

The complaint

Mr and Mrs C are unhappy with the performance of a boiler that was supplied to them under a conditional sale agreement with A Shade Greener (Boilers) LLP (ASG).

What happened

In 2013, Mr and Mrs C entered into a regulated conditional sale agreement with ASG for the supply, installation and maintenance of a domestic boiler. In early 2019 ASG replaced the boiler as there'd been various problems with it.

Around 12 months later, in January 2020, Mrs C spoke to ASG as they were having problems with their hot water. ASG sent an engineer out. He said the boiler plate heat exchanger was blocked with system debris. ASG said the engineer removed the plate and removed as much debris as possible to give Mr and Mrs C hot water again. ASG told them they were responsible for their own heating system and needed to have a power flush completed by their own third-party engineer. ASG also charged Mr and Mrs C a £120 call out charge for its engineer's visit.

Mr and Mrs C weren't happy with this. They questioned why a power flush was needed as one should have been completed when the replacement boiler was installed in 2019. Mr and Mrs C were also unhappy about the call out charge. They told ASG that, when Mrs C reported the problem, she was told it sounded like the issue was to do with debris in the pipes and that ASG would do a flush as a gesture of goodwill for the £120 call out charge. They said this was the only reason she agreed to the charge, but the engineer didn't do this – instead he cleaned and replaced the plate heat exchanger.

ASG rejected Mr and Mrs C's concerns. In brief, it said a flush was carried out when the replacement boiler was installed, Mrs C was made aware there would be a £120 call out charge if the problem was caused by debris and, the problems would continue until Mr and Mrs C arranged their own additional flush.

Mr and Mrs C then arranged for their heating system to be power flushed. This cost them £450. They said the plumber who did this told them that if a power flush had been carried out when the boiler was installed in 2019, the plate heat exchanger shouldn't have needed repairing just a year later.

Mr and Mrs C raised this again with ASG. They said Mrs C had been told over the phone that the call out fee would be waived as a gesture of goodwill. They asked for a copy of the phone call and refused to pay the call out charge. In reply, ASG referred to its previous response and directed Mr and Mrs C to us.

One of our investigators looked into this complaint. He thought it was unlikely a power flush had been carried out by ASG when it should have been or, if it had, it hadn't been done correctly. He also thought there was no basis here for ASG to charge a call out fee. To put things right our investigator said ASG should: refund the cost of Mr and Mrs C's power flush, together with 8% simple interest; and, waive the call out charge.

ASG didn't accept our investigator's view. In short, it said: ASG has a signed flushing certificate from when the boiler was installed in 2019 showing Mr and Mrs C were happy with it; a flush is never 100% guaranteed to remove all debris; and, since Mr and Mrs C's own flush was carried out, debris has once again been found in the plate heat exchanger.

As the matter remained unresolved, it was passed to me. To try and resolve things informally, our investigator passed on my initial thoughts to ASG. I explained I wasn't satisfied that a power flush was carried out, or if it was, it wasn't done with the requisite skill, care and diligence. I accepted there was a discrepancy with what Mr and Mrs C say was agreed on the phone call when the problem was reported, but I didn't think this affected the overall outcome of this complaint as I wasn't satisfied ASG's agreement allowed the call out charge. Taking all this into account I was minded to direct ASG to put things right in the same way as suggested by our investigator. I asked if ASG wished to now settle the complaint.

In reply, ASG repeated its point about problems still happening after Mr and Mrs C had their system flushed. It implied the problems were more likely to be down to Mr and Mrs C failing to maintain their central heating system.

As no agreement has been reached, I've moved to issue a formal decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided to uphold it. I'll explain why. First, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the key issue here: given the issues Mr and Mrs C have had with their central heating, does ASG need to do anything to put things right?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual point or argument – only those that I'm satisfied are central to me reaching what I think is a fair outcome. Our rules allow me to do this. This reflects the informal nature of the Financial Ombudsman Service as a free alternative to the courts.

I've looked at the contract between Mr and Mrs C and ASG. This sets out that ASG would supply, install, maintain and service a central heating boiler. I can see in clause 2 a) of schedule 1 of the contract that ASG agreed to undertake a power flush of the central heating system *before* installation (my emphasis). Clause 1 of the same schedule sets out that the installation will be carried out in a very careful and considered method of working and best working practices will be followed.

