

The complaint

Miss G complains that A Shade Greener (Boilers) LLP (“ASG”) has no right to charge her for a repair undertaken to her boiler.

What happened

Miss G entered into a conditional sale agreement with ASG on 2 September 2014 for the supply and installation of a boiler. The boiler was installed shortly after by a company that I will call “V”.

Under the terms of the conditional sale agreement, everything else being equal, Miss G undertook to make 168 monthly payments – of various amounts – totalling £8,720.85. This was broken down as £3,998.37 for the “*equipment*” and £4,722.48 for the “*maintenance and service for the term of the agreement [of 168 months]*”.

Miss G called ASG on 24 July 2019 to report there was no power to her boiler.

ASG advised Miss G that it would ask V to attend her property to inspect the boiler and carry out any necessary repairs. But added that if it transpired the fault wasn’t a manufacturing fault with the boiler, then then the call out (and any subsequent repair) would be payable by her.

V attended Miss G’s property on 25 July 2019 and inspected the boiler. It was repaired and a service report produced/raised.

This service report stated that:

- *water ingress in boiler, poss rain through air intake, expansion vessel flat*
- *component replaced*
- *Non Warranty Callout*
- *Create invoice – ASG Non Warranty*

On 29 July 2019 ASG advised Miss G that she was obliged to pay it £562.80, because the 25 July 2019 repair wasn’t covered under its warranty. Miss G didn’t pay this invoice and, to date, still hasn’t done so. However, Miss G has continued to make – as far as I understand it – all other payments required of her.

On 22 October 2019 Miss G’s boiler was serviced by an agent of ASG. Miss G complained to this agent that the boiler was often flooded with rainwater, which was documented. However, ASG said no such concern was raised with it directly by Miss G.

Following the boiler service of 22 October 2019 ASG continued to chase Miss G for the sum of £562.80.

On 13 May 2020 Miss G complained to ASG about (amongst other things) its request for £562.80 from her.

On 4 June 2020 ASG issued Miss G with a final response letter (“FRL”). Under cover of this FRL it outlined why it felt Miss G was obliged to pay it the sum of £562.80.

Unhappy with the content of ASG’s FRL, Miss G referred her complaint to our service.

Miss G’s complaint was considered by one of our investigators who ultimately concluded that it should be upheld.

In summary she said that ASG had no right to charge Miss G the sum of £562.80 (and this sum should be cancelled/written off) and for the distress and inconvenience the whole matter had caused Miss G, it should pay her a further £150.

Neither party accepted the investigator’s conclusion, so the matter has been referred to me for review and 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.

It’s clear that both parties have very strong feelings about this complaint. Both parties have provided detailed submissions in support of their respective views which I can confirm I’ve read and considered in their entirety. However, I trust that the parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn’t to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I’ve got is incomplete, unclear, or contradictory, I’ve to base my decision on the balance of probabilities.

Miss G has a conditional sale agreement with ASG. This agreement is a regulated agreement and this service has the power to look complaints about it.

Miss G has raised a number of concerns. But for the avoidance of doubt I’m only considering here Miss G’s complaint about ASG’s decision to seek from her the sum of £562.80 and nothing else. Miss G is of course free to raise any other concerns she might have to ASG and then, where appropriate, to our service for consideration under a different reference.

Miss G and ASG should be able to rely on the terms of the contract. After all, Miss G and ASG freely entered into it and they both agreed they wanted to contract on these terms.

When I look at the contract I see nothing that permits ASG to charge Miss G the sum of £562.80. In particular, I’ve seen nothing that says what a non-warranty visit is, or how much Miss G might be charged for it, or that she might be charged for such a visit at all.

I accept that ASG may have been invoiced the sum of £562.80 by V and it has been obliged to pay this sum to V. But I don't need to look at this point. I say this because if ASG wants to pass on such a charge to Miss G, and I can see why it might want to, then there was nothing preventing it from saying so when it drew up the contract, but it didn't.

Rather, Miss G contracted on the terms that ASG set out in its contract. ASG didn't take the opportunity to cover this point in that contract. That might have been an oversight or error on its part, and that's unfortunate. But I don't agree it's fair and reasonable now to try to introduce a new clause in the contract to cover this.

Miss G and ASG seem to accept that the damage to the boiler was as a result of an ingress of rainwater. And ASG seems to accept there is nothing in the contract regarding additional charges. But ASG says section 17 of the contract states:

17 In the event of any of the following happening, the Customer shall pay all sums payable to the Company under this Agreement including Instalments which are overdue or are yet to become due, but subject to the provisions of paragraph 18 of the Conditional Sale Agreement and the rights of the Customer under condition 4.2 above:

17.2 In the event of theft, fire or damage accidental or otherwise to the Equipment throughout the Term, where any loss suffered by the Company in respect of the Equipment is not covered by the Customer's insurance.

And 18 states:

18 The Customer will remain responsible for maintaining all other parts of the Customer's central heating system including pipe work and radiators in the Property at their own expense and for the avoidance of doubt the Company will only be responsible for maintaining the Equipment and not any other parts of the Property's central heating system.

And instead of invoking its section 17 rights, it "*charged Miss G for the parts accordingly, which Miss G was made aware of prior to the appointment booking*".

I accept that section 17 might allow ASG to 'call in' all the sums due under the contract in the event of damage to the boiler, but ASG didn't do this. Instead, ASG asked Miss G to pay the sum of £562.80, a non-warranty cost. Non-warranty costs aren't set out in the contract, so I can't see that they are recoverable under this clause.

I can see that section 18 says Miss G is responsible for maintaining everything other than the Equipment (as defined in the contract). But the contract doesn't set out the consequences of Miss G not doing so. Furthermore, the sum of £562.80 is in respect damage to the boiler (the Equipment) and not the other parts of Miss G's central heating system.

I'm also not persuaded that just because ASG and/or V notified Miss G that she might be charged for the 25 July 2019 repair (by phone and email) and that she signed the service report generated/produced by V in respect of the same changes anything. In other words, I'm not persuaded that these notifications/report varied the original contract that was taken out by Miss G (with ASG) in 2014.

Therefore, I'm satisfied that ASG has no right to seek recovery from Miss G the sum of £562.80 for the repairs undertaken on her boiler (by V) on 25 July 2019. I'm also satisfied that this whole matter has caused Miss G a degree of distress and inconvenience for which she should be fairly compensated for. And taking everything into account, I'm in agreement with our investigator that the sum of £150 represents an appropriate sum to have to be paid in this respect.

My final decision

My final decision is that A Shade Greener (Boilers) LLP:

- must write off the sum of £562.80 and cease the pursuit of this sum from Miss G
- no reference to this sum should be recorded with third party credit reference agencies, and if it has been, it must be removed along with any other adverse information that may relate to it.
- must pay Miss G £150 for the distress and inconvenience this whole matter has caused her

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 3 March 2022.

Peter Cook
Ombudsman