

The complaint

Mrs D complains about the suitability of investment decisions that Raymond James Investment Services Limited made on her behalf within her discretionary managed portfolio.

What happened

In 2012, having previously been advised by a Raymond James adviser, Mrs D was advised by them to start using their discretionary managed portfolio service. This service applied to three products Mrs D held, an offshore bond, a stocks and shares ISA and a general investment account (GIA). From 2014 Mrs D took withdrawals from the bond of £3,000 per month to supplement her income. Following her retirement in 2018, she began to also take withdrawals of £1,000 per month from the GIA.

In 2022 Mrs D saw a sudden fall in the value of her portfolio, of over £200,000. In December 2022 she asked her adviser to not make any further trades without first speaking to her and said that she would be changing managers imminently. In February 2023 she transferred away and after speaking to a new adviser, she complained about shares in smaller companies that had been bought in her GIA and ISA as they weren't in line with her cautious attitude to risk. She added that over the last few years, Raymond James hadn't been managing her capital gains efficiently, and ought to have crystallised losses on some of those individual share holdings to offset gains. The unexpected need to pay capital gains tax (CGT) had an impact on her disposable income and day to day finances.

Raymond James didn't uphold the complaint, explaining that the portfolio had met Mrs D's objectives of providing an income and maintaining its overall value and was in line with her attitude to risk. They explained the purpose of including these shares was to provide a growth element to the portfolio and pointed to one of the shares in particular which had performed well. They didn't address the CGT management in their reply.

Mrs D remained unhappy and referred the complaint to our service, explaining that she didn't have the capacity to sustain losses in this portfolio, as she was dependent on it for income, and would be for the rest of her life. She felt the shares – which she pointed out were mostly small cap – were inappropriate given her lack of investment experience. An investigator considered her complaint and didn't uphold it. He said that when taken in the context of the overall portfolio, the inclusion of the shares wasn't unsuitable.

Mrs D disagreed as she didn't feel the risk posed by these specific shares had properly been addressed so she asked for the complaint to be reviewed by an ombudsman, and it was passed to me. I issued a provisional decision upholding the complaint as follows.

My provisional decision

"There are two broad complaint points here – the first is about whether the investments in Mrs D's portfolio were suitable for her, and the second is whether the portfolio was managed appropriately in relation to capital gains tax. I've looked at these separately for clarity.

Was the portfolio suitable?

When looking at whether Raymond James have made suitable investment decisions on Mrs D's behalf, I've considered whether they were reasonable taking into account Mrs D's objectives, circumstances, investment experience and attitude to risk. Any information given to Mrs D needed to be fair clear and not-misleading, in particular at times she needed to make decisions – for instance when agreeing to the way Raymond James was going to manage her portfolio. Finally, I've considered whether the portfolio was managed in the way agreed, and whether any changes to the management style were agreed.

I've kept in mind that investments were made in the context of a portfolio and not in isolation. This means that a singular investment may be higher than Mrs D's risk tolerance – but in the portfolio context, this may be balanced out by lower risk assets. So, while Mrs D's complaint focuses on the eight or so single company shares, I need to consider the rest of the investments too in order to decide whether Raymond James's decisions were fair and reasonable. This also has a bearing on any redress I might award – as I'm looking at the portfolio as a whole, rather than just the single company shares.

Though Mrs D was a client prior to 2012, that appears to be when the discretionary management agreement began that continued until she transferred away in 2023. I've considered the paperwork chronologically from 2012 onwards to see what was discussed and agreed.

In October 2012, Mrs D and her adviser completed a document called Form 109, which set out her circumstances, investment experience and attitude to risk. This shows:

