

The complaint

Mr and Mrs L complain about the quality of services they purchased using credit provided by A Shade Greener (Boilers) LLP trading as Everlasting Boilers ("ASG").

What happened

In May 2014 Mr and Mrs L entered into a finance agreement with ASG under which it agreed to supply and install a boiler in their home and to provide maintenance services for the boiler.

Under the terms of the contract when installing the boiler ASG was obliged to carry out a power flush. The parties agree this never happened, rather Mr and Mrs L's position is no flush was actually carried out and ASG's position is that it carried out a manual flush.

Around two years into the agreement the boiler started to malfunction. The problems were ongoing over a period of several years. During this time ASG sent engineers to deal with the problems, the company that manufactured the boiler sent its engineers too, and Mr and Mrs L also hired and paid for their own engineers to do the same.

Mr and Mrs L's overall stance is that the boiler ultimately failed because the installation and subsequent maintenance work was not done to the standard they were entitled to expect. Therefore they want the remaining debt written off and for ASG to remove what they believed was a charge that ASG has placed on their home at H M Land Registry. Mr and Mrs L also want ASG to ask the credit agencies to remove any adverse information it has asked them to register about the agreement on their respective credit files.

Whereas ASG's overall stance is that there were legacy issues with Mr and Mrs L's central heating system. It is not responsible for these, and they caused the boiler to fail. Therefore it needs do nothing further and is entitled to pursue Mr and Mrs L for the debt owed under the agreement between them.

Dissatisfied Mr L complained to our service. Initially only Mr L complained on behalf of himself and Mrs L, subsequently Mrs L complained too and joined the complaint in her own right.

One of our investigators looked into Mr and Mrs L's complaint. Our investigator recommended that Mr and Mrs L's complaint should be upheld.

Mr L and Mrs L accepted our investigator's recommendation, ASG did not. ASG sent several detailed responses. I've summarised below ASG's responses to our investigator's recommendation.

ASG agreed that the contract between it and Mr and Mrs L said that a power flush would be carried out as part of the installation. However, Mr and Mrs L *"signed to confirm [they] understood only a manual flush would be conducted. In this case, Manual Flush was recommended, rather than the Power Flush. We have fully adhered to the instructions given by the manufacturer in the installation of the boiler by completing a Manual Flush rather than the Power Flush."* Moreover, ASG pointed out that when first installed the boiler was working.

ASG repeated its earlier stance that the boiler failed due to debris in Mr and Mrs L's central heating system. Mr and Mrs L are responsible for maintaining their central heating system. Therefore it follows that ASG has no responsibility for what has gone wrong.

Furthermore, Mr and Mrs L agreed in their contract with ASG that they would maintain their central heating system. As a result ASG is entitled to require them to demonstrate that they did this. But they have not supplied this information from which ASG can infer that Mr and Mrs L breached this obligation.

ASG added that it had performed a manual flush when the boiler was installed, it also added an inhibitor into the system, then in 2016 it carried out a power flush, free of charge, this means it had gone "*above and beyond*" to help Mr and Mrs L.

Further, ASG pointed out that neither a manual flush nor a power flush 100% guarantees that pipes and radiators are free from debris.

In addition, ASG referred to separate final decisions this service had issued in relation to different customers of ASG's. In ASG's opinion these decisions are relevant to this decision, and we ought reasonably to reach the same conclusions as reached in those decisions.

Finally ASG pointed out that it had registered a restriction not a charge at H M Land Registry on the register for Mr and Mrs L's property.

ASG asked that an ombudsman take a fresh look at Mr and Mrs L's complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr and Mrs L on the one hand and ASG on the other, disagree about most of the key issues in this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr and Mrs L purchased the boiler, the installation service and the maintenance services from ASG using a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. ASG is also the supplier of the goods and services under this type of agreement. It is what is known as a mixed contract, that is one for both goods and services. ASG is responsible for complaints about the quality of both the goods and the services. Mr and Mrs L do not appear to be complaining about the quality of the boiler but rather about the services provided.

The relevant law says that under a mixed contract where there is a supply of services, there is an implied term that the services will be carried out with reasonable skill and care. So I must consider whether when carrying out the installation work and the maintenance work on balance ASG performed those services with reasonable skill and care.

