DRN-5293145

The complaint

Mr F2, as executor, complains on behalf of the estate of Mr F1 and Mrs F about the Inheritance Tax ('*IHT*') advice they received from Independent Financial Advice Bureau ('*IFAB*') which resulted in an IHT liability which could've been avoided.
In summary, he says:

- IFAB advised Mr F1 and Mrs F in 2016 to re-rewrite their Will – to protect their home from care fees (through a life interest trust) – revoking their previous Will dated 2007 that would've protected them from IHT (through a legacy trust).
- They're also unhappy about the conduct of IFAB including demanding phone calls, defamatory emails towards Mr S – a family friend and retired IFA who is assisting Mr F2 with this complaint – and quoting the incorrect figures for the investments held.

To put things right, Mr F2 would like the £63,596 IHT liability paid that he feels could've been avoided.

Mr F2 is being assisted by Mr S.

What happened

IFAB didn't uphold the complaint. In a Final Response Letter (FRL) dated July 2023, in summary, it said:

- It can't say who, if anyone, persuaded or advised Mr F1 and Mrs F to re-write their Wills in 2016. Perhaps they could contact the solicitors – which changed in 2020 – who may be able to offer more information.
- Mr F1 has never been a client of IFAB therefore it can't address the concerns raised about any 'advice' he may have received.
- During a meeting with Mrs F, in which Mr F1 was also present (given Mrs F's state of health) their assets were confirmed along with a joint life (second death) policy – which it suggested they place in trust and use to mitigate any IHT liability.
- The total value of Mr F1 and Mrs F's estate – as confirmed by them on 24 July 2019, was £892,995 plus the life policy – so they would've had the means to pay any potential IHT liability.
- In July 2019, IFAB suggested that Mr F1 and Mrs F bring their son Mr F2 to the next meeting. For reasons that are unknown, this never happened.
- In a previous meeting with Mr F1 and Mrs F, on 28 June 2019, they advised IFAB that their property was worth £325,000. On 11 April 2023, Mr S said the value was recorded as £415,000, so a difference of £90,000 that would attract an IHT liability of £36,000.
- In the June 2019 meeting Mr F1 and Mrs F confirmed they had savings of £106,000 but Mr S confirmed that their bank savings were £164,000, so a difference of £58,000 which would attract an IHT liability of £23,000.
- Overall, this increased the IHT liability by £59,200 but IFAB wasn't provided with any of this information at the time, therefore it can't be responsible for any IHT liability.
- It can't he held responsible for Mrs F not putting the life policy (and investment

bonds) in trust for the purposes of IHT.
- It can't be held responsible for Mrs F changing solicitors and failing to provide her solicitors with all the information relating to the existing Will, or the new solicitors failing to consider the implications of any existing Will.

Issues were raised about jurisdiction, and whether this complaint was made in time. Consequently, IFAB made clear that it didn't consent to our service considering the merits of this complaint.

I considered the jurisdiction issue and concluded that Mr F1 was an eligible complainant, therefore Mr F2, on behalf of the estate of Mr F1, and Mrs F, could bring this complaint. It was made within three years of when Mr F2 knew, or ought reasonably to have known, he had cause for complaint following the IHT liability arising on Mr F1's and Mrs F's estate. I can't consider a complaint about 'complaint handling' and 'customer service' because these are not regulated activities. I could only consider these issues if they are ancillary to a regulated activity, which I can't say they are in this instance.

In this instance, I think, given the nature of the complaint, Mr F2 knew, or ought reasonably to have known, he had cause for complaint in late 2022 – following discovery of the potential IHT liability on the estate of Mr F1 and Mrs F.

In other words, I'm persuaded that he had concerns from late 2022 which led him to make enquires with IFAB and also call in the assistance of Mr S. So, Mr F2 on behalf of the estate of Mr F1 and Mrs F, had until 2025 to bring the complaint.

I appreciate the additional points made by IFAB, but I don't think the solicitor (whether it be the old one or the new one) failing to highlight issues regarding the impact of their new Will means that Mr F1 and Mrs F (and/or Mr F2) knew or ought reasonably to have known they had cause for complaint. It's all the more reason why they wouldn't have known.

