

## The complaint

Mrs K is unhappy with how A Shade Greener (Boilers) LLP (ASG) carried out its obligations to maintain a boiler it supplied to her under a conditional sale agreement.

## What happened

In 2014, Mrs K entered into a regulated conditional sale agreement with ASG for the supply, installation and maintenance of a domestic boiler. The agreement was for 14 years and covered both the original cost of the boiler and the maintenance and servicing costs. The agreement was originally taken out by Mrs K and her husband, who sadly passed away. For simplicity, I will refer just to Mrs K throughout.

Mrs K told us she had problems with the boiler from the start. She said these included issues with the circuit board in 2015 and the expansion vessel, pressure relief valve, plate heat exchanger filling loop and pump motor the following year. Mrs K also said that in April 2020 she had to pay for the plate heat exchanger to be replaced again.

Mrs K complained to ASG saying that it hadn't carried out a proper power flush of the central heating system when the boiler was installed. She said this was a breach of contract which had caused irreparable damage to the boiler. Mrs K demanded that ASG fit a new boiler.

ASG replied stating the boiler had been flushed when the boiler was fitted. It went on to say that the maintenance of the central heating system was Mrs K's responsibility, not ASG's, and it wasn't liable for problems with the boiler caused by debris from that system. ASG gave Mrs K the cost of either buying out the remainder of her agreement or terminating it early and returning the boiler.

Mrs K wasn't happy with ASG's response to her complaint. So, she brought it to our service. During this time, Mrs K went abroad for an extended period. While she was away, the boiler's annual service became due. When this wasn't carried out, ASG told Mrs K she was in breach of contract and it was no longer liable for the servicing part of the agreement. It also asked her to repay the remaining balance of her agreement in full. Mrs K then paid ASG £2,214 to buy the boiler and settle her agreement. She said she then replaced the boiler. Mrs K told us she wanted a refund of the amount she'd paid to end her agreement.

One of our investigators looked into this matter. Briefly, she didn't think the issues Mrs K had with the boiler justified her being able to end the agreement early without charge. But our investigator also thought the terms and conditions of the agreement didn't allow ASG to charge Mrs K a non-warranty call out fee when the plate heat exchanger was replaced in 2020, so this should be refunded.

ASG said it accepted our investigator's view as a gesture of goodwill. Mrs K didn't agree with our investigator. In summary, she said she had to pay £2,214 to end the agreement as the boiler was beyond repair, and this was due to ASG's failure to carry out a basic power flush when the boiler was fitted.

As this matter remains unresolved, it's been passed to me for a 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 in part. I'll explain why. First, I'm aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here: should ASG refund the cost of settling the agreement early to Mrs K?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

I can see that ASG serviced the boiler each year from 2015 to 2020 inclusive. I can also see that while Mrs K reported various issues during the first few years, these were sorted out in line with the terms and conditions of the agreement. So, I don't think ASG acted unfairly or unreasonably in relation to these issues.

Mrs K's position is that the boiler wouldn't have needed replacing if ASG had carried out a power flush when the boiler was fitted. In turn, this means she wouldn't have had to pay £2,214 to end the agreement early. I don't accept this. I've looked at the flushing certificate that was completed when the boiler was fitted. This shows that a manual flush with both a cleaner and inhibitor was carried out at that time. So, while this wasn't a power flush, it was a flush, and an anti-corrosion inhibitor was used.

I can also see from ASG's records that Mrs K had another flush carried out some five years later in September 2019. This was a power flush, and again a cleaner and inhibitor were used. But by April 2020, Mrs K was still having problems with debris from her central heating system entering the boiler's plate heat exchanger. So, I'm satisfied this later flush didn't stop the issues she was having. In turn, as this flush didn't stop the problem, I'm not satisfied ASG's failure to carry out a power flush in 2014 meant the boiler needed replacing. So, there's no basis for me to direct ASG to refund the £2,214 Mrs K paid to end the agreement early.

I'll now turn to the non-warranty call out in 2020. I can see Mrs K reported an issue with the boiler in April 2020. ASG's records show an engineer visited the next month and replaced the plate heat exchanger as it was blocked with debris from Mrs K's central heating system. ASG told us this was classed as a non-warranty call out and Mrs K paid £232.80 for this.

I've looked at Mrs K's agreement with ASG. Having done so, I'm not satisfied there's any contractual basis for ASG to charge either for a non-warranty call out or to replace the plate heat exchanger. I can see why it may want to charge for these. But if that's the case, there was nothing stopping ASG from detailing this when the contracts were drawn up. But it didn't. Instead, Mrs K contracted with ASG on the terms set out in the agreement.

Whether ASG intended to include a charge for non-warranty call outs in the agreement, it didn't do so. 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. In any event, ASG has agreed to refund this amount to Mrs K. We would typically also award 8% annual simple interest on these types of refunds.

When the investigator asked ASG, on my behalf, if it would agree to pay this, it said it didn't believe it's fair for interest to be awarded as it's accruing each day and it will have to pay more unnecessarily when it's already agreed to the refund. I don't agree.

Mrs K should never have been charged the non-warranty call out fee in the first place. She's been without this money since June 2020. I'm satisfied it's fair and reasonable for her to be compensated for this loss. I accept ASG has agreed to give Mrs K a refund. But as a business authorised by the Financial Conduct Authority (FCA), it's subject to the complaint handling rules set out in the FCA's handbook. I'm also satisfied that once Mrs K made her complaint, it's fair and reasonable for her to be able to pursue it as far as those rules allow.

### **Putting things right**

In summary, for the reasons set out above, ASG should refund £232.80 to Mrs K. It should add 8% annual simple interest to this amount, calculated from the date the payment was made to the date of the refund. If ASG thinks that it's required by HM Revenue & Customs to deduct income tax from the simple interest, it should tell Mrs K how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

### **My final decision**

My final decision is that I uphold this complaint. A Shade Greener (Boilers) LLP should now compensate Mrs K as set out above.

This final decision marks the end of the Financial Ombudsman Service's review of this complaint. This means we are unable to consider the merits of it any further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 5 October 2022.

John Miles

**Ombudsman**