DRN-4518198

The complaint

Mr and Mrs H have complained that Bowmore Financial Planning Limited ('Bowmore') unsuitably advised them to invest the proceeds from their house sale in January 2022. Their plans for the cash were short term and they suffered a loss on their investment. They want this to be returned to them.

What happened

Mr and Mrs H had been clients of Bowmore since 2018 and had built up a discretionary portfolio including a pension, ISAs, and General Investment Accounts ('GIA'). After some delays Mr and Mrs H were able to complete the sale of their home in January 2022 and had around £1m in proceeds. They were advised to invest the funds, which they did, but the value of their investment fell.

Mr and Mrs H complained to Bowmore who responded on 3 February 2023 not upholding the complaint. It said;

- During the period of the house sale and afterwards, Mr and Mrs H's plans were fluid and changed several times.
- £900,000 was invested into a GIA in Mrs H's name for tax purposes as outlined in a suitability letter of 8 June 2021 and earlier report of 15 November 2018.
- There had been plenty of discussion about what options were available to Mr and Mrs H depending on their changing circumstances.
- The investment advice given was suitable for Mr and Mrs H's investment appetite, their long-term objectives and understanding of investment risk.

Mr and Mrs H weren't happy with the outcome and brought their complaint to this service. Our investigator who considered the complaint didn't think it should be upheld. He said;

- There was evidence to suggest that Mr and Mrs H's plans weren't necessarily so short term, and it was reasonable for Bowmore to have suggested they invest the funds.
- Initially Mr and Mrs H had wanted to keep the house sale proceeds as cash, but for a variety of reasons it was noted that it would be sensible to generate a return. And Mr and Mrs H had agreed to the recommendations to invest around £1m.
- The financial reviews showed that Mr and Mrs H had a capacity for loss and the investment was suitable for them.
- Despite a new full suitability report not being generated prior to the January 2022 investment and the pros and cons of investing versus cash not being outlined, the investigator thought Mr and Mrs H weren't unaware of the risks. Even if a fuller report had been provided, he thought Mr and Mrs H would still have decided to invest. Their desire to outperform inflation took precedence over having less capital to put towards a house purchase.
- Evidence showed Mr and Mrs H were considering going for a smaller house and

providing financial security for their family. And that evidence suggested that Mr and Mrs H would have invested even if Bowmore hadn't provided any advice.

- He couldn't be sure of what was discussed during a phone call of July 2022, but he couldn't see that Bowmore had said anything improper during the call.

Mr and Mrs H didn't agree and provided some further information and evidence, but this didn't change the investigator's opinion about the complaint. As the complaint remains unresolved, it has been passed to me to decide in my role as ombudsman.

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 reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

I should first explain that the Financial Ombudsman Service is an informal dispute resolution service set up as a free – to consumers – alternative to the courts. In deciding this complaint, I have focused on what I consider to be the central issues that are relevant to the outcome of the complaint, rather than commenting on every issue in turn. This isn't intended as a discourtesy, rather it reflects the informal nature of our service and my remit. I've considered everything that has been said by the parties but limited my findings to the areas which impact on the outcome of the case. I'll also mention at this stage that where there's a dispute about what happened I've based my decision on the balance of probabilities.

In response to the investigator's opinion, Mr and Mrs H have sent a detailed and lengthy submission for my consideration and I'd like to thank them for the efforts they have made in bringing their complaint. I will comment on the points they have made further in my decision. I appreciate Mr and Mrs H have pointed out that they hadn't previously seen sight of some of the documents – records of calls and file meeting notes – which they have now. In some instances, I have relied on those. The evidence available suggests that they are contemporaneous notes and are a reflection of the writer's recollection of what was discussed.

<u>Summary of outcome</u>

In summary, I think Mr and Mrs H's objectives and attitude to risk were reasonably identified in 2018 for the investments they were making at that time. However, I do think the additional funds added in 2022 – £930,000 – should have been treated by Bowmore as more than a 'top up' to their existing portfolio. But I am satisfied that there is sufficient evidence to show that Mr and Mrs H, in part, instigated how those additional funds were invested. By that time, I am of the opinion they had sufficient investment experience to understand the risks involved in stock market investment and Bowmore had further warned them of the risk of investing those funds for the short term, but they chose to invest with the hope of better returns than they would have received if the funds were held in cash based investments. I am also of the opinion it was Mr and Mrs H's decision to sell their portfolio in July 2022 and subsequently reinvest.

