory not obvious to ASIC in its 2015 surveillance?
- Why did ASIC not take enforcement action in 2015 to correct the poor practices that were seemingly present, well known and subject to the complaints it had received about the business?
- What were the findings of ASIC's 2015 surveillance review of Dixon Advisory?
- Did ASIC request Dixon Advisory make changes to its practices in relation to URF, its Investment Committee governance, or to address any conflicts of interest within the business, or any other changes as a result of its 2015 review of the business?
- Was the change of the URF Responsible Entity in 2015, and changes in Dixon Advisory directors, a result of actions related to the 2015 surveillance undertaken by ASIC?
- Did ASIC continue to monitor the operations at Dixon Advisory as a result of the findings of its 2015 review of the business?

ASIC's 2019 action

- In response to Questions of Notice from the June 2024 Senate Estimates hearing, ASIC suggested that *"There was insufficient evidence or grounds arising from the investigation to take action against DASS management and directors*":
  - What investigation did ASIC undertake to make this determination?
  - What evidence did ASIC find as a result of this investigation and why was this evidence deemed insufficient?
- Did ASIC:
  - examine the Board minutes of Dixon Advisory and E&P and the minutes of the Dixon Advisory Investment Committee meetings?
  - interview the people who knew what really happened, including directors, members of the investment committee, management at the URF and advisers themselves?
  - focus on what went wrong at the URF?
  - investigate why so much money was lost by investors in the URF?

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    - take adequate action with respect to compliance with insolvency laws, other than the action against the one Dixon Advisory director for seeking to extinguish the $19m intercompany debt?

- What did ASIC's investigation find regarding the extent to which senior managers were involved across both the advice and product manufacturing sides of the business and how conflicts of interest were managed?
- Why was this court action continued after Dixon Advisory was placed into administration knowing ASIC would not be able to collect the fines and the cost of the action be recovered via the ASIC Funding Levy? What did proceeding with the case prove? What other options were available to ASIC at that time?
- Why did ASIC drop the "failure to prioritise the interests of the client" proceedings, a critically important part of the case that goes a long way to explain the reasons for why Dixon Advisory operated this way, given the $134 million or more in fees that Dixon Advisory received from URF between 2015 and 2018?
- Why was no action ever taken against the people in charge at Dixon Advisory and related entities, and why did ASIC provide a commitment to "*seek no further declaration of contravention in the proceedings*"? Why didn't ASIC publicly state this commitment?
- If this was just an advice issue, as the September 2022 contraventions suggested, then why was the change of senior personnel in the Evans Dixon group relevant? If the senior personnel in the Evans Dixon group did the wrong thing, then why wasn't action taken against them?
- When were the changes made to senior personnel in the Evans Dixon group that "*facilitated future compliance with the civil penalty provisions*" as referenced in the September 2022 judgement?

Product issues

- Did ASIC investigate Dixon Advisory's research into the URF and the decision to add the product to their approved list? Did ASIC investigate their processes to continue to recommend the product.
- What investigations did ASIC undertake in relation to the product manufacturing issues in relation to URF and other in-house products?
- Why did ASIC take the decision not to investigate the product related issues?
    - Did ASIC examine the URF's adherence to the DDO and MIS obligations?
- Why was the product manufacturing side of the business (that built the URF fund) not core to ASIC's investigation scope when it was the failure of the product that was the underlying cause for the consumer loss?

Settlements

- Why did ASIC complete an agreed settlement without the intention of enforcing the penalty and collecting the costs order, as set out in the court judgement?
- Why did ASIC agree not to take any further action against Dixon Advisory?
- Why wasn't it made clear in ASIC's media release on 19 September 2022 that it did not intend to collect against the costs order or enforce the fine?

- Did Dixon Advisory compensate the eight sample clients who were part of the ASIC investigation?

Insolvency issues

- What investigations did ASIC undertake in relation to insolvency issues at Dixon Advisory, including the repayment of the intercompany debt, and the transfer of clients and clients' ongoing fee arrangements to a related entity?
- Why did ASIC drop its investigation in relation to the transition of former Dixon Advisory clients to Evans & Partners?
- Why did ASIC extend the Dixon advisory licence until 5 April 2023, if all the advisers were removed by the end of June 2022 and the administrator had applied for the licence to be cancelled some time before 19 September 2022 (but presumably in late June or July 2022)?
- Does it usually take ASIC this long to cancel an AFSL of an advice business in liquidation/administration? If not, why did it take so long with Dixon Advisory?

Auditors

- What actions did Deloitte, as the auditor of the URF since 2011, the independent accountant of the offer of the CPUs in 2017 and the Evans Dixon float in 2018, take in calling out the conflicted fees Dixon Advisory received from the URF, the lack of compliance with the gearing policy by the Responsible Entity, and other irregularities?

