DRN-3782620

The complaint

Mrs L complains that Evelyn Partners Discretionary Investment Management Limited, trading as Tilney Discretionary Investment Management Limited ("Tilney"), failed to provide her with the advisory service she was paying for. She wants it to refund its fees for January to September 2021.

The complaint is brought on her behalf by her son, who holds power of attorney for his mother. For ease, I'll refer to everything as if it's been said by Mrs L.

What happened

Mrs L has an Investment Advisory Service agreement with Tilney. Tilney recommended suitable asset allocation models, based on Mrs L's circumstances. Mrs L was also able to ask for advice on buying and selling investments which did not form part of the model. Tilney needed Mrs L's instructions before it could trade on her behalf.

Mrs L complains that:

1. Tilney didn't send its usual list of buy and sell recommendations with its January 2021 report. The report included codes which the advisor couldn't explain, and she didn't understand. Tilney suggested its discretionary service might be more appropriate for her, but this was subject to a higher charge. Mrs L says Tilney changed its advisory service, because the report differed from previous years, but that it didn't issue new terms.
2. Tilney failed to recommend the sale of two holdings which she'd introduced, and which were too high risk to be suitable for her.
3. Tilney failed to provide her with advice from January 2021, when she didn't receive the usual investment recommendations. She didn't receive this until September when she asked for Tilney's advice. She wants Tilney to refund its fees from January to September 2021 of £2,050.

Tilney said its advisory service hadn't changed. It said it issued a review letter in January 2021, outlining its recommendations and asked Mrs L to contact it. She didn't get in touch to request a full review or to ask for specific recommendations. Tilney contacted her again in February 2021 asking for instructions for the cash held on the account. Mrs L responded to say she wondered if tracker funds might be better for her as she wouldn't need to follow the movements of the stock market. Tilney recommended its discretionary service. Mrs L phoned Tilney the following month, but it says it didn't respond to her and it apologised.

Tilney accepted it should have advised Mrs L to sell her two share holdings. It apologised and offered her £1,495.11, representing the growth she would have seen in her investment if the shares had been sold earlier and reinvested in the asset allocation model. It also offered her £200 for the distress and inconvenience caused.

Our investigator didn't recommend that the complaint should be upheld. He thought Tilney had provided the agreed advisory service and didn't need to refund its fees. And he thought Tilney's offer of compensation was fair and reasonable.

Mrs L didn't agree. She said, in summary, that:

- Tilney's January 2021 report said the portfolio was over-weight in equities but didn't provide any recommendations.
- In September 2021, when Mrs L asked for recommendations, Tilney recommended 20% of her investments were reallocated. If Tilney had carried out a review and offered recommendations in January 2021, as the investigator concluded, it seems unusual that such a large reallocation was recommended just eight months later.
- Tilney effectively downgraded the service Mrs L received to an "advice-on-request" service, whilst keeping its fees at the same level.
- Tilney hasn't compensated her for its admitted omissions.

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.

The advisory service terms and conditions say:

"*We will offer to carry out an annual review of your Portfolio*." (3.7)

And:

"*We do not make decisions without referring to you. You may accept or reject our advice. All decisions on whether to buy, hold or sell any investments are yours*." (3.1.4)

In practice, this meant Tilney sent Mrs L its 'Investment Report' on at least an annual basis. This included a market commentary, a portfolio analysis, summary and valuation, details of asset performance and some explanatory notes. This, together with the covering letter, would include information about whether or not the portfolio continued to meet Mrs L's investment objectives and risk profile, and would indicate whether she held any funds on its "sell" or "switch" list. If the report concluded that the portfolio didn't meet her needs, or if there were specific funds that might need to be sold, it was up to Mrs L to contact Tilney to discuss this, and to request a review.

Mrs L says that in January 2020 Tilney sent her a list of funds that it recommended she sell and buy; but sell and buy recommendations weren't included in the January 2021 report. I find that's because Mrs L requested a review in January 2020. She'd had a discussion with her advisor, provided up to date information about her circumstances, objectives, and attitude to risk, and asked for specific investment recommendations.

She didn't ask for a review in January 2021. But I'm satisfied Tilney offered a review, as required in the terms and conditions.

The portfolio report Mrs L received in January 2021 concluded that, "*The portfolio continues to reflect your investment objectives, risk profile and any other investment requirements we have previously agreed, as at the date of this report*". This conclusion ignored Mrs L's two direct shareholdings that she'd transferred into the portfolio, but I will comment on that later. Apart from these two holdings, Tilney concluded the portfolio remained suitable for Mrs L. So I don't find it was appropriate for Tilney to provide any investment recommendations.

Its covering letter which was sent with the report pointed out that Mrs L's portfolio contained some funds which were on its "switch list". And that she should consider changing these funds. The letter said:

"*Based on your Investment Report if you would like to take advice on any of the issues highlighted above please do get in touch with me*."

I'm satisfied this reflects the nature of the service as described in the terms and conditions. It was for Mrs L to monitor her investments and seek advice from Tilney as and when she wanted to; Tilney would send her an annual report and would highlight anything she ought to be aware of; and it would offer to provide a full review, and specific recommendations, if Mrs L requested it. In the circumstances, I'm satisfied that Tilney provided the service that Mrs L was paying for, and I don't find there's any obligation on it to refund its fees.

But I've also thought about whether Tilney should have done more in Mrs L's particular circumstances – it had noted in its records that she was vulnerable, because of her age. And, whilst a power of attorney was in place, this wasn't registered with Tilney until September 2021. Until then, she continued to deal with her own financial affairs.

Mrs L didn't respond to the January 2021 report. In February, Tilney contacted her to ask for her instructions for investment of the cash held in her account and asked for her instructions in respect of a fund which was redeeming. Mrs L replied to say that she generally ignored her emails because she didn't know which ones were important. And she asked if she might be better to invest in tracker funds, so she didn't have to follow the markets.

The service Mrs L was paying for was not a financial planning service. Tilney's responsibility was only to provide advice about the investments held in Mrs L's advisory portfolio. But I think Mrs L's email put Tilney on notice that Mrs L may have been struggling to keep on top of things as far as her advisory portfolio was concerned. In the circumstances, I think Tilney acted reasonably. I say this because it suggested she might want to consider its discretionary investment service – where all investment decisions would be made by Tilney, without the need to refer to Mrs L.

Mrs L didn't reply to Tilney's email. But the following month, she phoned to discuss investment of the cash and to discuss investing in tracker funds. Her advisor wasn't available, and Tilney says it didn't respond to her phone call. It apologised. But I think it would have been upsetting for Mrs L not to have received contact from her advisor following her phone message, particularly because she may have been struggling to know what to do about her investments. I think Tilney should compensate Mrs L for the distress it caused and I consider £150 to be fair and reasonable.

As noted above, Mrs L had transferred two shareholdings into her portfolio. Tilney accepts it should have made it clear that it recommended these shareholdings were sold as part of the review it carried out in January 2020. It offered to compensate Mrs L by paying her £1,495.11 for the lost investment growth, and £200 for the distress and inconvenience caused. I'm satisfied this fairly compensates Mrs L for Tilney's mistake.

I appreciate Mrs I is frustrated that Tilney hasn't paid the sum it offered in its final response letter already. But I wouldn't expect it to have paid her because she didn't accept its offer.

My final decision

My final decision is that Evelyn Partners Discretionary Investment Management Limited should:

1. Pay Mrs L £1,495.11 for the lost investment growth.

2. Pay Mrs L £350 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs L to accept or reject my decision before 1 December 2022.

Elizabeth Dawes
Ombudsman