<u>Mr and Mrs H's circumstances</u>

As a background I will outline Mr and Mrs H's circumstances prior to 2022. In 2018 Mr H was aged 59 years and Mrs H 57 years. They were both in good health and had been retired for a few years. Mr and Mrs H owned their primary residence and also owned a second property valued at around £250,000, which was occupied by one of their children.

During their initial meeting with Bowmore on 3 October 2018 it's recorded their priorities were to 'stay ahead of inflation' and 'improve value of the estate…steady managed growth to pass through the generations.' It's also recorded;

- 'Agreed they were comfortable with 20-33% loss, as they are keeping a good amount of money back £357K mainly to help their other 3 children with house deposits…their eldest has already had £40,000.'
- 'They can afford to wait for a recovery.'
- They had a 'Fairly Adventurous profile selected which is consistent with their [risk profiling tool] outcomes.'
- Mr and Mrs H's house is on the market and they plan to downsize but it may not release any cash…looking to stay in the area. They will probably rent for a while before they buy…'
- Mr and Mrs H wanted to 'Invest money so it isn't going backwards' and to 'Reduce inheritance tax bill.'

Mr and Mrs H had a further meeting with Bowmore on 22 October during which its noted;

- 'Their house is up for sale and seriously thinking about renting for life – had a good discussion about this and prefer the idea of their children owning their house they live in and paying rent…but definitely looking to sell their current home.'

After the above conversations an Investment and Income Strategy Suitability Report was issued on 13 November 2018. It recorded;

- Recommendations were provided for a total of £600,000, mostly with an income mandate and balanced risk profile of '4'. The largest of these were £220,000 to be invested in a new GIA with a risk profile of '4' with and income mandate for Mr H and the same for Mrs H but with an investment of £240,000.
- In addition to Mr and Mrs H's cash ISAs, Mr H held £18,000 in cash and Mrs H £117,000. Mrs H held £522,000 in NS&I Income Bonds and they both held £50,000 in premium bonds. £120,000 was earmarked to be gifted to their children.
- They wanted to invest £500,000 from their cash-based savings and £100,000 from their existing ISAs.
- Mr and Mrs H wanted financial security and a comfortable retirement and to grow their investments enough to support those objectives.
- Their attitude to risk was discussed further to a risk questionnaire and recorded as a risk profile of '5' out of '7' and they had 'some capacity for loss'.
- In the past they had taken a 'large' amount of risk financially but wanted to reduce this to a more moderate level.
- Their investment timescale was for life.
- Their investment experience was very little other than Mr H choosing a fund for his pension and him having been involved in 'multi-million-pound deals through work.'

I have been provided with many call and meeting notes and emails etc detailing further conversations and recommendations made subsequent to the above investments going ahead. Those communications include all aspects of Mr and Mrs H's financial circumstances, such as whole of life policies, mitigating inheritance tax etc and not just their investments. However, with regard to the house sale – which was taking a long time – I note the following;

- 22.06.20 – 'discussed holiday lets or maybe a country/farm style property where the business element pays for the property upkeep ... they are still keen to move from their house but may rent out and not averse to taking on more debt whilst rates are low and more likely to be for the foreseeable future.
- 08.12.20 – Amongst other investment points the notes record 'Housing market is again stagnant/unpredictable, so we feel that selling our house is off the table for now. Therefore, we need to keep some focus on re-mortgaging or paying off the existing mortgage when it comes to the end of its term in May 2022.' ' £20K left to pay the builder out of £160K total, whole front of house has been redone …' which I understand was done to improve its selling prospects.
- 16.03.21 – £100,000 was invested into a new GIA for Mrs H into the ethical ('ESG') portfolio .
- 05.04.21 – Mr and Mrs H email Bowmore to say;

  > 'our house is under offer…and our buyers are looking for a completion date by end-June. Although we are actively looking for a property, we are having some difficulty finding somewhere we want to buy so there may be a need for us to temporarily move into rented accommodation, which would leave us with something like £950K from the sale of our current house which we would be looking to place into some sort of short term investment so that it earns some money whilst we look for something to buy. We are looking to [name of contact] regarding a mortgage of max £750K over the medium term so as not to disturb our current investments.'

