

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2024-2025

Agency: Australian Securities and Investment Commission
Question No: BET098
Topic: Dixon Advisory
Reference: Written (14 June 2024)
Senator: Andrew Bragg

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?
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?
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?
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?
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?
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?
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?

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).

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.

3. 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.

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.

- 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).

- 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.
- 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.