DRN-3304028

The complaint

Mr B and Mr M complain that A Shade Greener (Boilers) LLP ("ASG") has no right to charge them for a repair undertaken to their boiler.

What happened

Mr B and Mr M entered into a conditional sale agreement with ASG on 18 April 2014 for the supply and installation of a boiler. The boiler was installed by a company that I will call "V" on 19 May 2014.

Under the terms of the conditional sale agreement, everything else being equal, Mr B and Mr M undertook to make 168 monthly payments – of various amounts – totalling £7,258.00. This was broken down as £2,535.52 for the *"equipment"* and £4,722.48 for the *"maintenance and service for the term of the agreement* [of 168 months]*"*.

In April 2019 ASG sent Mr B a letter advising/suggesting he undertake a power flush to his (and Mr M's) heating system.

In July 2019 Mr B and Mr M had their heating system flushed at a cost to them of £400.

In July 2019, but after the above flush had been undertaken, Mr B and Mr M's boiler was serviced by ASG.

In November 2019 Mr B and Mr M had a new central heating filter fitted at a cost to them of £150.

Mr B called ASG on 22 November 2019 to report there was a problem with the boiler.

ASG advised Mr B that it would ask V to attend the 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 him and Mr M.

V attended the property on 26 November 2019 and inspected the boiler. It was repaired and a service report produced/raised.

This service report stated that:

- *component replaced*
- *replaced blocked plate heat exchanger to get hot water working again & it now stays on*
- *system water is brown and had blocked up the heat exchanger and is causing poor circulation through the system*
- *advised that circulation/debris issues are not covered by V*
- *Non Warranty Callout*

On 26 November 2019 ASG issued Mr B and Mr M with an invoice for £232.80 in respect of V's visit of the same day. This invoice wasn't paid.

After the 26 November 2019 visit by V Mr B says he asked for his own engineer to attend and it advised him there was no issue with the water in the system. Mr B says he (and Mr M) were charged for this visit.

On 21 December 2019 V attended Mr B and Mr M's property to fix the boiler. Mr B says V (on this visit) said there was no issue with the water in the system and there was no charge for the fix.

On 10 January 2020 ASG issued Mr B and Mr M with a revised invoice for £188.40 in respect of V's visit of 26 November 2019. This invoice wasn't paid.

On 9 June 2020 ASG chased Mr B and Mr M for the outstanding invoice sum of £188.40.

Shortly after receiving the above request for payment Mr B and Mr M referred a compliant to our service.

Mr B and Mr M's complaint was considered by one our investigators who concluded it should be upheld. In summary she said that ASG:

- had no right to charge Mr B and Mr M the sum of £188.40 – reduced from £232.80 – and this sum should be cancelled/written off.
- should ensure any negative information recorded in respect of the above sum is removed from Mr B (and Mr M's) credit file
- pay Mr B (and Mr M) £200 for the distress and inconvenience this whole matter has caused them (including being without hot water for a period of time)

ASG didn't accept 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.

Mr B and Mr M have a conditional sale agreement with ASG. This agreement is a regulated agreement and this service has the power to look complaints about it.

Mr B and Mr M have raised a number of concerns. But for the avoidance of doubt I'm only considering here Mr B and Mr M's complaint about ASG's decision to seek from them the sum of £188.40 and nothing else. Mr B and Mr M are of course free to raise any other concerns they might have to ASG and then, where appropriate, to our service for consideration under a different reference.

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

When I look at the contract I see nothing that permits ASG to charge Mr B and Mr M the sum of £188.40. In particular, I've seen nothing that says what a non-warranty visit is, or how much Mr B and Mr M might be charged for it, or that they might be charged for such a visit at all.

I accept that ASG may have been invoiced the sum of £188.40 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 Mr B and Mr M, 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, Mr B and Mr M 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.

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 simply *"invoiced* [Mr B and Mr M] *for* [the] *part accordingly"* a possibility Mr B acknowledged might be the case when agreeing to the 26 November 2019 call out/repair.

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 Mr B and Mr M to pay the sum of £188.40, 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 Mr B and Mr M are responsible for maintaining everything other than the Equipment (as defined in the contract). But the contract doesn't set out the consequences of Mr B and Mr M not doing so. Furthermore, the sum of £188.40 is in respect damage to the boiler (the Equipment) and not the other parts of Mr B and Mr M's central heating system.

I'm also not persuaded that just because ASG notified Mr B on 22 November 2019 (over the phone) that he and Mr M might be charged for the 26 November 2019 callout/repair, that V told Mr B the same on 26 November 2019 (after the repair had been completed) and that Mr B 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 Mr B and Mr M (with ASG) in 2014.

Therefore, I'm satisfied that ASG has no right to seek recovery from Mr B and Mr M the sum of £188.40 for the repairs undertaken on their boiler (by V) on 22 November 2010. I'm also satisfied that this whole matter has caused Mr B and Mr M a degree of distress and inconvenience for which they should be fairly compensated for. And taking everything into account, I'm in agreement with our investigator that the sum of £200 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 £188.40 and cease the pursuit of this sum from Mr B and Mr M
- 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 Mr B and Mr M £200 for the distress and inconvenience this whole matter has caused them

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mr M to accept or reject my decision before 9 March 2022.

Peter Cook
Ombudsman