- She held around £1.8 million in liquid assets.*
- She had an income of £50,000 net per year, which came from withdrawals from her existing investments and from employment. Her outgoings were £4,000 per month – so she had very little disposable income after expenditure.*
- Out of a list of various investment types, Mrs D confirmed she'd only ever invested in collective investments – she hadn't directly held shares or government bonds, or more complex or risky investments, like structured products or derivatives.*
- She agreed with the statement "I have investments, but I do not take an active interest in them or deal in them regularly."*
- She was looking to invest for more than 16 years with the goal of protecting the capital value of her investments from the effects of inflation.*
- There is a six question "Investment Risk Attitude" questionnaire and a further nine question "Investment Objective Attitude" questionnaire, but the quality of the scanned copy of this form means I cannot read the questions. The questions resulted in an agreed strategy of 50% fixed income investment and 50% equity investment, which was the middle option of five risk levels. I understand Raymond James refer to this as the 'balanced' strategy.*
- However, it was noted that Mrs D was "a cautious investor and am happy using the mixed investment 20-60% shares investment management association median as the chief comparator for my portfolios. The closest to this is 50/50".*
- Application forms were completed for the three accounts – these are largely identical and include the statement "Your adviser will include the following types of investment in your portfolio unless you specify otherwise: Cash and Money Market Funds. Bonds. Equities. In addition please specify below if you would like your adviser to consider including the following in your portfolio: "Wider-range" investments (e.g. structured products, hedge funds, private equity funds)" – Mrs D ticked no.*

On 31 October 2014 Mrs D completed an attitude to risk questionnaire, which resulted in an attitude to risk that fell into group 4 out of a possible 7, where 7 is the highest amount of risk.

The results of this confirm that most people in group 4 would likely choose a portfolio made up of 30% high risk investments, 40% medium and 30% low risk. However, it was also pointed out in the report that Mrs D's preference was lower risk – she had said she would prefer portfolio 2, which was made up of 0% high risk, 30% medium and 70% low risk.

The following day a fact find was completed by the adviser which recorded the following about Mrs D's investment knowledge and experience:

- *Regarding shares/equities and gilts/corporate bonds, Mrs D had a basic understanding, but wasn't an expert.*
- *Though she was good with money generally and figures, she relied on the adviser to provide a strategy for the portfolios.*
- *That Mrs D's standard of living would be affected by a 20% loss of capital or income.*
- *The adviser noted Mrs D was "quite risk averse but not overly so. She realises that non-cash assets do fluctuate in value and can result in enduring losses."*
- *Her specific investment objectives were "steady returns, replenish income taken, preserve capital over time."*
- *That Mrs D "prefers not to invest in obscure/unregulated investments". "Obscure" was not defined. However, Mrs D also signed a "wider-range investment" agreement at this time which allowed Raymond James to invest in more unusual higher-risk investments, if they chose to.*

In my view a key part of this information is the discussion about Mrs D's capacity for loss. Raymond James hasn't provided me with evidence of a projection showing what a 20% loss would mean for Mrs D and the income she required from this portfolio. So, I don't have evidence of how long the portfolio could sustain the income she required, if it lost that much money, compared to how long without that loss. However, what is clear is that this money was necessary to sustain an income for the rest of Mrs D's life – and given she was in her early 50's in 2012, that could be a long time. In my view this means she had very little capacity for loss.

On 3 December 2014 Raymond James sent Mrs D a letter setting out some of the discussions that had taken place. But this didn't detail the way in which they would be managing her portfolio in terms of the types of investments they would make or the level of risk involved. On 10 May 2016 a meeting took place, and the adviser made a note following this which said:

"[Mrs D] is an in-experienced investor with little knowledge of investments although she is very bright and keeps good records... Her outgoings are small but [Mrs D] has a low propensity to take investment risk and is certainly sensitive to the portfolio falling to less than £1.4m. Over the years, the primary comparator of IMA20-60 has been used which we both agreed best reflects [Mrs D's] overall capacity for loss and propensity to accept investment losses. [Mrs D] realises that non-cash investments can go down as well as up and also realises that cash deposits offer very little performance at the moment."

Reading all of this together, I find that Mrs D preferred to take less risk with her investments than the 50/50 strategy would normally involve. It's clear from the paperwork they would be using a different comparator to measure the growth of the portfolio, rather than sticking to a 50/50 construction. That comparator involves 20-60% equity content – and when read with the answers in the 2014 attitude to risk questionnaire particularly, in my view Mrs D would likely have been more comfortable with the lower end of this - 20% rather than 60% equity. I find that her attitude to risk was lower than 'balanced' which is in line with what Mrs D has said about having a cautious attitude to risk.