- 09.04.21 – In response to the above Bowmore's adviser emailed Mr and Mrs H to say;

  > 'I'd have a look at the best savings account as we wouldn't generally recommend investments for what could be a relatively short period (3-5 years is usually an acceptable time horizon)…We could look at investments if a mortgage is in play but we're looking at much larger amounts here than the money borrowed to do the front of your house and so the risks of investments possibly not performing and you still having a mortgage to repay are greater.'

- 13.05.21 – Mr and Mrs H emailed their adviser to confirm that completion on their house would be at the end of June and that;

  > 'As we are going to be moving into rented accommodation it would be sensible that the proceeds from the house sale are put somewhere in order to generate a return. This will be circa £930k after the mortgage is paid off and all bills are paid. We would appreciate your advice/suggestions. Initially we are renting for a year, but this could be extended depending on the housing market situation going forward.'

  Bowmore replied to say;

  > 'Over such a short timescale we really ought to be considering cash products. However if you want to invest, we could consider this as it's a large amount to have in cash and we would hope as we bounce back from Covid that it should be good for stock-markets – but of course we can't guarantee this.'

Further to the above Mr and Mrs H then spoke with their adviser whose call notes record amongst other points that;

> 'Discussed they might only get 0.4% on cash, but it's there if they need it for a house purchase.
>
> Discussed investing vs cash and, if we lowered the risk that put them more in fixed interest than you might like in what is looking to be quite an inflationary environment.
>
> There is a very real risk that if market doesn't perform that they will be long-term renters:
>
> - [Mr H] said we still have the [second] property so its not as if they're completely off the property ladder.
> - They can also get a mortgage if its not a good time to be coming out of the market.
> - They've also got some investment that have been invested for some time.
>
> Whereas if they don't do anything they may lose out on investment growth and house prices and may not be able to get a house that at least matches their old house.'

- 17.05.21 – The adviser recommends putting the house money into Mrs H's name for tax purposes and suggests it be added to either of the two investments they were currently invested in. The returns of the two funds had been similar 'so it's probably more do you want your investments to 'invest for good'?'
- 28.05.21 – Mr and Mrs H respond to say, 'we're happy with the decision about the house money' and confirm that they couldn't be sure of when the house sale would complete.
- 07.06.21 – Mr and Mrs H email the adviser about the potential lack of diversity in investing in the same fund and the adviser responds with the opportunity to discuss this as well as sending on some fact sheets.

Mr and Mrs H were then written to on 8 June 2021;

> 'Further to our recent telephone and email correspondence, I am writing to confirm my recommendations for you to contribute circa £1m to Mrs H's … GIA … in order to build your wealth and provide long term financial security as part of your financial planning objectives.'
>
> Your circumstances, objectives and attitude to investment risk are summarised in your Investment Strategy and Income Strategy Suitability Report dated 15/11/2018 [this should read 13/11/2018]. I am not aware of any changes that would impact on my view that your plans, and the underlying investment strategies, remain suitable for the recommended contributions. However, if there have been any changes, please let me know immediately as these may affect the recommendations I have made.'

- 09.08.21 – Phone call notes record that Mr and Mrs H were thinking about looking for a smaller house and setting up trusts for their children and grandchildren plus were thinking about moving to the Channel Islands.
- 17.11.21 – A meeting file note records that 'House prices have increased whilst they

have been selling and they have looked out as far as [county name] … they may go cheaper, continue to rent – they're checking as initially it was one year – now looking to extend out to three years. They may go more expensive.'

- 16.12.21 – Mr and Mrs H emailed Bowmore and said 'we are reconsidering what to do with the proceeds from the house sale because, looking at the way things are going, it may take us a while to find another house to buy. We may be better off investing elsewhere with a more competitive fee structure.'

  In response the adviser refers to the performance of the potential investment noting that 'we can't guarantee investment returns' as well as the charging structure along with the offer of a conversation. It goes on to say;

  > 'With investment managers that have a track record of protecting clients capital through good and bad markets and I think it's fair to say we've experienced both thus far. I think it's important the capital is protected as much as possible the [discretionary manager's] process maximises return for a given level of risk as you will eventually need the money back for a house purchase and the purpose of investing it is to try and maintain that value with inflation so you can buy an equivalent house when you find something suitable.'