The parties are familiar with the history of this complaint. But I'll briefly recap on the timeline below because I'll need to refer to this history in explaining what I've decided and why.

- On 15 March 2016 ASG's engineer visited Mr and Mrs L home to look at their boiler. This visit was made in response to a call from Mr and Mrs L about the boiler not working properly. The engineer recorded that the problem was debris in the plate heat exchanger. He also noted that the debris was from Mr and Mrs L's central heating system.
- On 16 March 2016 an engineer from the boiler's manufacturer visited to attend to the boiler. This visit was also in response to a call from Mr and Mrs L about the boiler not working properly. This engineer found debris blocking the plate heat exchanger. This engineer replaced the plate heat exchanger.
- On 5 April 2016 at its own cost, ASG arranged for a power flush to be carried out. No flushing certificate was provided.
- In March 2017 and April 2017 there were further calls between Mr and Mrs L and ASG about the boiler not working properly. But ASG were not prepared to do more work for free given that its stance was the problems were due to Mr and Mrs L's central heating system rather than due to anything it was responsible for.
- In December 2017 Mr and Mrs L paid for a third-party engineer to carry out a power flush.
- Between January 2018 and December 2019 there were at least five more occasions when Mr and Mrs L called ASG to tell it the boiler wasn't working correctly. In December 2019 the manufacturer visited Mr and Mrs L's home and at that point the engineer recorded that the boiler was beyond economic repair.

It is not in dispute that the contract between Mr and Mrs L and ASG stipulates that a power flush should have been done and it was not. ASG says a manual flush was done instead. Mr and Mrs L say no flush was done, but at the time they did not realise this because they had no idea what a flush involved. It was only later, when they witnessed the power flush they paid for, that they became aware of what was involved in a flush. Further, it is their stance that they saw none of this activity when the installation took place. I've got their first-hand account of what they saw which has been consistent. I have no such account from the engineer who carried out the installation. Although I do have paperwork saying the flush was done.

ASG indicate the question of an initial power flush is something of a red herring because what was required was a flush and a manual flush was good enough. It explains this is because that is all that the manufacturer tells the installer to do in the installation instructions. I've not seen these instructions. But if a manual flush was best practice I wonder why a power flush was stipulated in the contract. I also looked at the manufacturer's website which suggests power flushing is possibly the process that will give the best results to clean debris from a heating system.

I accept that no flush, power flush or manual flush or whatever other type of flush is available offers a 100% guarantee that pipes and radiators are free from debris. But that is not what I am looking at here. I am looking at whether the installation was done with reasonable and skill and care. I am not saying that whatever work was done to install the boiler had to 100% guarantee that pipes and radiators were free from debris.

ASG's stance is, in any event, Mr and Mrs L agreed to the variation of the contract whereby ASG did a manual flush instead of a power flush. But I've not seen anything to suggest that before substituting the manual flush for the power flush it told Mr and Mrs L it was doing this, explained the difference and got their informed consent. I'm not sure what Mr and Mrs L signed to say that they knew a manual flush would be conducted but ASG were the experts here. Without something to show that ASG gave Mr and Mrs L the explanation I have set out above I'd not find it fair or reasonable to place great weight on the document they signed.

I also take on board that it might be reasonably expected that a brand new boiler that had had been installed with reasonable skill and care and had been serviced appropriately would work problem free for more than two years. ASG points to Mr and Mrs L's central heating system as being the cause of the debris. And that is a possibility. But I also take on board that Mr and Mrs L tell us that their previous boiler had worked without the build-up of debris for a decade before ASG installed the new boiler in 2014. I have no reason to doubt what Mr and Mrs L say about this. I might have expected though if the central heating system had legacy debris problems then in the ten years prior to 2014 this would have come to light. Moreover, it would make no sense for Mr and Mrs L to go to the expense of fitting a new boiler to a central heating system which they knew had legacy problems and was therefore bound very soon to cause problems with their new boiler.

It is not in dispute that the boiler was working immediately after being installed. But that does not really tell me if the installation was done with reasonable skill and care because a below par installation might not necessarily have stopped the boiler working altogether right from the get-go.