It's clearly contradictory to this attitude to risk that Mrs D signed the "wider-range investments" agreement – its also contradictory to the notes the adviser made. I find the latter more compelling evidence – it's a reflection of the conversation that took place and it is supported by Mrs D's recollections of saying she was cautious. So having considered this in the round, I'm not convinced that the signed wider-range investment agreement shows Mrs D was willing to take a higher amount of risk or invest in unusual products.

The mandate from 2012 allows investment in equities. However, none of the evidence I've seen shows that there was ever a discussion of the types of equities that might be involved in the portfolio. The term "equities" by itself is very broad and there is a large variance in the type and level of risk involved in different equities. For instance, there's no mention of any specific currencies, market capitalisation sizes, listing venues etc that might be invested in.

Based on the evidence I have, I'm not convinced Mrs D knew enough about equities as an asset class to have known about the different risks involved in different types of equities – for instance large cap vs small cap equities. I'm not convinced she could reasonably consent to more unusual equities being included in the portfolio – like emerging market or Alternative Investment Market (AIM) listed equities, even if they were in line with her attitude to risk.

While the mandate allowed Raymond James to invest in "equities" generally, they were required to exercise their discretion in a reasonable way which in my view includes taking into account Mrs D's attitude to risk. Based on the evidence presented to me, I'm not persuaded the single company shares in question were suitable in isolation for Mrs D. This is because:

- None were large-cap companies and from my research, just two are arguably mid-cap now, but may not have been in 2016 to 2022 when they were first bought. The rest are small cap companies. This is an indicator of them being more high risk, generally because they are smaller, younger companies, who are more likely to fail than a mid- or large-cap companies.*
- Of the eight companies mentioned in Mrs D's complaint, I've found that five were listed on the AIM and two on the Main Market of the London Stock Exchange and one on a different market. AIM-listed equities are generally considered higher risk than Main Market-listed equities again because they are smaller, younger and less experienced companies.*
- These were specialist companies – four were in the energy sector and four were focused on precious metals. When a company's focus is niche, this means they are particularly sensitive to any impact on that particular market, bringing more risk.*

In my view this means these were higher-risk equities and not the sort that someone with Mrs D's level of knowledge and experience would have been familiar with. They are also generally not the sort of equities that a lower-risk investor would normally hold. If these were the only investments the adviser had included in the portfolio, in my view they would be unsuitable. As set out above, I also need to consider whether they were appropriate for inclusion in the portfolio, in the context of the other investments held.

I haven't been given information by Raymond James about their opinion of the risk levels of each of the individual funds they've included in the portfolio. So, I've researched the funds involved, using the current Key Investor Information Documents, Fund Factsheets and other information I can find online about the funds. While the exact assets held within funds changes over time, each has an overall aim which doesn't change over time, because funds are designed for long-term investment. As a result, in the absence of information about the assets held within each fund at the times they were invested in, I find it reasonable to rely on the current information, as its unlikely to be too different from the assets held earlier.

Based on the annual portfolio breakdowns Raymond James has provided, which show the mixture of investments held on 1 October of each year, I can see that there are a maximum of six broad categories of investments contained in the portfolio in any given year. I've analysed the mixture of assets for a selection of the years since 2012 using those six high-level categories and found the following information:

- *In 2014, the valuation I have is from just after Mrs D had deposited a large amount of cash into the portfolio, which hadn't yet been invested. The assets in the portfolio were:*
 - *52.84% cash*
 - *0.52% in funds that purely invest in bonds (fixed interest securities)*
 - *5.5% in funds that purely invest in Japanese equities*
 - *19.6% in funds that purely invest in various equities*
 - *21.17% in funds that invest in a mixture of bonds, equities and other assets*
- *In 2015, before any single company shares were purchased in Mrs D's portfolio, it was worth £1,389,284.09 in total, broken down as:*
 - *0.57% cash*
 - *27.4% in funds that purely invest in bonds*
 - *26.35% in funds that purely invest in Japanese equities*
 - *8.93% in funds that purely invest in various equities*
 - *36.75% in funds that invest in a mixture of bonds, equities and other assets*
- *In 2016, after the first investment in single company shares, the portfolio was worth £1,492,201.64, as follows:*
 - *5.62% cash*
 - *22.25% in funds that purely invest in bonds*
 - *15.80% in funds that purely invest in Japanese equities*
 - *21.62% in funds that purely invest in various equities*
 - *34.51% in funds that invest in a mixture of bonds, equities and other assets*
 - *0.2% in single company shares*
- *In 2017 the portfolio was worth £1,498,226.92:*
 - *1.81% cash*
 - *22.37% in funds that purely invest in bonds*
 - *26.89% in funds that purely invest in Japanese equities*
 - *11.93% in funds that purely invest in various equities*
 - *35.82% in funds that invest in a mixture of bonds, equities and other assets*
 - *1.18% in single company shares*
- *In 2018 the portfolio was worth £1,545,134.28:*
 - *5.53% cash*
 - *18.82% in funds that purely invest in bonds*
 - *24.35% in funds that purely invest in Japanese equities*
 - *10.15% in funds that purely invest in various equities*
 - *35.86% in funds that invest in a mixture of bonds, equities and other assets*
 - *5.28% in single company shares*
- *In 2020 the portfolio was worth £1,555,240.85:*
 - *23.53% cash*
 - *20.5% in funds that purely invest in bonds*
 - *4.73% in funds that purely invest in Japanese equities*
 - *24.73% in funds that purely invest in various equities*
 - *18.14% in funds that invest in a mixture of bonds, equities and other assets*

- 8.38% in single company shares

Regarding the amount invested in the mixed funds, I haven't analysed how much was in equities, bonds or other types of assets within those funds. For the purpose of this exercise, I consider it reasonable to assume roughly half of these funds were made up of bonds and half equities (though if Raymond James would like to provide more detailed information for the relevant times they are welcome to do so in reply to this provisional decision).

Taking that approach, by my maths in 2014 11.1% was in bonds and 52.84% in cash – totalling 63.9%. In 2015 after the majority of cash was invested, around 45.78% of the portfolio was in bonds, in 2016 this was 39.5%, in 2018 this was 36.75% and in 2020 it was just 29.7%.

This shows the level of investment in funds that invest in bonds – which are generally considered to be lower risk investments – steadily decreased at the same time the investment in single company shares and other equities increased. Though the increase in the single company shares was slow over time, there was no balancing lower risk investments. In fact, it seems money was taken from the lower risk assets to invest in equities – both in funds and the single company shares.

I've noticed that some of the funds allow investment into both developed and emerging markets, such as various countries in Asia and South and Central America. There's also been some use of hedge funds and some of the equity and mixed asset funds include a derivative content, which is generally accepted in industry as a high-risk asset. So even outside the single company shares, some of the other funds were also higher risk.

There's also consistently a significant amount of equities concentrated in Japan – which meant the portfolio would be particularly sensitive to any risks local to Japan's politics and economy. This strategy wasn't explicitly set out in the paperwork – there's no mention of Mrs D being aware of this geographic concentration or that she was aware of the risks that it may pose. Investment in Japan, a developed economy, in and of itself isn't unreasonable – its simply that due to the higher concentration of investment of over 25% at times, there is an additional risk.

Overall, I'm convinced that the portfolio involved a mixture of investments at a higher level of risk than Mrs D was willing or able to take from around the time of the first investment in single company shares in 2016 onwards. In addition, she wasn't made aware of the different risk level involved in many of the assets included in the portfolio, so couldn't have provided consent investment in them regardless of her attitude to risk.

While the discretionary mandate was broad, I'm not persuaded that the discretion has been applied in a reasonable manner given the lack of transparent information about the investments, and against the background of Mrs D's attitude and capacity for risk. I've set out under "putting things right" below, how Raymond James should calculate whether there's been any financial loss as a result of the unsuitable portfolio.

Was the portfolio managed appropriately in relation to capital gains tax?

In the fact find completed on 1 November 2014 the adviser noted that CGT management and use of ISA allowance were required in the management of the portfolio. I've considered the gains and losses information that Raymond James has provided, taking into account that losses can be carried forward, and I've found the following information.