- 03.01.22 – Mr and Mrs H email the adviser to confirm they will be exchanging on their house on 7 January 2022 and ask for bank details of where to send the proceeds for investment.
- Bowmore confirmed on 19 January 2022 that it would start investing the funds.

In April 2022 Mr and Mrs H started having concerns about the advice and service they were receiving and spoke with a different representative at Bowmore. A new investment adviser was recommended. In May Mr and Mrs H then were looking to unwind the investment of their house proceeds bearing in mind the capital gains tax position and this was further raised in their email of 1 July 2022.

Subsequent to the above, Mr and Mrs H were hoping to exchange on a house in February 2023 but that fell through although they have confirmed that since then they completed on a new house in February 2024 and also bought a small cottage to run as a holiday letting business. They told us this demonstrated their determination to buy a house after selling their previous home in 2022 and evidenced that they had no plans to rent long term and only wanted to invest the house sale proceeds for the shorter term.

I appreciate Mr and Mrs H are adamant they were always looking to buy another house, but I think it's fair to say that Mr and Mrs H's plans were in a state of flux pending their house sale. Mr and Mrs H's house had been on the market since 2018 and the sale didn't complete until January 2022 – so for around three to four years Mr and Mrs H couldn't make any firm plans about their future living arrangements. And I think this is reflected in the variety of exploratory housing options that are referred to in the above timeline of events and contact they had with their adviser at Bowmore. With the then difficult housing market Mr and Mrs H were understandably unsure what the future held and were considering all of their options including future living arrangements.

<u>Mr and Mrs H's attitude to risk</u>

The recommendation letter issued in June 2021 referred to the suitability report from 13 November 2018. It recorded that after Mr and Mrs H had completed a joint risk questionnaire, they were placed in risk group of five (seven being the highest risk). There was then comment about their capacity for loss and that they had 'some capacity for loss'. And there is further comment about how Mr and Mrs H felt about taking risk;

> 'You selected an ideal model portfolio where you would be comfortable with 30% invested in high risk/return, 40% invested in medium risk/return and 30% low risk/return investment. You would both, however, be open to receiving advice on the best asset mix to meeting your aspirations and tolerance for downside risk.'

I can see a further risk assessment summary was completed in January 2019 when again their risk rating group was recorded has five – a balanced risk profile.

In conclusion regarding risk, it was recorded that Mr and Mrs H were 'looking for 6-7%pa, return net of fees and based on our discussion, we agreed you would be comfortable with a short-term fall in value of between 20-33%'.

A balanced risk portfolio – with a risk rating of four – lower than the accepted risk profile of five – was suggested. I don't find this was an unreasonable conclusion to have reached regarding their risk profile bearing in mind Mr and Mrs H's financial circumstances and objectives as identified for their current investment at the time.

<u>The decision to invest Mr and Mrs H's house proceeds</u>

The house sale proceeds became available in January 2022 and were to be invested into the same ESG portfolio Mr and Mrs H were then currently invested into. I understand that after the recommendation to invest was made in June 2021, Mr and Mrs H had three further meetings/discussions with their adviser on 16 June, 9 August and 17 November to discuss Mr H's concerns about diversification and geographical investment. This indicates to me that Mr and Mrs H were engaged in the decision to invest and the investment itself.

And by this time – January 2022 – Mrs H had three/four years of investment experience and awareness of the volatility that can be experienced in stock market investments. In particular, they were invested during the sharp falls in February 2020 after the growing instability due to the COVID-19 pandemic. Yet, in spite of their experience of the volatility of the market, Mr and Mrs H still chose to invest with the funds that were earmarked for their house purchase.

Of course, it's for the investment adviser to ensure it provides suitable recommendations for a customer bearing in mind their investment objectives and circumstances. And I am satisfied this was done. I say this because I note it was Mr and Mrs H's initial suggestion to look to invest to generate some returns on such a large sum. If their adviser didn't think it was suitable for them then they had an obligation to point this out. In response to Mr and Mrs H's suggestion they were advised at that time to;

> '… look at the best savings account as we wouldn't generally recommend investments for what could be a relatively short period (3-5 years is usually an acceptable time horizon)…We could look at investments if a mortgage is in play but we're looking at much larger amounts here than the money borrowed to do the front of your house and so the risks of investments possibly not performing and you still having a mortgage to repay are greater.'