There is a dispute about whether ASG did do a power flush in April 2016. Because again Mr and Mrs L tell us they watched the engineer, and he did not appear to carry out the same process as the engineer who they also observed working in December 2017 as he did a power flush. Moreover, Mr and Mrs L tell us that the power flush they had done at their own cost in December 2017 took two days and they say this indicated (according the third party engineer) that no power flush had been done for a decade before. I've no reason to doubt that the December 2017 power flush did take two days. I am persuaded from the information I have seen about the typical duration of power flushes that this also suggests that previous flushes had not been done to the required standard.

I've thought about what ASG has said about other complaints that came to this service. I recognise that ASG considers that the complaints it mentions are so similar to this current complaint that they should guide my conclusions and reasoning. But I am not bound by my colleague's decision in those complaints, because ombudsmen's decisions are not binding precedents in the way that the courts' decisions are. I am required to form my own view of this complaint, rather than to simply follow the views of others in other complaints.

For all of these reasons I am persuaded that it is more likely than not, in the very particular circumstances of this complaint, that the initial fitting of the boiler was not done with reasonable skill and care, either because no flush was done at all or because the flush that was done was inadequate. It follows that I am satisfied that this is a breach of contract and that ASG must take steps to put this right. Mr and Mrs L have now replaced their boiler. They did have use of the boiler ASG fitted albeit that use was impaired. Therefore I think the remedy should focus on ending any liability that Mr and Mrs L have under the agreement with ASG.

I find therefore that ASG must.

- End the agreement with Mr and Mrs L with nothing further owing and this includes writing-off the debt that ASG indicates is currently owed. ASG must also stop pursuing Mr and Mrs L for the debt.
- It must ask the credit reference agencies to remove any adverse information it or its agents have asked them to register on Mr L's credit file and on Mrs L's credit file in relation to its agreement with them.
- It must ask the credit reference agencies to mark the agreement as fully settled with nothing further owed on Mr L's credit file and on Mrs L's credit file.
- It must remove the restriction that it has asked H M Land Registry to register against the register of Mr and Mrs L's property.

In addition I find that Mr and Mrs L only had to pay for a power flush in December 2017 due to ASG's breach of contract in 2014. Therefore it must reimburse Mr and Mrs L for the fee they paid for the power flush in December 2017. It must also pay interest on this sum.

I am also persuaded that ASG's actions have caused Mr and Mrs L unnecessary distress and inconvenience and therefore it is fair and reasonable that ASG pay Mr and Mrs L £100 for this.

I've found that most likely the installation was not done with reasonable skill and care. That means I don't have to look at whether Mr and Mrs L maintained their central heating system in line with the agreement after the installation. Neither do I have to look at whether ASG carried out its maintenance obligations post installation with reasonable skill and care. I say this because these issues now fall away. It follows I make no findings about them.

My final decision

My final decision is that A Shade Greener (Boilers) LLP trading as Everlasting Boilers must:

- End the agreement with Mr and Mrs L with nothing further owing and this includes writing-off the debt that ASG indicates is currently owed. ASG must also stop pursuing Mr and Mrs L for the debt.
- It must ask the credit reference agencies to remove any adverse information it or its agents have asked them to register on Mr L's credit file and on Mrs L's credit file in relation to its agreement with them.
- It must ask the credit reference agencies to mark the agreement as fully settled with nothing further owed on Mr L's credit file and on Mrs L's credit files.
- It must remove the restriction that it has asked H M Land Registry to register against the register of Mr and Mrs L's property and not try to register any new restriction instead.
- Refund Mr and Mrs L for the fee they paid for the power flush in December 2017. It must also add interest to this refund at the rate of 8% simple per year. The interest to run from the date Mr and Mrs L paid for the power flush until the date of settlement.
- Pay Mr and Mrs L a total of £100 for distress and inconvenience.

ASG must pay the total compensation within 28 days of the date on which Mr and Mrs L accept my final decision. If it pays later than this it must also pay interest on the £100 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If ASG considers it is legally required to deduct income tax from the interest set out above it must send a tax deduction certificate with the payment so that Mr and Mrs L can reclaim the tax if they are able to.

Mr and Mrs L should refer back to ASG if they are unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 15 March 2023.

Joyce Gordon
Ombudsman