Year	Total gain after losses	CGT allowance	Taxable amount	After previous years' unused losses are applied, the total
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	<i>in that year</i>			<i>taxable amount was</i>
12/13	£54,317.40	£10,600.00	£43,717.40	
13/14	£10,587.48	£10,900.00	-£312.52	
14/15	£11,712.55	£11,000.00	£712.55	£400.03
15/16	£12,112.29	£11,100.00	£1,012.29	
16/17	£9,787.01	£11,100.00	-£1,312.99	
17/18	£10,431.17	£11,300.00	-£868.83	
18/19	£13,327.71	£11,700.00	£1,627.71	£0 (with £554.11 of loss left)
19/20	£41,904.93	£12,000.00	£29,904.93	£29,350.82
20/21	£30,886.99	£12,300.00	£18,586.99	
21/22	£29,937.47	£12,300.00	£17,637.47	
22/23	-£223.82	£12,300.00	-£12,523.82	

In the 2012/13 year Mrs D took a large withdrawal from the portfolio, so I've not considered that year when looking at how the CGT has been managed. In my view it's clear that prior to the 2019/20 tax year, the gains in the portfolio were being managed carefully to ensure there would only be a small CGT liability, if any. However, something seemed to change from 2019 onwards and I've seen no documents explaining this change in approach, either to Mrs D at that time, or to Mrs D and our service during the course of this complaint.

If Mrs D was a basic rate taxpayer, then she'd have had to pay CGT of 10% on the gains from 2019 onwards, which by my rough maths would have been around the following amounts:

- 19/20 – £2,935
- 20/21 – £1,858
- 21/22 – £1,763

As this was an unexpected change in strategy and bearing in mind all her income came from the investments and was necessary to cover her expenditure, I'm not surprised that Mrs D says she struggled to be able to pay these bills. There were uncrystallised losses in the GIA each year that could have been used to offset the gains, to manage the CGT liability as had been done in previous years. I've seen no evidence as to why Raymond James didn't do that from 2019 on.

Overall, I'm satisfied that Raymond James acted unreasonably in the way Mrs D's gains and losses were managed from 2019 onwards. I'm conscious of the fact that it's not particularly realistic to go back through all the trades to say which gains and losses shouldn't and should have been crystallised respectively. This is because any conclusions would be marred by the benefit of hindsight.

I am also mindful that anything that was still held in her portfolio when Mrs D transferred away are gains and losses that she can use to manage her CGT liability going forward. However, she may have been in a worse position overall as losses may be more pronounced due to not being crystallised earlier.

I consider a reasonable compromise here would be for Raymond James to pay half of the CGT that Mrs D had to pay for the three tax years from 2019 to 2022. Mrs D will need to provide proof of the amount of tax she paid and the dates of payment. Raymond James should also add 8% simple interest to the amounts, from the dates Mrs D paid each tax bill, to the date of settlement. This is to make up for the fact Mrs D hasn't had the use of that money since paying the bills.

I've also considered the fact that Mrs D has been caused unnecessary worry by both the higher tax bills and the discovery that so much risk had been taken with her money against her wishes. Raymond James should pay Mrs D £500 compensation for this."

To calculate whether Mrs D had been caused any loss as a result of the unsuitable investments, I said that Raymond James should compare the performance of Mrs D's investment with that of the FTSE UK Private Investors Income Total Return Index benchmark.

Replies to my provisional decisions

Mrs D accepted the provisional decision and provided proof of the tax she'd paid from 2019 to 2022, which we shared with Raymond James.

Raymond James didn't accept the decision and in summary they said:

- The increased CGT liability in the recent years was due to the closure/delisting of certain investment funds, and by large withdrawals by Mrs D, for instance to help pay for her daughter's wedding, not because of a change to their strategy. They said they would provide more information about the closure/delisting of funds, but I didn't receive any specific details on this.
- The investment management service was not driven by tax considerations, and they generally avoided crystallising losses.
- It's likely that when Mrs D moved away from Raymond James in 2023, she continued to take risk. If she truly had no capacity for loss, then she wouldn't have done that, which they felt was persuasive that she could take risk.
- The agreed mandate was balanced risk, with a 50/50 growth/defensive split and a 20% capacity for loss. Raymond James permitted tactical asset allocation of up to 10% either side of its baseline investment strategies and Mrs D's portfolios remained within these boundaries.
- They were not tasked with managing Mrs D's portfolio "indefinitely" nor were they told by Mrs D that she could not sustain any losses in her portfolio.
- They disagreed with the benchmark I said should be used to calculate redress, saying that it was very similar as the make-up of the portfolio, with around 50% equities. They said this is essentially the same equity weighing as used in the portfolio, as it was managed on a 50/50 basis.
- They felt I had placed too much weight on Mrs D's submissions made during her complaint as these would have been made with hindsight, and more weight should be placed on the documentary evidence. They felt this was in relation to Mrs D being cautious rather than having a balanced attitude to risk. They said Mrs D's statements in making her complaint should not carry more weight than the level of service she chose to receive, her conduct and behaviour over the years and the steps she took when she moved away from Raymond James.
- Regarding Mrs D's knowledge, they said it wasn't necessary to explain all the facets of investments to her. Mrs D was not required to have sophisticated or in-depth knowledge about investments, in order to be able to have her funds managed on a discretionary basis in a suitable manner. The role of the investment manager is to manage their client's portfolio in line with the agreed mandate, and they wouldn't seek permission or consent from Mrs D in order to make investment decisions.
- All of the equities used in Mrs D's portfolio were listed on an exchange. Whilst they might be considered "higher risk" in isolation, they should not be considered unsuitable in a discretionary portfolio amongst a much wider range of investments. The suggestion that individual stocks rendered the portfolio unsuitable is not

supported. The loss from the equities equated to about 2% of the portfolio, which they didn't feel was material when looking at the whole portfolio, and they felt it is consistent with a balanced mandate.

- The argued the portfolio was diversified, dominated by defensive and mixed-asset funds, with direct equities capped at around 12.8%. Even a 50% collapse in those equities would only reduce the overall portfolio by about 6.4%.
- The mixed asset funds contained around 30% equity content and not the 50/50 that I had set out. They felt it wasn't reasonable to make a "rough guess" as part of a decision when considering the equity content of the portfolio.
- The Finametrica questionnaire identified that, at a 95% confidence level, the portfolio's standard deviation should remain below circa 11%. Bloomberg data shows that the portfolio's actual volatility stayed within this range. This confirms that the portfolio's realised risk characteristics remained in line with the strategy agreed.
- If I was still minded to uphold the complaint, then fees ought to be deducted from the benchmark calculation other wise this puts Mrs D in a better position than she'd otherwise be in.

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 not been persuaded to depart from the findings I reached in my provisional decision. I'll avoid repeating my provisional findings where possible and the below should be read with the provisional decision set out above, as it forms part of my final decision.

Raymond James has said that I concluded Mrs D had no capacity for loss. However, I didn't find that Mrs D had no capacity for loss – merely very little. While that may be a small distinction on its face, its important because its often necessary – particularly prior to the last couple of years when interest rates have risen – to take an amount of risk to generate the level of income Mrs D required.

Raymond James has said they weren't asked to manage the investment indefinitely – but the 1 November 2014 fact find says "*time horizon for investment: Lifetime*", which was repeated in the 18 January 2020 fact find. The latter is clear that she was incredibly reliant on this money for the rest of her life, as the pension income she would receive wouldn't cover her needs. It's clear Raymond James was aware of this, but I've seen no evidence as to why they felt it was necessary to take the level of risk involved in this portfolio, to generate the income, bearing in mind her small capacity for risk.

I'd note my focus on capacity was just one of three main reasons I found the portfolio to be unsuitable. Regardless of Mrs D's capacity for risk, I have two other reasons to uphold the complaint. Firstly, the investments as a portfolio exceeded her attitude to risk. Regarding Mrs D's attitude to risk I've relied on the following evidence:

- 31 October 2014 Finametrica report: "*prepared to take a small to medium degree of risk... It is somewhat more important that the value of your investments does not fall (than it retains its purchasing power)*"
- 1 November 2014 fact find: "*She is a cautious investor.. is quite risk averse but not overly so*"
- 3 December 2014 suitability letter: "*Your chief aim at the moment is to invest...in a tax efficient and cautious way*"

- 6 January 2020 Finametrica report: *“you are prepared to take only a small degree of risk with your financial decisions... Compared to others how do you rate your willingness to take financial risks? Low risk taker... What degree of risk have you taken with your financial decisions in the past? Small”*
- 18 January 2020 fact find: *“She is a cautious investor”*

I note the term balanced is used by Raymond James to describe the risk level of the mandate and the only definition of this I’ve seen is in reference to the 50/50 defensive/growth strategy. In response to my provisional decision, they’ve provided commentary on the level of risk involved in the portfolio in August 2022 and have said it was cautious to balanced overall at that time. So, Raymond James distinguishes between the terms cautious and balanced – though I haven’t seen any definitions of these risk levels.

