DRN-4050855

The complaint

Miss R raises a number of complaints about Eagle Financial Services Limited (Eagle). She complains she was misled about the tax she could claim in respect of her Self Invested Personal Pension (SIPP) and other products recommended to her. And she is generally unhappy with the advisory service it provided.

What happened

I set out the background to this complaint in my provisional decision. I've repeated it again here with some amendments to reflect information provided to me by each party.

Miss R told our service that she had met with the Eagle adviser (the adviser) previous to June 2017. She said Eagle had been managing her affairs for many years and was aware of Miss R's plans for retirement for nearly five years before this date so discussions about her investment plans began before June 2017. But for the purposes of this complaint the issues leading to Miss R's complaint, started in or around June 2017.

In the *"Confidential Financial Planning Questionnaire – Adviser Notes"* the adviser said the following about Miss R's circumstances:

- I had initially said that Miss R worked two days each week since May 2016. However, Miss R has corrected my provisional decision by saying this should have read she had reduced her hours in May 2017. And she had an annual 'rental' income of £17,000 to £25,000.
- She didn't intend to draw on her pension because she wanted to use these funds for inheritance planning.
- Her assets included a main residence of £400,000, a second home at £190,000, a 50% share in an office of £200,000, agricultural land of £100,000 and cash of around £375,000. It was noted the shares in her business would sell for an estimated £1.7million (Miss R has confirmed her shares were sold for just over £1.9million).
- She wanted to retire investing the sale proceeds of her business with low or no risk investments although it was noted some risk was important.
- She wanted enough money to live comfortably for the rest of her life. She wanted to work out how much income she could take without depleting her resources.

On 23 June 2017 Miss R signed the client agreement which, amongst other things, set out the cost of Eagle's financial consultation as a one-off payment of £7,000. And it's ongoing review service was set at 0.25% of Miss R's total funds, which was a reduction in Eagles' normal fee of 0.50%. On the same day, (23 June) a suitability report was prepared by the adviser. Amongst other things, Miss R's aims and objectives were recorded as follows:

- Plan for a change in lifestyle on retirement after selling shares in her business. She wanted to continue working for approximately another eighteen months and may require an income from what she'd invested.
- There was an anticipated Capital Gains Tax (CGT) liability of £190,000 from the sale of her shares in her business – Miss R was willing to consider ways of mitigating this.

- She wanted to retain some money in deposit accounts for spending over the next couple of years and invest £1.5million without 'tying' up her money.
- She wanted to use her pension funds and property/ land only as a last resort.
- She required growth in the short and long term with the opportunity to take tax efficient income when required.
- She wanted to maximise her tax allowance and reduce tax when possible. She also wanted to minimise costs and charges.
- She required a low risk strategy with her money and her main concern was a reduction in her spending power due to inflation over time.

The adviser gave Miss R a risk rating of 'low' (level 3 out of 10). And in summary, the adviser made the following recommendations to Miss R:

- Invest £150,000 in a General Investment Account (GIA) for short term growth until consideration was given to investing into an Enterprise Investment Scheme (EIS).
- Invest £1million in an Offshore Bond (the 'Bond') which would provide tax free growth and she could withdraw up to 5% allowance (£50,000) each year for tax efficient income.
- Invest £325,000 in a Wealth Preservation Account (WPA) with the same provider as the Bond. The WPA is arranged as a cluster of single premium life assurance policies written into trust. After seven years the invested assets will become protected from Inheritance Tax (IHT) liability.
- Top-up her SIPP account with £88,960 to fully fund her pension account for tax relief.

The adviser recommended holding all the investments/bonds and the SIPP with one platform provider who I'll refer to as 'B'. The reason given was that it would enable Eagle to negotiate lower contract costs and it would also result in administration benefits.

Another suitability report dated 28 June 2017 dealt with the WPA and its impact on IHT planning. The objective was said to be: *"You are aware of reliefs available for your estate that reduce your estate for IHT. You have already made pension contributions to the maximum limits in order that this can provide for your beneficiaries at your death or for your own use should you require it in the long term. You are happy to make a gift to trust to reduce your exposure to IHT as long as maximum flexibility is available and that capital is available should you require it or it reduces IHT if not required."*

The adviser said for the tax year 2017/2018 the 'Nil Rate Band' (NRB) for IHT purposes was £325,000 and that after seven years the invested assets (in the WPA) would become totally protected from IHT. The adviser went on to say: *"We have discussed that you would like to have your* [a named trustee] *and long standing friend as Trustees. Your beneficiaries of the Trust will not be named in your application but provided as a letter of wishes with your Will. This is because, if at a later date, you change your mind about your beneficiaries, this can easily be amended via the letter of wishes rather than a full legal process involved with* [the provider's name] *documentation."*

