

## The complaint

The estate of Mr S (the estate) complains that ART Holdings Limited trading as MFS Independent Financial Advisers (MFS) failed to consider the tax implications for Mr S's pension plan on death despite him being in poor health, resulting in large losses for the estate. The estate wants compensation for the losses.

## What happened

Mr S was in poor health and was managing his financial affairs with the assistance of his son, Mr DS. Mr DS approached MFS in November 2020 to review his father's pension plans in advance of his 75<sup>th</sup> birthday on 27 May 2021. At this meeting it was explained that Mr S had lost confidence in his previous financial adviser, and no action had been taken around the Lifetime Allowance (LTA) that his benefits would be tested against at age 75. MFS gathered information about the existing plans and issued a summary report on 26 February 2021, in respect of five of these. MFS said a full financial review should be undertaken, considering all of Mr S's circumstances, before any recommendations were made. Fees were agreed and MFS issued a suitability report with its recommendations on 30 June 2021. This stated that Mr S health was "*poor*" but that he didn't wish to disclose medical information. Although emails from Mr DS sent in March 2021 had said Mr S's life expectancy was "*likely a few years*".

The suitability report didn't directly consider Mr S's health and at Mr DS's request focused only on Mr S's pension plans rather than his other assets. MFS recommended that Mr S take guaranteed annuity rates (GAR) and tax-free cash (TFC) under two plans and transfer three others to a new plan on the Aviva Platform. These recommendations were accepted. No recommendations were made about another pension with Fidelity. Further meetings took place between Mr DS and MFS and the content of some of these is disputed. At a meeting on 21 September 2021, MFS's notes say TFC calculations were requested by Mr DS, as he was considering the Inheritance Tax (IHT) implications for his parent's estates. Emails also show some discussion around IHT planning options including trusts and investments which might benefit from Business Property Relief (BPR). MFS say Mr DS decided not to take further TFC from Mr S's pensions at that time, as his parents had no requirement for income or capital. It says it confirmed that the tax treatment of pension benefits on death changed at age 75 (Mr S was now over age 75). Mr DS says he has no recollection of this change being discussed.

On 10 January 2022, MFS recommended Mr S switch his Fidelity pension to the Aviva Platform, largely over available investment options and this advice was accepted. MFS says that within the appendix of this suitability report the change to the tax treatment of pensions on death beyond age 75 was set out. MFS provided further recommendations in December 2022 and February 2023 in respect of an insurance investment held by Mr S. On 17 February 2023 Mr DS asked MFS what the total TFC sum available was. On 21 February 2023 MFS confirmed this was £154,986. Two days later Mr DS cancelled the agreement with MFS, he said advice was no longer required and Mr S would transfer to a new provider with lower charges. MFS confirmed it had terminated the agreement on 1 March 2023. The Aviva plan appears to have then been transferred to Vanguard.

Unfortunately, Mr S died on 1 October 2024, and his estate complained that MFS hadn't clearly explained the position around TFC on death, despite Mr S's poor health and limited life expectancy. And as a result, the funds, which would have otherwise been left without liability to IHT to Mr S's wife, would now be subject to income tax when withdrawn from the pension. The estate said at Mrs S's marginal rate of tax this would amount to a loss of around £58,000. MFS didn't accept the complaint. It said Mr S hadn't wanted his health to be fully considered and Mr DS had decided against drawing TFC as he was more concerned about IHT. It said the reports it had sent, which were signed by Mr DS, accepting the recommendations, referred to the tax position changing beyond age 75.

The estate referred the complaint to our service and our investigator looked into it, but he didn't think it should be upheld.

Our investigator said full medical information hadn't been disclosed and Mr DS hadn't made MFS sufficiently aware of Mr S health status for this to be given further emphasis. He said Mr DS had countersigned reports confirming the details were understood, and these set out information about death benefits. And he said any responsibility MFS had, ended on 1 March 2023 and Mr S hadn't passed away until 1 October 2024.

Mr DS disagreed and provided some emails he sent to MFS referring to his father's worsening health. He said the issue around not providing medical details only related to sourcing underwritten annuity quotes to compare with the guaranteed rates offered by two of Mr S's pensions, not the more general position. And he said the references to the change in treatment of death benefits was buried in appendices and notes sections written in confusing jargon, rather than being in the main body of the recommendations MFS had made. Mr DS said emails he'd sent showed the TFC was an important consideration for his parents, which he'd specifically asked about on 25 March 2021.

