DRN-3549186

The complaint

Ms L complains that A Shade Greener (Boilers) LLP ("ASG") has no right to charge her for a repair undertaken to her boiler in 2021, about a poor quality power flush that was undertaken when the boiler was installed in 2014 and how she was treated when she fell into financial difficulties in 2021.

What happened

Ms L entered into a conditional sale agreement with ASG on 3 April 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, Ms L undertook to make 168 monthly payments – of various amounts – totalling £7,258. 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]*"*.

Ms L called ASG on 26 March 2021 to report a fault with her boiler.

Ms L initially agreed for the fault to be investigated on 25 May 2021 when her annual boiler service had been scheduled.

Ms L called ASG on 5 April 2021 to ask for her annual boiler service, and the investigation of her reported fault, to be brought forward.

ASG advised Ms L that it would ask V to attend her property to inspect the boiler and carry out any necessary repairs on 12 April 2021. 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 Ms L's property on 12 April 2021 and inspected the boiler. It was repaired and a service report produced/raised.

This service report said:

"component replaced
NON-WARRANTY ISSUE
on arrival boiler was overheating on hot water
the plate was blocked, the plate was replaced and old one left on site
also removed a large amount of debris from the boiler
the filter is on the flow pipe, not the return
advised the customer that [V] *does not cover against debris related issues*
NON-WARRANTY ISSUE"

Ms L called ASG on 13 April 2021 to ask whether a power flush was undertaken when the boiler was installed.

On 21 April 2021 ASG advised Ms L that she was obliged to pay it £232.80, because the 12 April 2021 repair wasn't covered under its warranty. Ms L didn't pay ASG this sum.

On 22 April 2021 ASG advised Ms L that she was obliged to pay it £188.40, because the 12 April 2021 repair wasn't covered under its warranty, and this sum would be added to her next direct debit on, or just after 28 May 2021. On receipt of this advice Ms L cancelled her direct debit and paid her April 2021 contractual payment by card. Ms L didn't pay ASG the sum of £188.40.

On 4 May 2021 ASG advised Ms L (amongst other things) that:

- the charge of £188.40 stood
- a power flush was performed when the boiler was installed in 2014
- termination of the agreement and return of the equipment isn't an option, only settlement of the agreement (with the equipment being retained)
- her direct debit needed to be reinstated

Ms L contacted ASG on 4 May 2021 to say she was experiencing financial difficulties and would like to discuss this with somebody.

On 11 May 2021 ASG advised Ms L that it was unable to agree to a reduction in her monthly payments.

Ms L called ASG on 13 May 2021 to say she was unable to make her contractual monthly payments of £44.16 (due to financial difficulties) but would pay – going forward – monthly payments of £25 by standing order.

Ms L'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 Ms L the sum of £188.40 (and this sum should be cancelled/written off), it should pay Ms L £100 for the distress caused in failing to deal appropriately with her request for assistance (when she fell into financial difficulties) and that her credit file, if required, is amended.

Ms L didn't respond to the Investigator's conclusion and ASG responded to say it disagreed with it.

I issued a provisional decision on this case in May 2022. In summary I said:

> 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.
>
> For ease I will address matters raised by Ms L under three separate headings.

power flush

Ms L questions the quality of the power flush undertaken by V when the boiler was installed in 2014. She says that she has been led to believe that a power flush should take a whole day to undertake and last for ten years. And the power flush undertaken by V in 2014 took only half a day and has lasted only six to seven years.

Although I don't doubt what Ms L says she has been led to believe, it's my understanding that power flushes can take between half a day and a whole day to undertake depending on the size of the property and the size of the central heating system. It's also my understanding that power flushes can last for between four and ten years depending on a number of factors.

Based on what both parties have said and submitted, and what I say above, I'm satisfied that an appropriate power flush was undertaken by V in 2014 and there is simply insufficient evidence for me to conclude that V did anything wrong in this respect.

repair charge of £188.40

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

Ms L and ASG should be able to rely on the terms of the contract. After all, Ms L 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 Ms L the sum of £188.40. In particular, I've seen nothing that says what a non-warranty visit is, or how much Ms L 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 £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 Ms L, 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, Ms L 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.

Ms L and ASG seem to accept that the damage to the boiler was as a result of a build-up of debris. 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, *"a chargeable repair was conducted as an alternative."*

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

I'm also not persuaded that just because ASG and/or V notified Ms L that she might be charged for the 12 April 2021 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 Ms L (with ASG) in 2014.

Therefore, I'm satisfied that ASG has no right to seek recovery from Ms L the sum of £188.40 for the repairs undertaken on her boiler (by V) on 12 April 2021.

I'm also of the view that in pursuing Ms L for the sum of £188.40 in the manner that it did ASG has caused Ms L both distress and inconvenience, and she should be fairly compensated for this. And taking everything into account I find that £100 would be an appropriate sum for ASG to have to pay in this respect.

financial difficulties

In May 2021 Ms L contacted ASG to say that because of the pandemic she was suffering financial hardship and could only afford to make payments against her agreement of £25 a month.

In considering whether ASG has treated Ms L fairly and reasonably in this respect I've had regard, amongst other things, to the Financial Conduct Authority's *"Consumer Credit and Coronavirus: Credit Tailored Support Guidance"* and CONC 7 of the Financial Conduct Authority's handbook *"Arrears, default and recovery (including repossessions)"*.

The guidance referred to above requires a firm (amongst other things) to treat a customer who is facing payment difficulties due to circumstances arising out of coronavirus with forbearance and due consideration. And CONC 7 requires a firm (amongst other things) to treat customers in default or in arrears difficulties with forbearance and due consideration.

The investigator concluded that ASG hadn't provided Ms L with as much support as it could and should have done when she notified it in May 2021 of her financial difficulties. And that for this ASG should have to pay Ms L £100.00.

On 11 May 2021 ASG sent Ms L an email saying that she should get advice about her financial difficulties and the Financial Conduct Authority's information sheet titled *"Arrears"*. Now in my view ASG could and should have done more in May 2021 to support Ms L than it did. However, things have moved on since.

Since May 2021 it's my understanding that ASG has continued to accept reduced payments from Ms L and payments that Ms L herself has said she can afford to make. So, taking everything into account, I don't think it would be fair or reasonable for me to say that ASG should have to do anything further in this respect although I would remind it of its continued obligations to treat Ms L, where she is still in financial difficulties, with forbearance and due consideration.

Ms L responded to she was happy with my provisional findings.

ASG responded to say, *"as a gesture of goodwill and without admission of liability"* it was prepared to accept my provisional findings.

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.

As both parties have accepted my provisional findings I see no reason to depart from them and I now confirm them as final

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 Ms L
- ensure no reference to the sum of £188.40 is recorded with third party credit reference agencies
- pay Ms L £100 for the distress and inconvenience its pursuit of the sum of £188.40 has caused her
- ensure it continues to meet its obligations to treat Ms L, where she is still in financial difficulties, with forbearance and due consideration.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 15 July 2022.

Peter Cook
Ombudsman