The adviser noted investing in a WPA is a 'Chargeable Lifetime Transfer' (CLT). So, when a gift is made into the WPA, it can become liable for immediate IHT together with any CLT paid within the last seven years which exceeds the NRB of £325,000. In terms of the provider's 'establishment' fee the adviser recommended 'Option 2'. The adviser said this would mean no upfront initial fee at 1.5% (Options 1) but instead this would be charged at 0.089% paid quarterly over a period of five years. The adviser noted as Miss R wasn't likely to make any withdrawals within five years of opening the WPA, which would result in penalties if she did, she (the adviser) thought Option 2 was the better payment option as it would mean no deduction from the initial investment, meaning more potential for growth from the outset.

Despite recommending investing £325,000, the WPA suitability report also referred to the sum of £333,100, which was an enhanced amount to cover ongoing charges. And on 28 June 2017, Miss R was provided with a WPA key facts document referring to the enhanced amount. However, on 6 July 2017, another WPA key facts document was provided to Miss R based on an initial investment of £325,000. And on the same day, Miss R wrote a cheque for this amount to be invested in the WPA.

In terms of costs and charges that applied to Miss R's investments these were set out in various documents including the EIS suitability report, the portfolio reports and key facts documents as well as the providers' brochures and illustrations. This information showed the following key costs that applied to Miss R's investments:

- B's yearly costs were 0.17% across all contracts.
- The Discretionary Fund Manager's (DFM) fees were 0.36%.
- The GIA illustration listed various 'investment charges' for each of Miss R's investments held in her account.
- In terms of the Bond, a key facts document dated 27 June 2017 showed the amount to be invested would be £1,000,000. An initial fee of £8,000 was deducted at the outset leaving a net investment of £992,000. The initial fee had been reduced from 1.5% to 0.8% by the Bond provider. A quarterly administration fee of £131.70 applied. Miss R was also provided with a 'Charges and Fees' document for the Bond.
- In terms of the WPA Miss R was provided with two key facts. The first was dated 28 June 2017 with a premium of £333,100. This was based on the charging structure under Option 2 where the establishment fee was taken over a period of five years at 0.089% as opposed to Option 1 which would have been an initial fee of 1.5%. Option 2 was based on the recommendation of the adviser. Miss R also received a second WPA key facts document dated 6 July 2017 with the payment option of Options 2.

In addition to the information in the various documents, on 14 June 2017 Miss R met with representatives from B and the DFM to discuss her investments. At this meeting the representative of the DFM noted Miss R seemed knowledgeable about the type of fees which applied to the investments that were part of her portfolio, particularly those involving foreign trading. The B agent also noted Miss R said on more than one occasion that she was: *"…an experienced Foreign Exchange Investor…".* B's agent added that with Miss R's level of investments on its (B's) platform she received a discounted rate of its Annual Management Charges.

In February 2018 Miss R and the adviser discussed investing in an EIS. This was first referred to in the initial suitability report in June 2017 but it wasn't recommended at that time. The adviser was initially reluctant to recommend this to Miss R due to her (Miss R's) low attitude to risk. But Miss R had discussed this option with her accountant and said she was willing to take the increased risk in order to take advantage of the tax benefits.

Following some research, the adviser considered she (the adviser) had found a suitable EIS product for Miss R to invest in. So, a recommendation was made to invest £90,000 in an EIS platform I'll refer to as 'K'. K invested in a number of EIS companies. And the adviser considered this diversification was more suitable for Miss R's risk appetite. The adviser also noted after some research she was able to establish that due to the 10% Entrepreneur's Tax Relief (ETR) Miss R had received from the sale of her business, she (Miss R) could still benefit from CGT deferral via an EIS investment.

The adviser provided a EIS suitability report where she recommended Miss R invest £90,000 at that point with K and later a further £40,000 in other EIS investments. The adviser noted: *"It was agreed that the amount to invest required to offset income tax via reliefs from an EIS*

is £90,000 for the tax year to carry back from 2016/2017 leaving £40,000 to invest to recover tax payable for 2017/2018. Both investments will reduce Capital Gains liability due in 2019 by £57,000 as well as recover 100% tax paid in 2016/17 and that estimated to be payable 2017/2018 (to be confirmed by HMRC)."