*"My parents are not in a hurry to take the tax-free amount – they are concerned that they will lose it if they don't take it by age 75, but I have reassured them that it will not be lost. If I'm wrong on this, please let me know ASAP".*

Mr DS said subsequently MFS had verbally recommended the TFC not be taken, which it disputes, because the funds weren't required and would be better retained in pension because of the tax-free growth this offered. And MFS had then emailed Mr DS on 28 September 2021, saying.

*"Thank you so much for confirming that you are no longer considering taking the tax free cash sum from the Aviva pension pot. This means that the funds remain outside their estate".*

But Mr DS said any advantage here had been outweighed by the loss of the TFC on death, and no IHT benefit had been obtained given everything was left to Mrs S.

As the estate doesn't agree it has come to me to decide.

## **My provisional decision**

I issued my provision decision on; 29 October 2025, I explained the reasons why I was planning to uphold the complaint. I said:

*I've thought carefully about what happened here and the arguments made subsequently. The role of our service is to independently settle disputes by being fair to both sides by deciding what is fair and reasonable in the circumstances of the complaint. Here there is a*

dispute about the scope of the advice and what information and advice was or wasn't provided around TFC, death benefits and Mr S's health. I asked MFS some questions about what had happened and for the full email threads around certain extracts already provided by both Mr DS and it, as I felt the context around those extracts was likely to be relevant.

MFS provided these and made a number of points. It said it had considered the TFC on some of the pensions, and that Mr DS was made aware of the change in tax treatment as this was recorded in its meeting notes. It also said that Mr DS had been provided with Aviva's key features document when that plan was set up which explained the tax position, including on death.

However, the role of an adviser is to provide suitable advice, and I think it's usual that the advantages and disadvantages of a course of action would be clearly set out. Mr S was already over age 75 and TFC would be lost on death. So, I think the default advice position would be that TFC should be taken, given that there would likely be a guaranteed income tax liability rather than a potential IHT liability through not doing so. Unless there was some compelling reason for the TFC not to be taken, in which case I'd expect that to have been made clear. But it wasn't.

I think the evidence shows that Mr S's relatively poor health was clearly known to MFS, it also knew that Mrs S was to be the beneficiary of his estate. That meant there would be no immediate IHT on the TFC funds had these been drawn and remained in the estate. IHT planning is complex, but broadly the longer one lives having undertaken legitimate planning, the more likely it is to be effective. So, there would seem little merit in delaying. And IHT planning opportunities were clearly discussed with Mr DS, that might have mitigated any future IHT, had the TFC been taken. And MFS knew that Mr DS and his children were the ultimate beneficiaries of his parent's estate and father's pension, this being specifically referred to in Mr DS's email to MFS on 4 July 2021.

There's evidence that Mr S and Mr DS wanted to limit the scope of MSF's advice, seemingly around concerns about costs, and wanted specific issues addressed rather than the overall position. However, the evidence also shows that over time this position evolved, with broader discussions around estate planning, and consideration of non-pension investments and structures. MFS has argued that its advice was specifically focused, and Mr DS was dealing with estate and IHT Planning matters.

But, the report MSF provided, which Mr DS signed to confirm acceptance and understanding of the contents, did set out the initial scope of the advice being provided. Page three of 30 June 2021 report summarised eight financial objectives, the first two being.

- "1. Review your existing pensions to ensure they continue to reflect your needs and objectives.
2. Review any guarantees, income options, death benefits, tax reliefs and allowances that are available to you"

And, in instructing MFS to proceed with advice reports, Mr DS had (as I've quoted above), specifically asked it about the ongoing ability to take TFC beyond age 75 in his email of 25 March 2021. The content of the report subsequently produced was largely around costs, ease of management and investment strategy. It didn't provide a detailed and clear review of the death benefits and tax relief available. With no reference being made to this in the main body of the report, which I think it reasonably should have, given Mr S particular circumstances.