Notwithstanding what IFAB says, I think the correct position is that Mr F2 had until 2025 under the three-year element of the rules within which to complain on behalf of the estate so the complaint in late 2022 is still in time.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- Mr F1 had a risk assessment carried out by IFAB in 2015 and a financial review in 2019. IFAB provided advice that affected him and Mrs F.
- Mrs F sadly died in 2020, after which her investments were transferred to Mr F1 (in August 2020. Neither he, nor IFAB engaged with each other – Mr F1 was also very ill. Mr F1 subsequently passed away (some 10 months later) in 2021.
- Mrs P had a Lasting Power of Attorney (LPA) which was registered in 2014. It was activated (following a meeting with the adviser) in July 2019.
- Mrs F's grant of probate (dated March 2021) had an estimated value of £349,973. Mr F1's grant of probate (dated March 2022) had an estimated value of £1,342,055.
- Half of the value of Mr F1's factory (worth £50,000) was also included in the calculations, giving an estimated estate value of around £1,158,991 – with an IHT bill of £63,596 – I note the figures don't quite add up.
- In response to the estates' request, the advisers provided a total value of £245,839 for the investments. But Mr S said that numerous investments were omitted – including AXA (value at £15,814), Aberdeen (valued at £19,734), Aviva (valued at £19,952), and stocks and shares £14,121 making a total £315,460.
- On the face of the evidence, and on balance, AXA, Aberdeen, and Aviva were (more

likely than not) linked to IFAB. But the advisers omitted to provide details of these three investments (worth approximately £54,000) – even though IFAB were servicing advisers.

- According to the estate, M F1 and Mrs F wouldn't have tried to engage the adviser about IHT liability and would've required prompting.
- Despite what Mr S says about the various valuations provided in 2019, compared to what they were in 2023 (for IHT purposes), these figures were provided (by Mr F1 and/or Mrs F) years before probate. In the circumstances, the adviser could only advise based on the information provided.
- The adviser says that in July 2019 when Mr F1 and Mrs F provided an estimated value of their estate, they weren't liable for IHT. At the time, the investments were listed in a document named Appendix 1, but this didn't include the AXA, Aberdeen, or Aviva investments, despite IFAB being the servicing adviser. This doesn't suggest that IFAB deliberately omitted these investments, to reduce the IHT liability at probate.
- The July 2019 suitability report recorded that Mr F1 and Mrs F owned their property as "tenants in common", as well as the value of their estate (which included the Skandia life assurance policy. It also noted that Mr F2 should attend the next meeting a few months away. But it doesn't mention Mr F1's business.
- The Skandia paperwork from 2001, confirms that it was a joint whole of life policy with a £68,640 sum assured, payable on last death advised by third-party business with no link to IFAB. Other paperwork (from June 2000) suggests that it was the same as the ReAssure police and held in trust for their three children.
- The investigator had some concerns about the accuracy of the fact find relating to the value of the Skandia life policy and whether it formed part of the estate. If it was included in error, it inadvertently offset other figures that should've been higher.
- In any case, the adviser asked them to put the cover in trust so that it could be used to pay off the IHT liability. But this may have been based on a misunderstanding of the value of the life cover.
- Despite being told that the adviser, in July 2022, provided an estate value of £992,995 – which is the same as the July 2019 value – no evidence has been provided confirming this. In any case, the adviser would've advised based on the information provided, which doesn't make him responsible for the IHT liability.
- In any case, there's no evidence that Mr F1 and Mrs F were actively interested in reducing their IHT liability. Mr S has also confirmed that there is none, although he said they would've been reliant on the adviser for such purposes.
- If Mr F1, and Mrs F, wanted to reduce their IHT liability he'd expect to see this as evidence of an objective or discussion point – but this wasn't. On the face of the evidence (showing that no liability was likely to be due) the adviser wasn't required to explore this with them and hasn't done anything wrong by not doing so.
- The above not withstanding there appears to be some miscommunication from both sides. Mr F1 and Mrs F provided valuations for their property and savings which was lower than what it should've been. The adviser probably failed to include/pickup on the three missing investments but included the life policy which was in trust. Even if there was no miscommunication, it's likely that the IHT liability threshold wouldn't have been passed, so wouldn't have been discussed by the adviser.
- In terms of the Wills, there's no persuasive evidence that the adviser advised Mr F1 and Mrs F to rewrite their Wills. The family home was placed in Mrs F's sole name because Mr F1 wanted to protect it from creditors when he was in a partnership. But in 2006 he formed a limited company with Mr F2, and the home was placed back as joint tenants in 2014. This shows that the changes were driven by his business arrangements and not IHT.
- Despite what Mr S says (who also concedes that he doesn't have information directly linking the adviser to the changes to the Will) there's no persuasive evidence that the

adviser is responsible for the changes to the Will.