The adviser also prepared two portfolio reports (both undated), relating to the EIS investments. As with the suitability report, these both set out the advantages and disadvantages of the EIS investment. They also set out the funds Miss R would be likely to invest in with a description of what each business did. The second EIS portfolio report noted the amount to be invested was a total of £150,000. And under the heading 'what happens next' the adviser noted: *"Your money will be held in cash until each relevant EIS fund obtains HMRC approval for investment when you will receive an EIS3 certificate. This certificate is the form used to obtain your tax reliefs. It can take six to nine months to obtain certificates."*

Miss R was also provided with various documents from the EIS provider K. In summary these documents along with the suitability report set out the advantages and disadvantages of this type of investment along with other key facts which included:

- In addition to the CGT deferment it was possible to offset income tax paid/ due that tax year and the previous year under 'carry back' rules. The funds from this could be used to mitigate Miss R's CGT liability.
- The disadvantages included that the investments were high risk and illiquid. It could take twelve months to obtain HMRC EIS qualification and HMRC could take up to twelve months to issue certification. CGT was only deferred until there was a disposal of qualifying shares or a breach of the EIS rules.
- Fees could be high at entry and for ongoing EIS management.
- Miss R had agreed to take the increased risk of investing in an EIS because the deferment of CGT was 'attractive' to her, in addition to the other tax benefits. It was noted Miss R was fully aware of the high risk nature of an EIS which was classified as a 'specialist risk'.
- It was agreed the amount to invest required to offset income tax via an EIS was £90,000. The adviser said if Miss R invested £90,000 then she would receive £26,939.60 (rounded to £27,000) in income tax relief. So this could be used towards the CGT payable in January 2019.
- Miss R and the adviser had dismissed other types of investment such as ISA allowances which had been maximised for that tax year.

In the provisional decision, I referred to calculations which were provided to us by the adviser. But both Miss R and the adviser have confirmed that these calculations were not provided to Miss R so I have removed them from the background of this complaint. And will not rely on them to reach my final decision.

Miss R was provided with two illustrations for the £90,000 to be invested in K. These both showed the net 'qualifying' investment amount after deduction of costs was just over £87,000. K's 'charging at a glance' document set out the fees that would apply to Miss R's investment which included an initial fee of 1.5% and an annual fee of 0.2%. Eagle had an initial fee of 1% for this type of investment. These costs were set out in the illustration.

In March 2018, Miss R invested £90,000 in an EIS with K. Amongst other things, the application also set out some of the key risks involved in investing in an EIS. Miss R recorded her annual gross income in the EIS application form as £20,000. In November 2018, Miss R invested a further £30,000 with K. On this occasion she said in her application form that her yearly income was £50,000 and said her occupation was 'retired'. In terms of K's illustration this showed the net amount invested after fees was £28,812.

In respect of another EIS investment this was with a different provider who I'll refer to as 'T'. An illustration was provided showing all the costs that would be applied. And showed there would be a net qualifying investment of £28,570. Miss R was issued with a key facts document by T. This showed the risk rating for the EIS was high and the intended market was for those who were willing to accept a high risk of loss to their capital invested in illiquid investments. But it noted any losses may be mitigated by EIS tax loss relief.

T's 'Brochure and Investor Agreement' document, amongst other things, said: *"Amounts invested my be held with the Custodian for a period of up to 12 months (or such longer period as may be determined by the Manager) before being allotted to Investee Companies. Allotments into Investee Companies may be done from time to time and may be done in stages…so as to take advantage of investment opportunities and provide flexibility to Investee Companies."* The brochure went on to say: *"EIS Relief will apply for the ex-year in which shares are allotted and can be carried back one year. There is no guarantee the shares will be allotted in the same tax year as the Subscription Deadline".* Miss R signed T's application form dated 29 October 2018.

In January 2020, T sent Miss R a 'Share Allotment Confirmation' document, which showed the amount of her funds which had been allotted up to that date and also a new investment which had been made. Amongst other things, this said:

> *"Prior to the investment,* [the investee company] *received HMRC Advance Assurance regarding the issue of EIS qualifying shares. We will work with the Company in order to obtain and issue EIS3 certificates as soon as possible, so that you are able to claim EIS tax reliefs, as applicable. HMRC may take six months from the date of allotment, or longer, to issue certificates. Please note the allotment date in respect of the investment into* [the investee company] *of 9 January 2020.*
>
> *We will keep you informed of our progress regarding EIS3 certificates. In situations where the EIS3 certificates are not available prior to the self-assessment tax return filing deadline for the period in which a claim is to be made, you will be able to obtain relief by way of a "stand alone" claim on receipt of the certificate. The timing of the certificate does not impact the availability or amount of relief or the period(s) against which it can be claimed."*

In this document it showed the funds brought forward were £13,714. Further, it was noted the latest funds deployed in qualifying shares was £3,299 leaving undeployed funds available for further investment as at 9 January 2020 as £10,415.