As far as Mrs D knew, she had told Raymond James she was a cautious investor and wanted to take a low amount of risk. I’ve seen no evidence that Raymond James explained that more risk would be taken than cautious, other than a mention in the suitability letter issued on 27 April 2014 that said “you have a balanced propensity to take investment risk”. This didn’t explain the difference between cautious and balanced.

The other reason I’m satisfied it’s reasonable to uphold the complaint is that Mrs D wasn’t given a fair opportunity to consent to the investments that were involved. I appreciate Raymond James’s comments that she didn’t need to understand all details, and broadly I agree that she doesn’t need to have as much knowledge as the investment manager. However, she still needs to be able to make an informed decision about allowing Raymond James to manage her investments. I’d have expected a clear, fair and not misleading explanation of the investments that would likely be involved in the portfolio, and the types of risks they might pose. At no point can I see that Raymond James explained the risk – over and above a general explanation of what equities are - either before she signed up to the discretionary service, or after.

Had Mrs D been given the opportunity to understand the risk that would be taken, on balance I’m convinced she would not have agreed to Raymond James managing her portfolio. I’d also note that sometimes it can be reasonable for an adviser to recommend that a customer takes more risk than their attitude to risk, if necessary for a certain objective. But generally, I would only agree that’s reasonable if the risks are fully explained. There’s no evidence that happened here.

I note Raymond James’s comments that the benchmark I set out is effectively the same equity content as Mrs D’s portfolio. In saying that, they appear to have overlooked the adviser’s comments in 2014. In the fact find dated 1 November 2014, the adviser said:

“Client does not regard Finametrica result as definitive. It is a pointer only. Comparators will continue to be used not benchmarks...”

The chief comparator to be used is the IMA 20-60% mixed median...

Portfolio will not be benchmarked to this asset allocation [50% defensive 50% growth] or to any other. A comparator approach will be used.”

So, it’s clear to me that the money wasn’t going to be invested in a 50/50 defensive/growth portfolio – instead the 20-60% mixed median benchmark would be used as a comparator. As I set out in my provisional decision, the equity content of the portfolio was more than 50% consistently and was generally between 60 and 75% of the portfolio.

I can see Raymond James disagrees with my use of rough calculations when considering the mixture of the assets in the mixed funds. They've said there was around 30% equity, not 50% in those funds. However my focus when looking at the asset mix was on the bond content, and the bond content was around 50% on average. For instance, there were two funds held consistently throughout:

- The LF Ruffer European fund – this is currently only holding cash, but the KIID for this fund says it will “*invest at least 70% in equities (company shares) and equity related securities of European companies... also invest up to 30% in investment and non-investment grade bonds, treasury bills, commodities... money market instruments... and cash*”. When I looked at this fund prior to writing my provisional decision, I had noted it contained 14.5% cash, 49% bonds, 30% equities and 8.6% commodities.
- The WS Ruffer Total Return fund – this currently holds around 50% bonds, 9% cash, 35% equities and 6% other investments. When I looked at this fund prior to writing my provisional decision, I had noted it contained around 60% bonds and cash.

So, I don't agree with Raymond James's comments that these mixed funds held more than 50% bonds. Raymond James has not provided any evidence for me to rely on regarding the asset mix of the funds at various points, so I can only go by the research I've been able to do online of the current asset allocation of the funds. This is why my calculation is only rough and not exact – it can't be exact because Raymond James has failed to provide the information necessary to make it exact. I see no reason to suspect that the aims of the funds have changed dramatically over time, so I consider it reasonable to conclude that the asset mix of these funds was around the same in previous years as it is now.

As set out in my provisional decision above, the lower risk asset content steadily decreased at the same time the investment in single company shares and other equities increased. Though the increase in the equities (both direct and in funds) was slow over time, there was no balancing lower risk investments. In fact, it seems money was taken from the lower risk assets to invest in equities. Overall, I remain persuaded that the portfolio contained more risk than Mrs D had wanted to take.

