

## **The complaint**

Mr and Mrs L are unhappy with how A Shade Greener (Boilers) LLP (ASG) carried out its obligations to maintain a boiler it supplied to them under a conditional sale agreement.

## **What happened**

In 2016, Mr and Mrs L entered into a regulated conditional sale agreement with ASG for the supply and installation of a domestic boiler. The agreement was to be paid back over 10 years. The boiler came with a 10-year warranty on the proviso that ASG carried out an annual service on it.

Mr and Mrs L have told us that since the boiler was fitted, they've had numerous issues. These include, but aren't limited to:

- The agreement was mis-sold to them as they were told there would be nothing to pay if the boiler broke down.
- They were told the boiler service would be free.
- The magnetic filter should be cleaned as part of the annual service.
- The expansion vessel should have been checked during the annual service.
- There were issues with the system being flushed.
- ASG put a charge on their property which wasn't explained to them.

When Mr and Mrs L complained to ASG, it told them it didn't think it had done anything wrong. So, Mr and Mrs L brought their complaint to our service where it was looked at by one of our investigators. Briefly, she thought the complaint should be upheld in part. Our investigator thought that while ASG's salesperson didn't fully explain what the agreement involved, it did set out the cost of the annual service. She also thought any issues with the expansion vessel would be covered by the boiler's 10-year manufacturer's warranty.

Our investigator also thought ASG had carried out a power flush when the boiler was installed and, while the age of Mr and Mrs L's existing pipework meant it may be prone to having issues with debris, this wasn't ASG's responsibility. But she did think ASG needed to: clean the magnetic filter during the annual service; remove the entry over Mr and Mrs L's property at HM Land Registry; and, pay them £150 for the trouble and upset they've been caused.

Mr and Mrs L maintained the agreement was mis-sold. They said ASG's salesperson told them the maintenance would be free.

ASG didn't accept our investigator's view. Briefly, it said the agreement sets out that while the boiler has a 10-year warranty, all the other items – including the magnetic filter – were only covered for 12 months. ASG also maintained that it fully explained the details of the HM Land Registry restriction to Mr and Mrs L.

As the matter remains unresolved, it's been passed to me for a decision. I issued a provisional decision on 22 August 2022. In it I said:

***What I've provisionally 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 reached a different outcome to our investigator. I'll explain why. First, I'm aware that 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. I've focussed on what I think is the heart of the matter here: did ASG clearly explain the agreement to Mr and Mrs L, and has it carried out its obligations under it?*

*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've looked at the conditional sale agreement. This is dated 13 January 2016. I'm satisfied this agreement sets out the terms and conditions relating to the boiler ASG supplied. It's signed by both Mr and Mrs L. There's nothing in the available evidence that makes me think their signatures aren't genuine. I've not got an example of Mrs L's signature, other than that contained in ASG's paperwork.*

*But I do have a letter Mr L signed and sent to ASG when he complained. I've compared this to his signature on the agreement. While I'm not an expert, there's nothing in this comparison to make me think Mr L didn't sign the agreement. There's also nothing in the available evidence to make me think Mrs L didn't sign the agreement.*

*Mr and Mrs L say they were told the annual service would be free. But this testimony isn't backed up by the other evidence I've seen. In their complaint letter to ASG, Mr and Mrs L say there was no mention they would have to pay for the service until Mr L rang to book it. This would have been after he received a reminder letter from ASG at the end of November 2016. Mr and Mrs L said when they queried this, they were sent a copy of the signed agreement – and when they received this, they didn't remember having signed it.*

*I've looked at ASG's records. These show Mr and Mrs L asked for a copy of the agreement on 19 October 2016 – well over a month before any reminders about the annual service were sent, and several days after they'd spoken to ASG about an issue with their heating. There's nothing that shows they questioned any details about the agreement or its validity at that time.*

*These records also show Mr and Mrs L spoke to ASG just before Christmas 2016 to book the service for early the following year. The notes at the time say they will call to pay first thing on the morning of the service. There's no mention at all of them querying the service fee.*

*Taking all this into account I'm not satisfied the agreement was mis-sold to Mr and Mrs L. It makes it clear there is an annual £75 charge for the service. Also, the boiler comes with a 10-year guarantee which should cover any breakdowns.*

*Moving on to the magnetic filter, ASG's position is that cleaning this isn't its responsibility and isn't included in the annual service. I don't agree. I accept the agreement states the boiler has a 10-year warranty and the other components have a 12-month guarantee. But*

condition six of the agreement states ASG will arrange an annual service of the **Goods** (my emphasis). The agreement defines the goods as those set out in the schedule to the agreement. The list of the goods in the schedule includes the magnetic filter.

As the agreement sets out that ASG will service the goods, and the goods include the magnetic filter, it follows I'm satisfied cleaning this filter should form part of each annual service going forward. I'm satisfied ASG's position over this has caused distress and inconvenience to Mr and Mrs L that could have been avoided. I think it should pay them £150 compensation for this.

Turning to the expansion vessel, it's not clear to me whether or not this is sited within the boiler housing. If it is, I would expect this to be covered by the annual service and 10-year boiler warranty. Also, my understanding is that this doesn't need to be re-pressurised during the annual service. It only needs recharging if there's a problem and it's lost pressure. So, I don't think ASG have acted unfairly or unreasonably in relation to this.

Mr and Mrs L have said there have been issues with their central heating system being flushed as their pipes are old and narrow. In the complaint form they submitted to us, they told us that two independent gas engineers said the system couldn't have been flushed at the beginning. Mrs L also told our investigator that ASG should have done a full flush when the boiler was installed, and they don't believe this was done. I don't accept this wasn't carried out.