Instead, in summarising the recommendations made around the pensions, MFS drew attention,

*“to the Risk Warnings section as well as the appendix of this report for further information regarding the taxation of pensions.”*

*Mr DS has said what was set out here around death benefits and the tax implications involved wasn't as clear as it might have been and I agree. The section I've emboldened is unnecessary, as the position before age 75 had already been set out in the previous paragraph, and I think just makes the tax treatment harder to understand.*

#### *“Death Benefits*

*If the individual dies on or after their 75th birthday, **or they die before age 75 but the funds are not paid out within two years**, then beneficiaries will pay tax at their marginal rate of income tax on both lump sum and income withdrawals.”*

*Whilst it is still possible to pay TFC once someone has passed age 75, that doesn't apply on death. So, any undrawn TFC is lost at that point, and I don't think that is specifically clarified in the explanation MFS provided above.*

*Whilst pensions are generally outside the scope of IHT (under current rules), this change of treatment is an obvious pitfall, and a fundamental one for financial advisers to consider. Most consumers aren't experts; they wouldn't need advisers if they were. MFS has said Mr DS was a knowledgeable, “professional investor”, which he disputes. And importantly in providing its advice MFS specifically treated both Mr S and Mr DS as a “retail client”, which basically means non-expert and provides the highest level of consumer protection under the regulations. As I've noted the tax treatment and death benefit position of Mr S's pension plans was a key objective set out by MFS in the suitability report. And it was such an important factor in Mr S's circumstances, I think proper clarification of this should have been a prominent part of the recommendations made and been set out in the main body of the report.*

*As Mr S was already over 75 years, this change in tax treatment was relevant and any specific health issues would only increase the importance. And MFS was aware Mr S was in poor health. This is confirmed in the reports themselves. The various points made about Mr S not wanting to provide specific medical information aren't relevant, as I agree these specifically related to annuity comparisons. Subsequently Mr DS provided updates around Mr S's declining health, which MFS acknowledged. So, the growing risk around not drawing the TFC should have been kept under ongoing review. It doesn't appear to have been.*

*Even if Mr DS was taking the lead on estate planning and IHT rather than MFS. It specifically stated that leaving funds in pension mitigated IHT, without confirming the counter point about TFC being lost on death in its email of 28 September 2021. MFS does have file notes that the change in tax treatment was discussed in meetings. But it is such a fundamental issue, that I'm surprised this wasn't clearly set out in writing, for the avoidance of doubt. And the full email from 28 September 2021, I've referred above, is also relevant here. Having moved on to ongoing issues with the Fidelity plan, MFS proposes transferring this plan into the Aviva arrangement established a few months before. It also says.*

*“Whilst considering the above options, your parents might simply prefer having two separate pension providers with 2 distinct pension pots and that would be fine too.*

*1)Fidelity Fully crystallized where only taxable income is available in future & 2) Aviva uncrystallized where they have 25% of the pot available tax free and can chose how to take their income in the future.”*

*I think that this wasn't caveated with a clear explanation that "2)" above only applied if Mr S didn't die, was a serious oversight and misleading. And by referring to "they" and "their" I think Mr DS would reasonably conclude his mother could also access TFC in the event of his father dying.*

*MFS has said the key features documents from Aviva refer to the tax treatment and death benefit position of pensions. And they do, but only briefly in generic terms as well as discussing many other issues such as tax relief on contributions and so on, which weren't relevant to Mr S's circumstances. Around TFC it said,*

*You can normally withdraw up to 25% of your pension fund as a tax-free lump sum".*

*No examples are provided about where this wouldn't be the case. In a separate section around death benefits it says that on death after age 75 the "remaining pension fund" will be paid to the beneficiaries and any benefits will be taxed at their marginal rates of tax. That's a similar wording to MFS own in its appendix. And as the adviser, I think it was MFS' role to deal with the specifics and there were multiple opportunities for it to do so.*

*I think had Mr S been fully advised of the situation it's more likely than not that he would have taken his maximum TFC sum.*

### **Termination of the advice relationship**

*Whilst at this stage I think MFS failed to treat Mr S fairly by not specifically advising on matters around the TFC, it is relevant that he and Mr DS decided they no longer required advice and would deal directly with a product provider around 19 months before Mr S's death. It's likely that the new provider issued or directed Mr DS to information about the tax treatment of pensions and the death benefit situation. There was also considerable speculation and media coverage in the months before Mr S's death about the General Election, and that a future Labour Government might change the rules around pensions, with TFC a particular focus. This speculation increased further as the Budget, due on 30 October 2024, approached.*