Miss R's complaint

Miss R's complained to our service about Eagle's overall advice. In summary, she said:

- Eagle misled her about how much she could reclaim in tax relief via her SIPP.
- Eagle had not noticed that the platform provider, B, had charged her incorrectly.
- She hadn't been told about yearly stockbroking fees for the Bond (£230) and WPA (£80).
- In terms of the Bond, the adviser incorrectly told Miss R the tax free amount she was able to withdraw.
- The adviser had provided Miss R with an incorrect 'Letter of Wishes' (LoW).
- The adviser had misled Miss R about the WPA charges.
- The adviser hadn't included the enhancement in the WPA of £8,100 when she should have done. Miss R only received the key facts document regarding the

WPA dated 28 June 2017 and not the one dated 6 July 2017.

- The adviser wasn't reluctant to recommend the EIS investments.
- Miss R did raise the EIS with her accountant, but she was relying on Eagle's advice before going ahead.
- Miss R says she was misled about the amount she would be able to reclaim in tax relief from investing in an EIS.
- Eagle had known the secondary set of EIS investments needed to be placed with some urgency with 'T'. Miss R was led to believe the EIS certificates could be issued almost immediately but this has not been the case.
- In terms of the EIS investments, the capital invested is stagnating.
- Throughout this process, Eagle had been categorical that the full value of the EIS investment of £150,000 could be allowed against CGT and income tax, but this has proved not to be the case because only the value of the individual EIS certificates can be allowed against tax relief which excluded the adviser fees.
- When she withdrew the funds from the GIA it had made a loss of £199. She said if she'd put the funds in a deposit account earning 1.25% a year she would have accumulated £1,093 of interest.

Eagle rejected Miss R's complaint. But it offered her £700 in compensation for any inconvenience it caused. Our investigator agreed with the compensation offered.

I issued my provisional decision on 11 November 2022 as I considered our investigator hadn't properly considered the issue of the WPA part of Miss R's complaint. I partly upheld Miss R's complaint on the basis that I thought the suitability report in respect of the EIS was unclear in terms of the tax savings. However, I agreed with our investigator that £700 was fair and reasonable compensation for this error.

In summary, Miss R disagreed with the recommended outcome in my provisional decision and reiterated what she had said above. She also added:

- The Ombudsman could explain why she is so clear in her assertion Miss R would have proceeded with the EIS investment despite the discrepancies in the EIS report. Miss R was led to believe that the tax benefits would be in excess of £100,000 as suggested by the suitability report, against the reality of £58,000 with an investment of £150,000, figures which only came to light after the investments had been made.
- Miss R said the CGT deferral is a maximum of £15,000, but this doesn't take account of the costs and charges, so the deferral amount was even less than this.
- Eagle advised Miss R on numerous occasions, that with an EIS the tax relief could be obtained at the point of investment, but this was incorrect.
- Miss R's accountant mentioned that EIS, but they gave no advice.
- Eagle should also confirm that it had over deducted from Miss R's investments until it was pointed out to them.
- The GIA was not considered as an option by Miss R. If the EIS investment had not gone ahead the money would be used to settle her CGT liability. Eagle's statements confirm that it understood this £150,000 was for use for an EIS so it should not have been invested in a GIA. As repeated on numerous occasions Miss R never intended to invest in a GIA so the Ombudsman should explain why it wasn't unsuitable.
- The Ombudsman could explain how she reached the conclusion that she *"thinks"* Miss R was not misled about the SIPP tax relief.
- The Ombudsman should hold Eagle responsible for giving the wrong or misleading information in reports, over the telephone or in meetings. Miss R has experienced detrimental effects because she was given incorrect information.
- Miss R has supplied the Ombudsman with a signed document dated 31 July 2018 where Eagle have agreed the stockbroking charges should not have been deducted.

Miss R never paid dealing charges when she purchased foreign currency in her job.

- The Ombudsman should not take a view on what she thinks Eagle might or might not have done regarding whether it would've discovered the mistakes with the overcharging by B.
- Miss R was given the incorrect charges for the WPA. Miss R had already accepted £8,000 upfront fee for the Bond and would likely have done the same with the WPA.
- There is no evidence to support the view from Eagle that it handed over the key facts regarding the WPA dated 6 July 2017.
- Miss R was given the wrong figure about how much she could withdraw from her Bond. The figure was given at a review meeting after the anniversary date of the policy. The Ombudsman appears to miss the point: this is another case of the adviser giving the wrong information to its client.
- All of Eagle's documents should be clearly date stamped. After each meeting or telephone discussion the adviser should have provided their client with a dated document specifically highlighting any changes that have been made and the reasons why and asked for written confirmation of the new instructions.
- The Ombudsman should use evidence of facts and not her 'personal opinion' on what she thinks might have happened. And the Ombudsman should deal with every issue that has been raised.