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Appendix 4

FAAA Member Survey Feedback on the implementation of the CSLR

October 2024

Outline the things that you are unhappy about in regards to the CSLR

1. Why would remaining advisers in the profession need to cover the cost of previous advisers who did the wrong thing and have now left the profession?
2. Why are we not covered by the limited liability provided by the Professional Standards Council just like accountants and solicitors are?? Why doesn't professional indemnity insurance cover all this business by business??
3. Vertical integrated financial services businesses are much different, bigger businesses carrying higher legal risk due to conflicts of interest compared to my single adviser self employed business, however we are unfairly classed together under CSLR. It's unfair I carry part of their business and legal risks for bad advice and product design when I have limited capital resources compared to a company like Dixons/EP1. The Dixons case really should be called the Evans & Partners case because it is absolutely a case of pheonixing. Also, the same clients being paid compensation are still their fee paying clients. Why doesn't the CSLR differentiate between vertically integrated businesses and businesses that are not (my PII insurer does).
4. It is not fair nor reasonable to punish the entire profession (via CSLR funding) for the misconduct of a few participants. Part of ASIC's role is to identify and deal with conflicted vertically integrated business models. Some have been around for over 20 years (e.g. Dixons). Why was it not picked up?
5. Subject: Request for Investigation and Review of CSLR Scheme Impact on Financial Planning Practices

   I wish to express my concerns regarding the inequitable treatment of financial advisers under the current framework of the Compensation Scheme of Last Resort (CSLR). It is unreasonable that my small business, along with other financial advisers, is being held financially accountable for the misconduct of large financial planning businesses such as Dixon Advisory and Evans & Partners (now E&P). Despite their well-documented failings, these firms have retained their clients, and their directors remain in prominent roles without consequence. The burden placed on small businesses like mine to contribute to this scheme is not only unjust but may also constitute an unlawful charge.

   It is difficult to understand why financial advisers are being treated differently from other professions such as accountants, lawyers, and doctors. These professionals are only required to maintain professional indemnity (PI) insurance, and several legal experts I have consulted confirmed that they would not tolerate being held responsible for the failings of their peers. Financial advisers are already required to hold PI insurance to address any issues related to their own advice. Why, then, should we bear the additional burden of compensating for the misconduct of large firms like E&P, which continue to operate?

   This scheme creates an unfair precedent where large institutions may continue to deliver poor advice, knowing that independent advisers and small businesses will ultimately shoulder the financial

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consequences. This echoes the failures of the banking sector, where advisers were often blamed for actions dictated by their employers. I urge you to investigate these issues and reconsider the impact of the CSLR on small financial planning businesses, which are already struggling to manage operational risks in an uneven regulatory environment.

6. Funding it via a levy on industry makes ethical financial advisers cover the bill for unethical financial advisers. Meanwhile Alan Dixon's on his yacht somewhere.
7. I am a small one adviser business working mainly with the average mum and dad clients. I am responsible and accountable for what I do in my business. I have professional indemnity cover and comply with all the licensee requirements and are audited each year. I do everything that is required to put my clients first. I am just one of many such small adviser firms. Without us the financial advice & Insurance industry will collapse.
    - Why do we have to pay for the fraudulent, profit first behavior of large advice firms?
    - Why do we have to pay for bad product design and integration failures, conflict of interest etc by large advice firms?
    - Why are these failures allowed to walk away so easy without consequences?
    - Why do we have to pay for more government created regulations and bodies that provides no benefit, only additional costs?
    - Why do politicians, government employees and greedy lawyers without any industry experience, decide what is best for our industry?

    It's far too broad and is making us not only litigation funders with the ASIC Levy but also having to kick in when ASIC fails in their diligence (and not just ASIC, they're just low hanging fruit). If this exists with other professions I might be more open minded, but I don't think that's the case.
8. My responsibility for another advice firms blatant misconduct that should have been covered under PI insurance or they should take liability themselves. If the liability is considered "too big" for the firm then the government should be held responsible for letting them get too big with terrible governance. I have no control over what other advisers and firms do and shouldn't have to insure them. A strange concept indeed.
9. The role of ASIC, I believe is to administer the Corporations Act with regards to the AFS licenses it registers. With that in mind, if a company, Dixon, fails in servicing's it's client's through not abiding by the Corporations Act, is this not a failing on ASIC's behalf? Lack/failure of monitoring to ensure AFS licensees and representatives are providing the appropriate advice.

    I'm not sure the requirements in registering an investment product, but again if the product fails should there not be contingencies to payback the members in its constitution. Who monitors these product providers, ASIC or APRA??? Again, is this a failing at a higher level.

    Further should Dixon not have had PI insurance which covers these incidents? Is this not a requirement for AFS licensees? What about Dixon's parent company, how are they not at fault for this scandal?

    This scheme was also not designed for retrospective complaints. In an environment where ASIC are trying to bring down the cost of financial advice, this is obviously contrary to that.