*From the evidence it seems that there was an attempt to draw the TFC from the new plan, but there wasn't adequate time to complete this. This action might have been prompted by a further deterioration in Mr S's health. But even if Mr DS had been under the impression that the TFC wouldn't be lost on death, it might be reasonable that the whole position should have been reviewed sooner than it appears it was, given the decision that MFS services were no longer required.*

*So, whilst I think MFS has some responsibility here, it isn't reasonable to say it is wholly to blame for any adverse tax consequences. That's because had its services been retained, particularly given the political background I've noted above, it might have provided further advice around the issue. And it's fair to say that providing financial advice is often an evolving, ongoing process. At the same time, it isn't reasonable to say a client must maintain an ongoing relationship with an adviser to be able to rely on previous advice given.*

### **Putting things right**

*I said my aim in awarding compensation was to put the estate of Mr S as closely as possible back into the position it would have been in but for the errors MFS made.*

*I think Mr S should have been advised to take his TFC. There would have been no income tax or immediate IHT on those funds. That advice wasn't provided, but once the relationship*

*with MFS ended, there was a significant period before Mr S died. Given the media speculation through much of that time, I think it is fair to say that it was reasonable that Mr S's tax position could have been reviewed, and action possibly mitigating any potential income tax liability.*

*So, I didn't think MFS is wholly responsible for the marginal income tax charge. And whilst the actual tax liability will only become known when the £158,986, that could have been taken as TFC, is withdrawn from the residual pension, that needed to be balanced with the possibility that no tax would have been incurred at all had this been taken in good time. Considering everything, I thought it reasonable MFS was responsible for half the tax liability.*

*I said MFS should undertake calculations to establish the likely marginal income tax liability, which it appeared would be based on Mrs S's tax position as the sole beneficiary of Mr S's estate and pension plan. With the calculation based on Mrs S's income tax position, for the tax year in which Mr S passed away, which is 2024-2025, as the details for that tax year will now be known. And it should then provide Mr S's estate with a copy of the calculations, set out in a simple manner. MFS should pay compensation of 50% of the calculated tax liability to Mr S's estate or directly to Mrs S if the estate's affairs were concluded. As this compensation would be in respect of tax-free benefits lost, it isn't appropriate to reduce the compensation notionally for tax.*

I asked both parties to send me any further information or comments they would like me to consider.

### **Response to provisional decision**

Mr DS accepted my provisional decision; he said Mrs S' tax matters for the tax year 2024-25 hadn't yet been finalised but would be soon.

MFS didn't accept my provisional decision. It made a number of points including around the clarity of Mr IS' financial objectives, the relative tax treatments in the event of his death, and the potential tax liability calculation. I'll consider these points further below.

### **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've decided to uphold the complaint.

I've considered the further points made by MFS, but I still think the loss of the TFC in the event of Mr IS' death was one of the key advice issues that should have been conclusively addressed, and it wasn't.

MFS has said that there wasn't a "*clearly expressed objective*" to draw TFC and no financial need for Mr IS to do so. It said its report of 30 June 2021 set out what it understood Mr IS objectives were then, and no concerns had been raised over this. That is correct, but MFS was engaged as expert. A consumer might have preconceived ideas about their financial requirements based on either a limited understanding or a misunderstanding of the relevant facts, with the specific tax implications of one course of action over another being highly important here. I think it's reasonably the role of the adviser, as expert, to both point out the advantages and disadvantages of the options, having followed the potential outcomes to their logical conclusions. Mr DS very clearly asked for clarification of the position on death when discussing whether to defer drawing the TFC, and this wasn't clearly addressed.

If the TFC wasn't taken, it would be lost on death, and whilst there would be no immediate IHT, there would be income tax payable by somebody, whether Mrs S or some future beneficiary, that would not have been incurred had Mr IS taken the TFC. Had Mr IS then done nothing with that money, there would have been no immediate IHT on his death, but there might have been later. Mrs S could have made gifts and so on that might have avoided any subsequent IHT on this money. But in simple terms, not taking the TFC guaranteed a tax liability and that wasn't adequately clarified by MFS, or specifically applied to Mr IS' circumstances.