Following Miss R's submissions, I asked the Eagle adviser to clarify where the £57,000 quoted in the EIS suitability report came from. Amongst other things, the adviser said:

> *"The error I talked about was definitely IHT [Inheritance Tax Relief], It had been calculated on the investment amount of £130,000. Which is £52,000 plus potential saving of probate fees at 3% which they were due to increase ie £56,000 as per the report. The actual calculation should have been based on £150,000 which would mean an IHT saving of £60,000 (40% of £150,000). This was a further saving of at least £4,000 not taking into account any probate fees.*
>
> *I calculated the overall savings using 10% relief saving as evidenced by the illustration provided by* [T] *which was the accepted illustration to provide application which* [Ms R] *completed herself and accepted. This was provided prior to application. See Document (1). It is time stamped at 26.10.2018*
>
> *My report neither refers to 10% or 20%, I gave overall savings, however either can apply. See Document (2) Document (3) is a blank claim for CGT. It is available for both CGT or ER. ER being prior to 23.10.2010*. [Ms R] *application for ER [Entrepreneurs Relief] was granted 10/04/2017."*

I sent the statement of the adviser to Miss R, along with the attachments. I said whilst I agreed that suitability report had not been clear, which was a conclusion I had reached in my provisional decision, I still considered £700 was appropriate compensation for Eagle's mistake. Miss R disagreed. In summary, she said Eagle had misled her and she is due compensation on this basis. In particular, she pointed out that IHT would not have been a way to mitigate her CGT but only to benefit her beneficiaries.

As no agreement could be reached, the matter has been passed to me for a final decision.

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, and on balance, even taking into account the further submissions and evidence by both parties, I still consider the redress Miss R has been offered is fair and reasonable. But before I explain why, I think it's important for me to recognise the strength of feeling Miss R has about this matter. She's provided very detailed submissions to support the complaint, which I've read and considered carefully. However, my findings will only focus on what I consider to be the central issues.

I know that Miss R wants definitive answers to many (if not all) of the questions she has raised, but the purpose of my decision isn't to address every single point - it's not what I'm required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

I also note Miss R might consider the Financial Ombudsman has been biased towards the business, but I don't agree, and I'm sorry she feels that way. My decision is based on what I consider to be fair and reasonable based on the available evidence. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. And where definitive evidence isn't available or is unclear or conflicting as some of it is here, my role is to decide on a balance of probabilities what is most likely to have happened based on the information I've been given.

EIS

The first thing to note here is that in my provisional decision I relied on calculations provided to us by Eagle. However, both parties have confirmed that these calculations were not used and/or provided to Miss R. So I will not rely on these calculations as part of my final decision. These figures noted that Miss R was entitled to 20% CGT deferral rate. And I did say I agreed with this. But having reconsidered everything, I agree with Miss R submissions that because she received ETR she would likely only be entitled to defer CGT of 10% following her investment in an EIS.

As noted above, the adviser provided further clarification about the figure of £57,000 referred to in the EIS suitability report. I've summarised this above, so I won't repeat it again here. Both parties have had the chance to comment and review this information.

So, I agree with Miss R that I don't think the EIS suitability report clearly explained where this figure of £57,000 had come from. I concluded this was the case in my provisional decision. And the further submissions from both parties supports this. But I do not agree with Miss R's submissions that she was led to believe by the adviser that the figure of £57,000 was based on an investment of £90,000. From what I understand of Miss R's further submissions she considered that if this was the case, if the EIS tax savings was £57,000 based on a £90,000 investment, she could expect a total of around £100,000 tax savings with a further investment of £60,000.

But the relevant part of the EIS suitability report, which I have quoted above, refers to an investment of £90,000 and then a further investment of £40,000. So, at the very least, this figure (£57,000) was based on an investment in an EIS of £130,000. I do, however, agree that Eagle have provided contradictory submissions regarding this amount of tax savings of £57,000. For example, in its final response letter to Miss R it said: *"That included CGT deferral and income tax paid for two tax years. A further income tax relief saving was not included in this figure for the additional investment to EIS because it was part way through the tax year. £40,000 was estimated on the forecast you provided."*

However, even if the suitability report had been clearer about the amount of estimated tax savings Miss R could expect, as I concluded in my provisional decision, I'm not persuaded

this would've made a difference to the outcome in that I consider Miss R would still have gone ahead with the recommendation to invest in an EIS. I'll explain why.

