FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Dixon Advisory and CSLR anger – Part One

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After presenting the regulatory update at the May 2024 FAAA Roadshow, with 10 presentations delivered around the country covering our objections to the way the Compensation Scheme of Last Resort (CSLR) is being implemented, I picked up the nickname 'Angry Anderson'. This is not the type of nickname that I would normally be embracing, however it does match how I feel about what has happened with the Dixon Advisory scandal and the CSLR.

Since then, I have been asked by a number of financial advisers about what I am most angry about. This is a really difficult question to answer as I am angry (not just annoyed) about so much of what has happened with the whole Dixon Advisory debacle and the impact that it has had on the CSLR. And the situation has only continued to get worse over recent months as more and more has come to light.

Nonetheless, I am happy to summarise my main objections:

1. E&P Financial Group walking away from its subsidiary Dixon Advisory and leaving virtually the entire mess for the rest of the advice profession to pick up.
2. The Government failing to deliver on a commitment of a prospective scheme (in which the financial advice sector would only be expected to pick up the costs of claims after the scheme started), and instead launching the scheme with a massive overhang of legacy compensation to be paid.
3. The Government committing to picking up the first 12 months of costs and claims for the CSLR, but then reducing that to less than three months and only covering one Dixon Advisory claim.
4. The Government failing to disclose anything about Dixon Advisory or the likely cost in the Explanatory Memorandum to the CSLR legislation, and failing to do a regulation impact statement for the CSLR.
5. ASIC failing to take action against Dixon Advisory in a timely manner and then only focussing on advice issues in their ultimate civil penalty action.
6. ASIC postponing the end date of Dixon Advisory's AFCA membership which seemingly has enabled multiple hundreds of extra claims in the final months.

I must make it clear that we do not oppose the remediation of these Dixon Advisory clients, who have been poorly treated. Our anger stems from these main objections above.

Over three parts, the FAAA will set out our grounds for anger around each of the above six objections. In this first part, I will address the first objection on the role of E&P Financial Group.

E&P Financial Group

The fact that E&P Financial Group (E&P) 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". I am certain that in the context of a likely distribution from the administrators of Dixon Advisory in the range of 5 cents in the dollar, that the clients of Dixon Advisory won't feel that the settlement was equitable. The financial advice profession, facing a bill of as much as $135 million to compensate these clients, certainly does not think that anything about this is equitable. After all, why should financial advisers, who do the right thing, be paying for the misconduct of Dixon Advisory?

Many events have occurred since that time, however evidently E&P appointed 36 of the 45 Dixon Advisory advisers around the time of going into administration to another subsidiary (Evans & Partners) and according to their FY22 Results Briefing, 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. Further, ASIC has taken action against a director of Dixon Advisory for allegedly changing the Constitution of Dixon Advisory and executing a deed of acknowledgement of debt just prior to going into administration, seemingly for the reason of avoiding the repayment of a $19m debt owed to Dixon Advisory by E&P Operations. This matter is still before the Courts, however 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 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 extracted from the URF over a three and a half year period between 1 January 2015 and 30 June 2018. There is no suggestion that any of this will be returned to 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.

The thing that is likely to infuriate the advice profession even more, is that given the high percentage of Dixon Advisory clients who moved over to Evans & Partners, it will be E&P that stands to benefit from the receipt of additional funds under advice, when the compensation is paid by the CSLR into the predominantly SMSFs of the former Dixon Advisory, now Evans & Partners, clients. Going forward, it will be E&P who will be the ones earning fees on this money.

Please keep an eye out for the next two parts of this story from David and Sarah.