

The complaint

Mr B complains that Raymond James Investment Services Limited (“Raymond James”) gave unsuitable advice to invest in an unregulated collective investment scheme (“UCIS”), which was too risky for his risk profile. He says when he transferred his pension away from Raymond James this was delayed due to his investment in the UCIS.

What happened

Mr B sought advice from Raymond James in 2010 about his pension arrangements.

An Investment Strategy Assessment document completed at the time said the expected size of the portfolio to be managed was £430,000.

The Raymond James Account form shows Mr B asked for a managed discretionary fund. Raymond James recommended that he invest through a Self-Invested Personal Pension (“SIPP”) and the investment strategy was to place 50% in fixed income investment and 50% in equity investment, with an instruction to include a ‘wider range’ of investments such as hedge funds and private equity investments.

Amongst other things, the documents noted that:

- This was a long-term investment to run for more than 10 years. The returned asset mix was Deposit Alternative and Mr B wanted to include alternative investments in his portfolio.
- Mr B was the Managing Director of a company with an annual income of £100,000 from dividends. His outgoings were £2,500 a month. He had over £1,000,000 in liquid investments and owned property worth more than £2,000,000.
- Mr B had held a wide range of investments, but didn’t take an active interest in them.

Funds were invested in a SIPP for Mr B and some of the funds were invested in EEA Life Settlements, an unregulated collective investment scheme (UCIS).

In 2021 Mr B complained to Raymond James about the advice to invest in the UCIS. This was after he had consulted another IFA and moved his pension to a different SIPP. He said he should not have been advised to invest in an unregulated scheme, which was too high risk for him and had led a loss on his investment. He also said the transfer of his pension took six months, which was too long.

Raymond James didn’t accept that it was at fault. It said the investments were all in line with his attitude to risk, and there hadn’t been any delay in transferring his pension.

Mr B then referred his complaint to this service. Our investigator thought the complaint about investing in the UCIS should be upheld. He asked Raymond James to carry out a calculation to see if Mr B had suffered a loss as a result of the advice.

Raymond James didn’t agree with the investigator. It said:

- the evidence shows a medium risk profile was agreed with Mr B and the investment formed a suitable part of the overall portfolio;

- it wasn't correct to say Mr B wanted a low risk approach;
- the risk profile was equivalent to 50% bonds and 50% equities and this was not a low risk strategy;
- Mr B was a wealthy individual with a significant capacity for loss and the investment only formed a small part of the overall SIPP account.

The investigator didn't change his view that investing in the UCIS was too risky.

As no agreement has been reached, the complaint has been passed to me for a 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.

Raymond James had to obtain enough information from Mr B to assess his financial circumstances and take reasonable care to ensure the recommendation it made was suitable for him, taking into account his circumstances including his attitude to risk and capacity for loss. Raymond James says it did this and recommended something that was suitable, taking into account his wealth and a medium risk profile agreed with him. I've considered carefully what Mr B's circumstances were and whether the recommendation was indeed suitable for him.

While the documents show Mr B agreed to having some funds invested in alternative investments, he has said he wanted a low risk approach. Raymond James' final response to Mr B's complaint said his objective was to achieve a return above inflation without losing money over any 12-month period. This objective is likely to be compatible with a cautious attitude to risk. A 50:50 split between bonds and equities is more aligned to a lower risk approach. And a later document reviewing Mr B's pensions and making recommendations specifically says,

"The total return to date has been modest due to the low risk approach selected at the outset. For example, exposure to equities has been modest..."

The information available is limited - due to the amount of time since the advice was given, Raymond James no longer has all of the documents. But from the evidence that is available I'm satisfied that Mr B wanted a low risk approach and this is what was agreed. I don't think the evidence supports Raymond James' view that a medium risk approach was in line with his attitude to risk.

Mr B has said he had no involvement in choosing the specific funds he was invested in. This is supported by the Investment Strategy Assessment where Mr B said he had no active interest in his investments. I'm satisfied he was invested in EEA Life Settlements because of the advice he was given by Raymond James.

This is an unregulated collective investment scheme (UCIS). Because of the lack of regulation and the type of assets they invest in, UCIS can be complex and high risk. The regulator has generally regarded this type of investment as having a high degree of volatility and risk of being illiquid. They are usually considered to be speculative investments and in practice rarely regarded as suitable for more than a small part of an investment portfolio.

Mr B's pension was invested in a range of assets. As stated, I have limited information but this investment seems to have made up at least 7 or 8% of his initial investment (and a valuation from 2014 indicates it was around 10% at that point). I can't see there was a good reason to make this investment given Mr B's risk profile.

Under the FCA's rules, this type of investment is not to be marketed to an ordinary retail investor. While Mr B is relatively wealthy, I haven't seen evidence showing he was a certified High Net Worth Individual or Sophisticated Investor.

Taking all of the above into account, I don't consider the advice to invest in this way was suitable for Mr B.

Mr B says when he wanted to transfer his pension, this was delayed by the fact he had funds invested in an unregulated investment scheme. I don't think it's necessary to comment on this, other than to say the steps I am directing Raymond James to take are aimed at putting him in the position he would have been in, if he had been given suitable advice. So it addresses this point as it places him, as far as possible, in the position he would have been in if his pension had not been invested in that way.

Putting things right

Fair compensation

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr B would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

What must Raymond James do?

To compensate Mr B fairly, Raymond James must:

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.
- Raymond James should also add any interest set out below to the compensation payable.
- Raymond James should pay into Mr B's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Raymond James is unable to pay the total amount into Mr B's pension plan, it should pay that amount directly to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr B is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. However, if Mr B would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 30%.
- Pay to Mr B £300 for distress caused by finding out he had invested in an unregulated investment which was difficult to sell and may have caused him a loss..

Income tax may be payable on any interest paid. If Raymond James deducts income tax from the interest it should tell Mr B how much has been taken off. Raymond James should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Raymond James pension portfolio (2010)	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Raymond James should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Raymond James pays should be included in the actual value before compensation is calculated.

If Raymond James is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Raymond James may require that Mr B provides an undertaking to pay Raymond James any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Raymond James will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Raymond James should use the monthly average rate for one-year fixed-rate bonds as published by

the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Raymond James pension portfolio (2010) should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Raymond James totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr B wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Raymond James Investment Services Ltd should pay the amount calculated as set out above.

Raymond James Investment Services Ltd should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 May 2023.

Peter Whiteley
Ombudsman