Firstly, I don't consider, on balance, the recommendation was unsuitable for Miss R which is something she is now suggesting due to her low risk rating. I note as at 28 June 2017, Miss R had investments totalling £2.8million (excluding land and property) and she had a total net worth of over £3.6million. From what I can see the only investment categorised as 'specialist risk' in her portfolio following her investment in the EIS products was for £150,000.

As Miss R said herself: *"£150,000 into EIS - whilst a high-risk investment the product allowed me to defer part of my CGT liability and reclaim 30% relief against Income Tax. After 2 years of investment it would fall outside the scope of IHT".* So, given her overall capacity for loss and her objectives for investing in an EIS, I do not think a recommendation to invest in this product in the amounts that she did, was unsuitable for Miss R.

Secondly, from everything Miss R has said, I consider she would have proceeded with the investment even if the figures had been clearer in the EIS report. In her letter to Eagle dated 10 September 2020, she said:

> *"The EIS was never dismissed by me; whilst being relatively high risk it had the benefit of falling outside of IHT and could be used to offset CGT. The maximum amount I was prepared to risk in such an investment was £150,000.* [The Eagle adviser] *wanted to research the appropriate products so in order for her to invest quickly, if required, I gave an advance payment of £150K, which was to be held on account for future use in an EIS."* Miss R has also said: *"You* [Eagle] *had explained that EIS were high risk, and ultimately I knew I needed to balance the level of investment, with potential losses against the reduction in CGT liability."*

Furthermore, even before discussing the EIS with Eagle, Miss R had discussed this with her accountant. I know the accountant didn't provide advice but it shows Miss R was thinking of this investment before discussing it with the adviser. And she also says she was unhappy that the EIS wasn't invested at the outset rather than investing in the GIA.

I further note that when the adviser found two providers that offered Miss R some diversification, thereby lowering the risk in, what was, a higher risk product than her other investments, Miss R on her own initiative started discussions directly with both EIS providers. She was also given other information about the proposed EIS investments including the providers' key facts documents and brochures. I note T showed in its illustration how much CGT deferral Miss R would receive which was 10% of the net investment amount.

Miss R says she didn't complete the application forms as I had said in my email to her following my provisional decision. This was based on what the adviser had said. However, Miss R does not dispute that she had the opportunity to read all of these applications before signing them. These also contained information about the EIS products she was investing in.

Although the suitability report was unclear about the £57,000 tax savings, it did set out the benefits and disadvantages of an EIS including the high risk nature of this investment, which, as her statements above suggest, Miss R clearly understood and accepted. And it's clear that Miss R did have an objective of mitigating her IHT as well as defer some of her CGT liability and claim the 30% income tax relief. Therefore, the tax savings in the suitability report, even if based just on IHT and/ or income tax relief, were not irrelevant to Miss R's decision making.

Whilst I don't think the matters I've outlined above, negate the adviser's duty to give clear, fair and not misleading information, I have to balance any mistakes that have been made during the course of the advice, with all of the circumstances of the case to reach a fair

conclusion as to the impact of these errors. And, on balance, for all the reasons set out above, I'm still of the view that Miss R would have proceeded with the EIS investment even if she had been given clearer information about the tax benefits she would have received from her investments.

Miss R complains about the EIS investments 'stagnating' which could impact on how much tax relief she will receive. However, she was clearly told from the start that the tax benefits would depend on the performance of the EIS businesses. This was all explained to her from the various documents she received including those I've highlighted above.

In terms of the deduction of the initial costs, Miss R maintains she wasn't told that these would be taken at the outset. But the Eagle EIS suitability report itself noted that one of the disadvantages of an EIS is that: *"Fees can be high at entry and ongoing EIS management".* And I can see that the EIS portfolio report also refers to the applicable costs and charges.

In addition, Miss R was given illustrations from the adviser based on her investments with K and T, which clearly showed how much of the 'net investment' would be made after costs. The providers' brochures and key facts documents also gave clear information about the costs involved. So, I'm not persuaded that Miss R wasn't given sufficient information about the impact of the initial charges on her EIS investments.

Miss R also says she wasn't given sufficient information about the need to be issued with the EIS3 certificates before she could take advantage of the tax benefits. But she was provided with clear, fair and not misleading information about this before investing. Information about the need to receive the certificates before a claim could be made was set out in the EIS suitability report as well as the EIS providers key facts and terms and conditions documents. I've quoted some of this information above. And Miss R was given information clearly showing that it could take up to twelve months to receive these certificates.