- The September 2015 letters confirms that Mr F1 had a High medium attitude to risk (ATR), as well as a number of other issues but doesn't include any information about changing registered ownership of the family home from joint tenancy to tenants in common.
- The September 2015 meeting notes (from the day before) confirm, amongst many other points, the following:
    - *"He (Mr F) informed me that he was being advised by a neighbour".*
    - *"We agreed that he would discuss the risks that we discussed with any equity investment and advise me of his decision in due course after having discussed the matter with his friend."*
    - *"Mrs F (name anonymised) then enquired about how Tenants in Common would work and used a diagram to assist and visualise the difference and advised her to contact her existing solicitor to discuss any existing wills and property trusts in order to ensure that her assets are passed, upon her demise, to the beneficiaries of her choosing, in the most efficient manner possible and also being mindful of the impact of long-term care."*
- The above doesn't suggest that Mr F1 and Mrs F were advised to change the ownership of their property from joint tenants to tenants in common. The adviser appears to have explained the basic difference in response to a question from Mrs F.
- The 2007 Will states that Mr F gave his trustees the nil rate sum and held it as a "Legacy Fund" for the beneficiaries. This suggests that the trust may have been a discretionary trust, for the benefit of Mrs F and their three children. The trust period is the period starting with Mr F's death and ending eight years after. It's worth noting that in 2007 there was no transferrable nil rate band, meaning that on the death of the first spouse, the nil rate band was lost. This was updated in 2017, when the nil rate band was introduced meaning that a spouse could inherit the deceased spouse's nil rate band making, tenants in common less effective – but still relevant for IHT panning.
- An excerpt from the 2016 Will shows that Mrs F would be the life tenant of their home and she had an interest in possession. Mr F's share of the property was classed as the trust fund, given to the trustees. There were mirror Wills in place for Mr F1 and Mrs F.
- The adviser's suitability report dated June 2006 contains the following relevant paragraph in the future consideration section, which states:
- *"I recommend that you may wish to consider revisiting your Will and also discussing the implications of Trusts and Life Assurance with your solicitor as your circumstances dictated, in order to ensure that your assets are passed, upon your unfortunate demise, to those beneficiaries of your choosing, in the most efficient manner possible and also being mindful of the impact of Long-Term Care."*
- The adviser's suitability report for Mr F1 and Mrs F dated July 2019, in the Will and LPA section states:
- *"You have confirmed you currently have a valid will in place and also have a Lasting Power of Attorney to ensure that in the event of your incapacity, your spouse/partner/relative could act on your behalf. You should always review these whenever your circumstances change as there can be tax-planning advantages from Will writing and this can ensure that as much of your estate goes to those intended"*
- The above supports the adviser's account that Mrs F enquired about how to protect her property in the event of going into care and that's why the adviser explained the concept of joint tenant versus tenants in common, and to speak to their solicitor if they wanted to know more.
- In other words, the 2006 advice was generic in that she should speak to their solicitor to discuss if her arrangements are appropriate with a cautious approach to future costs. The 2015 notes show that an explanation was given, but they were referred to

the relevant profession. The 2019 advice was also standard. There's nothing within this that shows that Mr F1 and Mrs F should reformulate their Wills and/or undo their existing estate planning arrangements.
- He doesn't agree that the handwritten document from May 2010 (regarding £80,000 IHT) or 2015 handwritten notes referring to the sale of the Spanish Villa is evidence that IFAB is responsible for Mr F1 and Mrs F changing the property ownership or IHT liability.

Mr S disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he said:

- IFAB seems to imply that his involvement in this has been as Mr F1 and Mrs F's IFA, but this is incorrect – he has never been a financial adviser to them.
- He was involved in the preparation and registration in 2014 of the LPA for both Mr F1 and Mrs F, but in his capacity as a friend.
- Mr F1 and Mrs F expressed the wish to transfer the property ownership from Mrs F to them both. But at no time was the care fee mentioned, considered or advice sought.
- He helped them through the process and engaged a solicitor, as a friend. He also obtained a property valuation as a matter of course.
- The valuation by an estate agent in 2014 was £320,00. IFAB should've been aware of this.
- IFAB were negligent in this instance by undervaluing the property and investments.
- The above notwithstanding, he agrees with the investigator's conclusion regarding the factory but not the investments. The adviser failed to include them on two occasions for Mrs F's probate.
- The adviser's 2015 knowledge throws in to doubt the 2019 financial review. Mr F1 and Mrs F has nothing to gain by not including these investments.
- He personally feels the IFA should've taken more care all the information had been provided. So, he questions whether this figure should be included.
- He doesn't agree that there wasn't a detailed discussion regarding the care fees and property ownership. A further meeting could've been arranged. Mrs F was the client, and there's no way the investigator could've explained what needed to be. If he had Mrs F wouldn't have proceeded with changing her Will.
- The adviser hasn't provided confirmation (signed by Mrs F) to confirm it was her decision to change her Will against advice.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary he said he:

- He appreciates the 2014 house valuation showed a value of £320,000.
- The adviser said that in 2019 Mr F1 and Mrs F provided the valuation of £325 but this appeared to be an undervaluation during probate. This doesn't change anything.
- Despite having obtained additional evidence from 2015, he can't say that IFAB was the architect of change.

Mr S, in response provided a brief history of the complaint, and tied up his points together. I don't think it's necessary to repeat his points.

As no agreement has been reached the matter has been passed to me for review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Having done so, I agree with the investigator's conclusion for similar reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr S says on behalf of Mr F2 (on behalf of the estates of Mr F1 and Mrs F), I'm unable to safely say that IFAB behaved in such a way that this complaint should be upheld, or that it should pay the outstanding IHT liability.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr F2's strength of feeling about this matter. Mr S, on his behalf, has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope that Mr F2 and IFAB won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do to reach a decision in this case. My role is to consider the evidence presented by Mr S and IFAB, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

It's also important to mention that without the benefit of hindsight, it's difficult to know for sure which course of action Mr F1 and Mrs F should've taken and I can't uphold a complaint or blame a business for not taking 'the best' option, if what it did was reasonable.

I'm also mindful that an adviser can only advise based on the information provided, which is what I think (on balance) the adviser did in this case. There seems to be an issue about the accuracy of some of the information provided, but this isn't something I can blame IFAB for. Neither Mr F2, nor by Mr S, were present at any of the key meetings – despite the adviser advising Mr F1 and Mrs F (in 2019) to bring Mr F2 to the next meeting. It makes it even more difficult to decipher (especially without conclusive documentary evidence) what Mr F1 and Mrs F wanted and what was (and wasn't) discussed with the adviser. I'm not persuaded that IHT mitigation was a top priority for them.

In this instance I believe I'm being asked to make several inferences based on a case theory of Mr S's for which there is no supporting evidence. And as I mentioned above, I must decide this case – on a balance of probabilities – based on the available evidence. It is possible that the adviser simply ignored Mr F1's and Mrs F's correct financial position but there isn't any persuasive evidence that allows me to safely reach this conclusion.

Even if there was an error on the part of the adviser, in relation to the three/four missed investments, this doesn't mean that IFAB is responsible for paying the outstanding IHT liability. On balance, I don't think Mr F1 and Mrs F presented an accurate picture of their financial circumstances and I don't think IFAB can be blamed for this.

I also appreciate that Mr S wasn't officially Mr F1 and Mrs Fs' IFA, however I'm mindful that he (a retired IFA) was assisting them as a good neighbour and friend. But it's possible that discussions with him, in the absence of their official adviser, would've influenced some of their choices. And unlike their discussions with IFAB, there's simply no record whatsoever of what was, and wasn't, discussed. I'm not seeking to blame Mr S for anything, simply highlighting this whole situation is not straightforward and arguably there's more to it than meets the eye.

Overall and on balance, I don't uphold this complaint, in summary, for the following reasons:

- Evidently there are differences in the valuations (for the property and investment) between 2019 and 2023, which (unsurprisingly) had an impact on Mr F1's and Mrs F's IHT liability. Such differences aren't unusual, given the passage of time – values can change over time – and these were supplied by Mr F1 and Mrs F some years before probate. Given the latter, on balance, I can't blame the adviser for advising based on the information provided. In other words, and on balance, I can't uphold this complaint based on a discrepancy subsequently coming to light. In this instance I think the adviser was entitled to rely on the information provided and hasn't behaved unreasonably by doing so.
- In relation to the missing three or four investments, it's arguable that the adviser should've checked the information. But given the above, I don't think the adviser was wrong to rely upon the information provided. There was nothing obvious to suggest that Mr F1 and Mrs F couldn't deal with their finances as such. In any case, I can't say that they were deliberately omitted by IFAB with a view to reducing the IHT liability, there's no persuasive evidence that this was the case, and I see no point in him doing so. If there was a (potential) IHT liability the adviser would've simply considered ways of mitigating it.
- I also don't think that the adviser should've gone behind the property valuation provided and sought independent verification. This isn't generally how this process works, so the adviser hasn't done anything wrong by not doing so. I'm satisfied that IFAB provided advice based on the information provided, as it was reasonably entitled to do.
- The above explanation also applies to the value of Mr F1's business which I'm satisfied he didn't mention in the July 2019 meeting with the adviser and explains why it wasn't included in the July 2019 suitability report containing other relevant information. I'm satisfied that it was Mr F1's responsibility to provide accurate and updated information about his and Mrs F's financial circumstances. It's possible that Mr F1 had other plans for his business, which might explain why he didn't mention it. I'm also aware that sometimes investors can choose not to provide all the information to their advisers. If this was the case here, it's not something I can blame IFAB for.
- I note there's a question mark about the value of the Skandia life cover and whether it was held in trust. Based on what the adviser says, it seems he wasn't told it was held in trust which is probably why in 2006 he advised them to consider placing it in trust - which the adviser says would've placed the money outside of the trust and allowed them to pay any IHT liability.
- I agree with the investigator that there's no persuasive evidence that Mr F1 and Mrs F actively wanted to mitigate their IHT liability in recent years. I note Mr S has also confirmed that there's no evidence, from either Mr F1 or Mrs F, that they wanted to engage IFAB for this purpose.
- Based on the value of their estate in 2019 (based on the information provided by them) the adviser didn't think that IHT liability was an issue which wasn't an unreasonable conclusion. In the circumstances, and on balance, I don't think the adviser not exploring the IHT issue further, of his own volition, was unreasonable.
- Despite what Mr S says, I don't agree that Mr F1 and Mrs F wouldn't have known about the potential implications of an IHT liability without being prompted by the adviser. On the face of the evidence, and on balance, I'm not persuaded that it was a priority for them. I'm mindful this was not the reason why they engaged the services of IFAB.
- On the face of the evidence, and on balance whether (or not) IHT liability could've been avoided, I can't safely say that IFAB is responsible for paying the outstanding IHT liability.
- On the face of the evidence, and on balance, I'm not persuaded that the adviser specifically advised Mr F1 and Mrs F to change how they owned their property therefore I can't safely say that IFAB is responsible for any financial losses they may

have suffered because of this change.

- In other words, on the face of the evidence, and on balance, it's not a conclusion that I can safely reach. I'm mindful that Mr S also conceded that there isn't any direct evidence to support his argument. On the contrary, it appears that this has been something that has been on Mr F1's and Mrs F's mind for some time before they decided to do something about it some years down the line.
- I'm aware that expert help and advice on all aspects of property ownership as well as creating and managing a trust in this instance would usually be undertaken by a solicitor - including whether a particular type of trust is the right option and who to appoint as trustee(s).
- These aren't issues that would generally be dealt with by a financial adviser. I'm not suggesting that a financial adviser can never advise a client to consider owning property in a particular way or setting up 'a trust'. Rather that the adviser was unlikely to have expertise on the point but can advise a client to consider options. In other words, they can advise clients to seek legal advice regarding it. However, a financial adviser isn't generally responsible for setting up a specific property ownership arrangement or a trust – that usually requires a lawyer and/or an accountant.
- Without the benefit of hindsight, it's difficult to know which approach (and/or which specific trust) would've been better - they all have their pros and cons. In the circumstances I can't say that what Mr F1 and Mrs F did was unreasonable for them as it's likely they would've had their reasons. And whilst I can't say what was or wasn't discussed, it's arguable that their solicitor would've considered all the issues, as well as what was already in existence, and advised against a particular course of action if it wasn't right for them. If the solicitor didn't do so that's not something I can blame IFAB for. I can't say that IFAB is responsible for Mr F1 and Mrs F's decision.
- Whilst I note what Mr S says about signed proof, I also haven't seen anything that shows that Mr F1 and Mrs F did what they did because they were following the adviser's advice. There's no persuasive evidence that this was the case.
- For the reasons set out above, and on balance, I can't say that the adviser was the 'architect' of change.

I appreciate that Mr F2 (and Mr S) will be unhappy that I've reached the same conclusion as the investigator.

But on the face of the available evidence, and on balance, despite what they say, I can't give Mr F2 – on behalf of the estate of Mr F1, and the estate of Mrs F – what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mr F1 and Mrs F to accept or reject my decision before 30 April 2025.

Dara Islam
Ombudsman