And three weeks later;

> 'Over such a short timescale we really ought to be considering cash products. However if you want to invest, we could consider this as it's a large amount to have

> in cash and we would hope as we bounce back from Covid that it should be good for stock-markets – but of course we can't guarantee this.'

Considering Mr and Mrs H's by now accumulated investment experience – and also bearing in mind during this time Mr H had investments with another platform provider as well – I don't think it's unrealistic that they did want to take advantage of the potential for growth in the stock market post the COVID-19 pandemic. And in November 2021 Mr and Mrs H had confirmed they were looking to extend the term on their rental property to three years.

Mr and Mrs H wanted to maintain the value of the funds with inflation and the call note of the 13 May indicates that amongst other things, interest rates were discussed – which were low at the time – and I think it likely Mr and Mrs H decided to invest as they saw it as an opportunity to make their funds grow despite being warned that cash-based products would be better, and that any expected stock market bounce back couldn't be guaranteed.

It is the emails and phone conversation of 13 May 2021 that appear to have been pivotal in the change from cash-based products to stock market investments. Clearly, I can't know this for sure, but I think it likely that during the discussion with their adviser Mr and Mrs H concluded that it would be better to invest any proceeds from the sale of their house rather than retaining it in cash. I think its most likely this to be the crucial conversation that caused Mr and Mrs H to change investment tack. But I think that was after discussion about the other options that were available to them.

The advice itself was given in June 2021 and bearing in mind the subsequent correspondence and contact etc, and that that the investments weren't made until January of the following year, this meant Mr and Mrs H had a further six months during which they could reconsider their decision as well as monitor the performance of their then current investments.

This time lag – during which time I note the markets had risen (the FTSE All Share Index by around 200 points and the FTSE 100 by 300/400 points) – and the fact Mr and Mrs H still chose to invest – suggests to me that they were sufficiently happy with their investments in order to agree to a further investment of just over £900,000 in order to take advantage of the hoped-for continued market uplift.

And I note that during the intervening period Mr and Mrs H emailed their adviser on 16 December 2021 and said;

> 'We are reconsidering what to do with the proceeds from the house sale because, looking at the way things are going, it may take us a while to find another house to buy. On that basis, paying the existing tier of fees on our investments may not make good financial sense to us. We may be better off investing elsewhere with a more competitive fee structure.'

This suggests to me that Mr and Mrs H anticipated a delay in buying their new home, were still actively considering with whom to invest but that they were still wanting to make an investment, rather than keeping the proceeds in cash – whether that be with Bowmore or another investment adviser. To me, this further evidences Mr and Mrs H's decision to invest their funds rather than retain it in cash.

After seeing a copy of the phone note of 13 May 2021, Mr and Mrs H 'question its validity regarding it being contemporaneous with the events.' And they say the note 'is very general and does not reflect any serious or detailed discussions.' But I have been given no reason to doubt that it was written at the time and a reflection of the adviser's recollections of what was discussed during that call.

The note details that a conversation was had about investing versus keeping their house sale proceeds in cash earning interest of around 0.4% and the advantages and disadvantages of both. And there is reference to Mr and Mrs H still having exposure to the property market through their second residence or the possibility of taking a mortgage if it wasn't a good time to come out of the market. So, I think it's clear that the various options were further discussed during this call, even if what was discussed isn't recorded in the note in as much detail as Mr and Mrs H would like to have seen.

Overall, I don't agree with Mr and Mrs H's comment that they had been very clear with Bowmore throughout that the house sale proceeds were going to be a short-term investment of about 12 months only. From the evidence presented, I don't think this is clear cut or as straightforward as they recall. They had many meetings and calls with Bowmore during this time and, as outlined in the timeline above – both before and after the advice was given – Mr and Mrs H were exploring various options for their future plans with the backdrop of a difficult housing market and a rising stock market.

In November 2021 Mr and Mrs H indicated they were going to extend their rental lease from one to three years and in December they confirmed it may take a while for them to find another house to buy. So, while I don't agree that Mr and Mrs H wanted to 'invest for good' – as mentioned on 17 May 2021 – and the email of 16 December 2021 indicates that their adviser was aware that sale proceeds would eventually be needed for a house purchase, I am satisfied they wanted to invest the house sale proceeds in the meantime.