I understand there have been delays in issuing some of the certificates from one provider and also some of the EIS investments haven't been made within expected timeframes so was still being held in cash. But this is not something I can hold Eagle responsible for. Once Miss R's investments were made with the relevant providers, the timescales for issuing the certificates and/or investing her cash weren't within the control of Eagle. And I can see in terms of T, it did keep Miss R up to date with the investments and how things were progressing.

SIPP Tax Relief

In my provisional decision, I didn't think there was any persuasive evidence that Eagle misled Miss R about the tax relief she could claim regarding her SIPP. I did say ideally, Eagle could have said the amount she could have claimed would be capped on her earnings. But I also noted that Miss R had an accountant who was dealing with, amongst other things, her tax affairs. And she clearly received advice about this matter from that accountant.

Even by Miss R's own admission, at most, she has suffered a loss of expectation. But I don't agree it was Eagle that gave her that expectation. I simply don't find any persuasive evidence to support that Eagle had misled Miss R in any way about the tax relief she could claim regarding her SIPP.

GIA

Miss R maintains she never intended to invest in a GIA. But, in my view, the evidence from the time of the advice shows she was given sufficiently clear information to make an informed choice about whether to invest in a GIA based on the adviser's recommendation.

But Miss R says the plan was instead to invest in the EIS at the point of the initial advice rather than the GIA or to just hold the £150,000 until the EIS investment had been made. I appreciate Miss R says she would have been better off putting the money in a savings account but this is with the benefit of hindsight. The recommendation to invest in a GIA whilst the adviser carried out research in the EIS, was not an unsuitable recommendation to make. It should be remembered that cost was a significant factor for Miss R in her objectives. The GIA had no adviser costs (other than the DFM fees), was low risk and she could access the funds with ten days-notice with no exit fees. I think this met with Miss R's objectives and therefore, wasn't an unsuitable recommendation to make.

As I said in my provisional decision, in terms of the loss she suffered when she withdrew monies from the GIA to invest in the EIS, Miss R was given sufficient risk warnings about the risk of loss. She denies receiving the GIA key facts document but the risk warnings were clearly set out in the June 2017 suitability report. I think it's unlikely that Miss R, who at every stage of the advice process, wanted detailed information about her investments, would have gone ahead with an investment where she wasn't provided information about the costs, the benefits, and the disadvantages. So, I don't think it's reasonable and/or plausible to say that Miss R didn't understand she would be investing in a GIA and/ or that she didn't receive information about this investment before deciding to proceed with the adviser's recommendation.

Fees and charges

In terms of the stockbroking charges, as set out in my provisional decision and the investigator's view, these particular fees were not levied separately by the Bond/ WPA provider. These were the DFM fees and formed part of their 0.36% annual charge. Miss R was given clear, fair and not misleading information about the DFM charges from the outset. I note that during a conversation with a representative with the platform provider B in June 2017, Miss R was told about the potential for dealing costs. The DFM used B's stockbroking service and the charge was made to the DFM. Miss R indirectly paid for the stockbroking fees but this was included in the 0.36% DFM charge she was told about from the start. So, I don't think Miss R has been misled about the charges.

I know Miss R considers her background in foreign exchange is irrelevant. But the point being made by the adviser and the representative from B was that Miss R had some understanding of how investments worked including that they could sometimes incur dealing charges. However, even without this meeting, I think Miss R was not misled about what charges applied to her investment platform.

Miss R has provided a document dated 31 July 2018, which she says shows the adviser agreed that the stockbroking fees needed to be refunded. This document consists of handwritten and typed notes which was drafted by Miss R. Whilst I've taken it into account, I can't say this shows the adviser said she would seek a refund on Miss R's behalf. The adviser has consistently told Miss R the stockbroking fees were part of the DFM percentage charge. So, I think it's unlikely the adviser agreed to seek a refund of these charges on Miss R's behalf.

Another complaint by Miss R is that Eagle didn't find out about B overcharging her until she found out this for herself. But as I said in my provisional decision, this mistake was not made by the adviser. I understand Miss R was paying Eagle for a service but it hadn't at the point she found the mistake by B, carried out a review of her investments. I don't think it acted unreasonably by not doing so before the review date. At this point, it's likely these mistakes would have come to light. In any event, as explained in my provisional decision, this was a mistake by a third party and Miss R has been unable to point to any loss as a result of these charges.

Miss R has said that she was also overcharged by Eagle. But I can't see that she raised this as part of her complaint. And she hasn't pointed to any loss for which compensation is due.