MFS also said that following the termination of the advice relationship there was still adequate time for the TFC to be drawn if Mr IS now wanted to. This somewhat presumes that the tax position was adequately understood, and I don't think it was. As noted in my provisional decision there was growing media speculation around TFC in general during this period, which is why I don't think it is reasonable to say MFS is wholly responsible for the potential tax liability, as it was no longer in a position to advise Mr IS. However, I still think the correct advice was that Mr IS draw his TFC at the earliest opportunity, considering the overall position, so I don't think MFS provided suitable advice.

In respect of the calculation of tax (Mr DS' figure of around £58,000 as set out in his complaint) MFS said it didn't agree with this. It said, without full details, this amounted to 37% of the potential TFC, apparently incurred in one tax year. Which in practice was unlikely given there was no indication that Mrs S needed the funds as a lump sum. It said there was no merit in incurring income tax at 40 and 45% to potentially mitigate IHT at 40%. And given the non-pension wealth previously reported (exceeding £1,000,000), Mrs S requirements would likely be for smaller sums to support living expenses or lifetime gifts, perhaps incurring a 20% income tax liability instead. I don't have details of Mrs S income tax position and it maybe that no such mitigation is possible, but I understand MFS' points here.

However, they are exactly the reason why I think Mr IS should have been advised to draw the TFC, because I agree there is no merit in incurring an income tax charge to potentially mitigate IHT. So, had the TFC been drawn, these points would be moot, with potentially no tax to consider. Mr IS might have immediately gifted the funds to Mrs S, without liability to IHT. She would have had £154,986 to do with as she pleased. That might include making gifts which might mitigate any future IHT entirely. And the sooner such a gift is made the more chance there is of it becoming partially, then fully exempt from IHT. Even if Mr IS had not gifted the TFC to Mrs S immediately, she would have inherited it free of tax on his death and could then have gifted it or spent it as she chose. So, I don't think it is reasonable to dictate how Mrs S accesses this money now, given it could have been accessed without any tax.

However, as noted in my provisional decision, I accept that there is uncertainty over what the tax liability could be, that's why I proposed it be based on Mrs S's income for the tax year in which Mr IS passed away. That's in the past and therefore isn't subjective. I think it is the fairest way to assess the liability for both sides and that MFS pays compensation of 50% of the liability calculated.

### **Putting things right**

My aim in awarding compensation is to put the estate of Mr S as closely as possible back into the position it would have been in but for the errors MFS made.

I think Mr S should have been advised to take his TFC. Had he there would have been no income tax and no immediate IHT on those funds on his death. That advice wasn't provided,

but once the relationship with MFS ended, there was a significant period before Mr S died. Given the situation, and media speculation through much of that period, I think it is fair to say that Mr S's tax position could have been reviewed, which may have mitigated potential income tax liabilities. Consequently, it isn't fair that MFS is wholly responsible for the marginal income tax charge.

Whilst the actual tax liability will only become known when the £158,986 is withdrawn from the pension, that needs to be balanced with the possibility that no tax would have been incurred at all had Mr S been advised to take the TFC. Taking everything into account, I still think it's reasonable MFS is responsible for half the tax liability.

To compensate the estate fairly MFS must calculate the marginal income tax liability. Mrs S was the sole beneficiary of the estate and of Mr S's pension. So, the tax calculation should be based on her income tax position, for the tax year in which Mr S passed away, which is 2024-2025. MFS will need tax information from Mrs S to complete these calculations.

MFS must provide Mr S's estate with a copy of its calculations, set out in a simple manner.

MFS must pay compensation of 50% of the calculated tax liability to Mr S's estate. If the estate's affairs are otherwise concluded, it should pay any compensation to Mrs S directly.

As this compensation would be in respect of tax-free benefits lost, it isn't appropriate to reduce the compensation notionally for tax.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against ART Holdings Limited trading as MFS Independent Financial Advisers.

I direct ART Holdings Limited trading as MFS Independent Financial Advisers to undertake the loss calculation as set out above and pay any compensation due to the estate of Mr S or directly to Mrs S as appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 14 January 2026.

Nigel Bracken  
**Ombudsman**