    How are we meant to encourage new advisers into the industry when they are going to be financially behind on day one paying for legacy issues.

At this stage, why aren't product providers contributing to CSLR to account for the issues caused by them?

The cost of running a business to provide financial advice to more Australians (which we know there aren't enough people getting advice) is only growing and this levy will only bear more burden and make it unaffordable to some advisers to continue their business. The funding model is unsustainable.

10. The CSLR sees very small businesses like mine paying for the misconduct of enormous firms who, through technical legal means, have 'closed' one firm owing 450M+ and smugly 'shifted' to the parent firm publicly announcing to all how well they have done.
11. Why was product failure scoped out??? We all know every stage of the economic cycle there will be failures. A missed opportunity to add some additional consumer protection - a missed opportunity! This could also raise additional funds from product providers and put them on notice. This is serious. Investors funds matter!

Outline the information you have about Dixons (or other wealth management firm)

12. I went for a job with Dixons back in 2009, and at that time I was a senior adviser with decent levels of experience, and I was told by the management team back then that "we don't hire senior planners, we build them up in-house". Basically saying that I knew too much to be brainwashed to flog their in-house junk so they had to pass on me and go with someone greener they could indoctrinate into their way of doing things. HUGE red flag for me at that time. This is how the Wolf of Wall Street's firm was built also...
13. I previously worked in a firm in Canberra. Everyone knew Dixon was rotten from the core and that none of the regulatory bodies did anything. Drove of client's leaving unable to access funds from dodgy investments.
14. I was not associated with Dixons but casting my mind back to the Storm Financial days - many people had notified ASIC about the risks. At the same time, there was a similar scam which never received the same publicity as Storm. I had clients who had been sucked into what was obviously a ponzi style scam. I probably spent some 4 hours trying to speak to someone at ASIC who could assist - all without any success.
15. My business used Evans & Partners as a stockbroking and consulting resource from 2009 to 2022. I am aware that senior E&P staff voiced concerns about Dixons practices before the merger was even finalized. The poor investment practices of Dixons were well known by a lot of people in the industry. How did ASIC not know this or investigate or intervene?
16. Dealt with one of their clients and she completely had her hands tied as she was sitting on major unrealised losses with their investments. This is not only their Masters investments, this is all their other investments. Tried to help the client seek advice and remediation from her existing Dixon adviser and they said this is the best they could do. And if she wants more detailed advice on her retirement, she needs to pay more for it as their ongoing service fee only reviews their investments. Noting this is the investments that are all sitting in the red they have remained as they are for years. She is unable to retire as she about 10 years behind on her original projected retirement as her investments have been wiped by Dixon investments. She should never have been recommended to setup an SMSF in the first place as she has no sophisticated investment needs and Dixon rolled her out of her government super. The upfront and ongoing Dixon advice is littered with conflicted advice and has put her in a way worse position had she either 1) Kept her position or 2) invested in a balanced market linked approach. She would have retired already.

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17. Dixons - reviewed portfolio for a former Dixon's advice client about 10 years ago and highlighted the conflict of interests and extortionate fees. The client was completely unaware. This is a highly educated individual with a high level of comfort with numbers and documentation. I will have records.

Why were you dissatisfied with the Regulator's response?

18. The system to disclose is too difficult to navigate
19. Told me to speak to another department, then I contacted them and they ignored me.
20. We prefer to go through AFCA rather than ASIC as the latter are under-resourced and don't have the capability to look into anything but the most serious, large-scale cases.
21. I provided my licensee (which they forward to ASIC) with very specific details of a practice that redeemed all of their client's growth investments in 2020 without their informed consent via a group email where they told the clients they are selling down all growth investments to cash due to "concerns about the impact of covid" and that if they did not want this action to be taken to contact the office within 2 days. Basically, it was an opt-out to the client base with no individual advice (and I know they do not operate discretionary accounts). I know of one client who was horrified by the thought of having her portfolio being sold (she is in her 70s and been an investor for decades so knows about cycles) and phoned with very clear instructions (to the receptionist who said she would give to adviser) not to do it but they did it anyway (so against her instructions). She phoned to complain and was told it was the "right thing to do". It happened to be at the bottom of the covid drop and by the time she came to see me she was still in cash type investment and missed out on the inevitable rebound. I have not heard anything from ASIC about it and the firm is still operating. Either my licensee is not being truthful when they said they forwarded to ASIC or ASIC don't think it's too much of a problem.
22. No action was taken as far as I know. In one case I notified them that the adviser stole money from clients and that he was a flight risk and he is now working in Singapore as a financial adviser. go figure! Lucky for my client they had me fighting and we got the money back from the AFSL's
23. Notified ASIC about Dixons related issues, it was anonymous but nothing happened for years
24. It took them 4 years to advise that the complaint detail had been lost and they requested it be resubmitted.