WPA/ Bond

Miss R says the WPA provider had agreed to reduce the initial fees to the same as the initial fee she paid with the Bond which was reduced from 1.5% to 0.8%. But this option was only available in relation to payment Option 1 and only applied to the Bond. I can't see any evidence of the provider agreeing to reduce its initial fees in respect of the WPA. And all the documents relating to the WPA show that Miss R had selected payment under Options 2 which was to pay a quarterly establishment fee over five years rather than an initial fee under Option 1.

In terms of the establishment fee in relation to the WPA, Miss R says she wasn't expecting to be charged so quickly under Option 2. From what she says she was led to believe by Eagle that the growth of the investments would be sufficient to cover these costs. But this is something that may have happened particularly as she was investing with no initial deduction of fees. So, I don't think the adviser gave Miss R unreasonable expectations about the potential for growth to, at least, cover some part of the fees.

Miss R's also complains that her WPA investment didn't include the enhanced amount. The key facts document dated 28 June 2017 and the suitability report of the same date, showed an investment amount of £333,100 which included an enhanced amount of £8,100 which was noted to offset ongoing fees.

But, I can see the suitability report dated 23 June 2017, referred to a WPA investment amount of £325,000. And so did a 'Your Lifetime Cashflow Report' dated 28 June 2017. Further, the adviser said in the suitability report dated 28 June 2017 that in relation to the WPA: *"The Nil Rate Band is the value of assets that is not chargeable to IHT at 40%. Above the excess above the Nil Rate Band is chargeable at 40%."* The IHT Nil Rate Band at the relevant time was £325,000 and was set out in the report. So, anything above this amount invested in the WPA would've been subject to an immediate IHT charge. Given one of Miss R's key objectives was to minimise her tax liability, I don't think it's likely she would have accepted to invest more than the NRB in her WPA.

Miss R maintains she didn't receive a revised key facts WPA document with the investment figure of £325,000, which the adviser says was given to her (Miss R) by hand following a meeting held on 6 July 2017. However, I note this was the same date that Miss R signed and dated the cheque for the sum of £325,000 to invest in the WPA.

Miss R's application form also clearly had the sum of £325,000 and both her trustees signed this on 6 July 2017. So, on balance, I consider it's more likely than not that Miss R did receive the updated key facts document related to the WPA. And on balance, I consider Miss R was given clear, fair and not misleading information about the WPA investment such that she could make an informed decision about the amount to invest and what charging structure to accept.

Miss R complains about what the adviser told her about the amount she could withdraw from her Bond in August 2019 which, at the time, the adviser said included an amount carried forward from the previous year but hadn't included the current year amount. But even if the adviser had mistakenly given Miss R the incorrect figure, she (Miss R) was told from the outset the percentage she could withdraw each year. She was also told directly by the provider how much she could withdraw in August 2019. So, from what I can see, Miss R hasn't suffered any loss as a result of information provided to her by the adviser.

Letter of Wishes (LoW)

It was set out in the suitability report dated 28 June 2017 that it was important for Miss R to have a Will in place for probate purposes. Having reviewed the LoW Miss R was provided with, I can't say this was an incorrect or misleading document. It simply gave Miss R a chance to let her trustees know what her wishes were if she were to die. As the adviser said, if Miss R was unsure about what documentation was needed, she (Miss R) could seek legal advice. From what Miss R says she did consult a solicitor, so I can't see any detriment has been caused by the document provided to her by the adviser.

Customer service

I know Miss R is dissatisfied overall with the customer service Eagle provided. But in my view, it did accommodate her wishes in several instances. It could not always meet her deadlines, but I don't think this means it provided a poor service to her. I also note it did negotiate lower fees for many of the products she invested in. I know Miss R has responded to my provisional decision that Eagle did this for other customers, but this doesn't negate the fact that it also did it for Miss R. One of her key objectives was to keep costs low. And by negotiating lower fees for Miss R in several instances, including its own, I think Eagle fairly and reasonably met with this objective for her.

Miss R reiterated in her response to my provisional decision, that she considers Eagle should provide dated documents and record all calls. She also referred to the number of typos in some documents. I appreciate these are frustrating matters for her. But I can't tell Eagle how to run its business. Or what processes it must adopt for recording interactions with its clients. That is a business decision for it to make with reference to its regulatory duties. My role is to decide whether in Miss R's case Eagle has acted fairly and reasonably and if it has not, award compensation accordingly.

For all these reasons, whilst I accept Eagle did provide Miss R with some incorrect and/ or unclear information during the advice process, I'm satisfied that £700 is sufficient compensation for the distress and inconvenience this has caused her.

My final decision

My final decision is that Eagle Financial Services Limited must pay Miss R £700 for the distress and inconvenience it has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 26 April 2023.

Yolande Mcleod
Ombudsman