I've considered Raymond James's comments that fees ought to be deducted from the calculation of redress. The benchmark is not designed to reflect the exact investments Mrs D would have made – rather its use is to calculate the sort of return Mrs D would have received had she invested at a suitable level of risk. It is a broad measure, precisely because I can't be exact when considering the investments Mrs D would have made, including what fees they would have involved. Adjusting the benchmark return for charges would also complicate the calculation and I don't consider this extra complexity to be justified, given that the benchmark return is not the actual figure Mrs D would have got before charges, but a broad measure of the overall potential loss she's experienced.

Regarding CGT, Raymond James has said the portfolio wasn't managed for tax. But this goes against the evidence provided – they had told Mrs D that they would bear CGT in mind when managing it and reinforced that through their actions in managing the portfolio up until the 2018/19 tax year, keeping gains very low. They knew that Mrs D didn't have disposable income readily available, so ought to have been aware that excessive unexpected tax liabilities would have been difficult for her to manage.

Raymond James have not provided an explanation of which funds closed, the dates of the closures or the amounts of gain generated. Without that detail I don't find their comments persuasive that the fund closures were the cause of the additional CGT from 2019 onwards.

They've also said that Mrs D withdrew from the portfolio to help with her daughter's wedding but again haven't provided specifics of this. The only meeting note I have that mentions this is dated 13 April 2022, which says that the funding worked well, but doesn't mention how much was withdrawn, which assets were sold specifically to facilitate the withdrawal, or the CGT bill this had generated.

I've considered the transaction history previously provided and can see there was a withdrawal of £11,200 in October 2021 and £10,000 in December 2021. I can see some assets were sold prior to both of these, but there's also some buying transactions and I don't have a running total of the cash account. So based on what I have, I can't deduce which assets were sold, or their gains, to directly facilitate the withdrawals.

Regardless, Raymond James hasn't explained why no losses were crystallised to offset the gains – they've simply said that isn't what they do. For instance, they could have provided commentary explaining why they felt the assets that were at a loss, would be better to hold rather than sell at the various points in time. So overall, I've not been provided with enough persuasive evidence to cause me to change my mind on this point.

The evidence provided by Mrs D shows her tax bills for capital gains were as follows:

- 2019/20: £2,988.40 paid to HMRC on 7 January 2021
- 2020/21: £1,858.60 paid to HMRC on 22 January 2022
- 2021/22: £1,763.70 paid to HMRC on 19 January 2023

Raymond James should pay half of those amounts and pay 8% simple interest to each, from the dates Mrs D paid each amount to HMRC, to the date of settlement.

Raymond James didn't comment on the £500 I set out as compensation for the distress and inconvenience caused. Having reconsidered everything, I maintain that it is a fair amount.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs D as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs D would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs D's circumstances and objectives when she invested.

What must Raymond James do?

To compensate Mrs D fairly, Raymond James must:

- Compare the performance of Mrs D's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Raymond James should also add any interest set out below to the compensation payable.
- As set out above, Raymond James should pay Mrs D half of the total amounts of CGT paid from 2019 to 2022. 8% simple interest should be added to the amount

Raymond James pays Mrs D from the date of each amount of tax Mrs D paid, to the date of settlement.

- Pay to Mrs D £500 for the worry caused.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Total Portfolio comprised of the bond, GIA and ISA	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of first investment in single company shares 12 August 2016	Date ceased to be held with Raymond James	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.

Fair value

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

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

Any withdrawal from the portfolio 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.

For clarity, the fees should not be deducted from the fair value calculation.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs D wanted income with some growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs D's circumstances and risk attitude.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £190,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £190,000, I may recommend the business to pay the balance.

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

Recommendation: If the amount produced by the calculation of fair compensation exceeds £190,000, I recommend that Raymond James Investment Services Limited pays Mrs D the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind Raymond James Investment Services Limited. It is unlikely that Mrs D can accept my decision and go to court to ask for the balance. Mrs D may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Raymond James Investment Services Limited should pay Mrs D the amount produced by that calculation – up to a maximum of £190,000 (including distress or inconvenience) plus any interest set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 September 2025.

Katie Haywood
Ombudsman