The original boiler was fitted in February 2013. I can see a flush wasn't carried out till the following month. I would note the flushing certificate issued at the time is incomplete. It doesn't show whether it was a manual flush or power flush, and other sections of the certificate have been left blank. Whilst these issues don't directly impact what followed, it does show there were discrepancies with ASG's contractual obligations from the start. I'll now turn to the installation of the replacement boiler in 2019. ASG has supplied details of the flush that was carried out then. Again, this certificate hasn't been fully completed. It also doesn't confirm what type of flush has been carried out, nor has the question about the duration of the flush been answered. So, it's not clear from this if a power flush was actually carried out before the new boiler was fitted.

When responding to my initial thoughts, ASG said it had evidence of a flush taking place, so only the standard of it is in question. I don't agree. I accept a flush took place in 2019. What the evidence supplied to me doesn't show is what type of flush it was.

Mr and Mrs C's testimony is that when the boiler was installed in 2019, the engineer was there rough roughly two hours. I've no reason to doubt this. My understanding is a power flush typically lasts a minimum of four hours and very often, a whole day. It would seem from this that either a flush other than a power flush was done or, if it was a power flush, it wasn't carried out in a very careful and considered way with best working practices being followed. In either case, I'm satisfied ASG has breached its contractual obligations to Mr and Mrs C. So, I've gone on to think about how they were impacted by this.

Mr and Mrs C told us that, when they had their own power flush carried out, the plumber told them if one had been carried out before the boiler was installed, it would be very unlikely for there to be an issue so soon after this. ASG has said the plumber's remarks are hearsay. I do understand this point. But these remarks are consistent with my own research which also indicates that if a power flush is carried out correctly, prior to the boiler installation, problems with debris in the heat exchanger are unlikely to occur within the timescales here.

ASG has commented on potential problems with the power flush carried out by Mr and Mrs C's plumber, especially as there still seems to be an issue with debris. I would point out that I'm only looking at the actions of ASG here, not Mr and Mrs C's plumber. In any event, this power flush was carried out after the issues with the hot water presented themselves, so it couldn't have caused them. Also, debris still causing problems is again consistent with my research. That is, once debris gets into a plate heat exchanger, it's very, very difficult to remove it, even with a subsequent power flush.

Taking all of this into consideration, I'm satisfied that, on balance, it's more likely than not that Mr and Mrs C wouldn't have needed to raise this issue with ASG in January 2020 but for it breaching its contractual obligations. If a power flush had been carried out correctly before the replacement boiler was installed – as set out in the contract – I think it's unlikely Mr and Mrs C would have had the problems when they did. In turn, they wouldn't have needed the visit from ASG and wouldn't have needed to then pay for their own power flush.

I'll now turn to the matter of the call out fee. Notwithstanding that, as I've just said, a call out wouldn't have been needed, I'm not satisfied ASG has any contractual basis for charging such a fee.

I've looked at the emails and texts ASG sent to Mrs C outlining its non-warranty call out charges. I can certainly understand why it may want to charge for such calls. But if that's the case, there was nothing preventing ASG from detailing this when it drew up the contract. But it didn't. Instead, Mr and Mrs C contracted with ASG on the terms that it set out in the contract. Whether or not it was ASG's intention to include in it a charge for non-warranty calls, it wasn't done. So, I don't think it's fair and reasonable for it to attempt to introduce a new clause into the contract to cover this.

Neither do I think the phone call Mrs C had with ASG, nor the subsequent emails and texts it sent, change this. The call didn't vary the contract and put such a term into it – and in any event, Mr and Mrs C dispute that Mrs C ever agreed to the call out fee. This is backed up by her refusal to sign ASG's remedial sheet/advisory notice at the end of the subsequent visit.

Putting things right

For the reasons I've outlined above, ASG should:

- refund the £450 Mr and Mrs C paid to have their own power flush done
- add 8% annual simple interest to this amount from the date of payment to the date of settlement
- waive the £120 call out charge from Mr and Mrs C's account

If ASG thinks that it's required by HM Revenue & Customs to deduct income tax from that simple interest, it should tell Mr and Mrs C how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax if appropriate.

My final decision

My final decision is that I uphold this complaint. A Shade Greener (Boilers) LLP must now compensate Mr and Mrs C as set out in my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 8 March 2022.

John Miles

Ombudsman