I've seen the flushing certificate that ASG's engineer completed. This shows a power flush was carried out when the boiler was fitted. This certificate is signed by the engineer and Mr L. So, I'm satisfied this was carried out. I do appreciate Mr and Mrs L's point about their pipes being old and narrow. But I'm not satisfied that's the fault or responsibility of ASG. If they think their pipework may potentially cause them problems in the future, it's open to them to rectify this.

Lastly, I'll deal with the entry at HM Land Registry. Mr and Mrs L have referred to this as a "charge" and said they can't re-mortgage their house because of it. I would make it clear that ASG's entry is not a charge on Mr and Mrs L's house. It's a restriction. A charge and a restriction are not the same.

In very general terms, a charge is used to secure a debt -such as a mortgage – and it allows the mortgage company to take possession and sell the property in the event of nonrepayment. That's not what ASG have registered. They've registered a restriction. Again, in very general terms, a restriction is something that restricts a property owner from doing certain things – such as selling the property - without the consent of the business named in the restriction. Here that's ASG.

Restrictions take many forms. ASG have said its restriction is there to make sure it's informed if Mr and Mrs L want to sell the property before they've finished paying for the boiler. ASG told us that in these situations, once it's aware of a customer wanting to sell a property where its goods are installed, it will work with both the outgoing and incoming owners to offer solutions relating to the ownership of the goods. My understanding of the restriction is that it wouldn't stop Mr and Mrs L being able to re-mortgage their home, nor would they need ASG's permission to do this.

Mr and Mrs L say it was never explained exactly what the entry at HM Land Registry entailed. I don't accept this. They told us that ASG said an entry would be made at HM Land Registry, but not that it would be a charge against the house – they'd had a charge against the house before for something else so they understood what this was, but this wasn't how ASG explained it to them.

*As above, ASG have registered a restriction over the property, not a charge. That's why any explanation from ASG wouldn't have been about a charge. I can see that Mr and Mrs L previously had a charging order and restriction registered over their property some years ago by another business. This isn't quite the same as a charge, but the differences aren't relevant to this complaint. But it's clear that Mr and Mrs L had some knowledge and understanding of what a charge and a charging order were.*

*It's also clear to me that they've confused these with the restriction that ASG have registered over their home. I'm not surprised ASG's explanation of what this was for didn't bear any resemblance to a charge or a charging order. That's because it's not the same at all.*

*Mr and Mrs L have told us and ASG that the entry on HM Land Registry was discussed during the sales process. I've also seen a checklist the salesperson completed. This states the entry at HM Land Registry has been fully explained to the customer. This checklist is from December 2015, shortly before the boiler was installed. It's signed by Mr L.*

*On balance, I'm satisfied ASG did give a clear explanation of the restriction during the sales process. It's also stated clearly on both the agreement and a further explanation is given on the pre-contract credit information Mr and Mrs L were given. I'm satisfied that over the years since taking out the agreement, they've misinterpreted what the actual restriction is and mistaken it for a charge or charging order. Taking all this into account, I don't think it would be fair and reasonable in the individual circumstances here to tell ASG to remove the restriction.*

*In summary, for the reasons I've set out above, I'm minded to direct ASG to clean the magnetic filter during the annual service, and to pay £150 to Mr and Mrs L for the distress and inconvenience they've experienced. I'm not minded to direct ASG to remove the restriction at HM Land Registry.*

I gave both parties time to reply to my provisional decision. Mr and Mrs L didn't accept my provisional decision. In brief, they said: the expansion vessel is sited within the boiler housing; the pressure it controls is paramount and needs to be checked during the annual service; it's their word against ASG's about what and how the agreement was sold and they remain adamant that it was mis-sold to them; and, ASG have so many claims against it, someone in authority should now take a stand against ASG.

ASG accepted my provisional 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 looked at everything afresh, I see no reason to depart from the outcome I reached in my provisional decision.

Mr and Mrs L have told us the expansion vessel is sited within the boiler housing. I accept this. As I said in my provisional decision outlined above, if this is the case, I would expect this to be checked during the annual service and be covered under the 10-year boiler warranty. If it's lost pressure, I would expect this to be dealt with.

Mr and Mrs L have also said it's their word against ASG's about how the agreement was sold. I would confirm again that I've considered all the available evidence and arguments that all the parties have supplied to us. Having done this, for the reasons I gave in my

provisional decision, I remain satisfied the agreement wasn't mis-sold by ASG. Nothing in Mr and Mrs L's response to my provisional decision has changed that.

Mr and Mrs L have said that ASG has so many claims against it, someone in authority should take a stand against it. I would point out that I have reached my decision based on the individual circumstances of Mr and Mrs L's complaint, not what may or may not have happened in any other complaints against ASG.

Also, the role of the Financial Ombudsman Service isn't to fine or punish a business. We are an alternative dispute resolution body. Our role is to resolve individual complaints between complainants, such as Mr and Mrs L, and financial businesses like ASG. My final decision marks the end of our process to resolve this individual complaint.

### **Putting things right**

In summary, for the reasons I gave in my provisional decision, ASG needs to clean the magnetic filter during the annual service and pay Mr and Mrs L £150 for the distress and inconvenience they've experienced.

### **My final decision**

My final decision is that A Shade Greener (Boilers) LLP should: clean the magnetic filter as part of the annual service; and, pay Mr and Mrs L £150.

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

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

John Miles

**Ombudsman**