Mr and Mrs H have referred to the service they were to be provided by Bowmore and this included 'ongoing behavioural coaching (mitigation of bad decisions)'. I read this as meaning that Bowmore should have advised them against investing the house proceed funds. I've taken into account that their decision to invest was made on the back of improving markets, their requirement to get a better return than what was being offered by remaining in cash as well as avoiding erosion of capital because of inflation.

Clearly it is part of an adviser's role to assist in preventing an investor making poor investment decisions. However, I think the evidence suggests that the options open to Mr and Mrs H were discussed, including the risk of investing – which by this time they had several years' experience of – an, bearing in mind the delays they had experienced in selling their house and problems finding a new home, that they decided to invest.

So, while I have found this a finely balanced decision to make, taking all of the above into account, when making the investments in January 2022 I think Mr and Mrs H had sufficient investment experience to do so and had been given sufficient information by Bowmore about possible advantages and disadvantages of doing so and went on to make an informed investment decision.

<u>The advice and ongoing suitability</u>

For their investment in 2018 Mr and Mrs H were advised to invest it with a boutique discretionary fund manager which had been established with Bowmore's clients in mind and which had built seven managed portfolios bespoke to the one to seven risk rating its clients were willing to take. The discretionary manager used a blend of investment funds invested 'across all major asset classes including equities, fixed interest, hedge funds, commodities and property.

Mr and Mrs H have questioned the ongoing suitability of their investments for them. There was a meeting on 12 December 2019, and I note the investments were still recorded as suitable and I can see an annual review took place on 22 June 2020 and it was recorded that the 'arrangements' still remained suitable. There was a recommendation for an investment of £100,000 which was currently in cash and reference was made to their attitude to risk and objectives etc as being the same as those recorded in the 2018 suitability report.

The recommendation letter of 8 June 2021 again referred to Mr and Mrs H's circumstances, objectives and attitude to investment risk was as summarised in the 2018 suitability report. But it said if there had been any changes Mr and Mrs H should let the adviser know. Mr and Mrs H have said that their circumstances had changed and that their circumstances should have been reassessed.

With regard to the recommendation letter sent in June 2021 Bowmore has said this was a top up to an existing strategy so full suitability wasn't provided – only reference to the previous suitability letter was made. I'm not convinced that this was just a 'top up' – this was a new and large sum of new money. It's unfortunate that Bowmore didn't provide a fuller suitability report at this time which would have been of use as I would have expected it to have referred to the reasons for the investment and the discussions that had been had around that and which would have assisted in deciding this complaint. But in spite of this, I do think the investment strategy and objectives etc were the same as previously agreed.

I say this because it's clear the adviser was aware the funds were needed for a house purchase as and when a property was found but on the balance of probabilities, I think this had all been discussed in the call of 13 May 2021 during which I am satisfied that it had most likely been agreed to change from cash-based products for the house sale proceeds to investment based. And as Mr and Mrs H had already previously invested in the portfolio that they chose, they were already familiar with its investment objectives, risk profile etc and so they didn't need to be detailed to Mr and Mrs H again. And in any event, the investment being made was then further discussed during several meetings subsequent to the recommendation letter.

And ultimately, by this time Mr and Mrs H were aware of and had three/four years of stock market risk and had been advised of the timescales involved in such investment – three to five years. But I'm satisfied that on the balance of probabilities it was more than likely Mr and Mrs H considered that the potentially shortened timescale for investment wouldn't necessarily mean that the investment couldn't provide a positive return. And I think this was a risk Mr and Mrs H were willing to take in exchange for the opportunity for growth with those funds when compared to interest rates/cash-based products in the meantime.

<u>Mr and Mrs H's decision to sell their investments</u>

A file note of 8 July 2022 indicates that Mr and Mrs H were thinking of cashing in their recent investment further to market falls. The note says there was a discussion about a withdrawal strategy and that Mr and Mrs H were worried about sustaining any further losses in the markets and I note that during this time – since investing in January 2022 – the FTSE All Share had fallen in value by over 300 points. The note says it was explained that markets can and do come back but that any losses incurred could be offset against future gains. However, if Mr and Mrs H wanted certainty, they would need to withdraw the funds required. It concludes;

> 'They will go away and discuss to make a decision from the two options
> 1. Hold till markets come back but we cannot say when this will be
> 2. Take the funds out now to create certainty and use losses to offset future gains.'

Mr and Mrs H then referred to the 'advice' they had been given and gave an instruction for the house sale proceeds portfolio to be sold on 14 July. Completion for the sale of the portfolio would take 24/48 hours.

A call then took place on 18 July. Mr and Mrs H say 'an intervention then occurred at a more senior level, we were reinvested in the market with a different product.' Bowmore's note records that during the overall conversation on 18 July Mr H made the comment that he could sometimes act in haste and asked whether the sales could be stopped. Mr and Mrs H wanted to invest back into the market and Bowmore told us it made clear that it wasn't giving any advice as suitability would have to be re-established, but the reinvestment went ahead upon Mr and Mrs H's instruction. Mr and Mrs H have said this conversation was a 'very hard sell'.

I have been given two conflicting arguments here. Mr and Mrs H say they acted upon the advice they received to sell the portfolio and were 'bamboozled' into reinvesting whereas Bowmore is clear in saying that it didn't give such advice – it was Mr and Mrs H's decision to do so on both accounts. As explained above, this service is impartial, and I have to decide a complaint on the evidence presented, or when that's conflicting what I think most likely happened.

Looking at the file note for the call of 8 July, and despite Mr and Mrs H's reference to 'advice' being given, I'm not persuaded that advice was given. I think it's more the case that Mr and Mrs H were thinking of cashing in their portfolio – understandably they were concerned because of the falls in the market – and a discussion was had around this, after which they were to go away and think about the options available to them. But the evidence doesn't suggest to me that advice was given.

And I note Bowmore's phone notes refer to Mr H saying he had lost sleep and suffering from anxiety post the sale instruction and the sale instruction itself being a 'knee jerk' reaction and an error of judgement. Like Mr and Mrs H have said, it's unfortunate a recording of the call isn't available – it would have been very useful. But the notes go on to say;

> '… we commented that although the sales placed couldn't be reversed, it would be possible for [the fund manager] to re-purchase the portfolio if indeed this was their decision and confirmed that we would waive any dealing costs and charges incurred. However, we made it absolutely clear that this would be an instruction we would pass on to the investment managers; we were not providing retail advice.'

The Core portfolio was reinvested into rather than the ESG portfolio as the latter hadn't performed as well because of its oil and gas exposure. But despite the reinvestment into a different portfolio, on balance and based on the comments made in the notes I have seen – I am satisfied that it is more likely that no advice was given during the conversation leading up to the decision to reinvest, only information – I think it was Mr and Mrs H who gave that instruction to reinvest.

While I appreciate that Mr and Mrs H will disagree with this, I think this came about because of them being understandably concerned about the falls in the market and their funds invested, their decision to sell and which they then regretted after further conversation with Bowmore. And I would be surprised if an adviser or fund manager would make such a decision – to sell one day and then decide it wasn't a good decision to have made and reversed that decision a matter of days later. So, I'm not persuaded Mr and Mrs H were advised to sell and then subsequently reinvest.

As I've ready commented on, this has been a difficult case to decide, and I appreciate Mr and Mrs H will be disappointed I have relied upon notes provided by Bowmore. And I do think Bowmore could have handled this better and there could have been clearer file notes, a full suitability report in June 2021 and call recordings would have been useful. Also, as I have said above, I do think the house proceeds investment shouldn't have been treated as a 'top up' but a new investment.

But I have to rely on the information and evidence presented to me in order to make a decision or in the absence of that reach a conclusion about what I think most likely happened. On balance, I'm persuaded that Mr and Mrs H were involved in the decision making to invest in those funds in the first instance but after that were concerned about losses and decided to then sell which proved to be a decision they regretted, hence the reinvestment.

In conclusion, I don't uphold Mr and Mrs H's complaint. Undoubtedly Mr and Mrs H will be disappointed with the outcome. Understandably they feel very strongly about it. This has been a long and drawn-out process for them, and they have made a lot of effort in bringing their complaint. I'd like to assure them I have taken into account all that they have said but I hope I have been able to explain how and why I have reached this decision.

My final decision

For the reasons give, I don't uphold Mr and Mrs H's complaint about Bowmore Financial Planning Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 23 May 2024.

Catherine Langley
Ombudsman